

## **EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION AND DOCUMENTS**

**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 Vietnam**

**Proposal for a Council Decision on the conclusion of the Free Trade Agreement between the European Union and the Socialist Republic of Vietnam**

**(along with publication of 12 accompanying Annexes)**

Submitted by the Department for International Trade (DIT) on 5 November 2018.

### **SUBJECT MATTER**

1. This Explanatory Memorandum (EM) concerns the proposals for Council Decisions on the signature and conclusion of the EU-Vietnam Free Trade Agreement (EVFTA). These Council Decisions respectively constitute the legal instruments authorising the Signing and Conclusion of the agreement on behalf of the European Union (EU).
2. Negotiations for the EVFTA began in June 2012 and concluded in December 2015. After the Court of Justice of the European Union Opinion regarding the EU-Singapore free trade agreement and the division of competences between the EU and Member States, the EVFTA was revised to be an EU exclusive competence only agreement by separating those elements deemed by the CJEU to be of shared competence with Member States into a separate EU-Vietnam Investment Protection Agreement (EVIPA). These revised and final texts were published in August 2018. To note, a separate EM on the EVIPA is being submitted alongside this EM.
3. The EVFTA will eliminate over 99% of all tariffs. 65% of duties on EU exports to Vietnam will be eliminated at entry into force, with the remainder gradually removed over a 10-year period. EU duties on imports from Vietnam will be eliminated progressively over a 7-year period in an asymmetric approach which takes into account the fact that Vietnam is still a developing country.
4. The EVFTA reduction of tariffs on EU exports include: all textile fabric duties (currently 12%) removed at entry into force; duties on most machinery and appliances (currently up to 35%) eliminated at entry into force with the rest after 5 years; duty on motorcycles with engines larger than 150 cc (currently 75%) fully removed after 7 years; car parts duty free after 7 years from current duties of up to 32%; roughly half of EU pharmaceuticals exports duty free at entry into force and the rest after 7 years (current duties up to 8%); nearly 70% of EU chemicals exports with current duties up to 5%, duty free at entry into force and

the rest with current tariffs up to 25% duty free over the next 7 years; wines and spirits tariff-free after 7 years (down from 50% and 48% respectively); frozen pork meat duty free after 7 years, beef after 3 years, dairy products after a maximum of 5 years and food preparations after a maximum of 7 years. Tariffs on chicken will be progressively reduced to 0% over the next 10 years.

5. Vietnam exporters will benefit from the removal of EU duties on non-processed shrimps at entry into force, on catfish in three years, on textile apparel over periods of three to seven years, on footwear over seven years, and improved market access via duty-free tariff rate quotas for milled, husked, broken and fragrant rice, for sweet corn, garlic, mushrooms, sugar and high-sugar-containing products, for manioc starch, surimi and for canned tuna. The EU will eliminate tariffs for industrial products over 7 years.
6. Businesses will be able to gain access to key services markets on each side with a number of non-tariff barriers between the EU and Vietnam removed, improving access for EU exporters of pharmaceuticals in particular. The EVFTA will also help to open Vietnam's public procurement with a portal to advertise tenders in English to EU business, and ensures a high level of Intellectual Property Rights protection. Vietnam will introduce a new register of 169 geographical indications (GIs) and protect European GIs in Vietnam.
7. The EVFTA provides the basis for mutual recognition of conformity assessment bodies and acceptance of their test assessments to reduce the costs of such compliance for many sectors. However, EVFTA will not change EU standards and regulations such as those related to food safety, product safety, consumer protection, health, environment, social or labour standards. The Government is satisfied that the right to regulate in the public interest is protected for all Parties under the agreement, including the UK's provision of the National Health Service and other utilities.
8. The EVFTA contains a comprehensive Chapter on 'trade and sustainable development', aimed at ensuring that trade supports environmental protection and social development, and promotes the sustainable management of forests and fisheries. The EVFTA (and indeed EVIPA) will be legally linked to the underpinning EU-Vietnam Partnership & Cooperation Agreement (EVPCA), which establishes the remit of political relations between the EU and Vietnam. Human rights is an essential element to this relationship and the EVPCA provides a mechanism for appropriate and proportionate measures to be taken, which could include the suspension of the EVFTA (and EVIPA), in the event of serious human rights breaches.
9. The agreement also covers non-tariff barriers to trade and other trade related aspects across the following:
  - Customs and Trade Facilitation
  - Rules of Origin
  - Technical Barriers to Trade
  - Sanitary and Phytosanitary (SPS) Measures
  - Investment market access (not to be confused with investment protection and ISDS elements including with the EVIPA)

- Renewable Energies
- Antitrust, Mergers, State-Owned Enterprises & Subsidies
- Trade Remedies and Dispute Settlements

## **SCRUTINY HISTORY**

10. The Council Decisions for conclusion and signature of the EVFTA are new proposals being put forward by the European Commission and there is no related scrutiny history.
11. Since its creation as a department, DIT has however provided high level summary updates of EU trade policy developments to both European Scrutiny Committee, which have including periodic references to the EVFTA.

## **MINISTERIAL RESPONSIBILITY**

12. The Secretary of State for International Trade has primary responsibility for trade policy. Given the widespread provisions of this FTA, many other Secretaries of State have an interest in this policy area, including the Secretaries of State for Foreign Affairs, Exiting the EU, International Development, Environment Food and Rural Affairs, Home Affairs and Business, Energy & Industrial Strategy.

## **INTEREST OF THE DEVOLVED ADMINISTRATIONS**

13. The UK's trade policy is a reserved matter under the UK's devolution settlements, though Devolved Administrations maintain an interest.

## **LEGAL AND PROCEDURAL ISSUES**

### **Legal basis**

14. The legal base for the Council Decision is within the scope of Articles 91, 100(2) and 207 of the TFEU. The signature of the FTA is based on Article 218(5) TFEU and the conclusion on the basis of Article 218(6) TFEU.

### **Legislative Procedure in the European Parliament**

15. The legislative procedure for the signing and conclusion of agreements under Article 207 of the TFEU is as set out in Article 218 of the TFEU. The role of the European Parliament is set out specifically in Articles 218(6) and 218(10).

### **Voting Procedure in the Council**

16. Whilst only Qualified Majority Voting (QMV) is mandated by the EU Treaties in this instance, we expect that Council will act via the process of Common Accord whereby agreement is required by all Member States in order for signature and conclusion of the EVFTA to be approved.

### **Impact on United Kingdom law**

17. In line with the CJEU Opinion of May 2017, the EVFTA as presented to Council will not require UK or other Member State ratification as it is an EU-only

agreement. This means that the EVFTA will enter into force once Council and the European Parliament grant approval, followed by ratification by Vietnam.

### **Application to Gibraltar**

18. The proposed Council Decisions on conclusion and signature of the FTA will apply to Gibraltar to the extent to which the EU Treaties apply to Gibraltar.

### **Fundamental Rights Analysis**

19. No fundamental rights issues arise in relation to this proposal.

### **APPLICATION TO THE EUROPEAN ECONOMIC AREA**

20. The EEA states will not be directly bound by the proposed decision but the agreement is likely to be adopted by the EEA since EEA states are obliged to apply EU internal market legislation.

### **SUBSIDIARITY**

21. Trade is a matter of exclusive EU competence under EU Treaties and international trade negotiations are handled at a European Union level. The proposals are therefore consistent with the principle of subsidiarity and European Union action is therefore appropriate.

22. The Government has conducted competence assessments of the EVFTA and EVIPA and is satisfied that they have been presented to Council in line with the CJEU Opinion 2/15 of May 2017.

### **POLICY IMPLICATIONS (including Exit implications where appropriate)**

23. On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the EU and all the rights and obligations of EU membership remain in force. During this period the Government will also continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

24. The UK could benefit from the liberalisation and commitments arising from the EVFTA in a number of areas including, but not necessarily limited to:

- a) 99% tariff elimination
- b) Increased services market access and liberalisation (including business services, environmental services, postal and courier services, banking, insurance, and maritime transport.
- c) The removal or prevention of a number of technical barriers to trade and non-tariff measures, such as duplicative testing requirements
- d) Liberalisation of the Vietnam's public procurement market and the advertisement of tenders in English via a dedicated online portal

- e) Increased protection of intellectual property rights
- f) The protection of UK GIs ('Scotch Whisky', 'Scottish Farmed Salmon', 'Irish Cream' and 'Irish Whiskey')
- g) Streamlined customs processes
- h) SPS frameworks

25. The March European Council agreed that during the Implementation Period (IP) the UK's and EU's shared aim is for international agreements (to which the UK is a party by virtue of EU membership) to continue to apply to the UK as now. Therefore, the EU set out in the draft Withdrawal Agreement that the UK should be treated as a Member State for the purposes of international agreements during the IP. The Government anticipates that this will include the EVFTA. We will continue to advance our dialogue with the Vietnamese government on the shape of our future bilateral trade and investment relationships to come into effect after the IP, including continuing work on securing continuity of the effects of the EVFTA. The UK is also looking to transition the EVPCA into a bilateral agreement, replicating post-Brexit the suspension mechanism highlighted above.

## **CONSULTATION**

26. The EU conducted a Trade Sustainability Impact Assessment (SIA) of a potential FTA between the EU and ASEAN countries regionally in 2009 before the launch of bilateral negotiations with Vietnam. This was conducted by an external contractor (Ecorys) and included consultation with internal and external experts, public consultations in Brussels and Bangkok and bilateral meetings with representatives from civil society groups and organisations. The European Parliament has been kept regularly informed.

27. Throughout the negotiations, the UK Government has engaged with business and across government, and has represented agreed Government policy to the Commission.

## **IMPACT ASSESSMENT**

28. The Government is preparing its own analysis of the final text and its assessment of the economic impacts of the EVFTA, which we will make available to Parliament as soon as possible.

## **FINANCIAL IMPLICATIONS**

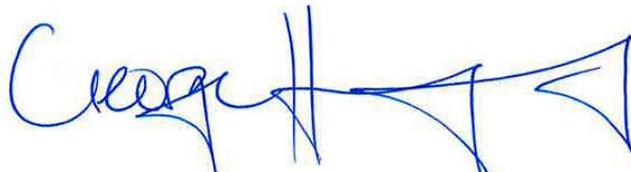
29. The EVFTA will have a financial impact on the EU budget in relation to revenue with an estimated loss of duties. The EU does not expect an impact on the EU budget in relation to expenditure. There would be a proportional financial impact for the UK whilst we remain an EU Member State.

## TIMETABLE

30. Whilst the Commission has not set out a timetable, we anticipate that Council could be asked to vote on signature and conclusion of the EVFTA and EVIPA before the UK has exited the EU in March 2019.
31. It remains unlikely that the European Parliament (EP) will be asked to approve the agreements before EP elections in April 2019, most likely pushing EP approval back to late 2019. Vietnam would need to ratify the EVFTA before it could enter fully into force. The current assessment is that the EVFTA is likely to enter into force during 2020, although late 2019 remains a possibility.

## OTHER OBSERVATIONS

32. For reference the list of Annexes provided alongside the proposed Council Decisions on signature and conclusion of the EVFTA are as follows:
- a) ADD 1 – Annex 1 – Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam
  - b) ADD 2 – Annex 2 – Reduction or Elimination of Customs Duties
  - c) ADD 3 – Annex 3 - Part 1/3 - Tariff Schedule of the Union
  - d) ADD 4 – Annex 3 – Part 2/3
  - e) ADD 5 – Annex 3 - Part 3/3
  - f) ADD 6 – Annex 4 – Part 1/2 – Tariff Schedule of Viet Nam
  - g) ADD 7 – Annex 4 – Part 2/2
  - h) ADD 8 – Annex 5 – Export Duties Schedule of Viet Nam
  - i) ADD 9 – Annex 6 – Union’s Schedule of Specific Commitments
  - j) ADD 10 – Annex 7 – Coverage of Government Procurement for the Union (Annex 9A) and Coverage of Government Procurement for Viet Nam (Annex 9B)
  - k) ADD 11 – Annex 8 – Specific Rules for Viet Nam on State-owned enterprises, enterprises granted special rights or privileges and designated monopolies
  - l) ADD 12 – Annex 9 – Concerning the definition of the concept of ‘originating products’ and methods of administrative cooperation



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