

CHAPTER 13

ENERGY AND RAW MATERIALS

ARTICLE 13.1

Objectives

The objectives of this Chapter are to facilitate trade and investment between the Parties to promote, develop and increase energy generation from renewable sources and the sustainable production of raw materials, including through the use of green technologies.

ARTICLE 13.2

Principles

1. Each Party retains the sovereign right to determine whether areas within its territory, as well as in its archipelagic and territorial waters, exclusive economic zone and continental shelf, are available for exploring for and producing energy goods and raw materials.

2. Each Party preserves its right to adopt, maintain and enforce measures that are necessary to secure the supply of energy goods and raw materials and are consistent with this Agreement.

ARTICLE 13.3

Definitions

For the purposes of this Chapter, the following definitions apply:

- (a) "authorisation" means the permission, licence, concession or similar administrative or contractual instrument by which the competent authority of a Party entitles an entity to exercise a certain economic activity in its territory;
- (b) "balancing" means actions and processes, in all timelines, through which network operators continuously ensure maintenance of the system frequency within a predefined stability range and compliance with the amount of reserves needed with respect to the required quality;
- (c) "energy goods" means the goods from which energy is generated and that are listed by the corresponding HS code in Annex 13 (Lists of energy goods, hydrocarbons and raw materials);¹
- (d) "hydrocarbons" means the goods that are listed by the corresponding HS code in Annex 13 (Lists of energy goods, hydrocarbons and raw materials);

¹ For greater certainty, the term "energy goods" does not include agricultural, forestry or fisheries goods other than biogas or biofuels.

- (e) "raw materials" means materials used in the manufacture of industrial goods that are listed by the corresponding HS code in Annex 13 (Lists of energy goods, hydrocarbons and raw materials);²
- (f) "renewable electricity" means electricity generated from renewable energy sources;
- (g) "renewable energy" means energy produced from solar, wind, hydro, geothermal, biological, ocean sources as well as other ambient sources where the original energy source is renewable;
- (h) "standard" means a standard as defined in Annex 1 to the TBT Agreement; and
- (i) "technical regulation" means a technical regulation as defined in Annex 1 to the TBT Agreement.

ARTICLE 13.4

Import and export monopolies

A Party shall not designate or maintain a designated import or export monopoly. For the purposes of this Article, the term "import or export monopoly" means the exclusive right or grant of authority by a Party to an entity to import energy goods or raw materials from, or export energy goods or raw materials to, the other Party.³

² For greater certainty, the term "raw materials" does not include agricultural, forestry or fisheries goods.

³ For greater certainty, this Article is without prejudice to Chapter 10 (Trade in services and investment) and does not include a right that results from granting an intellectual property right.

ARTICLE 13.5

Export pricing

A Party shall not impose a higher price for its exports of energy goods or raw materials to the other Party than the price charged for such energy goods or raw materials when destined for the domestic market, by means of any measure such as licences or minimum price requirements.

ARTICLE 13.6

Domestic pricing

Each Party shall seek to ensure that wholesale electrical energy and natural gas prices reflect actual supply and demand. If a Party decides to regulate the price of the domestic supply of energy goods and raw materials (hereinafter referred to as "regulated price"), it may do so only to achieve a legitimate public policy objective, and only by imposing a regulated price that is clearly defined, transparent, non-discriminatory and proportionate.

ARTICLE 13.7

Authorisation for exploration and production of energy goods and raw materials

1. If a Party requires an authorisation to explore for or produce electricity, hydrocarbons or raw materials, that Party shall:

- (a) grant such an authorisation in accordance with the conditions and procedures set out in Articles 10.33 (Objectivity, impartiality and independence) and 10.34 (Publication and information available); and
- (b) ensure a transparent process for granting authorisations and publish at least the type of authorisation and the relevant area or part thereof, in such a manner as to enable potentially interested applicants to submit applications.

2. A Party may grant authorisations without complying with the conditions and procedures set out in Article 10.34 (Publication and information available) and point (b) of paragraph 1 of this Article in any of the following cases related to hydrocarbons:

- (a) the area has been subject to a previous procedure complying with Article 10.34 (Publication and information available) and point (b) of paragraph 1 of this Article which has not resulted in an authorisation being granted;
- (b) the area is available on a permanent basis for exploration or production; or

(c) the authorisation granted has been relinquished before its date of expiry.

3. A Party may require an entity which has been granted an authorisation to pay a financial contribution or a contribution in kind.⁴ The financial contribution or a contribution in kind shall be fixed in a manner that does not interfere with the management and decision-making process of such entity.

4. Each Party shall ensure that the applicant is provided with the reasons for the rejection of its application to enable that applicant to have recourse to procedures for appeal or review. The procedures for appeal or review shall be made public in advance.

ARTICLE 13.8

Assessment of environmental impact

1. Each Party shall ensure that its laws and regulations require an environmental impact assessment for activities related to production of energy goods or raw materials, where such activities may have a significant impact on the environment.

⁴ For greater certainty, the terms "financial contribution" and "contribution in kind" in this paragraph do not include any security or payment required for an entity to meet an obligation to fund and carry out decommissioning or any security or payment required for post-decommissioning activities.

2. With respect to the environmental impact assessment referred to in paragraph 1, each Party shall, as required by its laws and regulations:

- (a) ensure that all interested persons, including non-governmental organisations, have an early and effective opportunity, and an appropriate time period, to participate in the environmental impact assessment as well as an appropriate time period to provide comments on the environmental impact assessment report;
- (b) take into account the findings of the environmental impact assessment relating to the effects on the environment prior to granting the authorisation;
- (c) make publicly available the outcome findings of the environmental impact assessment;
and
- (d) identify and assess as appropriate the significant effects of a project on:
 - (i) population and human health;
 - (ii) biodiversity;
 - (iii) land, soil, water, air, and climate; and
 - (iv) cultural heritage and landscape, including the expected effects deriving from the vulnerability of the project to risks of major accidents or disasters that are relevant to the project concerned.

ARTICLE 13.9

Offshore risk and safety

1. Each Party shall ensure that regulatory functions relating to safety and environmental protection of offshore oil and gas operations are conducted independently from regulatory functions relating to economic development and licensing of offshore oil and gas operations, such as by maintaining separate legal entities.

2. Each Party shall, when applicable, establish the conditions necessary for safe offshore exploration and production of oil and gas in its territory in order to protect the marine environment and coastal communities against pollution. Such conditions shall be based on high standards of safety and environmental protection for offshore oil and gas operations.

3. The Parties shall cooperate, as appropriate, to internationally promote high standards of safety and environmental protection for offshore oil and gas operations by sharing information and increasing transparency on safety and environmental performance.

ARTICLE 13.10

Access to energy infrastructure for producers of renewable electricity

1. Without prejudice to Article 13.7 (Authorisation for exploration and production of energy goods and raw materials), each Party shall ensure that producers of renewable electricity in its territory are granted access to the electricity transmission and distribution infrastructure in its territory on non-discriminatory, reasonable and cost-reflective terms within a reasonable period of time after the request for access has been submitted and under conditions that allow reliable use of such infrastructure.
2. Each Party shall ensure that owners or operators of electricity transmission and distribution infrastructure in its territory publish the terms and conditions that are referred to in paragraph 1 and take appropriate measures to minimise the curtailment of renewable electricity production.
3. Each Party shall ensure balancing markets are in place where producers of renewable energy may procure goods and services under reasonable and non-discriminatory terms.
4. This Article is without prejudice to the right of each Party to adopt or maintain in its laws and regulations derogations from the right to access to its electricity transmission and distribution infrastructure based on objective and non-discriminatory criteria, provided such derogations are necessary to fulfil a legitimate policy objective, such as the need to maintain the stability of the electricity system.

ARTICLE 13.11

Regulatory body

Each Party shall maintain or establish an independent regulatory body or any other independent body that is:

- (a) legally distinct and functionally separate from, and not accountable to:
 - (i) other authorities; or
 - (ii) operators or entities providing, or having access to, the electricity transmission and distribution infrastructure; and
- (b) entrusted to resolve disputes regarding appropriate terms, conditions and tariffs for access to and use of electricity transmission and distribution infrastructure within a reasonable period of time.

ARTICLE 13.12

Cooperation on standards, technical regulations, and conformity assessment procedures

1. In accordance with Articles 9.5 (International standards) and 9.6 (Standards), the Parties shall promote cooperation between the regulators or standardisation bodies located within their respective territories in the area of energy efficiency and sustainable renewable energy, with a view to contributing to sustainable energy and climate policy.
2. For the purposes of paragraph 1, the Parties shall endeavour to identify relevant initiatives of mutual interest concerning standards, technical regulations, and conformity assessment procedures related to energy efficiency and sustainable renewable energy.

ARTICLE 13.13

Research, development and innovation

The Parties shall promote research, development and innovation in the areas of energy efficiency, renewable energy and raw materials, and cooperate as appropriate, including to:

- (a) promote the dissemination of information and best practices on environmentally sound and economically efficient policies regarding energy goods and raw materials, and cost-effective practices and technologies in the areas of energy efficiency, renewable energy and raw materials, in a manner that is consistent with the adequate and effective protection of intellectual property rights; and

- (b) promote research, development and application of energy-efficient and environmentally sound technologies, practices and processes in the areas of energy efficiency, renewable energy and raw materials which would minimise harmful environmental impacts in the entire energy goods and raw materials chains.

ARTICLE 13.14

Cooperation on energy goods and raw materials

The Parties shall cooperate, as appropriate, in the area of energy goods and raw materials with a view to, *inter alia*:

- (a) reducing or eliminating trade and investment distorting measures in third countries affecting energy goods and raw materials;
- (b) coordinating their positions in international fora where trade and investment issues related to energy goods and raw materials are discussed and fostering international programmes in the areas of energy efficiency, renewable energy and raw materials;
- (c) fostering exchange of market data in the area of:
 - (i) energy goods including information on the organisation of energy markets, promotion of new energy technologies and energy efficiency; and

- (ii) raw materials;

- (d) promoting corporate social responsibility in accordance with international standards, such as the OECD Guidelines for Multinational Enterprises and the OECD Due Diligence Guidance for Responsible Business Conduct;

- (e) promoting the values of responsible sourcing and mining globally as well as maximising the contribution of their raw materials sectors and associated industrial value chains to the fulfilment of the United Nations Sustainable Development Goals;

- (f) promoting research, development, innovation and training in relevant fields of common interest in the area of energy goods and raw materials;

- (g) fostering exchange of information and best practices on domestic policy developments;

- (h) promoting the efficient use of resources (i.e. improving production processes as well as durability, reparability, design for disassembly, ease of reuse and recycling of goods);
and

- (i) promoting internationally high standards of safety and environmental protection for offshore oil, gas and mining operations, by sharing information and increasing transparency on safety and environmental performance.

