



Energy Charter - legal framework for providing energy security

**Integrating Global Energy Markets –
Providing Energy Security
Ashgabat, 3-4 November 2011**

Zafar Samadov
Senior Expert
Energy Charter Secretariat



Issues

- **The Energy Charter**
 - Process
 - Treaty
- **The role of the Energy Charter**
- **Elements of the Energy Charter Treaty**
 - Binding obligations
 - Trade and transit
 - Investment
 - Dispute settlement
 - Soft obligations
 - PEEREA
- **Accession**



Basic Approach of the ECT

■ ARTICLE 2: PURPOSE OF THE TREATY

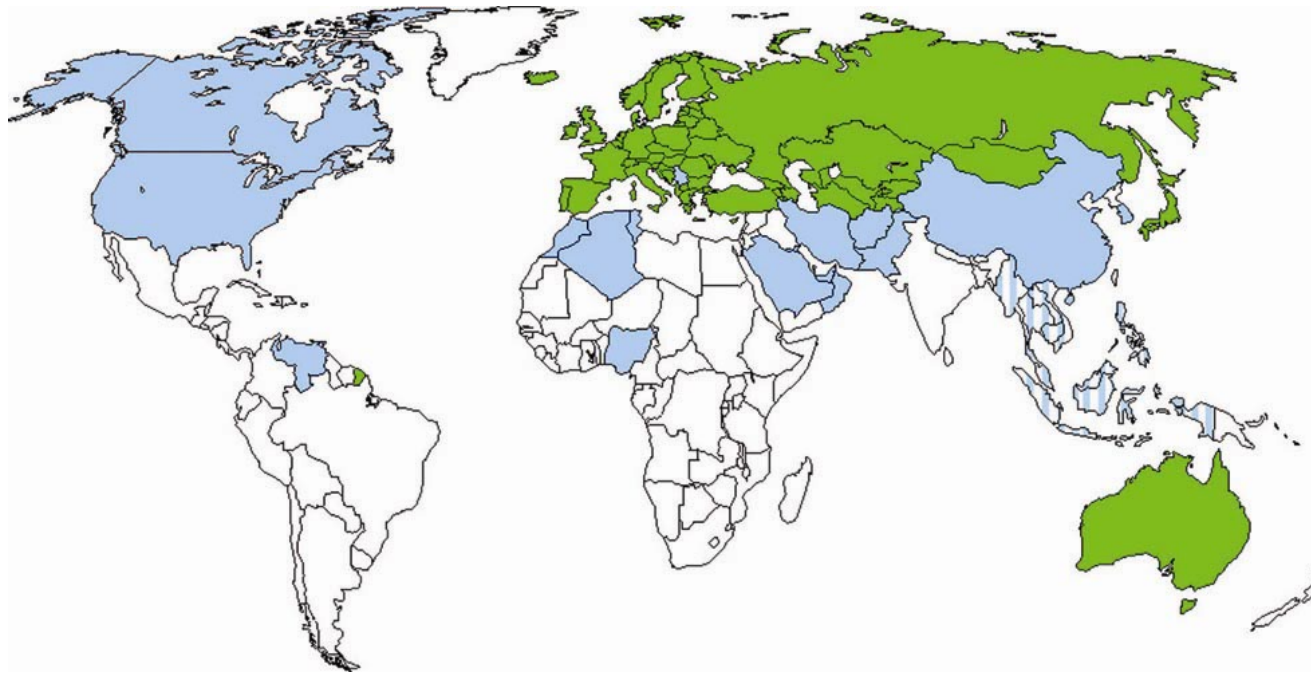
This Treaty establishes a legal framework in order to **promote long-term cooperation in the energy field, based on complementarities and mutual benefits**, in accordance with the objectives and principles of the Charter.

■ ARTICLE 3: INTERNATIONAL MARKETS

The Contracting Parties shall **work to promote access to international markets on commercial terms, and generally to develop an open and competitive market**, for Energy Materials and Products.



Energy Charter



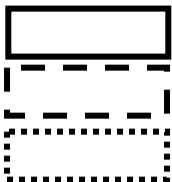
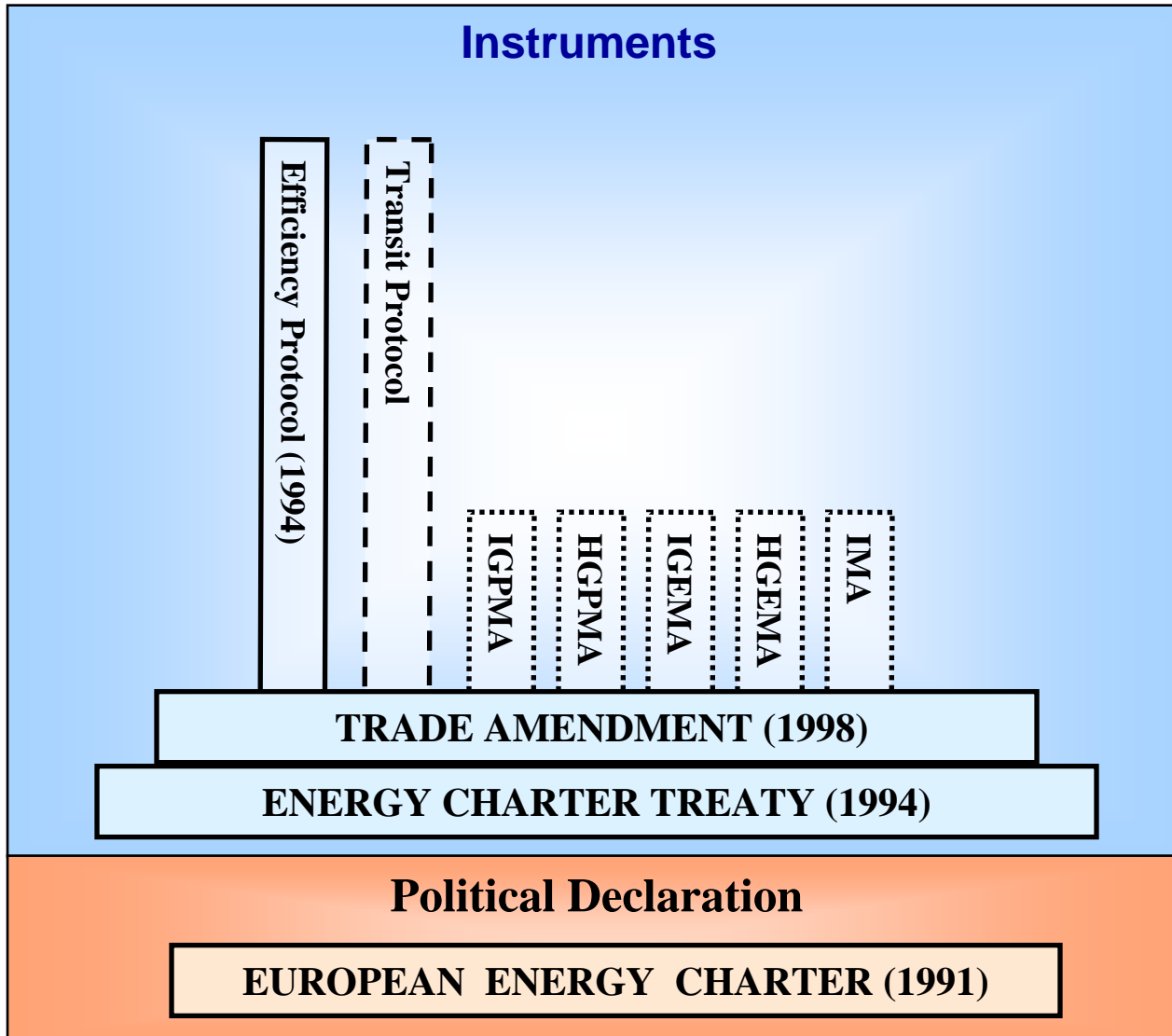
➤ **51 Signatory Countries (green) represent:**

- **Around 40% of global GDP**
- **Around 40% of global gas production**
- **Around 25% of global oil production**

What is the Energy Charter Process?



1. Energy Charter Treaty
 - Strengthen rule-of-law on energy issues
 - Reduce risk for energy investments and trade
 - Promote energy efficiency
2. Forum
 - Government, industry, other stakeholders
 - Discuss policies, strategies and instruments
3. Series of Activities
 - To negotiate additional provisions to the existing framework
 - To implement framework with the help of subsidiary working groups of the Energy Charter Conference and of the Industry Advisory Panel



- adopted and in force
- ongoing negotiations
- model agreements (MA)



The Tool Box of the Energy Charter Treaty

- Legally binding tools
 - Trade provisions
 - Transit provisions
 - Investment provisions
 - Based on enforceable dispute settlement
- Soft tools
 - Energy efficiency
 - Competition/investment climate
 - Technology transfer
- Supported by non-binding model agreements
 - Intergovernmental agreements
 - Host government agreements



ECT Key Provisions

- Art. 5/29 => Trade
- Art. 7 => Transit
- Art. 8 => Technology transfer
- Art 10-15 => Investment
- Art. 19 => Environment/energy efficiency
- Art. 18 => Sovereignty over natural resources
- Art. 19 => Environment/energy efficiency
- Art. 26-28 => Disputes settlement



What the ECT Does Not Do

- Impose or determine national energy policies
- Impose access to resources
- Impose privatisation
- Impose mandatory third party access
- Provide supranational regulation



The Role of the Energy Charter

- **Energy Charter**

- Members: Energy consumers, producer, transit countries
- Open to all countries
- Legally binding multilateral instruments with enforceable rules / minimum standards
- Protection of site specific investment
- Foster energy trade
- Forum / knowledge sharing for all countries along the energy chain / with different experience

- **IEF**

- Producer / consumer countries
- Global oil focus
- Statistics and forum for policy discussion on global oil

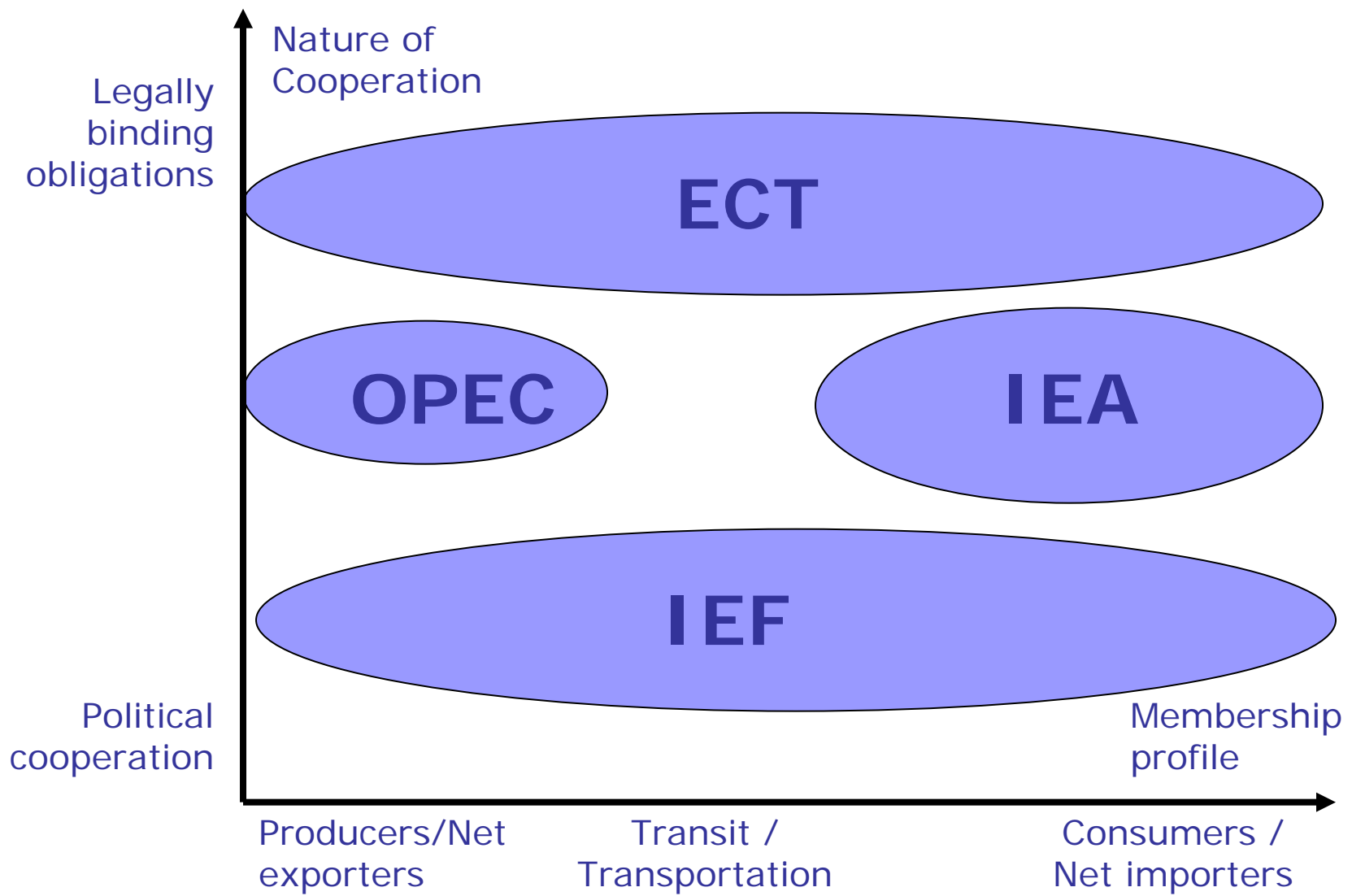
- **OPEC**

- Oil producer countries
- Output / Export quotas
- Statistics, analysis

- **IEA**

- OECD countries
- 90 days oil stocks
- Counter part to OPEC
- Statistics,
- Policy discussion /Analysis

Focus of International Energy Organisations





General Benefits of ECT

Energy Charter process:

- Knowledge sharing and cooperation on energy issues (sector reform, technology)

Energy Charter Treaty:

- ECT is an energy specific treaty, promoting long-term cooperation
- By implementing market principles, ECT creates an investor-friendly climate favourable to the flow of investments, energy and technologies
- ECT encourages co-operative efforts aimed at promoting market-oriented reforms of the energy sectors



Potential benefits of ECT

Potential interest

- Need for more FDI in energy sector
- Ensure investor confidence
- Interest in multinational cooperation on energy development, incl. energy efficiency, technology

Energy Charter

- Forum of knowledge sharing

Energy Charter Treaty

- Energy specific trade rules
- Peer review process on energy efficiency, investment climate
- Offers investor protection for in-and-outgoing investment



ECT Investment Protection

- **Strong Protection for Foreign Investment**
 - Binding NT/MFN obligation for post-establishment phase, elimination of QR, TRIMs (e.g. national content)
 - Best-endeavors to promote NT/MFN for pre-investment phase
 - Freedom of investment-related capital transfers
 - Protection of individual investment contracts
 - Freedom of employment of key personnel
- **Protection Against Political Risks**
 - Expropriation and nationalization
 - Prompt, effective and adequate compensation for any assets expropriated
 - Breach of individual investment contracts
 - Unjustified restrictions on the transfer of funds
- **Monitoring / Review Process**

Trade in Energy Under ECT



- Applies WTO rules by reference, to all trade of energy materials and products
- Applies MFN to energy trade – also between CPs - non-WTO Members
- National treatment once energy goods crossed border
- Elimination of quantitative restrictions (GATT XI)

Trade Amendment:

- Possibility to move to binding tariffs regime



ECT Transit Provisions

- Art. 7 of ECT
- Freedom of energy transit
- Non-discrimination as to origin, destination or ownership
- Transit treated no less favourably than energy originating in or destined for transit country itself
- Non-interruption of flow (incl. dispute)
- Obligation not to obstruct the establishment of new capacity
- No mandatory third party access
- Negotiations of Transit Protocol

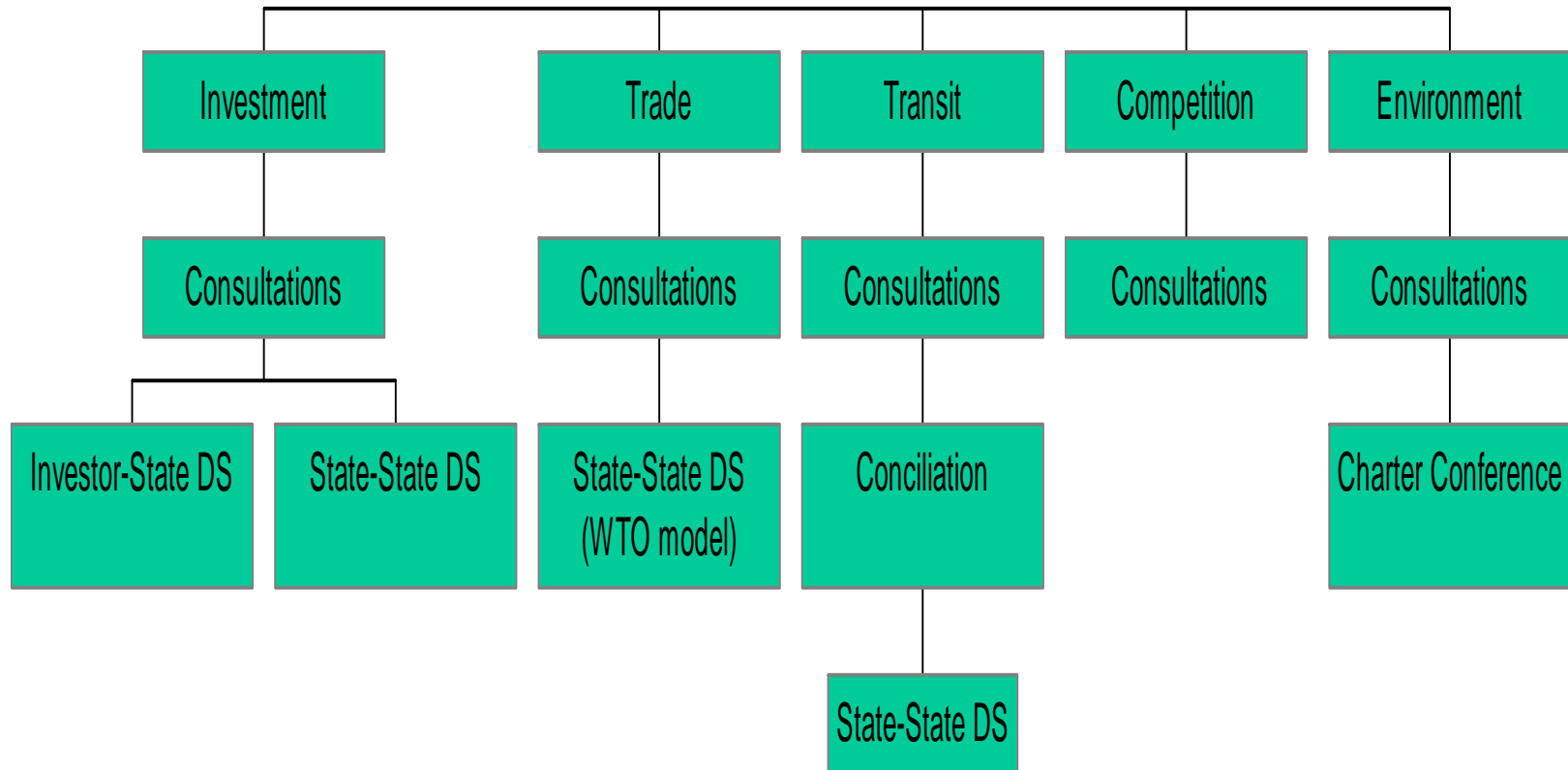


ECT and Dispute Settlement

- Covers a broad range of disputes in the energy sector (investment, trade, transit, competition, environment);
- Investor-state (Art. 26) and state-state (Art.27) disputes;
- Reference to:
 - Existing dispute resolution for investment and trade
 - New forms of dispute resolution for transit, competition and environment.
- Large place given to amicable settlement. Failing which:
 - International arbitration is an option under Article 26.
 - Countries committed to ensure enforcement and carry out arbitration decisions without delay.
- First practical cases of ECT dispute settlement



Dispute Resolution under the ECT





PEEREA Parties' Obligations

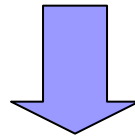
- Formulate and implement EE strategies and policies
- Create appropriate legal, regulatory and institutional frameworks
- Develop, implement, and update EE programmes
- Encourage new approaches of financing EE
- Co-operate internationally and assist each other

ECT Accession Procedure



Preliminary stage:

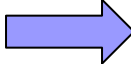
Signature of the Energy Charter political
declaration



**Observer to Energy Charter
Conference**



ECT Accession Procedure

- **Stage 1:**
Consultation process including submission of the three reports to the Energy Charter Conference on:
 - Harmonisation of laws and regulations with the ECT
 - Investment climate and exceptions to national treatment
 - Energy efficiency
- **Stage 2:** The “candidate country” on the basis of these reports submits a request to the Energy Charter Conference for accession.
- **Stage 3:** Energy Charter Conference’s decision
- **Stage 4:** National ratification  **Member State**



Thank you for your attention

zafar.samadov@encharter.org



Energy Charter Secretariat

www.encharter.org