**POSITION PAPER OF INVESTMENT AND TRADE WORKING GROUP**

*Prepared by*

*Investment & Trade Working Group*

# The EVFTA, Comprehensive and Progressive Trans-Pacific Partnership, and other important Trade Agreements

The Investment and Trade Working Group takes note of the fact that the EU–Vietnam Free Trade Agreement will be on the Agenda of the EU Parliament by mid-2018 and when that happens, we hope that the 750 Members of the European Parliament will give their approval in a plenary session, just as we hope the National Assembly will do for Vietnam. We have seen an increasing questioning from the public in general of the benefits of trade liberalization. In this context, the Investment and Trade Working Group expects the European Parliament members to raise questions on regulations that the Vietnamese Government has recently adopted notably in the Pharmaceuticals and Wine & Spirits sectors, sustainable development and the implementation of the Paris Agreement, and finally human and labor rights. All these issues will be extremely important and we need to anticipate and actively address the concerns the Members of the European Parliament and national constituencies.

There are some fears that recent developments could lead to a risk of a reduction of Vietnam’s imports from the EU as the EU-Vietnam FTA is not yet in force. We hope that the Government should not withdraw with one hand what has been committed with the other hand, for example by increasing internal taxation in anticipation of a reduction in import taxes or opening up markets to imports while restricting domestic distribution and thus sales of those imported goods.

In addition to the EU-Vietnam FTA, the Investment and Trade Working Group supports Vietnam's participation in the proposed Comprehensive and Progressive Trans-Pacific Partnership ("CPTPP") and several other important pending trade agreements. For the CPTPP in particular, we believe that this landmark agreement between 11 of the 12 "TPP" countries will create growth, jobs and sustainable economic and social development right through the region. Last June, we encouraged the Vietnamese government to push forward with a number of other important trade pacts, including the EU-Vietnam FTA, the Regional Comprehensive Economic Partnership and other important agreements. Our position on these agreements has not changed. Each offers opportunities, and together they offer even greater opportunities.

# Other Supply Chain Obstacles and the Implementation of Resolution 35

## Supply Chain Obstacles

### Decree 23 - "Trading License"

##### **Issues**: Some issues remain from our last Forum:

### The Decree 23 requires a “trading license” for foreign invested enterprises engaged in import and distribution of any kind of product. This is in addition to the existing approvals included in their Investment Registration Certificates (“IRC”) and Enterprise Registration Certificates (“ERC”), as well as any product specific special condition imposed for purposes of safety, human health or the environment. This requirement for a trading license is not timely response from the government, the criteria for issuance are opaque and it should be done away with as a nontariff barrier.

### In particular, the MOIT is not required to follow specific timeline for review and issuance of the trading license and in practice, the MOIT can take several months, on average 3-4 months, for this review process.

### The draft Decree to replace Decree 23 further proposes to impose this requirement on the following areas of business activity, among others:

### Commercial promotion services;

### Commercial brokerage services;

### Leasing goods service;

### E-commerce service;

### Logistic service;

### Inspection service;

### Market research service;

### Management consulting service;

### Service related to production;

### Auction service;

### Tendering service;

### Commodity exchange, or member of a Commodity exchange; and

### ***Other commercial activities related to the purchase and sale of goods***. *(Emphasis added).*

### The last item means that literally any service that touches on the sale and purchase of goods may be deemed subject to the "trading license" requirement.

##### **Suggestion**:

### We have raised this issue before and the only response has been a citation to the offending measure. We respectfully request that the measure itself be scrutinized more carefully with a view to a more transparent and efficient approach.

### HS Code Requirement for FIE Trading License

##### **Issues**:

##### According to Article 5 of Decree 23/2007, an FIE must obtain a Trading License prior to its conduct of trading/distribution activities. Although Decree 23/2007 does not explicitly require it, the MOIT has issued many official letters, e.g., Official Letter No. 0304/BCT-KH on 9 Jan 2008 to DPI Ho Chi Minh, requesting FIEs to include the exact HS codes in their applications and local DPI to include specific HS codes in the Trading License (prior to 2015, in the Investment Certificate).

##### The requirement that foreign invested trading enterprises include the HS Codes of the products they import and distribute in their Trading License and Retail Store Licenses (for 2nd store onward) seems not only unnecessarily onerous and burdensome, it also seems to raise an issue of National Treatment in so far as domestic trading companies are not subject to the same handicap.

##### In other words, domestically-owned companies are not subject to the same requirement, so it is therefore discriminatory against foreign-invested traders. This handicap prevents foreign invested trading companies from supplying in a timely manner all kinds of imported components, raw materials and finished products needed for the supply chain to function efficiently because it requires them to amend their Trading License and Retail Store Licenses each time they want to offer a new product. This requirement applies even where the product in question is not subject to any condition or special licensing requirement.  In any case, issues of safety, human health, and the environment are already addressed in other regulations applicable to the importation of goods. Therefore, this measure is redundant and unnecessary, constituting a discriminatory nontariff barrier, and we respectfully suggest that it should be eliminated.

##### **Suggestion**:

##### Decree replacing Decree 23 should provide that FIEs' licenses do not include reference to HS codes, and they can trade any products that are not prohibited by the laws.

### "Economic Needs Test"

### We have questioned the need for the so-called “Economic Needs Test” (“ENT”) many times and have never received a satisfactory answer as to why it is necessary. There are no objective criteria for its application and all it does is present in another handicap to foreign retailers seeking to develop the market. The ENT would have been eliminated in five years under the CPTPP and the EU-VN FTA, recognizing its uselessness. Why not accelerated this reasonable measure and help the many retail construction projects looking for good tenants around the country by giving full play to the spirit of the WTO commitments to open the market to foreign important distribution services?

**Issue**:

Under Vietnam's WTO Commitments, *"the establishment of outlets for retail services (beyond the first one) shall be allowed on the basis of an Economic Needs Test (ENT). Applications to establish more than one outlet shall be subject to pre-established publicly available procedures, and approval shall be based on objective criteria. The main criteria of the ENT include the number of existing service suppliers in a particular geographic area, the stability of market and geographic scale".*

Accordingly, foreign invested enterprise is subject to ENT if it establishes second retail store and onward, if the store is from 500sqm and/or is not in a retail zoning area, such as a mall or department store.

The ENT councils are established at the province/city level, including representatives of DPI, DOIT, and relevant District, to review and give their opinion on each store, based on the ENT criteria provided under Decree 23/2007.

The problem that enterprises in this sector are facing now is that MOIT does not accept the results of ENT review of the ENT council at its discretion, even when the ENT council has issued its supportive opinions. MOIT has requested applying enterprises to provide the following data: (i) Quantity of retail stores, (ii) stability of market, (iii) residential density and (iv) scale of district-level localities where are expected for the setting up of retail establishments, so that ENT council can specifically re-confirm that relevant enterprise meets each and every one of such criteria.

This request from MOIT is not in compliance with Decree 23/2007, under which the ENT council's opinion is required only 1 time. Furthermore, an enterprise does not have either the obligation or the resources to obtain the macro-economic and zoning data in order to give to the authorities to support each of its retail store applications. This has caused and will cause tremendous unofficial fees for the enterprises.

### Furthermore, there is currently no regulatory timeframe for the ENT council or the MOIT to respond to a retail store application/ENT case. In practice, MOIT has taken many months to issue the approval even upon issuance of ENT approval by ENT council.

### **Suggestion**:

### Decree replacing Decree 23 must provide clearly on procedures, timeline, obligations of each of the authorities involving in this ENT in order to reduce time cost and unofficial cost for enterprises. The Decree must clarify the ENT applies for the 2nd physical store onward only. The principle of National Treatment should be respected.

### Customs Clearance

### Although Vietnam’s customs procedures are currently being modernized with a new electronic customs clearance system (‘e Customs’), launched in 2014, delays are still common. These have largely been attributed to a number of inefficient and manual customs processes, including cargo inspections that lack transparency and consistency. For example, it takes, 21 days to export a cargo shipment from Vietnam, compared to 14 days from Thailand and 11 days from Malaysia. To be fair, most of the commonly cited delays are "behind the border" issues, including non-tariff barriers imposed by authorities other than customs, especially in the name of health and safety.

##  Banking Issues - From the Enterprises' Perspective

### Circular 32 on Current Account Opening:

### The Circular 32 restricts the legal entity regarding opening a bank payment account, which stipulates two subjects: (1) individuals, and (2) enterprise established under the Enterprise Law. Since the implementation of this Circular, specific organizations such as representative offices, non-governmental organizations, business associations and other organizations are considered non-legal entities to open a bank account.

### We urge the early review of this measure to ensure normal financial operations of all forms of legal business activity.

## Investment Environment

### **Housing**

### Everyone here is aware that Vietnam has made great progress in creating a hospitable investment environment, in which local and foreign businesspeople and their families can work in an atmosphere that is secure and comfortable. Schools and hospital services have improved dramatically, there are more entertainment, cultural and recreational options. One element that has proven elusive is in the area of home ownership. Although rules have already been issued that allow limited sales of certain types of condominiums and villas to foreign buyers, implementing rules have not been followed in a timely manner and as a result there is much confusion and risk in the market.

### The biggest outstanding issue right now is the implementation of the restrictions on foreign ownership of housing in Vietnam, which affect foreign buyers' right to own houses in Vietnam for more than two years. The 2014 Housing Law, which allows foreign buyers to own houses in Vietnam, became effective on 1 July 2015; and Decree No. 99/2015/ND-CP ("**Decree 99**"), which specifies the mechanisms for implementing foreign buyers' right to own houses in Vietnam, became effective on 10 December 2015.

### Decree 99 requires the Ministry of Public Security ("**MOPS**") and the Ministry of National Defence ("**MOND**") to identify the areas that are subject to national security and defence and inform the provincial people's committees. According to the MOPS's official dispatch No. 786/BCA-TCAN dated 19 April 2017 and the MOND's official dispatch No. 10328/BQP-TM dated 19 October 2016, we understand that these have been done.

### The provincial people's committees must then base on those guidelines of the MOPS and MOND to instruct the provincial departments of construction to identify the commercial housing projects where foreign individuals and organizations are not allowed to own houses. In the particular case of Ho Chi Minh City, based on the public information, we understand that this has been done in July 2017.

### Those are good signs that the government is keen to move things forward. The final work of identifying commercial housing projects where foreign individuals and organizations are not allowed to own houses, and publishing those information online is now to be done by the provincial departments of construction.

### However, it appears that no progress has been made from the provincial departments of construction's side. Thus, this long delay really concerns foreign individuals and organizations who are interested in buying houses in Vietnam. We hope that the provincial departments of construction will work more actively and closely with other relevant authorities to resolve these issues in accordance with the instruction of the provincial people’s committees. This is the final step to finally effect foreigners’ right to buy houses in Vietnam, which was supposed to be effective more than two years ago.

### Another notable problem is the technical limitations in ownership registration. Foreign ownership of condominiums in a residential tower is limited to 30%, but the Ministry of Construction and its local departments have not yet implemented the necessary system for registering and tracking the number of foreign owned apartments in a given project, so the secondary market has frozen up completely. In most provinces, there seems to be no system for changing the ownership category from local to foreign once a property has been sold to a local buyer. This kind of risk only increases the cost of capital that is needed for building up Vietnam’s housing stock. We hope that these issues can be sorted out soon so the market can start to operate normally.

## Labor: Draft Decree on Compulsory Social Insurance for Foreign Employees Working in Vietnam – Concerns over Rising Employment Costs

Investors - both foreign and domestic - are concerned that the rapidly rising cost of labor may undermine Vietnam's attractiveness as an investment destination and the Government's ability to continue generating jobs for the young people coming into the labor market will be affected. The chart below shows that Japanese investors are more concerned about this trend in Vietnam than almost anywhere else.

* *Proportion of Japanese enterprises responses that wages increase causes business concern (According to JETRO investigation in 2016):*



There are a number of causes for the increase labor cost, one of which is the ever rising and expanding application of payroll taxes. Recently, a Draft Decree detailing and guiding the implementation of the Law on Social Insurance ("Draft Decree") which the Ministry of Labor, Invalids and Social Affairs ("MOLISA") was recently released for public comment. It provides that from January 1 2018, compulsory social insurance will apply to foreign employees working in Vietnam. This requirement will increase the employment costs for companies doing businesses in Vietnam, and we are concerned that it is part of a greater trend towards higher employment costs that will undermine the competitiveness of the overall economy.

According to this Draft Decree foreign employees and their employers will be subject to compulsory social insurance contribution. This includes foreign employees who:

* are working in Vietnam under indefinite-term labor contracts, definite-term labor contracts, or seasonal or specific job contracts with durations of more than one (1) full month with employers based in Vietnam, and
* have been granted either (i) a work permit ("giấy phép lao động" in Vietnamese), (ii) practicing certificate ("chứng chỉ hành nghề" in Vietnamese) or (iii) practicing licence ("giấy phép hành nghề" in Vietnamese).

The Draft Decree proposes that foreign employees working in Vietnam will be required to pay into all five regimes of the Vietnamese compulsory social insurance, which are currently applicable only to Vietnamese employees, namely: (i) sickness, (ii) maternity, (iii) labor accident and occupational disease, (iv) retirement and (v) survivorship allowance. The contribution rates imposed on both employers and foreign employees will be the same as applicable for Vietnamese employees; specifically 8% from the employees and 18% from the employers, respectively, based on their actual monthly salaries and benefits, and capped at 20 times of the applicable General Minimum Wage.

According to the Draft Decree, the processes and procedures for foreign employees’ participation in the Vietnamese compulsory social insurance regimes would not be different from the current procedures applicable to Vietnamese employees, which are provided for under the 2014 Law on Social Insurance. The Draft Decree provides some details on the contents of dossiers for the foreign employees' participation in the scheme, but there are concerns about how accessible the regime will be when those who pay in need to claim their benefits.

The Draft Decree and the Proposal Statement introducing it, address some of the concerns that will arise. For example, the Proposal Statement provides that the accumulation of periods of social insurance premium contribution is not regulated in this Draft Decree, and this principle will be applicable only to the nationals whose countries have signed bilateral agreements with Vietnam on this matter. This seems to be because of the difficulties of calculating contribution periods when the foreign employees work in many different countries. In addition, foreign employees subject to this Draft Decree would be entitled to a lump-sum social insurance allowance upon their request in case their labor contracts or work permits expire and they do not continue working under the contracts or extend their work permits. The foreign employees are supposed to make their requests within 30 days prior to the expiry date of their contracts or work permits (the earlier date would be applicable), and the insurance authority is supposed to be responsible for settling and paying the allowance to the employees within 10 days upon the date of the receipt of proper requests. The calculation of the lump-sum social insurance allowance applicable to foreign employees would be the same as what is currently applicable to Vietnamese employees according to the Law on Social Insurance. However, any foreign employee who has ever tried to claim benefits under the health insurance scheme will already know that it may well be practically impossible to realize the benefits he/she has paid for until many unexpected administrative procedures are resolved.

To assess the financial impact of the Draft Decree, below is a table that calculates how much the change would cost a business, using the current applicable General Minimum Wage and Regional Minimum Wage:

|  |  |  |
| --- | --- | --- |
| Year | 2018 | 2018 |
| Contributors | Employer | Vietnamese employee | Employer | Foreign employee |
| Social insurance  | 18% | 8% | 18% | 8% |
| Unemployment insurance | 1% | 1% | [N/A] | [N/A] |
| Health insurance  | 3% | 1.5% | 3% | 1.5% |

This scenario assumes:

* Social insurance and health insurance are calculated based on actual monthly salary capped at VND24.2 million (approximately US$1,100), being 20 times of the current General Minimum Wage, which is VND1.21 million at present;
* Unemployment insurance is calculated based on actual monthly salary capped at VND52 million to 75 million (approximately US$2,400 to 3,400), meaning 20 times of the Regional Minimum Wage, which ranges from VND2.58 million to VND3.75 million, depending on the regions, at present.

To illustrate, the chart below shows the actual costs of employment in regards to the total contribution to the three social insurance funds at four levels of wages for an employer based in Ho Chi Minh City, which belongs to Region I, using the current applicable General Minimum Wage and Regional Minimum Wage:

Exchange rate: 1 USD = 22,800 VND

|  |  |  |
| --- | --- | --- |
| Salary range | Salary used to calculate the contribution (VND) | Total Contribution (VND/USD) |
| For Social Insurance and Health Insurance | For Unemployment Insurance  | Employer | Vietnamese employee | Employer | Foreign Employee |
| The current applicable minimum wage(for Region I: VND 3,750,000) | 3,750,000 | 3,750,000 | VND 825,000/USD 36.2  | VND 393,750/USD 17.3 | VND 787,500/USD34.5 | VND 356,250/USD15.6 |
| USD400  | 9,120,000 | 9,120,000 | VND 2,006,400/USD 88 | VND 957,600/USD 42 | VND 1,915,200/USD 84 | VND 866,400/USD 38 |
| USD4,000  | 24,200,000 | 75,000,000 | VND 5,832,000/USD 255.8 | VND 3,049,000/USD 133.7 | VND 5,082,000/USD 222.9 | VND 2,299,000/USD 100.8 |
| USD10,000  | 24,200,000 | 75,000,000 | VND 5,832,000/USD255.8 | VND 3,049,000/USD133.7 | VND 5,082,000/USD222.9 | VND 2,299,000/USD100.8 |

Applying these calculations, a combined contribution of USD$ 323.70 for an employee with wages of USD$4,000 per month will be considered burdensome by many, especially if there are any issues with redemption, pay-out and remittance at the end of the contract period.

Moreover, the Draft Decree seems to make mandatory what the Law on Social Insurance had initially held out as an optional benefit. The 2014 Law on Social Insurance provided that from January 1, 2018, to require that foreign employees working in Vietnam under a work permit, practicing certificate, or practicing licence issued by a competent body of Vietnam “will be allowed to” participate in the compulsory social insurance program. However, the Draft Decree makes it sound more like an obligation than a right to pay into the social insurance program.

Adding in this new tax, Vietnam's taxes on workers will be among the highest in the region, taking into account the number of taxes, high rates, and broad bases (which include not only salary but all forms of benefits). Stakeholder comments were only welcome until June 12th, so it may be too late to reconsider, but to ensure the smooth implementation of this change we would encourage the drafters to consider taking more time to introduce this important change in the employment environment. Otherwise, this Draft Decree will come into force on January 1, 2018.

## Commercial Promotions - Draft Decree Detailing the Law on Commerce regarding Commercial Promotion Activities

**Issue**:

Around the world, sales promotions are a common way to clear products of enterprises, as long as such activities do not violate competition laws, anti-dumping regulations, and consumer protection laws, which are all in place.

Under the current regulations, enterprises wish to conduct sale promotions are subject to many restrictions: i) value cap of 50% of products; ii) time limitation of 90 days per year, and 45 days per launch; iii) onerous notification and registration procedures at 56 provinces and central cities where the sale promotion is offered; and iv) post-event report and contribution to State budget if the sale promotion value is not used up in certain cases (such as lucky draws).

In practice, the costs for complying with these notification and registration procedures can be prohibitive. For a retailer, which sells hundreds of types of products, notification and post-event report with all provinces can be extremely expensive.

**Suggestion**:

Draft decree replacing Decree 37/2006 on sales promotions should eliminate the unreasonable restrictions and procedures, which shall reduce costs for enterprises and benefit consumers.

## Importation of used/refurbished machinery and equipment - Draft Circular replacing Circular No. 23/2015/TT-BKHCN

**a. Scope of management (Article 1)**

***Issue:*** *The new draft circular on the importation of used equipment is not an improvement on the current, problematic rules. First, the new draft extends restrictions to certain types of temporary imports for re-export*

Under the current Circular No. 23, the restriction only applies to temporary imports for re-export for implementation of toll manufacturing contracts, production or implementation of investment projects.

Nonetheless, the draft extends the age restriction to other types of temporary imports for re-export by only excluding the business of temporary imports for re-export out of the scope of its management. This means that if the draft enters into force, temporary imports for re-export for exhibitions, conferences, training and certain other purposes would be subject to the same restrictions.

Such extension is not consistent with the main principle of this draft, which is to manage used machinery/equipment in production and business operations as set forth in Article 1.1 of the draft.

Further, that the draft imposes such restriction to the aforementioned activities would cause difficulties for enterprises in operating their businesses as enterprises do not need to temporarily import new machinery/equipment for such purposes (i.e. exhibitions, conferences, training). In other words, the Vietnamese government is burdening enterprises' operations by pushing them to arrange more financial resources for activities that do not harm the environment.

***Proposal:*** We suggest keeping the same scope of management as regulated under Circular No. 23 or, better yet, leave the issue to more relevant authorities.

**b. Requirements applied to Used Machinery/Equipment in Investment Projects (Article 7)**

***Issue:*** *New requirements applied to Used Machinery/Equipment in Investment Projects*

The draft is also a step backward as compared to Circular No. 23 as used machinery/equipment in investment projects no longer receive exemptions from the age requirement as set forth in Circular No. 23.

Given the overall policies to attract foreign investment, and the purpose of environmental protection, we take the view that the new requirements applied to used machinery/equipment in investment projects are not practical as Vietnam has established standards and regulations to manage and supervise the environmental impact of imported machinery/equipment. As such, it is not necessary to impose further barriers to used machinery/equipment in investment projects.

Nonetheless, among three Options as proposed in the draft, we are inclined to favor Option 1 as Option 2 and Option 3 may cause certain difficulties during implementation.

Particularly, for Option 2, given the variety of machinery/equipment, it may be not be consistent to determine which parts are the "main parts" of a given production chain. Also, it may not be applicable to the importation of a single machine. The appraisal to determine the remaining age would burdensome if the criteria and standard to define remaining age are not clear.

For Option 3, the appraisal to determine the remaining value would also prove to be a burdensome process as it depends on the appraisal of each testing agency, and such appraisal may not be consistent if the criteria and standard to define remaining value are not clear.

Also, we propose to extend the age requirement in Option 1 to 25 years, instead of 20 years. Practically, machinery/equipment, especially those with G7 standards, can be designed and maintained to run well despite their 20’s age. Packing, printing, molding, thermoforming machineries are some examples. Regular and good maintenance, good program of upgrade/refurbishment can enable the machines to run at target condition. High sense of equipment ownership together with a rigorous preventive maintenance program enables machines to be cared for in a state that they appear and run as new machines.

**c. Importation Procedure for Machinery/Equipment in Investment Projects (Article 10)**

***Issue****: The two-stage application process is burdensome and risky for enterprises*

While we appreciate the MOST's efforts to facilitate the implementation of exemptions for investment projects, the two-stage application process tends to create uncertainty for applicants. Particularly, for Stage 1, in order to receive exclusive treatment for used machinery/equipment in investment projects, investors must identify the list of used machinery/equipment at the time of applying for an investment decision/Investment Registration Certificate. Nonetheless, at this stage, the MOST does not make final decisions by providing preliminary comments to the application. While the draft is not clear on this point, we understand that the licensing authority only grants Investment Registration Certificates if the MOST's preliminary comments are positive, which is to say that the importation of used machinery/equipment as listed in an application dossier is accepted.

The final decision is only made during Stage 2, which is 30 days before actual importation when the investors, after receiving an Investment Registration Certificate, submit a subsequent dossier to the MOST. At this stage, the MOST is still able to refuse importation.

Such regulations bring about risks to investors, namely that the MOST may change its mind during Stage 2 by refusing the importation of the used machinery/equipment in question, while the investors must decide to invest in Vietnam on the basis of the MOST's preliminary comments during Stage 1.

In addition, the two-stage process as suggested in the draft is unnecessarily time consuming and costly as, in practice, the MOST may make its final decision during Stage 1 rather than wait until Stage 2 because, in principle, there is almost no difference in application documentation, except for the Appraisal Certificate, which may be submitted during Stage 1.

***Proposal****:* We propose combining Stage 1 and Stage 2 into a single-stage application process, i.e. the MOST will make its final decision before or during the investment decision/Investment Registration Certificate application process. This is critical for investment licensing authority to approve an investment project, also for Investor to decide if it will go with the investment or not.

**d. Validity and place of Appraisal Certificate (Article 12.6)**.

***Issue:*** *The draft only provides a six-month validity period for Appraisal Certificates and requires the Appraisal before importation.*

We propose extending the validity period to 12 months as the appraisal process is complex and time consuming. Also, the packing/transportation of machinery/equipment in international transactions (e.g. by sea) requires a considerable amount of time.

We propose to accept the Appraisal either before the importation or in Vietnam. In case of the later, enterprise can temporarily bring the equipment to its warehouse/plant and supplement the Appraisal within 30 days for customs clearance in accordance with customs clearance procedures.

**e. Exceptional approval by MOST in special case (when shelf life is greater than those provided in Art 7 – i.e. 20 years) – Art 15.2:**

The draft sets more barriers/conditions vs current Circular No. 23 by proposing situation where the used equipment cannot be considered for import: complicated technology, remaining shelf life less than 10 years. Such conditions are unclear and not feasible to prove. We suggest to remove Article 15.2.

**f. Transitional Clause (Article 17)**

***Issue:*** *The draft excludes its effect in the event that a “contract is signed and machinery/equipment are on board for shipment before the entry into force of the new Circular,” which is the same as the transition clause in the current Circular No. 23 and, therefore, not reasonable.*

Particularly, such regulations would give rise to controversy on how to treat the equipment that has been approved by the MOST in accordance with Circular No. 23 before the effect of the new Circular, but the shipment is made after the entry into force of the new Circular.

***Proposal:*** We suggest the transition clause as follows:

“*The Circular shall not be applicable to following cases, unless where it is more favorable for enterprises:*

* *A purchase contract is signed and used machinery/equipment is shipped on board before the effective date of the new Circular; or*
* *Used equipment has been approved by the MOST in accordance with Circular No. 23.*

*Unless the procedures under this Circular is more favorable and enterprise choose to go with it, used equipment have been approved by MOST in accordance with Cir 23 shall be continued implementing in accordance with Circular 23”.*