

# Article 1 – Definitions

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## General comments and notes

**ECT 7 [CONF 96] (17/03/94)**  
Article 1 – Definitions  
*Chairman’s note to Article 1*

Negotiations in the Plenary finished, except for the definition of the GATT and Related Instruments and the exclusion of maritime transport.

**ECT 6 [CONF 82] (20/12/93)**  
**ECT 5 [CONF 72] (11/10/93)**  
Article 1 – Definitions  
*Chairman’s note to Article 1*

Negotiations in the Plenary finished, except for the question of “Control” and “Intellectual Property”.

**ECT 4 [CONF 64] (07/07/93)**  
Article 1 – Definitions  
*Chairman’s note to Article 1*

Negotiations in the Plenary finished, except for the question of “Control”, “Intellectual Property” and “Additional refinery products to Annexes EM and NI”. Plenary will not revert to remaining footnotes.

**ECT 3 [CONF 60] (01/06/93)**  
Article 1 – Definitions  
*Chairman’s note to Article 1*

Negotiations in the Plenary on paragraphs (1), (2), (3), (7), (10), (12), (14) and (15) finished.

**BA-31 (21/12/92)**  
**BA-26 (25/11/92)**  
Article 1 – Definitions

The Chairman of WG II asked delegations to provide him with comments and suggestions on definitions of Energy Materials and Products relevant for investment Articles in order for him to make a new draft of the definition of Investments.

**BA-15 (12/08/92)**  
Article 1 – Definitions

Articles 1.4, 1.5, 1.6, 1.7, 1.12 and 1.13 are Chairman’s compromise Proposals.

**BA 14 (24/06/92)**  
Article 1 – Definitions

Item (9) defines “Agreement Area”. However, for ease of reading, as a temporary measure, the word [Territory] has been kept in the text of the document.

**BA 13 (19/06/92)**  
Article 1 – Definitions

Item (9) defines “[Territory]”. However, for ease of reading, as a temporary measure, the word “[Territory]” has been kept in the text of the document.

**BA 12 (09/04/92)**  
Article 1 – Definitions

References of GATT and GATT-related instruments as currently drafted in items (10) and (11) are overlapping and will be reworked after the discussion on Article 5 A (document BA-11).

**BA 6 (21/01/92)**  
Article 1 – Definitions

Former Article 4 “Protocols” has been moved to Article 1(9).

**USA:**

- the term “non-discrimination” appears often in the text. Some type of definition would be useful, preferably one that includes both national and MFN treatment.
- an alternative approach to the problem of definition might be similar to the form used in Chapter Nine of the US-Canada Free Trade Agreement.

**USSR:** Argues necessity to define “transport” and “transit”.

**BA 4 (31/10/91)**  
Article 1 – Definitions

New texts in para (4), (5) and (8) based on suggestion of Chairman; in para (7) on basis of Australia proposal.

**Romania:** clarification of other notions mentioned in Basic Agreement is needed.

**USA:**

- the term “non-discrimination” appears often in the text. Some type of definition would be useful, preferably one that includes both national and MFN treatment.
- an alternative approach to the problem of definition might be similar to the form used in Chapter Nine of the US-Canada Free Trade Agreement.

**BP 2 (11/09/91)**  
*Explanatory Memorandum*

Article 1 defines various terms used in the text of the Basic Protocol.

## **Article 1.1**

### **ECT as adopted (17/12/94)**

Article 1.1 – Definitions

As used in this Treaty:

- (1) “Charter” means the European Energy Charter adopted in the Concluding Document of the Hague Conference on the European Energy Charter signed at The Hague on 17 December 1991; signature of the Concluding Document is considered to be signature of the Charter.

### **CONF 104 (Text for adoption) (14/09/94)**

Article 1.1 – Definitions

For the purposes of this Treaty:

- (1) “Charter” means the European Energy Charter adopted in the Concluding Document of the Hague Conference on the European Energy Charter signed at The Hague on 17 December 1991; signature of the Concluding Document is considered to be signature of the Charter.

### **Interim Text (25/06/94)**

Article 1.1 – Definitions

For the purposes of this Treaty:

- (1) “Charter” means the European Energy Charter adopted in the Concluding Document of the Hague Conference on the European Energy Charter signed at The Hague on 17 December 1991; signature of the Concluding Document is considered to be signature of the Charter.

### **Interim Text (20/06/94)**

#### **Compromise text [CONF 98] (22/04/94)**

Article 1.1 – Definitions

For the purposes of this Treaty:

- (1) “Charter” means the European Energy Charter signed at The Hague on 17 December 1991.

### **ECT 7 (17/03/94)**

Article 1.1 – Definitions

For the purposes of this Treaty unless the context otherwise requires:

- (1) “Charter” means the European Energy Charter signed at The Hague on 17 December 1991;

**ECT 6 [CONF 82] (20/12/93)**  
**ECT 5 [CONF 72] (11/10/93)**  
**ECT 4 [CONF 64] (07/07/93)**  
**ECT 3 [CONF 60] (01/06/93)**  
**ECT 3 [CONF 60] (01/06/93)**  
**ECT 2 [CONF 56] (01/05/93)**  
**(Compromise text) ECT 1 [CONF 50] (15/03/93)**  
**BA-37 (01/03/93)**  
**BA-35 (09/02/93)**  
**BA-31 (21/12/92)**  
**BA-26 (25/11/92)**  
**BA-22 (21/10/92)**  
Article 1.1 – Definitions

For the purposes of this Agreement unless the context otherwise requires:

- (1) “Charter” means the European Energy Charter signed at The Hague on 17 December 1991;

**BA-15 (12/08/92)**  
**BA 14 (24/06/92)**  
**BA 13 (19/06/92)**  
**BA 12 (09/04/92)**  
**BA 6 (21/01/92)**  
**BA 4 (31/10/91)**  
Article 1.1 – Definitions

For the purposes of this Agreement unless the context otherwise requires:

- (1) “Charter” means the European Energy Charter;

**BP 2 (11/09/91)**  
**Basic Protocol (20/08/91)**  
Article 1.1(a) – Definitions

1. For the purposes of this Agreement unless the context otherwise requires:

- (a) “Charter” means the European Energy Charter;

## **Article 1.2**

**ECT as adopted (17/12/94)**  
**CONF 104 (Text for adoption) (14/09/94)**  
Article 1.2 – Definitions

“Contracting Party” means a state or Regional Economic Integration Organization which has consented to be bound by this Treaty and for which the Treaty is in force.

**Interim Text (25/06/94)**  
**Interim Text (20/06/94)**  
**Compromise text [CONF 98] (22/04/94)**  
**ECT 7 [CONF 96] (17/03/94)**  
Article 1.2 – Definitions

“Contracting Party” means a state or Regional Economic Integration Organization which has consented to be bound by the Treaty and for which the Treaty is in force.

**ECT 6 [CONF 82] (20/12/93)**  
**ECT 5 [CONF 72] (11/10/93)**  
**ECT 4 [CONF 64] (07/07/93)**  
**ECT 3 [CONF 60] (01/06/93)**  
**ECT 2 [CONF 56] (01/05/93)**  
**(Compromise text) ECT 1 [CONF 50] (15/03/93)**  
**BA-37 (01/03/93)**  
**BA-35 (09/02/93)**  
**BA-31 (21/12/92)<sup>1</sup>**  
**BA-26 (25/11/92)<sup>2</sup>**  
**BA-22 (21/10/92)<sup>2</sup>**  
Article 1.2 – Definitions

“Contracting Party” means a state or Regional Economic Integration Organisation which has consented to be bound by the Agreement and for which the Agreement is in force;

<b>BA-15 (12/08/92)</b> <b>BA 14 (24/06/92)</b> <b>BA 13 (19/06/92)</b> <b>BA 12 (09/04/92)</b> <b>BA 6 (21/01/92)</b> <b>BA 4 (31/10/91)</b> Article 1.2 – Definitions	<b>BP 2 (11/09/91)</b> <b>Basic Protocol (20/08/91)</b>  Article 1.1(b) – Definitions
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“Contracting Party” means a party to this Agreement;

<sup>1</sup> EC will submit the definition of the Regional Economic Integration Organization for the next meeting of the Legal Sub-Group.

<sup>2</sup> EC will submit the definition of the Regional Economic Integration Organization for the November meeting of Legal Drafting Sub-Group.

## Article 1.3

**ECT as adopted (17/12/94)**  
**CONF 104 (Text for adoption) (14/09/94)**  
**Interim Text (25/06/94)**  
**Interim Text (20/06/94)**  
**Compromise text [CONF 98] (22/04/94)**  
Article 1.3 – Definitions

“Regional Economic Integration Organization” means an organization constituted by states to which they have transferred competence over certain matters a number of which are governed by this Treaty, including the authority to take decisions binding on them in respect of those matters.

**ECT 7 [CONF 96] (17/03/94)**  
Article 1.3 – Definitions  
*Endnote\* to Article 1 – Definitions*

[“Regional Economic Integration Organization” means an organization constituted by states to which they have transferred competence over certain matters a number of which are governed by this Treaty, including the authority to take decisions binding on them in respect of those matters.]<sup>3</sup>

**ECT 6 [CONF 82] (20/12/93)**  
Article 1.3 – Definitions  
*Endnote\* to Article 1 – Definitions*

[“Regional Economic Integration Organisation” means an organisation constituted by states to which they have transferred competence over certain matters a number of which are governed by this Agreement, including the authority to take decisions binding on them in respect of those matters.]<sup>4</sup>

**ECT 5 [CONF 72] (11/10/93)**  
Article 1.3 – Definitions  
*Footnote 27.8 to Article 27*

[“Regional Economic Integration Organisation” means an organisation constituted by states to which they have transferred competence over certain matters a number of which are governed by this Agreement, including the authority to take decisions binding on them in respect of those matters.]<sup>4</sup>

### **Footnote 27.8 to Article 27**

**Japan** proposes the following treatment of the EIO issue:

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\* *Ed. note:* Endnote is included at the end of the Draft.

<sup>3</sup> Wording dependent on Articles 27 and 28. **Japan** contingency reserve.

\* *Ed. note:* Endnote is included at the end of the Draft.

<sup>4</sup> **Japan** contingency reserve related to Article 27.

### Article 1(3)

“Economic Integration Organization (EIO)” means an organization constituted by sovereign States;

- a) to which its member States have transferred competences in respect of any matters governed by this Agreement and Protocols, including the authority to take decisions binding on its member States in respect of those matters and which has been duly authorized, in accordance with its internal procedure, to sign, ratify, accept, approve or accede to the instruments concerned;
- b) in which any discriminatory measures between its member States are eliminated;
- c) of which any discriminatory and non-discriminatory measures enacted and/or implemented by any member States against any Contracting Parties which are not member States are uniformed; and
- d) whose purpose shall be to facilitate liberalization of all the economic activities and unification of all the economic policies (including currency, taxation, and monetary and fiscal policy) among member States through elimination of existing discriminatory measures and/or prohibition of new or more discriminatory measures among member States in its competences and not to raise the overall level of discriminations in the activities between the EIO and Contracting Parties which are not member States.

**ECT 4 [CONF 64] (07/07/93)**

Article 1.3 – Definitions

*Endnote\* to Article 1 – Definitions*

[“Regional Economic Integration Organisation” means an organisation constituted by states to which they have transferred competence over certain matters a number of which are governed by this Agreement, including the authority to take decisions binding on them in respect of those matters.]<sup>4</sup>

**ECT 3 [CONF 60] (01/06/93)**

Article 1.3 – Definitions

[“Regional Economic Integration Organisation” means an organisation constituted by Sovereign States to which its Member States have transferred competences over a range of matters governed by this Agreement and Protocols, including the authority to take decisions binding on its Member States in respect of those matters.]<sup>4</sup>

**ECT 2 [CONF 56] (01/05/93)**

**(Compromise text) ECT 1 [CONF 50] (15/03/93)**

Article 1.3 – Definitions

“Regional Economic Integration Organisation” means an organization constituted by Sovereign States to which its Member States have transferred competences over a range of matters governed by this Agreement and Protocols, including the authority to take decisions binding on its Member States in respect of those matters.

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\* *Ed. note*: Endnote is included at the end of the Draft.

<sup>4</sup> **Japan** contingency reserve related to Article 27.



**BA-37 (01/03/93)**  
Article 1.3 – Definitions

[“A Regional Economic Integration Organisation” means an organisation constituted by Sovereign States to which its Member States have transferred competences over a range of matters governed by this Agreement and Protocols, including the authority to take decisions binding on its Member States in respect of those matters.]<sup>5</sup>

**BA-35 (09/02/93)**  
Article 1.3 – Definitions

“A Regional Economic Integration Organisation” means an organisation constituted by Sovereign States to which its Member States have transferred competences over a range of matters governed by this Agreement and Protocols, including the authority to take decisions binding on its Member States in respect of those matters.<sup>6</sup>

**BA-31 (21/12/92)**  
*Specific comment to Article 1.2 – Definition*

*EC will submit the definition of the Regional Economic Integration Organization for the next meeting of the Legal Sub-Group.*

**BA-26 (25/11/92)**  
**BA-22 (21/10/92)**  
*Specific comment to Article 1.2*

*EC will submit the definition of the Regional Economic Integration Organization for the November meeting of Legal Drafting Sub-Group.*

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<sup>5</sup> USA suggests adoption of modified text to EC proposal (new text underlined) reading:

“Regional Economic Integration Organisation” means an organisation constituted by, and composed of, sovereign States, which has competence in respect of matters covered by this Agreement and Protocols, including the authority to take decisions binding on its Member States in respect of those matters, and has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to this Treaty.

<sup>6</sup> EC proposal. Not discussed in WG II.

## **Article 1.4**

**ECT as amended (24/04/98)\***  
**CC 113 (04/03/98)\***  
Article 1.4 – Definitions

“Energy Materials and Products”, based on the Harmonised System of the World Customs Organization and the Combined Nomenclature of the European Communities, means the items included in Annexes EM I or EM II.

**CC 107 (03/12/1997)\***  
Article 1.4 – Definitions

“Energy Materials and Products”, Based on the Harmonized System of the World Customs Organisation and the Combined Nomenclature of the European Communities, means the items included in Annexes EM I and/or EM II as the case requires.

**ECT as adopted (17/12/94)**  
**CONF 104 (Text for adoption) (14/09/94)**  
**Interim Text (25/06/94)**  
**Interim Text (20/06/94)**  
**Compromise text [CONF 98] (22/04/94)**  
Article 1.4 – Definitions

"Energy Materials and Products", based on the Harmonized System of the Customs Co-operation Council and the Combined Nomenclature of the European Communities, means the items included in Annex EM.

**ECT 7 [CONF 96] (17/03/94)**  
**ECT 6 [CONF 82] (20/12/93)**  
**ECT 5 [CONF 72] (11/10/93)**  
**ECT 4 [CONF 64] (07/07/93)**  
Article 1.4 – Definitions

“Energy Materials and Products”, based on the Harmonized System (HS) of the Customs Cooperation Council and the Combined Nomenclature (CN) of the European Communities, means the items of HS or CN included in Annex EM.

**ECT 3 [CONF 60] (01/06/93)**  
Article 1.4 – Definitions  
*Para 1 of General comment to Article 1(4)*

“Energy Materials and Products”, based on the Harmonised System (HS) of the Customs Cooperation Council and the Combined Nomenclature (CN) of the European Communities, means the items of HS or CN included in Annex EM.

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\* *Ed. note:* As modified by Article 2 of the Amendment to the Trade-Related Provisions of the ECT (Annex 1 to the Final Act).

\* *Ed. note:* As modified by Article 2 of document CC 113.

\* *Ed. note:* As modified by Article 2 of document CC 107.

#### General comment to paragraph 4

The Chairman proposed to include language in the Treaty text to enable the Charter Conference to adapt, if necessary, the list mentioned in 1(4) and 1(5) and if agreed also in 1(4)(a), by consensus.

- 1) In case of 1(4) and 1(5) a new sub-paragraph (e) to Article 41(1) has been added reading:  
"approve the adoption of and modification to Annexes EM and NI".

<p style="text-align: center;"><b>ECT 2 [CONF 56] (01/05/93)</b> <b>(Compromise text) ECT 1 [CONF 50] (15/03/93)</b> Article 1.4 – Definitions</p>
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“Energy Materials and Products”, based on the Harmonised System (HS) of the Customs Cooperation Council and the Combined Nomenclature (CN) of the European Communities, means the following items of HS or CN [...]\*

<p style="text-align: center;"><b>BA-37 (01/03/93)</b> Article 1.4 – Definitions</p>
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<sup>7</sup>“Energy Materials and Products”, based on the Harmonised System (HS) of the Customs Cooperation Council and the Combined Nomenclature (CN) of the European Communities, means the following items of HS or CN [...]\*

<p style="text-align: center;"><b>BA-35 (09/02/93)</b> Article 1.4 – Definitions</p>
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<sup>8</sup>“Energy Materials and Products”, based on the Harmonised System (HS) of the Customs Cooperation Council and the Combined Nomenclature (CN) of the European Communities, means the following items of HS or CN [...]\*

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\* *Ed. note:* further the provision lists HS or CN items considered as “Energy Materials and Products”. Taking into account that subsequently the list becomes Annex EM of the Treaty, the evolution of HS/CN items was included in the revision of Annex EM.

<sup>7</sup> **Norway** scrutiny reserve on whole paragraph (4). Norway wishes also to scrutinise the possibility for additions to HS items. In particular Norway wants the following items to be included:

29.01 Acyclic hydrocarbons (saturated or unsaturated as ethylene, propene (propylene), butene (butylene) and isomers thereof, butadiene and isoprene, other).

29.02 Cyclic hydrocarbons (e.g. cyclohexane, benzene, toluene, xylenes and their isomers, styrene, ethyl benzene, cumene and other).

29.05.11 Methanol (methylalcohol).

<sup>8</sup> General scrutiny reserve. This definition has been considered primarily in relation to trade Articles.

**BA-31 (21/12/92)**  
**BA-26 (25/11/92)**  
Article 1.3 – Definitions

<sup>9</sup>“Energy Materials and Products”, based on the Harmonised System (HS) of the Customs Cooperation Council and the Combined Nomenclature (CN) of the European Communities, means the following items of HS or CN [...]\*

**BA-22 (21/10/92)**  
Article 1.3 – Definitions

<sup>10</sup>“Energy Materials and Products”, based on the Harmonised System (HS) of the Customs Cooperation Council and the Combined Nomenclature (CN) of the European Communities, means the following items of HS or CN [...]\*

**BA-15 (12/08/92)**  
Article 1.3 – Definitions

<sup>11</sup>“Energy Materials and Products”, based on the Harmonised System (HS) of the Customs Cooperation Council and the Combined Nomenclature (CN) of the European Communities, means the following items of HS or CN [...]\*

**BA 14 (24/06/92)**  
**BA 13 (19/06/92)**  
Article 1.3 – Definitions

<sup>12</sup>“Energy Materials and Products”, based on the Harmonised System (HS) of the Customs Cooperation Council and the Combined Nomenclature (CN) of the European Communities, means the following items of HS or CN [...]\*

**BA 12 (09/04/92)**  
Article 1.3 – Definitions

“Energy Materials and Products”, based on the Harmonised System (HS) of the Customs Cooperation Council and the Combined Nomenclature (CN) of the European Communities, means the following items of HS or CN [...]\*

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<sup>9</sup> General scrutiny reserve. This definition has been considered only in relation to trade Articles.

<sup>10</sup> General scrutiny reserve. This definition only applies to trade Articles of the Basic Agreement.

\* *Ed. note:* further the provision lists HS or CN items considered as “Energy Materials and Products”. Taking into account that subsequently the list becomes Annex EM of the Treaty, the evolution of HS/CN items was included in the revision of Annex EM.

<sup>11</sup> General scrutiny reserve.

<sup>12</sup> General scrutiny reserve. The delegations were asked to forward to the Secretariat their concrete proposals for adding or deleting individual items of the Harmonized System as currently indicated here in advance of the first autumn meeting of WG II. To this end the Secretariat will, upon request, provide delegations a copy of the Combined Nomenclature of the European Communities in French. The next discussion on the definition of [Energy Materials and Products] will be conducted on basis of those recommendations.

**BA 6 (21/01/92)**  
Article 1.3 – Definitions

“Energy Materials and Products” – [Ref. ANNEX II of BA 4]

**BA 4 (31/10/91)**  
Article 1.3 – Definitions  
*Annex II – Draft paper for further discussion in WG II on  
definition of Energy Materials and Products*

“Energy Materials and Products” – [Ref. ANNEX II]

**Annex II**

There are two approaches for defining Energy Materials and Products:

1. Alternative A is the US idea for defining energy goods as tabled following the first meeting of Working Group II.
2. Alternative B is a United Kingdom Department of Energy suggestion to use the European Communities Combined Nomenclature as a basis for developing a definition of Energy Materials and Products.

The relevant experts will need to decide the actual content of a definition based on these precedents or similar ones which other delegations may wish to offer. Given the desire for specificity the Chairman see no alternative to this type of enumerative approach.

**BP 2 (11/09/91)**  
Article 1.1(d) – Definitions  
Article 10 – Non-Discrimination

**Article 1.1(d)**

(a) “Energy Materials and Products” has the meaning given to it in Article 10 below;

**Article 10**

In the administration of its own laws, regulations and requirements affecting production of and trade in matters the subject of this Agreement (hereinafter referred to as “Energy Materials and Products”) and equipment and services related to the extraction, production, conversion, treatment, carriage and supply of such Materials and Products each Contracting Party undertakes:

...

<p style="text-align: center;"><b>Basic Protocol (20/08/91)</b> Article 1.1(d) – Definitions Article 8 – Non-Discrimination</p>
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**Article 1.1(d)**

(d) “Energy Materials and Products” has the meaning given to it in Article 8 below;

**Article 8**

In the administration of its own laws, regulations and requirements affecting production of and trade in matters the subject of this Agreement (hereinafter referred to as “Energy Materials and Products”) and services related to the production and supply of such Materials and Products each Contracting Party undertakes: ...

## **Article 1.4bis**

**ECT as amended (24/04/98)\***  
**CC 113 (04/03/98)\***  
Article 1.4bis – Definitions

“Energy-Related Equipment”, based on the Harmonised System of the World Customs Organization, means the items included in Annexes EQ I or EQ II .

**CC 107 (03/12/1997)\***  
Article 1.4bis – Definitions

“Energy-Related Equipment”, based on the Harmonised System of the World Customs Organization, means the items included in Annexes EQI and/or EQII as the case requires.

**ECT 7 [CONF 96] (17/03/94)**  
*Footnote 1.1 to Ministerial Declaration*

Switzerland is of the view that the language in the Ministerial Declaration is not sufficient and suggest the following approach:

- (a) Definition of Energy Related Equipment to be included in the Treaty reading:

*“Energy Related Equipment”, based on the harmonized System (HS) of the Customs Cooperation Council and the Combined Nomenclature (CN) of the European Communities, means the items of HS or CN included in Annex RE.*

**ECT 3 [CONF 60] (01/06/93)**  
*Par. 2 of General comment to Article 1(4)*

- 2) An informal Sub-Group has been given the task to explore the possibility of including a list of Energy Related Equipment. This Sub-Group will report on its preliminary findings to the next Plenary. On the basis of that report the June Plenary will revert to the question of inclusion of Energy Related Equipment and the procedure to be followed.

In case the Plenary decides to include Energy Related Equipment in the Treaty text, the Chairman of the Sub-Group Definitions suggested the following additional textual amendments:

- (a) New definition of Energy Related Equipment reading:

(4)(a) “Energy Related Equipment”, based on the Harmonized System (HS) of the Customs Cooperation Council and the Combined Nomenclature (CN) of the European Communities, means the items of HS or CN included in Annex RE.

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\* *Ed. note:* As modified by Article 2 of the Amendment to the Trade-Related Provisions of the ECT (Annex 1 to the Final Act).

\* *Ed. note:* As modified by Article 2 of document CC 113.

\* *Ed. note:* As modified by Article 2 of document CC 107.

(b) Addition to Article 41(1)(e): “and to Annex RE”.

(c) In case the Plenary decides to include Energy Related Equipment and negotiations on the list of items are not finished prior to signing of the Treaty, the Ministerial Declaration to this paragraph will be added to read:

“The Contracting Parties declare that Annex RE will be considered for adoption at the first meeting of the Charter Conference.”



## **Article 1.5**

**Final Act and ECT as adopted (17/12/94)**

Article 1.5 – Definitions

*Understanding 2 - With respect to Article 1(5)*

“Economic Activity in the Energy Sector” means an economic activity concerning the exploration, extraction, refining, production, storage, land transport, transmission, distribution, trade, marketing, or sale of Energy Materials and Products except those included in Annex NI, or concerning the distribution of heat to multiple premises.

### **Understanding 2 (With respect to Article 1(5))**

- (a) It is understood that the Treaty confers no rights to engage in economic activities other than Economic Activities in the Energy Sector.
- (b) The following activities are illustrative of Economic Activity in the Energy Sector:
  - (i) prospecting and exploration for, and extraction of, e.g., oil, gas, coal and uranium;
  - (ii) construction and operation of power generation facilities, including those powered by wind and other renewable energy sources;
  - (iii) land transportation, distribution, storage and supply of Energy Materials and Products, e.g., by way of transmission and distribution grids and pipelines or dedicated rail lines, and construction of facilities for such, including the laying of oil, gas, and coal-slurry pipelines;
  - (iv) removal and disposal of wastes from energy related facilities such as power stations, including radioactive wastes from nuclear power stations;
  - (v) decommissioning of energy related facilities, including oil rigs, oil refineries and power generating plants;
  - (vi) marketing and sale of, and trade in Energy Materials and Products, e.g., retail sales of gasoline; and
  - (vii) research, consulting, planning, management and design activities related to the activities mentioned above, including those aimed at Improving Energy Efficiency.

**CONF 104 (Text for adoption) (14/09/94)**

Article 1.5 – Definitions

*Understanding 2 – With respect to Article 1(5)*

“Economic Activity in the Energy Sector” means an economic activity concerning the exploration, extraction, refining, production, storage, land transport, transmission, distribution, trade, marketing, or sale of Energy Materials and Products except those included in Annex NI, or concerning the distribution of heat to multiple premises.

## **Understanding 2 (With respect to Article 1(5))**

- (a) The Contracting Parties understand that this Treaty confers no rights to engage in economic activities other than Economic Activities in the Energy Sector.
- (b) The following activities are illustrative of Economic Activity in the Energy Sector:
  - (i) prospecting and exploration for, and extraction of, e.g., oil, gas, coal and uranium;
  - (ii) construction and operation of power generation facilities, including those powered by wind and other renewable energy sources;
  - (iii) land transportation, distribution, storage and supply of Energy Materials and Products, e.g., by way of transmission and distribution grids and pipelines or dedicated rail lines, and construction of facilities for such, including the laying of oil, gas, and coal-slurry pipelines;
  - (iv) removal and disposal of wastes from energy related facilities such as power stations, including radioactive wastes from nuclear power stations;
  - (v) decommissioning of energy related facilities, including oil rigs, oil refineries and power generating plants;
  - (vi) marketing and sale of, and trade in Energy Materials and Products, e.g., retail sales of gasoline; and
  - (vii) research, consulting, planning, management and design activities related to the activities mentioned above, including those aimed at Improving Energy Efficiency.

<p><b>Interim Text (25/06/94)</b> Article 1.5 – Definitions <i>Understanding 2 – To Article 1(5)</i></p>
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“Economic Activity in the Energy Sector” means an economic activity concerning the exploration, extraction, refining, production, storage, land transport, transmission, distribution, trade, marketing, or sales of Energy Materials and Products except those included in Annex NI, or concerning **in** the distribution of heat to multiple premises.

## **Understanding 2 (To Article 1(5))**

Economic Activity in the Energy Sector includes, **for example**:

- (a) prospecting and exploration for, and extraction of, e.g., oil, gas, coal and uranium;
- (b) construction and operation of power generation facilities, including those powered by wind and other renewable energy sources;
- (c) land transportation, distribution, storage and supply of Energy Materials and Products, e.g., by way of transmission and distribution grids and pipelines or dedicated rail lines, and construction of facilities for such, including the laying of oil, gas, and coal-slurry pipelines;

- (d) removal and disposal of wastes from energy related facilities such as power stations, including radioactive wastes from nuclear power stations;
- (e) decommissioning of energy related facilities, including oil rigs, oil refineries and power generating plants;
- (f) marketing and sale of, and trade in Energy Materials and Products, e.g., retail sales of gasoline; and
- (g) research, consulting, planning, management and design activities related to the activities mentioned above, including those aimed at improving energy efficiency.

<p style="text-align: center;"><b>Interim Text (20/06/94)</b> Article 1.5 – Definitions <i>Understanding 2 – To Article 1(5)</i></p>
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“Economic Activity in the Energy Sector” means an economic activity concerning the exploration, extraction, refining, production, storage, land transport, transmission, distribution, trade, marketing, or sales of Energy Materials and Products except those included in Annex NI, or in the distribution of heat to multiple premises.

**Understanding 2 (To Article 1(5))**

Economic Activity in the Energy Sector includes, for example:

- (a) prospecting and exploration for, and extraction of, e.g., oil, gas, coal and uranium;
- (b) construction and operation of power generation facilities, including those powered by wind and other renewable energy sources;
- (c) land transportation, distribution, storage and supply of Energy Materials and Products, e.g., by way of transmission and distribution grids and pipelines or dedicated rail lines, and construction of facilities for such, including the laying of oil, gas, and coal-slurry pipelines;
- (d) removal and disposal of wastes from energy related facilities such as power stations, including radioactive wastes from nuclear power stations;
- (e) decommissioning of energy related facilities, including oil rigs, oil refineries and power generating plants;
- (f) marketing and sale of, and trade in Energy Materials and Products, e.g., retail sales of gasoline; and
- (g) research, consulting, planning, management and design activities related to the activities mentioned above, including those aimed at improving energy efficiency.

**Compromise text [CONF 98] (22/04/94)**  
Article 1.5 – Definitions  
*Ministerial Declaration 2 – To Article 1(5)*

“Economic Activity in the Energy Sector” means an economic activity concerning the business of the exploration, extraction, refining, production, storage, [land transport]<sup>13</sup> transmission, distribution, trade, marketing, or sales of Energy Materials and Products except those included in Annex NI, or in the distribution of heat to multiple premises.

**Ministerial Declaration 2 (To Article 1(5))**

Economic Activity in the Energy Sector includes, for example:

- prospecting and exploration for, and extraction of, e.g. oil, gas, coal and uranium;
- construction and operation of power generation facilities, including those powered by wind and other renewable energy sources;
- transportation, distribution, storage and supply of Energy Materials and Products, e.g. by way of transmission and distribution grids and pipelines or dedicated rail lines, and construction of facilities for such, including the laying of oil, gas, and coal-slurry pipelines;
- removal and disposal of wastes from energy related facilities such as power stations, including of radioactive wastes from nuclear power stations;
- decommissioning of energy related facilities, including oil rigs, oil refineries and power generating plants;
- marketing, and sale of, and trade in Energy Materials and Products, e.g. retail sales of gasoline;
- research, consulting, planning, management and design activities, related to the activities mentioned above, including those aimed at improving energy efficiency.

**ECT 7 [CONF 96] (17/03/94)**  
Article 1.5 – Definitions  
*Ministerial Declaration 2 – To Article 1(5)*

“Economic Activity in the Energy Sector” means an economic activity in the business of the exploration, extraction, refining, production, storage, [transport]<sup>14</sup>, transmission, distribution, trade, marketing, or sales of Energy Materials and Products except those included in Annex NI or in the distribution of heat to multiple premises.

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<sup>13</sup> Maritime transport has been excluded from the definition of “Economic Activity in the Energy Sector”.

<sup>14</sup> USA supported by Japan proposes explicit exclusion of maritime transport from coverage of the Treaty, for instance by the following wording: “Nothing in this Treaty shall apply to maritime transport (including inland waterways) and related activities, and to air transport (including speciality air services)”. The intention of the phrase “related activities” would be to exclude lightering, fuel bunkering and offshore services. This proposal would include replacement of “carriage” in Article 8(10)(a) by “movement over land”. Norway draws attention to its proposal contained in CONF-52 for a separate Article on the material scope of application of the Treaty.

## **Ministerial Declaration 2 (To Article 1(5))**

Economic Activity in the Energy Sector includes, [for example:]<sup>15</sup>

- the prospecting and exploration for, and extraction of, e.g. oil, gas, coal and uranium;
- the construction and operation of power generation facilities, including those powered by wind and other renewable energy sources;
- the transportation, distribution, storage and supply of Energy Materials and Products, [e.g.]<sup>15</sup> by way of transmission and distribution grids and pipelines or dedicated rail lines, and construction of facilities for such, including the laying of oil, gas, and coal-slurry pipelines;
- removal and disposal of wastes from energy related facilities such as power stations, including of radioactive wastes from nuclear power stations;
- decommissioning of energy related facilities, including oil rigs, oil refineries and power generating plants;
- the marketing, and sale of, and trade in Energy Materials and Products, e.g. retail sales of gasoline;
- research, consulting, planning, management and design activities, related to the activities mentioned above, including those aimed at improving energy efficiency.

<p><b>ECT 6 [CONF 82] (20/12/93)</b> Article 1.5 – Definitions <i>Ministerial Declaration 2 – To Article 1(5)</i></p>
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“Economic Activity in the Energy Sector” means an economic activity in the business of the exploration, extraction, refining, production, storage, transport, transmission, distribution, trade, marketing, or sales of Energy Materials and Products except those included in Annex NI.

## **Ministerial Declaration 2 (To Article 1(5))**

Economic Activity in the Energy Sector includes, for example:

- the prospecting and exploration for, and extraction of, e.g. oil, gas, coal and uranium;
- the construction and operation of power generation facilities, including those powered by wind and other renewable energy sources;
- the transportation, distribution, storage and supply of Energy Materials and Products, e.g. by way of transmission and distribution grids and pipelines or dedicated rail lines, and construction of facilities for such, including the laying of oil, gas, and coal-slurry pipelines;
- removal and disposal of wastes from energy related facilities such as power stations, including of radioactive wastes from nuclear power stations;

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<sup>15</sup> USA suggests deletion. See also footnote 1.2 [*ed. note: see previous footnote 14 supra*] in the Treaty text.

- decommissioning of energy related facilities, including oil rigs, oil refineries and power generating plants;
- the marketing, and sale of, and trade in Energy Materials and Products, e.g. retail sales of gasoline;
- research, consulting, planning, management and design activities, related to the activities mentioned above, including those aimed at improving energy efficiency.

**ECT 5 [CONF 72] (11/10/93)**  
**ECT 4 [CONF 64] (07/07/93)**  
 Article 1.5 – Definitions  
*Ministerial Declaration 2 – To Article 1(5)*

“Economic Activity in the Energy Sector” means an economic activity in the business of the exploration, extraction, production, storage, transport, transmission, distribution, trade, marketing, or sales of Energy Materials and Products except those included in Annex NI.

**Ministerial Declaration 2 (To Article 1(5))**

Economic Activity in the Energy Sector includes, for example:

- the prospecting and exploration for, and extraction of, e.g. oil, gas, coal and uranium;
- the construction and operation of power generation facilities, including those powered by wind and other renewable energy sources;
- the transportation, distribution, storage and supply of Energy Materials and Products, e.g. by way of transmission and distribution grids and pipelines or dedicated rail lines, and construction of facilities for such, including the laying of oil, gas, and coal-slurry pipelines;
- removal and disposal of wastes from energy related facilities such as power stations, including of radioactive wastes from nuclear power stations;
- decommissioning of energy related facilities, including oil rigs, oil refineries and power generating plants;
- the marketing, and sale of, and trade in Energy Materials and Products, e.g. retail sales of gasoline;
- research, consulting, planning, management and design activities, related to the activities mentioned above, including those aimed at improving energy efficiency.

<p><b>ECT 3 [CONF 60] (01/06/93)</b>  Article 1.5 – Definitions  <i>Ministerial Declaration 2 – To Article 1(5)</i></p>
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“Economic Activity in the Energy Sector” means an economic activity in the business of the exploration, extraction, production, storage, transport, transmission, distribution, [trade, marketing, or sales]<sup>16</sup> of Energy Materials and Products except those included in Annex NI.

**Ministerial Declaration 2 (To Article 1(5))**

Economic Activity in the Energy Sector includes, for example:

- the prospecting and exploration for, and extraction of, e.g. oil, gas, coal and uranium;
- the construction and operation of power generation facilities, including those powered by wind and other renewable energy sources;
- the transportation, distribution, storage and supply of Energy Materials and Products, e.g. by way of transmission and distribution grids and pipelines or dedicated rail lines, and construction of facilities for such, including the laying of oil, gas, and coal-slurry pipelines;
- removal and disposal of wastes from energy related facilities such as power stations, including of radioactive wastes from nuclear power stations;
- decommissioning of energy related facilities, including oil rigs, oil refineries and power generating plants;
- the marketing, and sale of, and trade in Energy Materials and Products, e.g. retail sales of gasoline;
- research, consulting, planning, management and design activities, related to the activities mentioned above, including those aimed at improving energy efficiency.

<p><b>ECT 2 [CONF 56] (01/05/93)</b>  Article 1.5 – Definitions  <i>Ministerial Declaration 2 – To Article 1(5)</i></p>	<p><b>(Compromise text) ECT 1 [CONF 50] (15/03/93)</b>  Article 1.5 – Definitions  <i>Ministerial Declaration 1 – To Article 1(5)</i></p>
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“Economic Activity in the Energy Sector” means the exploration, extraction, production, storage, transport, transmission, distribution, trade, marketing, or sales of Energy Materials and Products except HS 27.07, 27.11.14, [DL], 44.01, and 44.02

**Ministerial Declaration 2 / 1 (To Article 1(5))**

Economic Activity in the Energy Sector includes, for example:

- the prospecting and exploration for, and extraction of, e.g. oil, gas, coal and uranium;

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<sup>16</sup> **Russian Federation** scrutiny reserve for linguistic check of these words.

- the construction and operation of power generation facilities, including those powered by wind and other renewable energy sources;
- the transportation, distribution, storage and supply of Energy Materials and Products, e.g. by way of transmission and distribution grids and pipelines or dedicated rail lines, and construction of facilities for such, including the laying of oil, gas, and coal-slurry pipelines;
- removal and disposal of wastes from energy related facilities such as power stations, including of radioactive wastes from nuclear power stations;
- decommissioning of energy related facilities, including oil rigs, oil refineries and power generating plants;
- the marketing, and sale of, and trade in Energy Materials and Products, e.g. retail sales of gasoline;
- research, consulting, planning, management and design activities, related to the activities mentioned above, including those aimed at improving energy efficiency.

Working Group III is invited urgently to consider whether there are other Economic Activities which are so closely related to improving energy efficiency as to justify attracting the protection afforded by the Energy Charter Treaty, by their inclusion in this paragraph.

**BA-37 (01/03/93)**  
 Article 1.5 – Definitions  
 Article 16.10 – Promotion, Protection and Treatment of Investments  
*Ministerial Declaration 1 – To Article 1(5)*

### **Article 1.5**

...  
 “Economic Activity in the Energy Sector” means the exploration, extraction, production, storage, transport, transmission, distribution, trade, marketing, or sales of Energy Materials and Products [except HS 27.07, 27.11.14, 22.07.20, 44.01, and 44.02].<sup>17</sup>

### **Article 16.10**

[Nothing in this Article shall apply to maritime and inland waterway services and facilities ...]<sup>18</sup>

### **Ministerial Declaration 1 (To Article 1(5))**

[Economic Activity in the Energy Sector includes, for example:

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<sup>17</sup> Subject to Norway footnote 1(4).1 on Article 1(4).

*Editor’s note:* such footnote read:

“Norway scrutiny reserve on whole paragraph (4). Norway wishes also to scrutinise the possibility for additions to HS items. In particular Norway wants the following items to be included:

29.01 Acyclic hydrocarbons (saturated or unsaturated as ethylene, propene (propylene), butene (butylene) and isomers thereof, butadiene and isoprene, other).

29.02 Cyclic hydrocarbons (e.g. cyclohexane, benzene, toluene, xylenes and their isomers, styrene, ethyl benzene, cumene and other).

29.05.11 Methanol (methylalcohol).”

<sup>18</sup> Chairman's proposal.



- the prospecting and exploration for, and extraction of, e.g. oil, gas, coal and uranium;
- the construction and operation of power generation facilities, including those powered by wind and other renewable energy sources;
- the transportation, distribution, storage and supply of Energy Materials and Products, e.g. by way of transmission and distribution grids and pipelines or dedicated rail lines, and construction of facilities for such, including the laying of oil, gas, and coal-slurry pipelines;
- removal and disposal of wastes from energy related facilities such as power stations, including of radioactive wastes from nuclear power stations;
- decommissioning of energy related facilities, including oil rigs, oil refineries and power generating plants;
- the marketing, and sale of, and trade in Energy Materials and Products, e.g. retail sales of gasoline;
- research, consulting, planning, management and design activities, related to the activities mentioned above, including those aimed at improving energy efficiency.]<sup>19</sup>

**BA-35 (09/02/93)**  
Article 1.5 – Definitions  
*Note for accompanying document+*  
*General comments on Article 1(5)*  
Article 16.10 – Promotion, Protection and Treatment of  
Investments

## Article 1.5

...

“Energy Sector” means the exploration, extraction, production, conversion, storage, transport, transmission, [distribution and trade in, marketing and sales]<sup>20</sup> of Energy Materials and Products, [provided, however, that this does not include the following items listed in Article 1(3): HS 27.07, 29.01, 29.02, 22.07.20, 29.05.11, 44.01, and 44.02].<sup>21</sup>

### Note for accompanying document

Economic Activity in the Energy Sector includes, for example:

- the prospecting and exploration for, and extraction of, e.g. oil, gas, coal and uranium;
- the construction and operation of power generation facilities, including those powered by wind and other renewable energy sources;

<sup>19</sup> **Norway** does not regard this document as serving any substantive purpose in the context of the definition of Investment. This definition should accordingly contain no reference to such a document.

<sup>20</sup> **USA** is not in a position for final negotiation.

<sup>21</sup> The substance proposed by **Japan** and **Hungary** but not discussed. All delegations are invited to submit their suggestions on which items of HS should be excluded from the coverage of Energy Sector to the Secretariat by 18 February 1993.

- the transportation, distribution, storage and supply of Energy Materials and Products, e.g. by way of transmission and distribution grids and pipelines or dedicated rail lines, and construction of facilities for such, including the laying of oil, gas, and coal-slurry pipelines;
- removal and disposal of wastes from energy related facilities such as power stations, including of radioactive wastes from nuclear power stations;
- decommissioning of energy related facilities, including oil rigs, oil refineries and power generating plants;
- the marketing, and sale of, and trade in Energy Materials and Products, e.g. retail sales of gasoline;
- research, consulting, planning, management and design activities, related to the activities mentioned above, including those aimed at improving energy efficiency.

#### **General comments on Article 1(5)**

- Legal limitations to the coverage should be done in the relevant Articles or Parts of the Basic Agreement (e.g. Article 16(10)).
- The Sub-Group on the definition of "Investment" has not excluded from the coverage of this definition the investments in power generating plants or co-generating plants dedicated exclusively for the use of industrial or service facilities.
- Text should be found in the Preamble of the Basic Agreement to cover the importance of energy efficiency.

#### **Article 16.10**

<sup>22</sup>[Nothing in this Article shall apply to: [maritime and inland waterway, transport facilities and services; or]<sup>23</sup>[...]

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<sup>22</sup> General scrutiny reserve on entire paragraph. This paragraph represents text as it emerged from WG II discussion of USA concerns about Working Hypotheses 1 and 2 and in based on USA suggestion for an additional Article creating limited exceptions to National Treatment and MFN Treatment post-establishment and standstill. Present draft would result in listed items being excepted from NT and MFN post-establishment and standstill. However, as indicated in the appropriate footnotes below, consensus as to whether the items should be excepted from NT and MFN post-establishment or standstill or from all three was not reached in each case.

<sup>23</sup> General consensus was reached that there should be an exception for "maritime and maritime services" from NT and MFN post-establishment but there was no consensus regarding exception from standstill. Norway states it can accept that "maritime and maritime services" will not be a part of this Agreement.

**BA-31 (21/12/92)**  
Article 1.4 – Definitions  
*(\*)Note for accompanying document*  
Article 16.10 – Promotion, Protection and Treatment of  
Investments

**Article 1.4**

(4) [(\*) “Investment” means every kind of asset owned [or controlled, directly or indirectly], by Investors of one or more Contracting Parties [in the Domain of another Contracting Party] *employed in association with the exploration, production, conversion, storage, transport, distribution and [supply] of Energy Materials and Products [and related services]*. In particular, Investments include:]<sup>24</sup> \*

...

**(\*) Note for accompanying document**

The energy field includes, for example, such energy specific activities as the laying of energy pipelines, the provision of energy meters, the decommissioning of oil rigs and nuclear power stations and contract energy management; but excludes activities which are not principally devoted to energy, such as road, rail, maritime and air transport, or the manufacture of energy consuming equipment.

Working Groups preparing Protocols are invited further to define the operations covered by their work in which Investments should be given the protection of this Agreement by way of amendment or be applied only by the parties to the relevant Protocol. It is particularly urgent to provide appropriate coverage of activities relating to energy efficiency.

**Article 16.10**

<sup>22</sup>[Nothing in this Article shall apply to: [maritime and inland waterway, transport facilities and services; or]<sup>23</sup> [...]

**BA-26 (25/11/92)**  
Article 16.10 – Promotion, Protection and Treatment of  
Investments

<sup>22</sup>[Nothing in this Article shall apply to: [maritime and inland waterway, transport facilities and services; or]<sup>23</sup> [...]

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<sup>24</sup> The chapeau was discussed during the WG II meeting on 18 December 1992. The current draft is based on Chairman’s proposal as contained in BA-30 and USA suggestion presented during negotiation. Square bracketed words indicate certain concerns by delegations.

Chairman invited delegations to forward to the Secretariat in a written form their comments on both definitions related to Investment including the note for the accompanying document under Article 1 or under Part IV by 17 January 1993.

The delegations should also focus on deletions of inappropriate suggestions, comments or reserves in footnotes in relation to the most recent drafts. Reflecting those responses the Secretariat will prepare a separate document containing all options together with a possible architecture for the next WG II meeting.

\* *Editor’s note*: Italics added to emphasise the part relevant to current Article 1.5.

**BA-22 (21/10/92)**  
Para 2 of Annex 1 to Article 16.10 – Promotion, Protection and  
Treatment of Investments

There shall be no exceptions to NT or MNF post-establishment subject to the conclusions of the Taxations sub-Group on 11.9.92.<sup>25,26,27,28</sup>

**BA 14 (24/06/92)**  
**BA 13 (19/06/92)**  
Article 1.13 – Definitions

“Energy cycle” means the entire energy-chain including [prospecting for, exploration, production, conversion, storage, transport, waste disposal and distribution and consumption of]<sup>29</sup> the various forms of energy and the decommissioning and treatment of energy-related physical structures.

**BA 12 (09/04/92)**  
Article 1.13 – Definitions

“Energy cycle” means the entire energy-chain including prospecting for, exploration, production, conversion, storage, transport, waste disposal and distribution and consumption of the various forms of energy and the decommissioning and treatment of energy-related physical structures.

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<sup>25</sup> **USA** fully supports the principle of NT post-establishment but notes that it is by no means clear that taxation is the only exception to this principle reflected in current legislation or policies of negotiating parties. For example, OECD countries have registered other limited exceptions to the principle. Among those are subsidies, political risk insurance and restrictions on maritime transport. USA also notes that, although it considers the general principle of standstill essential to the agreement, it may be necessary for countries to take similar limited exception to it.

<sup>26</sup> **Russian Federation** notes that it cannot yet state that it will have no exception to NT post-establishment.

<sup>27</sup> **Japan** reserve pending clarification of definition of “Make investments”.

<sup>28</sup> **Canada** can accept this principle on the assumption that the pre-establishment stage covers all elements of “Make Investments” as defined in Article 1(6) of BA-15.

<sup>29</sup> **Australia** suggests substituting with “planning stages, design, exploration, exploitation of national resources, production, conversion, storage, transport, distribution, utilisation, rehabilitation, decommissioning and waste handling and disposal of”. This change is a broader description of the whole cycle and allows for coverage of renewables.

## **Article 1.6**

**Final Act and ECT as adopted (17/12/94)**

Article 1.6 – Definitions

*Understanding 3 – With respect to Article 1(6)+*

*Declaration 1 - With respect to Article 1(6)*

“Investment” means every kind of asset, owned or controlled directly or indirectly by an Investor and includes:

- (a) tangible and intangible, and movable and immovable, property, and any property rights such as leases, mortgages, liens, and pledges;
- (b) company or business enterprise, or shares, stock, or other forms of equity participation in a company or business enterprise, and bonds and other debt of a company or business enterprise;
- (c) claims to money and claims to performance pursuant to contract having an economic value and associated with an Investment;
- (d) Intellectual Property;
- (e) Returns;
- (f) any right conferred by law or contract or by virtue of any licences and permits granted pursuant to law to undertake any Economic Activity in the Energy Sector.

A change in the form in which assets are invested does not affect their character as investments and the term “Investment” includes all investments, whether existing at or made after the later of the date of entry into force of this Treaty for the Contracting Party of the Investor making the investment and that for the Contracting Party in the Area of which the investment is made (hereinafter referred to as the “Effective Date”) provided that the Treaty shall only apply to matters affecting such investments after the Effective Date.

“Investment” refers to any investment associated with an Economic Activity in the Energy Sector and to investments or classes of investments designated by a Contracting Party in its Area as “Charter efficiency projects” and so notified to the Secretariat.

### **Understanding 3 (With respect to Article 1(6))**

For greater clarity as to whether an Investment made in the Area of one Contracting Party is controlled, directly or indirectly, by an Investor of any other Contracting Party, control of an Investment means control in fact, determined after an examination of the actual circumstances in each situation. In any such examination, all relevant factors should be considered, including the Investor's

- (a) financial interest, including equity interest, in the Investment;
- (b) ability to exercise substantial influence over the management and operation of the Investment; and

- (c) ability to exercise substantial influence over the selection of members of the board of directors or any other managing body.

Where there is doubt as to whether an Investor controls, directly or indirectly, an Investment, an Investor claiming such control has the burden of proof that such control exists.

### **Declaration 1 (With respect to Article 1(6))**

The Russian Federation wishes to have reconsidered, in negotiations with regard to the supplementary treaty referred to in Article 10(4), the question of the importance of national legislation with respect to the issue of control as expressed in the Understanding to Article 1(6).

**CONF 104 (Text for adoption) (14/09/94)**  
Article 1.6 – Definitions  
*Understanding 3 – With respect to Article 1(6)*  
*Declaration 1 – With respect to Article 1(6)*

“Investment” means every kind of asset, owned or controlled directly or indirectly by an Investor and includes:

- (a) tangible and intangible, and movable and immovable, property, and any property rights such as leases, mortgages, liens, and pledges;
- (b) a company or business enterprise, or shares, stock, or other forms of equity participation in a company or business enterprise, and bonds, and debt of, a company or business enterprise;
- (c) claims to money and claims to performance pursuant to contract having an economic value and associated with an Investment;
- (d) Intellectual Property;
- (e) Returns;
- (f) any right conferred by law, contract or by virtue of any licences and permits granted pursuant to law to undertake any Economic Activity in the Energy Sector.

A change in the form in which assets are invested does not affect their character as investments and the term “Investment” includes all investments, whether existing at or made after the later of the dates of entry into force of this Treaty for the Contracting Party of the Investor making the investment and for the Contracting Party in the Area of which the investment is made (hereinafter referred to as the “Effective Date”) provided that this Treaty shall only apply to matters affecting such investments after the Effective Date.

“Investment” refers to any investment associated with an Economic Activity in the Energy Sector and to investments or classes of investments designated by a Contracting Party in its Area as “Charter efficiency projects” and so notified to the Secretariat.

### **Understanding 3 (With respect to Article 1(6))**

For greater clarity as to whether an Investment made in the Area of one Contracting Party is controlled, directly or indirectly, by an Investor of any other Contracting Party, control of an

Investment means control in fact, determined after an examination of the actual circumstances in each situation. In any such examination, all relevant factors should be considered, including the Investor's

- (a) financial interest, including equity interest, in the Investment;
- (b) ability to exercise substantial influence over the management and operation of the Investment; and
- (c) ability to exercise substantial influence over the selection of members of the board of directors or any other managing body.

Where there is doubt as to whether an Investor controls, directly or indirectly, an Investment, an Investor claiming such control has the burden of proof that such control exists.

### **Declaration 1 (With respect to Article 1(6))**

The Russian Federation wishes to have reconsidered, in negotiations with regard to the supplementary treaty referred to in Article 10(4), the question of the importance of national legislation with respect to the issue of control as expressed in the Understanding to Article 1(6).

**Interim Text (25/06/94)**  
Article 1.6 – Definitions  
*Understanding 3 – To Article 1(6)*  
*Declaration 1 – To Article 1(6)*

“Investment” means every kind of asset, owned or controlled directly or indirectly by an Investor and includes:

- (a) tangible and intangible, and movable and immovable, property, and any property rights such as leases, mortgages, liens, and pledges;
- (b) a company or business enterprise, or shares, stock, or other forms of equity participation in a company or business enterprise, and bonds, and debt of, a company or business enterprise;
- (c) claims to money and claims to performance pursuant to contract having an economic value and associated with an Investment;
- (d) Intellectual Property;
- (e) Returns;
- (f) any right conferred by law to undertake any Economic Activity In the Energy Sector, or conferred by contract or by virtue of any licences and permits granted pursuant to law.

A change in the form in which assets are invested does not affect their character as investments and the term “Investment” includes all investments, whether existing at or made after the later of the dates of entry into force of this Treaty for the Contracting Party of the Investor making the investment and for the Contracting Party in the Area of which the investment is made (hereinafter referred to as the “Effective Date”) provided that this Treaty shall only apply to matters affecting such investments after the Effective Date.

For the purposes of this Treaty, “Investment” refers to any investment associated with an Economic Activity in the Energy Sector and to investments or classes of investments designated by a Contracting Party in its Area as “Charter efficiency projects” and so notified to the Secretariat.

### **Understanding 3 (To Article 1(6))**

For greater clarity as to whether an Investment made in the Area of one Contracting Party is controlled, directly or indirectly, by an Investor of any other Contracting Party, control of an Investment means control in fact, determined after an examination of the **factual** actual circumstances in each situation. In any such examination, all relevant factors should be considered, including the Investor's

- (a) financial interest, including equity interest, in the Investment;
- (b) ability to exercise substantial influence over the management and operations of the Investment; and
- (c) ability to exercise substantial influence over the selection of members of the board of directors or any other managing body.

Where there is doubt as to whether an Investor controls, directly or indirectly, an Investment, **the** an Investor shall be responsible for demonstrating claiming such control has the burden of proof that such control exists.

### **Declaration 1 (To Article 1(6))**

The Russian Federation wishes to have reconsidered, in negotiations with regard to the supplementary treaty referred to in Article 10(4), the question of the importance of national legislation with respect to the issue of control as expressed in the Understanding to Article 1(6).

**Interim Text (20/06/94)**  
Article 1.6 – Definitions  
*Understanding 3 – To Article 1(6)*  
*Declaration 1 – To Article 1(6)*

“Investment” means every kind of asset, owned or controlled directly or indirectly by an Investor and includes:

- (a) tangible and intangible, and movable and immovable, property, and any property rights such as leases, mortgages, liens, and pledges;
- (b) a company or business enterprise, or shares, stock, or other forms of equity participation in a company or business enterprise, and bonds, and debt of, a company or business enterprise;
- (c) claims to money and claims to performance pursuant to contract having an economic value and associated with an Investment;
- (d) Intellectual Property;
- (e) Returns;



- (f) any right conferred by law, contract or by virtue of any licences and permits granted pursuant to law to undertake any Economic Activity in the Energy Sector.

A change in the form in which assets are invested does not affect their character as investments and the term “Investment” includes all investments, whether existing at or made after the later of the dates of entry into force of this Treaty for the Contracting Party of the Investor making the investment and for the Contracting Party in which the investment is made (hereinafter referred to as the “effective date”) provided that this Treaty shall only apply to matters affecting such investments after the effective date.

For the purposes of this Treaty, “Investment” refers to any investment associated with an Economic Activity in the Energy Sector and to investments or classes of investments designated by a Contracting Party in its Area as “Charter Efficiency Projects”, and so notified to the Secretariat.

### **Understanding 3 (To Article 1(6))**

For greater clarity as to whether an Investment made in the Area of one Contracting Party is controlled, directly or indirectly, by an Investor of any other Contracting Party, control of an Investment means control in fact, determined after an examination of the factual circumstances in each situation. In any such examination, all relevant factors should be considered, including the Investor's

- (a) financial interest, including equity interest, in the Investment;
- (b) ability to exercise substantial influence over the management and operations of the Investment; and
- (c) ability to exercise substantial influence over the selection of members of the board of directors or any other managing body.

Where there is doubt as to whether an Investor controls, directly or indirectly, an Investment, the Investor shall be responsible for demonstrating that such control exists.

### **Declaration 1 (To Article 1(6))**

The Russian Federation wishes to have reconsidered, in negotiations with respect to the supplementary treaty referred to in Article 13(4), the question of the importance of national legislation with respect to the issue of control as expressed in the Understanding to Article 1(6) .

**Compromise text [CONF 98] (22/04/94)**

Article 1.6 – Definitions

*Ministerial Declaration 3 – To Article 1(6)*

“Investment” means every kind of asset, owned or controlled directly or indirectly by an Investor and includes:

- (a) tangible and intangible, and movable and immovable, property, and any property rights such as leases, mortgages, liens, and pledges;

- (b) a company or business enterprise, or shares, stock, or other forms of equity participation in a company or business enterprise, and bonds, and debt of, a company or business enterprise;
- (c) claims to money and claims to performance pursuant to contract having an economic value and associated with an Investment;
- (d) Intellectual Property;
- (e) Returns;<sup>30</sup>
- (f) any right conferred by law, contract or by virtue of any licences and permits granted pursuant to law.

A change in the form in which assets are invested does not affect their character as investments and the term "Investment" includes all investments, whether existing at or made after the later of the dates of entry into force of this Treaty for the Contracting Party of the Investor making the investment and for the Contracting Party in which the investment is made (hereinafter referred to as the "effective date") provided that this Treaty shall only apply to matters affecting such investments after the effective date.

For the purposes of this Treaty, "Investment" refers to any investment associated with an Economic Activity in the Energy Sector and to investments or classes of investments designated by a Contracting Party in its Area as "Charter Efficiency Projects", and so notified to the Secretariat.

### **Ministerial Declaration 3 (To Article 1(6))**

For greater clarity as to whether an Investment is controlled, directly or indirectly, by an Investor, control of an Investment means control in fact, determined after an examination of the "factual circumstances in each situation. In any such examination, all relevant factors should be considered, including the Investor's

- (a) financial interest, including equity interest, in the Investment,
- (b) ability to exercise substantial influence over the management and operations of the Investment, and
- (c) ability to exercise substantial influence over the selection of members of the board of directors or any other managing body.

**ECT 7 [CONF 96] (17/03/94)**  
 Article 1.6 – Definitions  
*Ministerial Declaration 3 – To Article 1(6)*  
*Endnote\* to Article 1 – Definitions*

“Investment” means every kind of asset, owned or controlled directly or indirectly by an Investor [and includes]<sup>31</sup>:

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<sup>30</sup> New addition.

\* *Ed. note*: Endnote is included at the end of the Draft.

- (a) tangible and intangible, and movable and immovable, property, and any property rights such as leases, mortgages, liens, and pledges;
- (b) a company or business enterprise, or shares, stock, or other forms of equity participation in a company or business enterprise, and bonds, and debt of, a company or business enterprise;
- (c) claims to money and claims to performance pursuant to contract having an economic value [and associated with an Investment];<sup>32</sup>
- (d) Intellectual Property;
- (e) [any right]<sup>33</sup> conferred by law, contract or by virtue of any licences and permits granted pursuant to law.

<sup>34</sup>

A change in the form in which assets are invested does not affect their character as investments and the term “Investment” includes all investments, whether existing at or made after the later of the dates of entry into force of this Treaty for the Contracting Party of the Investor making the investment and Contracting Party in which the investment is made (hereinafter referred to as the “effective date”) provided that this Treaty shall only apply to matters affecting such investments after the effective date.

For the purposes of this Treaty, “Investment” refers to any investment associated with an Economic Activity in the Energy Sector and to investments or classes of investments designated by a Contracting Party in its Area as “Charter Efficiency Projects”, and so notified to the Secretariat.

### **Ministerial Declaration 3 (To Article 1(6))**

For greater clarity as to whether an Investment is controlled, directly or indirectly, by an Investor, control of an Investment means control in fact, determined after an examination of the factual circumstances in each situation. In any such examination, all relevant factors should be considered, including the Investor's (1) financial interest, including equity interest, in the Investment; (2) ability to exercise substantial influence over the management and operations of the Investment, and (3) ability to exercise substantial influence over the selection of members of the board of directors or any other managing body.

Where there is doubt as to whether an Investor controls, directly or indirectly, an Investment, the Investor shall be responsible for demonstrating that such control exists.

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<sup>31</sup> **Canada** suggests substituting with: “and consisting of the following”. **Canada** considers that clarity calls for an exclusive rather than an illustrative list. No support from other delegations.

<sup>32</sup> **Canada** proposes replacing with: “and involving the commitment of capital or other resources in the Area of another Contracting Party to economic activity in such Area.”

<sup>33</sup> **Norway** proposes substituting with: “business concessions”. Supported by **Romania**.

<sup>34</sup> **Canada** suggests additional language following sub-paragraph (e) reading:

“For greater clarity:

(a) claims to money which arise solely from:

(i) commercial sales contracts of a national or enterprise in the Area of one Contracting Party to an enterprise in the Area of another Contracting Party; or

(ii) the extension of credit in connection with a commercial transaction (e.g. trade financing), or

(b) any other claims to money;

which do not involve the kinds of interests specified in sub-paragraphs (a) through (d) above shall not be considered investments.”

**ECT 6 [CONF 82] (20/12/93)**  
**ECT 5 [CONF 72] (11/10/93)**  
Article 1.6 – Definitions  
*Endnote\* to Article 1 – Definitions*

“Investment” means every kind of asset, [owned or controlled directly or indirectly by an Investor]<sup>35</sup> [and includes]<sup>31</sup>:

- (a) tangible and intangible, and movable and immovable, property, and any property rights such as leases, mortgages, liens, and pledges;
- (b) a company or business enterprise, or shares, stock, or other forms of equity participation in a company or business enterprise, and bonds, and debt of, a company or business enterprise;
- (c) claims to money and claims to performance pursuant to contract having an economic value [and associated with an Investment];<sup>32</sup>
- (d) Intellectual Property;
- (e) [any right]<sup>33</sup> conferred by law, contract or by virtue of any licences and permits granted pursuant to law.

<sup>34</sup>

A change in the form in which assets are invested does not affect their character as investments and the term “Investment” includes all investments, whether existing at or made after the later of the dates of entry into force of this Agreement for the Contracting Party of the Investor making the investment and Contracting Party in which the investment is made (hereinafter referred to as the “effective date”) provided that this Agreement shall only apply to matters affecting such investments after the effective date.

For the purposes of this Agreement, “Investment” refers to any investment associated with an “Economic Activity in the Energy Sector.”

**ECT 4 [CONF 64] (07/07/93)**  
Article 1.6 – Definitions

“Investment” means every kind of asset, [owned or controlled directly or indirectly by an Investor]<sup>36</sup> [and includes]<sup>31</sup>:

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\* *Ed. note:* Endnote is included at the end of the Draft.

<sup>35</sup> Sub-Group Chairman advised a transitional measure until Russian Federation has completed required legislation related to the definition of control. (Russian Federation’s acceptance of Article 30(7) depends on a satisfactory solution of this question).

**Japan** understands that the Sub-Group could not establish a general definition of “controlled”, and therefore, interpretation of the meaning of “controlled” will be left to the discretion of each Contracting Party in which the Investment is made and each Contracting party will be able to decide the meaning of “controlled” in accordance with its national legislation. In this regard, Japan thinks that there should be an explicit record in the Ministerial Declaration to that effect in order to avoid any misunderstanding or confusion in the future.

<sup>36</sup> As agreed in the Sub-Group the definition “Investment of an Investor” was deleted and the substance moved back to Article 1(6). A solution for Russian Federation on definition on control has not yet been found. **Russian Federation**’s acceptance of Article 30(7) depends on a satisfactory solution on this question. Sub-Group Chairman advised a transitional measure until Russian Federation has completed required legislation.

- (a) tangible and intangible, and movable and immovable, property, and any property rights such as leases, mortgages, liens, and pledges;
- (b) a company or business enterprise, or shares, stock, or other forms of equity participation in a company or business enterprise, and bonds, and debt of, a company or business enterprise;
- (c) claims to money and claims to performance pursuant to contract having an economic value [and associated with an Investment];<sup>Error! Bookmark not defined.</sup>
- (d) Intellectual Property;
- (e) [any right]<sup>Error! Bookmark not defined.</sup> conferred by law, contract or by virtue of any licences and permits granted pursuant to law.  
<sup>Error! Bookmark not defined.</sup>

A change in the form in which assets are invested does not affect their character as investments and the term “Investment” includes all investments, whether existing at or made after the later of the dates of entry into force of this Agreement for the Contracting Party of the Investor making the investment and Contracting Party in which the investment is made (hereinafter referred to as the “effective date”) provided that this Agreement shall only apply to matters affecting such investments after the effective date.

For the purposes of this Agreement, “Investment” refers to any investment associated with an “Economic Activity in the energy Sector.”

<p><b>ECT 3 [CONF 60] (01/06/93)</b> Articles 1.6 + 1.8 – Definitions</p>
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- (6) “Investment” means every kind of asset, [and includes]<sup>37</sup>:
  - (a) tangible and intangible, and movable and immovable, property, and any property rights such as leases, mortgages, liens, and pledges;
  - (b) [a company or business enterprise]<sup>38</sup>, or shares, stock, or other forms of equity participation in a company or business enterprise, and bonds, and debt of a company or business enterprise;
  - (c) claims to money and claims to contract having an economic value [and associated with an Investment],<sup>39</sup>
  - (d) Intellectual Property;
  - (e) [any right]<sup>Error! Bookmark not defined.</sup> conferred by law, contract or by virtue of any licences and permits granted pursuant to law.

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<sup>37</sup> **Canada** suggests substituting with: “and consisting of the following”. Canada considers that clarity calls for an exclusive rather than an illustrative list.

<sup>38</sup> **Russian Federation** scrutiny reserve for linguistic check of these words.

<sup>39</sup> **Canada** proposes replacing with: “and involving the commitment of capital or other resources in the Domain of another Contracting Party to economic activity in such Domain.”

<sup>40</sup> **Canada** suggests additional language following sub-paragraph (e) reading: “For greater clarity:

A change in the form in which assets are invested does not affect their character as investments and the term "Investment" includes all investments, whether existing at or made after the later of the dates of entry into force of this Agreement for the Contracting Party of the Investor making the investment and Contracting Party in which the investment is made (hereinafter referred to as the "effective date") provided that this Agreement shall only apply to matters affecting such investments after the effective date.

[For the purposes of this Agreement, "Investment" refers to any investment associated with an "Economic Activity in the Energy Sector."]<sup>41</sup>

(8) ["Investment of an Investor" means an Investment owned [or controlled directly or indirectly,]<sup>42</sup> by an Investor.]<sup>43</sup>

<p><b>ECT 2 [CONF 56] (01/05/93)</b> <b>(Compromise text) ECT 1 [CONF 50] (15/03/93)</b> Articles 1.6 + 1.8 – Definitions</p>
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- (6) "Investment" means every kind of asset, [DL] and includes:
- (a) tangible and intangible, and movable and immovable, property, and any property, rights such as leases, mortgages, liens, and pledges;
  - (b) a company or business enterprise, or shares, stock, or other forms of equity participation in, and bonds, debentures and debt of a company or business enterprise;
  - (c) claims to money and claims to performance pursuant to contract having an economic value and associated with an Investment;
  - (d) Intellectual Property;
  - (e) any right conferred by law, contract or by virtue of any licences and permits granted pursuant to law;

A change in the form in which assets are invested does not affect their character as investments and the term "Investment" includes all investments, whether existing at or made

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- (a) claims to money which arise solely from:
- (i) commercial sales contracts of a national or enterprise in the Domain of one Contracting Party to an enterprise in the Domain of another Contracting Party; or
  - (ii) the extension of credit in connection with a commercial transaction (e.g. trade financing),
- or
- (b) any other claims to money; which do not involve the kinds of interests specified in subparagraphs (a) through (d) above shall not be considered investments."

<sup>41</sup> **Russian Federation** scrutiny reserve for linguistic check of this sentence. The Chairman asked Canada and Norway to withdraw their footnotes.

<sup>42</sup> **Russian Federation** wants deletion of this paragraph. **Russian Federation** specified that a possible compromise on this question might be found through:

- a) a reflection of this question in Article 19; and
- b) a Ministerial Declaration to specify guidance for international arbitration in the case of a dispute arising over the question of direct/indirect control and indirect ownership.

A Sub-Group consisting of Switzerland, European Communities, Canada and Russian Federation will draft such a Ministerial Declaration. The Group will report to the Secretariat by mid-June.

<sup>43</sup> **Switzerland** contingency reserve; change of definition can call for consequential amendments in other Articles.

after the later of the dates of entry into force of this Agreement for the Contracting Party of the Investor making the investment and Contracting Party in which the investment is made (hereinafter referred to as the “effective date”) provided that [DL] this Agreement shall only apply to matters affecting such investments after the effective date.

For the purposes of this Agreement, “Investment” refers to any investment associated with an “Economic Activity in the Energy Sector.”

- (8) “Investment of an investor” means an asset owned or controlled, directly or indirectly, by an investor.

<b>BA-37 (01/03/93)</b> Article 1.5 – Definitions
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“Investment” means every kind of asset owned [[or controlled,]<sup>44</sup> directly or indirectly,]<sup>45</sup> by investors of one or more Contracting Parties in the Domain of another Contracting Party. [In particular, though not exclusively, Investments include:]<sup>37</sup>

- (a) tangible and intangible, and movable and immovable, property and any property rights such as leases, mortgages, liens, and pledges;
- (b) a company or business enterprise, or shares, stock, or other forms of equity participation in, and bonds, debentures and debt of<sup>46</sup>, a company or business enterprise;
- (c) claims to money and claims to performance pursuant to contract having an economic value [and associated with an Investment]<sup>47</sup>;
- (d) [Intellectual Property]<sup>48</sup>;
- (e) [any right]<sup>49</sup> conferred by law, contract or by virtue of any licences and permits granted pursuant to law;<sup>50</sup>

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[A change in the form in which assets are invested does not affect their character as investments and the term “Investment” includes all investments, whether existing at or made after the later of the dates of entry into force of this Agreement for the Contracting Party of the investor making the investment and Contracting Party in which the investment is made (hereinafter referred to as the “effective date”) provided that with respect to investments made before the effective date and continuing after the effective date, this Agreement shall only apply to matters affecting such investments after the effective date.]<sup>51</sup>

<sup>44</sup> **Russian Federation** reserve. **Russian Federation** wants explicit guidelines used on case by case basis or a definition of control. **USA** and **Russian Federation** will discuss this.

<sup>45</sup> **Norway** asks for deletion. However, Norway is prepared to lift up its position if its concerns be resolved elsewhere in the BA.

<sup>46</sup> **Canada** proposes the addition of: “with a repayment period of one year or more”.

<sup>47</sup> **Canada** proposes replacing with: “and involving the commitment of capital or other resources in the Domain of another Contracting Party to economic activity in such Domain.” **Canada** will reconsider its proposal in the light of current draft of this definition (chapeau and third paragraph).

<sup>48</sup> **Canada** maintains a reserve pending definition and relations between Articles 7, 16 and 18.

<sup>49</sup> **Norway** proposes substituting with: “business concessions”.

<sup>50</sup> **Canada** proposes addition of the provision that “such activity includes the commitment of capital or other resources in the Domain of another Contracting Party.” **Canada** will reconsider its proposal in the light of current draft of this definition (chapeau and third paragraph).

<sup>51</sup> Legal Sub-Group will consider this para with the view of ensuring clarity and avoiding of redundancy.

For the purposes of this Agreement, “Investment” refers to any investment associated with an “Economic Activity in the Energy Sector.”<sup>52</sup>

...

**BA-35 (09/02/93)**  
Article 1.5 – Definitions  
*General comments on Article 1(5)*

“Investment” means every kind of asset owned [or controlled,]<sup>53</sup> directly or indirectly, by Investors of one or more Contracting Parties in the Domain of another Contracting Party. [In particular, though not exclusively, Investments include:]<sup>Error! Bookmark not defined.</sup>

- (a) tangible and intangible, and movable and immovable, property and any property rights such as leases, mortgages, liens, and pledges;
- (b) a company or business enterprise or shares, stock, or other forms of equity participation (including minority participation) in, and bonds, debentures and debt of<sup>46</sup>, a company or business enterprise;
- (c) claims to money and claims to performance pursuant to contract having an economic value [and associated with an Investment]<sup>54</sup>;
- (d) [Intellectual Property]<sup>48</sup>;
- (e) [any right conferred by law,]<sup>55</sup> contract or by virtue of any licences and permits granted pursuant to law;<sup>56</sup>

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A change in the form in which assets are invested does not affect their character as investments and the term “Investment” includes all investments, whether existing at or made after the later of the dates of entry into force of this Agreement for the Contracting Party of the Investor making the investment and Contracting Party in which the investment is made (hereinafter referred to as the “effective date”) provided that with respect to investments made before the effective date and continuing after the effective date, this Agreement shall only apply to matters affecting such investments after the effective date.

For the purposes of this Agreement, “Investment” refers to any investment associated with an economic activity (\*)<sup>57</sup> in the Energy Sector.<sup>58</sup>

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<sup>52</sup> Some delegations wanted the content of this paragraph to form the basis of a definition of scope, preferably placed in the beginning of Part IV.

**Norway** comments if its proposal as recorded in footnote 16.2 be accepted this sentence should be deleted. Moreover, the term “investment associated with an economic activity in the energy sector” is quite vague and not easily applicable from a legal point of view, and should be avoided also for that reason. To the extent that it is considered necessary to link Investment with economic activity in the Energy Sector, it should be done in the relevant substantive Articles of the Basic Agreement, and not in the definition of Investment.

<sup>53</sup> **Russian Federation** reserve. **Russian Federation** wants explicit guidelines used on case by case basis.

<sup>54</sup> **Canada** proposes replacing with: “and involving the commitment of capital or other resources in the Domain of another Contracting Party to economic activity in such Domain.”

<sup>55</sup> **Norway** scrutiny reserve.

<sup>56</sup> **Canada** proposes addition of the provision that “such activity includes the commitment of capital or other resources in the Domain of another Contracting Party.”

<sup>57</sup> Note for accompanying document:

Economic Activity in the Energy Sector includes, for example:



## General comments on Article 1(5)

- Legal limitations to the coverage should be done in the relevant Articles or Parts of the Basic Agreement (e.g. Article 16(10)).
- The Sub-Group on the definition of “Investment” has not excluded from the coverage of this definition the investments in power generating plants or co-generating plants dedicated exclusively for the use of industrial or service facilities.
- Text should be found in the Preamble of the Basic Agreement to cover the importance of energy efficiency.

<p style="text-align: center;"><b>BA-31 (21/12/92)</b> Article 1.4 – Definitions</p>
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[(\*)<sup>59</sup> “Investment” means every kind of asset owned [or controlled, directly or indirectly], by Investors of one or more Contracting Parties [in the Domain of another Contracting Party] employed in association with the exploration, production, conversion, storage, transport, distribution and [supply] of Energy Materials and Products [and related services]. In particular, Investments include:]<sup>60</sup>

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- the prospecting and exploration for, and extraction of, e.g. oil, gas, coal and uranium;
  - the construction and operation of power generation facilities, including those powered by wind and other renewable energy sources;
  - the transportation, distribution, storage and supply of Energy Materials and Products, e.g. by way of transmission and distribution grids and pipelines or dedicated rail lines, and construction of facilities for such, including the laying of oil, gas, and coal-slurry pipelines;
  - removal and disposal of wastes from energy related facilities such as power stations, including of radioactive wastes from nuclear power stations;
  - decommissioning of energy related facilities, including oil rigs, oil refineries and power generating plants;
  - the marketing, and sale of, and trade in Energy Materials and Products, e.g. retail sales of gasoline;
  - research, consulting, planning, management and design activities, related to the activities mentioned above, including those aimed at improving energy efficiency.

<sup>58</sup> Some delegations wanted the content of this paragraph to form the basis of a definition of scope, preferably placed in the beginning of Part IV.

<sup>59</sup> (\*) Note for accompanying document:

The energy field includes, for example, such energy specific activities as the laying of energy pipelines, the provision of energy meters, the decommissioning of oil rigs and nuclear power stations and contract energy management; but excludes activities which are not principally devoted to energy, such as road, rail, maritime and air transport, or the manufacture of energy consuming equipment.

Working Groups preparing Protocols are invited further to define the operations covered by their work in which Investments should be given the protection of this Agreement. Such definitions could be incorporated in this Agreement by way of amendment or be applied only by the parties to the relevant Protocol. It is particularly urgent to provide appropriate coverage of activities relating to energy efficiency.

<sup>60</sup> The chapeau was discussed during the WG II meeting on 18 December 1992. The current draft is based on Chairman's proposal as contained in BA-30 and USA suggestion presented during negotiation. Square bracketed words indicate certain concerns by delegations.

Chairman invited delegations to forward to the Secretariat in a written form their comments on both definitions related to Investment including the note for the accompanying document under Article 1 or under Part IV by 17 January 1993.

The delegations should also focus on deletions of inappropriate suggestions, comments or reserves in footnotes in relation to the most recent drafts. Reflecting those responses the Secretariat will prepare a separate document containing all options together with a possible architecture for the next WG II meeting.

- (a) tangible or intangible, movable and immovable property and any other related property rights such as mortgages, liens or pledges as well as leases;<sup>61</sup>
- (b) [shares in, or stock, or other forms of equity, bonds or debentures or debt<sup>46</sup> of, or any other form of participation including minority forms in, a company or business enterprise;]<sup>62</sup>
- (c) claims to money and claims to performance [under contract]<sup>63</sup> having an economic value [and associated with an Investment;]<sup>64</sup>
- (d) [Intellectual Property<sup>65</sup>];<sup>66</sup>
- (e) [any right conferred by law or contract, [relating to an Investment or by virtue of]<sup>67</sup> any licences and permits pursuant to law];<sup>68,69, 70</sup>

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A change in the form in which assets are invested does not affect their character as investments and the term “Investment” includes all investments, whether existing at or made after the later of the dates of entry into force of this Agreement for the Contracting Party of the Investor making the investment and Contracting Party in which the investment is made (hereinafter referred to as the “effective date”) provided that with respect to investments made before the effective date and continuing after the effective date, this Agreement shall only apply to matters affecting such investments after the effective date.

<p><b>BA-26 (25/11/92)</b> Article 1.4 – Definitions</p>
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“Investment” means every kind of [asset in energy field]<sup>71</sup> owned [or controlled, directly or indirectly],<sup>72</sup> by Investors of one Contracting Party<sup>73</sup>. [In particular, though not exclusively, it includes any of the following:]<sup>74</sup>

<sup>61</sup> **Canada** proposes the addition of: “acquired in the expectation or used for the purpose of economic benefits or business purposes”.

<sup>62</sup> **USA** suggests a tighter reformulation as follows: “shares, stock, or other forms of equity participation (including minority participation) in, and bonds, debentures and debt instruments of, a company or business enterprise”.

<sup>63</sup> **USA** suggests substituting with: “pursuant to contract”.

<sup>64</sup> **Canada** proposes replacing with: “and involving the commitment of capital or other resources in the Domain of another Contracting Party to economic activity in such Domain.”

**USA** requests retention of the phrase in the main text.

<sup>65</sup> **Hungary** asks for adding: “related to industrial projects”.

<sup>66</sup> **Canada** scrutiny reserve pending clarification of relationship between Articles 7, 16 and 18.

<sup>67</sup> **USA** suggests replacing with: “and”.

<sup>68</sup> Subject to scrutiny reserve by all delegations.

<sup>69</sup> On the basis of the previous text, **Canada** proposed the addition of the proviso that “such activity includes the commitment of capital or other resources in the Domain of another Contracting Party.” The Chairman suggested consideration of this as a substantive provision under Article 16.

<sup>70</sup> **Romania** asks for adding: “including concessions to search for, extract or exploit natural resources in the energy field”.

<sup>71</sup> The Chairman seeks to draft a proposal in light of written observations.

<sup>72</sup> **Russian Federation** scrutiny reserve.

<sup>73</sup> **Hungary** suggests insertion of: “acquired after 17 December 1991”.

<sup>74</sup> **Canada** proposes substituting with: “It consists of the following.” **Canada** considers the list should be exclusive rather than illustrative.

- (a) tangible or intangible, movable and immovable property and any other related property rights such as mortgages, liens or pledges as well as leases;<sup>61</sup>
- (b) shares in, or stock, or other forms of equity, bonds or debentures or debt<sup>46</sup> of, or any other form of participation including minority forms in, a company or business enterprise;
- (c) claims to money and claims to performance under contract having an economic value [and associated with an Investment;]<sup>64</sup>
- (d) [Intellectual Property<sup>65</sup>];<sup>66</sup>
- (e) [any right conferred by law or contract, relating to an Investment or by virtue of any licences and permits pursuant to law];<sup>68,69</sup>

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A change in the form in which assets are invested does not affect their character as investments and the term “Investment” includes all investments, whether existing at or made after the later of the dates of entry into force of this Agreement of the Contracting Party of the Investor making the investment and Contracting Party in which the investment is made (hereinafter referred to as the “effective date”) provided that with respect to investments made before the effective date and continuing after the effective date, this Agreement shall only apply to matters affecting such investments after the effective date.

<p><b>BA-22 (21/10/92)</b> Article 1.4 – Definitions</p>
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“Investment” means every kind of [energy asset]<sup>75</sup> owned [or controlled, directly or indirectly],<sup>72</sup> by Investors of one Contracting Party. [In particular, though not exclusively, it includes any of the following:]<sup>74</sup>

- (a) tangible or intangible, movable and immovable property and any other related property rights such as mortgages, liens or pledges as well as leases;<sup>Error! Bookmark not defined.</sup>
- (b) shares in, or stock, or other forms of equity, bonds or debentures or debt<sup>Error! Bookmark not defined.</sup> of, or any other form of participation including minority forms in, a company or business enterprise;
- (c) claims to money and claims to performance under contract having an economic value [and associated with an Investment;]<sup>Error! Bookmark not defined.</sup>
- (d) [Intellectual Property;]<sup>Error! Bookmark not defined.</sup>
- (e) [any right conferred by law or contract, relating to an Investment or by virtue of any licences and permits pursuant to law];<sup>Error! Bookmark not defined.,Error! Bookmark not defined.</sup>

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A change in the form in which assets are invested does not affect their character as investments and the term “Investment” includes all investments, whether existing at or made after the later of the dates of entry into force of this Agreement or the Contracting Party of the Investor making the investment and Contracting Party in which the investment is made (hereinafter referred to as the “effective date”) provided that with respect to investments made before the effective date and

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<sup>75</sup> **Hungary** and **Japan** scrutiny reserve. **Japan** suggests replacing with: “asset in energy field”.

continuing after the effective date, this Agreement shall only apply to matters affecting such investments after the effective date.

**BA-15 (12/08/92)**  
Article 1.4 – Definitions

“Investment” means every kind of energy investment owned or controlled, directly or indirectly, by Investors of one Contracting Party. In particular, though not exclusively, it includes any of the following:

- (a) tangible or intangible, property and any other related property rights such as mortgages, liens or pledges as well as leases;
- (b) a company or business enterprise or shares in, or stock, bonds or debentures or debt of, or any other form of participation including minority forms in, a company or business enterprise;
- (c) claims to money and claims to performance under contract having a financial value and associated with an Investment;
- (d) Intellectual Property;
- (e) rights conferred by law or under contract, to undertake any commercial activity, including concessions or other rights for the search for, or the cultivation, extraction or exploitation of natural resources;

A change in the form in which assets are invested does not affect their character as investments and the term “Investment” includes all investments, whether existing at or made after the later of the dates of entry into force of this Agreement for the Contracting Party of the Investor making the Investment and Contracting Party in which the Investment is made (hereinafter referred to as the “effective date”) provided that with respect to investments made before the effective date and continuing after the effective date, this Agreement shall only apply to matters affecting such investments after the effective date.

**BA 14 (24/06/92)**  
**BA 13 (19/06/92)**  
Article 1.4 – Definitions

“Investment” means every kind of asset<sup>76,77</sup>, which has been used or is used in connection with [the implementation of the principles of the Charter [and in accordance with the provisions of this Agreement]<sup>78,79</sup>]<sup>80</sup>. In particular, though not exclusively, includes any of the following:

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<sup>76</sup> **USA** and **Switzerland** suggest inserting “owned or controlled, directly or indirectly, by Investors of one Contracting Party in the [Territory] of another Contracting Party”.

<sup>77</sup> **Australia** suggests inserting “owned or controlled, directly or indirectly, by Investors of one Contracting Party”.

<sup>78</sup> **USA** suggests deletion and instead adding “in the energy field”.

<sup>79</sup> **Switzerland** reserve.

<sup>80</sup> **Japan** suggests substituting with “exploration, production, conversion, storage, transport and distribution of [Energy Materials and Products]”.

- (a) [tangible or intangible]<sup>81</sup> property and any other related property rights such as mortgages, liens or pledges as well as leases;
- (b) <sup>82</sup> shares in, and stock, bonds and debentures of, and any other form of participation including minority forms<sup>83</sup> in, a company or business enterprise<sup>84</sup>;
- (c) [claims to money and claims to performance under contract having a financial value<sup>85</sup>]<sup>86</sup>;
- (d) [intellectual property as defined in item (12)]<sup>87</sup>;
- (e) [rights, conferred by law or under contract, to undertake any commercial activity, including the search for, or the cultivation, extraction or exploitation of natural resources]<sup>88</sup>;

A change in the form in which assets are invested does not affect their character as investments [and the term “Investment” includes all investments, whether existing at or made after the date of entry into force of this Agreement (hereinafter referred to as the “effective date”)]<sup>89</sup> provided that with respect to investments made before the effective date and continuing after the effective date, this Agreement shall only apply to matters affecting such investments after the effective date]<sup>90,91</sup>.

<sup>81</sup> **Austria** asks for replacing with: “movable and immovable”.

<sup>82</sup> **USA** suggests adding for clarity at an appropriate place : “a company, equity or debt”.

<sup>83</sup> **Japan** requests clarification and examples on minority forms.

<sup>84</sup> **EC** suggests adding: “having its principal place of business within the [Territory] of a Contracting Party”.

<sup>85</sup> **USA** suggests adding: “and associated with an Investment”.

<sup>86</sup> **Canada** requests that claims to money in connection with commercial contracts for the sale of goods and services or licences to provide services should not be included.

<sup>87</sup> **Canada** does not consider appropriate the inclusion of intellectual property in the definition of Investment.

<sup>88</sup> **Austria** suggests substituting with: “rights to carry out economic activities based on a concession or other rights for the search for, the cultivation, extraction or exploitation of natural resources”.

<sup>89</sup> **Japan** argues that “effective date” should be the date when the Investor's country or the country where its Investment is made, enter into the BA, whichever is the latest. Deferred to a later stage dependent on discussions on Article 39.

<sup>90</sup> **Austria** suggests replacing with: “, even if a new authorization is required”.

<sup>91</sup> **Canada** is of that opinion that definitions should not establish substantive obligations, so the square bracketed part should be placed to Part IV of BA e.g. to Article 16 as a new para reading: “This Agreement applies to all Investments, whether existing at or made after the date of entry into force of this Agreement (hereinafter referred to as the “effective date”)] provided that with respect to Investments made before the effective date and continuing after the effective date, this Agreement shall only apply to matters affecting such Investments after the effective date.”

<sup>92</sup> **Canada** proposes replacing the whole item (4) with the following:

Investment

1. Investment of an Investor of a Contracting Party means an investment that is owned or controlled directly or indirectly by an Investor of such Contracting Party.
2. For the purposes of paragraph (1), an Investor owns or controls an investment indirectly when he has a determining influence on the management of such investment.
3. Investment consists of:
  - a) a business enterprise located in the [Territory] of another Contracting Party that is controlled by such Investor;
  - b) equity of debt securities of a business enterprise located in the [Territory] of another Contracting Party, or any interest in such enterprise that entitles the owner to share in the income or profits or to share in the assets on dissolution;
  - c) real estate or other tangible property located in the [Territory] of another Contracting Party;
  - d) a loan to a business enterprise located in the [Territory] of another Contracting Party made or guaranteed by an affiliate of such business enterprise;
  - e) interests arising from the commitment of significant capital in the [Territory] of another Contracting Party to a major project or permanent commercial presence in that [Territory] related to (i) contracts

**BA 12 (09/04/92)**  
Article 1.4 – Definitions

“Investment” means every kind of asset<sup>93</sup>, which has been used or is used in connection with the implementation of the principles of the Charter [and in accordance with the provisions of this Agreement]<sup>94,95</sup> in particular, though not exclusively, includes any of the following:

- (a) tangible or intangible property and any other related property rights such as mortgages, liens or pledges as well as leases;
- (b) shares in, and stock, bonds and debentures of, and any other form of participation including minority forms in, a company or business enterprise<sup>96</sup>;
- (c) claims to money, and claims to performance under contract having [a financial]<sup>97</sup> value;
- (d) intellectual property as defined in item (12);
- (e) rights, conferred by law or under contract, to undertake any commercial activity, including the search for, or the cultivation, extraction or exploitation of natural resources;

A change in the form in which assets are invested does not affect their character as investments [and the term]<sup>98</sup> “Investment” includes all investments, whether existing at or made after the date of entry into force of this Agreement [(hereinafter referred to as the “effective date”)<sup>89</sup> provided that with respect to investments made before the effective date and continuing after the effective

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involving the presence of the Investor's property in [Territory] of another Contracting Party (e.g., concession agreements, turnkey or construction contracts) or (ii) contracts where the remuneration depends substantially on the production, revenues or profits of a business enterprise.

4. For greater clarity, investment excludes the following kinds of interest :
  - a) claims to money that arise solely from:
    - i) commercial contracts for the sale of goods or services by a national or entity in the [Territory] of one Contracting Party to a business enterprise in the [Territory] of another Contracting Party;
    - ii) the extension of credit in connection with a commercial transaction (e.g. trade financing); or
    - iii) any other claims to money;and that do not involve the kinds of interests listed in paragraph (3);
  - b) any loan to a business enterprise other than a loan between affiliated business enterprises described in paragraph (3)(d); and
  - c) bonds, treasury bills, or any other kind of debt security issued by a Contracting Party, including those issued by regional or local governments or authorities of a Contracting Party.
5. a) “Equity or debt securities” includes voting and non-voting shares, bonds, convertible debentures, stock options and warrants.
  - b) “Business enterprise” means an enterprise that has, or in the case of an establishment thereof will have:
    - i) a place of business;
    - ii) an individual or individuals employed or self employed in connection with the business; and
    - iii) assets used in carrying on the business, and that involves a financial commitment for the purpose of commercial gain.
  - c) “Enterprise” means any entity constituted or organized under applicable law, including any corporation, trust, partnership, sole proprietorship, joint venture or other association.

<sup>93</sup> **USA, Australia and Switzerland** suggest inserting “owned or controlled, directly or indirectly, by Investors of one Contracting Party in the Territory of another Contracting Party”.

<sup>94</sup> **USA** suggests deletion and instead adding “in the energy field”.

<sup>95</sup> **Switzerland** reserve.

<sup>96</sup> **EC** suggests adding: “having its principal place of business within the Territory of a Contracting Party”.

<sup>97</sup> **Norway** asks for substituting with “an economic”.

<sup>98</sup> **Austria** suggests replacing with: “provided that the reinvestments are undertaken in accordance with the laws of the Party concerned. The term...”

date, this Agreement shall only apply to matters affecting such investments after the effective date]<sup>99</sup>.

**BA 6 (21/01/92)**  
Article 1.4 – Definitions

“Investment” means every kind of asset<sup>100</sup>, which are used in connection with the implementation of the principles of the Charter and in accordance with the provisions of this Agreement. In particular, though not exclusively, includes any of the following:

- (a) [movable and immovable]<sup>101</sup> property and any other related property rights such as mortgages liens or pledges;
- (b) shares in, and stock, bonds and debentures of, and any other form of participation in, a company or business enterprise;
- (c) claims to money, and claims to performance under contract having a financial value;
- (d) intellectual<sup>102</sup> property rights, goodwill, technical processes, know-how and any other benefit or advantage attached to a business;
- (e) [rights]<sup>103</sup>, conferred by law or under contract<sup>103</sup>, to undertake any commercial activity, including the search for, or the cultivation, extraction or exploitation of natural resources;<sup>104</sup>
- (f) goods which under a leasing agreement are placed at the disposal of a lessee in the Territory of one Contracting Party in conformity with its laws and regulations;

A change in the form in which assets are invested does not affect their character as investments and the term “Investment” includes all investments, whether existing at or made after the date of entry into force of this Agreement (hereinafter referred to as the “effective date”) provided that this Agreement shall only be applicable to Investments made before the effective date and which continue after the effective date with respect to matters affecting such Investments after the effective date.

**BA 4 (31/10/91)**  
Article 1.4 – Definitions

“Investment” means every kind of asset<sup>100</sup>, and in particular, though not exclusively, includes any of the following:

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<sup>99</sup> **Austria** suggests deletion.

<sup>100</sup> (**Australia**): Insert “owned or controlled by Investors of one Contracting Party and admitted by one of the other Contracting Parties subject to its laws and investment policies”.

<sup>101</sup> (**Australia**): Replace by “tangible and intangible”.

<sup>102</sup> (**Australia**): Insert “and industrial”.

<sup>103</sup> (**Australia**): Replace by “business concessions and other rights required to conduct economic activity and having economic value”.

<sup>104</sup> (**Australia**): Add a new wording:

“and to manufacture, use and sell products; and

(g) activities associated with investments, such as the organisation and operation of business facilities, the acquisition, exercise and disposition of property rights including intellectual property rights, the raising of funds and the purchase and sale of foreign exchange.”

- (a) [movable and immovable]<sup>101</sup> property and any other related property rights such as mortgages liens or pledges;
- (b) shares in, and stock, bonds and debentures of, and any other form of participation in, a company or business enterprise;
- (c) claims to money, and claims to performance under contract having a financial value;
- (d) Intellectual<sup>102</sup> property rights, goodwill, technical processes, know-how and any other benefit or advantage attached to a business;
- (e) [rights]<sup>103</sup>, conferred by law or under contract, to undertake any commercial activity, including the search for, or the cultivation, extraction or exploitation of natural resources;<sup>105</sup>

which are used in connection with the implementation of the principles of the Charter and in accordance with the provisions of this Agreement.

A change in the form in which assets are invested does not affect their character as investments and the term “Investment” includes all investments, whether made before or after the date of entry into force of this Agreement;

<b>BP 2 (11/09/91)</b> Article 1.1(e) – Definitions	<b>Basic Protocol (20/08/91)</b> Article 1.1(e) – Definitions
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- (e) “Investment” means every kind of asset, including changes in the form in which assets are invested and in particular, though not exclusively, includes any of the following:
  - (i) movable and immovable property and any other related property rights such as mortgages liens or pledges;
  - (ii) shares in, and stock, bonds and debentures of, and any other form of participation in, a company or business enterprise;
  - (iii) claims to money, and claims to performance under contract having a financial value;
  - (iv) intellectual property rights, goodwill, technical processes , know-how and any other benefit or advantage attached to a business;
  - (v) rights, conferred by law or under contract, to undertake any commercial activity, including the search for, or the cultivation, extraction or exploitation of natural resources;

which is used in connection with the implementation of the principles of the Charter and in accordance with the provisions of this Agreement.

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<sup>105</sup> (Australia): add a new wording: “and to manufacture, use and sell products; and (f) activities associated with investments, such as the organisation and operation of business facilities, the acquisition, exercise and disposition of property rights including intellectual property rights, the raising of funds and the purchase and sale of foreign exchange.”



## **Article 1.7**

**ECT as adopted (17/12/94)**  
**CONF 104 (Text for adoption) (14/09/94)\***  
**Interim Text (25/06/94)**  
**Interim Text (20/06/94)**  
Article 1.7 – Definitions

“Investor” means:

- (a) with respect to a Contracting Party:
  - (i) a natural person having the citizenship or nationality of or who is permanently residing in that Contracting Party in accordance with its applicable law;
  - (ii) a company or other organization organized in accordance with the law applicable in that Contracting Party;
- (b) with respect to a “third state”, a natural person, company or other organization which fulfils, mutatis mutandis, the conditions specified in subparagraph (a) for a Contracting Party.

**Compromise text [CONF 98] (22/04/94)**  
Article 1.7 – Definitions

“Investor” means:

- (a) with respect to a Contracting Party
  - (i) a natural person having the citizenship or nationality of or who is permanently residing in that Contracting Party in accordance with its applicable laws;
  - (ii) a company or other organization organized in accordance with the laws applicable in that Contracting Party
- (b) with respect to a “third state”, a natural person, company or other organization which fulfils, mutatis mutandis, the conditions specified in sub-paragraph (a) for a Contracting Party.

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\* *Ed. note:* Appendix II in document CONF 104 contains “Main changes since Interim text”. With respect to Article 1(7)(b) it states:

“In accordance with Article 1(7)(b) the term “third state” has been used throughout the revised Treaty text instead of the phrase “state that is not a Contracting Party”.”

**ECT 7 [CONF 96] (17/03/94)**  
**ECT 6 [CONF 82] (20/12/93)**  
Article 1.7 – Definitions  
*Endnote\* to Article 1 – Definitions*

["Investor" means:

- (a) with respect to a Contracting Party
  - (i) a natural person having the citizenship or nationality of or who is permanently residing in that Contracting Party in accordance with its applicable laws;
  - (ii) a company or other organization organized in accordance with the laws applicable in that Contracting Party
- (b) with respect to a "third state", a natural person, company or other organization which fulfills, mutatis mutandis, the conditions specified in sub-paragraph (a) for a Contracting Party.]<sup>106</sup>

**ECT 5 [CONF 72] (11/10/93)**  
Article 1.7 – Definitions  
*Endnote\* to Article 1 – Definitions*

["Investor" means:

- (a) with respect to a Contracting Party
  - (i) a natural person having the citizenship or nationality of or who is permanently residing in that Contracting Party in accordance with its applicable laws<sup>107</sup>;
  - (ii) a company or other organisation organised in accordance with the laws<sup>107</sup> applicable in that Contracting Party
- (b) with respect to a "third state", a natural person, company or other organisation which fulfills, mutatis mutandis, the conditions specified in sub-paragraph (a) for a Contracting Party.]<sup>106</sup>

**ECT 4 [CONF 64] (07/07/93)**  
Article 1.7 – Definitions  
*Endnote\* to Article 1 – Definitions*

["Investor" means:

- (a) with respect to a Contracting Party
  - (i) a natural person having the citizenship or nationality of or who is permanently residing in that Contracting Party in accordance with its applicable laws;

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\* *Ed. note:* Endnote is included at the end of the Draft.

<sup>106</sup> **Norway** scrutiny reserve.

\* *Ed. note:* Endnote is included at the end of the Draft.

<sup>107</sup> **Japan** requests for insertion of "and regulations".

- (ii) a company or other organisation organised in accordance with the laws applicable in that Contracting Party
- (b) with respect to a “third state”, a natural person, company or other organisation which fulfills, mutatis mutandis, the conditions specified in sub-paragraph (a) for a Contracting Party.]<sup>106</sup>

**ECT 3 [CONF 60] (01/06/93)**  
Article 1.7 – Definitions

[“Investor” of a Contracting Party means:

- (a) natural persons having the citizenship or nationality of or who are permanently residing in that Contracting Party in accordance with its applicable laws;
- (b) companies or other organisations organised in conformity with the laws and regulations applicable in that Contracting Party.]<sup>106</sup>

**ECT 2 [CONF 56] (01/05/93)**  
**(Compromise text) ECT 1 [CONF 50] (15/03/93)**  
Article 1.7 – Definitions

“Investor” [DL] of a Contracting Party means:

- (a) natural persons having the citizenship or nationality of, or who are permanently residing in, that Contracting Party in accordance with its applicable laws;
- (b) companies or other organisations under the laws and regulations applicable in that Contracting Party.

**BA-37 (01/03/93)**  
**BA-35 (09/02/93)**  
Article 1.6 – Definitions

“Investor” means with regard to a Contracting Party:

- (a) natural persons having the citizenship or nationality of [or who are permanently residing in]<sup>108</sup> that Contracting Party in accordance with its applicable laws;
- (b) [companies or other organisations under the laws and regulations applicable in that Contracting Party.]<sup>109</sup>

<sup>108</sup> **Canada, Australia and USA** will propose a compromise text for solving up Australia and Canada concerns.

<sup>109</sup> **Romania** wants this para should read as follows: “companies and other entities, legally constituted under the laws and regulations applicable in that Contracting Party, whether or not organised for pecuniary gain, or privately or governmentally owned or controlled”.

**Norway** reserve its right to revert to this definition when no satisfactory solution be found under footnote 41.3.

**BA-31 (21/12/92)**  
Article 1.5 – Definitions

“Investor” means with regard to a Contracting Party:

- (a) natural persons having the citizenship or nationality of [or who are permanently residing in]<sup>110</sup> that Contracting Party in accordance with its<sup>111</sup> laws;
- (b) [companies or other organisations under the laws and regulations applicable in that Contracting Party.]<sup>109</sup>

**BA-26 (25/11/92)**  
Article 1.5 – Definitions  
*Footnote 22 of Article 27 – Exceptions*

**Article 1.5**

“Investor” means with regard to a Contracting Party:

- (a) natural persons having the citizenship or nationality of [or who are permanently residing in]<sup>112</sup> that Contracting Party in accordance with its laws;
- (b) companies or other organisations under the laws and regulations applicable in that Contracting Party.

**Footnote 22 of Article 27<sup>113</sup>**

Australia proposes new para, which provides wording to prevent “double-dipping” (i.e. repeated action on the same matter by an investor who is a citizen/national of one Contracting Party and a permanent resident of another Contracting Party):

“( ) This Agreement shall not apply to a natural person who is not a citizen or national of a Contracting Party (the first Contracting Party) but who is a permanent resident of that Contracting Party, if :

- (a) that person has already invoked the provisions of this Agreement against the Contracting Party in which that person has made an Investment (the second Contracting Party), provided that this has occurred in respect of the same matter or,
- (b) the person is a citizen or national or permanent resident of the second Contracting Party.”

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<sup>110</sup> Final position pending the discussion of Article 27 and Article 16.

<sup>111</sup> **Romania** request insertion of: “applicable”.

<sup>112</sup> Final position pending the discussion of Article 27, in particular F.N. 27.22.

<sup>113</sup> Note: The proposed new para (4) should be read in conjunction with Article 1(5)(a) (Definition of "Investor"), as it would read with the insertion of the words "or who are permanently residing in". [*Ed. note*: the reference to “The proposed new para (4)” seems to be erroneous.]

**BA-22 (21/10/92)**  
Article 1.5 – Definitions  
*Footnote 22 of Article 27 – Exceptions*

**Article 1.5**

“Investor” means [with regard to a Contracting Party:]<sup>114</sup>

- (a) natural persons having the citizenship [or nationality]<sup>115</sup> of<sup>116</sup> that Contracting Party in accordance with its laws;
- (b) [companies or other organisations under the laws and regulations applicable in that Contracting Party.]<sup>117</sup>

**Footnote 22 of Article 27**<sup>113</sup>

Australia proposes new para, which provides wording to prevent "double-dipping" (i.e. repeated action on the same matter by an investor who is a citizen/national of one Contracting Party and a permanent resident of another Contracting Party):

"( ) This Agreement shall not apply to a natural person who is not a citizen or national of a Contracting Party (the first Contracting Party) but who is a permanent resident of that Contracting Party, if :

- (a) that person has already invoked the provisions of this Agreement against the Contracting Party in which that person has made an Investment (the second Contracting Party), provided that this has occurred in respect of the same matter or,
- (b) the person is a citizen or national or permanent resident of the second Contracting Party.”

**BA-15 (12/08/92)**  
Article 1.5 – Definitions

“Investor” means with regard to a Contracting Party:

- (a) natural persons having the citizenship or nationality of that Contracting Party in accordance with its laws;
- (b) companies or firms constituted under civil or commercial law, including cooperative societies and other legal persons governed by public or private law in force in the territory of

<sup>114</sup> Drafting group established for 5(b) recommends change in language of the chapeau which will require either discussion in WG II or assignment to Legal Sub-Group for consideration.

<sup>115</sup> **Hungary** scrutiny reserve.

<sup>116</sup> **Australia** asks for insertion of: “or who are permanently residing in”.

<sup>117</sup> **USA, Norway and Canada** reserve. All reserve right to revisit this definition should a satisfactory solution not be reached to the issue expressed in USA footnote 1.33 contained in BA-14. Footnote 1.33 In BA-14, which the USA suggested be added to Article 1 or Article 16, read as follows : “Each Contracting Party reserves the right to deny the advantages of this Agreement to a legal entity if citizens or nationals of a non-signatory country control such entity and if that entity has non substantial business activities in the Domain of the Contracting Party in which it is organised; or the denying Contracting Party does not maintain normal economic relations with the non-signatory country the nationals of which control such entity.”

that Contracting Party or otherwise having the nationality of a Contracting Party in accordance with its laws and having its registered office, central administration or principal place of business within the territory of a Contracting Party;

**BA 14 (24/06/92)**  
**BA 13 (19/06/92)**  
Article 1.6 – Definitions

“Investor” means with regard to a Contracting Party:

- (a) natural persons having the citizenship or [nationality of that Contracting Party]<sup>118</sup> in accordance with its laws;
- (b) any [legal entities]<sup>119</sup> incorporated or constituted under the law in force in the [Territory] of that Contracting Party [whether or not organised for pecuniary gain or privately or governmentally owned or controlled and having [real economic]<sup>120</sup> activities within the [Territory] of that Contracting Party]<sup>121</sup>;
- (c) [any [legal entities]<sup>119,122</sup> controlled by nationals of that Contracting Party or by legal entities incorporated or constituted under the law in force in the [Territory] of that Contracting Party]<sup>123</sup>;

<sup>124</sup>provided that that natural persons or [legal entities]<sup>119</sup> are [not prohibited by]<sup>125</sup> the laws of that Contracting Party from making Investments in the [Territory] of another Contracting Party in connection with [Energy Materials and Products], [or to trade in [Energy Materials and Products] or equipment or services related to the extraction, production, conversion, treatment, carriage or supply of [Energy Materials and Products] in or to the [Territory] of another Contracting Party]<sup>123,126</sup>.

<sup>127</sup>

<sup>118</sup> **Australia** asks for replacing with “or who are permanently residing”.

<sup>119</sup> **Japan** asks for replacing either with “company” or “entity” so as to include bodies which both do and do not have legality.

<sup>120</sup> **USA** suggests substituting with: “substantial business”.

<sup>121</sup> **Austria** suggests deletion.

<sup>122</sup> **USA** asks for insertion of “owned or”.

<sup>123</sup> **Austria** suggests deletion.

<sup>124</sup> **USA** can accept last clause starting “provided that” and ending by the end of this para, but sees no need for it.

<sup>125</sup> **Norway** reserve, subject to substituting “not prohibited by” with “competent”.

<sup>126</sup> **Canada** proposes replacing subparagraphs (b) and (c) with the following text:

“b) such Contracting Party or an agency thereof;

c) a local or regional authority or government of such Contracting Party, or an agency of such authority or government; or

d) an entity ultimately controlled directly or indirectly through the ownership of voting interests by :

- i) such Contracting Party or an agency or agencies thereof;
  - ii) one or more local or regional authorities or governments of a Contracting Party, or an agency or agencies of such authority or government;
  - iii) one or more natural persons having the citizenship or [nationality of that Contracting Party in accordance with
  - iv) any combination of persons or entities described in (i), (ii) and (iii);
- that makes or has made an Investment.

To this Canada adds that “Investors” should have a more substantive connection to a Contracting Party than required by the current definition. Legal entities controlled directly or indirectly by nationals of states not signatory to the Basic Agreement should not be included in the definition of Investor.”

<sup>127</sup> **USA** suggests adding here or in Article 16 the following text: “Each Contracting Party reserves the right to deny the advantages of this Agreement to a legal entity if citizens or nationals of a non-signatory country control

**BA 12 (09/04/92)**  
Article 1.6 – Definitions

“Investor” means with regard to a Contracting Party:

- (a) natural persons having the citizenship or [nationality of that Contracting Party in accordance with its laws]<sup>128</sup>;
- (b) any legal entities incorporated or constituted under the law in force in the Territory of that Contracting Party whether or not organised for pecuniary gain or privately or governmentally owned or controlled and having real economic activities within the Territory of that Contracting Party;
- (c) any legal entities controlled by nationals of that Contracting Party or by legal entities incorporated or constituted under the law in force in the Territory of that Contracting Party;

provided that that natural persons or legal entities are not prohibited by the laws of that Contracting Party from making Investments in the Territory of another Contracting Party in connection with [Energy Materials and Products], [or to trade in [Energy Materials and Products] or equipment or services related to the extraction, production, conversion, treatment, carriage or supply of [Energy Materials and Products] in or to the Territory of another Contracting Party]<sup>129</sup>.

**BA 6 (21/01/92)**  
Article 1.5 – Definitions

“Investor” means with regard to a Contracting Party:

- (a) natural persons having the citizenship or [nationality of that Contracting Party in accordance with its laws]<sup>130</sup>;
- [(b) any corporations, companies, firms, enterprises, organisations and associations incorporated or constituted under the law in force in the Territory of that Contracting Party;]<sup>131,132</sup>

provided that that natural person, corporation, company, firm, enterprise, organisation or association is competent, in accordance with the laws of that Contracting Party to make investments in the Territory of another Contracting Party in connection with [Energy Materials and Products], or to trade in [Energy Materials and Products] or equipment or services related to

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such entity and if that entity has no substantial business activities in the [Territory] of the Contracting Party in which it is organized; or the denying Contracting Party does not maintain normal economic relations with the non-signatory country the nationals of which control such entity.”

<sup>128</sup> **Australia** asks for replacing with “or whose residence in that Contracting Party is not limited as to time under its laws”. Due to strong reservations by other countries Australia comes up with a compromise text by 7 April 1992.

<sup>129</sup> **Austria** suggests deletion.

<sup>130</sup> **(Australia)**: Replace by “or whose residence in that Contracting Party is not limited as to time under its laws”;

<sup>131</sup> **(Switzerland)**: Replace the subpara (b) with: “any corporations, companies, firms, enterprises, organisations and associations controlled by nationals of that Contracting Party or by corporations, companies, firms, enterprises, organisations and associations incorporated or constituted under the law in force in the Territory of that Contracting Party”

<sup>132</sup> **(USA)**: Adding after Party following wording: “whether or not organised for pecuniary gain or privately or governmentally owned or controlled.”

the extraction, production, conversion, treatment, carriage or supply of [Energy Materials and Products] in or to the Territory of another Contracting Party.

<p style="text-align: center;"><b>BA 4 (31/10/91)</b> Article 1.5 – Definitions</p>
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“Investor” means with regard to a Contracting Party:

- (a) natural persons having the citizenship or [nationality of that Contracting Party in accordance with its laws]<sup>130</sup>;
- (b) any corporations, companies, firms, enterprises, organisations and associations incorporated or constituted under the law in force in the Territory of that Contracting Party;

provided that that natural person, corporation, company, firm, enterprise, organisation or association is competent, in accordance with the laws of that Contracting Party;

- (i) make investments in the Territory of another Contracting Party in connection with Energy Materials and Products, or
- (ii) trade in Energy Materials and Products or equipment or services related to the extraction, production, conversion, treatment, carriage or supply of Energy Materials and Products in or to the Territory of another Contracting Party.

<p style="text-align: center;"><b>BP 2 (11/09/91)</b> <b>Basic Protocol (26/08/91)</b> Article 1.1(f) – Definitions</p>
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(f) “Investor” means with regard to a Contracting Party:

- (i) natural persons having the citizenship or nationality of that Contracting Party in accordance with its laws;
- (ii) any corporations, companies, firms, enterprises, organisations and associations incorporated or constituted under the law in force in the Territory of that Contracting Party;

provided that that natural person, corporation, company, firm, enterprise, organisation or association is competent, in accordance with the laws of that Contracting Party, to make Investments in the Territory of another Contracting Party;



## **Article 1.8**

**Final Act and ECT as adopted (17/12/94)**  
**CONF 104 (Text for adoption) (14/09/94)**  
Article 1.8 – Definitions  
*Understanding 4 – With respect to Article 1(8)*

“Make Investments” or “Making of Investments” means establishing new Investments, acquiring all or part of existing Investments or moving into different fields of Investment activity.

### **Understanding 4 (With respect to Article 1(8))**

Consistent with Australia’s foreign investment policy, the establishment of a new mining or raw materials processing project in Australia with total investment of \$A 10 million or more by a foreign interest, even where that foreign interest is already operating a similar business in Australia, is considered as the making of a new investment.

**Interim Text (25/06/94)**  
Article 1.8 – Definitions  
*Understanding 4 – To Article 1(8)*

“Make Investments” or “Making of Investments” mean establishing new Investments, acquiring all or part of existing Investments or moving into different fields of activity.

### **Understanding 4 (To Article 1(8))**

Consistent with Australia’s foreign investment policy, the establishment of a new mining or raw materials processing project in Australia with total investment of \$A 10 million or more by a foreign interest, even where that foreign interest is already operating a similar business in Australia, is considered as the making of a new investment.

**Interim Text (20/06/94)**  
Article 1.8 – Definitions  
*Understanding 4 – To Article 1(8)*

“Make Investments” or “Making of Investments” mean establishing new Investments, acquiring all or part of existing Investments or moving into different fields of activity.

### **Understanding 4 (To Article 1(8))**

Consistent with Australia’s foreign investment policy, the establishment of a new mining or raw materials processing project in Australia with total investment of \$A 10 million or more by a foreign interest, even where that foreign interest is already operating a similar business in Australia, is the making of a new investment.

**Compromise text [CONF 98] (22/04/94)**  
Article 1.8 – Definitions  
*Ministerial Declaration 4 – To Article 1(8)*

“Make Investments” and “Making of Investments”<sup>133</sup> mean establishing new Investments, acquiring all or part of existing Investments or moving into different fields of activity.

**Ministerial Declaration 4 (To Article 1(8))**

Consistent with Australia's foreign investment policy. The establishment of a new mining or raw materials processing project with total investment of \$A 10 million or more by a foreign interest, even where that foreign interest is already operating a similar business in Australia, is the making of a new investment.

**ECT 7 [CONF 96] (17/03/94)**  
Article 1.8 – Definitions  
*Ministerial Declaration 4 – To Article 1(8)*  
*Endnote\* to Article 1 – Definitions*

[“Make Investments” means establishing a new Investment, acquiring all or part of an existing Investment or moving into a different field of activity.]<sup>134</sup>

**Ministerial Declaration 4 (To Article 1(8))**

Consistent with the Australian Foreign Acquisitions and Takeovers Act 1975 (as amended), the substantial addition of capital to an existing Investment in Australia would constitute the making of a new Investment.

**ECT 6 [CONF 82] (20/12/93)**  
Article 1.8 – Definitions

[“Make Investments” means establishing a new Investment, acquiring all or part of an existing Investment [DL] or substantially expanding or altering the type or the objective of an existing Investment;]<sup>135</sup>

**ECT 5 [CONF 72] (11/10/93)**  
Article 1.8 – Definitions

[“Make Investments” means establishing a new Investment, acquiring all or part of an existing Investment, expanding an existing Investment, or substantially altering the type or the objective of an existing Investment;]<sup>136</sup>

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<sup>133</sup> Addition of “Making of Investments” to bring the definition into line with the text of other Articles.

\* *Ed. note*: Endnote is included at the end of the Draft.

<sup>134</sup> **Japan** scrutiny reserve.

<sup>135</sup> **EC** scrutiny reserve. **USA** and **Switzerland** reserve. **Switzerland** suggested the following alternative formulation: “.. acquiring all or part of an existing Investment or moving into a different field of activity.”

<sup>136</sup> **USA** reserve.

**ECT 4 [CONF 64] (07/07/93)**  
Article 1.8 – Definitions

“Make Investments” means establishing a new Investment, acquiring all or part of an existing Investment, expanding an existing Investment, or substantially altering the type or the objective of an existing Investment;

**ECT 3 [CONF 60] (01/06/93)**  
Article 1.9 – Definitions  
*General comment to Article 1(9)*

“Make Investments” means establishing a new Investment, acquiring all or part of an existing Investment, expanding an existing Investment, or substantially altering the type or the objective of an existing investment;

**General comment to Article 1(9)**

It was decided that this definition would be discussed in connection with Article 13.\*

**ECT 2 [CONF 56] (01/05/93)**  
**(Compromise text) ECT 1 [CONF 50] (15/03/93)**  
Article 1.9 – Definitions

“Make investments” means establishing a new Investment, acquiring all or part of an existing Investment, expanding an existing Investment, or substantially altering the type or the objective of an existing Investment;

**BA-37 (01/03/93)**  
Article 1.7 – Definitions

[“Make Investments” means establishing a new Investment, acquiring all or part of an existing Investment, expanding an existing Investment, or substantially altering the type or the objective of an existing Investment;]<sup>137</sup>

**BA-35 (09/02/93)**  
Article 1.7 – Definitions

**BA-31 (21/12/92)**  
Article 1.6 – Definitions

[“Make Investments” means establishing a new Investment, acquiring all or part of an existing Investment, expanding an existing Investment, or substantially altering the type or the objective of an existing Investment;]<sup>138</sup>

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\* *Ed. note:* Article 13 in ECT 3 deals with “Promotion, Protection and Treatment of Investments”.

<sup>137</sup> Subject to outcome of discussion between USA, Russian Federation and United Kingdom. USA reserve until further progress is made on Article 16.

<sup>138</sup> USA reserve until further progress is made on Article 16.

**BA-26 (25/11/92)**  
**BA-22 (21/10/92)**  
Article 1.6 – Definitions

“Make Investments” means establishing a new Investment, acquiring all or part of an existing Investment, expanding an existing Investment, or substantially altering the type or the objective of an existing Investment;

**BA-15 (12/08/92)**  
Article 1.6 – Definitions

“Make Investments” means establishing a new Investment, acquiring all or part of an existing Investment, expanding an existing Investment, or substantially altering the type or the objective of an existing investment;

**BA 14 (24/06/92)**  
**BA 13 (19/06/92)**  
Article 1.7 – Definitions

“Make Investments” means establishing a new Investment, acquiring all or part of an existing Investment, and expanding an existing Investment<sup>139</sup>.

**BA 12 (09/04/92)**  
Article 1.7 – Definitions

“Make Investments” means establishing a new Investment, acquiring all or part of an existing Investment, and expanding an existing Investment.

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<sup>139</sup> **Japan** asks for expanding the current definition by adding :

- a) “altering the initial objective of an existing Investment”;
- b) “establishing of a branch, factory or other business place, as well as substantial alteration of the type or the objective of business thereof;”
- c) “money lending”.

## **Article 1.9**

**ECT as adopted (17/12/94)**

Article 1.9 – Definitions

“Returns” means the amounts derived from or associated with an Investment, irrespective of the form in which they are paid, including profits, dividends, interest, capital gains, royalty payments, management, technical assistance or other fees and payments in kind.

**CONF 104 (Text for adoption) (14/09/94)**

**Interim Text (25/06/94)**

**Interim Text (20/06/94)**

**Compromise text [CONF 98] (22/04/94)**

**ECT 7 [CONF 96] (17/03/94)**

**ECT 6 [CONF 82] (20/12/93)**

**ECT 5 [CONF 72] (11/10/93)**

Article 1.9 – Definitions

“Returns” means the amounts derived from or associated with an Investment, irrespective of the form in which paid, including profits, dividends, interest, capital gains, royalty payments, management, technical assistance or other fees, and payments in kind.

**ECT 4 [CONF 64] (07/07/93)**

Article 1.9 – Definitions

“Returns” means the amounts derived from or associated with an Investment, irrespective of the form in which paid, including profits, dividends, interest, capital gains, royalty payments, management, technical assistance or other fees, and returns in kind.

**ECT 3 [CONF 60] (01/06/93)**

Article 1.10 – Definitions

“Returns” means the amounts derived from or associated with an Investment, irrespective of the form in which is paid, including profit, dividends, interest, capital gain, royalty payment, management fee, technical assistance fee or other fee, or returns in kind.

**ECT 2 [CONF 56] (01/05/93)**

**(Compromise text) ECT 1 [CONF 50] (15/03/93)**

Article 1.10 – Definitions

“Returns” means the amounts derived from or associated with an Investment, irrespective of the form in which is paid, including profit, dividends, interest, capital gain, royalty payment, management, technical assistance or other fee, or returns in kind.

**BA-37 (01/03/93)**  
**BA-35 (09/02/93)**  
Article 1.8 – Definitions

["Returns" means the amounts yielded in pecuniary form or in kind by an investment and includes profits, interest, capital gains, dividends, royalties and fees.]<sup>140</sup>

**BA-31 (21/12/92)**  
Article 1.7 – Definitions

["Returns" means the amounts yielded in pecuniary form or in kind by an Investment and includes profits, interest, capital gains, dividends, royalties and fees.]<sup>141</sup>

**BA-26 (25/11/92)**  
**BA-22 (21/10/92)**  
Article 1.7 – Definitions

"Returns" means the amounts yielded in pecuniary form or in kind by an Investment and includes profits, interest, capital gains, dividends, royalties and fees.

**BA-15 (12/08/92)**  
Article 1.7 – Definitions

"Returns" means the amounts yielded by an Investment in pecuniary form or in kind and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees, unspent earnings and other remuneration of personnel engaged from abroad in connection with that Investment.

**BA 14 (24/06/92)**  
**BA 13 (19/06/92)**  
Article 1.8 – Definitions

"Returns" means the amounts yielded by an Investment (in pecuniary form or in kind)<sup>142</sup> and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees, unspent earnings and other remuneration of personnel engaged from abroad in connection with that Investment.

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<sup>140</sup> **Romania** supported by **USA** suggests replacing the whole definition with: "Returns means the amounts derived from or associated with an Investment, irrespective of the form in which is paid, including profit, dividends, interest, capital gain, royalty payment, management, technical assistance or other fee, or returns in kind."

<sup>141</sup> **Romania** suggests replacing the whole definition with: "Returns means the amounts derived from or associated with an Investment, irrespective of the form in which is paid, including profit, dividends, interest, capital gain, royalty payment, management, technical assistance or other fee, or returns in kind."

<sup>142</sup> **Canada** may wish to discuss this in relation to amounts yielded "in kind" once Working Group II has discussed the trade provisions of the Basic Agreement.

**BA 12 (09/04/92)**  
Article 1.8 – Definitions

“Returns” means the amounts yielded by an Investment (in pecuniary form or in kind) and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees, unspent earnings and other remuneration of personnel engaged from abroad in connection with that Investment.

**BA 6 (21/01/92)**  
Article 1.6 – Definitions

<sup>143</sup>“Returns” means the amounts yielded by an Investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees;

<b>BA 4 (31/10/91)</b> Article 1.6 – Definitions	<b>BP 2 (11/09/91)</b> <b>Basic Protocol (26/08/91)</b> Article 1.1(g) – Definitions
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“Returns” means the amounts yielded by an Investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees;

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<sup>143</sup> Many delegations stressed the need for a better definition of Returns, in particular in relation to Article 19. Specific comments of delegations on Article 19 have now been transferred to Article 1 with the aim of utilizing them as the basis for a new definition. They are listed below.

The Secretariat will propose such a definition at the next WG II meeting.

**EC:** “... of payments in connection with an investment, in particular

- a) of the returns;
- b) in repayment of loans;
- c) of the proceeds from the liquidation or the sale of the whole or any part of the investment.”

**United States of America:** “returns in kind”

**Switzerland:** “other payment related to an Investment”

**Australia:** “such funds include the following:

- a) the initial capital plus any additional capital used to maintain or expand the investment;
- b) returns;
- c) proceeds from the sale or partial sale or liquidation of the investment ;
- d) payments made pursuant to a loan agreement or for losses referred to in Article 17;
- e) unspent earnings and other remuneration of personnel engaged from abroad in connection with that Investment”.

## **Article 1.10**

**ECT as adopted (17/12/94)**  
**CONF 104 (Text for adoption) (14/09/94)**  
Article 1.10 – Definitions

“Area” means with respect to a state that is a Contracting Party:

- (a) the territory under its sovereignty, it being understood that territory includes land, internal waters and the territorial sea; and
- (b) subject to and in accordance with the international law of the sea: the sea, sea-bed and its subsoil with regard to which that Contracting Party exercises sovereign rights and jurisdiction.

With respect to a Regional Economic Integration Organization which is a Contracting Party, Area means the Areas of the member states of such Organization, under the provisions contained in the agreement establishing that Organization.

**Interim Text (25/06/94)**  
**Interim Text (20/06/94)**  
**Compromise text [CONF 98] (22/04/94)**  
Article 1.10 – Definitions

“Area” means with respect to a Contracting Party:

- (a) the territory under its sovereignty, it being understood that territory includes land, internal waters and the territorial sea; and
- (b) subject to and in accordance with the international law of the sea: the sea, sea-bed and its subsoil with regard to which that Contracting Party exercises sovereign rights and jurisdiction.

With respect to a Regional Economic Integration Organization which is or becomes a Contracting Party to this Treaty, Area means the Areas of the member states of such an Organization, under the provisions contained in the agreement establishing that Organization.

**ECT 7 (17/03/94)**  
Article 1.10 – Definitions  
*Endnote\* to Article 1 – Definitions*

“Area” means with respect to a Contracting Party:

- (a) the territory under its sovereignty, it being understood that territory includes land, internal waters and the territorial sea, and
- (b) [subject to and in accordance with the international law of the sea; the sea, sea-bed and its subsoil with regard to which that Contracting Party exercises sovereign rights [and] jurisdiction.]<sup>144</sup>

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\* *Ed. note:* Endnote is included at the end of the Draft.



With respect to a Regional Economic Integration Organization which is or becomes a Contracting Party to this Treaty, Area means the areas of the member states of such an Organization, under the provisions laid down in the agreement establishing that Organization.

**ECT 6 [CONF 82] (20/12/93)**  
**ECT 5 [CONF 72] (11/10/93)**  
**ECT 4 [CONF 64] (07/07/93)**  
Article 1.10 – Definitions

“Area” means with respect to a Contracting Party:

- (a) the territory under, its sovereignty, it being understood that territory includes land, internal waters and the territorial sea, and
- (b) subject to and in accordance with the international law of the sea; the sea, sea-bed and its subsoil with regard to which that Contracting Party exercises sovereign rights [and] jurisdiction.

With respect to a Regional Economic Integration Organisation which is or becomes a Contracting Party to this Agreement, Area means the areas of the member states of such an Organisation, under the provisions laid down in the agreement establishing that Organisation.

**ECT 3 [CONF 60] (01/06/93)**  
Article 1.11 – Definitions

[“Domain” means in respect of a Contracting Party:

- (a) the territory under its sovereignty, it being understood that territory includes land, internal waters and the territorial sea, and
- (b) [maritime areas, including]<sup>145</sup> the sea, sea-bed and its subsoil with regard to which that Contracting Party exercises, in accordance with international law, sovereign rights or jurisdiction.]<sup>146,147</sup>

With respect to a Regional Economic Integration Organisation which is or becomes a Contracting Party to this Agreement, Domain means the domains of the Member States of such an Organisation, under the provisions laid down in the agreement establishing that Organisation.

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<sup>144</sup> **Japan** proposes that this paragraph be replaced with the following wording:

“the sea, the sea-bed and its subsoil with regard to which that Contracting Party exercises, in accordance with the international law of the sea, jurisdiction and sovereign rights in respect of energy resources”. This proposal aims to provide explicitly that “jurisdiction and sovereign rights” referred to in this paragraph indicate those in respect of energy resources.

<sup>145</sup> General scrutiny reserve.

<sup>146</sup> **Norway** can not accept this definition. **Norway** proposal can be found in BA-37 and Room Document 11 of 25 May.

<sup>147</sup> **Romania** and **Bulgaria** scrutiny reserve.

**ECT 2 [CONF 56] (01/05/93)**  
**(Compromise text) ECT 1 [CONF 50] (15/03/93)**  
Article 1.11 – Definitions

“Domain” means in respect of a Contracting Party the territory under its sovereignty, it being understood that territory includes land, internal waters and the territorial sea, and the sea, sea-bed and its subsoil over which that Contracting Party exercises, in accordance with international law, sovereign rights or jurisdiction. With respect to a Regional Economic Integration Organisation which is or becomes a Contracting Party to this Agreement, Domain means the domains of the Member States of such an Organisation, under the provisions laid down in the agreement establishing that Organisation.

**BA-37 (01/03/93)**  
**BA-35 (09/02/93)**  
Article 1.9 – Definitions

[“Domain” means in respect of a Contracting Party the territory under its sovereignty, it being understood that territory includes land, internal waters and the territorial sea, and the sea, [seabed and its subsoil over which that Contracting Party exercises, in accordance with international law, sovereign rights or jurisdiction.]<sup>148</sup> With respect to a Regional Economic Integration Organisation which is or becomes a Contracting Party to this Agreement, Domain means the domains of the Member States of such an Organisation, under the provisions laid down in the agreement establishing that Organisation.<sup>149</sup>

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<sup>148</sup> **Romania** suggests this part sentence should read:

“seabed adjacent to the territorial sea and its subsoil over which that Contracting Party exercises sovereign rights or jurisdiction, in accordance with international law as reflected in the 1982 United Nations Convention on the Law of the Sea.”

<sup>149</sup> **Norway** proposal to amend this definition is as follows:

A. The Chairman of Working Group II has presented a proposal concerning the definition of “territory”. Also Norway has presented a proposal concerning the Agreement’s scope of application.

The Chairman of Working Group II has since proposed to replace the term “territory” in his proposal with the term “domain”.

The Legal Sub-Group has discussed the proposed definition contained in Article 1 (9), and has proposed amendments. The Legal Sub-Group has questioned the suggestion to replace the term “territory” with the term “domain”, but has deferred making a recommendation until Norway has had an opportunity to explain the legal rationale for its proposal.

B. Norway has the following comments to the proposed definition:

a) The fundamental objective of the participants in the Basic Agreement negotiations is to agree on a legal framework, based on the principles expressed in the European Energy Charter, for the development of an efficient energy market in Europe and a better functioning energy market globally. International law recognises state sovereignty rights over the natural resources on the territory. And on the continental shelf, and the European Energy Charter explicitly recognises the states rights in this respect. It is recognised under international law that “territory” comprises a state's land territory as well as its internal waters and the territorial sea. There is, accordingly, no need for a definition merely to state this fact.

The coastal state exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources. These rights are limited to the purposes of exploring and exploiting the natural resources of the continental shelf, and can therefore not be considered as territorial sovereignty.

The coastal state's rights to utilise the natural resources in or on the seabed or its subsoil follow already from its rights according to international law on the continental shelf. The coastal state's rights on the continental shelf to such utilization overlap with its rights in this respect in the exclusive economic zone. A State does not, with the exception mentioned below, get rights under international law in the exclusive economic zone with respect to utilisation of energy resources additional to those which already follow from its sovereign rights on the continental shelf. The additional rights for the coastal state in the exclusive economic zone pertain in practice to management and utilisation of living marine resources, i.e. fishery resources, and the

**BA-31 (21/12/92)**  
Article 1.8 – Definitions

“Domain” means in respect of a Contracting Party the territory under its sovereignty, it being understood that territory includes land, internal waters and the territorial sea, and the sea, [seabed and its subsoil over which that Contracting Party exercises, in accordance with international law, sovereign rights or jurisdiction.]<sup>148</sup> [With respect to a Regional Economic Integration

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question of environmental jurisdiction. In Norway opinion, matters related to fisheries should be kept outside the scope of the Basic Agreement. A definition of the Basic Agreement’s area of application which explicitly and in general terms include the sea above the seabed and its subsoil is, in Norway opinion, accordingly besides the scope of an agreement relating to energy resources, and should be avoided.

A point of possible relevance to the Basic Agreement in the context of the coastal state's rights in the exclusive economic zone is the following: The UN Convention on the Law of the Sea which, as is well known, is not yet in force, states in Article 56.1 (a) *inter alia* that the coastal state has the sovereign rights with regard to activities for the economic exploration and exploitation of the zone such as the production of energy from the water, currents and winds. It could thus be argued that a future-orientated Basic Agreement might include in a definition of scope a reference to utilisation of such energy activities. In Norway opinion, the possibilities that exclusive economic zones will in practice be utilised for such purposes seem rather distant. Norway accordingly does not find it necessary to let the Basic Agreement Include such utilisation.

b) In Norway opinion, an Agreement pertaining to energy resources could, if the participants feel that the Agreement's area of application has to be defined, more properly contain a separate article for instance as follows: “This Agreement is applicable in a Contracting Party's territory, and for coastal states also on the continental shelf over which such states exercise in accordance with international law sovereign rights for the purpose of exploring it and exploiting its natural resources of the seabed and subsoil”.

c) Should the participants in the negotiations be of the opinion that inclusion in the Basic Agreement of a definition of its jurisdictional scope is essential, Norway has the following comments:

The definition proposed by the Legal Sub-Group has considerably improved the legal stringency of the proposal. Norway does, however, share the concern expressed by the Legal Sub-Group of applying the term “domain” in the definition. The term “domain” has no generally recognised application in the proposed context. Use of such a term may cause uncertainty, and may have unwarranted implications. In Norway opinion, it is imperative to continue the efforts at improving the proposed definition.

It will, in Norway view, not be sufficient merely to substitute the term “domain” in the Legal Sub- Group's proposal with the term “territory”. The problem would then still remain that the term “territory” would be defined in a manner which disregards the internationally generally accepted concept that a state's territory does not extend beyond its sea territory, and that the state in the area adjacent to the sea territory does not exercise sovereignty, but sovereign rights. In addition, Norway regards, for reasons explained above in para a), as difficult and unwarranted the inclusion of the term “sea” in such a definition in an Agreement directed at energy activities.

Norway will on this background propose the following definition, based on the Legal Sub-Group’s proposal, and previously accepted definitions in international law (the 1958 Convention on the Continental Shelf and the 1982 Convention on the Law of the Seas):

(9) “Area under a Contracting Party's jurisdiction” means in respect of a state the territory under its sovereignty, and for coastal states also the continental shelf over which such states exercise in accordance with international law sovereign rights for the purpose of exploring it and exploiting its natural resources of the seabed and subsoil. With respect to a Regional Economic Integration Organisation which is or becomes a Party to this Agreement, this Agreement applies to the territories and areas which are Parties to this Agreement exercise sovereignty or sovereign rights for the purpose of exploring and exploiting energy resources, in accordance with international law, to the extent of that Organisation's competence in the matters which are the subject of this Agreement”.

C. The word “domain” should wherever it occurs in the Basic Agreement be replaced with the expression “areas under a Contracting Party's jurisdiction”, or the Agreement should otherwise be amended as required.

D. Pending the outcome of the deliberations on the proposal contained in Article 16 (10) to the effect that nothing in Article 16 shall apply to maritime and inland waterways, transport facilities and services, Norway has to reserve its position on whether or not to accept the extension of the area of application of the Basic Agreement to the continental shelf over which coastal states exercise in accordance with international law sovereign rights for the purpose of exploring it and exploiting its natural resources. The final position of Norway on this issue will depend on an assessment of the balance of benefits in the Basic Agreement as a whole.

Organisation which is or becomes a Contracting Party to this Agreement the term “Domain” shall be construed as meaning the respective territories of those member states of such organisation which are also Contracting Parties to this Agreement, to the extent of that organisation’s competence in the matters which are the subject of this Agreement in those territories]<sup>150</sup>.

**BA-26 (25/11/92)**  
**BA-22 (21/10/92)**  
Article 1.8 – Definitions

“Domain” means in respect of a Contracting Party the territory under its sovereignty, it being understood that territory includes land, internal waters and the territorial sea, and the sea, seabed and its subsoil over which that Contracting Party exercises, in accordance with international law, sovereign rights or jurisdiction. [With respect to a Regional Economic Integration Organisation which is or becomes a Contracting Party to this Agreement the term “Domain” shall be construed as meaning the respective territories of those member states of such organisation which are also Contracting Parties to this Agreement, to the extent of that organisation’s competence in the matters which are the subject of this Agreement in those territories]<sup>150</sup>.

**BA-15 (12/08/92)**  
Article 1.8 – Definitions

“Domain” means in respect of a Contracting Party the territory under its sovereignty, it being understood that territory includes land, internal waters and the territorial sea, and the sea, sea-bed and its subsoil over which that Contracting Party exercises, in conformity with international law, sovereign rights or jurisdiction. [With respect to a regional economic integration organisation which is or becomes a Party to this Agreement the term “Agreement Area” shall be construed as meaning the respective territories of those member states of such organisation which are also Parties to this Agreement, to the extent of that organisation’s competence in the matters which are the subject of this Agreement in those territories].<sup>150</sup>

**BA 14 (24/06/92)**  
Article 1.9 – Definitions

“Agreement Area” means in respect of a Contracting Party the territory under its sovereignty, it being understood that territory includes land, internal waters and the territorial sea, and the sea, sea-bed and its subsoil over which that Contracting Party exercises, in conformity with international law, sovereign rights or jurisdiction. [With respect to a regional economic integration organisation which is or becomes a Party to this Agreement the term “Agreement Area” shall be construed as meaning the respective territories of those member states of such organisation which are also Parties to this Agreement, to the extent of that organisation’s competence in the matters which are the subject of this Agreement in those territories].<sup>150</sup>

**BA 13 (19/06/92)**  
Article 1.9 – Definitions

“[Territory]” means in respect of a Contracting Party the [Territory] under its sovereignty, it being understood that territory includes land, internal waters and the territorial sea, and the sea,

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<sup>150</sup> EC will propose a new text.

sea-bed and its subsoil over which that Contracting Party exercises, in conformity with international law, sovereign rights or jurisdiction. [With respect to a regional economic integration organisation which is or becomes a Party to this Agreement the term [Territory] shall be construed as meaning the respective territories of those member states of such organisation which are also Parties to this Agreement, to the extent of that organisation's competence in the matters which are the subject of this Agreement In those territories].<sup>150</sup>

**BA 12 (09/04/92)**  
Article 1.9 – Definitions

["Territory" means in respect of a Contracting Party the territory under its sovereignty, and the sea [and submarine]<sup>151</sup> areas over which that Contracting Party exercises, in conformity with international law, sovereignty, sovereign rights or jurisdiction. With respect to a regional economic integration organisation which is or becomes a Party to this Agreement the term Territory shall be construed as meaning the respective territories of those member states of such organisation which are also Parties to this Agreement, to the extent of that organisation's competence in the matters which are the subject of this Agreement in those territories]<sup>152</sup>.

**BA 6 (21/01/92)**  
Article 1.7 – Definitions

"Territory" means in respect of a Contracting Party the territory under its sovereignty, and the sea and submarine areas over which that Contracting Party exercises, in conformity with international law, sovereignty, sovereign rights or jurisdiction. With respect to a regional economic integration organisation which is or becomes a Party to this Agreement the term Territory shall be construed as meaning the respective territories of those member states of such organisation which are also Parties to this Agreement, to the extent of that organisation's competence in the matters the subject of this Agreement in those territories.

**BA 4 (31/10/91)**  
Article 1.7 – Definitions

"Territory" means in respect of a Contracting Party the territory under its sovereignty, and the sea and submarine areas over which that Contracting Party exercises, in conformity with international law, sovereignty, sovereign rights or jurisdiction.

With respect to a regional economic integration organisation which is or becomes a Party to this Agreement the term Territory shall be construed as meaning the respective territories of those member states of such organisation which are also Parties to this Agreement, to the extent of that organisation's competence in the matters the subject of this Agreement in those territories.

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<sup>151</sup> **Japan** suggests replacing with "its bed and subsoil" in accordance with the expression used in UN Convention on the Law of the Sea.

<sup>152</sup> **Switzerland** suggests replacing with:

"Territory" shall be taken to mean, as regards a Contracting Party, the land territory under its sovereignty as well as the marine spaces and airspace in which it exercises sovereignty, sovereign rights or Jurisdiction in conformity with international law. The term "Territory" shall be taken to mean, as regards an organisation of regional economic integration which is or becomes a Party to this Agreement, the Territories of its member states which are Parties to this Agreement, to the extent of the organisation's competence, on those Territories, over matters covered by this Agreement.

**BP 2 (11/09/91)**  
**Basic Protocol (20/08/91)**  
Article 1.1(i) – Definitions

- (i) “Territory” means in respect of each Contracting Party its land territory as well as those maritime areas adjacent to the outer limit of the territorial sea of any of its territories, over which the State concerned exercises, in accordance with international law, sovereign rights for the purpose of exploration and exploitation of the natural resources of such areas.

## Article 1.11

**ECT as amended (24/04/98)\***  
**CC 113 (04/03/98)\***  
**CC 107 (03/12/1997)\***  
Article 1.11 – Definitions

- (a) “WTO” means the World Trade Organization established by the Agreement Establishing the World Trade Organization.
- (b) “WTO Agreement” means the Agreement Establishing the World Trade Organization, its Annexes and the decisions, declarations and understandings related thereto, as subsequently rectified, amended and modified from time to time.
- (c) “GATT 1994” means the General Agreement on Tariffs and Trade as specified in Annex 1A to the Agreement Establishing the World Trade Organization, as subsequently rectified, amended or modified from time to time.”

**CC 100 (14/11/97)\***  
Article 1.11 – Definitions

- (a) “WTO” means the World Trade Organization established by the Agreement Establishing the World Trade Organization.
- (b) “WTO Agreement”<sup>153</sup> means the Agreement Establishing the World Trade Organization including the multilateral trade agreements contained in its Annexes 1, 2 and 3, which are binding on all members of the WTO, and the decisions, declarations and understandings related thereto, as subsequently rectified, amended and modified.
- (c) “Related Instruments” means the plurilateral trade agreements contained in Annex 4 to the Agreement Establishing the World Trade Organization and agreements, arrangements or other legal instruments including decisions, declarations and understandings, concluded under the auspices of the WTO, which are binding on those members of the WTO that have accepted them, as subsequently rectified, amended or modified.
- (d) “GATT 1994” means the General Agreement on Tariffs and Trade as specified in Annex 1A to the Agreement Establishing the World Trade Organization, as subsequently rectified, amended or modified.”

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\* *Ed. note:* As modified by Article 2 of the Amendment to the Trade-Related Provisions of the ECT (Annex 1 to the Final Act).

\* *Ed. note:* As modified by Article 2 of document CC 113.

\* *Ed. note:* As modified by Article 2 of document CC 107.

\* *Ed. note:* As modified by Attachment 5 to document CC 100.

<sup>153</sup> The definitions of “WTO Agreement” and “Related Instruments” may require further reflection.

**CC 96 (17/10/97)\***  
Article 1.11 – Definitions  
*Note by the Secretariat*

- (a) “WTO” means the World Trade Organization established by the Agreement Establishing the World Trade Organization.
- (b) “WTO Agreement”<sup>153</sup> means the Agreement Establishing the World Trade Organization including the multilateral trade agreements contained in its Annexes 1, 2 and 3, which are binding on all members of the WTO, and the decisions, declarations and understandings related thereto, as subsequently rectified, amended and modified.
- (c) “Related Instruments”<sup>153</sup> means the plurilateral trade agreements contained in Annex 4 to the Agreement Establishing the World Trade Organization and agreements, arrangements or other legal instruments including decisions, declarations and understandings, concluded under the auspices of the WTO, which are binding on those members of the WTO that have accepted them, as subsequently rectified, amended or modified.
- (d) “GATT 1994” means the General Agreement on Tariffs and Trade as specified in Annex 1A to the Agreement Establishing the World Trade Organization, as subsequently rectified, amended or modified.”

**Note by the Secretariat**

The definition of “GATT 1994” remains unchanged as compared with the present text of Article 1 (11) (c) of the ECT.

**ECT as adopted (17/12/94)**  
Article 1.11 – Definitions

- (a) “GATT means “GATT 1947” or “GATT 1994”, or both of them where both are applicable.
- (b) “GATT 1947” means the General Agreement on Tariffs and Trade, dated 30 October 1947, annexed to the Final Act Adopted at the Conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, as subsequently rectified, amended or modified.
- (c) “GATT 1194” means the General Agreement on Tariffs and Trade as specified in Annex 1A of the Agreement Establishing the World Trade Organization, as subsequently rectified, amended or modified.

A party to the Agreement Establishing the World Trade Organization is considered to be a party to GATT 1994.

- (d) “Related Instruments” means, as appropriate:
  - (i) agreements, arrangements or other legal instruments, including decisions, declarations and understandings, concluded under the auspices of GATT 1947 as subsequently rectified, amended or modified; or

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\* *Ed. note:* As modified by Attachment 4 to document CC 96.



- (ii) the Agreement Establishing the World Trade Organization including its Annex 1 (except GATT 1994), its Annexes 2, 3 and 4, and the decisions, declarations and understandings related thereto, as subsequently rectified, amended or modified.

<b>CONF 104 (Text for adoption) (14/09/94)</b> Article 1.11 – Definitions
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- (a) “GATT” means “GATT 1947” and/or “GATT 1994”, as appropriate.

“GATT 1947” means the General Agreement on Tariffs and Trade, dated 30 October 1947, annexed to the Final Act Adopted at the Conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, as subsequently rectified, amended or modified.

“GATT 1994” means the General Agreement on Tariffs and Trade as specified in Annex 1A of the Agreement Establishing the World Trade Organization, as subsequently rectified, amended or modified.

A party to the Agreement Establishing the World Trade Organization is considered to be a party to GATT 1994.

- (b) “Related Instruments” means, as appropriate,
  - (i) agreements, arrangements or other legal instruments, including decisions, declarations and understandings, concluded under the auspices of the GATT 1947 as subsequently rectified, amended or modified; and/or
  - (ii) the Agreement Establishing the World Trade Organization including its Annex 1 (except GATT 1994), its Annexes 2, 3 and 4, and the decisions, declarations and understandings related thereto, as subsequently rectified, amended or modified.

<b>Interim Text (25/06/94)</b> Article 1.11 – Definitions
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- (a) “GATT” means “GATT 1947” and/or “GATT 1994”, as appropriate.

“GATT 1947” means the General Agreement on Tariffs and Trade, dated 30 October 1947, annexed to the Final Act Adopted at the Conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, as subsequently rectified, amended or modified.

“GATT 1994” means the General Agreement on Tariffs and Trade as specified in Annex 1A of the Agreement Establishing the World Trade Organization as subsequently rectified, amended or modified.

- (b) “Related Instruments” means, as appropriate,

- (i) agreements, arrangements or other legal instruments concluded under the auspices of the GATT 1947 as subsequently rectified, amended or modified; and/or
- (ii) the Agreement Establishing the World Trade Organization including its Annex 1 (except GATT 1994), **and** its Annexes 2, 3 and 4, and the decisions, declarations and understandings related thereto, as subsequently rectified , amended or modified.

<b>Interim Text (20/06/94)</b> Article 1.11 – Definitions
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- (a) “GATT 1947” means the General Agreement on Tariffs and Trade, dated 30 October 1947, annexed to the Final Act Adopted at the Conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, as rectified, amended or modified.

“GATT 1994” means the General Agreement on Tariffs and Trade as specified in Annex 1A of the Agreement Establishing the World Trade Organization as subsequently rectified, amended or modified.

“GATT” means GATT 1947 and/or GATT 1994.

- (b) “Related Instruments” means agreements, arrangements or other legal instruments concluded under the auspices of the GATT 1947 as subsequently rectified, amended or modified and/or the Agreement Establishing the World Trade Organization including its Annex 1 except GATT 1994, and its Annexes 2, 3 and 4, as subsequently rectified, amended or modified.

<b>Compromise text [CONF 98] (22/04/94)</b> Article 1.11 – Definitions
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- (a) “GATT” means the General Agreement on Tariffs and Trade dated October 30, 1947 as subsequently rectified, amended, supplemented or otherwise modified (hereinafter referred to as “the General Agreement” in this paragraph), including the decisions, understandings or other legal instruments adopted by the contracting parties to the General Agreement pursuant to the relevant provisions of the General Agreement, and/or the General Agreement on Tariffs and Trade 1994 annexed to the Agreement establishing the World Trade Organization as appropriate.
- (b) “Related Instruments” means agreements, arrangements or other legal instruments concluded under the auspices of the GATT.

<b>ECT 7 [CONF 96] (17/03/94)</b> Article 1.11 – Definitions
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- [(a) “GATT” means the General Agreement on Tariffs and Trade dated October 30, 1947 as subsequently rectified, amended, supplemented or otherwise modified (hereinafter referred to as “the General Agreement” in this paragraph), including the decisions, understandings or other legal instruments adopted by the contracting parties to the General Agreement pursuant to the relevant provisions of the General Agreement, and/or the General Agreement on

Tariffs and Trade 1994 annexed to the Agreement establishing the World Trade Organization as appropriate.

- (b) “Related Instruments” means agreements, arrangements or other legal instruments concluded under the auspices of the GATT.]<sup>154</sup>

<p style="text-align: center;"><b>ECT 6 [CONF 82] (20/12/93)</b> <b>ECT 5 [CONF 72] (11/10/93)</b> Article 1.11 – Definitions <i>Endnote* to Article 1 – Definitions</i></p>
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[“GATT and Related Instruments” means:

- (a) the General Agreement on Tariffs and Trade, done at Geneva October 30, 1947; and
- (b) agreements, arrangements, decisions, understandings, or other joint action within the framework of the General Agreement on Tariffs and Trade.]<sup>155</sup>

<p style="text-align: center;"><b>ECT 4 [CONF 64] (07/07/93)</b> Article 1.11 – Definitions</p>
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“GATT and Related Instruments” means:

- (a) the General Agreement on Tariffs and Trade, done at Geneva October 30, 1947; and
- (b) agreements, arrangements, decisions, understandings, or other joint action within the framework of the General Agreement on Tariffs and Trade.

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<sup>154</sup> General reserve. This definition cannot be finalized until after the results of the Marrakesh Conference on the Uruguay Round. The Secretariat will also give attention to adequate wording to distinguish between GATT 1947 and GATT/UR 1994.

\* *Ed. note*: Endnote is included at the end of the Draft.

<sup>155</sup> **Japan** suggests replacing the current definition with 3 separate definitions reading:

- “GATT” means the General Agreement on Tariffs and Trade dated October 30, 1947 as subsequently rectified, amended, supplemented or otherwise modified (hereinafter referred to as “the General Agreement” in this paragraph), including the decisions, understandings or other legal instruments adopted by the contracting parties to the General Agreement pursuant to the relevant provisions of the General Agreement, and/or the successor agreement of the General Agreement, as appropriate.
- “Related Instruments” means agreements, arrangements or other legal instruments concluded under the auspices of the GATT.
- “Contracting Parties to the GATT and Related Instruments” means a government or a Regional Economic Integration Organisation to which the GATT and/or one or more of the Related Instruments are applicable in accordance with the relevant provisions of the GATT and Related Instruments.

**Japan** further proposes, with relation to those definitions, replacing the wording “member of the GATT,” in this Treaty (for example in Articles 4 and 35) with “Contracting Parties to the GATT” [*Ed. note*: this last paragraph of the comment refers only to ECT 5].

**ECT 3 [CONF 60] (01/06/93)**  
Article 1.12 – Definitions

["GATT and Related Instruments" means:

- (a) the General Agreement on Tariffs and Trade, done at Geneva October 30, 1947;
- (b) agreements, arrangements, decisions, understandings, or other joint action [pursuant to]<sup>156</sup> the General Agreement on Tariffs and Trade;

[and any successor agreement or agreements thereto.]<sup>157</sup><sup>158</sup>

<b>ECT 2 [CONF 56] (01/05/93)</b> <b>(Compromise text) ECT 1</b> <b>[CONF 50] (15/03/93)</b> Article 1.12 – Definitions	<b>BA-37 (01/03/93)</b> <b>BA-35 (09/02/93)</b>  Article 1.10 – Definitions	<b>BA-31 (21/12/92)</b> <b>BA-26 (25/11/92)</b> <b>BA-22 (21/10/92)</b> Article 1.9 – Definitions
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"GATT and Related Instruments" means:

- (a) the General Agreement on Tariffs and Trade, signed at Geneva October 30, 1947;
- (b) agreements, arrangements, decisions, understandings, or other joint action pursuant to the General Agreement on Tariffs and Trade;

and any successor agreement or agreements thereto.

<b>BA-15 (12/08/92)</b>  Article 1.9 + 1.10 – Definitions	<b>BA 14 (24/06/92)</b> <b>BA 13 (19/06/92)</b> Article 1.10 + 1.11 – Definitions
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(9)/(10) <sup>159</sup>"GATT" means GATT, its related instruments, applicable term schedules and relevant jurisprudence including reports of dispute settlement Panels, agreements and decisions of the Contracting Parties.

(10)/(11) <sup>159</sup>"GATT-related instrument" means an agreement, arrangement, decision, understanding, declaration, or other joint action pursuant to the General Agreement on Tariffs and Trade.

<sup>156</sup> This wording should be checked by the Legal Sub-Group to ensure that all relevant GATT – texts are covered (e.g. Technical Barriers to Trade).

<sup>157</sup> Legal Sub-Group should check whether this text is really necessary.

<sup>158</sup> **Japan** scrutiny reserve.

<sup>159</sup> References of GATT and GATT-related instruments as currently drafted in items, (9/10) and (10/11) are overlapping and will be reworked after the discussion of trade related Articles.

**BA 12 (09/04/92)**  
Article 1.10 + 1.11 – Definitions

(10) “GATT” means GATT, its related instruments, applicable term schedules and relevant jurisprudence including reports of dispute settlement Panels, agreements and decisions of the Contracting Parties.

(11) “GATT-related instrument” means an agreement, arrangement, decision, understanding, declaration, or other joint action pursuant to the General Agreement on Tariffs and Trade.

**BA 6 (21/01/92)**  
Article 1.8 – Definitions

“GATT-related instrument” means an agreement, arrangement, decision, understanding, declaration, or other joint action pursuant to the General Agreement on Tariffs and Trade.

**BA 4 (31/10/91)**  
Article 1.8 – Definitions

“GATT-related instrument” means an agreement, arrangement, decision, understanding, declaration, or other joint action pursuant to the General Agreement on Tariffs and Trade.

## **Article 1.12**

<p><b>Final Act and ECT as adopted (17/12/94)</b> Article 1.12 – Definitions <i>Understanding 5 - With respect to Article 1(12)</i></p>
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“Intellectual Property” includes copyrights and related rights, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits and the protection of undisclosed information.

### **Understanding 5 (With respect to Article 1(12))**

The representatives recognize the necessity for adequate and effective protection of Intellectual Property rights according to the highest internationally-accepted standards.

<p><b>Text for adoption (01/09/94)</b> Article 1.12 – Definitions <i>Understanding 5 - With respect to Article 1(12)</i></p>
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“Intellectual Property” includes copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits and the protection of undisclosed information.

### **Understanding 5 (With respect to Article 1(12))**

The representatives recognize the necessity for adequate and effective protection of Intellectual Property rights according to the highest internationally accepted standards.

<p><b>Interim Text (25/06/94)</b> Article 1.12 – Definitions <i>Understanding 5 – To Article 1(12)</i></p>
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“Intellectual Property” includes copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits and the protection of undisclosed information.

### **Understanding 5 (To Article 1(12))**

Contracting Parties recognize the necessity for **an** adequate and effective protection of Intellectual Property rights according to the highest internationally accepted standards.

<p><b>Interim Text (20/06/94)</b> Article 1.12 – Definitions <i>Understanding 5 – To Article 1(12)</i></p>	<p><b>Compromise text [CONF 98] (22/04/94)</b> Article 1.12 – Definitions <i>Ministerial Declaration 5 – To Article 1(12)</i></p>
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“Intellectual Property” includes copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits and the protection of undisclosed information.

### **Understanding 5 (To Article 1(12)) / Ministerial Declaration 5 (To Article 1(12))**

Contracting Parties recognize the necessity for an adequate and effective protection of Intellectual Property rights according to the highest internationally accepted standards.

**ECT 7 [CONF 96] (17/03/94)**  
Article 1.12 – Definitions  
*Ministerial Declaration 5 – To Article 1(12)*

“Intellectual Property” Includes copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits and the protection of undisclosed information.

### **Ministerial Declaration 5 (To Article 1(12))**

Contracting Parties recognize the necessity for an adequate and effective protection of Intellectual Property rights according to the highest internationally accepted standards.<sup>160</sup>

**ECT 6 [CONF 82] (20/12/93)**  
**ECT 5 [CONF 72] (11/10/93)**  
**ECT 4 [CONF 64] (07/07/93)**  
Article 1.12 – Definitions  
*Ministerial Declaration 3 – To Article 1(12)*  
*Endnote\* to Article 1 – Definitions*

“Intellectual Property” includes copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits and the protection of undisclosed information.<sup>161</sup>

### **Ministerial Declaration 3 (To Article 1(12))**

[Contracting Parties recognise the necessity for an adequate and effective protection of Intellectual Property rights according to the highest internationally accepted standards.]<sup>160,162</sup>

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<sup>160</sup> USA general reserve; prefers to move it to the Preamble.

\* *Ed. note:* Endnote is included at the end of the Draft.

<sup>161</sup> The agreement on this definition has been reached in the Plenary [*ed. note:* the first sentence of the comment refers only to ECT 4]. **Canada** made its acceptance conditional provided that “as defined by national law” will be added to the definition. The Canada suggestion was supported by **Russian Federation** and **Romania**. The Plenary is prepared to consider the Canada suggestion provided it could help to solve the Canada concern in relation to the expropriation question in Article 15. **Canada** will consult with capital accordingly and notify the Secretariat [*ed. note:* ECT 4 adds “by 3 September 1993”] of its findings.

<sup>162</sup> Except for Canada all delegations are in favour of having the Ministerial Declaration linked to Article 1(12). **Canada** prefers the Ministerial Declaration linked to the Charter Treaty as a whole. Subject to consultations with capitals.

**ECT 3 [CONF 60] (01/06/93)**  
Article 1.13 – Definitions  
*Sub-Group Chairman's note 1 and 2 under Article 6 – Intellectual  
Property*

“Intellectual Property” [includes]<sup>163</sup> copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits and the protection of undisclosed information.

**Sub-Group Chairman's note (under Article 6)**

1. The Sub-Group in principle was in favour of including a Ministerial Declaration on the importance of securing Intellectual Property Rights. The Sub-Group Chairman will draft such a text to be circulated to the Group by 8 June 1993 and Sub-Group members will comment by 15 June 1993.
2. In relation to Article 1(13), definition of Intellectual Property, a majority of the Group could agree to the present definition with the understanding of it being an illustrative enumeration while Canada still prefers a closed list. Canada will redraft the definition with a view to appease its concern related to the expropriation question in Article 15. Canada will submit redraft of the definition to the Sub-Group participants by 8 June and the Group will in turn submit their comments on the redraft to the Sub-Group Chairman by 15 June.

**ECT 2 [CONF 56] (01/05/93)**  
Article 1.13 – Definitions\*

“Intellectual Property” [includes]<sup>164</sup> copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits and the protection of undisclosed information.<sup>165</sup>

**(Compromise text) ECT 1 [CONF 50] (15/03/93)**  
Article 1.13 – Definitions\*

“Intellectual Property” includes copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits and the protection of undisclosed information.

**BA-37 (01/03/93)**  
Article 1.11 – Definitions\*

“Intellectual Property” [includes]<sup>166</sup> copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits and the protection of undisclosed information.

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<sup>163</sup> **Canada** prefers to retain “refers to”, but will reconsider whether its concerns could be addressed through the Investment Part of the Agreement (see Sub-Group Chairman's note under Article 6).

\* Ed. note: see also relevant deleted articles.

<sup>164</sup> **Canada** prefers to retain “refers to”, but will reconsider whether its concerns could be addressed through the Investment Part of the Agreement.

<sup>165</sup> **Romania** suggests that the definition should cover also software.



<b>BA-35 (09/02/93)</b> Article 1.11 – Definitions *	<b>BA-31 (21/12/92)</b> Article 1.10 – Definitions *
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["Intellectual Property" is as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation, done at Stockholm, July 1967<sup>167,168</sup>.]<sup>169</sup>

<b>BA-26 (25/11/92)</b> Article 1.10 – Definitions *
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["Intellectual Property" is as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation, done at Stockholm, July 1967<sup>167, 168</sup>.]<sup>170</sup>

<b>BA-22 (21/10/92)</b> Article 1.10 – Definitions *
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["Intellectual Property" is as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation, done at Stockholm, July 1967<sup>167, 168</sup>.]<sup>171</sup>

<b>BA-15 (12/08/92)</b> Article 1.11 – Definitions *
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["Intellectual Property" is as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation, done at Stockholm, July 1967]<sup>172</sup>

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<sup>166</sup> **Canada** would prefer substitution with: "refers to". **USA** has a preference for the definition contained in the Convention establishing "WIPO" but will consider whether the word "includes" might be acceptable with the understanding of this being an illustrative enumeration. Australia and Japan scrutiny reserve.

<sup>167</sup> **Australia** suggests adding: "and shall also include confidential information (including trade secrets and know-how), circuit layouts and semi-conductor chips and unregistered trademarks".

<sup>168</sup> **USA** supports Australia footnote 1.22 [*ed. note*: BA-31 seems to erroneously state "footnote 1.23"(comment of Romania) instead of 1.29 (comment of Australia)] with some amendments, such that the addition should read: "including confidential information (including trade secrets and know-how), layout designs of integrated circuits and unregistered trademarks".

<sup>169</sup> A Sub-Group established by the Chairman of WG II under Article 18 chaired by European Communities and consisting of Australia, Canada, Japan and USA shall prepare a new draft of the definition of Intellectual Property taking into account the implications for the Investment Articles of the Basic Agreement and also the relation to industrial and commercial property (see square bracketed part in draft of Article 7).

\* *Ed. note*: see also relevant deleted articles.

<sup>170</sup> Sub-Group chaired by Australia and consisting of USA, Canada, European Communities and the Chairman of Legal Sub-Group shall prepare prior to December meeting of WG II or in the margins of the December meeting of WG 11 a new draft of the definition of Intellectual Property taking into account the implications for the Investment Articles of the Basic Agreement and also the relation to industrial and commercial property (see square bracketed part in draft of Article 7).

<sup>171</sup> Sub-Group chaired by Australia and consisting of USA, Canada, European Communities and the Chairman of Legal Sub-Group should prepare for the November meeting of WG 11 a new draft of the definition of Intellectual Property taking into account the implications for the Investment Articles of the Basic Agreement and also the relation to industrial and commercial property (see square bracketed part in draft of Article 7). The Secretariat will contact relevant bodies with the aim of informing negotiating parties on the progress and content of TRIPS negotiations.

<sup>172</sup> **Australia** supported by **USA** suggests adding: "and shall also include confidential information (including trade secrets and knowhow) circuit layouts and semi-conductor chips and unregistered trade marks".

**BA 14 (24/06/92)**  
**BA 13 (19/06/92)**  
Article 1.12 – Definitions \*

[“Intellectual Property” is as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation, done at Stockholm, July 1967]<sup>172</sup>.

**BA 12 (09/04/92)**  
Article 1.12 – Definitions \*

[“Intellectual Property” is as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation, done at Stockholm, July 1967]<sup>167</sup>.

**BA 6 (21/01/92)**  
Article 1.10 – Definitions \*

“Intellectual property” is as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation, done at Stockholm, July 1967.

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\* *Ed. note:* see also relevant deleted articles.

## **Article 1.13**

**ECT as adopted (17/12/94)**  
**CONF 104 (Text for adoption) (14/09/94)\***  
Article 1.13 – Definitions

- (a) “Energy Charter Protocol” or “Protocol” means a treaty, the negotiation of which is authorized and the text of which is adopted by the Charter Conference, which is entered into by two or more Contracting Parties in order to complement, supplement, extend or amplify the provisions of this Treaty with respect to any specific sector or category of activity within the scope of this Treaty, or to areas of cooperation pursuant to Title III of the Charter.
- (b) “Energy Charter Declaration” or “Declaration” means a non-binding instrument, the negotiation of which is authorized and the text of which is approved by the Charter Conference, which is entered into by two or more Contracting Parties to complement or supplement the provisions of this Treaty.

**Interim Text (25/06/94)**  
**Interim Text (20/06/94)**  
Article 1.13 – Definitions

“Protocol” means a treaty, the negotiation of which is authorized, and the text of which is adopted by the Charter Conference, which is entered into by two or more Contracting Parties in order to complement, supplement, extend or amplify the provisions of this Treaty with respect to any specific sector or category of activity within the scope of this Treaty, or to areas of cooperation pursuant to Title III of the Charter.

**Compromise text [CONF 98] (22/04/94)**  
Article 1.13 – Definitions

“Protocol” means a treaty, the negotiation of which is authorized, and the terms of which are adopted by the Charter Conference, which is entered into by two or more Contracting Parties in order to complement, supplement, extend or amplify the provisions of this Treaty with respect to any specific sector or category of activity within the scope of this Treaty, or to areas of cooperation pursuant to Title III of the Charter.

**ECT 7 [CONF 96] (17/03/94)**  
Article 1.13 – Definitions

“Protocol” means an agreement authorized and adopted by the Charter Conference and entered into by any of the Contracting Parties in order to complement, supplement, extend or amplify the provisions of this Treaty to specific sectors or categories of activity comprised within the scope of this Treaty, including areas of cooperation referred to in Title III of the Charter.

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\* *Ed. note:* Appendix II in document CONF 104 contains “Main changes since Interim text”. With respect to Article 1(13) it states: “Arising from discussion of the Nuclear Protocol, Article 1(13) now provides for the possibility of non-binding Energy Charter Declarations under the auspices of the Charter Conference, as well as legally binding Energy Charter Protocols, Parallel amendments are made in Articles 33 and 34.”

<b>ECT 6 [CONF 82] (20/12/93)</b> <b>ECT 5 [CONF 72] (11/10/93)</b> <b>ECT 4 [CONF 64] (07/07/93)</b> Article 1.13 – Definitions	<b>ECT 3 [CONF 60] (01/06/93)</b>  Article 1.14 – Definitions
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“Protocol” means an agreement authorised and adopted by the Charter Conference and entered into by any of the Contracting Parties in order to complement, supplement, extend or amplify the provisions of this Agreement to specific sectors or categories of activity comprised within the scope of this Agreement, including areas of cooperation referred to in Title III of the Charter.

<b>ECT 2 [CONF 56] (01/05/93)</b> <b>(Compromise text) ECT 1 [CONF 50] (15/03/93)</b> Article 1.14 – Definitions
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“Protocol” means an agreement authorised and adopted by the Charter Conference and entered into by any of the Contracting Parties [DL] in order to complement, supplement, extend or amplify the provisions of this Agreement to specific sectors or categories of activity comprised within the scope of this Agreement, including areas of cooperation referred to in Title III of the Charter.

<b>BA-37 (01/03/93)</b> Article 1.12 – Definitions
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[“Protocol” means an agreement entered into by any of the Contracting Parties under the auspices of the Charter in order to complement, supplement, extend or amplify the provisions of this Agreement to specific sectors or categories of activity comprised within the scope of this Agreement, including areas of cooperation referred to in Title III of the Charter.]<sup>173</sup>

<b>BA-35 (09/02/93)</b>  Article 1.12 – Definitions	<b>BA-31 (21/12/92)</b> <b>BA-26 (25/11/92)</b> <b>BA-22 (21/10/92)</b> Article 1.11 – Definitions	<b>BA-15 (12/08/92)</b>  Article 1.12 – Definitions
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“Protocol” means an agreement entered into by any of the Contracting Parties under the auspices of the Charter in order to complement, supplement, extend or amplify the provisions of this Agreement to specific sectors or categories of activity comprised within the scope of this Agreement, including areas of cooperation referred to in Title III of the Charter.

<sup>173</sup> **Hungary** proposes new wording of the definition based on Articles 28(1) and 29(3)(h):

“Protocol” means an agreement authorized and adopted by the Charter Conference and entered into by any of the Contracting Parties [deletion] in order to complement, supplement, extend or amplify the provisions of this Agreement to specific sectors or categories of activity comprised within the scope of this Agreement, including areas of cooperation referred to in Title III of the Charter.

**BA 14 (24/06/92)**  
**BA 13 (19/06/92)**  
**BA 12 (09/04/92)**  
Article 1.15 – Definitions

“Protocol” means an agreement<sup>174</sup> entered into by any of the Contracting Parties under the auspices of the Charter in order to complement, supplement, extend or amplify the provisions of this Agreement to specific sectors or categories of activity comprised within the scope of this Agreement, including areas of cooperation referred to in Title III of the Charter.

**BA 6 (21/01/92)**  
Article 1.9 – Definitions

“Protocol” means an agreement<sup>174</sup> entered into by any of the Contracting Parties in order to confirm, supplement, extend or amplify the provisions of this Agreement to specific sectors or categories of activity comprised within the scope of this Agreement, including areas of cooperation referred to in Title III of the Charter.

**BA 4 (31/10/91)**  
Article 4 – Protocols<sup>175</sup>

“Protocol” means an agreement entered into by any of the Contracting Parties in order to confirm, supplement, expand or apply the provisions of this agreement to specific sectors or categories of activity comprised within the scope of this agreement, including a protocol referred to in Title III of the charter.

**BP 2 (11/09/91)**  
Article 1.1(h) – Definitions  
Article 3 – Core Protocols  
Article 4 – Supplementary Protocols

#### **Article 1.1(h)**

(h) “Supplementary Protocol” means any protocol listed in Article 4 of this Agreement;

#### **Article 3**

- (1) Each Contracting Party shall negotiate in good faith and take all necessary measures subject only to Article 44(5) below to adopt, sign and ratify, accept or approve all Core Protocols.
- (2) Each of the Articles of this Agreement listed in this paragraph shall be the subject of a separate Core Protocol to be negotiated in accordance with this Agreement:  
Article [ ]; Article [ ] etc.
- (3) In addition to the Core Protocols specified in paragraph (2) above, the following matters shall be the subject of separate Core Protocols: (cross reference to Title III of Charter).

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<sup>174</sup> **Canada** suggests insertion of “or instrument whether or not legally binding”.

<sup>175</sup> Note: New text suggested by Chairman.

- (4) The Contracting Parties may in accordance with Articles 28 and 29 below agree upon additions to or deletions from the list of Core Protocols specified in this Article, including any downgrading of a Core Protocol to a Supplementary Protocol or upgrading of a Supplementary Protocol to a Core Protocol

#### **Article 4**

- (1) Those Contracting parties considering it necessary to or desirable for their proper implementation of the principles of the Charter and the provisions of this Agreement shall sign and ratify, accept or approve any or all of the Supplementary Protocols.
- (2) Each of the following matters shall be the subject of a separate Supplementary Protocol negotiated in accordance with this Agreement: (cross reference to Title III of Charter).
- (3) The Contracting Parties may in accordance with Articles 28 and 29 below agree upon additions to or deletions from the list of Supplementary Protocols specified in this Article.

<p style="text-align: center;"><b>Basic Protocol (26/08/91)</b> Article 1.1(h) – Definitions Article 3 – Core Protocols Article 4 – Supplementary Protocols</p>
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#### **Article 1.1(h)**

- (h) “Supplementary Protocol” means any protocol listed in Article 4 of this Agreement;

#### **Article 3**

- (1) Each Contracting Party shall negotiate in good faith and take all necessary measures subject only to Article 42 (5) below to adopt, sign and ratify, accept or approve all Core Protocols.
- (2) Each of the Articles of this Agreement listed in this paragraph shall be the subject of a separate Core Protocol to be negotiated in accordance with this Agreement:  
Article [ ]; Article [ ] etc.
- (3) In addition to the Core Protocols specified in paragraph (2) above, the following matters shall be the subject of separate Core Protocols: [cross reference to Title III of Charter plus emergencies].
- (4) The Contracting Parties may in accordance with Articles 26 and 27 below agree upon additions to or deletions from the list of Core Protocols specified in this Article, including any downgrading of a Core Protocol to a Supplementary Protocol or upgrading of a Supplementary Protocol to a Core Protocol.

#### **Article 4**

- (1) Those Contracting Parties considering it necessary to or desirable for their proper implementation of the principles of the Charter and the provisions of this Agreement shall sign and ratify, accept or approve any or all of the Supplementary Protocols.

- (2) Each of the following matters shall be the subject of a separate Supplementary Protocol negotiated in accordance with this Agreement: [cross reference to Title III of Charter].
- (3) The Contracting Parties may in accordance with Articles 26 and 27 below agree upon additions to or deletions from the list of Supplementary Protocols specified in this Article.

## Article 1.14

<b>ECT as adopted (17/12/94)</b> <b>CONF 104</b> (Text for adoption) (14/09/94) <b>Interim Text (25/06/94)</b> <b>Interim Text (20/06/94)</b> <b>Compromise text [CONF 98]</b> (22/04/94) <b>ECT 7 [CONF 96] (17/03/94)</b> <b>ECT 6 [CONF 82] (20/12/93)</b> <b>ECT 5 [CONF 72] (11/10/93)</b> <b>ECT 4 [CONF 64] (07/07/93)</b> Article 1.14 – Definitions	<b>ECT 3 [CONF 60]</b> (01/06/93) <b>ECT 2 [CONF 56]</b> (01/05/93) <b>(Compromise text) ECT 1</b> <b>[CONF 50] (15/03/93)</b>  Article 1.15 – Definitions	<b>BA-37 (01/03/93)</b> <b>BA-35 (09/02/93)</b> <b>BA-15 (12/08/92)</b>      Article 1.13 – Definitions	<b>BA-31 (21/12/92)</b> <b>BA-26 (25/11/92)</b> <b>BA-22 (21/10/92)</b>      Article 1.12 – Definitions
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“Freely Convertible Currency” means a currency which is widely traded in international foreign exchange markets and widely used in international transactions.

<b>BA 14 (24/06/92)</b> BA 13 (19/06/92) Article 1.16 – Definitions
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“Freely convertible currency” means a currency which is widely traded in international foreign exchange markets [and]<sup>176</sup> widely used in international transactions.

<b>BA 12 (09/04/92)</b> Article 1.16 – Definitions
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“Freely convertible currency” means a currency which is widely traded in international foreign exchange markets and widely used in international transactions.

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<sup>176</sup> **Canada** asks for replacing with: “or”.