

CONFERENCE SECRETARIAT

Room Document 4

WG II, 1-6 Feb 93

Brussels, 1 February 1993

Basic Agreement - Article 11

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Since the Article 11 has been reverted to the Working Group II, the attached update comprises additional comments from some delegations the Secretariat has received to date.

[ARTICLE 11](1)

TRANSPORT AND TRANSIT

- (1) Each Contracting Party [shall take the necessary measures to facilitate](2) the transit through its Domain of Energy Materials and Products from the Domain of another Contracting Party to the Domain of a third Contracting Party or to or from port facilities in its Domain for loading or unloading, without distinction as to the origin, destination or ownership of such Energy Materials and Products or discrimination as to the pricing on the basis of such distinctions, and without imposing any unreasonable delays, restrictions or charges.
  
- (2) (3) Contracting Parties shall encourage relevant entities to cooperate in:
  - (a) modernising transit networks necessary to the supply of Energy Materials and Products;
  
  - (b) the development and operation of transport infrastructure serving the Domain of more than one Contracting Party;
  
  - (c) measures to mitigate the effects of the interruption in the supply of Energy Materials and Products;
  
  - (d) facilitating the connection to high-pressure transmission pipelines and the synchronous interconnection of high-voltage transmission grids.

- (3) (3)(6) Each Contracting Party undertakes that its provisions relating to [transport of Energy Materials and Products and the use of harbour facilities]<sup>(4)</sup>, high-pressure transmission pipelines or high-voltage transmission grids shall treat Energy Materials and Products wholly or partly originating in or destined for the Domain of another Contracting Party, in no less favourable a manner than its provisions treat such materials and products wholly or partly originating in or destined for its own Domain, except if otherwise provided for in an existing international [agreement]<sup>(5)</sup>.
- (4) (3) In the event that access to existing [high-pressure transmission pipelines or high-voltage transmission grids]<sup>(7)</sup> within a Contracting Party cannot be obtained [on commercial terms for transit of energy from another Contracting Party to a third Contracting Party, the Contracting Parties shall not place obstacles in the way of establishing financially and economically viable new capacity-subject to their applicable legislation, inter alia on safety, technical standards, environmental protection and land use]<sup>(8)</sup>.
- (5) A Contracting Party through whose Domain Energy Materials and Products transit [through high-pressure transmission pipelines or high-voltage transmission grids]<sup>(9)</sup> from the Domain of another Contracting Party to the Domain of a third Contracting Party or to or from port facilities in its Domain for loading or unloading shall not in the event of a dispute over the terms and conditions of that transit interrupt<sup>(10)</sup> nor permit any entity subject to its [jurisdiction]<sup>(11)</sup> to interrupt<sup>(10)</sup> the existing flow of Energy Materials and Products until after [the dispute has been referred to the Charter Conference and the Charter Conference has had]<sup>(12)</sup> adequate time to seek conciliation between the parties in dispute.

(6) (3) The provisions of this Article shall not require a Contracting Party to take action [- other than the protection of existing flows - which it demonstrates to the other Contracting Parties concerned would endanger its] (13)(14) [security of] (15) energy supply, quality of service and the most efficient development and operation of all parts of its electricity and gas systems(16).

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Specific comments

- 11.1 : CDN, AUS, N, J and AZB general reserve on whole Article.
- 11.2 : USA scrutiny reserve. EC conditional reserve subject to withdrawal of USA reserve.
- 11.3 : GR reserve.
- 11.4 : USA reserve pending further instructions from capital.
- 11.5 : AUS asks for substituting with "law".
- 11.6 : EC may prepare additional language reducing any possible doubt that this provision does not require third party access.
- 11.7 : AUS asks for replacing with: "facilities for the transport of Energy Materials and Products and harbour facilities".
- 11.8 : GR suggests substituting with "for transit of energy from another Contracting Party, the first Contracting Party shall, if requested, attempt to resolve the issue - including if appropriate by considering the possibility of new capacity being established - in accordance with its applicable legislation, inter alia on safety, environmental protection and land use".

- 11.9 : AUS supported by RUF suggests deletion.
- 11.10: ARM suggests inserting: "or limit".
- 11.11: SF supported by S and CH requests substituting with "control".
- 11.12: General reserve by J, N, USA, AUS and A. Chairman noted that the appropriate form of conciliation procedure could be discussed in the context of Article 29 but asked AUS, USA, RUF to come up with a compromise solution.
- 11.13: A suggests replacing with: "which - apart from existing supply flows and contractual relations to be maintained - proves to endanger its own".
- 11.14: AZB requests for substituting with: "which would threaten its national security interests and also the".
- 11.15: RUF and AUS reserve.
- 11.16: RUF suggests adding the following text:  
", subject to the requirement, that the relevant policies, measures and practices in the fields covered by this Article are not applied in a manner which causes disturbances to the principles of the present Agreement, would constitute a means of discrimination between the Contracting Parties or its Investors, or cause serious damage to existing contractual relations in the fields covered by this Agreement or to the trade flows, and that such relevant policies, measures and practices shall be discontinued as soon as the conditions giving rise to them have ceased to exist".