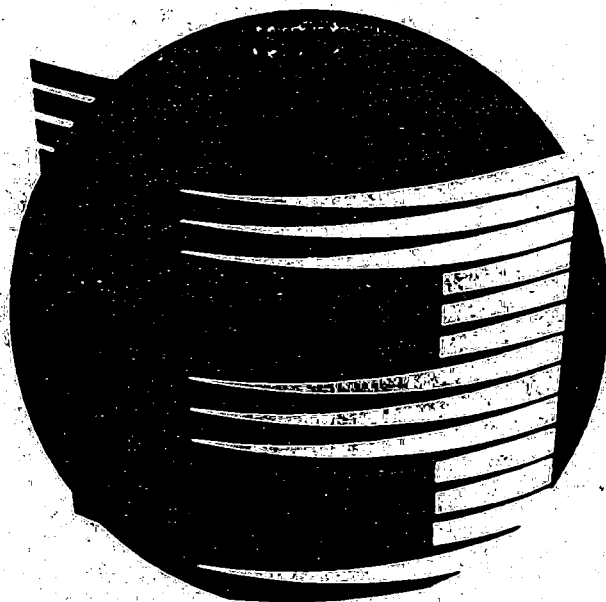

DRAFT

TREATY



EUROPEAN ENERGY CHARTER

CONFERENCE SECRETARIAT

46/93

CONF 60

RESTRICTED

Brussels, 1 June 1993

NOTE FROM THE SECRETARIAT

Subject : Draft Energy Charter Treaty - third version

1. The annexed draft Treaty together with Annexes and the Ministerial Declaration records the position reached after the discussions at the Plenary meeting on 25-28 May 1993.
2. Revised drafts of Annexes A and T to the Treaty package will be circulated separately. They will reflect the outcome of the Review Session on 29 May 1993 and cover the countries reviewed in that Session (Annex A for Croatia and Annexes T for Albania, Armenia, Bulgaria, Croatia, Georgia, Kyrgyzstan and Tadjikistan) as well as amendments from other countries submitted to the Secretariat before the May Plenary.

CHARTER CONFERENCE SECRETARIAT

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DRAFT

ENERGY CHARTER TREATY

PREAMBLE

The Contracting Parties to this Agreement,

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

Having regard to the European Energy Charter signed at The Hague on 17 December 1991,

Aware that all Signatories to the European Energy Charter undertook to agree an Energy Charter Treaty to place the commitments contained in that Charter on a secure and binding international legal basis;

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

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 Agreement;

Determined to remove progressively technical, administrative and other barriers to trade in Energy Materials and Products and related equipment, technologies and services;

Looking to the eventual membership of the General Agreement on Tariffs and Trade of those Contracting Parties which are not currently Contracting Parties to the General Agreement on Tariffs and Trade and concerned to provide interim trade arrangements which will assist those Contracting Parties and not impede their preparation of themselves for such membership;

Having regard to the rights and obligations of certain Contracting Parties who are also parties to the General Agreement on Tariffs and Trade and its related Agreements, as renegotiated from time to time;

Having regard to national competition rules concerning mergers, monopolies, anti-competitive practices and abuse of dominant position where these are already established;

Having regard to the competition rules applicable to member states of the European Community under the Treaty establishing the European Economic Community, the Treaty establishing the European Coal and Steel Community and the Treaty establishing the European Atomic Energy Community;

Having regard to the competition rules applicable to contracting parties to the European Economic Area;

Having regard to the work in the Organisation for Economic Co-operation and Development and the United Nations Conference on Trade and Development to increase co-operation between sovereign states on competition matters;

Having regard to the Treaty on the Non-Proliferation of Nuclear Weapons, the Nuclear Suppliers Guidelines and the obligations of international nuclear safeguards;

Having regard to the necessity of a most efficient exploration, production, conversion, storage, transport, distribution and use of energy;

Having regard to the increasing urgency of measures to protect the environment, including the decommissioning of energy installations and waste disposal, and to the need for internationally agreed objectives and criteria for this purpose;

[Recalling the United Nations Framework Convention on Climate Change, the ECE Convention on Long-Range Transboundary Air Pollution and its protocols, and other international environmental agreements with energy-related aspects, and recognizing the increasing urgency of measures to protect the environment, including internationally agreed measures;](1)

HAVE AGREED AS FOLLOWS:

Specific comments

P.1: General scrutiny reserve.

PART I

DEFINITIONS AND GENERAL PROVISIONS

ARTICLE 1

DEFINITIONS

For the purposes of this Agreement unless the context otherwise requires :

- (1) "Charter" means the European Energy Charter signed at The Hague on 17 December 1991;
- (2) "Contracting Party" means a State or Regional Economic Integration Organisation which has consented to be bound by the Agreement and for which the Agreement is in force;
- (3) ["Regional Economic Integration Organisation" means an organisation constituted by Sovereign States to which its Member States have transferred competences over a range of matters governed by this Agreement and Protocols, including the authority to take decisions binding on its Member States in respect of those matters.](1)

Specific comments

1(3).1: J contingency reserve related to Article 27.

- (4) "Energy Materials and Products", based on the Harmonised System (HS) of the Customs Cooperation Council and the Combined Nomenclature (CN) of the European Communities, means the items of HS or CN included in Annex EM.

General comment

The Chairman proposed to include language in the Treaty text to enable the Charter Conference to adapt, if necessary, the list mentioned in 1(4) and 1(5) and if agreed also in 1(4)(a), by consensus.

- 1) In case of 1(4) and 1(5) a new sub-paragraph (e) to Article 41(1) has been added reading:
"approve the adoption of and modification to Annexes EM and NI".

- 2) An informal Sub-Group has been given the task to explore the possibility of including a list of Energy Related Equipment. This Sub-Group will report on its preliminary findings to the next Plenary. On the basis of that report the June Plenary will revert to the question of inclusion of Energy Related Equipment and the procedure to be followed.

In case the Plenary decides to include Energy Related Equipment in the Treaty text, the Chairman of the Sub-Group Definitions suggested the following additional textual amendments:

(a) New definition of Energy Related Equipment reading:

(4)(a) "Energy Related Equipment", based on the Harmonized System (HS) of the Customs Cooperation Council and the Combined Nomenclature (CN) of the European Communities, means the items of HS or CN included in Annex RE.

(b) Addition to Article 41(1)(e): " and to Annex RE".

(c) In case the Plenary decides to include Energy Related Equipment and negotiations on the list of items are not finished prior to signing of the Treaty, the Ministerial Declaration to this paragraph will be added to read:

"The Contracting Parties declare that Annex RE will be considered for adoption at the first meeting of the Charter Conference."

(5) "Economic Activity in the Energy Sector" means an economic activity in the business of the exploration, extraction, production, storage, transport, transmission, distribution, [trade, marketing, or sales]⁽¹⁾ of Energy Materials and Products except those included in Annex NI.

Specific comments

1(5).1: RUF scrutiny reserve for linguistic check of these words.

(6) "Investment" means every kind of asset, [and includes]⁽¹⁾:

(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]⁽²⁾, or shares, stock, or other forms of equity participation in a company or business enterprise, and bonds, and 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];⁽³⁾

(d) Intellectual Property;

(e) [any right]⁽⁴⁾ conferred by law, contract or by virtue of any licences and permits granted pursuant to law.

(5)

A change in the form in which assets are invested does not affect their character as investments and the term "Investment" includes all investments, whether existing at or made after the later of the dates of entry into force of this Agreement for the Contracting Party of the investor making the investment and Contracting Party in which the investment is made (hereinafter referred to as the "effective date") provided that this Agreement shall only apply to matters affecting such investments after the effective date.

[For the purposes of this Agreement, "Investment" refers to any investment associated with an "Economic Activity in the Energy Sector."]⁽⁶⁾

Specific comments

1(6).1: CDN suggests substituting with: " and consisting of the following". CDN considers that clarity calls for an exclusive rather than an illustrative list.

1(6).2: RUF scrutiny reserve for linguistic check of these words.

1(6).3: CDN proposes replacing with: "and involving the commitment of capital or other resources in the Domain of another Contracting Party to economic activity in such Domain."

1(6).4: N proposes substituting with: "business concessions". Supported by RO.

1(6).5: CDN suggests additional language following sub-paragraph (e) reading:

"For greater clarity:

(a) claims to money which arise solely from:

(i) commercial sales contracts of a national or enterprise in the Domain of one Contracting Party to an enterprise in the Domain of another Contracting Party; or

(ii) the extension of credit in connection with a commercial transaction (e.g. trade financing),

or

(b) any other claims to money;

which do not involve the kinds of interests specified in subparagraphs (a) through (d) above shall not be considered investments."

1(6).6: RUF scrutiny reserve for linguistic check of this sentence.

The Chairman asked CDN and N to withdraw their footnotes.

(7) ["Investor" of a Contracting Party means:

(a) natural persons having the citizenship or nationality of or who are permanently residing in that Contracting Party in accordance with its applicable laws;

(b) companies or other organisations organised in conformity with the laws and regulations applicable in that Contracting Party.](1)

Specific comments

1(7).1: N scrutiny reserve.

(8) ["Investment of an Investor" means an investment owned [or controlled directly or indirectly,]⁽¹⁾ by an Investor.]⁽²⁾

Specific comments

1(8).1: RUF wants deletion of this paragraph. RUF specified that a possible compromise on this question might be found through:

- a) a reflection of this question in Article 19; and
- b) a Ministerial Declaration to specify guidance for international arbitration in the case of a dispute arising over the question of direct/indirect control and indirect ownership.

A Sub-Group consisting of CH, EC, CDN and RUF will draft such a Ministerial Declaration. The Group will report to the Secretariat by mid-June.

1(8).2: CH contingency reserve; change of definition can call for consequential amendments in other Articles.

(9) "Make Investments" means establishing a new investment, acquiring all or part of an existing investment, expanding an existing investment, or substantially altering the type or the objective of an existing investment;

General comment

It was decided that this definition would be discussed in connection with Article 13.

(10) "Returns" means the amounts derived from or associated with an investment, irrespective of the form in which is paid, including profit, dividends, interest, capital gain, royalty payment, management fee, technical assistance fee or other fee, or returns in kind.

(11) ["Domain" means in respect of a Contracting Party:

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

(b) [maritime areas, including]⁽¹⁾ the sea, sea-bed and its subsoil with regard to which that Contracting Party exercises, in accordance with international law, sovereign rights or jurisdiction.]⁽²⁾⁽³⁾

With respect to a Regional Economic Integration Organisation which is or becomes a Contracting Party to this Agreement, Domain means the domains of the Member States of such an Organisation, under the provisions laid down in the agreement establishing that Organisation.

Specific comments

1(11).1: General scrutiny reserve.

1(11).2: N can not accept this definition. N proposal can be found in BA-37 and Room Document 11 of 25 May.

1(11).3: RO and BG scrutiny reserve.

(12) ["GATT and Related Instruments" means:

- (a) the General Agreement on Tariffs and Trade, done at Geneva October 30, 1947;
- (b) agreements, arrangements, decisions, understandings, or other joint action [pursuant to]⁽¹⁾ the General Agreement on Tariffs and Trade;

[and any successor agreement or agreements thereto.]⁽²⁾⁽³⁾

Specific comments

1(12).1: This wording should be checked by the Legal Sub-Group to ensure that all relevant GATT - texts are covered (e.g. Technical Barriers to Trade).

1(12).2: Legal Sub-Group should check whether this text is really necessary.

1(12).3: J scrutiny reserve.

(13) "Intellectual Property" [includes]⁽¹⁾ copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits and the protection of undisclosed information.

Specific comments

1(13).1: CDN prefers to retain "refers to", but will reconsider whether its concerns could be addressed through the Investment Part of the Agreement (see Sub-Group Chairman's note under Article 6).

(14) "Protocol means an agreement authorised and adopted by the Charter Conference and entered into by any of the Contracting Parties in order to complement, supplement, extend or amplify the provisions of this Agreement to specific sectors or categories of activity comprised within the scope of this Agreement, including areas of cooperation referred to in Title III of the Charter.

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

Chairman's note

Negotiations in the Plenary on paragraphs (1), (2), (3), (7), (10), (12), (14) and (15) finished.

[ARTICLE 2]⁽¹⁾

PURPOSE OF THE AGREEMENT

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

Chairman's note

Negotiations in the Plenary finished.

Specific comments

2.1 : N general reserve.

PART II

COMMERCE

ARTICLE 3

ACCESS TO ENERGY RESOURCES AND MARKETS

- (1) The Contracting Parties will strongly promote access to local, export and international markets for the acquisition and disposal of Energy Materials and Products on commercial terms and undertake to remove progressively barriers to trade. [DL]
- (2) They will, accordingly, seek to ensure that price formation shall be based on market principles.

ARTICLE 4

TRADE IN ENERGY MATERIALS AND PRODUCTS AND RELATED SERVICES

Except as otherwise provided in this Agreement trade in Energy Materials and Products between Contracting Parties shall be governed by the provisions of the GATT and Related Instruments, as they are applied under GATT rules between particular Contracting Parties who are members of the GATT.

ARTICLE 5

URUGUAY ROUND

In the event of the adoption of agreements within the framework of the Uruguay Round of the General Agreement on Tariffs and Trade or other significant and relevant developments in the international trading system, Contracting Parties undertake to consider appropriate amendments to this Agreement.

ARTICLE 6

INTELLECTUAL PROPERTY

Deleted

Chairman's note

Plenary fully endorsed the deletion of this Article.

Secretariat has made the consequential changes in the text of other Articles and Annexes.

Sub-Group Chairman's note

1. The Sub-Group in principle was in favour of including a Ministerial Declaration on the importance of securing Intellectual Property Rights. The Sub-Group Chairman will draft such a text to be circulated to the Group by 8 June 1993 and Sub-Group members will comment by 15 June 1993.
2. In relation to Article 1(13), definition of Intellectual Property, a majority of the Group could agree to the present definition with the understanding of it being an illustrative enumeration while CDN still prefers a closed list. CDN will redraft the definition with a view to appease its concern related to the expropriation question in Article 15. CDN will submit redraft of the definition to the Sub-Group participants by 8 June and the Group will in turn submit their comments on the redraft to the Sub-Group Chairman by 15 June.
3. As to the question of NT and MFN in relation to Intellectual Property Rights it is the opinion of the Group that no substantive discipline for IPR protection as such should be introduced so to say "by the back door".

In order to cover both NT and MFN the Chairman suggested following new paragraph to Article 13:

"Contracting Parties agree that NT and/or MFN in relation to Intellectual Property are exclusively governed by the respective provisions contained in the applicable international agreements for the protection of Intellectual Property rights by which the Contracting Party is bound."

The suggestion was discussed in the Group, but due to the complexity of the matter, the Sub-Group participants would need to refer to capitals before taking a position on the suggestion. Comments should reach the Chairman by 8 June.

The initial AUS suggestion intended to solve the same problem will, for the time being, have "stand-by" status.

4. There was an extensive discussion on expropriation related issues based on RD-22 of 22 May 1993 from RO and the note from CDN as included in RD-38 of 28 May 1993. CDN will try to find an acceptable solution to the problem through appropriate additions in the definition and RO would, based on the CDN redraft of the definition, consider whether this would accommodate their concerns. Other delegations agreed to look into possible options for this issue.

[ARTICLE 7]⁽¹⁾

COMPETITION

- (1) The Contracting Parties agree to work to alleviate market distortions and barriers to competition in [Economic Activity in the Energy Sector.]⁽²⁾
- (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.]⁽²⁾

- (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 co-operate 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 Domain 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 and may request that the other's competition authorities initiate appropriate enforcement action. The notifying Contracting Party shall include in such notification sufficient information to permit the other 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 that Contracting Party is able to provide. The notified Contracting Party or, as the case may be, the relevant competition authorities may consult with the other and shall accord full consideration to the request of the other 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 other of its decision or the decision of the relevant competition authorities and may inform the other, at the sole discretion of the notified Contracting Party, of the grounds for the decision. If enforcement action is initiated, the notified Contracting Party will advise the notifying Contracting Party of its outcome and, to the extent possible, of significant interim developments.
- (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) or in Article 31(1) shall be the exclusive means within this Agreement of resolving any disputes that may arise over the implementation or interpretation of this Article.
-

Chairman's note

Negotiations in the Plenary finished.

Specific comments

7.1 : N contingency reserve pending Article 1(5).

7.2 : CDN and AUS scrutiny reserve.

[ARTICLE 8](1)(2)

TRANSIT

- (1) Each Contracting Party shall take the necessary measures to facilitate the Transit of Energy Materials and Products without distinction as to the origin, destination or ownership of such Energy Materials and Products or discrimination as to the pricing on the basis of such distinctions, and without imposing any unreasonable delays, restrictions or charges.
- (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 Domain of more than one Contracting Party;
 - (c) measures to mitigate the effects of interruptions in the supply of Energy Materials and Products;
 - (d) facilitating the interconnection of Energy Transport Facilities.
- 3) [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 Domain, except if otherwise provided for in an existing international agreement.](3)
- (4) [In the event that access to Energy Transport Facilities cannot be obtained on commercial terms for Transit of Energy Materials and Products the Contracting Parties shall not place obstacles in the way of establishing new capacity - subject to applicable legislation which is compatible with paragraph (1) of this Article](4).
- (5) [A Contracting Party through whose Domain Energy Materials and Products may Transit shall not be obliged to
- (a) permit the construction of Energy Transport Facilities, or
 - (b) permit terms and conditions governing Transit and use of such facilities,

which it demonstrates to the other Contracting Parties concerned would endanger the security of supply of its customers, the quality of service of supplies of Energy Materials and Products and the most efficient development and operation of all parts of its electricity and gas systems.

Subject to paragraphs (6) and (7), Contracting Parties shall permit the Transit of established flows of Energy Materials and Products to, from or between the Domain of other Contracting Parties.](5)

- (6) A Contracting Party through whose Domain Energy Materials and Products Transit shall not in the event of a dispute over any matter arising from that Transit interrupt or reduce, nor permit any entity subject to its control to interrupt or reduce, nor require any entity subject to its jurisdiction to interrupt or reduce the existing flow of Energy Materials and Products except where this is specifically provided for in a contract or other agreement governing such Transit or where the procedure in paragraph (7) has been completed.
- (7) (a) The parties to a dispute relating to paragraph (6) shall exhaust any contractual or other dispute resolution remedies they have previously agreed;
- (b) If this fails to resolve the dispute, a party to the dispute may refer it to the Secretary General referred to in Article 40 with a note summarising the matters in dispute. The Secretary General shall notify all Contracting Parties of any such referral;
- (c) Within 30 days of receipt of such a note, the Secretary General, in consultation with the parties to the dispute and the 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 resident in the Domains through which the Transit occurs, from which the Energy Materials and Products being transported originate or to which the Energy Materials and Products are being supplied;
- (d) The conciliator shall conciliate between the parties and seek their agreement to a resolution to the dispute 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 such resolution;

- (e) The Contracting Parties undertake to observe and ensure that the entities under their control or jurisdiction observe any interim decision under paragraph (7)(d) on tariffs, terms and conditions for 12 months following the conciliator's decision or until resolution of the dispute, whichever is earlier;
 - (f) No dispute concerning a Transit which has already been the subject of the conciliation procedures set out in this Article may be referred to the Secretary General under paragraph (7)(b) above unless the previous dispute has been resolved;
 - (g) Standard provisions on conciliator's expenses, location, etc shall be decided by the Charter Conference.
- (8) [This Article shall not derogate from a Contracting Party's rights and obligations under existing bilateral or multilateral agreements.](6)
- (9) This Article shall not be interpreted as to oblige any Contracting Party which does not have a category of Energy Transport Facilities used for Transit to take in relation to that category any measures pursuant to the provisions of this Article. Contracting Parties would however be obliged to take measures if necessary to meet the obligations in paragraph (4).
- (10) (7) For the purpose of this Article:
- (a) "Transit" means the carriage through the Domain of a Contracting Party, or to or from port facilities in its Domain for loading or unloading, of products and materials originating in the Domain of another State and destined for

the Domain of a third State, so long as either the other State or the third State is a Contracting Party. It also means such carriage through the Domain of a Contracting Party of products and materials originating in the Domain of another Contracting Party and destined for the Domain of that other Contracting Party unless the former Contracting Party is listed in Annex N. Any Contracting Party may delete its listing in Annex N by so notifying the Secretary General who shall notify all other Contracting Parties. The deletion shall take effect four weeks after such former notification without further procedures.

- (b) "Energy Transport Facilities" consist of high pressure gas transmission pipelines, high voltage electricity transmission grids and lines, crude oil transmission pipelines, coal slurry pipelines, oil product pipelines, and other fixed facilities specifically for handling Energy Materials and Products.

Specific comments

- 8.1 : N general reserve (see footnote 8.4).
- 8.2 : CDN contingency reserve pertaining to paragraphs (3), (5), (6) and (7).
- 8.3 : AUS contingency reserve (removal of reserve depends on AUS concerns about coverage of transport in the Agreement being met through adoption of a legally binding GATT reference approach).
- 8.4 : It was agreed that in relation to paragraph (4), the terms of that paragraph should apply only within the territory of the Contracting Party and that the substance of article 79 of the Convention of the Law of the Sea should be made applicable to the Continental Shelf. In addition it was agreed that when the Law of the Sea Convention enters into force Contracting Parties will give serious consideration to limiting the field of

application of Article 8 in the Charter Treaty and to leaving pipelines crossing the Continental Shelf to the Law of the Sea Convention. In N's opinion the Charter Treaty should not interfere with the regime relating to submarine cables and pipelines on the Continental Shelf already established in international law. The territorial scope of application of Article 8 should therefore be limited to land territory, internal waters and territorial sea.

Legal Sub-Group was asked to draft appropriate provisions. Insofar as coastal states possess no rights in relation to the Continental Shelf relevant to the obligations in a particular paragraph of this Article, that paragraph should not apply to pipelines and cables on the Continental Shelf. Insofar as the coastal states have rights relating to the Continental Shelf relevant to the obligations of any particular paragraph, then the obligations should apply in relation to pipelines and cables on the Continental Shelf.

Informal discussion is to continue.

8.5 : RUF, U and BLR reserve. They propose the following wording for this paragraph:

"Subject to paragraphs (6) and (7) the Contracting Party through whose Domain Energy Materials and Products may Transit shall not be obliged to endanger existing flows of Energy Materials and Products destined for consumers of such products in its Domain or for the Domain of another Contracting Party, or the security of its energy systems and the optimal regimes of their operation, if it so proves to other interested Contracting Parties."

8.6 : EC scrutiny reserve. Legal Sub-Group to advice further on derogation issues.

8.7 : USA scrutiny reserve on the whole paragraph (10); to be resolved before the June Plenary.

[ARTICLE 9](1)

TRANSFER OF TECHNOLOGY

- (1) The Contracting Parties agree to promote [in accordance with their laws and regulations](2) access to and transfer of technology on a commercial and non-discriminatory basis to assist effective trade and investment and to implement the objectives of the Charter, subject to the protection of the 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 for transfer of technology, in the field of Energy Materials and Products and related equipment and services, subject to non-proliferation and other international obligations.

General comment

Chairman stated that the agreement on this Article was reached in the WG II. Since then two delegations raised new suggestions (see specific comments) the Chairman asked USA and RUF delegations to discuss bilaterally their concerns and submit a compromise to the Secretariat before next Plenary meeting.

Specific comments

9.1: USA suggests new text for this Article reading:

ACCESS TO AND TRANSFER OF TECHNOLOGY

Subject to the protection of the Intellectual Property rights, to non-proliferation and other international obligations, and to their laws and regulations, the Contracting Parties

- (a) agree to promote access to and transfer of technology and related equipment and services employed in Economic Activity in the Energy Sector on a commercial and non-discriminatory basis, in order to assist effective trade and investment and to implement the objectives of the Charter; and
- (b) to give effect to paragraph (1), shall strive both to eliminate existing, and to create no new, obstacles to access to and transfer of technology and related equipment and services employed in Economic Activity in the Energy Sector.

USA proposal received no support. USA was asked to reconsider it.

9.2: RUF suggests deletion.

ARTICLE 10

ACCESS TO CAPITAL

- (1) Contracting Parties acknowledge the importance of conditions which promote the flow of capital to finance trade in Energy Materials and Products and investment in the Energy Sector of Contracting Parties particularly those with economies in transition. Accordingly in accordance with their laws and with their measures necessary for prudential regulation, Contracting Parties shall not require entities subject to their jurisdiction to provide to traders and investors from other Contracting Parties seeking to borrow funds or issue and sell equity shares or other securities in connection with Economic Activity in the Energy Sector treatment less favourable than that provided in like circumstances to their own traders and investors or to traders and investors from any other Contracting Party or any third State.
- (2) A Contracting Party which has programmes providing for access to public credits, guarantees and insurance for facilitating trade or investment abroad shall to the extent permitted by its laws make

such facilities available to its investors for investments in Economic Activity in the Energy Sector of other Contracting Parties or available for trade in relation with such investments, in accordance with the criteria for assistance from such programmes.

- (3) Contracting Parties shall seek to encourage the operations and, where appropriate, make full use of the expertise of relevant international financial institutions in mobilising private investments in Economic Activity in the Energy Sector of Contracting Parties.
- (4) Nothing in this Article shall prevent financial institutions from applying their own lending/underwriting practices based on market principles and prudential considerations or prevent Contracting Parties from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system.

Chairman's note

During the May Plenary several delegations presented alternative texts for this Article: H (Room Document 1); RO (Room Document 6); USA (Room Document 9) and RUF (Room Document 37). The Chairman asked WG II Chairman to prepare a consolidated text for discussion at the next Plenary meeting.

PART III

INVESTMENT PROMOTION AND PROTECTION

ARTICLE 12

INVESTMENT IN ENERGY RESOURCES AND MARKETS

The Contracting Parties undertake to facilitate [DL] investment in and development of energy resources and markets [DL] by formulating and applying transparent rules, [DL] in accordance with [DL] this Part.

ARTICLE 13

PROMOTION, PROTECTION AND TREATMENT OF INVESTMENTS

- (1) Each Contracting Party shall in accordance with the objectives and principles of the Charter and the provisions of this Agreement encourage and create stable, equitable, favourable and transparent conditions for Investors of other Contracting Parties to Make Investments in its Domain. Such conditions shall include a commitment to accord at all times to Investments of Investors of other Contracting Parties fair and equitable treatment. 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 than that required by international law, including that Contracting Party's international obligations. This Part shall not derogate from the duty of each Contracting Party to observe any obligations it may have entered into with regard to Investments of Investors of any other Contracting Party to the extent that they are more favourable than those accorded by this Part.
- (2) Each Contracting Party shall permit Investors of other Contracting Parties to Make Investments in its Domain on a basis no less

favourable than that accorded to its own Investors or to Investors of any other Contracting Party or any third state, whichever is the most favourable subject to the provisions of paragraphs (3) to (6) below.

(3) Notwithstanding paragraph (2) above each Contracting Party may maintain limited exceptions to the obligations of paragraph (2) which correspond to their domestic legislation in force on the date of signature of this Agreement, provided :

- (a) any exception shall not be a greater departure from the obligations of paragraph (2) than that required by or specified in the relevant laws, regulations or administrative commitments;
- (b) details of the relevant laws, regulations and administrative commitments are available publicly in line with Contracting Parties' obligations under Article 23 of this Agreement.
- (c) a summary of such laws, regulations and administrative commitments is included in Annex A to this Agreement. That summary may contain intentions concerning future legislation or application of existing laws and regulations. A Contracting Party shall be bound by such intentions contained in that summary only to the extent indicated therein.

The rights and treatment accorded pursuant to any such exceptions shall be on a most favoured nation basis except

- (i) in accordance with a law listed in Annex A requiring a Contracting Party to restrict investments by investors of another Contracting Party as a consequence of the latter Contracting Party's restrictions on investment by investors of the former Contracting Party;
- (ii) that no [DL] Contracting Party shall be obliged to extend the benefit of any treatment, preference or privilege resulting from its membership of any Regional Economic Integration Organisation which is a [DL] Contracting Party to this

Agreement to another Contracting Party which is not a member of that Regional Economic Integration Organisation or to the Investor of such other Contracting Party.

- (4) For the avoidance of doubt, the provisions of this Article do not affect the application of a Contracting Party's laws, regulations and administrative commitments concerning the technical fitness of Investors of another Contracting Party to carry out certain particular activities or possible Investments in its Domain under the terms of this Agreement, whether or not such Investors have already made other Investments in such Domain.
- (5) Each Contracting Party agrees not to introduce after its signature of this Agreement any new measures (being laws, regulations or administrative commitments) or changes to measures which would have the effect at any time of adding to any discrimination maintained between the right and ability of its own Investors and Investors of any other Contracting Party or third state, whichever is the most favourable, to Make Investments in its Domain. Provided that a Contracting Party may, after its signature of this Agreement, take any relevant measures which it considers necessary for the ending of any monopoly or privatisation of a state enterprise provided that the totality of such additional measures taken by a Contracting Party, when considered together with existing measures, does not constitute an additional barrier to Investment opportunities [DL] for Investors of other Contracting Parties. Any such measures shall also be subject to the other provisions of this Article and the Contracting Party shall amend its summary in Annex A accordingly.
- (6) The Contracting Parties [DL] shall endeavour to reduce progressively existing restrictions which affect the ability of Investors of other Contracting Parties to make Investments in their Domain. They shall amend summaries in Annex A to take account of any such reduction. The Charter Conference shall annually review progress in this direction.[DL]
- (7) In addition each Contracting Party shall in its Domain accord to Investments of Investors of another Contracting Party, and their

management, maintenance, use, enjoyment or disposal, treatment no less favourable than that which it accords to Investments of its own Investors or of the Investors of any other Contracting Party or any third state, and their management, maintenance, use, enjoyment or disposal, whichever is the most favourable.

(1)

(8) [A Contracting Party shall, subject to its laws and regulations relating to the entry, stay and work of a natural person, 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 Domain 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)

(9) Without prejudice to Article 16, the provisions of this Article shall also apply to Returns.

(10) Nothing in this Article shall apply [DL] to grants provided by a Contracting Party for development of advanced energy technology; or government insurance and loan guarantee programmes for encouraging companies to invest abroad for economic development purposes; or small business development programmes for socially and economically disadvantaged minorities.

[(11) For the purposes of Articles 4 and 35 of this Agreement Trade Related Investment Measures applied by a Contracting Party as a condition of making or operating an investment shall be regarded as:

(a) laws, regulations and requirements for the purposes of article 3 of the GATT;

(b) prohibitions or restrictions for the purposes of article 11 of the GATT.

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

- (i) 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;
- (ii) that an enterprise's purchase or use of imported products [DL] be limited to an amount related to the volume or value of local products [DL] that it exports;

or which restricts:

- (iii) 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;
 - (iv) the importation by an enterprise of products [DL] 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;
 - (v) the exportation or sale for export by an enterprise of products [DL] whether specified in terms of particular products [DL] in terms of volume or value of products [DL] in terms of a proportion of volume or value of its local production;
- (12) [A Contracting Party shall not apply any investment measure which is mandatory [or enforceable under domestic law or under administrative rulings or compliance with which is necessary to obtain an advantage]⁽⁴⁾ which requires the export by an enterprise or precludes the import by an enterprise of particular products or a specific volume or value of products.]⁽⁵⁾

- (13) [Contracting Parties shall apply the provisions of paragraphs (11) and (12) to services as though services were products for the purposes of those paragraphs.]⁽⁶⁾
- (14) Nothing in paragraphs (11), (12) and (13) shall be construed to prevent a Contracting Party from requiring an investor or investment to apply qualification requirements for export promotion, foreign aid, government procurement or preferential tariff or quota programs.]⁽³⁾
- (15) 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 investment, investment agreements, and investment authorisations.

(7)

General comments

1. N has proposed 2 alternatives for Article 13. The numbering however refers to BA-37 version. The N proposal would either add the following language to or substitute the following language for language in the Articles and paragraphs indicated below :

Article 16, paras (2)-(6) replaced with:

Alternative A

- (2) Each Contracting Party shall in areas under its jurisdiction as a minimum standard permit investors of other Contracting Parties to make investments on a basis no less favourable than that accorded to investors of any other Contracting Party or any third state, whichever is most favourable.

Alternative B

- (2) Each Contracting Party shall in areas under its jurisdiction permit investors of other Contracting Parties to Make Investments on a basis no less favourable than that accorded to its own investors or to investors of any other Contracting Party or any third state, whichever is most favourable.

Article 41:

- (1) Notwithstanding the provisions of Article 16, any Contracting Party may upon signing this Agreement reserve its right to apply to investors of other Contracting Parties Most Favoured Nations treatment as a minimum standard. Such reservation shall be confirmed when ratifying, accepting or approving the Agreement.
- (2) The Contracting Parties agree to make every effort to eliminate reservations made pursuant to paragraph (1) which affect the ability of investors of other Contracting Parties to Make Investments in areas under their jurisdiction.
- (3) Any Contracting Party may accord to investors of any other Contracting Party the same treatment on a reciprocal basis as that Contracting Party pursuant to paragraph (1) accords to investors from other Contracting Parties.

Article 44, para (2) (Note subparas (2) (a), (b), (c) and (d) remain unchanged)

- (2) The Depositary shall inform the Contracting Parties, other states being signatories to the European Energy Charter, and Parties with an Association Agreement pursuant to Article 38, in particular of:

Article 44, para (2) (e) and (f) (Note subpara (2) (e) replaces existing text and subpara (2) (f) is new text).

(e) any reservation pursuant to Article 41;

(f) any other declaration or notification concerning this Agreement.

Article 1. (Addition of following Definition):

"Most Favoured Nation treatment" means, unless the GATT otherwise entails, that a Contracting Party in laws, regulations, judicial decisions, administrative rulings or general applications may treat its National Investors more favourably than Investors from other Contracting Parties, but all Investors from other Contracting Parties must be treated equally, and no less favourable than Investors from any third state.

11. N has also proposed to introduce following Article on Access to Resources reading:

(1) The Contracting Parties undertake to facilitate access to and development of energy resources by Investors by formulating transparent rules regarding the acquisition, exploration and development of energy resources.

(2) The Contracting Parties shall maintain or adopt procedures, which shall not discriminate Investors from other Contracting Parties on grounds of nationality or country of origin, governing acceptance and treatment prior to allocation of applications for authorisations, licences, concessions and contracts to prospect and explore for or to exploit or extract energy resources.

(3) In allocating authorisations, licences, concessions and contracts pursuant to paragraph (2), a Contracting Party shall treat Investors from other Contracting Parties no less favourably than Investors from any other Contracting Party or any third country, whichever is most favourable.

III. N furthermore suggested to have an Article on Government Participation:

"Any Contracting Party shall be free to participate in energy activities through direct participation by the Government or through government-controlled investors. Such investors may be granted exclusive or special privileges in this respect. In such cases they shall conduct these activities in a manner consistent with this Agreement."

IV. N also submitted a new Article on Property reading:

"This Agreement shall in no way prejudice the system existing in Contracting Parties in respect of property."

Specific comments

13.1 : USA proposes a separate paragraph to be added instead of the Ministerial Declaration to 13(8).

13.2 : EC scrutiny reserve.

13.3 : General scrutiny reserve on the new package of paragraphs (11) to (14).

- The Sub-Group Chairman will recommend the Conference Chairman the arrangement of an additional meeting with relevant GATT experts before next Plenary Session.

- EC will produce a draft Annex to this Agreement reproducing TRIMs Transitional Arrangements before next Plenary.

- Whether the package consisting of paragraphs (11) to (14) will be a self standing Article remains to be seen in relation to trade and investment dispute settlement procedures.

13.4 : CDN substantial reserve.

13.5 : AUS substantial reserve.

13.6 : AUS and CDN substantial reserve.

13.7 : H raised the question that certain safeguard measures relating to investment in industries struggling with social, economical, etc. difficulties, should be reflected in the Treaty text. To meet its concerns H suggests a "contingency" clause to be included in Article 13 as a new para reading:

"Contracting Parties may introduce special measures derogating, from obligations under this Article in cases where they are facing serious difficulties, particularly where these entail serious social problems and they can demonstrate that applying national treatment for Making Investment would aggravate these difficulties. Furthermore countries entitled to transitional measures under Article 36 may derogate from this Article also in the case where certain industries:

- are undergoing restructuring or;
- face the elimination or drastic reduction of the total market share held by already established companies or the nationals of the given Contracting Party or;
- are newly emerging industries.

Such measures shall be reasonable and necessary in order to remedy the situation, be applied on an MFN basis, and shall only relate to Making Investment after the entry into force of such measures. Furthermore they shall effect the operation of companies or nationals already established in the Contracting Party introducing them, only to the same extent as applied to their own companies or nationals.

Any such measures taken should be notified to the Secretariat."

ARTICLE 14

COMPENSATION FOR LOSSES

(1) Except where Article 15 applies, an Investor of any Contracting Party who suffers a loss with respect to any Investment in the Domain of another Contracting Party owing to war or other armed conflict, state of national emergency, civil disturbance, or other similar event in that Domain, shall be accorded by the latter Contracting Party, treatment, as regards restitution, indemnification, compensation or other settlement, 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 who, in any of the situations referred to in that paragraph, suffers a loss in the Domain 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.

Chairman's note

Negotiations in the Plenary finished.

ARTICLE 15

EXPROPRIATION

(1) Investments of Investors of a Contracting Party in the Domain of any other Contracting Party shall not be nationalised, expropriated or subjected to a measure or measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") except where such expropriation is:

- (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 or impending expropriation became known in such a way as to affect the value of the investment (hereinafter referred to as the "valuation date").

[Such fair market value shall by the election 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.](1)

(2) 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) Where a Contracting Party expropriates the assets of a company or enterprise in its Domain in which Investors of any other Contracting Party have an Investments, including through shareholding, these provisions shall apply to ensure prompt, adequate and effective compensation for those Investors for any impairment or diminishment of the fair market value of such Investment resulting from such expropriation.](2)

[(4) Reversion of properties and rights to a resource owner pursuant to an [investment agreement](3) and laws and regulations in force in a Contracting Party at the time such agreement was concluded and which are otherwise in conformity with the provisions of this Agreement, shall not in itself be regarded, for purposes of this Agreement, as an act of expropriation or nationalisation or as a measure having effect equivalent to nationalisation or expropriation.](4)

General comments

- The Sub-Group Chairman will continue to solve the problem in paragraph (4).
- Additional provision may be needed to cover the special position of Intellectual Property Rights (see Sub-Group Chairman's note under Article 6).

Specific comments

15.1: RUF proposes to change this text to:

"Such fair market value shall be calculated in the currency of the Contracting Party making the expropriation. If the currency of this Contracting Party is not freely convertible, the calculation of the mentioned value is made, when necessary, in the freely convertible currency on the basis of the market rate of exchange existing for that currency on the valuation date.

Compensation can be paid in the currency of the Contracting Party making the expropriation. Compensation shall also include annual interest at a commercial rate established on a market basis from the date of expropriation until the date of payment."

The intent of the proposal is to give the same compensation to all types of investors, as the present text.

Many delegations pointed out that RUF requirement is already adequately covered in the Treaty text.

RUF retains this footnote until solution to Article 16(5) is found.

15.2: Sub-Group Chairman proposes to delete this paragraph.

15.3: CDN reserve pending the harmonisation of terminology.

15.4: N proposes to maintain the text as formulated in BA 37 (with a slight modification in the third line):

"Reversion of properties and rights to a resource owner pursuant to laws and regulations in force in a Contracting Party at the time an investment originally was made in the Domain of that Contracting Party shall not be regarded, for purposes of this Agreement, as an act of expropriation or nationalisation or as a measure having effect equivalent to nationalisation or expropriation."

Sub-Group Chairman was asked to find a compromise before the next Plenary.

ARTICLE 16

TRANSFER OF PAYMENTS RELATED TO INVESTMENTS

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

- (a) the initial capital plus any additional capital for the maintenance and development of an investment;
 - (b) [Returns;]⁽¹⁾
 - (c) payments under a contract, including amortisation of principal and accrued interest payment 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; and
 - (g) payments of compensation pursuant to Articles 14 and 15.
- (2) Transfers of payments under paragraph (1) shall be effected without delay and in a Freely Convertible Currency.
- (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) [Subject to the provisions of paragraphs (1) to (3), a Contracting Party may have laws and regulations requiring reports of currency transfer.]⁽²⁾ Notwithstanding the provisions of paragraphs (1) to (3) a Contracting Party may protect the rights of creditors, or ensure compliance with laws on the issuing, trading and dealing in securities and the satisfaction of judgments in civil, administrative and criminal adjudicatory proceedings, through the equitable, non-discriminatory, and good faith application of its laws and regulations.

(5) The provisions of paragraph (2) regarding the currency of transfers are applied in relations between Contracting Parties which constituted the former USSR insofar as this does not contradict agreements between them, [provided that such agreements shall not lead to treatment of Investors of other Contracting Parties that is less favourable than that accorded either to Investors of the Contracting Parties which have entered into such an agreement or to Investors of any other state]⁽³⁾. In accordance with Article 36 transitional arrangements may apply in the absence of such agreements, provided that such arrangements accord to Investors of Contracting Parties, not formerly constituting the USSR, treatment that is not less favourable than that accorded either to Investors of the Contracting Party maintaining transitional arrangements or to Investors of any other State.

General comments

It has been concluded that only AUS, RO and possibly MO could benefit from a Balance of Payments exception clause. Two suggestions for solving the Balance of Payments issues have been tabled:

1. AUS proposal:

"Notwithstanding the provisions of paragraphs 16(1) and 16(3), AUS (MOL and RO) may in exceptional balance of payments circumstances exercise such controls as are necessary to regulate international capital movements for balance of payments purposes. Any restrictions under this provision shall be temporary and shall be consistent with its (their) obligations under existing international agreements and, in particular, with the responsibilities of IMF membership. In any case, no restrictions under this provision shall affect the making of payments or transfers for current international transactions nor provide for discriminatory treatment between Contracting Parties. In taking a measure pursuant to this paragraph, AUS (MOL or RO) shall ensure that such measure least infringes the rights of other Contracting Parties and is no broader in scope or duration than necessary."

2. RO proposal:

Notwithstanding the provisions of paragraphs (1) to (3), a Contracting Party may, in exceptional circumstances related to its balance of payments exercise such limited restrictions as are necessary, in scope or duration, to regulate the international capital movements. These restrictions shall be consistent with the applicable laws and regulations of that Contracting Party and shall ensure a non-discriminatory treatment among Contracting Parties.

All delegations were asked to inform the Secretariat at the latest by 18 June whether they could avail themselves to either of the proposals. The Secretariat will then prepare the final list of countries availing themselves of the BOP exceptions.

Specific comments

16.1: J wants to exclude Returns in kind.

16.2: Large majority of delegations agreed with the Sub-Group Chairman's proposal for deletion of this sentence. RUF wants to keep it and proposes to replace "Subject to" with "Notwithstanding"; as a result the word "Notwithstanding" in the third line should be replaced by "Furthermore".

16.3: USA prefers an alternative for the text:

"provided that such agreements shall not derogate from the obligations of those Contracting Parties under this Agreement with respect to other Contracting Parties and their Investors".

EC prefers deletion but can accept the language if agreed by all the other delegations.

RUF thinks that the first four lines of 16(5) are sufficient.

J, USA and RUF reserve.

The Chairman of the Plenary strongly recommended all delegations to accept the present text of paragraph (5).

[ARTICLE 17](1)

SUBROGATION

[(1) If a Contracting Party or its designated agency (the "Indemnifying Party") makes a payment under an indemnity or guarantee given in respect of an Investment and Returns in the Domain of another Contracting Party (the "Host Party"); the Host Party shall recognise

(a) the assignment to the Indemnifying Party by law or by legal transaction of all the rights and claims resulting from such an Investment [without prejudice to the rights of an Investor under Article 30,](2) and

(b) that the Indemnifying Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the original Investor.

(3)

(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) above, and

(b) any payments received in pursuance of those rights and claims,

as the original Investor was entitled to receive by virtue of this Agreement in respect of the Investment concerned and its related Returns.](4)

- (3) Without prejudice to Article 16 any payments received in non-convertible currency by the Indemnifying Party in pursuance of the rights and claims acquired shall be freely available to the Indemnifying Party for the purpose of meeting any expenditure incurred in the Domain of the Host Party.
-

General comment

WG II at its meeting on 22 April 1993 agreed that this Article should be included in the Treaty and should be limited to cover only political risk insurance.

AUS would need some more time to reconsider whether commercial risk should also be covered.

J wants commercial risks to be covered too and suggests that there should be no limitations to the coverage of risks in this Article.

Specific comments

17.1 : General scrutiny reserve.

17.2 : RUF suggests substituting with:

"However, the Investor, to the extent that it is not covered by an insurance agreement, may enjoy the rights provided under Article 30."

17.3 : N suggests insertion of the following (reintroduction from BA 37):

"This provision is without prejudice to any right of a Contracting Party under this Agreement, or consistent with its obligation under this Agreement, to require approval of the subrogation of rights referred to in this paragraph."

17.4 : USA suggests the following redraft, amending paragraphs (1) and (2):

(1) If a Contracting Party or its designated agency (the "Indemnifying Party") makes a payment under an indemnity or guarantee given in respect of an Investment and Returns in the Domain of another Contracting Party (the "Host Party"), the Host Party shall recognise

(a) the assignment to the Indemnifying Party by law or by legal transaction of all the rights and claims [DL] in respect of such Investment, [DL] and

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

all without prejudice to the right under Article 30 of the Investor that was given the benefit of the indemnity or guarantee to exercise such rights and enforce such claims on behalf of the Indemnifying Party, as well as any rights and claims of the Investor itself in respect of other Investment and Returns.

(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) above, and

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

as the [DL] Investor that was given the benefit of the indemnity or guarantee was entitled to receive by virtue of this Agreement in respect of the Investment concerned and its related Returns.

[ARTICLE 18]⁽¹⁾

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 Agreement, nothing in Part III or V of this Agreement shall be construed to supersede any incompatible provision of such terms of the other agreement, and nothing in such terms of the other agreement shall be construed to supersede any incompatible provision of Part III or V of this Agreement, where any such incompatible provision is more favourable to the investor or investment.

General comments

The Chairman concluded that there is general agreement on this Article. The Plenary will revisit this Article in the light of the total text of the Treaty.

Specific comments

18.1: N, EC and CDN contingency reserve.

ARTICLE 19

NON-APPLICATION OF PART III IN CERTAIN CIRCUMSTANCES

Each Contracting Party reserves the right to deny the advantages of this Part to a legal entity if citizens or nationals of a non-signatory country control such entity and if that entity has no substantial business activities in the Domain of the Contracting Party

In which it is organised or the denying Contracting Party does not maintain diplomatic relationship with the non-signatory or adopts or maintains measures with respect to the non-signatory that prohibit transactions with the investor of that non-signatory or that would be violated or circumvented if the advantages in this Part [DL] were accorded to the investor of that non-signatory or to its investments.

PART IV

CONTEXTUAL

ARTICLE 21

SOVEREIGNTY OVER ENERGY RESOURCES

The Contracting Parties recognise state sovereignty and sovereign rights over energy resources in accordance with and subject to international legal rights and obligations including the provisions of this Agreement. Each State accordingly holds in particular the rights to decide the geographical areas within its Domain to be made available for exploration and development of its energy resources and 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 and development within its Domain.

ARTICLE 22

ENVIRONMENTAL ASPECTS

- (1) In pursuit of sustainable development and taking into account its obligations under those international environmental agreements to which it is a party, each Contracting Party shall strive to minimise in an economically efficient manner harmful environmental impacts occurring both within and outside its Domain from all operations within the energy cycle in its Domain, taking proper account of safety. In doing so each Contracting Party shall act cost-effectively. In its policies and actions each Contracting Party shall strive to take precautionary measures to anticipate, prevent or minimise environmental degradation. They agree that the polluter in the Domains of 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. Contracting Parties shall accordingly:

- (a) take account of environmental considerations throughout the formulation and implementation of their energy policies;
- (b) promote market-oriented price formation throughout the energy cycle and a fuller reflection of environmental costs and benefits;
- (c) having regard to Article 39(4) encourage cooperation in the [DL]⁽¹⁾ attainment of the environmental objectives of the Charter and in the field of international environmental standards for the energy cycle, taking into account differences between Contracting Parties in adverse effects and abatement costs;
- (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 amongst 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 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;
 - (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;
 - (j) promote internationally 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.
- (2) [At the request of one or more Contracting Parties, disputes concerning the application and 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.](²)
- (3) 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 impacts" 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, whilst reducing the amount of energy required to produce that output.
- (d) "cost-effective measures" means to achieve a defined objective at the lowest cost or to achieve the greatest benefit at a given cost.

Chairman's note

Negotiations in the Plenary finished.

Specific comments

22.1 : N scrutiny reserve on deletion of "cost-effective".

22.2 : N maintains its proposal as contained in the Room Document 7 of the Plenary Session of 26 April 1993.

[ARTICLE 23](1)

TRANSPARENCY

- (1) In accordance with Articles 4 and 35 laws, regulations, judicial decisions and administrative rulings and standards of general application which affect matters covered by Article 4 shall be subject to the transparency disciplines of the GATT and relevant Related Instruments.
- (2) Laws, regulations, judicial decisions, and administrative rulings or standards of general application made effective by any Contracting Party, and agreements in force between Contracting Parties, which affect other matters covered by this Agreement 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.

Chairman's note

Negotiations in the Plenary finished.

Specific comments

23.1 : N contingency reserve.

ARTICLE 24

TAXATION

(1) GENERAL EXCLUSION

Except as set out in this Article, nothing in this Agreement shall apply to taxation measures of the Contracting Parties. In the event of any inconsistency between this Article and any other provision of this Agreement, this Article shall prevail to the extent of the inconsistency.

(2) APPLICATION OF PROVISIONS RELATING TO TRADE

Notwithstanding paragraph (1),

(a) Articles 4 and 35 shall apply to taxation measures other than those on income or on capital; and

(b) the provisions of this Agreement requiring a Contracting Party to provide most favoured nation treatment relating to trade in goods and services shall apply to taxation measures other than taxes on income or on capital, except that such provisions shall not apply to:

(i) an advantage accorded by a Contracting Party pursuant to the tax provisions in any convention, agreement or arrangement, described in paragraph (6.1)(b) of this Article; or

(ii) any taxation measure aimed at ensuring the effective collection of taxes, except where the measure arbitrarily discriminates between goods of the Contracting Parties or arbitrarily restricts benefits accorded under the above-mentioned provisions of this Agreement.

(3) APPLICATION OF PROVISIONS RELATING TO INVESTMENT

Notwithstanding paragraph (1), the provisions imposing national treatment obligations or most favoured nation obligations under Part III shall apply to taxation measures of the Contracting Parties other than those on income or on capital, except that nothing in Part III shall apply to:

- (a) impose most favoured nation obligations with respect to advantages accorded by a Contracting Party pursuant to the tax provisions in any convention, agreement or arrangement, described in paragraph (6.1)(b) of this Article; or
- (b) any taxation measure aimed at ensuring the effective collection of taxes, except where the measure arbitrarily discriminates between Investors of the Contracting Parties or arbitrarily restricts benefits accorded under the investment provisions of this Agreement.

(4) EXPROPRIATORY AND DISCRIMINATORY TAXATION

- (a) Notwithstanding paragraphs (1) and (3), Article 15 shall apply to taxation measures.
- (b) Whenever an issue arises under Article 15, to the extent it pertains to whether a taxation measure constitutes an expropriation or nationalisation or whether a taxation measure alleged to constitute an expropriation or nationalisation is discriminatory, the investor or the Contracting Party alleging expropriation shall refer the issue of whether the measure is not an expropriation or whether the measure is discriminatory to the competent tax authorities. Referral is required at the earlier of the time when amicable settlement procedures under Article 30(1) or 31(1) begin or the time the issue is submitted to arbitration or dispute resolution. Competent tax authorities shall, within a period of six months, strive to resolve the non-discrimination issue so referred, applying 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 measure or no such tax convention is in force between the Contracting Parties concerned, applying the non-discrimination principles under the OECD Model Tax Convention on Income and Capital. Bodies called upon to settle disputes pursuant to Articles 30 and 31 may take into account any conclusions arrived at by the competent tax authorities regarding whether the measure is not an expropriation. Such bodies shall take into account any conclusions arrived at by the competent tax authorities regarding whether the measure is discriminatory. Under no circumstances shall involvement of competent tax authorities lead to a delay of proceedings under Articles 30 and 31.

(5) WITHHOLDING TAX

Without limiting the application of the foregoing, and for greater certainty, Article 16 shall not limit the right of a Contracting Party to impose or collect a tax by withholding or other means.

(6) DEFINITIONS

(6.1) The term "taxation measure" includes:

- (a) the provisions relating to taxes of the domestic law of the Contracting Party or of a political subdivision thereof or a local authority therein; and
- (b) the provisions relating to taxes of any convention for the avoidance of double taxation and any international agreement or arrangement to which the Contracting Party is bound.

(6.2) There shall be regarded as taxes on income and 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.

- (6.3) "A competent tax authority" means the competent authority pursuant to a double taxation agreement in force between the Contracting Parties or, when there is no such agreement between the countries in question, the Minister or Ministry of Finance or his or its authorised representatives.
-

General comment

Based on the current text of this Article, Plenary invited Taxation and Legal Sub-Group to meet in the middle of June to resolve potential problems.

ARTICLE 25

STATE ENTITIES AND EXCLUSIVE OR SPECIAL PRIVILEGES [DL]

- (1) Each Contracting Party undertakes that if it establishes or maintains a state entity wherever located and [DL] entrusts such entity [DL] with regulatory, administrative or other governmental authority, such entity shall conduct its activities in a manner consistent with the Contracting Party's obligations under this Agreement.
- (2) Each Contracting Party undertakes that entities entrusted with the operation of services of central economic interest shall conduct their activities in a manner consistent with this Agreement. In particular such an entity shall in the sale of its goods or services treat investments of investors of another Contracting Party no less favourably than investments of its own investors.
- (3) Each Contracting Party undertakes that if it grants to any other entity exclusive or special privileges, in the field of energy, it shall not require that entity to conduct its activities in a manner inconsistent with this Agreement.

ARTICLE 26

OBSERVANCE BY SUB-FEDERAL AUTHORITIES

[Each Contracting Party shall take all measures available to it within its constitution to ensure observance of the provisions of this Agreement by the regional and local governments and other governmental authorities within its Domain .j⁽¹⁾⁽²⁾

General comments

During the discussion of this Article at the Plenary on 26 May 1993 no agreement was reached on the text. Some delegations expressed the view that the adoption of the legally-binding GATT-reference approach in this Treaty should carry with it the use of the text from the Uruguay Round negotiations dealing with observance by Sub-Federal authorities, extending this also to cover investment.

USA wants to revert to this Article only after the overall balance of the Treaty is clear, taking also into account the position adopted on a possible exception for REIO's under Article 27.

Specific comments

26.1: EC suggests to replace the present text of Article 26 by the following, based on the wording considered in the context of the GATT Uruguay round:

"Each Contracting Party is fully responsible under this Agreement for the observance of all provisions of this Agreement and to this end shall take all measures available to it to ensure observance by regional and local governments and other governmental authorities within its Domain. The dispute settlement provisions of this Agreement may be invoked in

respect of measures affecting its observance taken by regional or local governments or other governmental authorities within the Domain of the Contracting Party."

26.2: AUS, CDN and CH prefer the text of BA-37 which read:

"Each Contracting Party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Agreement by the regional and local governments and other governmental authorities within the Domain of a Contracting Party."

ARTICLE 27

EXCEPTIONS

- (1) There shall be no exceptions to Article 4 and 35.
- (2) Provisions of this Agreement other than those referred to in paragraph (1) shall not preclude any Contracting Party from adopting or enforcing any measures:
 - (a) necessary for the maintenance of public order;
 - [(b) necessary to protect human, animal or plant life or health;]⁽¹⁾
 - (c) essential to the acquisition or distribution of Energy Materials and Products in conditions of general or local short supply arising for reasons outside the control of that Contracting Party, if such measures are consistent with the principle that all other Contracting Parties are entitled to an equitable share of the international supply of such Energy Materials and Products and that any such measures that are inconsistent with this Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist;

[provided that such measures shall not constitute disguised restrictions on investment, 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 Agreement to an extent greater than is strictly necessary to the stated end.]⁽²⁾

(3) Provisions of this Agreement other than those referred to in paragraph (1) shall not be construed:

(a) to require any Contracting Party to furnish any information the disclosure of which it considers contrary to its security interests;

(b) to prevent any Contracting Party from taking any measure which it considers necessary for the protection of its essential security interests;

(c) to prevent any Contracting Party from taking any measure in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security;

(d) to prevent any Contracting Party from taking any action in pursuance of its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons, the Nuclear Suppliers Guidelines and other international nuclear safeguards obligations;

[provided that such measures shall not constitute a disguised restriction on investment.]⁽²⁾

(3)

General comment

CDN proposal concerning transfers of Returns in kind as registered in footnote 19.6 of BA-37 will be discussed in the connection with Article 27.

Specific comments

27.1 : CH recommends deletion; USA suggests incorporation of paragraphs (2)(b) and (2)(c) in paragraph (3).

27.2 : USA and J recommend deletion.

27.3 : EC, N and S suggest a new paragraph to provide a general exception for Regional Economic Integration Organisations (Room Document 19):

"The provisions of this Agreement shall not be construed so as to oblige any one Contracting Party to extend to another Contracting Party or the Investor of another Contracting Party the benefit of any treatment, preference or privilege resulting from a REIO, any existing or future customs union or a free trade area or interim agreement leading to the formation of REIO a customs union or a free-trade area, unless also that other Contracting Party is or becomes a member to or associated with such REIO customs union, free trade area or interim arrangement."

J and USA oppose to provide REIO a general exception.

PART V

DISPUTE SETTLEMENTS

ARTICLE 30

SETTLEMENT OF DISPUTES BETWEEN AN INVESTOR AND A CONTRACTING PARTY

- (1) Disputes between a Contracting Party and an Investor of another Contracting Party relating to an investment of the latter in the Domain of the former, which concern an alleged breach of an obligation of the former under Part III (except under Article 13(6)), shall, if possible, be settled amicably.
- (2) If such disputes can not 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;
 - (b) in accordance with any applicable, previously agreed dispute settlement procedure; or
 - (c) in accordance with the following paragraphs of this Article.

[Without prejudice to paragraph (4), Contracting Parties against which an Investor submits a dispute under sub-paragraphs (a) or (b), and which do not unconditionally accept resubmission of that dispute at a later stage under sub-paragraph (c), are listed in Annex ID.

For the sake of transparency, Contracting Parties that are listed in Annex ID shall state their policies, practices and conditions in this regard to the Secretariat, as soon as possible and in any case no later than the date of the deposit of their instrument of

ratification, acceptance or approval in accordance with Article 44.]⁽¹⁾⁽²⁾

(3) In the event an Investor chooses to submit the dispute for resolution under (2)(c), the Investor shall further provide his consent in writing for the dispute to be submitted 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 (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 sub-paragraph (a), under the rules governing the Additional Facility for the Administration of Proceedings by the secretariat of the Centre (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;

OR

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

OR

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

(4) (3) 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.

(5) (a) The consent given in paragraph (4) together with the written consent of the investor given pursuant to paragraph 3 shall 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; and

(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 ("New York Convention").

(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 1 of that Convention.

(6) A tribunal established under paragraph (3) shall decide the issues in dispute in accordance with this Agreement and applicable rules and principles of international law.

(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 written request referred to in paragraph (3) 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".]⁽⁴⁾

(8) [The awards of arbitration, which may include an award of interest, shall be final and binding on the parties to the dispute. An award of arbitration concerning a measure of a Sub-Federal 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 Domain of such awards.]⁽⁵⁾

Chairman's note

Except for square bracketed part of paragraph (2) and paragraph (8) negotiations in the Plenary are finished.

Specific comments

30.1: J and RUF scrutiny reserve.

30.2: USA preliminary review indicates that, at a minimum, the first paragraph should read:

"Notwithstanding paragraph (4), Contracting Parties ..., and which do not give unconditional [DL] consent to the resubmission ..."

USA remains convinced that this formulation may unintentionally call into question the Contracting Parties (other than N, see footnote 30.2) unconditional consent that a dispute which the Investor has not submitted for resolution under paragraph (2)(a) or (2)(b), may be submitted to arbitration.

USA accordingly maintains that the best approach to this issue is to:

(a) amend paragraph (2)(c) to read, per the Legal Sub-Group:

"(c) in accordance with paragraph (3)."

(b) delete the two paragraphs in brackets;

(c) change the chapeau of paragraph (3) to read:

"Provided that the Investor concerned has not submitted the dispute for resolution under paragraph (2)(a) or (2)(b), the Investor may choose to consent in writing to the submission of the dispute by binding arbitration to:"

30.3: The Sub-Group Chairman suggests the following wording to be placed in the Treaty to solve the N constitutional problem:

"Norway may at the time of ratification or at any subsequent time by notification to the depositary declare that it gives its unconditional consent to the submission of a dispute to international arbitration or conciliation in accordance with the provisions of this Article."

30.4: RUF contingency reserve depending on the outcome of definition 1(8).

30.5: The Sub-Group Chairman has proposed this text in an effort to address CDN concerns reflected in footnotes 30.18 and 30.20 of CONF 56. The Sub-Group Chairman had noted limited support for footnote 30.20 and no support for footnote 30.18. However, he also noted readiness to accommodate the CDN constitutional situation. AUS has similar concerns with respect to footnote 30.20.

CDN, EC, AUS, RUF and CH will carry on with informal discussion to find a compromise.

ARTICLE 31

SETTLEMENT OF DISPUTES BETWEEN CONTRACTING PARTIES

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

- (2) If the dispute has not been settled in accordance with paragraph (1) within a reasonable period of time, either party may, except as otherwise provided in this Agreement or agreed in writing by the Contracting Parties, or as concerns the application or interpretation of Article 7 or 22, by written notice 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 within 30 days of delivering the notice in paragraph (2) and inform the other Contracting party of its appointment;
 - (b) Within 60 days of the receipt of the written notice under paragraph (2), the other Contracting Party to the dispute shall, in turn, 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 written notice under paragraph (2) request that the appointment be made in accordance with paragraph (3)(d) below;
 - (c) A third member, who may not be a national or citizen of a Contracting Party to the dispute, shall then be appointed between the Contracting Parties to the dispute. That member shall be the President of the tribunal. If, within 150 days of the delivery of the notice referred to in paragraph (2) above, the Contracting Parties are unable to agree on the appointment of a third member, that appointment shall be made, in accordance with paragraph (3)(d) below, at the request of either Contracting Party submitted within 180 days of delivery of that notice;
 - (d) Appointments pursuant to paragraphs (3)(b) or (3)(c) above shall be made by the Secretary-General of the Permanent Court of International Arbitration (PCIA) within 30 days of the receipt of a request to do so. If he 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 paragraphs (3)(a) to (3)(d) above shall have regard to the qualifications and experience, particularly in matters covered by this Agreement, of the members to be appointed;
- (f) In the absence of an agreement between the Contracting Parties to the contrary, the Arbitration rules of the United Nation Commission on International Trade Law (UNCITRAL) shall govern, except to the extent modified by the Contracting 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 Agreement and international law.
- (h) [The arbitral award shall be final and binding upon the Contracting Parties to the dispute.]⁽¹⁾
- (i) The expenses of the tribunal, including the remuneration of its members, shall be borne in equal shares by the Contracting 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 to the dispute.
- (j) Unless the Contracting Parties to the dispute agree otherwise, the tribunal shall sit in the Hague, and will use the premises and facilities of the Permanent Court of Arbitration.
- (k) A copy of the award shall be deposited with the Secretariat who shall make it generally available.

Chairman's note

Negotiations in the Plenary finished.

Specific comments

31.1 : CDN contingency reserve.

ARTICLE 32

NON-APPLICATION OF ARTICLE 31 TO TRADE DISPUTES

To the extent that a dispute between Contracting Parties concerns the application of Article 4 or 35 and no other Article of this Agreement, it shall not be settled under Article 31 unless the parties to the dispute agree otherwise.

ARTICLE 33

SETTLEMENT OF DISPUTES ON APPLICABILITY OF ARTICLE 31

- (1) If a disagreement arises over the application of Article 32 to a dispute a party to the dispute may refer the matter to an ad hoc arbitration under this Article. In the light of the overall balance of rights and obligations in the GATT and Related Instruments and in this Agreement, respectively, the arbitration shall determine the extent to which the dispute should be brought under the GATT and Related Instruments or Annex D of this Agreement and to which it should be brought under Article 31 of this Agreement, or both, if the dispute is to be settled under both GATT and Related Instruments or Annex D of this Agreement and

Article 31 of this Agreement, the arbitrator shall also determine which elements of the dispute are to be considered under which procedure and the sequence of such consideration: Only for compelling reasons should issues in a dispute pertaining to obligations under Article 4 or 35 of this Agreement be considered under Article 31 of this Agreement.

(2) Such an arbitration shall be constituted as follows:

- (a) Within 30 days of the referral pursuant to paragraph (1), the Contracting Parties in dispute shall choose a sole arbitrator who may not be a national or citizen of a Contracting Party to the dispute. If, within 30 days of the receipt of the request for arbitration, the Contracting Parties are unable to agree on the appointment of a sole arbitrator, that appointment shall be made, in accordance with paragraph (2)(b) below, at the request of any party to the dispute;
- (b) An appointment pursuant to paragraph (2)(a) above shall be made by the Secretary-General of the Permanent Court of International Arbitration (PCIA) within 30 days of the receipt of a request to do so. If he is prevented from discharging this task the appointment shall be made by the First Secretary of the Bureau. If the latter, in turn, is prevented from discharging this task the appointment shall be made by the next most senior Deputy;
- (c) Appointments made in accordance with paragraphs (2)(a) and (2)(b) above shall have regard to the qualifications and experience, particularly in matters covered by this Agreement and by the GATT and Related Instruments, of the arbitrator to be appointed;
- (d) In the absence of an agreement between the Contracting Parties to the dispute to the contrary, the arbitration rules of the United Nation Commission on International Trade Law (UNCITRAL) shall apply, except to the extent modified by the Contracting Parties to the dispute or by the arbitrator;

- (e) The decisions of the arbitrator under this Article shall be taken within 60 days of this appointment in accordance with this Agreement and international law and shall take account of the desirability of an orderly and timely resolution of the dispute;
 - (f) The arbitrator's award shall be final and binding upon the Contracting Parties to the dispute;
 - (g) The expenses of the arbitrator, including his remuneration, shall be borne in equal shares by the Contracting Parties to the dispute. The arbitrator may, however, at his discretion direct that a higher proportion of the costs be paid by one of the Contracting Parties to the dispute;
 - (h) Unless the Contracting Parties to the dispute agree otherwise, the arbitrator shall sit in the Hague, and will use the premises and facilities of the Permanent Court of Arbitration;
 - (i) A copy of the award shall be deposited with the Secretariat who shall make it generally available.
- (3) Neither Contracting Party shall initiate or continue dispute settlement proceedings under the GATT or a GATT Related Instruments or under Article 35, Annex D of this Agreement pending the results of arbitration pursuant to this Article.

PART VI

TRANSITIONAL

ARTICLE 35

INTERIM PROVISIONS ON TRADE RELATED MATTERS

[DL] So long as one or more Contracting Party is not a contracting party to the GATT and Related Instruments, the following provisions shall apply to trade between Contracting Parties at least one of which is not a member of the GATT or a relevant Related Instrument.

- (1) If such trade is governed by an existing bilateral agreement between those Contracting Parties, that agreement shall apply between them following notification to all other Contracting Parties by both Contracting Parties concerned provided that its application does not distort the trade of any third Contracting Party.
- (2) In all other cases trade in Energy Materials and Products shall be governed by the provisions of the GATT and Related Instruments, as in effect on 1 July 1992, as if all such Contracting Parties were members of GATT and applied the Related Instruments except as provided in Annex G. The Charter Conference may amend Annex G by consensus.
- (3) Each Signatory to this Agreement, and each State or Regional Economic Integration Organisation acceding to this Agreement, shall on the date of its signature or of its deposit of its instrument of accession, deposit with the Depository a list of all tariff rates and other charges at the level applied on such date of signature or deposit, on Energy Materials and Products imported into its Domain.
- (4) Subject to paragraph (5) below, each Contracting Party undertakes not to increase any tariff rates or other charges on Energy Materials or Products above the level applied on the date of its signature or deposit as referred to in paragraph (3).

- (5) Notwithstanding paragraph (4), a Contracting Party may maintain limited exceptions to the obligations of paragraph (4), provided that it deposits with the Depositary on the date of signature or deposit as referred to in paragraph (3), along with the list referred to in paragraph (3), a list of such exceptions, specifically identified by reference to the HS or CN items to which such exceptions apply.
- (6) Annex D to this Agreement shall apply to disputes regarding compliance with provisions applicable to trade under this Article, except that Annex D shall not apply to any dispute between Contracting Parties, the substance of which arises under an agreement that:
- (a) has been notified in accordance with and meets the other requirements of paragraph (1) of this Article; or
 - (b) establishes a free-trade area or a customs union as described in paragraph 5 of Article XXIV of the GATT.

[ARTICLE 36]⁽¹⁾

TRANSITIONAL 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 any one or more of the following provisions⁽²⁾ of this Agreement, subject to the conditions in paragraphs (3) to (6) of this Article:

Article 7, paragraphs (2) and (5)

Article 8, paragraphs (1) and (3)

Article 10

Article 13, paragraphs (2), (7) and (11)

Article 16, paragraph (2), limited to members of former USSR with respect of transfers between them

Article 22, paragraphs (1)(b) and (1)(i)

Article 24, paragraphs (2) 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. They shall give full consideration to providing through bilateral or multilateral arrangements technical assistance in whatever form they consider most effective to respond to the needs notified under paragraph (4)(c) of this Article.
- (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 for each Contracting Party claiming transitional arrangements in Annex T to this Agreement. Each such Contracting Party shall take the measures listed by the date (or dates which may differ for different provisions, and different stages) set out in that Annex. Contracting Parties which have temporarily suspended full compliance under paragraph (1) undertake that, unless there are exceptional circumstances recorded in Annex T, they shall not suspend full compliance with the relevant obligations beyond [1 January 1998.]⁽³⁾
- (4) A Contracting Party which has invoked transitional arrangements shall notify the Secretariat at least once in 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 problems it foresees and of its proposals for dealing with those problems;

- (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 Agreement, or to deal with any problems noted in subparagraph (b) as well as to promote other necessary market oriented reforms and modernisation of its energy sector;
 - (d) of any possible requirement to include in its Annex T further of the provisions listed in paragraph (1) or to extend the timetable for achieving compliance in respect of any particular stage towards full implementation as set out in Annex T.
- (5) The Secretariat shall:
- (a) circulate to all Contracting Parties the notifications referred to in paragraph (4) above;
 - (b) circulate and actively promote, relying where appropriate on arrangements in other international organisations the matching of needs for and offers of technical assistance referred to in paragraphs (4)(c) and (2);
 - (c) circulate to all Contracting Parties at the end of each six month period a summary of any notifications made under paragraph (4)(a) above and of any applications under paragraph (4)(d) above.
- (6) [The Charter Conference shall annually review the progress by Contracting Parties towards implementation of the provisions of this Article in accordance with Article 39(3) and the matching of needs and offers of technical assistance referred to in paragraphs (4)(c) and (2). In the course of that review it may decide to take appropriate action under Article 39(3). It may decide to authorise a Contracting Party to delay full compliance with provisions notified under paragraph 4(d) which have not been listed in Annex T for that Contracting Party, or to defer by up to a year at a time any of the dates set out in Annex T. Annex T shall be amended in accordance with such authorizations.]⁽⁴⁾

General comment

It is agreed that Article 36 is also applicable to Protocols, as appropriate.

Specific comments

36.1: General reserve.

36.2: This list includes Articles which were proposed for transitional arrangements by the WG II Chairman. However, based on the outcome of review sessions the delegations claimed the following Articles (paragraphs) to be eligible for transitional arrangements additionally to those proposed above:

Article 3

Article 4

Article 8, paragraphs (2), (4) and (5)

Article 12

Article 13, paragraphs (1), (3), (5) and (6)

Article 14

Article 15, paragraph (1)

Article 16, paragraphs (1), (2) and (3)

Article 22, paragraph (1)

Article 23

Article 24, paragraph (4)(b)

Article 35, paragraph (1)

The decision on whether a transitional period can be claimed for any provision of the Charter Treaty could be taken as part of the final decision on that provision.

36.3: The principle of a target date was generally accepted. More discussions will be necessary on this particular date.

36.4: RUF scrutiny reserve on the voting rules.

EC and J reserve on amendments to Annexes T after signature of the Charter Treaty.

PART VII

STRUCTURAL AND INSTITUTIONAL

ARTICLE 38

PROTOCOLS

- (1) The Charter Conference may authorise the negotiation of a number of Protocols 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 Contracting Party to a Protocol unless it is, or becomes at the same time, a Signatory to the Charter and a Contracting Party to this Agreement.
- (4) Subject to paragraph (3) above, 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.

Chairman's note

Negotiations in the Plenary finished.

ARTICLE 39

CHARTER CONFERENCE

- (1) [The Contracting Parties shall meet periodically in a Conference (hereinafter referred to as "the Charter Conference") at which each Contracting Party shall be entitled to have one representative. The first meeting of the provisional Charter Conference shall be convened by the provisional Secretariat designated on an interim basis under Article 40(5), not later than ninety days after the closing date for signature of this Agreement as specified in Article 43. Subsequent ordinary meetings shall be held at intervals determined by the Charter Conference.]⁽¹⁾

- (2) Extraordinary meetings of the Charter Conference may be held at times other than those referred to in paragraph (1) 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 them by the Secretariat, it is supported by at least one-third of the Contracting Parties.

- (3) The Charter Conference shall:
 - (a) carry out the duties assigned it by this Agreement and Protocols;

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

 - (c) facilitate in accordance with this Agreement and Protocols the co-ordination 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;]⁽²⁾
 - (g) encourage cooperative efforts aimed at facilitating and promoting market oriented reforms and modernisation of energy sectors in those countries of Central and Eastern Europe and the Former Soviet Union undergoing economic transition;
 - (h) authorise negotiation of, approve the terms of reference of such negotiation and consider and adopt the text of Protocols;
 - (i) [authorise the negotiation of and consider and approve or adopt Association Agreements;]⁽²⁾
 - (j) consider and adopt texts of amendments to this Agreement;
 - (k) 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.
- (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 Agreement.
- (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 5 years) to be determined by the Charter Conference, the Charter Conference shall thoroughly review the functions provided for in this Agreement in the light of the extent to which the provisions of this Agreement 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.
-

General comments

Provisions relating to provisional institutions may be deleted from the text of the Agreements and placed in the Final Act.

Chairman noted that agreement on substance of this Article has been reached.

Specific comments

39.1 : General contingency reserve until the provisions of Article on Provisional Application will be finalised.

39.2 : J reserve, but undertook to check with Capital whether this was necessary. J is asked to notify the Secretariat as soon as possible whether its reserves on paragraphs (3)(f) and (3)(i) can now be lifted.

ARTICLE 40 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 5 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 Agreement or in any Protocol and any other functions assigned to it by the Charter Conference.
- (5) The Secretariat functions will be carried out on an interim basis by a provisional Secretariat until the entry into force of this Agreement pursuant to Article 49 and the appointment of a Secretariat under this Article.
- (6) The Secretariat may enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions.

Chairman's note

Negotiations in the Plenary finished.

ARTICLE 41

VOTING

- (1) Consensus shall be required for decisions by the Charter Conference to :
 - (a) adopt amendments to this Agreement other than amendments to Articles 39 and 40;

- (b) approve accessions to this Agreement under Article 46;
- (c) authorize the negotiation of and approve or adopt the text of Association Agreements;
- (d) [approve adjustments to Annex [B]]; ⁽¹⁾ and
- (e) approve the adoption of and modification to Annexes EM and NI.

The Contracting Parties shall make every effort to reach agreement by consensus on any other matter requiring their decision under this Agreement. If agreement cannot be reached by consensus, paragraphs (2), (3) and (4) shall apply.

- (2) Decisions on budgetary matters referred to in Article 39(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 39(7) shall be taken by a three fourths majority of the Contracting Parties.
- (4) Except in cases specified in paragraphs (1)(a) to (d), (2) and (3) and as otherwise specified in this Agreement, decisions provided for in this Agreement 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. For purposes of this paragraph, "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.
- (5) 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.

- (6) 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 Agreement; provided that such an organisation shall not exercise its right to vote if its Member States exercise theirs, and vice versa.
- (7) In the event of persistent arrears in a Contracting Party's discharge of financial obligations under this Agreement, the Charter Conference may suspend that Contracting Party's voting rights in whole or in part.
-

Chairman's note

Negotiations in the Plenary finished.

Specific comments

41.1 : EC contingency reserve relating to the content and procedures of Annex B.

ARTICLE 42

FUNDING PRINCIPLES

- (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 by assessed contributions payable in the proportions specified in Annex [B], which may be adjusted from time to time in accordance with Article 41(2).

- (4) Each Protocol may contain provisions to assure that any costs of the Secretariat arising from a Protocol are borne by the Parties thereto.
- (5) The Charter Conference may accept additional, 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).
-

Chairman's note

Negotiations in the Plenary finished.

PART VIII.

FINAL PROVISIONS

ARTICLE 43

SIGNATURE

This Agreement shall be open for signature at Lisbon from [] to [] by the States and Regional Economic Integration Organisations whose representatives signed the Charter.

ARTICLE 44

RATIFICATION, ACCEPTANCE OR APPROVAL

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

ARTICLE 45

APPLICATION TO OTHER TERRITORIES

- (1) Any State or Regional Economic Integration Organization may at the time of signature, ratification, acceptance, approval or accession declare that the Agreement shall extend to all the other 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 Agreement enters into force for that Contracting Party.
- (2) Any Contracting Party may at a later date, by a declaration addressed to the Depositary, extend the application of this Agreement to other territory specified in the declaration. In

respect of such territory the Agreement 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 addressed to the Depositary. The withdrawal shall, subject to the applicability of Article 52(3), become effective upon the expiry of one year after the date of receipt of such notification by the Depositary.

ARTICLE 46

ACCESSION

This Agreement shall be open for accession by States and Regional Economic Integration Organisations which have signed the Charter from the date on which the Agreement is closed for signature. The instruments of accession shall be deposited with the Depositary.

ARTICLE 47

AMENDMENT

- (1) Any Contracting Party may propose amendments to this Agreement.
- (2) The text of any proposed amendment to this Agreement shall be communicated to the Contracting Parties by the Secretariat at least three months before the meeting at which it is proposed for adoption.
- (3) Amendments to this Agreement texts of which have been adopted [DL] by the Charter Conference shall be submitted by the Depositary to all Contracting Parties for ratification, acceptance or approval.

- (4) Ratification, acceptance or approval of amendments to this Agreement shall be notified to the Depositary in writing. Amendments shall enter into force between Contracting Parties having ratified, accepted or approved them on the ninetieth day after the receipt by the Depositary of notification of their 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 48

ASSOCIATION AGREEMENTS

- (1) The Charter Conference may authorize the negotiation of Association Agreements with States or Regional Economic Integration Organizations, or with international organizations, in order to pursue the objectives and principles of the Charter and the provisions of this Agreement or one or more Protocols.
- (2) The relationship established with and the rights enjoyed and obligations incurred by an associating State, Regional Economic Integration Organization, or international organization shall be appropriate to the particular circumstances of the association, and in each case shall be set out in the Association Agreement.

ARTICLE 49

ENTRY INTO FORCE

- (1) This Agreement shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance or approval thereof.
- (2) For each State or Regional Economic Integration Organisation which ratifies, accepts or approves this Agreement or accedes

thereto after the deposit of the thirtieth instrument of ratification, acceptance or approval [DL], 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) above, 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 50

PROVISIONAL APPLICATION

- (1) The Signatories agree to apply this Agreement and any amendments thereto provisionally following signature, to the extent that such provisional application is not inconsistent with their laws or constitutional requirements pending its entry into force in accordance with Article 47 or 49.
- (2) Any Signatory may terminate its provisional application of this Agreement. Termination of provisional application for any Signatory shall take effect upon the expiration of one year from the day on which such Signatory's written notice of its intention not to become a party to this Agreement is received by the Depositary.
- (3) Notwithstanding that a Signatory terminates its provisional application of this Agreement, Article 1 and Parts III and V of this Agreement shall apply, in accordance with paragraph (1), to any investment made in the Domain of that Signatory by investors of other Contracting Parties or in the Domains of other Contracting Parties by investors of that Contracting Party prior to the effective date of termination of provisional application for a period of [twenty years] from such date.

ARTICLE 51

RESERVATIONS

No reservations may be made to this Agreement.

General comment

N proposes a new Article on Declarations and Statements to be included in the Final Provisions of the Charter Treaty immediately after the Article on Reservations. The purpose of this suggestion is indicated in Room Document 2 of the Plenary Session of 26 April 1993. This structure is identical to that of the United National Convention on the Law of the Sea of 1982. The substantive content of this draft Article is identical to that article 310 of that Convention.

ARTICLE X

DECLARATIONS AND STATEMENTS

Article [reservations] does not preclude a state or Regional Economic Integration Organisation, when signing, ratifying or acceding to this Agreement, from making declarations or statements, however phrased or named, with a view, inter alia, to the harmonization of its laws and regulations with the provisions of this Agreement, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Agreement in their application to that state or Regional Economic Integration Organization.

ARTICLE 52

WITHDRAWAL

- (1) At any time after five years from the date on which this Agreement has entered into force for a Contracting Party, that Contracting Party may [DL] give written notification to the Depository of its withdrawal from this Agreement.
- (2) Any such withdrawal shall take effect upon expiry of one year after the date of the receipt of the notification by the Depository, or on such later date as may be specified in the notification of [DL] withdrawal.
- (3) The provisions of this Agreement and the appropriate provisions of any Protocol to which the withdrawing Contracting Party is a party, as defined in that Protocol, shall continue to apply to Investments made in the Domain of a Contracting Party by Investors of other Contracting Parties or in the Domain of other Contracting Parties by Investors of that Contracting Party as of the date when that Contracting Party's withdrawal from this Agreement takes effect for a period of twenty years from such date.
- (4) [DL] 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 Agreement.

ARTICLE 53

DEPOSITARY

The Government of the Portuguese Republic shall be the Depository of this Agreement.

ARTICLE 54

AUTHENTIC TEXTS

In witness whereof the undersigned, being duly authorised to that effect, have signed texts 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 [] on the [] day of [].

WG II Chairman's note

The decision on the official languages for this Agreement has been referred to Plenary.

DRAFT

ANNEX EM
ENERGY MATERIALS AND PRODUCTS
(In accordance with Article 1(4)).

ANNEX NI
NON-APPLICABLE ENERGY MATERIALS AND PRODUCTS
FOR INVESTMENT PART
(In accordance with Article 1(5)).

[ANNEX RE]
ENERGY RELATED EQUIPMENT
(In accordance with Article 1(4)(a)).

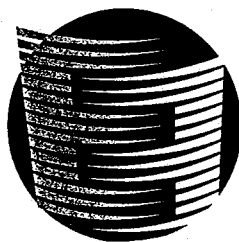
ANNEX N
LIST OF CONTRACTING PARTIES REQUIRING AT LEAST 3 SEPARATE
DOMAINS TO BE INVOLVED IN A TRANSIT
(In accordance with Article 8(10)(a)).

ANNEX ID
LIST OF CONTRACTING PARTIES NOT ALLOWING AN INVESTOR TO RESUBMIT
THE SAME DISPUTE TO INTERNATIONAL ARBITRATION
AT A LATER STAGE UNDER ARTICLE 30
(In accordance with Article 30(2)).

ANNEX G
NON APPLICABLE PROVISIONS OF THE GATT AND
RELATED INSTRUMENTS
(In accordance with Article 35(2)).

ANNEX D
INTERIM PROVISIONS FOR TRADE DISPUTE SETTLEMENT
In accordance with Article 35(6)).

ANNEX B
FORMULA FOR ALLOCATING CHARTER COSTS
In accordance with Article 42(3)).



EUROPEAN ENERGY CHARTER

ANNEX EM

ENERGY MATERIALS AND PRODUCTS

Nuclear
Energy

- 26.12 Uranium or thorium ores and concentrates.
 - 26.12.10 Uranium ores and concentrates.
 - 26.12.20 Thorium ores and concentrates.

- 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.
 - 28.44.10 Natural uranium and its compounds.
 - 28.44.20 Uranium enriched in U235 and its compounds; plutonium and its compounds.
 - 28.44.30 Uranium depleted in U235 and its compounds; thorium and its compounds.
 - 28.44.40 Radioactive elements and isotopes and radioactive compounds other than 28.44.10, 28.44.20 or 28.44.30.
 - 28.44.50 Spent (irradiated) fuel elements (cartridges) of nuclear reactors.

- 28.45.10 Heavy water (deuterium oxide).

- | | | |
|----------------|-------|--|
| Coal, Natural | 27.01 | Coal, briquettes, ovoids and similar solid |
| Gas, Petroleum | | fuels manufactured from coal. |
| and Petroleum | | |
| Products, | 27.02 | Lignite, whether or not agglomerated |
| El. Energy | | excluding jet. |
| | 27.03 | Peat (including peat litter), whether or not |
| | | agglomerated. |
| | 27.04 | Coke and semi-coke or 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 |
| | | (e.g. benzole, toluole, xylene, naphthalene, |
| | | other aromatic hydrocarbon mixtures, phenols, |
| | | creosote oils and others). |
| | 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. |
| | 27.10 | Petroleum oils and oils obtained from bituminous |
| | | minerals, other than crude. |

- 27.11 Petroleum gases and other gaseous hydrocarbons
Liquified:
- natural gas
- propane
- butanes
- ethylene, propylene, butylene and butadiene
(27.11.14)
- other
- In gaseous state:
- natural gas
- other
- 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 (e.g. bituminous mastics, cut-backs).
- 27.16 Electrical energy.

(1)

Other Energy

- 44.01 Firewood, logs, twigs, bundles of firewood and similar forms; woodboards and particles; sawdust, wastes and fragments of wood, whether or not agglomerated, in the form of logs, briquettes, balls or similar forms.

44.02 Charcoal (including charcoal from shells or nuts), whether or not agglomerated.

Specific comments

EM.1: N suggests inclusion of following two items in the list:

29.01 Acyclic hydrocarbons (saturated or unsaturated as ethylene, propene (propylene), butane (butylene) and isomers thereof, butadiene and isoprene, others).

29.02 Cyclic hydrocarbons (e.g. cyclohexane, benzene, toluene, xylenes and their isomers, styrene, ethylbenzene, cumene and others).

A majority for their inclusion was not obtained.

ANNEX NI

NON-APPLICABLE ENERGY MATERIALS AND PRODUCTS
FOR INVESTMENT PART

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 (e.g. benzole, toluole, xylole, naphtalene, other aromatic hydrocarbon mixtures, phenols, creosote oils and others).

[27.11.14]⁽¹⁾ ethylene, propylene, butylene and butadiene

44.01 Firewood, logs, twigs, bundles of firewood and similar forms; woodboards and particles; sawdust, wastes and fragments of wood, whether or not agglomerated, in the form of logs, briquettes, balls or similar forms.

44.02 Charcoal (including charcoal from shells or nuts), whether or not agglomerated.

Specific comments

NI.1: Further consideration needed. N, supported by USA and RUF, proposes deletion. CDN wants to maintain this reference.

[ANNEX RE]⁽¹⁾

ENERGY RELATED EQUIPMENT

8401.10	Nuclear reactors
8401.30	Fuel elements (cartridges), non-irradiated
8401.40	Parts of nuclear reactors
8402.90	Parts of steam or other vapour generating boilers and super-heated water boilers
84.04	Auxiliary plant for use with boilers of heading No 84.02: condensers for steam or other vapour power units
8406.90	Parts of steam turbines and other vapour turbines
84.10	Hydraulic turbines, water wheels and regulators therefor, including parts
8411.82	Other gas turbines than turbo-jets and turbo-propellers, of a power exceeding 5000 kW
8418.61/69	Other refrigerating or freezing equipment; heat pumps
8418.99	Parts of refrigerating or freezing equipment and heat pumps of No 8418.61 and 8418.69
8501.31/34	Other DC motors; DC generators
8501.61/64	AC generators (alternators)
8502.11/13	Generating sets with compression-ignition internal combustion piston engines (diesel or semi-diesel engines)
8502.20	Generating sets with spark-ignition internal combustion piston engines
8502.30	Other generating sets
85.03	Parts suitable for use solely or principally with the machines of heading No. 8501.31/34, 8501.61/64, 8502.11/13, 8502.20 and 8502.30
85.04	Electrical transformers, static converters (for example, rectifiers) and inductors
8506	Primary cells and primary batteries, including parts
8507.10/80	Electric accumulators, including separators therefor, whether or not rectangular (including square)

- 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) weighing each more than 30 kg
- 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, junction boxes), for a voltage exceeding 1000 volts
- 8536.10 Fuses
- 8536.20 Automatic circuit breakers
- 8536.30 Other apparatus for protecting electrical circuits
- 8536.41 Relays for a voltage not exceeding 60 V
- 8536.49 Other relays
- 8536.50 Other switches
- 85.37 Boards, panels (including numerical control panels), consoles, desks, cabins and other bases, equipped with two or more apparatus of heading No 85.35 or 85.36, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of Chapter 90, other than switching apparatus of heading No 85.17
- 85.38 Parts suitable for use solely or principally with the apparatus of heading No 85.35, 85.36 or 85.37
- 8541.40 Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light emitting diodes
- 8544.59 Other electric conductors, for a voltage exceeding 80 V but not exceeding 1000 V (other), not fitted with connectors
- 8544.60 Other electric conductors, for a voltage exceeding 1000 V
- 90.28 Gas, liquid or electricity supply or production meters, including calibrating meters therefor, including parts and accessories
- 9032.10 Thermostats

Specific comments

RE.1 : The Plenary meeting of 28 May 1993 agreed that an informal Sub-Group should explore the possibility of having an agreement on a list of Energy Related Equipment under this Agreement. The list of items is an illustrative one and could serve as the starting point for Sub-Group's findings (see also General comment under Article 1(4)).

ANNEX N

**LIST OF CONTRACTING PARTIES REQUIRING AT LEAST 3 SEPARATE
DOMAINS TO BE INVOLVED IN A TRANSIT**

ANNEX ID

**LIST OF CONTRACTING PARTIES NOT ALLOWING AN INVESTOR TO RESUBMIT
THE SAME DISPUTE TO INTERNATIONAL ARBITRATION
AT A LATER STAGE UNDER ARTICLE 30**

[ANNEX G]⁽¹⁾

1. THE FOLLOWING PROVISIONS OF THE GATT AND RELATED INSTRUMENTS
SHALL NOT BE APPLICABLE UNDER ARTICLE 35(2)

a) THE GATT

- II Schedule of Concessions
- IV Films
- XV Exchange Arrangements
- XXVIII Governmental Assistance to Economic Development
- XXV Joint Action by the Contracting Parties
- XXII Consultations
- XXIII Nullification and Impairment
- XXVI Acceptance, Entry into Force and Registration
- XXVII Withholding or Withdrawal of Concessions
- XXVIII Modification of Schedules
- XXVIII bis Tariff Negotiations
- XXIX The relation of this Agreement to the Havana Charter
- XXX Amendments
- XXXI Withdrawal
- [XXXII Contracting Parties]⁽²⁾
- XXXIII Accessions

(3)

XXXVI-XXXVIII Trade and Development

Annex H

All ad articles in Annex I related to above GATT Articles

Agreement on Government Procurement

Arrangement Regarding Bovine Meat

International Dairy Arrangement

The Multifiber Arrangement

Agreement on Trade in Civil Aircraft

Decision on Differential and More Favourable Treatment,
Reciprocity and Fuller Participation of Developing Countries

Decision on Safeguard Action for Development Purposes

[Understandings regarding notification, consultation, dispute
settlement and surveillance.]⁽⁴⁾

b) THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE (Standards Code)

- Preamble (Articles 1, 8, 9)
- 1(3) General Provision
- 2.6.4 (Preparation, Adoption and Application of Technical Regulations and Standards by Central Government Bodies)
- 10.6 Information about Technical Regulations, Standards and Certification Systems
- 11 Technical Assistance
- 12 Developing Countries
- 13 Committee on Technical Barriers to Trade
- 14 Consultation and Dispute Settlement
- 15 Final Provisions other than 15(5) and 15(13)
- Annex 2 Technical Expert Groups
- Annex 3 Panels

c) THE AGREEMENT ON INTERPRETATION AND APPLICATION OF ARTICLES VI, XVI and XXIII (Subsidies and Countervailing Measures)

- (5)
- 10 Export Subsidies on Certain Primary Products
- 12 Consultations
- 13 Conciliation, Dispute Settlement and Authorised Countermeasures
- 14 Developing Countries
- 16 Committee on Subsidies and Countervailing Measures
- 17 Conciliation
- 18 Dispute Settlement
- 19(2) Acceptance and Accession
- 19(4) Entry into Force
- 19(5)(a) Conformity of National Legislation
- 19(6) Review by Committee
- 19(7) Amendments
- 19(8) Withdrawal
- 19(11) Secretariat
- 19(12) Deposit
- 19(13) Registration

d) THE AGREEMENT ON IMPLEMENTATION OF ARTICLE VII (Customs Valuation)

1.2(b)(iv) Transaction Value

11(1) Determination of Customs Value

14 (second sentence) Application of Annexes

18 Committee on Customs Valuation

19 Consultation

20 Dispute Settlement

21 Developing Countries

22 Acceptance and Accession

24 Entry into Force

25.1 Conformity of National Legislation

26 Review

27 Amendment

28 Withdrawal

29 Secretariat Services

30 Depositary

31 Registration

Annex II

Annex III

Protocol to the Agreement (except 1.7 and 1.8; with necessary conforming introductory language)

e) THE AGREEMENT ON IMPORT LICENSING PROCEDURES

2(2) footnote 2

4

5 except paragraphs (2) and (8)

f) THE AGREEMENT ON IMPLEMENTATION OF ARTICLE VI (Antidumping Code)

13 Developing Countries

14 Committee on Anti-Dumping Practices

15 Consultation, Conciliation and Dispute Settlement

16 Final Provisions, except paragraphs (1), (3), (10)

g) DECLARATION ON TRADE MEASURES TAKEN FOR BALANCE OF PAYMENTS PURPOSES

(6)

4 to 13 inclusive

h) ALL OTHER PROVISIONS IN THE GATT AND RELATED INSTRUMENTS WHICH RELATE TO:

i) governmental assistance to economic development and the treatment of developing countries;

ii) the establishment or operation of specialist committee and other subsidiary institutions;

iii) reconciliation and dispute resolution;

[DL]

[i) ALL FINAL PROVISIONS OTHER THAN IN THE GATT AND THE TOKYO ROUND AGREEMENTS]⁽⁷⁾

j) ALL AGREEMENTS, ARRANGEMENTS, DECISIONS, UNDERSTANDINGS OR OTHER JOINT ACTION PURSUANT TO THE PROVISIONS LISTED IN (a) to [(i)]⁽⁷⁾ ABOVE.

2. [So long as one or more Contracting Party is not a Contracting Party to an instrument related to GATT, where a provision in such an instrument, requires matters to be notified to or through the GATT, the GATT Secretariat or a Committee, such matters shall be notified in English, French, German, Italian, Russian or Spanish to or through the Secretariat established by Article 40 of this Agreement or such other body subsequently appointed by the Charter Conference.]⁽⁴⁾

3. [Each Contracting Party shall ensure the conformity of its laws, regulations and administrative procedures with the provisions of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII, the Agreement on the Implementation of Article VII, the Agreement on Import Licensing Procedures, and the Agreement on Implementation of Article VI as those Agreements apply for that Contracting Party.](8)
-

Specific comments

- G.1 : EC scrutiny reserve pending the study of all GATT material.
- G.2 : USA, J and EC scrutiny reserve.
- G.3 : RUF suggestion to include Article XXXV. USA suggests inclusion of all provisions related to non-application in the relevant codes.
- G.4 : USA and CH will submit redraft of paragraph (2) during the week with the purpose of ensuring non-duplication of GATT notification system.
- J reserve on notification languages.
- G.5 : USA suggests insertion of 3(1)-3(3).
- G.6 : USA was asked to submit proposal during the week for its suggestion to exclude from chapeau and provisions 1-3 references to developing countries and article XVIII.B.
- G.7 : USA, EC and CDN reserve on inclusion of this sub-paragraph.
- G.8 : Legal Sub-Group was asked to check that the reference to relevant articles are included in this Annex.

ANNEX D

INTERIM PROVISIONS FOR TRADE DISPUTE SETTLEMENT

- (1) (a) In their relations with one another, Contracting Parties shall make every effort through co-operation and consultations to arrive at a mutually satisfactory resolution of any difference of views about existing measures that might materially affect compliance with the provisions applicable to trade under Article 35.
- (b) A Contracting Party may make a written request for consultations with any other Contracting Party regarding any existing measure of the other Contracting Party that it considers might affect materially compliance with provisions applicable to trade under Article 35. A Contracting Party that requests consultations shall to the fullest extent possible indicate the measure complained of and specify the provisions of Article 35 and of the GATT and Related Instruments that it considers relevant. Requests to consult pursuant to this paragraph shall be notified to the Secretariat, who shall periodically inform the Contracting Parties of pending consultations that have been notified.
- (c) A Contracting Party shall treat any confidential or proprietary information identified as such and contained in or received in response to a written request, or received in the course of consultations, in the same manner that it is treated by the Contracting Party providing the information.
- (d) In seeking to resolve matters that are considered by a Contracting Party to affect compliance with Article 35 as between itself and another Contracting Party, the two Contracting Parties participating in consultations or other dispute settlement shall make every effort to avoid a resolution that adversely affects the trade of any other Contracting Party.

- (2) (a) If the Contracting Parties have not within 60 days from the request for consultation under paragraph (1)(b) above resolved their dispute or agreed to resolve it by conciliation, mediation, arbitration or other method, either Contracting Party may deliver to the Secretariat a written request for the establishment of a panel in accordance with paragraphs (2)(b) to (f) below. In its request it shall state the substance of the dispute and indicate which provisions of Article 35 and of the GATT and Related Instruments are considered relevant. The Secretariat shall promptly deliver copies of the request to all Contracting Parties.
- (b) The interests of other Contracting Parties shall be taken into account during the resolution of a dispute. Any third Contracting Party having a substantial interest as defined in GATT in a matter shall have the right to be heard by the panel and to make written submissions to the panel, provided that both the disputing Contracting Parties and the Secretariat are notified in writing no later than the date of establishment of the panel, as determined in accordance with paragraph (2)(c) below.
- (c) A panel shall be deemed to be established 45 days after the date of receipt of the written request of a Contracting Party by the Secretariat pursuant to paragraph (2)(a) above.
- (d) A panel shall be composed of three members who shall be chosen by the Secretary-General from the roster described in paragraph (7) below. Except with the agreement of both of the disputing Contracting Parties, the members of a panel would not be citizens of countries which are parties to the dispute or citizens of countries of the Regional Economic Integration Organisations which are parties to the dispute, or citizens of countries which have been sought to be third parties under paragraph (2)(b) or citizens of countries of the Regional Economic Integration Organisations which have sought to be third parties.

- (e) The disputing Contracting Parties shall respond within ten working days to the nominations of panel members and would not oppose nominations except for compelling reasons.
 - (f) Panel members would serve in their individual capacities and not as government representatives, nor as representatives of any organisation. Governments would therefore not give them instructions nor seek to influence them as individuals with regard to matters before a panel. Panel members should be selected with a view to ensuring the independence of members, a sufficiently diverse background and a wide spectrum of experience.
 - (g) The Secretariat shall promptly notify all Contracting Parties that a panel has been composed.
- (3) (a) The Charter Conference shall adopt rules of procedure for panel proceedings consistent with this Annex. Rules of procedure shall be as close as possible to those of GATT. The panel shall also have the right to adopt additional rules of procedure not inconsistent with the rules of procedure adopted by the Charter Conference or with this Annex. In a proceeding before a panel each disputing Contracting Party and third Contracting Parties which have notified their interest in accordance with paragraph (2)(b), shall have the right to at least one hearing before the panel and to provide written submission. Disputing Contracting Parties shall also have the right to provide written rebuttal argument. At the request of third Contracting Parties which have notified their interest in accordance with paragraph (2)(b), the panel may grant them access to the written submissions to the panel by those disputing Contracting Parties which have agreed to the disclosure of their respective submissions to the third Contracting Parties.

The proceedings of the panel shall be confidential. A panel shall make an objective assessment of the matters before it, including the facts of the dispute and the compliance of measures and conduct with the provisions applicable under

Article 35. In exercising its functions, a panel shall consult with the disputing Contracting Parties and give them adequate opportunity to arrive at a mutually satisfactory solution. Unless otherwise agreed by the disputing Contracting Parties, the panel shall base its decision on the arguments and submissions of the disputing Contracting Parties. Panels shall be guided by the interpretations given to the GATT and Related Instruments within the GATT and by relevant bodies within the framework of GATT.

Unless otherwise agreed by the disputing Contracting Parties, all procedures involving the panel, including the issuance of its final report, should be completed within 180 days of the date of establishment of the panel; however, a failure to complete all procedures within this period shall not affect the validity of a final report.

- (b) A panel shall determine its jurisdiction: its decision shall be final and binding. Any objection by a disputing Contracting Party in the dispute resolution that a dispute is not within the jurisdiction of the panel shall be considered by the panel, which shall decide whether to deal with the objection as a preliminary question or to join it to the merits of the dispute.
 - (c) In the event of two or more requests for establishment of a panel in relation to disputes that are substantively similar, the Secretary-General may with the consent of all the disputing Contracting Parties appoint a single panel.
- (4) (a) After having considered rebuttal arguments, a panel shall submit to the disputing Contracting Parties the descriptive sections of its draft written report, including a statement of the facts and a summary of the arguments made by the disputing Contracting Parties. The original disputing Contracting Parties shall be afforded an opportunity to submit written comments on the descriptive sections within a period set by the panel.

Following the date set for receipt of comments from the Contracting Parties, the panel shall issue to the disputing Contracting Parties an interim written report, including both the descriptive sections and the panel's proposed findings and conclusions. Within a period set by the panel a disputing Contracting Party may submit to the panel a written request that the panel review specific aspects of the interim report before issuing a final report. Before issuing a final report, the panel may, in its discretion, meet with the disputing Contracting Parties to consider, the issues raised in such a request.

The final report shall include both descriptive sections, including a statement of the facts and a summary of the arguments made by the disputing Contracting Parties, and the panel's findings and conclusions; it also shall include a discussion of arguments made on specific aspects of the interim report at the stage of reviewing the interim report. The final report shall deal with every substantial issue raised before the panel and necessary to the resolution of the dispute and shall state the reasons for the panel's conclusions.

A panel shall issue its final report by providing it promptly to the Secretariat and to the disputing Contracting Parties. The Secretariat shall at the earliest practicable opportunity distribute the final report, together with any written views that a disputing Contracting Party desires to have appended, to all Contracting Parties.

- (b) Where a panel concludes that a measure, introduced or maintained by, or other conduct of, a Contracting Party does not comply with a provision of Article 35 or with a provision of the GATT and Related Instruments that applies under Article 35, the panel may recommend in its final report that the Contracting Party alter or abandon the measure or conduct so as to be in compliance with that provision.

- (c) Panel reports shall be adopted by the Charter Conference. In order to provide sufficient time for the Charter Conference to consider panel reports, a report shall not be considered for adoption by the Charter Conference until at least 30 days after it has been provided to all Contracting Parties by the Secretariat. Contracting Parties having objections to a panel report shall give written reasons for their objections to the Secretariat at least 10 days prior to the date on which the report is to be considered for adoption by the Charter Conference, and the Secretariat shall promptly provide them to all Contracting Parties. Participating Contracting Parties shall have the right to participate fully in the consideration of the panel report on that dispute by the Charter Conference, and their views shall be fully recorded.
- (d) In order to ensure effective resolution of disputes to the benefit of all Contracting Parties, prompt compliance with rulings and recommendations of a final panel report that has been adopted by the Charter Conference is essential. A Contracting Party which is subject to a ruling or recommendation of a final panel report that has been adopted by the Charter Conference shall inform the Charter Conference of its intentions in respect to complying with such ruling or recommendation. If it is impracticable to comply immediately, the Contracting Party concerned shall explain to the Charter Conference why this is so and shall, in light of this explanation, have a reasonable period of time in which to so comply. The aim of dispute resolution is the modification or removal of inconsistent measures.
- (5) (a) Where a Contracting Party has failed within a reasonable period of time to comply with a ruling or recommendation of a final panel report that has been adopted by the Charter Conference, a Contracting Party to the dispute injured by such non-compliance may deliver to the noncomplying Contracting Party a written request that the noncomplying Contracting Party enter into negotiations with a view to agreeing upon mutually acceptable compensation. If so

requested the noncomplying Contracting Party shall promptly enter into such negotiations.

- (b) If the noncomplying Contracting Party refuses to negotiate, or if the Contracting Parties have not reached agreement within 30 days after delivery of the request for negotiations, the injured Contracting Party may make a written request for authorisation of the Charter Conference to suspend obligations owed by it to the noncomplying Contracting Party under Article 35.
 - (c) The Charter Conference, may authorise the injured Contracting Party to suspend obligations to the noncomplying Contracting Party which the injured Contracting Party considers equivalent in the circumstances.
 - (d) The suspension of obligations shall be temporary and shall be applied only until such time as the measure found to be inconsistent with Article 35 has been removed, or the Contracting Party that must implement recommendations or rulings provides a mutually acceptable solution or a mutually satisfactory solution is reached.
- (6) (a) Before suspending such obligations the injured Contracting Party shall inform the noncomplying Contracting Party of the nature and level of its proposed suspension. If the noncomplying Contracting Party delivers to the Secretary-General a written objection to the level of suspension of obligations proposed by the injured Contracting Party, the objection shall be referred to arbitration as provided below in this paragraph, and the suspension of obligations shall be stayed until the arbitration has been completed and the determination of the arbitral panel has become final and binding in accordance with paragraph (6)(e) below.
- (b) The Secretary-General shall establish an arbitral panel in accordance with paragraphs (2)(d) to (f), though if practicable it shall be the same panel that made the ruling or recommendation referred to in paragraph (4)(d) above, to

examine the level of obligations that the injured Contracting Party proposes to suspend. Unless the Charter Conference decides otherwise the rules of procedure for panel proceedings shall be adopted in accordance with paragraph (3)(a).

- (c) The arbitral panel shall determine whether the level of obligations proposed to be suspended by the injured Contracting Party is excessive in relation to the injury it experienced, and if so, to what extent. It shall not review the nature of the obligations suspended, except insofar as the nature of such obligations may be inseparable from the panel's determination with regard to the level of suspended obligations.
- (d) The arbitral panel shall deliver its written determination to the suspending and the noncomplying Contracting Parties and to the Secretariat within 60 days after the panel has been established or within such other period as may be agreed by the suspending and the noncomplying Contracting Parties. The Secretariat shall present the determination to the Charter Conference at the earliest practicable opportunity, and no later than its next meeting following receipt of the determination.
- (e) The determination of the arbitral panel shall become final and binding 30 days after the date of its presentation to the Charter Conference, and any level of suspension of benefits allowed thereby may thereupon be put into effect by the injured Contracting Party in such manner as that Contracting Party considers equivalent in the circumstances, unless prior to the expiration of the 30 days period, the Charter Conference decides otherwise.
- (f) In suspending any obligations to a noncomplying Contracting Party, an injured Contracting Party shall make every effort not to adversely affect the trade of any other Contracting Party.

- (7) Each Contracting Party may designate two individuals, who shall, in the case of Contracting Parties who are also contracting parties to the GATT, if they are willing and able to serve as panellists under this Article, be panellists currently nominated for the purpose of GATT dispute panels. The Secretary-General may also designate, with the approval of the Charter Conference, acting by consensus, not more than ten individuals, who are willing and able to serve as panellists for purposes of dispute resolution in accordance with paragraphs (2) to (4) above. The Charter Conference may in addition decide, acting by consensus, to designate for the same purposes, up to 20 individuals who serve on dispute settlement rosters of other international bodies, who are willing and able to serve as panellists. The names of all of the individuals so designated shall constitute the dispute settlement roster. Individuals shall be designated strictly on the basis of objectivity, reliability and sound judgement and, to the greatest extent possible, shall have expertise in international trade and energy matters, in particular as relates to provisions applicable under Article 35; they need not be citizens of the designating country. In fulfilling any function under this Annex, designees shall not be affiliated with or take instructions from any Contracting Party. Designees shall serve for renewable terms of five years and until their successors have been designated. A designee whose term expires shall continue to fulfil any function for which that individual has been chosen under this Annex. In the case of death, resignation or incapacity of a designee, the Contracting Party or the Secretary General, whichever designated said designee, shall have the right to designate another individual to serve for the remainder of that designee's term, the designation by the Secretary-General being subject to approval of the Charter Conference, acting by consensus.
- (8) Notwithstanding the provisions contained in this Annex, Contracting Parties are encouraged to consult throughout the pendency of any dispute resolution proceeding with a view to settling their dispute.

- (9) The Charter Conference may appoint other bodies or fora to perform any of the functions ascribed in this Annex to the Secretariat and the Secretary-General.
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Chairman's note

Negotiations in the Plenary finished.

ANNEX B

FORMULA FOR ALLOCATING CHARTER COSTS

To be elaborated at a later stage.

ENERGY CHARTER TREATY

DRAFT

ANNEXES T

LIST OF COUNTRIES' SPECIFIC TRANSITIONAL MEASURES
(In accordance with Article 36(2) on Articles of the
Energy Charter Treaty specified in Article 36(1)).



EUROPEAN ENERGY CHARTER

Version 3

1 June 1993

List of Countries eligible for Transitional Arrangements

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Azerbaijan	13	Moldova	61
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Bulgaria	25	Romania	69
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Hungary	40	Ukraine	90
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ANNEX "T"

COUNTRY : ALBANIA

PROVISION

Article 3, paragraph (2).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The prices for fuel resources are not liberalized. They are state controlled and in household sector they are subsidised by the Government.

PHASE-OUT

No less than 5 years.

ANNEX "T"

COUNTRY : ALBANIA

PROVISION

Article 7, paragraphs (2) and (5).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

High degree of state monopoly in the extraction, transportation and processing of oil and gas, electric power production and distribution, requires to prepare laws in the field of antimonopoly activities.

PHASE-OUT

Not less than 4-5 years.

ANNEX "T"

COUNTRY : ALBANIA

PROVISION

Article 8, paragraphs (1) and (2).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Legislation regulating the transit of energy materials through Albania's territory until now is not prepared. It is necessary to modernize infrastructure during transition period with the aim to bring its level to the requirements of the market economy.

PHASE-OUT

Transition period not less than 5 years.

ANNEX "T"

COUNTRY : ALBANIA

PROVISION

Article 22, paragraph (1).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Obsolete technology and equipments in Albanian energy sector requires high investments for the modernization of the existing projects to reduce environmental problems.

PHASE-OUT

Not less than 5 years.

ANNEX "T"

COUNTRY : ARMENIA

PROVISION

Article 3, paragraph (2).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

At present the government has to subsidize the energy sector in order to limit the rise in prices of electric power, gas and heat for the public. That is why market price formation mechanisms are absent so far in this field. Technical assistance is needed.

PHASE-OUT

Transition period under this Article may of necessity turn out rather long. No set deadline, expected during the transition period.

ANNEX "T"

COUNTRY : ARMENIA

PROVISION

Article 7, paragraphs (2) and (5).

SECTOR

Electric power sector.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

At present State monopoly exists in Armenia in most energy sectors. Antimonopoly legislation and the draft law on energy are at the stage of elaboration.

PHASE-OUT

After the adoption of the above laws most of the energy sectors will be demonopolized. No set deadline, expected during the transition period.

ANNEX "T"

COUNTRY : ARMENIA

PROVISION

Article 13, paragraphs (1) and (5).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The law-making process in the Republic of Armenia has not been completed yet, in particular the law on foreign investments has so far not been adopted. Due to this it is not excluded that under conditions of an economy in transition and of the establishment of market relations there may arise the need for the adoption of measures extending the scope of exceptions from national treatment.

PHASE-OUT

Full compliance with the requirements of this Article may be ensured only after the conclusion of the transition period.

No set deadline, expected during the transition period.

ANNEX "T"

COUNTRY : ARMENIA

PROVISION

Article 14, paragraph (2).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The legislation of the Republic of Armenia on foreign investments is at the stage of preparation. The draft law on foreign investments does not provide for measures of compensation for losses caused by war conflicts (apart from requisition).

PHASE-OUT

The duration of the transition period depends on the political situation in the region and on the adoption of the law on foreign investments.

No set deadline, expected during the transition period.

ANNEX "T"

COUNTRY : ARMENIA

PROVISION

Article 15, paragraph (1).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The draft law of the Republic of Armenia on foreign investments provides that "Compensation ... shall correspond to the real value of the investment nationalized or requisitioned". Under conditions of general shortage, including energy materials, it will be difficult so far to apply practically the term "fair market value".

PHASE-OUT

Taking into account the above, the transition period on this Article may turn out of necessity rather long.

No set deadline, expected during the transition period.

ANNEX "T"

COUNTRY : ARMENIA

PROVISION

Article 16, paragraph (2).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The Republic is in the rouble zone, there is no currency of its own. Due to the shortage of convertible currency the Republic cannot guarantee at this stage the unconditional compliance with the requirements of this paragraph.

PHASE-OUT

The transition period under this Article depends on the timing of the convertibility of the rouble.

No set deadline, expected during the transition period.

ANNEX "T"

COUNTRY : ARMENIA

PROVISION

Article 23, paragraph (2).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

In the Republic of Armenia there are no official enquiry points yet to which requests for information about the relevant laws and other regulations could be addressed. There is no information centre either. Technical assistance is required.

PHASE-OUT

The problem will be solved at the initial stage of the transition period.

Transition period of 2-3 years.

ANNEX "T"

COUNTRY : AZERBAIJAN

PROVISION

Article 3, paragraph (2).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

State monopoly is established in the Republic of Azerbaijan in the extraction of oil and gas, in gas transportation, in the production of electric power and heat. State regulation of prices for energy carriers also exists.

PHASE OUT

A transition period of 6 years is needed for going over to price formation on market principles.

ANNEX "T"

COUNTRY : AZERBAIJAN

PROVISION

Article 4.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The adoption of a number of laws - on external economic activities in free economic zones, on foreign exchange control, etc. - is required to comply with the treaty obligations under the GATT. Besides, it is necessary to bring the existing legislation into line with the legislation of the countries which are parties to the GATT.

PHASE OUT

The adjustment to the requirements of the Basic Agreement will take a sufficiently long period of time.

ANNEX "T"

COUNTRY : AZERBAIJAN

PROVISION

Article 7, paragraphs (2) and (5).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The law "On Antimonopoly Activities" has been adopted in the Republic of Azerbaijan. The establishment of an appropriate management structure is required.

PHASE OUT

Transition period of 5 years is needed to comply fully with the treaty obligations.

ANNEX "T"

COUNTRY : AZERBAIJAN

PROVISION

Article 8.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National and Ministries.

DESCRIPTION

It is necessary to adopt a set of laws on energy, on licensing procedures regulating the questions of transit. During a transition period it is envisaged to build and modernise power transmission lines, as well as generating capacities with the aim of bringing their technical level to the world requirements and adjusting to conditions of a market economy.

PHASE OUT

Transition period of 5-6 years is needed to comply with the treaty obligations.

ANNEX "T"

COUNTRY : AZERBAIJAN

PROVISION

Article 10.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Transition period is needed.

PHASE OUT

It does not appear possible to assess the duration of the transition period required because of the text of the Article not being finalized.

ANNEX "T"

COUNTRY : AZERBAIJAN

PROVISION

Article 16.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The law "On the Protection of Foreign Investments", N° 57, of January 15, 1992, provides that foreign investors are guaranteed, after payment of appropriate taxes and levies, the transfer abroad of their income and other sums in a foreign currency legally received in connection with the investments. The law does not contain a detailed list of the types of payments permitted.

PHASE OUT

The solution of this issue is related to the normalization of the balance of payments and convertibility of the rouble. Besides, the text of the Article is not finalized, there are comments and reserves dealing with balance of payments questions. It does not appear possible to assess the duration of the transition period before the negotiations on these questions are over.

ANNEX "T"

COUNTRY : AZERBAIJAN

PROVISION

Article 23, paragraph (3).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

There are no official enquiry points so far in the Republic of Azerbaijan to which requests for information about relevant laws and other regulatory acts could be addressed. At present such information is concentrated in various organisations.

PHASE OUT

The duration of the transition period can be assessed as 3 years.

ANNEX "T"

COUNTRY : BELARUS

PROVISION

Article 3, paragraph (2).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

There is no liberalization of prices for electric power, heat and gas from the population and the public sector, for electric power in agriculture. The social policy of the government for the long-term is also aimed at subsidizing prices in the household sector and partly in agriculture.

PHASE-OUT

During the transition period the abolition of the regulation of prices for electric power in agriculture is expected (3-5 years); for the domestic sector the establishment of a deadline is not foreseen.

ANNEX "T"

COUNTRY : BELARUS

PROVISION

Article 7, paragraphs (2) and (5).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

State monopoly exists in the Republic of Belarus in such areas of the fuel and energy complex as:

- extraction, transportation and processing of oil;
- transport of gas;
- electric power production and transmission;
- design, construction and assembly of fuel and energy complex projects.

Antimonopoly legislation is at the stage of elaboration.

PHASE-OUT

After the adoption of anti-monopoly legislation a part of the above functions will be de-monopolized in the coming years. The duration of the transition period has not been defined.

ANNEX "T"

COUNTRY : BELARUS

PROVISION

Article 8, paragraph (4).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Laws on energy, land and others are being worked out at present, and before their final adoption uncertainty remains as to the conditions for establishing new transport capacities for energy carriers in the territory of the Republic.

PHASE-OUT

A transition period will be needed which should not be long - up to 3 years.

ANNEX "T"

COUNTRY : BELARUS

PROVISION

Article 16, paragraph (2).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The Republic is in the rouble zone, has no proper currency of its own, legal tender notes are used in part performing the functions of money. Because of the shortage of convertible currency the Republic cannot at this stage guarantee unconditional compliance with the provisions of paragraph (2) of this Article.

PHASE-OUT

The phase-out of this specific limitation depends on the timing of the convertibility of the rouble. The duration of the transition period is not defined.

ANNEX "T"

COUNTRY : BELARUS

PROVISION

Article 22.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

In view of the need to invest tremendous resources in the liquidation of the consequences of the Chernobyl accident, the Republic cannot earmark sufficient financial resources for the modernization of the existing energy projects with the aim of installing modern gas-cleaning technologies to reduce substantially harmful emissions into the atmosphere.

PHASE-OUT

The overcoming of this limitation will require a lengthy transition period of 10-12 years.

ANNEX "T"

COUNTRY : BULGARIA

PROVISION

Article 3, paragraph (2).

Article 22, paragraph (1)(b).

SECTOR

Coal, electricity and gas industries, oil products.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

In the cases of coal, electricity, natural gas and oil products, the above mentioned principles could not be applied under the present transitional economic conditions.

The social policy of the Government, as well as some long-term international treaties, are the basic factors which do not allow the application of price formation based on market principles.

PHASE-OUT

Approximately 5 years.

ANNEX "T"

COUNTRY : BULGARIA

PROVISION

Article 35, paragraph (1).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Bulgaria will start negotiations for accession to GATT soon. Existing obligations under certain bilateral agreements and the forthcoming negotiations for accession to GATT make it premature for Bulgaria to accept the obligations under this paragraph.

PHASE-OUT

No set deadline; expected during transitional period.

ANNEX "T"

COUNTRY : CROATIA

PROVISION

Article 3, paragraph (2).

SECTOR

All energy sectors (except oil).

LEVEL OF GOVERNMENT

National.

DESCRIPTION

There is no complete liberalization of prices for energy, and prices do not correspond to real costs of production.

PHASE OUT

It is supposed that energy prices in Croatia will be completely based on market principles in 3-4 years.

ANNEX "T"

COUNTRY : CROATIA

PROVISION

Article 7, paragraph (2).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

It is necessary to prepare corresponding laws in the field of anti-monopoly activities and regulatory acts for anti-competitive conduct.

PHASE OUT

During 3-4 years.

ANNEX "T"

COUNTRY : CROATIA

PROVISION

Article 8, paragraph (2).

SECTOR

All energy sectors (especially electricity).

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The war situation, forced on Croatia, caused the material damages on energy transmission systems. During a transition period it is envisaged to modernise power transmission lines with the aim of bringing their technical level to the level before the war.

PHASE OUT

Expected transition period is 4 years.

ANNEX "T"

COUNTRY : CROATIA

PROVISION

Article 13, paragraph (11).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Export of energy can be done only with authorisation of Government.

PHASE OUT

No set deadline, expected during the transition period.

ANNEX "T"

COUNTRY : CROATIA

PROVISION

Article 14.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Republic of Croatia cannot accept compensation for losses in connection with the circumstances listed in Article 14.

PHASE OUT

Transition period 5 years.

ANNEX "T"

COUNTRY : CROATIA

PROVISION

Article 22, paragraph (1)(b).

SECTOR

Coal, electricity and gas.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Prices for coal, electricity and gas are not yet market-oriented and do not reflect environmental costs and benefits.

PHASE OUT

The transition period is required up to 1 January 1998.

ANNEX "T"

COUNTRY : THE CZECHLANDS

PROVISION

Article 3, paragraph (1).

SECTOR

Uranium ore and concentrates.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Federal Government of the former Czech and Slovak Republic, Regulations of Federal Ministry of Foreign Trade, No: 560/92.

Import of uranium ore and concentrates including uranium fuel bundles containing uranium of foreign origin will not be licensed.

PHASE OUT

It is expected that this transitional arrangement will be lifted by 1995-1996.

ANNEX "T"

COUNTRY : ESTONIA

NO REQUIREMENTS NOTIFIED

ANNEX "T"

COUNTRY : GEORGIA

PROVISION

Article 3, paragraph (2).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

At present State monopoly exists in the extraction of energy resources and in their transportation and processing, in the production of electric power and heat, as well as there is regulation of prices for energy sources.

PHASE-OUT

For a transition to price formation according to market principles in respect of energy sources a transition period up to 1998 is required.

ANNEX "T"

COUNTRY : GEORGIA

PROVISION

Article 7, paragraphs (2) and (5).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Laws on demonopolization are at present at the stage of elaboration in the Republic and that is why the State has so far the monopoly practically for all energy sources and energy resources, which restricts the possibility of competition in the energy and fuel complex.

PHASE-OUT

Transition period up to the year 1999 is required.

ANNEX "T"

COUNTRY : GEORGIA

PROVISION

Article 8, paragraphs (3), (4) and (5).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

It is necessary to prepare a set of laws on the matter. At present there are substantially different conditions for the transport and transit of various energy sources in the Republic of Georgia (electric power, natural gas, oil products, coal).

To ensure the compliance with the provisions of the Article large volume energy construction is required.

PHASE-OUT

Transition period up to the year 1999 is required.

ANNEX "T"

COUNTRY : GEORGIA

PROVISION

Article 10, paragraph (2).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The law on foreign investments is at present at the stage of preparation.

PHASE-OUT

Transition period up to the year 1997 is required.

ANNEX "T"

COUNTRY : GEORGIA

PROVISION

Article 22, paragraph (1).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Investments in the Republic of Georgia have not taken so far into account to the full extent environmental protection measures. Laws are needed, as well as large investments for the technical reequipment of technological processes for them to meet the international ecological requirements.

PHASE-OUT

To determine the duration of the transition period does not appear possible at the present stage. The aim is to ensure the compliance with this paragraph by the year 2000.

ANNEX "T"

COUNTRY : HUNGARY

PROVISION

Article 3 paragraph (2) - "price formation shall be based on market principles."

SECTOR

Electricity and gas industries.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

In the cases of natural gas and electricity the said principles cannot be applied in Hungary under the present transitional economic circumstances.

The Government's social policy intends to provide subsidy through household prices and therefore both electricity and gas prices will continue to be regulated.

PHASE-OUT

No set deadline, expected during the transition period.

ANNEX "T"

COUNTRY : HUNGARY

PROVISION

Article 8, paragraph (4).

SECTOR

Electricity industry.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

According to the current legislation establishment and operation of high-voltage transmission lines is a state monopoly.

The creation of the new legal and regulatory framework for establishment, operation and ownership of high-voltage transmission lines is under preparation.

The Ministry of Industry and Trade has already initiated the creation of the new Act on Electricity Power, that will have its impact also on the Civil Code and on the Act on Concession.

PHASE-OUT

Expected in 1996, after entering in force of the new electricity law and related regulatory decrees.

ANNEX "T"

COUNTRY : HUNGARY

PROVISION

Article 16, paragraph (1)(d).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

According to the Act on Investments of Foreigners in Hungary, article 33, the foreign top managers, executive managers, members of the Supervisory Board and the foreign employees may transfer their savings up to 50% of their aftertax earnings through the bank of their company.

PHASE-OUT

In the framework of the foreign exchange liberalization programme whose final target is the full convertibility of the Forint.

The phase out of this particular restriction depends on the progress we are able to make in the implementation of this programme. Since this restriction does not create any barrier to the foreign investors in our view there is no need to set a special deadline for the phasing out.

ANNEX "T"

COUNTRY : KAZAKHSTAN

PROVISION

Article 3, paragraph (2).

SECTOR

Oil, gas, coal, electric power, transportation.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Prices for fuel resources have not yet been liberalised. The ceiling levels are set by the government in the process of the economic reform.

PHASE-OUT

Not less than 5-6 years.

ANNEX "T"

COUNTRY : KAZAKHSTAN

PROVISION

Article 4.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Since the existing legislation regulating foreign trade has been prepared without taking into account the rules and standards of the GATT, a sufficiently long period will be required to implement appropriate adjustment to these rules and standards.

PHASE-OUT

The question of the final text of Article 4 still remains the subject of further negotiation. The duration of the transitional period cannot be less than 4-5 years.

ANNEX "T"

COUNTRY : KAZAKHSTAN

PROVISION

Article 7.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Currently the relevant legislation is at the stage of elaboration.

PHASE-OUT

Transitional period of 3-4 years is needed.

ANNEX "T"

COUNTRY : KAZAKHSTAN

PROVISION

Article 8, paragraph (3).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Legislation regulating the transit of Energy Materials and Products through the territory of Kazakhstan is still to be worked out. Under present conditions the financial and economic conditions of their transportation in transit may differ from those applied to Energy Materials and Products intended for domestic needs.

PHASE-OUT

The transition to national treatment in this field may require 5-6 years.

ANNEX "T"

COUNTRY : KAZAKHSTAN

PROVISION

Article 10.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Relevant legislation is currently under preparation.

PHASE-OUT

The final text of this Article is not finalised and is pending further negotiations. Longer transitional period (6-7 years) will be needed for full compliance.

ANNEX "T"

COUNTRY : KAZAKHSTAN

PROVISION

Article 13, paragraph (5).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The law-making process in Kazakhstan, including the sphere covered by the Energy Charter Treaty, is far from complete. Therefore, it cannot be excluded that during the period of stabilisation of the economy and implementation of market reforms the need will arise for introducing measures inconsistent with paragraph (5) of Article 13, even after the signature of the Energy Charter Treaty. The rule of "standstill" can be put into effect on termination of the transition period.

PHASE-OUT

Before the end of the transition period conditions will be prepared for putting into effect paragraph (5) of Article 13 to the full extent. The duration of this period cannot be less than 5-7 years.

ANNEX "T"

COUNTRY : KAZAKHSTAN

PROVISION

Article 14.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The existing legislation does not provide for compensation in connection with the circumstances listed in Article 14.

PHASE-OUT

The appropriate adjustment of legislation can be carried out at an early stage of the transition period (2-3 years).

ANNEX "T"

COUNTRY : KAZAKHSTAN

PROVISION

Article 15, paragraph (1).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The Law on Foreign Investments of December 7, 1990 (Article 25) contains an obligation of the Kazakhstan to compensate to a foreign investor the losses incurred as a result of a requisition of his property. However, this Law does not contain all those specific details of compensation which are included in the text of Article 15.

PHASE-OUT

The necessary supplemental provisions to the legislation can be introduced at an early stage of the transition period (2-3 years).

ANNEX "T"

COUNTRY : KAZAKHSTAN

PROVISION

Article 16, paragraph (1).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The Law on Foreign Investments of December 7, 1990 (Article 26) guarantees to foreign investors "the right to freely transfer abroad the income from activities and from liquidation of legal persons with foreign participation, as well as from the sale of their shares in such enterprises". At the same time the Decree of the President of the Republic of Kazakhstan "On the Organisation of External Economic Activities of the Republic of Kazakhstan for the Period of Stabilisation on the Economy and Implementation of Market Reforms" of January 25, 1992 (paragraph 4), establishes that foreign currency will be sold to foreign investors "for transfer abroad of profit and dividends". Thus, the existing legislation treats these questions in a more restrictive way than proposed in draft text of Article 16.

PHASE-OUT

The adjustment of national legislation to the requirements of the Energy Charter Treaty in this matter will require time, taking into account, in particular, the situation with the balance of payments. The possible time periods within which can be reached a full compliance is estimated to 3-4 years.

ANNEX "T"

COUNTRY : KAZAKHSTAN

PROVISION

Article 22, paragraph (1)(b).

SECTOR

All energy sectors.

LÉVEL OF GOVERNMENT

National.

DESCRIPTION

Prices for energy carriers and energy do not reflect ecological costs and benefits.

PHASE-OUT

This is an integral part of measures of transition to a market economy and will require not less than 5 years.

ANNEX "T"

COUNTRY : KAZAKHSTAN

PROVISION

Article 24, paragraph (4)(b).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National, the Ministry of Finance.

DESCRIPTION

The existing taxation legislation does not provide that the competent tax authorities may deal with claims of foreign investors as to whether tax measures applied to them constitute an expropriation or nationalisation, as well as discrimination, in the sense of Article 24, paragraph (4)(b). The legislation in force does not provide, either, for a possibility of applying the principles under the OECD Model Tax Convention on Income and Capital.

Though the Law on Taxes from Enterprises, Associations and Organisations of February 14, 1991 (Article 32, paragraph 1) determines that the rules established by an international treaty with the participation of the Republic of Kazakhstan prevail over the domestic taxation legislation, there remains the problem of adjustment of the practices of the tax authorities to the requirements of Article 24, paragraph (4)(b).

PHASE-OUT

At an early stage of the transition period (2-3 years).

ANNEX "T"

COUNTRY : KYRGYZSTAN

PROVISION

Article 3, paragraph (1).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The obligations under the present draft text of Article 3(1) cannot be fully complied with due to the following laws being in force:

The Decree of the President of the Republic of Kyrgyzstan of April 2, 1992 "On the regulation of the External Economic Activities in the Republic of Kyrgyzstan" (paragraph 2)

- only specialized commercial State structures and producing enterprises have the right to export the following products of State importance:
 - Oil and oil products;
 - Natural gas;
 - Coal;
 - Ores and concentrates;
 - Scrap of ferrous and non-ferrous metals.

The Law "On General principles of External Economic Activities" of April 18, 1991 (Article 17)

- Joint ventures, international associations and organisations, according to the procedure established by the legislation of the Republic of Kyrgyzstan, may carry out foreign trade and other external economic transactions, including transactions in the national currency within the Republic without its export.

PHASE-OUT

No plans so far.

ANNEX "T"

COUNTRY : KYRGYZSTAN

PROVISION

Article 3, paragraph (2).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

State monopoly for electric power and district heat exists. Prices for them are strictly regulated by the government. Currently there is great disparity between the prices for electric power and heat and their costs. There is also a great difference between the prices of electric power for public utilities, household consumption (the price is much below cost) and for industrial users (the price is much above cost). It should be pointed out that at present energy prices differ greatly from the average world prices, they are substantially lower.

PHASE-OUT

Expected during 3-5 years; the law on energy will be adopted, improvement of price formation in the direction of market principles will take place.

ANNEX "T"

COUNTRY : KYRGYZSTAN

PROVISION

Article 4.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The obligations under the text of Article 4 cannot be fully complied with due to the following laws being in force:

- 1) The Decree of the President of the Republic of Kyrgyzstan of April 2, 1992 "On the Regulation of the External Economic Activities in the Republic of Kyrgyzstan" (paragraph 2):

Only specialized commercial State structures and producing enterprises have the right to export the following products of State importance:

Oil and oil products;

Natural gas;

Coal;

Ores and concentrates;

Scrap of ferrous and non-ferrous metals.

- 2) The law "On Foreign Investments in the Republic of Kyrgyzstan" of June 28, 1991 (Article 10):

The export of goods and services purchased in the market takes place according to the products established by the legislation of the Republic of Kyrgyzstan on export-import transactions.

- 3) The law "On the Customs Tariff" of December 15, 1992 (Article 30):

Preferences in rates of the customs tariff may be established in the form of exemption from customs duty, reduced duty rates or setting quotas for preferential import with regard to goods and other items:

- originating in the States forming with the Republic of Kyrgyzstan a customs union or a free trade zone or making preparations for the creation of such a union (zone);
- circulating in frontier trade.

PHASE-OUT

No plans so far.

ANNEX "T"

COUNTRY : KYRGYZSTAN

PROVISION

Article 16, paragraph (1).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The law "On Foreign Investments in the Republic of Kyrgyzstan" of June 28, 1991 (Article 10):

The export of Soviet and foreign currency by foreign investors takes place according to the procedure established by the legislation of the Republic of Kyrgyzstan on exchange regulation (at the stage of preparation and approval).

PHASE-OUT

No plans so far.

ANNEX "T"

COUNTRY : KYRGYZSTAN

PROVISION

Article 24, paragraph (1).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Under the law on insurance in the Republic of Kyrgyzstan of December 18, 1991 individual exceptions may be established by the legislation of the Republic of Kyrgyzstan for foreign citizens and persons.

PHASE-OUT

Expected during 3-5 years, after improvements in the law on insurance.

ANNEX "T"

COUNTRY : LATVIA

NO REQUIREMENTS NOTIFIED

ANNEX "T"

COUNTRY : LITHUANIA

NO REQUIREMENTS NOTIFIED

ANNEX "T"

COUNTRY : MOLDOVA

PROVISION

Article 3, paragraphs (1) and (2).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

It is necessary to prepare and adopt legislation in the field of energy and to define the mechanism of access to energy resources. Preparation and adoption of other regulations are needed determining the conditions for the establishment of market principles of prices and tariffs formation, for giving up the system of subsidies.

PHASE-OUT

A transition period of not less than 5 years.

ANNEX "T"

COUNTRY : MOLDOVA

PROVISION

Article 7, paragraphs (2) and (5).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

It is necessary to prepare packages of laws in the field of antimonopoly activities and other regulatory acts for anti-competitive conduct.

PHASE-OUT

A transition period of not less than 5 years.

ANNEX "T"

COUNTRY : MOLDOVA

PROVISION

Article 10.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National, the National Bank of Moldova.

DESCRIPTION

It is necessary to introduce an amendment into the Law "On Foreign Investments". It is necessary to develop the securities market and the regulatory acts and mechanisms of access to State credits, guarantees and insurance in the energy sector.

PHASE-OUT

A transition period of 5 years. (Will be made more precise after the signature of the Basic Agreement.)

ANNEX "T"

COUNTRY : MOLDOVA

PROVISION

Article 13, paragraphs (5), (6) and (7).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

It is necessary to prepare the antimonopoly legislation, the regulatory acts related to the regulation of foreign investments, to develop the process of privatisation.

PHASE-OUT

The duration of the transition period has not been defined.

ANNEX "T"

COUNTRY : MOLDOVA

PROVISION

Article 16, paragraphs (2) and (3).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National, the National Bank, the Ministry of Finance, the Ministry for External Economic Relations, the Ministry of Economy.

DESCRIPTION

The formation of the foreign exchange market is necessary.

PHASE-OUT

A transition period of 5 years.

ANNEX "T"

COUNTRY : MOLDOVA

PROVISION

Article 23, paragraph (3).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National, the Ministry of Justice.

DESCRIPTION

It is necessary to create the enquiry points.

PHASE-OUT

A transition period of not less than 3 years.

ANNEX "T"

COUNTRY : POLAND

PROVISION

Article 13, paragraph (2).

SECTOR

Fuel and power sector, mining, high voltage power lines, pipe-line transportation.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Conditions of release of the above mentioned sectors for full national treatment for foreign investors shall be identical with the relevant provisions of the association agreement between Poland and the European Communities (Europe Agreement, Article 44, Article 50, Annex XIa, Annex XIb, Annex XIId).

PHASE-OUT

Poland's intention is to phase out its NT-non-compatible measures in accordance with relevant provisions of the Europe Agreement, concluded between Poland and the European Communities and signed on 16 December 1991.

The Europe Agreement (Article 6) provides for a "transition period of a maximum duration of ten years divided into two successive stages, each in principle lasting five years. The first stage shall begin when this Agreement enters into force".

Although the Europe Agreement, pending ratification procedures in some Member States of the EC, has not yet entered into force, there is a reasonable chance that this will happen before the end of the year 1993. Provisionally, therefore, the first stage of the above mentioned transition period can be assumed to last until the end of 1998, whereas the second stage - until the end of 2003.

The Europe Agreement further opens the national treatment for EC companies:

- in the fuel and power industry - from its entry into force,
- in the mining industry - at the latest by the end of the first stage of the transition period (1998),

- in high voltage power lines and in pipe-line transportation - at the latest by the end of the transition period (2003).

Poland retains right to introduce measures which derogate from the above obligation if certain industries:

- are undergoing restructuring, or
- are facing serious difficulties, particularly where these entail serious social problems in Poland, or
- face the elimination or a drastic reduction of the total market share held by Polish companies or nationals in a given sector or industry in Poland, or
- are newly emerging industries in Poland.

Such measures can be applied in fuel and power and mining only during the first stage, whereas in high voltage and pipelines - during the entire transition period. Moreover, such measures:

- shall cease to apply for fuel/power and mining at the latest two years after the expiration of the first stage, for high voltage and pipelines - upon the expiration of the transitional period, and
- shall be reasonable and necessary in order to remedy the situation, and
- shall only relate to establishment in Poland to be created after the entry into force of such measures.

ANNEX "T"

COUNTRY : ROMANIA

PROVISION

Article 7, paragraphs (2) and (5).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Detailed regulation is subject to further elaboration.

PHASE OUT

T.P. 5 years.

ANNEX "T"

COUNTRY : ROMANIA

PROVISION

Article 13, paragraph (2), (7) to (11).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

- The legislation concerning the natural resources is under development; some special provisions could be brought about, in the way of Article 16, for the transitional period;
- In order to protect certain infant industries or sectors undergoing restructuring or facing serious difficulties corresponding social problems.

PHASE OUT

T.P. 8 years.

ANNEX "T"

COUNTRY : ROMANIA

PROVISION

Article 14.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Romanian Foreign Investment Law does not stipulate measures for compensation of losses generated by military conflicts (except requisition).

PHASE OUT

- related provisions are under development in our legislation;
- Romania is to become a member of MIGA and foreign investors can avail of the insurance cover provided by this World Bank institution.
- the transitional period is estimated up to 1 January 1998.

ANNEX "T"

COUNTRY : ROMANIA

PROVISION

Article 22, paragraph (1).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

- The necessity to enact general environmental legislation and to ensure that all proposed legislation is reviewed for environmental impact;
- The necessity to create the framework and the means to ensure the access to the public to adequate information and to the policy setting process as well as investment strategy and environmental impact assessment of individual projects.

PHASE OUT

The transition stages and periods required are in accordance with the pace of the economic reform and the effort for the integration in the European structures. We estimate a T.P. of 7 years.

ANNEX "T"

COUNTRY : ROMANIA

PROVISION

Article 22, paragraph (1)(b).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The necessity to ensure that acceptable least-cost environmental measures are reflected in the market oriented price formation and to integrate these measures in industrial-energy restructuring and development and in the privatization process.

PHASE OUT

We estimate a T.P. of 7 years.

ANNEX "T"

COUNTRY : RUSSIA

PROVISION

Article 7, paragraph (2).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

The Federation.

DESCRIPTION

A comprehensive framework of anti-monopoly legislation has been created in the Russian Federation but the structure of the energy sectors inherited from the past still retains a high degree of monopolisation, which limits accordingly competition possibilities. According to existing assessments, demonopolisation processes in the energy sectors will take a long time.

PHASE-OUT

The aim of the transition period is to phase out the inconsistencies between the antimonopoly regulation adopted recently and the real situation in the energy sectors.

ANNEX "T"

COUNTRY : RUSSIA

PROVISION

Article 13, paragraph (5).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

The Federation.

DESCRIPTION

The law-making process in the Russian Federation, including the energy sectors, is far from being completed. It is, therefore, not excluded that the conditions of an economy in transition and of formation of market relations might necessitate the adoption of measures extending the scope of exceptions from national treatment.

PHASE-OUT

The standstill obligation with regard to the exceptions from national treatment can be implemented only after the expiry of the transition period.

ANNEX "T"

COUNTRY : RUSSIA

PROVISION

Article 13, paragraph (6).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

The Federation.

DESCRIPTION

The law making process in the Russian Federation is far from being completed. It is, therefore, not excluded that the conditions of an economy in transition and of formation of market relations would compell to adopt measures not fully compatible to the obligation to reduce progressively the existing restrictions.

PHASE-OUT

The obligation "to reduce progressively" (roll-back) the exceptions from national treatment can be fulfilled to the full extent only after the expiry of the transition period.

ANNEX "T"

COUNTRY : RUSSIA

PROVISION

Article 13, paragraph (7).

SECTOR

All sectors of energy.

LEVEL OF GOVERNMENT

The Federation.

DESCRIPTION

The law-making process in the Russian Federation is far from being completed. It is, therefore, not excluded that the conditions of an economy in transition and of formation of market relations the needs might necessitate the adoption of measures extending the scope of exceptions from national treatment at the post-investment stage.

PHASE-OUT

The full observance of the requirements of Article 13, paragraph (7), can be ensured only on the expiration of the transition period.

ANNEX "T"

COUNTRY : RUSSIA

PROVISION

Article 15, paragraph (1)
("Such compensation shall amount to the fair market value ...").

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

The Federation.

DESCRIPTION

The Law on Foreign Investments of July 4, 1991 (Article 8) provides that "compensation ... shall correspond to the real value of the investments to be nationalized or requisitioned". Practical application of the category "fair market value" in the Russian Federation presupposes a much greater similarity of market conditions in Russia and in the industrialized countries of the West than at present. For the time being, the criteria used for the assessment of such value in the West may prove not quite applicable to the conditions existing in Russia.

PHASE-OUT

The transition period in this case may turn out to be long to the maximum.

ANNEX "T"

COUNTRY : RUSSIA

PROVISION

Article 16, paragraph (1).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

The Federation.

DESCRIPTION

The Law on Foreign Investments of July 4, 1991 (Article 10) provides that "foreign investors ... shall be guaranteed unhindered transfer abroad of payments connected with their investments, provided these payments were received in foreign currency". The Law does not contain a detailed list of types of possible payments as it has been done in Article 16.

PHASE-OUT

Since the solution of this issue is connected with the normalisation of the balance of payments and convertibility of the rouble, a sufficiently long transition period will be required for the realization in full of the requirements of Article 16.

ANNEX "T"

COUNTRY : RUSSIA

PROVISION

Article 23, paragraphs (1), (2) and (3).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

The Federation and the Republics constituting Federation.

DESCRIPTION

- 1) There is no provision in the Russian Federation for obligatory publication of judicial decisions and administrative rulings since they are not considered to be the sources of the Law. Changes of the existing legal system in the matter are not expected.
- 2) No official enquiry points exist in the Russian Federation as of now to which requests for information about relevant laws and other regulation acts could be addressed.

PHASE-OUT

- 1) The existing legal system will not be changed.
The solution might be sought under Exemption.
- 2) The issue may be solved at an early stage of the transition period.

ANNEX "T"

COUNTRY : SLOVAKIA

PROVISION

Article 3, paragraph (2).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Prices of energy have not yet been liberalised.

PHASE-OUT

It is supposed that energy prices in Slovakia will be based on market principles from the year 1996.

ANNEX "T"

COUNTRY : SLOVAKIA

PROVISION

Article 8, paragraphs (1) and (3).

SECTOR

Electricity Industry /high-voltage electricity transmission grids/.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Exception refers to transit of power energy - Slovak transmission system still do not satisfy conditions of UCPT. Slovakia makes technical arrangements for direct interconnection with Austria by 400 dv transmission line. Construction should be terminated within the period to the year 1996.

PHASE-OUT

This transitional measure is supposed to be eliminated by the year 1997.

ANNEX "T"

COUNTRY : SLOVENIA

PROVISION

Article 13, paragraphs (2), (3), and (7).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Related legislation has not been adopted yet.

PHASE-OUT

Transitional period 1 year is needed.

ANNEX "T"

COUNTRY : SLOVENIA

PROVISION

Article 13, paragraph 11(a) (v).

SECTOR

Electricity.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Government's permission for electricity export is required.

PHASE-OUT

It is expected that this provision will be lifted before entry into force of the Energy Charter Treaty.

ANNEX "T"

COUNTRY : SLOVENIA

PROVISION

Article 22, paragraph (1)(b).

SECTOR

Coal, electricity and gas industries.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Prices of coal, electricity and gas not market-oriented and they do not reflect environmental costs and benefits. Nevertheless, some activities to reduce adverse effects on the environment have already started.

PHASE-OUT

The transition period required is up to 1 January 1998.

ANNEX "T"

COUNTRY : TADJIKISTAN

PROVISION

Article 3, paragraph (2).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

At present the social policy of the government provides for subsidizing prices for electric power, heat and gas for households, the public sector and agriculture.

PHASE-OUT

During the transitional period it is expected to abolish the regulation of prices for electric power for the industrial sector and for agriculture. The liberalization of prices for households will be implemented more smoothly and will take a longer period of time.

ANNEX "T"

COUNTRY : TADJIKISTAN

PROVISION

Article 7, paragraph (2).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

A high degree of monopolization remains still in the Republic of Tadjikistan, which restricts substantially possibilities for competition. Due to the difficult economic situation in the Republic because of the losses as a result of hostilities and natural disasters the processes of demonopolization in the energy sector may take long time.

PHASE-OUT

Transition period of 5-6 years is required to comply fully with the Treaty obligations.

ANNEX "T"

COUNTRY : TADJIKISTAN

PROVISION

Article 16, paragraph (2).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The Republic is in the rouble zone, it has no currency of its own. Due to the convertible currency being in short supply, Tadjikistan cannot for the time being guarantee unconditional compliance with the provisions of this paragraph.

PHASE-OUT

The phasing-out of this limitation depends on the timing of rouble convertibility. The duration of the transition period will depend on this matter.

ANNEX "T"

COUNTRY : TADJIKISTAN

PROVISION

Article 23, paragraph (3).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

There are no enquiry points yet in the Republic of Tadjikistan to which requests for information about relevant laws and other regulations could be addressed.

PHASE-OUT

The duration of the transition period may be determined as 3-4 years.

ANNEX "T"

COUNTRY : UKRAINE

PROVISION

Article 3, paragraph (1).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

There is no legislation for formulation of transparent rules regarding acquisition, exploration and development of energy resources. Technical assistance is required.

PHASE-OUT

It is expected in 1997.

ANNEX "T"

COUNTRY : UKRAINE

PROVISION

Article 3, paragraph (2).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Market principles of price formation are absent. Their development, as well as application of mechanism of their implementation, are needed. Technical assistance is required.

PHASE-OUT

Deadline for going over to world prices of energy materials and products under market principles of price formation will be adjusted as one approaches them. Preliminarily in stages between 1997 to 2000.

ANNEX "T"

COUNTRY : UKRAINE

PROVISION

Article 7, paragraph (2) - existence and enforcement of competition laws.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The Supreme Soviet of Ukraine adopted on 18.02.92 the Law "On Control of Monopolism and Prevention of Unfair Competition in Entrepreneurial Activities". Also the Anti-Monopoly Committee has been created. Further improvement of legislation is required. Technical assistance is required.

PHASE-OUT

It is expected in 1997.

ANNEX "T"

COUNTRY : UKRAINE

PROVISION

Article 12.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Formulation and application of transparent rules regarding facilitation of investment in energy resources and markets is not still sufficient and it is only partially covered by current legislation. Technical assistance will be required to cover the requirements of this Article.

PHASE-OUT

It is expected in 1997.

ANNEX "T"

COUNTRY : UKRAINE

PROVISION

Article 16, paragraph (2).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Non-existence of convertible national currency requires transitional measure on this provision.

PHASE-OUT

The time for currency convertibility will be adjusted as it approaches and will depend on technical assistance; preliminarily by 2000.

ANNEX "T"

COUNTRY : UKRAINE

PROVISION

Article 23, paragraphs (1), (2) and (3).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Improvement of the present transparency of laws up to the level of international practice is required. Ukraine will have to create enquiry points providing information about laws, regulations, judicial decisions and administrative rulings and standards of general application.

PHASE-OUT

It is expected by 1997.

ANNEX "T"

COUNTRY : UZBEKISTAN

NOT YET RECEIVED

ENERGY CHARTER TREATY

DRAFT

ANNEXES A

EXISTING BARRIERS TO NATIONAL TREATMENT

(Exceptions under Article 13(3) to the obligations of Article 13(2)).



EUROPEAN ENERGY CHARTER

Version 3

1 June 1993

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Azerbaijan	13	Lithuania	107
Belarus	16	Luxembourg (not yet reviewed)	
Belgium	17	* Malta	111
Bulgaria	20	Moldova	112
Canada	21	Netherlands	116
Croatia	27	* Norway	119
Cyprus (not yet reviewed)		Poland	120
Czechlands	30	Portugal	124
* Denmark	34	Romania	128
Estonia	35	Russia	130
* European Communities	36	Slovakia	154
Finland	37	Slovenia	158
France	46	Spain	160
* Georgia	48	Sweden	166
Germany	49	Switzerland	168
Greece	54	* Tadjikistan	174
Hungary	60	* Turkey	175
Iceland	70	Ukraine	176
* Ireland	74	United Kingdom	177
Italy	75	United States	179
Japan	85	Uzbekistan (not yet reviewed)	

* No exceptions notified.

ANNEX "A"

COUNTRY : ALBANIA

MEASURES

Law on Foreign Investment No. 7496 of 4 August 1992 Articles 3 to 6 as supplemented by Decree No. 442 of 10 October 1992.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

All foreign investments in Albania require authorisation by the Ministry of Trade and Foreign Economic Cooperation when they exceed the value of 50.000 USD or its equivalent in other convertible currencies, or by local authorities when they are under this value. For the important sectors of economy, especially mining, oil, gas and energy sector, having the minimum value of 10 million USD, the authorisation is required by the Council of Ministers.

The companies established in accordance with the Albanian laws and which have headquarters in Albania, require authorisation for all investments only when the initial capital of foreign natural or legal persons is more than 50%.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : ARMENIA

MEASURES : Draft Law on Foreign Investment

The Law on Foreign Investment is being analysed and will be discussed by Parliament in its current session.

Preliminary consultations with Armenian delegates on the interpretation of the Foreign Investment Law would suggest that the only discrimination which appears to exist in Armenia arises under Articles 13, 14 and 15 of the Law on Foreign Investment.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Discrimination in the treatment of a foreign investor as compared with a local investor/entrepreneur may occur when the investment is made in the domestic currency. In this case, a foreign investor would be required to go to both the Ministry of Finance and the Ministry of Economy for permission, while a local investor/entrepreneur could obtain permission for the same project at a local level of government.

Both foreign and local investors are subject to the same procedure for obtaining permission (from the two Ministries) to make investments in a foreign currency and there would appear to be no discrimination .

PHASE-OUT

No explicit commitment to withdraw although this is viewed as largely a transitional measure.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : ARMENIA

MEASURES : Draft Law on Foreign Investment

The Law on Foreign Investment is being analysed and will be discussed by Parliament in its current session.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Activities of enterprises with foreign investors may be limited or forbidden on some territories defined by legal acts of Armenia Republic on grounds of defence and national security considerations.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : AUSTRALIA

MEASURES

Foreign Acquisitions and Takeovers Act 1975.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Authorisation required for acquisition by foreign interests of substantial interest in domestic firms with total assets of A\$5 million or more.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

Probable pre-establishment application only - potential post-establishment application depending upon final definitions of pre- and post-establishment.

Notes

1. Because the effect of Article 13(5) is to grandfather existing foreign investment policy restrictions at the time of signing the Energy Charter Treaty, the Australian Government wishes to fully reserve its position in relation to all items reported in Annex A.
2. The Australian Government would need to reserve its position in respect of the liberalisation obligations of Article 13 insofar as these obligations relate to actions undertaken by Australian State or Territory Governments if Article 26 was not retained.

ANNEX "A"

COUNTRY : AUSTRALIA

MEASURES

Foreign investment policy concerning new business (outlined in Australia's Foreign Investment Policy: a Guide for Investors, September 1992).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Authorisation required for foreign interests to establish new businesses (including new investment in unrelated areas, a new mining or raw materials processing project) with total investment of A\$10 million or more.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

Probable pre-establishment application only - potential post-establishment application depending upon final definitions of pre- and post-establishment.

Notes

1. Because the effect of Article 13(5) is to grandfather existing foreign investment policy restrictions at the time of signing the Energy Charter Treaty, the Australian Government wishes to fully reserve its position in relation to all items reported in Annex A.
2. The Australian Government would need to reserve its position in respect of the liberalisation obligations of Article 13 insofar as these obligations relate to actions undertaken by Australian State or Territory Governments if Article 26 was not retained.

ANNEX "A"

COUNTRY : AUSTRALIA

MEASURES

Foreign investment policy regarding foreign governments (outlined in Australia's Foreign Investment Policy: a Guide for Investors, September 1992).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Authorisation required for direct investments by foreign governments or their agencies, irrespective of size.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

Probable pre-establishment application only - potential post-establishment application depending upon final definitions of pre- and post-establishment.

Notes

1. Because the effect of Article 13(5) is to grandfather existing foreign investment policy restrictions at the time of signing the Energy Charter Treaty, the Australian Government wishes to fully reserve its position in relation to all items reported in Annex A.
2. The Australian Government would need to reserve its position in respect of the liberalisation obligations of Article 13 insofar as these obligations relate to actions undertaken by Australian State or Territory Governments if Article 26 was not retained.

ANNEX "A"

COUNTRY : AUSTRALIA

MEASURES

Shipping Registration Act 1981.

SECTOR

Maritime transport.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Registration as an Australian flag vessel is restricted. For a vessel to be registered in Australia it must be majority Australian owned unless it is demise chartered to an Australian national operator.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

Probable pre-establishment application only - potential post-establishment application depending upon final definitions of pre- and post-establishment.

ANNEX "A"

COUNTRY : AUSTRIA

MEASURES

Laws, including detailed regulations, issued by the provinces (a list of the applicable provincial laws is attached) in line with several principles and guidelines, determined by the Electricity Act (Elektrizitätswirtschaftsgesetz) 1975, issued under federal authority.

SECTOR

Electricity.

LEVEL OF GOVERNMENT

Provincial.

DESCRIPTION

Govern the licensing of electricity supply utilities. For natural persons to be so licensed it is required that the person be (a) of Austrian nationality and, in case of Vorarlberg only, (b) domiciled in Austria. For juridical entities or commercial partnerships, it is required the entity (a) have its seat in the territory of the Republic of Austria and, in case of Burgenland, Carinthia, Styria, Tyrol and Vorarlberg only, (b) have as managers persons qualified as natural persons mentioned above.

Other than liberalisation required by the EEA Agreement, which only affects countries who are participants to this Agreement, there are no plans for liberalisation prior to Entry into Force of this Agreement.

In case of "a particular economic interest", the provincial governments can deviate from the nationality requirement and admit foreign investment.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

Due to the nationality requirements governing investment in electricity under the provincial laws, the Most Favoured Nation clause of Article 13(2) is not applicable.

ANNEX "A"

COUNTRY : AUSTRIA

MEASURES

Pipeline Law (Rohrleitungsgesetz 1975).

SECTOR

Oil and Gas Pipelines.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Requirement that to be licensed to own and operate an oil or gas pipeline a natural person must (a) have Austrian nationality and (b) be domiciled in Austria; and a juridical entity or commercial partnership must (a) have its seat in the territory of the Republic of Austria and (b) be managed by persons of Austrian nationality. This authority to grant licenses is with the federal government.

Other than liberalisation required under the EEA Agreement, which only affects countries who are participants to this Agreement, there are no plans for liberalisation prior to Entry into Force of this Agreement.

In case of "a particular economic interest", the federal government can refrain from the nationality requirement and admit foreign investment.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

The Most Favoured Nation Clause of Article 13(2) is not applicable.

ANNEX "A"

COUNTRY : AUSTRIA

MEASURES

Industry Craft and Commerce Act (Gewerbeordnung) of 1973.

SECTOR

Oil and Gas, refining.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

For operation of refineries, gasworks, filling stations, district heating as well as the trading of fuels foreign natural persons can only be licensed if National Treatment is stipulated in bilateral agreements or is based on reciprocity.

Juridical entities not incorporated in Austria are dependent on bilateral agreements.

Other than liberalisation required under the EEA Agreement, which only affects countries who are participants to this Agreement, there are no plans for liberalisation prior to Entry into Force of this Agreement.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

The Most Favoured Nation Clause of Article 13(2) is not applicable.

Addendum

List of relevant implementing electricity acts of the provinces:

- Electricity Act of Burgenland (Burgenländisches Elektrizitätsgesetz).
Statute dated October 1, 1985, published in the Provincial Legislation Gazette N° 3/1986.
- Electricity Act of Carinthia (Kärntner Elektrizitätswirtschaftsgesetz).
Statute dated June 15, 1978, published in the Provincial Legislation Gazette N° 77/1978.
- Electricity Act of Lower Austria (Elektrizitätsgesetz NÖ EWG)
Statute dated May 17, 1990, published in the Provincial Legislation Gazette N° 7800-0/1990.
- Electricity Act of Upper Austria (Oö. Elektrizitätsgesetz)
Statute dated April 16, 1982, published in the Provincial Legislation Gazette N° 41/1982.
- Provincial Electricity Act 1979 of Salzburg (Salzburger Landeselektrizitätsgesetz)
as amended by the Statutes dated February 6, 1980, published in the Provincial Legislation Gazette N° 47/1980 and the Statutes dated July 2, 1986, published in the Provincial Legislation Gazette N° 77/1986.
- Electricity Act of Styria (Stmk. Elektrizitätswirtschaftsgesetz ELWG)
Statute dated April 7, 1981, published in the Provincial Legislation Gazette N° 77/1981.
- Electricity Act of Tyrol (Tiroler Elektrizitätsgesetz)
Statute dated March 24, 1982, published in the Provincial Legislation Gazette N° 40/1982.
- Electricity Supply Act of Vorarlberg (Vorarlberger Elektrizitätsversorgungsgesetz)
Statute dated November 30, 1983, published in the Provincial Legislation Gazette N° 31/1983.
- Electricity Act of Vienna (Wiener Elektrizitätswirtschaftsgesetz)
Statute dated December 17, 1976, published in the Provincial Legislation Gazette N° 8/1977, as amended by the Statute dated March 5, 1980, published in the Provincial Legislation Gazette N° 22/1980.

ANNEX "A"

COUNTRY: AZERBAIJAN

MEASURES

Law on the Protection of Foreign Investment of 15 January 1992.
Article 7.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Activities of enterprises with foreign investors may be limited or forbidden on some territories defined by legal acts of Azerbaijan republic on grounds of defence and national security considerations.

PHASE OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY: AZERBAIJAN

MEASURES

Law on the Protection of Foreign Investment of 15 January 1992.
Article 6.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Enterprises with foreign investors are prohibited from investing in certain activities which are set forth in a list prepared by the Cabinet of Ministers.

PHASE OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY: AZERBAIJAN

MEASURES

Leasing law.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Entities which are wholly or partly owned by foreign investors must secure any lease of property from the owner of the property whereas domestically owned entities may secure leases from whoever is currently using or supervising the property.

PHASE OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : BELARUS

MEASURES : Law on Foreign Investment

Even though new Constitution has not yet been approved (it is expected to pass in 1993) the law on foreign investment already exists.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Discrimination of foreign investors was not found on a preliminary consultation with Belarus's delegation. No definite ideas exist as to the way the land can be bought or leased in the future but, for the time being, no discrimination seems to exist. Both national and foreign investors can only lease land. Buying land is not allowed for both.

PHASE-OUT

Not applicable.

OTHER EXCEPTIONS

Does not violate National Treatment in the post-investment stage.

ANNEX "A"

COUNTRY : BELGIUM

MEASURES

Article 108 of the Commercial Code of 1949 as amended by Law on Financial Options and Financial Markets of 4 December 1990.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Prior authorisation by the Ministry of Finance is required for public issues, offers for sale on the security market, listing on stock exchanges and other financial instruments created by a private person, a company or an institution under non EC control, as well as offers for sale of Belgian securities by a private person, a company or an institution under non EC control.

For the application of this measure, the following are considered as non EEC controlled:

- private persons who have not the nationality of any member State of the European Community;
- entities of private law or entities of public law who are not established in conformity with the legislation of any EEC member State;
- entities of private law or entities of public law established in conformity with the legislation of an EEC member State but who haven't either their legal seat or their central administration or their principal establishment within the EEC.

PHASE-OUT

No commitments.

OTHER EXCEPTIONS

Measure also violates MFN principles in the pre-investment stage under Article 13(2) .

ANNEX "A"

COUNTRY : BELGIUM

MEASURES

Law of 6 April 1949, amended by law of 21 December 1990 on Ship Registration.

SECTOR

All energy sectors (Maritime transport).

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

The King, in line with the practice of major maritime countries, determines the conditions of ship registration (the right to fly the national flag) [at least majority owned by a Belgian].

PHASE-OUT

No commitments.

OTHER EXCEPTIONS

Not applicable.

ANNEX "A"

COUNTRY : BELGIUM

MEASURES

Revised Convention for the Navigation on the Rhine.

SECTOR

All energy sectors (Inland waterways).

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

The right to carry out transport of goods and persons between two points on the inland waterways covered by the revised Convention for the Navigation on the Rhine is reserved to vessels owned by either nationals of Contracting States of that convention or member States of the EEC, or companies based in the territory of any of these States, which are owned in majority and controlled by nationals of these States.

PHASE-OUT

No commitments.

OTHER EXCEPTIONS

Measure also violates MFN principle in the pre-investment stage under Article 13(2).

ANNEX "A"

COUNTRY : BULGARIA

MEASURES

1. Constitution of the Republic of Bulgaria (State Gazette 56/91) - Article 22.
2. Law on the economic activities of foreign persons and on the protection of foreign investments (State Gazette 8/92)-Article 5.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

- 1.1 Article 22/1/ - Foreigners and foreign legal persons shall not acquire property rights over land unless the latter is inherited on the strength of a law. In that case they shall transfer their property.
- 2.1 Article 5/2/ - A foreign person, whether as a branch or a private merchant, shall not acquire property rights over land. Companies with foreign interest of more than 50% shall not acquire property rights over agricultural land;
- 2.2 Article 5/3/ - Foreign persons or companies in which the interest or foreign persons ensures them, directly or through other companies with foreign interest, a majority in the taking of a decision or prevents the taking of a decision, shall require a permit in the following cases:
.....
 - (3) The acquiring of immovable property in particular geographical regions established by the Council of Ministers.
 - (4) The exploring, working and extracting of natural resources from the territorial waters, the continental shelf or the exclusive economic zone.
 - (5) The acquiring of interest which ensures a majority in the taking of a decision or prevents the taking of a decision by a company which does business or holds property under the preceding items.

PHASE-OUT

None.

OTHER EXCEPTIONS

In connection with new draft laws Bulgaria reserves the right to present other exceptions before signing the Energy Charter Treaty.

ANNEX "A"

COUNTRY : CANADA

MEASURES

Investment Canada Act, R.S.C. 1985, c.28 (1st Supp.).
Investment Canada Regulations, SOR/85-611.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Under the Investment Canada Act, non-Canadians who establish a new Canadian business must notify Investment Canada. Similarly, the direct or indirect acquisition of control of an existing Canadian business with an asset value below given thresholds must be notified; in the case of such acquisition where the asset value is above those thresholds, the non-Canadian making the acquisition must apply for and be subject to review by Investment Canada.

An investment subject to review under the Investment Canada Act may not be implemented unless the Minister responsible for the Investment Canada Act advises the applicant that the investment is likely to be of net benefit to Canada.

In making a net benefit determination, the Minister, through Investment Canada, may review undertakings submitted to the Minister in connection with any proposed acquisition which is the subject of review.

Canada may require, or enforce, any commitment or undertakings, such as for the employment of Canadians in key personnel positions (e.g. senior management) or for commitments regarding spending on research and development by Canadian business in connection with the review of an acquisition of that investment under the Investment Canada Act.

PHASE-OUT

None.

OTHER EXCEPTIONS

Exception to Article 13(8).

ANNEX "A"

COUNTRY : CANADA

MEASURES

Canada Business Corporations Act, R.S.C. 1985, c. C-44.

Canada Corporations Act, R.S.C. 1970, c. C-32.

Canada Business Corporations Act Regulations, SOR/79-316.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

"Constraints" may be placed on the issue, transfer and ownership of shares in federally incorporated corporations. The object is to permit corporations to meet Canadian ownership requirements, under certain laws set out in the Canada Business Corporations Act Regulations, in sectors where ownership is required as a condition to operate or to receive licences, permits, grants, payments or other benefits. In order to maintain certain "Canadian" ownership levels, a corporation is permitted, amongst other measures, to sell shareholders' shares without the consent of those shareholders, and to purchase its own shares on the open market. "Canadian" is defined in the Canada Business Corporations Act Regulations.

PHASE-OUT

None

OTHER EXCEPTIONS

Exception to Article 13(7).

ANNEX "A"

COUNTRY : CANADA

MEASURES

Canada Business Corporations Act, R.S.C. 1985, c. C-44.

Canada Business Corporations Act Regulations, SOR/79-316.

Canada Corporations Act, R.S.C. 1970, c. C-32.

Special Acts of Parliament incorporating specific companies.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Investment

The Canada Business Corporations Act requires that a simple majority of the board of directors, or of a committee thereof, of a federally-incorporated corporation be resident Canadians. For purposes of the Act, "resident Canadian" means an individual who is a Canadian citizen ordinarily resident in Canada, a citizen who is a member of a class set out in the Canada Business Corporations Act Regulations, or a permanent resident as defined in the Immigration Act other than one who has been ordinarily resident in Canada for more than one year after he became eligible to apply for Canadian citizenship.

In the case of a holding corporation, not more than one-third of the directors need be resident Canadians if the earnings in Canada of the holding corporation and its subsidiaries are less than 5% of the gross earnings of the holding corporation and its subsidiaries.

Under the Canada Corporations Act, a simple majority of the elected directors of a corporation established under a Special Act must be resident in Canada and citizens of a Commonwealth country. This requirement applies to every joint stock company incorporated subsequent to June 22, 1869 by any Special Act of Parliament.

PHASE-OUT

None

OTHER EXCEPTIONS

Exception to Article 13(7).

ANNEX "A"

COUNTRY : CANADA

MEASURES

Canada Petroleum Resources Act, R.S.C. 1985, c. 36 (2nd Supp.).
Territorial Lands Act, R.S.C. 1985, c. T-7.
Public Lands Grants Act, R.S.C. 1985, c. P-30.
Canada - Newfoundland Atlantic Accord Implementation Act, S.C. 1987, c.3.
Canada - Nova Scotia Offshore Petroleum Resources Accord Implementation Act, S.C. 1988, c. 28.
Canada Oil and Gas Land Regulations, C.R.C. 1978, c. 1518.

SECTOR

Oil and Gas Industries.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

This reservation applies to production licenses issued with respect to "frontier lands" and "offshore areas" (areas not under provincial jurisdiction) as defined in the applicable measures.

Persons who hold oil and gas production licenses or shares therein for discoveries made after March 5, 1982 must be Canadian citizens ordinarily resident in Canada, permanent residents or corporations incorporated in Canada. No production license may be issued for discoveries made after March 5, 1982 unless the Minister of Energy, Mines and Resources is satisfied that the Canadian ownership rate of the interest-owner in relation to the production license on the date of issuance would not be less than 50%. "Interest-owner" is defined in the Canada Petroleum Resources Act to mean "the interest holder who owns an interest or the group of interest holders who hold all the shares of an interest".

The Canadian ownership requirements for oil and gas production licenses for discoveries made prior to March 5, 1982, are set out in the Canada Oil and Gas Land Regulations.

PHASE-OUT

The Government of Canada has announced that it intends to remove the Canadian ownership requirement for "frontier" and "offshore" production licenses. Legislation to accomplish this has been introduced in Parliament.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : CANADA

MEASURES

Investment Canada Act, R.S.C. 1985, c. 28 (1st Supp.).

Investment Canada Regulations, SOR/85-611.

Policy on Non-Resident Ownership in the Uranium Mining Sector, 1987.

SECTOR

Uranium mining.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Ownership by "non-Canadians", as defined in the Investment Canada Act, of a uranium mining property is limited to 49% at the stage of first production. Exceptions to this limit may be permitted if it can be established that the property is in fact "Canadian-controlled" as defined in the Investment Canada Act.

Exemptions from the policy are permitted, subject to approval of the Governor in Council, only in cases where Canadian participants in the ownership of the property are not available. Investments in properties by non-Canadians, made prior to December 23, 1987 and that are beyond the permitted ownership level, may remain in place. No increase in non-Canadian ownership is permitted.

PHASE-OUT

None.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : CANADA

MEASURES

Petro-Canada Public Participation Act, S.C. 1991, c.10.

Cooperative Energy Act, S.C. 1980-81-82-83, c.108.

Eldorado Nuclear Limited Reorganisation and Divestiture Act, S.C. 1988, c.41.

Nordion and Theratronics Divestiture Authorization Act, S.C. 1990, c.4.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Non-residents may not own more than a specified percentage of the voting shares of the corporation to which each Act applies. For each company the restrictions are as follows:

Petro-Canada Inc:	25%
Eldorado Nuclear Limited:	5%
Cooperative Energy Corporation:	49%
Nordion Limited:	25%
Theratronics Limited:	49%

PHASE-OUT

None.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : CROATIA

MEASURES

Foreign Investment Act (1991) - Article 17.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

A foreign legal person can only, together with domestic persons, invest the capital in a jointly - owned insurance company. In such a case, all foreign persons together cannot invest in the same company less than 20% and more than 49% of the total amount of the initial security fund.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : CROATIA

MEASURES

Mining Act (1991) - Article 9.

SECTOR

Mining.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Foreign natural person or entity needs a special permit for mining activities issued by Government of the Republic of Croatia.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : CYPRUS

NOT YET REVIEWED

ANNEX "A"

COUNTRY : THE CZECHLANDS

MEASURES

The Federal Act of the former Czech and Slovak Republic on Production, Distribution and Use of Gaseous Fuels for Heating No. 67/1960.

SECTOR

Gas Industry.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The Act states that public high pressure and distribution pipelines can be established and run by legal entities which are wholly owned by nationals.

PHASE-OUT

A new law for this sector will be submitted for approval by Parliament with entry into force in 1993. Therefore it is expected that this exception will be removed before entry into force of the Energy Charter Treaty.

OTHER EXCEPTIONS

ANNEX "A"

COUNTRY : THE CZECHLANDS

MEASURES

The Federal Act of the former Czech and Slovak Federal Republic on Production, Distribution and Consumption of Electricity No 79/1957.

SECTOR

Electricity.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The Act provides that public transmission and distribution grids can be established and run by legal entities which are wholly owned by nationals.

PHASE-OUT

A new law for this sector will be submitted for approval by Parliament with entry into force in 1993. Therefore it is expected that this exception will be removed before entry into force of the Energy Charter Treaty.

OTHER EXCEPTIONS

ANNEX "A"

COUNTRY : THE CZECHLANDS

MEASURES

The Commercial Code-federal Act No. 513/91 of the former Czech and Slovak Federal Republic.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

This Code constitutes, besides other, basic conditions for nationals and foreign natural persons and legal entities. A foreign natural person or legal entity must have an enterprise or company or an organisational component thereof, located in the Czech Republic. The authorizations to do business commence on the day of registration into the Company Register by this person or by the legal entity or by its organizational component.

PHASE-OUT

Permanent provision.

OTHER EXCEPTIONS

ANNEX "A"

COUNTRY : THE CZECHLANDS

MEASURES

The Federal Foreign Exchange Act No. 528/90 as amended by the Act No. 228/92 of the former Czech and Slovak Republic.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Under this Act foreign natural person non-residing in the Czech Republic can not be granted the ownership of real estate. Paragraph 25 of this Act sets up some exceptions that are not of substantial relevance for energy undertakings.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

ANNEX "A"

COUNTRY : DENMARK

NO EXCEPTIONS NOTIFIED

ANNEX "A"

COUNTRY : ESTONIA

MEASURES

Draft Law on Energy in the Republic of Estonia, not ratified.
Article 2 para (4).

SECTOR

Production and distribution of electricity.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Foreign investment shall be allowed in electricity production, but 51% of total electricity production must be produced by Estonian state owned firms. It means, that in electricity production area foreign ownership is not allowed more than 49% of total production. Foreign ownership is not allowed in main high voltage (330kV, 220kV) electricity transmission lines.

PHASE-OUT

None.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : EUROPEAN COMMUNITIES

NO EXCEPTIONS NOTIFIED

ANNEX "A"

COUNTRY : FINLAND

MEASURES

Act on Monitoring foreign Acquisitions of Enterprises (1612/92).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The transfer of Finnish companies into foreign hands is monitored concerning every company with more than 1000 employees on its payroll or with turnover or yearend assets of FIM 1000 million or above. Confirmation by the Ministry of Trade and Industry would be needed if the buyer acquires control of at least 1/3 of the voting rights rendered by all shares of the company. Under the procedure, the MTI would have to confirm the acquisition unless it considers that an essential national interest is jeopardized. In such a case the Council of State may block an individual acquisition. Defense-industries will fall under the monitoring practice regardless of size.

PHASE-OUT

The monitoring practice would be repeated at the beginning of the year 1996.

OTHER EXCEPTIONS

As regards its acquisitions, any Finnish entity with foreign control of more than 50% of all voting rights rendered by all shares, is subject to the same monitoring procedure as foreigners and foreign entities. The same procedure also applies when a partner in a Finnish General or Limited Partnership is a foreigner or a foreign entity.

ANNEX "A"

COUNTRY : FINLAND

MEASURES

Act on Monitoring Acquisitions of real estate by foreigners and foreign entities (1613/92).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

National persons not being or previously having been resident in Finland and foreign entities willing to acquire real estate in Finland, which real estate is situated in the border-zone or a specified restricted area or is intended for leisure-time dwelling or for recreational purposes only, must apply for a permission to acquire such real estate. These restrictions also apply to Finnish companies with foreign control of more than 50% of all voting rights rendered by all shares, and to Finnish General or Limited partnerships where a partner is a foreigner or a foreign entity. The permission is granted by the Provincial Administration under specified conditions.

PHASE-OUT

None.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : FINLAND

MEASURES

Trade Act of 1919 and the 1993 Act on Amending the Trade Act (228/93).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Any foreigner intending to carry on a trade in Finland has to apply for permission of the Provincial Administration. The permission may be granted provided that the foreigner is permanently resident in Finland, is self-sufficient and can produce a guaranty or other collateral for three years' State and municipal taxes as well as other public charges. If a foreign organisation intends to carry on a business or trade establishing a branch in Finland, it is subject to the above provisions except that of permanent residence.

PHASE-OUT

According to the 1993 Act (228/93) amending the 1919 Trade Act no permission is required if the foreigner (i.e. natural person) in question is permanently resident in the area covered by the EEA-Treaty. Similarly, no permission is required if a foreign entity which has registered a branch in Finland, has been established according to legislation of a state party to the EEA-Treaty and also has its residence, central management or main place of business in such a state. The Ministry of Trade and Industry has according to the Act the right to grant the permission, where still needed, to natural persons and foreign entities in cases where the phase-out would not otherwise apply.

This act will enter into force simultaneously with EEA-Treaty.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : FINLAND

MEASURES

Companies Act of 1978 and the 1993 Act (92/93) on Amending the Companies Act.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

According to the present Companies Act:

1. The founders of a (limited) company must be citizens of Finland, Iceland, Norway, Sweden or Denmark and no more than half of them may be residents of other Nordic countries than Finland.
2. At least half of the directors must be citizens of Finland or another Nordic country and be residents of Finland. However, at most 1/3 of the directors may be citizens of a non-Nordic country or residents of such a country.
3. The managing director and all those authorized to sign the firm must be residents of Finland and citizens of a Nordic country.
4. At least one of the accountants must be a Finnish citizen and a resident of Finland unless a Certified (in Finland) Public Accountant Firm is used.

The Ministry of Trade and Industry is authorised to grant exceptions to the requirements described above in items 1 - 3.

PHASE-OUT

According to the 1993 Act (92/93) on Amending the Companies Act, which will enter into force simultaneously with the EEA Treaty:

1. All the above requirements concerning citizenship are abolished.

2. At least half of the founders of a company must have residence in the European Economic Area. The Ministry of Trade and Industry may grant exceptions. If the founder is a legal entity it must have been established according to legislation of a state party to the EEA-Treaty and have its residence, central management or main place of business in such a state.
3. At least half of the directors, the managing director and all those authorized to sign the firm must have residence in the European Economic Area.
4. The citizenship requirement described in item 4 above is changed into that of residence in the European Economic Area.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : FINLAND

MEASURES

Electricity Act of 1979 and the 1993 Act (142/93) on Amending the Electricity Act.

SECTOR

Production, transmission and distribution of electricity.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The licence to produce, transmit or distribute electricity may be granted only to Finnish citizens, corporations or utilities.

PHASE-OUT

According to the 1993 Act (142/93) on Amending the Electricity Act, which will enter into force simultaneously with the EEA-Treaty, there would not be any nationality requirement.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : FINLAND

MEASURES

Mining Act of 1965 and the 1992 Act on Amending the Mining Act (1625/92).

SECTOR

Mining.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

For mining activities a foreign national person or entity needs a permit issued by the Council of State.

PHASE-OUT

According to the 1992 Act (1625/92) amending the 1965 Mining Act no permit is needed. This Act will enter into force simultaneously with the EEA-Treaty.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : FINLAND

MEASURES

Nuclear Energy Act of 1987 (990/87).

SECTOR

Nuclear Energy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

A licence to use nuclear energy may be granted only to Finnish citizens, Finnish corporations or foundations or to government authorities.

For special reasons, foreign corporations or authorities may be granted a licence.

- 1) to transport nuclear material or nuclear waste within Finland;
- 2) to carry out imports or exports in connection with transit via Finland of nuclear material, nuclear waste, or ores or ore concentrates containing uranium or thorium; and
- 3) for temporary operation of a nuclear facility within Finland.

PHASE-OUT

None.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : FINLAND

MEASURES

Continental Shelf Act of 1965.

SECTOR

Exploration and exploitation of the continental shelf.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Exploration and exploitation of the continental shelf of Finland is subject to a licence issued by the Council of State. The licence may be granted to a foreign citizen or entity only under qualified conditions.

PHASE-OUT

None.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : FRANCE

MEASURES

Exploitation Licensing (...).

SECTOR

Hydrocarbons and energy related minerals.

LEVEL OF GOVERNMENT

Central government authorization by permit.

DESCRIPTION

As exploration licenses can be granted to any company originating from any country, exploitation as a significant and long term commitment is only granted to companies (parent companies and subsidiaries as well) located in the EEC.

PHASE-OUT

No commitments.

OTHER EXCEPTIONS

None.

Notes

1. Any direct investment in the energy sectors and energy related activities in France (including its overseas districts) by a non EEC's investor shall comply with the general regulation on direct investment enforced at the time of the application, according to which an authorization has to be granted by the French Treasury to a non EEC's investor willing to acquire control of an existing entity, above certain thresholds fixed by the regulation.
2. Any company established in the EEC enjoys national treatment.

ANNEX "A"

COUNTRY : FRANCE

MEASURES

Exploitation Licensing (...).

SECTOR

Nuclear fuel cycle related activities.

LEVEL OF GOVERNMENT

Central government authorization by decree.

DESCRIPTION

Nuclear fuel cycle related activities are restricted to French nationals and/or French owned companies, taking into account the truly strategic importance of the nuclear fuel supply and treatment.

PHASE-OUT

No commitments.

OTHER EXCEPTIONS

None.

Note

Any direct investment in the energy sectors and energy related activities in France (including its overseas districts) by a non EEC's investor shall comply with the general regulation on direct investment enforced at the time of the application, according to which an authorization has to be granted by the French Treasury to a non EEC's investor willing to acquire control of an existing entity, above certain thresholds fixed by the regulation.

ANNEX "A"

COUNTRY : GEORGIA

NO EXCEPTIONS NOTIFIED

ANNEX "A"

COUNTRY : GERMANY

MEASURES

Air Traffic Law (Luftverkehrsgesetz), Section 3, Paragraph 1.

SECTOR

General.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Foreign investments in an air transport enterprise must not exceed 25% of the capital.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

Not applicable.

ANNEX "A"

COUNTRY : GERMANY

MEASURES

Air Traffic Law (Luftverkehrsgesetz), Section 3, Paragraph 1.

SECTOR

General.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

A licence to operate an air transport enterprise is granted only to companies with majority-control by German nationals.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

Not applicable.

ANNEX "A"

COUNTRY : GERMANY

MEASURES

Guideline for the granting of financial contributions of March 17, 1988. Final Version April 21, 1989.

SECTOR

General.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Acquisition of a German flag vessel is reserved to an enterprise incorporated in Germany.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

Not applicable.

ANNEX "A"

COUNTRY : GERMANY

MEASURES

Section 3 Ship Register Regulation (Schiffsregister VO) of May 26, 1951 (BGBL. I, 1951, S. 355; BGBL. I, 1968, S. 1295).

SECTOR

General.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Registration in the German Ship Register is reserved to ships owned or controlled by German nationals or companies.

Registration is a precondition for the national flag. Without the national flag, companies may not undertake cabotage.

PHASE-OUT

Presently under consideration.

OTHER EXCEPTIONS

Not applicable.

ANNEX "A"

COUNTRY : GERMANY

MEASURES

Law concerning the Additional Protocol No. 2 of October 17, 1979 on the revised Mannheim Rhine Shipping Act (revidierte Rheinschiffahrtsakte) BGBl. 1980 II, S. 870.

SECTOR

General.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Navigation on the Rhine (cabotage) is reserved to vessels owned or controlled by nationals of the Contracting Parties of the Rhine Navigation Treaty or of the Member States of the European Communities.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

Not applicable.

ANNEX "A"

COUNTRY : GREECE

MEASURES

Hydrocarbon Law No. 468/1976, currently under review (Art.2 par.1, 2, Art.5 par.1, Art.8 par.1, Art.11 par.1).

SECTOR

Oil and gas exploration and exploitation.

LEVEL OF GOVERNMENT

National (Ministry of Industry, Energy and Technology).

DESCRIPTION

The rights of exploration and exploitation of hydrocarbons belong to the Greek State, which exercises these rights by signing, with contractors, Production Sharing or Licence Agreements, following a public tender. The Public Petroleum Corporation (DEP) may be awarded the sole right to carry out exploration and exploitation of hydrocarbons in areas where National Security reasons exist. The State or the DEP may participate in a Joint venture with a Contractor, with a certain percentage specified in the call for tenders.

PHASE-OUT

No commitments.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : GREECE

MEASURES

Hydrocarbon Law, No. 468/1976, currently under review (Art. 10 par.2).

SECTOR

Oil and gas exploration and exploitation.

LEVEL OF GOVERNMENT

National (Ministry of Industry, Energy and Technology).

DESCRIPTION

Foreign States and Greek or foreign legal entities directly or indirectly controlled by foreign States (excluding EC Countries) can be appointed as Contractors for upstream activities only exceptionally and under specific conditions. (Approval by the Council of Ministers).

PHASE-OUT

No commitments.

OTHER EXCEPTIONS

MFN not applicable, subject to the outcome of the current review of Law 468/1976.

ANNEX "A"

COUNTRY : GREECE

MEASURES

Hydrocarbon Law, No. 468/1976, currently under review (Art.17 par.11).

SECTOR

Oil and gas exploration and exploitation.

LEVEL OF GOVERNMENT

National (Ministry of Industry, Energy and Technology).

DESCRIPTION

Following a hydrocarbon discovery, which is commercially exploitable, the investor, for the production of hydrocarbons has to establish a Greek joint stock company (société anonyme). This company shall be responsible for managing investor's rights and obligations stipulated in the contract.

PHASE-OUT

No commitments.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : GREECE

MEASURES

Law No. 1559/1985 for the exploitation of alternative energy sources and the regulation of specific matters in the electricity sector. This law has been amended with Law No. 1914/1990, article 62.

SECTOR

Electricity Production, Transmission and Distribution.

LEVEL OF GOVERNMENT

National (Ministry of Industry, Energy and Technology).

DESCRIPTION

The Public Power Corporation has the "de jure" monopoly of the production, transmission and distribution of electric power. Autoproducers connected to the PPC grid can build and operate power stations under certain restrictions in the capacity of the stations and sell any surplus of electricity exclusively to PPC under tariffs regulated by the Minister of Energy (art 4 of Law 1559/85). There is also the possibility of independent power stations which operate not connected to the PPC grid meeting the needs of the autoproducers (art 3 of Law 1559/85). However, production of electric power may be connected to private investors after a specific approval by the PPC and the state and provided that the electricity produced is sold exclusively to PPC (art 62 of Law 1914/90).

PHASE-OUT

No commitments. PPC will follow developments at Community level for the realisation of the internal market of energy.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : GREECE

MEASURES

Legislative Decree Act No. 210/73, Art 143 & 144 (Greek Mining Code)
Law Act No. 1475/84 (Geothermal Potential).
Presidential Decree 92/86.

SECTOR

Mineral coal, radioactive minerals and geothermal exploration and exploitation.

LEVEL OF GOVERNMENT

National (Ministry of Industry, Energy and Technology).

DESCRIPTION

The right of exploration and exploitation of solid fuels, other minerals, radioactive minerals and geothermal potential, belongs to the Greek State. The Greek State exercises this right either directly or indirectly through contract, following a public tenders procedure, ratified by special Law under the responsibility of the Minister of Industry, Energy and Technology. For foreign physical and legal persons or entities of non EEC countries, approval by the Council of Ministers is required. Such an approval is not required for physical and legal persons or entities of the EEC countries in accordance with Presidential Decree 92/86.

PHASE-OUT

No commitments.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : GREECE

MEASURES

Law 1892/1990 (Arts. 24 - 32).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National (Ministry of National Economy, Ministry of Defence) and District Authorities.

DESCRIPTION

The establishment in certain border regions is subject to a permit issued by the competent authorities. The procedure for obtaining this permit as well as the competent authority are different in the case of Greek or Community natural or legal persons, than in the case of natural or legal persons of third countries.

PHASE-OUT

No commitments.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : HUNGARY

MEASURES

Act V. 1990 on Private entrepreneurs.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Only Hungarian residents have the right to take up and pursue economic activities as self-employed persons.

PHASE-OUT

No commitments.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : HUNGARY

MEASURES

Act XXIV. of 1988 on Investments by foreigners in Hungary.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Only companies established in conformity with the Hungarian legislation are authorised to take up and pursue economic activities. Acquisition of real estate by wholly or partly foreign owned companies established in Hungary is allowed only to the extent necessary for performing their economic activities. Foreigners must pay the cash part of their capital contribution in convertible currencies. Foreigners are allowed to buy only registered shares.

PHASE-OUT

No commitments.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : HUNGARY

MEASURES

Act LXIX. of 1991 on Financial Institutions.

SECTOR

Banking excluding securities.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Establishment of wholly or partially foreign owned banks (i.e. commercial banks, investment banks, specialised financial institutions, thrift institutions) and the acquisition of shares by foreigners in Hungarian banks if the total foreign ownership in the bank exceeds 10% is subject to Government licensing.

PHASE-OUT

No commitments.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : HUNGARY

MEASURES

Act II. of 1979 on State Finance.

SECTOR

Insurance.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Establishment of partially or wholly foreign owned insurance companies and the acquisition of shares by foreigners in Hungarian insurance companies is subject to government licensing.

PHASE-OUT

No commitments.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : HUNGARY

MEASURES

Act I. of 1987 on Land.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Acquisition of real estate and land by foreign legal and natural persons is subject to Ministry of Finance authorisation in accordance with criteria specified in the Government Decree No. 171/1991 on Acquisition of Immovable Property by Foreigners, with the exception specified in the Act on Investments by Foreigners in Hungary.

PHASE-OUT

No commitments.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : HUNGARY

MEASURES

Law-Decree No. 1 of 1974 on Foreign Exchange Management.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Long-term lease or user right of real property and land by foreigners is subject to foreign exchange authorisation. Purchasing of bonds issued in domestic currency is subject to foreign exchange authorisations.

PHASE-OUT

No commitments.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : HUNGARY

MEASURES

Government Decree No. 112 of 1990 on Export and Import of Commodities, Services and Rights Representing Material Value.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Importation of semi-finished and finished buildings and related building activities are subject to licensing.

PHASE-OUT

No commitments.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : HUNGARY

MEASURES

Law of 1962/IV. for electricity generation, transport and distribution.

SECTOR

Electricity.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

To generate, transport and distribute electricity is state monopoly.

PHASE-OUT

After approval by the Parliament of the new electricity law which is under preparation.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : HUNGARY

MEASURES

Act XVI. of 1991 on Concession. 1

SECTOR

All energy sectors and natural resources (as well as some areas of transport, telecommunications etc.,).

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Whenever state or the local authority conveys the right of carrying on an activity subject to the act on Concession for a limited time by a contract on concession, such contract shall be awarded by means of calling a public tender. Article 8 establishes the rules for such tender. Para 3 describes non obligatory stipulations, any tender may contain. "If necessary the invitation shall also contain: any conditions relating to the employment of domestic manpower, and utilisation of domestic entrepreneurs or suppliers.

PHASE-OUT

No commitments.

OTHER EXCEPTIONS

Note 1 The Act on Concession is equally applicable for residents and their corporations.

ANNEX "A"

COUNTRY : HUNGARY

MEASURES

Act LIII. of 1992 on Management of State Property.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

In the course of the privatisation the government is entitled to determine for longer run the minimum share of state ownership in case of wholly or partly state owned companies according to criteria specified in the Act.

PHASE-OUT

The Government Decree should be revised in every two years.

OTHER EXCEPTIONS

Access for foreigners to a few special credit, guarantee and state aid schemes tailored to promote SMEs, especially in connection with the privatisation of state owned companies and to help - partly in order to reach better conditions in the privatisation deal - reorganising the handicap structure of viable Hungarian companies, is limited.

ANNEX "A"

COUNTRY : ICELAND

MEASURES

Art 4(3) of the Act on Investment by Non-residents in Business Enterprises No. 34/1991.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Only the Icelandic State, Icelandic local authorities, Icelandic citizens with legal domicile in Iceland, and legal persons with domicile in Iceland and which are wholly owned by Icelandic citizens with legal domicile in Iceland are permitted to own energy exploitation rights as regards waterfalls and geothermal energy. The same applies to ownership of enterprises which produce and distribute energy.

PHASE OUT

From the 1st of January 1996 the principle of non discrimination based on nationality will apply to citizens and legal persons with domicile within the proposed European Economic Area.

OTHER EXCEPTIONS

Measure does not violate MFN principles in the pre-investment stage under Article 13(2) by virtue of the general exception contained in Article 27(3)(a).

ANNEX "A"

COUNTRY : ICELAND

MEASURES

Act on Investment by Non-residents in Business Enterprises No. 34/1991.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Total investment by a single non-resident or by financially linked non-residents in excess of ISK 250 million per annum is subject to authorisation. Same applies to total investment by non-residents in any sector in excess of 25 per cent of total investment in that sector.

PHASE-OUT

An amendment bill currently before the Parliament proposes above restrictions to be deleted. Therefore it is expected that these restrictions will be removed before entry into force of the Energy Charter Treaty.

OTHER EXCEPTIONS

ANNEX "A"

COUNTRY : ICELAND

MEASURES

Act on Investment by Non-residents in Business Enterprises No. 34/1991.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

In all cases investment by non-residents is dependent on a reciprocity requirement being satisfied.

PHASE-OUT

An amendment bill currently before the Parliament proposes above restriction to be deleted. Therefore it is expected that this restriction will be removed before entry into force of the Energy Charter Treaty.

OTHER EXCEPTIONS

ANNEX "A"

COUNTRY : ICELAND

MEASURES

Act on Investment by Non-residents in Business Enterprises No. 34/1991.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Authorisation required for direct investment by foreign governments or government-owned enterprises in Icelandic enterprises.

PHASE-OUT

An amendment bill currently before the Parliament proposes deletion of the requirement of authorisation for government-owned enterprises.

OTHER EXCEPTIONS

ANNEX "A"

COUNTRY : IRELAND

NO EXCEPTIONS NOTIFIED

ANNEX "A"

COUNTRY : ITALY

MEASURES

Law 6.12.1962, n. 1643.
Establishment of ENEL, State Electricity Authority.

SECTOR

Distribution of electricity.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

No activity of distribution of electricity by an operator other than ENEL, or a Municipality or a small utility managing a small non connected electric network (mainly in small islands).

PHASE-OUT

No plans at the present time.

OTHER EXCEPTIONS

ANNEX "A"

COUNTRY : ITALY

MEASURES

Decree of the President of Republic 18.3.1965, n. 342.
Activities in the electric sector of an operator or other than ENEL.

SECTOR

Hydroelectric power generation.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

For the exploitation of water flows to generate electricity (> 3 Mw),
ENEL has the right of pre-emption.

PHASE-OUT

To be modified, according to Art. 1 of law 9 January 1991.
Implementing administrative regulation is still to be issued.

OTHER EXCEPTIONS

ANNEX "A"

COUNTRY : ITALY

MEASURES

Decree of the President of Republic 18.3.1965, n. 342.
Activities in the electric sector of operators other than ENEL.

SECTOR

High voltage electricity transport.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

No import of electricity by an operator other than ENEL.
No high-voltage transport of electricity for an operator other than ENEL.

PHASE-OUT

Following an EEC Directive.

OTHER EXCEPTIONS

ANNEX "A"

COUNTRY : ITALY

MEASURES

Law 9.1.1991, n. 9 - Art. 20.
Generation of electricity by operators other than ENEL.

SECTOR

Generation of electricity in conventional power stations, as defined in CIP (Committee for Prices) Measure n. 6/1992.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Generation allowed for internal use to some classes of operators.
Use by a controlled company is considered as internal use.
Electricity generated in excess of internal use can be sold only to ENEL.

PHASE-OUT

No provision.

OTHER EXCEPTIONS

ANNEX "A"

COUNTRY : ITALY

MEASURES

Law 9.1.1991, n. 9 - Art. 22

Generation of electricity by operator other than ENEL.

SECTOR

Generation of electricity from renewable and assimilated sources, as defined in CIP Measure n. 6/1992.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Generation allowed for internal use only.

In a consortium, use by each member is considered as internal use.

Use by a controlled company is considered as internal use.

Electricity generated in excess of internal use can be sold only to ENEL.

PHASE-OUT

No provision.

OTHER EXCEPTIONS

Generation of hydroelectricity remains subject to further limitations, as exposed in other exception.

Generation of geo-thermal electricity remains subject to further limitations, as exposed in other exception.

ANNEX "A"

COUNTRY : ITALY

MEASURES

Law 9.12.1986, n. 896:

Prospecting, exploration and exploitation of geo-thermal sources.

SECTOR

Exploitation of geo-thermal sources in the generation of electricity.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Exclusive right to prospect and exploit geo-thermal sources and to transport geo-thermal fluids in the Provinces of Grosseto, Livorno, Pisa and Siena (Tuscany) granted to ENEL.

Pre-emption rights granted to ENEL and ENI for exploration licences in other Provinces.

PHASE-OUT

To be modified, following the conversion of ENEL and ENI into State-controlled stock Companies.

OTHER EXCEPTIONS

ANNEX "A"

COUNTRY : ITALY

MEASURES

Law 10.2.1953, n. 136, Art. 2 e 25.
Establishment of ENI, State Agency for hydrocarbons.

SECTOR

Hydrocarbons transport.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Exclusive rights to construct and operate ducts for the transport of national hydrocarbons granted to ENI within the "ENI zone" (the Po River valley).

PHASE-OUT

The rights have been transformed into concessions by the Law 8.8.1992, n. 359 of conversion of ENI into a State-controlled stock company. No further action is foreseen.

OTHER EXCEPTIONS

ANNEX "A"

COUNTRY : ITALY

MEASURES

Law 28.11.1980, N. 782, Art. 11.
Natural gas distribution in Southern Italy.

SECTOR

Construction of infrastructures for the distribution of natural gas.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Exclusive right - only in areas of Southern Italy concerned by the "gasification" plan - to construct the infrastructures, linking the main gasducts to the urban distribution grids, according to a plan provided in the Law, granted to ENI.

PHASE-OUT

The right has been transformed into a concession by the Law 8.8.1992, n. 359 of conversion of ENI into a State-controlled stock company. No further action is foreseen.

OTHER EXCEPTIONS

ANNEX "A"

COUNTRY : ITALY

MEASURES

Law 10.2.1953, n. 136.

Law 9.1.1991, n. 9.

Establishment of ENI, State Agency for hydrocarbons.

SECTOR

Prospecting, exploration and exploitation for hydrocarbons.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

- a) Exclusive right to prospect, explore, exploit for and to transport and to store hydrocarbons within "ENI zone" (the Po River valley) granted to ENI Group.
- b) Foreign Companies (with the exception of EEC Companies) can operate only under reciprocity conditions;
- c) An Operator other than ENI cannot hold licenses for a total surface larger than 10,000 square kilometres on-shore, plus 10.000 square kilometres off-shore.

PHASE-OUT

- a) Following Law 8.8.1992, n. 359 which transformed ENI into a State-controlled stock Company, exclusive rights were changed into licenses.
- b) and c) no plans at present.

OTHER EXCEPTIONS

ANNEX "A"

COUNTRY : ITALY

MEASURES

Law 30.7.1990, n. 221.
Exploration and exploitation for mineral resources.

SECTOR

Exploration and exploitation for coals.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Foreign Companies (with the exception of EEC Companies) can operate in a joint-venture licence only through a branch established in Italy.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

ANNEX "A"

COUNTRY : JAPAN

MEASURES

Foreign Exchange and Foreign Trade Control Law.

SECTOR

Nuclear, electric utility, gas utility, heat supply, oil and mining industry sectors.

Air Transport, maritime transport and railway.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

"Foreign Investors"* must provide notification to the Minister of Finance and the Minister in charge of the industry involved prior to the making of a "Domestic Direct Investment"** in the above sectors. Such direct investment is accepted unless the Government provides notice to the contrary within 14 days.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

* "Foreign Investor" is defined throughout this Annex "A" as follows:

- (a) A non-resident individual;
- (b) A company established under the foreign law or a company which has a main office overseas;
- (c) A domestic company of which more than 50 % of the total capital is owned by non-residents;
- (d) A domestic company of which a majority of the board members are non-resident individuals; or
- (e) When any individual or company other than a Foreign Investor as defined above makes a "Domestic Direct Investment" for a Foreign Investor, the non-Foreign Investor is interpreted as a Foreign Investor

** "Domestic Direct Investment" is defined throughout this Annex "A":

- (a) Acquisition of stock or share of a company which is not listed on the stock exchange;
- (b) Acquisition of stock of a company listed on the stock exchange, (limited to cases where the ratio of the number of acquired stocks against the total number of stocks issued shall be not less than 10/100);
- (c) Transfer of such stock or share of a company not listed on the stock exchange as a person acquired before he becomes a non-resident and continue to hold until the time of transfer (limited to transfer made by an individual who is a non-resident to anyone of those mentioned in (a) to (e) of the definition of Foreign Investor);
- (d) Establishment of a branch, factory, or other business place;
- (e) Money lending (of which the term exceeds one year and is not more than five years, and the amount is not less than two hundred million yen, and of which the term exceeds five years and the amount is not less than one hundred million yen);
- (f) Acquisition of debentures of which the principal is redeemable over one year and within five years and the amount is not less than two hundred million yen, and of which the principal is redeemable over five years and the amount is not less than one hundred million yen);
- (g) Consent given to a substantial alteration on the objective of business of a company by the foreign investor holding one-third or more of the total number of stocks issued;
- (h) Substantial alteration of the type or the business objective of a branch, factory, or other business place.

ANNEX "A"

COUNTRY : JAPAN

MEASURES

Foreign Exchange and Foreign Trade Central Law and concomitant Order and Ordinances.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

When a Domestic Direct Investment is performed by a Foreign Investor whose country has not concluded any treaty or other international agreement relating thereto with Japan, and therefore a screening is deemed necessary in order to make conditions substantially equal to those of the Domestic Direct Investment performed by Japanese investors in the country, the Foreign Investor has to make prior notification concerning the Domestic Direct Investment.*

The Japanese government is at present considering amending the concomitant ordinance concerning all types of investments including the energy sector. Such amendment, if it is realized, will make this provision compatible with the Basic Agreement.

* Investors of countries of which names are not listed in an ordinance concomitant to the Foreign Exchange and Foreign Trade Control Law, must make the prior notification indicated.

PHASE-OUT

N/A.

OTHER EXCEPTIONS

This provision would be a potential violation of the MFN standard.

ANNEX "A"

COUNTRY : JAPAN

MEASURES

Mining Law.

SECTOR

Mining Industry.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Mining right is granted only to Japanese natural and juridical person.

PHASE-OUT

None.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : JAPAN

MEASURES

Civil Aeronautics Law.

SECTOR

All energy sectors (Air transport).

LEVEL OF GOVERNMENT

National.

DESCRIPTION

A licence to operate an air transport business may be granted only to enterprises where less than one-third of the voting rights are held by non-Japanese nationals and none of their representatives and less than one-third of members of the board of directors are non-Japanese. Cabotage and other domestic services using aircraft are reserved to national airlines.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : JAPAN

MEASURES

Ship Law.

SECTOR

All energy sectors (Maritime transport).

LEVEL OF GOVERNMENT

National.

DESCRIPTION

In order to obtain the national flag, companies must be headquartered in Japan and their partners (unlimited partnership) or directors must be Japanese. Without the national flag, vessels may not engage in cabotage.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : KAZAKHSTAN

MEASURES

Law on Concessions in the Republic of Kazakhstan of December 1991 (Article 19).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

While hiring working force in the framework of concession agreement the share of foreign specialists in the highest technical and administrative personnel must not exceed 30%.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : KAZAKHSTAN

MEASURES

Provision on setting up auctions to obtain objects of state property, approved by the Decision of the State Committee of Kazakh SSR for Management of State Material Resources of 1 August 1991, No. 101 (para. 8).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Foreign natural and legal entities cannot participate in an auction, if a starting price of the state property object is set lower than 100 000 roubles.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : KAZAKHSTAN

MEASURES

Law on Denationalisation and Privatisation of 22 June 1991 (Article 10).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

At privatisation of state property citizens of foreign states are allowed to be its buyers. However, at privatisation of objects in separate areas of economy to ensure priority right of citizens of Republic Cabinet of Ministers of Kazakh SSR establishes the residence qualification on the territory of Kazakh SSR of not less than 5 years for those, who want to participate as a buyer.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : KAZAKHSTAN

MEASURES

Law on Protection and Support of Private Entrepreneurial Activity of 4 July 1992 (Article 1, para. 3).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Citizens and legal entities of other states enjoy the same rights and bear the same responsibilities in the area of private entrepreneurial activities as citizens and legal entities of Republic of Kazakhstan with the exception of cases established by legal acts of Republic of Kazakhstan.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : KAZAKHSTAN

MEASURES

Law on Freedom of Economic Activity and Development of Entrepreneurial Activity in Kazakh SSR of 11 December 1990 (Article 23).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Foreign citizens involved in economic activity on the territory of Kazakh SSR, enjoy equal rights with citizens of Kazakh SSR with taking into account special norms regarding these persons which are regulated by other legal acts.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : KYRGYZSTAN

MEASURES

The decree of the President of the Republic of Kyrgyzstan of April 2, 1992 "Concerning the Regulation of External Economic Activities" (paragraph 1).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Certain goods referred to the category of procedures of State importance may only be exported by specialized commercial State structures and producing enterprises. The list of such goods attached to the Decree includes, in particular:

1. Oil and oil products
2. Natural gas
3. Coal
4. Ores and Concentrates
5. Non-ferrous, rare and rare-earth metals
6. Scrap of ferrous and non-ferrous metals
7. Precious metals and stones and articles therefrom
8. Grain
9. Cotton
10. Wool
11. Raw leather
12. Tobacco
13. Silkworm cocoons
14. Seeds of sugar-beet, lucerne
15. Volatile-oil-bearing plants
16. Products of Tibetan medicine
17. Medicinal plants.

PHASE-OUT

Not yet provided for.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : KYRGYZSTAN

MEASURES

The Law of December 12, 1992 on banks and banking activities in the Republic of Kyrgyzstan (Article 11, paragraph 2, and Article 15).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

The founders and participants of banks may be foreign legal and natural persons. Banks are granted licenses entitling them to conduct operations. To obtain a license a bank with participation of Kyrgyzstan and foreign capital, a foreign bank, a subsidiary of a foreign bank has to submit a set of documents exceeding in number the set required for domestic banks (Article 11).

Article 15 (Special Provisions for Establishing Subsidiaries, Affiliates and Offices of Foreign Banks in the Territory of the Republic of Kyrgyzstan) determines that only first-class (according to international practice) foreign banks may open subsidiaries in the territory of the Republic of Kyrgyzstan. With respect to domestic banks this requirement is not provided for by the Law.

PHASE-OUT

Not provided for.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : KYRGYZSTAN

MEASURES

The Law "On Concessions and Foreign Concessive Enterprises in the Republic of Kyrgyzstan of March 6, 1992 (Article 4).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The Government of the Republic establishes a list of objects for which the leasing on concession is either not permitted or restricted (the list is at the stage of elaboration).

PHASE-OUT

Not provided for.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : KYRGYZSTAN

MEASURES

The Law on Insurance in the Republic of Kyrgyzstan of December 18, 1991 (Article 6).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Foreign citizens and legal persons are entitled to insurance services equally with citizens and legal persons of the Republic of Kyrgyzstan. Individual exceptions may be established by the legislation of the Republic of Kyrgyzstan.

PHASE-OUT

Not yet provided for.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : KYRGYZSTAN

MEASURES

The Law "On General Principles of Denationalisation, Privatisation and Entrepreneurial Activities" of December 20, 1991 (Article 2) and the Law on Amendments and Supplements to the Law of the Republic of Kyrgyzstan "On general Principles of Denationalisation and Entrepreneurial Activities" of March 6, 1992 (Article 1).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Foreign citizens and legal persons are admitted to the participation in the process of the privatisation of State and utilities enterprises and to acquiring State-owned shares (stocks, shares) of joint-stock and other commercial companies (Article 2 of the Law of December 20, 1991).

PHASE-OUT

Not provided for.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : LATVIA

MEASURES

Law "On Foreign Investment in the Republic of Latvia" of 5, November 1991 (Articles 5 and 6).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Permission by the Council of Ministers, or its authorised institution is necessary for foreign investments which material and financial assets exceed one million USD or an equivalent sum in other convertible currencies in part or in total, if the foreign investor:

- a) invests in a state enterprise,
- b) obtains control over an enterprise of the Republic of Latvia,
- c) establishes a new enterprise.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : LATVIA

MEASURES

Law "On Foreign Investment in the Republic of Latvia" of 5, November 1991 (Article 2).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Foreign investors have the right to engage in entrepreneurial activities only by establishing limited liability companies or joint stock companies, with or without the participation of a local partner or by participating in such companies.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : LATVIA

MEASURES

Law "On Foreign Investment in the Republic of Latvia" of 5, November 1991 (Article 3).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Foreign investors may not gain control of enterprises which are involved in entrepreneurial activity relating to acquisition of all renewable and non-renewable natural resources, including those found on the continental shelf, and harbour management.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : LATVIA

MEASURES

Law "On Foreign Investment in the Republic of Latvia" of 5, November 1991 (Article 3.3).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Foreign investors cannot purchase the land but may arrange agreements for land lease, the term of which must not exceed ninety nine years.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : LICHTENSTEIN

MEASURES

Law on the acquisition of real estate (Gesetz über den Grundstückserwerb).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Acquisition of real estate is subject to authorisation.

PHASE-OUT

Amendments under consideration.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : LICHTENSTEIN

MEASURES

Law on pipelines (Rohrleitungsgesetz).

SECTOR

Oil and gas pipelines.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

A concession for the construction and operation of a pipeline that crosses the Liechtenstein border to transport oil, gas or liquid or gaseous fuels, is accorded only to Liechtenstein controlled companies having their seat in Liechtenstein.

PHASE-OUT

None.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : LITHUANIA

MEASURES

Law on foreign investment in the Republic of Lithuania (Article 5), ratified on 29 December 1990 and amended 11 February 1992.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Foreign investment shall be allowed in all spheres of activity, with the exception of spheres where foreign investment is prohibited by the laws of the Republic of Lithuania.

Without a special license issued by a directive of the Government of the Republic of Lithuania, foreign capital firms and joint ventures shall be prohibited from:

exploring for and exploiting mineral deposits.

exploiting natural resources.

State owned and state share holding companies have the right without founder's approval to increase their own assets, while issuing shares, repurchased by foreigners or (and) Lithuanian Republic investors' deposits in hard currency. State property shall not be repurchased by the hard currency deposits.

Specific state owned enterprises and enterprises, share portfolio of which foreign investors can purchase with the approval of the Government of the Republic of Lithuania, aiming to increase assets and establish joint ventures, shall get a permission from the Government of the Republic of Lithuania or the relative authorized body.

PHASE-OUT

None.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : LITHUANIA

MEASURES

Law on foreign investment in the Republic of Lithuania (Article 27), ratified on 29 December 1990 and amended 11 February 1992.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

If a foreign investor desires to acquire controlling interest (in excesses of 50 percent of shares) in firms that are entered on a separate list by the Government (or by a person authorized by it), the foreign investor must obtain a license to make an investment.

A foreign capital firm of joint venture functioning not as a state firm, or functioning as a stock corporation, in the event that the Lithuanian founder of such a corporation possesses less than 51 percent of shares, shall be prohibited from:

operating oil and gas pipelines, electricity transmission lines, district heating systems, and facilities ensuring these objects, functioning.

PHASE-OUT

None.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : LITHUANIA

MEASURES

Law on foreign investment in the Republic of Lithuania (Article 21), ratified on 29 December 1990 and amended 11 February 1992.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Foreign investors shall have the right to rent, in accordance with the laws of the Republic of Lithuania, buildings and premises necessary for their commercial economic activity, as well as plots of land for the construction of said buildings.

The term of a land lease for foreign investors may be fixed for up to 99 years, with a right of priority for extensions of the term of the lease. Unless the lease provides otherwise, land rent for the plot shall not be changed during the entire period that the lease is in force. The conditions of land lease shall be regulated by the Government of the Republic of Lithuania.

PHASE-OUT

None.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : LUXEMBOURG

NOT YET REVIEWED

ANNEX "A"

COUNTRY : MALTA

NO EXCEPTIONS NOTIFIED

ANNEX "A"

COUNTRY : MOLDOVA

MEASURES

Law of the Republic of Moldova on Foreign Investments, April 1, 1992, Chapter IV, paragraph 2, Article 31.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Foreign investors and enterprises with foreign investments may acquire state securities with the permission of the Ministry of Economy and Finance of the Republic of Moldova.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : MOLDOVA

MEASURES

Law of the Republic of Moldova on Joint-Stock Companies, January 3, 1992, Chapter I, paragraph 4, Article 12.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Physical and juridical persons of foreign states, persons without citizenship, and international organizations may hold only nominal shares.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : MOLDOVA

MEASURES

Law of the Republic of Moldova on Property, January 23, 1991, Chapter V, Article 38 and Law of Republic of Moldova on Foreign Investments, April 1, 1992, Chapter I, paragraph g, Article 5.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Citizens and juridical persons of foreign countries and international organisations and persons without citizenship cannot have property for land in the Republic of Moldova.

As a result there cannot be foreign investments in the form of buying property right for land.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : MOLDOVA

MEASURES

Law of the Republic of Moldova on Banks and Banking activity promulgated on 12 July 1992, Chapter III, paragraph 2, Article 11.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

In the case of formation of Joint Banks with foreign capital participation, one of the foreign founding partners must be a bank.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : THE NETHERLANDS

MEASURES

Reciprocity Requirement.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Reciprocity requirements may be in force for non-EC countries for lead-managers of Guilder-denominated issues.

No commitments for liberalisation.

PHASE-OUT

No commitments.

OTHER EXCEPTIONS

Not applicable.

ANNEX "A"

COUNTRY : THE NETHERLANDS

MEASURES

Article 311 of the Netherlands Code of Commerce.

SECTOR

All energy sectors (Maritime transport).

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Ownership of Netherlands flag vessels reserved to investment made by shipping companies incorporated under Dutch law, established in the Kingdom and having their actual place of management in the Netherlands.

PHASE OUT

No commitments.

OTHER EXCEPTIONS

Not applicable.

ANNEX "A"

COUNTRY : THE NETHERLANDS

MEASURES

Revised Convention for the Navigation on the Rhine.

SECTOR

All energy sectors (Inland Waterways).

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

The right to carry out transport of goods and persons between two points on the inland waterways covered by the revised Convention for the Navigation on the Rhine is reserved to vessels owned by either nationals of Contracting States of that convention or member States of the EEC, or companies based in the territory of any of these States, which are owned in majority and controlled by nationals of these States.

PHASE-OUT

No commitments.

OTHER EXCEPTIONS

Measure also violates MFN principle in the pre-investment stage under Article 13(2).

ANNEX "A"

COUNTRY : NORWAY

NO EXCEPTIONS NOTIFIED

ANNEX "A"

COUNTRY : POLAND

MEASURES

Law of June 14, 1991 (Article 1) on Companies with Foreign Participation.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Conduct of activity of foreign parties permitted exclusively in the form of either limited liability companies or joint stock companies, which have their registered seat in the territory of the Republic of Poland, or may receive or acquire shares in companies already engaged in the operation of enterprises in Poland.

This provision means that foreign parties cannot resort to the form of a partnership under the regime of Polish law (civil partnership, registered partnership, limited partnership), including the acquisition of stock in such companies established in Poland. They can, however, act as mutual funds investor being a partnership governed by foreign law.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : POLAND

MEASURES

Law of June 14, 1991 (Article 4) on Companies with Foreign Participation.

SECTOR

Specific sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Permit of the Minister for Ownership Transformation required for the establishment of a foreign company intending to conduct its activity in at least one of the following areas:

- a) the operation of sea - and airports;
- b) dealing in real estate or acting as intermediary in real estate transactions;
- c) defense industry which is not covered by licensing requirements;
- d) wholesale trading in imported consumer goods;
- e) providing of legal services.

PHASE-OUT

There has been much debate concerning the usefulness of maintaining restrictions with regard to point d.). However, no specific draft of a possible amendment has yet been prepared by the Government.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : POLAND

MEASURES

Law of June 14, 1991 (Article 6) on Companies with Foreign Participation.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Permits of the Minister for Ownership Transformation required for following acts of foreign parties:

- a) acquisition or receipt of shares in a company with registered seat in Poland, if such a company conducts its activities in one of five areas listed in Article 4 of the Law;
- b) extension by a company of its scope of activity into at least one of the areas listed in Article 4 of the Law;
- c) entering by a company into a contract allowing it to use in Poland for a period exceeding 6 months or to acquire the property of a state legal person (separate enterprise, real estate, a plant or a branch of an enterprise);
- d) receipt by a state legal person of shares in a company with foreign participation, if such a Polish partner is to make a non-monetary subscription to the initial capital (e.g. separate enterprise, real estate or a plant or branch of an enterprise).

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : POLAND

MEASURES

- a) Law of March 24, 1920 on Acquisition of Real Estate by Foreign Persons;
- b) Act of September 29, 1990, amending the Land Economy and Expropriation Act;

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

With regard to both laws foreign persons (corporate bodies based abroad, individuals not having Polish citizenship, companies incorporated in Poland but with foreign direct/indirect ownership of at least 50% of the company's share capital) require a permit from the Minister of Interior for acquisition or perpetual lease of real estate.

In case of real estate of "special significance" (e.g. industrial, commercial, agricultural) the decision is taken after consultation with the relevant Minister. The permit is valid for one year; if the acquisition is not effected within that period of time, the validity of the permit expires. It is worth noting that companies with a majority of Polish-owned share capital do not require a permit from the Ministry of Interior; they need, however, to obtain a permit of the Minister of Ownership Transformation, if the seller is a state legal person.

PHASE-OUT

Possible amendments aiming at a larger flexibility are a subject of an ongoing debate. No draft laws having as yet been submitted to the Parliament.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : PORTUGAL

MEASURES

Decree-Law nr. 197-D/86 of July 1986.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

In general, all investments are subject to prior notification. The sale between non-residents of shares in foreign investment operations is subject to a simple registration, a posteriori, when: (1) the parties concerned are nationals and residents of EC; (2) the acquisition of such shares does not exceed 20% of the capital of the company or does not imply effective control or a strengthening of decision making power. Portugal maintains the right to submit to authorisation individual investments by non-EC companies.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : PORTUGAL

MEASURES

Law 11/90 of April 1990 - Privatisation of Nationalised Companies.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

In enterprises to be privatised, the Council of Ministers may impose limit on the acquisition of shares by foreign entities or by Portuguese companies which are owned by foreign entities.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : PORTUGAL

MEASURES

Decree-Law 284/90, of September 1990.

SECTOR

Gas industry.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

This law provides a public tender for the construction of terminals and pipelines and the concession of exploration of natural gas. Only companies established in one of EC Member State can apply.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : PORTUGAL

MEASURES

Decree-Law 525/85 - Importation of petroleum and petroleum products.

SECTOR

Petroleum and petroleum products.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Import authorisations can only be granted to entities established in one of EC members.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : ROMANIA

MEASURES

- a) The Constitution of Romania; Article 41 paragraph 2;
- b) The Land Law No. 18, February 1991, Chapter IV, Article 47.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

- a) Foreigners and stateless persons may not acquire the right of land ownership.
- b) Natural persons who do not have Romanian citizenship and are not resident in Romania as well as the legal persons which do not have Romanian citizenship and headquarters in Romania cannot acquire land in any form through acts inter vivos.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : ROMANIA

MEASURES

The Foreign Investment Law; Law No. 35, April 1993 - Article 1 (g).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

For purposes of this law, foreign investors cannot purchase residence buildings not related to the investment as well as the construction thereof.

PHASE-OUT

Presently under consideration.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : RUSSIA

MEASURES

The Law on Foreign Investments in the RSFSR of 4 July 1991, (Article 16).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Enterprises in which the amount of foreign investments exceeds 100 million roubles are registered under a special procedure (with the Committee for Foreign Investments) with the permission of the Government of the Russian Federation.

PHASE-OUT

Parliament is considering change of the value of foreign investments.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : RUSSIA

MEASURES

The Law on Property in the Russian Federation of 24 December 1991 (Articles 27, 28).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

The provisions of this Law concerning property of Soviet citizens apply also to the property of foreign citizens located in the RSFSR, if legislative acts do not provide otherwise.

Foreign legal persons are entitled to have in their ownership in the territory of the RSFSR industrial and other enterprises, buildings, structures and other property for the purposes of carrying out by them of entrepreneurial and other activities in the cases and under the procedures established by the legislative acts of the RSFSR.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : RUSSIA

MEASURES

The Decision of the Council of Ministers of the RSFSR of 3 December 1990 "On the Use of Monetary Means in Soviet Roubles by Foreign Firms in the Territory of the RSFSR" (para. 1).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Foreigners are not permitted to acquire for roubles buildings and structures, except incompleated ones.

Other restrictions may also be established for foreigners.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : RUSSIA

MEASURES

The Land Code of the Russian Federation of 25 April 1991 (Articles 3, 7, 13).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Plots of land may not be transferred to foreign citizens into ownership and into inherited possession for life (only for use).

However, the Procedure for the Sale of Plots of Land during the Privatisation of State and Municipal Enterprises, during the Expansion and Additional Construction of Such Enterprises, as well as of Those Transferred to Citizens and their Association for Entrepreneurial Activities (approved by the Decree of the President of the Russian Federation of 14 June 1992) allows the sale of land plots to foreigners. Consequently, the exception with regard to foreigners provided for by the Land Code of the RF will not be applied in cases of purchase by them of land plots in the process of privatisation.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : RUSSIA

MEASURES

The Law of the Russian Federation "On Subsoil" of 21 February 1992 (Article 9).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

The subsoil may be used by subjects of entrepreneurial activity irrespective of forms of property, including legal persons and citizens of other States, except as otherwise provided for by the legislative acts of the Russian Federation.

Consequently, foreign entrepreneurs may be prohibited from using subsoil.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : RUSSIA

MEASURES

The Regulations Concerning Licensing of Subsoil Use (approved by the Decision of the Supreme Soviet of the RF of 15 July 1992).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

(para. 9.1) The subjects of entrepreneurial activity irrespective of terms of property, including legal persons and citizens of other States, except as otherwise provided for by the legislative acts of the Russian Federation, may be licensees.

(para. 10.5) It is permitted to hold tenders and auctions in individual cases for small enterprises of the prospectors' team type, for defence enterprises carrying out conversion programmes, with participation of domestic enterprises only. This implies that foreigners may not be admitted to such tenders and auctions.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : RUSSIA

MEASURES

The Water Code of the RSFSR of 30 June 1972 (Article 18).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Foreigners may be water users only in cases specifically provided for by legislation.

PHASE-OUT

New legislation is pending.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : RUSSIA

MEASURES

The Forest Code of the RSFSR, 1978 (Article 45).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Foreigners may be forest users only in cases specifically provided for by legislation.

PHASE-OUT

New legislation is pending.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : RUSSIA

MEASURES

The Law of the RSFSR "On Foreign Investments in the RSFSR" of 4 July 1991 (Article 39).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

The Lease of Federal property of the RSFSR whose value exceeds 100 million roubles to foreign investors, enterprises with foreign investments is effected with the permission of the State authority empowered to manage such property.

PHASE-OUT

This provision can be either changed or deleted.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : RUSSIA

MEASURES

The Air Code of the USSR (approved by the decree of the Presidium of the Supreme Soviet of the USSR of 11 May 1983 (Article 23).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

USSR Law used by the Federation.

DESCRIPTION

The crew of civil aircraft of the USSR may include only citizens of the USSR.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : RUSSIA

MEASURES

The Regulations of the Inland Water Transport of the USSR of 15 October 1955 (para. 6).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

USSR Law used by the Federation.

DESCRIPTION

Under the flags of the USSR and of the Union Republics may sail ships:

- which are State property and are under the authority of Soviet State institutions, organisations and enterprises;
- belonging to Soviet cooperative and public organisations.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : RUSSIA

MEASURES

The Code of the Merchant Shipping of the USSR of 17 September 1968 (Article 22).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

USSR Law used by the Federation.

DESCRIPTION

Under the flag of the USSR may sail ships belonging to the State, to Soviet organisations and citizens.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : RUSSIA

MEASURES

The Law of the RSFSR "On Banks and Banking in the RSFSR" of 2 December 1990 (Article 14).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

To ensure equal competition conditions for all banks the Bank of Russia may prescribe additional requirements to the founders of joint banks with participation of Soviet and foreign capital and to non-resident banks regarding the minimum and maximum amounts of their authorised capital.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : RUSSIA

MEASURES

The Law of the Russian Federation "On Commodity Exchanges and Exchange Trade" of 20 February 1992 (Article 19)

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Foreign legal and natural persons who are not members of the exchange may participate in exchange trade only through exchange agents.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : RUSSIA

MEASURES

The Law on Foreign Investments in the RSFSR (Article 36).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

The purchasing by foreign investors of State securities may be effected with the permission of the Ministry of Finance of the RSFSR or the central finance bodies of the Republics forming part of the RSFSR.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : RUSSIA

MEASURES

The Law of the Russian Federation "On Insurance" of 27 November 1992 (Article 6, para. 1).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Legislative acts of the Russian Federation may establish restrictions for the creation of insurance organisations in the territory of the Russian Federation by foreign legal and natural persons.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : RUSSIA

MEASURES

The Decision of the Government of the RF of 5 November 1992 No. 848 "On the Use of Foreign Credits Provided to the Russian Federation on the Basis of Inter-Governmental Agreements and on the Procedure of Settlements for Such Credits" (para. 1).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Tenders for the distribution of credit resources of this kind are held among interested enterprises (organisations)-residents of the Russian Federation. Consequently, foreigners are not admitted to such tenders.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : RUSSIA

MEASURES

The Decision of the Supreme Soviet of the RF "On Implementation of the Law of the RF "On Insurance" of 27 November 1992 (para. 5).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Foreign legal and natural persons may establish insurance organisations in the territory of the Russian Federation only in the form of limited liability or joint stock companies. The share of foreign investors in the authorised capital of such organisations may not exceed in total 49%.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : RUSSIA

MEASURES

The Law of the Russian Federation "On Legal Protection of the Topology of Micro-chips" of 23 September 1992 (Article 13).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Foreign natural and legal persons enjoy the rights provided for by this Law equally with natural and legal persons of the Russian Federation in virtue of international treaties of the Russian Federation or on the basis of the principle of reciprocity.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : RUSSIA

MEASURES

The Patent Law of the Russian Federation of 23 September 1992 (Article 36).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Foreign natural and legal persons enjoy the rights provided for by this Law equally with natural and legal persons of the Russian Federation in virtue of international treaties of the Russian Federation or on the basis of the principle of reciprocity.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : RUSSIA

MEASURES

The Law of the Russian Federation "On Trade-marks, Service Marks and Appellations of Origin of Goods" of 23 September 1992 (Article 47)

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Foreign natural and legal persons enjoy the rights provided for by this Law equally with natural and legal persons of the Russian Federation in virtue of international treaties of the Russian Federation or on the basis of the principle of reciprocity.

The right to register in the Russian Federation appellations of origin of goods is provided to legal and natural persons of the States providing similar right to legal and natural persons of the Russian Federation.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : RUSSIA

MEASURES

The Law of the Russian Federation "On Legal Protection of Computer Programmes and Data Bases" of 23 September 1992 (Article 7).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Copyright for foreigners with regard to a computer programme or a data base published for the first time or located in some material form in the territory of a foreign State is recognised in accordance with international treaties of the Russian Federation.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : RUSSIA

MEASURES

The Instructions of the State Bank of the USSR "On Regulation of Currency Operations in the Territory of the USSR (Basic Provisions)".

- a) para 11, section IV;
- b) para 1, section II;

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

- a) For opening an account with the volume of receipts during the year exceeding 10 million roubles a non-resident legal person needs a written permission of the Central Bank.
- b) All settlements on external economic operations between resident legal persons and non-resident legal persons must be effected in a freely convertible currency, except as otherwise provided for by Inter-Governmental agreements.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : RUSSIA

MEASURES

Law on Currency Regulation and Exchange Control of 9 October 1992
(Article 7, para. 2).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Special procedure for opening and maintaining of non-residents in the currency of the Russian Federation as compared with opening and maintaining such accounts by the residents of the Russian Federation, is established by the Central Bank of the Russian Federation.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : SLOVAKIA

MEASURES

The Commercial Code-federal act No 513/91 of the former Czech and Slovak Federal Republic.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

This Code constitutes, besides other, basic conditions for nationals and foreign natural persons and legal entities. A foreign natural person or legal entity must have an enterprise or company or an organisational component thereof, located in the Slovak Republic. The authorizations to do business commence on the day of registration into the Company Register by this person or by the legal entity or by its organizational component.

PHASE-OUT

Permanent provision.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : SLOVAKIA

MEASURES

The Federal Act of the former Czech and Slovak Federal Republic on Production, Distribution and Consumption of Electricity No 79/1957.

SECTOR

Electricity.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Act provides that public transmission and distribution grids can be established and run by legal entities which are wholly owned by nationals.

PHASE-OUT

A new law for this sector will be submitted for approval by Parliament with entry into force in 1993. Therefore it is expected that this exception will be removed before entry into force of the Energy Charter Treaty.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : SLOVAKIA

MEASURES

The Federal Act of the Czech and Slovak Federal Republic on Production, Distribution and Use of Gaseous Fuels for Heating No 67/1960.

SECTOR

Gas Industry.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The Act states that public high pressure and distribution pipelines can be established and run by legal entities which are wholly owned by nationals.

PHASE-OUT

A new law for this sector will be submitted for approval by Parliament with entry into force in 1993. Therefore it is expected that this exception will be removed before entry into force of the Energy Charter Treaty.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : SLOVAKIA

MEASURES

The Federal Foreign Exchange Act No 528/90 as amended by the Act No 228/92 of the former Czech and Slovak Republic.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Under this Act foreign natural person non-residing in the Slovak Republic can not be granted the ownership of real estate. Paragraph 25 of this Act sets up some exceptions that are not of substantial relevance for energy undertakings.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : SLOVENIA

MEASURES

Draft Strategy on Foreign Investment.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

As there is no new legislation in force in Slovenia, the draft Strategy on Foreign Investments envisages that some foreign investments will be supervised and directed and the foreign investor will not be granted the favour of national treatment.

Such investments relevant for energy sector are activities which are reserved for state owned or public companies, activities financed or subsidized from budget, municipal activities, transport and public transport, exploitation of natural resources and real estate business. In such cases most favoured nation treatment is granted.

PHASE-OUT

None.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : SLOVENIA

MEASURES

Draft Law on Energy Supply.

SECTOR

Electricity and gas.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Transmission and distribution of electricity and transmission of gas are public services which cannot be implemented as a concessionary public service.

In the event of establishing the public company with parts of privately owned capital either national or foreign, the majority share of the basic capital of the Republic of Slovenia or the local authorities must be assured.

PHASE-OUT

None.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : SPAIN

MEASURES

Law of 18/1992, on foreign investments, of 1st July and related Decrees.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

All the foreign investments in Spain are free, except:

- a) Investments made by an investor not belonging to the EEC that might cause problems to the national interests.
- b) Activities directly related to national defence.
- c) Investments made by foreign governments not belonging to the EEC.

All these exceptions require authorisation by the Government.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : SPAIN

MEASURES

Law of 18th March 1966, developed by the Decrees 2617/66, on authorisation for electric plants, of 20th October, and 2619/66, of 20th October too.

Law 15/1980, on unified exploration of the Electricity National System, of 16th December.

SECTOR

Electric industry.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Prior authorisation by the Ministry of Industry, Trade and Tourism is required for all investors, national or foreign, to produce electricity. There is a state service which manages, guarantees and optimizes the integrated system of production and transmission of electricity.

PHASE-OUT

In a few months, the Government will present to the Parliament a new project of Law to unify the present legislation and promote competition in the generation and distribution of electricity.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : SPAIN

MEASURES

Law of 25/1964, on nuclear energy, of 29th April, developed by the Decree 2869/72 of 21st July.

Law 15/1980, on the foundation of the Nuclear Security Council, of 22nd April.

SECTOR

Nuclear.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Several prior administrative authorisations are required to set up a nuclear plant.

Control of Nuclear security is an exclusive competence of the Nuclear Security Council.

On the other hand, it must be emphasised that the state companies ENUSA and ENRESA take charge exclusively of the first and second cycle of the nuclear fuel treatment respectively.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : SPAIN

MEASURES

Law of 22/1973, on mining of 21st July as amended by Law 54/1980 of 5th November and Royal Legislative Decree 1303/1986 of 28th June, which adapts Spanish legislation to EEC Law.

SECTOR

Mining industry.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Mining mineral resources are divided into four types.

Certain administrative authorisations or permissions are required, depending on the type of resource to be worked.

National and foreign investors have the same opportunities to obtain those authorisations or permissions. However, foreign States or Governments need a special authorisation by the Spanish Government to invest in the mining industry.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : SPAIN

MEASURES

Law 21/1974, on hydrocarbons, of 27th June as amended by Law 21/1992, on industry, of 16th July.

SECTOR

Hydrocarbons.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The extraction of hydrocarbons and the related activities are regulated by these laws. Several authorisations and permissions are required. National and EEC investors have the same opportunities to obtain them. Other foreign investors have to set up a Spanish corporation (that is to say, in conformity with Spanish Law) or obtain a special authorisation by the Spanish Government.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : SPAIN

MEASURES

Law 34/1992, on oil sector organisation, of 22nd December.

SECTOR

Oil industry.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Oil and oil products importations and exportations can be done freely. Nevertheless, if the oil import does not come from an EEC country or the destination of an oil import is not an EEC country, the Spanish Government is able to establish a special regulation.

On the other hand, several administrative authorisations are needed to refine, transport, distribute and sell oil and oil products.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : SWEDEN

MEASURES

Civil Aviation Act.

SECTOR

Air Transport.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

An aircraft may be registered in Sweden only if it is owned by the Swedish Government, a Swedish municipality, Swedish citizens or a Swedish legal person. For special reasons the Swedish National Civil Aviation Authority may grant exemptions from these restrictions. Such exemptions may be granted only if the aircraft, as a rule, is used outside Sweden.

Similar restrictions exist with respect to those who may be authorised to carry out domestic air traffic. The nationality requirements on participation in decision making and ownership is, however, stronger.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : SWEDEN

MEASURES

Act of the Sea and Ordinance on Foreign Shipping.

SECTOR

Maritime Transport.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Flag vessels may be registered in Sweden only if they are owned by a Swedish subject or a Swedish legal person to more than 50%. Cabotage is reserved to vessels flying the national flag.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : SWITZERLAND

MEASURES

Code of obligations (Obligationerecht).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

The board of directors of a corporation with limited liability (derogations are possible for holding companies) and the administration of a co-operative company must be composed of a majority of Swiss citizens domiciled in Switzerland.

PHASE-OUT

None.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : SWITZERLAND

MEASURES

Purchase of real property by foreign nationals (Erwerb von Grundstücken durch Personen im Ausland).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Acquisition of real property by a foreign national, a foreign based or foreign-controlled enterprise is subject to an authorisation requirement.

PHASE-OUT

Legislation under consideration.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : SWITZERLAND

MEASURES

Legislation on hydropower (Gesetzgebung über Wasserkraft).

SECTOR

Hydropower.

LEVEL OF GOVERNMENT

Federal and cantonal.

DESCRIPTION

The concession for the use of hydropower is granted only to Swiss citizens domiciled in Switzerland and to Swiss-controlled companies having their seat in Switzerland. Within this legal framework additional conditions may be set in the cantons.

PHASE-OUT

None.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : SWITZERLAND

MEASURES

Law on nuclear energy (Atomgesetz).

SECTOR

Nuclear energy.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

The authorisation to build and operate a nuclear plant or a radioactive waste depository is granted only to Swiss-controlled companies having their seat in Switzerland.

PHASE-OUT

Legislation under consideration.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : SWITZERLAND

MEASURES

Law on pipelines (Rohrleitungsgesetz).

SECTOR

Oil and gas pipelines.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

A concession for the construction and operation of a pipeline that crosses the Swiss border, to transport oil, gas or liquid or gaseous fuels, is accorded only to Swiss-controlled companies having their seat in Switzerland.

PHASE-OUT

Legislation under consideration.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : SWITZERLAND

MEASURES

Agreement concerning the exploration of oil, gas and other hydrocarbons (Konkordat betreffend die Schürfung und Ausbeutung von Erdöl).

SECTOR

Hydrocarbons.

LEVEL OF GOVERNMENT

Cantonal.

DESCRIPTION

An intercantonal agreement among ten cantons (Zürich, Schwyz, Glarus, Zug, Schaffhausen, Appenzell Ausser-Rhoden, Appenzell Inner-Rhoden, St. Gallen, Aargau, Thurgau) provides that a concession for exploration and exploitation of oil, gas and other hydrocarbons may be granted only to companies that are 75 per cent owned by Swiss nationals. (Other cantons, not members of this agreement, have adopted similar provisions some of which include requirements concerning the seat and the administration of such companies.)

PHASE-OUT

None.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : TADJIKISTAN

NO EXCEPTIONS NOTIFIED

ANNEX "A"

COUNTRY : TURKEY

NO EXCEPTIONS NOTIFIED

ANNEX "A"

COUNTRY : UKRAINE

MEASURES

Law on Foreign Investments (Article 43).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Leasing of state or municipal property worth over US\$ 10M to foreign investors requires authorisation by the Government.

PHASE-OUT

No plans.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : UNITED KINGDOM

MEASURES

Fair Trading Act 1973 (as amended).

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Central.

DESCRIPTION

Certain mergers (domestic or foreign) with or acquisitions of substantial shareholdings in U.K. companies which raise issues of public interest can be referred by the Government to the Monopolies and Mergers Commission for investigation. If a merger is found to operate against the public interest, the Government may take action to remedy or prevent the adverse effects.

PHASE-OUT

No plans.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : UNITED KINGDOM

MEASURES

Petroleum (Production) (Landward Areas) Regulations 1984.
Petroleum (Production) (Seaward Areas) Regulations 1988.

SECTOR

Oil and gas exploration and production.

LEVEL OF GOVERNMENT

Central.

DESCRIPTION

Licensees required to have an adequate corporate representation in the U.K., commensurate with operational activity taking place under their licence. In practice most foreign companies register subsidiaries in the U.K. for this purpose.

PHASE-OUT

No plans.

OTHER EXCEPTIONS

None.

ANNEX "A"

COUNTRY : U.S.A.

MEASURES

16 U.S.C. §797.

SECTOR

Electric Power.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Under the Federal Power Act, only U.S. citizens, associations of U.S. citizens, or corporations organized under the laws of the U.S. or any state thereof may be awarded licenses to construct, operate, or maintain facilities for the development, transmission, and utilization of power on land and water controlled by the U.S. Federal Government.

Non-U.S. citizens may obtain such licenses by investing through a U.S. corporation holding a license. Foreign-controlled corporations incorporated in the U.S. may receive such licenses.

PHASE-OUT

None.

OTHER EXCEPTIONS

ANNEX "A"

COUNTRY : U.S.A.

MEASURES

Atomic Energy Act, 42 U.S.C. §§2131-2134.

SECTOR

Atomic Energy.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

A license is required for the operation, transfer, receipt, manufacture, production, acquisition, and import or export of any facilities that produce or use nuclear materials. Such a license may not be issued to any entity known or believed to be owned, controlled or dominated by a foreign individual, a foreign-controlled corporation or a foreign government. Determinations of foreign ownership or control are made on a case-by-case basis.

PHASE-OUT

None.

OTHER EXCEPTIONS

ANNEX "A"

COUNTRY : U.S.A.

MEASURES

The Geothermal Steam Act, 30 U.S.C. §§1002, 1015.

43 C.F.R. 3202.1.

SECTOR

Geothermal Energy.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Leases for the development of geothermal steam and associated resources on lands administered by the Secretary of the Interior may be issued only to U.S. citizens, associations of U.S. citizens, and corporations organized under the laws of the U.S. or of any State or the District of Columbia, or governmental units, including, without limitation, municipalities.

Non-U.S. citizens may obtain such leases by investing through a U.S. corporation holding a lease. Foreign-controlled corporations incorporated in the U.S. may receive such leases.

PHASE-OUT

None.

OTHER EXCEPTIONS

ANNEX "A"

COUNTRY : U.S.A.

MEASURES

42 U.S.C. §9111.

42 U.S.C. §9102(18).

SECTOR

Ocean Thermal Energy.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

In order to qualify for a license to own, build, or operate an ocean thermal energy facility in the territorial waters of the United States, a company or other legal entity must: (1) be organized under the laws of the United States or of any State; (2) have a U.S. citizen as its President (or other executive officer) and as its Chairman of the Board (or holder of similar office); and (3) have U.S. citizens constitute the majority of the number of directors required for a quorum necessary to conduct the business of the Board.

Subject to the limitation described above, non-U.S. citizens may obtain such licenses by investing through a U.S. corporation holding a license, and foreign-controlled corporations incorporated in the U.S. may receive such licenses.

PHASE-OUT

None.

OTHER EXCEPTIONS

ANNEX "A"
COUNTRY : U.S.A.

MEASURES

Mineral Lands Leasing Act of 1920, 30 U.S.C. §181 et seq;

Mineral Leasing Act for Acquired Lands of 1947, 30 U.S.C. §351 et seq.

10 U.S.C. §7435.

43 C.F.R. 2882.2-1.

43 C.F.R. 3102.

43 C.F.R. 3472.

43 C.F.R. 3502.

SECTOR

On-shore Federal Lands: Access to Resources, including Coal, Oil, and Gas.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Foreign citizens and foreign corporations may not acquire (1) rights of way for oil or gas pipelines, or pipelines carrying products refined from oil or gas, across on-shore federal lands; or (2) leases or interests in certain minerals, such as coal or oil, on on-shore federal lands. Non-U.S. citizens may own an interest, including a 100% interest, in a domestic corporation that acquires a right-of-way for oil or gas pipelines across non-shore federal lands, or that acquires a lease to develop mineral resources on on-shore federal lands, unless the laws, customs or regulations of the foreign investor's home country deny similar or like privileges for the mineral or access in question to U.S. citizens or corporations. 30 U.S.C. §181, 185.

If the laws, customs, or regulations of any foreign country deny the privilege of leasing public land to citizens or corporations or the United States, citizens of that foreign country, or corporations controlled by citizens of that country, are restricted from obtaining access to federal leases on Naval Petroleum Reserves. 10 U.S.C. §7435(a).

PHASE-OUT

None.

OTHER EXCEPTIONS

The reciprocity requirements of the above measures also constitute exceptions to Most-Favored-Nation Treatment.

ANNEX "A"

COUNTRY : U.S.A.

MEASURES

Department of the Interior Appropriations Act, Fiscal Year 1981, 42 U.S.C. §6508.

Federal Land Policy and Management Act of 1976, 43 U.S.C. §1701 et seq.
43 C.F.R. 3130.

SECTOR

Oil and gas leasing: National Petroleum Reserve - Alaska.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Oil and gas leases within the National Petroleum Reserve - Alaska may be held only by citizens and nationals of the U.S., permanent resident aliens, associations or citizens, nationals, or resident aliens, and corporations organized under the laws of the U.S. or any state.

Non-U.S. citizens may obtain such leases by investing through a U.S. corporation holding a lease. Foreign-controlled corporations incorporated in the U.S. may receive such leases.

PHASE-OUT

None.

OTHER EXCEPTIONS

ANNEX "A"

COUNTRY : U.S.A.

MEASURES

The Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. §1331 et seq.

30 C.F.R. 256.35.

30 C.F.R. 281.4.

SECTOR

Oil and Gas.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

The Secretary of the Interior is authorized to grant to the highest responsible qualified bidder or bidders by competitive bidding any oil or gas lease on submerged lands the Outer Contrinental Shelf. 43 U.S.C. §1337.

Such leases may be held only by: (1) citizens, nationals and permanent residents of the United States; (2) corporations organized under the laws of the United States or of any State; or (3) associations of such citizens, nationals, permanent residents, or corporations. 30 C.F.R. 256.35, 281.4.

Non-U.S. citizens may obtain such leases by investing through a U.S. corporation holding a lease. Foreign-controlled corporations incorporated in the U.S. may receive such leases.

PHASE-OUT

None.

OTHER EXCEPTIONS

ANNEX "A"

COUNTRY : U.S.A.

MEASURES

The International Investment and Trade in Services Act, 22 U.S.C. §3101 et seq.

SECTOR

All energy sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

All investments in U.S. business enterprises in which a foreign person has at least a 10% ownership interest are subject to a reporting requirement.

PHASE-OUT

None.

OTHER EXCEPTIONS

This requirement represents an exception to national treatment post-establishment as well as pre-establishment.

APPENDIX

The obligations of Article 13 shall not apply to the treatment accorded by the United States with respect to the sectors and matters indicated below:

government grants; government insurance and loan programs; maritime transport (including inland waterways) and related activities; and small business development programs for socially and economically disadvantaged minorities.

ANNEX "A"

COUNTRY : UZBEKISTAN

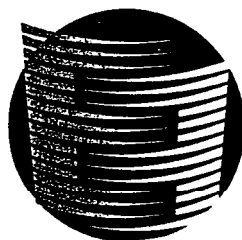
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ENERGY CHARTER TREATY

DRAFT

MINISTERIAL DECLARATION

To the Energy Charter Treaty



EUROPEAN ENERGY CHARTER

Version 3

1 June 1993

MINISTERIAL DECLARATION

General comment

All Ministerial Declarations are subject to N proposal on new Article on Declarations and Statements intended to be incorporated in the Part VIII - Final Provisions of the Charter Treaty.

1. To Charter Treaty as a whole

The Contracting Parties declare that it is their common understanding that the provisions of the Energy Charter Treaty do not oblige any Contracting Party to introduce mandatory Third Party Access or to prevent the charging of identical prices or tariffs to customers in different locations who are in similar circumstances apart from location.

2. To Article 1(5)

Economic activity in the Energy Sector includes, for example:

- the prospecting and exploration for, and extraction of, e.g. oil, gas, coal and uranium;
- the construction and operation of power generation facilities, including those powered by wind and other renewable energy sources;
- the 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;
- removal and disposal of wastes from energy related facilities such as power stations, including of radioactive wastes from nuclear power stations;
- decommissioning of energy related facilities, including oil rigs, oil refineries and power generating plants;
- the marketing, and sale of, and trade in Energy Materials and Products, e.g. retail sales of gasoline;

- research, consulting, planning, management and design activities, related to the activities mentioned above, including those aimed at improving energy efficiency.

3. To Article 4

In an accompanying Ministerial declaration it will be stated that the Charter Conference will consider how to apply the Energy Charter Treaty to energy related services after the negotiations in the Uruguay Round on services are concluded.

An accompanying Ministerial declaration will request that the Charter Conference address the matter of procurement after negotiations in the Uruguay Round are concluded.

4. To Article 7

Interpretative understandings:

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

["Enforcement" or "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 laws granting or continuing an authorisation.](1)

Specific comments

7.1 : AUS scrutiny reserve.

5. To Article 8(4)

Ministers agree that such applicable legislation would include provisions on environmental protection, land use, safety, technical standards.

6. To Article 13(3)

Ministers or their representatives intend that the exceptions under Article 13 (3) to the obligations of Article 13 (2) should be in a form which facilitates review and is transparent and helpful to potential investors and other interested parties. To facilitate this:

- i) The representatives of the Negotiating Parties have communicated to the Secretariat lists of exceptions in summary form. Those provided on behalf of Negotiating Parties which have requested transitional arrangements under Article 36 are wholly or in part provisional and subject to completion of their domestic legislative processes. Where possible, such lists also contain statements of intention in relation to further liberalisation. The Conference is invited to review those lists within [1 month] and make any appropriate recommendations:
- ii) Final lists of exceptions corresponding to their domestic legislation will be communicated to the Secretariat by those Negotiating Parties which requested a transitional period within [3 months]. Those lists also can be supplemented by statements of intention on further liberalisation together with the expected timetable. The Conference is invited to review those final lists within [4 months].
- iii) Any negotiating Party may amend its list of exceptions at any time before or after the entry into force of this Agreement: Such amendments would of course be subject to the standstill obligations.

Ministers or their representatives invite the Conference to consider how best to present the summary lists of exceptions to facilitate review and make them transparent to investors and other interested parties.

7. To Article 13(8)

[Except in relation to the measures listed in Annex A, ministers undertake not to apply their legislation bearing on the employment of citizens, nationals or permanent residents of other Contracting Parties in such a way as to preclude the employment in select posts relating to investments of investors of other Contracting Parties supervisory, professional managerial or technical employees or partners of their choice so long as

- i) Such employees or partners have been employed by or partners in the investor concerned or in one of its investments for at least twelve months in the preceding 3 years and are key personnel;
- ii) The select post requires a high level of supervisory, professional managerial or technical competence or experience and experience of the corporate affairs of the investor or investment concerned.](1)(2)

Specific comments

13(8).1: AUS and EC scrutiny reserve.

13(8).2: USA and CDN reserve.

8. To Article 22(1)(1)

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.

9. To Article 27

In their mutual relations, Contracting Parties which are Members of the European Communities shall apply Community rules and shall not therefore apply the rules arising from this Agreement except insofar as there is no Community rule governing the particular subject concerned.

10. To Article 30(2)(a)

Article 30(2)(a) shall not in itself be interpreted to require a Contracting Party to enact Part III of this Agreement into its domestic law.

11. To Article 35(2), Annex G

Ministers request the Charter Conference to develop notification procedures under this provision which will ensure increased transparency while minimising administrative costs.

12. To Article 36

Contracting Parties seeking transitional arrangements are invited to notify provisional Annex Ts along with provisional notification of their needs for assistance to facilitate completion of the stages set out therein. The provisional Secretariat should collate such notifications and seek to match requests initially by 31 July 1993. The provisional Charter Conference is invited to arrange for discussion on those notifications such that full agreement can be reached on Annex T by 30 November 1993.

13. To Article 39

The accompanying Ministerial declaration would request the Secretary General to 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 Energy Charter Treaty and the Charter. The Secretary General might report back to the Charter Conference at the meeting required under Article 39(1) not later than ninety days after the closing date of signature.

The accompanying Ministerial declaration would require the Charter Conference to adopt the annual budget before the beginning of the financial year and approve the annual accounts.

14. To Annex A and Annex T

In the event that, during the consideration of Annex A (referred to in Article 13(3)) and Annex T (referred to in Article 36(1)), it is considered that an amendment to the initialled text of the Energy Charter Treaty attached hereto is required, the provisional Charter Conference will meet to agree the texts of such amendments as soon as possible in order that such amendments may be incorporated into the text of the Energy Charter Treaty, which is to be opened for signature on [_____].

15. To Annex D

~~Ministerial declaration strongly to encourage GATT members to appoint the same panellists for the Energy Charter Treaty roster.~~