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Plain English Guide to the European Union-Vietnam Free Trade Agreement

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Written for the Chamber by experts from

ASIAN TRADE CENTRE

Overview

Traditional ways of doing business are being dramatically upended. It is not only the ongoing struggles with the coronavirus that has disrupted businesses around the globe. Many firms were already grappling with the effects of a US-China trade war and a global slowdown in trade flows.

Despite an overall gloomy picture, Vietnam has remained a bright spot. The economy has been strongly growing on the back of impressive domestic demand from a large and increasingly wealthy population and the need for many firms to find new suppliers for a wide range of products and services. Vietnam's trade to GDP ratio is nearly 200 percent, with many firms well-versed in selling goods (and increasingly services) beyond domestic borders and in many high technology sectors. The World Bank estimates that full implementation of EVFTA will increase Vietnam's GDP by 2.4 percent and boost exports by 12 percent, leading to expected additional benefits both ways.[1]

The launch of the European Union's latest trade agreement with Vietnam is poised to foster additional growth and exchange between one of Southeast Asia's rising stars and Europe. In August 2020, the EU-Vietnam FTA (EVFTA) is scheduled to be coming into force.[2] This booklet examines many of the new benefits available for firms doing business between these markets, with a focus on companies operating out of Vietnam and exporting to the EU. [3]

[1] *Vietnam: Deepening International Integration and Implementing EVFTA, World Bank, May 2020, accessed at: http://documents.worldbank.org/curated/en/866871589557725251/pdf/Vietnam-Deepening-International-Integration-and-Implementing-the-EVFTA.pdf on May 22, 2020.*

[2] *EVFTA is actually two separate agreements, including a trade agreement (EVFTA) and a separate document that covers investment (EVIPA). The Vietnamese Parliament approved both agreements in May 2020. The trade agreement enters into force 60 days later. The investment agreement awaits full ratification by all EU member states which may be a lengthy process. This booklet discusses both the trade and investment agreements under the terms the "FTA" or "EVFTA*

[3] *Firms interested in the opposite—from the EU into Vietnam—should examine the extensive materials prepared by the European Union, including a guide document found at: https://trade.ec.europa.eu/doclib/docs/2016/june/tradoc_154622.pdf with particularly useful details on autos and pharmaceutical products. Also note the EU page on the agreement, found at http://trade.ec.europa.eu/doclib/press/index.cfm?id=1437, which will be updated now that the agreements have been approved and are moving towards entry into force in August 2020.*

What Is New in EVFTA?

The EU has often complicated and high tariffs that apply to many imported goods. Under EVFTA, the EU has committed to remove nearly all of these with the majority dropped to become duty-free on the very first day of the deal. Many of the items are important export items for companies in Vietnam, giving significant immediate benefits to companies that harness the agreement effectively.

This includes a wide range of agricultural tariffs, many textile, apparel and footwear products, and most electronics. Most tariff lines drop on entry into force, in August 2020, with the remainder generally being cut in equal installments across a four, six or eight year time frame.

The EVFTA trade agreement includes 17 chapters (and an additional 4 chapters in the EVIPA on investment). This booklet does not describe all of the elements in the agreements, but is focused on those aspects most relevant for Vietnam-based firms wanting to access the EU markets.

When Does It Start?

The EVFTA will begin in August 2020.[4]

What Is Not Changing?

The EVFTA does not really make a significant difference in one key area of concern for many Vietnamese firms trying to gain a foothold in Europe: it does not address a range of standards, especially for food and agricultural products, that can stymie efforts to sell into the EU.

The EU has in place a wide range of rules, called sanitary and phytosanitary (SPS) regulations, to protect European consumers and meeting these requirements can be challenging for developing country food and agricultural exporters. EVFTA has not streamlined or eliminated many of these potential obstacles to trade, which will require sustained help to get Vietnamese farmers, growers, processors and exporters to sufficient quality to have final goods shipped to Europe.

[4] *Unlike the EVFTA, which did not need specific approval from all EU member states to bring the agreement into force, investment remains a subject for individual EU member states to handle. Hence the EVIPA will begin after the commitments are approved by EU members. In the meantime, existing Bilateral Investment Treaties (BITs) will remain in place.*

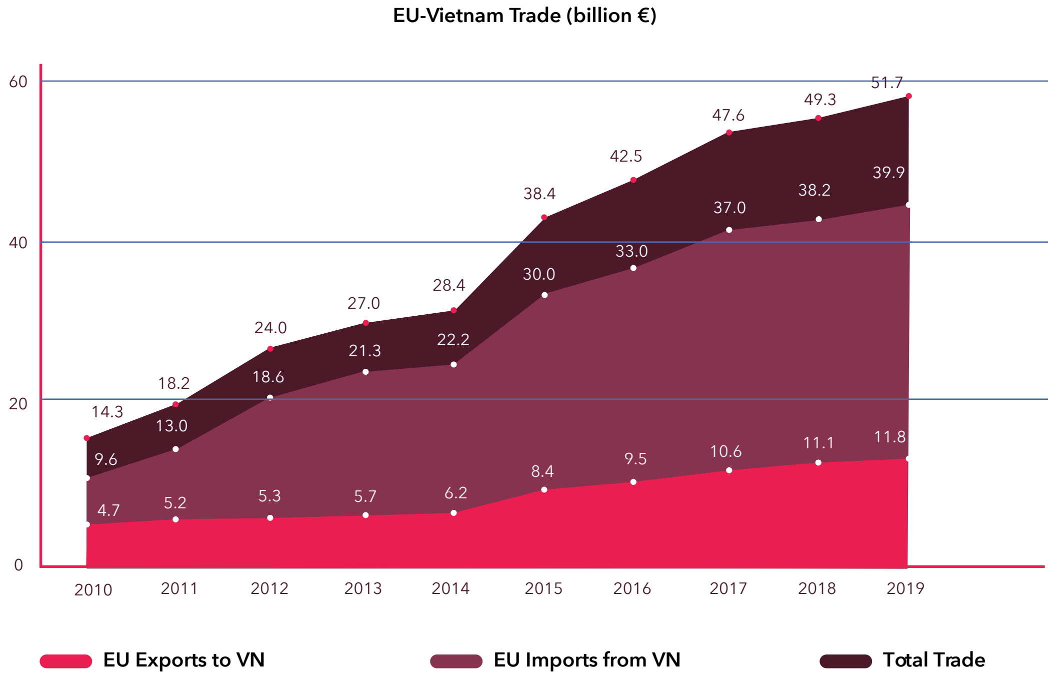
[5] *SPS chapter 6 in EVFTA can be found here:* https://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157351.pdf

SPS rules can be included in a list of non-tariff barriers (NTBs) which, as the name suggests, are a wide range of obstacles to trade other than tariffs. One example is the use of labeling rules to make it more difficult or even impossible for foreign products to enter the domestic market. Not all standards, rules and regulations, of course, are explicitly designed to prevent foreign goods. Many, including SPS regulations, exist for good reason—to ensure that citizens are not eating unsafe food products. However, legitimate concerns can cross over and become barriers to trade, particularly if rules are unevenly enforced. Many of the obstacles EU and Vietnam firms face in entering each other's market could be seen as fitting into the NTB categories. Most of these NTBs are not likely to change under EVFTA.

One additional note of caution: like many export-oriented countries, Vietnam is particularly at risk of economic slowdown in global markets. Depressed economic growth in the European Union (or even in Vietnam) may make the net impact of EVFTA shallower, with more time needed to show significant benefits or drive fundamental changes in economic structures as well as boost trade flows as much as might otherwise have been expected.

EU-Vietnam Economic Ties

Among ASEAN nations, Vietnam is the largest exporter of goods to the EU. Trade between EU and Vietnam has consistently grown since 2010. Vietnam's exports to the EU were valued at €39.9 billion in 2019, a 4.5% growth from 2018's figure. In 2019, EU's exports to Vietnam grew at 6% year-on-year to €11.8 billion.



EU is the second biggest overseas market for Vietnamese products and Vietnam's fourth largest trading partner after China, South Korea and the US.

Vietnam's key exports to the EU in 2018

Description	Trade Value (million US$)	Share of Vietnam's exports to the EU relative to the world (%)
Electrical machinery, equipment and parts	20,514.16	23.69
Footwear	4,690.74	27.90
Machinery and mechanical appliances and parts	3,288.62	28.08
Apparel and clothing; not knitted or crocheted	2,656.06	18.57
Coffee, tea, mate and spices	1,630.93	40.08
Furniture	1,307.51	17.63
Apparel and clothing; knitted or crocheted	1,284.75	9.28
Articles of leather; handbags and similar items	1,058.33	33.73
Fruit and nuts	954.68	15.93
Fish and crustaceans	898.34	14.02
Plastics and articles thereof	827.03	19.76
Iron or steel articles	649.42	21.54
Optical, photographic, medical or surgical instruments	581.42	7.53
Iron and steel	551.48	11.91
Vehicles	485.51	18.35

Mobile phones, telephone sets, electronic integrated circuits and sports footwear are top Vietnam's exports to the world with a combined trade value of US$ 610 billion in 2018. The bulk of Vietnam's exports to the EU is in the category of electrical machinery, equipment and parts. This category largely comprises mobile phones (US$ 12.3 billion) and switching and routing apparatus (US$ 0.98 billion). Footwear and clothing are also major exports to the EU. Exports of footwear to the EU represents 28% of its global exports and that of all garment, inner wear and sportswear is 14% of its global exports. Exports of coffee not roasted or decaffeinated to the EU is at US$ 1.22 billion in 2019 and this constitute 43% of Vietnam's total exports to the world. This makes the EU the biggest market for Vietnam's coffee exports. Export of handbags and leather articles to the EU also made up a significant share of Vietnam's global exports at 34%.

EU's key exports to Vietnam in 2018

Description	Trade Value (million US$)	Share of Vietnam's exports to the EU relative to the world (%)
Machinery and mechanical appliances and parts	2,804.88	0.71
Aircraft, spacecraft and parts	1,779.08	2.08
Electrical machinery and equipment and parts	1,231.12	0.63
Pharmaceutical products	1,079.34	0.57
Optical, photographic, medical or surgical instruments	652.52	0.56
Plastics and articles thereof	349.82	0.52
Vehicles	349.64	0.14
Raw hides and leather	276.16	7.46
Chemical products	272.56	0.79
Iron and steel	262.67	0.74
Meat and edible meat offal	206.79	1.81
Beverages, spirits and vinegar	204.31	0.56
Organic chemicals	196.26	0.30
Wood and articles of wood	192.70	1.24
Prepared animal fodder	149.33	2.39

Top exports from the EU are capital intensive goods such as pharmaceutical products, vehicles and high-tech machine and equipment with a trade value exceeding US$ 249 billion in 2018. Most exported product category from the EU to Vietnam in 2018 is machinery and mechanical appliances and parts such as machine for heavy industry application and their parts and machine for sealing and encapsulating. At 6-digit HS classification, aeroplanes and aircrafts are products with the highest export value of US$ 2.2 billion in 2019 and is in the second largest exported product category.

Electrical machinery and pharmaceutical products made up the third and fourth largest category of EU's exports to Vietnam respectively. Welding machines and other electrical machines with individual functions amounts to US$ 255 million of the export value. Amongst pharmaceutical products exported to Vietnam, medicaments for retail sale and vaccines constitute 68% of the value of the exported pharmaceutical products in 2019.

EVFTA Overview

As the section above indicates, the EU and European member states have seen dramatically increasing levels of business with Vietnam—even ahead of the launch of the trade agreement.

EVFTA is an important agreement. It provides new market access and more certainty around the rules that govern trade between the two partners.

Both parts of this are important. Both the EU and Vietnam are relatively open economies. Vietnam, in particular, has surprisingly low tariffs and strong service sector liberalization commitments as a result of its late accession to the World Trade Organization (WTO) in 2007. Vietnam has also aggressively pursued trade deals, including joining the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) which took effect for Vietnam in January 2019. Many of these agreements, especially the CPTPP, required significant domestic-level changes inside Vietnam. The EVFTA reinforces these market opening steps and provides business partners with greater certainty over the future path of economic development likely to take place inside Vietnam.

Both CPTPP and EVFTA, for instance, include a wide range of regulatory changes that require institutional reform, affecting even the process of future rulemaking in the country. These changes have been welcomed by the governments of the EU and Vietnam—at the highest levels across ministries—as critically important tools to spur future growth and prosperity. To pick just one example, both CPTPP and EVFTA encourage more fair behavior in markets by state-owned enterprises.

Prior to EVFTA, the European Union had already granted preferential access to Vietnamese exporters via the Generalized Scheme of Preferences (GSP). The GSP gives developing country members, like Vietnam, better benefits into the EU market for goods than non-GSP firms can receive, including lower tariffs such as partial or full removal of duties on up to two thirds of tariff lines.[6]

[6] *GSP comes in different categories, with GSP for low and lower middle income countries using World Bank criteria. Slightly wealthier countries can qualify for GSP+ benefits, while least developed economies can be granted the EU's Everything But Arms (EBA) preferential access. For more details on the EU's preferential, non-FTA programs, see https://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences/ accessed May 19, 2020.*

GSP benefits, however, have to be renewed and are conditional on the partner country's state of economic development. This makes participation less certain and increases risks for firms counting on GSP to deliver market access. Given the high rates of recent economic growth for Vietnam, it will soon graduate from GSP eligibility and lose access to duty-free access on a wide array of goods.

The EVFTA, by contrast, guarantees market access for Vietnamese goods into the EU at specified tariff rates and also includes promises for access to services, investment and more. Since GSP is a one-way agreement, European companies did not receive reciprocal access into Vietnam under this trading scheme. The EVFTA remedies this situation and gives both sides benefits from the arrangements.

Trade agreements like EVFTA also provide greater certainty and lowered risks for firms. Existing commitments made between partners are locked in. As an example, while the EU does not currently charge tariffs on inbound vitamins or a wide range of pharmaceutical products or rubber, if the EU opts to change this policy position in the future, Vietnamese firms are promised duty-free treatment.[7]

One important caveat up front for companies intending to use EVFTA. This booklet gives an overview of the rules, commitments and provisions most likely of benefit for firms. It does not, however, provide a comprehensive review. EVFTA is a complicated agreement that may require some specialist advice to ensure that all the relevant rules are being followed by firms.[8]

[7] *With the caveat that members always reserve the right to act in the interest of health and safety for human, animal and plant life and health. Basically, however, governments have a harder time imposing greater restrictions on trade to FTA partners than to non-members.*
[8] *To give just one example, European firms seeking to export items that Vietnam customs may classify as used goods, including clothing, footwear, electronics and older vehicles, may still find export barriers into Vietnam. See Appendix 2-A-5 for details: https://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157345.pdf*

Side Trip: How Do Governments Tackle Trade in Goods?

Global trade is structured through the World Trade Organization (WTO), which now includes 164 member states. The WTO rules help structure trade. While small and medium sized enterprises (SMEs) may not be aware of most WTO rules, there is one particular element of the WTO that firms should recognize: Most Favored Nation (MFN) tariff rates. Every WTO member has a tariff schedule that shows the tariff rates that they use for goods at the border for every product.[9]

Firms can always trade across borders using MFN tariff rates. Companies do not need to have a free trade agreement to trade goods. Firms do not need to use a free trade agreement (FTA) even if one exists. If no FTA is used, the tariff applied is automatically the MFN rate.[10]

Tariffs are not a tax, although it may feel like a tax to companies. Tariffs are revenue collected by customs at the border on goods. Not all goods are subject to tariffs. Many enter markets without tariffs at all, under what are called "duty-free" terms.

Products are classified using what are called the Harmonized System of Codes (HS Codes). Every good is given a specific number by the World Customs Organization (WCO). The HS classification scheme is updated every five years (although most categories remain unchanged). The most recent update took place in 2017.[11]

Goods are divided into 99 broad "chapters" or categories at the 2 digit level. As an example, Chapter 20 includes preparations of fruit, vegetables, nuts, etc. Breaking this down further, at the four digit "heading" level, HS20.09 includes fruit juices and vegetable juices, not fortified with vitamins and minerals. The classification gets more specific as more digits are added. Orange juice, other than frozen, appears at the six digit or subheading level, HS20.19.09.

[9] *Without getting too technical, there are two WTO rates—a bound rate and an applied rate. The former should be viewed as the ceiling, as members have promised not to go above this tariff level for the product. The latter is the tariff or duty rate actually used at the border. The gap between them is called "water."*

[10] *Firms can find out the MFN rates from either the WTO website (https://www.wto.org/english/tratop_e/tariffs_e/tariff_data_e.htm), from the customs websites for the destination country, or ask the freight forwarder, customs broker, or shipping firm to assist.*

[11] *See the WCO at http://www.wcoomd.org/en/topics/nomenclature/instrument-and-tools/hs-nomenclature-2017-edition.aspx Note that individual member countries may have updated their domestic HS codes (beyond the 6 digit level) more recently.*

Chart: The Classification of Orange Juice

20 (Chapter 2 digit)

- Preparations of vegetables, fruit, nuts, etc.

Chart: The Classification of Orange Juice

20.09 (Header 4 digit)

- Fruit juices and vegetable juices, not fortified with vitamins and minerals

Chart: The Classification of Orange Juice

20.09.19 (Sub-Header 6 digit)

- Orange juice (other than frozen)

Countries can continue to divide products into more HS codes with more digits—as many as 12. Anything beyond 6 digits, however, is called "domestic headings" and are no longer harmonized or consistent across all WCO members.

What this means for firms is that frozen orange juice at the 8 digit level (such as HS20.19.09.01) in one market may have a slightly different 8 digit HS code in a different market. Firms need to be careful and ensure that the HS code classification for their products match in the export and home markets. Customs officials can assist with classification questions.

EVFTA Trade in Goods

EVFTA Chapter 2 on market access contains a number of important rules to bring greater clarity and lowered risk for firms trading goods between the EU and Vietnam. This includes pledges such as national treatment to ensure that regulations and rules apply equally to goods of all parties.

The procedures, rules and obligations followed in the EU essentially already conform to EVFTA rules. The biggest benefit, then, for companies in Vietnam is the new market access granted by the agreement, rather than potential rules changes coming in the EU in the wake of EVFTA entry into force.[12]

While GSP provided Vietnam-based firms with lower tariff rates on up to 75% of goods, EVFTA will lock in duty-free treatment (or no tariffs at all) on 71% of goods on the first day of the agreement in August 2020. The percentage of goods covered by the FTA will rise to 99% after eight years.[13] For European goods being exported to Vietnam, 65% will receive duty-free treatment at the start and nearly all goods will be granted zero tariffs within 10 years.[14] Agricultural exporters from Vietnam to the EU (assuming the hurdle of demonstrated adherence to the EU's strict food safety standards can be overcome) will receive significant tariff savings on a wide range of goods. While the EU's existing tariffs for many food products can be both high and complex, Vietnam received excellent access to the EU market, often at tariff-free rates.[15]

[12] *The reverse is not true. EVFTA contains some important regulatory and legal changes within Vietnam that make it easier for European firms to do business in Vietnam. As a simple example, EVFTA includes provisions on remanufactured and repaired goods that may address an important obstacle to doing trade with Vietnam—domestic level rules that often classify such goods as "used" and either ban importation or make trade extremely difficult. EU firms may also want to examine the rules contained in the trade facilitation and customs chapter for some changes forthcoming in this area for Vietnam. For details on what European companies exporting goods to Vietnam can expect from EVFTA, see the booklet prepared by the EU at: https://trade.ec.europa.eu/doclib/docs/2016/june/tradoc_154622.pdf*

[13] *Nearly every tariff line will be set at zero by 2027.*

[14] *Actual coverage in the agreement provides for 48.5% of Vietnam's tariff lines to become duty-free to EU companies, but these lines account for 64.5% of total imported value. Over time the coverage widens, as noted, to 98.3% of Vietnam's tariff lines. The last 1.7% of lines could be subject to Vietnam's approved tariff quotas at the WTO. See World Bank, p. 19.*

[15] *For the complete list, see the EU's schedule shown in Annex 2-A-1, available at: https://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157341.pdf. Note that the EU's schedule is based on MFN tariffs that apply to all 164 members of the World Trade Organization (WTO) that do not have existing preferential arrangements in place, like FTAs. Since Vietnam is currently eligible for GSP benefits, its exports may (or may not) have exposed to MFN tariffs. Assessing the actual benefits of EVFTA for a particular product also may mean calculating the changes relative to GSP tariff rates, not MFN rates.*

For instance, before the EVFTA came into effect, ham exports from Vietnam faced tariffs of 77.8 euros/100 kg. On entry into force in August 2020, ham arriving into the EU from Vietnam will be duty-free.[16] Dried or smoked ham had MFN tariffs of 151.2 euros/100 kg which also becomes tariff free on the first day.[17]

Seafood has generally less complicated, but still quite high tariffs (up to 23%) in place before EVFTA. Nearly all products become tariff-free immediately, with some items, like halibut, sole and turbot, phasing out over four even installments to become duty-free. A few additional seafood products like sardines and some types of mackerel drop to zero in six annual installments. Anchovies, tilapia, and toothfish will take eight years to become duty-free.[18]

Chicken exports face a wide array of tariffs entering the EU. Boneless chicken was at 102.4 euros/100 kg. Chicken tariffs are dropping in eight even installments starting on the first day of the agreement to become duty-free by 2027.
The EU also granted access to many agricultural products that may not be produced or exported in large quantities today from Vietnam, but which have sufficient benefits for food producers to consider shifting production to take advantage of EVFTA.
For instance, dairy and cheese products have extraordinarily complicated tariffs for nearly all products. Under EVFTA, many of these items become duty-free immediately.

[16] As this booklet makes clear, all products claiming tariff preferences, like duty-free treatment on ham, will need to ensure that they qualify for such benefits like lowered tariffs by strictly following the accompanying rules of origin and ensuring that all paperwork is properly filled out and submitted to customs.
[17] MFN, or Most Favored Nation, refers to the tariff applied at the border to firms shipping from any of the 164 WTO members. Without a trade agreement or other preference program in place, all companies are subject to MFN rates.
[18] The tariff schedule for the EU lists immediate duty-free treatment as "A," while B3 means tariffs are cut in four equal installments, B5 is equally cut in six annual installments, and B7 will be eliminated in eight annual reductions. The longest timeline, B15, will take 16 years to become duty-free. For more details on reading the tariff schedule, be sure to examine Annex 2-A at: https://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157340.pdf Note that some processed fish categories may have longer periods before becoming tariff free. Some items, like canned tuna, may be subject to tariff rate quotas (TRQs), discussed further in the text below.

To see what a difference it can make, consider infant formula. The MFN rate for formula is 1.31 euros/kg/lactic matter + 22 euros/100 kg. This means the product is subject to one rate for the lactic, a specific dairy component, plus an additional charge for every 100 kg entering the EU.[19] Such complexity can make it challenging for dairy exporters to be competitive. However, after EVFTA begins, formula from Vietnam will be tariff-free immediately into the EU.[20] A wide variety of cheeses, like cheddar (currently 167.1 euros/100 kg), also receive immediate duty-free treatment.[21]

Coffee, a key export item for Vietnam, will see roasted beans become tariff-free, instead of paying 7.5% for regular or 9% for decaffeinated, or up to 11.5% for coffee substitutes containing coffee.

Nearly all fruits, vegetables and plants will have immediate, duty-free access from Vietnam into the EU.[22] However, do note that some agricultural products from Vietnam to the EU will remain subject to what are called tariff rate quotas (TRQs). These allow, for example, Vietnamese firms to export up to 30,000 tons of milled rice; 400 tons of garlic; or 350 tons of mushrooms at zero tariffs to the EU. Any shipments above the quota amounts will continue to pay EU MFN tariffs.

In the non-agricultural sector, EUVFTA also gives significant benefits to Vietnamese firms. A wide array of chemicals, resins, fertilizers, insecticides, and dyes, for example, typically face 5-6.5% MFN rates. Nearly all drop to zero immediately, with most of the rest dropping in four years.

While tariffs on rubber have been at 0, products made with rubber such as transmission belts, tires, or surgical gloves have had tariffs ranging from 2-4.5%. All become duty-free either immediately or in six years. Rubber products have been an important export item for Vietnam, even ahead of the entry of EVFTA.

[19] *Specifically, HS 04022911 reads: "Special milk, for infants, in hermetically sealed containers of a net content not exceeding 500 g, of a fat content, by weight, exceeding 10 %" Higher fat content milk (HS 04022991) has a higher MFN tariff rate at 1.62 euros/kg/lactic matter + 22 euros/100 kg.*

[20] *Many other dairy categories have the same complex compound MFN tariffs, but most drop to 0 on entry into force, with all scheduled lines becoming duty-free in either 3 or 5 years.*

[21] *Cheese producers, in particular, will need to consider the EU's system of geographical indications (GIs), noted later in this booklet. While cheddar is not a protected term so it could be exported and sold in the EU from Vietnam, some items that appear to receive generous tariff treatment, like Parmigiano Reggiano (MFN rate of 188.2 euros/100 kg), cannot legally be sent to the EU, as this term is a protected product—this cheese is only allowed to be sold if produced in this region of Italy.*

[22] *Some fruits, vegetables and processed fruit and vegetables continue to have complicated tariffs, both before and after the EVFTA. These items are listed as A+EP, which indicates that the ad valorum (or % tariff) is eliminated immediately, but the specific duty tariffs can still be applied*

Another key sector for Vietnam has been textiles and apparel. EVFTA lower tariffs on a all fibers and fabrics (natural and synthetic), with MFN rates up to 8% to zero on entry into force.[23] Apparel also receives significant new market access benefits under the agreement, although some of the tariff reductions are phased in over time rather than immediately applicable.

Sample Apparel Benefits

Item	MFN Rate	Date of Duty-Free (0% tariff) Treatment[24]
Outdoor coats and jackets	12%	Four to six years[25]
Men's and women's suits	12%	Immediately[26]
Women or girl's knitted or woven blouses	12%	Immediately
T-shirts	12%	Six years
Brassieres	6.5%	Six years
Bedspreads	12%	Six years
Umbrellas	4.7%	Immediately

A wide variety of steel screws used to draw a duty-rate of 3.7%, but all drop to zero on entry into force. Aluminum doors and windows were 6% and are dropping over four years to be duty-free. Assorted hand tools, like shovels or chainsaw blades, will have 1.7-2.7% tariffs disappear at the start of the agreement.

Every single item in Chapter 84--hundreds of categories in an assortment of electrical equipment--becomes duty-free on entry into force. This includes such disparate items as boilers, turbines, pumps, compressors, air conditioning units, ovens, refrigerator units, dishwashing machines, fire extinguishers, cranes, lifts and hoists, mowers, milking machines, pasta machines, printing machinery, textile spinning machines, sewing machines, machine tools, drills, sanders, calculators, cash registers, disk drives, keyboards, ATM machines, vacuum molding machines, industrial robots, valves, ball bearings, gaskets and seals, liquid crystal device (LCD) machinery, and ship rotor blades. Across hundreds of products included in the chapter, MFN tariffs ranged from a handful that were duty-free, to most items at 1.7-2.7%, with a few reaching as high as 8%. Every item in Chapter 84 will receive 0 tariffs on entry into force in August 2020.

[23] *With a very few exceptions, such as 5506 20 11 polyester spinning fibers, which takes four years for the current 4% rate to become duty free.*
[24] *Immediately means at the time of entry into force or August 2020.*
[25] *Except for anoraks and windbreakers (6102 30 90) which have duty-free status immediately. Some coats in 6202, however, will take eight years to become duty-free.*
[26] *Some categories, like ensembles of synthetic fabric (6102 23 00) or suits of the same types of fabric (6103 33 00), drop across six or four, respectively.*

Chapter 85, electronics and components, a category that also matters to many Vietnamese firms, largely drops to 0 on entry into force. Some of slower reductions in current EU MFN tariff rates on are items that cannot be commercially valuable, like coin operated record players, which do not fall to zero for four years. Some, however, like many categories of televisions including those with higher value screen technologies, do not lose the 14% EU tariff for six years.

Many important auto and vehicle parts categories are also dropping on entry into force from levels of 3-4.5%.

Eyeglasses and other optical equipment are also becoming duty-free on the first day of the agreement. Most items were set at 2.7%, with some camera lenses falling from 6.7% to zero. Cameras will become duty-free immediately, rather than attracting tariff rates of 3.7-4.2%.

Finally, while wooden furniture has been duty-free into the EU, this rate is now locked into the EUVFTA. Bamboo and rattan furniture will lose the 5.6% tariff rate on entry into force. All other products in Chapter 94, such as lamps and Christmas tree lights, are also set to become duty-free immediately.

EVFTA will take effect in August 2020, with firms receiving duty-free access on all goods listed here as "immediate" on that date. For products that will be cut in equal installments, the first tariff reduction will also begin on the same date in August. For example, a plug-in alarm clock (HS9105 11 00) has an MFN rate of 4.7% and will be reduced in four installments.[27] In August, when the EVFTA comes into force, this tariff will be cut to become 3.5%. On January 1, 2021, the second installment will be applied, dropping the tariff to 2.3%. The alarm clock will be duty free at the start of January 2023.

Note that the EU has made a recent rule change that requires that all firms have an EU economic operator for handling goods. The Market Surveillance Regulation requires such an individual of record to ensure paperwork is in order and that EU authorities can contact a locally present individual in situations of potential risk. An EU operator can be: the manufacturer of the goods; the importer (if the manufacturer is not established in the EU); an authorized representative; or a fulfilment service provider, if none of the above are established in the EU.*

[27] *As this example indicates, some tariffs will need to be rounded down to the nearest 1/10th of a percent. See Section A, point 4. The EU's tariff schedule shows the letter "A" on items that immediately become duty-free. The alarm clock would be represented by "B3" in the tariff schedule.*

* *New EU Regulation on Market Surveillance and Product Compliance Published, Steptoe and Johnson LLP, June 28, 2019,* [https://www.lexology.com/library/detail.aspx?g=44713a72-3897-4480-86dc-05d57d07563c.](https://www.lexology.com/library/detail.aspx?g=44713a72-3897-4480-86dc-05d57d07563c)

Exporters to the EU must have a REX number in order to complete shipments of more than EUR 6,000. (This REX number is also required for exporters claiming GSP benefits into the EU.) The REX system is the EU database used to register and identify exporters, allowing them to certify the origin of goods based upon self-certification of origin. Exporters sending goods from the EU to Vietnam will satisfy EVFTA origin documentation requirements by submission of a self-certified statement of origin made out by a registered exporter in the REX system database, or by any exporter for consignments that do not exceed EUR 6,000.*

* *REX Numbers for Exporters into the EU, Baker McKinzie, June 26, 2020* https://insightplus.bakermckenzie.com/bm/international-commercial-trade/vietnam-rex-numbers-for-exporters-to-the-eu-deadline-30-june

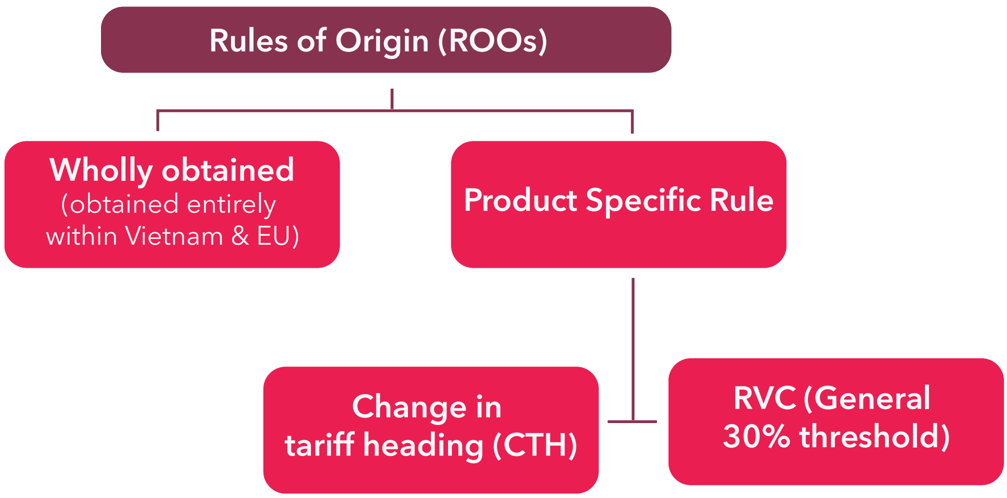
Rules of Origin

Firms in Vietnam that want to take advantage of these lower tariffs have to follow the specific rules of origin (ROO) that match each and every product. These ROOs are designed to ensure that products from outside the EU and Vietnam cannot "sneak into" the arrangement and get lower tariffs. The point of an FTA is to give competitor benefits to EU and Vietnamese partners that non-members cannot access. This is especially key when the tariff savings can be as significant as EVFTA offers—duty-free access can only be granted to products from the participating member country firms.

In general, ROOs fit into two broad categories: 1) items that are "wholly obtained" or 100% from the EU or Vietnam, such as nearly all agricultural products, forestry items, fish from domestic waters and the like; and 2) items that have been "substantially transformed."

Substantial transformation has specific rules for each product, but in general, firms cannot break bulk shipments, repackage items, engage in simple assembly and so forth. Companies need to consult the ROO chapter (Protocol 1) carefully to determine the exact rules required to match lower tariffs for each HS Code.

ROOs are not the same thing as the stamp on the box "made in Vietnam" or the tag on the shirt "made in France." The specific criteria needed for each product to be eligible for lower tariff rates on offer is outlined in Protocol 1.



EVFTA has an interesting ROO approach—more detailed that the typical ASEAN agreement (which started with "blanket" regional value content rules) and less detailed than the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), which gives explicit rules for every single tariff line.

What the EVFTA has done is create basic rules, mostly split by HS tariff chapters (at the two digit level, like 01 for live animals or 29 for organic chemicals). These rules outline the basic idea of the ROO. But firms will also need to carefully review the text in Protocol 1 to ensure that the details are followed. Firms that fail to follow the ROO cannot claim tariff benefits. Those companies that are not in compliance with ROOs and proceed to claim preferences can receive significant fines and penalties, which may also be applied retroactively.

Firms MUST pay careful attention to the ROOs in Annex 1 of Protocol 1.[28] All FTAs can have very different ROOs, so firms must check their specific products to ensure that the right rules are met before claiming benefits, even if the company has experience using ROOs in different trade agreements.

Firms planning to use EVFTA for nearly all agricultural items should be aware that the agreement requires most content to be wholly obtained. This includes many processed food items, meaning that sourcing of ingredients and raw materials will need to be done within Vietnam and the EU.

Firms canning tomatoes, for instance, that currently source some or all of the tomatoes from Thailand for use in Vietnam processing will not be eligible for EVFTA, as the ROOs require that all of the materials used in this final product be wholly obtained, or grown in Vietnam or the EU.

Fruit juice, by contrast, uses a change in tariff heading (CTH) rule which does allow the fruit and other raw materials to be sourced from outside the partners as long as the final product does not include more than 20% weight from sugar. The raw materials in fruit juices (Chapter 20) are typically found in a different chapter (Chapter 08).

On additional complication for processed food producers may be the introduction of some ROOs that include allowable weights for certain ingredients or materials. This is particularly true for items that contain sugar (often limited to less than 20% of the weight of the final product) or dairy (an example is chocolate, which limits the individual weight of sugar and dairy items to not more than 40% of the final product and the combined weight of sugar and dairy may not exceed 60% of the weight of the final product.)

[28] *https://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157381.pdf The ROO details can be found starting on page number 47*

For non-agricultural goods, the basic rules in EVFTA are either a change in tariff heading (generally at the two digit or chapter level) or regional value content (RVC). For chemicals, many ROOs are process rules (as long as the key processes like cracking or distillation take place within the EU or Vietnam). In some product categories, firms can choose between the multiple ROOs, whenever the word "or" is included.

Companies familiar with ASEAN may not immediately recognize the RVC rules in EVFTA, as the language is different. In ASEAN, the rules are typically written as "40 or 45% RVC." In EVFTA, the rule reads "manufacture in which the value of all the materials used does not exceed 70 % of the ex-works price of the product." This is the same as a 30% RVC rule, as it means that at least 30% of the final product value must be obtained from EVFTA partners.

Textiles and apparel, as is common in many FTAs, face complicated ROOs. In EVFTA, double transformation is required—from fibre to fabric or from yarn to garment. Printed fabrics have a special "printing" rule.

Many firms shipping goods between the EU and Vietnam may use regional hubs enroute, such as Singapore, for consolidation of shipments. The EVFTA makes this process simpler, by promising to maintain origin status during transit through third countries when under the supervision of customs authorities. To qualify, firms must not alter, transform or perform any operations on the goods (beyond whatever might be required to maintain their condition or affix any necessary country-specific labeling prior to final arrival in the EU or Vietnam).[29]

In short, firms are strongly urged to carefully study the rules and conditions that must be met in order to qualify for tariff cuts under EVFTA.

The EU intends to eventually create an EU-ASEAN FTA. Such an agreement would allow sourcing of materials from across the EU and ASEAN to meet ROOs. An interim step to help achieve this outcome is to provide rules for "cumulation" or the combination of content between EU agreements in the region to "count" towards RVC. The EU currently has two agreements in ASEAN—with Singapore (which entered into force in November 2019)[30] and with Vietnam. Several more are under negotiation, including an EU-Indonesia FTA.

[29] *See Article 13 of Protocol 1 for additional details at: https://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157381.pdf*
[30] *The EU-Singapore FTA is the subject of a companion booklet by SICC and the Asian Trade Centre. It can be found here:*

In EVFTA, the only products currently allowed to cumulate content between the EU, Vietnam and Singapore are live, fresh, chilled, prepared or preserved squid, cuttlefish and octopus. At some point in the future, the list of eligible products found in Annex III to Protocol 1 may be expanded.[31] Firms with an interest in expanding this list of items eligible for cumulation may wish to consult with their government.

Apparel firms trading goods in HS codes 61 and 62 may also be interested to know that items can include content, including fabrics, sourced from South Korea, building on the EU-Korea FTA. For details, see Annex V of Protocol 1.[32]

EVFTA has a certificate of origin (CO) that Vietnam requires.[33] Specific instructions are given in Annex VII to Protocol 1. In addition to the draft CO shown on page 149, the Annex provides samples of an application for movement certificate and declaration form for exporters.[34]

The form needed by exporters out of Vietnam into the EU is at the end of this guide.

31 See the details at: https://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157381.pdf
32 This Annex refers back to Paragraph 7 of Article 3. https://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157381.pdf
33 Approved EU firms can use self-certification for EVFTA. Vietnam may also shift towards self-certification at a later date. EU exporters will need to be registered in the REX system to receive a CO. See https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOC_2020_196_R_0006&rid=6
34 These documents can be seen at: https://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157381.pdf Document last accessed on June 8, 2020.

Trade in Services

Goods are the most obvious part of trade flows. The manufacturing of goods includes a large and growing share of trade in services. Even getting an egg or an onion from the original farm to the market and onward to overseas customers requires many different types of services.

While much of the focus of the agreement in Chapter 8 deals with regulatory and legal changes in Vietnam, there are new benefits to be had for Vietnam-based firms to deliver services into the EU. However, the agreement can be challenging to understand and the actual, practical changes may be more limited than first appears.

The agreement was negotiated on the basis of what is called a "positive list." This means that only the sectors specifically listed in the 8-A Annexes are opened for Vietnamese services firms and suppliers. In addition, as many services sectors are handled directly by EU member states, within each permitted sector or subsector, different EU states may or may not have agreed to the same standards in openness.

Of course, Vietnamese companies may already be delivering services to the EU ahead of the arrival of the EVFTA. The agreement provides such firms additional benefits, such as national treatment (similar treatment to domestic services firms where commitments have been made).

To understand what services are now available to Vietnam in the EU, it may be best to start with an example of engineering services. Of the 28 EU markets,[35] 19 have allowed the digital delivery of engineering services. The remaining 9 have a variety of restrictions such as one EU member state that provides only "pure planning" engineering services, six member states have not agreed to allow online provision of engineering services at all, and one requires approval from the local chamber of engineers.[36]

For investment by Vietnamese engineering firms into the EU, this is allowed by 26 EU member states.[37] Restrictions are imposed on investments by one member to ask for partnership or subcontracting with local investors and by another EU member state that requires that only national citizens have permission to invest in the sector.

[35] The UK has specific commitments in EVFTA under EU membership that will change in the future once it leaves the organization.

[36] In technical language, online delivery of services, or Mode 1, may include other means of delivering such services including telephone and via post but in today's economy, most will be digital or online. For engineering services, Mode 2 is fully open in all EU member countries, which allows EU firms to travel to Vietnam to get engineering services. Modes 1 and 2 commitments for the EU can be seen in Annex 8-A-1 shown at: https://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157357.pdf

[37] In some FTAs, investment in services is called Mode 3 and included in the same set of schedules. The EU has split these out into Annex 8-A-2, found at: https://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157358.pdf

Do note that, even when access is granted under EVFTA, firms may still need to obtain licenses and qualifications to perform a service in some EU member countries. The EVFTA agreement does promise that any such licensing or qualification rules should not be for the purpose of restricting economic activity and should be administered efficiently and in an impartial manner. Individuals may also need visas or the competition of additional immigration and travel requirements. Some of the conditions are shown in Annex 8-A-3.

For engineering companies, "business visitors, intra-corporate transferees, and business sellers," six EU member states require residency; one requires local nationality; and one requires two years of demonstrated construction experience.[38] Contractual service suppliers of engineering services need to pass economic needs tests in 9 EU markets; one requires planning services, subject to an economic needs test; two include a residency requirement; one requires special knowledge relevant to the sector; and one member market made no commitments at all.

Hence, although services are a critical part of the global economy—essential to manufacturing and important in their own right—EVFTA does not make it easy to move services from Vietnam to the EU. Many sectors are ignored completely, with no new commitments at all on offer. Even in those areas that are included, the simple example of engineering shows the difficulties that some firms will face in taking advantage of any new market access on offer.

[38] *See the details in Annex 8-A-3, found at: https://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157359.pdf*

Investment

The European Union has traditionally handled investment issues at the level of individual nations, rather than as a collective. In the negotiations with Vietnam, investment was handled in a hybrid model. Investment protection is covered in a separate document, the EU-Vietnam Investment Protection Agreement (EVIPA), while market access commitments and overall rules for investment are included in the EVFTA.

For most companies, the distinction is less relevant than the rules and commitments. Hence, this booklet discusses new rules and access of importance to Vietnam-based firms looking to invest in the EU under the broad heading of "EVFTA."

EVFTA carves out or excludes services and investment in audio-visual and a wide array of domestic transport including air and maritime transport.

Performance requirements, such as economic needs tests, limitations on total numbers of establishments or total amount of foreign investable capital, or total numbers of local employment, are prohibited. Do note, however, as the example of engineering services shows, that governments may have scheduled a variety of exceptions to these overall rules. (If governments did not do so in the agreement, they are now prohibited from imposing new restrictions in the future.)

Investors in scheduled sectors are granted national treatment (similar to whatever rules apply to locally invested firms) and MFN treatment (no less favorable treatment than other foreign investors).[39]

The EVIPA is, as the name implies, about protection of investments. The key objective of the investment protection agreement is to ensure that Vietnamese and EU investors have clarity of treatment of their investments, including the same treatment or non-discrimination for investors going both ways. The agreement pledges both governments to avoid expropriation (or seizure of assets) except in limited, transparent conditions. Overall, the agreement provides similar investment treatment to existing bilateral investment treaties (BITs) and FTAs. Prior to EVIPA, Vietnam had 21 different BITs in place, which will now be replaced with one agreement and extended to include all EU member states.

[39] *MFN treatment does come with exceptions, including communication services (other than post and telecommunications); recreational, cultural and sporting services; fisheries and aquaculture; forestry and hunting; and mining (including oil and gas). In these areas, the EU and Vietnam have the right to discriminate (or not to do so).*

One important element of the EVIPA is a significantly changed system for handling disputes over investment. Typically, investors have recourse to what is called investor-state dispute settlement (ISDS) in circumstances where the foreign government has unfairly expropriated (or seized) covered investments without providing adequate compensation.

Investment protection procedures like ISDS can be quite important for foreign firms that are uncertain about the likelihood of receiving fair treatment from the local court system in times of disputes over government expropriation actions.

EVIPA, like the agreement between the EU and Singapore, uses a different model to protect investors: a standing system more similar to a Court to manage disagreements. The exact details can be found in the agreement.[40]

It is important to understand that governments have always had—and will maintain—the right to regulate in the interests of human, animal and plant life and health, as well as ensure public safety. The agreement clarifies some of these government prerogatives in greater detail.

A standing Court-type of system like the one in EVIPA has been designed to resolve some important complaints of typical ISDS procedures including the lack of precedent that follows between cases, high costs, limited transparency over proceedings, and includes some specific elements to prevent abuse of the system.

The Court-system embedded in EVIPA does not allow investors to sue the EU or Vietnam for any perceived problem, including loss of market or declining sales. Instead, it helps firms be more confident in the regulatory environment for foreign investors and ensures an alternative approach is available for handling specific types of disputes in the future.

[40] http://trade.ec.europa.eu/doclib/press/index.cfm?id=1437

Other Key Elements of EVFTA

Intellectual Property Rights and Geographical Indications (GIs)

Vietnam has been steadily upgrading its ability to register and protect the ideas embedded in products. The EVFTA reinforces the importance of intellectual property rights (IPR). Many of the rules in the agreement duplicate IP rules that Vietnam has agreed to follow in the CPTPP.

Of particular importance for Vietnamese companies is the new addition of geographical indications (GIs).[42] GIs will now be protected both inside Vietnam and for products exported to the EU.[43] While widely known and understood in Europe, GIs are relatively new in Asia. The EVFTA applies GIs to a much larger group of products than before.

The primary idea behind GIs is that there is something particular to the creation of a product based on its geographic origins. Apparently similar goods produced in a different location or with different production methods should not be allowed to be marketed in the same way, as the two items are not actually alike.

The easiest example for many to recognize is champagne (and many other types of wines and spirits). GIs in alcoholic beverages have a long history. Champagne produced from grapes grown in Champagne, France, is assumed to be endowed with certain qualities and characteristics that cannot be replicated by a similar type of product made in California. Only the beverage made in Champagne, France, qualifies for the label of champagne. All others must be called something else, like sparkling wine, to avoid any potential customer confusion.

In EVFTA, Vietnamese producers need to be mindful of European GIs, which may provide specific protections for 169 EU products that cannot be sold in Europe or in Vietnam under the same names. Vietnam listed 39 items for GI protection.[44]

[41] *For more details on the changes forthcoming for EU firms operating in Vietnam, see the EU's booklet at https://trade.ec.europa.eu/doclib/docs/2016/june/tradoc_154622.pdf*
[42] *CPTPP also has a shorter section on GIs, but provides protection only to "compound" names like Parmesan Reggiano cheese and not simply parmesan.*
[43] *The enthusiasm by which both sides opt to enforce the GI rulebook may vary.*
[44] *See the full list of protected GIs in Annex 12-A, at: https://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157371.pdf*

Government Procurement

As the largest purchaser of goods and services in the economy, governments are an important part of the economy. Typically, however, foreign firms have no access to government procurement contracts.

EVFTA opens up procurement markets at the central level for Vietnamese firms interested in bidding on EU contracts. Vietnamese firms are not eligible for all potential tenders, but those that exceed roughly US$180,000 for goods and services, with a higher threshold for construction of US$6.9 million.[45]

Note that not every paperclip or air ticket purchased by the respective governments are suddenly open for competition. The agreement details, in Chapter 9, the specific types of contracts that are eligible.[46]

Other Elements

EVFTA is a comprehensive agreement. It includes 17 chapters covering many important aspects of trade in goods and services, with four additional chapters on investment in EVIPA. Some firms will need to examine the legal texts carefully for details not included in this booklet.

The trade and sustainable development chapter may cause some working adjustments for firms based in Vietnam. Companies are to maintain fundamental working rights for employees,[47] follow several existing multilateral environmental treaties on topics like endangered species, and cooperate to sustainably manage forest and fisheries resources.

The agreement is legally binding, which means that the governments in the EU and in Vietnam have promised to legally uphold nearly all of the commitments in the agreements.[48]

[45] *The actual limits are expressed in SDR, or Special Drawing Rights, maintained daily by the IMF. For more details on exactly which contracting parties in EU member states are included, see Annex 9-A at https://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157365.pdf*

[46] *https://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157364.pdf*

[47] *The specific commitments are similar to those embedded in the CPTPP, including following the International Labor Organization's 1998 Declaration. See Chapter 13 at: https://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157373.pdf*

[48] *A few chapters or provisions are not subject to dispute settlement. For example, Chapter 13 on trade and sustainable development has a different system for handling disagreements over implementation.*

Conclusions

The EVFTA provides a significant range of new opportunities for companies based out of Vietnam to supply goods and services to the European Union. Given the importance of the EU market to Vietnam's existing export profile, the new benefits found in EVFTA should increase the competitiveness of Vietnamese firms even further within Europe.

As EVFTA is not automatically applied to exports from Vietnam, firms need to ensure that they have read and understood what the agreement offers and follow the relevant rules. Companies may need additional specialist advice and assistance to ensure compliance.

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