EU/Vietnam Investment Protection Agreement

2018/0358(NLE) - 17/10/2018

PURPOSE: to approve the conclusion of the Investment Protection Agreement between the European Union and Viet Nam.

PROPOSED ACT: Council Decision.

ROLE OF THE EUROPEAN PARLIAMENT: Council may adopt the act only if Parliament has given its consent to the act.

BACKGROUND: 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 EUR 227.3 billion of trade in goods (2017) and EUR 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.

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 EUR 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.

In 2007, the Council authorised the Commission to enter into negotiations for a region-to-region Free Trade Agreement (FTA) with countries of the ASEAN.

In 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.

CONTENT: the Commission called on the Council to approve, on behalf of the Union, **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.

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

- the **comprehensive liberalisation of services and investment markets**, including crosscutting rules on licensing and for the mutual recognition of diplomas, and sector-specific rules designed to ensure a level playing field for EU businesses;
- **new tendering opportunities** for EU bidders in Vietnam, who is not a member of the WTO Agreement on Government Procurement;
- 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;
- based on international standards, a more trade-facilitative regime for the approval of European **food exports to Vietnam**;
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- 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;
- 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**;
- 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;
- 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.

Institutional provisions: 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. It shall be 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).

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 EUR 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 EUR 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.