

*This document is the European Union's (EU) proposal for the EU-Australia FTA. It has been tabled for discussion with Australia. The actual text in the final agreement will be a result of negotiations between the EU and Australia.*

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## CHAPTER [XX]

### ENERGY AND RAW MATERIALS

#### *Article X.1*

##### **Objective**

The Parties aim at facilitating trade and investment in the areas of energy and raw materials, and improving environmental sustainability in these areas, in accordance with the provisions of this Agreement.

#### *Article X.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. Recalling the general provision on the Parties' right to regulate and consistent with the other provisions of this Agreement, the Parties preserve their right to adopt, maintain and enforce measures necessary to securing the supply of energy goods and raw materials.

#### *Article X.3*

##### **Definitions**

For the purposes of this Chapter:

- (a) "Energy goods" refers to the goods from which energy is generated listed by the corresponding HS code in Annex I to this Chapter;
- (b) "Raw Materials" refers to materials used in the manufacture of industrial products listed by the corresponding HS code in Annex I to this Chapter;
- (c) "Hydrocarbons" refers to the goods listed by the corresponding HS code in Annex I to this Chapter;

- (d) "Renewable energy" refers to a type of energy, including electric energy, produced from wind, solar, geothermal, hydrothermal and ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas or biogases;
- (e) "Energy efficiency" refers to a ratio of output of performance, service, goods or energy, to an input of energy;
- (f) "Standards" means [*as defined in the TBT Chapter*];
- (g) "Technical regulations" means [*as defined in the TBT Chapter*];
- (h) "Authorisation" refers to 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.

*Article X.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 Party<sup>1</sup>.

*Article X.5*

**Export pricing**

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 goods when destined for the domestic market, by means of any measure such as licenses or minimum price requirements.

*Article X.6*

**Domestic pricing**

1. The Parties shall not regulate the price of the domestic supply of wholesale electricity and gas. If the Parties decide to regulate the price of the domestic supply of energy goods and raw materials other than wholesale electricity and gas (hereinafter referred to as "regulated price"), they may do so only by imposing a public service obligation.
2. When imposing a public service obligation, each Party shall ensure that the obligation:

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<sup>1</sup> For greater certainty, this article is without prejudice to provisions in the Trade in Service and Investment Chapter and Schedules, and does not include a right that results from the grant of an intellectual property right.

- (a) is clearly defined, including by specifying the categories of beneficiaries, transparent and proportionate;
  - (b) is time limited and shall not be maintained if the circumstances or objectives giving rise to its imposition no longer exist;
3. The Party regulating the price shall ensure the publication of the methodology underlying the calculation of the regulated price referred to in paragraph 2 of this Article prior to its entry into force.

*Article X.7*

**Authorisation for exploration and production of energy goods [hydrocarbons; electricity] and raw materials**

1. If a Party requires an authorisation to explore for or produce energy goods [hydrocarbons and electricity] and raw materials, that Party shall grant such an authorisation in accordance with the conditions and procedures set out in Articles [X] and [X] of Section [A] [Domestic Regulation].
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. The Parties may grant authorisations without complying with the conditions and procedures set out in Articles [X] and [X] of Section [A] [Domestic Regulation] in any of the following cases related to hydrocarbons:
  - a) the area has been subject to a previous procedure complying with Articles [X] and [X] 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.
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 X.8*

**Assessment of environmental impact**

1. Each Party shall ensure that an environmental impact assessment is carried out prior to granting authorisation for a project for the production of energy goods or raw materials, where the project may have a significant impact on the environment relating to any or all of the aspects listed in paragraph 2.
2. The environmental impact assessment shall identify and assess as appropriate the significant effects of the project on a) population and human health; b) biodiversity; c) land, soil, water, air and climate; and, d) cultural heritage and landscape, including the expected effects deriving from the vulnerability of the project to risks of major accidents and/or disasters that are relevant to the project concerned.
3. Each Party shall ensure that an early and effective opportunity and an appropriate time period is given to all interested persons (including relevant non-governmental organisations) to participate in the environmental impact assessment and an appropriate time period to provide comments on the environmental impact assessment report carried out pursuant to paragraph 1.
4. Each Party shall take into account the findings of the environmental impact assessment and make the results of the process referred to in paragraph 3 available to the public prior to granting authorisation for the project. The Parties shall make available the outcome findings of the environmental impact assessment and of the authorisation granted to the public in an appropriate manner.

*Article X.9*

**Off-shore risk and safety**

1. The Parties shall ensure that the authorities competent for safety and environmental protection relating to offshore oil and gas operations are separate legal entities, and independent from any functions relating to economic development and licensing of offshore oil and gas operations.
2. Each Party shall 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. These conditions shall be based on high standards of safety and environmental protection for offshore oil and gas operations.
3. The Parties shall cooperate to promote internationally those high standards of safety and environmental protection for offshore oil and gas operations, by sharing information, increasing transparency and by disclosing information about industry safety and environmental performance.

*Article X.10*

**Third-party access to energy transport infrastructure**

1. Each Party shall ensure that owners or operators of transmission networks in its territory grant non-discriminatory access to the energy infrastructure for the transport of gas and electricity of any entity of the Parties. Access to the energy infrastructure shall be granted within a reasonable period of time from the date of the request for access by that entity.
2. Notwithstanding paragraph 1 of this Article, a Party may introduce or maintain in its laws and regulations a list of derogations from the right to third party access based on objective criteria provided that they are necessary to fulfil a legitimate policy objective.
3. Each Party shall ensure that entities of the Parties are accorded access to and use of energy transport infrastructure for the transport of gas and electricity on reasonable and non-discriminatory terms and conditions, including non-discrimination between types of energy, and at cost-reflective tariffs. Each party shall publish the terms, conditions and tariffs for the access to and use of energy transport infrastructure.

*Article X.11*

**Regulatory Authority**

Each Party shall maintain or establish an independent regulatory body or any other independent body that is legally distinct and functionally separate from, and not accountable to other authorities as well as to operators providing or entities having access to energy transport infrastructure, and which shall be entrusted to resolve disputes regarding appropriate terms, conditions and tariffs for access and use within a reasonable period of time.

*Article X.12*

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

1. Without prejudice to the commitments taken by the Parties in Articles X.7 (authorisation), X.12 (Third party access) and X.13 (Independent regulation), 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, the Parties shall ensure that its own network owners and 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;
  - b) allow the reliable use of the electricity network to supply electricity generated by renewable electricity suppliers of the other Party;

- c) provide balancing services;

where '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

- d) take appropriate grid and market-related operational measures 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 stability of the electricity system, based on objective and non-discriminatory criteria.

#### *Article X.13*

### **Safety and integrity of equipment and infrastructure**

Nothing in this Section shall be construed to prevent a Party from adopting temporary measures necessary to protect the safety and to preserve the integrity of energy equipment or infrastructure, subject to the requirement that such measures are not applied in a manner which would constitute a disguised restriction on trade or investment of the other Party.

#### *Article X.14*

### **Standards, technical regulations and conformity assessments**

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

#### *Article X.15*

### **Cooperation on Standards, Technical Regulations and Conformity Assessments**

In accordance with X (International Standards) and Article X (Regulatory Cooperation) of Chapter X (Technical Barriers to Trade), the Parties shall promote cooperation between the regulators and/or standardisation bodies located within their respective territories on the area of energy efficiency and sustainable renewable energy, with a view to contributing to sustainable energy and climate policy and facilitating, *inter alia*:

- a) the convergence, or harmonisation where possible, of their respective current standards on energy efficiency and sustainable renewable energy, based on mutual interest and reciprocity, and according to modalities to be agreed by the regulators and the standardisation bodies concerned;

- b) the development of common standards on energy efficiency and sustainable renewable energy;
- c) joint analysis, methodologies and approaches, to assist and facilitate the development of relevant tests and measurement standards, in cooperation with the relevant respective standardisation organisations; and
- d) the promotion of standards on equipment for sustainable renewable energy generation and energy efficiency, including product design and labelling, where appropriate, through existing international cooperation initiatives.

*Article X.16*

**Research, development and innovation**

The Parties shall promote research, development and innovation in the areas of energy efficiency and renewable energy and raw materials, and to this end the Parties shall, *inter alia*:

- a) promote the dissemination of information and best-practices on environmentally sound and economically efficient energy and raw materials policies, 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;
- b) promote research, development and application of energy-efficient and environmentally sound technologies, practices and processes in the areas of energy efficiency and renewable energy and raw materials, which would minimise harmful environmental impacts in the entire energy and raw materials chains; and
- c) promote bilateral cooperation in pre-normative research in the area of renewable energy equipment and energy efficiency.

*Article X.17*

**Cooperation on Energy and Raw Materials**

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

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

- d) promote corporate social responsibility in accordance with international standards, such as the OECD Guidelines for Multinational Enterprises and the respective Due Diligence Guidance;
- e) promote the values of responsible sourcing and mining globally as well as to maximise the contribution of their raw materials sectors and associated industrial value chains to the fulfilment of the UN Sustainable Development Goals;
- f) promote research, development, innovation and training in relevant fields of common interest in the area of energy goods and raw materials;
- g) foster exchange of information and best practices on domestic policy developments;
- h) promote 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) promote internationally high standards of safety and environmental protection for offshore oil, gas and mining operations, inter alia by increasing transparency, sharing information, including on industry safety and environmental performance.

## Annex I

### List of Energy Goods by HS code

coal (HS code .... ), crude oil (HS code .... ), oil products (HS code .... ), natural gas whether liquefied or not (HS code .... ), and electrical energy (HS code .... )

### List of Raw Materials by HS code

[to be further defined, but unprocessed and semi-processed products covered in the following chapters:]

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
31	Fertilisers
40	Rubber
41	Raw hides and skins (other than fur skins) and leather
44	Wood and articles of wood
45	Cork and articles of cork
47	Pulp of wood or of other fibrous cellulosic material
50	Silk
51	Wool, fine or coarse animal hair; horsehair yarn and woven fabric.
52	Cotton
53	Other vegetable textile fibres; paper yarn and woven fabrics of yarn
71	Natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metal, and articles thereof
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 ...), Natural gas (HS code ..)