

Article 1(10) – 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 1.10

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.]¹

* *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]² the sea, sea-bed and its subsoil with regard to which that Contracting Party exercises, in accordance with international law, sovereign rights or jurisdiction.]^{3,4}

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.

¹ **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.

² General scrutiny reserve.

³ **Norway** can not accept this definition. **Norway** proposal can be found in BA-37 and Room Document 11 of 25 May.

⁴ **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.]⁵ 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.]⁶

⁵ **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.”

⁶ **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.]¹⁴⁸ [With respect to a Regional Economic Integration

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]⁷.

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]¹⁵⁰.

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].¹⁵⁰

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].¹⁵⁰

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,

⁷ 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].¹⁵⁰

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]⁸ 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]⁹.

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.

⁸ **Japan** suggests replacing with “its bed and subsoil” in accordance with the expression used in UN Convention on the Law of the Sea.

⁹ **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.