

Article 20 – Transparency

Notes and General Comments

Negotiations in the Plenary finished in May 1993 (ECT 2, CONF 56).

<p>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) ECT 3 [CONF 60] (01/06/93) ECT 2 [CONF 56] (01/05/93) Endnote* to Article 23 – Transparency</p>
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Norway contingency reserve.

<p>BA 37 (01/03/93) BA 35 (09/02/93) BA 31 (21/12/92) BA 26 (25/11/92) Chairman's note + Endnote* to Article 15 – Transparency</p>
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Subject to the 2 specific reserves negotiations finished in WG II. The Article is being referred to the Legal Sub-Group.

EC reserve.

<p>BA 22 (21/10/92) Chairman's note + Endnote* to Article 15– Transparency</p>

Subject to the 3 reserves negotiations finished in WG II.

EC reserve

<p>BA 18 (18/09/92) General Comment to Art. 15 – Transparency</p>
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USA asks provisionally for including a commitment to provide an opportunity for Investors to comment before the adoption of additional regulations having general effect.

<p>BA 15 (12/08/92) BA 14 (24/06/92) BA 13 (19/06/92) Note and General Comment to Art. 15 – Transparency</p>

Subject to USA alternative redraft.

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

USA asks provisionally for including a commitment to provide an opportunity for Investors to comment before the adoption of additional regulations having general effect.

BA 12 (09/04/92)
Note and General Comment to Art. 15 – Transparency

Subject to USA alternative redraft (see general comments in Article 5)*

USA asks provisionally for including a commitment to provide an opportunity for Investors to comment before the adoption of additional regulations having general effect.

BA 6 (21/01/92)
Note and General Comment to Art. 15 – Transparency

Former paragraph (4) deleted.

USA asks provisionally for including a commitment to provide an opportunity for Investors to comment before the adoption of additional regulations having general effect.

BA 4 (31/10/91)
Note and General Comments to Art. 12 – Transparency

Former paragraphs (4) and (5) dropped. New para (4) suggested by Chairman. The paragraph has been retained to meet the sentiment expressed in the Charter text on such transparency while removing any immediate detailed obligation. Contracting Parties will return to the question in appropriate Protocols.

Japan: “published promptly” in (1) should be more clearly specified.

Switzerland: the information should be available to the private sector.

USA: should include a commitment to provide an opportunity for investors to comment before the adoption of additional regulations having general effect.

BP 2 (11/09/91)
Explanatory Memorandum

Article 12(1) requires that Contracting Parties publish certain categories of information that relate to the production, distribution or use of Energy Materials and Products. (Source: GATT Article X),

Article 12(2) grants an exception to the preceding requirement, where the disclosure of information might impede law enforcement or otherwise be contrary to the public interest or to law, or prejudice legitimate commercial interests of particular enterprises. (Source: GATT Article X)

* *Ed. note:* Content of general comments in Article 5:

“Since many delegations, including Russian Federation considered in particular drafting of para (2) inadequate, the Chairman suggested two alternatives approaches to be discussed at the next meeting:

- alternative A: the current draft with added footnotes;
- alternative B: based on USA draft which would implicitly replace a number of other BA provisions.”

Article 12(3) requires contracting Parties to establish a central enquiry point where requests for relevant information may be addressed, and to inform the Charter secretariat of the details of this enquiry point.

Article 12(4) requires Contracting Parties to notify the charter secretariat of all laws and regulations relevant to the Basic protocol (and details of where such information may be obtained), plus any amendments to this information and reports on the implementation of energy policies.*

Article 27 extends the provisions of Article 12 (“Transparency”) to Investors and Investments.

* *Ed. note:* Basic Protocol and in BP 2 contained an additional paragraph 12.4, which disappears in BP 4: In respect of the matters the subject of this Agreement each Contracting Party shall notify the Secretariat established under Article 30 below of all laws and regulations applicable in its Territory and where enquiries about such laws and regulations should be directed, any amendments made to such laws or regulations from time to time, and information, at intervals to be determined by the Governing Council referred to in Article 28 below, on the implementation of its energy policies as defined in Article 6 above.

Article 20.1

ECT as amended (24/04/98)*

CC 113 (04/03/98)*

CC 107 (03/12/97)*

Article 20.1 – Transparency

Laws, regulations, judicial decisions and administrative rulings of general application which affect trade in Energy Materials and Products or Energy Related Equipment are, in accordance with Article 29(2)(a), among the measures subject to the transparency disciplines of the WTO Agreement.

CC 100 (14/11/97)* Article 20.1 – Transparency	CC 96 (17/10/97)* Article 20.1 – Transparency
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Laws, regulations, judicial decisions and administrative rulings of general application which affect trade in Energy Materials and Products are, in accordance with Article 29(2)(a), among the measures subject to the transparency disciplines of the WTO Agreement and relevant Related Instruments.

ECT as adopted (17/12/94)

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

Article 20.1 – Transparency

Laws, regulations, judicial decisions and administrative rulings of general application which affect trade in Energy Materials and Products are, in accordance with Article 29(2)(a), among the measures subject to the transparency disciplines of the GATT and relevant Related Instruments.

Interim Text (25/06/94)

Article 23.1 – Transparency

Laws, regulations, judicial decisions and administrative rulings of general application which affect **matters covered by Article 35 shall, in accordance with that Article, be** trade in Energy Materials and Products are, in accordance with Article 35(2)(a), subject to the transparency disciplines of the GATT and relevant Related Instruments.

Interim Text (20/06/94)

Article 23.1 – Transparency

Laws, regulations, judicial decisions and administrative rulings of general application which affect matters covered by Article 35 shall, in accordance with that Article, be subject to the transparency disciplines of the GATT and relevant Related Instruments.

* *Ed. note:* As modified by Art. 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.

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

Compromise text [CONF 98] (22/04/94)
Article 23.1 – Transparency

[DL] Laws, regulations, judicial decisions and administrative rulings of general application which affect matters covered by Article 35¹ shall, in accordance with that Article, be subject to the transparency disciplines of the GATT and relevant Related Instruments.

ECT 7 [CONF 96] (17/03/94)
ECT 6 [CONF 82] (20/12/93)
ECT 5 [CONF 72] (11/10/93)
Article 23.1 – Transparency

In accordance with Articles 4 and 35 laws, regulations, judicial decisions and administrative rulings of general application which affect matters covered by Article 4 shall be subject to the transparency disciplines of the GATT and relevant Related Instruments.

ECT 4 [CONF 64] (07/07/93)
ECT 3 [CONF 60] (01/06/93)
ECT 2 [CONF 56] (01/05/93)
Article 23.1 – Transparency

In accordance with Articles 4 and 35 laws, regulations, judicial decisions and administrative rulings and standards of general application which affect matters covered by Article 4 shall be subject to the transparency disciplines of the GATT and relevant Related Instruments.

(Compromise text) ECT 1 [CONF 50] (15/03/93)
Article 23.1 – Transparency

In accordance with Articles 4 and 35 laws, regulations, judicial decisions and administrative rulings and standards of general application which [DL] affect matters covered by Article 4 [DL] shall be subject to the transparency disciplines [DL] of the GATT and Related Instruments.

BA 37 (01/03/93)
BA 35 (09/02/93)
Article 15.1 – Transparency

Laws, regulations, judicial decisions and administrative rulings and standards of general application which relate to matters covered by Article 5 [and Article 41 BIS]² of this Agreement shall be subject to the transparency disciplines of Article X of the GATT.

¹ Reference to Article 4 was deleted after redrafting of that Article by Legal Sub-Group.

² General scrutiny reserve.

BA 31 (21/12/92)
BA 26 (25/11/92)
BA 22 (21/10/92)
Article 15.1 – Transparency

Laws, regulations, judicial decisions and administrative rulings and standards of general application which relate to matters covered by Article 5 of this Agreement shall be subject to the transparency disciplines of Article X of the GATT.

BA 18 (18/09/92) Option B
Article 15.1– Transparency

Laws, regulations, judicial decisions and administrative rulings and standards of general application which are covered by Article 5 of this Agreement will be subject to transparency disciplines of Article X of the GATT.

BA 18 (18/09/92) Options A and C
BA 15 (12/08/92)
BA 14 (24/06/92)
BA 13 (19/06/92)
BA 12 (09/04/92)
Article 15.1– Transparency

Each Contracting Party undertakes that laws, regulations, judicial decisions and administrative rulings and standards of general application which are made effective by that Contracting Party and which relate to the production, import, export, conversion, distribution or use of [Energy Materials and Products]³ shall be made public promptly in such a manner as to enable other Contracting Parties and Investors to become acquainted with them. Agreements made between governments or governmental agencies of two or more Contracting Parties which affect international trade in [Energy Materials and Products] between Contracting Parties shall also be published.

BA 6 (21/01/92)
Article 15.1– Transparency

Each Contracting Party undertakes that laws, regulations, judicial decisions and administrative rulings and standards of general application which are made effective by any Contracting Party and which relate to the production, import, export, conversion, distribution or use of [Energy Materials and Products] shall be published promptly in such a manner as to enable other Contracting Parties and Investors to become acquainted with them. Agreements made between governments or governmental agencies of two or more Contracting Parties which affect international trade in [Energy Materials and Products] between Contracting Parties shall also be published.

³ USA asks for inserting “and investment”.

BA 4 (31/10/91)
Article 8.1 - Standards
Article 12.1 – Transparency

Contracting Parties shall ensure that energy standards or specifications, and operating procedures required to be met by Investors, are objectively justifiable and non-discriminatory and *that they are published and readily available to Investors*;

Article 12.1 – Transparency

Each Contracting Party undertakes that laws, regulations, judicial decisions and administrative rulings of general application which are made effective by any Contracting Party and which relate to the production, distribution or use of [Energy Materials and Products] shall be published promptly in such a manner as to enable other Contracting Parties and Investors to become acquainted with them. Agreements made between governments or governmental agencies of two or more Contracting Parties which affect international trade in [Energy Materials and Products] between Contracting Parties shall also be published.

BP 2 (11/09/91)
Article 8.1 – Standards
Article 12.1 – Transparency

Contracting Parties shall ensure that energy standards or specifications, and operating procedures required to be met by Investors, are objectively justifiable and non-discriminatory and *that they are published and readily available to Investors*;

Article 12.1 – Transparency

Each Contracting Party undertakes that laws, regulations, judicial decisions and administrative rulings of general application which are made effective by any Contracting Party and which relate to the production, distribution or use of Energy Materials and Products shall be published promptly in such a manner as to enable other Contracting Parties and Investors to become acquainted with them. Agreements made between governments or governmental agencies of two or more Contracting Parties which affect international trade in Energy Materials and Products between Contracting Parties shall also be published.

Basic Protocol (26/08/91)
Article 10.1 – Transparency

Each Contracting Party undertakes that laws, regulations, judicial decisions and administrative rulings of general application which are made effective by any Contracting Party and which relate to the production, distribution or use of Energy Materials and Products shall be published promptly in such a manner as to enable other Contracting Parties and Investors to become acquainted with them. Agreements made between governments or governmental agencies of two or more Contracting Parties which affect international trade in Energy Materials and Products between Contracting Parties shall also be published.

Article 20.2

ECT as adopted (17/12/94) CONF 104 (Text for adoption) (14/09/94) Article 20.2 – Transparency	Interim Text (25/06/94) Interim Text (20/06/94) Compromise text [CONF 98] (22/04/94) Article 23.2 – Transparency
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Laws, regulations, judicial decisions and administrative rulings of general application made effective by any Contracting Party, and agreements in force between Contracting Parties, which affect other matters covered by this Treaty shall also be published promptly in such a manner as to enable Contracting Parties and Investors to become acquainted with them. The provisions of this paragraph shall not require any Contracting Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of any Investor.

ECT 7 [CONF 96] (17/03/94) Article 23.2 – Transparency <i>Chairman's note to Article 23</i>
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Laws, regulations, judicial decisions and administrative rulings of general application made effective by any Contracting Party, and agreements in force between Contracting Parties, which affect other matters covered by this Agreement shall also be published promptly in such a manner as to enable Contracting Parties and Investors to become acquainted with them. The provisions of this paragraph shall not require any Contracting Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of any Investor.

Chairman's note

Legal Sub-Group advises that present wording of first sentence of paragraph (2) is satisfactory (see CONF 82).

ECT 6 [CONF 82] (20/12/93) ECT 5 [CONF 72] (11/10/93) Article 23.2 – Transparency <i>Chairman's note to Article 23</i>

Laws, regulations, judicial decisions and administrative rulings of general application made effective by any Contracting Party, and agreements in force between Contracting Parties, which affect other matters covered by this Agreement shall also be published promptly in such a manner as to enable Contracting Parties and Investors to become acquainted with them. The provisions of this paragraph shall not require any Contracting Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of any Investor.

Chairman's note

The Legal Sub-Group was asked by the Plenary Chairman to revisit the text of paragraph (2) in order to draft a language that only those judicial decisions or administrative rulings be published

that have a general effect in the sense that they contain information that is relevant to how the Contracting Party would in the future discharge obligations under the Charter Treaty.

ECT 4 [CONF 64] (07/07/93)
ECT 3 [CONF 60] (01/06/93)
ECT 2 [CONF 56] (01/05/93)
Article 23.2 – Transparency

Laws, regulations, judicial decisions, and administrative rulings or standards of general application made effective by any Contracting Party, and agreements in force between Contracting Parties, which affect other matters covered by this Agreement shall also be published promptly in such a manner as to enable Contracting Parties and Investors to become acquainted with them. The provisions of this paragraph shall not require any Contracting Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of any Investor.

(Compromise text) ECT 1 [CONF 50] (15/03/93)
Article 23.2 – Transparency

Laws, regulations, judicial decisions, and [DL] administrative rulings or standards of general application made effective by any Contracting Party, and agreements in force between [DL] Contracting Parties, which [DL] affect other matters covered by this Agreement shall also be [DL] published promptly in such a manner as to enable [DL] Contracting Parties and Investors to become acquainted with them. The provisions of this paragraph [DL] shall not require any Contracting Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of [DL] any Investor.

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 15.2-3 – Transparency

- (2) Laws, regulations, judicial decisions, and generally applicable administrative rulings or standards made effective by a Contracting Party, [and agreements in force between a Contracting Party and one or more other Contracting Parties,]⁴ which relate to other matters covered by this Agreement shall also be made public promptly in such a manner as to enable other Contracting Parties and Investors to become acquainted with them.
- (3) The provisions of paragraphs (1) and (2) above shall not require any Contracting Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

⁴ General scrutiny reserve.

BA 18 (18/09/92) Option B
Article 15.2 – Transparency

- (2) Each Contracting Party undertakes that other laws, regulations, judicial decisions, and administrative rulings and standards of general application which are made effective by that Contracting Party, which relate to the production, import, export, conversion, distribution, investment, or use of [Energy Materials and Products], shall be made public promptly in such a manner as to enable other Contracting Parties and Investors to become acquainted with them.
- (3) The provisions of paragraph (1) above shall not require any Contracting Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

BA 18 (18/09/92) Options A and C
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)
Articles 15.2 – Transparency

[The provisions of paragraph (1) above shall not require any Contracting Party to disclose confidential information in such a way as to impede law enforcement or otherwise be contrary to the public interest or to law, or to prejudice the legitimate commercial interests of particular public or private enterprises]⁵.

BA 4 (31/10/91)
BP 2 (11/09/91)
Article 12.2 – Transparency
Article 27 – Investment Transparency

The provisions of paragraph (1) above shall not require any Contracting Party to disclose confidential information in such a way as to impede law enforcement or otherwise be contrary to the public interest or to law, or to prejudice the legitimate commercial interests of particular public or private enterprises.

Article 27 – Investment Transparency

For the avoidance of doubt, the provisions of Article 12 above shall also apply to laws, regulations, judicial decisions and administrative rulings of general application affecting the Investments and Investors of any Contracting Party in the Territory of another Contracting Party.

⁵ **Canada** would prefer wording closer to GATT provisions if possible.

<p style="text-align: center;">Basic Protocol (26/08/91) Article 10.2 – Transparency Article 25 – Investment Transparency</p>
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The provisions of paragraph (1) above shall not require any Contracting Party to disclose confidential information in such a way as to impede law enforcement or otherwise be contrary to the public interest or to prejudice the legitimate commercial interests of particular public or private enterprises.

Article 25 – Investment Transparency

For the avoidance of doubt, the provisions of Article 10 above shall also apply to laws, regulations, judicial decisions and administrative rulings of general application affecting the Investments and Investors of any Contracting Party in the Territory of another Contracting Party.

Article 20.3

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) 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) ECT 3 [CONF 60] (01/06/93) ECT 2 [CONF 56] (01/05/93)
Article 20.3 – Transparency	Article 23.3 – Transparency

Each Contracting Party shall designate one or more enquiry points to which requests for information about the above mentioned laws, regulations, judicial decisions and administrative rulings may be addressed and shall communicate promptly such designation to the Secretariat which shall make it available on request.

(Compromise text) ECT 1 [CONF 50] (15/03/93)
Article 23.3 – Transparency

Each Contracting Party [DL] shall designate one or more enquiry points to which requests for information about [DL] the above mentioned laws, regulations, judicial decisions and administrative rulings may be addressed and [DL] shall communicate promptly [DL] such designation to the Secretariat [DL] which shall make it available on request.

BA 37 (01/03/93)
BA 35 (09/02/93)
BA 31 (21/12/92)
BA 26 (25/11/92)
Article 15.4 – Transparency

Each Contracting Party undertakes to nominate one or more enquiry points to which requests for information about relevant laws, regulations, judicial decisions and administrative rulings may be addressed and to communicate promptly the location of these enquiry points to the Secretariat established under Article 31, for provision by the Secretariat to any Investor on request.

BA 22 (21/10/92)
Article 15.4 – Transparency

[Each Contracting Party undertakes to nominate one or more enquiry points to which requests for information about relevant laws, regulations, judicial decisions and administrative rulings may be addressed and to communicate promptly the location of these enquiry points to the Secretariat established under Article 31, for provision by the Secretariat to any Investor on request]⁶.

⁶ EC scrutiny reserve.

BA 18 (18/09/92) Options A, B and C
BA 15 (12/08/92)
Article 15.3 – Transparency

Each Contracting Party undertakes to nominate [and publish details concerning a central]⁷ enquiry point to which requests for information about relevant laws, regulations, judicial decisions and administrative rulings may be addressed and to communicate [these details]⁸ to the Secretariat established under Article 31, for provision by the Secretariat to any Investor on request.

BA 14 (24/06/92)
BA 13 (19/06/92)
BA 12 (09/04/92)
Article 15.3 – Transparency

Each Contracting Party undertakes to nominate and publish details concerning a central enquiry point to which requests for information about relevant laws, regulations, judicial decisions and administrative rulings may be addressed and to communicate these details to the Secretariat established under Article 31, for provision by the Secretariat to any Investor on request.

BA 6 (21/01/92)
Article 15.3 – Transparency

Each Contracting Party undertakes to nominate and publish details concerning a central enquiry point to which requests for information about relevant laws, regulations, judicial decisions and administrative rulings may be addressed and to communicate these details to the Secretariat established under Article 31, for provision by the Secretariat to any Investor on request.

BA 4 (31/10/91)
Article 12.3 – Transparency

Each Contracting Party undertakes to nominate and publish details concerning a central enquiry point to which requests for Information about relevant laws, regulations, judicial decisions and administrative rulings may be addressed [and to communicate these details to the Secretariat established under Article 30 below]⁹.

BP 2 (11/09/91)
Article 12.3 – Transparency

Each Contracting Party undertakes to nominate and publish details concerning a central enquiry point to which requests for information about relevant laws, regulations, judicial decisions and administrative rulings may be addressed and to communicate these details to the Secretariat established under Article 30 below.

⁷ EC suggests deletion.

⁸ EC proposes replacing with “promptly the location of this enquiry point”.

⁹ Japan suggests deletion.

<p style="text-align: center;">Basic Protocol (26/08/91) Article 10.3 – Transparency</p>

Each Contracting Party undertakes to nominate and publish details concerning a central enquiry point to which requests for information about relevant laws, regulations, judicial decisions and administrative rulings may be addressed and to communicate these details to the Secretariat established under Article 28 below.