

*This document contains an EU proposal for an Energy and Raw materials Chapter in the Trade Part of a possible modernised EU-Chile Association Agreement. It has been tabled for discussion with Chile. The actual text in the final agreement will be a result of negotiations between the EU and Chile. The EU reserves the right to make subsequent modifications to this proposal.*

## **EU-Chile Free Trade Agreement**

### **EU TEXTUAL PROPOSAL**

#### **ENERGY AND RAW MATERIALS CHAPTER**

## *Article 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 2*

### **Principles**

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.

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

## *Article 3*

### **Definitions**

For the purpose 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) "Monopoly" means [*as defined in the chapter on SOEs*];
- i) "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.

## **Section I. Monopolies and Pricing of Energy Goods and Raw Materials**

### *Article 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 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.

## **Section II. Regulatory Issues**

### *Article 6*

#### **Domestic regulated prices**

1. The price charged for the supply of energy goods and raw materials to industrial consumers shall be determined solely by supply and demand.
2. By way of derogation from paragraph 1 of this Article, the Parties may impose in the general economic interest<sup>2</sup> [*or Public Service Obligation*] an obligation on undertakings which relates to the price of supply of energy goods and raw materials, (hereinafter referred to as "regulated price").
3. The Parties shall ensure that this obligation is clearly defined, transparent, proportionate, non-discriminatory, verifiable and of limited duration. In applying this obligation, the Parties shall also guarantee equality of access to consumers for other undertakings.
4. Where the price, at which energy goods and raw materials are sold on the domestic market, is regulated, the Party concerned shall ensure that the methodology underlying

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<sup>1</sup> For greater certainty, this provision is without prejudice of the provisions in the [Trade in Services and Investment Chapter] and does not include any right that results from the grant of an exclusive intellectual property right.

<sup>2</sup> General economic interest is understood in the same sense as it is understood in Article 106 of the Treaty on the Functioning of the European Union and in particular as provided for in the case law of the EU Party.

the calculation of the regulated price is published prior to the entry into force of the regulated price.

#### *Article 7*

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

1. If a Party requires an authorisation to explore for or produce energy goods [hydrocarbons and electricity] and raw materials [ores and concentrates], 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 8*

##### **Transit**

The Parties shall take the necessary measures to facilitate transit, consistent with the principle of freedom of transit, and in accordance with Article V.2, V.4 and V.5 of GATT 1994 and Articles 7.1 and 7.3 of the Energy Charter Treaty of 1994, which are incorporated into and made part of this Agreement.

#### *Article 9*

##### **Interference and unauthorised taking**

1. Each Party shall take all necessary measures to prohibit the interruption, reduction or stoppage, or the unauthorised taking of energy goods in transit or transported through its territory. Measures targeted at the efficient management of the pipelines or the electricity grid, such as physical or virtual reverse flows are not covered by the scope of this

provision.

2. Each Party shall take all necessary measures to:

- a) minimise the risk of interruption, reduction, stoppage and unauthorised taking of energy goods in transit or transported through its territory; and
- b) expeditiously restore the normal operation of the transit or transport operation that has been interrupted, reduced or stopped.

3. In the event of a dispute, a Party shall not interrupt, reduce or stop, or permit or require any enterprise to interrupt, reduce or stop, the transport or transit of energy goods through its territory prior to the conclusion of the dispute, unless this is specifically provided for in a contract or other agreement governing the transport or transit of those goods.

#### *Article 10*

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

1. Each Party shall ensure that owners or operators of energy transport networks in its territory grant 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 a limited list of derogations from the right to third party access based on objective criteria set out in legislation, 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 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 12*

### **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.

### **Section III. Promotion of Renewable Energy and Energy Efficiency**

#### *Article 13*

#### **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 14*

#### **Research, development and innovation**

The Parties shall promote research, development and innovation in the areas of energy efficiency and renewable energy, 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 policies, and cost-effective practices and technologies in the areas of energy efficiency and renewable energy, 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, which would minimise harmful environmental impacts in the entire energy chain; and
- c) promote bilateral cooperation in pre-normative research in the area of renewable energy equipment and energy efficiency.

### **Section IV. Cooperation on Energy and Raw Materials**

#### *Article 15*

#### **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 efficient, renewable energy and raw materials;
- c) foster exchange of aggregated market data in the area of energy and raw materials;
- d) promote research, development and innovation in the areas of energy efficiency, renewable energy and raw materials;
- e) foster exchange of information and best practices on domestic policy developments;
- f) promote internationally high standards of safety and environmental protection for offshore oil, gas and mining operations, by increasing transparency, sharing information, including on industry safety and environmental performance.

*Annex I*

**List of Energy Goods by HS code**

*[to be further defined]*

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; cermet; articles thereof

**List of hydrocarbons by HS code**

*[to be further defined]*

Crude oil (HS code ...)

Natural gas (HS code ..)