



EUROCHAM POSITION PAPER
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Presented by
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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, the International Finance Corporation, the World Bank and all the authorities represented here today for facilitating this ongoing constructive dialogue with the private sector through the Vietnam Business Forum.

Overview

Over the past months we have observed the recovery of most industry sectors in Vietnam: Credit has become accessible, cheap and flowing more easily, and the stock market has more than doubled. This can to a large part be attributed to the Government's stimulus packages, which reduced by 30% corporate income tax rates for small and medium-sized enterprises for the fourth quarter of 2008 and for 2009, and cut by half the value-added tax on certain goods and services until end-2009. It also decided to give to firms a 4 percentage point interest rate subsidy on their short-term loans contracted and disbursed in February–December 2009. As a result, the Vietnamese economy is now projected to grow at 5% in 2009 and at 6,5% in 2010.

On a broader perspective, EuroCham notes that the focus on the government's fiscal stimulus may have distracted Vietnam from general reform processes: We believe that the government should not get "sidetracked" by the short-term rebound, but focus instead on the fundamental constraints to the economy's competitiveness. In a general sense, we feel the correct course for the government in the present climate is to accelerate the structural changes within the economy so as to enhance productivity and maximize the nation's retention of its growth potential. That means continuing reform processes on all levels: First, micro reforms such as opening up the telecom-, pharmaceutical- and retail industries to foreign competition. Second, streamlining the clunky, all-pervasive state-owned enterprises, and, more generally, tackling the scourges of corruption and red tape. In particular, EuroCham believes that pushing on with state-owned enterprise reform has an important role to play in the strengthening of the economy as a whole. EuroCham recommends that the Government accelerates the equitization process and announces a clear roadmap and timetable to potential strategic partners, in particular in the banking and telecommunications sectors. Without these reforms, Vietnam will find it hard to rise above its present niche as a low-cost manufacturing base into the more diversified, richer economy it could become.

Trade barriers and WTO implementation

After almost three years after Vietnam's accession to the WTO, we encourage the Vietnamese government to full and timely implementation of Vietnam's WTO commitments: Over the past years, Vietnam has greatly benefited from significant Foreign Direct Investments (FDI) influxes triggered upon its accession to the WTO. The resulting liberalization in significant service sectors has offered promising opportunities for business development to foreign investors, notably in the fields of distribution, banking and telecommunications. Vietnam now needs to demonstrate to the international community its willingness to comply with its WTO commitments. Therefore the full and timely implementation of these commitments represents a fundamental factor for Vietnam's ongoing attraction of significant levels of FDI. 2010 will constitute a key period as, in accordance with Vietnam's WTO commitments, many limitations (both in terms of forms of investments and foreign ownership) in committed sectors of services shall be entirely lifted.

This is particularly true with regards to retail- and distribution: 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. 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. Few explanations on the scope of the ENT are to be found in Circular 9, guiding the implementation of Decree 23. Moreover, the establishment of foreign companies in the banking sector remains subject to burdensome and lengthy procedures, and to date only a limited number of licences have been issued. 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.

With regards to the pharmaceutical industry, the Vietnamese Government maintains several barriers to market access that, taken together, significantly impede the import of innovative pharmaceutical and biological products. In particular, Vietnam agreed, as part of its WTO accession commitments, to extend trading rights (the right to import and export independent of government-approved channels) to pharmaceuticals, effective January 1, 2009. The Ministry of Health has promised to release guidelines to replace the current Circular 6, which despite WTO-opening does still not allow foreign invested companies to import finished pharmaceutical products into Vietnam. Eurocham member companies are highly motivated to utilize the opportunity to establish legal entities in Vietnam and ask that requirements be clarified through the release of this guidance that shall replace Circular 6.

With regards to growing activities in the area of 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 (DPI) 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 implement clear and consistent regulations with regards to scope and limits to M&A activities.

Intellectual property protection

Despite Vietnam's accession to the Agreement on Trade Related Aspects of Intellectual Property Rights ("TRIPs"), protecting and enforcing intellectual property (IP) rights remains a problem in Vietnam: A broad range of counterfeit products continue to be sold in the Vietnamese market, and a significant number of retailers in both Hanoi and Ho Chi Minh City openly admit that they expect the business of trading in counterfeit products to grow, and many plan to continue selling counterfeit products in the years to come. EuroCham 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 will come into effect as of January 2010. These new rules and their strict application will be of paramount importance for foreign.

Taxation and administrative reform

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 under the new Corporate Income Tax Law that came into effect in January this year. 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.

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. EuroCham therefore strongly welcomes the Advisory Council for Administrative Procedure Reform (ACAPR) initiative to identify a list of administrative procedures that are causing difficulties and obstacles to doing business in Vietnam (Project 30), which is currently being carried out comprehensively at all levels, engaging all state administrative agencies, citizens and businesses.

EuroCham believes that the success of Project 30 in particular and administrative reform in general depends largely on the active involvement and input of the business community in Vietnam. Eurocham therefore encourages the business community to provide even more specific feedback on particular APs. The Government and the Advisory Council, to which EuroCham is a member, have rightly demanded that more specific guidance of how to improve specific APs is needed rather than only generally saying APs are unclear, inefficient and slow. EuroCham again encourages everybody to use that opportunity and provide the Advisory Council with comprehensive feedback so that the regulatory/administrative environment gets more favorable for all businesses in Vietnam.

Finally, there is strong feedback from not only our members but across the business community that the approval process for setting up business in Vietnam is still laborious: 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 developing countries this mechanism has proved extremely useful and effective.

Infrastructure and customs procedures

With regards to infrastructure, we have observed troubling delays in many important infrastructure projects, serving as an impediment to both growth and productivity. We therefore encourage the Government to involve the private sector to speed up completion of those key projects underway and pending. With container shipping demand already challenging terminal capacity, the state of the nation’s ports remains an issue of the utmost importance and one which risks having a severely limiting effect on future investment if not addressed comprehensively and as a matter of urgency.

Customs issues have recently troubled many European companies, like for example long processing times at customs due to lacking pre-arrival clearance, equal treatment of all goods regardless of their customs value, uneven import duties on disassembled parts of a product as compared to the import of the finished product, or the problem of damaged goods in customs procedures. EuroCham welcomes the openness and the willingness of the Vietnamese Government in general and the Customs Department in particular to enter into a constructive dialogue and solicit feedback on all administrative procedures and overall customs issues that the foreign businesses in Vietnam encounter. We believe that improving customs laws and regulations does not require huge capital investments but can improve drastically the investment climate in Vietnam.

Power, energy efficiency and environmental sustainability

Consumption of electricity has been growing by 15% annually, hence substantially surpassing the economic growth rates, and is expected to reach 3.5 times the current 2009 figure by 2020. Compared to some other countries in the region, 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. This key problem is leading to a shortage of investment capital and threatening to perpetuate the slower growth in power capacity. Until the regulatory environment in Vietnam has reached an internationally competitive level, 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.

We see great opportunities in the present climate for the Government to increase its focus on sustainable energy use, and in particular electrical efficiency. 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.

With power demand significantly outpacing production and Vietnam one of five countries most at threat from global warming, we would like to point out that EuroCham in partnership with the Vietnam Chamber of Commerce and Industry (VCCI) has hosted on September 17th and 18th in the Melia Hotel in Hanoi the conference and exhibition “GREEN-BIZ 2009 – European Green Business Solutions for Vietnam”. I am very pleased to say that GreenBiz 2009 has been well received by both the Vietnamese and the foreign side. It has initiated and intensified the awareness of environmental concerns and offered solutions to the challenges that lie ahead and how to address climate change as the most pressing issue for Vietnam.

Human Resources

With regards to human resources, we would like to point out increasing difficulties of our members to obtain work permits for their staff in a timely manner. In particular, the formal requirement of having a university degree often results in timely and costly efforts of our members to evidence other experience in case an employee does not have such degree. Also we note that with regards to compulsory health insurance for foreign employees, the vast majority of our members’ employees are already covered by an existing health plan. It is therefore unlikely that any foreigner is willing to cancel their existing health insurance in favor of a compulsory Vietnamese health insurance scheme that will in most cases not cover as broad as existing policies. Accordingly, the compulsory health insurance in fact is an additional cost of doing business for most of our members. EuroCham therefore recommends that compulsory health insurance for foreign employees to be cancelled with immediate effect.

We also strongly believe that carefully watching signs of discrimination between foreign and Vietnamese companies will help keeping Vietnam an attractive investment destination in the future: It is important to realize that most of our member companies contribute greatly to the employment of many Vietnamese citizens, upgrade the infrastructure and environment and are solid and reliable tax-payers. It is therefore highly important that foreign companies are treated equally to Vietnamese companies on all levels.

EuroCham Whitebook 2010

Please note that at a Press Conference held in Hanoi Thursday last week, we have officially launched the second edition of EuroCham’s “White Book of Trade Issues and Recommendations”. We have distributed print versions and CDs of the Whitebook 2010 to key representatives of both the government and the private sector. Like the first edition, the Whitebook 2010 aims to summarize some of the key issues affecting the business climate for European businesses in Vietnam. The book is sector-specific and covers most major industries that our member companies operate in, like e. g. pharmaceuticals, fast-moving consumer goods, energy, telecom and banking. It also includes in the second edition some overlapping key areas that cover most - if not all - industries doing business in Vietnam, like for example Intellectual Property protection, Mergers and Acquisitions (M&A) and the state of Vietnam’s implementation of WTO-commitments. Also, the Whitebook 2010 includes for the first time a Progress-Update that shows specifically the progress that has been made over the last year in the particular sectors.

Summary

To sum up, we note that the main obstacles for European companies willing to invest into Vietnam remain infrastructure, human resources, weak enforcement of intellectual property rights protection, and lack of consistency and transparency in the regulatory decision-making process. In this context, we note that whilst EuroCham represents the European private sector in Vietnam, the resolution of many of the issues addressed here could be supplemented by starting Free Trade Agreement negotiations between the European Union and Vietnam.

EuroCham and its members have a firm belief in the great potential of Vietnam, both as a regional leader and as a destination for European investment. We encourage the Vietnamese Government to work with the private sector to address these 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!