

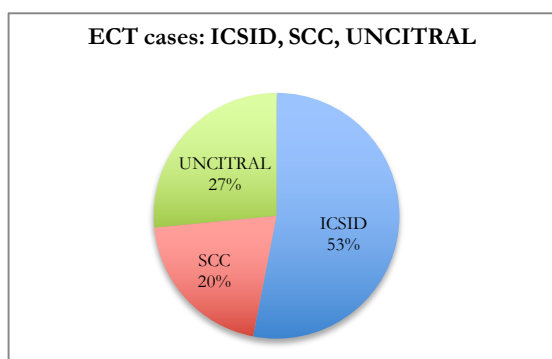
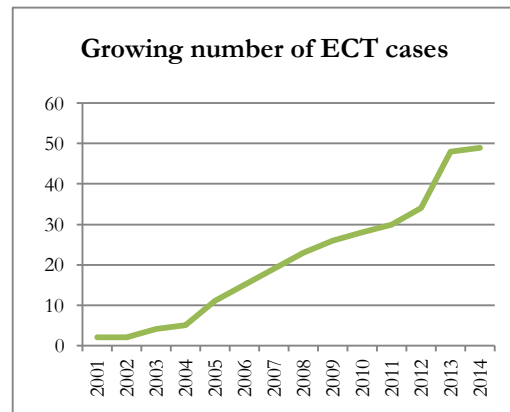
## SERIES OF NOTES ON THE ENERGY CHARTER TREATY

### Note 1

09 March 2014

## STATISTICAL ANALYSIS OF PUBLICLY AVAILABLE ARBITRATION CASES UNDER THE ENERGY CHARTER TREATY

The first international investment arbitration case under the Energy Charter Treaty (ECT) was registered at the International Centre for Settlement of Investment Disputes (ICSID) in 2001. To the best of the author's knowledge, there are currently 49 publicly available arbitration claims that have been submitted under the ECT.<sup>1</sup>

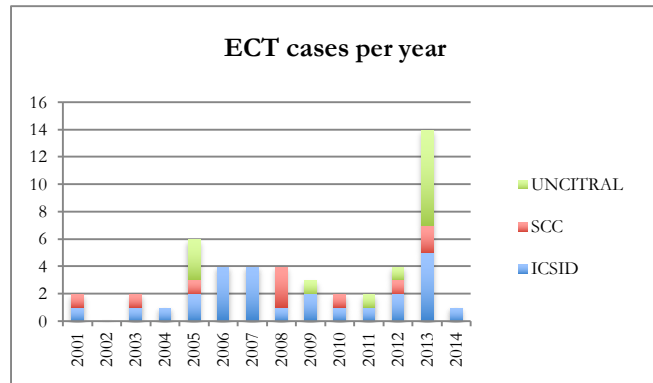


ECT covered Investors continue to favour ICSID as an arbitration venue with 26 registered cases (53%) against 13 registered at the Stockholm Chamber of Commerce (SCC) (20%). Ad hoc arbitration has so far claimed 10 cases, which have been initiated under the UNCITRAL Arbitration Rules (27%).

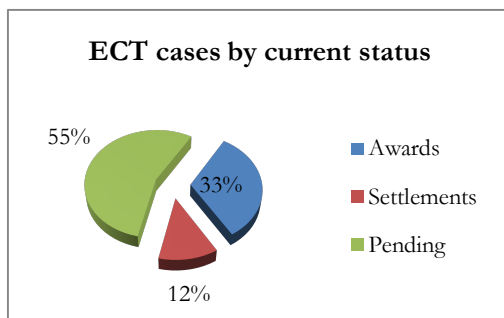
<sup>1</sup> A list of 51 ECT cases, however, has been compiled by the Energy Charter Secretariat at [www.encharter.org](http://www.encharter.org)

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**2013** witnessed a large increase in arbitration claims under the ECT (14 in total). It seems reasonable to suggest that considering the current uncertainties of governmental energy policies (e.g. the effect of increasing tariffs and cutting subsidies in photovoltaic/solar thermal segment of the European energy market)



**2014** will be a bumper year for ECT arbitration cases.



The current status of the arbitration cases filed under Article 26 of the ECT is as follows:

- 16 awards (rendered) - 33%<sup>2</sup>
- 6 cases have been settled - 12%
- 27 cases are pending - 55%

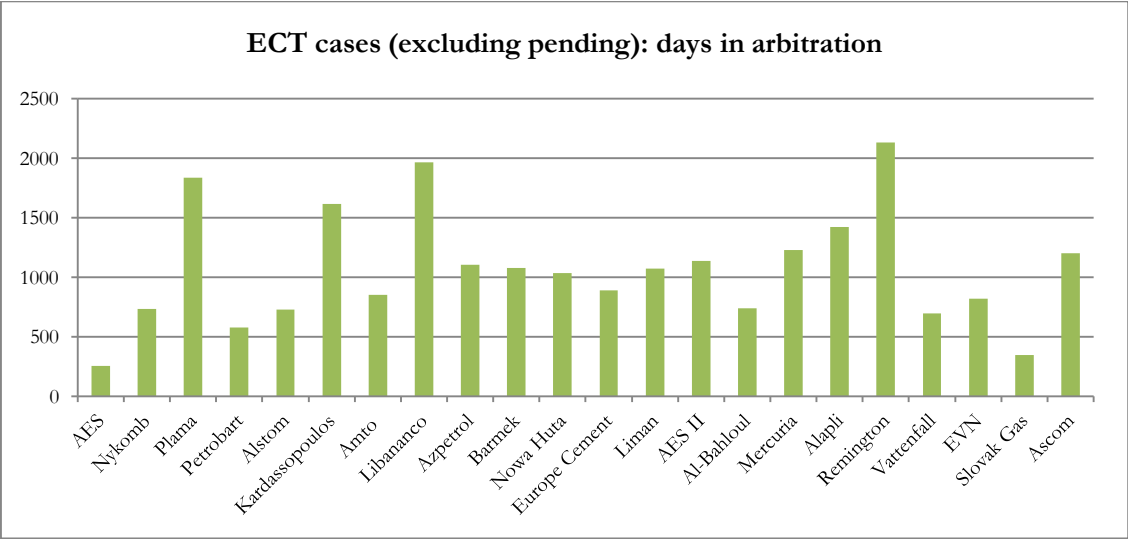
In respect of concluded ECT cases,<sup>3</sup> the average length of arbitration proceedings is almost 3 years with the quickest being *AES* (settlement reached in approximately 8 ½ months); the lengthiest ECT arbitration proceeding is *Remington* which took the arbitral tribunal almost 6 years to render an award.

<sup>2</sup> Awards recording parties' settlement agreements have been counted towards settlements.

<sup>3</sup> ECT cases where final awards have been issued and settlements achieved.

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On average, settlements<sup>4</sup> were reached in less than 2 years, and (final) awards were issued in just less than 3 ½ years.



*“Statistics are no substitute for judgment.”*

Henry Clay

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<sup>4</sup> AES, Alstom, Barmek, Vattenfall, EVN, Slovak Gas.