

Article 3 – International Markets

Notes and General comments

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

[Article 3] – Access to Energy Resources and Markets

- At the beginning of the March Plenary there was a discussion of both the present text of Article 3 and the Norway proposal, recorded in CONF 82, to replace this with two separate Articles. No agreement was reached on either approach. Several delegations took the view that the relevant issues were dealt with satisfactorily elsewhere in the Treaty, and that any attempt to cover them in Article 3 would create overlap and legal uncertainty.
- **Norway** argued that Access to Resources should be treated separately from Investment. Following this discussion Norway proposed a new version of its suggested Article on Access to Energy Resources, which is now recorded in footnote 3.1.
- This revised proposal was also briefly discussed. **Australia** and **Kazakhstan** conveyed their support; in the case of **Australia** with preference for MFN treatment in paragraph (2). **USA**, **Japan** and **EC** maintained reserves on the Norway proposal for the reasons summarized above.

3.1 : **Norway** proposes that this Article should be deleted and replaced with two separate Articles reading:

“ACCESS TO ENERGY RESOURCES

- (1) The Contracting Parties undertake to facilitate access to energy resources inter alia by allocating on the basis of published criteria authorizations, licences, concessions and contracts to prospect and explore for or to exploit or extract energy resources.
- (2) In the application of such criteria each Contracting Party shall, without prejudice to Article 25(5), treat entities from other Contracting Parties no less favourably than (its own entities or) entities of any other Contracting Party or any state that is not a Contracting Party.

ACCESS TO MARKETS

- (1) The Contracting Parties will strongly promote access to local, export and international markets for the disposal of Energy Materials and Products on commercial terms and undertake to remove progressively barriers to trade. Energy Materials and Products originating from any Contracting Party shall be given non-discriminatory access to markets in other Contracting Parties in accordance with this Treaty and any relevant Protocol. Similarly, and in particular in accordance with Article 13, investors of one Contracting Party shall not be excluded or restricted from entering and operating in the market of another Contracting Party.

- (2) The Contracting Parties agree to work to alleviate market distortions and barriers to competition in markets in the energy sector. In general, price formation shall be based on market principles.”

<p style="text-align: center;">ECT 6 [CONF 82] (20/12/93) ECT 5 [CONF 72] (11/10/93) [Article 3] – <u>Access to Energy Resources and Markets</u></p>
--

Norway wants this Article deleted and replaced with two separate Articles reading:

ACCESS TO ENERGY RESOURCES

- (1) The Contracting Parties undertake to facilitate access to and development of energy resources by Investors by formulating transparent rules regarding the acquisition, exploration and development of energy resources.
- (2) The Contracting Parties shall maintain or adopt procedures, which shall not discriminate Investors from other Contracting Parties on grounds of nationality or country of origin, governing acceptance and treatment prior to allocation of applications for authorisations, licences, concessions and contracts to prospect and explore for or to exploit or extract energy resources.
- (3) In allocating authorisations, licences, concessions and contracts pursuant to paragraph (2), a Contracting Party shall treat Investors from other Contracting Parties no less favourably than Investors from any other Contracting Party or any state that is not a Contracting Party, whichever is most favourable.

ACCESS TO MARKETS

- (1) The Contracting Parties will strongly promote access to local, export and international markets for the disposal of Energy Materials and Products on commercial terms and undertake to remove progressively barriers to trade. Energy Materials and Products originating from any Contracting Party shall be given non-discriminatory access to markets in other Contracting Parties in accordance with this Agreement and any relevant Protocol. Similarly, and in particular in accordance with Article 13, Investors of one Contracting Party shall not be excluded or restricted from entering and operating in the market of another Contracting Party.
- (2) The Contracting Parties agree to work to alleviate market distortions and barriers to competition in markets in the energy sector. In general, price formation shall be based on market principles.

BA-37 (01/03/93)
[Article 4B] - Access to Markets

- Finalisation of this Article dependant on satisfactory completion of trade and investment Articles, as well as Articles 26 and 28.
- There was no consensus in the WG II meeting on 27 February 1993 on the need for Articles 4A and 4B. Some delegations suggested deletion of these Articles on the grounds that the texts of these Articles were too vague, covered by and possibly inconsistent with other Articles. It was suggested that language might be moved to the Preamble to express these Charter goals. Other delegations, however, strongly opposed this approach which in their views would upset the balance of the BA. In conclusion, delegations were invited to consider the need for these Articles. This issue would have to be considered in the Plenary.

USA general reserve.

Kazakhstan is of the opinion that this Article should be considered together with Article 16.

BA-35 (09/02/93)
BA-31 (21/12/92)
BA-26 (25/11/92)
BA-22 (21/10/92)
BA-15 (12/08/92)
[Article 4B] - Access to Markets

Finalisation of this Article dependant on satisfactory completion of trade and investment Articles, as well as Articles 26 and 28.

USA general reserve.

BA-14 (24/06/92)
[Article 4B] - Access to Markets

Finalization of both Articles (4A (“Access to Resources”) and 4B) dependant on satisfactory completion of trade and investment Articles, as well as Articles 26 and 28.

USA general reserve.

BA-13 (19/06/92)
[Article 4B] - Access to Markets

Finalization of both Articles (4A (“Access to Resources”) and 4B) dependant on satisfactory completion of trade and investment Articles, as well as Articles 26 and 28.

Norway and **Russian Federation** acceptance of this Article subject to changes being considered in Article 4A which also parallel Charter text.

EC scrutiny reserve dependent on an outcome of negotiations on trade Articles.

BA 12 (09/04/92)
Article 4B – Access to Markets
Alternative A and B

Alternative A

Text taken from Article 3, paras (5) and (6) of BA-6. New wording suggested by EC.

Alternative B

New Article proposed by Norway.

BA 6 (21/01/92)
Article 3 - Principles

New Article replacing and expanding former Article 6 para (1) and the chapeau of para (1) and its subpara (a) of former Article 7, as well as reflecting the requirements of some delegations on transitional provisions.

BA 4 (31/10/91)
Article 6 - Energy Policies

New text suggested by EC, Norway, Switzerland and USSR.

(Norway): asks for a better balance between security of supply and security of markets.

(USSR): wishes to enlarge the scope of this Article and to make it more balanced.

Some delegations expressed views on moving it to the Preamble.

BP 2 (11/09/91)
Explanatory Memorandum

Article 6 notes the relationship between the energy policies of different countries. It requires Contracting Parties to consider the need to liberalise markets, improve security of energy supply and protect the environment when implementing policy, and requires the Governing Council periodically to review the energy policies of Contracting Parties.

Article 3

Final Act (Trade Amendment) (24/04/98)*
CC 113 (Text for Adoption) (04/03/98)*
CC 107 (Trade Amendment) (03/12/97)*
Article 3 – International Markets

The Contracting Parties shall work to promote access to international markets on commercial terms, and generally to develop an open and competitive market, for Energy Materials and Products and Energy-Related Equipment.

ECT as adopted (17/12/94)
CONF 104 (Text for adoption) - (14/09/94)
Article 3 – International Market

The Contracting Parties shall work to promote access to international markets on commercial terms, and generally to develop an open and competitive market, for Energy Materials and Products.

Interim text (25/06/94)
Article 3 – International Markets

The Contracting Parties shall work to: **(a)** promote access to international markets for Energy Materials and Products on commercial terms, and generally to **(b)** develop an open and competitive market for energy.

Interim text (20/06/94)
Article 3 – International Markets

The Contracting Parties shall work to:

- (a) promote access to international markets for Energy Materials and Products on commercial terms; and
- (b) develop an open and competitive market for energy.

Compromise text [CONF 98] (22/04/94)
[Article 3 - Deleted]

ECT 7 [CONF 96] (17/03/94)
[Article 3] - Access to Energy Resources and Markets

- (1) The Contracting Parties will strongly promote access to local, export and international markets for the acquisition and disposal of Energy Materials and Products on commercial terms and undertake to remove progressively barriers to trade.
- (2) They will, accordingly, seek to ensure that price formation shall be based on market principles.

* Modification based on Art. 2 of the Amendment to the Trade-Related Provisions of the Energy Charter Treaty.

ECT 6 [CONF 82] (20/12/93) ECT 5 [CONF 72] (11/10/93) [Article 3] - <u>Access to Energy Resources and Markets</u>	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) Article 3 - <u>Access to Energy Resources and Markets</u>
---	---

- (1) The Contracting Parties will strongly promote access to local, export and international markets for the acquisition and disposal of Energy Materials and Products on commercial terms and undertake to remove progressively barriers to trade. [DL]
- (2) They will, accordingly, seek to ensure that price formation shall be based on market principles.

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 4B] - Access to Markets

- (1) The Contracting Parties will strongly promote access to local, export and international markets for the disposal of Energy Materials and Products on commercial terms and undertake to remove progressively barriers to trade. Energy Materials and Products originating from any Contracting Party shall be given [non-discriminatory] access to markets in other Contracting Parties in accordance with this Agreement and any relevant Protocol. Similarly, and in particular in accordance with Article 16, investors of one Contracting Party shall not be excluded or restricted from entering and operating in the market of another Contracting Party.
- (2) The Contracting Parties agree to work to alleviate market distortions and barriers to competition in markets in the energy [sector/cycle*]. [In general, price formation shall be based on market principles]¹.

BA-15 (12/08/92)
[Article 4B] - Access to Markets

- (1) The Contracting Parties will strongly promote access to local, export and international markets for the disposal of [Energy Materials and Products] on commercial terms and undertake to remove progressively barriers to trade. [Energy Materials and Products] originating from any Contracting Party shall be given [non-discriminatory] access to markets in other Contracting Parties in accordance with this Agreement and any relevant Protocol. Similarly, and in particular in accordance with Article 16, investors of one Contracting Party

* *Ed. note:* In BA 31, BA 26 and BA 22, paragraph 2 of Article 4B provides: “[sector/cycle/field]” instead of “[sector/cycle]”.

¹ **Japan** scrutiny reserve.

shall not be excluded or restricted from entering and operating in the market of another Contracting Party.

- (2) The Contracting Parties agree to work to alleviate market distortions and barriers to competition in markets in the energy [sector/cycle/field]. [In general, price formation shall be based on market principles].

BA-14 (24/06/92) [Article 4B] - Access to Markets

- (1) The Contracting Parties will strongly promote access to local, export and international markets for the disposal of [Energy Materials and Products] on commercial terms and undertake to remove progressively barriers to trade. [Energy Materials and Products] originating from any Contracting Party shall be given [non-discriminatory] access to markets in other Contracting Parties in accordance with this Agreement and any relevant Protocol. Similarly, and in particular in accordance with Article 16, investors of one Contracting Party shall not be excluded or restricted from entering and operating in the market of another Contracting Party.
- (2) The Contracting Parties agree to work to alleviate market distortions and barriers to competition in markets in the energy [sector/cycle/field]. [In general, price formation shall be based on market principles]².

BA-13 (19/06/92) [Article 4B] - Access to Markets

- (1) The Contracting Parties will strongly promote access to local and [export]³ markets for the disposal of [Energy Materials and Products] on commercial terms and undertake progressively to remove barriers to trade. [Energy Materials and Products] originating from any Contracting Party shall be given [non-discriminatory] access to markets in other Contracting Parties in accordance with this Agreement and any relevant Protocol. Similarly, and in particular in accordance with Article 16, investors of one Contracting Party shall not be excluded or restricted from entering and operating in the market of another Contracting Party.
- (2) The Contracting Parties agree to work to alleviate market distortions and barriers to competition in markets in the energy [sector/cycle/field]. [In general, price formation shall be based on market principles]²

² **Japan** scrutiny reserve.

³ **Japan** suggests replacement with the word “international”.

BA 12 (09/04/92)
Article 4B-Access to Markets (alternatives A and B)

Alternative A

- (1) The Contracting Parties shall ensure that access to local and export markets for disposal of [Energy Materials and Products] can be attained on commercial terms and that Investors are not excluded on grounds of nationality or country of origin from entering a market.
- (2) In order to promote efficiency in all aspects of the Energy Cycle, Contracting Parties agree to work to alleviate market distortions and barriers to competition in the extraction, production, conversion, treatment, carriage (including transmission and distribution) or supply of [Energy Materials and Products] in relevant markets. In general, price-formation shall be based on market principles.

Alternative B

The Contracting Parties shall, through laws, regulations, administrative rulings or general applications, give access to domestic markets for disposal of [Energy Materials and Products] on commercial terms. Investors of, and [Energy Materials and Products] originating from, one Contracting Party shall be given the same market access as Investors of or [Energy Materials and Products] originating from any other Contracting Party or third state, including the Contracting Party in whose market [Energy Materials and Products] is disposed of. Such access should be provided through the operation of market forces and through elimination of barriers to trade. In particular:

- (a) laws, regulations, administrative rulings or general applications should not exclude or limit any Investor on grounds of nationality or country of origin from entering or operating in a market for [Energy Materials and Products];
- (b) any laws, regulations, administrative rulings or general applications applying to foreign Investors with regard to entering and operating in markets for [Energy Materials and Products], shall apply equally to national Investors.

BA 6 (21/01/92)
Article 3.5 - Principles

- (5) The Contracting Parties shall ensure that non-discriminatory access to local and international markets for disposal of [Energy Materials and Products] can be attained on commercial terms. Such access should be provided through the operation of market forces and through elimination of barriers to trade.

BA 4 (31/10/91)
Article 6 - Energy Policies;

Article 6 - Energy Policies

Each Contracting Party recognises that its governmental policies concerning matters which are the subject of this Agreement are linked to the energy policies of other Contracting Parties. In carrying out their energy policies, *Contracting Parties shall strive to liberalise and improve access to markets*, to improve [security of supply and to reduce damage to the environment]^{4*}

BP 2 (11/09/91)
Article 6 - Energy Policies

Article 6 - Energy Policies

Each Contracting Party recognises that its governmental policies concerning matters which are the subject of this Agreement are linked to the energy policies of other Contracting Parties. In carrying out their energy policies, *Contracting Parties shall take account of the need to liberalise markets, improve security of supply and enhance the environment. ...*^{*}

⁴ **Australia:** is concerned that the formulation “Improve security of supply” is ambiguous and could be used to justify restrictive trade policies designed to ensure security of domestic energy supply. If this concept is retained, suggests referring to “security of supply in an environmentally consistent manner”.

^{*} *Ed. note:* Italics added to emphasise the part relevant to current Article 3.