

# 21998A0912(01)

## **Final Act of the International Conference and Decision by the Energy Charter Conference in respect of the amendment to the trade-related provisions of the Energy Charter Treaty - Joint Declarations - Annex I: Amendment to the Trade-Related Provisions of the Energy Charter Treaty - Annex II: Decisions in connection with the Adoption of the Amendment to the Trade-Related Provisions of the Energy Charter Treaty**

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FINAL ACT OF THE INTERNATIONAL CONFERENCE AND DECISION BY THE ENERGY CHARTER CONFERENCE IN RESPECT OF THE AMENDMENT TO THE TRADE-RELATED PROVISIONS OF THE ENERGY CHARTER TREATY

FINAL ACT OF THE INTERNATIONAL CONFERENCE AND DECISION OF THE ENERGY CHARTER CONFERENCE

I. Between 17 December 1994 and 18 December 1997 the Provisional Energy Charter Conference met to negotiate an amendment to the trade-related provisions of the Energy Charter Treaty. A Conference to adopt the amendment was held at Brussels on 23 and 24 April 1998. Representatives of the Republic of Albania, the Republic of Armenia, Australia, the Republic of Austria, the Azerbaijani Republic, the Kingdom of Belgium, the Republic of Belarus, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia, the Republic of Cyprus, the Czech Republic, the Kingdom of Denmark, the Republic of Estonia, the European Communities, the Republic of Finland, the French Republic, the Republic of Georgia, the Federal Republic of Germany, the Hellenic Republic, the Republic of Hungary, the Republic of Iceland, Ireland, the Italian Republic, Japan, the Republic of Kazakhstan, the Republic of Kyrgyzstan, the Republic of Latvia, the Principality of Liechtenstein, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Malta, the Republic of Moldova, the Kingdom of the Netherlands, the Kingdom of Norway, the Republic of Poland, the Portuguese Republic, Romania, the Russian Federation, the Slovak Republic, the Republic of Slovenia, the Kingdom of Spain, the Kingdom of Sweden, the Swiss Confederation, the Republic of Tajikistan, the former Yugoslav Republic of Macedonia, the Republic of Turkey, Turkmenistan, Ukraine, the United Kingdom of Great Britain and Northern Ireland and the Republic of Uzbekistan (hereinafter referred to as 'the representatives') participated in the Conference, as did invited observers from certain countries and international organizations.

II. The Energy Charter Conference, which was definitively established on the entry into force on 16 April 1998 of the Energy Charter Treaty 1994, also met on 23 and 24 April 1998 to consider adoption of the amendment to the Trade-Related Provisions of the Energy Charter in accordance with the provisions of the Energy Charter Treaty.

AMENDMENT TO THE TRADE-RELATED PROVISIONS OF THE ENERGY CHARTER TREATY

III. The text of the Amendment to the Trade-Related Provisions of the Energy Charter Treaty (hereinafter referred to as the 'Amendment') which is set out in Annex I and Decisions with respect thereto which are set out in Annex II were adopted in accordance with the modalities of the international conference called for this purpose and under the Energy Charter Treaty in accordance with the procedure provided for in the Treaty.

UNDERSTANDINGS

IV. The following understandings with respect to the Amendment were adopted:

1. understanding with respect to Article 29(2)(a) and Annex W:

Notwithstanding the listing of paragraph 6 of Article XXIV of the GATT 1994 in Annex W(A)(1)(a)(i), any signatory affected by an increase in customs duties or other charges of any kind imposed on or in connection with importation or exportation referred to in the first sentence of that paragraph, is entitled to seek consultations in the Charter Conference.

2. understanding with respect to Article 29(7):

In the case of a signatory, not a member of the WTO, which is listed in Annexes BR or BRQ or both, any concession offered formally in the process of its accession to the WTO with respect to energy materials or products listed in Annex EM II or energy-related equipment listed in Annex EQ II shall, for the purpose of this Article, be regarded as a commitment under the WTO.

3. understanding with respect to Articles 29(6) and (7) and 34(3)(o):

The Charter Conference shall conduct an annual review with respect to any possibility of moving items of energy materials and products or energy-related equipment from Annexes EM I or EQ I to Annexes EM II or EQ II.

## DECLARATIONS

V. The following Declarations were made with respect to the Amendment:

Joint declaration on trade-related intellectual property rights

Signatories confirm their commitment to provide effective protection of intellectual property rights following the highest international standards.

Intellectual property rights include for the purpose of this declaration in particular copyright and related rights (including computer programmes and data bases), trademarks, geographical indications, patents, designs, topographies of semiconductor products and undisclosed information.

Joint declaration by the Russian Federation and the European Union

The Russian Federation has raised the issue of trade in nuclear materials. The Russian Federation and the EU agreed that the partnership and cooperation agreement between the Russian Federation, the European Union and its Member States, which entered into force on 1 December 1997, is the appropriate framework to deal with this issue, as confirmed in the conclusions of 27 January 1998 Cooperation Council.

## ANNEX I

### AMENDMENT TO THE TRADE-RELATED PROVISIONS OF THE ENERGY CHARTER TREATY

#### Article 1

Article 29 of the Treaty shall be replaced by the following text:

#### 'Article 29

Interim provisions on trade-related matters

1. The provisions of this Article shall apply to trade in energy materials and products and energy-related equipment while any Contracting Party is not a member of the WTO.

2. (a) Trade in energy materials and products and energy-related equipment between Contracting Parties at least one of which is not a member of the WTO shall be governed, subject to subparagraph (b) and to the exceptions and rules provided for in Annex W, by the provisions of the WTO Agreement, as applied and practised with regard to energy materials and products and energy-related equipment by members of the WTO among themselves, as if all Contracting Parties were members of the WTO;

(b) Such trade of a Contracting Party which is a State that was a constituent part of the former Union of Soviet Socialist Republics may instead be governed, subject to the provisions of Annex TFU, by an agreement between two or more such States, until 1 December 1999 or the admission of that Contracting Party to the WTO, whichever is the earlier;

3. (a) Each signatory to this Treaty, and each State or regional economic integration organisation acceding to this Treaty before 24 April 1998, shall on the date of its signature or of its deposit of its instrument of accession provide to the Secretariat a list of all customs duties and charges of any kind imposed on or in connection with importation or exportation of energy materials and products, notifying the level of such customs duties and charges applied on such date of signature or deposit. Each signatory to this Treaty, and each State or regional economic integration organisation acceding to this Treaty before 24 April 1998, shall on that date provide to the Secretariat a list of all customs duties and charges of any kind imposed on or in connection with importation or exportation of energy-related equipment, notifying the level of such customs duties and charges applied on that date;

(b) Each State or regional economic integration organisation acceding to this Treaty on or after 24 April 1998, shall, on the date of its deposit of its instrument of accession, provide to the Secretariat a list of all customs duties and charges of any kind imposed on or in connection with importation or exportation of energy materials and products and energy-related equipment, notifying the level of such customs duties and charges applied on such date of deposit.

Any changes to such customs duties or charges of any kind imposed on or in connection with importation or exportation shall be notified to the Secretariat, which shall inform the Contracting Parties of such changes.

4. Each Contracting Party shall endeavour not to increase any customs duty or charge of any kind imposed on or in connection with importation or exportation:

(a) in the case of the importation of energy materials and products listed in Annex EM I or energy-related equipment listed in Annex EQ I and described in Part I of the Schedule relating to the Contracting Party referred to in Article II of the GATT 1994, above the level set forth in that Schedule, if the Contracting Party is a member of the WTO;

(b) in the case of the exportation of energy materials and products listed in Annex EM I or energy-related equipment listed in Annex EQ I, and that of their importation if the Contracting Party is not a member of the WTO, above the level most recently notified to the Secretariat, except as permitted by

the provisions made applicable by subparagraph (2)(a).

5. A Contracting Party may increase such customs duty or other charge above the level referred to in paragraph (4) only if:

(a) in case of a customs duty or other charge imposed on or in connection with importation, such action is not inconsistent with the applicable provisions of the WTO Agreement, other than those provisions of the WTO Agreement listed in Annex W; or

(b) it has, to the fullest extent practicable under its legislative procedures, notified the Secretariat of its proposal for such an increase, given other interested Contracting Parties reasonable opportunity for consultation with respect to its proposal, and accorded consideration to any representations from such Contracting Parties.

6. In respect of trade between Contracting Parties at least one of which is not a member of the WTO, no such Contracting Party shall increase any customs duty or charge of any kind imposed on or in connection with importation or exportation of energy materials and products listed in Annex EM II or energy-related equipment listed in Annex EQ II above the lowest of the levels applied on the date of the decision by the Charter Conference to list the particular item in the relevant Annex.

A Contracting Party may increase such customs duty or other charge above that level only if:

(a) in case of a customs duty or other charge imposed on or in connection with importation, such action is not inconsistent with the applicable provisions of the WTO Agreement, other than those provisions of the WTO Agreement listed in Annex W; or

(b) in exceptional circumstances not elsewhere provided for in this Treaty, the Charter Conference decides to waive the obligation otherwise imposed on a Contracting Party by this paragraph, consenting to an increase in a customs duty, subject to any conditions the Charter Conference may impose.

7. Notwithstanding paragraph 6, in the case of trade referred to in that paragraph, Contracting Parties listed in Annex BR in respect of energy materials and products listed in Annex EM II, or in Annex BRQ in respect of energy-related equipment listed in Annex EQ II, shall not increase any customs duty or other charge above the level resulting from their commitments or any provisions applicable to them under the WTO Agreement.

8. Other duties and charges imposed on or in connection with importation or exportation of energy materials and products or energy-related equipment shall be subject to the provisions of the understanding on the interpretation of Article II: 1(b) of the GATT 1994 as modified according to Annex W.

9. Annex D shall apply:

(a) to disputes regarding compliance with provisions applicable to trade under this Article;

(b) to disputes regarding the application by a Contracting Party of any measure, whether or not it conflicts with the provisions of this Article, which is considered by another Contracting Party to nullify or impair any benefit accruing to it directly or indirectly under this Article; and

(c) unless the Contracting Parties parties to the dispute agree otherwise, to disputes regarding compliance with Article 5 between Contracting Parties at least one of which is not a member of the WTO;

except that Annex D shall not apply to any dispute between Contracting Parties, the substance of which arises under an agreement that:(i) has been notified in accordance with and meets the other requirements of subparagraph (2)(b) and Annex TFU; or

(ii) establishes a free-trade area or a customs union as described in Article XXIV of the GATT 1994. `

Article 2

The Treaty shall be amended as follows:

In the Preamble, paragraph 7, replace 'General Agreement on Tariffs and Trade and its Related Instruments' with 'Agreement Establishing the World Trade Organisation`.

In the Preamble, paragraph 8, replace 'related equipment` with 'energy-related equipment`.

In the Preamble, paragraph 9, replace 'General Agreement on Tariffs and Trade` and 'parties thereto` with 'World Trade Organisation` and 'members thereof`.

In the Preamble, paragraph 10, replace 'parties to the General Agreement on Tariffs and Trade and its Related Instruments` with 'members of the World Trade Organisation`.

In Article 1, replace the text of paragraph (4) with:

'4. "Energy materials and products", based on the Harmonised System of the World Customs Organisation and the Combined Nomenclature of the European Communities, means the items included in Annexes EM I or EM II.`

In Article 1, after the text of paragraph 4 insert:

'4a. "energy-related equipment", based on the Harmonised System of the World Customs Organisation, means the items included in Annexes EQ I or EQ II.`

In Article 1, replace the text of paragraph 11 with:

'11.(a) "WTO" means the World Trade Organisation established by the Agreement Establishing the World Trade Organisation;

(b) "WTO Agreement" means the Agreement Establishing the World Trade Organisation, its Annexes and the decisions, declarations and understandings related thereto, as subsequently rectified, amended and modified from time to time;

(c) "GATT 1994" means the General Agreement on Tariffs and Trade as specified in Annex 1A to the Agreement Establishing the World Trade Organisation, as subsequently rectified, amended or modified from time to time.'

In Article 3, after 'energy materials and products' insert 'and energy-related equipment'.

In Article 4, title, replace 'GATT and related instruments' with 'WTO Agreement' and in the text of Article 4, replace 'parties to the GATT' with 'members of the WTO' and replace 'GATT and related instruments' with 'WTO Agreement'.

In Article 5, paragraph 1, insert '1994' following 'Articles III and XI of the GATT' and replace 'GATT and related instruments' with 'WTO Agreement'.

In Article 14, paragraph 6, replace 'GATT and related instruments' with 'WTO Agreement'.

In Article 20, paragraph 1, replace 'GATT and relevant related instruments' with 'WTO Agreement' and after 'energy materials and products' insert 'energy-related equipment'.

In Article 21, paragraph 4, replace 'Article 29(2) to (6)' with 'Article 29(2) to (8)'.

In Article 25, paragraph 3, replace 'GATT and related instruments' with 'WTO Agreement'.

In Article 34, paragraph 3, add after subparagraph (m):

'(n) consider and approve the listing of signatories in Annexes BR or BRQ or in both these Annexes;

(o) consider and approve the addition of items to Annex EM II from Annex EM I with the corresponding deletion of those items from Annex EM I and consider and approve the addition of items to Annex EQ II from Annex EQ I with the corresponding deletion of those items from Annex EQ I;'

In Article 34, paragraph 3, replace the denomination of subparagraph '(n)' with subparagraph '(p)'.

In Article 36(1)(d), replace 'G' with 'W'.

In Article 36, in paragraph 1, after subparagraph (f) add:

'(g) approve the addition of items to Annex EM II from Annex EM I with the corresponding deletion of those items from Annex EM I and approve the addition of items to Annex EQ II from Annex EQ I with the corresponding deletion of those items from Annex EQ I.'

In Article 36, paragraph 4, replace '(f)' with '(g)'.

In the 'Table of Contents' of Annexes to the Energy Charter Treaty, rename 'Annex EM' as 'Annex EM I', insert as 2 to 4 the additional Annexes 'Annex EM II energy materials and products (In accordance with Article 1(4))', 'Annex EQ I List of energy-related equipment (In accordance with Article 1(4a))' and 'Annex EQ II list of energy-related equipment (In accordance with Article 1(4a))'.

In 9. Annex G, replace 'GATT and related instruments' with 'WTO Agreement', and rename 'Annex G' as 'Annex W'.

Renumber Annexes 2 to 10 as Annexes 5 to 13. Insert as 14 and 15 the additional Annexes 'Annex BR list of contracting Parties which shall not increase any customs duty or other charge above the level resulting from their commitments or any provisions applicable to them under the WTO Agreement (In accordance with Article 29(7))' and 'Annex BRQ list of Contracting Parties which shall not increase any customs duty or other charge above the level resulting from their commitments or any provisions applicable to them under the WTO Agreement (In accordance with Article 29(7))'.

Renumber Annexes 11 to 14 as Annexes 16 to 19.

In respect of Annex D, replace '(In accordance with Article 29(7))' with '(In accordance with Article 29(9))'.

In Annex EM, rename 'EM' as 'EM I'.

In Annex TRM, paragraph (1)(a) and (b) and in paragraph (3)(a) and (b), replace 'party to the GATT' with 'member of the WTO'.

In Annex TFU, paragraphs (2)(c), (4), first sentence, and (6), first sentence, replace 'GATT and related instruments' with 'WTO Agreement'.

Article 3

Annex D of the Treaty shall be amended as follows:

In the heading replace '(In accordance with Article 29(7))' with '(In accordance with Article 29(9))'.

At the end of paragraph 1(a), delete the period and add thereafter following '29':

', or about any measures that might nullify or impair any benefit accruing to a Contracting Party directly

or indirectly under the provisions applicable to trade under Article 29.`

In paragraph 1(b), at the end of the first sentence, delete the period and insert thereafter following '29`:

', or any measure that might nullify or impair any benefit accruing to a Contracting Party directly or indirectly under the provisions applicable to trade under Article 29.` ,

and in the second sentence, replace 'GATT and related instruments` with 'WTO Agreement` .

In paragraph 1(d), insert after the comma before 'the Contracting Parties` :

'or to nullify or impair any benefit accruing to it directly or indirectly under the provisions applicable to trade under Article 29,` .

In paragraph 2(a), second sentence, replace 'GATT and related instruments` with 'WTO Agreement` .

In paragraph 3(a), second sentence, replace 'GATT and related instruments` with 'WTO Agreement` , and replace the penultimate sentence with:

'Panels shall be guided by the interpretations given to the WTO Agreement within the framework of the WTO Agreement and shall not question the compatibility with Article 5 or 29 of practices applied by any Contracting Party which is a member of the WTO to other members of the WTO to which it applies the WTO Agreement and which have not been taken by those other members to dispute resolution under the WTO Agreement.`

In paragraph 4(b), first sentence, replace 'GATT or a related instrument` with 'WTO Agreement` .

In paragraph 5(c), replace 'GATT or related instruments` with 'WTO Agreement` .

In paragraph 7, first sentence, replace 'party to the GATT` , with 'member of the WTO`

and replace 'panellists currently nominated for the purpose of GATT dispute panels` with:

'persons whose names appear on the indicative list of governmental and non-governmental individuals, referred to in Article 8 of the understanding on rules and procedures governing the settlement of disputes contained in Annex 2 to the WTO Agreement or who have in the past served as panellists on a GATT or WTO dispute settlement panel.`

Add after paragraph 9:

'10. Where a Contracting Party invokes Articles 29(9)(b), this Annex shall apply, subject to the following modifications:

(a) the complaining party shall present a detailed justification in support of any request for consultations or for the establishment of a panel regarding a measure which it considers to nullify or impair any benefit accruing to it directly or indirectly under Article 29;

(b) where a measure has been found to nullify or impair benefits under Article 29 without violation thereof, there is no obligation to withdraw the measure; however, in such a case the panel shall recommend that the Contracting Party concerned make a mutually satisfactory adjustment;

(c) the arbitral panel provided for in paragraph (6)(b), upon the request of either party, may determine the level of benefits that have been nullified or impaired, and may also suggest ways and means of reaching a mutually satisfactory adjustment; such suggestions shall not be binding upon the parties to the dispute.`

Article 4

The following Annex shall replace Annex G of the Treaty:

'Annex W

EXCEPTIONS AND RULES GOVERNING THE APPLICATION OF THE PROVISIONS OF THE WTO AGREEMENT(In accordance with Article 29(2)(a))

A. Exceptions to the application of the provisions of the WTO Agreement.

The following provisions of the WTO Agreement shall not be applicable under Article 29(2)(a):

1. Agreement establishing the World Trade Organisation

All except Article IX, paragraphs 3 and 4 and Article XVI, paragraphs 1, 3 and 4

(a) Annex 1A to the WTO Agreement:

Multilateral Agreements on trade in goods:

(i) General Agreement on Tariffs and Trade 1994

>TABLE>

Understanding on the interpretation of Article II: 1(b) of the GATT 1994

>TABLE>

Understanding on the Interpretation of Article XVII of the GATT 1994

>TABLE>

Understanding on the balance-of-payments provisions of the GATT 1994

>TABLE>

Understanding on the interpretation of Article XXIV of the GATT 1994

All except paragraph 13

Understanding in Respect of Waivers of Obligations under the GATT 1994

>TABLE>

Understanding on the Interpretation of Article XXVIII of the GATT 1994

Marrakesh Protocol to the GATT 1994

(ii) Agreement on agriculture;

(iii) Agreement on the application of sanitary and phytosanitary measures;

(iv) Agreement on textiles and clothing;

(v) Agreement on technical barriers to trade.

Preamble (paragraphs 1, 8, 9)

>TABLE>

(vi) Agreement on Trade-related investment measures;

(vii) Agreement on implementation of Article VI of the GATT 1994 (Anti-dumping)

>TABLE>

(viii) Agreement on implementation of Article VII of the GATT 1994 (customs valuation)

Preamble, paragraph 2, the phrase "and to secure additional benefits for the international trade of developing countries".

>TABLE>

(ix) Agreement on preshipment inspection

Preamble, paragraphs 2 and 3

>TABLE>

(x) Agreement on rules of origin

Preamble, eighth indent

>TABLE>

(xi) Agreement on Import Licensing Procedures

>TABLE>

(xii) Agreement on subsidies and countervailing measures

>TABLE>

(xiii) Agreement on safeguards

>TABLE>

(b) Annex 1B to the WTO Agreement:

General Agreement on trade in services

(c) Annex 1C to the WTO Agreement:

Agreement on trade-related aspects of intellectual property rights

(d) Annex 2 to the WTO Agreement:

Understanding on rules and procedures governing the settlement of disputes

(e) Annex 3 to the WTO Agreement:

Trade policy review mechanism

(f) Annex 4 to the WTO Agreement:

Plurilateral trade agreements:(i) Agreement on trade in civil aircraft;

(ii) Agreement on government procurement

(g) Ministerial decisions, declarations and understanding:(i) Decision on measures in favour of least-developed countries;(ii) Declaration on the contribution of the WTO to achieving greater coherence in global economic policy making;(iii) Decision on notification procedures;(iv) Declaration on the relationship of the WTO with the IMF

; (v) Decision on measures concerning the possible negative effects of the reform programme on least-developed and net food-importing developing countries;(vi) Decision on notification of first integration under Article 2.6 of the Agreement on textiles and clothing;(vii) Decision on review of the ISO/IEC information centre publication;(viii) Decision on proposed understanding on WTO-ISO standards information system;(ix) Decision on anti-circumvention;(x) Decision on review of Article 17.6 of the Agreement on implementation of Article VI of the GATT 1994

; (xi) Declaration on dispute settlement pursuant to the Agreement on implementation of Article VI of the GATT 1994 or Part V of the Agreement on subsidies and countervailing measures;(xii) Decision regarding cases where customs administrations have reason to doubt the truth or accuracy of the declared value;(xiii) Decision on texts relating to minimum values and imports by sole agents, sole distributors and sole concessionaires;(xiv) Decision on institutional arrangements for the GATS;(xv) Decision on certain dispute settlement procedures for the GATS;(xvi) Decision on trade in services and the environment;(xvii) Decision on negotiations on movement of natural persons;(xviii) Decision on financial services;(xix) Decision on negotiations on maritime transport services;(xx) Decision on negotiations on basic telecommunications;(xxi) Decision on professional services;(xxii) Decision on accession to the Agreement on government procurement;(xxiv) Decision on the application and review of the understanding on rules and procedures governing the settlement of disputes;(xxv) Understanding on commitments in financial services;(xxvi) Decision on the acceptance of and accession to the agreement establishing the WTO;(xxvii) Decision on trade and environment;(xviii) Decision on organisational and financial consequences following from implementation of the Agreement establishing the WTO;(xxix) Decision on the establishment of the preparatory committee for the WTO.

2. All other provisions in the WTO Agreement which relate to:

(a) governmental assistance to economic development and the treatment of developing countries, except for paragraphs 1 to 4 of the Decision of 28 November 1979 (L/4903) on differential and more favourable treatment, reciprocity and fuller participation of developing countries;

(b) the establishment or operation of specialist committees and other subsidiary institutions;

(c) signature, accession, entry into force, withdrawal, deposit and registration.

3. All agreements, arrangements, decisions, understandings or other joint action pursuant to the provisions listed as not applicable in paragraphs 1 or 2.

4. Trade in nuclear materials may be governed by agreements referred to in the Declarations related to this paragraph contained in the Final Act of the European Energy Charter Conference.

B. Rules governing the application of provisions of the WTO Agreement

1. In the absence of a relevant interpretation of the WTO Agreement adopted by the Ministerial Conference or the General Council of the World Trade Organisation under paragraph 2 of Article IX of the WTO Agreement concerning provisions applicable under Article 29(2)(a), the Charter Conference may adopt an interpretation.

2. Requests for waivers under Article 29(2) and (6)(b) shall be submitted to the Charter Conference, which shall follow, in carrying out these duties, the procedures of paragraphs 3 and 4 of Article IX of the WTO Agreement.

3. Waivers of obligations in force in the WTO shall be considered in force for the purposes of Article 29 while they remain in force in the WTO.

4. The provisions of Article II of the GATT 1994 which have not been disapplied shall, without prejudice to Article 29(4), (5) and (7), be modified as follows:

(i) All energy materials and products listed in Annex EM II and energy-related equipment listed in Annex EQ II imported from or exported to any other Contracting Party shall also be exempt from all other duties or charges of any kind imposed on or in connection with importation or exportation, in excess of those imposed on the date of the standstill referred to in Article 29(6), first sentence, or under Article 29(7), or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing or exporting territory on the date referred to in Article 29(6), first sentence;

(ii) Nothing in Article II of the GATT 1994 shall prevent any Contracting Party from imposing at any time on the importation or exportation of any product:

(a) a charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III of GATT 1994 in respect of the like domestic product or in respect of an article from which the imported product has been manufactured or produced in whole or in part;

(b) any anti-dumping or countervailing duty applied consistently with the provisions of Article VI of GATT 1994;

(c) fees or other charges commensurate with the cost of services rendered.

(iii) No Contracting Party shall alter its method of determining dutiable value or of converting currencies so as to impair the value of the standstill obligations provided for in Article 29(6) or (7);

(iv) If any Contracting Party establishes, maintains or authorises, formally or in effect, as monopoly of the importation or exportation of any energy material or product listed in Annex EM II or in respect of energy-related equipment listed in EQ II, such monopoly shall not operate so as to afford protection on the average in excess of the amount of protection permitted by the standstill obligation provided for in Article 29(6) or (7). The provisions of this paragraph shall not limit the use by Contracting Parties of any form of assistance to domestic producers permitted by other provisions of this Treaty;

(v) If any Contracting Party considers that a product is not receiving from another Contracting Party the treatment which the first Contracting Party believes to have been contemplated by the standstill

obligation provided for in Article 29(6) or (7), it shall bring the matter directly to the attention of the other Contracting Party. If the latter agrees that the treatment contemplated was that claimed by the first Contracting Party, but declares that such treatment cannot be accorded because a court or other proper authority has ruled to the effect that the product involved cannot be classified under the tariff laws of such Contracting Party so as to permit the treatment contemplated in this Treaty, the two Contracting Parties, together with any other Contracting Parties substantially interested, shall enter promptly into further negotiations with a view to a compensatory adjustment of the matter;

(vi) (a) The specific duties and charges included in the Tariff Record relating to the Contracting Parties members of the International Monetary Fund, and margins of preference in specific duties and charges maintained by such Contracting Parties, are expressed in the appropriate currency at the par value accepted or provisionally recognised by the Fund at the date of the standstill referred to in Article 29(6), first sentence, or under Article 29(7). Accordingly, in case this par value is reduced consistently with the Articles of Agreement of the International Monetary Fund by more than twenty per cent, such specific duties and charges and margins of preference may be adjusted to take account of such reduction; provided that the Conference concurs that such adjustments will not impair the value of the standstill obligation provided for in Article 29(6) or (7) or elsewhere in this Treaty, due account being taken of all factors which may influence the need for, or urgency of, such adjustments;

(b) Similar provisions shall apply to any Contracting Party not a member of the Fund, as from the date on which such Contracting Party becomes a member of the Fund or enters into a special exchange agreement in pursuance of Article XV of GATT 1994.

(vii) Each Contracting Party shall notify the Secretariat of the customs duties and charges of any kind applicable on the date of the standstill referred to in Article 29(6), first sentence. The Secretariat shall keep a tariff record of the customs duties and charges of any kind relevant for the purpose of the standstill on customs duties and charges of any kind under Article 29(6) or (7).

5. The Decision of 26 March 1980 on "Introduction of a loose-leaf system for the schedules of tariff concessions" (BISD 27S/24) shall not be applicable under Article 29(2)(a). The applicable provisions of the Understanding on the Interpretation of Article II:1(b) of the GATT 1994 shall, without prejudice to Article 29(4), (5) or (7), apply with the following modifications:

(i) In order to ensure transparency of the legal rights and obligations deriving from paragraph 1(b) of Article II of GATT 1994, the nature and level of any "other duties or charges" levied on any energy materials and products listed in Annex EM II or energy-related equipment listed in Annex EQ II with respect to their importation or exportation, as referred to in that provision, shall be recorded in the tariff record at the levels applying at the date of the standstill referred to in Article 29(6), first sentence, or under Article 29(7) respectively, against the tariff item to which they apply. It is understood that such recording does not change the legal character of "other duties or charges";

(ii) "Other duties or charges" shall be recorded in respect of all energy materials and products listed in Annex EM II and energy-related equipment listed in Annex EQ II;

(iii) It will be open to any Contracting Party to challenge the existence of an "other duty or charge", on the ground that no such "other duty or charge" existed at the date of the standstill referred to in Article 29(6), first sentence, or the relevant date under Article 29(7), for the item in question, as well as the consistency of the recorded level of any "other duty or charge" with the standstill obligation provided for by Article 29(6) or (7), for a period of one year after the entry into force of the Amendment to the trade-related provisions of this Treaty, adopted by the Charter Conference on 24 April 1998, or one year after the notification to the Secretariat of the level of customs duties and charges of any kind referred to in Article 29(6), first sentence, or Article 29(7), if that is the later;

(iv) The recording of "other duties or charges" in the tariff record is without prejudice to their consistency with rights and obligations under GATT 1994 other than those affected by subparagraph (iii) above. All Contracting Parties retain the right to challenge, at any time, the consistency of any "other duty or charge" with such obligations;

(v) "Other duties or charges" omitted from a notification to the Secretariat shall not subsequently be added to it and any "other duty or charge" recorded at a level lower than that prevailing on the applicable date shall not be restored to that level unless such additions or changes are made within six months of the notification to the Secretariat.

6. Where the WTO Agreement refers to "duties inscribed in the Schedule" or to "bound duties", there shall be substituted "the level of customs duties and charges of any kind permitted under Article 29(4) to (8)".

7. Where the WTO Agreement specifies the date of entry into force of the WTO Agreement (or an analogous phrase) as the reference date for an action, there shall be substituted the date of entry into force of the Amendment to the trade-related provisions of this Treaty adopted by the Charter Conference on 24 April 1998.

8. With respect to notifications required by the provisions made applicable by Article 29(2)(a):

(a) Contracting Parties which are not members of the WTO shall make their notifications to the Secretariat. The Secretariat shall circulate copies of the notifications to all Contracting Parties.



Notifications to the Secretariat shall be in one of the authentic languages of this Treaty. The accompanying documents may be solely in the language of the Contracting Party;

(b) such requirements shall not apply to Contracting Parties to this Treaty which are also members of the WTO which provides for its own notification requirements.

9. Where Article 29(6)(a) or (6)(b) applies, the Charter Conference shall carry out any applicable duties that the WTO Agreement assigned to the relevant bodies under the WTO Agreement.

10. (a) Interpretations of the WTO Agreement adopted by the Ministerial Conference or the General Council of the WTO under paragraph 2 of Article IX of the WTO Agreement insofar as they interpret provisions applicable under Article 29(2)(a) shall apply;

(b) Amendments to the WTO Agreement under Article X of the WTO Agreement that are binding on all members of the WTO (other than those under paragraph 9 of Article X) insofar as they amend or relate to provisions applicable under Article 29(2)(a), shall apply unless a Contracting Party requests the Charter Conference to disapply or modify such amendment. The Charter Conference shall take the decision by a three-fourths majority of the Contracting Parties and determine the date of the disapplication or modification of such amendment. A request for the disapplication or modification of such amendment may include a request that the application of the amendment be suspended pending the decision of the Charter Conference.

A request to the Charter Conference made under this paragraph shall be made within six months of the circulation of a notification from the Secretariat that the amendment has taken effect under the WTO Agreement.

(c) Interpretations, amendments, or new instruments adopted by the WTO, other than the interpretations and amendments applied under paragraphs (a) and (b) shall not apply.

#### Article 5

The following Annexes shall be inserted in the Annexes to the Treaty:

##### '2. Annex EM II

#### ENERGY MATERIALS AND PRODUCTS

(In accordance with Article 1(4))`.

##### '3. Annex EQ I

#### LIST OF ENERGY-RELATED EQUIPMENT

(In accordance with Article 1(4a))

For the purpose of this Annex, "Ex" has been included to indicate that the product description referred to does not exhaust the entire range of products within the World Customs Organisation Nomenclature headings or the Harmonised System codes listed below.

>TABLE>

##### `4. Annex EQ II

#### LIST OF ENERGY-RELATED EQUIPMENT

(In accordance with Article 1(4a))`.

##### '14. Annex BR

#### LIST OF CONTRACTING PARTIES WHICH SHALL NOT INCREASE ANY CUSTOMS DUTY OR OTHER CHARGE ABOVE THE LEVEL RESULTING FROM THEIR COMMITMENTS OR ANY PROVISIONS APPLICABLE TO THEM UNDER THE WTO AGREEMENT

(In accordance with Article 29(7))`.

##### '15. Annex BRQ

#### LIST OF CONTRACTING PARTIES WHICH SHALL NOT INCREASE ANY CUSTOMS DUTY OR OTHER CHARGE ABOVE THE LEVEL RESULTING FROM THEIR COMMITMENTS OR ANY PROVISIONS APPLICABLE TO THEM UNDER THE WTO AGREEMENT

(In accordance with Article 29(7))`.

#### Article 6

##### Provisional application

1. Each signatory which applies the Energy Charter Treaty provisionally in accordance with Article 45(1) and each Contracting Party agrees to apply this amendment provisionally pending its entry into force for such signatory or Contracting Party to the extent that such provisional application is not inconsistent with its constitution, laws or regulations.

2. (a) Notwithstanding paragraph (1):

(i) any signatory which applies the Energy Charter Treaty provisionally or Contracting Party may deliver to the Depository within 90 days of the date of the adoption of this amendment by the Charter Conference a declaration that it is not able to accept the provisional application of this amendment;

(ii) any signatory which does not apply the Energy Charter Treaty provisionally in accordance with Article

45(2) may deliver to the Depositary not later than the date on which it becomes a Contracting Party or begins to apply the Treaty provisionally a declaration that it is not able to accept the provisional application of this amendment.

The obligation contained in paragraph (1) shall not apply to a signatory or Contracting Party making such a declaration. Any such signatory or Contracting Party may at any time withdraw that declaration by written notification to the Depositary.

(b) Neither a signatory or Contracting Party which makes a declaration in accordance with subparagraph (a) nor investors of that signatory or Contracting Party may claim the benefits of provisional application under paragraph (1).

3. Any signatory or Contracting Party may terminate its provisional application of this amendment by written notification to the Depositary of its intention not to ratify, accept or approve this amendment. Termination of provisional application for any signatory or Contracting Party shall take effect on the expiration of 60 days from the date on which such signatory's or Contracting Party's written notification is received by the Depositary. Any signatory which terminates its provisional application of the Energy Charter Treaty in accordance with Article 45(3)(a) shall be considered as also having terminated its provisional application of this amendment with the same date of effect.

#### Article 7

##### Status of the Decision

The Decision adopted in connection with the adoption of this amendment is an integral part of the Energy Charter Treaty.

#### ANNEX II DECISIONS IN CONNECTION WITH THE ADOPTION OF THE AMENDMENT TO THE TRADE-RELATED PROVISIONS OF THE ENERGY CHARTER TREATY

1. A signatory which does not apply the amendment adopted on 24 April 1998 provisionally may at the time that it takes action to apply that amendment, whether on a definitive or a provisional basis, notify the secretariat in writing that until it is listed in Annexes BR and BRQ, it will apply the amendment as if all items of energy materials and products and of energy-related equipment continued to be listed in Annexes EM I and EQ I.

The amendment shall apply accordingly to such a signatory.

Any signatory may at any time withdraw the notification referred to above in writing to the secretariat.

2. The final provisions of the amendment shall be based on Part VIII, in particular Article 42, of the Energy Charter Treaty so far as relevant.