

Dear representatives of MOFA and METI,

Dear Ladies and Gentlemen,

I am very pleased to be with you at the Tokyo Energy Charter Forum today. I appreciate very much the warm hospitality of the Japanese government and the sincere interest of Japanese companies.

In particular, let me congratulate the economic security division of MOFA for taking care of the organisation and METI for their support.

During this last week I had the privilege to discuss the Treaty and the role of the Energy Charter Secretariat with

- government officials from the *Kantei*, METI, MOFA and Ministry of Justice;
- business stakeholders such as JOGMEC, Keidanren, NEXI or the Japanese Foreign Trade Council;
- and seminars at Tokyo and Kyoto Universities.

I learned a lot from that interesting exchange of information and I do hope we will have stronger cooperation during 2015 in order to prepare the 2016 Japanese Chairmanship.

Now, last but not least, it is my pleasure to address you.

Although Japan is an important original member of the treaty, there has been only one event in Tokyo since Japan acceded to the treaty in 2002. Considering that Japan will have the Chairmanship of the Energy Charter

Conference in 2016, it was about the right time to hold this Forum.

We prepared a fact sheet in Japanese explaining the key points of the Treaty and showing its current membership. You can find the Treaty, in Japanese and English, at our website with additional information on the Security Group established by the Secretariat during the recent gas crisis amongst EU, Ukraine and Russia.

The relevance of the Energy Charter Treaty as the only multilateral investment agreement signed by 52 countries plus the European Union and the European Atomic Energy Community (Euratom) is beyond doubt. Montenegro, Jordan and Pakistan are currently in the accession process while Morocco and Indonesia are starting it. China is getting more interested in the possibilities of the Energy Charter.

Energy investments require strong legal protection and efficient dispute resolution mechanisms. Since the first case recorded in 2001, the Secretariat has collected information on 59 investment arbitrations under the ECT (*since there is no obligation to inform the Secretariat about existing disputes, we only have partial information*).

Of those 59 arbitration cases, 21 were concluded with a final arbitral award and 7 were settled by an agreement of the parties.

Just before the summer, final awards were published in the investment arbitrations initiated by the former Yukos shareholders against the Russian Federation under the Energy Charter Treaty. The arbitrators unanimously ordered the Russian Federation to compensate the

claimants in the total aggregated amount of USD 50 billion for certain measures.

The decisions prove the Treaty to be a powerful instrument for protecting foreign energy investments against arbitrary measures from the host state. International arbitration should be the last resort (*amicable agreements are always to be preferred*), but is a useful mechanism in the hands of investors.

We are privileged to have gathered today the lawyers for both sides and the Secretary to the Tribunal of the Yukos cases. You will also benefit from the interaction with a lawyer who recently advised a Japanese corporation in reaching a settlement agreement with an ASEAN country in order to avoid international arbitration.

Although we kindly request you not to put any detailed question on such specific cases, you will benefit from the general and practical experience of those professionals. You will also be able to further interact during the network reception, in which my special envoy –Prof. Nobuo Tanaka, former IEA Executive Director- will give a guest speech.

The Forum will **focus on the resolution of investment disputes, not only on investment arbitration.**

Therefore, the last panel will explore some of the possibilities currently being discussed by the Energy Charter Conference: the promotion of mediation and conciliation as an alternative to investment arbitration.

The Conference has started also to consider the potential establishment of an ‘Energy Charter’

investment ombudsman, to act as first stop for foreign investors to solve their concerns before escalating into a full dispute.

In addition, we need to increase awareness of the rights and obligations of investors and Contracting Parties under the treaty: ambiguity, legal uncertainty, grey areas... should be reduced to the minimum possible allowing, in a clear and predictable way, for a fair balance between (i) the public interest of the host states and (ii) investor's rights.

Therefore, we need to know more about how the treaty is applied in practice by arbitral tribunals. That is why the Conference is also considering the incorporation of the UNCITRAL Transparency Rules (of which Prof. Hamamoto, who will chair the next panel, is one of the main drafters).

I hope these proposals may bring a substantial improvement to the ECT dispute resolution system.

Finally, I wish to say a word on the soon to be new political declaration. During the last months, around 100 states (including Iran, Egypt, Mexico, Russia, Philippines...) have been involved in the discussions on the International Energy Charter, which will be formally adopted and signed at a high level conference in The Hague in May 2015.

It is expected that countries signing the International Energy Charter will subsequently move towards accession to the ECT. That will be the Energy Charter's latest contribution to energy security and at a global level.

We hope the Forum will help Japanese stakeholders to understand better how the Treaty works; in particular, its mechanism for the resolution of investment disputes. Please, make this event as much interactive as possible.

Thank you for your attention and enjoy the Forum.