

Brussels, 23-24 April 1998

Related documents: CC 113, CC 115, CC 119, CC 124, RD 10 (ECC of 23-24 04 1998), RD 11 (ECC of 23-24 04 1998), RD 24 Rev. (ECC of 23-24 04 1998)

DECISION OF THE ENERGY CHARTER CONFERENCE

Subject: Amendment to the Trade-Related Provisions of the Energy Charter Treaty

The Chairman reminded delegations of the special character of the adoption of the text of the Amendment to the Trade-Related Provisions of the Energy Charter Treaty. It was proposed that the text be adopted under the modalities of an international conference and under the Energy Charter Treaty according to its terms.

Delegations' attention was drawn to the fact that the text of the joint statement on nuclear trade, agreed by the Russian Federation and the European Union, which was already referred to in document CC 112 point 12, had been circulated to delegations (with Message 114/98 of 20 April 1998). It reads:

“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.”

Japan reiterated its position that it seeks listing on Annexes BR and BRQ. The Chairman noted Japan's position and concluded that there was no opposition to it.

The European Community declared that since it had not yet been possible for the Community to complete its internal procedures, it was not yet in a position to give a formal definitive

Keywords: Trade Amendment

approval to the text of the Trade Amendment at this stage. However, the Community could agree with the substance of the text, subject to the completion of the Community's internal procedures. The final position of the Community would be communicated to the Energy Charter Secretariat as soon as these procedures were completed.

The following delegations also declared that they had not yet been able to complete formally their internal procedures: Armenia, Cyprus, Georgia, Kyrgyzstan, Romania, the Slovak Republic and Tajikistan. The Chairman concluded that there was a consensus amongst participants that the text of the Trade Amendment was acceptable and should be regarded as adopted in accordance with the modalities of the international conference called for this purpose. There was also a consensus that this text should be considered to be adopted under the Energy Charter Treaty in accordance with the procedure provided for in the Treaty.

The Chairman noted the statement by the delegation of Japan that it could not at this point join the consensus but would not oppose it and that Japan could not ratify the Amendment before it is listed in Annexes BR and BRQ.

The Chairman further noted that a few delegations had not yet had completed their internal procedures for adoption of the texts. He proposed that those few delegations which have indicated to the Conference that this was their situation should notify the Secretariat as soon as possible of the confirmation of the adoption. The Energy Charter Secretariat would inform all participants in the Conference at the latest 90 days after the meeting that the formal adoption of the Trade Amendment has taken effect for all participants. It was agreed that the relevant date for adoption would continue to be 24 April 1998.

The European Community declared that when it would decide on Provisional Application on the basis of Article 6 of the Trade Amendment. Provisional Application for the European Community would commence after 90 days in accordance with paragraph (2)(a)(i).

Finally the Chairman concluded that, as described in Room Document 24 Rev. of 24 April 1998, the Final Act would comprise the elements agreed and the Secretariat would inform delegations about the completion of the preparation of the Final Act and circulate the text in English and Russian as soon as possible. The text would be available in all other authentic languages as soon as possible thereafter.

[Attached are:

- I. Chairman's conclusion on the Final Act as presented in Room Document 24 Rev. of 24 April 1998;
- II. "Final Act of the International Conference and Decision of the Energy Charter Conference" (as of September 2004) including:
 - a. the text of the Amendment to the Trade-Related Provisions of the Energy-Charter Treaty as contained in doc. CC 113 and amended with doc. CC 115)
 - b. decisions contained in doc. CC 113 and Room Document 10 of 18 November 1998;
- III. Chairman's Statement at the Adoption Session on 24 April 1998 as circulated in Room Document 11 of 23 April 1998;
- IV. Chairman's Conclusion on the implementation of Trade-Related Rules, at the Energy Charter Conference on 24 April 1998 as contained in doc. CC124 point 13.]

Keywords: Trade Amendment

**Room Document 24 Rev
Charter Conference
23-24 April 1998**

Brussels, 24 April 1998

Chairman's conclusion on the Final Act

A copy of the Final Act of the Energy Charter Treaty done at Lisbon is available to Delegations.

The Heads of Delegations present at the meeting of the Energy Charter Conference held on 23-24 April 1998 concur that the "Final Act" of the International Conference held to adopt the Amendment to the Trade-Related Provisions of the Energy Charter Treaty should follow the same format and should comprise:

1. The text of the Amendment circulated as CC 113 on 4 March 1998 incorporating its corrigendum in CC 115 dated 31 March 1998, without the "Declaration in Connection with the Adoption of the Amendment to the Trade-Related Provisions of the Energy Charter Treaty Adopted on 24 April 1998"¹.
2. Decision No. 2, circulated in Room Document 10, which reads:
"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."
3. The "Decision"² will become "Decision No. 1" and read "Decision in Connection with the Adoption of the Amendment to the Trade-Related Provisions of the Energy Charter Treaty"

The Heads of Delegations accept that the above elements represent a true record of the deliberations of the Conference concerning the elements of the text.

The decision on the adoption of the Amendment of the Trade-Related Provisions of the Energy Charter Treaty in the context of the Treaty according to its procedure will be recorded in the Records of the First Conference following the usual practice of the Conference. The Summary Record would include reference to the positions of delegations where relevant and in particular the position expressed by Japan.

Delegations should also note that the Energy Charter Secretariat will inform all participants to this Conference upon the completion of all relevant formalities, at the latest 90 days after this meeting, that the formal adoption of the Amendment has taken effect for all participants.

¹ Page 42 of the English version of the Amendment, page 46 of the French version, last page of the German version, page 46 of the Italian version, page 44 of the Russian version and page 47 of the Spanish version.

² Page 39 of the English version of the Amendment, page 43 of the French version, fourth page from the end of the German version, page 43 of the Italian version, page 41 of the Russian version and page 44 of the Spanish version.

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 23-24 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, also met on 23 and 24 April 1998 to consider adoption of the Amendment to the Trade-Related Provisions of the Energy Charter Treaty 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 1 and Decisions with respect thereto which are set out in Annex 2

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.⁷²

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.

⁷² See Chairman's Statement at the Adoption Session on 24 April 1998, p. 206.

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.

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

(ANNEX 1 TO THE FINAL ACT OF THE INTERNATIONAL CONFERENCE AND DECISION OF THE ENERGY CHARTER CONFERENCE)

ARTICLE 1

Article 29 of the Treaty shall be replaced by the following text: ⁷³

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. ⁷⁴
- (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.

⁷³ See Chairman's Conclusion on the Implementation of Trade-Related Rules, at the Energy Charter Conference on 24 April 1998, p. 207.

⁷⁴ See 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, Understandings, n. 1. with respect to Article 29(2)(a) and Annex W, p. 168.

- (3) (a) Each signatory to this Treaty, and each state or Regional Economic Integration Organization 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 Organization 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 Organization 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.⁷⁵

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

⁷⁵ See 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, Understandings, n. 3. with respect to Article 29(6) and (7) and 34(3)(o), p. 168.

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.⁷⁶

- (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 sub-paragraph (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 seven, replace “General Agreement on Tariffs and Trade and its Related Instruments” with “Agreement Establishing the World Trade Organization”

In the Preamble, paragraph eight, replace “related equipment” with “Energy-Related Equipment”.

⁷⁶ See 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, Understandings, n. 2. with respect to Article 29(7), p. 168 and 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, Understandings, n. 3. with respect to Article 29(6) and (7) and 34(3)(o), p. 168.

In the Preamble, paragraph nine, replace “General Agreement on Tariffs and Trade” and “parties thereto” with “World Trade Organization” and “members thereof”

In the Preamble, paragraph ten, replace “parties to the General Agreement on Tariffs and Trade and its Related Instruments” with “members of the World Trade Organization”.

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

- “(4) “Energy Materials and Products”, based on the Harmonised System of the World Customs Organization 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:

- “(4bis) “Energy-Related Equipment”, based on the Harmonised System of the World Customs Organization, means the items included in Annexes EQ I or EQ II.”

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

- “(a) “WTO” means the World Trade Organization established by the Agreement Establishing the World Trade Organization.
- (b) “WTO Agreement” means the Agreement Establishing the World Trade Organization, 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 Organization, 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 “article 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 “or 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 sub-paragraph (m):

- “(n) consider and approve the listing of signatories in Annexes BR or BRQ or in both these Annexes;⁷⁷
- (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;⁷⁸

In Article 34, paragraph (3) replace the denomination of sub-paragraph “(n)” with sub-paragraph “(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(4bis))” and “Annex EQ II List of Energy-Related Equipment (In accordance with Article 1(4bis))”.

In 9. Annex G, replace “GATT and Related Instruments” with “WTO Agreement”, and rename “Annex G” as “Annex W”.

⁷⁷ See Decisions in Connection with the Adoption of the Amendment to the Trade-Related Provisions of the Energy Charter Treaty (Annex 2 to the Final Act), n. 1, p. 205 and Chairman’s Statement at the Adoption Session on 24 April 1998, p. 206.

⁷⁸ See Decisions in Connection with the Adoption of the Amendment to the Trade-Related Provisions of the Energy Charter Treaty (Annex 2 to the Final Act), n. 1, p. 205 and 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, Understandings, n. 3. with respect to Article 29(6) and (7) and 34(3)(o), p. 168.

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:⁷⁹

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”.

⁷⁹ See Chairman’s Conclusion on the Implementation of Trade-Related Rules, at the Energy Charter Conference on 24 April 1998, p. 207.

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 Article 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 Organization

All except article IX, paragraphs 3 and 4 and 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

- II Schedules of Concessions, paragraphs (1)(a),(1)(b,1st sentence), (1)(c) and (7)
- IV Special Provisions relating to Cinematographic Films
- XV Exchange Arrangements
- XVIII Governmental Assistance to Economic Development
- XXII Consultation
- XXIII Nullification and Impairment

- XXIV Customs Unions and Free-Trade Areas, paragraph 6 ⁸⁰
- XXV Joint Action by the Contracting Parties
- XXVI Acceptance, Entry into Force and Registration
- XXVII Withholding or Withdrawal of Concessions
- XXVIII Modification of Schedules
- XXVIIIbis Tariff Negotiations
- XXIX The Relation of this Agreement to the Havana Charter
- XXX Amendments
- XXXI Withdrawal
- XXXII Contracting Parties
- XXXIII Accession
- XXXV Non-application of the Agreement between Particular Contracting Parties
- XXXVI Principles and Objectives
- XXXVII Commitments
- XXXVIII Joint Action
- Annex H Relating to Article XXVI
- Annex I Notes and Supplementary Provisions (related to the above-mentioned GATT provisions)

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

- 2 Date of incorporation of other duties and charges into the schedule
- 4 Challenges, (1st sentence only)
- 6 Dispute settlement
- 8 Supersession of BISD 27S/24

Understanding on the Interpretation of Article XVII of the GATT 1994

- 1 only the phrase “for review by the working party to be set up under paragraph (5)”
- 5 Working Party on state trading

⁸⁰ See 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, Understandings, n. 1. with respect to Article 29(2)(a) and Annex W, p. 168.

Understanding on the Balance-of-Payments Provisions of the GATT 1994

- 5 Committee on Balance-of-Payments Restrictions, except last sentence
- 7 Review by the Committee, the phrase “or under paragraph 12(b) of Article XVIII”
- 8 Simplified consultation procedures
- 13 Conclusions of Balance-of-Payments consultations, first sentence, third sentence: the phrase “and XVIII: B, the 1979 Declaration” and last sentence.

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

- 3 Nullification and Impairment

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)

1.3 General Provisions

10.5 The words “Developed country” and the words “French or Spanish” which shall be replaced by “Russian”

10.6 The phrase “and draw attention of developing country Members interest to them.”

10.9 Information about technical regulations, standards and certification systems (languages)

11 Technical assistance to other Parties

- 12 Special and differential treatment of developing countries
- 13 The Committee on Technical Barriers to Trade
- 14 Consultation and Dispute Settlement
- 15 Final Provisions (other than 15.2 and 15.5)
- Annex 2 Technical Expert Groups
- (vi) Agreement on Trade-Related Investment Measures
- (vii) Agreement on Implementation of Article VI of the GATT 1994 (Anti-dumping)
 - 15 Developing Country Members
 - 16 Committee on Anti-Dumping Practices
 - 17 Consultation and Dispute Settlement
 - 18 Final Provisions, paragraphs 2 and 6
- (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”

 - 14 Application of Annexes (second sentence except as far as it refers to Annex III paragraphs 6 and 7)
 - 18 Institutions (Committee on Customs Valuation)
 - 19 Consultation and Dispute Settlement
 - 20 Special and differential treatment of developing countries
 - 21 Reservations
 - 23 Review
 - 24 Secretariat

Annex II Technical Committee on Customs Valuation

Annex III Extra Provisions (except paragraphs 6 and 7)
- (ix) Agreement on Preshipment Inspection

Preamble, paragraphs 2 and 3

 - 3.3 Technical Assistance
 - 6 Review
 - 7 Consultation

- 8 Dispute Settlement
- (x) Agreement on Rules of Origin
 - Preamble, 8th indent
 - 4 Institutions
 - 6 Review
 - 7 Consultation
 - 8 Dispute Settlement
 - 9 Harmonization of Rules of Origin
 - Annex I Technical Committee on Rules of Origin
- (xi) Agreement on Import Licensing Procedures
 - 1.4(a) General Provisions (last sentence)
 - 2.2 Automatic Import Licensing (footnote 5)
 - 3.5(iv) Non-Automatic Import Licensing (last sentence)
 - 4 Institutions
 - 6 Consultations and Dispute Settlement
 - 7 Review (except paragraph 3)
 - 8 Final provisions (except paragraph 2)
- (xii) Agreement on Subsidies and Countervailing Measures
 - 4 Remedies (except paragraphs 4.1, 4.2 and 4.3)
 - 5 Adverse Effects, last sentence
 - 6 Serious Prejudice (paragraphs 6.6, the phrases “subject to the provisions of paragraph 3 of Annex V” and “arising under Article 7, and to the panel established pursuant to paragraph 4 of Article 7”, 6.8 the phrase “, including information submitted in accordance with the provisions of Annex V” and 6.9)
 - 7 Remedies (except paragraphs 7.1, 7.2 and 7.3)
 - 8 Identification of Non-Actionable Subsidies, paragraph 8.5 and Footnote 25
 - 9 Consultations and Authorised Remedies
 - 24 Committee on Subsidies and Countervailing Measures and Subsidiary Bodies
 - 26 Surveillance
 - 27 Special and Differential Treatment of Developing Country Members

- 29 Transformation into Market Economy, paragraph 29.2 (except first sentence)
- 30 Dispute Settlement
- 31 Provisional Application
- 32.2, 32.7 and 32.8 (only insofar as it refers to Annexes V and VII)
Final Provisions
- Annex V Procedures for Developing Information concerning
Serious Prejudice
- Annex VII Developing Countries

(xiii) Agreement on Safeguards

- 9 Developing Country Members
- 12 Notification and Consultation, paragraph 10
- 13 Surveillance
- 14 Dispute Settlement
- ANNEX Exception

(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 Rights⁸¹

(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

⁸¹ See 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, Declarations, Joint Declaration on Trade-Related Intellectual Property Rights, p. 168.

- (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
- (xxviii) Decision on Organizational 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.⁸²

(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 Organization 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;

⁸² See 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, Declarations, Joint Declaration by the Russian Federation and the European Union, p. 169.

- (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, a 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 recognized 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 centum, 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 sub-paragraph (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(2)(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(4bis))

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 Organization Nomenclature headings or the Harmonized System codes listed below.

Ex 39.19 Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls.

- Ex 3919.10 - In rolls of a width not exceeding 20 cm
 - To be used for oil and gas pipelines and sea lines protection

Ex 73.04* Tubes, pipes and hollow profiles, seamless, of iron (other than cast iron) or steel.

- 7304.10 - Line pipe of a kind used for oil or gas pipelines
- Casing, tubing and drill pipe, of a kind used in drilling for oil or gas:⁸⁴
- 7304.21⁸³ - Drill pipe
- 7304.29⁸³ - Other

Ex 73.05 Other tubes and pipes (for example, welded, riveted or similarly closed), having circular cross-sections, the external diameter of which exceeds 406.4 mm, of iron or steel.

- Line pipe of a kind used for oil or gas pipelines:
- 7305.11 - Longitudinally submerged arc welded
- 7305.12 - Other, longitudinally welded
- 7305.19 - Other
- 7305.20 - Casing of a kind used in drilling for oil or gas

Ex 73.06* Other tubes, pipes and hollow profiles (for example, open seam or welded, riveted or similarly closed), of iron or steel.

⁸³ Covered by 7304 20 in the 1992 version.

* Except products for use in civil aircraft.

- 7306.10 - Line pipe of a kind used for oil or gas pipelines
 - 7306.20 - Casing and tubing of a kind used in drilling for oil or gas
- 73.07 Tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel.
- Ex 73.08 Structures (excluding prefabricated buildings of heading No. 94.06) and parts of structures (for example, bridges, and bridge-sections, lock-gates, towers, lattice masts, roofs, roofing frame-works, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns), of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron or steel.
- 7308.20 - Towers and lattice masts
 - 7308.40 - Equipment for scaffolding, shuttering, propping or pitpropping
 - Ex 7308.90 - Other
 - Parts for oil and gas drilling platforms
- Ex 73.09 Reservoirs, tanks, vats and similar containers for any material (other than compressed or liquefied gas), of iron or steel, of a capacity exceeding 300 l, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment.
- Ex 7309.00 -- For liquids
 - Of a capacity exceeding 1,000,000 l, where specially designed for strategic oil reserves
 - Heat insulated
- Ex 73.11 Containers for compressed or liquefied gas, of iron or steel.
- Of more than 1,000 l
- Ex 73.12* Stranded wire, ropes, cables, plaited bands, slings and the like, of iron or steel, not electrically insulated.
- Ex 7312.10 - Stranded wires, ropes and cables
 - Ropes and cables coated, non-coated or zinc coated of a kind used in the energy sector
- Ex 73.26 Other articles of iron or steel.
- Ex 7326.90 - Other
 - Connectors for optical fibre cables
- Ex 76.13 Aluminium containers for compressed or liquefied gas.
- Of more than 1,000 l
- Ex 76.14 Stranded wire, cables, plaited bands and the like, of aluminium, not electrically insulated.

* Except products for use in civil aircraft.

- Ex 7614.10 - With steel core
 - Of a kind used in electricity generation, transmission and distribution
- Ex 7614.90 - Other
 - Of a kind used in electricity generation, transmission and distribution
- Ex 78.06 Other articles of lead.
 - Containers with an anti-radiation lead covering, for the transport or storage of highly radioactive materials
- Ex 81.09 Zirconium and articles thereof, including waste and scrap.
 - Ex 8109.90 - Other
 - Cartridges or tubes for nuclear fuel elements
- Ex 82.07 Interchangeable tools for hand tools, whether or not power-operated, or for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screw driving), including dies for drawing or extruding metal, and rock drilling or earth boring tools.
 - Rock drilling or earth boring tools:
 - 8207.13⁸⁴ - With working part of cermets
 - 8207.19 - Other, including parts
- Ex 83.07* Flexible tubing of base metal, with or without fittings.
 - For exclusive use in oil and gas wells
- 84.01 Nuclear reactors; fuel elements (cartridges), non-irradiated, for nuclear reactors; machinery and apparatus for isotopic separation.
- 84.02 Steam or other vapour generating boilers (other than central heating hot water boilers capable also of producing low pressure steam); super-heated water boilers.
- 84.03 Central heating boilers other than those of heading No. 84.02.
- 84.04 Auxiliary plant for use with boilers of heading No. 84.02 or 84.03 (for example, economisers, super-heaters, soot removers, gas recoverers); condensers for steam or other vapour power units.
- 84.05 Producer gas or water gas generators, with or without their purifiers; acetylene gas generators and similar water process gas generators, with or without their purifiers.

⁸⁴ Covered by 8207 11 and 12 in the 1992 version.

* Except products for use in civil aircraft.

- Ex 84.06 Steam turbines and other vapour turbines.
- Other turbines ⁸⁵:
 - 8406.81 - Of an output exceeding 40 MW
 - 8406.823 - Of an output not exceeding 40 MW
 - 8406.90 - Parts
- Ex 84.08* Compression-ignition internal combustion piston engines (diesel or semi-diesel engines).
- Ex 8408.90 - Other engines
 - New, of a power exceeding 50 kW
- Ex 84.09 Parts suitable for use solely or principally with the engines of heading No. 84.07 or 84.08.
- 8409.99 - Other
- 84.10 Hydraulic turbines, water wheels, and regulators therefor.
- 84.11* Turbo-jets, turbo-propellers and other gas turbines.
- 84.13* Pumps for liquids, whether or not fitted with a measuring device; liquids elevators.
- Ex 84.14* Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters.
- Fans:
 - Ex 8414.59 - Other
 - For use in mining and power plants
 - 8414.80 - Other
 - 8414.90 - Parts
- 84.16 Furnace burners for liquid fuel, for pulverised solid fuel or for gas; mechanical stokers, including their mechanical grates, mechanical ash dischargers and similar appliances.
- Ex 84.17 Industrial or laboratory furnaces and ovens, including incinerators, non-electric.
- Ex 8417.80 - Other
 - Exclusively waste incinerators, laboratory furnaces and ovens and uranium sintering ovens
 - Ex 8417.90 - Parts
 - Exclusively for waste incinerators, laboratory furnaces and ovens and uranium sintering ovens

⁸⁵ Covered by 8406 19 in the 1992 version.

* Except products for use in civil aircraft.

Ex 84.18* Refrigerators, freezers, and other refrigerating or freezing equipment, electric or other; heat pumps other than air conditioning machines of heading No. 84.15.

- Other refrigerating or freezing equipment; heat pumps:
- 8418.61 - Compression type units whose condensers are heat exchangers
- 8418.69 - Other

Ex 84.19* Machinery, plant or laboratory equipment, whether or not electrically heated, for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilising, pasteurising, steaming, drying, evaporating, vapourising, condensing or cooling, other than machinery or plant of a kind used for domestic purposes; instantaneous or storage water heaters, non-electric.

- 8419.50 - Heat exchange units
- 8419.60 - Machinery for liquefying air or other gases
- Other machinery, plant and equipment:
- 8419.89 - Other

Ex 84.21* Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids and gases.

- Filtering or purifying machinery and apparatus for liquids:
- 8421.21 - For filtering or purifying water
- Filtering or purifying machinery and apparatus for gases:
- 8421.39 - Other

Ex 84.25* Pulley tackle and hoists other than skip hoists; winches and capstans; jacks.

- 8425.20 - Pit-head winding gear; winches specially designed for use underground

Ex 84.26* Ships' derricks; cranes, including cable cranes; mobile lifting frames, straddle carriers and works trucks fitted with a crane.

- Ex 8426.20 - Tower cranes
 - For offshore platforms and onshore rigs
- Other machinery:
- Ex 8426.91 - Designed for mounting on road vehicles
 - Lifting equipment for repairing and completion of wells

* Except products for use in civil aircraft.

Ex 84.29 Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers.

- Mechanical shovels, excavators and shovel loaders:

Ex 8429.51

- Front-end shovel loaders

- Loaders specially designed for underground use

Ex 84.30 Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snow-ploughs and snow-blowers.

- Coal or rock cutters and tunnelling machinery:

8430.31

- Self-propelled

8430.39

- Other

- Other boring or sinking machinery:

Ex 8430.41

- Self-propelled

- For the discovery or exploitation of deposits of oil and gas

Ex 8430.49

- Other

- For the discovery or exploitation of deposits of oil and gas

Ex 84.31 Parts suitable for use solely or principally with the machinery of heading Nos. 84.25 to 84.30.

- Only for machinery covered

84.71* Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included.

Ex 84.74 Machinery for sorting, screening, separating, washing, crushing, grinding, mixing or kneading earth, stone, ores or other mineral substances, in solid (including powder or paste) form; machinery for agglomerating, shaping or moulding solid mineral fuels, ceramic paste, unhardened cements, plastering materials or other mineral products in powder or paste form; machines for forming foundry moulds of sand.

8474.10

- Sorting, screening, separating or washing machines

8474.20

- Crushing or grinding machines

Ex 8474.90

- Parts

- Of cast iron or cast steel

Ex 84.79* Machines and mechanical appliances having individual functions, not specified or included elsewhere in this Chapter.⁸⁶

⁸⁶ Chapter 84.

* Except products for use in civil aircraft.

- Other machines and mechanical appliances:
 - Other
 - Mobile hydraulic powered mine roof support
- Ex 8479.89
- Ex 84.81 Taps, cocks, valves and similar appliances for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves.
- 8481.10 - Pressure-reducing valves
 - 8481.20 - Valves for oleohydraulic or pneumatic transmissions
 - 8481.40 - Safety or relief valves
 - 8481.80 - Other appliances
 - 8481.90 - Parts
- Ex 84.83 Transmission shafts (including cam shafts and crank shafts) and cranks; bearing housings and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints).
- Ex 8483.40 - Gears and gearing, other than toothed wheels, chain sprockets and other transmission elements presented separately; ball or roller screws; gear boxes and other speed changers, including torque converters
- Transmission elements exclusively for use in sucker rod pumping units in the oil and gas industry
- Ex 84.84* Gaskets and similar joints of metal sheeting combined with other material or of two or more layers of metal; sets or assortments of gaskets and similar joints, dissimilar in composition, put up in pouches, envelopes or similar packings; mechanical seals.
- 8484.10 - Gaskets and similar joints of metal sheeting combined with other material or of two or more layers of metal
 - 8484.20⁸⁷ - Mechanical seals
- 85.01* Electric motors and generators (excluding generating sets).
- 85.02* Electric generating sets and rotary converters.
- 85.03* Parts suitable for use solely or principally with the machines of heading No. 85.01 or 85.02.
- Ex 85.04* Electrical transformers, static converters (for example, rectifiers) and inductors.
- Liquid dielectric transformers:

⁸⁷ Not covered by separate subheading in the 1992 version.

* Except products for use in civil aircraft.

- 8504.21 - Having a power handling capacity not exceeding 650 kVA
- 8504.22 - Having a power handling capacity exceeding 650 kVA but not exceeding 10,000 kVA
- 8504.23 - Having a power handling capacity exceeding 10,000 kVA
- Other transformers:
- 8504.33 - Having a power handling capacity exceeding 16 kVA but not exceeding 500 kVA
- 8504.34 - Having a power handling capacity exceeding 500 kVA
- 8504.40 - Static converters
- 8504.50 - Other inductors
- 8504.90 - Parts

Ex 85.07* Electric accumulators, including separators therefor, whether or not rectangular (including square).

--Excluding the use for non-energy sectors

85.14 Industrial or laboratory electric (including induction or dielectric) furnaces and ovens; other industrial or laboratory induction or dielectric heating equipment.

Ex 85.26* Radar apparatus, radio navigational aid apparatus and radio remote control apparatus.

- 8526.10 - Radar apparatus
- Other:

8526.91 - Radio navigational aid apparatus

85.31* Electric sound or visual signalling apparatus (for example bells, sirens, indicator panels, burglar or fire alarms), other than those of heading No. 85.12 or 85.30.

Ex 85.32 Electrical capacitors, fixed, variable or adjustable (pre-set).

- 8532.10 - Fixed capacitors designed for use in 50/60 Hz circuits and having a reactive power handling capacity of not less than 0.5 kvar (power capacitors)

85.35 Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, fuses, lightning arresters, voltage limiters, surge suppressors, plugs, junction boxes), for a voltage exceeding 1,000 volts.

* Except products for use in civil aircraft.

- 85.36 Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 volts.
- Ex 8536.10 - Fuses
 - Exceeding 63 ampere
 - Ex 8536.20 - Automatic circuit breakers
 - Exceeding 63 ampere
 - Ex 8536.30 - Other apparatus for protecting electrical circuits
 - Exceeding 16 ampere
 - Relays:
 - 8536.41 - For a voltage not exceeding 60 V
 - 8536.49 - Other
 - Ex 8536.50 - Other switches
 - For a voltage exceeding 60 V
- 85.37 Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading No. 85.35 or 85.36, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of Chapter 90, and numerical control apparatus, other than switching apparatus of heading No. 85.17.
- 85.38 Parts suitable for use solely or principally with the apparatus of heading No. 85.35, 85.36 or 85.37.
- Ex 85.41 Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light emitting diodes; mounted piezo-electric crystals.
- Ex 8541.40 - Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light emitting diodes
 - Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels
- Ex 85.44 Insulated (including enamelled or anodised) wire, cable (including co-axial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fibre cables, made up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors.
- 8544.60 - Other electric conductors, for a voltage exceeding 1,000 V
 - 8544.70 - Optical fibre cables

* Except products for use in civil aircraft.

Ex 85.45 Carbon electrodes, carbon brushes, lamp carbons, battery carbons and other articles of graphite or other carbon, with or without metal, of a kind used for electrical purposes.

8545.20 - Bushes

85.46 Electrical insulators of any material.

85.47 Insulating fittings for electrical machines, appliances or equipment, being fittings wholly of insulating material apart from any minor components of metal (for example, threaded sockets) incorporated during moulding solely for purposes of assembly, other than insulators of heading No. 85.46; electrical conduit tubing and joints therefor, of base metal lined with insulating material.

Ex 87.04 Motor vehicles for the transport of goods.

- Other, with compression-ignition internal combustion piston engine (diesel or semi-diesel):

Ex 8704.21 - g.v.w. not exceeding 5 tonnes

-- Specially designed for the transport of highly radioactive materials

Ex 8704.22 - g.v.w. exceeding 5 tonnes but not exceeding 20 tonnes

-- Specially designed for the transport of highly radioactive materials

Ex 8704.23 - g.v.w. exceeding 20 tonnes

-- Specially designed for the transport of highly radioactive materials

- Other, with spark-ignition internal combustion piston engine:

Ex 8704.31 - g.v.w. not exceeding 5 tonnes

-- Specially designed for the transport of highly radioactive materials

Ex 8704.32 - g.v.w. exceeding 5 tonnes

-- Specially designed for the transport of highly radioactive materials

Ex 87.05 Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, breakdown lorries, crane lorries, fire fighting vehicles, concrete-mixer lorries, road sweeper lorries, spraying lorries, mobile workshops, mobile radiological units).

8705.20 - Mobile drilling derricks

* Except products for use in civil aircraft.

- Ex 87.09 Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles.
- Vehicles:
 - Ex 8709.11 - Electrical
 - Specially designed for the transport of highly radioactive materials
 - Ex 8709.19 - Other
 - Specially designed for the transport of highly radioactive materials
- Ex 89.05 Light-vessels, fire-floats, dredgers, floating cranes, and other vessels the navigability of which is subsidiary to their main function; floating docks; floating or submersible drilling or production platforms.
- 8905.20 - Floating or submersible drilling or production platforms
- Ex 90.15 Surveying (including photogrammetrical surveying), hydrographic, oceanographic, hydrological, meteorological or geophysical instruments and appliances, excluding compasses; rangefinders.
- Ex 9015.80 - Other instruments and appliances
 - Geophysical instruments only
 - 9015.90 - Parts and accessories
- Ex 90.26* Instruments and apparatus for measuring or checking the flow, level, pressure or other variables of liquids or gases (for example, flow meters, level gauges, manometers, heat meters), excluding instruments and apparatus of heading No. 90.14, 90.15, 90.28 or 90.32.
- Except for use in the water distribution industry
- 90.27 Instruments and apparatus for physical or chemical analysis (for example polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus); instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like; instruments and apparatus for measuring or checking quantities of heat, sound or light (including exposure meters); microtomes.
- 90.28 Gas, liquid or electricity supply or production meters, including calibrating meters therefor.
- Ex 90.29* Revolution counters, production counters, taximeters, mileometers, pedometers and the like; speed indicators and tachometers, other than those of heading No. 90.14 or 90.15; stroboscopes.

* Except products for use in civil aircraft.

- Ex 9029.10 - Revolution counters, production counters, taximeters, mileometers, pedometers and the like
 - Production counters
- Ex 9029.90 - Parts and accessories
 - For production counters
- Ex 90.30* Oscilloscopes, spectrum analysers and other instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading No. 90.28; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionising radiations.
 - Ex 9030.10 - Instruments and apparatus for measuring or detecting ionising radiations
 - For use in the energy sector
 - Other instruments and apparatus, for measuring or checking voltage, current, resistance or power, without a recording device:
 - 9030.31 - Multimeters
 - 9030.39 - Other
 - Other instruments and apparatus:
 - Ex 9030.83⁸⁸ - Other, with a recording device
 - For use in the energy sector
 - Ex 9030.89 - Other
 - For use in the energy sector
 - Ex 9030.90 - Parts and accessories
 - For use in the energy sector
- 90.32* Automatic regulating or controlling instruments and apparatus.

⁸⁸ Covered by 9030 81 in the 1992 version.

* Except products for use in civil aircraft.

4. ANNEX EQ II
LIST OF ENERGY-RELATED EQUIPMENT
(In accordance with Article 1(4bis))

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 from 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;⁸⁹

⁸⁹ See Decisions in connection with the Adoption of the Amendment to the Trade-Related Provisions of the Energy Charter Treaty (Annex 2 to the Final Act), n. 1, p. 205.

- (ii) any signatory which does not apply the Energy Charter Treaty provisionally in accordance with Article 45(2) may deliver to the Depository 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 Depository.

- (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 Depository of its intention not to ratify, accept or approve this Amendment. Termination of provisional application for any signatory or Contracting Party shall take effect upon the expiration of 60 days from the date on which such signatory's or Contracting Party's written notification is received by the Depository. 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 DECISIONS

The Decisions adopted in connection with the adoption of this Amendment are an integral part of the Energy Charter Treaty.

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

(ANNEX 2 TO THE FINAL ACT OF THE INTERNATIONAL CONFERENCE AND DECISION OF THE ENERGY CHARTER CONFERENCE)

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.⁹⁰

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.

⁹⁰ See Chairman's Statement at the Adoption Session on 24 April 1998, p. 206.

CHAIRMAN'S STATEMENT AT THE ADOPTION SESSION ON 24 APRIL 1998 ⁹¹

“On the issue of future listing of countries on Annexes BR and BRQ, I conclude that all delegations are aware of the long standing positions of those delegations which like Australia, Hungary and Japan have repeatedly underlined that they support legally binding tariff commitments provided their commitments under the Energy Charter Treaty reflect their commitments in the WTO. This also reflects the position of other delegations, and there is a general acceptance among delegations that they will give positive consideration to that position at the time when the decision on legally binding tariff commitments is taken.”

⁹¹ Editor's note: Document CS(98) 338 CC 124, point 6, of 24 May 1998 (not published). This Statement was read out by the Chairman to the Adoption Session on 24 April 1998 and also circulated in written form. This Statement, which reflected the outcome of informal consultations, replaced a draft Declaration on the issue of listing on Annexes BR and BRQ, the text of which was consequently deleted from the text for adoption.

**CHAIRMAN'S CONCLUSION ON
THE IMPLEMENTATION OF TRADE-RELATED RULES,
AT THE ENERGY CHARTER CONFERENCE
ON 24 APRIL 1998 ⁹²**

The Chairman concluded with respect to the future implementation of trade-related rules that there was a consensus among delegations that the Secretariat was to be invited to develop the elements for one implementation system based on the regime in the Trade Amendment. In particular, where the Trade Amendment foresees notification requirements and procedures, including with regard to Understanding 2 to the Amendment, they would follow WTO practice, provided that duplication of notifications with the WTO did not occur. There was furthermore a consensus that in developing dispute settlement rules and procedures WTO rules of procedure and practice would be followed and the roster of panellists to be adopted by the Conference would be drawn up in accordance with Article 3 of the Amendment.

Finally, whenever necessary to maintain the principle of harmonious implementation of trade-related rules based on WTO practice, appropriate rules of procedure should include the elements necessary to achieve that aim.

⁹² Editor's note: Document CS (98) 338 CC 124, point 13, of 24 May 1998 (not published). The Conclusion was drawn by the Chairman to the first Energy Charter Conference on 24 April 1998. The Conference agreed without objection to this conclusion.