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Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, of the Investment Protection Agreement between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The dynamically growing Southeast Asian economies, with their over 600 million consumers and a rapidly rising middle class, are key markets for European Union exporters and investors. With a total € 227.3 billion of trade in goods (2017) and € 77 billion of trade in services (2016), the Association of Southeast Asian Nations (ASEAN) taken as a whole is the EU's third largest trading partner outside Europe, after the US and China. At the same time, a total € 263 billion foreign direct investment stock (2016) in the ASEAN makes the EU the first foreign direct investor in the ASEAN, while the ASEAN as a whole is in its turn the second largest Asian foreign direct investor in the EU – with a total foreign direct investment stock of € 116 billion (2016).

Vietnam has become the EU's second biggest trading partner in ASEAN after Singapore and ahead of Malaysia, with trade between the EU and Vietnam worth € 47.6 billion in 2017. Vietnam is one of the fastest growing countries in ASEAN, with an average GDP growth rate of around 6% in the past decade that is forecasted to be maintained in the future. Vietnam is a vibrant economy of more than 90 million inhabitants, with the fastest growing middle class in ASEAN, and a young and dynamic workforce. With its high literacy rate and education levels, comparatively low wages, good connectivity and a central location within ASEAN, more and more foreign investors are choosing Vietnam as their hub to service the Mekong region and beyond.

On 23 April 2007, the Council authorised the Commission to enter into negotiations for a region-to-region Free Trade Agreement (FTA) with countries of the ASEAN. It being understood that the objective was to negotiate a region-to-region FTA, the authorisation provided however for the possibility of bilateral negotiations in the event that it was not possible to reach an agreement to negotiate jointly with a grouping of countries of the ASEAN. In light of difficulties encountered in the region-to-region negotiations, both sides acknowledged that an impasse had been reached and agreed to pause these.

On 22 December 2009, the Council agreed on the principle of launching bilateral negotiations with individual ASEAN countries based on the authorisation and negotiating directives of 2007, whilst preserving the strategic objective of a region-to-region agreement. The Council also authorised the Commission to launch bilateral negotiations first with Singapore, as a first step towards the objective of the timely launch of such negotiations with other relevant ASEAN countries. The EU has thereafter launched bilateral FTA negotiations with Malaysia (2010), Vietnam (2012), Thailand (2013), the Philippines (2015) and Indonesia (2016).

On 15 October 2013, based on a new EU competence under the Lisbon Treaty, the Council authorised the Commission to extend the on-going bilateral negotiations with ASEAN countries to cover also investment protection.

On the basis of the negotiating directives adopted by the Council in 2007, and supplemented in October 2013 to include investment protection, the Commission has negotiated with Vietnam an ambitious and comprehensive FTA and an Investment Protection Agreement (IPA), with a view to creating new opportunities and legal certainty for trade and investment between both partners to develop. The legally reviewed texts of both agreements have been made public and can be found on the following link:

http://ec.europa.eu/trade/policy/countries-and-regions/countries/vietnam/

The Commission is putting forward the following proposals for Council decisions:

– Proposal for a Council Decision on the signing, on behalf of the European Union, of the Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam;

– Proposal for a Council Decision on the conclusion of the Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam;

– Proposal for a Council Decision on the signing, on behalf of the European Union, of the Investment Protection Agreement between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part; and

– Proposal for a Council Decision on the conclusion of the Investment Protection Agreement between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part.

Earlier, the Commission had put forward a proposal for a horizontal safeguard regulation that will be of application, among other agreements, to the FTA between the EU and Vietnam.

The attached proposal for a Council Decision constitutes the legal instrument authorising the signing, on behalf of the European Union, of the Investment Protection Agreement between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part.

- **Consistency with existing policy provisions in the policy area**

The negotiations of the FTA and the IPA were preceded by the negotiation, by the European External Action Service, of a Partnership and Cooperation Agreement (PCA) between the European Union and its Member States and the Socialist Republic of Viet Nam, which entered into force in October 2016. The PCA provides the legal framework to further develop the already longstanding and strong partnership between the EU and Vietnam, in a broad range of areas, including political dialogue, trade, energy, transport, human rights, education, science and technology, justice asylum and migration.

The EU and Vietnam's longstanding trade and economic relationship has until now developed in the absence of a specific legal framework. The FTA and IPA that have been negotiated will constitute specific agreements giving effect to the trade and investment provisions of the PCA and will be an integral part of the overall bilateral relations between the EU and Vietnam.

From the date of its entry into force, the EU-Vietnam IPA will replace and supersede the bilateral investment treaties between Vietnam and EU Member States that are listed in Annex 6 (List of Investment Agreements) to the IPA.

- **Consistency with other Union policies**

The EU-Vietnam FTA and IPA are fully consistent with Union policies and will not require the EU to amend its rules, regulations or standards in any regulated area. Furthermore, like all other trade and investment agreements the Commission has negotiated, the EU-Vietnam FTA and IPA fully safeguard public services and ensure that governments' right to regulate in the public interest is fully preserved by the agreements and constitutes a basic underlying principle to them.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

Following the Court of Justice of the EU Opinion 2/15, and in light of the subsequent wide-ranging discussions among EU institutions on the architecture of trade and investment agreements, the Commission presents the result of negotiations with Vietnam in the form of two self-standing agreements: an FTA and an IPA, as was the case for the result of negotiations between the EU and Singapore.

In view of Opinion 2/15, and considering that the content of the EU-Vietnam FTA is essentially the same contents as that of the EU-Singapore FTA, all the areas covered by the EU-Vietnam FTA would fall within the competence of the EU and, more particularly, within the scope of Articles 91, 100(2) and 207 TFEU. In the same vein, all substantive provisions on investment protection under the EU-Vietnam IPA, to the extent that these apply to foreign direct investment, would be covered under Article 207 TFEU.

As a result, the EU-Vietnam FTA is to be signed by the Union pursuant to a decision of the Council based on Article 218(5) TFEU and concluded by the Union pursuant to a decision of the Council based on Article 218(6) TFEU, following the European Parliament's consent.

The EU-Vietnam IPA is to be signed by the Union pursuant to a decision of the Council based on Article 218(5) TFEU and concluded by the Union pursuant to a decision of the Council based on Article 218(6) TFEU, following the European Parliament's consent and ratification by the Member States in accordance with their respective internal procedures.

• Subsidiarity (for non-exclusive competence)

As confirmed by Opinion 2/15 on the EU-Singapore FTA and in analogy thereto, the EU-Vietnam FTA as presented to Council does not cover any matters that fall outside of the EU's exclusive competence.

With regard to the IPA, the Court confirmed that, pursuant to Article 207 TFEU, the EU has exclusive competence with regard to all substantive provisions on investment protection, to the extent that these apply to foreign direct investment. The Court further confirmed the EUs exclusive competence with regard to the state-to-state dispute settlement mechanism in relation to investment protection. Finally, the Court stated that the EU has shared competence with regard to non-direct investment and investor-to-state dispute settlement (replaced later on by the Investment Court System in the IPA), where the Member States act as defendants.[1]

These elements cannot be separated in any coherent way from the substantive provisions or the state-to-state dispute settlement and hence should be included in EU-level agreements.

• Proportionality

This proposal is in line with the vision of Europe 2020 strategy and contributes to the Union's trade and development objectives.

[1] See the clarification in the judgement of the Court of Justice of the European Union in Case C-600/14 Germany vs Council (Judgment of 5 December 2017) paragraph 69.

- **Choice of the instrument**

This proposal is in accordance with Article 218 TFEU, which envisages the adoption by the Council of decisions on international agreements. There exists no other legal instrument that could be used in order to achieve the objective expressed in this proposal.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

After negotiations with Vietnam were completed, a team led by DG Trade's Chief Economist Unit's carried out a study of the economic benefits to be expected from the agreement.

The analysis predicts that the elimination of bilateral tariffs and export taxes together with the reduction of the NTBs that affect the cross-border exchanges of goods and services will boost bilateral trade considerably. EU exports to Vietnam are estimated to rise by more than € 8 billion by 2035, while Vietnam's exports to the EU are expected to grow by € 15 billion. This corresponds to an increase in relative terms of EU exports to Vietnam by almost 29% and of Vietnam exports to the EU by nearly 18%.

The economic modelling carried out further estimates that EU national income could grow by more than € 1.9 billion by 2035 as a result of the FTA, while Vietnam's national income could increase by € 6 billion over the same period. The sizeable difference in expected benefits is the result of the large difference in the relative importance of the EU and Vietnam as export destination to each another.

The results of the quantitative analysis presented above may be considered to underestimate the real economic impact of the agreement, as they do not take into account the foreseeable benefits linked to the strengthening of the protection and enforcement of intellectual property rights or the liberalisation of FDIs in the manufacturing sectors and of public procurement. Furthermore, synergies in global supply chains that may derive from the EU-Vietnam FTA, particularly in the broader context of an ongoing effort to further strengthen the EU's economic relationship with the ASEAN region, have not been possible to model but could be expected to be significant.

- **Stakeholder consultations**

Prior to the launch of bilateral negotiations with Vietnam, a Trade Sustainability Impact Assessment (TSIA) of the FTA between the EU and the ASEAN[2] was conducted by an external contractor to study the potential economic, social and environmental impact of a closer economic partnership between both regions.

In the framework of the preparation of the TSIA, the contractor consulted internal and external experts, organised public consultations in Brussels and in Bangkok, and held bilateral meetings and interviews with civil society in the EU and in ASEAN. Consultations in the framework of the TSIA provided a platform for the involvement of key stakeholders and the civil society in a dialogue on trade policy in relation to Southeast Asia.

Both, the TSIA report and the consultations held in the context of its preparation, provided the Commission with input that has been of great value in all bilateral trade and investment negotiations launched since with individual ASEAN countries.

[2] http://trade.ec.europa.eu/doclib/html/145989.htm

In addition, in June 2012, the Commission conducted a public consultation on the future bilateral agreement with Vietnam that included a questionnaire prepared to obtain information from stakeholder that later helped the Commission in establishing priorities and taking decisions throughout the negotiating process. 62 replies were received, of which 43 from industry federations and associations, 16 from individual companies and three from Member States. Replies covered a wide range of sectors, including agri-food, ICT, textiles, services, pharmaceuticals, chemicals, metals, green energy, automotive, machinery and wood-paper. The written consultation was followed with meetings with a selected number of respondents to the questionnaire identified as representing the most sensitive sectors for the negotiations with Vietnam (textile, alcoholic beverages, pharmaceuticals, automotive and ICT).

A roundtable with stakeholders on human rights and sustainable development in the context of bilateral relations between the EU and Vietnam was held in May 2015[3]. The Commission then carried out a dedicated analysis[4] addressing the possible impact of the FTA on human rights and sustainable development.

Prior and during negotiations, the EU Member States were regularly informed and consulted orally and in writing on the different aspects of the negotiation via the Council's Trade Policy Committee. The European Parliament was also regularly informed and consulted via its Committee on International Trade (INTA), and notably its EU-Vietnam FTA Monitoring Group. The texts progressively resulting from the negotiations were circulated throughout the process to both institutions.

- **Collection and use of expertise**

A Trade Sustainability Impact Assessment of the FTA between the EU and ASEAN was carried out by the external contractor "Ecorys".

- **Impact assessment**

The TSIA, conducted by an external contractor and finalised in 2009, concluded that an ambitious EU-ASEAN FTA would deliver important positive impacts (in terms of GDP, income, trade and employment) for both the EU and Vietnam. National income effects on the EU side were estimated at € 13 billion and for Vietnam at € 7.6 billion.

- **Regulatory fitness and simplification**

The EU-Vietnam FTA and IPA are not subject to REFIT procedures. They nevertheless contain a number of provisions that will simplify trade and investment procedures, reduce export and investment related costs and will therefore enable more small firms to do business in both markets. Among the expected benefits are: less burdensome technical rules, compliance requirements, customs procedures and rules of origin, the protection of intellectual property rights, or the reduction in cost of litigation under the Investment Court System for claimants that are SMEs.

[3] http://trade.ec.europa.eu/doclib/events/index.cfm?id=1288

[4] http://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154236.pdf

- **Fundamental rights**

The proposal does not affect the protection of fundamental rights in the Union.

4. BUDGETARY IMPLICATIONS

The EU-Vietnam FTA will have a financial impact on the EU budget on the side of the revenues. It is estimated that foregone duties could reach an amount of € 1.7 billion upon full implementation of the agreement. The estimate is based on average imports projected for 2035 in the absence of an agreement and represents the annual loss in revenues resulting from the elimination of EU tariffs on imports originating in Vietnam.

The EU-Vietnam IPA is expected to have a financial impact on the EU budget on the side of the expenditures. The agreement will be the EU's third (after the EU-Canada Comprehensive Economic and Trade Agreement, and the EU-Singapore) to incorporate the Investment Court System (ICS) for the resolution of disputes between investors and states. An amount of € 700,000 of additional yearly expenditure is foreseen from 2019 onwards (subject to the entry into force of the agreement) to finance the permanent structure comprising a First Instance and an Appeal Tribunal. At the same time, the agreement entails the use of administrative resources under budget line XX 01 01 01 (Expenditure related to officials and temporary staff working with the Institution), considering that it is estimated that one Administrator will be dedicated as full-time equivalent to the tasks inherent to this agreement. This is indicated in the Legislative Financial Statement and is subject to the conditions mentioned in it.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The EU-Vietnam FTA and IPA include institutional provisions that lay down an implementing bodies' structure to continuously monitor the implementation, operation and impact of the agreements. The agreements being an integral part of the overall bilateral relation between the EU and Vietnam as governed by the PCA, the mentioned structures will form part of a common institutional framework with the PCA.

The institutional chapter of the FTA establishes a Trade Committee that has as its main task to supervise and facilitate the implementation and application of the agreement. The Trade Committee is comprised of representatives of the EU and of Vietnam who will meet every year or at the request of either side. The Trade Committee will be in charge of supervising the work of all specialised committees and working groups established under the agreement (Committee on Trade in Goods; Committee on Customs; Committee on Sanitary and Phytosanitary Measures; Committee on Investment, Trade in Services, Electronic Commerce and Government Procurement; Committee on Trade and Sustainable Development; Working Group on Intellectual Property Rights, including Geographical Indications; and Working Group on Motor Vehicles and Parts).

The Trade Committee has also the task to communicate with all interested parties, including private sector and civil society, in relation to the functioning and implementation of the agreement. In the agreement, both sides recognise the importance of transparency and openness and commit to consider the views of members of the public in order to draw on a broad range of perspectives in the implementation of the agreement.

The institutional chapter of the IPA establishes a Committee with the main task to supervise and facilitate the implementation and application of the agreement. Among other tasks, the

Committee may, subject to the completion of each side's respective legal requirements and procedures, decide to appoint the Members of the ICS Tribunals, fix their monthly remuneration, and adopt binding interpretations of the agreement.

As emphasised in the "Trade for All" Communication, the Commission is dedicating increasing resources to the effective implementation and enforcement of trade and investment agreements. In 2017, the Commission published the first annual FTA Implementation Report. The main purpose of the report is to convey an objective picture on the implementation of EU FTAs, highlighting the progress made and the shortcomings that need to be addressed. The objective is for the report to serve as the basis for open debate and engagement with Member States, the European Parliament and the civil society at large on the functioning of the FTAs and their implementation. As an annual exercise, the publication of the report will allow regular monitoring of developments, registering also how identified priority issues have been addressed. The report will cover the EU-Vietnam FTA as of its entry into force.

- **Implementation in the EU**

Certain actions will need to be taken in order to ensure implementation of the Agreement. These will be put in place in time for the application of the Agreement. These are a Commission implementing regulation to be adopted pursuant to Article 58(1) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code opening the tariff rate quotas provided for by the Agreement.

- **Explanatory documents (for directives)**

Not applicable

- **Detailed explanation of the specific provisions of the proposal**

In negotiating the **EU-Vietnam FTA**, the Commission pursued two principal objectives: first, to provide the best possible terms of access for EU operators to Vietnam's market; and, second, to set a valuable second point of reference (after the agreements with Singapore) for the EU's other negotiations in the region.

Both of these objectives have been fully met: the agreement goes beyond existing WTO commitments in many areas, such as services, procurement, non-tariff barriers and the protection of intellectual property, including geographical indications (GI). In all of these areas Vietnam also agreed to new commitments which go significantly beyond what Vietnam has so committed in other agreements, including in CPTPP.

In line with the objectives set by the negotiating directives, the Commission secured:

(1) the comprehensive liberalisation of services and investment markets, including cross-cutting rules on licensing and for the mutual recognition of diplomas, and sector-specific rules designed to ensure a level playing field for EU businesses;

(2) new tendering opportunities for EU bidders in Vietnam, who is not a member of the WTO Agreement on Government Procurement;

(3) the removal of technical and regulatory trade barriers to trade in goods, such as duplicative testing, in particular by promoting the use of technical and regulatory standards familiar in the EU in the sectors of motor vehicles, pharmaceuticals and medical devices, as well as green technologies;

(4) based on international standards, a more trade-facilitative regime for the approval of European food exports to Vietnam;

(5) Vietnam's commitment to reduce or eliminate its tariffs on imports from the EU, and a cheaper access of European businesses and consumers to products originating in Vietnam;

(6) a high level protection of intellectual property rights, including with regard to the enforcement of these rights, also at the border, and a TRIPs-plus level of protection of EU GIs;

(7) a comprehensive chapter on trade and sustainable development, which aims at ensuring that trade supports labour rights, environmental protection and social development and promotes the sustainable management of forests and fisheries. It includes commitments on effective application of international standards and on efforts towards ratification of a number of international conventions. The chapter also sets out how social partners and civil society will be involved in its implementation and monitoring; and

(8) a swift dispute resolution mechanisms through either panel arbitration or with the help of a mediator.

The **EU-Vietnam IPA** will ensure a high level of investment protection, while safeguarding the EU's and Vietnam's rights to regulate and pursue legitimate public policy objectives such as the protection of public health, safety and the environment.

The agreement contains all the innovations of the EU's new approach to investment protection and its enforcement mechanisms that are not present in the 21 existing bilateral investment treaties between Vietnam and EU Member States. It is a very important feature of the IPA that it replaces and hence improves the 21 existing bilateral investment treaties.

In line with the objectives set by the negotiating directives, the Commission ensured that EU investors and their investments in Vietnam will be granted fair and equitable treatment and not be discriminated against compared to Vietnamese investments that are in like situations. At the same time, the IPA protects EU investors and their investments in Vietnam from expropriation, unless it is for public purposes, in accordance with due process, on a non-discriminatory basis and against payment of prompt, adequate, and effective compensation according to fair market value of the expropriated investment.

Also in line with the negotiating directives, the IPA negotiated by the Commission will offer investors the option of a modern and reformed investment dispute resolution mechanism. This system ensures that investment protection rules are adhered to and seeks to strike a balance between protecting investors in a transparent manner and safeguarding the right of a State to regulate in order to pursue public policy objectives. The agreement sets up a standing international and fully independent dispute resolution system, consisting of a permanent First Instance and an Appeal Tribunal that will conduct dispute settlement proceedings in a transparent and impartial manner.

The Commission is mindful of the balance to be struck between moving forward with the reformed EU investment policy and the sensitivities of EU Member States as regards the possible exercise of shared competence on these matters. The Commission has not, therefore made a proposal to provisionally apply the investment protection agreement. Nonetheless, should Member States wish to see a proposal for provisional application of the investment protection agreement, the Commission stands ready to make such a proposal.

2018/0359 (NLE)

Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, of the Investment Protection Agreement between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 207(4), in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) On 23 April 2007, the Council authorised the Commission to negotiate a free trade agreement ('FTA') with countries of the Association of Southeast Asian Nations (ASEAN). That authorisation provided for the possibility of bilateral negotiations.

(2) On 22 December 2009, the Council authorised the Commission to pursue bilateral FTA negotiations with individual ASEAN countries. In June 2012, the Commission launched bilateral negotiations on an FTA with Vietnam to be conducted in accordance with the existing negotiating directives.

(3) On 15 October 2013, the Council authorised the Commission to extend the on-going bilateral negotiations with ASEAN countries to cover also investment protection.

(4) The negotiations for an Investment Protection Agreement between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part (the 'Agreement') have been concluded.

(5) Therefore, the Agreement should be signed on behalf of the Union, subject to its conclusion at a later date,

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Investment Protection Agreement between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part (the 'Agreement') is hereby approved on behalf of the Union, subject to the conclusion of the Agreement.

Article 2

The Council Secretariat General shall establish the instrument of full powers to sign the Agreement on behalf of the Union, subject to its conclusion, for the person(s) indicated by the negotiator of the Agreement.

Article 3

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

1.2. Policy area(s) concerned in the ABM/ABB structure

1.3. Nature of the proposal/initiative

1.4. Objective(s)

1.5. Grounds for the proposal/initiative

1.6. Duration and financial impact

1.7. Management mode(s) planned

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

2.2. Management and control system

2.3. Measures to prevent fraud and irregularities

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

3.2.2. Estimated impact on operational appropriations

3.2.3. Estimated impact on appropriations of an administrative nature

3.2.4. Compatibility with the current multiannual financial framework

3.2.5. Third-party contributions

3.3. Estimated impact on revenue

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

EU-Vietnam Investment Protection Agreement

1.2. Policy area(s) concerned in the ABM/ABB structure[5]

20.02 – Trade Policy

1.3. Nature of the proposal/initiative

☑ The proposal/initiative relates to a new action

☐ The proposal/initiative relates to a new action following a pilot project/preparatory action[6]

☐ The proposal/initiative relates to the extension of an existing action

☐ The proposal/initiative relates to an action redirected towards a new action

1.4. Objective(s)

1.4.1. The Commission's multiannual strategic objective(s) targeted by the proposal/initiative

The proposal can be framed in the first of the ten Juncker priorities – Jobs, Growth and Investment.

1.4.2. Specific objective(s) and ABM/ABB activity(ies) concerned

Specific objective No

1

ABM/ABB activity(ies) concerned

20.02 – Trade Policy

1.4.3. Expected result(s) and impact

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

The objective of the EU-Vietnam Investment Protection Agreement (IPA) is to enhance the investment climate between the EU and Vietnam. The agreement will bring benefits to European investors by ensuring a high level protection of their investments in Vietnam, while at the same time safeguarding the EU's rights to regulate and pursue legitimate public policy objectives such as the protection of public health, safety and the environment.

The agreement establishes an Investment Court System (ICS) designed to meet the high expectations of citizens and industry for a fairer, more transparent and institutionalised system of settling investment disputes. The provisions in the EU-Vietnam IPA having an impact on the EU budget relate precisely to the setting up and running costs of the ICS.

5 ABM: activity-based management; ABB: activity-based budgeting.

6 As referred to in Article 54(2)(a) or (b) of the Financial Regulation.

1.4.4. Indicators of results and impact

Specify the indicators for monitoring implementation of the proposal/initiative.

The IPA brings legal certainty and predictability that is expected to help the EU and Vietnam attract and maintain investment to underpin their economy.

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term

Maintain or improve the level of investment flows between the EU and Vietnam.

1.5.2. Added value of EU involvement

In 2016, total EU FDI stock in Vietnam amounted to € 8.3 billion. As one of the largest foreign investors in the country, the EU will benefit from the enhanced investment climate that the IPA will provide for. The agreement further contains all the innovations of the EU's new approach to investment protection and its enforcement mechanisms that are not present in the 21 existing bilateral investment treaties between Vietnam and EU Member States that the IPA will be replacing.

1.5.3. Lessons learned from similar experiences in the past

N/A

1.5.4. Compatibility and possible synergy with other appropriate instruments

N/A

1.6. Duration and financial impact

☐ Proposal/initiative of limited duration

☐ Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY

☐ Financial impact from YYYY to YYYY

☑ Proposal/initiative of unlimited duration

Implementation with a start-up period from 2019 (subject to ratification in the Council and the European Parliament).

followed by full-scale operation.

1.7. Management mode(s) planned[7]

☐ Direct management by the Commission

☐ by its departments, including by its staff in the Union delegations;

☐ by the executive agencies

☐ Shared management with the Member States

☑ Indirect management by entrusting budget implementation tasks to:

☐ third countries or the bodies they have designated;

☑ international organisations and their agencies (to be specified);

☐the EIB and the European Investment Fund;

[7] Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html

☐ bodies referred to in Articles 208 and 209 of the Financial Regulation;

☐ public law bodies;

☐ bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;

☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;

☐ persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

If more than one management mode is indicated, please provide details in the 'Comments' section.

Comments

As regards the financial handling of the ICS in the EU-Vietnam IPA, a contribution will be given to an "existing structure" (namely, the ICSID) so that it channels the retainer fees to be paid to the judges composing the ICS. It is only in case that a dispute arises that the fees for case management could materialize, the services of ICSID as secretariat being otherwise free of charge.

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

As per the provisions of the framework agreement concluded with the organisation concerned.

2.2. Management and control system

2.2.1. Risk(s) identified

As per the provisions of the framework agreement concluded with the organisation concerned.

2.2.2. Information concerning the internal control system set up

As per the provisions of the framework agreement concluded with the organisation concerned. In particular, the applicable verification rules.

2.2.3. Estimate of the costs and benefits of the controls and assessment of the expected level of risk of error

Given the estimated financial impact, no substantive quantifiable costs or benefits can be identified. The contribution will be part of DG Trade's overall control system.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures.

As per the provisions of the framework agreement concluded with the organisation concerned. In addition, DG Trade's anti-fraud strategy, which contains a dedicated chapter on financial management, will apply.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1 Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number 4	Diff./Non-diff.[8]	from EFTA countries[9]	from candidate countries[10]	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	20.0201	Diff.	NO	NO	NO	NO

New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number N/A	Diff./Non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	N/A		YES/NO	YES/NO	YES/NO	YES/NO

[8] Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

[9] EFTA: European Free Trade Association.

[10] Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

Heading of multiannual financial framework	Number	4

DG: TRADE			Year 2019	Year 2020	Year 2021	Year 2022	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
• Operational appropriations										
Number of budget line 20.0201	Commitments	(1)	0.700	0.700	0.700	0.700				2.800
	Payments	(2)	0.700	0.700	0.700	0.700				2.800
Number of budget line	Commitments	(1a)	-	-	-	-				
	Payments	(2a)	-	-	-	-				
Appropriations of an administrative nature financed from the envelope of specific programmes[11]			0	0	0	0				
Number of budget line		(3)								

[11] Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

TOTAL appropriations for DG TRADE	Commitments	=1+1a+3	0.700	0.700	0.700	0.700				2.800
	Payments	=2+2a+3	0.700	0.700	0.700	0.700				2.800

• TOTAL operational appropriations	Commitments	(4)	0.700	0.700	0.700	0.700				2.800
	Payments	(5)	0.700	0.700	0.700	0.700				2.800
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)	0	0	0	0				
TOTAL appropriations under HEADING 4 of the multiannual financial framework	Commitments	=4+6	0.700	0.700	0.700	0.700				2.800
	Payments	=5+6	0.700	0.700	0.700	0.700				2.800

If more than one heading is affected by the proposal / initiative:

• TOTAL operational appropriations	Commitments	(4)								
	Payments	(5)								

• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
TOTAL appropriations under HEADINGS 1 to 4 of the multiannual financial framework (Reference amount)	Commitments	=4+6								
	Payments	=5+6								

Heading of multiannual financial framework	5	‘Administrative expenditure’

EUR million (to three decimal places)

		Year 2019	Year 2020	Year 2021	Year 2022	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
DG: TRADE									
• Human resources		0.143	0.143	0.143	0.143				0.572
• Other administrative expenditure		0	0	0	0				
TOTAL DG TRADE	Appropriations	0.143	0.143	0.143	0.143				0.572

TOTAL appropriations under HEADING 5 of the multiannual financial framework	(Total commitments = Total payments)	0.143	0.143	0.143	0.143				0.572

EUR million (to three decimal places)

	Year 2019	Year 2020	Year 2021	Year 2022	Enter as many years as necessary to show the duration of the impact (see point 1.6)	TOTAL

TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework	Commitments	0.843	0.843	0.843	0.843				3.372
	Payments	0.843	0.843	0.843	0.843				3.372

3.2.2. Estimated impact on operational appropriations

☐ The proposal/initiative does not require the use of operational appropriations

☑ The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs			Year 2019		Year 2020		Year 2021		Year 2022		Enter as many years as necessary to show the duration of the impact (see point 1.6)						TOTAL	
	OUTPUTS																	
⇩	Type[12]	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1[13]…			Running of the ICS															
- Output	Secreta		1	0.70		0.70		0.70		0.700								2.800
- Output	Case(s)			-		p.m.		p.m.		p.m.								
- Output																		
Subtotal for specific objective No 1				0.700		0.700		0.700		0.700								2.800
SPECIFIC OBJECTIVE No 2 ...																		

[12] Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

[13] As described in point 1.4.2. 'Specific objective(s)…'

- Output																		
Subtotal for specific objective No 2																		
TOTAL COST			0.700		0.700		0.700		0.700									2.800

3.2.3. Estimated impact on appropriations of an administrative nature

3.2.3.1. Summary

☐ The proposal/initiative does not require the use of appropriations of an administrative nature

☑ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year 2019	Year 2020	Year 2021	Year 2022	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
HEADING 5 of the multiannual financial framework								
Human resources	0.143	0.143	0.143	0.143				0.572
Other administrative expenditure	0	0	0	0				
Subtotal HEADING 5 of the multiannual financial framework								
Outside HEADING 5[14] of the multiannual financial framework								
Human resources								
Other expenditure of an administrative nature								
Subtotal outside HEADING 5 of the multiannual financial framework								
TOTAL	0.143	0.143	0.143	0.143				0.572

[14] Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

3.2.3.2. Estimated requirements of human resources

☐ The proposal/initiative does not require the use of human resources.

☑ The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full time equivalent units

	Year 2019	Year 2020	Year 2021	Year 2022	Enter as many years as necessary to show the duration of the impact (see point 1.6)
• Establishment plan posts (officials and temporary staff)					
XX 01 01 01 (Headquarters and Commission's Representation Offices)	1	1	1	1	
XX 01 01 02 (Delegations)					
XX 01 05 01 (Indirect research)					
10 01 05 01 (Direct research)					
• External staff (in Full Time Equivalent unit: FTE)[15]					
XX 01 02 01 (AC, END, INT from the 'global envelope')					
XX 01 02 02 (AC, AL, END, INT and JED in the delegations)					
XX 01 04 yy [16] - at Headquarters					
XX 01 04 yy [16] - in Delegations					
XX 01 05 02 (AC, END, INT - Indirect research)					
10 01 05 02 (AC, END, INT - Direct research)					
Other budget lines (specify)					

[15] AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JED= Junior Experts in Delegations.

[16] Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

TOTAL	1	1	1	1			

XX is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	Monitoring of the running of the ICS/Case handling
External staff	

3.2.4. Compatibility with the current multiannual financial framework

☑ The proposal/initiative is compatible the current multiannual financial framework.

☐ The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

☐ The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework.

3.2.5. Third-party contributions

The proposal/initiative does not provide for co-financing by third parties.

The proposal/initiative provides for the co-financing estimated below:

Appropriations in EUR million (to three decimal places)

	Year 2019	Year 2020	Year 2021	Year 2022	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body: Government of the Socialist Republic of Viet Nam	0.700	0.700	0.700	0.700				2.800
TOTAL appropriations co-financed	0.700	0.700	0.700	0.700				2.800

3.3. Estimated impact on revenue

☑ The proposal/initiative has no financial impact on revenue.

☐ The proposal/initiative has the following financial impact:

☑ on own resources

☐ on miscellaneous revenue

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year (B2016)	Impact of the proposal/initiative[17]						
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article …….		…….						

For miscellaneous 'assigned' revenue, specify the budget expenditure line(s) affected.

[…]

Specify the method for calculating the impact on revenue.

[…]

[17] As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % for collection costs.

EUROPEAN
COMMISSION

Brussels, 17.10.2018
COM(2018) 694 final

ANNEX 1

ANNEX

to the

Proposal for a Council Decision

on the signing, on behalf of the European Union, of the Investment Protection Agreement between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam of the other part

INVESTMENT PROTECTION AGREEMENT
BETWEEN THE EUROPEAN UNION
AND ITS MEMBER STATES, OF THE ONE PART,
AND THE SOCIALIST REPUBLIC OF VIET NAM,
OF THE OTHER PART

THE EUROPEAN UNION,

hereinafter referred to as the "Union"

THE KINGDOM OF BELGIUM,

THE REPUBLIC OF BULGARIA,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

IRELAND,

THE REPUBLIC OF CROATIA

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBURG,

HUNGARY,

THE REPUBLIC OF MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

ROMANIA,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN, and

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

of the one part, hereinafter jointly referred to as the "EU Party", and

THE SOCIALIST REPUBLIC OF VIET NAM

of the other part, hereinafter referred to as "Viet Nam",

hereinafter jointly referred to as the "Parties",

RECOGNISING their longstanding and strong partnership based on the common principles and values reflected in the *Framework Agreement on Comprehensive Partnership and Cooperation between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part,* signed in Brussels on 27 June 2012 (hereinafter referred to as the "Partnership and Cooperation Agreement"), and their important economic, trade and investment relationship, including as reflected in the *Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam,* signed in Brussels on dd/mm/yyyy (hereinafter referred to as the "Free Trade Agreement");

DESIRING to further strengthen their economic relationship as part of, and in a manner coherent with, their overall relations, and convinced that this Agreement will create a new climate for the development of investment between the Parties;

RECOGNISING that this Agreement will complement and promote regional economic integration efforts;

DETERMINED to strengthen their economic, trade and investment relationship in accordance with the objective of sustainable development, in its economic, social and environmental dimensions, and to promote investment under this Agreement in a manner mindful of high levels of environmental and labour protection and relevant internationally recognised standards and agreements;

DESIRING to raise living standards, promote economic growth and stability, create new employment opportunities and improve the general welfare and, to this end, reaffirming their commitment to promoting investment;

REAFFIRMING their commitments to the principles of sustainable development in the Free Trade Agreement;

RECOGNISING the importance of transparency as reflected in their commitments in the Free Trade Agreement;

REAFFIRMING their commitment to the *Charter of the United Nations*, done at San Francisco on 26 June 1945, and having regard to the principles articulated in *The Universal Declaration of Human Rights*, adopted by the General Assembly of the United Nations on 10 December 1948;

BUILDING on their respective rights and obligations under the *Marrakesh Agreement establishing the World Trade Organization*, done at Marrakesh on 15 April 1994 (hereinafter referred to as the "WTO Agreement") and other multilateral, regional and bilateral agreements and arrangements to which they are party, in particular, the Free Trade Agreement;

DESIRING to promote the competitiveness of their companies by providing them with a predictable legal framework for their investment relations,

HAVE AGREED AS FOLLOWS:

CHAPTER 1

OBJECTIVES AND GENERAL DEFINITIONS

ARTICLE 1.1

Objective

The objective of this Agreement is to enhance the investment relations between the Parties in accordance with the provisions of this Agreement.

ARTICLE 1.2

Definitions

For the purposes of this Agreement:

(a) "natural person of a Party" means, in the case of the EU Party, a national of one of the Member States of the Union in accordance with its domestic laws[1] and regulations and, in the case of Viet Nam, a national of Viet Nam in accordance with its domestic laws and regulations;

[1] The term "natural person" includes natural persons permanently residing in Latvia who are not citizens of Latvia or any other state but who are entitled, under the laws and regulations of Latvia, to receive a non-citizen's passport (Alien's Passport).

(b) "juridical person" means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

(c) "juridical person of a Party" means a juridical person of the EU Party or a juridical person of Viet Nam, set up in accordance with the domestic laws and regulations of a Member State of the Union, or of Viet Nam, respectively, and engaged in substantive business operations[1] in the territory of the Union or of Viet Nam, respectively;

a juridical person is:

(i) "owned" by natural or juridical persons of one of the Parties if more than 50 per cent of the equity interest in it is beneficially owned by persons of the EU Party, or of Viet Nam, respectively; or

[1] In line with its notification of the Treaty establishing the European Community to the World Trade Organization (WT/REG39/1), the Union and its Member States understand that the concept of "effective and continuous link" with the economy the Union enshrined in Article 54 of the Treaty on the Functioning of the European Union is equivalent to the concept of "substantive business operations". Accordingly, for a juridical person set up in accordance with the laws and regulations of Viet Nam and having only its registered office or central administration in the territory of Viet Nam, the Union and its Member States shall only apply the benefits of this Agreement if that juridical person possesses an effective and continuous link with the economy of Viet Nam.

(ii) "controlled" by natural or juridical persons of one of the Parties if persons of the EU Party, or of Viet Nam, respectively, have the power to name a majority of its directors or otherwise to legally direct its actions;

(d) "services supplied and activities performed in the exercise of governmental authority" means services supplied or activities performed neither on a commercial basis nor in competition with one or more economic operators;

(e) "economic activities" includes activities of an industrial, commercial and professional character and activities of craftsmen, but do not include services supplied or activities performed in the exercise of governmental authority;

(f) "operation" means, with respect to an investment, the conduct, management, maintenance, use, enjoyment, sale or other forms of disposal of the investment;[1]

(g) "measures adopted or maintained by a Party" means measures taken by:

(i) central, regional or local governments and authorities; and

(ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

[1] For greater certainty, this does not include steps taking place at the time of or before the procedures required for making the related investment are completed in accordance with the applicable laws and regulations.

(h) "investment" means every kind of asset which is owned or controlled, directly or indirectly, by an investor of a Party in the territory[1] of the other Party, which has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, the assumption of risk and a certain duration; forms that an investment may take include:

(i) tangible or intangible, movable or immovable property, as well as any other property rights, such as leases, mortgages, liens and pledges;

(ii) an enterprise[2] as well as shares, stocks and other forms of equity participation in an enterprise, including rights derived therefrom;

(iii) bonds, debentures, and loans and other debt instruments, including rights derived therefrom;

(iv) turnkey, construction, management, production, concession, revenue-sharing and other similar contracts;

[1] For greater certainty, the territory of a Party includes its exclusive economic zone and continental shelf, as provided for under *United Nations Convention on the Law of the Sea*, done at Montego Bay on 10 December 1982 (hereinafter referred to as the "UNCLOS").

[2] For the purpose of the definition of "investment", an "enterprise" does not include a representative office. For greater certainty, the fact that a representative office is established in the territory of a Party is not in itself considered that there is an investment.

(v) claims to money or to other assets or any contractual performance having an economic value;[1] and

(vi) intellectual property rights[2] and goodwill;

returns that are invested shall be treated as investments provided that they have the characteristics of an investment and any alteration of the form in which assets are invested or reinvested shall not affect their qualification as investments as long as they maintain the characteristics of an investment;

[1] For greater certainty, claims to money do not include claims to money that arise solely from commercial contracts for the sale of goods or services by a natural or juridical person in the territory of a Party to a natural or juridical person in the territory of the other Party, or financing of such contract other than a loan covered by subparagraph (iii), or any related order, judgement, or arbitral award.

[2] For the purposes of this Agreement, intellectual property rights refer at least to all categories of intellectual property that are referred to in Sections 1 to 7 of Part II of the TRIPS Agreement, namely:
(a) copyright and related rights;
(b) trademarks;
(c) geographical indications;
(d) industrial designs;
(e) patent rights;
(f) layout-designs (topographies) of integrated circuits;
(g) protection of undisclosed information; and
(h) plant varieties.

(i) "investor of a Party" means a natural person of a Party or a juridical person of a Party who has made an investment in the territory of the other Party;

(j) "returns" means all amounts yielded by or derived from an investment or reinvestment, including profits, dividends, capital gains, royalties, interest, payments in connection with intellectual property rights, payments in kind and all other lawful income;

(k) "measure" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form;

(l) "person" means a natural person or a legal person;

(m) "third country" means a country or territory outside the scope of territorial application of this Agreement as defined in Article 4.22 (Territorial Application);

(n) "EU Party" means the Union or its Member States or the Union and its Member States within their respective areas of competence as derived from the Treaty on the European Union and the Treaty on the Functioning of the European Union;

(o) "Party" means the EU Party or Viet Nam;

(p) "domestic" means with regard to legislation, law or laws and regulations for the Union and its Member States[1] and for Viet Nam, respectively, legislation, law or laws and regulations at central, regional or local level; and

(q) "covered investment" means an investment by investor of a Party in the territory of the other Party, in existence as of the date of entry into force of this Agreement or made or acquired thereafter, that has been made in accordance with the other Party's applicable law and regulations.

CHAPTER 2

INVESTMENT PROTECTION

ARTICLE 2.1

Scope

1. This Chapter applies to:

(a) covered investment, and

(b) investors of a Party with respect to the operation of their covered investment.

[1] For greater certainty, the domestic laws and regulations of the Member States of the Union include the Union's laws and regulations.

2. Articles 2.3 (National Treatment) and 2.4 (Most-Favoured-Nation Treatment) do not apply to:

(a) audio-visual services;

(b) mining, manufacturing and processing[1] of nuclear materials;

(c) production of or trade in arms, munitions and war material;

(d) national maritime cabotage;[2]

(e) domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:

(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;

[1] For greater certainty, processing of nuclear materials includes all the activities contained in the *International Standard Industrial Classification of all Economic Activities* as set out in Statistical Office of the United Nations, Statistical Papers, Series M, N 4, ISIC REV 3.1, 2002 code 2330.

[2] Without prejudice to the scope of activities which constitute cabotage under domestic laws and regulations, national maritime cabotage under this Sub-Section covers transportation of passengers or goods between a port or point located in Member State of the Union or Viet Nam and another port or point located in that same Member State of the Union or Viet Nam, including on its continental shelf, as provided for in UNCLOS, and traffic originating and terminating in the same port or point located in a Member State of the Union or Viet Nam.

(ii) the selling and marketing of air transport services;

(iii) computer reservation system services;

(iv) ground handling services; and

(v) airport operation services;

and

(f) services supplied and activities performed in the exercise of governmental authority.

3. Articles 2.3 (National Treatment) and 2.4 (Most-Favoured-Nation Treatment) do not apply to subsidies granted by the Parties.[1]

4. This Chapter does not apply to the Parties' respective social security systems or to activities in the territory of each Party, which are connected, even occasionally, with the exercise of official authority.

[1] In the case of the EU Party "subsidy" includes "state aid" as defined in Union law. For Viet Nam, "subsidy" includes investment incentives, and investment assistance such as production site assistance, human resources training and competitiveness strengthening activities, such as assistance for technology, research and development, legal aids, market information and promotion.

5. This Chapter does not apply to measures affecting natural persons seeking access to the employment market of a Party, nor does it apply to measures regarding citizenship, residence or employment on a permanent basis.

6. With the exception of Articles 2.1 (Scope), 2.2 (Investment and Regulatory Measures and Objectives) and 2.5 (Treatment of Investment) to 2.9 (Subrogation), nothing in this Agreement shall be construed as limiting the obligations of the Parties under Chapter 9 (Government Procurement) of the Free Trade Agreement or to impose any additional obligation with respect to government procurement. For greater certainty, measures with respect to government procurement that are in compliance with Chapter 9 (Government Procurement) of the Free Trade Agreement shall not be considered a breach of Articles 2.1 (Scope), 2.2 (Investment and Regulatory Measures and Objectives) and 2.5 (Treatment of Investment) to 2.9 (Subrogation).

ARTICLE 2.2

Investment and Regulatory Measures and Objectives

1. The Parties reaffirm their right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, safety, environment or public morals, social or consumer protection, or promotion and protection of cultural diversity.

2. For greater certainty, this Chapter shall not be interpreted as a commitment from a Party that it will not change its legal and regulatory framework, including in a manner that may negatively affect the operation of investments or the investor's expectations of profits.

3. For greater certainty and subject to paragraph 4, a Party's decision not to issue, renew or maintain a subsidy or a grant shall not constitute a breach of this Chapter in the following circumstances:

(a) in the absence of any specific commitment to an investor of the other Party or to a covered investment under law or contract to issue, renew, or maintain that subsidy or grant; or

(b) in accordance with any terms or conditions attached to the issuance, renewal or maintenance of the subsidy or grant.

4. For greater certainty, nothing in this Chapter shall be construed as preventing a Party from discontinuing the granting of a subsidy[1] or requesting its reimbursement, or as requiring that Party to compensate the investor therefor, where such action has been ordered by one of its competent authorities listed in Annex 1 (Competent Authorities).

[1] In the case of the EU Party, "subsidy" includes "state aid" as defined in the Union's law. For Viet Nam, "subsidy" includes investment incentives, and investment assistance such as production site assistance, human resources training and competitiveness strengthening activities, such as assistance for technology, research and development, legal aids, market information and promotion.

ARTICLE 2.3

National Treatment

1. Each Party shall accord to investors of the other Party and to covered investments, with respect to the operation of the covered investments, treatment no less favourable than that it accords, in like situations, to its own investors and to their investments.

2. Notwithstanding paragraph 1 and, in the case of Viet Nam subject to Annex 2 (Exemption for Viet Nam on National Treatment), a Party may adopt or maintain any measure with respect to the operation of a covered investment provided that such measure is not inconsistent with the commitments set out in Annex 8-A (The Union's Schedule of Specific Commitments) or Annex 8-B (Viet Nam's Schedule of Specific Commitments) of the Free Trade Agreement, respectively, where such measure is:

(a) a measure that is adopted on or before the date of entry into force of this Agreement;

(b) a measure referred to in subparagraph (a) that is being continued, replaced or amended after the date of entry into force of this Agreement, provided the measure is no less consistent with paragraph 1 after it is continued, replaced or amended than the measure as it existed prior to its continuation, replacement or amendment; or

(c) a measure not falling within subparagraph (a) or (b), provided it is not applied in respect of, or in a way that causes loss or damage[1] to, investments made in the territory of the Party before the date of entry into force of such measure.

ARTICLE 2.4

Most-Favoured-Nation Treatment

1. Each Party shall accord to investors of the other Party and to covered investments, with respect to the operation of the covered investments, treatment no less favourable than the treatment it accords, in like situations, to investors of a third country and their investments.

2. Paragraph 1 does not apply to the following sectors:

(a) communication services, except for postal services and telecommunication services;

(b) recreational, cultural and sporting services;

[1] For the purposes of this subparagraph, the Parties understand that if a Party has provided for a reasonable phase-in period for the implementation of a measure or if that Party has made any other attempt to address the effects of the measure on investments made before the date of entry into force of the measure, those factors shall be taken into account in determining whether the measure causes loss or damage to investments made before the date of entry into force of the measure.

(c) fishery and aquaculture;

(d) forestry and hunting; and

(e) mining, including oil and gas.

3. Paragraph 1 shall not be construed as obliging a Party to extend to investors of the other Party or covered investments the benefit of any treatment granted pursuant to any bilateral, regional or international agreement that entered into force before the date of entry into force of this Agreement.

4. Paragraph 1 shall not be construed as obliging a Party to extend to investors of the other Party or covered investments the benefit of:

(a) any treatment granted pursuant to any bilateral, regional or multilateral agreement which includes commitments to abolish substantially all barriers to investment among the parties or requires the approximation of legislation of the parties in one or more economic sectors;[1]

(b) any treatment resulting from any international agreement for the avoidance of double taxation or other international agreement or arrangement relating wholly or mainly to taxation; or

[1] For greater certainty, the ASEAN Economic Community falls within the concept of regional agreement under this subparagraph.

(c) any treatment resulting from measures providing for the recognition of qualifications, licences or prudential measures in accordance with Article VII of the *General Agreement on Trade in Services*[1] or its Annex on Financial Services.

5. For greater certainty, the term "treatment" referred to in paragraph 1 does not include dispute resolution procedures or mechanisms, such as those included in Section B (Resolution of Disputes between Investors and Parties) of Chapter 3 (Dispute Resolution), provided for in any other bilateral, regional or international agreements. Substantive obligations in such agreements do not in themselves constitute "treatment" and thus cannot be taken into account when assessing a breach of this Article. Measures by a Party pursuant to those substantive obligations shall be considered "treatment".

6. This Article shall be interpreted in accordance with the principle of *ejusdem generis*.[2]

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[1] As contained in Annex 1b of the Marrakesh Agreement establishing the World Trade Organization, done at Marrakesh on 15 April 1994.

[2] For greater certainty, this paragraph shall not be construed as preventing the interpretation of other provisions of this Agreement, where appropriate, in accordance with the principle of *ejusdem generis.*

ARTICLE 2.5

Treatment of Investment

1. Each Party shall accord fair and equitable treatment and full protection and security to investors of the other Party and covered investments in accordance with paragraphs 2 to 7 and Annex 3 (Understanding on the Treatment of Investments).

2. A Party breaches the obligation of fair and equitable treatment referred to in paragraph 1 where a measure or series of measures constitutes:

(a) a denial of justice in criminal, civil or administrative proceedings;

(b) a fundamental breach of due process in judicial and administrative proceedings;

(c) manifest arbitrariness;

(d) targeted discrimination on manifestly wrongful grounds, such as gender, race or religious belief;

(e) abusive treatment such as coercion, abuse of power or similar bad faith conduct; or

(f) a breach of any further elements of the fair and equitable treatment obligation adopted by the Parties in accordance with paragraph 3.

3. Treatment not listed in paragraph 2 may constitute a breach of fair and equitable treatment where the Parties have so agreed in accordance with the procedures provided for in Article 4.3 (Amendments).

4. When applying paragraphs 1 to 3, a dispute settlement body under Chapter 3 (Dispute Settlement) may take into account whether a Party made a specific representation to an investor of the other Party to induce a covered investment that created a legitimate expectation, and upon which the investor relied in deciding to make or maintain that investment, but that the Party subsequently frustrated.

5. For greater certainty, the term "full protection and security" referred to in paragraph 1 refers to a Party's obligations to act as may be reasonably necessary to protect physical security of the investors and the covered investments.

6. Where a Party has entered into a written agreement with investors of the other Party or covered investments that satisfies all of the following conditions, that Party shall not breach that agreement through the exercise of governmental authority. The conditions are:

(a) the written agreement is concluded and takes effect after the date of entry into force of this Agreement;[1]

[1] For greater certainty, a written agreement that is concluded and takes effect after the date of entry into force of this Agreement does not include the renewal or extension of an agreement in accordance with the provisions of the original agreement, and on the same or substantially the same terms and conditions as the original agreement, which has been concluded and entered into force before the date of entry into force of this Agreement.

(b) the investor relies on the written agreement in deciding to make or maintain the covered investment other than the written agreement itself and the breach causes actual damages to that investment;

(c) the written agreement[1] creates an exchange of rights and obligations in connection to the said investment, binding on both parties; and

(d) the written agreement does not contain a clause on the settlement of disputes between the parties to that agreement by international arbitration.

7. A breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

ARTICLE 2.6

Compensation for Losses

1. Investors of a Party whose covered investments suffer losses owing to war or other armed conflict, a revolution, a state of national emergency, a revolt, an insurrection or a riot in the territory of the other Party shall be accorded by that other Party, with respect to restitution, indemnification, compensation or other form of settlement, treatment no less favourable than that accorded by that other Party to its own investors or to the investors of any third country.

[1] The term "written agreement" means an agreement in writing, entered into by a Party with an investor of the other Party or their investment and negotiated and executed by both parties, whether in a single instrument or multiple instruments.

2. Without prejudice to paragraph 1, investors of a Party who, in any of the situations referred to in paragraph 1, suffer losses in the territory of the other Party shall be accorded prompt, adequate and effective restitution or compensation by the other Party if those losses result from:

(a) requisitioning of covered investment or a part thereof by the other Party's armed forces or authorities; or

(b) destruction of covered investment or a part thereof by the other Party's armed forces or authorities,

which was not required by the necessity of the situation.

ARTICLE 2.7

Expropriation

1. A Party shall not nationalise or expropriate the covered investments of investors of the other Party either directly, or indirectly through measures having an effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation"), except:

(a) for a public purpose;

(b) under due process of law;

(c) on a non-discriminatory basis; and

(d) against payment of prompt, adequate and effective compensation.

2. The compensation referred to in paragraph 1 shall amount to the fair market value of the covered investment at the time immediately before the expropriation or the impending expropriation became public knowledge, whichever is earlier, plus interest at a reasonable rate established on a commercial basis, from the date of expropriation until the date of payment. Such compensation shall be effectively realisable, freely transferable in accordance with Article 2.8 (Transfer) and made without delay.

3. Notwithstanding paragraphs 1 and 2, in the case that Viet Nam is the expropriating Party, any measure of direct expropriation relating to land shall be:

(a) for a purpose in accordance with the applicable domestic laws and regulations[1]; and

(b) upon payment of compensation equivalent to the market value, while recognising the applicable domestic laws and regulations.

4. The issuance of compulsory licences in relation to intellectual property rights does not constitute an expropriation within the meaning of paragraph 1, to the extent that such issuance is consistent with the *Agreement on Trade-Related Aspects of Intellectual Property Rights* contained in Annex 1C of the WTO Agreement (hereinafter referred to as "TRIPS Agreement").

[1] The applicable domestic laws and regulations is Viet Nam's Land Law No. 45/2013/QH13 and Decree No. 44/2014/ND-CP Regulating Land Prices, as at the date of entry into force of this Agreement.

5. An investor affected by an expropriation shall have a right, under the law of the expropriating Party, to prompt review of its claim and of the valuation of its investment, by a judicial or other independent authority of that Party.

6. This Article shall be interpreted in accordance with Annex 4 (Understanding on Expropriation).

ARTICLE 2.8

Transfer

Each Party shall permit all transfers relating to covered investments to be made in a freely convertible currency, without restriction or delay and at the market rate of exchange applicable on the date of transfer. Such transfers include:

(a) contributions to capital, such as principal and additional funds to maintain, develop or increase the investment;

(b) profits, dividends, capital gains and other returns, proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;

(c) payments of interest, royalties, management fees, and technical assistance and other fees;

(d) payments made under a contract entered into by the investor, or the covered investment, including payments made pursuant to a loan agreement;

(e) earnings and other remuneration of personnel engaged from abroad and working in connection with the investment;

(f) payments made pursuant to Article 2.6 (Compensation for Losses) and Article 2.7 (Expropriation); and

(g) payments of damages pursuant to an award issued under Section B (Resolution of Disputes between Investors and Parties) of Chapter 3 (Dispute Settlement).

ARTICLE 2.9

Subrogation

If a Party, or an agency thereof, makes a payment under an indemnity, a guarantee or a contract of insurance it has entered into in respect of an investment made by one of its investors in the territory of the other Party, the other Party shall recognise the subrogation or transfer of any right or title or the assignment of any claim in respect of such investment. The Party or the agency shall have the right to exercise the subrogated or assigned right or claim to the same extent as the original right or claim of the investor. Such rights may be exercised by the Party or an agency thereof, or by the investor only if the Party or an agency thereof so authorises.

CHAPTER 3

DISPUTE SETTLEMENT

SECTION A

RESOLUTION OF DISPUTES BETWEEN PARTIES

SUB-SECTION 1

OBJECTIVE AND SCOPE

ARTICLE 3.1

Objective

The objective of this Chapter is to establish an effective and efficient mechanism for avoiding and settling any dispute between the Parties regarding the interpretation and application of this Agreement with a view to arriving at a mutually agreed solution.

ARTICLE 3.2

Scope

This Chapter applies with respect to the avoidance and settlement of any dispute between the Parties regarding the interpretation or application of the provisions of this Agreement, except as otherwise provided for in this Agreement.

SUB-SECTION 2

CONSULTATIONS AND MEDIATION

ARTICLE 3.3

Consultations

1. The Parties shall endeavour to resolve any dispute referred to in Article 3.2 (Scope) by entering into consultations in good faith with the aim of reaching a mutually agreed solution.

2. A Party shall seek consultations by means of a written request to the other Party, copied to the Committee established pursuant to Article 4.1 (Committee), identifying the measure at issue and the relevant provisions of this Agreement.

3. Consultations shall be held within 30 days of the date of receipt of the request referred to in paragraph 2 and take place, unless the Parties agree otherwise, in the territory of the Party to which the request is made. The consultations shall be deemed concluded within 45 days of the date of receipt of the request, unless both Parties agree to continue consultations. Consultations, in particular all information disclosed and positions taken by the Parties, shall be confidential and without prejudice to the rights of either Party in any further proceedings.

4. Consultations on matters of urgency, including those regarding perishable goods, seasonal goods or seasonal services, shall be held within 15 days of the date of receipt of the request referred to in paragraph 2. The consultations shall be deemed concluded within 20 days, unless both Parties agree to continue consultations.

5. The Party that sought consultations may have recourse to Article 3.5 (Initiation of the Arbitration Procedure) if:

(a) the other Party does not respond to the request for consultations within 15 days of the date of its receipt;

(b) the consultations are not held within the timeframes provided for in paragraphs 3 or 4;

(c) the Parties agree not to have consultations; or

(d) the consultations have been concluded without a mutually agreed solution.

6. During consultations each Party shall provide sufficient factual information for an examination of the manner in which the measure at issue could affect the operation and application of this Agreement.

ARTICLE 3.4

Mediation Mechanism

The Parties may at any time agree to enter into a mediation procedure pursuant to Annex 9 (Mediation Mechanism) with respect to any measure adversely affecting investment between the Parties.

SUB-SECTION 3

DISPUTE SETTLEMENT PROCEDURES

ARTICLE 3.5

Initiation of the Arbitration Procedure

1. If the Parties fail to resolve the dispute by recourse to consultations as provided for in Article 3.3 (Consultations), the Party that sought consultations may request the establishment of an arbitration panel.

2. The request for the establishment of an arbitration panel shall be made in writing to the other Party and copied to the Committee. The complaining Party shall identify the measure at issue in its request, and explain how that measure is inconsistent with the provisions of this Agreement in such a manner as to clearly present the legal basis for the complaint.

ARTICLE 3.6

Terms of Reference of the Arbitration Panel

Unless the Parties agree otherwise within 10 days of the date of the selection of the arbitrators, the terms of reference of the arbitration panel shall be:

"To examine, in the light of the relevant provisions of this Agreement cited by the Parties, the matter referred to in the request for the establishment of an arbitration panel pursuant to Article 3.5 (Initiation of the Arbitration Procedure), to rule on the conformity of the measure in question with the provisions referred to in Article 3.2 (Scope), and to set out in its report the findings of fact, the applicability of relevant provisions and the basic rationale for any findings and recommendations, in accordance with Articles 3.10 (Interim Report) and 3.11 (Final Report).".

ARTICLE 3.7

Establishment of the Arbitration Panel

1. An arbitration panel shall be composed of three arbitrators.

2. Within 10 days of the date of receipt by the Party complained against of the request for the establishment of an arbitration panel, the Parties shall consult in order to agree on the composition of the arbitration panel.

3. If the Parties do not agree on the composition of the arbitration panel within the time frame provided for in paragraph 2, each Party may appoint an arbitrator from the sub-list of that Party established under Article 3.23 (List of Arbitrators) within 10 days of the expiry of the time frame provided for in paragraph 2. If a Party fails to appoint an arbitrator from its sub-list the arbitrator shall be selected by lot, upon request of the other Party, by the chair of the Committee, or the chair's delegate, from the sub-list of that Party established under Article 3.23 (List of Arbitrators).

4. If the Parties do not agree on the chairperson of the arbitration panel within the time frame provided for in paragraph 2 the chair of the Committee, or the chair's delegate, shall select by lot, upon request of a Party, the chairperson of the arbitration panel from the sub-list of chairpersons established under Article 3.23 (List of Arbitrators).

5. The chair of the Committee, or the chair's delegate, shall select the arbitrators within five days of the request referred to in paragraphs 3 or 4.

6. The date of establishment of the arbitration panel shall be the date on which the three selected arbitrators have notified the Parties of the acceptance of their appointment in accordance with Annex 7 (Rules of Procedure).

7. If any of the lists provided for in Article 3.23 (List of Arbitrators) have not been established or do not contain sufficient names at the time a request is made pursuant to paragraphs 3 or 4, the arbitrators shall be drawn by lot from among the individuals who have been formally proposed by both Parties or by a Party in the event that only one Party has made a proposal.

ARTICLE 3.8

Dispute Settlement Proceedings of the Arbitration Panel

1. The rules and procedures set out in this Article, Annexes 7 (Rules of Procedure) and 8 (Code of Conduct for Arbitrators and Mediators) shall govern the dispute settlement proceedings of an arbitration panel.

2. Unless the Parties agree otherwise, they shall meet the arbitration panel within 10 days of its establishment in order to determine all matters that the Parties or the arbitration panel deem appropriate, including the timetable of the proceedings and the remuneration and expenses of the arbitrators in accordance with Annex 7 (Rules of Procedure). Arbitrators and representatives of the Parties may take part in this meeting via telephone or video conference.

3. The venue of the hearing shall be decided by mutual consent of the Parties. If the Parties do not agree on the venue of the hearing, it shall be held in Brussels if the complaining Party is Viet Nam and in Ha Noi if the complaining Party is the EU Party.

4. Any hearing shall be open to the public unless otherwise provided for in Annex 7 (Rules of Procedure).

5. In accordance with Annex 7 (Rules of Procedure), the Parties shall be given the opportunity to attend any of the presentations, statements, arguments or rebuttals in the proceedings. Any information or written submission submitted to the arbitration panel by a Party, including any comments on the descriptive part of the interim report, responses to questions by the arbitration panel and comments by a Party on those responses, shall be made available to the other Party.

6. Unless the Parties agree otherwise within three days of the date of establishment of the arbitration panel, the arbitration panel may receive, in accordance with Annex 7 (Rules of Procedure), unsolicited written submissions (*amicus curiae* submissions) from natural or legal person established in the territory of a Party.

7. For its internal deliberations, the arbitration panel shall meet in closed session where only arbitrators take part. The arbitration panel may also permit its assistants to be present at its deliberations. The deliberations of the arbitration panel and the documents submitted to it shall be kept confidential.

ARTICLE 3.9

Preliminary Ruling on Urgency

If a Party so requests, the arbitration panel shall give a preliminary ruling within 10 days of its establishment on whether it deems the case to be urgent.

ARTICLE 3.10

Interim Report

1. The arbitration panel shall issue an interim report to the Parties setting out the findings of fact, the applicability of relevant provisions and the basic rationale for any findings and recommendations, no later than 90 days from the date of establishment of the arbitration panel. When it considers that this deadline cannot be met, the chairperson of the arbitration panel shall notify the Parties and the Committee in writing, stating the reasons for the delay and the date on which the arbitration panel plans to issue its interim report. The arbitration panel shall, under no circumstances, issue the interim report later than 120 days after the date of establishment of the arbitration panel.

2. A Party may submit a written request, including comments, to the arbitration panel to review precise aspects of the interim report within 14 days of its notification.

3. In cases of urgency, including those involving perishable goods or seasonal goods or services, the arbitration panel shall make every effort to issue its interim report within 45 days and, in any case, no later than 60 days after the date of establishment of the arbitration panel. A Party may submit a written request, including comments, to the arbitration panel to review precise aspects of the interim report, within seven days of the notification of the interim report.

4. After considering any written requests, including comments, by the Parties on the interim report, the arbitration panel may modify its report and make any further examination that it considers appropriate.

ARTICLE 3.11

Final Report

1. The arbitration panel shall issue its final report to the Parties and to the Committee within 120 days of the date of establishment of the arbitration panel. When it considers that this deadline cannot be met, the chairperson of the arbitration panel shall notify the Parties and the Committee in writing, stating the reasons for the delay and the date on which the arbitration panel plans to issue its final report. The arbitration panel shall under no circumstances issue the final report later than 150 days from the date of establishment of the arbitration panel.

2. In cases of urgency, including those involving perishable goods or seasonal goods or services, the arbitration panel shall make every effort to notify its final report within 60 days of the date of its establishment. The arbitration panel shall under no circumstances issue the final report later than 75 days from the date of establishment of the arbitration panel.

3. The final report shall include a sufficient discussion of the arguments made at the interim review stage, and shall clearly address the comments of the Parties.

ARTICLE 3.12

Compliance with the Final Report

The Party complained against shall take any measure necessary to comply promptly and in good faith with the final report.

ARTICLE 3.13

Reasonable Period of Time for Compliance

1. If immediate compliance is not possible, the Parties shall endeavour to mutually agree on the period of time to comply with the final report. In such a case, the Party complained against shall, no later than 30 days after the receipt of the final report, notify the complaining Party and the Committee of the time it will require for compliance (hereinafter referred to as the "reasonable period of time").

2. If there is disagreement between the Parties on the reasonable period of time to comply with the final report, the complaining Party shall, within 20 days of the receipt of the notification made in accordance with paragraph 1 by the Party complained against, request, in writing, the arbitration panel established pursuant to Article 3.7 (Establishment of the Arbitration Panel) (hereinafter referred to as the "original arbitration panel") to determine the length of the reasonable period of time. That request shall be notified to the Party complained against and copied to the Committee.

3. The arbitration panel shall notify its ruling on the reasonable period of time to the Parties and to the Committee within 20 days of the date of the submission of the request referred to in paragraph 2.

4. The Party complained against shall inform, in writing, the complaining Party of its progress to comply with the final report at least 30 days before the expiry of the reasonable period of time.

5. The Parties may agree to extend the reasonable period of time.

ARTICLE 3.14

Review of Measure Taken to Comply with the Final Report

1. The Party complained against shall notify the complaining Party and the Committee before the end of the reasonable period of time of any measure that it has taken to comply with the final report.

2. If the Parties disagree on the existence or the consistency of any measure taken to comply with the provisions referred to in Article 3.2 (Scope) and notified under paragraph 1, the complaining Party may request, in writing, the original arbitration panel to rule on the matter. The request shall be notified to the Party complained against and copied to the Committee. The complaining Party shall identify in its request the specific measure at issue, and explain how such measure is inconsistent with the provisions referred to in Article 3.2 (Scope) in a manner sufficient to clearly present the legal basis for the complaint.

3. The arbitration panel shall notify its ruling to the Parties and to the Committee within 45 days of the date of the submission of the request referred to in paragraph 2.

ARTICLE 3.15

Temporary Remedies in Case of Non-Compliance

1. If the Party complained against fails to notify the complaining Party and the Committee of any measure taken to comply with the final report before the expiry of the reasonable period of time, or if the arbitration panel rules that no measure to comply with has been taken or that the measure notified under paragraph 1 of Article 3.14 (Review of Measure Taken to Comply with the Final Report) is inconsistent with that Party's obligations under the provisions referred to in Article 3.2 (Scope), the Party complained against shall, if so requested by the complaining Party and after consultations with that Party, present an offer for compensation.

2. If the complaining Party decides not to request an offer for compensation or, in case such request is made, if no agreement on compensation is reached within 30 days of the end of the reasonable period of time or of the issuance of the arbitration panel ruling under Article 3.14 (Review of Measure Taken to Comply with the Final Report) that no measure to comply with has been taken or that a measure taken is inconsistent with the provisions referred to in Article 3.2 (Scope), the complaining Party shall be entitled, upon notification to the other Party and to the Committee, to take appropriate measures within the framework of the preferential trade and investment commitments applicable between the Parties which have an effect equivalent to the nullification or impairment caused by the violation. The notification shall specify such measures. The complaining Party may implement the measures at any moment after the expiry of 10 days from the date of receipt of the notification by the Party complained against, unless the Party complained against has requested arbitration under paragraph 3 of this Article.

3. If the Party complained against considers that the effect of the measures taken by the complaining Party is not equivalent to the nullification or impairment caused by the violation, it may request, in writing, the original arbitration panel to rule on the matter. That request shall be notified to the complaining Party and copied to the Committee before the expiry of the period of 10 days referred to in paragraph 2. The original arbitration panel shall notify its ruling on the measures taken by the complaining Party to the Parties and to the Committee within 30 days of the date of the submission of the request. Obligations shall not be suspended until the original arbitration panel has notified its ruling, and any suspension shall be consistent with that ruling.

4. The measures set out in this Article shall be temporary and shall not be applied after:

(a) the Parties have reached a mutually agreed solution pursuant to Article 3.19 (Mutually Agreed Solution);

(b) the Parties have agreed that the measure notified under paragraph 1 of Article 3.14 (Review of Measure Taken to Comply with the Final Report) brings the Party complained against into conformity with the provisions referred to in Article 3.2 (Scope); or

(c) any measure found to be inconsistent with the provisions referred to in Article 3.2 (Scope) has been withdrawn or amended so as to bring it into conformity with those provisions, as ruled under paragraph 3 of Article 3.14 (Review of Measure Taken to Comply with the Final Report).

ARTICLE 3.16

Review of Measure Taken to Comply After the Adoption
of Temporary Remedies for Non-Compliance

1. The Party complained against shall notify the complaining Party and the Committee of any measure it has taken to comply with the report of the arbitration panel following the measures applied by the complaining Party or following the application of compensation, as the case may be. With the exception of cases referred to in paragraph 2, the complaining Party shall terminate the measures taken in accordance with Article 3.15 (Temporary Remedies in Case of Non-compliance) within 30 days of the date of the receipt of the notification. In the event that compensation has been applied, and with the exception of cases referred to in paragraph 2, the Party complained against may terminate the application of such compensation within 30 days of its notification that it has complied with the report of the arbitration panel.

2. If the Parties do not agree on whether the notified measure brings the Party complained against into conformity with the provisions referred to in Article 3.2 (Scope), within 30 days of the date of receipt of the notification, the complaining Party shall request, in writing, the original arbitration panel to rule on the matter. That request shall be notified to the Party complained against, copied to the Committee.

3. The ruling of the arbitration panel shall be notified to the Parties and to the Committee within 45 days of the date of the submission of the request. If the arbitration panel rules that the notified measure is in conformity with the provisions referred to in Article 3.2 (Scope), the measures referred to in Article 3.15 (Temporary Remedies in Case of Non-compliance) or the compensation, as the case may be, shall be terminated. Where relevant, the level of suspension of obligations or of compensation shall be adapted in light of the ruling of the arbitration panel.

ARTICLE 3.17

Replacement of Arbitrators

If during arbitration proceedings the original arbitration panel, or some of its members, are unable to participate, withdraw, or need to be replaced because the member does not comply with the requirements of the Code of Conduct in Annex 8 (Code of Conduct for Arbitrators and Mediators), the procedure set out in Article 3.7 (Establishment of the Arbitration Panel) applies. The time limit for the notification of the reports and rulings, as the case may be, shall be extended by 20 days.

ARTICLE 3.18

Suspension and Termination of Arbitration Proceedings

1. The arbitration panel shall, at the request of both Parties, suspend its work at any time for a period agreed by the Parties not exceeding 12 consecutive months. It shall resume its work before the end of that suspension period at the written request of both Parties. The Parties shall inform the Committee, accordingly. The arbitration panel may also resume its work at the end of the suspension period at the written request of either Party. The requesting Party shall inform the Committee and the other Party, accordingly. If a Party does not request the resumption of the arbitration panel's work at the expiry of the suspension period, the authority of the arbitration panel shall lapse and the proceedings shall be terminated. In the event of a suspension of the work of the arbitration panel, the time frames set out in the relevant provisions of this Chapter shall be extended by the same period of time for which the work was suspended. The suspension and termination of the arbitration panel's work are without prejudice to the rights of either Party in other proceedings subject to Article 3.24 (Choice of Forum).

2. The Parties may agree to terminate the proceedings of the arbitration panel by jointly notifying the chairperson of the arbitration panel and the Committee at any time before the issuance of the final report of the arbitration panel.

ARTICLE 3.19

Mutually Agreed Solution

The Parties may reach a mutually agreed solution to a dispute under this Chapter at any time. They shall jointly notify the Committee and the chairperson of the arbitration panel, where applicable, of any such solution. If the solution requires approval pursuant to the relevant domestic procedures of either Party, the notification shall refer to this requirement and the dispute settlement procedure shall be suspended. If such approval is not required, or if the completion of any such domestic procedures is notified, the dispute settlement procedure shall be terminated.

ARTICLE 3.20

Information and Technical Advice

At the request of a Party, or upon its own initiative, the arbitration panel may request any information it deems appropriate for the proceedings of the arbitration panel from any source, including the Parties involved in the dispute. The arbitration panel also has the right to seek the opinion of experts, as it deems appropriate. The arbitration panel shall consult the Parties before choosing such experts. Any information obtained under this Article shall be disclosed and submitted to the Parties for their comments within the time frame set by the arbitration panel.

ARTICLE 3.21

Rules of Interpretation

The arbitration panel shall interpret the provisions referred to in Article 3.2 (Scope) in accordance with customary rules of interpretation of public international law, including those codified in the *Vienna Convention on the Law of Treaties*, done at Vienna on 23 May 1969 (hereinafter referred to as the "Vienna Convention"). The arbitration panel shall also take into account relevant interpretations in reports of panels and of the Appellate Body adopted by the Dispute Settlement Body under Annex 2 of the WTO Agreement (hereinafter referred to as "DSB"). The reports and rulings of the arbitration panel cannot add to or diminish the rights and obligations of the Parties provided for in this Agreement.

ARTICLE 3.22

Decisions and Rulings of the Arbitration Panel

1. The arbitration panel shall make every effort to take any decision by consensus. In the event that a decision cannot be reached by consensus, the matter at issue shall be decided by majority vote. Dissenting opinions of arbitrators shall in no case be disclosed.

2. The reports and rulings of the arbitration panel shall be accepted unconditionally by the Parties. They shall not create any rights or obligations with respect to natural or legal persons. The reports and rulings shall set out the findings of fact, the applicability of the relevant provisions referred to in Article 3.2 (Scope) and the basic rationale behind any findings and conclusions. The Committee shall make the reports and rulings of the arbitration panel publicly available in their entirety within 10 days of their issuance, unless it decides not to do so in order to protect confidential information.

SUB-SECTION 4

GENERAL PROVISIONS

ARTICLE 3.23

List of Arbitrators

1. The Committee shall, no later than six months after the date of entry into force of this Agreement, establish a list of at least 15 individuals who are willing and able to serve as arbitrators. The list shall be composed of three sub-lists:

(a) one sub-list for Viet Nam;

(b) one sub-list for the Union and its Member States; and

(c) one sub-list of individuals who are not nationals of either Party and do not have permanent residence in either Party and who shall act as chairperson of the arbitration panel.

2. Each sub-list shall include at least five individuals. The Committee shall ensure that the list is always maintained at that minimum number of individuals.

3. Arbitrators shall have demonstrated expertise and experience of law and international trade. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government, or be affiliated with the government of any of the Parties, and shall comply with the Code of Conduct in Annex 8 (Code of Conduct for Arbitrators and Mediators).

4. The Committee may establish an additional list of 10 individuals with demonstrated expertise and experience in specific sectors covered by this Agreement. Subject to the agreement of the Parties, such an additional list shall be used to compose the arbitration panel in accordance with the procedure set out in Article 3.7 (Establishment of the Arbitration Panel).

ARTICLE 3.24

Choice of Forum

1. Recourse to the dispute settlement procedure under this Chapter shall be without prejudice to any action in the framework of the World Trade Organization, including dispute settlement action, or under any other international agreement to which both Parties are party.

2. By way of derogation from paragraph 1, a Party shall not, for a particular measure, seek redress for the breach of a substantially equivalent obligation under this Agreement and under the WTO Agreement or under any other international agreement to which both Parties are party in the relevant fora. Once dispute settlement proceedings have been initiated, the Party shall not bring a claim seeking redress for the breach of the substantially equivalent obligation under the other agreement to the other forum, unless the forum selected first fails for procedural or jurisdictional reasons to make findings on the claim seeking redress to that obligation.

3. For the purposes of this Article:

(a) dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel under Article 6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*;

(b) dispute settlement proceedings under this Chapter are deemed to be initiated by a Party's request for the establishment of an arbitration panel under paragraph 1 of Article 3.5 (Initiation of the Arbitration Procedure);

(c) dispute settlement proceedings under any other international agreement are deemed to be initiated in accordance with that agreement.

4. Nothing in this Agreement shall preclude a Party from implementing the suspension of obligations authorised by the DSB. Neither the WTO Agreement nor the Free Trade Agreement shall be invoked to preclude a Party from taking appropriate measures under Article 3.15 (Temporary Remedies in Case of Non-Compliance).

ARTICLE 3.25

Time Limits

1. All time limits laid down in this Section, including the limits for the arbitration panels to notify their reports and rulings, shall be counted in calendar days from the day following the act or fact to which they refer, unless otherwise specified.

2. Any time limit referred to in this Section may be modified by mutual agreement of the Parties to the dispute. The arbitration panel may at any time propose to the Parties to modify any time limit referred to in this Section, stating the reasons for the proposal.

ARTICLE 3.26

Review and Amendment

The Committee may review and decide to amend Annexes 7 (Rules of Procedure), 8 (Code of Conduct for Arbitrators and Mediators) and 9 (Mediation Mechanism).

SECTION B

Resolution of Disputes between Investors and Parties

SUB-SECTION 1

Scope and Definitions

ARTICLE 3.27

Scope

1. This Section applies to a dispute between, on the one hand, a claimant of one Party and, on the other hand, the other Party concerning any measure[1] which allegedly constitutes a breach of the provisions of Chapter 2 (Investment Protection) and which allegedly causes loss or damage to the claimant or, where the claim is brought on behalf of a locally established company owned or controlled by the claimant, to the locally established company.

2. For greater certainty, a claimant shall not submit a claim under this Section if its investment has been made through fraudulent misrepresentation, concealment, corruption or conduct amounting to an abuse of process.

[1] For greater certainty, the term "measure" may include failures to act.

3. The Tribunal and the Appeal Tribunal established pursuant to Articles 3.38 (Tribunal) and 3.39 (Appeal Tribunal), respectively, may not decide claims that fall outside the scope of this Article.

4. A claim with respect to restructuring of debt of a Party shall be addressed in accordance with this Section and Annex 5 (Public Debt).

ARTICLE 3.28

Definitions

For the purposes of this Section, unless otherwise specified:

(a) "proceedings" means proceedings before the Tribunal or the Appeal Tribunal under this Section;

(b) "disputing parties" means the claimant and the respondent;

(c) "claimant of a Party" means:

(i) an investor of a Party, as referred to in subparagraph 1(b) of Article 2.1 (Scope), acting on its own behalf; or

(ii) an investor of a Party, as referred to in subparagraph 1(b) of Article 2.1 (Scope), acting on behalf of a locally established company owned or controlled by that investor; for greater certainty, a claim submitted under this subparagraph shall be deemed to relate to a dispute between a Contracting State and a national of another Contracting State for the purposes of Article 25(1) of the ICSID Convention;

(d) "ICSID Convention" means the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States*, done at Washington on 18 March 1965;

(e) "non-disputing Party" means Viet Nam when the respondent is the Union or a Member State of the Union, or the Union when Viet Nam is the respondent;

(f) "respondent" means either Viet Nam or, in the case of the EU Party, either the Union or the Member State concerned pursuant to Article 3.32 (Notice of Intent to Submit a Claim);

(g) "locally established company" means a juridical person, established in the territory of a Party, and owned and controlled by an investor of the other Party;

(h) "New York Convention of 1958" means the *Convention for the Recognition and Enforcement of Foreign Arbitral Awards*, done at New York on 10 June 1958;

(i) "third party funding" means any funding provided by a natural or juridical person who is not a party to the dispute but who enters into an agreement with a disputing party in order to finance part or all of the cost of the proceedings in return for a remuneration dependent on the outcome of the dispute, or any funding provided by a natural or juridical person who is not a party to the dispute in the form of a donation or grant;

(j) "UNCITRAL" means the United Nations Commission on International Trade Law; and

(k) "UNCITRAL Transparency Rules" means the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration.

SUB-SECTION 2

ALTERNATIVE DISPUTE RESOLUTION AND CONSULTATIONS

ARTICLE 3.29

Amicable Resolution

Any dispute should as far as possible be settled amicably through negotiations or mediation and, where possible, before the submission of a request for consultations pursuant to Article 3.30 (Consultations). Such settlement may be agreed at any time, including after the commencement of proceedings under this Section.

ARTICLE 3.30

Consultations

1. Where a dispute cannot be resolved amicably as provided for in Article 3.29 (Amicable Resolution), a claimant of one Party alleging a breach of the provisions referred to in paragraph 1 of Article 3.27 (Scope) shall submit a request for consultations to the other Party. The request shall contain the following information:

(a) the name and address of the claimant and, where such request is submitted on behalf of a locally established company, the name, address and place of incorporation of the locally established company;

(b) the provisions referred to in paragraph 1 of Article 3.27 (Scope) alleged to have been breached;

(c) the legal and factual basis of the claim, including the measures alleged to breach the provisions referred to in paragraph 1 of Article 3.27 (Scope);

(d) the relief sought and the estimated amount of damages claimed; and

(e) evidence establishing that the claimant is an investor of the other Party and that it owns or controls the covered investment including the locally established company where applicable, in respect of which a request for consultations was submitted.

When a request for consultations is submitted by more than one claimant, or on behalf of more than one locally established company, the information in subparagraphs 1(a) and 1(e) shall be submitted for each claimant or locally established company, as the case may be.

2. A request for consultations shall be submitted within:

(a) three years of the date on which the claimant or, as applicable, the locally established company, first acquired, or should have first acquired, knowledge of the measure alleged to be in breach of the provisions of Chapter 2 (Investment Protection) and knowledge that thereby loss and damages incurred to:

(i) the claimant, for claims brought by an investor acting on its own behalf; or

(ii) the locally established company, for claims brought by an investor acting on behalf of a locally established company; or

(b) two years of the date on which the claimant or, as applicable, the locally established company, ceases to pursue claims or proceedings before a tribunal or court under domestic law and, in any event, no later than seven years after the date on which the claimant first acquired, or should have first acquired knowledge of the measure alleged to be in breach of the provisions of Chapter 2 (Investment Protection) and knowledge that thereby loss and damage incurred to:

(i) the claimant, for claims brought by an investor acting on its own behalf; or

(ii) the locally established company, for claims brought by an investor acting on behalf of a locally established company.[1]

3. Unless the disputing parties agree otherwise, the place of consultation shall be:

(a) Ha Noi where the consultations concern measures of Viet Nam;

(b) Brussels where the consultations concern measures of the Union; or

(c) the capital of the Member State of the Union concerned, where the request for consultations concerns exclusively measures of that Member State.

Consultations may also take place by videoconference or other means, particularly if a small or medium-sized enterprise is involved.

4. Unless the disputing parties agree to a longer period, consultations shall be held within 60 days of the submission of the request for consultations.

5. In the event that the claimant has not submitted a claim pursuant to Article 3.33 (Submission of a Claim) within 18 months of submitting the request for consultations, the claimant shall be deemed to have withdrawn from proceedings under this Section and may not submit a claim under this Section. This period may be extended by agreement between the parties involved in the consultations.

[1] Subparagraph (2)(b) does not apply where Annex 12 (Concurring Proceedings) applies.

6. The time limits set out in paragraphs 2 and 5 shall not render claims inadmissible where the claimant can demonstrate that the failure to request consultations or submit a claim is due to the claimant's inability to act as a result of actions deliberately taken by the Party concerned, provided that the claimant acts as soon as reasonably possible after it has become able to act.

7. In case that the request for consultations concerns an alleged breach of the agreement by the Union, or by a Member State of the Union, it shall be sent to the Union. If measures of a Member State of the Union are identified, it shall also be sent to the Member State concerned.

ARTICLE 3.31

Mediation

1. The disputing parties may at any time agree to have recourse to mediation.

2. Recourse to mediation is voluntary and without prejudice to the legal position of either disputing party.

3. Recourse to mediation may be governed by the rules set out in Annex 10 (Mediation Mechanism for Disputes between Investors and Parties). Any time limit mentioned in Annex 10 (Mediation Mechanism for Disputes between Investors and Parties) may be modified by mutual agreement between the disputing parties.

4. The mediator is appointed by agreement of the disputing parties. Such appointment may include appointing a mediator from among the Members of the Tribunal appointed pursuant to Article 3.38 (Tribunal) or the Members of the Appeal Tribunal appointed pursuant to Article 3.39 (Appeal Tribunal). The disputing parties may also request the President of the Tribunal to appoint a mediator from among the Members of the Tribunal who are neither nationals of a Member State of the Union nor of Viet Nam.

5. Once the disputing parties agree to have recourse to mediation, the time limits set out in paragraphs 2 and 5 of Article 3.30 (Consultations), paragraph 6 of Article 3.53 (Provisional Award) and paragraph 5 of Article 3.54 (Appeal Procedure) shall be suspended between the date on which it was agreed to have recourse to mediation and the date on which either party to the dispute decides to terminate the mediation, by way of a letter to the mediator and the other disputing party. Upon request of both disputing parties, if a division of the Tribunal has been established pursuant to Article 3.38 (Tribunal), the division shall stay its proceedings until the date on which either party to the dispute decides to terminate the mediation, by way of a letter to the mediator and the other disputing party.

SUB-SECTION 3

SUBMISSION OF A CLAIM AND CONDITIONS PRECEDENT

ARTICLE 3.32

Notice of Intent to Submit a Claim

1. If the dispute cannot be settled within 90 days of the submission of the request for consultations, the claimant may deliver a notice of intent which shall specify, in writing, the claimant's intention to submit the claim to dispute settlement under this Section and contain the following information:

(a) the name and address of the claimant and, where such request is submitted on behalf of a locally established company, the name, address and place of incorporation of the locally established company;

(b) the provisions referred to in paragraph 1 of Article 3.27 (Scope) that are alleged to have been breached;

(c) the legal and factual basis of the claim, including the measures that are alleged to breach the provisions referred to in paragraph 1 of Article 3.27 (Scope); and

(d) the relief sought and the estimated amount of damages claimed.

The notice of intent shall be sent to the Union or to Viet Nam, as the case may be. When a measure of a Member State of the Union is identified, it shall also be sent to the Member State concerned.

2. When a notice of intent has been sent to the Union, the Union shall make a determination of the respondent and, after having made such a determination, it shall inform the claimant within 60 days of the receipt of the notice of intent as to whether the Union or a Member State of the Union shall be the respondent.

3. In case the claimant has not been informed of the determination of the respondent within 60 days of the receipt of the notice of intent:

(a) if the measures identified in the notice are exclusively measures of a Member State of the Union, that Member State shall be the respondent; or

(b) if the measures identified in the notice include measures of the Union, the Union shall be the respondent.

4. The claimant may submit a claim pursuant to Article 3.33 (Submission of a Claim) on the basis of the determination referred to in paragraph 2, or, if no such determination has been communicated to the claimant within the timeframe provided for in paragraph 2, in accordance with paragraph 3.

5. Where either the Union or its Member State is the respondent following a determination made pursuant to paragraph 2, neither the Union nor the Member State concerned may assert the inadmissibility of the claim, lack of jurisdiction of the Tribunal or otherwise assert that the claim or award is unfounded or invalid on the grounds that the proper respondent should be the Union rather than the Member State or *vice versa*.

6. The Tribunal and the Appeal Tribunal shall be bound by the determination made pursuant to paragraph 2.

7. Nothing in this Agreement or the applicable rules on dispute settlement shall prevent the exchange of all information relating to a dispute between the Union and the Member State concerned.

ARTICLE 3.33

Submission of a Claim

1. If the dispute cannot be settled within six months of the submission of the request for consultations and at least three months have elapsed from the submission of the notice of intent to submit a claim pursuant to Article 3.32 (Notice of Intent to Submit a Claim), the claimant, provided that it satisfies the requirements set out in Article 3.35 (Procedural and Other Requirements for the Submission of a Claim), may submit a claim to the Tribunal established pursuant to Article 3.38 (Tribunal).

2. A claim may be submitted to the Tribunal under one of the following sets of rules on dispute settlement:

(a) the ICSID Convention;

(b) the *Rules on the Additional Facility for the Administration of Proceedings* (hereinafter referred to as the "ICSID Additional Facility Rules") by the Secretariat of the International Centre for Settlement of Investment Disputes (hereinafter referred to "Secretariat of ICSID"), where the conditions for proceedings pursuant to subparagraph (a) do not apply;

(c) the arbitration rules of UNCITRAL; or

(d) any other rules by agreement of the disputing parties. In the event that the claimant proposes a specific set of dispute settlement rules and if, within 30 days of receipt of the proposal, the disputing parties have not agreed in writing on such rules, or the respondent has not replied to the claimant, the claimant may submit a claim under the rules provided for in subparagraphs (a), (b) or (c).

3. All the claims identified by the claimant in the submission of its claim pursuant to this Article must be based on measures identified in its request for consultations pursuant to subparagraph 1(c) of Article 3.30 (Consultations).

4. The rules on dispute settlement referred to in paragraph 2 shall apply subject to the rules set out in this Section, as supplemented by any rules adopted by the Committee, by the Tribunal or by the Appeal Tribunal.

5. A claim shall be deemed submitted under this Article when the claimant has initiated proceedings under the applicable rules on dispute settlement.

6. Claims submitted in the name of a class composed of a number of unidentified claimants, or submitted by a representative intending to conduct the proceedings in the interests of a number of identified or unidentified claimants that delegate all decisions relating to the proceedings on their behalf, shall not be admissible.

ARTICLE 3.34

Other Claims

1. A claimant shall not submit a claim to the Tribunal if the claimant has a pending claim before any other domestic or international court or tribunal concerning the same measure as that alleged to be inconsistent with the provisions referred to in paragraph 1 of Article 3.27 (Scope) and the same loss or damage, unless the claimant withdraws such pending claim.

2. A claimant acting on its own behalf shall not submit a claim to the Tribunal if any person who, directly or indirectly, has an ownership interest in or is controlled by the claimant has a pending claim before the Tribunal or any other domestic or international court or tribunal concerning the same measure as that alleged to be inconsistent with the provisions referred to in paragraph 1 of Article 3.27 (Scope) and the same loss or damage, unless that person withdraws such pending claim.

3. A claimant acting on behalf of a locally established company shall not submit a claim to the Tribunal if any person who, directly or indirectly, has an ownership interest in or is controlled by the locally established company has a pending claim before the Tribunal or any other domestic or international court or tribunal concerning the same measure as that alleged to be in breach of the provisions of Chapter 2 (Investment Protection) and the same loss or damage, unless that person withdraws such pending claim.

4. Before submitting a claim, the claimant shall provide:

(a) evidence that it and, where relevant pursuant to paragraphs 2 and 3, any person who, directly or indirectly, has an ownership interest in or is controlled by the claimant or the locally established company, has withdrawn any pending claim referred to in paragraphs 1, 2 or 3; and

(b) a waiver of its right, and where applicable, of the locally established company's right, to initiate any claim referred to in paragraph 1.

5. This Article applies in conjunction with Annex 12 (Concurring Proceedings).

6. The waiver provided pursuant to subparagraph 4(b) shall cease to apply where the claim is rejected on the basis of a failure to meet the nationality requirements to bring an action under this Agreement.

7. Paragraphs 1 to 4, including Annex 12 (Concurring Proceedings), do not apply when claims submitted to a domestic court or tribunal are initiated for the sole purpose of seeking interim injunctive or declaratory relief and do not involve the payment of monetary damages.

8. When claims are brought both pursuant to this Section and Section A (Resolution of Disputes between the Parties), or both pursuant to this Section and another international agreement concerning the same treatment as that alleged to be inconsistent with the provisions of Chapter 2 (Investment Protection), a division of the Tribunal constituted under this Section shall, as soon as possible after hearing the disputing parties, take into account proceedings pursuant to Section A (Resolution of Disputes between the Parties) or to another international agreement in its decision, order or award. To that end, it may also, if it considers necessary, stay its proceedings. In acting pursuant to this provision, the Tribunal shall respect paragraph 6 of Article 3.53 (Provisional Award).

ARTICLE 3.35

Procedural and Other Requirements for the Submission of a Claim

1. A claim may be submitted to the Tribunal under this Section only if:

(a) the submission of the claim is accompanied by the claimant's consent in writing to the settlement of the dispute by the Tribunal in accordance with the procedures set out in this Section and the claimant's designation of one of the set of rules on dispute settlement referred to in paragraph 2 of Article 3.33 (Submission of a Claim) as the applicable dispute settlement rules;

(b) at least six months have elapsed since the submission of the request for consultations under Article 3.30 (Consultations) and at least three months have elapsed since the submission of the notice of intent to submit a claim under Article 3.32 (Notice of Intent to Submit a Claim);

(c) the request for consultations and the notice of intent to submit a claim fulfil the requirements set out in paragraphs 1 and 2 of Article 3.30 (Consultations), and paragraph 1 of Article 3.32 (Notice of Intent to Submit a Claim), respectively;

(d) the legal and factual basis of the dispute was subject to prior consultations pursuant to Article 3.30 (Consultations);

(e) all the claims identified in the submission of the claim to the Tribunal made pursuant to Article 3.33 (Submission of a Claim) are based on the measure or measures identified in the notice of intent to submit a claim made pursuant to Article 3.32 (Notice of Intent to Submit a Claim); and

(f) the conditions set out in Article 3.34 (Other Claims) are fulfilled.

2. This Article is without prejudice to other jurisdictional requirements arising from the relevant dispute settlement rules.

ARTICLE 3.36

Consent

1. The respondent consents to the submission of a claim under this Section.

2. The claimant shall deliver its consent in accordance with the procedures provided for in this Section at the time of submitting a claim pursuant to Article 3.33 (Submission of a Claim).

3. The consent under paragraphs 1 and 2 requires that:

(a) the disputing parties shall refrain from enforcing an award rendered pursuant to this Section before such award has become final pursuant to Article 3.55 (Final Award); and

(b) the disputing parties shall refrain from seeking to appeal, review, set aside, annul, revise or initiate any other similar procedure before an international or domestic court or tribunal, as regards an award pursuant to this Section.[1]

4. The consent under paragraphs 1 and 2 shall be deemed to satisfy the requirements of:

(a) Article 25 of the ICSID Convention and the ICSID Additional Facility Rules for written consent of the disputing parties; and

(b) Article II of the New York Convention of 1958 for an agreement in writing.

[1] For greater certainty, this subparagraph applies in conjunction with Article 3.57 (Enforcement of Final Awards).

ARTICLE 3.37

Third-Party Funding

1. In case of third-party funding, the disputing party benefiting from it shall notify the other disputing party and the division of the Tribunal, or where the division of the Tribunal is not established, the President of the Tribunal the existence and nature of the funding arrangement, and the name and address of the third party funder.

2. Such notification shall be made at the time of submission of a claim, or, when the financing agreement is concluded or the donation or grant is made after the submission of a claim, without delay as soon as the agreement is concluded or the donation or grant is made.

3. When applying Article 3.48 (Security for Costs), the Tribunal shall take into account whether there is third-party funding. When deciding on the cost of proceedings pursuant to paragraph 4 of Article 3.53 (Provisional Award), the Tribunal shall take into account whether the requirements provided for in paragraphs 1 and 2 of this Article have been respected.

SUB-SECTION 4

INVESTMENT TRIBUNAL SYSTEM

ARTICLE 3.38

Tribunal

1. A Tribunal is hereby established to hear claims submitted pursuant to Article 3.33 (Submission of a Claim).

2. Pursuant to subparagraph 5(a) of Article 4.1 (Committee), the Committee shall, upon the entry into force of this Agreement, appoint nine Members of the Tribunal. Three of the Members shall be nationals of a Member State of the Union, three shall be nationals of Viet Nam and three shall be nationals of third countries.[1]

3. The Committee may decide to increase or decrease the number of the Members of the Tribunal by multiples of three. Additional appointments shall be made on the same basis as provided for in paragraph 2.

[1] Instead of proposing the appointment of three Members who have its nationality, either Party may propose to appoint up to three Members who have other nationality. In this case, such Members shall be considered to be nationals of the Party that proposed their appointment for the purposes of this Article.

4. The Members of the Tribunal shall possess the qualifications required in their respective countries for appointment to judicial offices or be jurists of recognised competence. They shall have demonstrated expertise in public international law. It is desirable that they have expertise, in particular, in international investment law, international trade law and the resolution of disputes arising under international investment or international trade agreements.

5. The Members of the Tribunal shall be appointed for a four-year term, renewable once. However, the terms of five of the nine persons appointed immediately after the date of entry into force of this Agreement, to be determined by lot, shall extend to six years. Vacancies shall be filled as they arise. A person appointed to replace a person whose term of office has not expired shall hold office for the remainder of the predecessor's term. A person who is serving on a division of the Tribunal when his or her term expires may, with the authorisation of the President of the Tribunal, continue to serve on the division until the closure of the proceedings of that division and shall, for that purpose only, be deemed to continue to be a Member of the Tribunal.

6. The Tribunal shall hear cases in divisions consisting of three Members, of whom one shall be a national of a Member State of the Union, one a national of Viet Nam and one a national of a third country. The division shall be chaired by the Member who is a national of a third country.

7. Within 90 days of the submission of a claim pursuant to Article 3.33 (Submission of a Claim), the President of the Tribunal shall appoint the Members composing the division of the Tribunal hearing the case on a rotation basis, ensuring that the composition of the divisions is random and unpredictable, while giving equal opportunity to all Members to serve.

8. The President and Vice-President of the Tribunal shall be responsible for organisational issues and will be appointed for a two-year term and shall be drawn by lot from among the Members who are nationals of third countries. They shall serve on the basis of a rotation drawn by lot by the co-chairs of the Committee or their respective delegates. The Vice-President shall replace the President when the President is unavailable.

9. Notwithstanding paragraph 6, the disputing parties may agree that a case be heard by a sole Member who is a national of a third country, to be selected by the President of the Tribunal. The respondent shall give sympathetic consideration to such a request from the claimant, in particular where the claimant is a small or medium-sized enterprise or the compensation or damages claimed are relatively low. Such a request should be made at the same time as the filing of the claim pursuant to Article 3.33 (Submission of a Claim).

10. The Tribunal may draw up its own working procedures. The working procedures shall be compatible with the applicable dispute settlement rules and this Section. If the Tribunal decides to do so, the President of the Tribunal shall draw up draft working procedures in consultation with the other Members of the Tribunal and present the draft working procedures to the Committee The draft working procedures shall be adopted by the Committee. If the draft working procedures are not adopted by the Committee within three months of their presentation, the President of the Tribunal shall make the necessary revision to the draft working procedures, taking into consideration the views expressed by the Parties. The President of the Tribunal shall subsequently present the revised draft working procedures to the Committee. The revised draft working procedures shall be considered adopted unless the Committee decides to reject the revised draft working procedures within three months of their presentation.

11. When a procedural question arises that is not covered by this Section, by any supplementing rules adopted by the Committee or by the working procedures adopted pursuant to paragraph 10, the relevant division of the Tribunal may adopt an appropriate procedure that is compatible with those provisions.

12. A division of the Tribunal shall make every effort to take any decision by consensus. In case that a decision cannot be reached by consensus, the division of the Tribunal shall render its decision by a majority of votes of all its Members. Opinions expressed by individual Members of a division of the Tribunal shall be anonymous.

13. The Members shall be available at all times and at short notice, and shall stay abreast of dispute settlement activities under this Agreement.

14. In order to ensure their availability, the Members shall be paid a monthly retainer fee to be fixed by decision of the Committee. In addition, the President of the Tribunal and the Vice-President, where applicable, shall receive a daily fee equivalent to the fee determined pursuant to paragraph 16 of Article 3.39 (Appeal Tribunal) for each day worked in fulfilling the functions of President of the Tribunal pursuant to this Section.

15. The retainer fee and the daily fee referred to in paragraph 14 shall be paid by both Parties taking into account their respective level of development into an account managed by the Secretariat of ICSID. In the event that one Party fails to pay the retainer fee or the daily fee, the other Party may elect to pay instead. Any such arrears will remain payable, with appropriate interests.

16. Unless the Committee adopts a decision pursuant to paragraph 17, the amount of the other fees and expenses of the Members of a division of the Tribunal shall be those determined pursuant to Regulation 14(1) of the Administrative and Financial Regulations of the ICSID Convention in force on the date of the submission of the claim and allocated by the Tribunal among the disputing parties in accordance with paragraph 4 of Article 3.53 (Provisional Award).

17. Upon a decision by the Committee, the retainer fee, the daily fee and the other fees and expenses may be permanently transformed into a regular salary. In such a case, the Members of the Tribunal shall serve on a full-time basis and they shall not be permitted to engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the President of the Tribunal. The Committee shall fix their remuneration and related organisational matters.

18. The Secretariat of ICSID shall act as Secretariat for the Tribunal and provide it with appropriate support. The expenses for such support shall be allocated by the Tribunal among the disputing parties in accordance with paragraph 4 of Article 3.53 (Provisional Award).

ARTICLE 3.39

Appeal Tribunal

1. A permanent Appeal Tribunal is hereby established to hear appeals from awards issued by the Tribunal.

2. The Appeal Tribunal shall be composed of six Members, of whom two shall be nationals of a Member State of the Union, two shall be nationals of Viet Nam and two shall be nationals of third countries.

3. Pursuant to subparagraph 5(a) of Article 4.1 (Committee), the Committee shall, upon entry into force of this Agreement, appoint the six Members of the Appeal Tribunal.[1]

4. The Committee may decide to increase or decrease the number of the Members of the Appeal Tribunal by multiples of three. Additional appointments shall be made on the same basis as provided for in paragraphs 2 and 3.

5. The Appeal Tribunal Members shall be appointed for a four-year term, renewable once. However, the terms of three of the six persons appointed immediately after the entry into force of this Agreement, to be determined by lot, shall extend to six years. Vacancies shall be filled as they arise. A person appointed to replace a person whose term of office has not expired shall hold office for the remainder of the predecessor's term.

[1] Instead of proposing the appointment of two Members who have its nationality or citizenship, either Party may propose to appoint up to two Members who have other nationalities or citizenship. In this case, such Members shall be considered to be nationals or citizens of the Party that proposed his or her appointment for the purposes of this Article.

6. The Appeal Tribunal shall have a President and Vice-President who shall be selected by lot for a two-year term from the Members who are nationals of third countries. They shall serve on the basis of a rotation drawn by lot by the Chair of the Committee. The Vice-President shall replace the President when the President is unavailable.

7. The Members of the Appeal Tribunal shall have demonstrated expertise in public international law, and possess the qualifications required in their respective countries for appointment to the highest judicial offices or be jurists of recognised competence. It is desirable that they have expertise in international investment law, international trade law and the resolution of disputes arising under international investment or international trade agreements.

8. The Appeal Tribunal shall hear appeals in divisions consisting of three Members of whom one shall be a national of a Member State of the Union, one a national of Viet Nam and one a national of a third country. The division shall be chaired by the Member who is a national of a third country.

9. The composition of the division hearing each appeal shall be established in each case by the President of the Appeal Tribunal on a rotation basis, ensuring that the composition of each division is random and unpredictable, while giving equal opportunity to all Members to serve. A person who is serving on a division of the Appeal Tribunal when his or her term expires may, with the authorisation of the President of the Appeal Tribunal, continue to serve on the division until the closure of the proceedings of that division and shall, for that purpose only, be deemed to continue to be a Member of the Appeal Tribunal.

10. The Appeal Tribunal shall draw up its own working procedures. The working procedures shall be compatible with this Section and the instructions provided in Annex 13 (Working Procedures for the Appeal Tribunal). The President of the Appeal Tribunal shall draw up draft working procedures in consultation with the other Members of the Appeal Tribunal and present the draft working procedures to the Committee within one year of the date of the entry into force of this Agreement. The draft working procedures shall be adopted by the Committee. If the draft working procedures are not adopted by the Committee within three months of their presentation, the President of the Appeal Tribunal shall make the necessary revision to the draft working procedures, taking into consideration the views expressed by the Parties. The President of the Appeal Tribunal shall subsequently present the revised draft working procedures to the Committee. The revised draft working procedures shall be considered adopted, unless the Committee decides to reject the revised draft working procedures within three months of their presentation.

11. When a procedural question arises that is not covered by this Section, by any supplementing rules adopted by the Committee or by working procedures adopted pursuant to paragraph 10, the relevant division of the Appeal Tribunal may adopt an appropriate procedure that is compatible with those provisions.

12. A division of the Appeal Tribunal shall make every effort to take any decision by consensus. In case that a decision cannot be reached by consensus, the division of the Appeal Tribunal shall render its decision by a majority of votes of all its Members. Opinions expressed by individual Members of a division of Appeal Tribunal shall be anonymous.

13. The Members of the Appeal Tribunal shall be available at all times and at short notice and shall stay abreast of other dispute settlement activities under this Agreement.

14. The Members of the Appeal Tribunal shall be paid a monthly retainer fee to be determined by decision of the Committee. In addition, the President of the Appeal Tribunal and the Vice-President, where applicable, shall receive a daily fee equivalent to the fee determined pursuant to paragraph 16 for each day worked in fulfilling the functions of President of the Appeal Tribunal pursuant to this Section.

15. The retainer fee and the daily fee referred to in paragraph 14 shall be paid by both Parties taking into account their respective level of development into an account managed by the Secretariat of ICSID. In the event that one Party fails to pay the retainer fee or the daily fee, the other Party may elect to pay instead. Any such arrears will remain payable, with appropriate interests.

16. Upon entry into force of this Agreement, the Committee shall adopt a decision determining the amount of the other fees and expenses of the Members of a division of the Appeal Tribunal. Such fees and expenses shall be allocated by the Tribunal, or where applicable by the Appeal Tribunal, among the disputing parties in accordance with paragraph 4 of Article 3.53 (Provisional Award).

17. Upon decision by the Committee, the retainer fee, the daily fee and the other fees and expenses may be permanently transformed into a regular salary. In such a case, the Members of the Appeal Tribunal shall serve on a full-time basis and they shall not be permitted to engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the President of the Appeal Tribunal. The Committee shall fix their remuneration and related organisational matters.

18. The Secretariat of ICSID shall act as Secretariat for the Appeal Tribunal and provide it with appropriate support. The expenses for such support shall be allocated by the Appeal Tribunal among the disputing parties in accordance with paragraph 4 of Article 3.53 (Provisional Award).

ARTICLE 3.40

Ethics

1. The Members of the Tribunal and of the Appeal Tribunal shall be chosen from persons whose independence is beyond doubt. They shall not be affiliated with any government.[1] They shall not take instructions from any government or organisation with regard to matters relating to the dispute. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest. In doing so, they shall comply with Annex 11 (Code of Conduct for Members of the Tribunal, Members of the Appeal Tribunal and Mediators). In addition, upon appointment, they shall refrain from acting as counsel or as party-appointed experts or witnesses in any pending or new investment protection dispute under this or any other agreement or under domestic laws and regulations.

[1] For greater certainty, the fact that a person receives an income from the government, or was formerly employed by the government, or has family relationship with a person who receives an income from the government, does not in itself render that person ineligible.

2. If a disputing party considers that a Member has a conflict of interest, it shall send a notice of challenge to the appointment to the President of the Tribunal or to the President of the Appeal Tribunal, accordingly. The notice of challenge shall be sent within 15 days of the date on which the composition of the division of the Tribunal or of the Appeal Tribunal has been communicated to the disputing party, or within 15 days of the date on which the relevant facts came to its knowledge if they could not have reasonably been known at the time of composition of the division. The notice of challenge shall state the grounds for the challenge.

3. If, within 15 days of the date of the notice of challenge, the challenged Member has elected not to resign from that division, the President of the Tribunal or the President of the Appeal Tribunal, accordingly, shall, after hearing the disputing parties and after providing the Member an opportunity to submit any observations, issue a decision within 45 days of the receipt of the notice of challenge and notify forthwith the disputing parties and other Members of the division.

4. Challenges against the appointment of the President of the Tribunal to a division shall be decided by the President of the Appeal Tribunal and *vice versa*.

5. Upon a reasoned recommendation from the President of the Appeal Tribunal, or on their joint initiative, the Parties may by decision of the Committee decide to remove a Member from the Tribunal or a Member from the Appeal Tribunal where the behaviour of this Member is inconsistent with the obligations set out in paragraph 1 and incompatible with his continued membership of the Tribunal or the Appeal Tribunal. If the President of the Appeal Tribunal is alleged of such behaviour, the President of the Tribunal shall submit the reasoned recommendation. Paragraph 2 of Article 3.38 (Tribunal) and paragraph 3 of Article 3.39 (Appeal Tribunal) shall apply *mutatis mutandis* for filling vacancies that may arise pursuant to this paragraph.

ARTICLE 3.41

Multilateral Dispute Settlement Mechanisms

The Parties shall enter into negotiations for an international agreement providing for a multilateral investment tribunal in combination with, or separate from, a multilateral appellate mechanism applicable to disputes under this Agreement. The Parties may consequently agree on the non-application of relevant parts of this Section. The Committee may adopt a decision specifying any necessary transitional arrangements.

SUB-SECTION 5

CONDUCT OF PROCEEDINGS

ARTICLE 3.42

Applicable Law and Rules of Interpretation

1. The Tribunal and the Appeal Tribunal shall decide whether the measures subject to the claim are in breach of with the provisions of Chapter 2 (Investment Protection) as alleged by the claimant.

2. When rendering its decisions, the Tribunal and the Appeal Tribunal shall apply the provisions of Chapter 2 (Investment Protection) and other provisions of this Agreement, as applicable, as well as other rules or principles of international law applicable between the Parties, and take into consideration, as matter of fact, any relevant domestic law of the disputing Party.

3. For greater certainty, the Tribunal and the Appeal Tribunal shall be bound by the interpretation given to the domestic law by the courts or authorities which are competent to interpret the relevant domestic law, and any meaning given to the relevant domestic law made by the Tribunal and the Appeal Tribunal shall not be binding upon the courts and the authorities of either Party. The Tribunal and the Appeal Tribunal does not have jurisdiction to determine the legality of a measure, alleged to constitute a breach of this Agreement, under the domestic laws and regulations of the disputing Party.

4. The Tribunal and the Appeal Tribunal shall interpret this Agreement in accordance with customary rules of interpretation of public international law, as codified in the *Vienna Convention on the Law of Treaties*, concluded at Vienna on 23 May 1969.

5. When serious concerns arise as regards issues of interpretation which may affect matters relating to this Section, the Committee may adopt interpretations of provisions of this Agreement. Any such interpretation shall be binding upon the Tribunal and the Appeal Tribunal. The Committee may decide that an interpretation shall have binding effect from a specific date.

ARTICLE 3.43

Anti-Circumvention

For greater certainty, the Tribunal shall decline jurisdiction where the dispute had arisen, or was foreseeable on the basis of a high degree of probability, at the time when the claimant acquired ownership or control of the investment subject to the dispute and the Tribunal determines, on the basis of the facts of the case, that the claimant has acquired ownership or control of the investment for the main purpose of submitting the claim under this Section. The possibility to decline jurisdiction in such circumstances is without prejudice to other jurisdictional objections which could be entertained by the Tribunal.

ARTICLE 3.44

Preliminary Objections

1. The respondent may file an objection that a claim is manifestly without legal merit, no later than 30 days after the constitution of the division of the Tribunal pursuant to paragraph 7 of Article 3.38 (Tribunal), and in any event before the first session of the division of the Tribunal, or 30 days after the respondent became aware of the facts on which the objection is based.

2. The respondent shall specify as precisely as possible the basis for the objection.

3. The Tribunal, after giving the disputing parties an opportunity to present their observations on the objection, shall, at the first meeting of the division of the Tribunal or promptly thereafter, issue a decision or provisional award on the objection, stating the grounds therefor. If the objection is received after the first meeting of the division of the Tribunal, the Tribunal shall issue such decision or provisional award as soon as possible, and no later than 120 days after the objection was filed. When issuing the decision the Tribunal shall assume the alleged facts to be true, and may also consider any relevant facts not in dispute.

4. The decision of the Tribunal shall be without prejudice to the right of a disputing party to object, pursuant to Article 3.45 (Claims Unfounded as a Matter of Law) or in the course of the proceedings, to the legal merits of a claim and without prejudice to a Tribunal's authority to address other objections as a preliminary question. For greater certainty, such objection may include an objection that the dispute or any ancillary claim is not within the jurisdiction of the Tribunal or, for other reasons, is not within the competence of the Tribunal.

ARTICLE 3.45

Claims Unfounded as a Matter of Law

1. Without prejudice to the Tribunal's authority to address other objections as a preliminary question, such as an objection that the dispute or any ancillary claim is not within the jurisdiction of the Tribunal or, for other reasons, is not within the competence of the Tribunal, and without prejudice to a respondent's right to raise any such objections at any appropriate time, the Tribunal shall decide as a preliminary question any objection by the respondent that, as a matter of law, a claim, or any part thereof, submitted under this Section is not a claim for which an award in favour of the claimant may be made under Article 3.53 (Provisional Award), even if the facts alleged were assumed to be true. The Tribunal may also consider any relevant facts not in dispute.

2. An objection under paragraph 1 shall be submitted to the Tribunal as soon as possible after the division of the Tribunal is constituted, and in no event later than the date the Tribunal fixes for the respondent to submit its counter-memorial or statement of defence or, in the case of an amendment to the claim, the date the Tribunal fixes for the respondent to submit its response to the amendment. This objection shall not be submitted as long as proceedings under Article 3.44 (Preliminary Objections) are pending, unless the Tribunal grants leave to file an objection under this Article, after having taken due account of the circumstances of the case.

3. Upon receipt of an objection under paragraph 1, and unless it considers the objection manifestly unfounded, the Tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or provisional award on the objection, stating the grounds therefore.

ARTICLE 3.46

Transparency of Proceedings

1. The UNCITRAL Transparency Rules apply to disputes under this Section, subject to paragraphs 2 to 8.

2. The request for consultations under Article 3.30 (Consultations), the notice of intent under paragraph 1 of Article 3.32 (Notice of Intent to Submit a Claim), the determination under paragraph 2 of Article 3.32 (Notice of Intent to Submit a Claim), the notice of challenge and the decision on this challenge under Article 3.40 (Ethics) and the request for consolidation under Article 3.59 (Consolidation) shall be included in the list of documents referred to in Article 3(1) of the UNCITRAL Transparency Rules.

3. Subject to Article 7 of the UNCITRAL Transparency Rules, the Tribunal may decide, on its own initiative or upon request from any person, and after consultation with the disputing parties, whether and how to make available any other documents provided to, or issued by, the Tribunal not falling within Article 3(1) and 3(2) of the UNCITRAL Transparency Rules. This may include exhibits when the respondent so agrees.

4. Notwithstanding Article 2 of the UNCITRAL Transparency Rules, the Union or Viet Nam, as the case may be, shall, after receiving the relevant documents pursuant to paragraph 2 of this Article, promptly transmit those documents to the non-disputing Party and make them publicly available, subject to the redaction of confidential or protected information[1].

5. Documents referred to in paragraphs 2, 3 and 4 may be made publicly available by communication to the repository referred to in the UNCITRAL Transparency Rules or otherwise.

6. No later than three years after the date of entry into force of this Agreement, the Committee shall review the operation of paragraph 3. Upon request of either Party, the Committee may adopt a decision pursuant to subparagraph 5(c) of Article 4.1 (Committee) stipulating of Article 3(3) of the UNCITRAL Transparency Rules shall apply instead of paragraph 3 of this Article.

[1] For greater certainty, confidential or protected information, as defined in Article 7(2) of the UNCITRAL Transparency Rules, includes classified government information.

7. Subject to any decision by the Tribunal on an objection regarding the designation of information claimed to be confidential or protected information, neither the disputing parties nor the Tribunal shall disclose to any non-disputing Party or to the public any protected information where the disputing party that provided the information clearly designates it as such.[1]

8. A disputing party may disclose to other persons in connection with proceedings, including witnesses and experts, such unredacted documents as it considers necessary in the course of proceedings under this Section. However, the disputing party shall ensure that those persons protect the confidential or protected information in those documents.

[1] For greater certainty, where a disputing party that submitted the information decides to withdraw all or parts of its submission containing such information in accordance with Article 7(4) of the UNCITRAL Transparency Rules, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn by the disputing party that first submitted the information or redesignate the information consistent with the designation of the disputing party that first submitted the information.

ARTICLE 3.47

Interim Decisions

The Tribunal may order an interim measure of protection to preserve the rights of a disputing party or to ensure that the Tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the Tribunal's jurisdiction. The Tribunal may neither order the seizure of assets nor prevent the application of the treatment alleged to constitute a breach. For the purposes of this paragraph, an order includes a recommendation.

ARTICLE 3.48

Security for Costs

1. For greater certainty, the Tribunal may, upon request, order the claimant to provide security for all or a part of the costs if there are reasonable grounds to believe that the claimant risks not being able to honour a possible decision on costs issued against the claimant.

2. If the security for costs is not provided in full within 30 days of the Tribunal's order, or within any other time period set by the Tribunal, the Tribunal shall so inform the disputing parties. The Tribunal may order the suspension or termination of the proceedings.

ARTICLE 3.49

Discontinuance

If the claimant, following the submission of a claim under this Section, fails to take any steps in the proceedings during 180 consecutive days or such periods as the disputing parties may agree, the claimant shall be deemed to have withdrawn its claim and to have discontinued the proceedings. The Tribunal shall, at the request of the respondent and after notice to the disputing parties, take note of the discontinuance of the proceedings in an order and issue an award on costs. After such an order has been rendered the authority of the Tribunal shall lapse. The claimant may not subsequently submit a claim on the same matter.

ARTICLE 3.50

Language of the Proceedings

1. The disputing parties shall agree on the language to be used in the proceedings.

2. If the disputing parties have not reached an agreement pursuant to paragraph 1 within 30 days of the constitution of the division of the Tribunal pursuant to paragraph 7 of Article 3.38 (Tribunal), the Tribunal shall determine the language to be used in the proceedings. The Tribunal shall make its determination after consulting the disputing parties with a view to ensuring the economic efficiency of the proceedings and ensuring that the determination does not impose any unnecessary burden on the resources of the disputing parties and of the Tribunal.[1]

ARTICLE 3.51

The Non-Disputing Party

1. The respondent shall, within 30 days of the receipt of any documents referred in subparagraphs (a) and (b) or promptly after any dispute concerning confidential or protected information has been resolved, provide the non-disputing Party:

(a) the request for consultations referred to in Article 3.30 (Consultations), the notice of intent under paragraph 1 of Article 3.32 (Notice of Intent to Submit a Claim), the determination under paragraph 2 of Article 3.32 (Notice of Intent to Submit a Claim) and the claim referred to in Article 3.33 (Submission of a Claim); and

[1] In considering the economic efficiency of the proceedings, the Tribunal should take into account the costs of the disputing parties and of the Tribunal in processing case-law and legal writings which will potentially be submitted by the disputing parties.

(b) upon request, any documents that are made available to the public in accordance with Article 3.46 (Transparency of Proceedings).

2. The non-disputing Party has the right to attend hearings held under this Section and to make oral representations relating to the interpretation of this Agreement.

ARTICLE 3.52

Expert Reports

The Tribunal, at the request of a disputing party or, after consulting the disputing parties, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety, or other matters raised by a disputing party in the proceedings.

ARTICLE 3.53

Provisional Award

1. Where the Tribunal concludes that a measure in dispute breaches any of the provisions of Chapter 2 (Investment Protection), the Tribunal may, on the basis of a request from the claimant and after hearing the disputing parties, award, separately or in combination, only:

(a) monetary damages and any applicable interest; and

(b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution, determined in a manner consistent with the relevant provisions of Chapter 2 (Investment Protection).

Where the claim was submitted on behalf of a locally-established company, any award under this paragraph shall provide that:

(a) monetary damages and any applicable interest shall be paid to the locally established company; and

(b) any restitution shall be made to the locally established company.

The Tribunal may not order the repeal of the treatment concerned.

2. Monetary damages shall not be greater than the loss suffered by the claimant or, as applicable, by its locally established company, as a result of the breach of any of the provisions of Chapter 2 (Investment Protection), reduced by any prior damages or compensation already provided by the Party concerned. For greater certainty, when an investor submits a claim on its own behalf, the investor may recover only loss or damage that the investor has incurred with regards to the covered investment of that investor.

3. The Tribunal may not award punitive damages.

4. The Tribunal shall order that the costs of the proceedings[1] be borne by the unsuccessful disputing party. In exceptional circumstances, the Tribunal may apportion costs between the disputing parties if it determines that apportionment is appropriate in the circumstances of the case. Other reasonable costs, including reasonable costs of legal representation and assistance, shall be borne by the unsuccessful disputing party, unless the Tribunal determines that such apportionment is unreasonable in the circumstances of the case. Where only some parts of the claims have been successful the costs shall be adjusted, proportionately, to the number or extent of the successful parts of the claims. The Appeal Tribunal shall deal with costs in accordance with this Article.

5. The Committee may adopt supplementing rules on fees for the purposes of determining the maximum amount of costs of legal representation and assistance that may be borne by specific categories of unsuccessful disputing parties. Such supplementing rules shall take into account the financial resources of a claimant who is a natural person or a small or medium-sized enterprise. The Committee shall endeavour to adopt such supplementing rules no later than one year after the date of entry into force of this Agreement.

6. The Tribunal shall issue a provisional award within 18 months of the date of submission of the claim. If that deadline cannot be respected, the Tribunal shall adopt a decision to that effect, which shall specify the reasons for such delay.

[1] For greater certainty, the term "costs of the proceedings" includes (a) the reasonable costs of expert advice and of other assistance required by the Tribunal, and (b) the reasonable travel and other expenses of witnesses to the extent such expenses are approved by the Tribunal.

ARTICLE 3.54

Appeal Procedure

1. Either disputing party may appeal a provisional award before the Appeal Tribunal, within 90 days of its issuance. The grounds for appeal are:

(a) that the Tribunal has erred in the interpretation or application of the applicable law;

(b) that the Tribunal has manifestly erred in the appreciation of the facts, including the appreciation of relevant domestic law; or

(c) those provided for in Article 52 of the ICSID Convention, in so far as they are not covered by subparagraphs (a) and (b).

2. The Appeal Tribunal shall dismiss the appeal where it finds that the appeal is unfounded. It may also dismiss the appeal on an expedited basis where it is clear that the appeal is manifestly unfounded.

3. If the Appeal Tribunal finds that the appeal is well founded, the decision of the Appeal Tribunal shall modify or reverse the legal findings and conclusions in the provisional award in whole or part. Its decision shall specify precisely how it has modified or reversed the relevant findings and conclusions of the Tribunal.

4. Where the facts established by the Tribunal so permit, the Appeal Tribunal shall apply its own legal findings and conclusions to such facts and render a final decision. If that is not possible, it shall refer the matter back to the Tribunal.

5. As a general rule, the appeal proceedings shall not exceed 180 days calculated from the date on which a party to the dispute formally notifies its decision to appeal to the date on which the Appeal Tribunal issues its decision. When the Appeal Tribunal considers that it cannot issue its decision within 180 days, it shall inform the disputing parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its decision. Unless exceptional circumstances so require, the proceedings shall in no case exceed 270 days.

6. A disputing party lodging an appeal shall provide security, including the costs of appeal, as well as a reasonable amount to be determined by the Appeal Tribunal in light of the circumstances of the case.

7. Articles 3.37 (Third-Party Funding), 3.46 (Transparency of Proceedings), 3.47 (Interim Decisions), 3.49 (Discontinuance), 3.51 (The Non-Disputing Party), Article 3.53 (Provisional Award) and 3.56 (Indemnification or Other Compensation) apply in respect of the appeal procedure, *mutatis mutandis*.

ARTICLE 3.55

Final Award

1. A provisional award issued pursuant to this Section shall become final if neither disputing party has appealed the provisional award pursuant to paragraph 1 of Article 3.54 (Appeal Procedure).

2. When a provisional award has been appealed and the Appeal Tribunal has dismissed the appeal pursuant to paragraph 2 of Article 3.54 (Appeal Procedure), the provisional award shall become final on the date of dismissal of the appeal by the Appeal Tribunal.

3. When a provisional award has been appealed and the Appeal Tribunal has rendered a final decision, the provisional award as modified or reversed by the Appeal Tribunal shall become final on the date of the issuance of the final decision of the Appeal Tribunal.

4. When a provisional award has been appealed and the Appeal Tribunal has modified or reversed the legal findings and conclusions of the provisional award and referred the matter back to the Tribunal, the Tribunal shall, after hearing the disputing parties if appropriate, revise its provisional award to reflect the findings and conclusions of the Appeal Tribunal. The Tribunal shall be bound by the findings made by the Appeal Tribunal. The Tribunal shall seek to issue its revised award within 90 days of receiving the decision of the Appeal Tribunal. The revised provisional award will become final 90 days after its issuance.

5. For the purposes of this Section, the term "final award" includes any final decision of the Appeal Tribunal rendered pursuant to paragraph 4 of Article 3.54 (Appeal Procedure).

ARTICLE 3.56

Indemnification or Other Compensation

The Tribunal shall not accept as a valid defence, counterclaim, set-off or similar claim the fact that the investor has received or will receive indemnification or other compensation pursuant to an insurance or a guarantee contract in respect of all or part of the compensation sought in a dispute initiated pursuant to this Section.

ARTICLE 3.57

Enforcement of Final Awards

1. Final awards issued pursuant to this Section:

(a) shall be binding between the disputing parties and in respect of that particular case; and

(b) shall not be subject to appeal, review, set aside, annulment or any other remedy.

2. Each Party shall recognise a final award rendered pursuant to this Section as binding and enforce the pecuniary obligation within its territory as if it were a final judgment of a court in that Party.

3. Notwithstanding paragraphs 1 and 2, during the period referred to in paragraph 4, the recognition and enforcement of a final award in respect of a dispute where Viet Nam is the respondent shall be conducted pursuant to the New York Convention of 1958. During that time, subparagraph 1(b) of this Article and subparagraph 3(b) of Article 3.36 (Consent) do not apply to disputes where Viet Nam is the respondent.

4. In respect of a final award where Viet Nam is the respondent, subparagraph 1(b) and paragraph 2 apply after a period of five years following the date of entry into force of this Agreement, or a longer period determined by the Committee should the conditions warrant it.

5. The execution of the award shall be governed by the laws concerning the execution of judgments or awards in force where such execution is sought.

6. For greater certainty, Article 4.14 (No Direct Effect) shall not prevent the recognition, execution and enforcement of awards rendered pursuant to this Section.

7. For the purposes of Article 1 of the New York Convention of 1958, final awards issued pursuant to this Section shall be deemed to be arbitral awards and to relate to claims arising out of a commercial relationship or transaction.

8. For greater certainty and subject to subparagraph 1(b), where a claim has been submitted to dispute settlement pursuant to subparagraph 2(a) of Article 3.33 (Submission of a Claim), a final award issued pursuant to this Section shall qualify as an award under Section 6 of Chapter IV of the ICSID Convention.

ARTICLE 3.58

Role of the Parties to the Agreement

1. The Parties shall not give diplomatic protection, or bring an international claim, in respect of a dispute submitted under this Section, unless the other Party has failed to abide by and comply with the award rendered in such dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

2. Paragraph 1 shall not exclude the possibility of dispute settlement under Section A (Resolution of Disputes between Parties) in respect of a measure of general application if that measure is alleged to have breached the Agreement and in respect of which a dispute has been initiated with regard to a specific investment pursuant to Article 3.33 (Submission of a Claim). This is without prejudice to Article 3.51 (The Non-Disputing Party) or Article 5 of the UNCITRAL Transparency Rules.

ARTICLE 3.59

Consolidation

1. In case that two or more claims submitted under this Section have a question of law or fact in common and arise out of the same events and circumstances, the respondent may submit to the President of the Tribunal a request for the consolidation of such claims or part thereof. The request shall stipulate:

(a) the names and addresses of the disputing parties to the claims sought to be consolidated;

(b) the scope of the consolidation sought; and

(c) the grounds for the request.

The respondent shall deliver the request to each claimant in a claim which the respondent seeks to consolidate.

2. If all disputing parties to the claims sought to be consolidated agree to the consolidation of the claims, the disputing parties shall submit a joint request to the President of the Tribunal pursuant to paragraph 1. The President of the Tribunal shall, after receipt of such joint request, constitute a new division of the Tribunal pursuant to Article 3.38 (Tribunal) (hereinafter referred to as the "consolidating division") which shall have jurisdiction over all or part of the claims which are subject to the joint consolidation request.

3. If the disputing parties referred to in paragraph 2 have not reached an agreement on consolidation within 30 days of the receipt of the request for consolidation referred to in paragraph 1 by the last claimant to receive it, the President of the Tribunal shall constitute a consolidating division pursuant to Article 3.38 (Tribunal). The consolidating division shall assume jurisdiction over all or part of the claims if, after considering the views of the disputing parties, it decides that doing so would best serve the interest of a fair and efficient resolution of the claims, including the interest of consistency of awards.

4. The consolidating division shall conduct its proceedings under the dispute settlement rules chosen by agreement of the claimants from those referred to in paragraph 2 of Article 3.33 (Submission of a Claim).

5. If the claimants have not agreed upon the dispute settlement rules within 30 days of the date of receipt of the request for consolidation by the last claimant to receive it, the consolidating division shall conduct its proceedings in accordance with the arbitration rules of UNCITRAL.

6. Divisions of the Tribunal constituted under Article 3.38 (Tribunal) shall cede jurisdiction in relation to the claims, or parts thereof, over which the consolidating division has jurisdiction and the proceedings of such divisions shall be stayed or adjourned, as appropriate. The award of the consolidating division in relation to the parts of the claims over which it has assumed jurisdiction shall be binding on the divisions which have jurisdiction over the remainder of the claims, as of the date the award becomes final pursuant to Article 3.55 (Final Award).

7. A claimant may withdraw the claim or a part thereof subject to consolidation from dispute settlement proceedings under this Article and such claim or part thereof may not be resubmitted under Article 3.33 (Submission of a Claim).

8. At the request of the respondent, the consolidating division, on the same basis and with the same effect as set out in paragraphs 3 and 6, may decide whether to assume jurisdiction over all or part of a claim falling within the scope of paragraph 1 which is submitted after the initiation of consolidation proceedings.

9. At the request of one of the claimants, the consolidating division may take appropriate measures in order to preserve the confidentiality of protected information of that claimant *vis-à-vis* other claimants. Such measures may include the submission of redacted versions of documents containing protected information to the other claimants or arrangements to hold parts of the hearing in private.

CHAPTER 4

INSTITUTIONAL, GENERAL AND FINAL PROVISIONS

ARTICLE 4.1

Committee

1. The Parties hereby establish a Committee comprising representatives of the EU Party and Viet Nam.

2. The Committee shall meet once a year, unless otherwise decided by the Committee, or in urgent cases at the request of either Party. The meetings of the Committee shall take place alternately in the Union and Viet Nam, unless otherwise agreed by the Parties. The Committee shall be co-chaired by the Minister of Planning and Investment of Viet Nam and the Member of the European Commission responsible for trade, or their respective delegates. The Committee shall agree on its meeting schedule and set its agenda.

3. The Committee shall:

(a) ensure the proper operation of this Agreement;

(b) supervise and facilitate the implementation and application of this Agreement, and further its general aims;

(c) consider issues regarding this Chapter that are referred to it by a Party;

(d) examine difficulties which may arise in the implementation of Section B (Resolution of Disputes between Investors and Parties) of Chapter 3 (Dispute Settlement);

(e) consider possible improvements of Section B (Resolution of Disputes between Investors and Parties) of Chapter 3 (Dispute Settlement), in particular in the light of experience and developments in other international fora;

(f) upon request of either Party, examine the implementation of any mutually agreed solution as regards a dispute under Section B (Resolution of Disputes between Investors and Parties) of Chapter 3 (Dispute Settlement);

(g) examine draft working procedures drawn up by the President of the Tribunal or of the Appeal Tribunal pursuant to paragraph 10 of Article 3.38 (Tribunal) and paragraph 10 of Article 3.39 (Appeal Tribunal);

(h) without prejudice to Chapter 3 (Dispute Settlement), seek to solve problems which might arise in areas covered by this Agreement, or resolve disputes that may arise regarding the interpretation or application of this Agreement; and

(i) consider any other matter of interest relating to areas covered by this Agreement.

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

(a) communicate on issues falling under the scope of this Agreement with all interested parties, including the private sector, social partners, and civil society organisations;

(b) consider and recommend to the Parties amendments to this Agreement or, in cases specifically provided for in this Agreement, amend by decision provisions of this Agreement;

(c) adopt interpretations of the provisions of this Agreement, including pursuant to paragraph 4 of Article 3.42 (Applicable Law and Rules of Interpretation) which shall be binding on the Parties and all bodies set up under this Agreement, including arbitration panels referred to in Section A (Resolution of Disputes between Parties) of Chapter 3 (Dispute Settlement) and the tribunals established under Section B (Resolution of Disputes between Investors and Parties) of Chapter 3 (Dispute Settlement);

(d) adopt decisions or make recommendations as envisaged by this Agreement;

(e) adopt its own rules of procedure;

(f) take any other action in the exercise of its functions in accordance with this Agreement.

5. The Committee may, in accordance with the relevant provisions of this Agreement and after completion of the respective legal requirements and procedures of the Parties:

(a) adopt decisions to appoint the Members of the Tribunal and the Members of the Appeal Tribunal pursuant to paragraph 2 of Article 3.38 (Tribunal) and paragraph 3 of Article 3.39 (Appeal Tribunal); increase or decrease the number of Members pursuant to paragraph 3 of Article 3.38 (Tribunal) and paragraph 4 of Article 3.39 (Appeal Tribunal); and remove a Member from the Tribunal or the Appeal Tribunal pursuant to paragraph 5 of Article 3.40 (Ethics);

(b) adopt and subsequently amend rules supplementing the applicable dispute settlement rules as referred to in paragraph 4 of Article 3.33 (Submission of a Claim); such rules and amendments shall be binding on the Tribunal and the Appeal Tribunal;

(c) adopt a decision stipulating that Article 3(3) of the UNCITRAL Transparency Rules shall apply instead of paragraph 3 of Article 3.46 (Transparency of Proceedings);

(d) fix the amount of the retainer fee referred to in paragraph 14 of Article 3.38 (Tribunal) and paragraph 14 of Article 3.39 (Appeal Tribunal) as well as the other fees and expenses of the Members of a division of the Appeal Tribunal and of the Presidents of the Tribunal and of the Appeal Tribunal pursuant to paragraphs 14 and 16 of Article 8.28 (Tribunal) and paragraphs 14 and 16 of Article 3.39 (Appeal Tribunal);

(e) transform the retainer fee and other fees and expenses of the Members of the Tribunal and of the Appeal Tribunal into a regular salary pursuant to paragraph 17 of Article 3.38 (Tribunal) and paragraph 17 of Article 3.39 (Appeal Tribunal);

(f) adopt or reject the draft working procedures of the Tribunal or of the Appeal Tribunal pursuant to paragraph 10 of Article 3.38 (Tribunal) and paragraph 10 of Article 3.39 (Appeal Tribunal);

(g) adopt a decision specifing any necessary transitional arrangements pursuant to Article 3.41 (Multilateral Dispute Settlement Mechanisms); and

(h) adopt supplemental rules on fees pursuant to paragraph 5 of Article 3.53 (Provisional Award).

ARTICLE 4.2

Decision-Making by the Committee

1. The Committee shall, for the purpose of attaining the objectives of this Agreement, have the power to take decisions, where provided for in this Agreement. The decisions taken shall be binding on the Parties, which shall take the measures necessary for the implementation of those decisions.

2. The Committee may make appropriate recommendations to the Parties.

3. All decisions and recommendations of the Committee shall be made by mutual consent.

ARTICLE 4.3

Amendments

1. The Parties may amend this Agreement. An amendment shall enter into force after the Parties exchange written notifications certifying that they have completed their respective applicable legal procedures as provided for in Article 4.9 (Entry into Force).

2. Notwithstanding paragraph 1 and where provided for in this Agreement, the Parties may adopt in the Committee a decision amending this Agreement. This is without prejudice to the completion of each Party's applicable legal procedures.

ARTICLE 4.4

Taxation

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

2. Nothing in this Agreement shall be construed as preventing the Parties from distinguishing, in the application of the relevant provisions of their fiscal legislation, between taxpayers who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested.

3. Nothing in this Agreement shall be construed as preventing the adoption or enforcement of any measure aimed at preventing the avoidance or evasion of taxes pursuant to the tax provisions of agreements to avoid double taxation or other tax arrangements or domestic fiscal legislation.

ARTICLE 4.5

Prudential Carve-Out

1. Nothing in this Agreement shall be construed as preventing a Party from adopting or maintaining measures for prudential reasons, such as:

(a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier; or

(b) ensuring the integrity and stability of a Party's financial system.

2. The measures referred to in paragraph 1 shall not be more burdensome than necessary to achieve their aim.

3. Nothing in this Agreement shall be construed as requiring a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.

ARTICLE 4.6

General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on covered investment, nothing in Articles 2.3 (National Treatment) and 2.4 (Most-Favoured-Nation Treatment) shall be construed as preventing the adoption or enforcement by any Party of measures:

(a) necessary to protect public security or public morals or to maintain public order;

(b) necessary to protect human, animal or plant life or health;

(c) relating to the conservation of exhaustible natural resources if such measures are applied in conjunction with restrictions on domestic investors or on the domestic supply or consumption of services;

(d) necessary for the protection of national treasures of artistic, historic or archaeological value;

(e) necessary to secure compliance with laws or regulations which are not inconsistent with Articles 2.3 (National Treatment) and 2.4 (Most-Favoured-Nation Treatment) including those relating to:

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; or

(iii) safety;

or

(f) inconsistent with paragraph 1 of Article 2.3 (National Treatment) provided that the difference in treatment is aimed at ensuring the effective or equitable imposition or collection of direct taxes in respect of economic activities or investors of the other Party[1].

[1] Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

(i) apply to non-resident investors and services suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory;

(ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory;

(iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures;

(iv) apply to consumers of services supplied in or from the territory of another Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory;

(v) distinguish investors and service suppliers subject to tax on worldwide taxable items from other investors and service suppliers, in recognition of the difference in the nature of the tax base between them; or

(vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

Tax terms or concepts in point (f) and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic laws and regulations of the Party taking the measure.

ARTICLE 4.7

Specific Exceptions

Nothing in Chapter 2 (Investment Protection) shall apply to non-discriminatory measures of general application taken by any public entity in pursuit of monetary policy or exchange rate policy. This Article shall not affect a Party's obligations under Article 2.8 (Transfer).

ARTICLE 4.8

Security Exceptions

Nothing in this Agreement shall be construed as:

(a) requiring a Party to furnish information, the disclosure of which it considers contrary to its essential security interests;

(b) preventing a Party from taking any action which it considers necessary for the protection of its essential security interests:

(i) connected with the production of or trade in arms, munitions and war materials and relating to traffic in other goods and materials and to economic activities carried out directly or indirectly for the purpose of provisioning a military establishment;

(ii) relating to the supply of services carried out directly or indirectly for the purpose of provisioning a military establishment;

(iii) relating to fissionable and fusionable materials or the materials from which they are derived; or

(iv) taken in time of war or other emergency in international relations;

(c) preventing a Party from taking any action in pursuance of its obligations under the *Charter of the United Nations*, done at San Francisco on 26 June 1945, for the purpose of maintaining international peace and security.

ARTICLE 4.9

Application of Laws and Regulations

Article 2.8 (Transfers) shall not be construed as preventing a Party from applying in an equitable and non-discriminatory manner, and in a way that would not constitute a disguised restriction on investment, its laws and regulations relating to:

(a) bankruptcy, insolvency, bank recovery and resolution, the protection of the rights of creditors, or the prudential supervision of financial institutions;

(b) issuing of, trading or dealing in financial instruments;

(c) financial reporting or record keeping of transfers where necessary to assist law enforcement or financial regulatory authorities;

(d) criminal or penal offenses, deceptive or fraudulent practices;

(e) ensuring the satisfaction of judgments in adjudicatory proceedings; or

(f) social security, public retirement or compulsory savings schemes.

ARTICLE 4.10

Temporary Safeguard Measures

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

ARTICLE 4.11

Restrictions in Case of Balance of Payments or External Financial Difficulties

1. Where a Party experiences serious balance of payments or external financial difficulties, or a threat thereof, it may adopt or maintain safeguard measures with regard to transfers, which shall:

(a) be non-discriminatory compared to third countries in like situations;

(b) not go beyond what is necessary to remedy the balance of payments or external financial difficulties;

(c) be consistent with the *Articles of Agreement of the International Monetary Fund* as applicable;

(d) avoid unnecessary damage to the commercial, economic and financial interests of the other Party; and

(e) be temporary and phased out progressively as the situation improves.

2. A Party having adopted or maintaining the measures referred to in paragraph 1 shall promptly notify the other Party of them and present, as soon as possible, a time schedule for their removal.

3. Where restrictions are adopted or maintained under paragraph 1, consultations shall be held promptly in the Committee unless consultations are held in other fora. The consultations shall assess the balance of payments or external financial difficulty that led to the respective measures, taking into account, *inter alia*, such factors as:

(a) the nature and extent of the difficulties;

(b) the external economic and trading environment; or

(c) alternative corrective measures which may be available.

The consultations shall address the compliance of any restrictive measures with paragraph 1. All relevant findings of statistical or factual nature presented by the International Monetary Fund shall be accepted and conclusions shall take into account the assessment by the International Monetary Fund of the balance of payments and the external financial situation of the Party concerned.

ARTICLE 4.12

Disclosure of Information

1. Nothing in this Agreement shall be construed as requiring a Party to make available confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private, except where a panel requires confidential information in dispute settlement proceedings under Section A (Resolution of Disputes between Parties) of Chapter 3 (Dispute Settlement). In such cases, the panel shall ensure that confidentiality is fully protected.

2. When a Party submits to the Committee information which is considered as confidential under its laws and regulations, the other Party shall treat that information as confidential, unless the submitting Party agrees otherwise.

ARTICLE 4.13

Entry into Force

1. This Agreement shall be approved by the Parties in accordance with their respective applicable legal procedures.

2. This Agreement shall enter into force on the first day of the second month following the date on which the Parties have notified each other of the completion of their applicable legal procedures for the entry into force of this Agreement. The Parties may agree on another date.

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

4. This Agreement may be provisionally applied if the Parties so agree. In this case the Agreement shall apply from the first day of the month following the date on which the Union and Viet Nam have notified each other of the completion of their applicable legal procedures for the provisional application. The Parties may agree on another date.

5. In the event that certain provisions of this Agreement cannot be provisionally applied, the Party which cannot undertake such provisional application shall notify the other Party of the provisions which cannot be provisionally applied. Notwithstanding paragraph 4, provided the other Party has completed the applicable legal procedures for the provisional application and does not object to provisional application within 10 days of the notification that certain provisions cannot be provisionally applied, the provisions of this Agreement which have not been notified shall be provisionally applied from the first day of the month following the notification.

6. A Party may terminate the provisional application by written notification to the other Party. Such termination shall take effect on the first day of the second month following the notification.

7. Where this Agreement, or certain provisions thereof, is provisionally applied, the term "entry into force of this Agreement" shall be understood to mean the date of provisional application. The Committee and other bodies established under this Agreement may exercise their functions during the provisional application of this Agreement. Any decisions adopted in the exercise of those functions will only cease to be effective if the provisional application of this Agreement is terminated and this Agreement does not enter into force.

ARTICLE 4.14

Duration

1. This Agreement shall be valid indefinitely.

2. The Union or Viet Nam may notify in writing the other Party of its intention to terminate this Agreement. The termination shall take effect at the end of the sixth month after the notification.

ARTICLE 4.15

Termination

In the event that this Agreement is terminated pursuant to Article 4.10 (Duration), the provisions of Chapter 1 (Objectives and General Definitions), Articles 2.1 (Scope), 2.2 (Investment and Regulatory Measures and Objectives) and 2.5 (Treatment of Investment) to 2.9 (Subrogation), the relevant provisions of Chapter 4 and the provisions of Section B (Resolution of Disputes between Investors and Parties) of Chapter 3 (Resolution of Disputes between Investors and Parties) shall continue to be effective for a further period of 15 years from the date of termination, with respect to investments made before the date of termination of the present Agreement, unless the Parties agree otherwise. This Article does not apply if the provisional application of this Agreement is terminated and this Agreement does not enter into force.

ARTICLE 4.16

Fulfilment of Obligations

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

2. If either Party considers that the other Party has committed a material breach of the Partnership and Cooperation Agreement, it may take appropriate measures with respect to this Agreement in accordance with Article 57 of the Partnership and Cooperation Agreement.

ARTICLE 4.17

Persons Exercising Delegated Government Authority

Unless otherwise specified in this Agreement, each Party shall ensure that any person, including a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly, that has been delegated regulatory, administrative or other governmental authority by a Party at any level of government as provided for in its domestic legislation, acts in accordance with the Party's obligations as set out under this Agreement in the exercise of its authority.

ARTICLE 4.18

No Direct Effect

Nothing in this Agreement shall be construed as conferring rights or imposing obligations on persons, other than those created between the Parties under public international law. Viet Nam may provide otherwise under its domestic law.

ARTICLE 4.19

Annexes

The Annexes to this Agreement shall form an integral part thereof.

ARTICLE 4.20

Relations to other Agreements

1. Unless otherwise provided for in this Agreement, previous agreements between the Union or its Member States and Viet Nam are not superseded or terminated by this Agreement.

2. This Agreement shall be part of the overall relations between the Union and its Member States, of the one part, and Viet Nam, of the other part, as provided for in the Partnership and Cooperation Agreement and it shall form part of the common institutional framework.

3. Nothing in this Agreement shall be construed as requiring a Party to act in a manner inconsistent with their obligations under the *Marrakesh Agreement Establishing the World Trade Organization*, done at Marrakesh on 15 April 1994.

4. Upon the entry into force of this Agreement, the agreements between Member States of the Union and Viet Nam listed in Annex 6 (List of Investment Agreements) including the rights and obligations derived therefrom, shall be terminated and cease to have effect, and shall be replaced and superseded by this Agreement.[1]

5. In the event of the provisional application pursuant to paragraph 4 of Article 4.13 (Entry into Force) the application of the provisions of the agreements listed in Annex 6 (List of Investment Agreements), as well as the rights and obligations derived therefrom, shall be suspended as of the date of provisional application.[2] In the event that the provisional application of this Agreement is terminated and this Agreement does not enter into force, the suspension shall cease and the agreements listed in Annex 6 (List of Investment Agreements) shall have effect.[3]

6. Notwithstanding paragraphs 4 and 5, a claim may be submitted pursuant to an agreement listed in Annex 6 (List of Investment Agreements), in accordance with the rules and procedures established in that agreement, provided that:

(a) the claim arises from an alleged breach of that agreement that took place prior to the date of suspension of the application of the agreement pursuant to paragraph 5 or, if the application of the agreement is not suspended pursuant to paragraph 5, prior to the date of entry into force of this Agreement; and

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1 The Parties share the understanding that the "sunset clauses" included in the agreements listed in Annex 6 (List of Investment Agreements) shall also cease to have effect.

2 The Parties share the understanding that the "sunset clauses" included in the agreements listed in Annex 6 (List of Investment Agreements) shall also be suspended.

3 For greater certainty, this sentence shall not bring into effect those agreements that have not yet entered into force or were terminated in accordance with their own provisions.

(b) no more than three years have elapsed from the date of suspension of the application of the agreement pursuant to paragraph 5 or, if the application of the agreement is not suspended pursuant to paragraph 5, from the date of entry into force of this Agreement until the date of submission of the claim.

7. Notwithstanding paragraphs 4 and 5, if the provisional application of this Agreement is terminated and this Agreement does not enter into force, a claim may be submitted pursuant to this Agreement, in accordance with the rules and procedures established in this Agreement, provided that:

(a) the claim arises from an alleged breach of this Agreement that took place during the period of provisional application of this Agreement; and

(b) no more than three years have elapsed from the date of termination of the provisional application until the date of submission of the claim.

8. For greater certainty, no claim may be submitted pursuant to this Agreement and in accordance with the rules and procedures established therein if the claim arises from an alleged breach of this Agreement that took place before the date of entry into force of this Agreement or, where this Agreement is provisionally applied, before the date of provisional application.

9. For the purposes of this Article, the definition of "entry into force of this Agreement" provided for in paragraph 7 of Article 4.13 (Entry into Force) does not apply.

ARTICLE 4.21

Future Accessions to the Union

1. The Union shall notify Viet Nam of any request for accession of a third country to the Union.

2. During the negotiations between the Union and the candidate country seeking accession, the Union shall endeavour to:

(a) provide, upon request of Viet Nam, and to the extent possible, information regarding any matter covered by this Agreement; and

(b) take into account concerns expressed by Viet Nam.

3. The Union shall notify Viet Nam of the entry into force of any accession to the Union.

4. The Committee shall examine, sufficiently in advance of the date of accession of a third country to the Union, any effects which that accession may have on this Agreement.

5. Any new Member State of the Union shall accede to this Agreement from the date of its accession to the Union by means of a clause to that effect in the act of accession to the Union. If the act of accession to the Union does not provide for the automatic accession of the Member State of the Union to this Agreement, the Member State of the Union concerned shall accede to this Agreement by depositing an act of accession to this Agreement with the Secretary-General of the Council of the Union and the Ministry of Foreign Affairs of Viet Nam, or their respective successors. The Parties may, by decision of the Committee, put in place any necessary adjustments or transitional arrangements.

ARTICLE 4.22

Territorial Application

This Agreement shall apply:

(a) with respect to the EU Party, to the territories in which the *Treaty on European Union* and the *Treaty on the Functioning of the European Union* are applied and under the conditions laid down in those Treaties; and

(b) with respect to Viet Nam, to its territory.

References to "territory" in this Agreement shall be understood in this sense, except as otherwise expressly provided for.

ARTICLE 4.23

Authentic Texts

This Agreement is drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish and Vietnamese languages, each of these texts being equally authentic.

EUROPEAN
COMMISSION

Brussels, 17.10.2018
COM(2018) 694 final

ANNEX 2

ANNEX

to the

Proposal for a Council Decision

on the signing, on behalf of the European Union, of the Investment Protection Agreement between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam of the other part

ANNEXES

TO THE INVESTMENT PROTECTION AGREEMENT

BETWEEN THE EUROPEAN UNION AND ITS MEMBER STATES, OF THE ONE PART,

AND THE SOCIALIST REPUBLIC OF VIET NAM, OF THE OTHER PART:

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

ANNEX 1

COMPETENT AUTHORITIES

In the case of the EU Party, the competent authorities entitled to order the actions referred to in paragraph 4 of Article 2.2 (Investment and Regulatory Measures and Objectives) are the European Commission, the European Court of Justice or, when applying Union law on state aid, an administration, authority, court or tribunal of a Member State. In the case of Viet Nam, the competent authorities entitled to order the actions referred to in paragraph 4 of Article 2.2 (Investment and Regulatory Measures and Objectives) are the Government of Viet Nam or the Prime Minister of Viet Nam, an administration, authority or a court.

ANNEX 2

EXEMPTION FOR VIET NAM ON NATIONAL TREATMENT

1. In the following sectors, subsectors or activities, Viet Nam may adopt or maintain any measure with respect to the operation of a covered investment that is not in conformity with Article 2.3 (National Treatment), provided that such measure is not inconsistent with the commitments set out in Annex 8-B (Viet Nam's Schedule of Specific Commitments) to the Free Trade Agreement:

   (a) newspapers and news-gathering agencies, printing, publishing, radio and television broadcasting, in any form;

   (b) production and distribution of cultural products, including video records;

   (c) production, distribution, and projection of television programmes and cinematographic works;

   (d) investigation and security;

   (e) geodesy and cartography;

   (f) secondary and primary education services;

   (g) oil and gas, mineral and natural resources exploration, prospecting and exploitation;

(h) hydroelectricity and nuclear power; power transmission and/or distribution;

(i) cabotage transport services;

(j) fishery and aquaculture;

(k) forestry and hunting;

(l) lottery, betting and gambling;

(m) judicial administration services, including but not limited to services relating to nationality;

(n) civil enforcement;

(o) production of military materials or equipment;

(p) operation and management of river ports, sea ports and airports; and

(q) subsidies.

2. If Viet Nam adopts or maintains such a measure after the date of entry into force of this Agreement, it shall not require an investor of the EU Party, by reason of its nationality, to sell or otherwise dispose of an investment existing when that measure enters into effect.

ANNEX 3

UNDERSTANDING ON TREATMENT OF INVESTMENT

The Parties confirm their common understanding on the application of paragraph 6 of Article 2.5 (Treatment of Investment):

1. Notwithstanding the condition set out in subparagraph 6(a) of Article 2.5 (Treatment of Investment), an investor which has a dispute that falls within the scope of Section B (Resolution of Disputes between Investors and Parties) of Chapter 3 (Disputes Settlement) with the Party with which it has entered into a written agreement that is concluded and has taken effect before the date of entry into force of this Agreement may claim the benefit of paragraph 6 of Article 2.5 (Treatment of Investment) in accordance with the procedures and conditions set out in this Annex.

2. Written agreements that are concluded and have taken effect before the date of entry into force of this Agreement and that fulfil the conditions set out in this paragraph may be notified within one year from the date of entry into force of this Agreement. Such written agreements shall:

   (a) satisfy all conditions set out in subparagraphs 6(b) to (d) of Article 2.5 (Treatment of Investment); and

(b) have been entered into either:

(i) by Viet Nam with investors of the Member States of the Union, referred to in paragraph 8 of this Annex, or their covered investments; or

(ii) by one of the Member States of the Union referred to in paragraph 8 of this Annex with investors of Viet Nam or their covered investments.

3. The procedure for notifying the written agreements referred to in paragraph 1 shall be as follows:

(a) the notification shall include:

(i) the name, nationality and address of the investor which is a party to the written agreement being notified, the nature of the covered investment of that investor and, where the written agreement is entered into by the covered investment of that investor, the name, address and place of incorporation of the investment; and

(ii) a copy of the written agreement, including all of its instruments;

and

(b) the written agreements shall be notified in writing to the following competent authority:

(i) in the case of Viet Nam, the Ministry of Planning and Investment; and

(ii) in the case of EU Party, the European Commission.

4. The notification referred to in paragraphs 2 and 3 does not create any substantive rights of the investor which is a party to that notified written agreement or its investment.

5. The competent authorities referred to in subparagraph 3(b) shall compile a list of the written agreements that have been notified in accordance with paragraphs 2 and 3.

6. Should a dispute arise in connection with one of the notified written agreements, the relevant competent authority shall verify if the agreement satisfies all conditions set out in subparagraphs 6(b) to (d) of Article 2.5 (Treatment of Investment) and the procedures set out in this Annex.

7. An investor shall not claim that paragraph 6 of Article 2.5 (Treatment of Investment) applies to the written agreement if the verification in accordance with paragraph 6 of this Annex concludes that the requirements referred to in that paragraph are not met.

8. The Member States of the Union referred to in subparagraph 2(b) of this Annex are Germany, Spain, the Netherlands, Austria, Romania, and the United Kingdom.

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ANNEX 4

UNDERSTANDING ON EXPROPRIATION

The Parties confirm their common understanding on expropriation:

1. Expropriation as referred to in paragraph 1 of Article 2.7 (Expropriation) may be either direct or indirect as follows:

   (a) direct expropriation occurs if an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure; and

   (b) indirect expropriation occurs if a measure or series of measures by a Party has an effect equivalent to direct expropriation, in that it substantially deprives the investor of the fundamental attributes of property in its investment including the right to use, enjoy and dispose of its investment, without formal transfer of title or outright seizure.

2. The determination of whether a measure or series of measures by a Party, in a specific factual situation, constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, *inter alia*:

(a) the economic impact of the measure or series of measures, although the fact that a measure or series of measures by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that such an expropriation has occurred;

(b) the duration of the measure or series of measures or of its effects; and

(c) the character of the measure or series of measures, in particular its object, context and intent.

3. Non-discriminatory measures or series of measures by a Party that are designed to protect legitimate public policy objectives do not constitute indirect expropriation, except in the rare circumstances where the impact of such measure or series of measures is so severe in light of its purpose that it appears manifestly excessive.

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ANNEX 5

PUBLIC DEBT

1. No claim that a restructuring of debt of a Party breaches an obligation under Chapter 2 (Investment Protection) may be submitted or, if already submitted, be pursued under Section B (Resolution of Disputes between Investors and Parties) of Chapter 3 (Disputes Settlement) if the restructuring is a negotiated restructuring at the time of submission or becomes a negotiated restructuring after such submission, except for a claim that the restructuring breaches Article 2.3 (National Treatment) or 2.4 (Most-Favoured-Nation Treatment).

2. Notwithstanding Article 3.33 (Submission of a Claim) of Section B (Resolution of Disputes between Investors and Parties) of Chapter 3 (Disputes Settlement), and subject to paragraph 1 of this Annex, an investor shall not submit a claim under Section B (Resolution of Disputes between Investors and Parties) of Chapter 3 (Disputes Settlement) that a restructuring of debt of a Party breaches Article 2.3 (National Treatment) or 2.4 (Most-Favoured-Nation Treatment)[1] or any obligation under Chapter 2 (Investment Protection), unless 270 days have elapsed from the date of submission by the claimant of the written request for consultations pursuant to Article 3.30 (Consultations).

[1] For greater certainty, a breach of the Article 2.3 (National Treatment) or Article 2.4 (Most-Favoured-Nation Treatment) does not occur merely by virtue of a different treatment provided by a Party to certain categories of investors or investments on grounds of a different macroeconomic impact, for instance to avoid systemic risks or spillover effects, or on grounds of eligibility for debt restructuring.

3. For the purposes of this Annex:

(a) "negotiated restructuring" means the restructuring or rescheduling of debt of a Party that has been effected through:

(i) a modification or amendment of debt instruments, as provided for under their terms, including their governing law; or

(ii) a debt exchange or other similar process in which the holders of no less than 66 percent of the aggregate principal amount of the outstanding debt subject to restructuring, excluding debt held by that Party or by entities owned or controlled by it, have consented to such debt exchange or other process;

and

(b) "governing law" of a debt instrument means a country's legal and regulatory framework applicable to that debt instrument.

4. For greater certainty, "debt of a Party" includes, in the case of EU Party, debt of a government of a Member State of the Union, or of a government in a Member State of the Union, at central, regional or local level.

ANNEX 6

LIST OF INVESTMENT AGREEMENTS

	Agreements	"Sunset Clauses"
1	Agreement between the Socialist Republic of Viet Nam and the Republic of Austria for the Promotion and Protection of Investments, signed on 27 March 1995.	Paragraph 3 of Article 11
2	Agreement between the Belgium-Luxembourg Economic Union and the Socialist Republic of Viet Nam for the Promotion and Reciprocal Protection of Investment, signed on 24 January 1991.	Paragraph 2 of Article 14
3	Agreement between the Government of the Republic of Bulgaria and the Socialist Republic of Viet Nam Government of the on Mutual Promotion and Protection of Investments, signed on 19 September 1996.	Paragraph 2 of Article 13
4	Agreement between the Government of the Czech Republic and the Government of the Socialist Republic of Viet Nam for the Promotion and Reciprocal Protection of Investment, signed on 25 November 1997, as amended on 21 March 2008.	Paragraph 3 of Article 10

	Agreements	"Sunset Clauses"
5	Agreement between the Government of the Kingdom of Denmark and the Government of the Socialist Republic of Vietnam concerning the Promotion and Reciprocal Protection of Investments, signed on 25 August 1993.	Paragraph 2 of Article 16
6	Agreement between the Government of the Republic of Estonia and the Government of the Socialist Republic of Viet Nam on the Promotion and Protection of Investments, signed on 24 September 2009, amended on 3 January 2011.	Paragraph 3 of Article 16
7	Agreement between the Government of the Republic of Finland and the Government of the Socialist Republic of Viet Nam on the Promotion and Protection of Investments, signed on 21 February 2008.	Paragraph 4 of Article 16
8	Agreement between the Government of the French Republic and the Government of the Socialist Republic of Viet Nam for the Promotion and Reciprocal Protection of Investments, signed on 26 May 1992.	Article 12
9	Agreement between the Federal Republic of Germany and the Socialist Republic of Viet Nam and on the Promotion and Reciprocal Protection of Investments, signed on 3 April 1993.	Paragraph 3 of Article 13
10	Agreement between the Government of the Hellenic Republic and the Government of the Socialist Republic of Viet Nam on the Promotion and Reciprocal Protection of Investments, signed on 13 October 2008.	Paragraph 3 of Article 13
11	Agreement between the Republic of Hungary and the Socialist Republic of Viet Nam for the Promotion and Reciprocal Protection of Investments, signed on 26 August 1994.	Paragraph 3 of Article 12
12	Agreement between the Italian Republic and the Socialist Republic of Viet Nam on the Promotion and Protection of Investments, signed on 18 May 1990.	Paragraph 2 of Article 14

	Agreements	"Sunset Clauses"
13	Agreement between the Government of the Republic of Latvia and the Government of the Socialist Republic of Viet Nam for the Promotion and Protection of Investments, signed on 6 November 1995.	Paragraph 4 of Article 13
14	Agreement between the Government of the Republic of Lithuania and the Government of the Socialist Republic of Viet Nam for the Promotion and Protection of Investments, signed on 27 September 1995.	Paragraph 4 of Article 13
15	Agreement on Encouragement and Reciprocal Protection of Investments between the Kingdom of Netherlands and the Socialist Republic of Viet Nam, signed on 10 March 1994.	Paragraph 3 of Article 14
16	Agreement between the Republic of Poland and the Socialist Republic of Viet Nam for the Promotion and Reciprocal Protection of Investments, signed on 31 August 1994.	Paragraph 3 of Article 12
17	Agreement between the Government of Romania and the Government of the Socialist Republic of Viet Nam on the Promotion and the Reciprocal Protection of Investments, signed on 1 September 1994.	Paragraph 2 of Article 11
18	Agreement between the Government of the Slovak Republic and the Government of the Socialist Republic of Viet Nam for the Promotion and Reciprocal Protection of Investments, signed on 17 December 2009.	Paragraph 4 of Article 14

	Agreements	"Sunset Clauses"
19	Agreement between the Government of the Kingdom of Sweden and the Government of the Socialist Republic of Viet Nam on the Promotion and Reciprocal Protection of Investments, signed on 8 September 1993.	Paragraph 3 of Article 11
20	Agreement between the Kingdom of Spain and the Socialist Republic of Viet Nam on the Promotion and Reciprocal Protection of Investments, signed on 20 February 2006.	Paragraph 3 of Article 13
21	Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Socialist Republic of Viet Nam for the Promotion and Protection of Investments, signed on 1 August 2002.	Article 14

ANNEX 7

RULES OF PROCEDURE

General Provisions

1. For the purposes of Section A (Resolution of Disputes between Parties) of Chapter 3 (Dispute Settlement) and these Rules of Procedures (hereinafter referred to as "Rules"):

   (a) "adviser" means a person retained by a Party to the dispute to advise or assist that Party in connection with the arbitration panel proceedings;

   (b) "arbitration panel" means a panel established under Article 3.7 (Establishment of the Arbitration Panel);

   (c) "arbitrator" means a member of an arbitration panel established under Article 3.7 (Establishment of the Arbitration Panel);

   (d) "assistant" means a person who, under the terms of appointment of an arbitrator, conducts research or provides assistance to that arbitrator;

   (e) "complaining Party" means any Party that requests the establishment of an arbitration panel under Article 3.5 (Initiation of the Arbitration Procedure);

(f) "day" means a calendar day;

(g) "Party complained against" means the Party that is alleged to be in violation of the provisions referred to in Article 3.2 (Scope);

(h) "proceedings" means, unless otherwise specified, dispute settlement proceedings of an arbitration panel under Section A (Resolution of Disputes between Parties) of Chapter 3 (Dispute Settlement); and

(i) "representative of a Party" means an employee or any person appointed by a government department or agency, or any other public entity of a Party who represents the Party for the purposes of a dispute under this Agreement.

2. The Party complained against shall be in charge of the logistical administration of hearings, unless otherwise agreed. The Parties shall share the expenses derived from organisational matters, including the remuneration and the expenses of the arbitrators.

Notifications

3. Each Party and the arbitration panel shall transmit any request, notice, written submission or any other document by e-mail to the other Party and, as regards written submissions and requests in the context of arbitration, to each of the arbitrators. The arbitration panel shall circulate documents to the Parties also by e-mail. Unless proven otherwise, an e-mail message shall be deemed to be received on the date of its sending. If any of the supporting documents are above 10 megabytes, they shall be provided in another electronic format to the other Party and, where relevant, to each of the arbitrators within two days of the date of sending of the e-mail.

4. A copy of the documents transmitted in accordance with Rule 3 shall be submitted to the other Party and, where relevant, to each of the arbitrators on the day of sending of that e-mail by either facsimile transmission, registered post, courier, delivery against receipt or any other means of telecommunication that provides a record of the sending thereof.

5. All notifications shall be addressed to the Ministry of Industry and Trade of Viet Nam and to the Directorate-General for Trade of the European Commission, respectively.

6. Minor errors of a clerical nature in any request, notice, written submission or other document related to the arbitration panel proceedings may be corrected by delivery of a new document clearly indicating the changes.

7. If the last day for delivery of a document falls on an official legal holiday of Viet Nam or of the Union, the document shall be deemed received on the next business day.

Commencing the Arbitration

8. If pursuant to Article 3.7 (Establishment of the Arbitration Panel) and to Rules 22, 23 and 49 an arbitrator is selected by lot, the lot shall be carried out at a time and place decided by the complaining Party to be promptly communicated to the Party complained against. The Party complained against may, if it so chooses, be present during the lot. In any event, the lot shall be carried out with the Party or Parties that are present.

9. If pursuant to Article 3.7 (Establishment of the Arbitration Panel) and to Rules 22, 23 and 49 an arbitrator is selected by lot and there are two chairpersons of the Committee, both chairpersons, or their delegates, or one chairperson alone in cases where the other chairperson or his delegate does not accept to participate in the lot, shall perform the selection by lot.

10. The Parties shall notify the selected arbitrators regarding their appointment.

11. An arbitrator who has been appointed according to the procedure established in Article 3.7 (Establishment of the Arbitration Panel) shall confirm the availability to serve as an arbitrator to the Committee within five days of the date in which that arbitrator was informed of the appointment.

12. The remuneration and expenses to be paid to the arbitrators will be in accordance with WTO standards. The remuneration for each arbitrator's assistant shall not exceed 50 per cent of the remuneration of that arbitrator.

13. The Parties must notify the agreed terms of reference referred to in Article 3.6 (Terms of Reference of the Arbitration Panel) to the arbitration panel within three days of their agreement.

Written Submissions

14. The complaining Party shall deliver its written submission no later than 20 days after the date of establishment of the arbitration panel. The Party complained against shall deliver its written counter-submission no later than 20 days after the date of receipt of the written submission of the complaining Party.

Working of Arbitration Panels

15. The chairperson of the arbitration panel shall preside at all its meetings. An arbitration panel may delegate the authority to the chairperson authority to make administrative and procedural decisions.

16. Unless otherwise provided for in Chapter 3 (Dispute Settlement), the arbitration panel may conduct its activities by any means, including telephone, facsimile transmissions or computer links.

17. The drafting of any ruling shall remain the exclusive responsibility of the arbitration panel and shall not be delegated.

18. When a procedural question arises that is not covered by Section A (Resolution of Disputes between Parties) of Chapter 3 (Dispute Settlement) and Annexes 7 (Rules of Procedure), 8 (Code of Conduct for Arbitrators and Mediators) and 9 (Mediation Mechanism), the arbitration panel, after consulting the Parties, may adopt an appropriate procedure that is compatible with those provisions.

19. When the arbitration panel considers that there is a need to modify any of the time limits for its proceedings other than the time limits set out in Section A (Resolution of Disputes between Parties) of Chapter 3 (Dispute Settlement) or to make any other procedural or administrative adjustment, it shall inform, in writing, the Parties of the reasons for the change or adjustment and of the period of time or adjustment needed.

Replacement

20. If in arbitration proceedings an arbitrator is unable to participate, withdraws, or has to be replaced because the arbitrator does not comply with the requirements of Annex 8 (Code of Conduct for Arbitrators and Mediators), a replacement shall be selected in accordance with Article 3.7 (Establishment of the Arbitration Panel) and Rules 8 to 11.

21. When a Party considers that an arbitrator does not comply with the requirements of Annex 8 (Code of Conduct for Arbitrators and Mediators) and for that reason should be replaced, that Party should notify the other Party within 15 days from when it obtained evidence of the circumstances underlying the arbitrator's material violation of Annex 8 (Code of Conduct for Arbitrators and Mediators).

22. When a Party considers that an arbitrator other than the chairperson does not comply with the requirements of Annex 8 (Code of Conduct for Arbitrators and Mediators) and for that reason should be replaced, the Parties shall consult and, if they so agree, select a new arbitrator in accordance with Article 3.7 (Establishment of the Arbitration Panel) and Rules 8 to 11.

    If the Parties fail to agree on the need to replace an arbitrator, either Party may request that such matter be referred to the chairperson of the arbitration panel, whose decision shall be final.

    If, pursuant to such a request, the chairperson finds that an arbitrator does not comply with the requirements of Annex 8 (Code of Conduct for Arbitrators and Mediators) and for that reason should be replaced, the new arbitrator shall be selected in accordance with Article 3.7 (Establishment of the Arbitration Panel) and Rules 8 to 11.

23. When a Party considers that the chairperson of the arbitration panel does not comply with the requirements of Annex 8 (Code of Conduct for Arbitrators and Mediators) and for that reason should be replaced, the Parties shall consult and, if they so agree, select a new chairperson in accordance with Article 3.7 (Establishment of the Arbitration Panel) and Rules 8 to 11.

If the Parties fail to agree on the need to replace the chairperson, a Party may request that this matter is referred to one of the other persons remaining on the sub-list of chairpersons established under subparagraph 1(c) of Article 3.23 (List of Arbitrators). The name of that person shall be drawn by lot by the chairperson of the Trade Committee, or the chairperson's delegate. The decision by that person concerning the need to replace the chairperson shall be final.

If that person decides that the original chairperson does not comply with the requirements of Annex 8 (Code of Conduct for Arbitrators and Mediators) and for that reason should be replaced, that person shall select a new chairperson by lot among the other persons remaining on the sub-list of chairpersons established under subparagraph 1(c) of Article 3.23 (List of Arbitrators). The selection of the new chairperson shall be done within five days of the date of the submission of the date of the decision provided for under this Rule.

24. The arbitration panel proceedings shall be suspended for the period during which the procedures provided for in Rules 21 to 23 are carried out.

Hearings

25. The chairperson of the arbitration panel shall fix the date and time of the hearing in consultation with the Parties and the arbitrators. The chairperson shall confirm, in writing, the date and time to the Parties. This information shall also be made publicly available by the Party in charge of the logistical administration of the proceedings, unless the hearing is closed to the public. Unless a Party disagrees, the arbitration panel may decide not to convene a hearing.

26. The arbitration panel may convene additional hearings if the Parties so agree.

27. All arbitrators shall be present during the entirety of any hearings.

28. The following persons may attend the hearing, irrespective of whether the proceedings are open to the public or not:

    (a) representatives of the Parties;

    (b) advisers to the Parties;

    (c) experts;

    (d) administrative staff, interpreters, translators and court reporters; and

    (e) arbitrators' assistants.

29. Only the representatives and advisers of the Parties and experts may address the arbitration panel.

30. No later than five days before the date of a hearing, each Party shall deliver to the arbitration panel a list of names of the persons who will make oral arguments or presentations at the hearing on behalf of that Party and of other representatives or advisers who will be attending the hearing.

31. The arbitration panel shall conduct the hearing in the following order, ensuring that the complaining Party and the Party complained against are afforded equal time:

Argument

(a) argument of the complaining Party;

(b) argument of the Party complained against.

Rebuttal

(a) reply of the complaining Party;

(b) counter-reply of the Party complained against.

32. The arbitration panel may direct questions to the Parties or the experts at any time during the hearing.

33. The arbitration panel shall arrange for a transcript of each hearing to be prepared and delivered as soon as possible to the Parties. The Parties may comment on the transcript and the arbitration panel may consider those comments.

34. Each Party may deliver a supplementary written submission concerning any matter that arose during the hearing within 10 days of the date of the hearing.

Questions in Writing

35. The arbitration panel may, at any time during the proceedings, address questions in writing to one Party or both Parties. Each Party shall receive a copy of any questions put by the arbitration panel.

36. A Party shall provide a copy of its written response to the arbitration panel's questions to the other Party. Each Party shall be given the opportunity to provide written comments on the other Party's reply within five days of the date of receipt of such reply.

Confidentiality

37 Each Party and its advisers shall treat as confidential any information submitted to the arbitration panel and designated as confidential by the other Party. When a Party submits a confidential version of its written submissions to the arbitration panel, it shall also, upon request of the other Party, provide a non-confidential summary of the information contained in its submissions that may be disclosed to the public no later than 15 days after the date of either the request or the submission, whichever is later, and an explanation of the reasons for which the non-disclosed information is confidential. Nothing in these Rules shall preclude a Party from disclosing statements of its own positions to the public to the extent that, when making reference to information submitted by the other Party, it does not disclose any information designated by the other Party as confidential. The arbitration panel shall meet in closed session when the submission and arguments of a Party contains confidential information. The Parties and their advisers shall maintain the confidentiality of the arbitration panel hearings when the hearings are held in closed session.

Ex parte Contacts

38. The arbitration panel shall not meet or communicate with a Party in the absence of the other Party.

39. An arbitrator shall not discuss any aspect of the subject matter of the proceedings with one Party or both Parties in the absence of the other arbitrators.

Amicus curiae Submissions

40. Unless the Parties agree otherwise within three days of the date of the establishment of the arbitration panel, the arbitration panel may receive unsolicited written submissions from natural or legal persons established in the territory of a Party who are independent from the governments of the Parties, provided that they are made within 10 days of the date of the establishment of the arbitration panel, that they are concise and in no case longer than 15 pages typed at double space, and that they are directly relevant to a factual or a legal issue under consideration by the arbitration panel.

41. The submission shall contain a description of the person making the submission, whether natural or legal, including its nationality or place of establishment, the nature of its activities, its legal status, general objectives and the source of its financing, and specify the nature of the interest that the person has in the arbitration proceedings. It shall be drafted in the languages chosen by the Parties in accordance with Rules 39 and 40.

42. The arbitration panel shall list in its ruling all the submissions it has received that conform to Rules 41 and 42. The arbitration panel shall not be obliged to address in its ruling the arguments made in those submissions. Any such submission shall be submitted to the Parties for their comments. The comments of the Parties shall be submitted within 10 days and they shall be taken into consideration by the arbitration panel.

Urgent Cases

43. In cases of urgency referred to in Section A (Resolution of Disputes between Parties) of Chapter 3 (Dispute Settlement), the arbitration panel, after consulting the Parties, shall adjust the time limits referred to in these Rules, as appropriate, and shall notify the Parties of such adjustments.

Translation and Interpretation

44. During the consultations referred to in Article 3.3 (Consultations), and no later than the date of the meeting referred to in paragraph 2 of Article 3.8 (Dispute Settlement Proceedings of the Arbitration Panel), the Parties shall endeavour to agree on a common working language for the proceedings before the arbitration panel.

45. If the Parties are unable to agree on a common working language, each Party shall make its written submissions in its chosen language which shall be one of the working languages of the WTO.

46. Arbitration panel rulings shall be issued in the language or languages chosen by the Parties.

47. Either Party may provide comments on the accuracy of the translation of any translated version of a document drawn up in accordance with these Rules.

48. Any costs incurred for translation of an arbitration ruling shall be borne equally by the Parties.

Other Procedures

49. These Rules are also applicable to proceedings under Articles 3.3 (Consultations), 3.13 (Reasonable Period of Time for Compliance), 3.14 (Review of Measure Taken to Comply with the Final Report), 3.15 (Temporary Remedies in Case of Non-Compliance) and 3.16 (Review of Measure Taken to Comply After the Adoption of Temporary Remedies for Non-Compliance). In that case, the time limits laid down in these Rules shall be adjusted in line with the special time limits provided for the adoption of a ruling by the arbitration panel in those other procedures.

ANNEX 8

CODE OF CONDUCT FOR ARBITRATORS AND MEDIATORS

Definitions

1. For the purposes of this Code of Conduct:

   (a) "arbitrator" means a member of an arbitration panel established under Article 3.7 (Establishment of the Arbitration Panel);

   (b) "assistant" means a person who, under the terms of appointment of an arbitrator, conducts research or provides assistance to that arbitrator;

   (c) "candidate" means an individual whose name is on the list of arbitrators referred to in Article 3.23 (List of Arbitrators) and who is under consideration for selection as a member of an arbitration panel under Article 3.7 (Establishment of the Arbitration Panel);

   (d) "mediator" means a person who conducts a mediation procedure in accordance with Annex 9 (Mediation Mechanism);

(e) "proceedings", unless otherwise specified, means dispute settlement proceedings of an arbitration panel under Section A (Resolution of Disputes between Parties) of Chapter 3 (Dispute Settlement); and

(f) "staff", in respect of an arbitrator, means a person under the direction and control of the arbitrator, other than assistants.

Responsibilities

2. Every candidate and arbitrator shall avoid impropriety and the appearance of impropriety, be independent and impartial, avoid direct and indirect conflicts of interests and observe high standards of conduct so that the integrity and impartiality of the dispute settlement mechanism is preserved. Former arbitrators shall comply with the obligations set out in Rules 15 to 18 of this Code of Conduct.

Disclosure Obligations

3. Prior to the appointment as an arbitrator under Section A (Resolution of Disputes between Parties) of Chapter 3 (Dispute Settlement), a candidate shall disclose any interests, relationships, or matters, that are likely to affect that candidate's independence or impartiality, or that might reasonably create an appearance of impropriety or bias in the proceedings. To that end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships or matters.

4. A candidate or arbitrator shall communicate, in writing, matters concerning actual or potential violations of this Code of Conduct to the Committee for consideration by the Parties.

5. Once appointed, an arbitrator shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in Rule 3 of this Code of Conduct and shall disclose them by informing the Committee, in writing, for consideration by the Parties. The disclosure obligation is a continuing duty which requires an arbitrator to disclose any such interests, relationships or matters that may arise during any stage of the proceedings.

Duties of Arbitrators

6. An arbitrator shall be available to perform, and shall perform, his duties thoroughly, expeditiously, and with fairness and diligence, throughout the course of the proceedings.

7. An arbitrator shall consider only those issues raised in the proceedings and necessary for a ruling and shall not delegate this duty to any other person.

8. An arbitrator shall take all appropriate steps to ensure that his assistant and staff are aware of, and comply with, Rules 2, 3, 4, 5, 16, 17 and 18 of this Code of Conduct.

9. An arbitrator shall not engage in *ex parte* contacts concerning the proceedings.

Independence and Impartiality of Arbitrators

10. An arbitrator shall avoid creating an appearance of bias and shall not be influenced by self-interest, outside pressure, political considerations, public clamour and loyalty to a Party or fear of criticism.

11. An arbitrator shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of his duties.

12. An arbitrator shall not use his position on the arbitration panel to advance any personal or private interests and shall avoid actions that may create the impression that others are in a special position to influence him.

13. An arbitrator shall not allow financial, business, professional, personal or social relationships or responsibilities to influence his conduct or judgment.

14. An arbitrator shall avoid entering into any relationship or acquiring any financial interest that is likely to affect his impartiality or that might reasonably create an appearance of impropriety or bias.

Obligations of Former Arbitrators

15. All former arbitrators shall avoid actions that may create the appearance that they were biased in carrying out their duties or derived advantage from the decisions or rulings of the arbitration panel.

Confidentiality

16. No arbitrator or former arbitrator shall at any time disclose or use any non-public information concerning proceedings or acquired during proceedings except for the purposes of those proceedings and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to adversely affect the interest of others.

17. An arbitrator shall not disclose an arbitration panel ruling or parts thereof prior to its publication in accordance with Section A (Resolution of Disputes between Parties) of Chapter 3 (Dispute Settlement).

18. An arbitrator or a former arbitrator shall not disclose the deliberations of an arbitration panel, or any arbitrator's view at any time.

Expenses

19. Each arbitrator shall keep a record and render a final account of the time devoted to the procedure and of his expenses, as well as the time and expenses of his assistant and staff.

Mediators

20. This Code of Conduct applies to mediators, *mutatis mutandis*.

ANNEX 9

MEDIATION MECHANISM

ARTICLE 1

Objective

The objective of this Annex is to facilitate the finding of mutually agreed solutions through a comprehensive and expeditious procedure with the assistance of a mediator, referred to in Article 3.4 (Mediation Mechanism).

SECTION A

MEDIATION PROCEDURE

ARTICLE 2

Request for Information

1. Before the initiation of the mediation procedure, a Party may request, at any time and in writing, information regarding a measure adversely affecting investment between the Parties. The Party to which such request is made shall provide, within 20 days, a written response containing its comments on the information contained in the request.

2. Where the responding Party considers that a response within 20 days is not practicable, it shall inform the requesting Party of the reasons for not meeting that deadline, together with an estimate of the shortest period within which it will be able to provide its response.

ARTICLE 3

Initiation of the Mediation Procedure

1. A Party may at any time request that the Parties enter into a mediation procedure. Such request shall be addressed to the other Party in writing. The request shall be sufficiently detailed, clearly present the concerns of the requesting Party and shall:

   (a) identify the specific measure at issue;

   (b) provide a statement of the alleged adverse effects on investment between the Parties that the requesting Party considers the measure has or could have; and

   (c) explain how the requesting Party considers that those effects are linked to the measure.

2. The mediation procedure may only be initiated by mutual agreement of the Parties. The Party to which a request pursuant to paragraph 1 is addressed shall give sympathetic consideration to the request and reply by accepting or rejecting it in writing within 10 days of the date of its receipt.

ARTICLE 4

Selection of the Mediator

1. Upon launch of the mediation procedure, the Parties shall endeavour to agree on a mediator no later than 15 days after the date of receipt of the reply referred to in paragraph 2 of Article 3 (Initiation of the Mediation Procedure) of this Annex.

2. In the event that the Parties are unable to agree on a mediator within the time limit laid down in paragraph 1, either Party may request the chairperson of the Committee, or the chairperson's delegate, to select the mediator by lot from the list established under Article 3.23 (List of Arbitrators). Representatives of the Parties shall be invited, with due notice, to be present when lots are drawn. In any event, the lot shall be carried out with the Party or Parties that are present.

3. The chairperson of the Committee, or the chairperson's delegate, shall select the mediator within five working days of the reply referred to in paragraph 2 by either Party.

4. Should the list provided for in Article 3.23 (List of Arbitrators) not be established at the time a request is made pursuant to Article 3 (Initiation of the Mediation Procedure) of this Annex, the mediator shall be drawn by lot from the individuals who have been formally proposed by one or both of the Parties.

5. A mediator shall not be a citizen of either Party, unless the Parties agree otherwise.

6. The mediator shall assist, in an impartial and transparent manner, the Parties in bringing clarity to the measure and its possible trade effects, and in reaching a mutually agreed solution. Annex 8(Code of Conduct for Arbitrators and Mediators) applies to mediators *mutatis mutandis*. Rules 3 to 7 (Notifications) and 44 to 48 (Translation and Interpretation) of Annex 7 (Rules of Procedure) apply *mutatis mutandis*.

ARTICLE 5

Rules of the Mediation Procedure

1. Within 10 days of the date of appointment of the mediator, the Party having invoked the mediation procedure shall present, in writing, a detailed description of the problem to the mediator and to the other Party, in particular of the operation of the measure at issue and its trade effects. Within 20 days of the date of delivery of that description, the other Party may provide, in writing, its comments to the description of the problem. Either Party may include in its description or comments any information that it deems relevant.

2. The mediator may decide on the most appropriate way of bringing clarity to the measure concerned and its possible trade effects. In particular, the mediator may organise meetings between the Parties, consult the Parties jointly or individually, seek the assistance of, or consult with, relevant experts and stakeholders and provide any additional support requested by the Parties. Before seeking the assistance of, or consulting with, relevant experts and stakeholders, the mediator shall consult with the Parties.

3. The mediator may offer advice and propose a solution for the consideration of the Parties which may accept or reject the proposed solution or may agree on a different solution. The mediator shall not advise or give comments on the consistency of the measure at issue.

4. The mediation procedure shall take place in the territory of the Party to which the request was addressed or, by mutual agreement, in any other location or by any other means.

5. The Parties shall endeavour to reach a mutually agreed solution within 60 days of the appointment of the mediator. Pending a final agreement, the Parties may consider possible interim solutions, especially if the measure relates to perishable goods.

6. The solution may be adopted by means of a decision of the Committee. Either Party may make such solution subject to the completion of any necessary internal procedures. Mutually agreed solutions shall be made publicly available. The version disclosed to the public may not contain any information that a Party has designated as confidential.

7. Upon request of the Parties, the mediator shall issue to the Parties, in writing, a draft factual report, providing a brief summary of:

   (a) the measure at issue in the mediation procedure;

   (b) the procedures followed; and

(c) any mutually agreed solution reached as the final outcome of the mediation procedure, including possible interim solutions.

The mediator shall provide 15 days for the Parties to comment on the draft factual report. After considering the comments of the Parties submitted within that period, the mediator shall issue, in writing, a final factual report to the Parties within 15 days. The factual report shall not include any interpretation of this Agreement.

8. The mediation procedure shall be terminated by:

(a) the adoption of a mutually agreed solution by the Parties, on the date of its adoption;

(b) mutual agreement of the Parties at any stage of the mediation procedure, on the date of that agreement;

(c) a written declaration of the mediator, after consultation with the Parties, that further efforts at mediation would be to no avail, on the date of that declaration; or

(d) a written declaration of a Party after exploring mutually agreed solutions under the mediation procedure and after having considered any advice and proposed solutions by the mediator, on the date of that declaration.

SECTION B

IMPLEMENTATION

ARTICLE 6

Implementation of a Mutually Agreed Solution

1. Where the Parties have agreed to a solution, each Party shall take the measures necessary to implement the mutually agreed solution within the agreed timeframe.

2. The implementing Party shall inform the other Party in writing of any steps or measures taken to implement the mutually agreed solution.

SECTION C

GENERAL PROVISIONS

ARTICLE 7

Confidentiality and Relationship to Dispute Settlement

1. Unless the Parties agree otherwise, and without prejudice to paragraph 6 of Article 5 (Rules of the Mediation Procedure) of this Annex, all steps of the mediation procedure, including any advice or proposed solution, are confidential. However, either Party may disclose to the public the fact that mediation is taking place.

2. The mediation procedure is without prejudice to the Parties' rights and obligations under Chapter 3 (Dispute Settlement) or any other agreement.

3. Consultations under Chapter 3 (Dispute Settlement) are not required before initiating the mediation procedure. However, a Party should avail itself of the other relevant cooperation or consultation provisions in this Agreement before initiating the mediation procedure.

4. A Party shall not rely on or introduce as evidence in other dispute settlement procedures under this Agreement or any other agreement, nor shall a panel take into consideration:

   (a) positions taken by the other Party in the course of the mediation procedure or information gathered under paragraph 2 of Article 5 (Rules of the Mediation Procedure) of this Annex;

   (b) the fact that the other Party has indicated its willingness to accept a solution to the measure subject to mediation; or

   (c) advice given or proposals made by the mediator.

5. A mediator may not serve as an arbitrator or panellist in dispute settlement proceedings under this Agreement or under the WTO Agreement involving the same matter for which he has been a mediator.

ARTICLE 8

Time Limits

Any time limit referred to in this Annex may be modified by mutual agreement between the Parties.

ARTICLE 9

Costs

1. Each Party shall bear its own expenses derived from the participation in the mediation procedure.

2. The Parties shall share jointly and equally the expenses derived from organisational matters, including the remuneration and expenses of a mediator. The remuneration of a mediator shall be the same as that provided for the chairperson of an arbitration panel in accordance with Rule 12 of Annex 7 (Rules of Procedure).

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ANNEX 10

MEDIATION MECHANISM FOR THE RESOLUTION OF DISPUTES BETWEEN INVESTORS AND PARTIES

ARTICLE 1

Objective

The objective of the mediation mechanism is to facilitate the finding of a mutually agreed solution through a comprehensive and expeditious procedure with the assistance of a mediator referred to in Article 3.31 (Mediation).

SECTION A

PROCEDURE UNDER THE MEDIATION MECHANISM

ARTICLE 2

Initiation of the Procedure

1. Either disputing party may request, at any time, the commencement of a mediation procedure. Such request shall be addressed to the other party in writing.

2. Where the request concerns an alleged breach of this Agreement by the authorities of the Union or by the authorities of a Member State of the Union it shall be addressed to the respondent as determined pursuant to Article 3.32 (Notice of Intent to Submit a Claim). If no respondent has been determined, it shall be addressed to the Union. Where the request is accepted, it shall specify whether the Union or the Member State of the Union concerned is a party to the mediation[1].

3. The disputing party to which the request is addressed shall give sympathetic consideration to the request and accept or reject it in writing within 45 days or, where such request is submitted after a request for consultation has been submitted pursuant to Article 3.30 (Consultations), within 30 working days of its receipt.

4. The request shall contain:

   (a) a summary of the differences or disputes, including, where appropriate, an identification of relevant legal instruments sufficient to identify the matter giving rise to the request;

   (b) the names and contact details of the requesting party and its representatives; and

[1] For greater certainty, where the request concerns treatment by the Union, the party to the mediation shall be the Union and any Member State of the Union concerned shall be fully associated in the mediation. Where the request concern exclusively treatment by a Member State of the Union, the party to the mediation shall be the Member State of the Union concerned, unless it requests the Union to be party.

(c) either a reference to the agreement to mediate or an invitation to the other disputing party or parties to mediate under this mediation mechanism.

ARTICLE 3

Selection of the Mediator

1. If both disputing parties agree to a mediation procedure, the disputing parties shall endeavour to agree on the choice of a mediator within 15 working days from the receipt of the reply to the request.

2. If the disputing parties cannot agree on the choice of the mediator within the established time frame, either disputing party may request the President of the Tribunal to draw by lot and appoint a mediator from among the Members of the Tribunal who are neither nationals of a Member State of the Union, nor of Viet Nam.

3. The President of the Tribunal shall appoint the mediator within five working days of the request referred to in paragraph 2.

4. The mediator shall assist, in an impartial and transparent manner, the disputing parties in reaching a mutually agreed solution.

ARTICLE 4

Rules of the Mediation Procedure

1. As soon as practicable following the mediator's designation, the mediator shall discuss with the disputing parties, whether in person, by telephone or by any other means of communication:

(a) the conduct of the mediation, in particular any outstanding procedural issues such as the languages and location of the mediation sessions;

(b) a provisional timetable for the conduct of the mediation;

(c) any legal disclosure obligation that may be relevant to the conduct of the mediation;

(d) whether the disputing parties wish to agree in writing not to commence or not to continue any other dispute settlement proceedings relating to the differences or disputes that are subject of the mediation while mediation is pending;

(e) whether special arrangements for the approval of a settlement agreement need to be made; and

(f) the financial arrangements, such as the calculation and payment of the mediator's fees and expenses in accordance with Article 8 (Costs) of this Annex.

2. The mediator may decide on the most appropriate way of bringing clarity to the measure at issue. In particular, the mediator may organise meetings between the disputing parties, consult the disputing parties jointly or individually, seek the assistance of, or consult with, relevant experts and stakeholders and provide any additional support requested by the disputing parties. However, before seeking the assistance of or consulting with relevant experts and stakeholders, the mediator shall consult with the disputing parties.

3. The mediator may offer advice to, and propose a solution for the consideration of, the disputing parties which may accept or reject the proposed solution or may agree on a different solution. However, the mediator shall not advise or give comments on the consistency of the measure at issue with this Agreement.

4. The procedure shall take place in the territory of the Party concerned or, by mutual agreement, in any other location or by any other means.

5. Subject to subparagraph 1(b), the disputing parties shall endeavour to reach a mutually agreed solution within 60 days from the appointment of the mediator. Pending a final agreement, the disputing parties may consider possible interim solutions.

6. Either the Union, a Member State of the Union or Viet Nam, when acting as a party to a mediation procedure, may make publicly available mutually agreed solutions, subject to the redaction of any information designated as confidential or protected.

7. The procedure shall be terminated by:

(a) the adoption of a mutually agreed solution by the disputing parties, on the date of adoption;

(b) a written declaration of the mediator, after consultation with the disputing parties, that further efforts at mediation would be to no avail; or

(c) written notice of a disputing party.

SECTION B

IMPLEMENTATION

ARTICLE 5

Implementation of a Mutually Agreed Solution

1. Where a solution has been agreed, each disputing party shall endeavour to take the measures necessary to implement the mutually agreed solution within the agreed timeframe.

2. The implementing disputing party shall inform the other disputing party in writing of any steps or measures taken to implement the mutually agreed solution.

3. On request of the disputing parties, the mediator shall issue to the disputing parties, in writing, a draft factual report, providing a brief summary of:

   (a) the measure at issue in these procedures;

   (b) the procedures followed; and

   (c) any mutually agreed solution reached as the final outcome of these procedures, including possible interim solutions.

4. The mediator shall provide the disputing parties with 15 working days to comment on the draft factual report. After considering the comments of the disputing parties submitted within that period, the mediator shall submit, in writing, a final factual report to the disputing parties within 15 working days. The factual report shall not include any interpretation of this Agreement.

SECTION C

GENERAL PROVISIONS

ARTICLE 6

Relationship to Dispute Settlement

1. The procedure under this mediation mechanism is not intended to serve as a basis for dispute settlement procedures under this Agreement or any other agreement. A disputing party shall not rely on or introduce as evidence in such dispute settlement procedures, nor shall any adjudicate body take into consideration:

   (a) positions taken by a disputing party in the course of the mediation procedure;

   (b) the fact that a disputing party has indicated its willingness to accept a solution to the measure subject to mediation; or

   (c) advice given or proposals made by the mediator.

2. Subject to any agreement pursuant to subparagraph 1(d) of Article 4 (Rules of the Mediation Procedure) of this Annex, the mediation mechanism is without prejudice to the rights and obligations of the Parties and the disputing parties under Chapter 3 (Dispute Settlement).

3. Unless the disputing parties agree otherwise, and without prejudice to paragraph 6 of Article 4 (Rules of the Mediation Procedure) of this Annex, all steps of the procedure, including any advice or proposed solution, shall be confidential. However, any disputing party may disclose to the public that mediation is taking place.

ARTICLE 7

Time Limits

Any time limit referred to in this Annex may be modified by mutual agreement between the disputing parties.

ARTICLE 8

Costs

1. Each disputing party shall bear its own expenses derived from the participation in the mediation procedure.

2. The disputing parties shall share jointly and equally the expenses derived from organisational matters, including the remuneration and expenses of the mediator. Remuneration of the mediator shall be in accordance with that provided for the Members of the Tribunal under paragraph 16 of Article 3.38 (Tribunal).

ANNEX 11

CODE OF CONDUCT FOR MEMBERS OF THE TRIBUNAL, MEMBERS OF THE APPEAL TRIBUNAL AND MEDIATORS

ARTICLE 1

Definitions

For the purposes of this Code of Conduct:

(a) "Member" means a Member of the Tribunal or a Member of the Appeal Tribunal established pursuant to Section B (Resolution of Disputes between Investors and Parties);

(b) "mediator" means a person who conducts the mediation procedure in accordance with Article 3.31 (Mediation) and Annex 10 (Mediation Mechanism for Disputes between Investors and Parties);

(c) "candidate" means an individual who is under consideration for selection as a Member of the Tribunal or a Member of the Appeal Tribunal;

(d) "assistant" means a person who, under the terms of appointment of a member, assists the member in his research or supports him in his duties;

(e) "staff", in respect of a member, means persons under the direction and control of the member, other than assistants.

ARTICLE 2

Responsibilities to the Process

Every candidate and every Member shall avoid impropriety and the appearance of impropriety, shall be independent and impartial and shall avoid direct and indirect conflicts of interest.

ARTICLE 3

Disclosure Obligations

1. Prior to their appointment, candidates shall disclose to the Parties any past and present interest, relationship or matter that is likely to affect their independence or impartiality or that might reasonably create an appearance of impropriety or bias. To that end, a candidate shall make all reasonable efforts to become aware of any such interest, relationship or matter.

2. Members shall communicate matters concerning actual or potential violations of this Code of Conduct in writing to the disputing parties.

3. Members shall at all times continue to make all efforts to become aware of any interest, relationship or matter referred to in paragraph 1. Members shall disclose such interests, relationships or matters to the disputing parties.[1]

ARTICLE 4

Duties of Members

1. Members shall perform their duties thoroughly and expeditiously throughout the course of the proceedings and shall do so with fairness and diligence.

2. Members shall consider only those issues raised in the proceedings which are necessary for a ruling and shall not delegate this duty to any other person.

3. Members shall take all appropriate steps to ensure that their assistants and staff are aware of, and comply with, Articles 2, 3, 5 and 7 of this Code of Conduct.

4. Members shall not discuss any aspect of the subject matter of the proceedings with a disputing party or the disputing parties in the absence of the other members of the division of the Tribunal or the Appeal Tribunal.

[1] For greater certainty, this obligation does not extend to information which is already in the public domain or was known, or should have reasonably been known, by all disputing parties.

ARTICLE 5

Independence and Impartiality of Members

1. Members shall be independent and impartial and avoid creating an appearance of bias or impropriety and shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or disputing party or fear of criticism.

2. Members shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere or appear to interfere with the proper performance of their duties.

3. Members shall not use their position as a member to advance any personal or private interests and shall avoid actions that may create the impression that others are in a special position to influence them.

4. Members shall not allow financial, business, professional, family or social relationships or responsibilities to influence their conduct or judgment.

5. Members shall avoid entering into any relationship or acquiring any financial interest that is likely to affect their impartiality or that might reasonably create an appearance of impropriety or bias.[1]

[1] For greater certainty, the fact that a Member receives an income from a government or has a family relationship with a person who receives an income from the government shall not in itself be considered to be inconsistent with paragraph 2 and 5.

ARTICLE 6

Obligations of Former Members

1. All former members shall avoid actions that may create the appearance that they were biased in carrying out their duties or derived advantage from the decisions or awards of the Tribunal or the Appeal Tribunal.

2. Without prejudice to paragraph 5 of Article 3.38 (Tribunal) and paragraph 9 of Article 3.39 (Appeal Tribunal), members shall undertake that after the end of their term, they shall not become involved in:

   (a) investment disputes which were pending before the Tribunal or the Appeal Tribunal before the end of their term;

   (b) investment disputes with which they dealt with as members of the Tribunal or the Appeal Tribunal and other disputes that have matters of fact in common with such disputes or arise out of the same events and circumstances as such disputes.

3. Members shall undertake that for a period of three years after the end of their term, they shall not act as representatives of one of the disputing parties in investment disputes before the Tribunal or the Appeal Tribunal.

4. If the President of the Tribunal or of the Appeal Tribunal is informed or otherwise becomes aware that a former Member of the Tribunal or of the Appeal Tribunal, respectively, is alleged to have acted inconsistently with the obligations set up in paragraphs 1 to 3, the President shall examine the matter, provide the opportunity to the former member to be heard, and, after verification, inform thereof:

   (a) the professional body or other such institution with which that former Member is affiliated;

   (b) the Parties; and

   (c) the President of any other relevant investment tribunal or appeal tribunal in view of the initiation of appropriate measures.

   The President of the Tribunal or of the Appeal Tribunal shall make public its decision to take any actions referred to in subparagraphs (a) to (c), together with the reasons therefore.

ARTICLE 7

Confidentiality

1. Members and former Members shall not disclose or use at any time any non-public information concerning proceedings or acquired during proceedings, except for the purposes of the proceedings, and shall not, in any event, disclose or use such information to gain personal advantage or advantage for others or to adversely affect the interest of others.

2. Members shall not disclose a decision or award or parts thereof prior to its publication in accordance with the transparency provisions of Article 3.36 (Transparency of Proceedings).

3. Members and former Members shall not disclose at any time the deliberations of the Tribunal or the Appeal Tribunal, or any member's views, whatever they may be.

ARTICLE 8

Expenses

Each Member shall keep a record and render a final account of the time devoted to the procedure and of the expenses incurred.

ARTICLE 9

Mediators

The rules set out in this Code of Conduct as applying to Members or former Members apply, *mutatis mutandis*, to mediators.

ARTICLE 10

Consultative Panel

1. The President of the Tribunal and the President of the Appeal Tribunal shall be assisted by a Consultative Panel for ensuring the proper application of this Code of Conduct, of Article 3.40 (Ethics) and for the execution of any other task, where so provided.

2. The Consultative Panel shall be composed of the respective Vice-Presidents and of the two most senior Members of the Tribunal or of the Appeal Tribunal.

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ANNEX 12

CONCURRING PROCEEDINGS

1. Notwithstanding paragraph 1 of Article 3.34 (Other Claims), an investor of the EU Party shall not submit to the Tribunal under Section B (Resolution of Disputes between Investors and Parties) of Chapter 3 (Dispute Settlement) a claim that Viet Nam has breached a provision referred to in Article 2.1 (Scope) if the investor has submitted a claim alleging a breach of that same provision referred to in Article 2.1 (Scope) in proceedings before a court or administrative tribunal of Viet Nam or any international arbitration.[1]

[1] The fact that an investor has submitted a claim that Viet Nam has breached a provision of Chapter 2 in proceedings before a court or administrative tribunal of Viet Nam or any international arbitration with respect to one of its investments does not prevent the same investor from submitting a claim alleging a breach of the same provisions to the Tribunal under Section B (Resolution of Disputes between Investors and Parties) of Chapter 3 (Dispute Settlement) with respect to its other investments where such other investment is allegedly affected by the same measure.

2. Notwithstanding paragraphs 2 and 3 of Article 3.34 (Other Claims), in the event that Viet Nam is the respondent, an investor of the EU Party shall not submit a claim to the Tribunal under Section B (Resolution of Disputes between Investors and Parties) of Chapter 3 (Dispute Settlement) that a measure is inconsistent with the provisions of Chapter 2 if any person who directly or indirectly controls or is directly or indirectly controlled by the investor (hereinafter referred to as "related person") has submitted a claim to the Tribunal or any other domestic or international court or tribunal alleging a breach of the same provisions, with respect to the same investment and:

   (a) the claim of that related person was addressed by an award, judgment, decision or other settlement; or

   (b) the claim of that related person is pending and that person has not withdrawn such pending claim.

3. Claims that do not fall into the scope of paragraph 1 or 2 of this Annex shall be subject to Article 3.34 (Other Claims).

ANNEX 13

WORKING PROCEDURES FOR THE APPEAL TRIBUNAL

1. The working procedures of the Appeal Tribunal established in accordance with paragraph 10 of Article 3.29 (Appeal Tribunal) shall include and address, *inter alia*:

   (a) practical arrangements relating to the deliberations of the divisions of the Appeal Tribunal and to the communication between the members of the Appeal Tribunal;

   (b) arrangements for the service of documents and of supporting documentation, including rules on the correction of clerical errors in such documents;

   (c) procedural aspects relating to the temporary suspension of proceedings in the event of death, resignation, incapacity or removal of a member of the Appeal Tribunal from a division or from the Appeal Tribunal;

   (d) arrangements for the rectification of clerical errors in decisions of the divisions of the Appeal Tribunal;

   (e) arrangements for the joinder of two or more appeals relating to the same provisional award; and

(f) arrangements for the language of the appeal procedure which shall, in principle, be conducted in the same language as the proceedings before the Tribunal which has rendered the provisional award subject to appeal.

2. The working procedures may also include guiding principles with regard to the following aspects which may subsequently be addressed through procedural orders of the divisions of the Appeal Tribunal:

(a) indicative timelines and the sequencing of submissions to and hearings of the divisions of the Appeal Tribunal;

(b) logistical aspects relating to the conduct of the proceedings, such as the places of deliberations and hearings of the divisions of the Appeal Tribunal and the modalities of representation of the disputing parties; and

(c) preliminary procedural consultations and possible pre-hearing conferences between a division and the disputing parties.