The proliferation of Regional Trade Agreements (RTAs) over the past few decades has drawn increasing attention and is in focus. In the period 1948-1994, the General Agreement on Tariffs and Trade (GATT) received 124 notifications of RTAs (relating to trade in goods), and since the creation of the World Trade Organization (WTO) in 1995, almost 300 additional arrangements covering trade in goods or services have been notified.¹)

Quite apart from these RTAs, treaties such as the Energy Charter Treaty (ECT) have also potentially an impact on trade obligations. In today’s energy-dependent world, securing energy investments is a challenge for producers, consumers and transit countries alike. The ECT, the only multilateral treaty which covers both investment protection and transit dispute resolution issues, is designed to promote energy security through the operation of more open and competitive energy markets, while respecting the principles of sustainable development and sovereignty over energy resources.

This paper seeks to raise some questions about the ECT’s compliance with the WTO obligations of its members. As much of the issues raised are still to be decided or authoritatively settled, it is anticipated that this paper will not act so much as a definitive source on the issues but rather a reflective attempt to raise awareness about issues that have not yet really received sufficient attention.

I. Introduction of the Energy Charter Treaty

It was in the early 1990s after the Cold War, when the states in Europe saw the opportunity to overcome the previous economic divisions, and the tremendous business potential lying in the energy sector, that the Energy Charter process was born to develop a commonly accepted foundation for energy cooperation between the states in Western and Eastern Europe.

In December 1991 in Hague, the European Energy Charter was signed, as a political declaration of principles for international energy including trade, transit and investment, together with the intention to negotiate a binding treaty. It was not until December 1994 in Lisbon that the first and only legally binding treaty\(^2\) dealing specifically with inter-governmental cooperation in the energy sector-the ECT-was signed. Together with the ECT, the Protocol on Energy Efficiency and Related Environmental Aspects (PEEREA) was signed, and they both entered into effect in April 1998. Also in April 1998, a Trade Amendment was made to ECT regarding to some trade-related provisions.

Thomas W. Wälde, former United Nations (UN) Inter-regional Adviser on Petroleum and Mineral Legislation, explained the original raison d’être behind the ECT as follows: