

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.
