

## SUMMARY REPORT

### TWO-YEAR IMPLEMENTATION OF THE EVFTA IN VIETNAM A REVIEW FROM BUSINESS PERSPECTIVE

1. The European Union–Vietnam Free Trade Agreement (EVFTA) has come into effect for more than 2 years (from August 1<sup>st</sup>, 2020). It is necessary to review and evaluate impacts of the agreement after 2 years. This report was implemented by the Center for WTO and International Trade – VCCI, with the support of FNF (Friedrich Naumann Foundation for Freedom), to identify and analyze results of trade, investment, and law-making process to implement the EVFTA in the first 2 years from a business perspective, thereby making necessary policy recommendations. The report was conducted on the basis of (i) Statistics on trade and investment between Vietnam and the EU; (ii) A Survey of more than 500 businesses on their EVFTA implementation; and (iii) A Review of law-making activities to implement the EVFTA.
2. ***From a trade perspective***, Vietnam’s total export turnover to the EU from August 2020 to July 2022 reached USD 83.4 billion, with an average of USD 41.7 billion per year, 24% higher than the average export turnover of the period 2016-2019. The utilization rate of EVFTA tariff preferences is 14.8%, increasing to 20.2% in 2021, and 24.5% in the first 6 months of 2022. Notably, EVFTA had a spillover effect on various population groups as the sectors making the best use of EVFTA tariff preferences include: rice (100%); footwear (74-98%); seafood (70-76%); plastic and plastic products (53-70%)... However, Vietnam’s export growth to the EU in 2021 was only 14.1%, lower than the average growth of Vietnam’s export to other FTA markets (18.2%) and to the world (19%). This rate was also lower than the EU’s import growth in 2021 (23%).
3. ***From the perspective of foreign direct investment (FDI) attraction***, the FDI registered capital of the EU into Vietnam in 2020 reached nearly USD 1,376 million, increasing by 8.6% compared to 2019, ranking 8<sup>th</sup>, and accounting for 4.8% of the total FDI into Vietnam. In 2021, the situation was more positive, with a total registered investment capital of more than USD 1,405 million, increasing by 2.2%, making the EU the 5th biggest FDI investor of Vietnam. However, the EU’s proportion in total FDI of Vietnam slightly decreased to 4.5%. Long-term data show that the EVFTA may create an important impetus to attract FDI from the EU into Vietnam, with the average annual investment capital in the period 2017-2021 (the period after EVFTA negotiations were completed), increasing by 86% compared to the previous period 2015-2016.

4. ***According to the VCCI's survey on businesses' awareness of the EVFTA***, nearly 94% of businesses have heard of or known about the EVFTA at different levels, this is the highest percentage in all FTAs. Out of 10 surveyed businesses, 03 ones said that they knew quite well and 01 business knew very well about EVFTA commitments related to their business activities. Motivations from the EVFTA benefits are probably big enough to attract the attention of businesses. This result also indicates that propaganda and dissemination activities about the EVFTA by Government agencies, VCCI, and media units in recent years have made positive effects. Among business groups, the FDI group had the highest percentage of knowing quite well/well about the EVFTA (43%), followed by private businesses (37%), and state-owned businesses (13%).
  
5. ***Regarding the actual impact of the EVFTA***, nearly 41% of surveyed businesses said that they had benefited from the EVFTA. Among the benefits, the most popular one is tariff preference (40-42% of businesses); followed by the increase of orders, revenue, and profit from supplying goods/services for import and export activities with the EU, or opportunities for cooperation with other partners to take advantage of the EVFTA (30-37% of businesses); and other long-term benefits such as investment opportunities or intellectual property protections in the EU (9-12% of businesses). For 59% of businesses never benefiting from the EVFTA in the past 2 years, common reasons are that businesses had no transaction with EU partners in this period (69%); did not know any specific benefits from the Agreement to take advantage of (24%); and some reasons caused by subjective limitations of businesses or objective obstacles in EVFTA implementation in both Vietnam and the EU (4-7%). There are also about 4.2% of businesses saying that they were damaged by the Agreement with main reasons such as an increase in compliance cost, or greater competitive pressure from EU's imports.
  
6. ***Regarding utilization of tariff preference***, 17% of surveyed businesses said that they had enjoyed EVFTA tariff preference for at least 01 export consignment, and 16% had at least 01 import consignment enjoying EVFTA tariff preference. Most of them knew about these preferences because they proactively learned about EVFTA commitments (73%), and/or got suggestions and support from partners (36%). As to what businesses did to enjoy preferences, 34% of businesses said that the current supplies of raw materials and production cycle fortunately met EVFTA's rules of origin (ROO); only 13% of businesses proactively had adjustments in order to enjoy tariff preferences. For cases that could not get tariff preference, common reasons are that products did not meet rule of origin (20-33% of businesses) or enjoyed other tariff preferences such as GSP or low MFN (18-31%). However, there are also a few businesses that did not enjoy the preferential tariffs because they did not meet the requirements for documents and other related procedures (10-11%) or knew nothing about these preferences (15%).

- 7. *Assessing impacts of the EVFTA and other FTAs in the future***, 76% of businesses believed that FTAs would have an impact on their business prospects in the next 3 years. Out of these businesses, a majority (85%) expected that this impact would be positive, and only 1% predicted it to be negative. Most of the businesses' expectations were placed on the opportunities to improve supply sources, increase the number of orders, revenue, profit, participation in the value chain and cooperation opportunities (88-92%). This very high rate, on the one hand, will be a motivation for businesses to proactively study and take action to realize expectations; on the other hand, may create certain risks due to over-optimism. Regarding barriers that may prevent businesses from taking advantage of the EVFTA, the most commonly predicted are market fluctuations and uncertainties (mentioned by 47% of businesses), lack of competitiveness (46%), lack of information on commitments and application methods (40%).
- 8. *Regarding the law-making process to implement the EVFTA***, the review shows that in the past 2 years, there is a total of 09 legal documents amended, supplemented, and promulgated to implement specific commitments in 06 Chapters and 01 Protocol of the EVFTA Full Text. Except for 1 group of commitments that have not yet reached the deadline for implementation (related to Remanufactured goods) and 1 group of commitments that were internalized but had no implementation mechanism (related to employees' freedom of association), all EVFTA commitments have already been "internalized" and guaranteed compatibility through these 09 documents.
- 9. *About the internalizing methodology***, EVFTA commitments are internalized by promulgating new documents to regulate EVFTA's specific issues (such as the Decree on preferential tariff schedule, certificate of fragrant rice; Circulars on ROO, and trade remedies), amending current documents regulating FTAs (Decree on procurement of bidding package under FTAs), or amending and supplementing existing documents regulating generally (Intellectual Property Law, Law on Insurance Business, Decree on Customs Procedures).
- 10. *Regarding the drafting process***, the review shows that the drafting process of the above documents was transparent, in accordance with the prescribed procedures, and the drafts were publicly posted on the website of drafting agencies. However, only 07/09 documents were sent to VCCI to collect businesses' comments. Many businesses' comments through VCCI (especially relating to the Decree on the certificate of fragrant rice and Circulars on Trade remedies) were taken into account by Drafting Agencies.

- 11. *Regarding the time of issuance and becoming effective***, except for a circular on the rule of origin issued before the Agreement coming into force, all other legal documents to implement the EVFTA were issued after its effective date (01/08/2020). Although all documents were drafted at a faster-than-usual pace; when compared with the milestone of 01/08/2020 required by the EVFTA, each of these documents was issued 278 days late on average. However, all documents were guaranteed their implementing effect in accordance with EVFTA commitments through regulations on retroactive effect, direct application, or regulations on utilization of rights under commitments. However, the slow issuance of EVFTA implementation documents had certain impacts on the ability of Vietnamese businesses to take advantage of this Agreement in the first stage.
- 12. *In terms of consistency***, all provisions in the 09 EVFTA implementation documents were consistent with the Constitution (constitutional), in accordance with higher-level documents, in accordance with the competence, sequence, formality (legal), and basically in harmony, not in conflict with other regulations in the relevant legal system (unity in the legal system).
- 13. *In terms of compatibility***, except for some rare cases, most of the provisions in these legal documents were compatible with the related EVFTA commitments (especially tariff preferences, rules of origin, trade remedies, etc.). Some provisions "internalizing" the EVFTA at a higher level than committed or with an earlier roadmap (requirements on transparency in bidding procedures). However, there are still a few cases where provisions did not completely follow original commitments (such as modifying application conditions compared to commitment on suspension of trademark protection that has become a common name), or the current legal status has not yet ensured the implementation of EVFTA commitments in practice (for example, the law on employee representative organizations at the grassroots level, the law on specialized inspection).
- 14. *As to transparency and feasibility***, almost all regulations were designed reasonably, clearly, closely, and feasibly. However, there are still a few cases where regulations did not completely reasonable and transparent, which can lead to difficulties in the application process or restrict the rights that businesses can be entitled to have under commitments (for example, the development of a whole new separate legal system specifically for FTA procurements; conditions for late submission of a certificate of origin to enjoy EVFTA tariff preference; regulations of non-discrimination between unintentional/intentional errors in compensation for damage caused by infringement of intellectual property rights).

**15. In conclusion,** from the business perspective, in the first 02 years, the EVFTA implementation has been relatively effective from the aspects of trade, investment, as well as law-making process. However, there are also some shortcomings and limitations preventing businesses from realizing the expected benefits of the Agreement. Therefore, in the next implementation stage, it is necessary to make appropriate adjustments to the Government's policies as well as the awareness and actions of the businesses. *For the Government,* besides technical requirements on the adjustment of a number of regulations and enforcement mechanisms to be more appropriate and favorable, it is necessary to have a redirection on activities of supporting information about the EVFTA and other FTAs for businesses (provided information has to be detailed, accurate, updated according to businesses' demands and easily accessible), and to increase the effectiveness of other supports for the businesses (support to improve competitiveness, trade promotion, connection and protection of businesses). *For businesses,* a proactivity in awareness and action is a necessary condition, and an effort to improve competitiveness is a sufficient condition for businesses to realize the benefits of the EVFTA or FTAs in general. Meanwhile, the cooperation between businesses, especially within the framework of associations, will be a significant booster for them to take advantage of international trade commitments more effectively, safely and sustainably./.