

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

EU-Mexico Free Trade Agreement

EU TEXTUAL PROPOSAL

Energy and Raw Materials

Article 1

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. Consistent with the provisions of this Chapter, the Parties preserve their right to adopt, maintain and enforce measures necessary to pursue legitimate public policy objectives, such as securing the supply of energy goods, protecting society, the environment, public health and consumers and promoting public security and safety.

Article 2

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;
- 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;

Article 3

Export and Import monopolisation

No Party shall designate or maintain an 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 a good from or export a good to the other Party¹.

Article 4

Export pricing

A Party shall not adopt or maintain 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 5

Domestic pricing

1. The Parties may only regulate the price of the domestic supply of energy goods and raw materials (hereinafter referred to as "regulated price") by imposing a public service obligation.
2. When imposing a public service obligation, each Party shall ensure that the obligation:
 - a. is clearly defined, transparent and proportionate;
 - b. 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 6

Access to exploration and production of energy goods

1. When a Party requires an authorisation for exploration or production of energy goods, that Party shall ensure that such an authorisation is granted following a public procedure. That public procedure shall specify, *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.
2. Notwithstanding paragraph 1 of this Article, the Parties may grant authorisations without conducting a public procedure in any of the following cases:
 - a) the area has been subject to a previous public procedure which has not resulted in an authorization being granted;
 - b) the area is available on a permanent basis for the exploration for or production of energy goods; or;

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

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

3. 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 authorization.

4. Each Party shall provide that the applicant has the right to appeal to or review the decision concerning the authorization by an authority higher than or independent from the authority that issued the decision. Each Party shall ensure that the applicant is provided with the reasons for the administrative decision 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 published.

Article 7

Third-party access to energy transport infrastructure

1. Each Party shall ensure that owners or operators of transmission 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 8

Regulatory Authority

1. Each Party shall maintain or establish a regulatory body or any other independent body that is separate from, and not accountable 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 9

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 10

Performance requirements in the renewable energy sector

The derogations listed in Article [on “Performance Requirements“, 2-6 para 5(a)] shall not apply to projects in the renewable energy sector that are funded and governed by an agreement with an international organisation.

Article 11

Cooperation on Standards, Technical Regulations and Conformity Assessments

1. The Parties shall promote cooperation between the regulators and/or standardization 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 existing or applied 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 12

Mutual recognition of test results

When the Parties request test reports in order to verify compliance with technical regulations or standards on energy efficiency, the Parties shall accept the test reports on energy efficiency

issued by a laboratory accredited by an accreditation body signatory of the mutual recognition arrangements under the International Laboratory Accreditation Cooperation (ILAC) or International Accreditation Forum (IAF).

Article 13

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 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 research, development and innovation in the areas of energy efficiency, renewable energy and raw materials;
- f) foster exchange of information and best practices on domestic policy developments;
- g) 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
- h) 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 furskins) 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
