

[ ENGLISH TEXT — TEXTE ANGLAIS ]

AGREEMENT BETWEEN THE GOVERNMENT OF CANADA AND THE  
GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM ON  
TRADE AND COMMERCE

The Government of Canada and the Government of the Socialist Republic of Vietnam (hereinafter referred to collectively as "Parties" and individually as "Party");

Convinced that the development of bilateral trade in goods and services will contribute to increased mutual understanding and cooperation between the people of Canada and of Vietnam;

Being desirous of promoting and facilitating the development of trade and commerce between the two Parties to their mutual advantage;

Conscious that trade and commercial relations are essential elements of the bilateral relationship between Canada and Vietnam;

Recognizing that the economic restructuring and progress towards a market-based economy in Vietnam is creating additional possibilities for expanded bilateral trade;

Conscious of the existing levels of economic and trade development of the Parties;

Noting Canada's status as a Contracting Party to the General Agreement on Tariffs and Trade (GATT)<sup>1</sup> and Vietnam's status as an Observer to the GATT; and

Looking forward to the accession of Vietnam to the GATT on terms to be agreed between Vietnam and the GATT Contracting Parties,

Have agreed as follows:

*Article I. Objectives*

The objectives of this Agreement, as elaborated more specifically in its provisions, are:

1. To establish a framework of balanced rights and obligations and agreed rules for the conduct of trade and commercial relations between Canada and Vietnam;
2. To secure the conditions and promote the increase and development of two-way trade between the Parties in their mutual interest; and
3. To support the sustainable economic development of the Parties and enhance trade co-operation between them in their mutual interest.

*Article II. Definitions*

Person

"Person" means a citizen or permanent resident of a Party or a body corporate constituted under the laws applicable in, or principally carrying on its business within, the territory of a Party.

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1. United Nations, Treaty Series, vol. 55, p. 187.

Territory

"Territory" means:

With respect to Canada, the territory to which its customs laws apply, including any areas beyond the territorial seas of Canada within which, in accordance with international law and its domestic laws, Canada may exercise rights with respect to the seabed and sub-soil and their natural resources; and

With respect to Vietnam, the territory to which its customs laws apply, including any areas beyond the territorial sea of Vietnam within which, in accordance with international law and its domestic laws, Vietnam may exercise rights with respect to the seabed and sub-soil and their natural resources.

Textile products

"Textile products" means tops, yarns, piece-goods, made-up articles, garments and other textile manufactured products (being products which derive their chief characteristics from their textile components) of cotton, wool, man-made fibres, or blends thereof, in which any or all of those fibres in combination represent either the chief value of the fibres or fifty (50) percent or more by weight (or seventeen (17) percent or more by weight of wool) of the product; artificial and synthetic staple fibre, tow, waste, simple mono- and multi-filaments, as well as textiles made of vegetable fibres, blends of vegetable fibres with fibres specified above, and blends containing silk, which are directly competitive with textiles made of fibres specified above and for which any or all of those fibres in combination represent either the chief value of the fibres or 50 (fifty) per cent or more by weight of the products.

Third country

"Third country" means any country other than Canada or Vietnam.

Transit

"Transit" means the passage across the territory of a country, with or without trans-shipment, warehousing, breaking bulk, or change in the mode or means of transport, when such passage is only a portion of a complete journey beginning and terminating beyond the frontier of the country across whose territory the traffic passes.

*Article III. Most-Favoured-Nation Treatment*

1. Any advantage, favour, privilege or immunity granted by either of the Parties to any product originating in or destined for any third country shall be accorded immediately and unconditionally to the like product originating in or destined for the territory of the other Party with respect to:

(a) Customs duties and charges of any kind imposed on or in connection with importation or exportation of products or imposed on the international transfer of payments for imports or exports;

(b) The method of levying the duties and charges referred to in clause (a) of this paragraph;

(c) The rules and formalities connected with their importation or exportation;

(d) All internal taxes or internal charges of any kind imposed in connection with imported or exported products; and

(e) All laws, regulations and requirements affecting sale, offering for sale, purchase, transportation or distribution of imported products within the territory of the Party.

2. No prohibition or restriction, whether made effective through quotas, import or export

licenses or other measures, shall be instituted or maintained by either Party on the importation of any product of the other Party or on the exportation or sale for export of any product destined for the territory of the other Party unless the importation of the like product of all third countries or the exportation of the like product to the territory of all third countries is similarly prohibited or restricted.

3. Each Party shall accord to the other Party and persons of the other Party treatment no less favourable than it accords to any third country or the persons of any third country in all matters relating to the allocation of foreign exchange for transactions involving the importation and exportation of products and in the administration of foreign exchange regulations in relation to such transactions.

4. The most-favoured-nation treatment provisions of this Agreement shall not apply to advantages now accorded, or which may hereafter be accorded, by either Party resulting from:

(a) Membership in a customs union or free trade area to which either Party is now or may become a party;

(b) Preferences or advantages granted to third countries and authorized under the General Agreement on Tariffs and Trade (GATT) or under other international agreements consistent with the GATT;

(c) Advantages accorded by Canada to countries and their overseas dependencies that are entitled to benefits of the British Preferential Tariff (BPT);

(d) Advantages that are accorded to third countries on a reciprocal basis in accordance with the Agreement Establishing the World Trade Organization and subsequent arrangements concluded thereunder; or

(e) Advantages accorded by either Party to adjacent countries in order to facilitate frontier traffic.

5. Notwithstanding subparagraphs 4(b) and (d), treatment accorded by Canada to all third countries with respect to any matter under those subparagraphs shall be accorded to Vietnam. Any preference or advantage under subparagraphs 4(b) and (d) which might adversely affect trade between the Parties shall, at the request of either Party, be the subject of consultations under Article XIV.

#### *Article IV. Trade Facilitation*

1. The Parties shall assist their respective business enterprises in respect of co-operation and joint ventures in manufacturing and processing for export to third countries in their mutual interest.

2. With respect to articles and samples imported for display at a fair or exhibition, the laws and regulations of the country where such fair or exhibition is held shall govern:

(a) Any exemption from customs duties or other similar charges; and

(b) Any entry of the articles or samples into the commerce of the importing country.

3. In accordance with applicable laws and regulations in force in the territory of each Party, each Party shall facilitate the freedom of transit, via the established routes most convenient for international transit, of products of the other Party across its territory. Products in transit across the territory of a Party that are not released from customs control and have not entered into the commerce of such Party shall not be subject to any unnecessary delays or restrictions and shall be exempt from all duties, taxes and other charges, except charges for transportation, administrative expenses or services rendered in relation to transit.

4. With respect to all charges, regulations and formalities applicable to products in transit, each Party shall accord to products of the other Party in transit across its territory treatment no less favourable than the treatment accorded to products of any third country in transit across its territory.

5. Each Party shall accord to the products of the other Party, which have been in transit across the territory of any third country and have not been released from customs control or entered into the commerce of such third country, treatment no less favourable than that which would have been accorded to such products had they been transported from their place of origin to their destination without going across the territory of such third country.

6. For greater certainty, nothing in paragraphs 3 to 5 prevents a Party from taking measures applicable to products of third countries in transit across its territory.

#### *Article V. State Trading Enterprises*

1. Each Party undertakes that if it establishes or maintains a state enterprise, wherever located, or grants to any enterprise, formally or in effect, exclusive or special privileges, such enterprise shall, in its purchases or sales involving either imports or exports, act in a manner consistent with the general principles of non-discriminatory treatment prescribed in this Agreement for governmental measures affecting imports or exports by private traders. To this end, such enterprises shall make any such purchases or sales solely in accordance with commercial considerations including price, quality, availability, marketability, transportation and other conditions of purchase or sale, and shall afford the enterprises of the other Party adequate opportunity, as may be provided for in domestic laws and regulations and in accordance with customary business practice, to compete for participation in such purchases or sales.

2. The provisions of paragraph 1 shall not apply to imports of products for immediate or ultimate consumption in governmental use and not otherwise for resale or use in the production of goods for sale.

#### *Article VI. Disruptive Trade Practices*

1. Nothing in this Agreement prejudices or qualifies the right of either Party to enact and administer laws and regulations:

(a) Consistent with the requirements of Article VI of the GATT and the related codes or successor agreements concluded under the GATT; or

(b) Applicable to products imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to domestic producers of like or directly competitive products.

2. As soon as possible after a request for initiation of an investigation is accepted by the authorities of one Party pursuant to a law or regulation referred to in paragraph 1, and in any event upon the initiation of an investigation, the other Party shall be afforded an adequate opportunity for consultations with the aim of clarifying the situation and arriving at a mutually agreed solution. Furthermore, throughout the period of investigation, the other Party shall be afforded an adequate opportunity to continue consultations, with a view to clarifying the factual situation and to arriving at a mutually agreed solution.

3. The Party which initiates an investigation or is conducting such an investigation shall permit, upon request, access to non-confidential evidence and data being used for initiating or conducting the investigation.

4. Each Party shall ensure that its laws and regulations referred to in paragraph 1 are transparent and afford affected parties an opportunity to submit their views. Such laws and regulations shall not be applied in a manner that discriminates arbitrarily or unjustifiably between products of the other Party and products of any third country.

5. The obligations under paragraphs 2 to 4 shall apply to Vietnam at such time as it implements laws or regulations relating to the matters set out in paragraph 1.

#### *Article VII. Transparency of Information*

1. Each Party shall make available publicly on a timely basis all laws and regulations related to commercial activity, including trade, investment, taxation, banking, insurance, financial services, transport and labour.

2. Each Party shall provide interested persons of the other Party access to available non-confidential, non-proprietary data on the national economy, and specific industrial, agricultural, commodity or service sectors, including data on foreign trade and investment.

#### *Article VIII. Services*

The Parties shall enter into consultations with a view to broadening the scope of this Agreement to include trade in services, consistent with multilateral principles established in the General Agreement on Trade in Services.

#### *Article IX. Merchant Vessels and Waterborne Cargoes*

1. In international traffic, the merchant vessels of each Party, merchant vessels chartered by persons of each Party, and the cargoes of such vessels shall, during arrival, stay at, and departure from the seaports where the other Party allows entry and exit of foreign merchant vessels, enjoy treatment, including access to harbour services, accorded to the most-

favoured nation. The Parties agree that any arrangement between Canada and the United States of America governing pilotage does not create rights under this paragraph.

2. In relation to products transported between Canada and Vietnam, neither Party shall create or maintain:

(a) Discriminatory measures of any kind to marketing the services of, securing cargoes for, and transferring payments related to, the merchant vessels of the other Party or merchant vessels chartered by persons of the other Party; or

(b) Discriminatory measures of any kind to the flow of waterborne cargoes through maritime cargo terminals or to the use of such terminals.

3. Each Party shall, on the basis of reciprocity with the other Party, facilitate the establishment and operation in its territory of representative offices of shipping enterprises of the other Party. The Parties recognize that shipping enterprises in both Canada and Vietnam own or operate vessels of either their own national or foreign registry.

#### *Article X. Terms of Payments*

1. Subject to the laws and regulations in force in Canada and Vietnam, all payments in respect of trade between the two countries shall be made on terms mutually agreed upon by the persons party to the commercial contracts governing that trade.

2. Neither Party shall require persons subject to their jurisdiction to engage in barter or countertrade transactions as a condition of bilateral trade between Canada and Vietnam.

#### *Article XI. Trade-related Finance*

The Parties shall encourage and facilitate the establishment of a relationship between Export Development Corporation of Canada, or its successor or successors, and the Central Bank of Vietnam, or an acceptable designate acting in full faith and credit of Vietnam, in regards to the financing of trade in capital goods, services and commodities, based on reasonable assessments of commercial risk and, where appropriate, based on sovereign risk guarantees.

#### *Article XII. Law Applicable to Contracts and Settlement of Commercial Disputes*

1. Neither Party shall interfere with the freedom of persons subject to its jurisdiction to agree with persons of the other Party on the choice of law to govern the conclusion and performance of contracts between them.

2. Persons of Vietnam, on the one hand, and persons of Canada, on the other hand, may agree to settle disputes arising out of commercial transactions by arbitration.

3. Such persons, involved in disputes arising out of individual commercial transactions, may agree to arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), adopted in 1976.<sup>1</sup>

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1. United Nations, Official Records of the General Assembly, Thirty-first Session, Supplement No. 17 (A/31/17), p. 34.

4. Nothing in this Agreement shall be interpreted in such a way as to hamper, nor shall either Party prevent, the parties to commercial transactions from agreeing on any other form of arbitration for the settling of commercial disputes, which they mutually prefer and which, in their opinion, best answers their commercial needs.

5. The persons of Canada and of Vietnam shall enjoy access to the courts of the other Party on the same basis as persons of any third country.

#### *Article XIII. Exceptions*

1. The provisions of this Agreement shall not limit the right of either Party to take any action for the protection of its national security interests.

2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prohibit the adoption or enforcement by either Party of measures:

- (a) Necessary to protect public morals;
- (b) Necessary to protect human, animal or plant life or health;
- (c) Relating to the importation or exportation of gold or silver;
- (d) Necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement;
- (e) Relating to the products of prison labour;
- (f) Imposed for the protection of national treasures of artistic, historic or archaeological value; or
- (g) Measures relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

3. Textile products are not subject to the provisions of paragraphs 1 and 2 of Article III and sub-paragraph 1(b) of Article VI. Where any agreement or arrangement dealing with certain textile products is in effect between the Parties, this exception shall apply only to the textile products covered by that agreement or arrangement.

#### *Article XIV. Consultations*

1. The Parties shall consult with each other from time to time regarding the operation of this Agreement or of any provision thereof.

2. The terms of reference for consultations held pursuant to paragraph 1 shall be:

- (a) To keep under review the possibility of broadening this Agreement;
- (b) To consider matters affecting trade and commerce between Canada and Vietnam;
- (c) To exchange information and views on matters that might adversely affect either Party's existing levels or future development of trade;
- (d) To review multilateral trade matters of common interest; and

(e) To review progress towards expanding bilateral trade, and to examine, where appropriate, proposals designed to encourage further growth in trade or to overcome hindrances to such growth.

3. Consultations pursuant to this Article may be initiated at the request of either Party on reasonable notice to the other Party.

4. The location of meetings held pursuant to this Article shall alternate between Canada and Vietnam unless the Parties agree otherwise. A representative of each Party shall lead that Party's delegation to such meetings. Each meeting shall be chaired by a representative of the host Party.

5. The Parties shall endeavour to settle through diplomatic channels any dispute that may arise over the interpretation or application of any provision of this Agreement.

*Article XV. Entry into Force, Term and Termination*

1. For the purpose of the entry into force of this Agreement, the Parties will inform each other by an exchange of notes that their respective legal requirements have been completed. This Agreement will enter into force on the date of the exchange of notes or, in the event that the exchange of notes does not take place on the same day, on the date of the last note.

2. This Agreement shall remain in force unless terminated by either Party upon six months' notice to the other Party. Should this Agreement be terminated, both Parties shall, to the extent possible, seek to minimize possible disruption to their trade relations.

3. The rights and obligations arising out of contracts entered into between persons of the Parties shall be the responsibility of such persons only. Termination of this Agreement shall not affect the fulfilment of obligations or undertakings arising from contracts entered into during the period the Agreement was in force.

4. Except as expressly provided herein, nothing in this Agreement overrides or modifies agreements already in force between the Parties.

5. At any time while this Agreement is in force, either Party may propose in writing amendments thereto and to which the other Party shall reply within 90 days upon receipt of such notice. The terms of this Agreement may be modified by the mutual consent in writing of the Parties when approved in accordance with their respective domestic legal procedures.

In witness whereof, the undersigned, being duly authorized by their Government, have signed this Agreement.

Done in duplicate at Hanoi, this 13th day of November 1995, in the English, French, and Vietnamese languages, each version being equally authentic.

For the Government of Canada:

ANDRÉ OUELLET

For the Government of the Socialist Republic of Vietnam:

LE VAN TRIET