

INTRODUCTION

- Following the collapse of Soviet Federation in the 1990s, there emerged a need to shift orientation of Euro-Russia relationship towards the global market - based economy. The Energy Charter Treaty of 1994 (ECT) was developed to institutionalize Europe relations with the energy-rich economies in the former USSR countries.
- ECT is administered with two other non-binding political declarations namely; ***the European Energy Charter of 1991 and the International Energy Charter of 2015 (IEC)***.
- The structure and implementation of these treaties is under the Energy Charter Conference and the Energy Charter Secretariat.

ECT STRUCTURE

The Energy Charter Treaty covers mainly four areas;

- 1. Trade provisions** which mirror the General Agreement on Trade and Tariffs of 1994 (GATT) principles of non-discrimination, national treatment and Most-Favored-Nation treatment.
- 2. Investment provisions** that provides for various standards of treatments for investors.
- 3. Transit provisions** that provides for the freedom of transportation and shipment on non-discriminatory basis.
- 4. Dispute settlement provisions** that focus on investor-State arbitration and state-to-state arbitration.

In order to join the ECT, a country starts by expressing interest, then prepare an accession report followed by an invitation to join the treaty and finally ratifying the treaty domestically.

Tanzania is a signatory to the International Energy Charter (IEC) of 2015 but has not acceded to the Energy Charter Treaty (ECT). Although the IEC is a non-binding agreement, it has been used as a strategic tool to attract countries towards the ECT.

TEN FACTS ABOUT THE ECT

1. ECT has triggered more investor-state lawsuits compared to other international trade and investment Treaties. As of December 2021, a total of **145 claims were initiated** by foreign investors against host countries.
2. While just 19 cases were registered during the first 10 years of the agreement (1998-2007), 102 investor lawsuits were filed during the last decade (2010- 2019), representing an **increase of 437% in the filed cases**.
3. Up to December 2021, Governments have been ordered or **settled to pay over US\$57.2 billion**.
4. Approximately 89% of the 50 lawsuits filed against Spain by October 2021 were **filed by equity funds and other portfolio investment**. Spain was ordered to pay Euro 971 million in 18 cases following its reforms toward renewable energy.
5. The ECT is **used by investors for treaty shopping**, 24 out of the 25 supposedly 'Dutch' investors who filed ECT-lawsuits by October 2021 are mailbox companies.
6. By December 2021, 44% of known ECT cases remained undecided, whereas **60% of resolved (45 Cases) lawsuits favored investors**.
7. By the end of 2012, **70% of known ECT cases were related to oil, gas and coal**
8. Approximately **97% of investors who sued** by the end of 2012 were fossil fuel companies.
9. As of December 2021, **64% of all breaches found were on fair and equitable treatment**.
10. As of December 2021, **54% of all 203 arbitrators were from developed (capital Exporting) countries** and only 1 was from Africa.



TANZANIA TRADE AND INVESTMENT COALITION (TATIC)

10 FACTS ABOUT THE ENERGY CHARTER TREATY (ECT)



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