



KEY POINTS FROM EUROCHAM Annual Vietnam Business Forum

Ho Chi Minh City, dated 24th October 2016

EuroCham is pleased to acknowledge the recent efforts that the new Vietnamese Government has made to further improve the business environment and increase Vietnam's competitiveness in by issuing Resolutions 19 and 35. The year 2016 has been a significant year for Vietnam and its relationship with its European counterparts.

Moreover, since 2016 a number of new laws and regulations governing foreign investment, enterprises, real estate and foreign ownership limits have come into effect, such as new Law on Investment and Law on Enterprises. There have been also intensive discussion and works on the revisions of a number of regulations to conform with these laws.

With the coming into effect of several international trade agreements and more particularly, the EVFTA, the AEC and the TPP, EuroCham members are looking forward to the positive changes that will be implemented and that will further business incentives as well as contribute to Vietnam's growth. Nevertheless, some concerns remain among European companies. This paper aims to identify those issues and propose solutions to further improve the business climate in Vietnam.

I. INCREASING THE LIVELIHOOD OF THE PEOPLE

1. Safe medical access and pharmaceuticals

Following the successful conclusion of the EVFTA and TPP negotiations, and thanks to determined action by the Vietnamese Government, there has been a number of positive progress in the healthcare industry, in particular the adoption of the new Pharma Law, which is expected to significantly increase patient access. Over the coming months, Vietnam will be finalizing the regulatory framework that will guide the pharmaceutical landscape for the foreseeable future. Pharma Group believes that the resolution of a number of remaining issues, which are consistent with the spirit of trade liberalization and pertinent to the international commitments, will bring great value to patients, the Vietnamese healthcare system and to industry – both local and foreign.

1.1 Fast access to innovative pharmaceuticals for Vietnamese patients

Effective elimination of local clinical trial requirements for drugs, biologics and vaccines approved by stringent international authorities, a further optimized and timely drug registration process is key to improving patient access.

1.2 Sustainable patient access: Government Procurement and Reimbursement

Ensuring a holistic approach to Government Procurement, building on doctor choice of high-quality medicines and optimizing the reimbursement system will be key in meeting the demands of a modern and innovative universal healthcare system.

1.3 Legal presence and developing local industry

Clear and practical guidelines for foreign investors to establish Foreign Invested Enterprises (FIEs) with all associate rights granted under WTO, EVFTA and TPP commitments, and adapted

incentives provides Vietnam with the opportunity to position itself as an ASEAN hub for innovative pharmaceutical manufacturing.

1.4 Intellectual Property Rights protection

A cornerstone of innovation which if implemented provides local companies confidence to develop patentable medicines over time and encourages the innovative pharmaceutical industry to invest in local industry, including technology transfer in the short term.

EuroCham Pharma Group remains wholeheartedly committed to working with the Vietnamese Government to attain the objective of improving the health of Vietnamese patients by ensuring fast and sustainable access to high quality, safe and innovative medicines.

2. Food safety

The Food, Agri, Aqua Business Sector of EuroCham Vietnam underlines some solutions for food safety improvement: through application of risk-based assessment, better and stricter enforcement of existing regulations and creation of a reliable and up-to-global standards' laboratory network. Furthermore, to keep – or improve – its current position as agricultural producer and exporter Vietnam needs not only increase food safety but also needs to develop a sustainable agricultural production and supply chain.

II. INCREASING CONSUMER'S CHOICE

1. Wine and Spirits

With the EU-VN Free Trade Agreement (EVFTA) being expected to enter into force from 1st January 2018, EuroCham Wine & Spirits Sector Committee emphasizes the implementation of some EVFTA commitments related to wine & spirits industry such as: tariffs liberalization over a 7-year period, the rules of origin agreement, EU Geographical Indications, licensing, framework for cooperation, regulatory discussion and a dispute settlement mechanism.

The Wine & Spirits Sector Committee also provides some recommendations regarding Decree 108/2015/NĐ-CP dated 28th October, 2015. In which, the introduction of key changes on the taxable price of imported products has resulted in a sharp increase of the tax burden and impacted the retail prices of imported products, making them even less affordable for Vietnamese consumers. This may in turn result in substantial loss of sales of legally imported products, thereby negatively impacting government revenues.

2. Automotive

2.1 Euro 4 fuel and emission

Commercial vehicles makers propose 1 year delay of Euro 4 emission for commercial vehicles together with condition of Euro 4 fuel being supplied nation-wide before the implementation of Euro 4 emission for diesel engines.

2.2 Circular 20/2011/TT-BCT stipulating additional procedures for imported cars from 09 seats or less

Under the revised Law on Investment effective from 1st July, 2016, Circular 20 might be no longer valid. Because of the importance of traffic safety for vehicles running on the road EuroCham has sent the petition to the Vietnamese Government to maintain the content of Circular 20. We would like to follow-up with Government on this.

3. Motorcycle

3.1. Special Consumption Tax

Members in Motorcycles industry raises some concerns the industry faces. One of which is the Special Consumption Tax rate for motorcycles with a capacity of over 125cc being 20%,

according to Law of SCT No. 27/2008/QH12 and Law No. 70/2014/QH13 amending some articles of Law of SCT. This has had a significant negative impact on manufacturers, which offer over-125cc motorcycles and limits consumers' choice.

3.2. Management of the manufacture, homologation, registration and circulation of electric bikes and electric motorcycles

Since the past few years, electric bikes/motorcycles have been increasingly popular, however the current non-strict control has created big risks to consumers in particular and society in general. Therefore to ensure safety and social order and minimize negative impacts on the environment, members in Motorcycles industry recommend relevant authorities to strengthen law enforcement against the manufacture, homologation, registration and circulation of electric bikes and electric motorcycles.

4. Nutritional Foods

The EuroCham Nutritional Foods Group (NFG) presents some issues and recommendations with the hope to promote science-based, effective policies and practices, and which will nurture a responsible, sustainable market for milk and nutritional products in Vietnam. The recommendations of NFG include:

4.1. Improving the Implementation of Regulations on Marketing for Nutritional Products for Young Children

NFG provides recommendations to some legal regulations concerning the advertisement and marketing of nutritional products for young children. Specifically, the Law on Advertisement of 2012 and Decree 100/2014/ND-CP regulating the trade and use of nutritional products for young children, feeding bottles and artificial dummies have extended the advertising ban on “breast-milk substitute milk products” for children up to 24 months of age. It has also introduced more restrictions on the advertisement and marketing for nutritional products for young children, potentially limiting access to information by parents and caregivers. Because of the lack of basic product information, Vietnamese consumers have few other official sources of information through which to assess product quality and learn about usage instructions.

4.2 Price Stabilisation of Milk Products for Children under 6 Years of Age

Under Decision 1079/QD-BTC dated 20th May, 2014 detailing the imposition of price stabilisation measures for milk products for children under 6 years of age and Decision 857/QD-BTC dated 12th May, 2015 amending and supplementing some articles of Decision 1079, price ceilings will be imposed on milk products for children under 6 years old from 1st June, 2014 through 31st December, 2016 inclusive.

NFG is concerned the State's interventions in the business activities of enterprises through administrative measures such as price ceilings run counter to the Government's aspirations to achieve a full market economy, and thus not only impacting the business performance of enterprises in the short- to medium-term, but also affecting long-term trade and investment prospects in general.

NFG provides some recommendations, including proposal to remove the price ceiling, allow for a return to market-based pricing and refrain from imposing any extensions of existing price ceilings or additional controls.

4.3. Harmonization with international best practices of local food regulations and laboratories testing

In light of the conclusion of various FTAs, it is especially important to harmonise with international best practice of local food quality regulations. Tolerance for nutrient values declared on a food label is the one angle that needs to be harmonised.

Another related issue is to have an assessment of its main laboratory capabilities vs. global benchmark, and make a plan to upgrade testing methods and facilities to be in accordance with international standards, ensuring accurate, quick, impartial and fair testing result.

III. INCREASING VIETNAM'S COMPETITIVENESS

EuroCham Tax & Transfer Pricing Sector Committee proposes some solutions on tax to remove difficulties and barriers, to promote enterprises' development as below:

- 1- Waiver of late payment interest/ penalties from tax re-audit/ re-inspection
- 2- Reduction of personal income tax liabilities for the employees who are working for garment-textile, leather and footwear
- 3- Postponing the application of the increased base to calculate compulsory insurance contributions

CONCLUDING REMARKS

European Chamber of Commerce in Vietnam would like again to thank the Government for the efforts made to increase the competitiveness and attractiveness of Vietnam as an investment destination for European companies. 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. Please note that our suggestions in this Position Paper are made on behalf, and in the interest of our Members, 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 interests 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 and EuroCham will continue to assist the Government and as much as possible. We are therefore looking forward to working with the Government, authorities and all our Members and partners, both Vietnamese and European, continueing having more regular dialogues and follow-up meetings through VBF to enhance Vietnam's competitiveness and attractiveness.

EUROCHAM POSITION PAPER

Annual Vietnam Business Forum

Ho Chi Minh City, dated 24th October 2016

EuroCham is pleased to acknowledge the recent efforts that the new Vietnamese Government has made to further improve the business environment and increase Vietnam's competitiveness in by issuing Resolutions 19 and 35. 2016 has been a significant year for Vietnam and its relationship with its European counterparts.

Moreover, since 2016 a number of new laws and regulations governing foreign investment, enterprises, real estate and foreign ownership limits have come into effect, such as new Law on Investment and Law on Enterprises. There have been also intensive discussion and works on the revisions of a number of regulations to conform with these laws.

With the coming into effect of several international trade agreements and more particularly, the EVFTA, the AEC and the TPP, EuroCham members are looking forward to the positive changes that will be implemented and that will further business incentives as well as contribute to Vietnam's growth. Nevertheless, some concerns remain among European companies. This paper aims to identify those issues and propose solutions to further improve the business climate in Vietnam.

I. INCREASING THE LIVELIHOOD OF THE PEOPLE

1. Safe medical access and pharmaceuticals

Pharma Group - the Pharmaceutical Sector Committee of EuroCham represents the voice of the international research-based pharmaceutical industry in Vietnam, whose priority is to ensure that Vietnamese patients have fast and sustainable access to high-quality, safe and innovative medicines in collaboration with the Government of Vietnam.

Thanks to determined actions by the Vietnamese Government, Vietnam has been performing very well in terms of healthcare outcomes relative to spending levels and furthermore has one of the highest uptakes of generics in the hospital and some of the lowest price in the region.¹

Following the successful conclusion of the EVFTA and TPP negotiations, the Vietnamese Government is starting to make progress on some of the existing access barriers. This is seen with the recent adoption of the Ministry of Health's new Pharma Law (effective from 1st January, 2017), which is expected to significantly increase patient access, as new, high-quality and innovative products no longer will be delayed due to the Local Clinical Trial requirement, and through the introduction of new concepts such as orphan drugs and Patient Assistance Programs. Furthermore, the exclusion of originator medicines from the ban on foreign products in Government Procurement, represents a clear victory for patients.

There are, however, still a number of issues which, currently limit Vietnamese patients' access to quality, innovative medicines in Vietnam. The resolution of these issues, which are consistent with the spirit of trade liberalization and pertinent to the EVFTA and the TPP agreements, and which will bring great value to patients, the Vietnamese healthcare system and to the local industry.

¹ IMS Project 2015

1.1. Ensuring Fast Patient Access to high-quality, safe and innovative medicines

- i. Local Clinical Trial:** The new Pharma Law removes the local clinical trial requirement, which is one of the key positive changes in accelerating patient access to high quality, innovative drugs. However, this exemption is not currently clear on biologics and vaccines, which is not in line with the EVFTA agreement. According to an industry survey, 65 new molecules could be made available in 2017, if holistically addressed.
- ii. Registration Process:** Companies are required to re-apply for product renewals or “visas” every 5 years, which is an administrative burden since the process for renewal or obtain a visa can take from 18-24 months, and it is only possible to submit a dossier for renewal 12 months prior to the expiry of existing visa. If this process was optimized, significant administrative hurdle on the Vietnamese authorities and companies could be removed.

1.2. Sustainable Patient Access

Universal access to quality medicine and healthcare for the Vietnamese patients is a crucial goal, which requires a holistic and transparent approach to the drug procurement process. A key element in achieving this goal would be through clear implementation of the Tender Circular issued by the Ministry of Health. Accordingly, we recommend two elements to the implementation of the new tendering process as follows:

- i. Reimbursement:** During the initial 3-year Marketing Authorization “visa” patients are not able to obtain reimbursement and the National Reimbursement List is only reviewed every 3-4 years, adding to the delay in bringing new treatments to patients.
- ii. Frequent reviews of the reimbursement list:** Proposal to develop clear and consistent timelines and timeline commitments for the reimbursement review process (i.e. from time of submission to time of response) and to allow for registration submission and reimbursement submission to occur at the same time and run in parallel. Finally, it is proposed to allow the pharmaceutical industry to provide reimbursement submissions directly. Such revisions would optimize the reimbursement system and further guarantees sustainable access to safe and effective medicines for Vietnamese patients.

1.3. Clear Legal Framework to establish a legal entity with all of its associated rights according to international commitments

It is recommended that the Vietnamese Government implement clear practical guidelines for the establishment of a foreign invested enterprise for pharmaceutical trading as allowed (but still not implemented) under Vietnam’s WTO commitments. This includes the right to establish a legal entity and carry out, or contract to third party to carry out, all activities granted under international commitments. Accordingly, the vast majority of the foreign pharmaceutical companies in Vietnam are operating as representative offices. The inability to set up a fully-established business in Vietnam has limited the ability of foreign pharmaceutical companies to engage in Vietnam through financial investments, development of local manufacturing facilities and technology transfer.

1.4. Effective implementation and enforcement mechanisms for IP and data protection rights

The adoption of patent protection, a strong enforcement system, Regulatory Data Protection (RDP), and other intellectual property protections that conform to international standards are needed to create a more predictable environment for investment, promote innovation, and help address the critical health issue of counterfeit medicines. With a view to the implementation of the EVFTA, TPP and the establishment of the ASEAN Economic Community, Vietnam has an opportunity to position itself as an attractive investment destination in ASEAN. A clear legal

framework addressing the abovementioned issues will send positive signals to MNCs, paving the way for an era for innovative investment in Vietnam's pharmaceutical industry, and could enable Vietnam to become a regional hub for innovative, pharmaceutical manufacturing.

Above all, EuroCham Pharma Group remains wholeheartedly committed to work with the Vietnamese Government to attain the objective of improving the health of Vietnamese people by ensuring them a sustainable access to innovative, high quality and safe medicines.

2. Food safety

For 2016, the Government set again an ambitious goal of reaching a USD 30 billion export figure for agricultural products. It is estimated that agriculture, forestry and fishery exports will grow thanks to: an increased demand, diversified product ranges, extended technology application, promotion and investments, and the impact of various free trade agreements, such as the European Vietnam Free Trade Agreement (EVFTA). Vietnam does not have a good reputation with regard to food safety though which will impact this goal negatively if not addressed. Food safety can quite easily be improved through application of risk-based assessment, better and stricter enforcement of existing regulations and creation of a reliable and up-to-global standards' laboratory network. To keep – or improve – its current position as agricultural producer and exporter Vietnam needs not only increase food safety but also needs to develop a sustainable agricultural production and supply chain. This will help to increase scale, quality of the products and food safety as well as the farmers' position and at the same time reduce the carbon footprint as a result.

II. INCREASING CONSUMER'S CHOICE

1. Wine and Spirits

With the EU-VN Free Trade Agreement (EVFTA) being expected to enter into force from 1st January 2018, we would like to note some of the commitments as below:

- Vietnam will liberalize tariffs over a 7-year period. From 45% tariff to zero in equal stage.
- The rules of origin agreement will facilitate the use of regional hubs by EU exporters.
- EU Geographical Indications will be protected automatically upon entry into force of the FTA.
- Vietnam will not apply any discriminatory quantitative and/or qualitative vertical or horizontal restrictions on licensing.
- More generally the FTA will provide a framework for cooperation, regulatory discussion and a dispute settlement mechanism.

While the implementation of the EVFTA should go a long way to resolve many of the existent market access issues, notably the elimination of import tariffs after 7 years, there are some problems that persist and potentially undermine the good outcome of the FTA, especially SCT reform detailed in the below part. EuroCham Wine & Spirits Sector Committee is willing to work closely with Vietnamese authorities during the formulation of legal framework/ implementing regulations for full implementation of EVFTA.

The Wine & Spirits Sector Committee also welcomes the change in Law No. 106/2016/QH13 of 6th April, 2016 regarding amendments to some articles of the Law on VAT, the Law on special excise duty and the Law on tax administration that remove the requirement of importer's taxable price be referenced to the selling price an independent trading establishment as set in Decree 108/2015/NĐ-CP dated 28th October, 2015, which provides details for implementation of SCT Law 2008 and Amended SCT Law 2014 (Decree 108). However, the adoption of Decree 108 has introduced key changes on the taxable price of imported products that resulted in a sharp

increase of the tax burden and impacted the retail prices of imported products, making them even less affordable for Vietnamese consumers. This may in turn result in substantial loss of sales of legally imported products, thereby negatively impacting government revenues.

We believe that the SCT reform may nullify the benefits of the tariff reductions negotiated under the EVFTA and the Trans-Pacific Partnership (TPP). Even assuming a zero import duty, the amount of SCT payable under the new regime is substantially higher than the total taxes (SCT + import duty) payable under the old SCT regime that use CIF as tax base. In practical terms, the FTAs will bring little improved access to the Vietnamese market. Thus, the adoption of the new SCT regime sends a very negative signal to Vietnam's trading partners. Indeed, a stable domestic tax policy is critical for maintaining and attracting foreign investments in Vietnam. The stability of the excise tax base serves as a firm ground on which excisable industries develop their business, thereby helping the domestic commerce and retail trade to prosper, effectively generating jobs and contributing to the government budget every year. Unpredictable changes without a roadmap and transparency would, therefore, discourage existing and prospective investors and impair trust in a stable business environment in Vietnam.

We would respectfully propose as below:

- Taking all this into consideration, we would encourage the Vietnamese Government to consider: In order to address the pressing issue faced by business operators who need to adjust their business plan and who face business difficulties caused by the promulgated Decree 108 in today's reality - from 1st January, 2016 to 30th June, 2016, taxable price of imported products based on Decree 113/2011/ND-CP dated 8th December, 2011 of the Government, amended and supplemented some articles of Decree 26/2009/ND-CP dated 16th March, 2009 of the Government detailing some articles of Laws on Special Consumption Tax and relevant Circulars shall continue to be applied. Therefore, enterprises will have the right to get deductions for SCT incremental which have been paid since 1st January, 2016 based on Decree 108. A clear deduction mechanism and timeline would be needed.
- In order to ensure a stable tax environment for business operators in Vietnam and to maintain sound relationships with trade partners, we further request the Government to review the SCT tax base and tax rate on alcoholic beverages in order to restore the favourable tax environment, reduce the tax burden on European operators. This would only support the development of the legitimate spirits market and would be fully in line the objective set in Resolution 19 to improve the business environment in 2016-2017 and with principle of trade liberalisation, which is the basis of the EU-Vietnam Free Trade Agreement.

2. Automotive

2.1 Euro 4 fuel and emission

Euro4 emission implementation: Following Prime Minister Decision No.49/2011/QD-TTg dated 1st September, 2011, all automakers had to prepare for the change of engines from Euro2 to Euro4. However, Euro 4 fuel was not supplied from January 2016 as defined in Decision 49 and the introduction roadmap for the Euro 4 fuel has not been clarified by end of October 2016. Even if Euro 4 fuel being supplied from January 2017 the supply network is not nation-wide and will also cause a **dilemma** for commercial vehicles makers (CV makers) with the risk of Euro 4 vehicles using wrong fuel. Therefore CV makers propose 1 year delay of Euro 4 emission for commercial vehicles together with condition of Euro 4 fuel being supplied nation-wide before the implementation of Euro 4 emission for diesel engines.

2.2 Circular 20/2011/TT-BCT stipulating additional procedures for imported cars from 09 seats or less

Circular 20/2011/TT-BCT issued on 12th May, 2011 by Ministry of Industry and Trade with the requirement for auto importers to have an authorization letter from an Original Equipment Manufacturer (OEM) have helped to protect the benefits of Vietnamese consumers with official maintenance and warranty conditions for the vehicles as well as traffic safety. However, under the revised Law on Investment effective from 1st July, 2016, Circular 20 might be no longer valid. Because of the importance of traffic safety for vehicles running on the road EuroCham has sent the petition to the Vietnamese Government to maintain the content of Circular 20.

3. Motorcycle

3.1. Special Consumption Tax

Motorcycles have consistently been serving, on average, over 60% of travel needs in Vietnam and there are now over 39 million motorcycles in the country. Vietnam is also currently the 4th largest market for motorbikes, still growing strongly and steadily, both in terms of size and quality. However, amongst other issues the industry faces, the Law on Special Consumption Tax (“SCT”) No. 27/2008/QH12 is one of them. Passed by the National Assembly on 14th November, 2008 and effective from 1st April, 2009, a SCT of 20% was introduced for motorcycles with a capacity of over 125cc. In addition, pursuant to the new Law No. 70/2014/QH13 amending some articles of Law No. 27 effective from 1st January, 2016, the SCT rate for motorcycles with a capacity of over 125cc is still 20%. This has had a significant negative impact on manufacturers, which offer over-125cc motorcycles and limits consumers’ choice. Since 2008 until now, the economic and social conditions of Vietnam have developed; under current economic and social conditions, a motorcycle, especially 150cc motorcycle, is not considered a luxury good, but just a popular private means of transportation.

3.2. Management of the manufacture, homologation, registration and circulation of electric bikes and electric motorcycles

Since the past few years, electric bikes/motorcycles have been increasingly popular, especially in the cities of the North, such as Hai Phong and Hanoi. According to the General Department of Statistics’ data, from 1st January, 2014 to 31st August, 2015, the number of electric bikes imported under quota in the country was 5,324, but the actual number in circulation by some sources was about 10 times that number. Density of using electric bikes and motorcycles tending to rise with current non-strict control has created big risks to consumers in particular and society in general.

Using unqualified electric bikes/motorcycles and circulate the same non-compliantly with regulations on traffic safety may cause serious risk for traffic safety. Most quantity of electric bikes/motorcycles circulating in Vietnam market has not been under inspection, control in quality. In terms of structure and design of manufacturers, as required, the speed of an electric bike is not permitted to exceed 25 km/h. However, according to a practical survey, the average speed of an electric bike circulating in the market is 30 - 45 km/h (equivalent to a motorcycle speed). According to our research, the brake system equipped on most electric bikes and motorcycles in circulation in Vietnam does not meet QCVN. The chassis designed and manufactured with lightweight materials, very weak traction, and not guaranteed brake system will cause serious injury to drivers in case of collision. Besides, consciousness of electric bike/motorcycle drivers when in traffic is poor. In fact, electric bike/motorcycle drivers are mostly junior high school and high school students in the country, not fully equipped with basic knowledge of road traffic law. According to Vietnam Association Motorcycles Manufacturer (studying 200 electric vehicle users in Hanoi in July 2015), only 30% of electric bike/motorcycle drivers often worn helmets. Meanwhile, nearly 50% of the users never used a helmet when participating in traffic. This has caused regrettable traffic accidents in recent years. According to

doctors of Viet Duc Hospital in Hanoi (by Dan Tri Newspaper, on 10th September, 2015) accidents caused by electric bikes/motorcycles are severer than those caused by motorcycles. Because of this, there should be strict inspection and control to minimize traffic accidents as well as ensuring social order.

Besides, electric bikes/motorcycles also cause big harms to the environment. Batteries of electric bikes and motorcycles which are currently circulating in the market are mainly lead batteries with not good quality, and will be discarded after a short time. **Further, the majority of electric bikes/motorcycles now seriously infringe intellectual property rights in trademark and industrial design.** It can be easily found that lots of electric bikes and motorcycles circulating in the market today violate intellectual property rights, namely trademarks and industrial designs registered for protection in Vietnam of famous motorcycle manufacturers such as Honda, Yamaha, Piaggio. This behavior also infringes the benefits of consumers and is considered as an unfair competitive practice by taking advantage of prestige of major manufacturers to sell their products and causing significant impact to the image and prestige of famous manufacturers in the market. Therefore, the homologation and registration of electric vehicles of which the industrial design infringes the intellectual property rights should be prohibited.

With all the issues mentioned above, to ensure safety and social order and minimize negative impacts on the environment, we recommend relevant authorities to strengthen law enforcement against the manufacture, homologation, registration and circulation of electric bikes and electric motorcycles.

4. Nutritional Foods

The EuroCham Nutritional Foods Group (NFG) is the non-profit, non-Governmental representative body of six of the world's leading multi-national dairy companies operating in Vietnam. NFG's mission is to improve the nutritional well-being of the Vietnamese people. Together with the Government, NGOs, and civil society partners, we work to make a positive impact on Vietnam's nutritional profile.

NFG would like to present below some issues and policy recommendations that we believe will help to promote science-based, effective policies and practices, and which will nurture a responsible, sustainable market for milk and nutritional products in Vietnam.

4.1. Improving the Implementation of Regulations on Marketing for Nutritional Products for Young Children

Since the year 2000, the Vietnamese Government has issued and amended many legal regulations concerning the advertisement and marketing of nutritional products for young children. Specifically, the Law on Advertisement of 2012 and Decree 100/2014/ND-CP on 6th November, 2014 (Decree 100) regulating the trade and use of nutritional products for young children, feeding bottles and artificial dummies have extended the advertising ban on "breast-milk substitute milk products" for children up to 24 months of age. It has also introduced more restrictions on the advertisement and marketing for nutritional products for young children, potentially limiting access to information by parents and caregivers.²

Responsible marketing and distribution practices enable consumers, health workers and the wider public to obtain accurate, science-based information. They also support parents' decisions to choose nutritious and healthy foods for their children and promote safe and appropriate use of nutritional products for infants who are not exclusively breastfed.

²See Article 6 and Article 11.b of Decree 100

While Decree 100 is aimed at strengthening constructive management of the industry, it has had several unintended consequences that could disadvantage consumers. For instance, with regards to breast-milk substitute milk products, basic information (information to which consumers are entitled) has sometimes been categorised as advertisement and has not been made available for consumer reference on the traders' websites. Because of the lack of basic product information, Vietnamese consumers have few other official sources of information through which to assess product quality and learn about usage instructions.

NFG member companies are committed to satisfying in full both local and international regulations regarding responsible marketing practices, including the International Code of Marketing of Breast-milk Substitutes adopted by the World Health Organisation. NFG's efforts are underpinned by our own Code of Conduct, which was originally issued in 2012³. NFG updated its Code of Conduct and compliance practices when Decree 100 was promulgated on 6th November, 2014 to replace the previous Decree 21/2006/ND-CP with effect from 1st March, 2015.

NFG has played a constructive role in industry self-regulation and compliance. Through the NFG Code of Conduct, member companies have cross-monitored and encouraged each other to comply with local regulations via the internal self-regulatory mechanism. Experience from the past 3 years has shown that the Code of Conduct has played a significant role in promoting responsible business and marketing practices by member companies. The Code of Conduct has brought about encouraging results and has helped raise awareness and understanding among member companies of relevant regulations and policies governing the industry.

EuroCham Nutritional Foods Group (NFG) members would like to propose the following:

- We encourage industry-wide adoption of best practices along the example provided by our own Code of Conduct and compliance standards.
- Competent Government agencies should closely monitor the trajectory of malnutrition among infants and young children to ensure that the implementation of Decree 100 is effective and does not generate negative impacts as a result of restrictions of essential product information.
- In order to strengthen access to basic product information, relevant Government agencies should develop and facilitate an official information channel to ensure that pertinent official product information, including data on quality and usage instructions, is available to consumers and does not violate advertising rules.
- Changes in the regulation, if any, must be made based on sound scientific evidences, with reference to progress against goals of National Nutrition Strategy, and with consideration to protect the right to access information by consumers.

4.2 Price Stabilisation of Milk Products for Children under 6 Years of Age

Since the year 2010, the Vietnamese Government has issued many legal regulations meant to control market prices. Most recently, the Ministry of Finance issued Decision 1079/QD-BTC dated 20th May, 2014 detailing the imposition of price stabilisation measures for milk products for children under 6 years of age (Decision 1079). The measures were prolonged for further 18 months through Decision 857/QD-BTC dated 12th May, 2015 amending and supplementing some articles of Decision 1079. According to these two Decisions, price ceilings will be imposed on milk products for children under 6 years old from 1st June, 2014 through 31st December, 2016 inclusive.

³ 'EuroCham Nutritional Foods Group Sector Committee', *EuroCham*, 2015. Available at <http://www.eurochamvn.org/Sector_Committees/Nutritional_Foods_Group>

The State's interventions in the business activities of enterprises through administrative measures such as price ceilings run counter to the Government's aspirations to achieve a full market economy. We are concerned that such measures not only impact the business performance of enterprises in the short- to medium-term, but also affect long-term trade and investment prospects in general. The Government's interference in the business decisions of enterprises sends a negative signal to investors that Vietnam's investment climate is not genuinely stable, open or integrated.

Such interference also has negative commercial effects on the industry. According to data released by market research company AC Nielsen in July 2015, the market for formula milk for children under 6 years old has decreased by 11% in volume in the twelve months after Decision 1079 was implemented.⁴ This might have been caused by the negative psychological impact that the price ceilings have had on consumers' behaviour. Furthermore, up to 60% of the public report having experienced moderate to no benefit from the price intervention measures introduced by the State.⁵ This, together with the actual modest rise in prices of economy-tier products since the imposition of price controls, suggests that price ceiling intervention may have failed in its stated humanitarian objective of lowering prices for needy consumers. While the National Nutrition Strategy considers milk products to be important, and encourages their use to improve the nutrition status of Vietnamese children, the observed 11% decline in powdered milk volume sales means that Vietnamese children are drinking less milk overall and thus getting fewer nutrients. This will have a negative future impact on the National Nutrition goals for improving Vietnamese children's health status.

There are now more than 700 different products across three distinct segments (premium, mid-tier, and economy); this product grouping offers an incredibly diverse selection of products to meet the equally diverse needs of Vietnamese consumers. According to AC Nielsen in July 2015, the average price of formula products in Vietnam's premium segment were in line with the average price levels of premium products in countries with comparable economic conditions and market characteristics in the region, such as Malaysia, Thailand and the Philippines (with Vietnamese prices differing by around 1%).

MOF and other government agencies have conducted a series of inspection on both local and international milk companies. Neither MOF nor any other Government agency demonstrated abnormal, unreasonable, or dramatic fluctuations in prices, or a negative impact on socio-economic stability (the criteria for applying price stabilization measures established in the 2012 Price Law) as justification for the price ceiling imposition.

Since the price ceiling regulation was established in 2014, many costs have increased, such as Vietnam dong exchange rate, electricity cost, labour cost, etc., which impact on the operation of milk manufacturers/distributors. In this context, one of the biggest international milk companies has decided to leave Vietnam market in 2016.

EuroCham Nutritional Foods Group members would like to make the following recommendations:

⁴ 'Cơ hội cho ngành hàng sữa bột tăng trưởng tại nông thôn', *Nielsen*, 26/07/2015. Available at <<http://www.nielsen.com/vn/vi/insights/2015/milk-powder-decrease-july-15.html>> and 'Powdered milk sales fall in major cities', *The Saigon Times*, 24/07/2015. Available at <<http://english.thesaigontimes.vn/42096/Powdered-milk-sales-fall-in-major-cities.html>>

⁵ Report 'Vietnam in Transition: Changing Attitudes to the Market and the State: Perception of a Number of Vietnamese People in 2014' jointly issued by *the Vietnam Chamber of Commerce and Industry and the World Bank* and released in July 2015, p.35 figure 16.

- Remove the price ceiling. Allow for a return to market-based pricing and refrain from imposing any extensions of existing price ceilings or additional controls.
- Any requirement for price declaration should be simple as its name. It should not be accompanied with any additional requirements, such as price structure, documents to justify for new price except the Government considered the change is unreasonable based on clear and true evidences, announcement of new approved price by authorities, etc., which in practical made the price declaration become another form of price registration.
- Clarify the objectives as well as the intended beneficiaries of the State's price stabilisation measures.
- Revise and clarify unclear and inconsistent provisions in the Law on Pricing and implementation documents including the circumstances under which price stabilisation measures should be imposed ('unreasonably high or low due to changes of price constituents') so that the State's intervention in market mechanisms be adequately justified.
- When necessary, impose price stabilisation measures over a restricted period of time and only on essential products that 'meet the basic needs of the people' as stipulated in the Law on Pricing. With regards to the milk formula market, the Government should not control the prices of products in the mid-tier and premium segments, but should only impose price stabilisation measures on the economy segment to improve access to these products by low income consumers.
- Consider lowering price-composing factors such as import tariffs (currently at 0% for imports from ASEAN and 10% for other countries, higher than in other regional countries) and VAT rates as solutions to help reduce the prices of formula products for children under 6 years old; and
- Ensure precise and consistent enforcement of the Law on Pricing and its sub-law documents by State authorities, particularly in regards to provisions governing circumstances where price stabilisation measures are needed⁶ and on the methods of price determination for goods subject to price stabilisation measures.⁷

4.3. Harmonization with international best practices of local food regulations and laboratories testing

In light of the conclusion of various FTAs, it is especially important to harmonise with international best practice of local food quality regulations. In our view, tolerance for nutrient values declared on a food label is the one angle that needs to be harmonised.

The issue is that from March 2016, for food product registration applications, the Vietnam Food Administration ("VFA") required that the tolerance for nutrient values in food products be $\pm 10\%$ from Label Claim ("LC"), i.e. the nutrient content should be 90-110% of LC across the product's shelf-life, applicable on all food products. This requirement is not based on any local laws or regulations. In fact, Vietnam does not have in place any regulation on nutrient labelling yet. However, this requirement is impossible for the food industry to conform with, due to the big fluctuation of nutrient contents in natural sources ingredients; depending on the season, geographic, weather, production and testing variations. It has resulted in rejection/delay of many product registrations.

VFA and VCCI had co-host a symposium in 12th September, 2016 to collect comments from relevant stakeholders, then VFA has another follow-up meeting on 6th October, however, no decision is given yet, and this issue is pending which make serious impact to the whole food industry.

⁶ Article 16, Law on Pricing dated 20 June 2012, and Article 4, Decree 177/2013/NĐ-CP dated 14 November 2013 of the Government

⁷ Circular 25/2014/TT-BTC dated 17 February 2014 of the Ministry of Finance

The guidance on tolerance level should be based on sound scientific evidences and in-line with good international practices, and to be issued officially and promptly to avoid business disruption. Both local and international associations and companies (Vietnam Dairy Association, Vinamilk, Amcham, EuroCham NFG) proposed the followings tolerance limit to harmonize with good international practices:

- a. For products without national technical regulations
 - For micronutrients (vitamins and minerals, bioactive dietary elements): The testing value throughout the shelf life and circulation should be:
 - Minimum: Equivalent to at least 80% of the value indicated on the label
 - Maximum: Not exceeding the upper tolerance limit for daily intake (as provided in Annex 2 of Circular 43/2014/TT-BYT on 24th November, 2014 by the Minister of Health regulating the management of functional foods)
 - For macronutrients (energy, proteins, carbohydrates, fats), especially those containing naturally occurring nutrients: The testing value throughout the shelf life and circulation should be:
 - Minimum: Equivalent to at least 80% of the value indicated on the label
 - Maximum: Equivalent to 120% of the value indicated on the label at most
- b. For products with national technical regulations: The minimum and maximum limits should comply with the limits set out in the regulations.

Another related issue is low accuracy of lab testing report in the market. With post-registration audit one of the VFA's focus, and its reliance on MOH/National Institute of Food Control (NIFC) central laboratory, high accuracy of testing report is very important for both regulator and industry to make an appropriate assessment of food quality, especially for out of specification (non-compliant issue) conclusion. We propose the Government to have an assessment of its main laboratory capabilities vs. global benchmark, and make a plan to upgrade testing methods and facilities to be in accordance with international standards (for example ISO or national organisations for standardisations) to ensure accurate, quick, impartial and fair testing result. NFG will spur and support initiatives for Vietnam Government and MOH to assess and enhance its capabilities in food safety and quality testing.

III. INCREASING VIETNAM'S COMPETITIVENESS

EuroCham Tax & Transfer Pricing Sector Committee has been working on and would like to propose some solutions on tax to remove difficulties and barriers, to promote enterprises' development as below:

1. Waiver of late payment interest/ penalties from tax re-audit/ re-inspection

Given there have been recently many re-tax audits/ inspections by transfer pricing inspection team, General Department of Taxation ("GDT"), State Auditors, etc. in relation to the cases which had already been audited/ inspected by the local tax departments and as result, there has been a large amount of additional tax collected from those re-audits/re-inspections. However, besides paying such additional taxes, the enterprises are also required to pay wrongful declaration penalties and late payment interests. This issue is now leading to huge pressures on enterprises.

Therefore, it is recommended that, if there is any re-audit/ re-inspection, the tax authorities should only collect additional tax and waive any penalties/ late payment interests.

2. Reduction of personal income tax liabilities for the employees who are working for garment-textile, leather and footwear

Due to the global economy downturn, enterprises that are operating in the industry of garment-textile, leather and footwear are facing a lot of difficulties in developing/ remaining markets. These industries are labor intensive and the majority of employees working for those industries are low-earners.

Therefore, to maintain the operation of those industries and ensure minimum social security issues, it is recommended that, the Vietnamese Government should have policy to reduce 50% of personal income tax liabilities for employees who are working in those industries for 2016.

3. Postponing the application of the increased base to calculate compulsory insurance contributions

According to the laws of social insurance, from 2016, the base to calculate **compulsory insurance contributions** (social insurance/ health insurance/ unemployment insurance) would include the actual salaries and fixed or regular allowances.

This change is causing increasing financial difficulties (cost increase) to the enterprises in this economic downturn.

Therefore, it is recommended that, the Vietnamese Government should consider postponing the application of above requirement until 2020.

CONCLUDING REMARKS

European Chamber of Commerce in Vietnam would like again to thank the Government for the efforts made to increase the competitiveness and attractiveness of Vietnam as an investment destination for European companies. 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. Please note that our suggestions in this Position Paper are made on behalf, and in the interest of our Members, 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 and EuroCham will continue to assist wherever possible. We are therefore looking forward to working with the Government of Vietnam and all our Members and partners, both Vietnamese and European, continueing having regular dialogue and follow-up meetings through VBF to enhance Vietnam's competitiveness.