

CHAPTER 7

NON-TARIFF BARRIERS TO TRADE AND INVESTMENT IN RENEWABLE ENERGY GENERATION

ARTICLE 7.1

Objectives

In line with global efforts to reduce greenhouse gas emissions, the Parties share the objectives of promoting, developing and increasing the generation of energy from renewable and sustainable sources, particularly through facilitating trade and investment. To this effect, the Parties shall cooperate towards removing or reducing non-tariff barriers and fostering cooperation, taking into account, where appropriate, regional and international standards.

ARTICLE 7.2

Definitions

For the purposes of this Chapter:

- (a) "local content requirement" means:
 - (i) with respect to goods, a requirement for an enterprise to purchase or use goods of domestic origin or from a domestic source, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production;
 - (ii) with respect to services, a requirement which restricts the choice of the service supplier or the service supplied to the detriment of services or service suppliers from the other Party;
- (b) "measures requiring to form a partnership with local companies" means any requirements to jointly establish or operate with local companies a legal person, a partnership according to domestic law, a joint venture or to jointly enter into contractual relations such as business cooperation contracts with local companies;
- (c) "offset" means any undertaking that imposes the use of a local content requirement, local suppliers, technology transfer, investment, counter-trade or similar actions to encourage local development;

- (d) "renewable and sustainable sources" means sources in the form of wind, solar, geothermal, hydrothermal, ocean energy, hydropower with capacity of 50 megawatt or less, biomass, landfill gas, sewage treatment plant gas or biogases; it does not encompass products from which energy is generated; and
- (e) "service supplier" means any natural or legal person of a Party that supplies a service.

ARTICLE 7.3

Scope

1. This Chapter applies to measures which affect trade and investment between the Parties related to the generation of energy from renewable and sustainable sources.
2. This Chapter does not apply to research and development projects and to demonstration projects carried out on a non-commercial scale.
3. This Chapter does not apply to projects funded and governed by agreements with international organisations or foreign governments to which the procedures or conditions of those donors apply.

4. Subject to paragraph 5, this Chapter is without prejudice to the application of any other relevant provisions of this Agreement, including any exceptions, reservations or restrictions thereto, to the measures mentioned in paragraph 1, *mutatis mutandis*. For greater certainty, in the event of an inconsistency between this Chapter and other provisions of this Agreement, those provisions shall prevail to the extent of the inconsistency.

5. Paragraphs (a) and (b) of Article 7.4 (Principles) apply after five years from the date of entry into force of this Agreement.

ARTICLE 7.4

Principles

A Party shall:

- (a) refrain from adopting measures providing for local content requirements or any other offset affecting the other Party's products, service suppliers, investors or enterprises;
- (b) refrain from adopting measures requiring to form partnerships with local companies, unless those partnerships are deemed necessary for technical reasons and that Party can demonstrate those reasons upon request of the other Party;

- (c) ensure that any measures concerning the authorisation, certification and licensing procedures that are applied, in particular, to equipment, plants and associated transmission network infrastructures, are objective, transparent, non-arbitrary and do not discriminate amongst applicants from the Parties;
- (d) ensure that administrative fees and charges imposed on or in connection with the:
 - (i) importation and use of products originating in the other Party, by the other Party's suppliers are subject to Articles 2.16 (Administrative Fees, Other Charges, and Formalities on Imports and Exports) and 4.10 (Fees and Charges); and
 - (ii) provision of services by the other Party's suppliers are subject to Articles 8.19 (Scope and Definitions), 8.20 (Conditions for Licensing and Qualification) and 8.21 (Licensing and Qualification Procedures); and
- (e) ensure that the terms, conditions and procedures for the connection and access to electricity transmission grids are transparent and do not discriminate against suppliers of the other Party.

ARTICLE 7.5

Standards, Technical Regulations and Conformity Assessment

1. This Article applies to the products covered by the tariff headings listed in Annex 7-A (List of Tariff Headings). The Parties may agree to include other products in this list by exchange of letters.

2. If relevant international standards established by the International Organization for Standardization or the International Electrotechnical Commission exist, the Parties shall use those international standards, or their relevant parts, as a basis for any standard, technical regulation or conformity assessment procedure, except when those international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued. In those cases, a Party shall, upon request of the other Party, identify the part of the respective standard, technical regulation or conformity assessment procedure which substantially deviate from the relevant international standard and provide justification as to the reasons for the deviation.

3. If appropriate, the Parties shall specify technical regulations based on product requirements in terms of performance, including safety and environmental performance, rather than design or descriptive characteristics.

4. A Party accepting a supplier's declaration of conformity as a positive assurance of conformity shall endeavour not to require the submission of test results.

5. If a Party requires test reports, whether alone, as the basis of, or in conjunction with other assurances of conformity, or as positive assurance that a product is in conformity with its relevant standards or technical regulations, it shall endeavour to accept test reports in form of the International Electrotechnical Commission System of Conformity Assessment Schemes for Electrotechnical Equipment and Components (IECEE CB Scheme) Test Reports without requiring any further testing.

6. If a Party requires third party's certification for product, it shall endeavour to accept a valid CB Test Certificate under the IECEE CB Scheme as sufficient assurance of conformity without requiring any further conformity assessment or administrative procedures or approvals.

7. This Article is without prejudice to the Parties applying requirements not related to the products in question, such as zoning laws or building codes.

ARTICLE 7.6

Exceptions

1. This Chapter is subject to Articles 2.22 (General Exceptions), 8.54 (General Exceptions) and 9.3 (Security and General Exceptions).

2. Nothing in this Chapter shall be construed as preventing a Party from adopting or enforcing measures necessary for the safe operation of the energy networks concerned, or the safety of the energy supply, subject to the requirement that those measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties' products, service suppliers or investors under like circumstances, or a disguised restriction on trade and investment between the Parties.

ARTICLE 7.7

Implementation and Cooperation

1. The Parties shall cooperate and exchange information on any issues relating to the implementation of this Chapter in the relevant specialised committees established pursuant to Article 17.2 (Specialised Committees). The Trade Committee may decide to adopt appropriate implementing measures to this effect.

2. The Parties shall exchange information, regulatory experiences and best practices in areas such as:
 - (a) the design and non-discriminatory implementation of measures promoting the use of energy from renewable sources;

 - (b) technical regulations, standards and conformity assessment procedures, such as those relating to grid code requirements.

3. The Parties shall promote cooperation, with respect to domestic or regional technical regulations, regulatory concepts, standards, requirements and conformity assessment procedures which comply with international standards, in relevant regional *fora*.