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INSIDE THIS ISSUE

EU - Vietnam Investment Protection Agreement (EVIPA) is under negotiation and promotion for the entry into force.

EU - VIETNAM INVESTMENT PROTECTION AGREEMENT

EU - Vietnam Free Trade Agreement (EVFTA) and EU-Vietnam Investment Protection Agreement (EVIPA) were officially ratified by the European Parliament on February 12, 2020. The signing of the EVIPA Agreement is said to replace 21 bilateral investment promotion and protection agreements that European Union (EU) Members States currently have in place with Vietnam. EVIPA has more comprehensive and fairer commitments on investment protection, together with important commitments under the EVFTA on opening the markets of goods, services, investment, public procurement, and intellectual property.

EU - VIETNAM

EU-VIETNAM INVESTMENT PROTECTION AGREEMENT

OVERVIEW

Compared with the investment promotion and protection agreements that EU Member States have with Vietnam, the EVIPA Agreement has fairly comprehensive content and layout, detailed in 04 chapters, a preamble and 13 attached appendix. Specfically:

Chapter 1: Objectives and General Definitions
Chapter 2: Investment Protection
Chapter 3: Dispute Settlement
Chapter 4: Institutional, General and Final Provisions

The appendices include:

Annex 1: Competent Authorities
Annex 2: Exemption for Viet Nam on National Treatment
Annex 3: Understanding on the Treatment of Investments
Annex 4: Understanding on Expropriation
Annex 5: Public Debt
Annex 6: List of Investment Agreements
Annex 7: Rules of Procedure
Annex 8: Code of Conduct for Arbitrators and Mediators

Annex 9: Mediation Mechanism
Annex 10: Mediation Mechanism for Disputes between Investors and Parties
Annex 11: Code of Conduct for Members of the Tribunal, the Appeal Tribunal and Mediators
Annex 12: Concurring Proceedings
Annex 13: Working Procedures for the Appeal Tribunal

SUMMARY OF THE KEY ISSUES IN EVFTA

Investment protection: Commitment to fair and equitable treatment and full protection and security to foreign investors, commitment not to nationalise or expropriate investments illegal and make adequate compensation in case of nationalisation or expropriation, commitment to compentsate the investors for suffer losses owing to war.

It can be seen that EVIPA has more comprehensive and fairer commitments on investment protection that EU Member States have with Vietnam. Accordingly, the commitments have clear criteria for each behavior that the state cannot do, with some exceptions to ensure the right to adjust the policy of the host country.

Notably, EVIPA has added a provision recognizing the right to adjust the policies of the host country, whereby the parties assert the right to manage in their territories to achieve policy goals such as health protection. community, safety, environment or public morality, social or consumer protection, or the promotion and protection of cultural diversity. These distinctions are designed to ensure that the provisions of EVIPA are consistently understood and applied, helping to limit disputes, in the event of investment disputes, ensuring Dispute settlement applies these provisions in a transparent, consistent manner, compatible with the views of the two sides during the negotiation of the Agreement.

Dispute settlement: The EVIPA Agreement establishes a permanent dispute settlement body to replace the ad-hoc arbitration mechanism in investment promotion and protection agreements. Vietnam has signed with EU member states before. Accordingly, disputes are resolved at a standing adjudication body consisting of two levels of trial: the first instance level and the appellate level with members selected by agreement between Vietnam and the EU.

EVIPA also specifies the selection criteria and code of conduct for members of the adjudication body. When a specific investment dispute arises, the President of each court will appoint the members to handle that dispute. These regulations are considered to help improve the fairness and consistency of dispute resolution activities, help limit the risk of errors, and at the same time enhance the independence of the dispute resolution body due to Disputing parties are no longer allowed to choose their own dispute settlers, and members must also strictly adhere to the Code of Conduct provided for in the Agreement.

Opportunity for Vietnam

It can be said that the EVIPA has a comprehensive impact on the Vietnamese economy and promotes the process of renovating the economic structure, perfecting the institution and business environment, creating favorable conditions for foreign investors in general and EU investors in particular to invest and do business in Vietnam. Based on that, Vietnam has the opportunity to achieve a right balance between attracting foreign investment and protecting national and public interests, supporting sustainable development and economic growth. Specifically:

- Commitment to investment protection in EVIPA and direct investment liberalization in EVFTA will keep Vietnam innovating its economic structure, completing the institution and business environment in Vietnam, and obtain the advantage for EU investors to do business in Vietnam. The level of EU investment liberalization in Vietnam will be further increased, especially in a number of service industries that are currently limited such as financial services, telecommunications services, transportation services, and logistics services. The market opening of these service industries will certainly boost FDI inflows from the EU into Vietnam in the coming time.

- Commitment to the Rules of Origin in the EVFTA Agreement is quite strictly regulated, which would get foreign investors to increase investment in the production in Vietnam to take advantage of access EU market and enhance the place of Vietnam's exporting goods in global value chains. It is expected that foreign investment in Vietnam will increase not only from EU member states seeking opportunities to access the Vietnamese market and by that to access the markets of other ASEAN countries, but also from investors, from other countries seeking opportunities through Vietnam to access the EU market.

- Due to the reduction of tariff and non-tariff barriers in the EVFTA, Vietnam's export turnover of goods and services will certainly grow strongly in the near future when the EVFTA Agreement comes into effect.

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