

# **ENERGY SECURITY: THE ROLE OF INTERNATIONAL LEGAL FRAMEWORK**

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**International Conference**

**«The Role of Governments and International Organisations in Promoting Energy Security»**

**Energy Charter Secretariat, International Energy Agency,  
Organisation for Security and Cooperation in Europe**

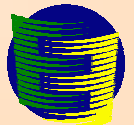
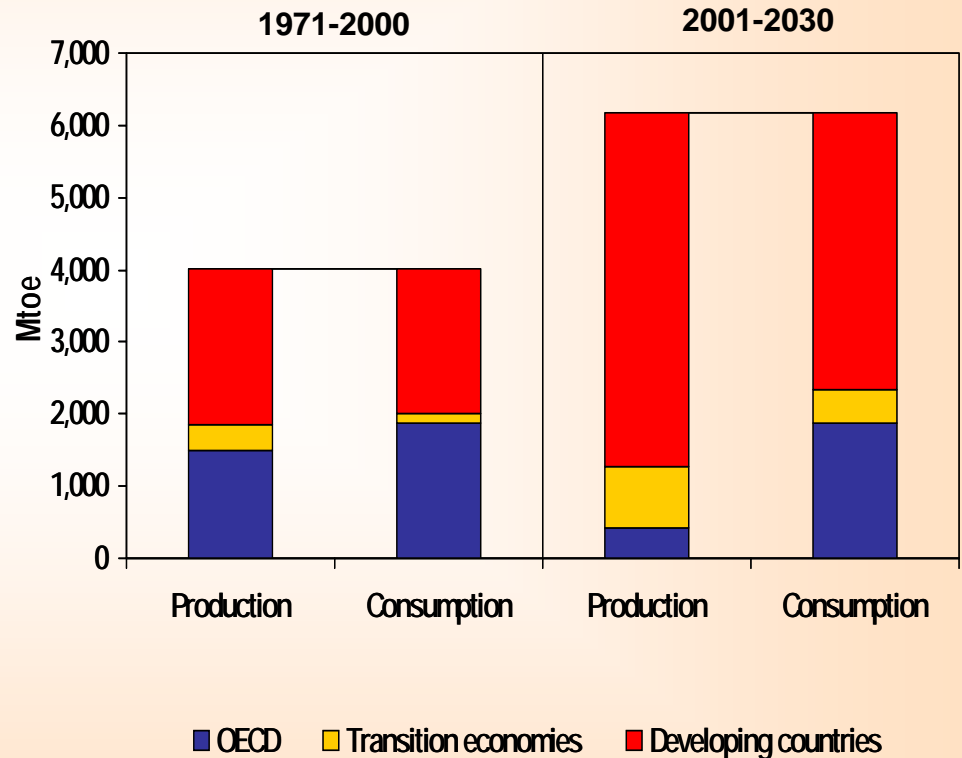
**25 October 2006, Palais d'Egmont, Brussels**

# GLOBAL ENERGY TRENDS: WHY NON-OECD IMPORTANT

**2001-2030:**

- **Increase in energy production:  
95% outside of OECD**
- **Increase in energy consumption:  
70% outside of OECD**
- **Cumulative energy investment:  
- 50% from non-OECD to non-OECD markets, and  
- 10% from non-OECD to OECD markets**

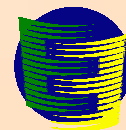
**Increase in World Energy  
Production and Consumption**  
(Source: IEA WEIO 2003)



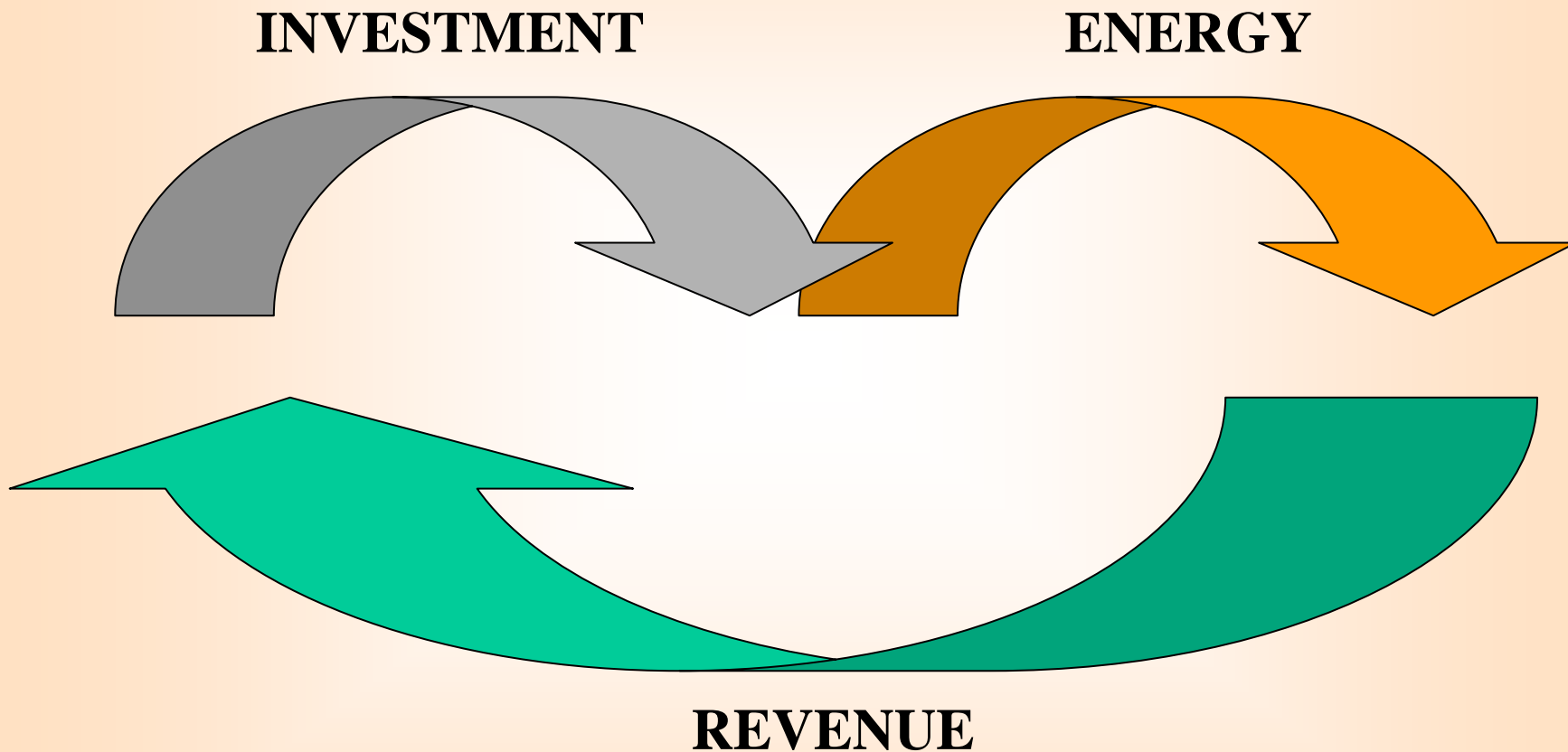
## **Diversification :**

- **of supply routes (“multiple pipelines”)**
- **of sources of supplies (“multiple suppliers”)**
- **of markets and routes to access them**

**to be based on balance of interests of all players throughout whole energy value chain**



# ECONOMIC “CIRCLE OF LIFE” OF ENERGY PROJECTS

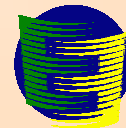


# **ENERGY ECONOMY: DEMAND FOR QUALITY OF REGULATORY FRAMEWORK**

## **Energy projects (compared to other industries):**

- Highest capital intensity (absolute & unit CAPEX per project),**
- Longest project life-cycles,**
- Longest pay-back periods,**
- Geology risks (+ immobile infrastructure, etc.),**
- Highest demand for legal & tax stability,**
- Role of risk management.**

**=> Higher demand for “quality” of legal and regulatory framework compared to other industries**



# ENERGY MARKETS DEVELOPMENT: EVOLUTION OF CONTRACTUAL STRUCTURES

**“Physical energy” markets =**

**Long-term contracts**

**+ Short-term contracts**

**+ Spot**

**+ Forward**

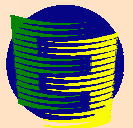
**+ “Paper energy” markets =**

**+ Forward**

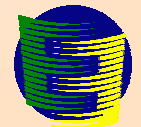
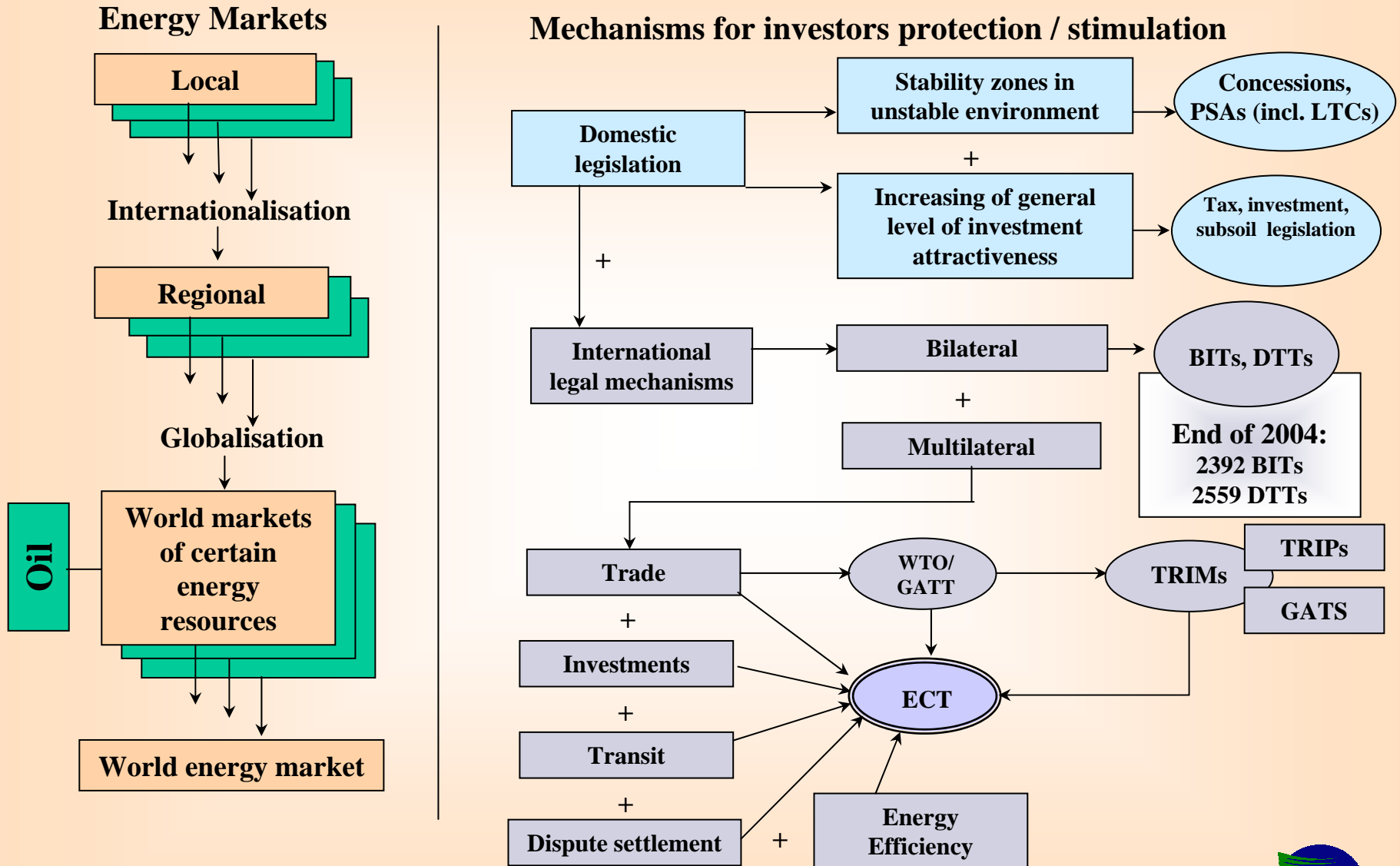
**+ Futures**

**+ Options**

**+ ...**



# DEVELOPMENT OF ENERGY MARKETS AND MECHANISMS FOR INVESTORS PROTECTION / STIMULATION



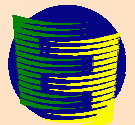
# SELECTED INTERNATIONAL INVESTMENT-RELATED AGREEMENTS

Organisation (member- states/CPs)	Legal Status	Scope	Investment	Trade	Transit	Energy Efficiency	Dispute Settlement
<b>ECT (51/52)</b>	<b>LB</b>	<b>Energy</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>WTO (149)</b>	<b>LB</b>	<b>General</b>	(Yes?) (Services)	<b>Yes</b>	<i>Yes/No*</i>	<i>No</i>	<b>Yes</b>
<b>NAFTA (3)</b>	<b>LB</b>	<b>General</b>	<b>Yes</b>	<b>Yes</b>	<i>No</i>	<i>No</i>	<b>Yes</b>
<b>MERCOSUR (4)</b>	<b>LB</b>	<b>General</b>	<b>Yes</b>	<b>Yes</b>	<i>No</i>	<i>No</i>	<b>Yes</b>
<b>OECD (30)</b>	<b>LB</b>	<b>General</b>	<b>Yes</b>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>
<b>APEC (21)</b>	<i>Non- LB</i>	<b>General</b>	<b>Yes</b>	<b>Yes</b>	<i>No</i>	<i>No</i>	<i>No</i>

\* application of GATT Art.V to grid-bound transportation systems is under debate

Plus specialised energy-related organisations: OPEC, IEA, IEF, UN ECE (partly), IAEA, ...

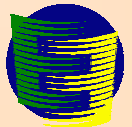
Plus specialised “regional” organisations: BSEC, BASREC, ...





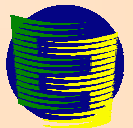
# ENERGY CHARTER SPECIFIC ROLE

- **Energy Charter *Treaty*:**
  - **Unique coverage of different areas for *energy* cooperation:**
    - investment, trade, transit, energy efficiency, dispute settlement,
    - energy materials & products + energy-related equipment,
    - 51 member-states (52CPs) + 19 observer-states + 10 observer organisations
  - **First and only one multilateral investment agreement with high standard of investment protection, incl. dispute settlement**
- **Energy Charter *process*:**
  - **Specialized forum for “advanced” discussion of the issues of energy markets evolution that might create new risks for development of energy projects in ECT member-states,**
  - **Platform for preparation of new legally binding instruments to diminish such risks within ECT member-states.**



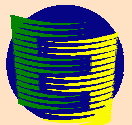
# ECT = THE FIRST MULTILATERAL INVESTMENT AGREEMENT (1)

- **Based on:**
  - well-established practice of BITs (about 500 BITs as of early 1990's - around 2400 BITs as of today)
  - investment chapter XI of NAFTA (US, Canada, Mexico)
  - some interaction with then proposed “Multilateral Agreement for Investment” (MAI – aborted in 1998)
- **Within 51 ECT member-states equal to 1275 BITs**
- **MFN and National Treatment for investors:**
  - binding guarantee of non-discriminatory treatment for *post-establishment* phase,
  - soft-law obligations for *pre-establishment* phase (stage of making investment)



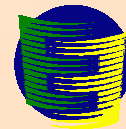
# ECT = THE FIRST MULTILATERAL INVESTMENT AGREEMENT (2)

- **Protection against key political/regulatory risk:**
  - expropriation and nationalisation,
  - breach of individual investment contracts,
  - unjustified restrictions on transfer of funds
- **Reinforced by access to binding international arbitration in case of dispute:**
  - State-to-state, and (**NOVELTY!**) investor-to-state => direct dispute settlement at investor's choice at ICSID, UNCITRAL or ICC Stockholm,
  - Awards:
    - ✓ final and enforceable under NY convention,
    - ✓ usually as entitlement to payment (no risk of vicious circle for retaliating measures),
    - ✓ retroactive to start of dispute, may include interest (no incentive to delay process)

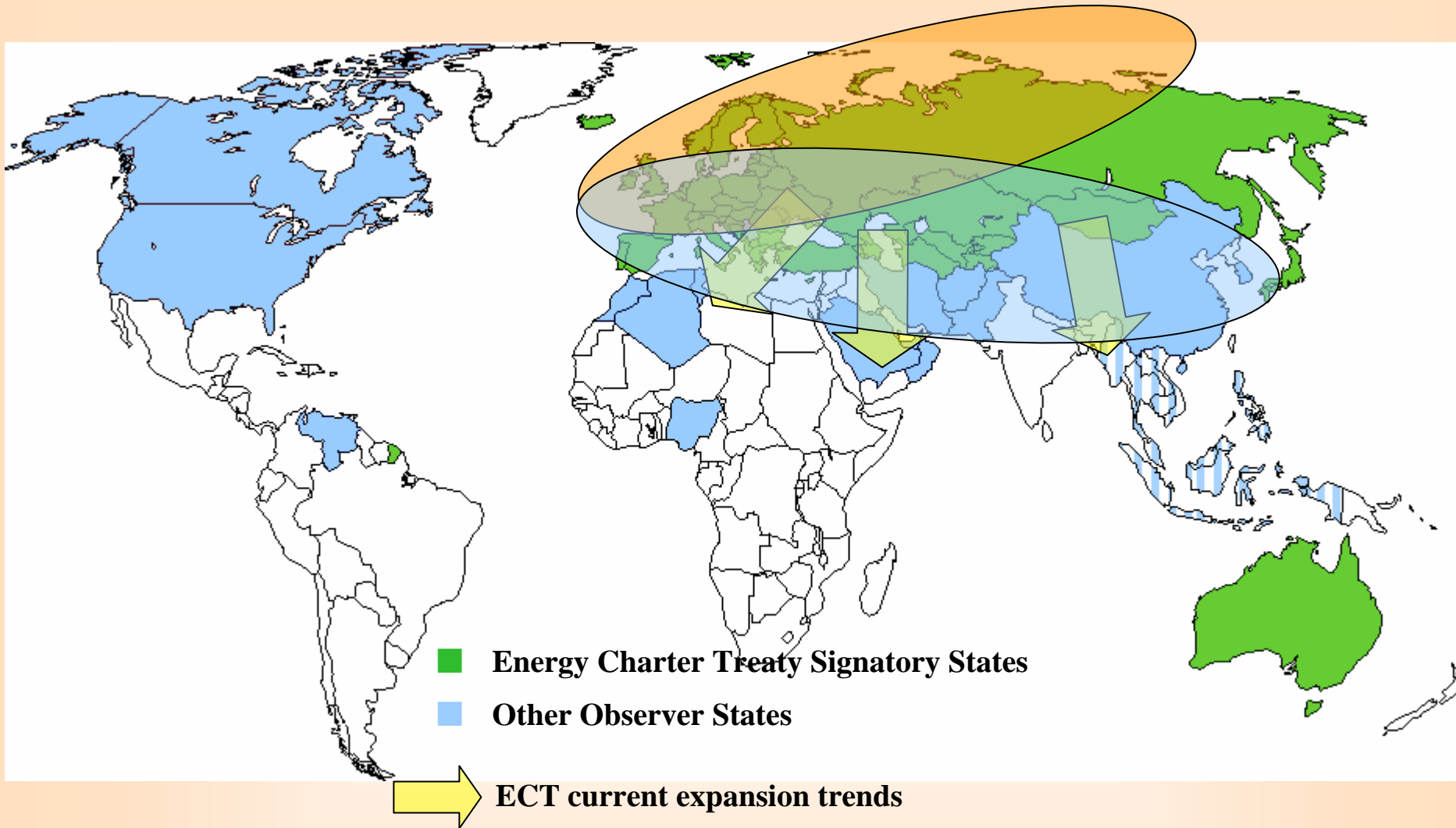


# **ECT EXPANSION PROCESS: ASIAN DIMENSION DOMINATES**

- **New ECT members:**  
**Mongolia - 1999**
- **New ECT observers:**  
**China – 2001**  
**Korea Rep. – 2002**  
**Iran – 2002**  
**Nigeria – 2003**  
**ASEAN – 2003**  
**Pakistan – 2005**  
**Afganistan – 2006**



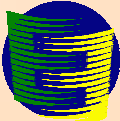
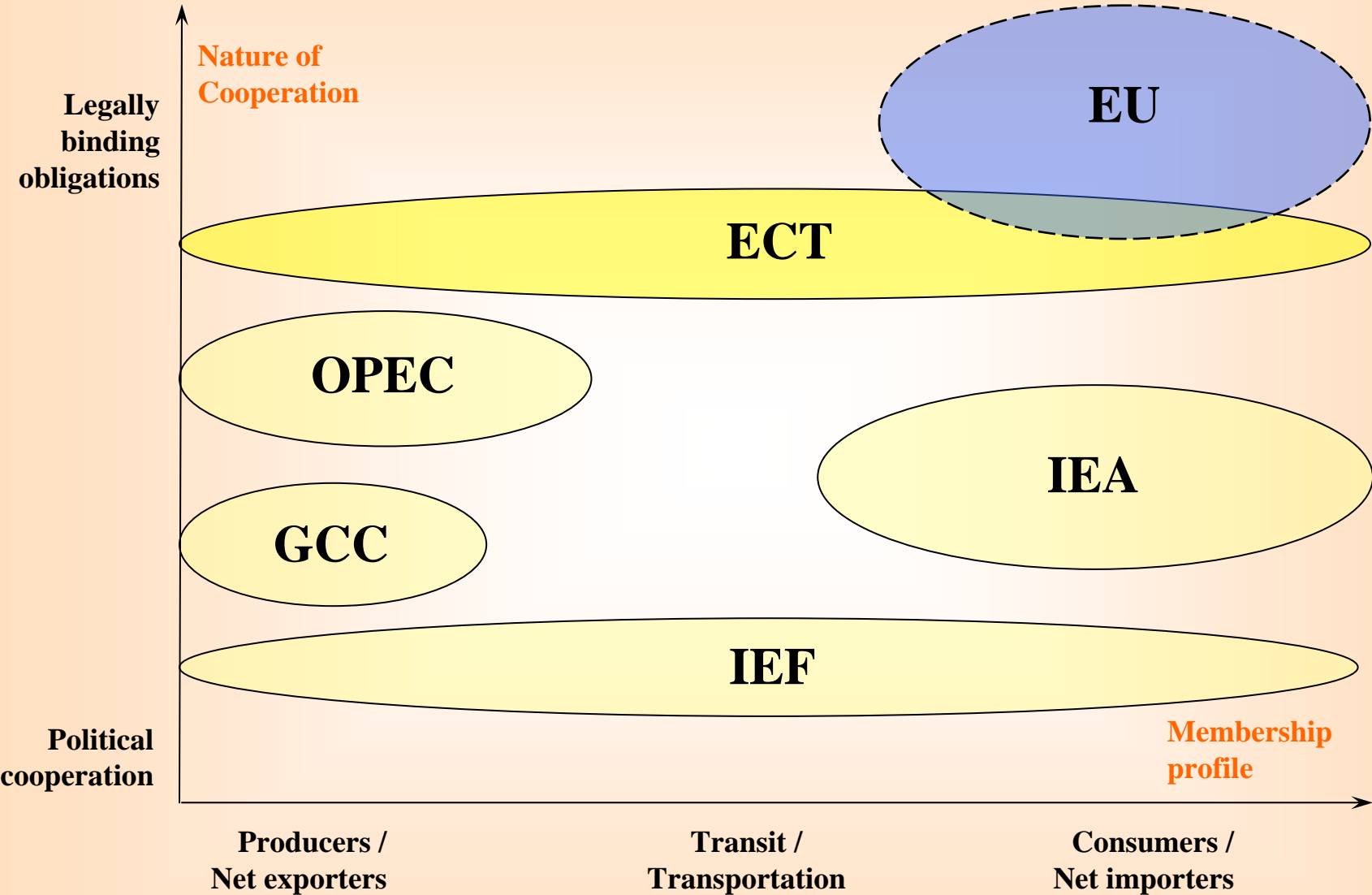
# ENERGY CHARTER PROCESS: GEOGRAPHICAL DEVELOPMENT



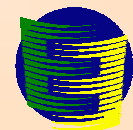
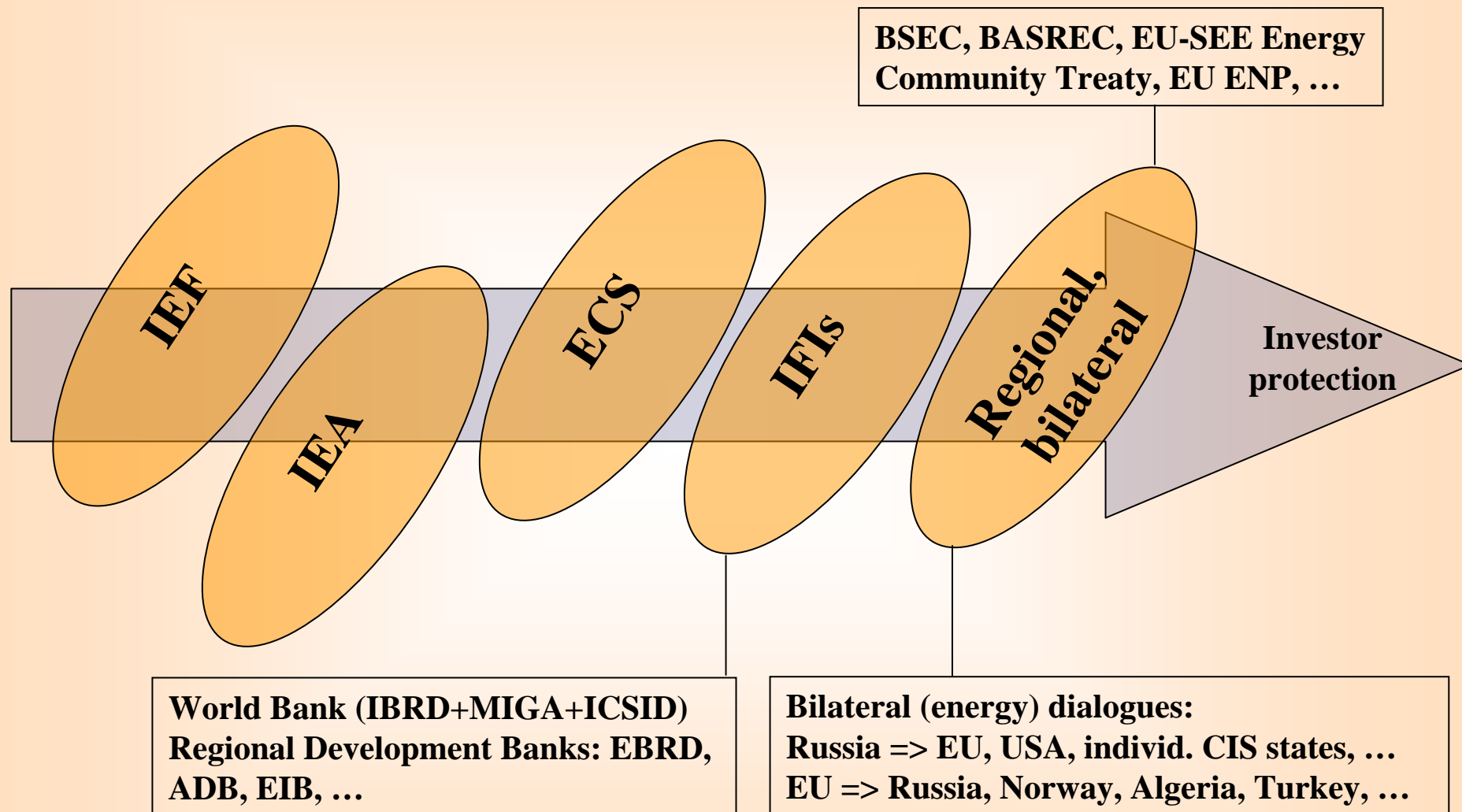
1. From trans-Atlantic political declaration to broader Eurasian single energy market
2. ECT expansion - objective and logical process based on clear economic and financial reasoning



# SOME ENERGY-RELATED INTERNATIONAL ORGANISATIONS (approximation)



# COMPLIMENTARITY OF ENERGY-RELATED INTERNATIONAL ORGANISATIONS (IN PROTECTING ENERGY INVESTMENTS)



**Thank you for your attention!**

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