



**POSITION PAPER OF EUROPEAN CHAMBER OF COMMERCE IN VIETNAM  
("EuroCham")  
MIDTERM VIETNAM BUSINESS FORUM 2017**

Honorable Deputy Prime Minister, Ministers, Dear VBF colleagues, Ladies and Gentlemen,

My name is Tomaso Andreatta and I am Vice Chairman of EuroCham, a founding Board member of VBF. On behalf of EuroCham and its partner European Business Associations, I would like to thank the Ministry of Planning and Investment and all the authorities represented here today for facilitating this on-going constructive dialogue with the private sector through the Vietnam Business Forum.

So far, 2017 is a significant year for Vietnam and its relationship with its European counterparts, because it is expected that the EU-Vietnam Free Trade Agreement (EVFTA) will come into force in 2018. EuroCham and its Sector Committees have been working jointly with relevant stakeholders to support the implementation of EVFTA via their engagement in preparation of the EVFTA roadmaps in each sector. Vietnam, is the second ASEAN country to negotiate an FTA with the EU, after Singapore and the first to sign and implement it. The EVFTA is going to be Vietnam's turning point in terms of its global trade in 2018 and beyond. Conversely, it also makes Vietnam the most promising business destination for European companies in Southeast Asia. This is not only because of its undeniable own potential, but also as a future hub for many business sectors in the Association of South-East Asian Nations (ASEAN).

The first general estimates of the EVFTA's impact show clear gains for to Vietnam's growth and welfare, as well as for overall trade between the EU and Vietnam. And Vietnam will be the bridge linking more than 500 million people in South-East Asia and more than 500 million Europeans a fantastic prospect.

For goods, nearly all customs duties - over 99% of the tariff lines will be eliminated. The small remaining number is partially liberalized through duty-free quotas. The market will be opened for most of EU food products, i.e. wine, spirits and frozen pork meat after seven years. For dairy products, after a maximum of five years. This is an unprecedented far-reaching tariff elimination for a country like Vietnam, proving its targets for deeper integration and trading relations with the EU. From the EU's side, the EU agreed to eliminate duties for about 85.6% of Vietnamese goods immediately and 99% of its tariffs after 5 years and clear all import tariffs after 7 years.

For service providers, (sub) - sectors that are not committed under the WTO but under which Vietnam makes commitments are, for example: interdisciplinary research and development (R&D) services, nursing services, physiotherapists and para-medical personnel, packaging services, trade fairs and exhibitions services and building-cleaning services. Moreover, it is noteworthy that the EVFTA contains a Most Favorable Nation clause that allows one party to grant the other party the best treatment that the former is negotiating with other partners under another framework. You will see many EVFTA commitments references in our Sectoral inputs presented later.

EuroCham is pleased to acknowledge the recent efforts that the Vietnamese Government has made to further improve the business environment and increase Vietnam's competitiveness. The Ministry of Planning and Investment (MPI) executed the implementation of the Law on



Investment<sup>1</sup> (LOI), while a number of the business conditions in certain sectors have been reduced in Law on Enterprises<sup>2</sup> (LOE). The Ministry of Finance (MOF), especially the General Department of Customs (GDC), has simplified customs procedures and continue ongoing policies dialogue at working level. On the other hand, the General Department of Taxation (GDT) provides quick and professional feedback to businesses' recommendations as well as welcomes feedback from business community at the earlier stage. Simplification of administrative procedures has been seen at the Ministry of Industry and Trade (MOIT), in addition to the issuance of Circular No. 23/2016/TT-BCT<sup>3</sup> deregulating Circular No. 37/2015/TT-BCT. We also appreciate the joint efforts of the Ministry of Agriculture and Rural Development (MARD) and Ministry of Health (MOH) in the recent changes in conformity announcement of food, raw materials and additives for export processing<sup>4</sup>, etc.

At EuroCham, we have been following the development of the Government's directions, e.g. Resolution 19<sup>5</sup> and Resolution 35<sup>6</sup> with great attention. These Resolutions represent ambitious and advanced policy guidelines, pushing the finishing line for Vietnam in best sense of the word, and manifesting an ambitious will for the country to take its place among the great economic forces in the region and in the global market. Since their issuance, we have really seen positive efforts and changes in an open-minded, tectonic and constructive approach with business community being at the focus. Under the spirit to fully support the Government in pursuing its objectives and goals, EuroCham members are willing to contribute our comments and recommendations and this paper aims to identify the pending issues and share with you the solutions to further improve the business climate in Vietnam.

## **I. Increasing livelihood of people**

### **1. Healthcare as one of the Government's priorities. These are the comments from EuroCham Healthcare Forum Sector Committees**

#### **a. Pharmaceuticals – Pharma Group**

The Vietnamese pharmaceutical sector today is at a cross-road. Demand for quality medicines will continue to increase in the years to come, driven by an increase in GDP per capita, investments in infrastructure, universal health insurance coverage and a shift to non-communicable diseases. Domestic supply is insufficient, and after many years of pharmaceuticals being a conditional business, the Vietnamese healthcare sector remains under-developed and fragmented. In order for Vietnam to meet the demand of its citizens in the future years, investments are required in infrastructure and services, from both foreign and local investors.

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<sup>1</sup> Law No. 67/2014/QH13 dated 26<sup>th</sup> November 2014 on Investment

<sup>2</sup> Law No. 68/2014/QH13 dated 26<sup>th</sup> November 2014 on Enterprises

<sup>3</sup> Circular No. 23/2016/TT-BCT dated 12<sup>th</sup> October 2016 of the Ministry of Industry and Trade on abolition Circular No. 37/2015/TT-BCT on permitted limits and inspection over formaldehyde content and aromaticamines released from Azo dyes in textile products

<sup>4</sup> Official Letter No. 8253/BNN-QLCL dated 30<sup>th</sup> September 2016 of the Ministry of Agriculture and Rural Development to agree with the exemption of conformity and food safety compliance announcement, exemption of sub-labels and Vietnamese labels for imported raw materials to be processed for export.

<sup>5</sup> Resolution No. 19-2017/NQ-CP dated 06<sup>th</sup> February 2017 on main duties and measures for improving business environment and enhancing national competitiveness in 2017 and orientation towards 2020

<sup>6</sup> Resolution No. 35/2016/NQ-CP dated 16<sup>th</sup> May 2016 on business support and development towards 2020

**The new Pharma Law<sup>7</sup>** represents a major step to build a predictable legal framework to attract both local and foreign investors, and to ensure a continuous supply of high quality drugs at affordable prices. The new Pharma Decree, proposes a **highly limited, impractical scope of activities for FIE legal entities in Vietnam**. It limits market access, creates legal uncertainty for existing and new investors in Vietnam and conflicts with existing legislation. As such, it does not create a level playing field for companies in Vietnam, discourages FIE and negatively impacts existing investors. Furthermore, the Decree attempts to expand the definition of distribution, to include regular supply chain activities such as warehousing, transportation and order-taking. Such supply chain activities are required to support the quality and continuity of supply of high quality pharmaceuticals, with the preservation of quality being an obligation under Pharma Law 2016 for FIE importers. We believe Foreign Invested Enterprises (FIE) to be critical in bringing investments, but also in terms of partnerships that transfer knowledge and technology into Vietnam. In innovative sectors like life-sciences investments are measured very differently and one cannot be looking at capital (bricks and mortar) investments alone, as large scale investments are not always the most cost-efficient long-term solution in the pharmaceutical sector.

The Prime Minister Nguyen Xuan Phuc has identified Healthcare as one of Vietnam's strategic priorities. In order to successfully deliver on this strategic priority, supporting policies need to adequately address and balance the trade-offs between the **3 pillars of healthcare: Patient Access/Health Outcomes, Industrial Development and State Budget**. Equally important, policies should always ensure: Predictability, Sustainability and Compromise leading to a Win for Patients, Win for Government and a Win for industry.

Consequently, we urge the Government to **facilitate a regular, formal Dialogue between the Ministry of Health, Vietnam Social Security, Ministry of Planning and Investment and Ministry of Industry and Trade to discuss policy** aspirations based on international experience and adapted to the Vietnamese context. Facilitating such a dialogue at the soonest convenience would send a very positive signal to the pharmaceutical industry, which would not only act as a bell-weather for other industries, but also further open Vietnam's window of opportunity to become an ASEAN hub for high-quality, innovative pharmaceutical manufacturing.

## **b. International Quality Generics**

- **Universal health coverage:** Universal coverage has been the most critical healthcare priority in Vietnam over the past few years. The Government targets to reach 90% of the population with access to public healthcare insurance by 2020, with the majority of patients in Vietnam currently treated with Off Patent Pharmaceuticals (OPP) including off-patent originators, branded generics and unbranded generics. This healthcare transformation towards universal health coverage, as a result, orients the needs for high quality generic pharmaceuticals and efficient management of government funds. In order to address the above needs, it is crucial for a proper approach on differentiation of OPP in Vietnam's healthcare decision making to be in place, which ensure early patient access to high quality OPP products as well as sufficient public spending on healthcare management.

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<sup>7</sup> Law No. 105/2016/QH13 dated 06<sup>th</sup> April 2016 of the National Assembly on Pharmacy

- **Limited differentiation:** Unfortunately, at the moment there is a limited differentiation of OPP in Vietnamese healthcare decision making (specifically in area of registration, reimbursement, formulary listing, pricing), therefore the International Quality Generics Group (IQGx) has initiated evidence based Health Technology Assessment (HTA) for OPP to sustain accessibility of affordable and good quality medicine to the Vietnamese population. Learned from the best practices in other markets, this approach has a number of key positive impacts which can have relevant potential gains for Vietnam's healthcare industry such as: Ensure comprehensive patients outcome and safety; Sustain high quality OPP for Vietnam patients with reliable pricing; Ensure efficiency in government spending; Increase quality standard within OPP manufacturers; Supply reliability for Vietnamese patients.

- Evaluating current infrastructure conditions, the IQGx Sector Committee proposes to the Government the **implementation of 3 important activities** which will support the initiative.

- To upgrade differentiated category mechanisms in hospital tenders taking into consideration the real life patient outcome benefit factor. Differentiated categories will ensure medicine with the same quality level to be reimbursed and evaluated in the same lot. This will sustain access of quality medicine in hospital tender.
- To impose Multi-Criteria Decision Analysis (MCDA) evaluation in drug decision making, i.e: National Reimbursement Drug List (NRDL). Multi-Criteria Decision Analysis will ensure a comprehensive and transparent mechanism. Giving the importance of NRDL and comprehensive dossier needed in its evaluation, MCDA would be the best-fit solution for evaluation mechanism. Furthermore, MCDA will help many stakeholders in NRDL to evaluate in transparent and efficient basis. IQGx through International Outcome Research Board (IORB) is ready to partner with NRDL stakeholders to share and help to implement this mechanism in tailored setting.
- To introduce a faster registration timeline for high quality OPP and an effective product introduction & visa approval process to ensure such products are being introduced in a timely manner.

The IQGx Sector Committee members also recommend collaborating with the Government to bring global expertise, best practice sharing, models and tools in planning and implementing those activities.

### **c. Medical Devices and Diagnostics**

- **Regulation on medical devices management:** The relevant ministries that are related to the operation of medical devices and diagnostics sector<sup>8</sup> have substantially completed their tasks quite well. The Ministry of Health has been instrumental in paving the way for the promulgation of Decree No. 36/2016/ND-CP<sup>9</sup> which facilitates a friendlier investment environment for the medical device sector. We recommend to extend the deadline for the publication and registration of medical devices under Decree 36/2016/ND-CP and deadline for import licensing under Circular 30/2015/TT-BYT to 31<sup>st</sup> December 2018. The Government shall conduct capacity

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<sup>8</sup> There are Ministry of Industry and Trade, Ministry of Health, and Ministry of Planning and Investment

<sup>9</sup> Decree No. 36/2016/ND-CP dated 15<sup>th</sup> May 2016 on medical device management

building on medical device registration dossier verification and issue a quick verification mechanism for products already approved in several countries in accordance with Global Harmonization Task Force and issue local guidelines for post-value surveillance.

- **Management of non-new medical devices and patients' safety:** The Government shall conduct control gates, tracking mechanism and regular audits of imported and installed equipment as in accordance with current regulations to prevent illegal imports of used medical devices. A special authorization mechanism should be implemented for “used” medical devices to be temporarily imported into Vietnam for specific use cases (training, demo). It is also recommended to open a healthcare market to the “OEM refurbished” equipment according to international quality guidelines by companies certified under these guidelines. The opening of the market to such goods is supported by the EVFTA.

- **Revision of Decree 23/2007/ND-CP:** We also recommend the Ministry of Industry and Trade to speed up the revision to Decree No. 23/2007/ND-CP<sup>10</sup> guiding the Commercial Code to be in line with the Law on Investment and Law on Enterprise. The amendment decree has yet to be promulgated. This may affect the investment plans of investors who intend to amend/supplement their trading activities in Vietnam. Additionally, it must also establish legal foundation & groundwork for the implementation of cross border-gate transfer of goods that will enhance competitiveness in the trading sector.

- **Enhancement of the business environment:** there is still room for improvement. For example, if the enterprise has concerns regarding specific issues in relation to its business activities which are not detailed under the law, such enterprise will have to obtain the opinion or legal ruling of the relevant competent authorities. At present, the law is silent on the procedures in order to obtain such opinion or legal ruling as well as the timeline for the authorities to provide the enterprise with their feedbacks. This is usually time-consuming and causes confusion for the enterprises in conducting their business in Vietnam.

## **2. Green Growth and sustainable development, Tourism and environment protection**

### **a. Green Growth**

- A more sustainable energy future path that attracts investment can be implemented immediately with the enacting of some key policy, regulatory and institution reforms, which have been identified for government and utilities through the advice of supporting donors and private sector experts and which have been successful in other similar countries.

- **Remove the legal barriers and support direct power purchase agreements (DPPA)** between power producers and large power consumers, as have shown to be extremely effective in other similar countries. Companies such as Apple, Nike, Coca Cola, Google and other multinational corporations have publically made global commitments to work towards using energy from renewables and energy efficient projects. A change in this policy which allows enterprises and consumers to have direct access to clean energy will attract additional investment and global brands that will help carry Vietnam up the manufacturing value chain.

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<sup>10</sup> Decree No. 23/2007/ND-CP dated 12<sup>th</sup> February 2007 detailing the Law on Commerce regarding goods purchase and sale activities or goods purchase and sale related activities of foreign-invested enterprises in Vietnam



- Implement the **recommendations of GIZ (German Agency for International Co-operation) and UNDP** on changes to the terms of the wind and solar PPAs to make these “bankable” with increases in Feed-In-Tariffs (FIT) for renewable energy.

- We recommend MOIT to issue a **Retail Power Price Roadmap to 2020 with a vision to 2025 for the introduction of Market-Based-Pricing for energy**, including definition of variable pricing between the three main tariff groups (residential, commercial and industrial). The provision of actual cost information can empower businesses, consumers and investors as to the most effective way to invest in higher efficiency equipment and processes. Energy efficiency investment and innovation are not occurring in high volumes now because businesses and consumers believe that power prices will remain low and subsidized by the Government. Meanwhile, investors require Government guarantees because prices do not reflect the full costs of production.

- Regarding **enhancement of Electricity of Vietnam’s (EVN) creditworthiness**: Increasingly international donors are offering support and guarantees for renewables and clean energy development and procedures which can assist in improving EVN’s creditworthiness. This credit enhancement of EVN would aid the government of Vietnam to reach energy and environment goals and bring low cost commercial finance to support power developers who wish to invest in clean energy in Vietnam.

- We suggest that MOIT and Electricity Regulatory Authority of Vietnam (ERAV) work with private sector solar experts and business groups in Vietnam **as partners in energy policy formation**. From such partnerships, the Government shall publish supporting regulations in the form most likely to attract private capital investment<sup>11</sup>.

- Introduce **tax incentives and simplify regulatory processes** to encourage individual households and businesses to reduce energy use and install their own solar, wind or other renewable energy sources to relieve pressure on the power distribution system.

- In terms of **water & waste management**, we recommend to create a framework for effective enforcing current water treatment standards, suspend operating licenses in case of severe violations, and align conflicting regulations on environment impact assessment. For E-waste, we suggest having a mandatory collection quota beginning with 10% (or more) of the yearly put-to market volume and increase on a clear timeline. We need clear, enforceable guidelines and timelines for the approval of waste-to-energy projects and accelerate implementation. We also recommend that Vietnam introduces specific policy targets and regulations for air quality control and emissions, tax coal power plants, cement factories, and other major polluters according to the estimated socio-economic and health impact; and accelerate development of the public transportation sector.

- **Under the EVFTA**: Vietnam’s commitments are made in 3 sub-sectors: (i) Production of electricity; transmission and distribution of electricity on own account; (ii) Manufacture of gas; distribution of gaseous fuels through mains on own account; and (iii) Production of steam and hot water; distribution of steam and hot water on own account. Eurocham and the Green Growth

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<sup>11</sup> The first high level enabling Decision No. 11/2017/QĐ-TTg on mechanism to encourage development of solar power projects in Vietnam has been recently published on 11<sup>th</sup> April 2017



Sector Committee are ready to support with preparations for the implementation of such commitments.

## **b. Tourism and Environment protection**

Vietnam has enormous potential to develop into a popular tourism destination attracting visitors from around the world. The objectives targeted in the Government's National Strategy (for 2020, vision 2030) regarding the development of the tourism industry are to: attract 10-10.5 million international visitors by 2020, serve 48 million domestic tourists (already surpassed in 2015), increase tourism revenue to USD18-19 billion by 2020 and contribute 6.5-7% of GDP by 2020.

**- Visa exemption:** We would like to point out the success of the temporary visa waiver program for the 5 European countries has significantly increased the number of higher spending long haul visitors. However, there are several key issues that we continue to believe need to be addressed in order for the travel and tourism industry to achieve its full potential and for Vietnam to achieve its development plan 2020 and Vision 2030.

Entry visa policy is one of the Government policies that has the biggest impact on international tourism flow. In the context of the 5 countries recently exempted from visa requirements, the critical issue facing our members and visitors is whether the exemption will be extended. We believe that Vietnam should be looking at the major higher spending tourist markets as well as markets for trade and investment and introduce an expanded number of countries whose citizens are eligible for visa on arrival or visa exemption. We suggest the list of visa exempt countries should be further expanded to include all countries with whom Vietnam has Free Trade Agreements, significant trading or investment partners and targeted inbound tourism markets (e.g. Australia, India) and also to extend the visa exemption from 15 days to 30 days.

## **c. Government support for the industry**

The contribution of the industry to the State Budget is, and will continue to be, significant. However, the government's support of promoting the industry, particularly in international markets, remains inadequate and substandard in comparison to our regional competitors. It is imperative for the government to contribute funding towards not only promotional activities but also initiatives that support the long-term objectives of the industry, such as cultural and environmental preservation, product development, and infrastructural improvements, as well as strengthen public-private cooperation for promotion and marketing at destination levels to support responsible tourism products and services.

## **d. Promotion and protection of heritage**

Vietnam's development of cultural and sustainable tourism has lagged behind the development of tourism infrastructure and national development. The degradation of heritage assets poses a risk to a lucrative existing tourism market and the future development of mid and high value tourism. Over-development and excessive land use in hotel construction, especially along the coast, are damaging the environment and heavily reliant on limited resources. The intangible heritage of Vietnamese contemporary society should be protected and promoted to generate income for local communities. Tourism can enable and give back to local communities but it must be done in a meaningful way, children/orphans and the most vulnerable people within Vietnamese society must not become tourist attractions. With careful planning and sustainable



development tourism has the ability to not only attract more travelers to Vietnam but also act as the window to the world and a bright future.

### **3. Food safety and toddlers' nutrition**

#### **a. Food safety and Sustainable farming towards enhancing exports – CropLife Vietnam**

In the area related food safety, there remains issues including misuse or abuse of crop protection (CP) products, public's misperception on CP products & its risks, and illegal, counterfeits, and low quality products. We recommend to promote responsible by training and education to farmers, embed dietary risk assessment and appropriate maximum residue level (MRL) setting, communicate the roles of novel CP generations to enhance farming effectiveness, and implement stricter inspections, control and management of problematic cases.

The residue issues could also lead to rejection and alerts in import nations. Therefore, Vietnam should harmonize regulatory framework with import countries based on risk assessment and stakeholders including producers, traders, Government agencies, pesticide companies, and farmers, must be aware of such assessment. Looking forward, under the context of climate and environment change, pesticides resistance of pests leads to increase doses. We recommend to establish fast track registration process to introduce innovative solutions, promote integrated pest management (IPM) program, and focus on effects of inappropriate use of pesticide.

#### **b. Food, Agri & Aqua Business Sector**

It is clear that Vietnam manages to grow sufficient agricultural products as it lists in the top five of exporting countries for various agricultural products. However, changes are required for the following reasons. Vietnam encounters increased competition on the global marketplace, also because Vietnam is one of the most expensive countries for export and import. Furthermore, the current agricultural methods impact the climate and agricultural resources, which in return impacts Vietnam's economy. In order to beat the competition and reduce climate change and its impact, it is paramount that Vietnam shifts from food security to food safety. To achieve this, it is in our view important there will be more focus on food safety through amongst others, more transparency and traceability. At the same time this will satisfy the increasing consumers' demand for safer food. The EuroCham Food, Agri and Aqua Business Sector is available to discuss how the private sector can assist with this.

- **EVFTA** will help set up a single and transparent procedure for the approval of EU exports of food products into Vietnam, with elimination of implemented Sanitary and Phytosanitary (SPS) measures that are unjustified obstacles to trade and encouraging the development and adoption of international standards, guidelines and recommendations, and promote their implementation by the Parties with the principles of the EU as a single entity, regionalization and pre-listing.

- **Requirement for registration of the “Announcement of conformity with food safety regulations”**. According to the existing Decree No. 38/2012/ND-CP<sup>12</sup> guiding the Food Safety Law (“**Decree 38**”), for food products without national technical standards (QCVN), businesses must register the Announcement of conformity with food safety regulations with competent State

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<sup>12</sup> Decree No. 38/2012/ND-CP dated 25<sup>th</sup> April 2012 detailing some articles in the Law on Food Safety



authorities in order to obtain a Certificate. This requirement is in conflict with Article 7.1a of the Food Safety Law<sup>13</sup> where it is stipulated that “*Food producers have the right to decide and announce the standards applied to the goods produced or supplied*”. Moreover, this requirement also conflicts with the Law on promulgation of legislative documents<sup>14</sup> which stipulates that the elaborating document may only prescribe the contents assigned.

In practice, this registration process (sublicense) has resulted in serious difficulties for businesses, causing delays and bottlenecks to the importation and product circulation process while bringing no practical value to food safety control<sup>15</sup>. MOH’s viewpoint that the requirement for registration of the Announcement of conformity with food safety regulations is still needed as many food products do not have national technical regulations, is not supported by the following documents:

- The Ministry of Science and Technology has pointed out in Official Document No. 770/BKH-CN-TDC to the MOH that national technical regulations should be developed by subject-matter groups (in alignment with international practices) and should focus on safety criteria/specifications, and **not** be developed for separate products.
- General requirements on the level, criteria/specifications, requirements on food safety and hygiene (e.g. heavy metals, contaminants, microbiological contaminants) have been promulgated by the MOH since 2011, and as products already have to meet with these general requirements, the request for registration of the Announcement of conformity with food safety regulations does not bring about any practical value.

- **Inspections:** Instead of focusing on quality management on paper, MOH should enhance its ex-post inspections to ensure that the products circulated on the market are safe.

The abovementioned Decree 38 is currently under revision following the instruction of Resolution 19 aimed at enhancing the business climate, however, this sub-license requirement is still maintained. This is against the Resolution 19<sup>16</sup>. Therefore, we respectfully ask the Vietnamese Government to provide instructions to MOH to remove this requirement from the revised Decree 38 to ensure compliance with the Food Safety Law and the spirit of Resolution 19.

### c. Nutritional Food Group

#### - Tolerance for nutrient values declared on food labels

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<sup>13</sup> Law No. 55/2010/QH12 dated 28<sup>th</sup> June 2010 on food safety

<sup>14</sup> Law No. 80/2015/QH13 dated 22<sup>nd</sup> June 2015 on promulgation of legislative documents

<sup>15</sup> Specifically: (1) Locally-made food products are now subject to dozens of sub-licenses as all input materials, packaging materials and the finished product have to register the announcement of conformity with food safety regulations, (2) Even in case of amendments to minor aspects of input materials that do not affect product quality (e.g. changing suppliers, revising expiry date, quality specifications, packaging method), manufacturers are required to re-register the conformity announcement for the said input materials, causing serious delays and costs to the manufacturing process, (3) The procedure has given way to arbitrary and inconsistent requirements by the reviewing officials, creating uncertainty for businesses and enabling an ask-give mechanism, (4) The procedure lacks a legal basis and thus, has led to an arbitrary review process. The same product can be registered under different conformity announcements and by different entities, with different applied standards. This is in conflict with the principle of the Law on Technical standards and regulations that each product should only have one technical standard, (5) The procedure causes a waste of time and costs, specifically, a product registration process can last up to 3-4 months, meanwhile, with around 10,000 registrations and renewals every year, the procedure costs businesses up to hundreds of billions of Vietnam Dong, and (6) The procedure is not in alignment with international practices, e.g. not observed in the EU or US.

<sup>16</sup> In terms of the need to “review, amend regulations on admission of conformity announcements of imported goods towards procedure removal or simplification; and to not require for submission of conformity announcements for products without national technical regulations”



The requirements on the tolerance for nutrient values declared on food labels set out by reviewing officials are inconsistent, unfeasible and mis-aligned with international practices, and have resulted in significant difficulties for businesses during product registrations. Following up to the feedback of MOH at the Annual VBF 2016 where it was informed that MOH was in the process of amending a relevant Decree, we would like to ask the MOH to share about the status of such a Decree, and urge the MOH to soon promulgate such a regulation to help resolve existing difficulties faced by businesses. We are also aware that the Government recently promulgated Decree No. 43/2017/ND-CP on goods labelling dated 14<sup>th</sup> April, 2017, in which it is provided that for nutrient values indicated on product labels, if one specific value is indicated then the average value of the range values should be used. We would like to ask how this principle will be applied in future tolerance regulation issued by the MOH (if any).

#### **- Implementation of regulations on marketing for nutritional products for young children**

Following up to the feedback of the MOH representative at the Annual VBF 2016 where it was shared that the MOH will coordinate with the Ministry of Information and Communication (MOIC) and other specialized agencies to strengthen information to mothers about appropriate use of breast-milk substitutes. We would like to **follow up on the progress of this coordination plan** and to learn how EuroCham can contribute to these activities.

## **II. Regulatory framework**

### **1. Protection of Intellectual Property Rights**

We would like to recommend to pursue programs to **raise awareness among the consumers and businesses** on the harmful consequences of counterfeiting, and implement measures including strictly condemning any infringement of IPRs (not directly mentioning the courts), **increasing the level administrative fines** against individuals committing copyright infringements, the award of monetary damages and other sanctions, **amendment of the IPR Law** to allow the enforcement in the online environment and finally adopt a Uniform Domain-Name Dispute-Resolution Policy (UDRP)-type system for resolution of '.vn' domain name disputes and cybersquatting, or amend either IP laws or Information & Technology (IT) laws to settle cases more effectively, **publish online all judicial decisions** in relation to IPRs enforcement and implement the general enforcement provisions, specific provisions relating to **enforcement of Geographical Indications as committed under the EVFTA** to ensure a sound IP environment to foreign IPR holders."

### **2. Enhancing legal enforcement**

Vietnam should ensure that the **1958 New York Convention<sup>17</sup> and Vietnamese law are strictly applied by Vietnamese courts**. Vietnam should further improve the recognition and enforcement of foreign arbitral awards (e.g. the burden of proof rests with the award debtor if it claims that a valid objection to enforcement exists and the award creditor is only required to provide to the court the valid award and the valid arbitration agreement in support of its application). We also kindly suggest that the Supreme People's Court and the Chief Justice could provide more and/or better instructions to lower level courts to consistently limit court interventions during arbitration proceedings.

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<sup>17</sup> The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 10<sup>th</sup> June 1958

### 3. Taxation framework

Regarding the corporate income tax (CIT), we welcome the more favorable tax incentives that have been introduced for enterprises. However, the guidance in **Decree No. 12/2015/ND-CP<sup>18</sup>** is **not yet comprehensive to fully reflect the positive principles of Law No. 71/2014/QH13<sup>19</sup>**. For an example, transitional rules are provided for investment projects in incentivized locations but not for incentivized industries. For value added tax (VAT), there is considerable potential for growth in the in the export services sector in Vietnam, including outsourcing and support for exported goods. We recommend having clear criteria for entitlement to 0% VAT for services (in particular for consumption overseas), for example, B2B services are consumed where the service recipient is resident overseas. We would also welcome more **ability for taxpayers to receive clear and timely written guidance from the tax authorities** on areas of the tax regulations where there are uncertainties so that the tax-payer can adopt tax policies properly and no penalties/ late payment interest should apply if the companies are tax re-audited/ re-inspected.

### 4. Customs framework and Transport services

#### a. National Single Window (NSW) implementation

Almost the **procedures for specialized inspection do not join NSW yet**. This slow progress creates difficulties for trader in process for getting permit license. The information in English version is not appropriate as Vietnamese version. Traders are not updated about the information of NSW implementation. Therefore, we recommend the Government to support Ministries to speed up the progress to join NSW for all the other commodities which required specialized license, keep updated information in both Vietnamese and English in NSW website, and GDC and Ministries to organize the workshop training to business community about the procedures in NSW

#### b. Transport Services:

Maritime transport services with mode 3 market access can have joint venture with maximum 70% foreign ownership (increase compared to WTO). For internal Waterways transport services, **there is no restriction for mode 1 while for mode 3, joint venture can have maximum 51% foreign ownership.**

### 5. Wines and Spirits Sector Committee

#### a. Special Consumption Tax (SCT) policies

We acknowledge the good overall outcome for the wines and spirits sector in EU-Vietnam Free Trade Agreement (EVFTA)<sup>20</sup>. We strongly recommend the Vietnamese Government to **maintain an uncomplicated and stable special consumption tax (SCT) policy on wine &**

<sup>18</sup> Decree No. 12/2015/ND-CP dated 12<sup>th</sup> February 2015 on elaboration of the Law on amendment and supplementation of some articles in tax laws and some articles of decrees on taxation

<sup>19</sup> Law No. 71/2014/QH13 dated 26<sup>th</sup> November 2014 on amendment and supplementation of some articles in tax laws

<sup>20</sup> Including some key notes (1) Vietnam will liberalize tariffs over a 7-year period, (2) The rules of origin agreement will facilitate the use of regional hubs by EU exporters, and (3) Vietnam will not apply any discriminatory quantitative and/or qualitative vertical or horizontal restrictions on licensing.

**spirits, together with the implementation of tariff concession and eliminations agreed under the EVFTA.** We expect the facilitation from Vietnamese authorities on the use of the hub model, and the non-alteration operations carried out under Customs supervision in the hubs (i.e. non-Party country), as well as the use of a non-party Invoice, self-certification of origin which allow EU goods to remain eligible for tariff concessions provided in the future Vietnam-EVFTA. **We also look forward the promulgation of a new decree replacing Decree No. 94/2012/ND-CP<sup>21</sup>** based on the latest draft with proposed positive changes which removed the restrictions and practical difficulties on liquor trading and distribution activities. In addition, the Industry recommends that the Vietnamese Government assesses the afore-mentioned to ensure that it is **fully compliant with the WTO Agreement on Customs Valuation**, both in law and in practice. It improves transparency and allows companies to set the right price for the market, which benefits consumers and ultimately boost imports and hence customs revenue.

#### **b. Fund for prevention and fighting against harmful effect of liquor and beer**

We fully support the dual goals of the Decision No. 244/QD-TTg<sup>22</sup> and the anticipated Law to ‘prevent and fight against the harmful effects of the abuse of liquor, beer and other alcoholic drinks (Draft Law) to help protect the local community’s health and contribute to stable socio-economic growth’. We believe **moderate and responsible consumption of alcohol and beer is a key pillar of this sustainable development that the Government, the private sector, and individual consumers all play a major role to redefine the alcohol and beer consumption culture/norm and take collective action to reduce harmful use and/or abuse.** We also believe **a fair and balanced Draft Law will reduce the harmful use of alcohol across Vietnam** while protecting Government revenue, commercial freedoms and economic activity. An overly strict alcohol trading may be counterproductive, driving people towards the black market, negatively impacting tourism and ultimately reducing tax revenue and increasing health risks to consumers. However, we are very **concerned about proposals of MOH in the Draft Law on restrictions/ban trading and commercial activities**, establishment of Public Health Improvement Fund based on the combination of existing Fund for prevention and fighting against harmful effects of tobacco (Tobacco fund) and proposing Fund for prevention and fighting against harmful effect of liquor and beer (Liquor and beer fund) etc. The alcohol beverages industry has been actively participating in various initiatives with the efforts to reduce harmful effects of abuse of alcoholic beverages and promote responsible drinking.

We appreciate opportunity to work with the Government, MOH, and other stakeholders to develop a **robust and competent alcohol policy regime and collectively tackle the harmful use of alcohol problems in Vietnam**, including (1) support an evidence-based, proportionate and targeted policy intervention to effectively manage individual consumption behaviour and harmful use of alcoholic beverages problem without excessively restricting market access/legitimate business activities, (2) adopt a comprehensive and integrated approach to manage harmful use of alcohol, coupling with rigorous evaluation of outcomes of all strategies implemented based on nationally agreed targets, (3) strengthen and ensure appropriate enforcement of existing regulations, (4) facilitate multi-stakeholders dialogue to share information/concerns/experience and deliberate effective strategies to manage identified harmful behaviours, e.g. unrecorded consumption, and (5) promote public/private partnership to set up a

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<sup>21</sup> Decree No. 94/2012/ND-CP dated 12<sup>th</sup> November 2012 on liquor production and trading

<sup>22</sup> Decision No. 244/QD-TTg dated 12<sup>th</sup> February 2014 on the National Policy in relation to Preventing and Fighting against the Harmful Effects of Alcohol Abuse by 2020



responsible consumption environment/norm in Vietnam e.g. through responsible serving training.

### III. Concluding remarks

2017 has seen major changes in terms of trade and competitiveness for businesses in Vietnam. Once again, we would like to thank the Government for the efforts made in the past years and improvements which we find **very encouraging and compensating our advocacy efforts and we will keep voicing out for constructive contribution to Vietnam's development. Nevertheless, some challenges remain to improve Vietnam's competitiveness, especially at a time where neighboring countries will also challenge Vietnam's competitive advantages in the region.**

We, therefore, invite and encourage the Vietnamese Government to address the issues outlined in this Position Paper and to comfort the expectations of the European business community in Vietnam and **partner with us to promote and prepare for the implementation of the EU-Vietnam Free Trade Agreement.** Please note that our suggestions in this Position Paper are made on behalf, and in the interest of the European business community in Vietnam. However, it is clear that in the vast majority of cases these suggestions are clearly in the long-term interest of the Vietnamese Government and the Vietnamese people.

We sincerely hope that our suggestions in this Position Paper will help the Vietnamese Government to reach its goals. We look forward to support the Government of Vietnam and all our Members and partners, both Vietnamese and European, to improve the business environment and enhance Vietnam's competitiveness and contribute to develop Vietnam into an attractive investment destination for European businesses.