

Brussels, 20 June 1994

INTERIM TEXT

FINAL ACT OF THE CONFERENCE ON THE ENERGY CHARTER TREATY

- I. The final Plenary Session of the Conference on the Energy Charter Treaty was held at (...) on (...). Representatives of Albania, Armenia, Australia, Austria, Azerbaijan, Belgium, Belarus, Bulgaria, Canada, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, European Community, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tadjikistan, Turkey, Turkmenistan, Ukraine, the United Kingdom, the United States of America and Uzbekistan participated. Observers from the Organization for Economic Co-operation and Development, the International Energy Agency, [others] also participated in the meeting.

BACKGROUND

- II. (Short factual history, including objectives, of the Energy Charter and Charter Treaty negotiations).

THE ENERGY CHARTER TREATY

III. As a result of its deliberations the Conference on the Energy Charter Treaty adopted the following texts and Decision(s):

- (a) The Energy Charter Treaty
- (b) Annex EM, Energy Materials and Products
- (c) Annex NI, Non-Applicable Energy Materials and Products for definition of Economic Activity in the Energy Sector
- (d) Annex TRM, Notification and phase-out (TRIMs)
- (e) Annex N, List of Contracting Parties requiring at least 3 separate Areas to be involved in a Transit
- (f) Annex VC, List of Contracting Parties which have made voluntary binding commitments in respect of Article 13(3)
- (g) 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
- (h) Annex IA, List of Contracting Parties not allowing an Investor to submit a dispute concerning the last sentence of Article 13(1) to International Arbitration
- (i) Annex P, Special sub-national dispute procedure
- (j) Annex G, Non applicable provisions of the GATT and Related Instruments
- (k) Annex SUT, Provisions for trade agreements between Republics of the former Soviet Union
- (l) Annex D, Interim provisions for trade dispute settlement
- (m) Annex B, Formula for allocating Charter costs
- (n) Annex PA, List of signatories which do not accept the provisional application obligation of Article 50(3)(b)
- (o) Annex T, List of Contracting Parties' transitional measures
- (p) Decision With respect to Article 13(7) of the Treaty

all of which are annexed to this Final Act, and agreed that the Energy Charter Treaty would be opened for signature at (...) from (...) to (...).

The Energy Charter Treaty together with the listed Annexes and the annexed Decision(s) form an integral whole*.

* Note

The Treaty should incorporate by reference the Annexes to the Treaty. In the case of the Decision(s), it is noted that a state or Regional Economic Integration Organization which does not sign the Final Act, and which later accedes to the Treaty, would not be bound by such Decision(s) unless either

- (a) the Treaty effectively incorporates the Decision(s); or
- (b) the Treaty enables the Charter Conference to require accession to such Decision(s) as a condition of accession to this Treaty.

The Legal Sub-Group will consider this issue.

UNDERSTANDINGS

IV. The Conference on the Energy Charter Treaty agreed to the following Understandings with respect to the Energy Charter Treaty (hereinafter referred to as the "Treaty") and Annexes:

1. To the Treaty as a whole

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

- (b) The provisions of the Treaty do not 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.
- (c) Derogations from most favoured nation treatment are intended to cover only conditions and rules applicable generally to Economic Activity in the Energy Sector.

2. To Article 1(5)

Economic Activity in the Energy Sector includes, for example:

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

3. To Article 1(6)

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

- (a) financial interest, including equity interest, in the Investment;
- (b) ability to exercise substantial influence over the management and operations of the Investment; and
- (c) ability to exercise substantial influence over the selection of members of the board of directors or any other managing body.

Where there is doubt as to whether an Investor controls, directly or indirectly, an Investment, the Investor shall be responsible for demonstrating that such control exists.

4. To Article 1(8)

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

5. To Article 1(12)

Contracting Parties recognize the necessity for an adequate and effective protection of Intellectual Property rights according to the highest internationally accepted standards.

6. To Article 6(1)

The Contracting Parties' agreement to Article 6 is not meant to imply any position on whether or to what extent the provisions of the "Agreement on Trade-Related Measures" annexed to the Final Act of the Uruguay Round of Multilateral Trade Negotiations are implicit in articles III and XI of the GATT.

7. To Article 7

(a) The unilateral and concerted anti-competitive conduct referred to in Article 7(2) are to be defined by each Contracting Party in accordance with its laws and may include exploitative abuses.

(b) "Enforcement" or "Enforces" includes action under the competition laws of a Contracting Party by way of investigation, legal proceeding, or administrative action as well as by way of any decision or further law granting or continuing an authorization.

8. To Article 8(4)

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

9. To Article 10 and Part V

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

10. To Article 13(1)

The reference to treaty obligations in the penultimate sentence of Article 13(1) does not include decisions taken by international organizations, even if they are legally binding, or treaties which entered into force before 1 January 1970.

11. To Article 13(4)

The supplementary treaty will specify conditions for applying the treatment described in Article 13(3).

Those conditions will include, inter alia, provisions relating to the sale or other disposal of state assets (privatization) and/or the dismantling of monopolies (demonopolization).

12. To Articles 13(4) and 35(6)

Contracting Parties may consider any connection between the provisions of Article 35(6) and Article 13(4).

13. To Article 16(5)

A Contracting Party which enters into the agreements referred to in Article 16(5) shall ensure that the conditions of such agreements are not in contradiction with that Contracting Party's obligations under the Articles of Agreement of the International Monetary Fund.

14. To Article 22(1)(i)

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

15. To Articles 25 and 26

With regard to trade in Energy Materials and Products covered by Article 35, that Article contains the relevant provisions on this subject.

16. To Article 27(1)

Exceptions contained in the GATT and Related Instruments apply between particular Contracting Parties which are parties to the GATT, as recognized in Article 4. With respect to trade in Energy Materials and Products covered by Article 35, that Article contains the applicable exceptions.

17. To Article 30(2)(a)

Article 30(2)(a) should not in itself be interpreted to require a Contracting Party to enact Part III of this Treaty into its domestic law.

18. To Article 35(1)

Where a provision of the GATT 1947 or a Related Instrument provides for Contracting Parties to act jointly, the Charter Conference shall take any such action.

19. To Article 39

(a) The Secretary General should make immediate contact with other international bodies in order to discover the terms on which they might be willing to undertake tasks arising from the Treaty and the Charter. The Secretary General might report back to the provisional Charter Conference at the meeting required under Article 50(4) not later than 180 days after the opening date of signature.

(b) The Charter Conference should adopt the annual budget before the beginning of the financial year and approve the annual accounts.

20. To Article 39(3)(1)

The technical changes to Annexes might for instance include, delisting of non-signatories or of signatories that fail to ratify, or additions to Annexes N and VC. It is intended that the Secretariat would propose such changes to the Charter Conference when appropriate.

21. To Annex D

Contracting Parties parties to the GATT should endeavour to appoint as panellists for the Treaty roster, the same panellists they nominate for the purpose of GATT dispute panels.

DECLARATIONS

V. The Conference on the Energy Charter Treaty noted the following declarations that were made with respect to the Energy Charter Treaty (hereinafter referred to as the "Treaty") and Annexes:

1. To Article 1(6)

The Russian Federation wishes to have reconsidered, in negotiations with respect to the supplementary treaty referred to in Article 13(4), the question of the importance of national legislation with respect to the issue of control as expressed in the Understanding to Article 1(6).

2. To Article 13

Canada and the United States each affirm that they will apply the provisions of Article 13 in accordance with the following considerations:

For the purposes of assessing the treatment which must be accorded to Investors of other Contracting Parties and their Investments, the circumstances will need to be considered on a case by case basis. A comparison between the treatment accorded to Investors of one Contracting Party, or the Investments of Investors of one Contracting Party, and the Investments or Investors of another Contracting Party, is only valid if it is made between Investors and Investments in similar circumstances. In determining whether differential treatment of Investors or Investments is consistent with Article 13, two basic factors must be taken into account.

The first factor is the policy objectives of Contracting Parties in various fields insofar as they are consistent with the principles of non-discrimination set out in Article 13. Legitimate policy objectives may justify differential treatment of foreign Investors or their Investments in order to reflect a dissimilarity of relevant circumstances between those Investors and Investments and their domestic counterparts. For example, the objective of ensuring the integrity of a country's financial system would justify reasonable prudential measures with respect to foreign Investors or Investments, where such measures would be unnecessary to ensure the attainment of the same objectives insofar as domestic Investors or Investments are concerned.

Those foreign Investors or their Investments would thus not be "in similar circumstances" to domestic Investors or their Investments. Thus, even if such a measure accorded differential treatment, it would not be contrary to Article 13.

The second factor is the extent to which the measure is motivated by the fact that the relevant Investor or Investment is subject to foreign ownership or under foreign control. A measure aimed specifically at Investors because

they are foreign, without sufficient countervailing policy reasons consistent with the preceding paragraph, would be contrary to the principles of Article 13. The foreign Investor or Investment would be "in similar circumstances" to domestic Investors and their Investments, and the measure would be contrary to Article 13.

3. To Article 28

The European Community and its member states recall that, in accordance with article 58 of the Treaty establishing the European Economic Community:

- (a) companies or firms formed in accordance with the law of a member state and having their registered office, central administration or principal place of business within the Community shall, for the right of establishment pursuant to Part Three, Title III, Chapter 2 of the treaty establishing the European Economic Community, be treated in the same way as natural persons who are nationals of member states; companies or firms which only have their registered office within the Community must, for this purpose, have an effective and continuous link with the economy of one of the member states;
- (b) "companies and firms" means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profitmaking; and further, that Community law provides for the possibility to extend the treatment described above to branches and agencies of companies or firms not established in one of the member states; and that, the application of Article 28 will allow only those derogations necessary to safeguard the preferential treatment resulting from the wider process of economic integration resulting from the Treaties establishing the European Communities.

4. To Annex G(4)

The European Community and the Russian Federation declare that trade in nuclear materials between them shall be governed, until they reach another agreement, by the provisions of Article 22 of the Agreement on Partnership and Cooperation signed at on 1994, the exchange of letters attached thereto and the related joint declaration, and disputes regarding such trade will be subject to the procedures of the said Agreement.

THE ENERGY EFFICIENCY PROTOCOL

- VI. [The Conference on the Energy Charter Treaty considered and adopted the text of the Protocol on Energy Efficiency and Related Environmental Aspects annexed hereto.]

AUTHENTIC TEXTS

- VII. [Although an effort will be made to agree authentic texts in all of the languages, in case this cannot be done on time there will be a need for procedures for doing so. These might be adopted by the provisional Charter Conference.]

PROVISIONAL CHARTER CONFERENCE AND SECRETARIAT

- VIII. [This heading recognizes that arrangements concerning the provisional Charter Conference and Secretariat could be made in the Final Act, should a need therefore be identified.]

THE EUROPEAN ENERGY CHARTER

- IX. The provisional Charter Conference and the Charter Conference provided for in the Energy Charter Treaty shall henceforth be responsible for making decisions on requests to sign the European Energy Charter.

DOCUMENTATION

X. Lists of meetings of the Conference on the Energy Charter Treaty and the Energy Efficiency Protocol [are] attached (not yet available).

XI. The records of negotiations, including minutes, will be deposited with the Secretariat.

Done at

Annex

The Conference on the Energy Charter Treaty adopted, with the intent to be bound thereby, the following

DECISION(S)

With respect to Article 13(7) of the Treaty

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

20 June 1994

INTERIM TEXT

ENERGY CHARTER TREATY

PREAMBLE

The Contracting Parties to this Treaty,

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

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

Recalling 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;

Desiring also to implement the basic concept of the European Energy Charter initiative which is to catalyse economic growth by means of exceptional measures to liberalize investment and trade in Energy Materials and Products;

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

Having regard to the objective of progressive liberalization of international trade and to the principle of avoidance of discrimination in international trade as enunciated in the General Agreement on Tariffs and Trade and its Related Instruments and as otherwise provided for in this Treaty;

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 in the General Agreement on Tariffs and Trade of those Contracting Parties which are not currently 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 which are also parties to the General Agreement on Tariffs and Trade and its Related Instruments, 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;

HAVE AGREED AS FOLLOWS:

PART I

DEFINITIONS AND GENERAL PROVISIONS

ARTICLE 1

DEFINITIONS

For the purposes of this Treaty:

- (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 Organization which has consented to be bound by the Treaty and for which the Treaty is in force.
- (3) "Regional Economic Integration Organization" means an organization constituted by states to which they have transferred competence over certain matters a number of which are governed by this Treaty, including the authority to take decisions binding on them in respect of those matters.
- (4) "Energy Materials and Products", based on the Harmonized System of the Customs Cooperation Council and the Combined Nomenclature of the European Communities, means the items included in Annex EM.
- (5) "Economic Activity in the Energy Sector" means an economic activity concerning the exploration, extraction, refining, production, storage, land transport, transmission, distribution, trade, marketing, or sales of Energy Materials and Products except those included in Annex NI, or in the distribution of heat to multiple premises.
- (6) "Investment" means every kind of asset, owned or controlled directly or indirectly by an Investor and includes:

- (a) tangible and intangible, and movable and immovable, property, and any property rights such as leases, mortgages, liens, and pledges;
- (b) a company or business enterprise, or shares, stock, or other forms of equity participation in a company or business enterprise, and bonds, and debt of, a company or business enterprise;
- (c) claims to money and claims to performance pursuant to contract having an economic value and associated with an investment;
- (d) Intellectual Property;
- (e) Returns;
- (f) any right conferred by law, contract or by virtue of any licences and permits granted pursuant to law to undertake any Economic Activity in the Energy Sector.

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

For the purposes of this Treaty, "Investment" refers to any investment associated with an Economic Activity in the Energy Sector and to investments or classes of investments designated by a Contracting Party in its Area as "Charter Efficiency Projects", and so notified to the Secretariat.

(7) "Investor" means:

(a) with respect to a Contracting Party

- (i) a natural person having the citizenship or nationality of or who is permanently residing in that Contracting Party in accordance with its applicable law;

- (ii) a company or other organization organized in accordance with the law applicable in that Contracting Party
- (b) with respect to a "third state", a natural person, company or other organization which fulfils, mutatis mutandis, the conditions specified in sub-paragraph (a) for a Contracting Party.
- (8) "Make Investments" and "Making of Investments" mean establishing new Investments, acquiring all or part of existing Investments or moving into different fields of activity.
- (9) "Returns" means the amounts derived from or associated with an investment, irrespective of the form in which paid, including profits, dividends, interest, capital gains, royalty payments, management, technical assistance or other fees, and payments in kind.
- (10) "Area" means with respect to a Contracting Party:
 - (a) the territory under its sovereignty, it being understood that territory includes land, internal waters and the territorial sea; and
 - (b) subject to and in accordance with the international law of the sea: the sea, sea-bed and its subsoil with regard to which that Contracting Party exercises sovereign rights and jurisdiction.

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

- (11) (a) "GATT 1947" means the General Agreement on Tariffs and Trade, dated 30 October 1947, annexed to the Final Act Adopted at the Conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, as rectified, amended or modified.

"GATT 1994" means the General Agreement on Tariffs and Trade as specified in Annex 1A of the Agreement Establishing the World Trade Organization as subsequently rectified, amended or modified.

"GATT" means GATT 1947 and/or GATT 1994.

(b) "Related Instruments" means agreements, arrangements or other legal instruments concluded under the auspices of the GATT 1947 as subsequently rectified, amended or modified and/or the Agreement Establishing the World Trade Organization including its Annex 1 except GATT 1994, and its Annexes 2, 3 and 4, as subsequently rectified, amended or modified.

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

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

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

ARTICLE 2

PURPOSE OF THE TREATY

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

PART II

COMMERCE

ARTICLE 3

INTERNATIONAL MARKETS

The Contracting Parties shall work to:

- (a) promote access to international markets for Energy Materials and Products on commercial terms; and
- (b) develop an open and competitive market for energy.

ARTICLE 4

TRADE

Nothing in this Treaty shall derogate, as between particular Contracting Parties which are parties to the GATT, from the provisions of the GATT and Related Instruments as they are applied between those Contracting Parties.

ARTICLE 6

TRADE RELATED INVESTMENT MEASURES

- (1) A Contracting Party shall not apply any trade related investment measure that is inconsistent with the provisions of article III or article XI of the GATT; this shall be without prejudice to the Contracting Party's rights and obligations under the GATT and Related Instruments and Article 35.
- (2) Such measures include any investment measure which is mandatory or enforceable under domestic law or under any administrative ruling or compliance with which is necessary to obtain an advantage, and which requires:

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

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

or which restricts:

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

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

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

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

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

ARTICLE 7

COMPETITION

- (1) Each Contracting Party shall work to alleviate market distortions and barriers to competition in Economic Activity in the Energy Sector.
- (2) Each Contracting Party shall ensure that within its jurisdiction it has and enforces such laws as are necessary and appropriate to address unilateral and concerted anti-competitive conduct in Economic Activity in the Energy Sector.
- (3) Contracting Parties with experience in applying competition rules shall give full consideration to providing, upon request and within available resources, technical assistance on the development and implementation of competition rules to other Contracting Parties.
- (4) Contracting Parties may 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 Area of another Contracting Party is adversely affecting an important interest relevant to the purposes identified in this Article, the Contracting Party may notify the other Contracting Party and may request that its competition authorities initiate appropriate enforcement action. The notifying Contracting Party shall include in such notification sufficient information to permit the notified Contracting Party to identify the anti-competitive conduct that is the subject of the notification and shall include an offer of such further information and cooperation as 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 competition authorities of the notifying Contracting Party and shall accord full consideration to the request of the notifying Contracting Party in deciding whether or

not to initiate enforcement action with respect to the alleged anti-competitive conduct identified in the notification. The notified Contracting Party shall inform the notifying Contracting Party of its decision or the decision of the relevant competition authorities and may if it wishes inform the notifying Contracting Party of the grounds for the decision. If enforcement action is initiated, the notified Contracting Party shall advise the notifying Contracting Party of its outcome and, to the extent possible, of any significant interim development.

- (6) Nothing in this Article shall require the provision of information by a Contracting Party contrary to its laws regarding disclosure of information, confidentiality or business secrecy.
- (7) The procedures set forth in paragraph (5) and Article 31(1) shall be the exclusive means within this Treaty of resolving any disputes that may arise over the implementation or interpretation of this Article.

ARTICLE 8

TRANSIT

- (1) Each Contracting Party shall take the necessary measures to facilitate the Transit of Energy Materials and Products consistent with the principle of freedom of transit and without distinction as to the origin, destination or ownership of such Energy Materials and Products or discrimination as to 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) modernizing Energy Transport Facilities necessary to the Transit of Energy Materials and Products;
 - (b) the development and operation of Energy Transport Facilities serving the Area 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 Area, except if otherwise provided for in an existing international agreement.

(4) In the event that Transit of Energy Materials and Products cannot be achieved on commercial terms by means of Energy Transport Facilities the Contracting Parties shall not place obstacles in the way of new capacity being established, subject to applicable legislation which is compatible with paragraph (1).

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

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

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

Subject to paragraphs (6) and (7), Contracting Parties shall secure established flows of Energy Materials and Products to, from or between the Area of other Contracting Parties.

(6) A Contracting Party, through whose Area Energy Materials and Products Transit, shall not, in the event of a dispute over any matter arising from that Transit, interrupt or reduce, 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 permitted in accordance with the conciliator's decision or other resolution of the dispute referred to in paragraph (7)(e).

- (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 with a note summarizing 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 Areas 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 to the dispute 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) unless the previous dispute has been resolved.
 - (g) Standard provisions on conciliator's expenses, location, etc shall be decided by the Charter Conference.
- (8) Nothing in this Article shall derogate from a Contracting Party's rights and obligations under international law including customary international law, existing bilateral or multilateral agreements, including rules concerning submarine cables and pipelines.
- (9) This Article shall not be so 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. Such Contracting Parties would, however, be obliged to comply with paragraph (4).
- (10) For the purposes of this Article:
- (a) "Transit" means the carriage through the Area of a Contracting Party, or to or from port facilities in its Area for loading or unloading, of Energy Materials and Products originating in the Area of another state and destined for the Area of a third state, so long as either the other state or the third state is a Contracting Party. It also means such carriage through the Area of a Contracting Party of Energy Materials and Products originating in the Area of another Contracting Party and destined for the Area of that other Contracting Party unless the two Contracting Parties concerned decide otherwise and record their decision by a joint entry in Annex N. The two Contracting Parties may

delete their listing in Annex N by jointly notifying the Secretary General of that intention 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.

ARTICLE 9

TRANSFER OF TECHNOLOGY

- (1) The Contracting Parties agree to promote access to and transfer of energy technology on a commercial and non-discriminatory basis to assist effective trade in Energy Materials and Products and investment and to implement the objectives of the Charter subject to their laws and regulations, and to the protection of Intellectual Property rights.
- (2) Accordingly to the extent necessary to give effect to paragraph (1), the Contracting Parties shall eliminate existing and create no new obstacles 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.

ARTICLE 10

ACCESS TO CAPITAL

- (1) Contracting Parties acknowledge the importance of open capital markets in encouraging the flow of capital to finance trade in Energy Materials and Products and for making and assisting investments in the Energy Sector of other Contracting Parties,

particularly those with economies in transition. Each Contracting Party shall accordingly endeavour to promote conditions for access to its capital market for companies and nationals of other Contracting Parties for the purpose of financing trade in Energy Materials and Products and for the purpose of Investment in Economic Activity in the Energy Sector of those Contracting Parties on terms no less favourable than those required in like circumstances of its own companies and nationals or companies and nationals of any other Contracting Party or any state that is not a Contracting Party.

- (2) A Contracting Party may adopt and maintain programmes providing for access to public loans, grants, guarantees or insurance for facilitating trade or investment abroad. It shall make such facilities available, consistent with the objectives, constraints and criteria of such programmes (including but not limited to, on any grounds, objectives, constraints or criteria relating to the place of business of an applicant for any such facility or the place of delivery of goods or services supplied with the support of any such facility) for investments in the Economic Activity in the Energy Sector of other Contracting Parties or for financing trade in Energy Materials and Products with other Contracting Parties.
- (3) Contracting Parties shall seek as appropriate to encourage the operations and take advantage of the expertise of relevant international financial institutions in implementing programmes in the Economic Activity in the Energy Sector that endeavour to improve the economic stability and investment climates of the 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 a Contracting Party from taking measures for prudential reasons, including for the protection of investors, consumers, 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 its financial system and capital markets.

PART III

INVESTMENT PROMOTION AND PROTECTION

ARTICLE 13

PROMOTION, PROTECTION AND TREATMENT OF INVESTMENTS

- (1) Each Contracting Party shall, in accordance with the provisions of this Treaty, encourage and create stable, equitable, favourable and transparent conditions for Investors of other Contracting Parties to Make Investments in its Area. Such conditions shall include a commitment to accord at all times to Investments of Investors of other Contracting Parties 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 favourable than that required by international law, including treaty obligations. Each Contracting Party shall observe any obligations it has entered into with an Investor or an Investment of an Investor of any other Contracting Party.
- (2) Each Contracting Party shall endeavour to accord to Investors of other Contracting Parties, as regards the Making of Investments in its Area, the Treatment described in paragraph (3).
- (3) For the purposes of this Article, "Treatment" means treatment accorded by a Contracting Party which is no less favourable than that which it accords to its own Investors or to Investors of any other Contracting Party or any state that is not a Contracting Party, whichever is the most favourable.
- (4) A supplementary treaty shall, subject to conditions to be laid down therein, bind each party thereto to accord to Investors of other parties, as regards the Making of Investments in its Area, the Treatment described in paragraph (3). That treaty shall be

open for signature by the states and Regional Economic Integration Organizations which have signed or acceded to this Treaty. Negotiations towards the supplementary treaty shall commence not later than 1 January 1995, with a view to concluding such a treaty by 1 January 1998.

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

(a) limit to the minimum the exceptions to the Treatment described in paragraph (3);

(b) progressively remove existing restrictions affecting Investors of other Contracting Parties.

(6) (a) A Contracting Party may, as regards the Making of Investments in its Area, at any time declare voluntarily to the Charter Conference and all other Contracting Parties its intention not to introduce new exceptions to the Treatment described in paragraph (3).

(b) A Contracting Party may, furthermore, at any time make a voluntary commitment to accord to Investors of other Contracting Parties, as regards the Making of Investments in some or all Economic Activities in the Energy Sector in its Area, the Treatment described in paragraph (3). Such commitments shall be notified to the Secretariat and listed in Annex VC and, once made, shall be binding under this Treaty.

(7) Each Contracting Party shall accord to Investments in its Area of Investors of another Contracting Party, and their related activities including 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 state that is not a Contracting Party and their related activities including management, maintenance, use, enjoyment or disposal, whichever is the most favourable.

- (8) The modalities of application of paragraph (7) in relation to programmes under which a Contracting Party provides grants or other financial assistance, or enters into contracts, for energy technology research and development, shall be reserved for the supplementary treaty described in paragraph (4). From the date of signature of this Treaty each Contracting Party shall keep informed the Charter Conference and all other Contracting Parties of the modalities it applies to the programmes described in this paragraph.
- (9) Each state or Regional Economic Integration Organisation which signs or accedes to this Treaty shall, on the date it signs the Treaty or deposits its instrument of accession, submit to the Secretariat a report summarizing all laws, regulations or other measures relevant to:
- (a) exceptions to paragraph (2); or
 - (b) the exceptions contained in paragraph (8).

In respect of sub-paragraph (a) the report may designate parts of the energy sector in which a Contracting Party accords to Investors of other Contracting Parties the Treatment described in paragraph (3).

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

In respect of sub-paragraph (b) these reviews may consider the effects of such programmes on competition and Investments.

- (10) Notwithstanding any other provision of this Article, the Treatment described in paragraph (3) shall not apply to the protection of Intellectual Property; instead, the treatment shall be as specified in the corresponding provisions of the applicable international agreements for the protection of Intellectual Property rights by which the respective Contracting Parties are bound.

- (11) For the purposes of Article 30, the application by a Contracting Party of a trade related investment measure as described in Articles 6(1) and 6(2) to an investment of an investor of another Contracting Party existing at the time of such application shall, subject to Articles 6(3) and 6(4), be considered a breach of an obligation of the former Contracting Party under this Part.
- (12) Each Contracting Party shall ensure that its domestic law provides effective means for the assertion of claims and the enforcement of rights with respect to investment, investment agreements, and investment authorizations.

ARTICLE 13 BIS

KEY PERSONNEL

- (1) A Contracting Party shall, subject to its laws and regulations relating to the entry, stay and work of natural persons, examine in good faith requests by investors of another Contracting Party, and key personnel who are employed by such investors or by investments of such investors, to enter and remain temporarily in its Area to engage in activities connected with the making or the development, management, maintenance, use, enjoyment or disposal of relevant investments, including the provision of advice or key technical services.
- (2) A Contracting Party shall permit investors of another Contracting Party which have investments in its Area, and investments of such investors, to employ any key person of the investor's or the investment's choice regardless of nationality and citizenship provided that such key person has been permitted to enter, stay and work in the Area of the former Contracting Party and that the employment concerned conforms to the terms, conditions and time-limits of the permission granted to such key person.

ARTICLE 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 Area of another Contracting Party owing to war or other armed conflict, state of national emergency, civil disturbance, or other similar event in that Area, shall be accorded by the latter Contracting Party, 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 state that is not a Contracting Party.

- (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 Area of another Contracting Party resulting from
 - (a) requisitioning of its Investment or part thereof by the latter's forces or authorities; or
 - (b) destruction of its Investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,shall be accorded restitution or compensation which in either case shall be prompt, adequate and effective.

ARTICLE 15

EXPROPRIATION

- (1) Investments of Investors of a Contracting Party in the Area of any other Contracting Party shall not be nationalized, expropriated or subjected to a measure or measures having effect equivalent to nationalization 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 at the request of the Investor be expressed in a Freely Convertible Currency on the basis of the market rate of exchange existing for that currency on the valuation date. Compensation shall also include interest at a commercial rate established on a market basis from the date of expropriation until the date of payment.

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

ARTICLE 16

TRANSFERS RELATED TO INVESTMENTS

- (1) Each Contracting Party shall with respect to Investments in its Area of Investors of any other Contracting Party guarantee the freedom of transfer into and out of its Area, including the transfer of:
 - (a) the initial capital plus any additional capital for the maintenance and development of an Investment;
 - (b) Returns;
 - (c) payments under a contract, including amortization 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 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) 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) Notwithstanding paragraph (2), Contracting Parties which constituted the former Union of Soviet Socialist Republics may provide in agreements concluded between them that transfers of payments shall be made in the currencies of such Contracting Parties, provided that such agreements do not treat Investments in their Area of Investors of other Contracting Parties less favourably than either Investments of Investors of the Contracting Parties which have entered into such agreements or Investments of Investors of any state which is not a Contracting Party.
- (6) Notwithstanding paragraph (1)(b), a Contracting Party may restrict the transfer of a Return in kind in circumstances where the Contracting Party is permitted under the GATT and Related Instruments or Article 35(1) of this Treaty to restrict or prohibit the exportation or the sale for export of the product constituting the Return in kind; provided however that a Contracting Party shall permit Returns in kind to be made as authorized or specified in an investment agreement, investment authorization, or other written agreement between the Contracting Party and either an Investor of another Contracting Party or its Investment.

ARTICLE 17

SUBROGATION

- (1) If a Contracting Party or its designated agency (hereinafter referred to as the "Indemnifying Party") makes a payment under an indemnity or guarantee given in respect of an investment of an investor (hereinafter referred to as the "Party Indemnified") in the Area of another Contracting Party (hereinafter referred to as the "Host Party"), the Host Party shall recognize:

- (a) the assignment to the Indemnifying Party of all the rights and claims in respect of such investment; and
 - (b) the right of the Indemnifying Party to exercise all such rights and enforce such claims by virtue of subrogation.
- (2) The Indemnifying Party shall be entitled in all circumstances to
- (a) the same treatment in respect of the rights and claims acquired by it by virtue of the assignment referred to in paragraph (1); and
 - (b) the same payments due pursuant to those rights and claims,
- as the Party Indemnified was entitled to receive by virtue of this Treaty in respect of the investment concerned.
- (3) In any proceeding under Article 30, a Contracting Party shall not assert as a defence, counterclaim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received or will be received pursuant to an insurance or guarantee contract.

ARTICLE 18

RELATION TO OTHER AGREEMENTS

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

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

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

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

ARTICLE 19

NON-APPLICATION OF PART III IN CERTAIN CIRCUMSTANCES

Each Contracting Party reserves the right to deny the advantages of this Part to:

- (1) a legal entity if citizens or nationals of a state that is not a Contracting Party own or control such entity and if that entity has no substantial business activities in the Area of the Contracting Party in which it is organized; or
- (2) an Investment, if the denying Contracting Party establishes that such Investment is an Investment of an Investor of a state that is not a Contracting Party and is a state in respect of which the denying Contracting Party
 - (a) does not maintain a diplomatic relationship; or
 - (b) adopts or maintains measures that
 - (i) prohibit transactions with Investors of that state; or
 - (ii) would be violated or circumvented if the benefits of this Part were accorded to Investors of that state or to their Investments.

PART IV

CONTEXTUAL

ARTICLE 21

SOVEREIGNTY OVER ENERGY RESOURCES

- (1) The Contracting Parties recognize state sovereignty and sovereign rights over energy resources. They reaffirm that these must be exercised in accordance with and subject to the rules of international law.
- (2) Without prejudice to the objectives of promoting access to energy resources, and exploration and development thereof on a commercial basis, the Treaty does not affect the rules in Contracting Parties governing the system of property ownership of energy resources.
- (3) Each state continues to hold in particular the rights to decide the geographical areas within its Area to be made available for exploration and development of its energy resources and the optimalization 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 to regulate the environmental and safety aspects of such exploration and development within its Area, and to participate in such exploration and exploitation, inter alia, through direct participation by the government or through state enterprises.
- (4) The Contracting Parties undertake to facilitate access to energy resources inter alia by allocating on a non-discriminatory basis on the basis of published criteria authorizations, licences, concessions and contracts to prospect and explore for or to exploit or extract energy resources.

ARTICLE 22

ENVIRONMENTAL ASPECTS

(1) In pursuit of sustainable development and taking into account its obligations under those international agreements concerning the environment to which it is party, each Contracting Party shall strive to minimize in an economically efficient manner harmful environmental impacts occurring either within or outside its Area from all operations within the energy cycle in its Area, taking proper account of safety. In doing so each Contracting Party shall act cost-effectively. In its policies and actions each Contracting Party shall strive to take precautionary measures to prevent or minimize environmental degradation. They agree that the polluter in the Areas 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 and a fuller reflection of environmental costs and benefits throughout the energy cycle;
- (c) having regard to Article 39(4), encourage cooperation in the attainment of the environmental objectives of the Charter and cooperation in the field of international environmental standards for the energy cycle, taking into account differences in adverse effects and abatement costs between Contracting Parties;
- (d) have particular regard to improving energy efficiency, to developing and using renewable energy sources, to promoting the use of cleaner fuels and to employing technologies and technological means that reduce pollution;

- (e) promote the collection and sharing among Contracting Parties of information on environmentally sound and economically efficient energy policies and cost-effective practices and technologies;
- (f) promote public awareness of the environmental impacts of energy systems, of the scope for the prevention or abatement of their adverse environmental impacts, and of the costs associated with various prevention or abatement measures;
- (g) promote and cooperate in the research, development and application of energy efficient and environmentally sound technologies, practices and processes which will minimize 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 state and prior to decision, and subsequent monitoring, of environmental impacts of environmentally significant energy investment projects;
- (j) promote international awareness and information exchange on Contracting Parties' relevant environmental programmes and standards and on the implementation of those programmes and standards;
- (k) participate, upon request, and within their available resources, in the development and implementation of appropriate environmental programmes in the Contracting Parties.

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

(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, minimizing harmful environmental impacts.

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

(c) "improving energy efficiency" means acting to maintain the same unit of output (of a good or service) without reducing the quality or performance of the output, while reducing the amount of energy required to produce that output.

(d) "cost-effective" means to achieve a defined objective at the lowest cost or to achieve the greatest benefit at a given cost.

ARTICLE 23

TRANSPARENCY

- (1) Laws, regulations, judicial decisions and administrative rulings of general application which affect matters covered by Article 35 shall, in accordance with that Article, be subject to the transparency disciplines of the GATT and relevant Related Instruments.
- (2) Laws, regulations, judicial decisions and administrative rulings of general application made effective by any Contracting Party, and agreements in force between Contracting Parties, which affect other matters covered by this Treaty shall also be published promptly in such a manner as to enable Contracting Parties and Investors to become acquainted with them. The provisions of this paragraph shall not require any Contracting Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of any Investor.
- (3) Each Contracting Party shall designate one or more enquiry points to which requests for information about the above mentioned laws, regulations, judicial decisions and administrative rulings may be addressed and shall communicate promptly such designation to the Secretariat which shall make it available on request.

ARTICLE 24

TAXATION

- (1) Except as otherwise provided in this Article, nothing in this Treaty shall apply to impose obligations with respect to taxation measures of the Contracting Parties. In the event of any inconsistency between this Article and any other provision of this Treaty, this Article shall prevail to the extent of the inconsistency.

- (2) Notwithstanding paragraph (1),
- (a) Article 35 shall apply to taxation measures other than those on income or on capital; and
 - (b) the provisions of this Treaty 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)(a)(ii); 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 Treaty.
- (3) 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 such provisions shall not apply to:
- (a) impose most favoured nation obligations with respect to advantages accorded by a Contracting Party pursuant to the tax provisions in any convention, agreement or arrangement, described in paragraph (6)(a)(ii) or resulting from membership of any Regional Economic Integration Organization; or
 - (b) any taxation measure concerning 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 Treaty.

(4) (a) Article 15 shall apply to taxes.

(b) Whenever an issue arises under Article 15, to the extent it pertains to whether a tax constitutes an expropriation or whether a tax alleged to constitute an expropriation is discriminatory, the following provisions shall apply:

(i) The Investor or the Contracting Party alleging expropriation shall refer the issue of whether the tax is an expropriation or whether the tax is discriminatory to the relevant competent tax authority. Failing such referral by the Investor or the Contracting Party, bodies called upon to settle disputes pursuant to Article 30(2)(c) or 31(2) shall make a referral to the relevant competent tax authorities.

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

(iii) Bodies called upon to settle disputes pursuant to Article 30(2)(c) or 31(2) may take into account any conclusions arrived at by the competent tax authorities regarding whether the tax is an expropriation. Such bodies shall take into account any conclusions arrived at within the six-month period prescribed in sub-paragraph (ii) by the competent tax authorities regarding whether the tax is discriminatory. Such bodies may also take into account any conclusions arrived at by the competent tax authorities after the expiry of the six-month period.

- (iv) Under no circumstances shall involvement of the competent tax authorities, beyond the end of the six-month period referred to in sub-paragraph (ii), lead to a delay of proceedings under Articles 30 and 31.
- (5) For the avoidance of doubt, Article 16 shall not limit the right of a Contracting Party to impose or collect a tax by withholding or other means.
- (6) (a) The term "taxation measure" includes:
 - (i) any provision relating to taxes of the domestic law of the Contracting Party or of a political subdivision thereof or a local authority therein; and
 - (ii) any provision relating to taxes of any convention for the avoidance of double taxation or any other international agreement or arrangement by which the Contracting Party is bound.
- (b) There shall be regarded as taxes on income or on capital all taxes imposed on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, or substantially similar taxes, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
- (c) "A competent tax authority" means the competent authority pursuant to a double taxation agreement in force between the Contracting Parties or, when there is no such agreement between the countries in question, the minister or ministry responsible for taxes or his or its authorized representatives.
- (d) For the avoidance of doubt, the terms "tax provisions" and "taxes" do not include customs duties.

ARTICLE 25

STATE AND PRIVILEGED ENTERPRISES

- (1) Each Contracting Party shall ensure that any state enterprise which it maintains or establishes shall conduct its activities in relation to the sale or provision of goods and services in its Area in a manner consistent with the Contracting Party's obligations under Part III of this Treaty.
- (2) No Contracting Party shall encourage or require such a state enterprise to conduct its activities in its Area in a manner inconsistent with the Contracting Party's obligations under other provisions of this Treaty.
- (3) Each Contracting Party shall ensure that if it establishes or maintains a state entity and entrusts such entity with regulatory, administrative or other governmental authority, such entity shall exercise such authority in a manner consistent with the Contracting Party's obligations under this Treaty.
- (4) No Contracting Party shall encourage or require any entity to which it grants exclusive or special privileges to conduct its activities in its Area in a manner inconsistent with the Contracting Party's obligations under this Treaty.
- (5) For the purposes of this Article, entity includes any enterprise, agency or other organization or individual.

ARTICLE 26

OBSERVANCE BY SUB-NATIONAL AUTHORITIES

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

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

ARTICLE 27

EXCEPTIONS

- (1) This Article shall not apply to Articles 14, 15 and 35.
- (2) The provisions of this Treaty other than
- (a) those referred to in paragraph (1); and
 - (b) with respect to sub-paragraph (i), Part III of this Treaty
- shall not preclude any Contracting Party from adopting or enforcing any measure
- (i) necessary to protect human, animal or plant life or health; or
 - (ii) essential to the acquisition or distribution of Energy Materials and Products in conditions of short supply arising from causes outside the control of that Contracting Party, if such measures are consistent with the principles that
 - all other Contracting Parties are entitled to an equitable share of the international supply of such Energy Materials and Products, and
 - any such measures that are inconsistent with this Treaty shall be discontinued as soon as the conditions giving rise to them have ceased to exist; or
 - (iii) designed to benefit aboriginal people or socially or economically disadvantaged individuals or groups, which measures
 - have no significant impact on that Contracting Party's economy, and

- introduce no discrimination between Investors of any other Contracting Party and Investors of that Contracting Party not included among those for whom the programmes are intended,

provided that such measures shall not constitute disguised restrictions on Economic Activity in the Energy Sector, or arbitrary or unjustifiable discrimination between Contracting Parties or between Investors or other interested persons of Contracting Parties. Such measures shall be duly motivated and shall not nullify or impair any benefit one or more other Contracting Parties may reasonably expect under this Treaty to an extent greater than is strictly necessary to the stated end.

Measures under subparagraph (iii) shall be notified to the Secretariat.

- (3) The provisions of this Treaty other than those referred to in paragraph (1) shall not be construed to prevent any Contracting Party from taking any measure which it considers necessary:
 - (a) for the protection of its essential security interests including those:
 - (i) relating to the supply of Energy Materials and Products to a military establishment; or
 - (ii) taken in the time of war, armed conflict or other emergency in international relations;
 - (b) relating to the implementation of national policies respecting the non-proliferation of nuclear weapons or other nuclear explosive devices or needed to fulfil its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons, the Nuclear Suppliers Guidelines, and other international nuclear non-proliferation obligations or understandings; or

(c) for the maintenance of public order.

Such measures should not constitute a disguised restriction on Transit.

- (4) The provisions of this Treaty which accord most favoured nation treatment shall not oblige any Contracting Party to extend to the Investors of any other Contracting Party any preferential treatment:
- (a) resulting from its membership in a free-trade area or customs union; or
 - (b) which is accorded by bilateral or multilateral agreements concerning economic cooperation between the states that constituted the former Union of Soviet Socialist Republics pending the establishment of their mutual economic relations on a definitive basis.

ARTICLE 28

ECONOMIC INTEGRATION AGREEMENTS

- (1) The provisions of this Treaty shall not be construed so as to oblige a Contracting Party which is a party to an Economic Integration Agreement (EIA) to extend, by means of the most favoured nation treatment, to another Contracting Party which is not a party to that EIA, any preferential treatment applicable between the parties to that EIA as a result of being a party to that EIA.
- (2) For the purposes of paragraph (1) "EIA" means an agreement substantially liberalizing inter alia trade and investment, by providing for the absence or elimination of substantially all discrimination between or among parties through the elimination of existing discriminatory measures and/or the prohibition of new or more discriminatory measures, either at the entry into force of that agreement or on the basis of a reasonable time-frame.
- (3) The application of the GATT according to Article 35 shall not be affected by this Article.

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 Area of the former, which concern an alleged breach of an obligation of the former under Part III shall, if possible, be settled amicably.
- (2) If such disputes 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.
- (3) (a) Subject only to sub-paragraphs (b) and (c), each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration or conciliation in accordance with the provisions of this Article.
 - (b) (i) The Contracting Parties listed in Annex ID do not give such unconditional consent where the Investor has previously submitted the dispute under paragraph (2)(a) or (2)(b).

(ii) For the sake of transparency, each Contracting Party that is listed in Annex ID shall provide a written statement of its policies, practices and conditions in this regard to the Secretariat no later than the date of the deposit of its instrument of ratification, acceptance or approval in accordance with Article 44 or the deposit of its instrument of accession in accordance with Article 46.

(c) A Contracting Party listed in Annex IA does not give such unconditional consent with respect to a dispute arising under the last sentence of Article 13(1).

(4) In the event that an Investor chooses to submit the dispute for resolution under paragraph (2)(c), the Investor shall further provide its 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)(i), 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.
- (5) (a) The consent given in paragraph (3) together with the written consent of the Investor given pursuant to paragraph (4) 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;
 - (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"); and
 - (iii) "the parties to a contract [to] have agreed in writing" for the purposes of article 1 of the UNCITRAL Arbitration Rules.
- (b) Any arbitration under this Article shall at the request of any party to the dispute be held in a state that is a party to the New York Convention. Claims submitted to arbitration hereunder shall be considered to arise out of a commercial relationship or transaction for the purposes of article 1 of that Convention.
- (6) A tribunal established under paragraph (4) shall decide the issues in dispute in accordance with this Treaty and applicable rules and principles of international law.
- (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 (4) and which, before a dispute between it and that Contracting Party arises, is controlled by Investors of another Contracting Party, shall for the purpose of article 25(2)(b) of the ICSID Convention be treated as a "national of another Contracting State" and shall for the purpose of article 1(6) of the Additional Facility Rules be treated as a "national of another State".

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

ARTICLE 31

SETTLEMENT OF DISPUTES BETWEEN CONTRACTING PARTIES

- (1) Contracting Parties shall endeavour to settle disputes concerning the application or interpretation of this Treaty through diplomatic channels.
- (2) If a dispute has not been settled in accordance with paragraph (1) within a reasonable period of time, either party thereto may, except as otherwise provided in this Treaty or agreed in writing by the Contracting Parties, and as concerns the application or interpretation of Article 7 or Article 22 or the last sentence of Article 13(1) for Contracting Parties listed in Annex IA, upon written notice to the other party to the dispute submit the matter to an ad hoc tribunal under this Article.
- (3) Such an ad hoc arbitral tribunal shall be constituted as follows:
- (a) The Contracting Party instituting the proceedings shall appoint one member of the tribunal and inform the other Contracting Party to the dispute of its appointment within 30 days of receipt of the notice referred to in paragraph (2) by the other Contracting Party.
- (b) Within 60 days of the receipt of the written notice referred to in paragraph (2), the other Contracting Party party to the dispute shall appoint one member. If the appointment is not made within the time limit prescribed, the Contracting Party

having instituted the proceedings may, within 90 days of the receipt of the written notice referred to in paragraph (2) request that the appointment be made in accordance with paragraph (3)(d).

- (c) A third member, who may not be a national or citizen of a Contracting Party party to the dispute, shall be appointed by the Contracting Parties parties to the dispute. That member shall be the President of the tribunal. If, within 150 days of the receipt of the notice referred to in paragraph (2), the Contracting Parties are unable to agree on the appointment of a third member, that appointment shall be made, in accordance with paragraph (3)(d), at the request of either Contracting Party submitted within 180 days of the receipt of that notice.
- (d) Appointments requested to be made in accordance with this paragraph shall be made by the Secretary-General of the Permanent Court of International Arbitration (PCIA) within 30 days of the receipt of a request to do so. If the Secretary General is prevented from discharging this task, the appointments shall be made by the First Secretary of the Bureau. If the latter, in turn, is prevented from discharging this task, the appointments shall be made by the most senior Deputy.
- (e) Appointments made in accordance with paragraphs (3)(a) to (3)(d) shall be made with regard to the qualifications and experience, particularly in matters covered by this Treaty, of the members to be appointed.
- (f) In the absence of an agreement to the contrary between the Contracting Parties, the Arbitration Rules of UNCITRAL shall govern, except to the extent modified by the Contracting Parties parties to the dispute or by the arbitrators. The tribunal shall take its decisions by a majority vote of its members.

- (g) The tribunal shall decide the dispute in accordance with this Treaty and applicable rules and principles of international law.
- (h) The arbitral award shall be final and binding upon the Contracting Parties parties to the dispute.
- (i) Where, in making an award, a tribunal finds that a measure of a regional or local government or authority within the Area of a Contracting Party listed in Part I of Annex P is not in conformity with this Treaty, either party to the dispute may invoke the provisions of Part II of Annex P.
- (j) The expenses of the tribunal, including the remuneration of its members, shall be borne in equal shares by the Contracting Parties parties to the dispute. The tribunal may, however, at its discretion direct that a higher proportion of the costs be paid by one of the Contracting Parties parties to the dispute.
- (k) Unless the Contracting Parties parties to the dispute agree otherwise, the tribunal shall sit in The Hague, and use the premises and facilities of the Permanent Court of Arbitration.
- (l) A copy of the award shall be deposited with the Secretariat which shall make it generally available.

ARTICLE 32

NON-APPLICATION OF ARTICLE 31 TO TRADE DISPUTES

To the extent that a dispute between Contracting Parties concerns the application of Article 6 or 35, it shall not be settled under Article 31 unless the Contracting Parties parties to the dispute agree otherwise.

PART VI

TRANSITIONAL

ARTICLE 35

INTERIM PROVISIONS ON TRADE RELATED MATTERS

So long as one or more Contracting Party is not a 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 party to the GATT or a relevant Related Instrument.

- (1) Trade in Energy Materials and Products shall be governed, with the exceptions and rules provided for in Annex G, by the provisions of the GATT and Related Instruments, as applied on 1 March 1994, and practised for these Materials and Products, among parties to the GATT, as if all Contracting Parties were parties to the GATT and applied the Related Instruments.
- (2) Notwithstanding paragraph (1), subject to the provisions of Annex SUT, such trade may be governed by an agreement between two or more states, all of which were constituent parts of the former Union of Soviet Socialist Republics, until 1 December 1999 or the admission of any party to that agreement to the GATT, whichever is the earlier.
- (3) Each signatory to this Treaty, and each state or Regional Economic Integration Organization acceding to this Treaty, shall on the date of its signature or of its deposit of its instrument of accession, deposit with the Secretariat a list of all tariff rates and other charges levied at the time of importation or exportation at the level applied on such date of signature or deposit, on Energy Materials and Products. Any changes to such rates or other charges shall be notified to the Secretariat which shall inform the Contracting Parties of such changes.

(4) Each Contracting Party shall endeavour not to increase any tariff rate or other charge levied at the time of importation or exportation

(a) in the case of the importation of Energy Materials and Products described in Part I of the Schedule relating to the Contracting Party referred to in article II of the GATT above the level set forth in that Schedule, if the Contracting Party is a party to the GATT;

(b) in the case of the exportation of Energy Materials, and Products and their importation if the Contracting Party is not a party to the GATT, above the level most recently notified to the Secretariat or deposited with it, except as permitted under paragraph (1).

(5) A Contracting Party may make such an increase only if either:

(a) in the case of rates and other charges levied at the time of importation, the provisions of the GATT or a Related Instrument, other than those listed in Annex G, permit such action

OR

(b) to the fullest extent practicable under legislative procedures, it has notified the Secretariat of its proposal for such an increase, has given other interested Contracting Parties reasonable opportunity for consultation with respect to its proposal and has accorded consideration to any representations from such Contracting Parties.

(6) Signatories undertake to commence negotiations not later than 1 January 1995 with a view to concluding by 1 January 1998 texts as appropriate in the light of any developments in the world trading system of amendment to this Treaty which shall, subject to conditions to be laid down therein, commit each Contracting Party not to increase such tariffs or charges beyond the level prescribed under that amendment.

(7) Annex D to this Treaty shall apply to disputes regarding compliance with provisions applicable to trade under this Article and under Article 6 unless both Contracting Parties party to the dispute agree otherwise, 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 (2); or
- (b) establishes a free-trade area or a customs union as described in article XXIV of the GATT.

ARTICLE 35 BIS

DEVELOPMENTS IN INTERNATIONAL TRADING ARRANGEMENTS

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

ARTICLE 35 TER

ENERGY RELATED EQUIPMENT

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

ARTICLE 36

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 of this Treaty, subject to the conditions in paragraphs (3) to (6):

Article 7, paragraphs (2) and (5)

Article 8, paragraph (4)

Article 10, paragraph (1)

Article 13, paragraph (7) - specific exceptions

Article 16, paragraph (1)(d) - related only to transfer of unspent earnings

Article 23, paragraph (3)

Article 25, paragraphs (1) and (3)

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

- (3) The applicable provisions, the stages towards full implementation of each, the measures to be taken and the date or, exceptionally, contingent event, by which each stage shall be completed and measure taken are listed for each Contracting Party claiming transitional arrangements in Annex T to this Treaty. 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 to comply fully with the relevant obligations by 1 July 2001. Should a Contracting Party find it necessary, due to exceptional circumstances, to request that the period of such temporary suspensions be extended or that any further temporary

suspensions not previously listed in Annex T be introduced, the decision upon such a request shall be made by the Charter Conference.

(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 Treaty, or to deal with any problems noted in sub-paragraph (b) as well as to promote other necessary market oriented reforms and modernisation of its energy sector;
- (d) of any possible need to make a request of the kind referred to in paragraph (3).

(5) The Secretariat shall:

- (a) circulate to all Contracting Parties the notifications referred to in paragraph (4);
- (b) circulate and actively promote, relying where appropriate on arrangements in other international organizations, the matching of needs for and offers of technical assistance referred to in paragraphs (2) and (4)(c);
- (c) circulate to all Contracting Parties at the end of each six month period a summary of any notifications made under paragraph (4)(a) and of any notifications under paragraph (4)(d).

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

PART VII

STRUCTURAL AND INSTITUTIONAL

ARTICLE 38

PROTOCOLS

- (1) The Charter Conference may authorize 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 Organization shall not become a party to a Protocol unless it is, or becomes at the same time, a signatory to the Charter and a Contracting Party to this Treaty.
- (4) Subject to paragraph (3), final provisions applying to a Protocol shall be defined in that Protocol.
- (5) A Protocol shall apply only to the Contracting Parties which consent to be bound by it, and shall not derogate from the rights and obligations of those Contracting Parties not party to the Protocol.
- (6) (a) A Protocol may assign duties to the Charter Conference.

(b) A Protocol which provides for decisions thereunder to be taken by the Charter Conference may provide, with respect to such decisions:
 - (i) for voting rules other than those contained in Article 41;
 - (ii) that only parties to the Protocol shall be considered to be Contracting Parties for the purposes of Article 41 or eligible to vote under the rules provided for in the Protocol.

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. Ordinary meetings shall be held at intervals determined by the Charter Conference.

- (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 the Contracting Parties by the Secretariat, it is supported by at least one-third of the Contracting Parties.

- (3) The functions of the Charter Conference shall be to:
 - (a) carry out the duties assigned it by this Treaty and any Protocols;
 - (b) keep under review and facilitate the implementation of the principles of the Charter and of the provisions of this Treaty and the Protocols;
 - (c) facilitate in accordance with this Treaty and the Protocols the 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;

- (g) encourage cooperative efforts aimed at facilitating and promoting market oriented reforms and modernization of energy sectors in those countries of Central and Eastern Europe and the former Union of Soviet Socialist Republics undergoing economic transition;
 - (h) authorize and approve the terms of reference for the negotiation of Protocols, and consider and adopt the texts thereof;
 - (i) decide on accessions to this Treaty;
 - (j) authorize the negotiation of and consider and approve or adopt association agreements;
 - (k) consider and adopt texts of amendments to this Treaty;
 - (l) consider and approve technical changes to the Annexes to this Treaty;
 - (m) 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 organizations with established competence in matters related to the objectives of this Treaty.
- (5) The Charter Conference may establish such subsidiary bodies as it considers appropriate for the performance of its duties.
- (6) The Charter Conference shall consider and adopt rules of procedure and financial rules.
- (7) In 1999 and thereafter at intervals (of not more than 5 years) to be determined by the Charter Conference, the Charter Conference shall thoroughly review the functions provided for in this Treaty in the light of the extent to which the provisions of this Treaty and Protocols have been implemented. At the conclusion of each review the Charter Conference may amend or abolish the functions specified in paragraph (3) and may discharge the Secretariat.

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 Treaty or in any Protocol and any other functions assigned to it by the Charter Conference.
- (5) The Secretariat may enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions.

ARTICLE 41

VOTING

- (1) Unanimity of the Contracting Parties present and voting at the meeting of the Charter Conference where such matters fall to be decided shall be required for decisions by the Charter Conference to:
 - (a) adopt amendments to this Treaty other than amendments to Articles 39 and 40;

- (b) approve accessions to this Treaty under Article 46 by states or Regional Economic Integration Organizations which were not signatories to the Charter as of [closing date for Treaty signature];
- (c) authorize the negotiation of and approve or adopt the text of association agreements;
- (d) approve modifications to Annexes EM, NI and B;
- (e) amend Annex G;
- (f) approve technical changes to the Annexes to this Treaty; and
- (g) approve the Secretary General's nominations of panelists under Annex D, paragraph (7).

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

- (2) Decisions on budgetary matters referred to in Article 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 (1)(g), (2) and (3) or as otherwise specified elsewhere in this Treaty, decisions provided for in this Treaty shall be taken by a three fourths majority of the Contracting Parties present and voting at the meeting of the Charter Conference at which such matters fall to be decided.
- (5) For purposes of this Article, "Contracting Parties present and voting" means Contracting Parties present and casting affirmative or negative votes, provided that the Charter Conference may decide upon rules of procedure to enable such decisions to be taken by Contracting Parties by correspondence.

- (6) Except as provided in paragraph (2), no decision referred to in this Article shall be valid unless it has the support of a simple majority of the Contracting Parties.
- (7) A Regional Economic Integration Organization shall, when voting, have a number of votes equal to the number of its member states which are Contracting Parties to this Treaty; provided that such an Organization shall not exercise its right to vote if its member states exercise theirs, and vice versa.
- (8) In the event of persistent arrears in a Contracting Party's discharge of financial obligations under this Treaty, the Charter Conference may suspend that Contracting Party's voting rights in whole or in part.

ARTICLE 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 assessed according to their capacity to pay, determined as specified in Annex B, the provisions of which may be revised from time to time in accordance with Article 41(1)(d).
- (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).

PART VIII

FINAL PROVISIONS

ARTICLE 43

SIGNATURE

This Treaty shall be open for signature at Lisbon from [period of three months starting from date of signature ceremony] by the states and Regional Economic Integration Organizations which signed the Charter.

ARTICLE 44

RATIFICATION, ACCEPTANCE OR APPROVAL

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

ARTICLE 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 Treaty 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 Treaty 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 Treaty to other territory specified in the declaration. In respect of such territory the Treaty shall enter into force on the ninetieth day following the receipt by the Depositary of such declaration.

- (3) Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification 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 Treaty shall be open for accession by states and Regional Economic Integration Organizations which have signed the Charter from the date on which the Treaty is closed for signature. Decisions on accession shall be taken in accordance with Article 41, including any proposed listing of the acceding state or Regional Economic Integration Organization in Annex N, ID, IA, P, PA or T. The instruments of accession shall be deposited with the Depositary.

ARTICLE 47

AMENDMENT

- (1) Any Contracting Party may propose amendments to this Treaty.
- (2) The text of any proposed amendment to this Treaty shall be communicated to the Contracting Parties by the Secretariat at least three months before the date on which it is proposed for adoption by the Charter Conference.
- (3) Amendments to this Treaty, texts of which have been adopted by the Charter Conference, shall be communicated by the Secretariat to the Depositary who shall submit them to all Contracting Parties for ratification, acceptance or approval.
- (4) Ratification, acceptance or approval of amendments to this Treaty 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 Treaty or one or more Protocols.
- (2) The relationship established with and the rights enjoyed and obligations incurred by an associating state, Regional Economic Integration 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 Treaty shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance or approval thereof, or of accession thereto by a state or Regional Economic Integration Organization which was a signatory to the Charter as of [closing date for Treaty signature].

- (2) For each state or Regional Economic Integration Organization which ratifies, accepts or approves this Treaty or accedes thereto after the deposit of the thirtieth instrument of ratification, acceptance or approval, it shall enter into force on the ninetieth day after the date of deposit by such state or Regional Economic Integration Organization of its instrument of ratification, acceptance, approval or accession.
- (3) For the purposes of paragraph (1), any instrument deposited by a Regional Economic Integration Organization shall not be counted as additional to those deposited by member states of such Organization.

ARTICLE 50

PROVISIONAL APPLICATION

- (1) Each signatory agrees to apply this Treaty provisionally pending its entry into force for such signatory in accordance with Article 49, to the extent that such provisional application is not inconsistent with its constitution, laws or regulations.
- (2)
 - (a) Notwithstanding paragraph (1) any signatory may, when signing, make a declaration that it is not able to accept provisional application. The obligation contained in paragraph (1) shall not apply to a signatory making such a declaration. Any such signatory may at any time withdraw that declaration by written notice to the Depositary.
 - (b) A signatory which makes a declaration in accordance with paragraph (2)(a) may not claim the benefits of provisional application under paragraph (1).
 - (c) Notwithstanding paragraph (2)(a), any signatory making a declaration referred to in paragraph (2)(a) shall apply Part VII of this Treaty provisionally pending the entry into force

of the Treaty in accordance with Article 49, to the extent that such provisional application is not inconsistent with its laws or regulations.

- (3) (a) Any signatory may terminate its provisional application of this Treaty by written notice to the Depositary of its intention not to become a Contracting Party to this Treaty. Termination of provisional application for any signatory shall take effect upon the expiration of sixty days from the day on which such signatory's written notice is received by the Depositary.
- (b) In the event that a signatory terminates provisional application under paragraph (3)(a), the obligation of the signatory under paragraph (1) to apply Parts III and V with respect to any investments made in its Area during such provisional application by investors of other signatories shall nevertheless remain in effect with respect to those investments for twenty years following the effective date of termination, except as otherwise provided in paragraph (3)(c).
- (c) Paragraph (3)(b) shall not apply to any signatory listed in Annex PA. A signatory shall be delisted from Annex PA effective upon its deposit with the Depositary of a request therefor.
- (4) Pending the entry into force of this Treaty the signatories shall meet periodically in the provisional Charter Conference, the first meeting of which shall be convened by the provisional Secretariat designated under paragraph (5) not later than 180 days after the opening date for signature of this Treaty as specified in Article 43.
- (5) The Secretariat functions will be carried out on an interim basis by a provisional Secretariat until the entry into force of this Treaty pursuant to Article 49 and the appointment of a Secretariat under Article 40.

- (6) The signatories shall, in accordance with and subject to the provisions of paragraph (1) or (2)(c) as appropriate, meet the costs of the provisional Secretariat by contributions assessed as if the signatories were Contracting Parties under Article 42(3). Any revisions made to Annex B by the signatories shall terminate upon the entry into force of this Treaty.
- (7) A state or Regional Economic Integration Organization which, prior to the Treaty's entry into force, accedes to this Treaty in accordance with Article 46 shall, pending the Treaty's entry into force, have the rights and assume the obligations of a signatory under this Article.

ARTICLE 51

RESERVATIONS

No reservations may be made to this Treaty.

ARTICLE 52

WITHDRAWAL

- (1) At any time after five years from the date on which this Treaty has entered into force for a Contracting Party, that Contracting Party may give written notification to the Depositary of its withdrawal from this Treaty.
- (2) Any such withdrawal shall take effect upon expiry of one year after the date of the receipt of the notification by the Depositary, or on such later date as may be specified in the notification of withdrawal.
- (3) The provisions of this Treaty shall continue to apply to Investments made in the Area of a Contracting Party by Investors of other Contracting Parties or in the Area of other Contracting

Parties by Investors of that Contracting Party as of the date when that Contracting Party's withdrawal from this Treaty takes effect for a period of twenty years from such date.

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

ARTICLE 53

DEPOSITARY

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

ARTICLE 54

AUTHENTIC TEXTS

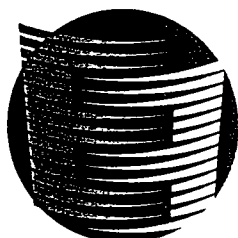
In witness whereof the undersigned, being duly authorized to that effect, have signed this Treaty in English, French, German, Italian, Russian and Spanish, of which every text is equally authentic, in one original, which will be deposited with the Government of the Portuguese Republic.

Done at [] on the [] day of [].

ENERGY CHARTER TREATY

INTERIM TEXT

ANNEXES TO THE ENERGY CHARTER TREATY



EUROPEAN ENERGY CHARTER

20 June 1994

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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 |
| Electrical | | excluding jet. |
| Energy | | |
| | 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, xylole, naphtalene, |
| | | 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.

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.

ANNEX NI

NON-APPLICABLE ENERGY MATERIALS AND PRODUCTS
FOR DEFINITION OF "ECONOMIC ACTIVITY IN THE ENERGY SECTOR"

- 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).
- 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.

ANNEX TRM

NOTIFICATION AND PHASE-OUT (TRIMs)

(1) Each Contracting Party shall notify to the Secretariat all trade related investment measures which it applies that are not in conformity with the provisions of Article 6, within:

(a) 90 days after the entry into force of this Treaty if the Contracting Party is a party to the GATT; or

(b) 12 months after the entry into force of this Treaty if the Contracting Party is not a party to the GATT.

Such trade related investment measures of general or specific application shall be notified along with their principal features.

(2) In the case of trade related investment measures applied under discretionary authority, each specific application shall be notified. Information that would prejudice the legitimate commercial interests of particular enterprises need not be disclosed.

(3) Each Contracting Party shall eliminate all trade related investment measures which are notified under paragraph (1) within

(a) 2 years from the date of entry into force of this Treaty if the Contracting Party is a party to the GATT; or

(b) 3 years from the date of entry into force of this Treaty if the Contracting Party is not a party to the GATT.

(4) During the applicable period referred to in paragraph (3) a Contracting Party shall not modify the terms of any trade related investment measure which it notifies under paragraph (1) from those prevailing at the date of entry into force of this Treaty so as to increase the degree of inconsistency with the provisions of Article 6 of this Treaty.

(5) Notwithstanding the provisions of paragraph (4), a Contracting Party, in order not to disadvantage established enterprises which are subject to a trade related investment measure notified under paragraph (1), may apply during the phase-out period the same trade related investment measure to a new Investment where

(i) the products of such Investment are like products to those of the established enterprises; and

(ii) such application is necessary to avoid distorting the conditions of competition between the new Investment and the established enterprises.

Any trade related investment measure so applied to a new Investment shall be notified to the Secretariat. The terms of such a trade related investment measure shall be equivalent in their competitive effect to those applicable to the established enterprises, and it shall be terminated at the same time.

(6) Where a state or Regional Economic Integration Organization accedes to this Treaty after the Treaty has entered into force:

(a) the notification referred to in paragraphs (1) and (2) shall be made by the later of the applicable date in paragraph (1) or the date of deposit of the instrument of accession; and

(b) the end of the phase-out period shall be the later of the applicable date in paragraph (3) or the date on which the Treaty enters into force for that state or Regional Economic Organization.

ANNEX N

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

1. Canada and United States of America

ANNEX VC
LIST OF CONTRACTING PARTIES WHICH HAVE MADE VOLUNTARY
BINDING COMMITMENTS IN RESPECT OF ARTICLE 13(3)

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

- | | |
|-------------------------|------------------------------|
| 1. Australia | 12. Hungary |
| 2. Azerbaijan | 13. Ireland |
| 3. Bulgaria | 14. Japan |
| 4. Canada | 15. Poland |
| 5. Croatia | 16. Portugal |
| 6. Cyprus | 17. Romania |
| 7. The Czech Republic | 18. The Russian Federation |
| 8. Estonia | 19. Slovenia |
| 9. European Communities | 20. Spain |
| 10. Finland | 21. Sweden |
| 11. Greece | 22. United States of America |

ANNEX 1A

LIST OF CONTRACTING PARTIES NOT ALLOWING AN INVESTOR
TO SUBMIT A DISPUTE CONCERNING THE LAST SENTENCE
OF ARTICLE 13(1) TO INTERNATIONAL ARBITRATION

1. Australia

2. Canada

3. Hungary

4. Norway

ANNEX P

SPECIAL SUB-NATIONAL DISPUTE PROCEDURE

PART I

1. Canada

PART II

- (1) Where, in making an award, the tribunal finds that a measure of a regional or local government or authority of a Contracting Party (hereinafter referred to as "the responsible Contracting Party") is not in conformity with a provision of this Treaty, the responsible Contracting Party shall take such reasonable measures as may be available to it to ensure observance of this Treaty in respect of the measure.
- (2) The responsible Contracting Party shall, within thirty days from the date the award is made, provide to the Secretariat written notice of its intentions as to ensuring observance of this Treaty in respect of the measure. The Secretariat shall present the notification to the Charter Conference at the earliest practicable opportunity, and no later than the meeting of the Charter Conference following receipt of the notice. If it is impracticable to ensure observance immediately, the responsible Contracting Party shall have a reasonable period of time in which to do so. The reasonable period of time shall be agreed by both parties to the dispute. In the event that such agreement is not reached, the responsible Contracting Party shall propose a reasonable period for approval by the Charter Conference.
- (3) Where the responsible Contracting Party fails, within the reasonable period of time, to ensure observance in respect of the measure, it shall at the request of the other Contracting Party party to the dispute (hereinafter referred to as "the injured Contracting Party") endeavour to agree with the injured Contracting Party on appropriate compensation as a mutually satisfactory resolution of the dispute.

- (4) If no satisfactory compensation has been agreed within twenty days of the request of the injured Contracting Party, the injured Contracting Party may with the authorization of the Charter Conference suspend such of its obligations to the responsible Contracting Party under this Treaty as it considers equivalent to those denied by the measure in question, until such time as the Contracting Parties have reached agreement on a resolution of their dispute.

- (5) In considering what obligations to suspend, the injured Contracting Party shall apply the following principles and procedures:
 - (a) The injured Contracting Party should first seek to suspend obligations with respect to the same Part of this Treaty as that in which the tribunal has found a violation.

 - (b) If the injured Contracting Party considers that it is not practicable or effective to suspend obligations with respect to the same Part of this Treaty, it may seek to suspend obligations in other Parts of this Treaty. If the injured Contracting Party decides to request authorization to suspend obligations under this sub-paragraph, it shall state the reasons therefor in its request to the Charter Conference for authorization.

- (6) On written request of the responsible Contracting Party, delivered to the injured Contracting Party and to the President of the tribunal that rendered the award, the tribunal shall determine whether the level of obligations suspended by the injured Contracting Party is excessive, and if so, to what extent. If the tribunal cannot be reconstituted, such determination shall be made by one or more arbitrators appointed by the Secretary General. Determinations pursuant to this paragraph shall be completed within sixty days of the request to the tribunal or the appointment by the Secretary General. Obligations shall not be suspended pending the determination, which shall be final and binding.

- (7) In suspending any obligations to a responsible Contracting Party, an injured Contracting Party shall make every effort not to affect adversely the rights under this Treaty of any other Contracting Party.

ANNEX G

NON-APPLICABLE PROVISIONS OF THE GATT AND RELATED INSTRUMENTS

(1) The following provisions of the GATT and Related Instruments shall not be applicable under Article 35(1):

(a) General Agreement on Tariffs and Trade

II	Schedules of Concessions
IV	Special Provisions relating to Cinematographic Films
XV	Exchange Arrangements
XVIII	Governmental Assistance to Economic Development
XXII	Consultation
XXIII	Nullification or Impairment
XXV	Joint Action by the Contracting Parties
XXVI	Acceptance, Entry into Force and Registration
XXVII	Withholding or Withdrawal of Concessions
XXVIII	Modification of Schedules
XXVIIIbis	Tariff Negotiations
XXIX	The relation of this Agreement to the Havana Charter
XXX	Amendments
XXXI	Withdrawal
XXXII	Contracting Parties
XXXIII	Accession
XXXV	Non-application of the Agreement between particular Contracting Parties
XXXVI	Principles and Objectives
XXXVII	Commitments
XXXVIII	Joint Action
Annex H	Relating to Article I
Annex I	Notes and Supplementary Provisions (related to above GATT articles)

Safeguard Action for Development Purposes

Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance.

(b) Related Instruments

(i) Agreement on Technical Barriers to Trade (Standards Code)

Preamble (tirts 1, 8, 9)

1.3 General provisions

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 to other Parties

12 Special and differential treatment of developing countries

13 The 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

(ii) Agreement on Government Procurement

(iii) Agreement on Interpretation and Application of Articles VI, XVI and XXIII (Subsidies and Countervailing Measures)

10 Export subsidies on certain primary products

12 Consultations

13 Conciliation, dispute settlement and authorized 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) National legislation

19.6 Review

- 19.7 Amendments
- 19.8 Withdrawal
- 19.9 Non-application of this Agreement between particular signatories
- 19.11 Secretariat
- 19.12 Deposit
- 19.13 Registration

(iv) Agreement on Implementation of Article VII (Customs Valuation)

1.2(b)(iv) Transaction value

- 11.1 Determination of customs value
- 14 Application of Annexes (second sentence)
- 18 Institutions (Committee on Customs Valuation)
- 19 Consultation
- 20 Dispute settlement
- 21 Special and differential treatment of developing countries
- 22 Acceptance and accession
- 24 Entry into force
- 25.1 National legislation
- 26 Review
- 27 Amendments
- 28 Withdrawal
- 29 Secretariat
- 30 Deposit
- 31 Registration

Annex II Technical Committee on Customs Valuation

Annex III Ad Hoc Panels

Protocol to the Agreement on Implementation of Article VII (except 1.7 and 1.8; with necessary conforming introductory language)

(v) Agreement on Import Licensing Procedures

- 1.4 General provisions (last sentence)
- 2.2 Automatic import licensing (footnote 2)
- 4 Institutions, consultation and dispute settlement
- 5 Final provisions (except paragraph 2.)

(vi) 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. and 3.).

(vii) Arrangement Regarding Bovine Meat

(viii) International Dairy Arrangement

(ix) Agreement on Trade in Civil Aircraft

(x) Declaration on Trade Measures Taken for Balance-of-Payments Purposes

(c) All other provisions in the GATT and Related Instruments which relate to:

(i) governmental assistance to economic development and the treatment of developing countries, except for paragraphs (1) to (4) of the Decision of 28 November 1979 (2/4903) on Differential and more Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries;

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

(iii) signature, accession, entry into force, withdrawal, deposit and registration.

(d) All agreements, arrangements, decisions, understandings or other joint action pursuant to the provisions listed in (a) to (c) above.

(2) Contracting Parties shall apply the provisions of the "Declaration on Trade Measures Taken for Balance-of-Payments Purposes" to measures taken by those Contracting Parties which are not parties to the GATT to the extent that that is practicable in the context of the other provisions of this Treaty.

(3) With respect to notification, the following rules shall apply:

(a) with respect to Contracting Parties of this Treaty which are also parties to the GATT and Related Instruments, notifications shall continue to be made in accordance with the provisions of the GATT or its Related Instruments as provided in Article 4; and

(b) with respect to Contracting Parties of this Treaty which are not parties to the GATT or a Related Instrument, notifications or actions covered in paragraph (2) shall be made to the Secretariat. The Secretariat shall circulate copies of the notification to all Contracting Parties. Notification to the Secretariat shall be in one of the authentic languages of this Treaty. The accompanying documents may be solely in the language of the Contracting Party.

(4) Trade in nuclear materials may be governed by agreements referred to in the Declarations related to this paragraph.

ANNEX SUT

PROVISIONS FOR TRADE AGREEMENTS BETWEEN REPUBLICS
OF THE FORMER SOVIET UNION

- (1) The agreements referred to in Article 35(2) shall be notified to the Secretariat by all Contracting Parties which are parties to the agreement within 6 months of signature of this Treaty or at sufficient interval before their implementation for other interested Contracting Parties to have reasonable opportunity to review the content and make representations with respect to it.
- (2) The notification shall include the text of the agreement in its original language or languages with a note indicating the Energy Materials and Products to which it applies and explaining the circumstances that make it impossible for the agreement fully to conform with the particular obligations under Article 35(1), the specific measures to be adopted to address the circumstances and a programme for achieving the progressive reduction and elimination of those practices which are inconsistent with Article 35(1).
- (3) The parties to the agreement shall give other Contracting Parties which have expressed an interest a reasonable opportunity for consultation and shall accord consideration to any representation from another Contracting Party. At the option of an interested Contracting Party, the agreement shall be considered by the Charter Conference.
- (4) The Charter Conference shall periodically review the implementation of such agreements and the progress being made towards the elimination of measures inconsistent with Article 35(1). At the request of a Contracting Party it may adopt recommendations to one or more of the parties to such an agreement.
- (5) The provisions of paragraphs (1) to (4) for notification and consultation shall not apply to agreements and arrangements the terms of which relate solely to commercial considerations.

(6) In cases of emergency, the agreements or provisions within them may be implemented before notification and/or consultation provided that such notification and/or consultation takes place promptly. In such cases the parties to the agreement may notify its text in advance of the note required under paragraph (2).

(7) Contracting Parties party to such agreements undertake to limit those provisions in them which are inconsistent with the obligations of Article 35(1) to those necessary to address the particular circumstances and to prefer the use of provisions which least deviate from the obligations of Article 35(1). In particular, they shall make every effort to take remedial action in the light of representations from another Contracting Party and in response to any recommendations of the Charter Conference.

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 dispute about existing measures that might materially affect compliance with the provisions applicable to trade under Article 6 or 35.
- (b) A Contracting Party may make a written request to any other Contracting Party for consultations regarding any existing measure of the other Contracting Party that it considers might affect materially compliance with provisions applicable to trade under Article 6 or 35. A Contracting Party which requests consultations shall to the fullest extent possible indicate the measure complained of and specify the provisions of Article 6 or 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, which 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 in which it is treated by the Contracting Party providing the information.
- (d) In seeking to resolve matters considered by a Contracting Party to affect compliance with provisions applicable to trade under Article 6 or 35 as between itself and another Contracting Party, the 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, within 60 days from the receipt of the request for consultation referred to in paragraph (1)(b), the Contracting Parties have not 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). In its request the requesting Contracting Party shall state the substance of the dispute and indicate which provisions of Article 6 or 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 other Contracting Party having a substantial interest (as defined in the GATT and Related Instruments) in a matter shall have the right to be heard by the panel and to make written submissions to it, provided that both the disputing Contracting Parties and the Secretariat have received written notice of its interest no later than the date of establishment of the panel, as determined in accordance with paragraph (2)(c).
- (c) A panel shall be deemed to be established 45 days after the receipt of the written request of a Contracting Party by the Secretariat pursuant to paragraph (2)(a).
- (d) A panel shall be composed of three members who shall be chosen by the Secretary-General from the roster described in paragraph (7). Except where the disputing Contracting Parties agree otherwise, the members of a panel shall not be citizens of Contracting Parties which either are party to the dispute or have notified their interest in accordance with paragraph (2)(b), or citizens of states members of a Regional Economic Integration Organization which either is party to the dispute or has notified its interest in accordance with paragraph (2)(b).

- (e) The disputing Contracting Parties shall respond within ten working days to the nominations of panel members and shall not oppose nominations except for compelling reasons.
 - (f) Panel members shall serve in their individual capacities and shall neither seek nor take instruction from any government or other body. Each Contracting Party undertakes to respect these principles and not to seek to influence panel members in the performance of their tasks. Panel members shall be selected with a view to ensuring their independence, and that a sufficient diversity of backgrounds and breadth of experience are reflected in a panel.
 - (g) The Secretariat shall promptly notify all Contracting Parties that a panel has been constituted.
- (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 the GATT and Related Instruments. A 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 any other Contracting Party which has notified its interest in accordance with paragraph (2)(b), shall have the right to at least one hearing before the panel and to provide a written submission. Disputing Contracting Parties shall also have the right to provide a written rebuttal. A Panel may grant a request by any other Contracting Party which has notified its interest in accordance with paragraph (2)(b) for access to any written submission made to the panel, with the consent of the Contracting Party which has made it.

The proceedings of a 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 with the provisions applicable to trade under Article 6 or 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, a 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 framework of the GATT, and shall not question the compatibility with Article 6 or 35 of this Treaty of practices applied by any Contracting Party which is a party to the GATT to other parties to the GATT to which it applies the GATT and which have not been taken by those other parties to dispute resolution under the GATT.

Unless otherwise agreed by the disputing Contracting Parties, all procedures involving a panel, including the issuance of its final report, should be completed within 180 days of the date of establishment of the panel; 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; such determination shall be final and binding. Any objection by a disputing Contracting Party 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 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 descriptive sections (including a statement of the facts and a summary of the arguments made by the disputing Contracting Parties), the panel's findings and conclusions, and a discussion of arguments made on specific aspects of the interim report at the stage of its review. 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 a Contracting Party does not comply with a provision of Article 6 or 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 adopted 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. The disputing Contracting Parties and Contracting Parties which notified their interest in accordance with paragraph (2)(b) 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 regarding compliance with such ruling or recommendation. In the event that immediate compliance is impracticable, the Contracting Party concerned shall explain its reasons for non-compliance to the Charter Conference and, in light of this explanation, shall have a reasonable period of time to effect compliance. 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 non-complying Contracting Party a written request that the non-complying Contracting Party enter into negotiations with a view to agreeing upon mutually acceptable compensation. If so requested the non-complying Contracting Party shall promptly enter into such negotiations.

- (b) If the non-complying 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 authorization of the Charter Conference to suspend obligations owed by it to the non-complying Contracting Party under Article 35.
 - (c) The Charter Conference may authorize the injured Contracting Party to suspend such of its obligations to the non-complying Contracting Party, under provisions of Article 6 or 35 or under provisions of the GATT and Related Instruments that apply under Article 35, as 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 6 or 35 has been removed, or until a mutually satisfactory solution is reached.
- (6) (a) Before suspending such obligations the injured Contracting Party shall inform the non-complying Contracting Party of the nature and level of its proposed suspension. If the non-complying 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. The proposed 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).
- (b) The Secretary-General shall establish an arbitral panel in accordance with paragraphs (2)(d) to (f), which if practicable shall be the same panel which made the ruling or recommendation referred to in paragraph (4)(d), 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 this is inseparable from the determination of the level of suspended obligations.
 - (d) The arbitral panel shall deliver its written determination to the injured and the non-complying Contracting Parties and to the Secretariat within 60 days of the establishment of the panel or within such other period as may be agreed by the injured and the non-complying Contracting Parties. The Secretariat shall present the determination to the Charter Conference at the earliest practicable opportunity, and no later than the meeting of the Charter Conference 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 non-complying Contracting Party, an injured Contracting Party shall make every effort not to affect adversely the trade of any other Contracting Party.
- (7) Each Contracting Party may designate two individuals who shall, in the case of Contracting Parties which are also party to the GATT, if they are willing and able to serve as panellists under this

Annex, be panellists currently nominated for the purpose of GATT dispute panels. The Secretary-General may also designate, with the approval of the Charter Conference, 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). The Charter Conference may in addition decide 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. 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.

- (8) Notwithstanding the provisions contained in this Annex, Contracting Parties are encouraged to consult throughout the dispute resolution proceeding with a view to settling their dispute.
- (9) The Charter Conference may appoint or designate other bodies or fora to perform any of the functions delegated in this Annex to the Secretariat and the Secretary-General.

ANNEX B

FORMULA FOR ALLOCATING CHARTER COSTS

- (1) Contributions payable by Contracting Parties shall be determined by the Secretariat annually on the basis of their percentage contributions required under the latest available United Nations Regular Budget Scale of Assessment (supplemented by information on theoretical contributions for any Contracting Parties which are not UN members).
- (2) The contributions shall be adjusted as necessary to ensure that the total of all Contracting Parties' contributions is 100%.

ANNEX PA
LIST OF SIGNATORIES WHICH DO NOT ACCEPT THE PROVISIONAL
APPLICATION OBLIGATION OF ARTICLE 50(3)(b)

1. The Czech Republic
2. Germany
3. Hungary
4. Lithuania
5. Poland
6. Portugal