

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 specifying 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 Party¹.

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

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.