

CHAPTER 17

INSTITUTIONAL, GENERAL AND FINAL PROVISIONS

ARTICLE 17.1

Trade Committee

1. The Parties hereby establish a Trade Committee comprising representatives of the Parties.

2. The Trade Committee shall meet once a year, unless otherwise decided by the Trade Committee, or in urgent cases at the request of a Party. The meetings of the Trade Committee shall take place alternately in the Union and Viet Nam, unless otherwise agreed by the Parties. The Trade Committee shall be co-chaired by the Minister of Industry and Trade 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 the proper operation of this Agreement;

 - (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 those bodies any necessary action, and evaluate and adopt decisions, where provided for in this Agreement, regarding any subject matter referred to it by those bodies;
- (d) consider ways to further enhance trade and investment relations between the Parties;
- (e) without prejudice to Chapter 15 (Dispute Settlement), 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.

4. The Trade Committee may, in accordance with the relevant provisions of this Agreement:

- (a) decide to establish specialised committees, working groups or other bodies, to allocate responsibilities to them in order to assist it in the performance of its tasks, and to dissolve them. The Trade Committee shall determine the composition, remit and tasks of the specialised committees, working groups or other bodies it establishes;
- (b) communicate on issues falling under the scope of this Agreement with all interested parties, including the private sector, social partners, and civil society organisations;

- (c) consider and recommend to the Parties amendments to this Agreement or, in cases specifically provided for in this Agreement, amend, by decision, provisions of 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 15 (Dispute Settlement);
- (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 in accordance with this Agreement.

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 the regular meetings of the Joint Committee.

ARTICLE 17.2

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 Customs;
- (c) the Committee on Sanitary and Phytosanitary Measures;
- (d) the Committee on Investment, Trade in Services, Electronic Commerce and Government Procurement; and
- (e) the Committee on Trade and Sustainable Development.

2. The composition, remit and tasks of the specialised committees referred to in paragraph 1 are defined in the relevant chapters and protocols of this Agreement and can be modified, if necessary, by decision of the Trade Committee.

3. Unless otherwise provided for in this Agreement or agreed by the Parties, the specialised committees shall meet once a year. They shall also meet 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 and 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 procedure in the absence of which the rules of procedure of the Trade Committee shall apply *mutatis mutandis*.

4. The specialised committees may submit proposals for decisions to be adopted by the Trade Committee or take decisions when this 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 areas of customs and sanitary and phytosanitary measures if this 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 of their meetings. The existence of a specialised committee shall not prevent either Party from bringing any matter directly to the Trade Committee.

ARTICLE 17.3

Working Groups

1. The following working groups are hereby established under the auspices of the Committee on Trade in Goods:
 - (a) the Working Group on Intellectual Property Rights, including Geographical Indications;
and
 - (b) the Working Group on Motor Vehicles and Parts.
2. The Trade Committee may decide to establish other working groups for a specific task or subject matter.
3. The Trade Committee shall determine the composition, remit and tasks of the working groups.
4. Unless otherwise agreed by the Parties, working groups shall meet once a year. They shall also meet at the request of either Party or of the Trade Committee. They shall be co-chaired, at 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 procedure in the absence of which the rules of procedure of the Trade Committee shall apply *mutatis mutandis*.

5. Working groups shall inform the relevant specialised committees of their schedules and agenda sufficiently in advance of their meetings. They shall report on their activities at each regular meeting of the relevant specialised committees. The 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 17.4

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 for the implementation of these decisions.
2. The Trade Committee may make appropriate recommendations to the Parties.
3. All decisions and recommendations of the Trade Committee shall be made by mutual consent.

ARTICLE 17.5

Amendments

1. The Parties may amend this Agreement. An amendment shall enter into force after the Parties exchange written notifications certifying that they have completed their respective applicable legal procedures as provided for in Article 17.16 (Entry into Force).

2. Notwithstanding paragraph 1, the Trade Committee may amend this Agreement as provided for in this Agreement. The Parties shall adopt the decision in the Trade Committee in accordance with their respective applicable legal procedures.

3. Notwithstanding paragraph 1, the list of entities in Sections A (Central Government Entities) to C (Other Covered Entities) of Annexes 9A (Coverage of Government Procurement for the Union) and 9B (Coverage of Government Procurement for Viet Nam) may be modified in accordance with Articles 9.20 (Modification and Rectification to Coverage) and 9.23 (Committee on Investment, Trade in Services, Electronic Commerce and Government Procurement).

ARTICLE 17.6

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 take a decision to amend this Agreement accordingly.

ARTICLE 17.7

Taxation

1. Nothing in this Agreement shall affect the rights and obligations of either the Union or one of its Member States or Viet Nam under any tax agreement between any Member State of the Union and Viet Nam. In the event of any inconsistency between this Agreement and any tax agreement, that tax 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 17.8

Current Account

The Parties shall authorise, in freely convertible currency, and in accordance with the provisions of *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 which fall within the scope of this Agreement, in particular relating to their respective specific commitments under Sub-Section 6 (Financial Services) of Section E (Regulatory Framework) of Chapter 8 (Liberalisation of Investment, Trade in Services and Electronic Commerce).

ARTICLE 17.9

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 Section B (Liberalisation of Investment) of Chapter 8 (Liberalisation of Investment, Trade in Services and Electronic 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 17.10

Application of Laws and Regulations relating to Capital Movements, Payments or Transfers

Articles 17.8 (Current Account) and 17.9 (Capital Movements) shall not be construed to prevent a Party from applying in an equitable and non-discriminatory manner, and in a way that would not constitute a disguised restriction on trade and investment, its laws and regulations relating to:

- (a) bankruptcy, insolvency, bank recovery and resolution, the protection of the rights of creditors, or 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; or
- (f) social security, public retirement or compulsory savings schemes.

ARTICLE 17.11

Temporary Safeguard Measures with Regard to Capital Movements, Payments or Transfers

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

ARTICLE 17.12

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 a 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 countries 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; and
 - (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. Those restrictive measures shall be in accordance with GATT 1994 and the *Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 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 its balance-of-payments. Those restrictive measures shall respect the conditions mentioned in Article XII of GATS.

4. A Party maintaining or having adopted the 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 restrictions are adopted or maintained under this Article, consultations shall be held promptly in the Committee on Investment, Trade in Services, Electronic Commerce and Government Procurement 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 17.13

Security Exceptions

Nothing in this Agreement shall be construed as:

- (a) requiring either Party to furnish information, the disclosure of which it considers contrary to its essential security interests;
- (b) preventing 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 relating 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 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;
- or
- (c) preventing a Party from taking any action in pursuance of its obligations under the *United Nations Charter* for the purpose of maintaining international peace and security.

ARTICLE 17.14

Preference Utilisation

After one year from the date of entry into force of this Agreement, the Parties shall exchange by 1 July each year annual import statistics for the previous year, including figures at tariff line level, on preferential and on non-preferential trade in goods between them.

ARTICLE 17.15

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 15 (Dispute Settlement). In such cases, the panel shall ensure that confidentiality is fully protected.
2. When a Party submits to the Trade Committee or to specialised committees information 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 17.16

Entry into Force

1. This Agreement shall be approved by the Parties in accordance with their respective applicable legal 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 of the completion of their applicable legal procedures for the entry into force of this Agreement. The Parties may agree on another date.

3. Notifications shall be sent to the Secretary-General of the Council of the European Union and to the Ministry of Industry and Trade of Viet Nam.

ARTICLE 17.17

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. The termination shall take effect at the end of the sixth month after the notification.

ARTICLE 17.18

Fulfilment of Obligations

1. The Parties shall take any general or specific measures required to fulfil their obligations under this Agreement. They shall ensure that the objectives set out in this Agreement are attained.

2. If a 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 17.19

Persons Exercising Delegated Government Authority

Unless otherwise specified in this Agreement, each Party shall ensure that any person, including a state-owned enterprise, 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 legislation, acts in accordance with the Party's obligations as set out under this Agreement in the exercise of its authority.

ARTICLE 17.20

No Direct Effect

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. Viet Nam may provide otherwise under its domestic law.

ARTICLE 17.21

Annexes, Appendices, Joint Declarations, Protocols and Understanding

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

ARTICLE 17.22

Relations to other Agreements

1. Unless otherwise provided for in this Agreement, previous agreements between the Member States of the Union or the European Community or the Union and Viet Nam are not superseded or terminated by this Agreement.
2. This Agreement shall be part of the overall relations between the Union and its Member States, on one side, and Viet Nam, on the other side, as provided for in the Partnership and Cooperation Agreement and shall form part of the common institutional framework.
3. Nothing in this Agreement shall be construed as requiring a Party to act in a manner inconsistent with its obligations under the WTO Agreement.

ARTICLE 17.23

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 a candidate country seeking accession, the Union shall endeavour to:
 - (a) provide, upon request of Viet Nam, and to the extent possible, information regarding any matter covered by this Agreement; and
 - (b) take into account concerns expressed by Viet Nam.
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 of the date of accession of a third country to the Union, any effects which that accession may have on this Agreement. The Parties may, by decision of the Trade Committee, put in place any necessary adjustments or transitional arrangements.

ARTICLE 17.24

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 for.

2. As regards the 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 17.25

Authentic Texts

This Agreement is drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, 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.

Done at [.....] on [.....]

For the European Union

For the Socialist Republic of Viet Nam