

CHAPTER 8

ENERGY AND RAW MATERIALS

Article 8.1

Objective

The objective of this Chapter is to promote dialogue and cooperation in the energy and raw material sectors to Parties' mutual benefit, to foster sustainable and fair trade and investment ensuring a level playing-field in those sectors, and to strengthen competitiveness of related value chains including value addition in accordance with the provisions of this Agreement.

Article 8.2

Principles

1. Each Party retains the sovereign right to determine whether areas within its territory, as well as in the exclusive economic zone, are available for exploration, production and transportation of energy goods and raw materials.
2. In accordance with the provisions of this Chapter, the Parties reaffirm the right to regulate within their respective territories to achieve legitimate policy objectives in the area of energy and raw materials.

Article 8.3

Definitions

For the purposes of this Chapter:

- (a) "Energy goods" means the goods from which energy is generated listed by the corresponding HS code in Annex I to this Chapter;
- (b) "Raw Materials" means substances used in the manufacturing of industrial products; including ores, concentrates, slags, ashes and chemicals; processed and unwrought, and

refined raw materials; metal waste; scrap and remelting scrap; covered by the HS chapters included in [List of Raw Materials by HS code] of Annex 1 to this Chapter;

(c) "Hydrocarbons" means the goods listed by the corresponding HS code in Annex I to this Chapter;

(d) "Renewable energy" means energy produced from solar, wind, hydro, geothermal, biological, and ocean sources and other renewable ambient sources;

(e) "Standards" means [as defined in the TBT Chapter];

(f) "Technical regulations" means [as defined in the TBT Chapter];

(g) "Authorisation" means the permission, license, 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 in compliance with the requirements in the authorization.

(h) "system operator" means:

for the European Unión:

a natural or legal person who is responsible for operating, ensuring the maintenance and development of the electricity distribution or transmission system in a given area and for ensuring the long-term ability of such systems.

For Chile:

an independent body responsible for coordinating the operation of interconnected electrical systems, that ensures the efficient economic performance and safety and reliability of the electric system, and provides open access to the transmission system.

(i) "Balancing" means all actions and processes, in all timelines, through which network operators ensure, in a continuous way, maintenance of the system frequency within a

predefined stability range and compliance with the amount of reserves needed with respect to the required quality;

(j) 'renewable fuels' means biofuels, bioliquids, biomass fuels and renewable fuels of non-biological origin, including renewable synthetic fuels and renewable hydrogen.

Article 8.4

Import and export monopolies

No Party shall designate or maintain a designated import or export monopoly. For the purposes of this Article, 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 Party¹.

Article 8.5

Export Pricing²

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

(2) Notwithstanding paragraph 1 of this Article, Chile may introduce or maintain measures with the objective to foster value addition, by supplying industrial sectors at preferential prices of raw materials so they can emerge within Chile provided that such measures satisfy the conditions set out in Annex II to this Chapter.

Article 8.6

Domestic regulated prices

1. The Parties recognise the importance of competitive energy markets to deliver a wide choice in the supply of energy goods and to enhance consumers welfare. The Parties also recognise that regulatory needs and approaches may differ between markets.

¹ For greater certainty, this article is without prejudice to provisions in the Trade in Services, Investment and State-owned enterprises, enterprises granted special rights or privileges, and designated monopolies Chapters and their respective Schedules, and does not include a right that results from the grant of an intellectual property right.

² For greater certainty, this article is without prejudice to the Annex XXX (ENAP) of Chapter 22 (State owned enterprises, enterprises granted special rights or privileges and designated monopolies).

2. Further to paragraph 1, as determined by a Party's domestic laws and regulations, each Party shall ensure that the supply of energy goods shall be based on market principles.
3. A Party may only regulate the price charged for the supply of energy goods by imposing a public service obligation.
4. If imposing a public service obligation, that Party shall ensure that the obligation is clearly defined, transparent, non-discriminatory, and does not go beyond what is necessary to achieve the objectives of the public service obligation.

Article 8.7

Authorisation for exploration and production of energy goods and raw materials

1. [Without prejudice [Domestic Regulation].] If a Party requires an authorisation to explore or produce energy goods and raw materials, that Party shall ensure that such authorisation is granted following a public and non-discriminatory procedure³.
2. That Party shall publish, inter alia, the type of authorisation, the relevant area or part thereof, and the proposed date or time limit for granting the authorisation, in such a manner as to enable potentially interested applicants to submit applications.
3. A Party may derogate from paragraph 2, of this Article, and [Domestic Regulation] in any of the following cases relating to hydrocarbons:
 - a) the area has been subject to a previous procedure which has not resulted in an authorisation being granted;
 - b) the area is available on a permanent basis for the exploration for or production; or
 - c) the authorisation granted has been relinquished before its date of extinction.
4. Each Party may require an entity which has been granted an authorisation to pay a financial contribution or a contribution in kind. The contribution shall be fixed in such a manner so as not to interfere with the management and the decision-making process of the entity which has been granted an authorisation.

³ For greater certainty, in the event of any inconsistency between this Article and [Investment Chapter] and [Services Chapter] and their respective annexes, those Chapters and annexes shall prevail with regard to any such inconsistency.

5. Each Party shall ensure that the applicant is provided with the reasons for the rejection of its application so as to enable such a person to have recourse to procedures for appeal or review where necessary. The procedures for appeal or review shall be made public in advance.

Article 8.8

Assessment of environmental impact

1. Each Party shall ensure that an assessment of environmental impact⁴ is carried out prior to granting authorization for a project or activity relating to energy or raw materials that may have a significant impact on population; human health; biodiversity; land, soil, water, air or climate; and cultural heritage or landscape. This assessment shall identify and assess those significant impacts.

2. Each Party shall ensure that relevant information is available to the public as part of the process for the assessment of environmental impact, and give time and opportunities to the public to participate in and provide comments therein.

3. Each Party shall publish and take into account the findings of the assessment of environmental impact prior to granting the authorization for the project or activity.

Article 8.9

Third-party access to energy transport infrastructure

1. Each Party shall ensure that system operators in its territory grant non-discriminatory access to the energy infrastructure for the transport of electricity to any [undertakings] of the Parties. To the furthest extent possible, access to the electricity infrastructure shall be granted within a reasonable period of time from the date of the request for access by that entity.

2. Each Party shall enable, in accordance with its laws and regulations, undertakings of the Parties are accorded access to and use of electricity transport infrastructure for the transport of electricity on reasonable and non-discriminatory terms and conditions, including non-discrimination between types of electricity sources, and at cost-reflective tariffs. Each Party shall publish the terms, conditions for the access to and use of electricity transport infrastructure.

⁴ In the case of Chile, "assessment of environmental impact" means the study of the environmental impact, as defined in Law 19.300 Title 1, Article 2, literal (i), or its successor, and as regulated by Article 11 of the same Law.

3. Notwithstanding paragraph 1 of this Article, a Party may introduce or maintain in its laws and regulations specific derogations from the right to third party access based on objective criteria provided that they are necessary to fulfil a legitimate policy objective. Such derogations shall be published before they start to apply.

4. The Parties recognise the relevance of the rules set out in paragraphs 1 to 3 also for gas infrastructure. A Party that does not apply such rules with regard to gas infrastructure shall endeavour to do so notably with regard to transport of renewable fuels, while acknowledging differences in market maturity and organisation.

Article 8.10

Access to infrastructure for producers of electricity generated from renewable energy sources

1. Without prejudice to the commitments taken by the Parties in [Articles 8.5 (Authorisation for exploration and production of energy goods and raw materials), 8.7 (Third party access to energy transport infrastructure) and 8.9 (Independent body)], each Party shall ensure that renewable energy suppliers of the other Party are accorded access to and use of the electricity network for renewable electricity generation facilities located within its territory on reasonable and non-discriminatory terms and conditions.

2. For the purposes of paragraph 1, each Party shall ensure as determined by its domestic laws and regulations, that its transmission undertakings and system operators, with respect to renewable electricity suppliers of the other Party:

- a) enable a connection to be established between new renewable electricity generation facilities and the electricity network without imposing discriminatory terms and conditions;
- b) enable the reliable use of the electricity network;
- c) provide balancing services; and
- d) ensure that appropriate grid and market-related operational measures are in place in order to minimise the curtailment of electricity produced from renewable energy sources.

3. Paragraph 2 is without prejudice to each Party's legitimate right to regulate in order to achieve certain public policy goals, such as the need to maintain the secure operation and stability of the electricity system, based on objective and non-discriminatory criteria.

Article 8.11

Independent body

1. Each Party shall maintain or establish an functionally independent body or bodies that:

- (i) fixes or approves the terms, conditions and tariffs of access to and use of the electricity network; and
- (ii) resolves disputes, within a reasonable period of time, regarding appropriate terms, conditions and tariffs of access to and use of the electricity network.

2. For purposes of paragraph 1, in performing those duties and exercising those powers, the body or bodies shall act transparently and impartially with regard to users, owners and operators of the electricity network.

Article 8.12

Cooperation on Standards

1. With a view to preventing, identifying and eliminating unnecessary technical barriers to trade in energy goods and raw materials, the provisions contained in [TBT Chapter] shall apply to these goods.

2. In accordance with Article [X.X (International Standards)] and Article [X.X (Regulatory Cooperation)] of Chapter [TBT Chapter], the Parties shall as appropriate promote cooperation between their relevant regulatory and standardization bodies in area such as energy efficiency, sustainable energy, and raw materials, with a view to contributing to trade, investment, and sustainable development, inter alia, through:

- a) the convergence or harmonisation, where possible, of their respective current standards, based on mutual interest and reciprocity, and according to modalities to be agreed by the regulators and the standardisation bodies concerned;
- b) joint analysis, methodologies and approaches, where possible, to assist and facilitate the development of relevant tests and measurement standards, in cooperation with the relevant respective standardisation organisations;
- c) the development of common standards, where possible, on energy efficiency and renewable energy; and
- d) the promotion of standards on raw materials, renewable energy generation and energy efficiency equipment, including product design and labeling, where appropriate, through existing international cooperation initiatives.

3. For the purposes of implementing this Chapter, the Parties aim to encourage the development and use of open standards and interoperability of networks, systems, devices, applications, or components in the energy and raw materials sector.

Article 8.13

Research, development and innovation

1. Recognising that research, development and innovation are key elements to further develop efficiency, sustainability and competitiveness in the energy and raw material sectors, the Parties agree to cooperate as appropriate, *inter alia*, in:

- a) promoting the research, development, innovation and dissemination of environmentally sound and cost-effective technologies, processes and practices in the areas of energy and raw materials;
- b) promoting value addition to the mutual benefit of the Parties and enhancement of productive capacity in energy and raw materials; and
- c) strengthening capacity building in the context of research, development and innovation initiatives.

Article 8.14

Cooperation on Energy and Raw Materials

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

- a) reduce or eliminate measures that in themselves or together with other measures could distort trade and investment, including of a technical, regulatory, and economic nature affecting energy or raw materials;
- b) discuss, whenever possible, their positions in international fora where relevant trade and investment issues are discussed and foster international programmes in the areas of energy efficiency, renewable energy and raw materials;
- c) promote responsible business conduct in accordance with international standards that have been endorsed or are supported by the Parties, such as the OECD

Guidelines for Multinational Enterprises and in particular its Chapter IX on Science and Technology;

Thematic cooperation on Energy

2. Recognising the need to accelerate the deployment of renewable and low carbon energy sources, increase energy efficiency and promote innovation to ensure access to safe, sustainable and affordable energy, the Parties agree to cooperate on any relevant issue of mutual interest, such as:

- a) renewable energy particularly with regards to technologies, integration into and access to the electricity system, storage and flexibility, and the whole renewable hydrogen supply chain;
- b) energy efficiency, including regulation, best practices, and efficient and sustainable heating and cooling systems;
- c) electromobility and charging infrastructure deployment; and
- d) open and competitive energy markets,

Thematic cooperation on Raw Materials

3. Recognising their shared commitment to responsible sourcing and sustainable production of raw materials and their mutual interest to facilitate the integration of raw materials value chains, the Parties agree to cooperate on any relevant issue of mutual interest, such as:

- a) responsible mining practices and raw materials value chains sustainability, including the contribution of the raw materials value chains to the fulfilment of the UN Sustainable Development Goals;
- b) raw materials value chains, including value addition;
- c) identification of areas of common interest for cooperation on research, development, and innovation activities covering the entire raw materials value chain, including cutting-edge technologies, smart mining and digital mines.

4. Cooperation activities will be developed taking into account available resources. Activities can be carried out in person or by any technological means available to the Parties.

5. Cooperation activities can be developed and implemented with the participation of international organizations, global fora, research institutions, as agreed between the Parties.

6. The Parties shall, as appropriate when implementing this Article, foster proper coordination with regard to the implementation of Articles [X.X Cooperation on Raw Materials] and [X.X Cooperation on Energy] of the [Political Title of this Agreement].

Article 8.15

Energy transition and renewable fuels

1. For the purposes of implementing this Chapter, the Parties recognize the important contribution that renewable fuels, inter alia, renewable hydrogen, including their derivatives, and renewable synthetic fuels, in reducing greenhouse gas emissions to address climate change.

2. In accordance with Article 8.10 (Cooperation on Standards), paragraph 2, the Parties shall, as appropriate, cooperate on convergence or harmonization where possible of certification schemes for renewable fuels, such as with regard to lifecycle emissions and safety standards.

3. Regarding renewable fuels, the Parties shall also cooperate with a view to:

(a) identify, reduce, and eliminate, as appropriate, measures that may distort bilateral trade, including of a technical, regulatory and economic nature.

(b) foster bilateral trade facilitating initiatives to promote the production of renewable hydrogen.

(c) promote the use of renewable fuels considering their contribution to the reduction of greenhouse gas emissions.

4. Furthermore, the Parties shall, as appropriate, encourage the development and implementation of international standards and regulatory cooperation with respect to renewable fuels and cooperate in relevant international fora with a view to develop relevant certification schemes that avoid the emergence of unjustified barriers to trade.

Article 8.16

Exception for Small and Isolated Electricity Systems

1. For the purposes of implementing this Chapter, the Parties recognize that their laws and regulations may provide for special regimes for small and isolated electric systems.

2. Pursuant to paragraph 1, a Party may maintain, adopt or enforce measures with regard to small and isolated electricity systems that derogate from Articles 8.4 (Domestic regulated prices), 8.5 (Authorisation for exploration and production of energy goods and raw materials), 8.7 (Third-party access to energy transport infrastructure); 8.8 (Access to infrastructure for producers of electricity generated from renewable energy sources), and 8.9

(Independent body), provided that such measures do not constitute disguised restrictions to trade or investment between the Parties.

Article 8.17

Role of the Trade in Goods Sub-Committee in implementing the Energy and Raw Materials Chapter

1. The Sub-Committee on Trade in Goods established by Article X.4 of [Sub-Committees of part III of this Agreement] shall be the body responsible for the implementation of this Chapter. The functions set out in points (a), (c), (d), (e) and (i) of Article X.18 of the Chapter on Trade in Goods shall apply to this Chapter *mutatis mutandis*.
2. Consistent with Articles 8.10 (Cooperation on Standards), 8.11 (Research, development and innovation), Article 8.12 (Cooperation on Energy and Raw Materials) and Article 8.13 (Energy transition and renewable fuels), if mutually agreed by the Parties, recommend to establish or facilitate other means of cooperation between them in the areas of energy and raw materials.
3. Upon to the agreement of the Parties, the Trade in Goods Committee shall meet in sessions dedicated to the implementation of this Chapter. When preparing such sessions, each Party may consider, as appropriate, inputs from of relevant stakeholders or experts.
4. Each Party shall designate a contact point to facilitate the implementation of this Article, including by ensuring the appropriate involvement of representatives of that Party, notify the other Party of its contact details and promptly notify the other Party of any changes to those contact details. For the EU, the contact point shall be the notified contact point for the Trade in Goods Committee. For Chile, the contact point shall be from the Under-Secretariat of International Economic Relations of the Ministry of Foreign Affairs or its successor.

Annex I

List of Energy Goods by HS code

solid fuel (HS code 27.01, 27.02 and 27.04), crude oil (HS code 27.09), oil products (HS code 27.10 and 27.13 – 27.15), natural gas, including liquefied natural gas and liquefied petroleum gas (HS code 27.11), and electrical energy (HS code 27.16).

List of Raw Materials by HS code

chapter	heading
25	Salt; sulphur; earths and stone; plastering materials, lime and cement
26	Ores, slag and ash
27	Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes
28	Inorganic chemicals; organic or inorganic compounds of precious metals, of rare-earth metals, of radioactive elements or of isotopes
29	Organic chemicals
71	Natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metal, and articles thereof – however excluding natural or cultured pearls, precious or some-precious stones.
72	Iron and steel
74	Copper and articles thereof
75	Nickel and articles thereof
76	Aluminium and articles thereof
78	Lead and articles thereof
79	Zinc and articles thereof
80	Tin and articles thereof
81	Other base metals; cermets; articles thereof

List of hydrocarbons by HS code

Crude oil (HS code 27.09), Natural gas (HS code 27.11)

Annex II

[referred to in paragraph 2 of Article 8.5 “Export Pricing”]

1. A measure that Chile maintains or introduces pursuant to Article 8.5 Export Pricing, paragraph 2, shall meet all the conditions set out in this paragraph. Such a measure shall:
 - a. not result in an export restriction for the other Party pursuant to Article X.11 [export restrictions] of the [National Treatment and Market Access for Goods Chapter];

- b. not adversely affect the capacity of the European Union to source raw materials from Chile;
 - c. if the raw material is supplied at that preferential price to any economic operator in any other country, be accorded immediately and unconditionally to economic operators in like situations in the European Union; and
 - d. not result in a preferential price that is below the lowest price for exports of the same good realized during the preceding 12 months.
2. In accordance with Chile's laws and regulations, the measure and the way it is implemented shall be made publicly available and at the request of the EU, Chile shall share with the EU detailed and reliable information on the product scope, the production volume that is covered by the measure, whether domestic sales at preferential prices have taken place, and the domestic price that has resulted from the measure.