

## Trade Policy Committee (Trade and Investment) meeting on 6 April 2022

### ITEM 4: Energy Charter Treaty

COM informed about the next round of negotiations from 19-22/04, which were to take place in hybrid format in Brussels. EU coordination meetings (also hybrid) will take place on 19 and 22 April. It will be less business as usual, as only one more round of negotiations is planned in May. Therefore, the plan is to discuss all issues. Bilateral meetings had been held in advance, especially with GBR, JPN and TUR. From the EU's point of view, **JPN had taken steps backwards in the definition of investment and sustainable development**. With regard to investment protection, JPN had once again emphasised that it **did not want to accept a closed list for Fair and Equitable Treatment (FET)**. With regard to the denial of benefits clause, minor adjustments had to be made to the text, and the reference to human rights was still under discussion. Discussions are ongoing with TUR on the reservation of indirect expropriation and with JPN on state regulatory law. With regard to the exceptions in favour of national security, there were reservations from AZE, as well as problematic comments from ARM. On sustainable development, **AZE and JPN continue to resist the reference to workers' rights**. On investor-state arbitration, COM said that it was still **highly problematic that JPN and TUR did not want to accept a reference to (basic) UNCITRAL regulations on transparency**. In the case of TUR, the background is that there are concerns with regard to the classification of confidential information.

In the debate, **NL, ES and PL reiterated the need to think about and prepare for the Komstroy ruling and possible exit scenarios in a timely manner**. ES also made it clear that it would consider an exit scenario, as it did not see how the Energy Charter Treaty could be adapted to **the Paris Agreement and other requirements**. **DE joined NL's request** and asked about the planned ad-hoc Energy Charter Conference in June and its concrete design, as well as about the background of the JPN, GBR, TUR resistance to individual clauses.

COM said that JPN had been surprised by the EU's proposal for a final list in FET. With regard to the definition of economic activity, it was unclear why JPN was so difficult to convince (also in view of the small number of JPN investments that would be affected). However, COM also emphasised the progress achieved, especially with regard to adaptation to climate targets. The Ad-Hoc Energy Charter Conference will take place on 24 June in Brussels, probably with a formal meeting on 23 June. COM does not plan to use this conference for further negotiations, but it is currently difficult to assess this.

### Working Party on Energy meeting on 28 April

Summary:

ECT: the 12th round of negotiations was physical and in an **improved atmosphere, but could not yet lead to major breakthroughs**

In detail:

The 12th round of negotiations was the first to take place physically since 2020, which created a more positive dynamic. However, **the discussion remained difficult and progress was less than COM had hoped for**. There is only one round left (16-20 May) before the ad hoc ECT conference on 24 June, at which the aim is still to conclude the modernisation dossier. The conference is preceded the day before by a modernisation group meeting to tie up any loose ends.

Progress was mainly made on trade aspects such as ISDS, transit and investment protection, less so on the energy aspects such as the definition of economic activity in the energy sector - the most controversial issue given the EU's demand to exclude fossil fuels from the treaty - and the inclusion of hydrogen.

DE and PL expressed their doubts on the achievement of the objectives of the EU mandate, and reiterated the request to COM to share with the working group the assessment - already done internally - on a coordinated withdrawal of the EU and its MS. AT wondered what will happen if the negotiations do not lead to a satisfactory outcome.

## Working Party on Energy meeting on 3 May 2022

Summary:

Energy Charter Treaty: preparation for 13th round of negotiations to modernise the Treaty will take place on 11/05. COM expects to reach a deal at the ad hoc Ministerial Conference on 24 June 2022. Follow-up of Budget and Management Committees and preparation of Working Group on Governance.

In detail:

- Preparation of the 13th round of negotiations on modernisation

COM informed the EU MS that the 13th round of negotiations on the modernisation of the Energy Charter Treaty (ECT) would take place in a hybrid setting from 16 to 20 May (a full week, of which the first day would be half a day). COM recalls that the deadline for registration was 2/05. The content preparation of this round will take place at a joint EWP/TPC S&I meeting on 11 May 2022. COM is still working on the objectives for the upcoming round and its talking points. The agenda is already available and the order of topics during this round of negotiations will be similar to the 12th round. Bilateral outreach to Japan will continue.

COM's assessment is that an agreement can be reached by the ad hoc Ministerial Charter Conference on 24 June 2022 (at the Albert Borschette meeting centre - COM will make its premises available). Although progress is slow and difficult, COM assumes that most Contracting Parties (CPs) will follow the bilateral compromises reached between EU and Japan.

FR Presidency concludes by underlining that on 11/05 it also expects COM to take stock of these negotiations to modernise the ECT.

Follow up on Budget and Management Committee

COM indicated that the extraordinary meeting of the Budget Committee focused on the rehabilitation of Ukraine's energy infrastructure. Fruitful discussions took place based on the preparations by the Energy Charter Secretariat (ECS). Ukraine participated in the meeting and gave an update on the developments on the ground. Most of the obstacles appear to be in the domestic supply of gas and electricity. ECS is working closely to see what the possible outcomes could be to help Ukraine. Most CPs asked ECS to work closely with other international organisations to avoid duplication and ECS will keep CPs informed about coordination/cooperation. Regarding funding, most CPs were in favour of contributions

through voluntary contributions (VC). ECS was asked to issue a call and TUR would provide a VC by the end of 2022. Under AOB, it was indicated that the priority in the two recruitments for new Heads of Service is currently for the Head of Service for External Activities.

At the Management Committee meeting on 28 April 2022, several CPs participated, and Ukraine also participated (in part) to provide an update on the situation on the ground (at the request of CH). Several topics were discussed: the changes to the Conference's rules of procedure, the withdrawal of Russia's observer status at the Conference, the suspension of Belarus' ECT membership (CPs asked for more information on this), Russian frozen funds and the Conference Declaration.

- Preparation of the working group on governance issues CM 2801/1/22 REV 1 2 FR 3

Several issues will be discussed during this working group: the revision of the rules of procedure at the Energy Charter Conference, the revision of the "staff manual", the revision of the structure of the ECS (was approved but now there is a new proposal on how the structure should be further revised. This document foresees substantial changes that need to be looked at further. CH and JPN seem concerned - to be confirmed) and the establishment of a partnership network (participants will have to pay a fee to be a member - COM will circulate a draft line to take (LTT) and seek views of EU MS on this).