

CHAPTER XX
Institutional, General and Final Provisions

Article X.1

Trade Committee

1. The Parties hereby establish a Trade Committee comprising representatives of the Union and Viet Nam.
2. The Trade Committee shall meet once a year, unless otherwise decided by the Trade Committee, or in urgent cases at the request of either Party. The meetings of the Trade Committee shall take place in the Union or Viet Nam alternately, unless otherwise agreed by the Parties. The Trade Committee shall be co-chaired by the Minister for Trade and Industry of Viet Nam and the Member of the European Commission responsible for Trade, or their respective delegates. The Trade Committee shall agree on its meeting schedule and set its agenda.
3. The Trade Committee shall:
 - (a) ensure that this Agreement operates properly;
 - (b) supervise and facilitate the implementation and application of this Agreement, and further its general aims;
 - (c) supervise and coordinate the work of all specialised committees, working groups and other bodies established under this Agreement, recommend to these bodies any necessary action, and evaluate and adopt decisions, where provided for in the Agreement, regarding any subject matter referred to it by these bodies;
 - (d) consider ways to further enhance trade and investment relations between the Parties;
 - (e) without prejudice to Chapter x (Dispute Settlement) and Chapter x (Investment Protection), seek to solve problems which might arise in areas covered by this Agreement, or resolve disputes that may arise regarding the interpretation or application of this Agreement; and
 - (f) consider any other matter of interest relating to areas covered by this Agreement as the Parties may agree.
4. The Trade Committee may in accordance with the relevant provisions of this Agreement:
 - (a) decide to establish or dissolve specialised committees, working groups or other bodies or allocate responsibilities to them in order to assist it in the performance of its tasks. The Trade Committee shall determine the composition, remit and tasks of the specialised committees, working group or other bodies it establishes;

- (b) communicate on issues falling under the scope of this Agreement with all interested parties including private sector, social partners, and civil society organisations;
 - (c) consider amendments to this Agreement or amend provisions of this Agreement in cases specifically provided for in this Agreement or recommend to the Parties amendments to this Agreement;
 - (d) adopt interpretations of the provisions of this Agreement, which shall be binding on the Parties and all bodies set up under this Agreement, including arbitration panels referred to under Chapter XX (Dispute Settlement) and tribunals established under Chapter XX (Investment Protection);
 - (e) adopt decisions or make recommendations as envisaged by this Agreement;
 - (f) adopt its own rules of procedure; and
 - (g) take any other action in the exercise of its functions as the Parties may agree.
5. The Trade Committee shall inform the Joint Committee set up under the Partnership and Cooperation Agreement as part of the common institutional framework on its activities and those of its specialised committees, as relevant, at regular meetings of the Joint Committee.

Article X.2

Specialised Committees

1. The following specialised committees are hereby established under the auspices of the Trade Committee.
 - (a) the Committee on Trade in Goods,
 - (b) the Committee on Services, Investment and Government Procurement;
 - (c) the Committee on Trade and Sustainable Development;
 - (d) the Committee on Sanitary and Phytosanitary Measures;
 - (e) the Committee on Customs.
2. The composition, remit and tasks of the above-mentioned specialised committees are defined in the relevant chapters and protocols of this Agreement and can be modified, if necessary, by the Trade Committee if both Parties so agree.
3. Unless otherwise provided for in this Agreement, the specialised committees shall meet once a year, or at the request of either Party or of the Trade Committee. They shall be co-chaired, at an appropriate level, by representatives of the Union and Viet Nam. The meetings shall take place alternately in the Union or Viet Nam, or by any other appropriate means of communication as agreed between the Parties. The specialised committees shall agree on their meeting schedule and set their agenda by mutual consent.

Each specialised committee may decide its own rules of procedures in the absence of which the rules of procedure of the Trade Committee shall apply *mutatis mutandis*.

4. The specialised committees may submit proposal for decision to be adopted by the Trade Committee or take decisions when the Agreement so provides.
5. At the request of a Party, or upon a reference from the relevant specialised committee, or when preparing a discussion in the Trade Committee, the Committee on Trade in Goods may address matters arising in the area of Customs and Sanitary and Phytosanitary Measures if doing so could facilitate the resolution of a matter that cannot otherwise be resolved by the relevant specialised committee.
6. The specialised committees shall inform the Trade Committee of their schedules and agenda sufficiently in advance of their meetings and shall report to the Trade Committee on results and conclusions from each of their meetings. The creation or existence of a specialised committee shall not prevent either Party from bringing any matter directly to the Trade Committee.

Article X.3

Working Groups

1. The following working groups are hereby established:
 - (a) the Working group on Intellectual Property Rights, including Geographical Indications under the auspices of the Committee on Trade in Goods;
 - (b) The Working group on Motor Vehicles and Parts under the auspices of the Committee on Trade in Goods;
 - (c) Other working groups for a specific task or subject matter as decided by the Trade Committee.
2. The Trade Committee shall determine the composition, remit and tasks of the Working groups.
3. Unless otherwise provided for in this Agreement, the Working groups shall meet once a year, or at the request of either Party or of the Trade Committee. They shall be co-chaired, at an appropriate level, by representatives of the Union and Viet Nam. The meetings shall take place alternately in the Union or Viet Nam, or by any other appropriate means of communication as agreed between the Parties. The Working groups shall agree on their meeting schedule and set their agenda by mutual consent. They may agree their own rules of procedures in the absence of which the rules of procedure of the Trade Committee shall apply *mutatis mutandis*.
4. Working groups shall inform the relevant specialised committees of their schedule and agenda sufficiently in advance of their meetings. They shall report on their activities at each regular meeting of the relevant specialised committees. The creation or existence of a Working group shall not prevent either Party from bringing any matter directly to the Trade Committee or the relevant specialised committees.

Article X.4

Evolving WTO Law

If any provision of the WTO Agreement that the Parties have incorporated into this Agreement is amended, the Parties shall consult with each other with a view to finding a mutually satisfactory solution, where necessary. As a result of such a review, the Trade Committee may amend this Agreement accordingly.

Article X.5

Decision-making of the Trade Committee

1. The Trade Committee shall, for the purpose of attaining the objectives of this Agreement, have the power to take decisions, where provided for in this Agreement. The decisions taken shall be binding on the Parties, which shall take the measures necessary to implement the decisions taken.
2. The Trade Committee may make appropriate recommendations, where provided for in this Agreement.
3. All decisions and recommendations of the Trade Committee shall be taken by mutual agreement.

Article X.6

Amendments

1. The Parties may decide to amend this Agreement. An amendment shall enter into force after the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures as set provided for in Article X.15 (Entry into force).
2. Notwithstanding paragraph 1, the Trade Committee may decide to amend this Agreement as referred to in Article 21 paragraph 4 lit. e) of the Chapter on Trade in Goods; Article 24 paragraph 2 lit c) of the Chapter on Investment Protection (ISDS) and Article 26 of the Chapter on Dispute Settlement. The Parties shall adopt the decision of the Trade Committee subject to their respective domestic requirements and procedures.

Article X.7

Taxation

1. Nothing in this Agreement shall affect the rights and obligations of either Viet Nam or the Union or one of its Member States under any tax agreement between Vietnam and

any Member State or States of the Union. In the event of any inconsistency between this Agreement and any such agreement, that agreement shall prevail to the extent of the inconsistency.

2. Nothing in this Agreement shall be construed to prevent the Parties from distinguishing, in the application of the relevant provisions of their fiscal legislation, between taxpayers who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested.
3. Nothing in this Agreement shall be construed to prevent the adoption or enforcement of any measure aimed at preventing the avoidance or evasion of taxes pursuant to the tax provisions of agreements to avoid double taxation or other tax arrangements or domestic fiscal legislation.

Article X.8

Current Account

The Parties shall authorise, in freely convertible currency, and in accordance with the provisions of the Articles of the Agreement of the International Monetary Fund, as applicable, any payments and transfers with regard to transactions on the current account of the balance of payments between the Parties, in particular relating to their respective specific commitments.

Article X.9

Capital Movements

1. With regard to transactions on the capital and financial account of balance of payments, the Parties shall not impose any restrictions on the free movement of capital relating to investments liberalised in accordance with Chapter II Section 1 [Liberalisation of investments] of Title XX [Trade in Services, Investment and E-Commerce].
2. The Parties shall consult each other with a view to facilitating the movement of capital between them in order to promote trade and investment.

Article X.10

Application of laws and regulations relating to capital movements, payments or transfers

Article 17 (Transfers) of Section 2 [Investment Protection], Articles X.8 and X.9 of this Chapter shall not be construed to prevent a Party from applying in an equitable and non-discriminatory

manner, and not in a way that would constitute a disguised restriction on trade and investment, its laws and regulations relating to:

- (a) bankruptcy, insolvency, bank recovery and resolution, or the protection of the rights of creditors, and the prudential supervision of financial institutions;
- (b) issuing, trading, or dealing in financial instruments;
- (c) financial reporting or record keeping of transfers where necessary to assist law enforcement or financial regulatory authorities;
- (d) criminal or penal offenses, deceptive or fraudulent practices;
- (e) ensuring the satisfaction of judgments in adjudicatory proceedings.
- (f) social security, public retirement or compulsory savings schemes.

Article X.11

Temporary safeguard measures with regard to capital movements, payments or transfers

In exceptional circumstances of serious difficulties for the operation monetary and exchange rate policy, in the case of Vietnam, or for the operation of the Union's economic and monetary union, or threat thereof safeguard measures that are strictly necessary may be taken by the Party concerned with regard to capital movements, payments or transfers for a period not exceeding one year.

Article X.12

Restrictions in case of balance of payments or external financial difficulties

1. Where a Party experiences serious balance-of-payments or external financial difficulties, or threat thereof, it may adopt or maintain safeguard measures with regard to capital movements, payments or transfers, which shall:
 - (a) be non-discriminatory compared to third parties in like situations;
 - (b) not go beyond what is necessary to remedy the balance-of-payments or external financial difficulties;
 - (c) be consistent with the Articles of Agreement of the International Monetary Fund, as applicable;

- (d) avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
 - (e) be temporary and phased out progressively as the situation improves.
- 2. In the case of trade in goods, each Party may adopt restrictive measures in order to safeguard its external financial position or balance-of-payments. These restrictive measures shall be in accordance with the General Agreement on Trade and Tariffs (GATT) and the Understanding on the Balance of Payments provisions of the GATT 1994.
- 3. In the case of trade in services or the liberalisation of investments, each Party may adopt restrictive measures in order to safeguard its external financial position or balance of payments. These restrictive measures shall respect the conditions mentioned in Article XII of the General Agreement on Trade in Services (GATS).
- 4. A Party maintaining or having adopted measures referred to in paragraphs 1 to 3 shall promptly notify the other Party of them and present, as soon as possible, a time schedule for their removal.
- 5. Where the restrictions are adopted or maintained under this Article, consultations shall be held promptly in the Committee on Trade in Services and Investment unless consultations are held in other *fora*. The consultations shall assess the balance-of-payments or external financial difficulty that led to the respective measures, taking into account, *inter alia*, such factors as:
 - (a) the nature and extent of the difficulties;
 - (b) the external economic and trading environment; or
 - (c) alternative corrective measures which may be available.

The consultations shall address the compliance of any restrictive measures with paragraphs 1 to 3. All relevant findings of statistical or factual nature presented by the IMF shall be accepted and conclusions shall take into account the assessment by the IMF of the balance-of-payments and the external financial situation of the Party concerned.

Article X.13

Security Exceptions

Nothing in this Agreement shall be construed:

- (a) to require either Party to furnish any information, the disclosure of which it considers contrary to its essential security interests;
- (b) to prevent either Party from taking any action which it considers necessary for the protection of its essential security interests:
 - (i) connected with the production of or trade in arms, munitions and war materials and related to traffic in other goods and materials and to economic activities carried out directly or indirectly for the purpose of provisioning a military establishment;
 - (ii) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;
 - (iii) relating to fissionable and fusionable materials or the materials from which they are derived; or
 - (iv) taken in time of war or other emergency in international relations;
- (c) to prevent either Party from taking any action in pursuance of its obligations under the UN Charter for the purpose of maintaining international peace and security.

Article X.13bis

Preference Utilisation

Starting from one year after the entry into force of this Agreement, the Parties shall exchange import statistics including figures at tariff line level on preferential and on all non-preferential imports of goods.

Article X.14

Disclosure of Information

1. Nothing in this Agreement shall be construed to require a Party to make available confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private except where a panel requires confidential information in dispute settlement proceedings under Chapter X [DS]. In such cases, the panel shall ensure that confidentiality is fully protected.
2. When a Party submits information to the Trade Committee or to specialised committees which is considered as confidential under its laws and regulations, the other Party shall treat that information as confidential, unless the submitting Party agrees otherwise.

Article X.15

Entry into Force

1. This Agreement shall be approved by the Parties in accordance with their respective procedures.
2. This Agreement shall enter into force on the first day of the second month following the date on which the Parties have notified each other that they have completed their respective applicable legal requirements and procedures for the entry into force of this Agreement. The Parties may by mutual agreement fix another date.
3. Notifications shall be sent to the Secretary General of the Council of the Union and to the Director-General, [Europe Market Department], Ministry of Industry and Trade of Viet Nam.
4. (a) This Agreement shall be provisionally applied from the first day of the month following the date on which the Union and Viet Nam have notified each other of the completion of their respective relevant procedures. The Parties may by mutual agreement fix another date.
(b) In the event that certain provisions of this Agreement cannot be provisionally applied, the Party which cannot undertake such provisional application shall notify the other Party of the provisions which cannot be provisionally applied.

Notwithstanding subparagraph 4(a), provided the other Party has completed the necessary procedures and does not object to provisional application within ten days of the notification that certain provisions cannot be provisionally applied, the provisions of this Agreement which have not been notified shall be provisionally applied the first day of the month following the notification.

- (c) A Party may terminate provisional application by written notice to the other Party. Such termination shall take effect on the first day of the second month following notification.
- (d) Where this Agreement, or certain provisions thereof, is provisionally applied, the term “entry into force of this Agreement” shall be understood to mean the date of provisional application. The Trade Committee and other bodies established under this Agreement may exercise their functions during the provisional application of this Agreement. Any decisions adopted in the exercise of these functions will only cease to be effective if the provisional application of this Agreement is terminated and this Agreement does not enter into force.

Article X.16

Duration

1. This Agreement shall be valid indefinitely.

2. Either Party may notify in writing the other Party of its intention to terminate this Agreement.
3. The denunciation shall take effect six months after the notification under paragraph 2 by the other Party.

Article X.17

Fulfilment of Obligations

1. The Parties shall take any general or specific measures required to fulfil their obligations under this Agreement. They shall see to it that the objectives set out in this Agreement are attained.
2. If either Party considers that the other Party has committed a material breach of the Partnership and Cooperation Agreement it may take appropriate measures with respect to this Agreement in accordance with Article 57 of the Partnership and Cooperation Agreement.

Article X.18

Persons Exercising Delegated Government Authority

Unless otherwise specified in this Agreement, each Party shall ensure that any person including a state owned enterprises, an enterprise granted special rights or privileges or a designated monopoly that has been delegated regulatory, administrative or other governmental authority by a Party at any level of government as provided for in its domestic laws and regulations, acts in accordance with the Party's obligations as set out under this Agreement in the exercise of that authority.

Article X.19

No Direct Effect

For greater certainty, nothing in this Agreement shall be construed as conferring rights or imposing obligations on persons, other than those created between the Parties under public international law. Vietnam may provide otherwise under Vietnamese domestic law.

Article X.20

Annexes, Appendices, Joint Declarations, Protocols and Understandings

The Annexes, Appendices, Joint Declarations, Protocols and Understandings to this Agreement shall form an integral part thereof.

Article X.21

Relations with Other Agreements

1. Unless specified otherwise under this Agreement, previous agreements between the Member States of the Union and/or the European Community and/or the Union and Viet Nam are not superseded or terminated by this Agreement.
2. This Agreement shall be part of the overall bilateral relations as provided for in the Partnership and Cooperation Agreement and it shall form part of the common institutional framework.
3. The Parties agree that nothing in this Agreement requires them to act in a manner inconsistent with their obligations under the WTO Agreement.

Article X.22

Future Accessions to the Union

1. The Union shall notify Viet Nam of any request for accession of a third country to the Union.
2. During the negotiations between the Union and the candidate country seeking accession, the Union shall endeavour to:
 - (a) provide, upon request of Viet Nam, and to the extent possible, any information regarding any matter covered by this Agreement; and
 - (b) take into account any concerns expressed.
3. The Union shall notify Viet Nam of the entry into force of any accession to the Union.
4. The Trade Committee shall examine sufficiently in advance to the date of accession of a third country to the Union any effects of such accession on this Agreement. The Parties may, by decision in the Trade Committee, put in place any necessary adjustments or transition arrangements.

Article X.23

Territorial Application

1. This Agreement shall apply:
 - (a) with respect to the Union, to the territories in which the *Treaty on European Union* and *the Treaty on the Functioning of the European Union* are applied and under the conditions laid down in those Treaties; and
 - (b) with respect to Viet Nam, to its territory.References to “territory” in this Agreement shall be understood in this sense, except as otherwise expressly provided.
2. As regards those provisions concerning the tariff treatment of goods, this Agreement shall also apply to those areas of the Union customs territory not covered by subparagraph 1(a).

Article X.24

Authentic Texts

This Agreement is drawn up in duplicate in the Bulgarian, Croatian, Czech, Estonian, Danish, Dutch, English, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish and Vietnamese languages, each of these texts being equally authentic.

JOINT DECLARATION

The Union recalls the obligations of those countries that have established a customs union with the Union to align their trade regime to the one of the Union, and for certain of them, to conclude preferential agreements with countries having preferential agreements with the Union.

In this context, the Parties note that Vietnam shall favourably consider to start negotiations with those countries which

- (a) have established a customs union with the Union, and
- (b) whose products do not benefit from the tariff concessions under this Agreement,

with a view to concluding a bilateral agreement establishing a free trade area in accordance with Article XXIV of the GATT 1994. Vietnam shall favourably consider to start negotiations as soon as possible with a view to having the above-mentioned agreements entering into force as quickly as possible after the entry into force of this Agreement.