



24th World Gas Conference
ARGENTINA | 2009
5-9 October

The Global Energy Challenge:
Reviewing the Strategies
for Natural Gas

Energy Charter Treaty: To Facilitate Cross-Border Gas Flow and Pipeline Interconnections

Ralf Dickel
Director for Trade and Transit
Energy Charter Secretariat

IGU, Buenos Aires,
Session C.2 on 8 October 2009
Developing Gas Markets in South America



24th World Gas Conference
ARGENTINA | 2009
5-9 October

The Global Energy Challenge:
Reviewing the Strategies
for Natural Gas

Challenges of Cross-Border Gas Trade

- How to deal with resource rent
- Fixed infrastructure tying players together
- Long-term investment along the chain
- Cross-border: different jurisdictions involved
- Danger of obsolescent bargaining
- Project competition

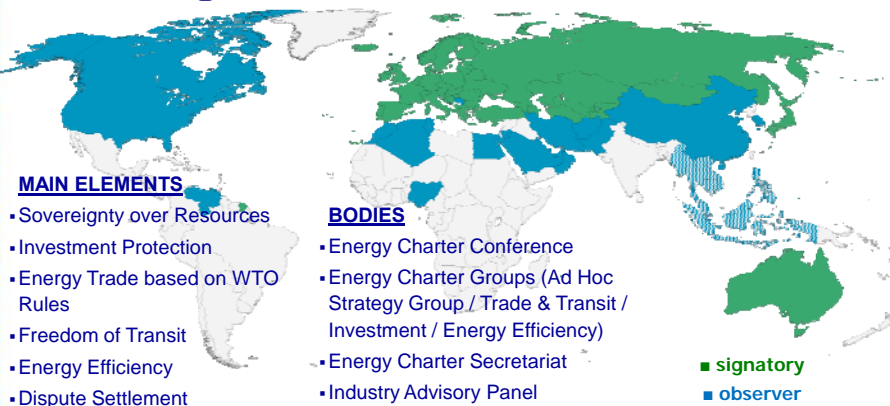


Advantages of the ECT as a Multilateral Framework

- As multilateral investment treaty:
 - Replaces $n \times (n-1) / 2$ bilateral investment treaties
 - Sets a (minimum) transparent protection standard
 - Reflects the global character of financing and procurement
 - Symmetric upstream / downstream protection
- For trade:
specifying WTO for energy trade by fixed infrastructure
- For transit:
beyond GATT V addressing the specificity of transit by fixed infrastructure
- Transparency and level playing field for competing projects
- Joint adaptation of ECT to match new developments



The Energy Charter Treaty 1994: Signature 1998: In Force





What the ECT Does **not** Do

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



ECT Art 18: Sovereignty over Energy Resources

ECT Article 18 (1)

“The Contracting Parties recognise state sovereignty and sovereign rights over energy resources...”

ECT Article 18 (2)

“... the Treaty shall in no way prejudice the rules in Contracting Parties governing the system of property ownership of energy resources.”

ECT Article 18 (3)

“Each state continues to hold in particular the rights to decide the geographical areas ... to be made available for exploration and development of its energy resources, the optimization 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 ...”



ECT Investment Protection (Part III)

- **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



Trade in Energy Under ECT (Art 29)

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

Trade Amendment:

- Possibility of inclusion of energy-related equipment in the ECT
- Possibility to move to binding tariffs regime



ECT Article 7 on Transit

- Facilitation of transit based on non-discriminatory and transparent rules
- Non-discrimination as to origin, destination, ownership or pricing
- Cooperation in:
 - modernization, development, and operation of transit facilities
 - mitigating the effects of interruptions
- No obstacles to the creation of new capacity
- Security of established transit flows
- Conciliation procedure for transit disputes
 - Non-interruption of transit flows until dispute is settled



Draft Transit Protocol

Further Elaborate and Detail ECT Article 7

- Basic text agreed at the end of 2002*
- Considerable progress with respect to:
 - Definition for available capacity
 - Principles of transit tariffication
 - Detailed provisions for new capacity creation
- Result of multilateral consultations in 2008-2009 on remaining open issues
 - Major progress on:
 - Congestion management, and
 - Avoidance of mismatch between the duration of supply and transit contracts

* See Document CC251 on the Energy Charter website (www.encharter.org)



24th World Gas Conference
ARGENTINA | 2009
5-9 October

The Global Energy Challenge:
Reviewing the Strategies
for Natural Gas

Open to New Developments / New Participants / Forum for Transparency

- Regular review every 5 years (art 34(7))
- Possibility to
 - Amend the treaty (Art 42)
 - Negotiate new protocols and declarations (Art 33)
- Accession possible for all countries accepted by the EC Conference subscribing to the ECT (Art 41)
- Possibility to conclude association agreements (Art 43)
- Participation as an observer
- Forum for transparency and knowledge sharing for new and existing cross-border gas pipeline projects



24th World Gas Conference
ARGENTINA | 2009
5-9 October

The Global Energy Challenge:
Reviewing the Strategies
for Natural Gas

Thank you for your attention!

www.encharter.org