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CHAPTER 12

ENERGY AND RESOURCES

ARTICLE 12.1

Objectives

The objectives of this Chapter are to facilitate trade and investment in energy and resources while maintaining high environmental, social and governance standards, and to support the energy transition and the Parties' respective net-zero greenhouse gas emissions objectives.

ARTICLE 12.2

Principles

1. Each Party retains the sovereign right to determine whether areas within its territory may be made available for exploring for and producing energy goods and resources.
2. Each Party preserves its right to adopt, maintain and enforce measures that are necessary to pursue legitimate public policy objectives, such as securing the supply of energy goods and resources within its territory, consistent with this Agreement.

ARTICLE 12.3

Definitions

For the purposes of this Chapter:

- (a) "authorisation" means the specific permission, license, concession or similar administrative or contractual instrument by which the competent authority of a Party authorises an entity to explore for or produce energy goods or resources in its territory;
- (b) "balancing" means:
 - (i) for the Union, 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; and
 - (ii) for Australia, actions and processes that seek to continuously ensure the maintenance of electricity system security in order to ensure operation within defined technical limits;
- (c) "covered enterprise" means a covered enterprise as defined in point (x) of Article 1.3 (General definitions);
- (d) "energy goods" means the goods from which energy is generated and that are listed by the corresponding HS code in Annex 12-A (List of energy goods, hydrocarbons and resources);
- (e) "energy infrastructure for the transport of electricity at transmission level" means, for Australia, transmission systems that are regulated under Chapter 6A of the National Electricity Rules, and the South West Interconnected System in Western Australia;¹

¹ For greater certainty, the term "energy infrastructure for the transport of electricity at transmission level" does not include small isolated electricity systems such as the currently regulated electricity systems in the Northern Territory.

- (f) "energy infrastructure for the transport of gas at transmission level" means, for Australia, transmission pipelines within the meaning of the National Gas Law other than those covered by clause 119, Schedule 3 of the National Gas Law that do not provide third-party access;
- (g) "energy transport infrastructure" means energy infrastructure for the transport of electricity at transmission level and energy infrastructure for the transport of gas at transmission level;
- (h) "entity" means any service supplier or investor as defined in points (q) and (k) of Article 9.2 (Definitions) respectively;
- (i) "hydrocarbons" means the goods that are listed by the corresponding HS code in Annex 12-A (List of energy goods, hydrocarbons and resources);
- (j) "non-discriminatory" means the national treatment obligation as specified in Article 9.6 (National treatment) and Article 9.14 (National treatment);²
- (k) "renewable energy" means energy produced from renewable non-fossil sources, including wind, solar (solar thermal and solar photovoltaic) and geothermal energy, osmotic energy, ambient energy, tidal energy, wave energy and other types of ocean energy, hydropower, biomass energy, energy generated from utilising landfill gas, sewage treatment plant gas, and biogas³;
- (l) "renewable fuels" means biofuels, biogases, bioliquids, biomass fuels and renewable fuels of non-biological origin such as renewable hydrogen and its derivatives; and
- (m) "resources" means materials used in the manufacture of industrial products, including ores, concentrates, slags, ashes and chemicals, processed, unwrought, and refined materials, metal waste, scrap and remelting scrap, which are covered by the corresponding HS code in Annex 12-A (List of Energy Goods, Hydrocarbons and Resources).⁴

² For greater certainty, for the purposes of Article 12.10, the term "non-discriminatory" does not prevent a Party from according to generators or producers of renewable energy more favourable treatment than it accords to other generators or producers.

³ This definition is without prejudice to sustainability requirements each Party may introduce in order to recognise energy as renewable.

⁴ For greater certainty, the term "resources" does not include agricultural, forestry or fisheries goods that are not used for the production of energy or industrial products.

ARTICLE 12.4

Regulated pricing

The Parties affirm their rights and obligations under Article 9.6 (National treatment), Article 9.10 (Non-conforming measures and exceptions), and Article 20.3 (Publication). In accordance with those rights and obligations, if a Party adopts a measure to regulate the price of domestic supply of electricity or natural gas to final customers, it shall, to the extent required by those Articles, ensure that such measure is transparent and is applied in a non-discriminatory manner.

ARTICLE 12.5

Authorisation for exploration and production of energy goods and resources

1. If a Party requires an authorisation, it shall ensure the requirements and procedures for granting the authorisation are established in advance made publicly available⁵, and are non-discriminatory between entities of each Party.
2. If a Party requires an authorisation in relation to hydrocarbons, it shall publish or make available on request, the information required for an interested entity to submit an application for that authorisation. Such information shall include:
 - (a) the type of authorisation required;
 - (b) the relevant area or part thereof in respect of which an authorisation may be sought; and
 - (c) if available, an indicative time frame for the processing of the application.
3. A Party may grant an authorisation in derogation from paragraph 2 in any of the following cases related to hydrocarbons:

⁵ For greater certainty, publishing the requirements and procedures for granting the authorisation would not require the Parties to publish all details of the internal assessment processes for assessing the application.

- (a) the area has been subject to a previous procedure which has not resulted in an authorisation being granted;
- (b) the area is permanently available for the exploration for or production of hydrocarbons; or
- (c) an authorisation granted in respect of the relevant area has been relinquished before its date of expiry.

4. A Party may require an entity which has been granted an authorisation to pay a financial contribution and a contribution in kind.

5. Each Party shall ensure that an applicant for an authorisation is provided with, or is provided with on request, the reasons for the rejection of its application to enable the applicant to have recourse to procedures for appeal or review. The procedures for such appeal or review shall be made publicly available in advance⁶.

6. This Article shall not apply to a measure that is, pursuant to Article 9.10 (Non-conforming measures and exceptions) or 9.17 (Non-conforming measures) not subject to an obligation under Section B (Investment liberalisation) or Section C (Cross-border trade in services) of Chapter 9 (Investment liberalisation and trade in services).

ARTICLE 12.6

Assessment of environmental impact

1. Each Party shall ensure that its laws and regulations require an environmental impact assessment for activities specified in Annex 12-B (Annex on assessment of environmental impact) related to the production or extraction of energy goods or resources, where such activities are likely to have a significant impact on the environment by reason of, *inter alia*, their nature, size or location.

⁶ For greater certainty, reference to "appeal or review" in this provision may refer to judicial, administrative or merit review procedures.

2. With respect to an environmental impact assessment referred to in paragraph 1, each Party shall, in accordance with its laws and regulations:

- (a) require that the significant effects of the activity on the environment are identified and assessed, as appropriate;
- (b) require that a timely opportunity is provided for relevant persons to participate in the environmental impact assessment process;
- (c) require a description of the features of the project or measures proposed in order to avoid, prevent or reduce likely significant adverse effects on the environment;
- (d) take into account the findings of the environment impact assessment prior to approving the activity; and
- (e) make publicly available the outcomes of the environmental impact assessment.

ARTICLE 12.7

Offshore risk and safety

1. Each Party affirms its rights and obligations under the UNCLOS and other relevant international agreements, relating to safety and environmental protection for offshore oil and gas operations, to which both Parties are party. In accordance with such rights and obligations, each Party shall take appropriate measures to prevent major accidents from offshore oil and gas operations and to limit the consequences of such accidents.

2. The Parties shall cooperate and exchange information, as appropriate, on their relevant regulatory systems for offshore oil and gas operations with the aim of maintaining high levels of safety and environmental protection for offshore oil and gas operations.

ARTICLE 12.8

Australian First Nations peoples' rights and interests in land and waters

1. The Parties reaffirm the principles expressed in the UNDRIP, in particular concerning Indigenous peoples' relationship to lands, territories and resources.
2. The Parties acknowledge that Australian law recognises Australian First Nations peoples' traditional rights and interests in land and waters.
3. The Parties acknowledge the importance of enhancing the ability of Australian First Nations people to participate in, and benefit from, Australia's energy transition.
4. Notwithstanding Article 12.5 (Regulated pricing), Article 12.6 (Authorisation for exploration and production of energy goods and resources), Article 12.7 (Assessment of environmental impacts) and Article 12.10 (Third-party access to energy transport infrastructure), Australia may adopt or maintain measures that accord preferences to any Australian First Nations person or organisation, or that provides for more favourable treatment of any Australian First Nations person or organisation relating to energy and resources.

ARTICLE 12.9

Third-party access to energy transport infrastructure

1. Each Party shall ensure that owners or operators of energy transport infrastructure or other entities holding relevant responsibility in relation to such infrastructure, in its territory grant non-discriminatory access to energy transport infrastructure for the transport of electricity generated or gas produced by any covered enterprise in its territory⁷, if regulatory and technical requirements are met, and if capacity is available in the energy transport infrastructure. A decision on access to the energy transport infrastructure shall be made within a reasonable period of time from the date of the request for access.

⁷ This Article shall only apply in respect of covered enterprises in the territory of a Party that comply with that Party's applicable laws and regulations.

2. Each Party shall ensure that any access to and use of energy transport infrastructure provided to a covered enterprise is on reasonable and non-discriminatory terms and conditions and at appropriately cost-reflective tariffs or at market-based tariffs⁸. Each Party shall ensure that any standard terms and conditions⁹, and any regulated tariffs or principles for determining negotiated tariffs for the access to and use of energy transport infrastructure are made publicly available.

3. Nothing in this Article shall prevent a Party from adopting or maintaining through its laws and regulations a derogation from paragraphs 1 or 2 that is designed to achieve a legitimate public policy objective,¹⁰ provided that such a derogation is:

(a) based on transparent criteria;

(b) non-discriminatory; and

(c) in the case of a derogation from paragraph 1, necessary to achieve that legitimate public policy objective.

4. As markets for renewable fuels and low carbon fuels continue to develop, each Party shall endeavour to apply the commitments set out in this Article with respect to transport infrastructure for such fuels.

5. This Article does not apply to a measure adopted or maintained with respect to Australia's Foreign Investment Framework which prohibits or otherwise conditions access to energy transport infrastructure by a covered enterprise, if entry [35 Foreign Investment Framework] to Annex 9-[D (Future measures)] applies to such a measure.

⁸ For greater certainty, in Australia, tariffs for energy infrastructure for the transport of gas are "market-based" to the extent that they are commercially negotiated or arbitrated in accordance with the regulatory framework in the National Gas Law and National Gas Rules. That regulatory framework applies to all potential users of the infrastructure in a non-discriminatory manner.

⁹ For greater certainty, "standard terms and conditions" does not include commercially negotiated terms and conditions.

¹⁰ For greater certainty, legitimate public policy objectives include, but are not limited to, supporting the deployment of renewable energy and maintaining the security or reliability of an energy system.

ARTICLE 12.10

Regulatory authority

For the purposes of Article 12.10 (Third-party access to energy transport infrastructure), each Party shall establish, maintain or designate one or more independent bodies that shall be entrusted to resolve disputes regarding appropriate terms, conditions and tariffs for access to, and use of, energy transport infrastructure within a reasonable period of time, and that shall:

- (a) act impartially and transparently; and
- (b) be legally distinct and functionally separate from operators, owners or users of energy transport infrastructure.

ARTICLE 12.11

Electricity generated from renewable energy sources

1. The Parties recognise the important contribution that renewable energy can make in reducing greenhouse gas emissions to mitigate climate change.
2. To this end, each Party shall seek to facilitate:
 - (a) investment in renewable energy generation; and
 - (b) the integration of renewable energy generation into electricity systems.
3. Each Party shall seek to ensure that owners or operators of energy infrastructure for the transport of electricity, or other entities holding relevant responsibility for the operation of the electricity system, within its territory provide or procure balancing services.

4. The Parties shall cooperate and exchange information, where reasonable, lawful and mutually agreed, on their respective regulatory systems to support the uptake of renewable energy.

ARTICLE 12.12

Research, development and innovation

1. Each Party shall endeavour to promote research, development and innovation in the areas of energy efficiency, and renewable energy and resources.

2. Each Party may encourage the dissemination of information and best-practice policies in the areas of energy efficiency, and renewable energy and resources, in a manner that is consistent with the adequate and effective protection of intellectual property rights.

ARTICLE 12.13

Cooperation

1. The Parties shall, subject to available resources and where mutually agreed, promote cooperation in the areas of energy and resources, including by:

- (a) enhancing investment, market access and minimising non-tariff barriers to trade;
- (b) enhancing mutual understanding in the areas of energy and resources, with a view to exchanging information on the Parties' regulatory policies;
- (c) encouraging activities that support corporate social responsibility in accordance with internationally-recognised standards; and
- (d) facilitating, as appropriate, consultation on the Parties' positions in multilateral or plurilateral fora where issues related to the areas of energy and resources may be raised and discussed.

ARTICLE 12.14

Cooperation on sustainable critical and strategic minerals

1. The Parties recognise their shared commitment to responsible sourcing and sustainable production of resources, including critical and strategic minerals, and their mutual interest to facilitate the integration of resources value chains. To this end, the Parties shall cooperate on relevant issues of mutual interest, including:

- (a) responsible mining practices and the sustainability of resources value chains;
- (b) resources value chains; and
- (c) research, development, and innovation activities covering the entire resources value chains, including cutting-edge technologies, smart mining and digital mines.

2. In order to support well-functioning, sustainable and resilient resources value chains, the Parties shall cooperate to promote the integration and development of their respective resources value chains, which may include facilitating and supporting investments in critical and strategic mineral projects. The Parties may exchange views on activities carried out under such cooperation within the framework of the Committee on Trade in Goods and Technical Barriers to Trade.

ARTICLE 12.15

Cooperation on renewable fuels

1. The Parties recognise the important contribution that renewable fuels including, *inter alia*, hydrogen, including its derivatives, and synthetic fuels of renewable origin, can make in reducing greenhouse gas emissions to address climate change.

2. The Parties shall cooperate in the area of renewable fuels, where mutually agreed, with a view to facilitating trade and investment, including by:

- (a) facilitating the development, adoption and implementation of relevant international standards and certification schemes to avoid the emergence of unnecessary barriers to trade, in particular with regard to greenhouse gas emissions and safety;
- (b) identifying, reducing and eliminating, as appropriate, measures that may unnecessarily impede bilateral trade in renewable fuels; and
- (c) promoting the use and production of renewable fuels and cooperating on associated supply chains.

ARTICLE 12.16

Rebalancing

1. The Parties affirm their respective:
 - (a) commitments to building competitive, diverse, resilient and sustainable global supply chains for energy goods and resources to support economic security and global decarbonisation; and
 - (b) rights to adopt and maintain measures necessary to secure their supply of energy goods and resources, including measures to strengthen the different stages of their energy goods and resources value chains, provided that such measures are adopted and maintained consistently with this Agreement as well as with each Party's other international obligations, including those under the WTO Agreement.
2. If a Party adopts or maintains a measure by which it imposes a higher price for exports of energy goods or resources to the other Party than the price charged for energy goods or resources when destined for its market, the other Party may deliver a written request for information and consultations regarding such a measure.
3. The written request referred to in paragraph 2 shall include:

- (a) a *prima facie* identification of the specific goods or sectors¹¹ that the requesting Party considers may be affected by the measure; and
- (b) a preliminary indication of the negative effect of the measure, or risk thereof, on the price, availability, import or production of specific goods referred to in point (a), or on the investment in the production of such goods, in the requesting Party.

4. The Party receiving the written request shall provide in writing the requested information no later than 30 days after the date of delivery of the request. If that Party is not able to provide any of the requested information, it shall explain its reasons for not doing so within the same period of time. The Parties shall enter into consultations no later than 60 days after the date of delivery of the request for information and consultations. The consultations shall be deemed concluded within 90 days of the date of delivery of the written request, unless the Parties agree otherwise. The consultations, and in particular all information designated as confidential and positions taken by the Parties during consultations, shall be confidential and shall be without prejudice to the rights of either Party in any further proceedings.

5. If the Parties do not reach a mutually agreed solution during the consultations referred to in paragraph 4, the requesting Party may, no earlier than 90 days from the date of delivery of the written request referred to in paragraph 2 and after giving notice to the Party receiving that written request, suspend, in whole or in part, the preferential tariff treatment under this Agreement in order to address the substantive negative effect¹² on the price, availability, import or production of specific goods referred to in paragraph 3, or on the investment in the production of such goods, in the requesting Party, or to prevent the risk of such effect, caused by the difference in price referred to in paragraph 2. The requesting Party shall assess such effect on the basis of objective information and analysis.

6. The suspension of preferential tariff treatment referred to in paragraph 5 shall be:

¹¹ For greater certainty, this and all subsequent references to goods or sectors in this Article also cover downstream goods or sectors.

¹² For greater certainty, the Parties understand that, for the purposes of the identification of the specific goods and investment in production thereof, and of such effect thereon, downstream products are also covered.

- (a) applicable only to the goods that are substantively negatively affected, or at risk thereof, by the measure referred to in paragraph 2, but not to any agricultural or fisheries good¹³;
- (b) proportionate, including with respect to its duration, to the substantive negative effect, or risk thereof, on the price, availability, import or production of the specific goods referred to in point (a) of this paragraph, or on the investment in the production of such goods, in the requesting Party; and
- (c) consistent with the requesting Party's obligations under the WTO Agreement.

7. The assessment of proportionality referred to in point (b) of paragraph (6) shall take into account any suspension of obligations applied by the requesting Party pursuant to a WTO ruling issued in its favour on the same measure. If such ruling is issued after the suspension of preferential tariff treatment pursuant to this Article has been applied, the Party shall adjust the applied suspension of preferential tariff treatment accordingly as appropriate.

8. This Article is without prejudice to each Party's rights and obligations under Chapter 24 (Dispute settlement). If a Party requests the establishment of a panel pursuant to Chapter 24 (Dispute settlement) in relation to a dispute concerning this Article, the panel shall treat that dispute as a matter of urgency pursuant to Article 24.11(2) (Decisions on urgency).

9. A Party may invoke Article 23.1 (General exceptions), Article 23.2 (Security exceptions) or Article XI:2(a) of GATT 1994, as incorporated into and made part of this Agreement *mutatis mutandis* pursuant to Article 2.11(1) (Import and export restrictions) in order to justify the measure referred to in paragraph 2.

10. Paragraphs 2 to 9 do not apply to the energy goods and resources listed in Annex 12-C (Annex on Article 12.16 (Rebalancing)).

¹³ For the purposes of this point, the term "agricultural good" means an agricultural product listed in Annex 1 to the Agreement on Agriculture and the term "fisheries good" means a fisheries product listed in HS Chapter 03 or HS headings 1604 and 1605.