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Destinataire:

Secrétariat de la Conférence sur la Charte de l'énergie,
Bruxelles

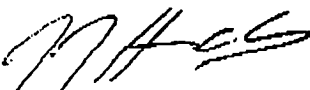
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Remarques:

En annexe, veuillez recevoir les propositions de la Délégation suisse pour les articles 1, 7, 23, 24, 27 de l'Accord de base.

Avec nos meilleures salutations.

Signature:


J.-J. Henchoz

Copie à :

Mission suisse auprès des CE, M. Ambühl

EUROPEAN ENERGY CHARTER CONFERENCE SECRETARIAT
DATE/N° : 16-3-92/288
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DELEGATION OF SWITZERLAND

12/3/1992

Basic Agreement for the European Energy Charter (Document 4/92, Annex 1 BA 6)

To the Secretariat of the European Energy Charter Conference

During the last meeting of WG II it was decided that delegations sent their proposals for amendments of the Basic Agreement to the Secretariat by March 13. Please find enclosed the proposals of the Swiss delegation concerning some definitions in Article 1, Article 7, Part IV, Articles 23 and 24 as well as Article 27.

Delegation of Switzerland

12/3/1992

Basic Agreement for the European Energy Charter (Document 4/92, Annex 1, BA 6)

Article 1, para (4), lit. (d)

Replace the text with the following one:

"(d) intellectual property, including undisclosed information, as well as goodwill and any other benefit or advantage attached to a business;"

Article 1, para (10)

This para is to be deleted.

Delegation of Switzerland

12/3/1992

Basic Agreement for the European Energy Charter (Document 4/92, Annex 1, BA 6)

Article 1, para (5)

Add after lit. (b) the following text as lit. (c), without deleting lit. (b):

- " (c) any corporations, companies, firms, enterprises, organisations and associations controlled by nationals of that Contracting Party or by corporations, companies, firms, enterprises, organisations and associations incorporated or constituted under the law in force in the territory of that Contracting Party."

Delegation of Switzerland

12/3/1992

Basic Agreement for the European Energy Charter (Document 4/92, Annex 1, BA 6)

Article 7 (Intellectual property)

In para (2), insert after "... protection equivalent to at least the minimum" the word "level".

In para (3), replace last sentence (starting with "In the case of Contracting Parties not party to the TRIPs Agreement...") with the following sentence:

"Contracting Parties who are not party to the TRIPs Agreement shall accord, in the field of intellectual property covered by this Article, a level of protection equivalent to the level provided for by the TRIPs Agreement where it provides for a higher minimum level of protection than that accorded under the Paris and Berne Conventions."

(Provisions on technical cooperation and transitional periods to be included in the Basic Agreement)

Delegation of Switzerland

12/3/1992

Basic Agreement for the European Energy Charter (Document 4/92, Annex 1, BA 6)

Article 18 (Expropriation)

In para (1) replace the sentence beginning with "Where that market value....." by the following wording:

"Where that market value cannot be readily ascertained, the value equivalent to the cost shall be determined in accordance with generally recognised principles of valuation considering the capital invested (historical cost of the investment) as well as the necessary depreciation and amortisations. Any capital already repatriated shall be deducted from the capital invested. This amount shall at least be equal to the replacement value."

Delegation of Switzerland

12/3/1992

Basic Agreement for the European Energy Charter (Document 4/92, Annex 1 BA 6)

Article 21 (Assignment of rights)

In para (1), lit (b) delete "...provided that where initial investment approval.....in the same way as the initial investment." and replace with the following new sentence which should be placed as a new section under para (1), lit. (b):

"Where rights and claims to an investment are acquired otherwise than under an indemnity or guarantee and where initial investment approval is required, the changed ownership of rights held by a foreign investor may, without prejudice to the principle of subrogation set forth in the previous section, be subject to an approval to be carried out without delay and in the same way as the initial approval by the Host Party."

Delegation of Switzerland

12/3/1992

Basic Agreement for the European Energy Charter (Document 4/92, Annex 1 BA 6)

Article 23 (Disputes between an Investor and a Contracting Party)

Replace the whole Article with the following one:

Article 23

Disputes between a Contracting Party and an investor of another Contracting Party

- (1) Without prejudice to Article 24 (disputes between Contracting Parties), disputes concerning obligations under Part IV of this Agreement between a Contracting Party and an investor of an other Contracting Party shall be settled through consultations upon a written request presented by any party to the dispute.
- (2) If these consultations do not result in a solution within three months from the date of the written request, the investor may submit the dispute, by means of a written notification,
 - (a) to the Secretariat, which shall attempt to reconcile the parties within a further three-month period, or
 - (b) directly to international arbitration.
- (3) If the investor refers the dispute to international arbitration, directly or after an unsuccessful attempt at conciliation made pursuant to paragraph (2) (a), the investor may choose to have recourse to:
 - (a) the International Centre for the Settlement of Investment Disputes (the "Center") (having regard to the provisions, where applicable, of the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington, D.C., on 15 March 1965 or the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings); or

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- (b) an international arbitrator or an ad hoc arbitral tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).
- (4) A legal person which has the nationality of one Contracting Party and which, at the time at which the dispute arises, is controlled by investors of another Contracting Party shall, for the purposes of Article 25 (2) (b) of the 1965 Convention referred to in paragraph 3(a), be treated as an investor of that other Contracting Party.
- (5) Each Contracting Party hereby gives its unconditional consent to the submission of disputes to international arbitration in accordance with the provisions of this Article.

Delegation of Switzerland

12/3/1992

Basic Agreement for the European Energy Charter (Document 4/92, Annex 1 BA 6)

Article 24 (Disputes between Contracting Parties)Replace the whole Article with the following one:**Article 24****Disputes between Contracting Parties**

(1)

- (a) If a dispute has arisen between Contracting Parties over the interpretation or application of this Agreement, and if that dispute has not been settled within [six] months, any party may submit it to the arbitration procedure provided for in this paragraph by a written notification addressed to the other party to the dispute.
- (b) Unless otherwise agreed by the parties to the dispute, the Arbitral Tribunal shall be constituted as follows:
 - (i) When making the notification referred to in paragraph (1) (a), the party instituting the proceedings shall appoint one member, who may be its national.
 - (ii) Within [30] days of the receipt of that notification, the other party to the dispute shall, in turn, appoint one member, who may be its national. If the appointment is not made within the time-limit prescribed, the party having instituted the proceedings may, within [30] days of the expiry of that time-limit, request that the appointment be made in accordance with clause (iv).
 - (iii) A third member, who may not be a national of a party to the dispute, shall then be appointed by agreement between the parties to the dispute. That member shall be the President of the Tribu-

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nal. If, within [six months] of the receipt of the notification referred to in paragraph (1) (a), the parties are unable to agree on the appointment of the third member, that appointment shall be made, in accordance with clause (iv), at the request of any party submitted within [30] days of the expiry of the [six]-month period provided for in the present clause.

- (iv) Appointments pursuant to clauses (ii) and (iii) shall be made by the President of the International Court of Justice within [30] days of the receipt of the request. If he is prevented from discharging this task or is a national of a party to the dispute, the appointments shall be made by the Vice-President. If the latter, in turn, is prevented from discharging this task or is a national of a party, the appointments shall be made by the most senior judge of the Court who is not a national of a party.
- (v) The Tribunal shall establish its own rules of procedure, unless otherwise agreed by the parties to the dispute, and shall take its decisions by a majority vote of its members.
- (vi) The arbitral award shall be final and binding upon the parties to the dispute.
- (vii) The expenses of the Tribunal, including the remuneration of its members, shall be borne in equal shares by the parties to the dispute.

- (2) If a dispute has arisen between Contracting Parties which are members of GATT or Parties to a GATT-related instrument, and if GATT or the GATT-related instrument is applicable, that dispute shall be settled according to the procedure set forth by GATT or the instrument in question.

Delegation of Switzerland

12/3/1992

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Article 27 (Exceptions)

Within the purview of Part IV (Investment promotion and protection) of this Agreement, exceptions regarding "human, animal or plant life or health, or the conservation of exhaustible resources" (in para (1) of Article 27) should not be retained.