

Managing change

Client Alert Vietnam

EU-Vietnam Free Trade Agreement (EVFTA)

Issue: April 2018 · www.roedl.de/vietnam | www.roedl.com/vietnam

EU-Vietnam Free Trade Agreement (EVFTA)

Complete document of the agreement is to be submitted and signed by all EU Member States by mid-2018.

Germany is Vietnam's largest trading partner. Vietnam is the second ASEAN country after Singapore to sign a FTA with Europe.

Improved market access is one of the key objectives of the EVFTA.

> General principles of EVFTA

Goals

The main goal of EVFTA is the elimination of customs duties and tariffs.

Under the provisions of the EVFTA, 65 % of tariff lines will be eliminated right after entry into force, and over 99 % of the tariff lines will be eliminated a few years after.

- Germany's elimination of all import taxes on Vietnamese goods within seven years (for products such as motorcycles, car parts and pharmaceuticals) from the effective date of this agreement;
- Vietnam will do it within 10 years

The EVFTA contains the abolishment of nearly all tariffs except for a few tariffs lines that are subject to duty-free tariff rate quotas.

Provisions facilitating customs and trades aim to address non-tariff issues at the border in order to facili-

tate legitimate trade without compromising effective customs controls.

Market opening will emphasize commercial relations between Germany and Vietnam, which is mutually beneficial. Vietnam's commitments to the WTO offer German partners the best possible access to Vietnam's market.

Tariff eliminations will give German and Vietnamese exporters many benefits related to, e.g., exports of machinery and appliances, pharmaceuticals, textile, car parts, motorcycles, chemicals, frozen pork meat and chicken, fishery, wines and spirits, cigarettes, raw tobacco, refined sugar, salt and eggs, etc.

Import and Export licensing procedures:

(i) Import licensing:

The bilateral obligations are very much written in order to help and enforce the implementation of the WTO Agreement on Import Licensing Procedures

(ii) Export licensing:

The text of EVFTA provides for an obligation to create full transparency on the existing export-related measures. Detailed notification to the other party is required for any future changes to the situation.

Cumulation

EVFTA provides for bilateral cumulation. German textile producers may supply Vietnamese garment producers with fabrics originating from other EU countries.

Whereas, Vietnam may benefit from extended cumulation with e.g. South Korea related to fabrics used for producing garments or other ASEAN countries regarding fishery products.

For example: basic agricultural products have to be fully obtained in Vietnam or Germany. Textiles and garments require a double transformation process. Vehicles will have to comply with the value limit of 45 % of non-originating materials and vehicle parts with the value limit of 50 % of non-originating materials.

Product Specific Rules (PSR)

Germany and Vietnam have agreed on a single set of PSR being applied without discrimination or any differential treatment to all producers in both countries wishing to have benefits from the preferential treatment.

Rules of origin

Products can be considered as sufficiently transformed in a country, if goods has a regional value content of 40 % or more, in order to grant for a tariff preference as agreed in the EVFTA or as regulated in unilateral preference.

However, there are a number of limitations which take into account the special situation of Vietnam and of Germany (e.g products containing sugar and dairy, products of steel, mechanical machinery, electrical machinery and others).

Main principles of rules of origin:

- Non-alteration: the products can transit through third countries under the condition that the products have not been transformed or subject to operations other than preserving them in a good condition or adding/affixing marks, labels, seals or any other documentation to ensure compliance with specific domestic requirements of the importing country.
- Certification: Government certificates (certificates of origin) will be needed for Vietnamese exporters, but there is a possibility for Vietnam to introduce self-certification.
- Self-certification: It has not yet allowed for Vietnamese exporters, but it's possible whenever Vietnam is ready to do so.

Sanitary and phytosanitary measures

Verifications can be done by both parties in accordance with international standards, costs are borne by the Party carrying out the verification.

E-commerce and Dispute settlement

EVFTA will set a number of rules regarding e-commerce and establish an efficient mechanism to resolve future disagreements.

> Trade and Sales to Germany under EVFTA

Import:

Germany will liberalize 71 % of its import from Vietnam from day one and 99 % will enter duty-free within seven years.

Custom duties will be removed over a transitional period of a maximum of 7 years for Vietnamese goods. Therefore, consumers from both sides will benefit from lower prices and exporters from strengthened competitiveness.

German market access for Vietnamese exporters: E.g. duty-free tariff rate quotas for Vietnamese rice exporters; liberalization of non-processed shrimps at entry into force of EVFTA etc.

Food safety requirements:

Trade policy has the duty to ensure that traded food and feed is safe and meets the relevant sanitary and phytosanitary measures in the importing country. Vietnam commits itself to apply the same import requirements to products coming from Germany to Vietnam as products being exported from Vietnam to Germany, so there is no case-by-case principle.

Geographical indications (GIs):

Thanks to the EVFTA, Vietnamese GIs will be recognized and protected as such in Germany, providing the adequate framework for further promoting imports and exports of quality products (e.g. Phu Quoc fish sauce).

Services procurement:

Vietnamese companies will have access to the German procurement market, procurement for goods and services for central and local entities in Germany.

Client Alert Vietnam

> Trade and Sales to Vietnam under EVFTA

Export

65 % of the German exports will enter duty-free from day one and 99 % within 10 years. Remaining trade, with the exception of a few products (the ones subject to duty-free tariff rate quotas), will be liberalized after 10 years.

Custom duties will be removed over a transitional period of 10 years for German goods. As a result, consumers from both sides will benefit from lower prices and exporters from strengthened competitiveness.

National treatment

This agreement forbids the discrimination between imported and domestically produced goods regarding the internal taxation or other governmental regulations. Subsequently, German goods will not be treated differently from domestic goods once they are on the Vietnamese market.

Remanufactured goods

The substantive discipline stipulates that remanufactured goods shall receive the same treatment as provided to the new goods. Therefore, goods considered by Vietnam as "used goods" and prohibited until now, will fall under the concept of "remanufactured goods". However, Vietnam can continue to restrict trade regarding specific "used goods" under strict conditions benefiting from the Most Favored Nation status.

Pharmaceutical products

Vietnam will allow foreign pharmaceutical companies to establish foreign invested enterprises in order to import pharmaceuticals and being duly authorised to be sold on the Vietnamese market. Improvement on intellectual property rights (IPR) will ensure a better access to quality medicines for the population, making Vietnam more attractive for pharmaceutical product producers as well as Vietnam will simplify requirements for marketing authorization (of an high importance for the research- based medical products).

Distribution license

Conditions for distribution and sale of spirits will not be more restrictive.

Regarding the investment in the manufacturing of beverages, Vietnam has removed and eased limitations.

Protocol on Rules of origin

The regional hub will be facilitated by German exporters due to a clause of non-alteration contained under the rules of origin.

If the conditions of the protocol are fulfilled, German exported goods will benefit from the preferential treatment at the Vietnamese border. Goods must "originate" in Germany. German exporters may use self-certification in case of consignments not exceeding the value of 6.000 Euro.

Import requirements

Vietnam commits itself to apply the same import requirements regarding products coming from Germany or another EU Member State. In general, EU is seen as one single entity.

Pre-listing

Once a category of food products from Germany has been approved, Vietnam automatically allows imports from all German establishments as long as it is convinced that the country has the capacity to check and monitor compliance of EU food safety requirements.

Accordingly, establishments are approved in the exporting party without prior individual inspection.

Geographical indications (GIs)

GIs give automatic protection after entry into force or after a transition period (e.g. Bayerisches Bier). The use will be reserved in Vietnam for products imported from the region in which they originate. Therefore, there is a protection of German geographical indications.

Investment

German investors will enjoy the best available treatment when investing in Vietnam. Increased access to Vietnam market will attract foreign investors and create opportunities for developing manufacturing within the country (limitations have been eased for several sectors). In short, investment will be promoted and protected.

Intellectual Property Rights (IPR)

Vietnam commits itself to, inter alia, accede to the WIPO Internet Treaties (copyright), apply WIPO recommendation on the protection of well-known trademarks, provide data protection on pharmaceutical products as well as accede to the Hague Agreement (procedural treaty on the registration of designs) and to

extend term of protection for designs to 15 years. These are the important and positive improvements in the field of IPR through the EVFTA, bringing benefits for IPR owners as well as for consumers.

Market access

EVFTA will help open the Vietnamese market for German service operators, abolish the limitations in number of business services (e.g. urban planning, architectural etc.), and offer new market access to a number of services such as packaging services or interdisciplinary Research and Development.

In distribution services, five years after the entry into force of the EVFTA retailers will no longer have to undergo an economic test. Vietnam also opens for cross-border services in the field of education, and makes improvements in the field of nursing, social, environmental, financial (and other auxiliaries financial services) and insurance services.

Increased market access will attract German investors and create opportunities for the developing manufacturing in Vietnam as well as new and more precise standards on investment will be set with several guarantees.

Regulatory disciplines

Vietnam commits itself to a set of high level regulatory disciplines on financial services, telecommunications,

computer services, postal services, domestic regulation, international maritime transport and mutual recognition of professional qualifications, relating to licensing qualifications, regulatory environment, etc. These disciplines will guarantee fair competition between local and German companies.

German companies are allowed to bid for public procurement contracts under certain conditions in Vietnam.

For further information please contact:



Stefan Ewers, LL.M. (Melbourne)
Partner

Attorney at Law (Germany)
Registered Foreign Lawyer (Vietnam)
Head of Ho Chi Minh City Office
Phone.: +84 28 73 07 27 88
E-Mail: stefan.ewers@roedl.com

At Eyelevel

„We stand by your side with international know-how and local knowledge, all from a single source, allowing you to take advantage of this unique opportunity and reap the rewards in this growing and attractive market.“

Rödl & Partner

„The great artistry of the human towers lies in its variety. Our towers thus always differ by height, width and shape.“

Castellers de Barcelona



„Each and every person counts“ – to the Castellers and to us.

Human towers symbolise in a unique way the Rödl & Partner corporate culture. They personify our philosophy of solidarity, balance, courage and team spirit. They stand for the growth that is based on own resources, the growth which has made Rödl & Partner the company we are today. „Força, Equilibri, Valor i Seny“ (strength, equilibrium, valour and common sense) is the Catalan motto of all Castellers, describing their fundamental values very accurately. It is to our liking and also reflects our mentality. Therefore Rödl & Partner embarked on a collaborative journey with the representatives of this long-standing tradition of human towers – Castellers de Barcelona – in May 2011. The association from Barcelona stands, among many other things, for this intangible cultural heritage.

Imprint Client Alert Vietnam, April 2018

Publisher: **Rödl & Partner Vietnam**
20Floor, CJ Tower,
2Bis-4-6 Le Thanh Toni Street
District 1, Ho Chi Minh City, Vietnam

Responsible for the content:
Stefan Ewers – stefan.ewers@roedl.com

Layout/Type: **Stefan Ewers** – stefan.ewers@roedl.com

This Newsletter offers non-binding information and is intended for general information purposes only. It is not intended as legal, tax or business administration advice and cannot be relied upon as individual advice. When compiling this Newsletter and the information included herein, Rödl & Partner used every endeavor to observe due diligence as best as possible, nevertheless Rödl & Partner cannot be held liable for the correctness, up-to-date content or completeness of the presented information. The information included herein does not relate to any specific case of an individual or a legal entity, therefore, it is advised that professional advice on individual cases is always sought. Rödl & Partner assumes no responsibility for decisions made by the reader based on this Newsletter. Should you have further questions please contact Rödl & Partner contact persons.

The entire content of this Newsletter and the information available in the internet is intellectual property of Rödl & Partner and is protected by copyright. Users may only download, print or copy the content of this Newsletter for their own purposes. Each change, reproduction, distribution or public communication of its content or parts of the content, whether online or offline, require the prior written consent of Rödl & Partner.