AMCHAM STATEMENT AT THE MIDTERM VIETNAM BUSINESS FORUM 2017

Presented by
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Good morning and thank you for the opportunity to speak about AmCham's perception of the business environment in Vietnam.

The American business community is proud of its contributions to the development of Vietnam's economy. Trade between our two countries passed $52 billion last year, up 16 percent year-on-year. We are confident that the rapid expansion of trade and investment relations between the US and Vietnam will continue and become dynamically stronger.

A new US President has taken office, and while we regret that he has effectively ended US participation in the Trans Pacific Partnership Agreement, AmCham believes there are other constructive paths forward to increase trade and investment between the US and Vietnam.

Among other things, we support a path leading to a free trade agreement (FTA) between our two countries. For an FTA to move forward, it will need to be viewed as beneficial and fair by all parties. The American business community in Vietnam stands ready to do our part to make this goal a reality. The first step was the signing last month of an MOU with VCCI to create a US-Vietnam Business Leadership Committee that will advocate for an FTA. In the meantime, the Trade and Investment Framework Agreement (TIFA) is a vehicle that can be used to resolve issues important to the business community. AmCham also supports ongoing efforts by the Vietnamese Government to improve the business environment for all by reducing costs and enhancing efficiency.

REMOVAL OF NON-TARIFF TRADE BARRIERS

To sustain and grow our bilateral trade and investment relationship, trade must be free and fair. Importing products into Vietnam remains more costly and complicated then it should be, and, given Vietnam's $34 billion trade surplus with the United States, it is particularly important for Vietnam to be seen as seriously addressing the numerous non-tariff *technical barriers to trade* mostly encountered at the border, and the so-called *behind the border barriers* which restrict the activities of companies and hamper the flow of US exports into Vietnam.

Technical Barriers to Trade

Technical barriers have the broadest impact on our members. These barriers include:

- Testing requirements required by the various ministries on a range of imported products, such as testing every shipment of certain imported products, irrespective of tests already conducted by the manufacturer, or the reliability of existing certification of shipments to Vietnam. Most test requirements fail to mention the specific risk that the tests are meant to mitigate. Enforcement tends to take place only at the customs border. Therefore, these same tests do not apply equally to local manufacturers.

- Circular 23, which impacts most of the manufacturing sector, places limits on the importation of used equipment. Local and international business groups have challenged this restriction repeatedly and it has been referenced in the USTR's annual report on barriers to trade. It is inconsistent with the WTO Technical Barriers to Trade Agreements, insofar as it sets arbitrary, non-scientific-based restriction on imports. Some manufacturing equipment and machinery, for the manufacture of semiconductors, as well as the automotive and aviation industries etc., can have a useful life of 20 years or more – and often much longer – as they are continuously maintained and refurbished. We recommend Customs and MoST make explicit the problems they are trying to address though these restrictions and implement a risk management strategy to solve them rather than simply prohibit imports of all machinery and equipment older than ten years.

- Decree 38 highlighted in USTR's annual report on barriers to trade, concerns the Law on Food Safety. The Decree's broad scope and uneven enforcement has led to uncertainty for US exporters and Vietnamese importers. We recommend that US and Vietnamese leaders direct the Working Group on Agriculture and Food Safety, established at the March 28-30 TIFA talks, to show concrete results, with cooperation by both governments in improving Vietnam's management of Decree 38, facilitating easier access of US agricultural exports to Vietnam and smoothing implementation of the full enforcement of the USDA Inspection Program**.**

Behind the Border Barriers

In addition to such technical barriers to trade cited above, there are numerous behind the border barriers that impede trade by preventing our companies from performing basic business activities such as transacting directly with their end-users or introducing new products without first acquiring a new or amended license. Examples include:

<u>Retail outlets</u>

- The Economic Needs Test (ENT), which restricts the opening of foreign invested retail outlets. This "test" contains no objective, transparent set of criteria, but has become more of a concession to be granted at the unpredictable discretion of relevant authorities.

<u>Import rights for pharmaceutical products and actions to provide a better healthcare environment</u>

- Foreign invested companies are not allowed to distribute pharmaceutical products. Pharmaceutical companies must currently distribute their products through local distributors. Under Vietnam's WTO Commitments on Services and Circular No. 34/2013/TT-BCT, foreign invested companies have the right to import pharmaceutical products to sell to licensed wholesalers and distributors. However, in practice and due to the restrictions in obtaining the certificate of satisfaction of conditions (CSC) under law, this has not been feasible and foreign pharmaceutical companies have to operate out of representative offices which significantly hinders the industry's ability to operate, partner, and invest in Vietnam. The new Decree No. 54/2017/ND-CP (implementing the Pharmaceutical Law), which will take effect from 1 July 2017, introduces new procedures (and requirements) for importers of pharmaceutical products to obtain the CSC. Encouragingly, we note that Decree No. 54 (purportedly) does not discriminate against foreign-invested importers. However, it remains to be seen whether the requirements and conditions will be applied in a consistent and transparent manner.

As Vietnam seeks to provide better healthcare options for its citizens, we hope the Government will commit to providing faster market access and reimbursement for innovative medicines. In addition, we urge the Government to dialogue with the private sector to better understand the trade-offs and impacts of changing the tendering systems on innovative medicines to manage the state budget. Recent policy announcements regarding off-patent originator (OPO) to be merged with Gx (generics) would significantly impact our member companies' ability to contribute to the Vietnamese pharmaceutical market and healthcare sector. Our member companies are worldwide leaders in the healthcare industry and invest significantly in Medical Education/ information, Pharmacovigilance & Quality Control and CSR activities. Our members as part of the multi-national innovative pharmaceutical industry in Vietnam are eager to discuss policy mechanisms that can help meet the Government's goals, while still preserving the necessary incentives for our members to make further investments e.g. in manufacturing, JVs with local companies, etc.

HS Codes

- The requirement for foreign owned distribution companies to list HS codes in their licenses and to amend their licenses each time they import a product under a new HS code, even if no restrictions exist on such imports. Local distribution companies do not face the same requirements, which appear to violate Vietnam's commitment to national treatment under the WTO.

ePayments and Banking Transactions

- Circular No. 19/2016/TT-NHNN on Bank Card Operations covers the issuance, usage, payment, switching, clearing and settlement of card transactions. Under this Circular, Article 24 (which will take effect on 1 January 2018) introduces the insertion of a switching organization approved by the SBV (i.e. NAPAS, whose majority shareholders include SBV and 15 commercial banks in Vietnam) in between all banks and international card schemes, at both the issuer (banks of individual cardholders) and acquirer (banks of merchants) ends. We remain concerned that requiring all transactions to be routed through NAPAS will significantly impede the security, speed and reliability of the transactions, as well as substantially hinder the competitiveness of foreign payment companies. It is critical that Vietnam maintains a conducive environment that fosters competition among local and foreign players to promote innovation, better cybersecurity and more cost-effective solutions and products.

- In implementing Vietnam's new Civil Code, the State Bank of Vietnam (SBV) has issued new banking regulations that create significant challenges for foreign companies. Most recently, Circular 23/2014/TT-NHNN and Circular 32/2016/TT-NHNN do not allow certain foreign agencies (e.g representative offices, branches of foreign organizations, embassies, foreign investment funds, etc.) to directly open bank accounts in Vietnam. In addition, Circular 39/2016/TT-NHNN limits the ability to source for flexible and affordable funding through uncommitted facilities, and impacts local banks ability to partner with foreign lenders to meet the needs of Vietnamese borrowers.

Online advertising

- Decree 181/2013/ND-CP guiding the implementation of the Law on Advertisement (Decree 181) requires a Vietnamese entity to only engage a locally licensed advertisement agency, which restricts opportunities for small and medium enterprises (SMEs) from promoting their products and services domestically and internationally when they advertise their products and services on cross border platforms like Google or Facebook. With limited budgets for advertising and marketing, the Vietnamese SMEs find these platforms the easiest and most effective way to promote their products and services. Unlike large enterprises, these SMEs do not need and cannot afford the engagement of advertising agencies for their advertisement and marketing activities.

Note that none of the above regulations serve to protect consumers from unsafe or illegal products or services. In the above examples, the products, services and brands are already circulating in the market, but their route to market is plagued with unnecessary costs and complications and Vietnam-based businesses and consumers ultimately bear these increased costs in the form of reduced availability and higher prices.

Trade facilitation will not only make it easier for US companies to export their goods and services to Vietnam, it will reduce costs for Vietnamese businesses and consumers. On a visit to Vietnam last year, the Director General of the WTO predicted that the Trade Facilitation Agreement (TFA) could reduce trade costs for Vietnam by as much as 20 percent. The TFA would also boost domestic trade flows, support SMEs to start exporting, and help Vietnamese business connect with cross-border production networks.

The Path Forward

Removing trade barriers will require coordination by a centralized body that incorporates input from all stakeholders and aligns ministerial objectives with the government's trade facilitation goals. Activating a National Committee on Trade Facilitation (NCTF) will fulfill this role and is perhaps the most important step to implementing the WTO Trade Facilitation Agreement (Sec III, Article 23.2), since the NCTF is the national body that will facilitate the domestic coordination and implementation of this agreement. The Prime Minister established the NCTF with the Decree on the Establishment of the ASW and NCTF, 1899/QĐ-TTg, on 4 October 2016. In addition, the Prime Minister issued Decision 1969/QĐ-TTg on 13 October 2016 approving the plan for preparation and implementation of the WTO Trade Facilitation Agreement.

Establishing a road map to a national single window is another important step in implementing the TFA (Sec I, Article 1.3, Enquiry Point), which relates to all aspects of cross-border regulation and compliance. Such a road map should include:

- Necessary reforms to the process should include drafts of any ANY and ALL policies which impact cross border transactions in both goods and services (Sec I, Article 1.1, Publication and Availability of Information).

- The publication of any newly issued or revised regulation for review and comment by relevant stakeholders, followed by the creation of a suitable period for commentary (Sec I, Article 2, Opportunity for Comment, Information before Entry Into Force, Consultations).

IMPROVING THE GENERAL OPERATING ENVIRONMENT FOR BUSINESSES

Removing barriers to trade and improving market access will attract new investors to Vietnam. However, FDI is increasingly reliant on both expansion by investors who are already established as well as the accounts they provide to prospective investors. This means that future FDI depends on improving the general operating environment for businesses.

More importantly, decreasing the cost and complication of doing business will benefit Vietnamese-owned businesses, many of which are SME's, and will spur entrepreneurship, which will, in turn, ensure Vietnam's future competitiveness and growth.

Modernizing Education and Ensuring Appropriate Labor Costs

The foundation for improving the operational efficiency and competitiveness of Vietnamese-based businesses is workforce productivity. Numerous studies show that educational curricula are outdated, teachers overwhelmed and underpaid, and graduates lack the job-ready skills sought by the private sector. To continue attracting investment and to upgrade the skills of its workforce, the government should take further action to modernize and upgrade its national education system, particularly at the vocational and university levels.

Modernizing education will ensure that Vietnam has a skilled workforce of managers, engineers, and manufacturing technicians that can move up the value chain as the economy grows.

Workforce development initiatives will improve worker output, but efficiency also depends on one critically important input: labor costs. Over the years, the rises in the minimum wage and the costs of mandatory insurance schemes have simply not been matched by increases in productivity. The result is that many companies across Vietnam are experiencing declines in productivity for each dollar invested in human resources. This is simply not sustainable. Decisions on minimum wage increases must incorporate considerations of productivity if Vietnam is to remain competitive.

A particular cost concern is the draft proposal by the Ministry of Labor that companies contribute 18% of foreign worker salaries into Vietnam's social insurance fund. If enacted, this would introduce dramatic and destabilizing higher costs for many foreign invested businesses and is unjustified given the unlikelihood foreign employees will ever benefit from such contributions.

Building Sustainable Infrastructure

The quality of Vietnam's operating environment and indeed the quality of life of its citizens rely on environmentally friendly and dependable infrastructure. If Vietnam follows through on plans to nearly quadruple its coal-fired power plant generating capacity over the next 13 years, the country faces the prospect tens of thousands of deaths linked to coal, according to a study by Harvard University. With respect to power needs, there is a clear and urgent need to address the growing shortfall in the supply vs. the demand for electrical power and AmCham believes the *Made in Vietnam* energy plan provides a roadmap to closing the power shortfall in a manner that is sustainable from a financial, environmental and supply chain perspective with a focus of efficiencies, renewables and gas.

The need for continued improvements to the transport infrastructure is increasingly obvious to anyone driving Vietnam's streets and highways. More efficient transport and logistics can play a significant role in increasing productivity and better position Vietnam to benefit from global demand, serve domestic markets, attract investment and generate quality jobs.

However, it is clear that Vietnam cannot address infrastructure needs and opportunities from government coffers and decreasing overseas development assistance. The country will need increased private sector participation. Private investment often depends on government guarantees that in turn depend on a steady strengthening of the government's balance sheet. This will require the continued divestment of SOEs that will not only provide the treasury with more cash, but also will stimulate capital markets and reduce corruption, as divested companies become more reliant on market forces and independent shareholder oversight. In addition, divestment will hopefully contribute to a more level playing field.

In this respect, we must recognize and applaud accomplishments of Prime Minister Phuc and his Government in pushing for a more vibrant, open playing field for businesses of all sectors, sizes and nationalities and in calling for a more business friendly operating environment. Under Mr. Phuc's leadership, we have seen a commitment to the opening of the energy sector through significant progress on the PetroVietnam-ExxonMobil Gas to Power Project in Central Vietnam, stimulation of the tourist sector and business travel through reciprocal one-year visas for US and Vietnamese citizens visiting each other's countries, and, we hope through the granting of gaming licenses to local and foreign investors. We have also seen strong leadership in pushing equitization of SOE's, continued administrative reform, and the elimination of red tape via efforts such as Resolution 35.

Shared Commitment to Develop Vietnamese SMEs

In conclusion, AmCham fully supports the government's commitment to the development of Vietnamese SMEs and its facilitation of their increased participation in global supply chains.

We are dedicated to assisting these efforts through our participation, alongside VCCI and USAID, in the Vietnam Trade Facilitation Alliance. This Alliance provides technical assistance related to customs administration, trade facilitation, and food safety. This year, AmCham will also be expanding its highly popular Supplier Day program that allows FDI companies to meet Vietnamese enterprises and establish business relationships.

We also congratulate the government on the hosting of APEC 2017 and express our hope and confidence among the business community that Vietnam is moving and its best days are ahead of it.

I wish good health, happiness and success to the leaders, distinguished guests, and our members here today, and I thank you for this opportunity to address the Vietnam Business Forum.