

SPEECH OF INVESTMENT AND TRADE WORKING GROUP

*Presented by
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I. Introduction

The Investment and Trade Working Group and its sub-working groups are keenly interested in the theme of Preparing Vietnamese Companies to Access International Markets.

The major global markets for Vietnamese products have laws and standards that can pose significant challenges for Vietnamese enterprises. In many countries, commercial buyers impose stringent requirements on suppliers for labor conditions in factories, the environmental impact of production, and even compliance with anti-corruption laws. For example, many foreign companies will not work with a local exporter that does not comply with Vietnamese tax and customs law because of the reputational and commercial risk involved.

These standards pose a serious hurdle to Vietnamese enterprises, but even businesses that are committed to compliance with local regulations struggle to do so. In order for Vietnam to continue to strengthen its role in the global supply chain, administrative agencies must make compliance less burdensome, not by lowering standards but by providing clear regulations, straightforward guidance and uniform enforcement. An atmosphere of transparency, support and collaboration will facilitate the access of Vietnamese enterprises to the best international markets.

With those comments in mind, we will mention a few of the specific issues currently facing both local and foreign-invested companies operating in Vietnam, and suggest approaches that will allow domestic and FDI businesses to grow together.

II. Investment & Trade Improvements

1. CPTPP ("TPP-11") and other Important Trade Agreements

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

2. The EV FTA

Next and in particular, as mentioned in previous meetings, we wish to highlight the importance of doing everything possible on the legislative side to prepare for the European Parliament's consideration of the EV FTA in a few months' time. This is the most immediate and realistic opportunity Vietnam has today to continue expanding access by local businesses to export markets while enabling reform domestically. We note that the EU–Vietnam Free Trade Agreement will be on the Agenda of the EU Parliament by mid-2018 and when that happens, we hope that the 750 Members of the European Parliament will give their approval in a plenary session, just as we hope the National Assembly will do for Vietnam.

But we have seen an increasing questioning from the public in general of the benefits of trade liberalization. In this context, the Investment and Trade Working Group expects the European Parliament members to raise questions on regulations that the Vietnamese Government has recently adopted. All these issues will be extremely important and we need to anticipate and continue to actively address the concerns of the Members of the European Parliament and national constituencies.

3. Specific and technical issues for trade improvements

3.1 Investment and Trade Conditions

- a. One persistent challenge relates to services which have not been committed or provided in the WTO Commitments or other international treaties to which Vietnam is a member, and for which investment conditions for foreign investors are not provided by Vietnamese law. Investment registration authorities continue to seek opinions from the ministries to consider and decide on investment in these areas. In practice, any opinion from the ministries such as “request the DPIs to consider and grant the licenses” is not considered an “approval”.

Suggestion: Streamlining the application process will enhance consistency across agencies at all levels between ministries, creating clarity in the interpretation and application of international treaties for all businesses operating in Vietnam. When there is no objection from the ministry, the DPI should grant the license. As long as the ministry opinion indicates consent, even if the word “approval” is not specifically used, the DPI should also grant the license.

- b. Under Decree No. 118 implementing the Investment Law, in case foreign investors have been granted a license to invest in those sectors / services, the investment registration authorities are to consider [and] decide on other foreign investors in the same sectors / services without seeking opinions from the ministries.

However, the HCMC DPI, for example, still seeks opinions from the ministries for each case regardless of precedents establishing that the proposed activities have been approved for foreign investors before.

Suggestion: The DPI would save time and resources by following precedents in accordance with these regulations.

- c. Pursuant to Decree 09/2018/ND-CP ("**Decree No. 09**") dated 15 January 2018, any domestic enterprise receiving even just 1% of foreign capital is subject to the Trading License requirement and must obtain a license for establishment of retail outlet for each and every retail store under its ownership.

The MOIT and DOIT are entitled to allow or reject the continued operation of such retail stores by granting the license for establishment of a retail outlet. As a result, the business operation and security of employees working in such stores are at risk.

Suggestion: We request that the requirement for re-licensing of existing retail stores be eliminated. The re-licensing may apply if foreign investors account for at least 51% of the charter capital. As a part of the Government's sustained effort to reduce administrative procedures, licensing requirements should be narrowly focused.

d. Trading License under Decree 09

Though there are legal timelines for the consultation process under Decree 09, in practice, the MOIT does not strictly follow these timelines, which results in delays in the approval process.

Decree No. 09, which replaced Decree 23/2007, also expands the administrative burden on enterprises by providing that the Trading License no longer serves as the Retail Establishment License for the first retail store. As such, even enterprises that open only 1 retail store still need to apply for a Retail Establishment License, a step that they were not required to follow under the previous Decree No. 23.

Suggestion: The consultation process with the MOIT should be limited to a restricted number of sensitive business sectors only, as this consultation process seems to be redundant due to clear WTO commitments.

3.2 National Technical Regulations on the content of formaldehyde and certain aromatic amines derived from azo colorants in textile products

Recently, Circular No. 07/2018/TT-BCT of the MOIT has extended the effective date of Circular 21 from 1 May 2018 to 1 January 2019. However, some serious issues of Circular No. 21 still loom over the sector.

We hope that the MOIT will consider a solution to both address the public health concern, and help ease the time and costs demanded of the responsible enterprises. We outlined some particular solutions in our detailed paper submitted to the MOIT earlier. Regulations that are clear are easier to comply with, and both local and foreign investors will benefit from uniform application and enforcement of laws that protect the environment and promote sustainable growth.

3.3 E-commerce

a. Taxation of e-commerce

We understand that the MOF has proposed the inclusion of a new section in the proposed amendments to the Law on Tax Administration ("**LTA**") governing e-commerce:

- to seek to shift the requirement to file and pay value added tax ("**VAT**") and corporate income tax ("**CIT**") from Vietnamese businesses to offshore suppliers of online services; and
- to consider requiring offshore entities supplying services to Vietnamese customers to appoint a representative office in Vietnam for tax declaration and payment.

Travel and tourism is one of Vietnam's most important industries in terms of sustainable economic and social development. The statistics of the World Travel & Tourism Council and the Vietnam National Administration of Tourism show that travel and tourism economy is not only large - it is growing fast.

We are concerned that the draft proposal, if turned into law, would have a negative impact on the continued success of this important sector. These issues will burden the resources of all businesses competing in this sector.

We respectfully request that the MOF thoroughly consider the draft proposal in relation to the taxation of e-commerce, leave the current tax withholding mechanism unchanged, continue to let

Vietnamese taxpayers collect and pay Vietnamese taxes, and not try to pass this duty off to foreign services suppliers abroad. We believe that improving the long-standing approach is better than trying to introduce a completely new system with all of its potential unforeseen complications.

b. Single payment gateway

Another issue is that the draft proposal introduced by the Ministry of Finance on 10 November 2017 proposed the mandatory routing of cross-border transactions to one single payment gateway, i.e. the National Payment Corporation of Vietnam (NAPAS) for the purposes of tax collection or otherwise.

We are concerned that this will weaken security, constrain innovation, reduce positive consumer experience, and reduce competition in the e-commerce market.

4. Improvements of Other Supply Chain Obstacles

4.1 "Economic Needs Test"

Decree No. 09 continues to apply the ENT, and further, expand the scope of retail stores subject to ENT.

The procedures, timeline, obligations of each of the authorities involving in this ENT should be clearly provided in order to reduce time cost and unofficial cost for enterprises. The ENT should apply for the 2nd physical store onward only. In all other respect, the principle of National Treatment should be respected. We would like to follow up on the status of this requirement.

4.2 Importation of used/refurbished machinery and equipment position paper - Draft Circular replacing Circular No. 23/2015/TT-BKHCHN

Several aspects of the current rules on the import of used and refurbished equipment have proven unreasonable for enterprises. We have raised these issues in detail and we believe that new changes are under consideration. We would like to follow up on the status of this issue.

5. Other specific issues

5.1 Developing the Market for Household / Rooftop Solar Energy

Vietnam's development and geographical circumstances make it well suited to deploy environmentally - friendly household/rooftop solar energy systems, and this is a great opportunity for Vietnamese engineering, installation and service providers. However, even as thousands of households are being constructed or renovated each week, almost all of them are losing this opportunity. A lack of specific guidelines from the Ministry of Finance and the Ministry of Industry and Trade ("MOIT") continue to delay EVN's implementation of the payment mechanism for rooftop solar, especially as to the official signing of rooftop solar power purchase agreements, as well as the calculation, payment and finalization of the excess energy output generated by developers to the grid system of EVN's power entities under the net-metering scheme currently provided under Decision 11 of the Prime Minister and Circular 16 of the MOIT.

5.2 Recognition and enforcement of foreign arbitral awards in Vietnam

Trade liberalization allows local and foreign companies to undertake long-term and profitable projects and commercial cooperation. Integration of the domestic economy into global chain requires certainty and reliable contractual relationships.

In practice, the Vietnamese courts have often issued decisions to reject the applications for the recognition and enforcement of foreign arbitral awards in Vietnam for reasons not consistent with the New York Convention.

We would like to recommend ensuring that the 1958 New York Convention is strictly applied by Vietnamese courts, in accordance with the 1958 New York Convention and the 2015 Civil Procedure Code, and that the Vietnamese court should not re-open the merits of a case that has been resolved by foreign arbitration.