

Article 1(8) – Definitions

General comments and notes regarding the whole article

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 1.8

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”¹ 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.]²

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;]³

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;]⁴

¹ 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.

² **Japan** scrutiny reserve.

³ **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.”

⁴ **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;]⁵

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;]⁶

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

⁵ Subject to outcome of discussion between USA, Russian Federation and United Kingdom. USA reserve until further progress is made on Article 16.

⁶ 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 Investment⁷.

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.

⁷ **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”.