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.
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
Political Declaration

EUROPEAN ENERGY CHARTER (1991)

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

TRADE AMENDMENT (1998)

ENERGY CHARTER TREATY (1994)

Efficiency Protocol (1994)

Transit Protocol

IGPMA
HGPMA
IGEMA
HGEMA
IMA

Instruments

- 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

- **IEA**
  - Legally binding obligations
  - Producers/Net exporters

- **ECT**
  - Nature of cooperation
  - Transit / Transportation

- **IEF**
  - Political cooperation
  - Consumers / Net importers

- **OPEC**
  - Membership profile
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

- Investment
  - Consultations
    - Investor-State DS
    - State-State DS
- Trade
  - Consultations
    - State-State DS (WTO model)
- Transit
  - Consultations
- Competition
  - Consultations
- Environment
  - Consultations
  - Charter Conference
- Conciliation
  - State-State DS
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