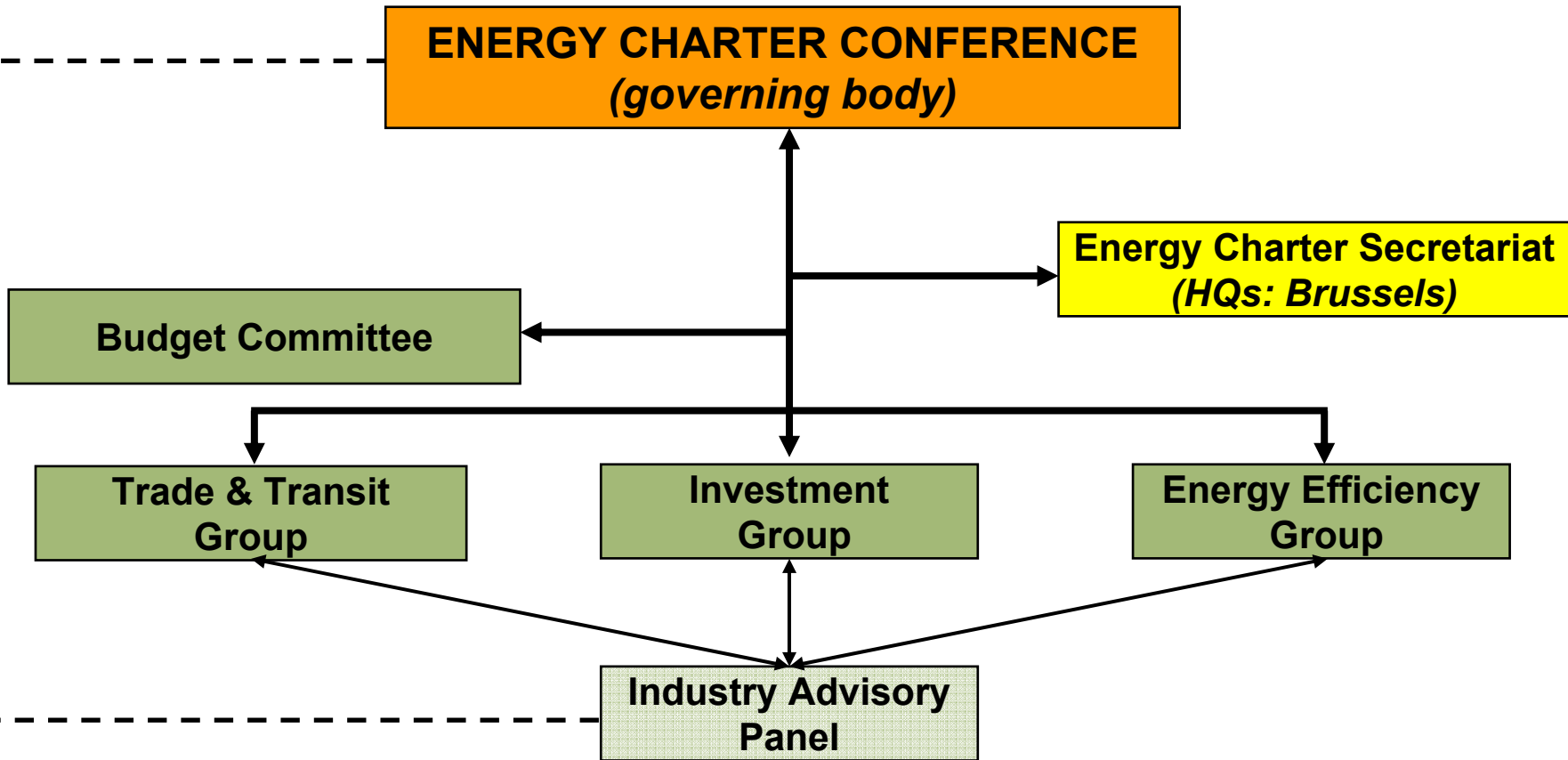


The Energy Charter Treaty: an overview

Energy Charter Institution



ECT Trade provisions

- ECT applies WTO non-discrimination standards in the energy sector:
 - National treatment, MFN
 - e.g.: transit
- Trade amendment brings ECT in line with WTO provisions
- ECT membership's benefit:
 - for **WTO members**: **complementary** to WTO membership
 - Smaller forum
 - Energy specific
 - Applies to investment
 - More flexible, expedient and reliable dispute resolution mechanism
 - for **non-WTO members**: **stepping stone** to WTO membership

History of ECT Trade

- Early (1991) recognition that it should be based on the rules of the multilateral trade system
- ECT incorporates 'by reference' GATT rules (EMP)
- ECT Trade Amendment "updates" ECT by incorporating the WTO rules (+ equipment). TA ratified by 30 member states, not yet in force (need 35 ratifications) but applied provisionally by some member states.

Overview of ECT Trade

ECT Trade regime consists of three pillars:

- ‘Interim’ provisions based on GATT (1947) rules or based on WTO rules (TA of April 1998)
- Trade provisions of ECT which are not based on GATT/WTO: TRIMS & Transit
- ECT trade dispute settlement system

Overview of ECT Trade as amended by TA (cont.)

ECT Trade provisions:

- Cover energy materials, products, energy-related equipment (Annexes EM1 & EQ1)
- Cover trade in services partially through the rules on investment
- Govern relations between WTO members and non-WTO members, as well as between non-WTO members
- Are based on GATT/WTO agreements – a step towards implementation of WTO rules by WTO non-members

Overview of ECT Trade (cont.)

- Product coverage – Annexes EM and EQ
- Trade principles: MFN, NT, No quantitative restrictions, transparency
- Exceptions to the Trade principles:
 - Annex W (A) lists WTO rules that are not applicable
 - Annex W (B) contains special rules and modifications of the WTO provisions

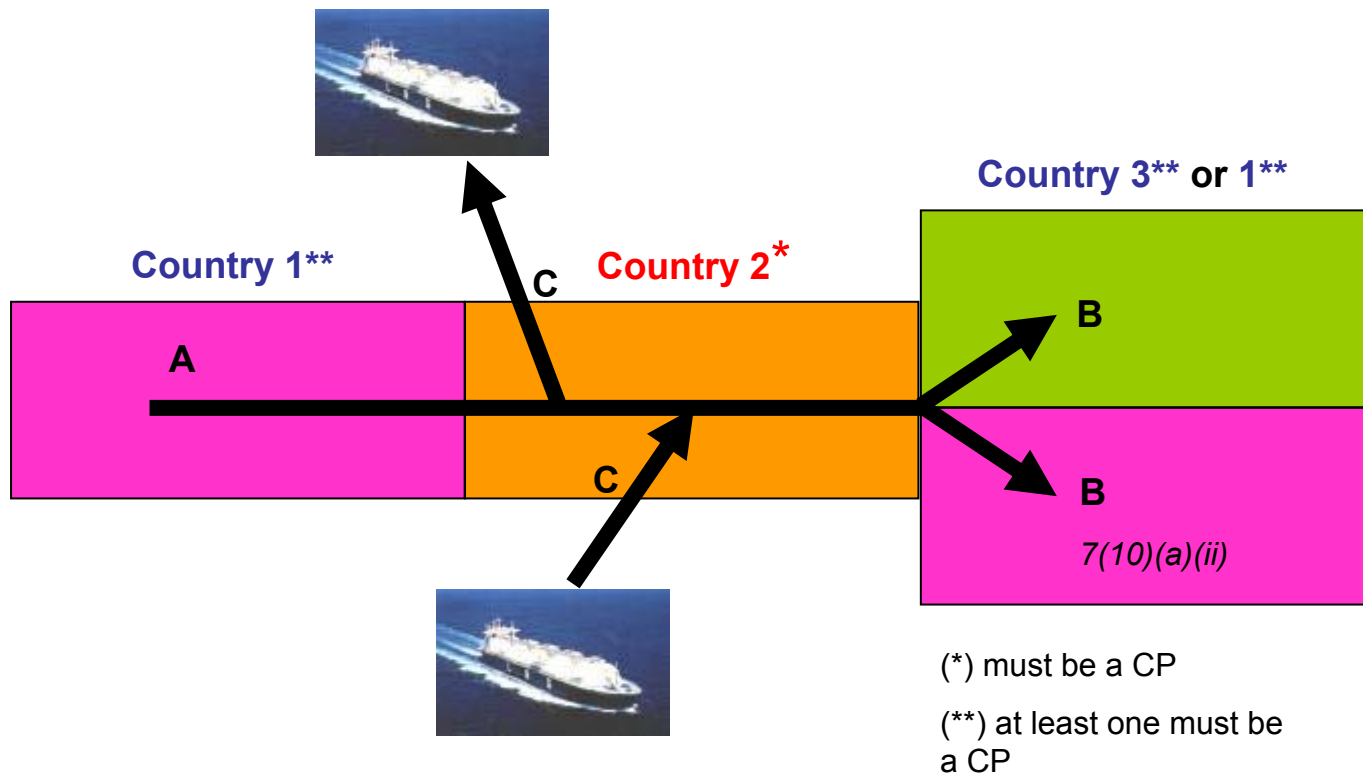
ECT Transit Provisions

- Freedom of energy transit 7(1)
- Established flows guaranteed 7(5)
- Non-interruption of transit flow (incl. dispute) 7(6)
- Non-discrimination 7(3) (national treatment)
 - as to origin, destination or ownership
 - as to pricing
- Obligation not to obstruct the establishment of new capacity
- No mandatory third party access

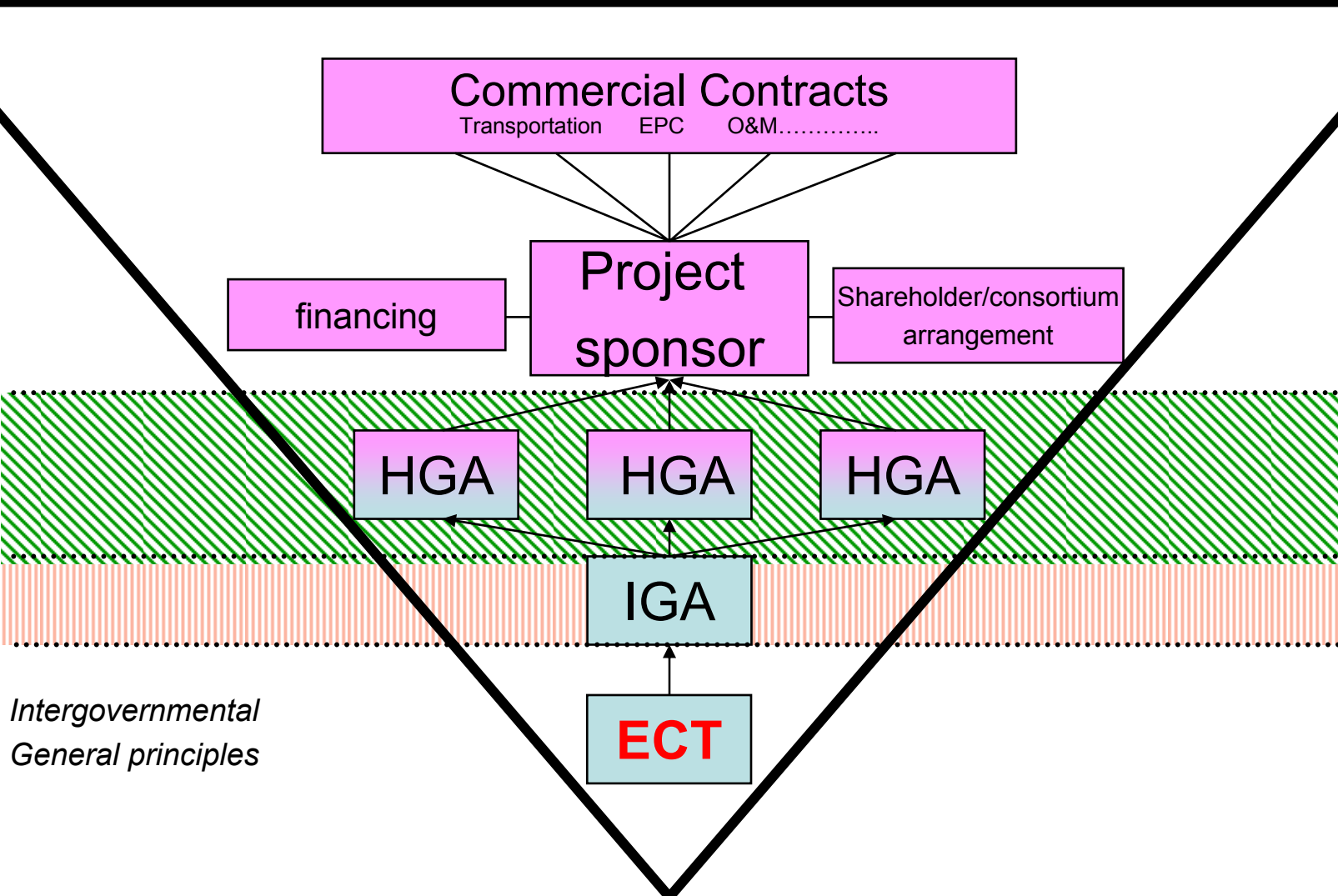
DEFINITION OF TRANSIT (Art. 7(10) ECT)

“... (a) Transit means:

- (i) the carriage through the Area of a CP, or to or from port facilities in its Area for loading or unloading, of EMP originating in the Area of another state and destined for the Area of a third state, so long as either the other state or the third state is a CP; or
- (ii) the carriage through the Area of a CP of EMP originating in the Area of another CP and destined for the Area of that other CP ...”



Contractual structure of a project



ECT investment provisions: Underlying Principles

- Attracting FDIs by sending signals to foreign investors that:
 - risk is reduced
 - country prepared to abide by their contractual commitments to investors (“pacta sunt servanda”)
- Protection of investments abroad

Investment Promotion/Protection

- Definitions of « investment » and « investor »
- Protection of individual investment contracts
- Principle of Non-Discrimination
- Freedom of investment-related capital transfers
- Compensation in case of expropriation and losses due to war and similar events
- Employment of key personnel

State-State Dispute Settlement

Consultations on “*disputes concerning the “application or interpretation” of ECT*”

if this fails

ECT
Arbitration

Ad-Hoc Arbitration

Application of ECT
and principles of international law

Award final and binding

Award enforceable

Investor-State Dispute Settlement

