

## **EuroCham**

### **Position Paper**

#### **Vietnam Business Forum: May 26<sup>th</sup>, 2010**

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Honorable Ministers, Ambassadors, Your Excellencies, Ladies and Gentlemen: On behalf of EuroCham and its partner European Business Groups, I would like to thank the Ministry of Planning and Investment and all the authorities represented here today for facilitating this ongoing constructive dialogue with the private sector through the Vietnam Business Forum.

#### **I. Overview**

2010 is a promising year for Vietnam: Growth figures came in at an impressive 5,32% for 2009, 5,8% for the first quarter of 2010 and growth is now projected to be over 6,5% this year. Credit has become accessible; however it is still relatively expensive. The stock markets have well recovered from their historical lows about a year ago. Overall, the economy seems back on track already. At the same time, Vietnam has increased its international visibility by assuming the rotating Chair of the Association of Southeast Asian Nations (ASEAN) from January 1<sup>st</sup> to December 12<sup>th</sup>, 2010. Vietnam's chairmanship of ASEAN offers the unique opportunity to increase Vietnam's standing in the region and beyond, thus promoting its political and diplomatic profile to match its increasing economic importance.

EuroCham believes that the biggest challenge for Vietnam for the remaining 2010 is to balance growth without fueling inflation, whilst at the same time creating sustainable long-term solutions for the country. We note that Vietnam is still at a comparatively early stage and mainly based on exporting raw materials like oil, gas, rice and coffee or simple low added-value finished goods like leather products, garments and shoes. We believe that one of the keys to sustainable economic development is to shift from these basic low added-value exports to more sophisticated and high added-value exports, in particular in the high-tech sectors. We believe that to realize such shift to high-tech manufacturing, and to attract and retain European and foreign investment in general, three core issues matter: Infrastructure and energy, human resources development and continuing regulatory- and administrative reforms.

## II. Infrastructure and Energy

It is estimated that Vietnam needs around 70-80 billion US\$ investment in the infrastructure sector in the coming 5-10 years alone. Developing its infrastructure will be one of Vietnam's major tasks to reach regional competitiveness and be further integrated into global supply chains. A major challenge will be to synchronize the different infrastructure types in order to increase the flow of goods throughout the whole supply chain. We believe that involvement of both financial and technical expertise of the foreign private sector will be key to keeping up with the massive demand in the infrastructure area. Public Private Partnerships (PPP) projects will be of key importance to upgrade Vietnam's infrastructure as the country integrates further into the world economy. The Vietnamese Government and the Ministry of Planning and Investment (MPI) have in recently introduced new regulations to develop and refine the regulatory framework governing PPP projects and contracts.

In order to further encourage the construction and improvement of infrastructure facilities by the private sector in Vietnam, the Vietnamese Government has recently passed Decree 108, which took effect on 15th January 2010 and contains new provisions relating to infrastructure projects and private sector participation. Further, the Ministry of Planning and Investment (MPI) has just released new draft regulations on "pilot PPP projects in infrastructures development" and particularly encouraged the foreign private sector for their feedback. These new regulations are designed to encourage more self-sustainable, viable and profitable infrastructure projects. We highly welcome the MPI's approach to address these PPP issues as a matter of priority and we believe that this is a excellent example of how the MPI works with the private sector. It is finally a great opportunity for the foreign private sector to influence legislation in the important field of PPP.

With regards to sea port infrastructure, we have good progress particularly for Cai Mep and Thi Vai seaports, where dredging at 14 meters will bring these ports up to international standards. However, it is important for Vietnam to have a clear national strategy for seaports: Vietnam probably needs 4-5 good ports in the south, 2-3 big ports in the north and maybe 1-2 in the central region. We believe that with 11-12 good ports, Vietnam will be more efficient than by having 50 – 60 small ports scattered among the different provinces. So the government has to carefully decide where to allocate its scarce resources. Such improving of seaport infrastructure would make it possible for more mother vessels to access Vietnam ports directly without feeder operations in Singapore, Hongkong and Tanjung Pelepas. Vietnam ports could become hubs for sea freight cargo, increasing the range and volume of logistics services offered in Vietnam. In this context we note that port charges as per present government tariffs are extraordinarily

high in comparison with other South East Asian ports and a significant reduction of these port charges is recommended in order to attract shipping lines entering Cai Mep and other ports as soon as possible, establishing links with the US West Coast and also with European ports.

In this context, we believe that improving customs regulations and procedures does not require huge capital investments but can improve drastically the investment climate in Vietnam: Many of our foreign enterprises see long clearance times, often caused by subjecting each good to the same tedious customs procedures. We suggest that customs administrations should introduce simplified clearances for low-value shipments. The key characteristics of such 'informal' clearance process include a simplified goods declaration and lower levels of scrutiny and intervention. Informal clearances should also be given on a 'conditional basis' to allow an early release of goods. We also recommend waiving of duty and taxes where the liability is considered to be negligible: Such "de-minimus" rule will help to save cost, speed up handling processes and will increase Vietnam's import competitiveness, whilst audit inspection via customs can still occur. We also believe that whilst some physical control must remain, efficient pre-arrival clearance measures will enable customs to focus its resources and efforts on high risk goods / activities and allows unimpeded delivery of other goods. We finally note that in our view successful pre-clearance does not necessarily depend on having an Electronic Data Interface (EDI) system: Whilst EDI systems enhance efficiency in transferring data, it has been found that simplification of pre-clearance is equally effective in a manual environment.

With regards to energy and power, consumption of electricity keeps on growing by 15% annually, thereby substantially surpassing the economic growth rates, and is expected to reach 3.5 times the current 2009/2010 figure by 2020. Compared to some other countries in the region, we note that Vietnam has fallen behind with respect to developing a competitive electricity market. This issue has not yet been settled due to a number of problems, of which electricity pricing is probably the most significant. In particular, the prominent role of Electricity of Vietnam (VN) and the related issue that power purchase agreements cannot be negotiated at viable tariffs makes it hard for foreign investors to engage more in this important sector. This is resulting in a shortage of - actually available - investment capital and threatening to perpetuate the slower growth in power capacity. EuroCham recommends adjusting energy prices and maintaining government guarantees in order to encourage foreign investment and lessen the perception of high risk in relation to major energy projects.

Along with the mentioned adjustments in electricity pricing policy, and the expansion of the market for energy service companies, we highly recommend the creation of an Energy Efficiency Board in charge of promoting specific action plans and standards (i.e. green building

standards) on this vital topic. Further, in view of the many recent industrial pollution cases, we strongly recommend the Government institute new regulations on industrial sites so as to guarantee environmental protection standards through the strict specification of minimum equipment standards. European regulations provide an excellent example in this regard and EuroCham and its members would welcome the opportunity to aid in the transfer of best practice in this area.

### **III. Human Resources Development**

Vietnam has made significant progress in education over the past years, in particular in illiteracy eradication, primary- and lower secondary education. However, challenges remain: The overall education quality is still low. Vietnam has to improve and upgrade its educational institutions so they meet the needs of real labor markets and training needs of companies. Therefore, Vietnamese universities will have to quickly catch up with international levels. In particular, the capacity and quality of vocational education needs to be improved. Upgrading teaching staff and educational managers will be key to improve not only quantity but also quality of education and training. We note that more and more Vietnamese students are going abroad to study, and many of them do not return home after they graduate. To avoid such "brain drain", Vietnam needs to continue its educational reforms in particular in the field of higher education, in close co-operation with the private sector. In this context it is important to mobilize overseas Vietnamese intellectuals to participate more in teaching, research and development of schools and universities.

The European private sector recommends focusing on two issues: First, supporting the development of top-universities that are able to compete internationally in terms of research and development capacities. Second, vocational training: There is still a strong gap between theory and actual practice needs: European businesses often find it hard to hire skilled people on almost every level. Vocational education and training often does not take into account the needs of the companies operating in Vietnam. European companies are therefore spending large amounts to send Vietnamese staff to their overseas headquarters to be able to train them appropriately. Eurocham believes that for vocational training, curricula and training equipment has to be up-to-date and in line with latest industry standards. Curricula should take into account both academic and industry needs. To this end, co-operation with the private sector is key, in particular in terms of designing training plans and curricula, offering internships and trainings and helping in providing state-of-the art equipment and offering lecturers from the foreign companies.

We would further like to point out increasing difficulties of our foreign companies to obtain work permits for their staff: In particular, the formal requirement of having a degree/diploma (and evidence of alternative experience in case no degree/diploma can be provided) often results in timely and costly efforts of our members: As the formal requirements of evidencing alternative experience are not precisely specified this often results in long time delays. In some cases, foreign employees find themselves in a situation of legal uncertainty where documents have been submitted but the work permit not yet been issued. We therefore recommend issuing an official receipt that allows foreign employees to commence work immediately upon submission of copied documents, and provide the full sets of legalized/consularised documents within three months from commencing work. This way, waiting times for legalization/consularisation procedures in the foreign country can be avoided (waiting times in some foreign countries are up to 6-8 weeks). We would also like to encourage the Vietnamese government to issue “conditional” work permits for foreign high-income employees/experts: These “conditional” work permits would allow the high-income employee/expert to commence work immediately and submit full documentation within three months from commencing work.

With regards to compulsory health insurance for foreign employees, the vast majority of foreign employees are already covered by an existing health plan that is mostly paid for already by the foreign company. It is unlikely that any foreigner is willing to cancel their existing international health insurance in favor of a compulsory (and only domestic) Vietnamese health insurance scheme that will in most cases not cover as broad as their existing international policies. Accordingly, the compulsory health insurance scheme implemented by the Vietnamese government is mostly only an additional cost of doing business for most of the foreign companies in Vietnam. It is unfortunate that this scheme has already been implemented by the Vietnamese government. EuroCham strongly recommends that the compulsory health insurance for foreign employees at least offer clear opt-out provisions for employees that are sufficiently covered by other health insurance schemes. Such opt-out should be granted upon evidencing of an existing foreign health plan.

With regards to social insurance alone (excluding health- and unemployment insurance), the burden will rise from 22% to 26% in 2014. The total burden of social insurance (i.e. social-, health- and unemployment insurance) will rise to 32.5% in 2014, thereby making Vietnam much less labour competitive in the region. Moreover, this cost increase has not yet brought significant improvement of the benefits provided. On the contrary, the new scheme has already triggered several staff initiatives of our foreign companies to search for alternative salary structures. EuroCham therefore strongly recommends not implementing the increase in social security-, health- and unemployment burdens by 2014. Moreover, and for the same reasons

valid for the compulsory health insurance scheme (in particular: alternative coverage provided in foreign country), we also recommend not extending the social insurance scheme to foreign employees.

#### **IV. Regulatory- and Tax Environment**

There is consensus in the foreign business community that the approval process for investing and setting up businesses in Vietnam is still difficult and time-consuming: For many foreign companies, the complexity of administrative procedures and the sometimes uncoordinated and inconsistent implementation of laws and regulations between different authorities can present a serious hindrance to running a successful business in Vietnam. We note that the obligation for the investor to approach in sequence a number of government agencies renders the process unduly time consuming. We therefore recommend that Vietnam moves to a “one-stop shop” approval. It would then be the responsibility of the relevant ministry to coordinate with other government bodies where necessary. In most ASEAN countries this mechanism has proved extremely useful and effective. In this context, we like to remind of the simple rule that “time is money”: Investors who have to wait for an investment license for five or six months in Vietnam (rather than five or six weeks in other countries in the region) are not only losing time, but money as they cannot manufacture or do their business as soon as they wish. The effects of above unpredictable bureaucracy and timing have already caused Vietnam to lose competitiveness in the eyes of foreign investors.

In some cases, provincial authorities have maintained requirements incompatible with the laws: For example, with regards to mergers and acquisitions (M&A), Eurocham notes that Vietnamese laws generally allow foreign investors to acquire shares in Vietnamese enterprises at unrestricted levels, unless restrictions are provided by the WTO and other Vietnamese laws. However, some local Departments of Planning and Investment (DPIs) have shown resistance to this general principle and in some cases have tried to prevent such acquisitions from being made, or have indefinitely delayed registering such acquisitions. We believe that such practice jeopardizes the attractiveness of Vietnam as an investment destination. The Vietnamese government should therefore instruct local DPIs to follow the laws, and in case local DPIs feel uncertain about implementing, clarify for example the requirements of Decree 139 and Decision 88 in the area of M&A.

In particular concerning to foreign investors remains the requirement of an “Economic Needs Test” (ENT) by which local authorities assess local conditions before issuing an authorization to establish any additional retail sales outlets: Even though of Decision 10 has opened the distribution sector to foreign service providers as of January 1st, 2009, the establishment of

100% foreign-owned capital companies in the distribution sector remains subject to significant administrative and procedural obstacles at local and central level. Few explanations on the scope of the ENT are to be found in Circular 9, guiding the implementation of Decree 23. We strongly encourage the Vietnamese Government that the licensing process for retail outlets should be transparent and guided by objective criteria only. The establishment of outlets for retail services shall be allowed on the basis of a transparent ENT, using objective parameters and limiting the potential for discretionary decisions.

Further, incentives for investment, in particular tax incentives, must be clear and applied predictably and consistently on both national and provincial levels. Whilst EuroCham welcomes the recent tax changes as part of the Government's stimulus program, a remaining area of concern is the scope for deductibility of advertising and promotional (A&P) expenses. Whilst we welcome the increase in the cap on deductible expenditure from 10% to 15% of total expenses, the new regulations still fall short of the expectations of the wider business community. A&P expenses are fully deductible in the vast majority of jurisdictions, and so this lack of material progress towards the eventual full abolition of the A&P tax cap only serves to reduce Vietnam's attraction as an investment destination for leading international brands.

EuroCham finally recommends that the Vietnamese Government should increase its efforts to raise awareness about the value of IP protection, in particular that it serves as an incentive for many European and foreign companies to research and develop their products further and thereby benefitting the consumers in the long run. On the legal side, sanctions for selling counterfeit products must be increased and rigidly enforced in practice. EuroCham highly welcomes the related modification of the Intellectual Property Law and Criminal Code regarding criminal sanctions connected to IP infringements that have come into effect as of this year. These new rules and their strict application will be of paramount importance for foreign investors in Vietnam.

## **V. Administrative Reform (Project 30)**

The Prime Minister's Master Plan for Administrative Simplification (Project 30) is an ambitious plan to substantially reduce the costs and risks of administrative procedures affecting businesses and citizens by simplifying or abolishing procedures, thereby reducing regulatory costs and risks for businesses. The Vietnamese government considers Project 30 as one of the top eight priorities in its 2010 targets and as an effective measure to avert the impacts of the global economic crisis. A Special Task Force has been installed, reporting directly to the Prime Minister. EuroCham is happy to contribute to Project 30 as member of the Advisory Council for Administrative Procedures Reform ("ACAPR") made up of 15 members. In order to successfully

complete Phase 2 of Project 30 before June 30, 2010, the Prime Minister has mobilized an additional 50 lawyers and 100 experts. To date, all members of the Advisory Council have completed their reviews and have submitted their reform recommendations. Encouraging results of Project 30 have been published for various cities and provinces already, including HCMC in April 2010: For HCMC, out of 2,504 listed procedures and requirements, 70.77% were revised or proposed to be revised, thereby significantly surpassing the initial target of 30%.

We believe that whilst these first results are impressive, the full impact of Project 30 may only be ascertained by the end of 2010. The long-term success of Project 30 will largely depend on the current good momentum to be kept. EuroCham believes that it is particularly important to actually implement and apply all recommendations on provincial levels: It is crucial that no new body of APs emerges whilst Project 30 is still ongoing, thereby counter-acting current efforts. This is particularly true for imposing additional approval requirements such as “baby permits” that are not justified by the current laws and have often resulted in a large burden for foreign investors in Vietnam. We hope that Project 30’s “top-down” approach with the Prime Minister’s STF at the top will prove to be an efficient mechanism in bringing Project 30 to life on the provincial levels.

## **VI. Price Stabilizations**

EuroCham and the European business community appreciate the government’s efforts to protect price stability of certain goods essential to the population and to prevent inflation. However, a proposed Draft Circular (Circular 104) by the Ministry of Finance (MOF) on price stabilizations, if implemented, would make many products subject to price stabilization that are not essential for the population. Moreover, experience has shown that price controls often result in shortages, hoarding and reduced product quality among other issues. Price controls simply do not work. If a government imposes a mandatory price ceiling, the suppliers of that product will withhold the goods from the market, or sell it to customers outside of the country with the price controls. This will lead to shortages and could lead to black-market sales of the good at a higher price. Experience has also shown that “command and control” economic measures are unworkable: With so many niche- and premium products, the chances are minimal that any central government can determine realistically and efficiently the costs and prices for tens of thousands of product variations.

Moreover, businesses invested in Vietnam would face a mountain of new administrative requirements as a result of this Circular, including mandatory reporting to Vietnamese government agencies. It appears that much of this reporting will require all companies under jurisdiction of this law to hand-over proprietary and sensitive information about their products,

profit margins, business strategies and plans. All this is against the spirit and objectives of Project 30 and a backward step in market development that will add substantial costs and uncertainty to the private sector doing business in Vietnam. We strongly believe that the first principle of price stabilization is to let the market stabilize the price based on the rule of 'supply and demand'! We would therefore like to propose to you that we set aside the draft Circular of and concentrate our efforts on alternative ways to keep prices in check and at the same time ensuring Vietnam's graduation to *"Market Economy Status"*.

## **VII. Summary**

To sum up, the main obstacles for European companies in Vietnam remain infrastructure, human resources, and a lack of consistency and transparency in the regulatory environment. EuroCham and its members maintain their firm belief in the great potential of Vietnam, both as a regional leader and as a destination for European investment. We note that Vietnam has chosen as theme for its Chair of ASEAN 2010: "Toward the ASEAN Community: From Vision to Action". In such role, Vietnam has the unique opportunity to boost cooperation among ASEAN members and between ASEAN and its partners, in order to increase regional links and respond to global challenges such as financial-economic crisis, food and energy security, climate change, natural disasters and diseases.

We finally encourage the Vietnamese Government to continue its good cooperation with the foreign private sector to address the above issues, as well as to maximize the efficiency of throughput at existing facilities. We welcome any comment on the suggestions contained here and are happy to provide further advice or expertise to aid in the consideration or implementation of the changes proposed here. We look forward to working with the Government of Vietnam and all our members and partners, both Vietnamese and European, to maximize their success in an ever more vibrant Vietnam!

I thank you for your attention!

*Alain Cany*

*Chairman, European Chamber of Commerce in Vietnam*