CHAPTER 3.13 WINE AND SPIRITS

3.13.1 Overview

The EuroCham Wines and Spirits Sector Committee (W&S Committee) is the peak industry body for the leading international wines and spirits companies in Vietnam. The Committee represents the common interests of its members in important areas including market access, taxation and regulation, marketing, intellectual property, food safety, and alcohol policy.

The Committee proactively engages local and national authorities on these issues for the benefit of industry, government, consumers, and society. We have a constructive relationship with the Government and commend its recent policy decisions on alcohol beverages including: reducing import tariffs consistent with World Trade Organisation (WTO) commitments, and eliminating Notice 197[1] and Circular 24[2] to remove burdensome import requirements on industry.

Vietnam is an important market for the EU wines and spirits (W&S) industry buttressed by the country's direction towards trade liberalisation, growing foreign direct investment, and a rising emerging middle class. The launch of the EU-Vietnam FTA negotiations in June 2012 further illustrates the country's growth prospects and ambition to be an economic powerhouse within ASEAN.

And while the industry is optimistic about the opportunities for future trade and investment, we continue to face a number of trade, tax and regulatory challenges that are hindering growth and potential. This chapter outlines our key challenges and recommendations that will help grow government revenue, support industry growth, and encourage a responsible drinking environment for those that choose to drink.

We look forward to these recommendations being adopted either as part of EU-Vietnam FTA talks or unilaterally by the Government before the conclusion of negotiations, and welcome ongoing dialogue with relevant authorities.

Summary of Chapter Recommendations

1. Tax policy:
   - Eliminate import tariffs as part of the FTA.
   - Warrant that tariff elimination in any EU-Vietnam FTA is secured by making sure it would not be followed by subsequent excise tax increases.
   - Ensure that Vietnam's customs valuation rules are fully compliant with WTO rules.

2. Ensure the non-WTO compliant aspects of the Decree 94/2012/NĐ-CP dated 12 November 2012 regulating liquor production and trading (Decree 94) are resolved before the conclusion of FTA talks.

3. Ensure Vietnam's advertising laws are consistently interpreted, applied and enforced. Abolish the 15% alcohol by volume (abv) threshold so that all products are able to advertise responsibly irrespective of alcohol content.

4. Ensure EU W&S geographical indications are protected and that intellectual property laws are appropriately enforced.

5. Ensure food labelling measures adequately protect legitimate EU W&S brought into Vietnam including lot code / traceability information protection.

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[1] *Notice No. 197/TB-BCT on the import of wines and spirits, cosmetics and mobile phones*
[2] *Circular No. 24/2010/TT-BCT Stipulating the Application of Automatic Import Licensing for a Number of Commodity Items*

3.13.2 Tax Policy

Relevant Ministries: Ministry of Industry and Trade (MOIT), Ministry of Finance (MOF)

Vietnam has abided by its WTO accession commitments on import tariff and Special Consumption Tax (SCT). However our members believe a number of challenges remain in the following areas:

1.Import Tariff

Issue description

The 2013 import tariff structure is as follows: 50% on wine; 45% on spirits and 35% on beer. These tariff levels are high and along with the Special Consumption Tax (SCT), create incentives for smuggling and other informal activities, undermining tax revenue efforts by the Government.

Potential gains/concerns for Vietnam

Tariff elimination for wines and spirits will bring benefit to Vietnam. The lowering of or eliminating the import tariff and SCT could reduce the economic incentive for the informal activities, result in increased tax-paid activities and therefore tax revenues for the Government.

Recommendations

- Immediate elimination of import tariff for all wines and spirits originating from the EU upon the entry into force of the agreement.
- This should include EU products transshipping through regional hubs consistent with reasonable and modern rules of origin provisions.

2. Special Consumption Tax (SCT)

Issue description

The current SCT structure on alcohol products is as follows: 25% on liquor under 20% abv[3]; 50% on liquor from 20% abv and above. Although the structure is compliant with Vietnam's WTO commitments, the 2013 excise hikes on liquor above 20% following the tariff reduction under the WTO accession commitments (spirits tariff reduced from 48% to 45% while its SCT increased from 45% to 50%), has only reduced the benefits gained from the import tariff reductions. Moreover the ad valorem tax system penalises consumers' desire for high-quality, high-value products and distorts market competition. Thus specific tax based on alcohol content would be more favourable.

Potential gains/concerns for Vietnam

Tariff elimination without subsequent excise increase would secure the achievements of FTA negotiations. Meanwhile a specific tax is easy to administer, transparent and fair; it helps stabilise tax revenues; and reduces the economic incentive for informal activities if it is set at an appropriate level.

Recommendations

- Secure tariff elimination in any EU-Vietnam FTA by making sure it would not be followed by subsequent excise tax increases.
- In the long-run (e.g. for a ten-year tax reform), transition to a wholly specific SCT based on alcohol content (i.e. 'x' Dong per litre of pure alcohol for all imported and local products).

[3] *Abv is a standard measure of how much alcohol (ethanol) is included in the alcohol beverage*

3. Custom Valuation

Issue description

After joining the WTO, Vietnam issued laws and regulations regarding the calculation methods to determine customs value for imported products which complied with WTO rules. However, pursuant to the latest List of Risk Management for Imported Product issued in connection with Official Letter 3286/TCHQ-TXNK which came into effect from 20 June 2013 (replacing Letter 5486/TCHQ-TXNK dated 10 Oct 2012 and Letter 348/TCHQ-TXNK dated 21 Jan 2011), reference price for 'sensitive items' has been set in the customs data system which provincial customs can refer when there is an issue with importer's declared values. The use of reference prices for imported goods results in de facto minimum import values and could trigger higher customs duty amounts. This practice has raised issues for the imported alcohol beverages industry over the years, and could be in violation of the WTO Agreement on Customs Valuation.

Potential gains/concerns for Vietnam

An objective and predictable system for determining dutiable value is vital for companies to set the right price for the market – it improves transparency and market mechanism. This will ultimately benefit the consumer.

Recommendations

The Vietnamese Government should ensure that it is fully compliant with the WTO Agreement on Customs Valuation, both in law and in practice.

3.13.3 Decree on Liquor Production and Trading (Decree 94/2012/ND-CP)

Relevant Ministries: Ministry of Industry and Trade (MOIT), Ministry of Finance (MOF)

Issue description

On 12 November 2012, Vietnam adopted Decree 94/2012/ND-CP, regulating liquor production and trading. This Decree replaces Decree 40/2008/ND-CP and came into force on 1 January 2013. The Decree provides for a new licensing regime, which raised industry's concerns regarding the distribution and sale of imported alcohol products in Vietnam:

- Decree 94 allows traders to possess only one type of licenses: distribution, wholesale or retail. This limits the range of services that foreign operators can provide; no such restrictions apply to local producers.

- Import rights will only be given to holders of distribution licenses. In conjunction with an obligation to have only one license, importers will effectively be prohibited from engaging in any other activities other than distribution. In theory, a multi-national entity may need to create a second company (belonging to the same owner) to be a wholesaler for wholesale activities, such as selling to supermarkets, stores, bars, restaurants, etc.

- The above create significant disruptions to the current supply chain especially in modern off-trade channels that do not operate in a centralised way. Currently, these outlets are able to operate as wholesalers and retailers of products and have direct relationship with manufacturers and importers. Under the new rules, these outlets will need a retail license to sell to consumers directly, but will be restricted from entering direct trade relationships with the manufacturers and importers based on commercial considerations. These difficulties might serve to deter investment and trade.

- Decree 94 also establishes a quantitative limit on the number of distribution, wholesale and retail licenses, based on population. Restricting the number of licenses, in particular in the abovementioned licensing regime, will create a secondary market for the licenses themselves and limit distribution options, particularly in under-populated, rural areas.

In addition, we also understand that in May 2013, the General Department of Customs under the Ministry of Finance is considering the re-introduction of the requirement on pre-export tax stamp at production site/export country for imported alcohol products. Again, this will only create substantive administrative and cost burdens on industry, consumers and government, and could be in potential breach of WTO obligations.

Recommendations

Although the W&S Committee has engaged the MOIT throughout the drafting process of Decree 94, the abovementioned concerns remain unresolved. And while we appreciate the Government's willingness to speak with the industry on an ongoing basis regarding the practical difficulties of Decree 94, we hope that meaningful progress is made to address our concerns before the conclusion of FTA talks.

Indeed, we look forward to these burdensome restrictions being removed and that a mutually beneficial solution is achieved.

3.13.4 Advertising Restrictions

Relevant Ministries: Ministry of Industry and Trade (MOIT), Ministry of Culture, Sports and Tourism (MCST)

Issue description

Vietnam prohibits all forms of advertising and promotion of wine and spirits exceeding 15% abv, including in both the off-trade and on-trade (such as the manufacturer's area, inside stores, etc). This general prohibition is discriminatory against higher strength products and should be addressed in the long-term given that all alcohol affects the human body in the same way irrespective of whether it is beer, wine or spirits. Typical servings of beer, wine and spirits contain the same amount of alcohol: a small glass of wine, a 300ml can of beer and 30ml nip of 40% abv spirits contain the same amount of ethyl alcohol.

Potential gains/concerns for Vietnam

Advertising and marketing are important commercial freedoms that create value for consumers and foster competition between brands. Excessive or discriminatory restrictions on brand communications take away the consumer's right to choose and prevent companies from competing on equal terms.

Furthermore, the evidence base for advertising bans is extremely weak at best and studies have failed to show a clear causal relationship between marketing and any indicator of harmful drinking. Indeed, many countries that impose the most severe restrictions or bans on advertising and marketing continue to have problematic drinking patterns despite the long-term presence of restrictions. In many low- to middle-income countries, non-commercial and illicit products account for a large proportion of the alcohol consumed. Regrettably, these products are neither branded nor advertised, so consumption is not influenced by advertising or marketing.

The responsible consumption of alcohol is in the interests of industry and society as a whole. In this regard, industry has developed a marketing code of conduct to ensure that the marketing, advertising and sales of beverage alcohol does not encourage irresponsible drinking behaviour. Industry is committed to this Code and will ensure that our products are not promoted or sold in ways that encourage excessive consumption and will promptly address any violations.

As advertising restrictions do little to address the misuse of alcohol, we urge the Government to prioritise raising consumer awareness about the risks associated with excessive drinking by strengthening consumer education campaigns especially those targeted at 'at-risk' consumers. We would welcome further engagement with Government and other stakeholders to develop and implement evidence-based approaches that can actually address the issues of reducing alcohol related harm.

Recommendations

The W&S Sector Committee strongly recommends that the Vietnamese Government be consistent in their interpretation, application, and enforcement of advertising and promotion regulations. It is noticeable that the rules have been interpreted and implemented in inconsistent ways at different locations across the country.

We also suggest further elimination of the 15% abv restriction to ensure Vietnam allows responsible advertising and market access equally for all products irrespective of alcohol content.

3.13.5 Geographical Indication (GIs)Recognition and Enforcement

Relevant Ministries: Ministry of Science and Technology (MOST), Ministry of Industry and Trade (MOIT)

Issue description

Vietnam is increasingly taking Intellectual Property Rights (IPR) more seriously and is seeking to complete its IPR legislative framework. Since its WTO accession, Vietnam has made a significant legislative effort by enacting revised laws on IP and the Criminal Code, aside from nearly 40 pieces of legislation and implementing decrees, circulars and ordinances. The protection of GIs is now set by the Intellectual Property Law 2005 and under-law documents. Vietnam has taken some positive steps, such as recognition of some EU GIs (Cognac, Scotch Whisky) among the full list of EU wines and spirits GIs with a production value at EURO 13 billion (farm gate price) and EURO 30 billion (consumer prices) respectively.

Protection of EU W&S GIs should be further enhanced. The Committee believes that current enforcement of Vietnam's IPR laws on GIs protection is yet efficient, with long proceedings leading to unreliable and unpredictable protection.

Potential gains/concerns for Vietnam

A geographical indication is a distinctive sign used to identify a product as originating in the territory of a particular country, region or locality where its quality, reputation or other characteristic is linked to its geographical origin. GIs with commercial value are exposed to misuse and counterfeiting. An enhanced GIs recognition and protection, together with improved general public awareness on the importance of GIs, would be to the ultimate interest of not only the protected GIs but of consumers against existing fraudulent practices.

GIs is also a powerful tool to improve agricultural productions, the value of their production and bring about socio-economic development. We are happy that recently the first Vietnamese GI – Phu Quoc Fish Sauce has been recognised by the EU. The EU-Vietnam FTA negotiations provide a platform for enhance GIs recognition and protection on both sides.

Recommendations

The Committee strongly supports protection of a short list of key EU W&S GIs. Moreover, we recommend improved and efficient protection of EU W&S GIs by:

- Ensuring strict enforcement of Vietnam's IPR laws on GIs.
- Reducing unnecessary burden of the enforcement procedures.
- Improving cooperation between enforcement and protected GIs stakeholders.

3.13.6 Traceability Protection

Relevant Ministries: Ministry of Health (MOH), Ministry of Science and Technology (MOST)

Issue description

According to Vietnam's legal system, there is no specific mandatory labeling requirement on Lot Identification/ traceability. The Law on Food safety 2010 and the Law on Products and Goods Quality 2007 recognise that tracing of the origin of unsafe foods by identifying their Lots and quantities are crucial in the recall process and hence the protection of consumer's health in case of food incidents.

European wines and spirits producers, abiding by EU law and following Codex Alimentarius guidelines, place a lot code on individual packages to be able to trace their products backward and forward in the supply chain. This allows to conduct an effective and targeted product recall if need be. These lot codes are mandatory for the circulation of foodstuff in the EU and tampering with them is forbidden.

We observed that smugglers routinely destroy lot codes to ensure their sales cannot be traced back to them. This breach in the traceability is detrimental to consumers in these countries, and is highly detrimental to producers since any safety issue would trigger a vast call back of products, or worse-case scenario could lead to a complete shutdown of a market. Traceability is key to build confidence towards our products in a region prone to food scandals and goods smuggling, and it should be considered as a tool against a protectionist reflex and a long-term insurance to keep the market open.

Based on our assessment, there is no specific provision on protection from tampering, blurring, erasing or removing the lot code/traceability. There are some administrative sanctions against violations of regulations on product labeling such as Decree 112/2010/ND-CP dated 1 December 2010 or Decree 80/2013/ND-CP dated 19 July 2013 however we believe these are not strong enough to prevent such violations.

Potential gains/concerns for Vietnam

One of the purposes of placing lot code on the label/packaging of wines and spirits products is for traceability in cases of suspected unsafe products, food incidents etc. Introducing legal prohibition on the removal or tampering lot code/traceability would not only protect EU producers' lot codes, but also improve traceability in line with the policy objective on food safety, further enhance protection of consumers' health, help discouraging informal activities, and ensure the products' authenticity

Recommendations

The W&S Committee strongly recommends

- Strict implementation and enforcement of the existing administrative protection on food labeling information pursuant to Decree 112/2010/ND-CP and Decree 80/2013/ND-CP or new replaced decrees.
- Stronger protection of EU W&S producers' lot codes by legal prohibitions on the tampering, blurring, erasing or removing the traceability information (i.e. 'decoding') by Vietnamese legislation.

We do not support the introduction of a new country-specific coding requirement which would duplicate current requirements. Put simply, forbidding tampering with EU lot codes would be the most cost effective way to protect consumers. The Committee would be happy to share with Vietnam the depth of expertise it has in this field especially since EU member states' implementation of traceability requirement offers a wide range of enforcement examples.