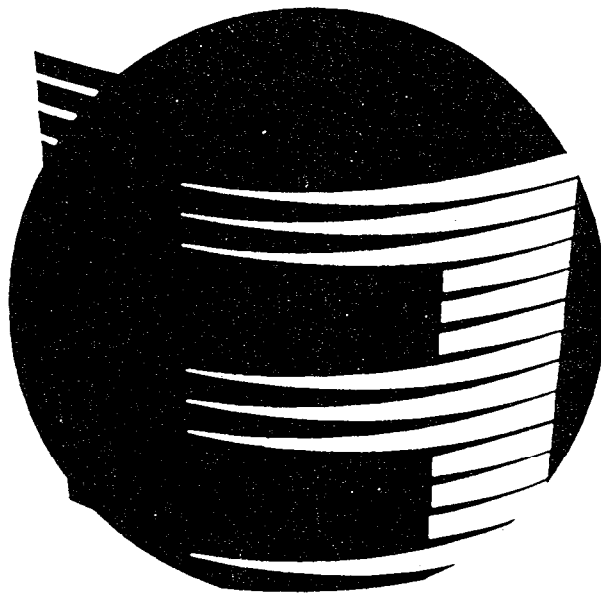

DRAFT

TREATY



EUROPEAN ENERGY CHARTER

23/93

CONFERENCE SECRETARIAT

CONF 50

RESTRICTED

Brussels, 15 March 1993

NOTE FROM THE SECRETARIAT

Subject: Energy Charter Treaty (Basic Agreement) - Compromise Text

1. The Chairman of Working Group II, Mr Fremantle, has proposed the attached compromise text for the Charter Treaty.

The text is based on BA 37. Changes to that text are underlined and deletions are marked as [DL].

2. Since the sequence of Articles in this compromise text has been changed, a reference table showing the relationship between the old BA numbering and the corresponding Articles in the attached draft Treaty is being circulated separately as CONF 51.
3. Delegations should note that there are some minor differences between the attached draft Treaty text and the corresponding Articles in CONF 49, mainly deriving from recommendations by the Legal Sub-Group. These changes are also summarised in CONF 51. The basis for the Plenary discussion on 24-26 March will however remain the CONF 49 text. Once agreement is reached on the substance of these Articles, final approval of the slightly amended texts will be handled by written procedure.

DRAFT

ENERGY CHARTER TREATY

PREAMBLE

The Contracting Parties to this Agreement,

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

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

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

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

Having regard to the objective of progressive liberalisation of international trade and to the principle of avoidance of discrimination in international trade as enunciated in the General Agreement on Tariffs and Trade and its related instruments and as otherwise provided for in this Agreement;

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

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

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

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

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

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

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

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

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

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

HAVE AGREED AS FOLLOWS:

PART I

DEFINITIONS AND GENERAL PROVISIONS

ARTICLE 1

DEFINITIONS

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

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

items of HS or CN:

Nuclear	26.12	Uranium or thorium ores and concentrates.
Energy		
	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).

[DL]

Coal, Natural	27.01	Coal, briquettes, ovoids and similar solid fuels manufactured from coal.
Gas, Petroleum and Petroleum Products,	27.02	Lignite, whether or not agglomerated excluding jet.
El. 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
- 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 [DL]

29.05.11 Methanol (methyl alcohol).

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.

(5) "Economic Activity in the Energy Sector" means the exploration, extraction, production, storage, transport, transmission, distribution, trade, marketing, or sales of Energy Materials and Products except HS 27.07, 27.11.14, [DL], 44.01, and 44.02.

- (6) "Investment" means every kind of asset, [DL] 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, and bonds, debentures 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) any right conferred by law, contract or by virtue of any licences and permits granted pursuant to law;

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

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

- (7) "Investor" [DL] of a Contracting Party means:
- (a) natural persons having the citizenship or nationality of, or who are permanently residing in, that Contracting Party in accordance with its applicable laws;

- (b) companies or other organisations under the laws and regulations applicable in that Contracting Party.
- (8) "Investment of an Investor" means an asset owned or controlled, directly or indirectly, by an Investor.
- (9) "Make Investments" means establishing a new Investment, acquiring all or part of an existing Investment, expanding an existing Investment, or substantially altering the type or the objective of an existing Investment;
- (10) "Returns" means the amounts derived from or associated with an Investment, irrespective of the form in which is paid, including profit, dividends, interest, capital gain, royalty payment, management, technical assistance or other fee, or returns in kind.
- (11) "Domain" means in respect of a Contracting Party the territory under its sovereignty, [it being understood that territory includes land, internal waters and the territorial sea] and the sea, seabed and its subsoil over which that Contracting Party exercises, in accordance with international law, sovereign rights or jurisdiction. With respect to a Regional Economic Integration Organisation which is or becomes a Contracting Party to this Agreement, Domain means the domains of the Member States of such an Organisation, under the provisions laid down in the agreement establishing that Organisation.
- (12) "GATT and Related Instruments" means:
- (a) the General Agreement on Tariffs and Trade, signed at Geneva October 30, 1947;
- (b) agreements, arrangements, decisions, understandings, or other joint action pursuant to the General Agreement on Tariffs and Trade;
- and any successor agreement or agreements thereto.

- (13) "Intellectual Property" includes copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits and the protection of undisclosed information.
- 14) "Protocol" means an agreement authorised and adopted by the Charter Conference and entered into by any of the Contracting Parties [DL] in order to complement, supplement, extend or amplify the provisions of this Agreement to specific sectors or categories of activity comprised within the scope of this Agreement, including areas of cooperation referred to in Title III of the Charter.
- (15) "Freely Convertible Currency" means a currency which is widely traded in international foreign exchange markets and widely used in international transactions.

ARTICLE 2

PURPOSE OF THE AGREEMENT

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

PART II

COMMERCE

ARTICLE 3

ACCESS TO ENERGY RESOURCES AND MARKETS

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

ARTICLE 4

TRADE IN ENERGY MATERIALS AND PRODUCTS AND RELATED SERVICES

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

ARTICLE 5

URUGUAY ROUND

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

ARTICLE 6**INTELLECTUAL PROPERTY**

Each Contracting Party shall ensure effective and adequate protection of intellectual [DL] property rights [DL] according to the applicable international conventions. [DL]. In particular, Contracting Parties shall ensure that measures are taken to provide effective and adequate protection of copyright and related rights, trade marks, geographical indications, industrial designs, patents, layout designs (topographies) of integrated circuits, and undisclosed information. Contracting Parties agree also to take necessary measures to control anti-competitive practices in contractual licences.

WG II Chairman's note

A Sub-Group on Intellectual Property is currently examining this Article and other provisions relevant to Intellectual Property.

ARTICLE 7**COMPETITION**

- (1) The Contracting Parties agree to work to alleviate market distortions and barriers to competition in the extraction, production, conversion, treatment, carriage (including transmission, distribution and marketing) and supply of Energy Materials and Products.
- (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 affecting its market in areas covered by this Agreement.

- (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, subject to limitations imposed by laws regarding disclosure of information, confidentiality and business secrecy.
- (5) If a Contracting Party considers that any specified anti-competitive conduct carried out within the Domain of another Contracting Party is adversely affecting an important interest relevant to the purposes identified in this Article, the Contracting Party may notify the other and may request that the other's competition authorities initiate appropriate enforcement action.

The notifying Contracting Party shall include in such notification sufficient information to permit the other Contracting Party to identify the anti-competitive conduct that is the subject of the notification and shall include an offer of such further information and cooperation as that Contracting Party is able to provide.

The notified Contracting Party or, as the case may be, the relevant competition authorities may consult with the other and shall accord full consideration to the request of the other Contracting Party in deciding whether or not to initiate enforcement action with respect to the alleged anti-competitive conduct identified in the notification. The notified Contracting Party shall inform the other of its decision or the decision of the relevant competition authorities and may inform the other, at the sole discretion of the notified Contracting Party, of the grounds for the decision. If enforcement action is initiated, the notified Contracting Party will advise the notifying Contracting Party of its outcome and, to the extent possible, of significant interim developments.

ARTICLE 8

TRANSPORT AND TRANSIT

- (1) Each Contracting Party shall take the necessary measures to facilitate the transit through its Domain of Energy Materials and Products from the Domain of another Contracting Party to the Domain of a third Contracting Party or to or from port facilities in its Domain for loading or unloading, without distinction as to the origin, destination or ownership of such Energy Materials and Products or discrimination as to the pricing on the basis of such distinctions, and without imposing any unreasonable delays, restrictions or charges.
- (2) Contracting Parties shall encourage relevant entities to cooperate in:
 - (a) modernising transit networks necessary to the supply of Energy Materials and Products;
 - (b) the development and operation of transport infrastructure serving the Domain of more than one Contracting Party;
 - (c) measures to mitigate the effects of [DL] interruptions in the supply of Energy Materials and Products;
 - (d) facilitating the interconnection of high-pressure gas transmission pipelines, [DL] high-voltage electricity transmission grids, [DL] crude oil transmission pipelines and coal slurry pipelines.
- (3) Each Contracting Party undertakes that its provisions relating to transport of Energy Materials and Products and the use of harbour facilities, high pressure gas transmission pipelines, high-voltage electricity transmission grids, crude oil transmission pipelines and coal slurry pipelines shall treat Energy Materials and Products wholly or partly originating in or

destined for the Domain of another Contracting Party, in no less favourable a manner than its provisions treat such materials and products wholly or partly originating in or destined for its own Domain, except if otherwise provided for in an existing international agreement.

- (4) In the event that access to existing high-pressure gas transmission pipelines, high-voltage electricity transmission grids, crude oil transmission pipelines or coal slurry pipelines within a Contracting Party cannot be obtained on commercial terms for transit of Energy Materials and Products from another Contracting Party to a third Contracting Party, the Contracting Parties shall not place obstacles in the way of establishing financially and economically viable new capacity - subject to their applicable legislation, inter alia, on safety, technical standards, environmental protection and land use.
- (5) The provisions of paragraphs (1) to (4) above shall not require a Contracting Party to take action which it demonstrates to the other Contracting Parties concerned would endanger its security of energy supply, quality of service or the most efficient development and operation of all parts of its electricity and gas systems.
- (6) A Contracting Party through whose Domain Energy Materials and Products transit through high-pressure gas transmission pipelines, high-voltage electricity transmission grids, crude oil transmission pipelines, coal slurry pipelines or oil product pipelines from the Domain of another Contracting Party to the Domain of a third Contracting Party or to or from port facilities in its Domain for loading or unloading shall not in the event of a dispute over any matter arising from that transit interrupt or reduce, nor permit any entity subject to its control to interrupt or reduce, nor require any entity subject to its jurisdiction to interrupt or reduce the existing flow of Energy Materials and Products except where this is specifically provided for in a contract or other agreement governing such transit or where the procedure in paragraph (7) has been completed.

- (7) (a) The parties to a dispute relating to paragraph (6) shall exhaust any contractual or other dispute resolution remedies they have previously agreed;
- (b) If this fails to resolve the dispute, a party to the dispute may refer it to the Secretary General referred to in Article 40 with a note summarising the matters in dispute. The Secretary General shall notify all Contracting Parties of any such referral;
- (c) Within 30 days of receipt of such a note, the Secretary General, in consultation with the parties to the dispute and the Contracting Parties concerned, shall appoint a conciliator. Such a conciliator shall have experience in the matters subject to dispute and shall not be a national or citizen of or resident in the Domains through which the transit occurs, from which the Energy Materials and Products being transported originate or to which the Energy Materials and Products are being supplied;
- (d) The conciliator shall conciliate between the parties and seek their agreement to a resolution to the dispute or upon a procedure to achieve such resolution. If within 90 days of his appointment he has failed to secure such agreement, he shall recommend a resolution to the dispute or a procedure to achieve such resolution and shall decide the interim tariffs and other terms and conditions to be observed for transit from a date which he shall specify until such resolution;

[DL]

- (e) The Contracting Parties undertake to observe and ensure that the entities under their control or jurisdiction observe any interim decision under paragraph (7)(d) on tariffs, terms and conditions for 12 months following the conciliator's decision or until resolution of the dispute, whichever is earlier;

- (f) No dispute concerning a transit which has already been the subject of the conciliation procedures set out in this Article may be referred to the Secretary General under paragraph (7)(b) above unless the previous dispute has been resolved;
- (g) Standard provisions on conciliator's expenses, location, etc shall be decided by the Charter Conference.
- (8) In respect of the supply to or through an international gas, oil or electricity transmission line or network, the Contracting Parties concerned shall ensure that adequate arrangements exist to provide in the event of an emergency breakdown for:
- i) reinstatement of the full supply as promptly as possible;
 - ii) appropriate recovery of the costs of such reinstatement;
 - iii) the equitable allocation of the residual supply.
- (9) This Article shall not derogate from a Contracting Party's obligations under article 5 of the GATT as applied by Articles 4 and 35 of this Agreement nor its rights and obligations under Article 4 of the Convention on the Continental Shelf of 1958 or Article 79 of the United Nations Convention on the Law of the Sea of 1982, nor its rights and obligations in existing bilateral or multilateral agreements insofar as the exercise of those rights and obligations does not detract from the rights of Contracting Parties who are not party to such agreements or of the Investors of such Contracting Parties.

ARTICLE 9

TRANSFER OF TECHNOLOGY

- (1) The Contracting Parties agree to promote in accordance with their laws and regulations access to and transfer of technology on a commercial and non-discriminatory basis to assist effective trade and Investment and to implement the objectives of the Charter, subject to the provisions of Article 6.
- (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) Each Contracting Party shall endeavour to encourage such capital flows by facilitating, in accordance with its laws, [DL] access to its capital markets [DL] for Investors of [DL] another Contracting Party [DL] with respect to the borrowing of funds and the issuance and sale of equity shares and other securities in connection with [DL] Economic Activity in the Energy Sector. Nothing in this Article is intended to impair the ability of financial institutions to establish and apply their own lending practices based on market principles.
- (2) To the extent permitted by its laws each Contracting Party shall provide [DL] access to public credits, guarantees and insurance for Investors in extraction, production, conversion, treatment, carriage or supply of Energy Materials and Products.
- (3) The Contracting Parties shall seek [DL] to take all appropriate advantage of the expertise and to support the operations of relevant international financial institutions in mobilising private Investments in connection with the subject matter of this Agreement.

PART III
INVESTMENT PROMOTION AND PROTECTION

ARTICLE 12

INVESTMENT IN ENERGY RESOURCES AND MARKETS

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

ARTICLE 13

PROMOTION, PROTECTION AND TREATMENT OF INVESTMENTS

- (1) Each Contracting Party shall in accordance with the objectives and principles of the Charter and the provisions of this Agreement encourage and create stable, equitable, favourable and transparent conditions for Investors of other Contracting Parties to Make Investments in its Domain. Such conditions shall include a commitment to accord at all times to Investments of Investors of other Contracting Parties fair and equitable treatment. Such Investments shall also enjoy the most constant protection and security and no Contracting Party shall in any way impair by unreasonable or discriminatory measures their management, maintenance, use, enjoyment or disposal. In no case shall such Investments be accorded treatment less than that required by international law, including that Contracting Party's international obligations. This Part shall not derogate from the duty of each Contracting Party to observe any obligations it may have entered into with regard to Investments of Investors of any other Contracting Party to the extent that they are more favourable than those accorded by this Part.

- (2) Each Contracting Party shall permit Investors of other Contracting Parties to Make Investments in its Domain on a basis no less favourable than that accorded to its own Investors or to Investors of any other Contracting Party or any third state, whichever is the most favourable subject to the provisions of paragraphs (3) to (6) below.
- (3) Notwithstanding paragraph (2) above each Contracting Party may maintain limited exceptions to the obligations of paragraph (2) which correspond to their domestic legislation in force on the date of signature of this Agreement, provided :
- (a) any exception shall not be a greater departure from the obligations of paragraph(2) than that required by or specified in the relevant laws, regulations or administrative commitments;
 - (b) details of the relevant laws, regulations and administrative commitments are available publicly in line with Contracting Parties' obligations under Article 23 of this Agreement.
 - (c) a summary of such laws, regulations and administrative commitments is included in Annex A to this Agreement. That summary may contain intentions concerning future legislation or application of existing laws and regulations. A Contracting Party shall be bound by such intentions contained in that summary only to the extent indicated therein.

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

- (i) in accordance with a law listed in Annex A requiring a Contracting Party to restrict Investments by Investors of another Contracting Party as a consequence of the latter Contracting Party's restrictions on Investment by Investors of the former Contracting Party;

- (ii) that no [DL] Contracting Party shall be obliged to extend the benefit of any treatment, preference or privilege resulting from its membership of any Regional Economic Integration Organisation which is a [DL] Contracting Party to this Agreement to another Contracting Party which is not a member of that Regional Economic Integration Organisation or to the Investor of such other Contracting Party.
- (4) For the avoidance of doubt, the provisions of this Article do not affect the application of a Contracting Party's laws, regulations and administrative commitments concerning the technical fitness of Investors of another Contracting Party to carry out certain particular activities or possible Investments in its Domain under the terms of this Agreement, whether or not such Investors have already made other Investments in such Domain.
- (5) Each Contracting Party agrees not to introduce after its signature of this Agreement any new measures (being laws, regulations or administrative commitments) or changes to measures which would have the effect at any time of adding to any discrimination maintained between the right and ability of its own Investors and Investors of any other Contracting Party or third state, whichever is the most favourable, to Make Investments in its Domain. Provided that a Contracting Party may, after its signature of this Agreement, take any relevant measures which it considers necessary for the ending of any monopoly or privatisation of a state enterprise provided that the totality of such additional measures taken by a Contracting Party, when considered together with existing measures, does not constitute an additional barrier to Investment opportunities [DL] for Investors of other Contracting Parties. Any such measures shall also be subject to the other provisions of this Article and the Contracting Party shall amend its summary in Annex A accordingly.
- (6) The Contracting Parties [DL] shall endeavour to reduce progressively existing restrictions which affect the ability of Investors of other Contracting Parties to make Investments in

their Domain. They shall amend summaries in Annex A to take account of any such reduction. The Charter Conference shall annually review progress in this direction.[DL]

- (7) In addition each Contracting Party shall in its Domain accord to Investments of Investors of another Contracting Party, and their management, maintenance, use, enjoyment or disposal, treatment no less favourable than that which it accords to Investments of its own Investors or of the Investors of any other Contracting Party or any third state, and their management, maintenance, use, enjoyment or disposal, whichever is the most favourable.
- (8) A Contracting Party
- (a) shall not require Investors of another Contracting Party to hire citizens, nationals or permanent residents of the former Contracting Party as key personnel nor impose other hiring requirements;
- (b) shall, [DL] subject to its laws and regulations relating to the entry, stay and work of a natural person, examine in good faith requests by Investors of another Contracting Party and key personnel who are employed by such Investors to enter and remain temporarily in its Domain to engage in activities connected with the Making or the management, maintenance, use, enjoyment or disposal of relevant Investments.
- (9) Without prejudice to Article 16, the provisions of this Article shall also apply to Returns.
- (10) Nothing in this Article shall apply [DL] to grants provided by a Contracting Party for development of advanced energy technology; or government insurance and loan guarantee programmes for encouraging companies to invest abroad for economic development purposes; or small business development programmes for socially and economically disadvantaged minorities.

(11) (a) A Contracting party shall not apply any Investment measure which is mandatory or enforceable under domestic law or under administrative rulings or compliance with which is necessary to obtain an advantage, and which requires:

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

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

or which restricts:

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

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

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

(vi) the sales of goods or services in its Domain, whether specified in terms of particular products or services, in terms of volume or value of a proportion or production or exports.

- (b) A Contracting Party shall not apply any measure which is mandatory which requires that an enterprise export a specific product or service, or a specific volume or value of products or services generally or to a specific market region.

[DL]

- (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 authorisations.

ARTICLE 14

COMPENSATION FOR LOSSES

- (1) Except where Article 15 applies, an Investor of any Contracting Party who suffers a loss with respect to an Investment in the Domain of another Contracting Party owing to war or other armed conflict, state of national emergency, civil disturbance, or other similar event in that Domain, shall be accorded by the latter Contracting Party, treatment, as regards restitution, indemnification, compensation or other settlement, which is the most favourable of that which that Contracting Party accords to any Investor, whether its own Investor, the Investor of any other Contracting Party, or the Investor of any third State.
- (2) Without prejudice to paragraph (1), an Investor of a Contracting Party who, in any of the situations referred to in that paragraph, suffers a loss in the Domain of another Contracting Party resulting from
- (a) requisitioning of its Investment or part thereof by the latter's forces or authorities, or
- (b) destruction of its Investment or part thereof by the latter's forces or authorities, which was not caused in combat action or 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) Investment of an Investor of a Contracting Party in the Domain of any other Contracting Party shall not be nationalised, expropriated or subjected to a measure or measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") except where such expropriation is:

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

Such compensation shall amount to the fair market value of the investment expropriated at the time immediately before the expropriation or impending expropriation became known in such a way as to affect the value of the Investment (hereinafter referred to as the "valuation date").

Such fair market value shall be calculated in a Freely Convertible Currency on the basis of the prevailing market rate of exchange for that currency on the valuation date and shall 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) Where a Contracting Party expropriates the assets of a company or enterprise which is incorporated or constituted under the law in force in any part of its own Domain, and in which Investors of any other Contracting Party have a shareholding, the provisions of paragraph (1) above shall apply to the extent necessary to guarantee prompt, adequate and effective compensation for those Investors.
- (4) Without prejudice to Article 16, the provisions of this Article shall also apply to Returns.
- (5) Reversion of properties and rights to a resource owner pursuant to laws and regulations in force in a Contracting Party at the time an Investment was made in the Domain of that Contracting Party shall not be regarded, for purposes of this Agreement, as an act of expropriation or nationalisation or as a measure having effect equivalent to nationalisation or expropriation.

WG II Chairman's note

Additional provision may be needed to cover the special position of Intellectual Property Rights. This is under study by a Sub-Group.

ARTICLE 16

TRANSFER OF PAYMENTS RELATED TO INVESTMENTS

- (1) Each Contracting Party shall with respect to Investments in its Domain by Investors of any other Contracting Party guarantee the freedom of transfer related to these Investments into and out of its Domain, including the transfer of:
 - (a) the initial capital plus any additional capital for the maintenance and development of an Investment;
 - (b) Returns;
 - (c) payments under a contract, including amortisation of principal and accrued interest payment pursuant to a loan agreement;
 - (d) unspent earnings and other remuneration of personnel engaged from abroad in connection with that Investment;
 - (e) proceeds from the sale or liquidation of all or any part of an Investment;
 - (f) payments arising out of the settlement of a dispute; and
 - (g) payments of compensation pursuant to Articles 14 and 15.
- (2) Transfers of payments under paragraph (1) shall be effected without delay and in a Freely Convertible Currency.
- (3) Transfers shall be made at a fair market rate of exchange 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 maintain laws and regulations requiring reports of currency transfer. Furthermore, 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 and criminal adjudicatory proceedings, through the equitable, non-discriminatory, and good faith application of its law.
- (5) Prior to 1 January 2000 Contracting Parties which were part of the former USSR may, [DL] in accordance with the laws or regulations of such Contracting Parties or in accordance with an agreement between them, require that transfers of Investments owned [DL] by nationals of such Contracting Parties be effected in a currency other than a Freely Convertible Currency.

WG II Chairman's note

A provision in relation to Balance of Payments problems will be included. The drafting is still being studied by a Sub-Group.

ARTICLE 17

ASSIGNMENT OF RIGHTS

- (1) If a Contracting Party, its designated agency or a company or enterprise incorporated in a Contracting Party other than an Investor (the "Indemnifying Party") makes a payment under an indemnity or guarantee given in respect of an Investment and Returns in the Domain of another Contracting Party (the "Host Party") or otherwise acquires the rights and claims to such an Investment as a result of the complete or partial default of the Investor, the Host Party shall recognise

(a) the assignment to the Indemnifying Party by law or by legal transaction of all the rights and claims resulting from such an Investment, and

(b) that the Indemnifying Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the original Investor [DL], provided that a change in ownership arising other than from an indemnity or guarantee covering non-commercial risks shall be subject to approval by the Host Party in the same way as the initial investment unless such approval was granted by the Host Party at the time of the initial investment.

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

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

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

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

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

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

ARTICLE 19

NON-APPLICATION OF PART III IN CERTAIN CIRCUMSTANCES

Each Contracting Party reserves the right to deny the advantages of this Part to a legal entity if citizens or nationals of a non-signatory country control such entity and if that entity has no substantial business activities in the Domain of the Contracting Party in which it is organised or the denying Contracting Party does not maintain diplomatic relationship with the non-signatory or adopts or maintains measures with respect to the non-signatory that prohibit transactions with the Investor of that non-signatory or that would be violated or circumvented if the advantages in this Part [DL] were accorded to the Investor of that non-signatory or to its Investments.

PART IV**CONTEXTUAL****ARTICLE 21****SOVEREIGNTY OVER ENERGY RESOURCES**

The Contracting Parties recognise state sovereignty and sovereign rights over energy resources in accordance with and subject to international legal rights and obligations including the provisions of this Agreement. Each State accordingly holds in particular the rights to decide the geographical areas within its Domain to be made available for exploration and development of its energy resources and the optimisation of their recovery and the rate at which they may be depleted or otherwise exploited, to specify and enjoy any taxes, royalties or other financial payments payable by virtue of such exploration and exploitation and to regulate the environmental and safety aspects of such exploration and development within its Domain.

ARTICLE 22**ENVIRONMENTAL ASPECTS**

- (1) In pursuit of sustainable development and consistently with those international environmental agreements to which they are parties, each Contracting Party shall strive to minimise in an economically efficient manner adverse effects on the environment occurring both within and outside its Domain from all operations within the energy cycle in its Domain, taking proper account of safety. In doing so each Contracting Party shall act cost effectively. In its policies and actions each Contracting Party shall strive to take precautionary measures to anticipate, prevent or minimise environmental degradation. They agree that the polluter [DL] should, in principle, bear the cost of pollution, with due regard

to the public interest and without distorting Investment in the energy cycle or international trade. Contracting Parties shall accordingly:

- (a) take account of environmental considerations throughout the formulation and implementation of their energy policies;
- (b) promote market-oriented price formation throughout the energy cycle and a fuller reflection of environmental costs and benefits;
- (c) encourage cooperation in the cost-effective attainment of the environmental objectives of the Charter for the energy cycle, taking account of the different circumstances of 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 that reduce pollution;
- (e) promote the collection and sharing amongst Contracting Parties of information on environmentally sound and economically efficient energy policies and cost effective practices and technologies;
- (f) promote public awareness of the environmental impacts of energy systems, of the scope for the prevention or abatement of their adverse impacts, and of the costs associated with various prevention or abatement measures;
- (g) promote and cooperate in the research, development and application of energy efficient and environmentally sound technologies, practices and processes which will minimise harmful environmental impacts of all aspects of the energy cycle cost effectively;

- (h) encourage favourable conditions for the transfer and dissemination of such technologies consistent with the adequate and effective protection of intellectual property rights;
 - (i) promote the transparent assessment at an early stage and prior to decision, and subsequent monitoring, of environmental impacts of environmentally significant energy investment projects;
 - (j) promote internationally awareness and information exchange on Contracting Parties relevant environmental programmes and standards and on the implementation of those programmes and standards.
- (2) For the purposes of this Article:
- a) "energy cycle" means the entire energy-chain including prospecting for, exploration, production, conversion, storage, transport, distribution and consumption of the various forms of energy, the decommissioning and treatment of energy-related physical structures and activities related to disposal of waste.
 - b) "environmental impacts" means any effect caused by a given activity on the environment, including human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical structures or the interactions among these factors; it also includes effects on cultural heritage or socio-economic conditions resulting from alterations to those factors.
 - c) "improving energy efficiency" means acting to maintain the same unit of output (of a good or service) without reducing the quality or performance of the output, whilst reducing the amount of energy required to produce that output.

ARTICLE 23

TRANSPARENCY

- (1) In accordance with Articles 4 and 35 laws, regulations, judicial decisions and administrative rulings and standards of general application which [DL] affect matters covered by Article 4 [DL] shall be subject to the transparency disciplines [DL] of the GATT and Related Instruments.

- (2) Laws, regulations, judicial decisions, and [DL] administrative rulings or standards of general application made effective by any Contracting Party, and agreements in force between [DL] Contracting Parties, which [DL] affect other matters covered by this Agreement shall also be [DL] published promptly in such a manner as to enable [DL] Contracting Parties and Investors to become acquainted with them. The provisions of this paragraph [DL] 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 [DL] any Investor.

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

ARTICLE 24

TAXATION

(1) GENERAL EXCLUSION

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

(2) APPLICATION OF PROVISIONS RELATING TO TRADE

Notwithstanding paragraph (1),

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

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

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

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

(3) APPLICATION OF PROVISIONS RELATING TO INVESTMENT

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

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

(4) EXPROPRIATORY AND DISCRIMINATORY TAXATION

- (a) Notwithstanding paragraphs (1) and (3), Article 15 shall apply to taxation measures.
- (b) Whenever an issue arises under Article 15, to the extent it pertains to whether a taxation measure constitutes an expropriation or nationalisation or whether a taxation measure alleged to constitute an expropriation or nationalisation is discriminatory, the Investor or the Contracting Party alleging expropriation shall refer the issue of whether the measure is not an expropriation or whether the measure is discriminatory to the competent tax authorities. Referral is required at the earlier of the time when amicable settlement procedures under Article 30(1) or 31(1) begin or the time the issue is submitted to arbitration or dispute resolution. Competent tax authorities shall, within a period of six months, strive to resolve the non-discrimination issue so referred, applying the non-discrimination provisions of the relevant tax convention or,

if there is no non-discrimination provision in the relevant tax convention applicable to the measure or no such tax convention is in force between the Contracting Parties concerned, applying the non-discrimination principles under the OECD Model Tax Convention on Income and Capital. Bodies called upon to settle disputes pursuant to Articles 30 and 31 may take into account any conclusions arrived at by the competent tax authorities regarding whether the measure is not an expropriation. Such bodies shall take into account any conclusions arrived at by the competent tax authorities regarding whether the measure is discriminatory. Under no circumstances shall involvement of competent tax authorities lead to a delay of proceedings under Articles 30 and 31.

(5) WITHHOLDING TAX

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

(6) DEFINITIONS

(6.1) The term "taxation measure" includes:

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

(b) the provisions relating to taxes of any convention for the avoidance of double taxation and any international agreement or arrangement to which the Contracting Party is bound.

(6.2) There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts or substantially similar taxes,

taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

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

WG II Chairman's note

This Article will need to be reviewed by the Legal and Taxation Sub-Groups in the light of decisions yet to be taken on the other Articles in Parts II to V.

ARTICLE 25

STATE ENTITIES AND EXCLUSIVE OR SPECIAL PRIVILEGES [DL]

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

ARTICLE 26

OBSERVANCE BY SUB-NATIONAL AUTHORITIES

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

ARTICLE 27

EXCEPTIONS

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

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

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

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

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

[DL]

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

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

provided that such measures shall not constitute a disguised restriction on Investment. [DL].

[DL]

PART V

DISPUTE SETTLEMENTS

ARTICLE 30

SETTLEMENT OF DISPUTES BETWEEN AN INVESTOR AND A CONTRACTING PARTY

- (1) Disputes between one Contracting Party and an Investor of another Contracting Party concerning an alleged breach of an obligation of the former under Part III of this Agreement, relating to an Investment of the latter in the Domain of the former 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 at which either party to the dispute requested amicable settlement, the dispute shall, subject to paragraph (3) below, at the written request of the Investor concerned be submitted to international arbitration or conciliation in accordance with paragraph (4).
- (3) An Investor may choose to submit the dispute for resolution :
 - (a) to the courts or administrative tribunals of the Contracting Party that is a party to the dispute; or
 - (b) in accordance with any applicable, previously agreed dispute settlement procedure; or
 - (c) in accordance with paragraph (4) only if:
 - (i) the Investor has consented in writing to settlement by arbitration or conciliation in accordance with the appropriate rules, thereunder;
 - (ii) the Investor has waived its right to initiate an action, in relation to the same subject matter, before the courts or tribunals of the Contracting Party concerned

or, where an action has already commenced, the Investor has [DL] discontinued it before any judgement or award is made or at any later stage permitted by the law of the Contracting Party concerned; and

(iii) not more than three years have elapsed from the date on which the Investor first acquired, or should have first acquired, knowledge of the alleged breach or the date on which the Investor incurred loss or damage if later. Such a period may exceed three years if the law of the Contracting Party concerned so permits.

(4) Unless within the period of 3 months provided in paragraph (2) above, the parties to the dispute have agreed an alternative dispute settlement procedure, the dispute may, at the election in writing of the Investor concerned, be submitted for settlement by arbitration or conciliation to:

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

(ii) the International Centre for Settlement of Investment Disputes, established pursuant to the Convention referred to in sub-paragraph (a) under the rules governing the Additional Facility for the Administration of Proceedings by the secretariat of the Centre (Additional Facility Rules) if the Contracting Party of the Investor [DL] 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) 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.
- (6) (a) The consent given in paragraph (5), together with the consent given under paragraph (3), shall satisfy the requirements for:
- (i) written consent of the parties to a dispute for purposes of Chapter II [DL] of the ICSID Convention and for purposes of the Additional Facility Rules; and
 - (ii) an "agreement in writing" for purposes of article II of the United Nations Convention on the Recognition and Enforcement of Arbitral Awards, done at New York, June 10, 1958 ("New York Convention").
- (b) Any arbitration under this Article shall at the request of any party to the dispute be held in a State that is a party to the New York Convention. [DL] Claims submitted to arbitration hereunder shall be considered to arise out of a commercial relationship or transaction for the purposes of article I of that Convention.
- (7) A tribunal established under this Article shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

- (8) An Investor other than a natural person which has the nationality of one Contracting Party and which before [DL] 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 Convention referred to in paragraph 4(a) above be treated as an Investor of that other Contracting Party.
- (9) The awards of arbitration, which may include an award of interest, shall be final and binding [DL] on the parties to the dispute. Each Contracting Party shall carry out without delay any such award and shall make provision for the effective enforcement in its Domain of such awards.

[DL]

- (10) The provisions of this Article shall not apply to disputes arising from Article 13(6).

ARTICLE 31

SETTLEMENT OF DISPUTES BETWEEN CONTRACTING PARTIES

- (1) Contracting Parties shall endeavour to settle disputes concerning the application or interpretation of this Agreement through diplomatic channels.
- (2) If the dispute does not concern the application of Article 7 or Article 22 and has not been settled in accordance with paragraph (1) above within a reasonable time, except as otherwise provided for in this Agreement or unless the Contracting Parties otherwise agree in writing, either Contracting Party may, by written notice to the other Contracting Party, submit the matter to an ad hoc arbitral tribunal under this Article.
- (3) Such an ad hoc arbitral tribunal shall be constituted as follows:
 - (a) The Contracting Party instituting the proceedings shall appoint one member of the tribunal within 30 days of delivering the notice in paragraph (2) and inform the other Contracting party of its appointment;
 - (b) Within 60 days of the receipt of the written notice under paragraph (2), the other Contracting Party to the dispute shall, in turn, appoint one member. If the appointment is not made within the time limit prescribed, the Contracting Party having instituted the proceedings may, within 90 days of the written notice under paragraph (2) request that the appointment be made in accordance with paragraph (3)(d) below;
 - (c) A third member, who may not be a national or citizen of a Contracting Party to the dispute, shall then be appointed between the Contracting Parties to the dispute. That member shall be the President of the tribunal. If, within 150 days of the delivery of the notice referred to in paragraph (2)

above, the Contracting Parties are unable to agree on the appointment of a third member, that appointment shall be made, in accordance with paragraph (3)(d) below, at the request of either Contracting Party submitted within 180 days of delivery of that notice;

- (d) Appointments pursuant to paragraphs (3)(b) or (3)(c) above shall be made by the Secretary-General of the Permanent Court of International Arbitration (PCIA) within 30 days of the receipt of a request to do so. If he is prevented from discharging this task, the appointments shall be made by the First Secretary of the Bureau. If the latter, in turn, is prevented from discharging this task, the appointments shall be made by the [DL] most senior Deputy.
- (e) Appointments made in accordance with paragraphs (3)(a) to (3)(d) above shall have regard to the qualifications and experience, particularly in matters covered by this Agreement, of the members to be appointed;
- (f) In the absence of an agreement between the Contracting Parties to the contrary, the Arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) shall govern, except to the extent modified by the Contracting Parties to the dispute or by the arbitrators. The tribunal shall take its decisions by a majority vote of its members.
- (g) The tribunal shall decide the dispute in accordance with this Agreement and international law.
- (h) The arbitral award shall be final and binding upon the Contracting Parties to the dispute.
- (i) The expenses of the tribunal, including the remuneration of its members, shall be borne in equal shares by the Contracting Parties to the dispute. The tribunal may, however, at its discretion direct that a higher proportion of the costs be paid by one of the Contracting Parties to the dispute.

- (j) Unless the Contracting Parties to the dispute agree otherwise, the tribunal shall sit in the Hague, and will use the premises and facilities of the Permanent Court of Arbitration.
- (k) A copy of the award shall be deposited with the Secretariat who shall make it generally available.

[DL]

ARTICLE 32

NON-APPLICATION OF ARTICLE 31 TO TRADE DISPUTES

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

ARTICLE 33

SETTLEMENT OF DISPUTES ON APPLICABILITY OF ARTICLE 31

(1) If a disagreement arises over the application of Article 32 to a dispute a party to the dispute may refer the matter to an ad hoc arbitration under this Article. In the light of the overall balance of rights and obligations in the GATT and Related Instruments and in this Agreement, respectively, the arbitration shall determine the extent to which the dispute should be brought under the GATT and Related Instruments or Annex D of this Agreement and to which it should be brought under Article 31 of this Agreement, or both, if the dispute is to be settled under both GATT and Related Instruments or Annex D of this Agreement and Article 31 of this Agreement, the arbitrator shall also determine which elements of the dispute are to be considered under which procedure and the sequence of such consideration. Only for compelling reasons should issues in a dispute pertaining to obligations under Article 4 or 35 of this Agreement be considered under Article 31 of this Agreement.

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

(a) Within 30 days of the referral pursuant to paragraph (1), the Contracting Parties in dispute shall choose a sole arbitrator who may not be a national or citizen of a Contracting Party to the dispute. If, within 30 days of the receipt of the request for arbitration, the Contracting Parties are unable to agree on the appointment of a sole arbitrator, that appointment shall be made, in accordance with paragraph (2)(b) below, at the request of any party to the dispute;

(b) An appointment pursuant to paragraph (2)(a) above shall be made by the Secretary-General of the Permanent Court of International Arbitration (PCIA) within 30 days of the receipt of a request to do so. If he is prevented from

discharging this task the appointment shall be made by the First Secretary of the Bureau. If the latter, in turn, is prevented from discharging this task the appointment shall be made by the next most senior Deputy;

- (c) Appointments made in accordance with paragraphs (2)(a) and (2)(b) above shall have regard to the qualifications and experience, particularly in matters covered by this Agreement and by the GATT and Related Instruments, of the arbitrator to be appointed;
- (d) In the absence of an agreement between the Contracting Parties to the dispute to the contrary, the arbitration rules of the United Nation Commission on International Trade Law (UNCITRAL) shall apply, except to the extent modified by the Contracting Parties to the dispute or by the arbitrator;
- (e) The decisions of the arbitrator under this Article shall be taken within 60 days of this appointment in accordance with this Agreement and international law and shall take account of the desirability of an orderly and timely resolution of the dispute;
- (f) The arbitrator's award shall be final and binding upon the Contracting Parties to the dispute;
- (g) The expenses of the arbitrator, including his remuneration, shall be borne in equal shares by the Contracting Parties to the dispute. The arbitrator may, however, at his discretion direct that a higher proportion of the costs be paid by one of the Contracting Parties to the dispute;
- (h) Unless the Contracting Parties to the dispute agree otherwise, the arbitrator shall sit in the Hague, and will use the premises and facilities of the Permanent Court of Arbitration;

- (i) A copy of the award shall be deposited with the Secretariat who shall make it generally available.

- (3) Neither Contracting Party shall initiate or continue dispute settlement proceedings under the GATT or a GATT Related Instruments or under Article 35, Annex D of this Agreement pending the results of arbitration pursuant to this Article.

PART VI

TRANSITIONAL

ARTICLE 35

INTERIM PROVISIONS ON TRADE RELATED MATTERS

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

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

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

ARTICLE 36

TRANSITIONAL ARRANGEMENTS

- (1) In recognition of the need for time to adapt to the requirements of a market economy, Contracting Parties other than Member States of the Organisation for Economic Co-operation and Development may suspend until a date not later than 1 January 1998 full compliance with its obligations under any of the following provisions of this Agreement, subject to the conditions in paragraphs (2) to (4) of this Article:

Article 6

Article 7, paragraphs (2) and (5)

Article 8, paragraphs (1) and (3)

Article 10, paragraphs (1) and (2)

Article 13, paragraphs (2), (3-final 2 lines only), (7) and (11)

Article 22, sub-paragraphs (b) and (i)

Article 24, paragraphs (2) and (3)

- (2) The applicable provisions, the stages towards full implementation of each, the measures to be taken and the date or, exceptionally, contingent event, by which each stage shall be completed and measure taken are listed for each Contracting Party claiming transitional arrangements in Annex T to this Agreement. Each such Contracting Party shall take the measures listed by the date set out in that Annex.
- (3) The Charter Conference acting by consensus may authorise a Contracting Party to delay implementation of provisions listed in paragraph (1) which have not been listed in Annex T for that Contracting Party. Annex T will be amended accordingly. The Charter Conference, acting according to Article 41(4), may defer by up to a year at a time any of the dates set out in Annex T.
[DL]
- (4) A Contracting Party which has invoked transitional arrangements shall notify the Secretariat:
- (a) of the need for technical assistance to facilitate completion of the stages set out in Annex T as necessary for the full implementation of this Agreement as well as to promote other necessary market oriented reforms and modernisation of its energy sector;
- (b) of the implementation of any measures listed in its Annex T;
[DL]
- (c) of any application to the Charter Conference to list further provisions in its Annex T or to extend the timetable for achieving compliance in respect of any particular stage towards full implementation as set out in Annex T.
- (5) Contracting Parties which are members of the Organisation for Economic Co-operation and Development shall give full consideration to providing through bilateral or multilateral arrangements technical assistance in whatever form they consider most effective to respond to the needs notified under paragraph (4)(a) of this Article.

(6) The Secretariat shall:

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

(b) circulate and actively promote, relying where appropriate on arrangements in other international organisations the matching of needs for and offers of technical assistance referred to in paragraphs (4)(a) and (5);

(c) circulate to all Contracting Parties at the end of each six month period a summary of any notifications made under paragraph (4)(b) above and of any applications under paragraph (4)(c) above.

(7) The Charter Conference shall regularly review [DL] the progress by Contracting Parties towards implementation of the provisions of this Article in accordance with Article 39(3) [DL] and the matching of needs and offers of technical assistance referred to in paragraphs (4)(a) and (5).

WG II Chairman's note

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

PART VII

STRUCTURAL AND INSTITUTIONAL

ARTICLE 38

PROTOCOLS

- (1) The Charter Conference may authorise the negotiation of a number of Protocols in order to pursue the objectives and principles of the Charter.
- (2) Any Signatory to this Agreement may participate in such negotiation. A Protocol shall apply only to the Contracting Parties which consent to be bound by it.
- (3) A State or Regional Economic Integration Organisation 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 Agreement.
- (4) Subject to paragraph (3) above, final provisions applying to a Protocol shall be defined in that Protocol.

ARTICLE 39

CHARTER CONFERENCE

- (1) The Contracting Parties shall meet periodically in a Conference [DL] (hereinafter referred to as "the Charter Conference") at which each Contracting Party shall be entitled to have one representative. The first meeting of the provisional Charter Conference shall be convened by the provisional Secretariat designated on an interim basis under Article 40(5), not later than ninety days after the closing date for signature of this Agreement as specified in Article 43. Subsequent ordinary meetings shall be held at intervals determined by the Charter Conference.
- (2) Extraordinary meetings of the Charter Conference may be held at times other than those referred to in paragraph (1) as may be determined by the Charter Conference, or at the written request of any Contracting Party, provided that, within six weeks of the request being communicated to them by the Secretariat, it is supported by at least one-third of the Contracting Parties.
- (3) The Charter Conference shall:
 - (a) carry out the duties assigned it by this Agreement and Protocols;
 - (b) keep under review and facilitate the implementation of the principles of the Charter and of the provisions of this Agreement and the Protocols;
 - (c) facilitate in accordance with this Agreement and Protocols the co-ordination of appropriate general measures to carry out the principles of the Charter;
 - (d) consider and adopt programmes of work to be carried out by the Secretariat;

- (e) consider and approve the annual accounts and budget of the Secretariat;
 - (f) consider and approve or adopt the terms of any headquarters or other agreement, including privileges and immunities considered necessary for the Charter Conference and the Secretariat;
 - (g) encourage cooperative efforts aimed at facilitating and promoting market oriented reforms and modernisation of energy sectors in those countries of Central and Eastern Europe and the Former Soviet Union undergoing economic transition;
 - (h) authorise negotiation of, approve the terms of reference of such negotiation and consider and adopt the text of Protocols;
 - (i) authorise the negotiation of and consider and approve or adopt Association Agreements;
 - (j) consider and adopt texts of amendments to this Agreement;
 - (k) appoint the Secretary General and take all decisions necessary for the establishment and functioning of the Secretariat including the structure, staff levels and standard terms of employment of officials and employees.
- (4) In the performance of its duties, the Charter Conference, through the Secretariat, shall cooperate with and make as full a use as possible, consistently with economy and efficiency, on the services and programmes of other institutions and organisations with established competence in matters related to the objectives of this Agreement.
- (5) The Charter Conference may establish such subsidiary bodies as it considers appropriate for the performance of its duties.
- (6) The Charter Conference shall consider and adopt rules of procedure and financial rules.

- (7) In 1999 and thereafter at intervals (of not more than 5 years) to be determined by the Charter Conference, the Charter Conference shall thoroughly review the functions provided for in this Agreement in the light of the extent to which the provisions of this Agreement and Protocols have been implemented. At the conclusion of [DL] each review the Charter Conference may amend or abolish the functions specified in paragraph (3) and may discharge the Secretariat.
-

WG II Chairman's note

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

ARTICLE 40

SECRETARIAT

- (1) The Charter Conference shall have a Secretariat which shall be composed of a Secretary General and such staff as are the minimum consistent with the efficient performance of its duties. [DL]
- (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 under this Agreement the Secretariat shall be responsible to and report to the Charter Conference.
- (4) The Secretariat shall provide the Charter Conference with all necessary assistance for the performance of its duties and shall carry out the functions assigned to it in this Agreement or in any Protocol and any other functions assigned to it by the Charter Conference.

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

ARTICLE 41

VOTING

- (1) Consensus shall be required for decisions by the Charter Conference to :

- (a) adopt amendments to this Agreement other than amendments to Articles 39 and 40;

[DL]

- (b) approve accessions to this Agreement under Article 46; and

- (c) authorize the negotiation of and approve or adopt the text of Association Agreements.

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

- (2) Decisions on budgetary matters referred to in Article 39(3)(e) and on [DL] adjustments to Annex [B] 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 simple majority of the Contracting Parties.

- (4) Except in cases specified in paragraphs (1)(a) to (c), (2) and (3) and as otherwise specified in this Agreement, decisions provided for in this Agreement shall be taken by a three fourths majority of the Contracting Parties present and voting at the meeting of the Charter Conference at which such matters fall to be decided. For purposes of this paragraph, "Contracting Parties present and voting" means Contracting Parties present and casting affirmative or negative votes, provided that the Charter Conference may decide upon rules of procedure to enable such decisions to be taken by Contracting Parties by correspondence.

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

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

ARTICLE 42

FUNDING PRINCIPLES

- (1) Each Contracting Party shall bear its own costs of representation at meetings of the Charter Conference and any subsidiary bodies.
- (2) The cost of meetings of the Charter Conference and any subsidiary bodies shall be regarded as a cost of the Secretariat.
- (3) The costs of the Secretariat shall be met by the Contracting Parties by assessed contributions payable in the proportions specified in Annex [B], which may be [DL] adjusted from time to time [DL] in accordance with Article 41(2).
- (4) Each Protocol may contain provisions to assure that any costs of the Secretariat arising from a Protocol are borne by the Parties thereto.
- (5) The Charter Conference may accept additional, voluntary, contributions from one or more Contracting Parties or from other sources. Costs met from such contributions shall not be considered costs of the Secretariat for the purposes of paragraph (3).

PART VIII

FINAL PROVISIONS

ARTICLE 43

SIGNATURE

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

ARTICLE 44

RATIFICATION, ACCEPTANCE OR APPROVAL

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

ARTICLE 45

APPLICATION TO OTHER TERRITORIES

- (1) Any State or Regional Economic Integration Organization may at the time of signature, ratification, acceptance, approval or accession declare that the Agreement shall extend to all the other territories for the international relations of which it is responsible, or to one or more of them. Such declaration shall take effect at the time the Agreement enters into force for that Contracting Party.
- (2) Any Contracting Party may at a later date, by a declaration addressed to the Depositary, extend the application of this Agreement to other territory specified in the declaration. In

respect of such territory the Agreement shall enter into force on the ninetieth day following the receipt by the Depository 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 Depository. 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 Depository.

ARTICLE 46

ACCESSION

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

ARTICLE 47

AMENDMENT

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

- (4) Ratification, acceptance or approval of amendments to this Agreement shall be notified to the Depositary in writing. Amendments shall enter into force between Contracting Parties having ratified, accepted or approved them on the ninetieth day after the receipt by the Depositary of notification of their ratification, acceptance or approval by at least three-fourths of the Contracting Parties. Thereafter the amendments shall enter into force for any other Contracting Party on the ninetieth day after that Contracting Party deposits its instrument of ratification, acceptance or approval of the amendments.
-

WG II Chairman's note

The Legal Sub-Group will be invited to draft a lighter adjustment procedure for Annex B.

ARTICLE 48

ASSOCIATION AGREEMENTS

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

ARTICLE 49

ENTRY INTO FORCE

- (1) This Agreement shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance or approval thereof.
- (2) For each State or Regional Economic Integration Organisation which ratifies, accepts or approves this Agreement or accedes thereto after the deposit of the thirtieth instrument of ratification, acceptance or approval [DL], it shall enter into force on the ninetieth day after the date of deposit by such State or Regional Economic Integration Organisation of its instrument of ratification, acceptance, approval or accession.
- (3) For the purposes of paragraph (1) above, any instrument deposited by a Regional Economic Integration Organisation shall not be counted as additional to those deposited by member States of such organisation.

ARTICLE 50

PROVISIONAL APPLICATION

- (1) The Signatories agree to apply this Agreement and any amendments thereto provisionally following signature, to the extent that such provisional application is not inconsistent with their laws or constitutional requirements pending its entry into force in accordance with Article 47 or 49.
- (2) Any Signatory may terminate its provisional application of this Agreement. Termination of provisional application for any Signatory shall take effect upon the expiration of one year from the day on which such signatory's written notice of its intention not to become a party to this Agreement is received by the Depositary.

- (3) Notwithstanding that a Signatory terminates its provisional application of this Agreement, Article 1 and Parts III and V of this Agreement shall apply, in accordance with paragraph (1), to any Investment made in the Domain of that Signatory by Investors of other Contracting Parties or in the Domains of other Contracting Parties by Investors of that Contracting Party prior to the effective date of termination of provisional application for a period of [twenty years] from such date.

ARTICLE 51

RESERVATIONS

No reservations may be made to this Agreement. [DL]

ARTICLE 52

WITHDRAWAL

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

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

ARTICLE 53

DEPOSITARY

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

ARTICLE 54

AUTHENTIC TEXTS

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

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

WG II Chairman's note

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

ANNEX A

EXISTING BARRIERS TO NATIONAL TREATMENT

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

Reference is made to document 8/93, REB-5 of 2 February 1993.

ANNEX B

FORMULA FOR ALLOCATING CHARTER COSTS

To be elaborated at a later stage.

ANNEX G

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

a) THE GATT

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

XXX Amendments

XXXI Withdrawal

XXXIII Accessions

XXXVI-XXXVIII Trade and Development

Appendix H

All ad articles in Appendix I related to above GATT Articles

Agreement on Government Procurement

Arrangement Regarding Bovine Meat

International Dairy Arrangement

The Multifiber Arrangement

Agreement on Trade in Civil Aircraft

Decision on Differential and More Favourable Treatment,

Reciprocity and Fuller Participation of Developing Countries

Decision on Safeguard Action for Development Purposes

Understandings regarding notification, consultation, dispute settlement and surveillance.

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

Preamble (tirets 1, 8, 9)

1(3) General Provision

2.6.4 (Preparation, Adoption and Application of Technical Regulations and Standards by Central Government Bodies)

[DL] 10.6 Information about Technical Regulations, Standards and Certification Systems

11 Technical Assistance

12 Developing Countries

13 Committee on Technical Barriers to Trade

14 Consultation and Dispute Settlement

15 Final Provisions other than 15(5) and 15(13)

Annex 2 Technical Expert Groups

Annex 3 Panels

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

[DL]

- 10 Export Subsidies on Certain Primary Products
- 12 Consultations
- 13 Conciliation, Dispute Settlement and Authorised
Countermeasures
- 14 Developing Countries
- 16 Committee on Subsidies and Countervailing Measures
- 17 Conciliation
- 18 Dispute Settlement
- 19(2) Acceptance and Accession

[DL]

- 19(4) Entry into Force
- 19(6) Review by Committee
- 19(7) Amendments
- 19(8) Withdrawal

[DL]

- 19(11) Secretariat
- 19(12) Deposit
- 19(13) Registration

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

1.2(b)(iv) Transaction Value

- 14 (second sentence) Application of Annexes
- 18 Committee on Customs Valuation
- 19 Consultation
- 20 Dispute Settlement
- 21 Developing Countries
- 22 Acceptance and Accession

[DL]

- 24 Entry into Force
- 26 Review
- 27 Amendment
- 28 Withdrawal

29 Secretariat Services
30 Depositary
31 Registration
Annex II
Annex III
Protocol to the Agreement (except I.7 and I.8; with necessary
conforming introductory language)

e) THE AGREEMENT ON IMPORT LICENSING PROCEDURES

2(2) footnote 3
4
5 except paragraphs (2) and (8)

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

13 Developing Countries
14 Committee on Anti-Dumping Practices
15 Consultation, Conciliation and Dispute Settlement
16 Final Provisions, except paragraphs (1), (3), (10)

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

4 to 13 inclusive

[DL]

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

- i) governmental assistance to economic development and the
treatment of developing countries;
- ii) the establishment or operation of specialist committee
and other subsidiary institutions;

- iii) reconciliation and dispute resolution;
 - iv) matters which have no relevance to trade in Energy Materials and Products.
- i) ALL FINAL PROVISIONS OTHER THAN IN THE GATT AND THE TOKYO ROUND AGREEMENTS
- j) ALL AGREEMENTS, ARRANGEMENTS, DECISIONS, UNDERSTANDINGS OR OTHER JOINT ACTION PURSUANT TO THE PROVISIONS LISTED IN (a) to (i) ABOVE.
2. So long as one or more Contracting Party is not a Contracting Party to an instrument related to GATT, where a provision in such and instrument, requires matters to be notified to or through the GATT, the GATT Secretariat or a Committee, such matters shall be notified in English, French, German, Italian, Russian or Spanish to or through the Secretariat established by Article 40 of this Agreement or such other body subsequently appointed by the Charter Conference.
3. Each Contracting Party shall ensure the conformity of its laws, regulations and administrative procedures with the provisions of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII, the Agreement on the Implementation of Article VII, the Agreement on Import Licensing Procedures, and the Agreement on Implementation of Article VI as those Agreements apply for that Contracting Party.

ANNEX D

INTERIM PROVISIONS FOR TRADE DISPUTE SETTLEMENT

- (1) (a) In their relations with one another, Contracting Parties shall make every effort through co-operation and consultations to arrive at a mutually satisfactory resolution of any difference of views about existing measures that might materially affect compliance with the provisions applicable to trade under Article 35.

- (b) A Contracting Party may make a written request for consultations with any other Contracting Party regarding any existing measure of the other Contracting Party that it considers might affect materially compliance with provisions applicable to trade under Article 35. A Contracting Party that requests consultations shall to the fullest extent possible indicate the measure complained of and specify the provisions of Article 35 and of the GATT and Related Instruments that it considers relevant. Requests to consult pursuant to this paragraph shall be notified to the Secretariat, who shall periodically inform the Contracting Parties of pending consultations that have been notified.

- (c) A Contracting Party shall treat any confidential or proprietary information identified as such and contained in or received in response to a written request, or received in the course of consultations, in the same manner that it is treated by the Contracting Party providing the information.

(d) In seeking to resolve matters that are considered by a Contracting Party to affect compliance with Article 35 as between itself and another Contracting Party, the two Contracting Parties participating in consultations or other dispute settlement shall make every effort to avoid a resolution that adversely affects the trade of any other Contracting Party.

(2) (a) If the Contracting Parties have not within 60 days from the request for consultation under paragraph (1)(b) above resolved their dispute or agreed to resolve it by conciliation, mediation, arbitration or other method, either Contracting Party may deliver to the Secretariat a written request for the establishment of a panel in accordance with paragraphs (2)(b) to (f) below. In its request it shall state the substance of the dispute and indicate which provisions of Article 35 and of the GATT and Related Instruments are considered relevant. The Secretariat shall promptly deliver copies of the request to all Contracting Parties.

(b) The interests of other Contracting Parties shall be taken into account during the resolution of a dispute. Any third Contracting Party having a substantial interest in a matter shall have the right to be heard by the panel and to make written submissions to the panel, provided that both the disputing Contracting Parties and the Secretariat are notified in writing no later than the date of establishment of the panel, as determined in accordance with paragraph (2)(c) below.

(c) A panel shall be deemed to be established 45 days after the date of receipt of the written request of a Contracting Party by the Secretariat pursuant to paragraph (2)(a) above.

- (d) A panel shall be composed of three members who shall be chosen by the Secretary-General from the roster described in paragraph (7) below. Except with the agreement of both of the disputing Contracting Parties, the members of a panel would not be citizens of countries which are parties to the dispute or citizens of countries of the Regional Economic Integration Organisations which are parties to the dispute, or citizens of countries which have been sought to be third parties under paragraph (2)(b) or citizens of countries of the Regional Economic Integration Organisations which have sought to be third parties.
 - (e) The disputing Contracting Parties shall respond within ten working days to the nominations of panel members and would not oppose nominations except for compelling reasons.
 - (f) Panel members would serve in their individual capacities and not as government representatives, nor as representatives of any organisation. Governments would therefore not give them instructions nor seek to influence them as individuals with regard to matters before a panel. Panel members should be selected with a view to ensuring the independence of members, a sufficiently diverse background and a wide spectrum of experience.
 - (g) The Secretariat shall promptly notify all Contracting Parties that a panel has been composed.
- (3) (a) The Charter Conference shall adopt rules of procedure for panel proceedings consistent with this Annex. Rules of procedure shall be as close as possible to those of GATT. The panel shall also have the right to adopt additional rules of procedure not inconsistent with the rules of procedure adopted by the Charter Conference or with this Annex. In a proceeding before a panel each disputing Contracting Party and third Contracting Parties which have notified their interest in accordance with paragraph (2)(b), shall have the right to at least one hearing before the panel and to provide

written submission. Disputing Contracting Parties shall also have the right to provide written rebuttal argument. At the request of third Contracting Parties which have notified their interest in accordance with paragraph (2)(b), the panel may grant them access to the written submissions to the panel by those disputing Contracting Parties which have agreed to the disclosure of their respective submissions to the third Contracting Parties.

The proceedings of the panel shall be confidential. A panel shall make an objective assessment of the matters before it, including the facts of the dispute and the compliance of measures and conduct with the provisions applicable under Article 35. In exercising its functions, a panel shall consult with the disputing Contracting Parties and give them adequate opportunity to arrive at a mutually satisfactory solution. Unless otherwise agreed by the disputing Contracting Parties, the panel shall base its decision on the arguments and submissions of the disputing Contracting Parties. Panels shall be guided by the interpretations given to the GATT and Related Instruments within the GATT and by relevant bodies within the framework of GATT.

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

- (b) A panel shall [DL] determine its [DL] jurisdiction: its decision shall be final and binding. Any objection by a disputing Contracting Party in the dispute resolution that a dispute is not within the jurisdiction of the panel shall be considered by the panel, which shall decide whether to deal with the objection as a preliminary question or to join it to the merits of the dispute.

- (c) In the event of two or more requests for establishment of a panel in relation to disputes that are substantively similar, the Secretary-General may with the consent of all the disputing Contracting Parties appoint a single panel.
- (4) (a) After having considered rebuttal arguments, a panel shall submit to the disputing Contracting Parties the descriptive sections of its draft written report, including a statement of the facts and a summary of the arguments made by the disputing Contracting Parties. The original disputing Contracting Parties shall be afforded an opportunity to submit written comments on the descriptive sections within a period set by the panel.

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

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

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

- (b) Where a panel concludes that a measure, introduced or maintained by, or other conduct of, a Contracting Party does not comply with a provision of Article 35 or with a provision of the GATT and Related Instruments that applies under Article 35, the panel may recommend in its final report that the Contracting Party alter or abandon the measure or conduct so as to be in compliance with that provision.
- (c) Panel reports shall be adopted by the Charter Conference. [DL]. In order to provide sufficient time for the Charter Conference to consider panel reports, a report shall not be considered for adoption by the Charter Conference until at least 30 days after it has been provided to all Contracting Parties by the Secretariat. Contracting Parties having objections to a panel report shall give written reasons for their objections to the Secretariat at least 10 days prior to the date on which the report is to be considered for adoption by the Charter Conference, and the Secretariat shall promptly provide them to all Contracting Parties. Participating Contracting Parties shall have the right to participate fully in the consideration of the panel report on that dispute by the Charter Conference, and their views shall be fully recorded.
- (d) In order to ensure effective resolution of disputes to the benefit of all Contracting Parties, prompt compliance with rulings and recommendations of a final panel report that has been adopted by the Charter Conference is essential. A Contracting Party which is subject to a ruling or recommendation of a final panel report that has been adopted by the Charter Conference shall inform the Charter Conference

of its intentions in respect to complying with such ruling or recommendation. If it is impracticable to comply immediately, the Contracting Party concerned shall explain to the Charter Conference why this is so and shall, in light of this explanation, have a reasonable period of time in which to so comply. The aim of dispute resolution is the modification or removal of inconsistent measures.

- (5) (a) Where a Contracting Party has failed within a reasonable period of time to comply with a ruling or recommendation of a final panel report that has been adopted by the Charter Conference, a Contracting Party to the dispute injured by such non-compliance may deliver to the noncomplying Contracting Party a written request that the noncomplying Contracting Party enter into negotiations with a view to agreeing upon mutually acceptable compensation. If so requested the noncomplying Contracting Party shall promptly enter into such negotiations.
- (b) If the noncomplying Contracting Party refuses to negotiate, or if the Contracting Parties have not reached agreement within 30 days after delivery of the request for negotiations, the injured Contracting Party may make a written request for authorisation of the Charter Conference to suspend obligations owed by it to the noncomplying Contracting Party under Article 35.
- (c) The Charter Conference, [DL], may authorise the injured Contracting Party to suspend obligations to the noncomplying Contracting Party which the injured Contracting Party considers equivalent in the circumstances.
- (d) The suspension of obligations shall be temporary and shall be applied only until such time as the measure found to be inconsistent with Article 35 has been removed, or the Contracting Party that must implement recommendations or rulings provides a mutually acceptable solution or a mutually satisfactory solution is reached.

- (6) (a) Before suspending such obligations the injured Contracting Party shall inform the noncomplying Contracting Party of the nature and level of its proposed suspension. If the noncomplying Contracting Party delivers to the Secretary-General a written objection to the level of suspension of obligations proposed by the injured Contracting Party, the objection shall be referred to arbitration as provided below in this paragraph, and the suspension of obligations shall be stayed until the arbitration has been completed and the determination of the arbitral panel has become final and binding in accordance with paragraph (6)(e) below.
- (b) The Secretary-General shall establish an arbitral panel in accordance with paragraphs (2)(d) to (f), though if practicable it shall be the same panel that made the ruling or recommendation referred to in paragraph (4)(d) above, to examine the level of obligations that the injured Contracting Party proposes to suspend. Unless the Charter Conference decides otherwise the rules of procedure for panel proceedings shall be adopted in accordance with paragraph (3)(a).
- (c) The arbitral panel shall determine whether the level of obligations proposed to be suspended by the injured Contracting Party is excessive in relation to the injury it experienced, and if so, to what extent. It shall not review the nature of the obligations suspended, except insofar as the nature of such obligations may be inseparable from the panel's determination with regard to the level of suspended obligations.
- (d) The arbitral panel shall deliver its written determination to the suspending and the noncomplying Contracting Parties and to the Secretariat within 60 days after the panel has been established or within such other period as may be agreed by the suspending and the noncomplying Contracting Parties. The Secretariat shall present the determination to the Charter

Conference at the earliest practicable opportunity, and no later than its next meeting following receipt of the determination.

- (e) The determination of the arbitral panel shall become final and binding 30 days after the date of its presentation to the Charter Conference, and any level of suspension of benefits allowed thereby may thereupon be put into effect by the injured Contracting Party in such manner as that Contracting Party considers equivalent in the circumstances, unless prior to the expiration of the 30 days period, the Charter Conference [DL] decides otherwise.
 - (f) In suspending any obligations to a noncomplying Contracting Party, an injured Contracting Party shall make every effort not to adversely affect the trade of any other Contracting Party.
- (7) Each Contracting Party may designate two individuals, who shall, in the case of Contracting Parties who are also contracting parties to the GATT, if they are willing and able to serve as panellists under this Article, be panellists currently nominated for the purpose of GATT dispute panels. The Secretary-General may also designate, with the approval of the Charter Conference, acting by consensus, not more than ten individuals, who are willing and able to serve as panellists for purposes of dispute resolution in accordance with paragraphs (2) to (4) above. The Charter Conference may in addition decide, acting by consensus, to designate for the same purposes, up to 20 individuals who serve on dispute settlement rosters of other international bodies, who are willing and able to serve as panellists. The names of all of the individuals so designated shall constitute the dispute settlement roster. Individuals shall be designated strictly on the basis of objectivity, reliability and sound judgement and, to the greatest extent possible, shall have expertise in international trade and energy matters, in particular as relates to provisions applicable under Article 35; they need not be citizens of the designating country. In fulfilling any function under this Annex, designees

shall not be affiliated with or take instructions from any Contracting Party. Designees shall serve for renewable terms of five years and until their successors have been designated. A designee whose term expires shall continue to fulfil any function for which that individual has been chosen under this Annex. In the case of death, resignation or incapacity of a designee, the Contracting Party or the Secretary General, whichever designated said designee, shall have the right to designate another individual to serve for the remainder of that designee's term, the designation by the Secretary-General being subject to approval of the Charter Conference, acting by consensus.

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

ANNEX T

LIST OF COUNTRIES' SPECIFIC TRANSITIONAL MEASURES

(In accordance with Article 36(2) on Articles of the Energy Charter Treaty specified in Article 36(1)).

MINISTERIAL DECLARATION

1. To Article 1(5)

Economic activity in the Energy Sector includes, for example:

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

Working Group III is invited urgently to consider whether there are other Economic Activities which are so closely related to improving energy efficiency as to justify attracting the protection afforded by the Energy Charter Treaty by their inclusion in this paragraph.

2. To Article 4

In an accompanying Ministerial declaration it will be stated that the Charter Conference will consider how to apply the ECT to energy related services after the negotiations in the Uruguay Round on services are concluded.

An accompanying Ministerial declaration will request that the Charter Conference address the matter of procurement after negotiations in the Uruguay Round are concluded.

3. To Article 7

Interpretative understandings:

The unilateral and concerted conduct referred to in paragraph (2) is to be defined by the Contracting Parties in accordance with their laws and may include exploitative abuses.

Enforcement action shall include any application of competition law by way of investigation, administrative action, or proceeding conducted by the competition authorities of a Party.

4. To Article 8

- Ministers recognise that the transit of Energy Materials and Products may require transport and port facilities other than those detailed in paragraphs (4), (6) and (7) and that the terms of access to and use of such facilities may unfairly impede trade and transit of Energy Materials and Products. They invite the Charter Conference to consider whether the provisions of paragraphs (1) and (3) of Article 8 are sufficient safeguard against such possible impediments or whether the provisions of paragraphs (4), (6) and (7) should be extended perhaps through Protocols on coal and other energy sectors to cover any other facilities dedicated to the transport of Energy Materials and Products if such extension can be achieved without prejudicial effects on the trade and transport of non-energy materials and products.

- The Contracting Parties declare that it is their common understanding that the provisions of the Basic Agreement do not oblige any Contracting Party to introduce mandatory Third Party Access.

5. To Article 13

Ministers or their representatives intend that the exceptions under Article 13 (3) to the obligations of Article 13 (2) should be in a form which facilitates review and is transparent and helpful to potential investors and other interested parties. To facilitate this:

- (i) The representatives of the Negotiating Parties have communicated to the Secretariat lists of exceptions in summary form. Those provided on behalf of Negotiating Parties which have requested transitional arrangements under Article 36 are wholly or in part provisional and subject to completion of their domestic legislative processes. Where possible such lists also contain statements of intention in relation to further liberalisation. The Conference is invited to review those lists within [1 month] and make any appropriate recommendations:

- (ii) Final lists of exceptions corresponding to their domestic legislation will be communicated to the Secretariat by those Negotiating Parties which requested a transitional period within [3 months]. Those lists also can be supplemented by statements of intention on further liberalisation together with the expected timetable. The Conference is invited to review those final lists within [4 months].

- (iii) Any negotiating Party may amend its list of exceptions at any time before or after the entry into force of this Agreement: Such amendments would of course be subject to the standstill obligations.

Ministers or their representatives invite the Conference to consider how best to present the summary lists of exceptions to facilitate review and make them transparent to investors and other interested parties.

6. To Article 27

In their mutual relations, Contracting Parties which are Members of the European Communities shall apply Community rules and shall not therefore apply the rules arising from this Agreement except insofar as there is no Community rule governing the particular subject concerned.

7. To Article 35(2), Annex G

Ministers request the Charter Conference to develop notification procedures under this provision which will ensure increased transparency while minimising administrative costs.

8. To Article 36

Contracting Parties seeking transitional arrangements are invited to notify provisional Annex Ts along with provisional notification of their needs for technical assistance to facilitate completion of the stages set out therein. The provisional Secretariat should collate such notifications and seek to match requests initially by 31 July 1993. The provisional Charter Conference is invited to arrange for discussion on those notifications such that full agreement can be reached on Annex T by 30 November 1993.

9. To Article 39

The accompanying Ministerial declaration would request the Secretary General to make immediate contact with other international bodies in order to discover the terms on which they might be willing to undertake tasks arising from the Basic Agreement and the Charter. The Secretary General might report back

to the Charter Conference at the meeting required under Article 39(1) not later than ninety days after the closing date of signature.

The accompanying Ministerial declaration would require the Charter Conference to adopt the annual budget before the beginning of the financial year and approve the annual accounts.

10. To Annex A and Annex T

In the event that, during the consideration of Annex A (referred to in Article 13(3)) and Annex T (referred to in Article 36(2)), it is considered that an amendment to the initialled text of the Energy Charter Treaty attached hereto is required, the provisional Charter Conference will meet to agree the texts of such amendments as soon as possible in order that such amendments may be incorporated into the text of the Energy Charter Treaty, which is to be opened for signature on [].

11. To Annex D

[DL] Ministerial declaration strongly to encourage GATT members to appoint the same panellists for the ECT roster.