**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.
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.

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.

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).

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”.

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.
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.
“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, expanding an existing Investment, or substantially altering the type or the objective of an existing Investment;\(^4\)]

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\(^1\) Addition of “Making of Investments” to bring the definition into line with the text of other Articles.

\(^2\) *Ed. note:* Endnote is included at the end of the Draft.

\(^3\) Japan scrutiny reserve.

\(^4\) 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.
“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.*

“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;

[“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

[“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.
“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;

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”.

"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;