

Chapter 3

Free Trade Agreements: EAEU

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Chapter 3

Free Trade Agreements: EAEU

The EAEU is an international economic union of countries located in northern Eurasia that was established via the Treaty on the Eurasian Economic Union. It came into effect on 1 January 2015 with founding member states of Belarus, Kazakhstan, and Russia. (Global Edge, 2017). Later, Armenia and Kyrgyzstan joined the EAEU.

1. EAEU Economic and Trade Overview of the World

The EAEU is continuously growing in strength as it launched the Customs Union which has a single market of around 183 million consumers. EAEU's GDP accounted for about US\$2.2 trillion in 2016 (Eurasian Economic Commission website).⁶

The EAEU comprised 2.3% of the world's import and 3.7% of the world's export in 2014. As of 1 January 2016, its population alone established a single market of 182.7 million consumers (EAEU, 2017). Its economically active population numbered 92.9 million in 2014 and its unemployment rate was 5.3%, which is relatively low compared to that of the US of 6.2% (EAEU, 2017). The union has three leading sectors: energy, manufacturing, and agriculture. Within the energy industry globally, oil production, gas production, and power generation consisted of 14.6% (ranked first), 18.4% (ranked second), and 5.1% (ranked fourth), respectively (EAEU, 2017). As for the manufacturing industry, production of steel, mineral fertilisers, and cast iron contributed 4.5% (ranked fifth), 10.8% (ranked second), and 4.5% (ranked third), respectively worldwide (EAEU, 2017). Globally, the EAEU's agricultural and milk production accounted for 5.5% and 7%, respectively (EAEU, 2017).

2. EAEU and its FTAs

Currently, the EAEU has four FTAs amongst its member countries as well as with Viet Nam, India, and the Republic of Korea. The EAEU FTAs and the VN–EAEU FTA have been signed and are in effect while those with India and the Republic of Korea are still under negotiation (Table 13). The EAEU–Singapore FTA is expected to be in negotiation by the end of 2017. Table 134 shows the bilateral and multilateral FTAs amongst EAEU members and with other countries (see Annex 1). Belarus, Kazakhstan, Russia, Armenia, and Kyrgyzstan have a several bilateral trade of 12, 7, 8, 8, and 5 respectively. In addition, their numbers of multilateral trade are Belarus (7), Kazakhstan (8), Russia (7), Armenia (5), and Kyrgyzstan (5) respectively (see Table 14). According to the website of the ADB Regional Integration Center, the EAEU members have not started or do not have any bilateral FTAs with ASEAN member states yet.

⁶ <http://www.eurasiancommission.org>

Table 13. EAEU Regional FTAs

| EAEU FTA | Status | Date |
|---------------------------|---|------------------|
| 1. EAEU | Signed and in effect | 1 January 2015 |
| | | |
| 2. EAEU–India | Negotiation launched | 11 July 2015 |
| 3. EAEU–Viet Nam | Signed and in effect | 5 October 2016 |
| | Signed but not yet in effect | 29 May 2015 |
| | Negotiation launched | 27 March 2013 |
| | Proposed/under consultation and study | 12 October 2010 |
| 4. EAEU–Republic of Korea | Negotiation launched (FTA talks started) | 10 April 2017 |
| 5. EAEU–Singapore | Expected to launch negotiation by the end of 2017 | 30 December 2019 |

EAEU = Eurasia Economic Union, FTA = free trade agreement.

Source: ARIC website, <https://aric.adb.org/fta-group>

Table 14. FTAs of Individual EAEU Countries

| EAEU Members | Number of Bilateral Trade Agreements | Number of Multilateral Trade Agreements |
|--------------|--------------------------------------|---|
| Belarus | 12 | 7 |
| Kazakhstan | 7 | 8 |
| Russia | 8 | 7 |
| Armenia | 8 | 5 |
| Kyrgyzstan | 5 | 5 |

EAEU = Eurasia Economic Union, FTA = free trade agreement.

Source: ARIC website, <https://aric.adb.org/fta-group>.

3. EAEU and Singapore

The total bilateral trade between the EAEU and Singapore in 2016 stood at 4.61 billion Singapore dollars (MTI, 2017). Singapore's major imports from the EAEU are petroleum and mineral oils while its top exports to the EAEU are machinery and metal (MTI, 2017). The EAEU and Singapore also worked on a feasibility study to establish an EAEU–Singapore FTA. The study was started on 28 October 2016 and was expected to be completed by the end of 2017 (MTI, 2017).

3.1. Existing bilateral agreements between Singapore and EAEU Members

Singapore had established the Avoidance of Double Taxation Agreements (DTAs) with Belarus, Russia, and Kazakhstan. It also has bilateral investment treaties (BITs) with Belarus and Russia (MTI, 2017) (Table 15). Table 15 indicates that Singapore has signed DTAs with Russia in September 2002, Belarus in March 2013, and Kazakhstan in September 2006 while these agreements came into effect in January 2009, December 2013, and August 2007, respectively. As for BITs, Singapore signed with Russia in September 2010 and Belarus in May 2000 which came into effect in June 2012 and January 2001, respectively (Table 13).

Table 15. Bilateral Agreements between Singapore and Some EAEU Members

| EAEU Member Country | Type of Agreement | Date Signed | Date Entered into Force |
|---------------------|--|----------------|-------------------------|
| Russia | Avoidance of Double Taxation Agreements (DTAs) | September 2002 | January 2009 |
| | Bilateral Investment Treaties (BITs) | September 2010 | June 2012 |
| Belarus | DTAs | March 2013 | December 2013 |
| | BITs | May 2000 | January 2001 |
| Kazakhstan | DTAs | September 2006 | August 2007 |

Source: Ministry of Trade and Industry Singapore website, <https://www.mti.gov.sg/>

Commercial Opportunity for Singapore Firms in the EAEU

Table 16 shows the business interests of Singaporean firms in each EAEU member country. Singapore companies are interested in Russia's food, education, infrastructure, and oil and gas sectors. Singapore has many businesses in Russia that include Changi Airports International via its joint venture with Basic Element and Sberbank, Olam International Limited (Olam), Food Empire Holdings Ltd, and Educare International Consultancy (MTI, 2017). Singaporean companies are also interested in the agriculture, tourism, and hospitality sectors of Armenia (MTI, 2017). As for Kazakhstan, Singapore has expressed interest in the education, oil and gas, engineering, urban solutions, and master planning sectors. Good examples of the Singaporean business presence in Kazakhstan are Educare and Surbana Jurong (MTI, 2017). Furthermore, Singapore places importance on the tourism, logistics, energy, and high-value added agriculture and agri-technology sectors of Kyrgyzstan and is attracted to the master planning, tourism, and hospitality sectors in Belarus (MTI, 2017).

Table 16. Commercial Opportunities for Singapore Companies in the EAEU

| Sectors | | | | |
|--|---|---|--|---|
| Russia | Armenia | Kazakhstan | Kyrgyzstan | Belarus |
| Food, education, infrastructure, and oil and gas sectors | Agriculture, tourism, and hospitality sectors | Education, oil and gas, engineering, urban solutions, and master planning sectors | Tourism, logistics, energy, and high value-added agriculture and agri-technology sectors | Master planning, tourism, and hospitality sectors |
| Examples of Singapore Business Presence | | | | |
| Russia | Armenia | Kazakhstan | Kyrgyzstan | Belarus |
| Changi Airports International (CAI), through its joint venture with Basic Element and Sberbank, develops and manages the Airports of the South (AOS). The AOS airports are Sochi, Krasnodar, Anapa, and Gelendzhik. CAI is also in the process of acquiring the Vladivostok International Airport with its partners, Russian Direct Investment Fund and Basic Element. | N/A | Educare, which provides training and teaching workshops to educators in Kazakhstan | N/A | N/A |
| Olam International Limited (Olam) invests and operates a modern industrial dairy farm in Penza Region, and has an extensive grain trading and procurement operation in Krasnodar Region. | N/A | Surbana Jurong, which provides urban and infrastructure development, engineering, and consulting expertise. The company has completed master planning works for Taraz Chemical Park, Atyrau Petrochemical Park (NIPT), and Atyrau SME Park. | N/A | N/A |
| Food Empire Holdings Ltd (Food Empire) is prominent in Russia's 3-in-1 instant coffee market with its MacCoffee brand, which won Russia's Golden Award for Most Popular Coffee Brand in 2013. | N/A | N/A | N/A | N/A |
| Educare International Consultancy (Educare) is experiencing rising consultancy success in Russia due to its unique service offering to transform the teaching pedagogy of Russian schools for the 21st century. | N/A | N/A | N/A | N/A |

Source: Ministry of Trade and Industry Singapore website, Ministry of Trade and Industry Singapore website, <https://www.mti.gov.sg/>

4. EAEU and India

4.1. Relationship between the EAEU and India

Although India and EAEU member countries have developed rapid economic relationship in recent years, such relationship is still weak. The two sides have two institutional mechanisms for economic cooperation: intergovernmental commissions and joint working groups (CAPEXIL, 2017). Besides these two mechanisms, the bilateral institutional frameworks remain weak and there seems to be no comprehensive strategy to economically integrate India and the EAEU via trade in goods, trade in services and investment, as well as other areas of cooperation (CAPEXIL, 2017). Thus, a prospective FTA amongst EAEU member countries and India could potentially create favourable conditions for developing both their trade and economic relations (CAPEXIL, 2017).

4.2. Status of bilateral trade in goods of the EAEU and India

While the India–EAEU bilateral trade has increased in recent years, it still appears weak. Total trade between the two parties increased from US\$9.3 billion in 2010 to US\$11.3 billion in 2014 (CAPEXIL, 2017). Compared with India’s total trade worldwide, this is a small figure in terms of export and import trade with the EAEU. Hence, both parties should consider several ways to strengthen and enhance their trading. Moreover, amongst the EAEU member countries, Russia accounts for the biggest share of bilateral trade with India, followed by Kazakhstan (CAPEXIL, 2017).

At the sectoral level, the India–EAEU agricultural trade links showed an overall fall in percentage compared to India’s total agricultural trade with the world. From 2000 to 2014, the share of India’s agricultural export to the EAEU decreased from 4.4% to 1.5% (CAPEXIL, 2017). Yet, the EAEU had significantly increased India’s agricultural imports during the period 2000–2014. While India’s industrial exports to the EAEU decreased in its share, India’s share of industrial imports from the EAEU remained nearly constant over the same period. Over the 14 years since 2000, the share of India’s industrial goods trade with the EAEU as a percentage of India’s total trade worldwide decreased from 1.42% to 1% (CAPEXIL, 2017).

The tariff structure is different between individual EAEU member countries and India. For example, India’s average most-favoured-nation (MFN) tariff rate appears to be relatively higher than that of EAEU member countries as a group (CAPEXIL, 2017). There are also differences within the tariff structures of governing agricultural and industrial products. In 2005, according to the analysis of average tariff levels applied to trade in goods in India, most product groups under the agriculture sector have higher tariff levels at the HS 2-digit level compared to the product group under industrial goods (CAPEXIL, 2017).

4.3. Trade in services of the EAEU and India

Bilateral trade in services is also expected to grow in trade in goods because of the FTA. The benefits will result mainly from the importance of ‘trade-enabling’ services that include transport, insurance and banking, telecommunication, and distribution (CAPEXIL, 2017). Furthermore, the sectors that have already dominated bilateral trade will be enhanced with the establishment of the FTA in services. These sectors include travel services, computer and related services, and other business and professional services (CAPEXIL, 2017). Moreover, the FTA between these parties would also enhance trade in some other areas of mutual interest where strong complementarities occur. Examples are hi-tech research and development, tourism, engineering services, environmental and agricultural services, energy, academic studies, etc. (CAPEXIL, 2017).

In the past few years, according to the EAEU trade statistics, the trade in services between India and the EAEU indicated steady growth. For example, in 2014, most bilateral trade in services between India and Russia amounted to roughly 80% of EAEU exports to India, and approximately 89% of its services imports from it (CAPEXIL, 2017). According to the analysis, the proposed FTA, comprising trade in services, may greatly benefit the EAEU member countries and India in terms of (i) 'services sectors linked to the growth in exports of goods' and (ii) 'services sectors independent from the growth in exports of goods' (CAPEXIL, 2017). For the second group, one can presume enhanced mutual trade in services following an inclusion of a trade in services chapter in the FTA because of a promising reduction in market access or national treatment weaknesses and improved transparency and certainty regarding measures affecting trade in services (CAPEXIL, 2017).

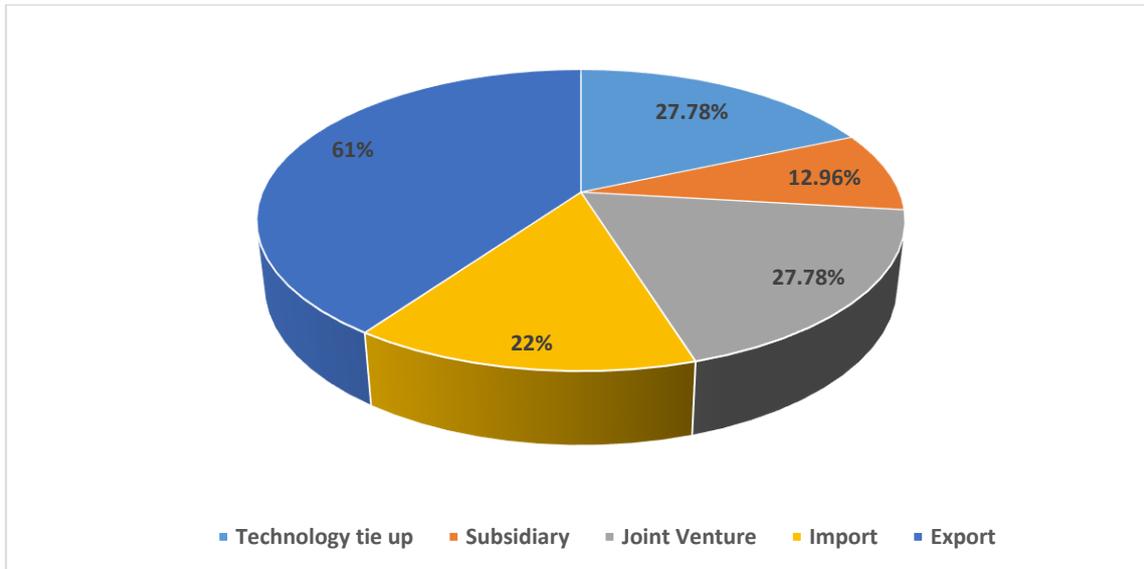
Although quantification seems difficult, the trade in services chapter is expected to contribute to establishing the legal certainty of bringing benefits for economic activity and FDI via Mode 3 (CAPEXIL, 2017). In addition, competition and innovation spillovers derived from foreign investments through the FTAs can lead to productivity gains across sectors. Also, access to main and globally competitive services may strengthen export competitiveness in both goods and services, especially when services imports comprising transport, communication, finance, and business services often function as an intermediary input for the manufacture of goods (CAPEXIL, 2017). Business and professional services, telecommunications services, transport services, financial services, energy-related services, travel services, tourism, research and development, computer and related services, audiovisual services, and environment services are potential sectors that would provide mutual benefit to bilateral trade in services (CAPEXIL, 2017).

4.4. India's business in the EAEU

The Nature of India's Business in the EAEU

According to the India–EAEU survey report, Indian businesses have already engaged with EAEU member countries and are exploring more opportunities to engage with the Union. Indian firms are expecting to expand their business engagement and diversify their export of goods and services to EAEU member countries (FICCI, 2017a). Figure 49 indicates that 61% of Indian firms are involved in export activities to EAEU member countries and nearly 22% of the firms import from EAEU member countries. In addition, the technology venture and tie-ups between the two parties accounted for 27.78% of total business activities. The Indian subsidiary and joint venture in the EAEU are nearly 12.96% and 27.78%, respectively, of the total business activities in the Union.

Figure 49. Nature of Indian Business in EAEU Member Countries

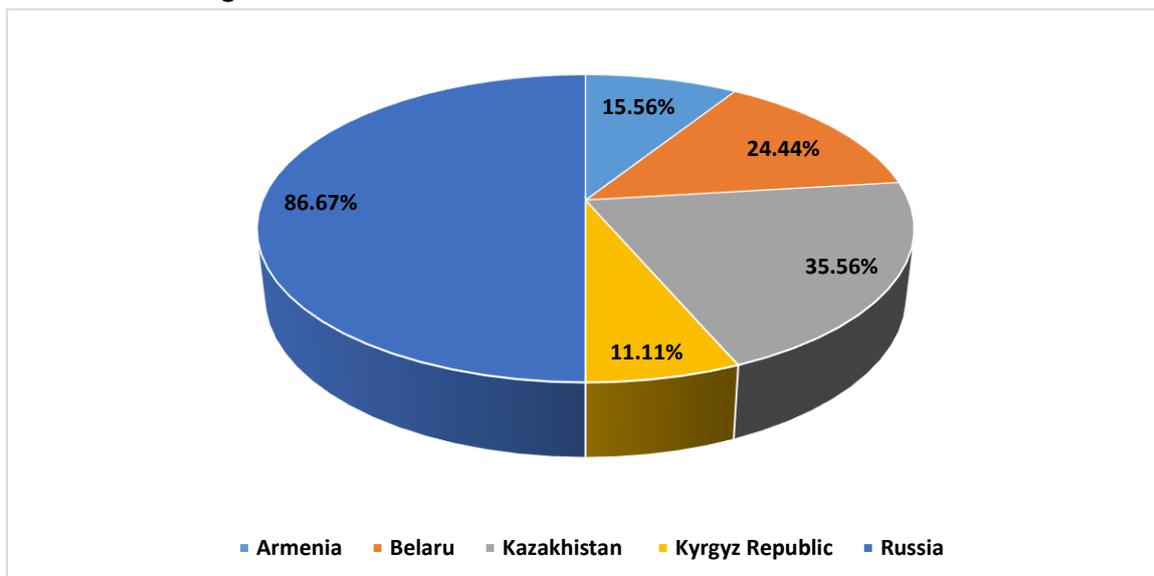


Note: The numbers in the pie chart do not add up to 100.

Source: FICCI (2017a).

The responses in the India–EAEU survey report highlight the importance of Russia and the renewed focus on bilateral trade with Russia. The survey also shows that Indian companies have expressed their interests in other economies of EAEU member states as well (FICCI, 2017b). Figure 50 illustrates that 87% of survey respondents engage in business with Russia and would like to enhance their business with their partners. It also indicates that the next most-favoured destinations for Indian industry in the EAEU region are Kazakhstan (35.56%), Belarus (24.44%), Armenia (15.56%), and Kyrgyzstan (11.11%).

Figure 50. Indian Business Interests in EAEU Member Countries



Note: The numbers are based on survey.

Source: FICCI website, <http://www.ficci.in/>

Indian companies already have diversified trade with EAEU member countries. The potential sectors are healthcare, pharmaceuticals, manufactured goods, processed food, agriproducts, and others such as financial services, legal services, information technology, defence, chemicals, mining, urban transport, and others (FICCI, 2017a). According to the FICCI survey report, Indian firms would like to focus on EAEU’s key sectors that include the manufacturing sector comprising food products, pharmaceuticals/healthcare, and chemicals (FICCI, 2017a). Table 17 shows the sector composition in basket of goods and services and these include the manufacturing sector, alcohol and beverage, food products, services, healthcare, textiles, tourism, sundry art, Christmas market products, personal care products, vet products, and packaging (FICCI, 2017a).

Table 17. Sector Composition in Basket of Goods and Services

| Sector | Goods and Services |
|--|--|
| Manufacturing | Automation products, automobiles (tractors, metro rail), power (boiler, generators), steel, rubber |
| Alcohol and Beverage | N/A |
| Food Products | Confectionary, dairy products, nutrition products, food supplements |
| Services | Financial, legal |
| Healthcare | Herbal products |
| Textile | Garment accessories, handicraft, home furnishings |
| Tourism | Tourism, medical tourism |
| Sundry Art, Christmas Market Products, Personnel Care Products, Vet Products, Packaging | N/A |

Source: FICCI website <http://www.ficci.in/>

5. EAEU and Viet Nam

5.1 EAEU–Viet Nam tariff reduction schedules

Viet Nam’s Tariff Commitment

Viet Nam’s tariff commitment schedule consists of 14,158 tariff lines. Out of these, 4,959 tariff lines were eliminated at the enforcement of agreement in 2015 (Table 18). Moreover, by 2020, 2025, and 2027, the additional tariff lines of 2241, 1053, and 27 will be eliminated, respectively. Figure 51 illustrates that a total 8,280 tariff lines in Viet Nam tariff commitment schedule will decrease to 0% by 2027.

Table 18. Number of Viet Nam Tariff Commitments to EAEU Member States

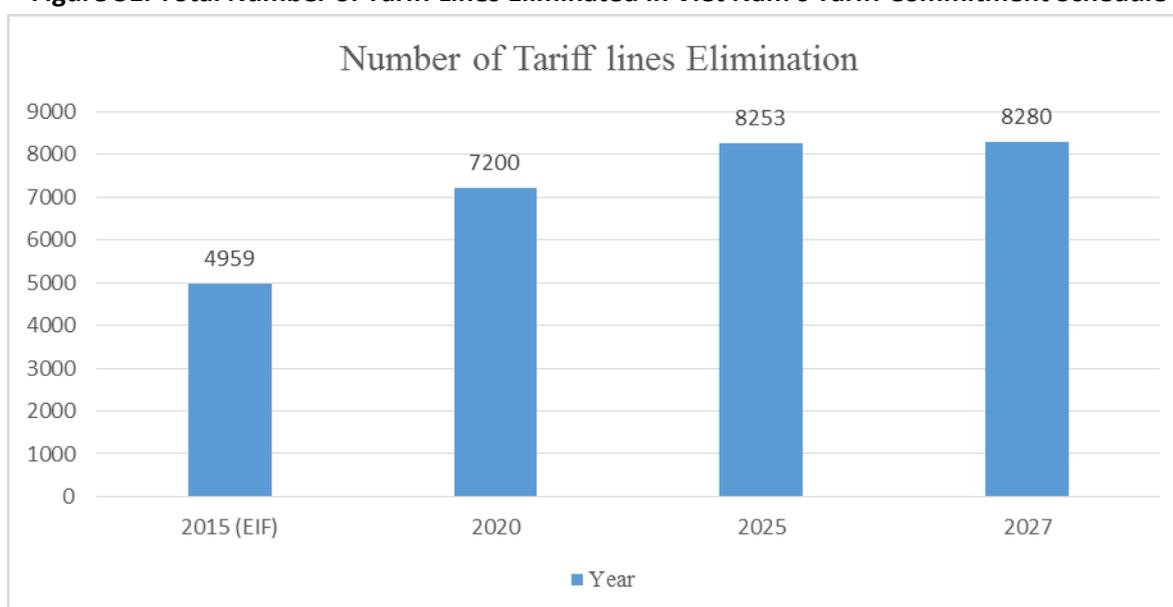
*Data extracted from the Viet Nam’s Tariff Commitment Schedule is at the 8-digit level.

| Year | 2016 (EIF) | 2020 | 2025 | 2027 |
|---|------------|-------|-------|-------|
| Number of tariff lines eliminated | 4,959 | 7,200 | 8,253 | 8,280 |
| Additional tariff elimination | 0 | 2,241 | 1,053 | 27 |
| Total tariff lines* | 9,471 | 9,471 | 9,471 | 9,471 |
| Proportion to total tariff lines that have been eliminated, % | 52 | 76 | 87 | 87 |
| Percentage of tariff lines that have not been eliminated, % | 48 | 24 | 13 | 13 |

EIF = Elimination Immediately in Force (indicating tariffs eliminated immediately from the date of entry).

Source: WTO Centre website, <http://wtocentre.iift.ac.in/>

Figure 51. Total Number of Tariff Lines Eliminated in Viet Nam’s Tariff Commitment Schedule



Source: <http://wtocentre.iift.ac.in/>

EAEU’s Tariff Commitment

Table 19 shows a total of 6,268 tariff lines comprising Viet Nam’s tariff commitment schedule. Out of 6,268 total tariff lines, 3,381 were eliminated when the agreement came into effect in 2016. By 2020 and 2025, additional tariff lines of 980 and 1,348, respectively, will be eliminated. Figure 51 indicates that 5,709 tariff lines in EAEU’s tariff commitment schedule will be 0% by 2025.

Table 19. Number of Tariff Commitments of EAEU Member States to Viet Nam

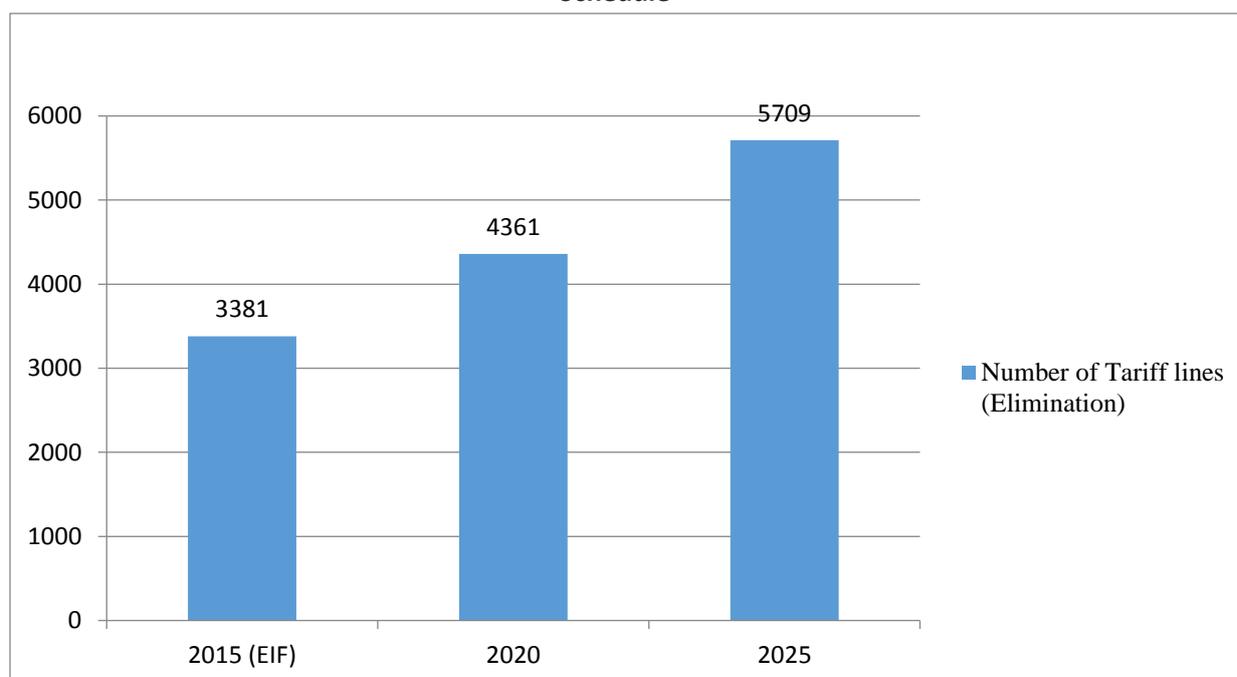
| Year | 2016 (EIF) | 2020 | 2025 |
|---|------------|-------|-------|
| Number of tariff lines (eliminated) | 3,381 | 4,361 | 5,709 |
| Additional tariff eliminated | 0 | 980 | 1,348 |
| *Total tariff lines | 6,268 | 6,268 | 6,268 |
| Proportion to total tariff lines that have been eliminated, % | 54 | 70 | 91 |
| Percentage of tariff lines that have not been eliminated, % | 46 | 30 | 9 |

*Total tariff lines in the EAEU tariff commitment schedules consist of 2-, 4-, 6-, 8-, and 10-digit level number which lead to the differences in total number of tariff lines between the EAEU and Viet Nam. The data source is from the original website.

EIF = Elimination Immediately in Force (indicating tariffs eliminated immediately from the date of entry)

Source: <http://wtocentre.iift.ac.in/>

Figure 52. Total Number of Tariff Lines Eliminated in EAEU Member States' Tariff Commitment Schedule



Source: WTO Centre website.

5.2. Opportunities and challenges for Viet Nam

Viet Nam will capture many great opportunities once the EAEU–VN FTA is formed. The FTA will allow Viet Nam to grow its economy, create more job opportunities, encourage trade and investment cooperation, and accelerate economic relations with EAEU countries. With the FTA, Viet Nam is expected to open its doors in the field of commodities, services, and investment for the first time as indicated by Dang Hoang Hai, Director of the Ministry of Industry and Trade's European Market Department (WTO, 2015).

Moreover, Viet Nam could also take advantage of the tariff reduction schedule according to the commitment in the EAEU–VN FTA; almost 90% of the import tariff lines will be decreased or removed completely to 0% (WTO, 2015). The outcome of introducing this mechanism is that Viet Nam will enhance its market access to the large promising common market of five EAEU countries with a total GDP of nearly US\$2.2 trillion and over 183 million consumers (WTO, 2015). According to Truong Hoang Hai, the General Secretary of the Hanoi Support Industries Association, seafood export is supposed to benefit the most from this FTA and Viet Nam’s fisheries will be more competitive when enjoying 0% import tariff (WTO, 2015). Yet, Vietnamese seafood will be widely accepted in the market only if the delivery, hygiene, and quality of seafood, which includes shrimp and fish, are guaranteed.

Furthermore, Viet Nam could also benefit from both sides in key areas further strengthening cooperation, which consist of trade defence, origin principle, customs management, technical barriers, food safety and quarantine measures, government procurement, intellectual property, and sustainable development (WTO, 2015). This would also allow room for Viet Nam to develop those key areas to further strengthen its economy as well as optimally favouring bilateral trade activities between the two sides. Moreover, the deal would not only boost trade volume but also establish favourable conditions for both sides in terms of investment, technology, and the use of qualified human resources, said Russian Ambassador to Viet Nam Konstantin Vasilievich Vnukov (EAEU–VN FTA, 2016). According to George Berczely, Chair of the Transportation and Logistics Sector Committee of the European Chamber of Commerce in Viet Nam, the EAEU–VN FTA will help enterprises in Viet Nam improve their competitiveness and be able to gain more access to the EU markets.⁷

Besides, in terms of trade facilitation, the EAEU–VN FTA will offer simplified customs procedures with pre-arrival processing that will enable the release of goods on arrival. However, this will require both sides to maintain transparency and responsibility to the commitments.

On the other hand, Viet Nam will face some challenges in stepping into this FTA. To enter the EAEU market, all products must meet a certain standard, which is determined by the EAEU side as well as its commitment in the EAEU–VN FTA. For instance, Viet Nam must comply with its commitments on rules of origin (ROO) and intellectual property rights (IPR). To take advantage of preferences in the Russian and the EAEU markets, Viet Nam enterprises must meet the ROO and get the preferential C/O (Certificate of Origin) (WTO, 2015). Moreover, small and medium-sized enterprises (SMEs) in Viet Nam must compete more strongly with EAEU companies to penetrate the EAEU market and capture domestic demand. According to Dang Hoang Hai, Director of the European Market Department, Vietnamese enterprises have little choice but to make continuous efforts and recognise strategies and measures to produce high-quality and competitive products to help contribute in facilitating the intensive integration of Viet Nam into the global economic market (WTO, 2015).

Moreover, enterprises related to the industry sector, specifically those in the garment, textiles, and footwear sectors, should prepare themselves to upgrade into higher global production value and supply chains. They should also depend less on imported materials and have a wider supplier base to guarantee their sustainable development.

Furthermore, regardless of the tariff reduction, Vietnamese exporters should also pay attention to the protective measures under the EAEU–VN FTA. In fact, Viet Nam is the second-largest supplier of textiles and apparel to the US market; in return, it has reduced China’s share in this market from 60%

⁷ <https://en.vietnamplus.vn/opportunities-challenges-lie-ahead-under-euvietnam-fta/94084.vnp>

to 42% (WTO, 2015). Thus, EAEU member countries have expressed concerns that opening markets for Viet Nam's products will make it difficult for their local enterprises. According to Ngo Chung Khanh, Deputy Director of the Multilateral Trade Policy Department, Ministry of Industry and Trade, the EAEU had imposed a measure whereby should Viet Nam's turnover exceeds the average turnover that it exported to the region from 2011 to 2013, a zero import duty will no longer apply to Viet Nam's garment and textiles export (WTO, 2015). In this case, the EAEU will set the duty back to 20%.

Furthermore, Viet Nam businesses must abide by the EAEU practices on the unique requirements of origin. For example, EAEU–VN FTA forbids dividing shipping consignment so that containers must be shipped directly and exclusively from Viet Nam to an EAEU member, even if it belongs to a multinational company with factories in different countries (EAEU–VN FTA, 2015). Also, the EAEU–VN FTA requires a certificate of origin as a prerequisite for favourable treatment (EAEU–VN FTA, 2015).

6. EAEU–VN FTA (Trade in Goods) vs ASEAN Trade in Goods Agreement

This section compares the two existing agreements, EAEU–VN FTA⁸ (Trade in Goods chapter) and the ASEAN Trade in Goods Agreement (ATIGA) (ASEAN Secretariat, 2013). It discusses the five major elements of trade in goods and summarises the key elements of tariff reduction/elimination, ROO, trade remedies, dispute settlement, and non-tariff measures (NTMs) and non-tariff barriers (NTBs). These would help understand the differences or similarities between the two FTAs in terms of tariff preferences, ROO, and the mechanisms to tackle NTMs and NTBs.

6.1. Tariff reduction and limination schedules

For trade in goods, tariffs or customs duties are most commonly used by states or territorial customs to either protect or liberalise market access of its economy. The design on the schedules of concessions of respective members of regional free trade arrangement determines the specific product concessions and/or conditions to market access. The meaningful regional free trade arrangement shall be a progressive reduction/elimination of tariffs, going beyond the World Trade Organization (WTO) MFN and establishing a more open, predictable, and transparent FTA.

⁸ EAEU–VN FTA, Full Text Agreement available at:
<http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?rtaid=973>

Table 20. Tariff Reduction/Elimination

| EAEU–VN FTA | ATIGA | Remarks |
|--|---|--|
| <p>Contains schedules of tariff commitments in Annex 1:</p> <ul style="list-style-type: none"> ▪ The schedule started from EIF until 2025 for EAEU and until 2027 for VN. ▪ Some originating products (U) are excluded from tariff commitment. ▪ Some originating products (T) are exempted from customs duties unless applied Art. 2.10, Trigger Safeguard Measures ▪ Some originating products (Q) are applied tariff rate quotas | <p>Contains different tariff reduction schedules in Article 19:</p> <ul style="list-style-type: none"> ▪ Different schedules from Schedules A to H ▪ Provided flexibility for CLMV until 2018 ▪ Eliminated tariff rate quotas (Article 20) | <ul style="list-style-type: none"> ▪ Under the EAEU–VN FTA is a longer flexibility of 2 years for VN tariff reduction schedule. ▪ Regarding trigger safeguard measures, for example, there are specific trigger levels with calculated formula for specific year. ▪ The EAEU provides a total annual import quota of 10,000 tons for rice from VN for 0%. The out-of-quota tariff rate is indicated as ‘U’. |

ATIGA = ASEAN Trade in Goods Agreement; CLMV = Cambodia, Lao PDR, Myanmar, Viet Nam; EAEU = Eurasian Economic Union; EIF = Elimination Immediately in Force (indicating tariffs eliminated immediately from the date of entry), VN = Viet Nam.

Source: Authors

Unlike ATIGA which establishes different kinds of tariff reduction schedules, such as a general list, exclusive list, sensitive list, and others (in other words, Schedules A to H), the EAEU–VN FTA has designed in the EAEU–VN FTA a long table of tariff reduction schedule of respective parties: in Annex 1.b for Viet Nam Schedule of Tariff Commitment and in Annex 1.e for the EAEU’s Schedule of Tariff Commitments. To find which products are excluded, we need to find in the EAEU’s Schedule of Tariff Commitments the tariff line designated as (U), or products that are applied safeguard measures with (T), or some products that are applied tariff rate quotas with (Q). The respective parties have started to progressively reduce and eliminate their tariff from the date of entry-into-force until 2025 for EAEU members and until 2027 for Viet Nam. In this light, Viet Nam received flexibility from the EAEU by having 2 more years for the tariff reduction schedule. ATIGA gave CLMV countries a similar flexibility of a longer period for tariff reduction schedule. However, two more interesting trade policy tools were applied in the EAEU–VN FTA (trade in goods) vis-à-vis ATIGA: trigger safeguard measures and tariff rate quota.

6.2. Trigger safeguard measures

The EAEU members provided the initial and subsequent trigger level for implementing the trigger safeguard measures at the level specified for that year, together with the formula (WTO, 2015)⁹ and specific products (WTO, 2015)¹⁰ with HS code and subsequent years. These are mostly garment and textile products, such as anoraks, shirts, suits, women's or girl suits, underwear, babies' garments and clothing, Footwear with uppers of rubber, wooden furniture of the kind used in the bedroom, etc. Hence, the volume of these Vietnamese products imported into the EAEU during any calendar year exceeds the trigger level for that year and would lead EAEU members to apply trigger safeguard measures on these products. Consequently, these products would be imposed in the 'form of a customs duty equal to the MFN rate of customs duty applied with respect to the goods concerned on the date when the trigger safeguard measures come into effect' (WTO, 2015)¹¹ Nonetheless, under Article 86 of ATIGA, ASEAN member states allow implementing safeguard measures only as one of the trade remedy measures in accordance with WTO obligation.

6.3. Tariff rate quota

At the same time, since the tariff rate quota can be applied, the EAEU has set a tariff rate quota for Vietnamese rice exported to the EAEU members. There are basically two types of rice: parboiled long grain rice of a length/width ratio equal to or greater than 3 (HS Code 1006306700) and other long grain rice with a length/width ratio equal to or greater than 3 (HS Code 1006-309800). These two types of rice will be permitted to be imported to EAEU members at 10,000 tons per year with 0% rate of customs duty within the quota (WTO, 2015).¹²

Viet Nam has also used a tariff rate quota on eggs and tobacco products being imported from EAEU members. The tariff rate quota is applied to eggs (of fowls, ducks, etc.) from EAEU members exported to Viet Nam with 'the total annual import quota of 8,000 dozen' which shall be separated 'from the quantity of Viet Nam's tariff rate quotas for eggs under its WTO commitment'.¹³ The same is applied to unmanufactured tobacco and tobacco refuse exported by EAEU members to Viet Nam with the 'total annual import quota of 500 tons'.¹⁴

More than the amount of tariff rate quota, these products will be classified as 'U'" which means they are 'excluded from any tariff commitment',¹⁵ so the customs duties applied to these products will have MFN treatment in compliance with Article 2.1 of the agreement.

Unlike the EAEU–VN FTA (trade in goods), ATIGA has been differently committed to eliminate the application of tariff rate quotas on any goods originating from its parties. Based on Article 20 of Elimination of Tariff Rate Quotas under ATIGA, amongst the 10 ASEAN countries, only Thailand and Viet Nam are explicitly bound to eliminate its existing tariff rate quotas.

⁹ Annex 2.a, Trigger Level for Trigger Safeguard Measures, WTO, 2015.

¹⁰ Annex 2.b, Table of Trigger Level of Specific Products for Trigger Safeguard Measures for each year, WTO, 2015.

¹¹ Article 2.10, Trigger Safeguard Measures, para 2, WTO, 2015.

¹² Annex 1.f, Note on Tariff Rate Quotas for Rice Exported to the Eurasian Economic Union, WTO, 2015

¹³ Annex 1.c, Note on Tariff Rate Quotas for Eggs Exported to Viet Nam, WTO, 2015.

¹⁴ Annex 1.d, Note on Tariff Rate Quotas for Unmanufactured Tobacco and Tobacco Refuse Exported to Viet Nam, **WTO, 2015.**

¹⁵ Annex 1.a, General Notes on Schedules of Tariff Commitments, WTO, 2015.

6.4. Key discussion points for Cambodia: on tariff reduction schedule of the EAEU–VN FTA

Both the EAEU–VN FTA (trade in goods) and ATIGA essentially provide some flexibility for Viet Nam, based on the condition of its economic development compared with other founding ASEAN and EAEU members. A similar flexibility might be given to Cambodia as well in terms of a longer period for the tariff reduction schedule. As negotiation is about give and take, the period of tariff reduction shall be within a reasonably phaseout period between the two parties to appropriately introduce to the business community the effect of the Cambodia–EAEU FTA, and to avoid a shock to the economic performance of the country. Also, the benefits of tariff reduction are subject to the fulfilment of ROO in receiving the preferential treatment.

While In fact, Viet Nam has already graduated from being a least-developed country, Cambodia remains as one. Thus, Cambodia shall make use of the special and differential treatment wherever applicable to receive more favourable conditions compared with Viet Nam under the agreement.

6.5. Discussion on the possibility of trigger safeguard measures and tariff rate quotas

Cambodia needs to be cautious about the trigger safeguard measures, which are not frequently used under ATIGA, or the tariff rate quotas, which cannot be used at all under ATIGA. In case trigger safeguard measures or tariff rate quotas are applied, Cambodia must ensure that the annual total trigger level or annual total imported quotas for Cambodia under the FTA are higher than the existing agreed import quota with Russia, since the potential Cambodia–EAEU FTA will include more parties, so the number of quotas is anticipated to be enlarged.

Given that exceeded trigger levels will lead to application of the MFN rate, which is like tariff rate quotas, why apply trigger safeguard measures? Actually, the trigger safeguard measures come with certain conditions. For example, trigger safeguard measures should not exceed 6 months. But if the volume of the designated imported products exceeds 150% of the trigger level, the application period will be extended for another 3 months. The Eurasian Economic Commission will notify in writing whether trigger safeguard measures should be imposed. If the decision is to apply, notice will be made at least 20 days before a trigger safeguard measure is applied and 3 days following the decision (WTO, 2015).¹⁶ The trigger for the safeguard measures is that it allows applying once an investigation is carried out regarding such rules, that a product is being imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry producing similar or directly competitive products.

6.6 Rules of origin

The origin of goods is like the principle of the ‘nationality’ of a good, or the country where a good was obtained or where it was manufactured with certain criteria. In international trade, the ROO is one of the most important trade policy tools to allow importation with or without any import duties imposed (WTO, 2014). Importing commodity needs to receive the certificate of origin for obtaining preferential treatment to be imported duty free in a country that is party to the agreement. In case of ATIGA, importers and exporters should use Certificate of Origin Form D and Certificate of Origin Form EAV to obtain preferential treatment under the EAEU–VN FTA. Hence, the methodologies in calculating the origin and the percentage of originated products are the foundation of ROO, which could confirm whether a product meets the conditions for preferential tariff.

¹⁶ Article 2.10: Trigger Safeguard Measures.

Most FTAs use the following criteria regarding the origin of products to conform to the ROO: (i) ‘wholly obtained or produced goods’, and (ii) ‘not wholly obtained or produced goods’. ‘Wholly obtained or produced goods’ are more like or made from natural products that are entirely obtained, extracted, manufactured, or produced in one country without using other countries’ inputs.¹⁷ Nonetheless, since more and more goods could not be entirely produced in a single country, then the requirement of ‘not wholly obtained or produced goods’ becomes more essential to determine the criteria of goods which have been substantially produced from/with imported or those which require processing in different countries to receive preferential treatment under the FTA.

Amongst the other approaches to determine whether ‘not wholly obtained or produced goods’ are eligible for tariff preference is value-added content (VAC), which include ‘the price and the proportion of foreign or local inputs’ (WTO, 2014).

Table 21. Value-Added Content (Origin Criteria)

| EAEU–VN FTA | ATIGA | Remarks |
|--|---|---|
| <p>Calculation of Value-Added Content (Article 4.5)</p> <p>For not wholly obtained or produced goods, it shall comply with only a specific rule (in ATIGA this is called Indirect Method) for calculating the origin criteria for goods.</p> <p>Annex 3: VAC is not less than X%</p> <div style="border: 1px solid black; padding: 10px; margin: 10px 0;"> $\frac{\text{FOB value} - \text{Value of Non-Originating Materials}}{\text{FOB value}} \times 100\%$ </div> | <p>Calculation of Regional Value Content (Article 29)</p> <p>At least two formulas called ‘Indirect and direct methods’</p> <p>The ASEAN RVC shall not be less than 40%.</p> <div style="border: 1px solid black; padding: 10px; margin: 10px 0;"> <p>(a) <i>Direct Method</i></p> $RVC = \frac{\text{ASEAN Material Cost} + \text{Direct Labour Cost} + \text{Direct Overhead Cost} + \text{Other Cost} + \text{Profit}}{\text{FOB Price}} \times 100\%$ <p>or</p> <p>(b) <i>Indirect Method</i></p> $RVC = \frac{\text{FOB Price} - \text{Value of Non-Originating Materials, Parts or Goods}}{\text{FOB Price}} \times 100\%$ </div> | <p>For not wholly produced or obtained goods, there is a need to measure substantial transformation. This includes RVC, CTC, and SPR.</p> <p>Mostly, RVC is set at 40%.</p> <p>More choices of formulas and less percentage of RVC mean more liberal.</p> |

CTC = change in tariff classification, RVC = regional value content, SPR = Special Processing Requirements.

Source: Authors.

Under ATIGA are two formulas – direct method or build-up formula and indirect method or build-down formula – for the importer and the exporter to choose in calculating the origin for claiming preferential tariff under the agreement. However, the EAEU–VN FTA provides only one formula, which

¹⁷ The requirement for wholly obtained/produced goods can be found in Article 4.4 of the EAEU–VN FTA and Article 27 for ATIGA. The list of wholly obtained/produced goods for EAEU–VN FTA can be found in Annex 3.

is the indirect method or build-down formula. In this sense, the ROO for EAEU–VN is less liberalised than ATIGA. Exporters and importers could use the more liberalised agreement to have more options. Those unable to determine the value of non-originating materials to calculate the origin of product can opt for the direct method. At the same time, VAC of the EAEU–VN FTA is 55%¹⁸ while that of ATIGA is 40%. Nonetheless, the VAC/regional value content (RVC) of most rules of origin in ATIGA is likely to be 40%.

Another approach to determine whether ‘not wholly obtained or produced goods’ are eligible for tariff preference is based on the tariff classification of a final good and the components used in the HS Code.

Table 22. Change in Tariff Classification and Accumulation of Origin

| EAEU–VN FTA | ATIGA | Remarks |
|--|---|---|
| <p>Change in Tariff Classification (Annex 3: PSR)</p> <p>There is a set of minimum requirements for production specified in Annex 3: PSR. Some products require CC, CTH, CTSH, VAC X%, CTC + VAC X%, CTC or VAC X%, and PSR.</p> | <p>Change in Tariff Classification (Article 28.ii)</p> <p>CTC at 4 digits (change in tariff heading of HS) or PSR</p> | <p>A specific manufacturing or processing operation, or a combination of any of these, parties shall permit exporter to decide which rule to use in determining whether the goods qualify as originating goods.</p> |

CC = change in chapter, CTC = change in tariff classification, CTH = change in tariff heading, CTSH = change in tariff sub-heading, PSR = product-specific rules, VAC = value-added content.

Source: Authors.

In principle, this method makes it easy for the exporter and importer who could not comply with the calculation of VAC to claim tariff preference under the FTA, so the CTC or certain PSRs are allowed.¹⁹ But the rule will apply only to certain agreed products. The importers and exporters have other choices or specific rules to comply with to qualify for the origin criteria. The EAEU–VN FTA seems to use the CTC method or PSR in various forms. Certain products could be change in chapter, some products could be change in tariff heading (CTH), some products could be change in tariff sub-heading (CTSH), some products still need to have VAC at 55% plus with CTC and so on as the minimum requirement to obtain the originating status. For ATIGA, the non-originating materials must undergo a CTC at the 4-digit level (ASEAN Secretariat, 2013),²⁰ which is change in tariff heading of the HS code. Those materials could undergo CTC or specific manufacturing or processing operation but these are only applied to non-originating materials. At the same time, based on Article 28(2.b), ATIGA allows exporters to decide which rules will qualify their goods to be originating goods. Those choices could be rules from an RVC-based rule of origin, a CTC-based rule of origin, a specific manufacturing or processing operation, or a combination of any these.

¹⁸ Sub-para 8, Article 3: Specific Requirements, Protocol between the Government of the Socialist Republic of Viet Nam and the Government of the Russian Federation on supporting the production of motor transport vehicles in the territory of the Socialist Republic of Viet Nam, Moscow, 21 March 2016, under the EAEU–VN FTA.

¹⁹ For the EAEU–VN FTA, the list of Product Specific Rules can be found in Annex 3.

²⁰ Article 28, Not Wholly Obtained or Produced Goods, ATIGA.

Key Discussions for Cambodia on Rule of Origin of the EAEU–VN FTA

ROO is most important in determining whether a product is an originating or non-originating good under the FTA for it to receive the tariff reduction benefits by fulfilling the requirements as set in the rules. As one of the two main criteria of origin, ‘wholly obtained or produced goods’ are likely to be easier to negotiate in determining the originating goods since they are materials entirely extracted or produced or made from natural products in one country without using other countries’ inputs. Cambodia needs to underscore the requirements of not wholly obtained or produced goods. In this light, the methodologies in calculating the origin to check the percentage of originated materials should use both direct and indirect methods. For Cambodia, the many choices for origin calculation and similar practice to ATIGA could be used as a basis for negotiation since they could emphasise consistency and, hence, assist exporters to easily comply with the ROO. VAC should be the same rate as applied by ATIGA, which is 40%.

Cambodia should prepare a list of products for the CTC or the PSR to apply to non-originating materials, and should allow exporters to choose the rule to determine the originating goods.

6.7. Trade remedy

Trade remedy is a trade policy tool from the WTO or any FTA consisting of the application of anti-dumping measures, countervailing measures, and safeguard measures to correct the competitive imbalances caused by unfair trade practices, such as dumping, subsidies, and a surge of imports. When serious injury, unfair trade practices, or a surge of imports is found, trade remedies such as safeguard, anti-dumping, and countervailing measures are the mechanisms to temporarily protect vulnerable sectors.

Table 23. Trade Remedy

| EAEU–VN FTA | ATIGA | Remarks |
|--|---|---|
| <p>Chapter 3: Trade Remedies</p> <p>Countervailing measures, anti-dumping measures, and safeguard measures</p> | <p>Chapter 9: Trade Remedy Measures</p> <p>Safeguard Measures, Anti-dumping and Countervailing Duties</p> | <p>Provisions on safeguards, anti-dumping and countervailing duties in the EAEU–VN FTA and ATIGA are general in scope, which are very much in line with the WTO.</p> <p>The EAEU–VN FTA contains several articles on safeguard measures: global safeguard measures (Article 3.3), and bilateral safeguard measures (Article 3.4)</p> <p>Safeguard measures can be applied in case of a surge of imports that causes, or threatens to cause, serious injury.</p> |

Source: Authors.

Trade remedies contain three key measures – countervailing, anti-dumping, and safeguard – which are in line with the WTO. Of these, the most important is safeguard measures as they do not depend on unfair trade practices’ unlike anti-dumping and countervailing measures. The only key difference between the EAEU–VN FTA and ATIGA on trade remedy is safeguard measures. For trade remedy, the EAEU–VN FTA tends to have various safeguard measures such as global safeguard measures (Article 3.3) and bilateral safeguard measures (Article 3.4), excluding trigger safeguard measures (Article 2.10).

Global safeguard measures refer to the use of the provisions of Article XIX of GATT 1994 and the Agreement on Safeguard Measures. Meanwhile, bilateral safeguard measures are the mechanisms for the parties to bilaterally apply safeguard measures, once ‘clear evidence of increased imports constitute a substantial cause or are threatening to cause serious injury’. (WTO, 2015: 20–23).²¹ The bilateral safeguard measures provide the medium to address a mutual acceptable resolution by undertaking the compensatory action with substantially equivalent trade effects along with certain conditions for bilateral safeguard measures. These measures could be in the form of ‘suspension of further reduction of any applicable rate of customs duty’ and ‘increase of the applicable rate of customs duty for the good concerned to a necessary level not exceeding the base rate’, together with conditional periods for the application of bilateral safeguard measures (WTO, 2015: 21).²²

6.8. Dispute settlement

The rules, procedures, and practices of the dispute settlement system in general have evolved since the establishment of the GATT in 1947. These have formed part of the WTO Agreement known as ‘Dispute Settlement Understanding (DSU)’. Typically, the dispute settlement system, which is based on rules, is the most effective mechanism to address the conflicts over the multilateral trading system to resolve disputes between parties. By ‘reinforcing the rule of law, the dispute settlement system makes the trading system more secure and predictable’. The more predictability and security, the better the multilateral trading system is because the market participants need to ensure stability and predictability in the governing laws, rules, and regulations applying to their commercial activity, thus allowing them to conduct trade on a long-term basis. The rules-based system allows a party to invoke the dispute settlement to allege the non-compliance of an independent ruling with concrete findings and conclusion for implementation or confrontation with possible trade sanctions (WTO, 2004).

²¹ Article 3.4, Bilateral Safeguard Measures.

²² Sub-paras 5 and 6, Article 3.4, Bilateral Safeguard Measures.

Table 24. Dispute Settlement

| EAEU–VN FTA | ATIGA | Remarks |
|---|--|---|
| <p>Chapter 14: Dispute Settlement</p> <p>Choices of forums: WTO or under this agreement</p> <ul style="list-style-type: none"> ▪ Scope: non-compliance or possible violation shall not be applied to any EAEU member state that is not a member of the WTO ▪ Only establishing Arbitral Panel | <p>Article 89: Dispute Settlement</p> <p>Referred to ASEAN Protocol on Enhanced Dispute Settlement Mechanism</p> <ul style="list-style-type: none"> ▪ The ASEAN Protocol provides choices of forum: WTO or under this protocol ▪ Scope: currently, violation complaint and situation complaint ▪ Establishing panel and appellate bodies | <p>The ASEAN Task Force is now amending the ASEAN Protocol by using the WTO DSU as benchmark. There are still several pending issues.</p> |

ASEAN = Association of Southeast Asian Nations, DSU = Dispute Settlement Understanding, EAEU = Eurasian Economic Union, WTO = World Trade Organization.

Source: Authors.

Both the EAEU–VN FTA and ATIGA allow a complaining party to decide on the choices of forums, either the WTO or under the mechanisms of the FTA. Therefore, EAEU members and Viet Nam have at least two choices to invoke the mechanisms – whether the WTO DSU or the EAEU–VN FTA. Under the FTA, the EAEU could possibly respond as a group or individually as a disputing party. However, since one EAEU member, Belarus, is not a WTO member, when a dispute occurs, Viet Nam cannot invoke the WTO Dispute Settlement Understanding (DSU) (WTO, 2015: 142).²³ Also, if the complaining party does not choose the WTO DSU to settle the dispute, then the EAEU–VN FTA can only establish an Arbitral Panel to objectively assess the dispute. Additionally, the scope of dispute settlement covers only the violation complaints as indicated in Article 14.2, ‘the procedural provisions of the relevant incorporated articles of the WTO agreement relating to dispute settlement in case of non-violation or possible violation shall not be applied’.

Under ATIGA, all ASEAN member states are members of the WTO and, hence, the choices are therefore through the dispute settlement mechanism of the WTO or ASEAN. However, the current ASEAN dispute settlement mechanism identifies types of disputes for which a complaint could be filed: violation complaint and situation complaint (currently, the situation complaint has no procedures to resolve the dispute. The procedure of the ASEAN Dispute Settlement Mechanism is not complete after the panel report. If the parties do not agree on the panel report to resolve the dispute, they could advance it to the appellate body, which is in line with the WTO. However, at the time of writing, ASEAN is still amending this protocol to make it more effective.

6.9. Non-tariff measures and non-tariff barriers

While tariff imposition could affect trade by increasing its cost for customs duty, NTMs do not only increase trade cost but also unintentionally block trade for specific commodities to protect public goods due to its inability to comply with certain standards, for example. Similarly, NTBs have been a key trade policy measure, which intentionally affect trade, specifically to protect domestic producers rather than public goods (Cadot, 2013). Other than tariff reduction/elimination, both NTMs and NTBs

²³ Sub-para 3, Article 14.2, Scope and Coverage.

potentially require much effort to establish mechanisms for monitoring and promoting trade facilitation.

Table 25. Non-tariff Measures and Non-tariff Barriers

| EAEU–VN FTA | ATIGA | Remarks |
|---|--|--|
| <p>Article 2.9: Quantitative Restrictions</p> <ul style="list-style-type: none"> - Chapter 6: TBT - Chapter 7: SPS | <p>Article 40. Application of Non-tariff Measures</p> <ul style="list-style-type: none"> ▪ Shall be in accordance with WTO rights and obligations ▪ Not prepared, adopted, or applied to creating unnecessary obstacles in trade ▪ Notification procedures ▪ Transparency <p>Article 42: Elimination of Other Non-tariff Barriers</p> <ul style="list-style-type: none"> ▪ Assigned different sectoral committees to take charge ▪ Provided three different tranches for elimination for each group of countries ▪ Member states and the private sector could notify NTBs | <p>Unlike ATIGA, there is no specific provision on NTMs or NTB, but there are similar provisions on QR (Article 2.9), TBT (Chapter 6) and SPS (Chapter 7).</p> |

ATIGA = ASEAN Trade in Goods Agreement, EAEU–VN FTA = Eurasian Economic Union and Viet Nam Free Trade Agreement, NTB = non-tariff barrier, NTM = non-tariff measure, SPS = sanitary and phytosanitary, TBT = technical barriers to trade.

Source: Authors.

The EAEU–VN FTA intends to address NTBs (WTO, 2015: 5)²⁴ yet it does not contain specific provisions for establishing mechanisms to deal with the NTBs. Typically, the agreement has emphasised several NTMs including quantitative restrictions, sanitary and phytosanitary (SPS), and technical barriers to trade (TBT). Nonetheless, both the SPS and TBT chapters mandate parties to designate competent authorities and serve as contact points (WTO, 2015: 70, 75)²⁵ for information exchange and notification of any change.

ATIGA mandates ASEAN member states to use NTMs appropriately and eliminate NTBs (ASEAN Secretariat, 2013: 41–42).²⁶ It provides clear guidelines to countries to modify or adopt new NTMs with transparency and other procedures, such as notification, to avoid ‘creating unnecessary obstacles in trade’. At the same time, ASEAN member states are obliged to develop an NTM database in the ASEAN Trade Repository, referred to in Article 13 which provides for respective national trade repositories. There is also a mechanism to identify and eliminate NTBs by member states for which they have completed three tranches. More importantly, ATIGA also delegates authorities to relevant ASEAN bodies to monitor and review NTBs to be eliminated as notified or reported by other member states or by private companies.

²⁴ Sub-para (a), Article 1.3: Objectives.

²⁵ Article 6.9 for TBT and Article 7.10 for SPS.

²⁶ Articles 40 and 42, ATIGA.

6.10. Intention of the EAEU for a comprehensive FTA

The EAEU member states have considered a new rule for FTAs which should be constructed comprehensively; are beyond import tariffs; and address the concerns on NTBs, SPS, TBT, government procurement, competition, e-commerce, sustainable development, and other trade-related issues (Ministry of Commerce and Industry, India, 2016).

The EAEU–VN FTA has already reflected some notable provisions such as on state-owned or -controlled enterprises, government procurement, competition, sustainable development, electronic technologies in trade, and priority investment projects. State-controlled enterprises and those with special or exclusive privileges are covered in Chapter 8 bis, but only between Viet Nam and Russia. The two parties must operate in a manner consistent with their respective WTO commitments. The provision on government procurement intends to promote transparency, expand government procurement system to electronic means, enhance capacity building, strengthen institution, share information, etc. Similarly, the provision on competition should conform with the principles of transparency, non-discrimination, and fairness. The FTA has also outlined provisions to strengthen cooperation on environmental and labour issues as well as sustainable development. The agreement also promotes e-commerce or the use of electronic technologies to minimise costs and facilitate cross-border trade.

6.11. Priority investment projects

The key aspect of the EAEU–VN FTA is the provision of priority investment projects which appears in Article 1.6, providing Viet Nam and Russia with the opportunity to sign another Protocol on Supporting the Production of Motor Transport Vehicles in the Territory of Viet Nam (Government of Viet Nam, 2016). In this regard, they established the joint ventures on ‘semi-knocked down (SKD) industrial assembly’²⁷ in Viet Nam by three authorised enterprises of Russia.²⁸ For any change, including types of motor transport vehicles to be produced, Russia’s trade ministry needs to submit a proposal, together with the feasibility study, to the Ministry of Industry and Trade of Viet Nam for the Vietnamese Party’s consideration for approval. The types of motor transport vehicles consist of sport utility vehicle of Ulyanovsky Avtomobilny Zavod (UAZ), vehicles for the transport of 10 or more persons, trucks, and special purpose motor transport vehicles. Regarding ownership, the capital contribution ratio of Vietnamese enterprises in the joint ventures of this motor transport vehicles production shall be at least 50% of the total charter capital of the joint venture. Meanwhile, the Russian enterprises are bound by the following conditions: to not transfer their capital for Viet Nam technology; contribute to the development of the automobile parts manufacturing industry; develop the system of automobile maintenance and repair services; provide technical personnel training for local workers; support to motor transport vehicles, parts, and components for accessing the EAEU markets; and grant joint ventures an exclusive right to supply the same models of the motor transport

²⁷ ‘Semi-knocked down (SKD) industrial assembly’ means the industrial assembly of motor transport vehicles in the territory of Viet Nam using parts and components both imported by the joint ventures to the territory of Viet Nam and produced in the territory of Viet Nam.

²⁸ The three authorised enterprises of Russia include Automobile Plant GAZ LLC, KAMAZ Foreign Trade Company Incorporated, and LLC Ulyanovsky Avtomobilny Zavod (UAZ).

vehicles, parts, and components in the markets of other ASEAN countries (Government of Viet Nam, 2016).²⁹

The local VAC of the motor transport vehicles would be calculated through the direct method. The origin criteria shall be complied with Chapter 4 of the EAEU–VN FTA with a certificate of origin indicating VAC of ‘not less than 55%’. At the same time, the value of Vietnamese materials shall be excluded from calculation of VAC (Government of Viet Nam, 2016).³⁰ The level of localisation in the manufacture of motor transport vehicles by the joint ventures must be localised by 2020 and 2025. If the localisation level requirement could not be met within 10 years from the date of entry with effect of the protocol, Viet Nam must withdraw the establishment licence or business registration certificate of the joint ventures. The localisation level requirements of the joint ventures will be implemented as follows:

Table 26. Level of Local Value-Added Content of Motor Transport Vehicles Produced by the Joint Ventures, %

| Year | 2020 | 2025 |
|---|------|------|
| SUV of ‘UAZ’ (Ulyanovsky Avtomobilny Zavod) | 30 | 40 |
| Motor transport vehicles for the transport of 10 or more persons, including the driver | 35 | 50 |
| Truck | 30 | 45 |
| Special purpose motor transport vehicles | 25 | 40 |

Source: Author.

²⁹ Article 3: Specific Requirements.

³⁰ Sub-para 8, Article 3: Specific Requirements.