



WHITEBOOK 2015

**TRADE/INVESTMENT ISSUES
& RECOMMENDATIONS**

CHAPTER 3.12 WINE AND SPIRITS

3.12.1 Overview

Vietnam is a priority market for the European wine and spirits industry. A middle-income country with favourable demographics, Vietnam remains a market with a strong potential that has not been completely fulfilled. The formal Vietnamese spirits market was estimated at more than 4.2 million nine-litre cases and the wine market at over 1.3 million nine-litre cases in 2013. Volumes of imported spirits have increased by over 50% since 2009, whereas volumes of local spirits have increased by over 370%.^[1] However, all of these volumes are dwarfed by the volumes of home-made and illicit liquor, which are estimated at over 28 million nine-litre cases.^[2] This poses major health risks, provides unfair competition to the legitimate industry, and deprives the Vietnamese Government of much needed tax revenues. Addressing this issue should be an essential element of the National Alcohol Policy (NAP), and it must also be addressed through tax policy.^[3]

We expect more rapid growth in imported wine and spirits over the coming years, as tariff reductions and rising incomes encourage more Vietnamese consumers to move away from the illicit sector, and ultimately to trade up to premium imported drinks. Overall, we are encouraged by the country's increasing trade liberalisation, growing levels of foreign direct investment, and emerging middle class. However, we continue to face a number of trade, tax and regulatory challenges.

The launch of the European Union-Vietnam Free Trade Agreement (EU-VN FTA) negotiations in June 2012 bolsters Vietnam's prospects as a growth market for our industry, but these prospects could be undermined by a failure to reach a satisfactory agreement on tariffs or by the persistence or creation of non-tariff barriers.

This position paper outlines our five key challenges and recommendations that will help grow Government revenue, support industry growth, and encourage a responsible drinking environment for those who choose to drink.

3.12.2 European Union-Vietnam FTA

Relevant Ministries: Ministry of Industry and Trade (MOIT), Ministry of Finance (MOF), Ministry of Science and Technology (MOST), Ministry of Health (MOH)

1. TARIFF ELIMINATION

Issue description

Vietnam currently levies import tariffs of 50% on wine, and 45% on spirits.^[4] These tariffs are high

[1] *International Wines and Spirits Record. IWSR Country Report 2014: Vietnam*. Available at: http://www.theiwsr.com/iwsronline_databases.html

[2] *Industry estimates based on IWSR and World Health Organization data*.

[3] <http://thuvienphapluat.vn/archive/Quyết-dinh-244-QĐ-TTg-nam-2014-phong-chong-tac-hai-lam-dung-do-uong-co-con-den-2020-vb221176.aspx> and/or <http://en.vietnamplus.vn/Home/Committee-to-target-growing-alcohol-problem/20145/49791.vnplus>

[4] *Circular 164/2013/TT-BTC dated 15 November 2013 and/or http://www.customs.gov.vn/SitePages/Tariff-Search.aspx?language=en-US*

and, along with the Special Consumption Tax (SCT), create incentives for smuggling and other informal activities, undermining tax revenue efforts by the Government. The industry seeks the full elimination of tariffs on European wine and spirits upon the entry-into-force of the agreement.

Potential gains and/or loss for Vietnam

Reducing the tax burden on legitimate imports will reduce the economic incentive for smuggling, counterfeit and other forms of illicit activity, and will therefore contribute to the efforts of cleaning up the market. Given the difference in pricing, imported wines and spirits target different consumer groups from local products and thus tariff reduction will have no negative effects for the legitimate local industry.

It will also signal Vietnam's continuing commitment to free trade and market-led reforms, and will bolster its economic leadership in the ASEAN region.

Recommendations

Immediate elimination of import tariffs for all wines and spirits originating from the EU upon the entry-into-force of the agreement.

2. RULES OF ORIGIN

Issue description

In today's international trade environment, the use of Asian hubs is common and provides supply chain efficiency in response to Asian markets' demand. Necessary non-alteration operations such as storage, splitting of consignments, applying market specific labels and tax stamps (where required), are carried out in bonded warehouse under strict customs supervision in the Asian hub. This enables the industry to consolidate shipments and ensure compliance with specific domestic requirements of the importing country. Invoicing consolidation may also be adopted to provide further flexibility. This model adds efficiency, saves costs, and decreases order fulfilment time without diminishing the origin status of EU goods.

Potential gains and/or loss for Vietnam

With reference to the existing FTAs and Rules of Origin (ROO) regulations,^[5] Vietnam has demonstrated its prudence and flexibility to ensure that the ROOs in its FTAs are sufficient to ascertain origin for preferential tariffs and remain compatible with the modern supply chain arrangement. This prudent but flexible approach facilitates and promotes bilateral/regional trade and economic development to its fullest potential.

Recommendations

The industry requests to continue applying prudent but flexible ROOs and ensure that the use of the hub model will not impede EU goods' eligibility for tariff concession provided in the future EU-VN FTA, for example by:

- Accepting the proposed non-alteration rule which allows non alteration operations (e.g. storage, splitting of consignments, applying market specific labels and tax stamps where required) to be carried out in non-Party country(ies) of transit whilst retaining the origin status;
- Enabling certified exporters to self-certify the origin of their exports to enjoy preferential tariffs;
- Ensuring non-Party invoices will not impede EU goods' eligibility for tariff concessions;
- Clarifying whether the intermediary consignee^[6] in the regional hub is allowed to put an origin

[5] *ASEAN, ASEAN-China, ASEAN-Australia & New Zealand, ASEAN-Korea etc. and/or http://www.fta-eu.org/doc/unp/opinion/en/FTA-Position-Paper-EU-Vietnam-trade-relations.pdf*

[6] *The intermediary consignee is usually the overseas subsidiary of the company in the exporting Party, or the exporter on behalf of the company in the exporting Party.*

declaration (including the approved exporter number of the original EU exporter) on the commercial document that would accompany goods from non-Party country(ies) to Vietnam and that would ultimately be used as a basis for claiming a preferential rate under the FTA.

- Ensuring the proof of origin requirement will be compatible with modern hubs while upholding the essential criteria to ascertain and confer origin in bilateral trade agreements like in the ASEAN FTAs.

3. GEOGRAPHICAL INDICATIONS (GIS) AND INTELLECTUAL PROPERTY RIGHTS (IPR)

Issue description

Vietnam's IPR legislation and regulations are not sufficient to offer a complete protection of intellectual property rights to business operators and they do not sufficiently protect goods benefiting from GIs.

Potential gains and/or loss for Vietnam

With regard to GIs, an enhanced system would protect the rights of importers and investors and also protect consumers against fraud.

Recommendations

- Protecting a short list of key GIs for EU wines and spirits.
- Improved and efficient protection of GIs for EU wines and spirits by:
 - Ensuring a strict enforcement of Vietnam's IPR laws on GIs;
 - Reducing unnecessary burdens of the enforcement procedures; and
 - Improving cooperation between law enforcement services and protected GIs stakeholders.

4. TRACEABILITY PROTECTION

Issue description

According to Vietnamese law, there is neither a specific traceability requirement for alcoholic beverage products nor sufficient legal protection on producers' traceability information placed on product packages (i.e. lot indications).

Potential gains and/or loss for Vietnam

Lot indications are mandatory for the circulation of foodstuff in the EU and tampering with them is forbidden. European wines and spirits producers, abiding by EU law and following Codex Alimentarius guidelines^[7], place lot indications on individual packages, which allows to trace them throughout the supply chain.

Parallel importers/counterfeiters/smugglers routinely remove, modify or blur producers' lot indications placed on EU products to remove themselves from liability and to hide their supply source. Such products are beyond producers' quality control systems and barely meet acceptable shipment or storage conditions, imposing a material threat to consumer safety and public health. Without relevant lot identification codes on a bottle, legitimate operators cannot conduct appropriate batch recalls in case of any incident. Intact producers' lot identification codes will not only benefit consumers and legitimate producers, but also facilitate the Government authorities' ability to identify illicit products with effective public-private partnerships.

Recommendations

- Stronger protection of EU wine and spirits producers' lot codes by legal prohibitions on the

[7] Codex Stan 1-1985. Amended 2010 <http://www.codexalimentarius.org/>

tampering, blurring, erasing or removing the traceability information (i.e. 'decoding') by Vietnamese legislation without introducing a new-country specific coding requirement which would duplicate requirements the sector already conforms to.

- Strict implementation and enforcement of the existing administrative protection on food labelling information pursuant to Decree 80/2013/ND-CP dated on 19 July 2013 (replacing Decree 54/2009/ND-CP dated 5 June 2009) on administrative sanctions on violations on standards, measurement and quality of goods, and other relevant regulations.

3.12.3 Special Consumption Tax (SCT)

Relevant Ministries: Ministry of Finance (MOF)

Issue description

Vietnam is proposing to raise the SCT rates on alcoholic beverage from 1 July 2015 as follows: ^[8]

Category	Current Rate	Proposed Rate
Beer	50%	65%
Alcohol < 20% ABV	25%	35%
Alcohol > 20% ABV	50%	65%

Should this proposal be adopted, it would substantially negate the positive impact of any tariff reductions achieved under the EU-VN FTA.

Potential gains/concerns for Vietnam

While revenues might increase in the short term, the proposed changes could be counterproductive in the long term, and

- Encourage non-tax paid activity including non-commercial, counterfeit, illicit and smuggled alcohol;
- Fail to deliver the Government's revenue objectives;
- Hurt legitimate businesses that make significant economic and social contributions; and
- Fail to support positive health outcomes.

In a recent regional case, in December 2013, the Director General of the Thai Excise Department, MrSomchaiPoonsawat, admitted that after the ThaiGovernment increased the excise tax on alcohol in September 2013, smuggling of foreign liquors rose markedly^[9].

Recommendations

Vietnam should consider an alternative approach: taxing products according to their alcohol content (i.e. a specific system) rather than their value (an ad valorem system). This is the most beneficial long term solution because it will:

- Greatly simplify tax administration;
- Eliminate the potential for under-valuation and other forms of price manipulation designed to evade tax;

[8] <http://www.vibonline.com.vn/Duthao/1527/LUAT-SUA-DOI-BO-SUNG-MOT-SO-DIEU-CUA-LUAT-THUE-TIEU-THU-DAC-BIET-Du-thao-ngay-1332014.aspx>

[9] See news article available at: <http://www.samuitimes.com/excise-department-promise-crackdown-smuggled-liquor/>

- Limit the incentives for smuggling, counterfeiting, (dangerous) non-commercial alcohol, and other forms of non-tax paid trade;
- Support the development of domestic industry;
- Guarantee a stable, sustainable tax base; and
- Incentivise responsible drinking by explicitly linking the amount of tax paid by consumers to the amount of alcohol consumed.

If it is not possible to move to a fully specific system immediately, the introduction of a small specific component alongside the existing ad valorem component would achieve many of the same objectives. The greater the proportion of specific tax as a percentage of the total tax burden, the greater the potential benefits. However, a fully specific system is the best, simplest system for the long term.

The tax system should also be set up in a way that encourages consumers to switch from illicit liquor to legitimate, tax-paid local spirits. This could be achieved by stepping up enforcement and reducing the overall tax burden on legitimate local spirits by switching the tax base from the wholesale price to the ex-factory price for these products, thus maintaining an affordable offer of formal spirits for the lower income segment.

3.12.4 Customs valuation

Relevant Ministries: General Department for Customs (GDC), Ministry of Finance (MOF)

Issue description

After joining the WTO, Vietnam issued laws and regulations regarding the calculation of customs valuations for imported products, which complied with WTO rules. However, since then, a system of reference prices for 'sensitive items' has been set in the customs data system. Provincial customs authorities refer to this database when there is an issue with importer's declared values^[10].

The use of reference prices for the calculation of customs valuation results in de facto minimum import values and unfairly high customs levies. This practice has caused a number of problems for members of the imported alcohol beverages industry over the years, and is likely to place Vietnam in violation of its obligations under the WTO Agreement on Customs Valuation, which prescribes the transaction value as the basis for customs valuation.

Potential gains/concerns for Vietnam

An objective and predictable system for determining dutiable value is vital for commercial planning. It improves transparency and allows companies to set the right price for the market, which benefits consumers and ultimately will boost imports and hence customs revenue.

Recommendations

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

[10] Circular 128/2013/TT-BTC dated 10 September 2013

3.12.5 Decree 94

Relevant Ministries: Ministry of Industry and Trade (MOIT)

Issue description

Decree 94/2012/ND-CP dated 12 November 2012 ('Decree 94') revised the law on the production and trade of alcohol beverages in Vietnam. It introduced a number of problematic provisions:

- Distinction among distributor, wholesaler and retailer licences, with any single entity only able to secure one of the three;
- Use of quotas for each type of licence, linked to population density in a given area; and
- Discriminatory treatment of local manufacturers, who do not have to apply for distribution or wholesale licences for their own products^[11].

Essentially, Decree 94 established a 'vertical' distribution system with three levels:

- **Distribution level:** a distributor licence is issued by the Ministry of Industry and Trade (MOIT). A distributor can only sell imported spirits to wholesalers in the provinces for which it is licensed. Under Decree 94, if the distributor wants to distribute nation-wide, it has to apply to the MOIT to have all the provinces listed in its distribution licence, noting the condition that the distributor has to sign sales contracts with at least three wholesalers of each province.
- **Wholesale level:** a wholesaler licence is issued by the provincial Department of Industry and Trade. The wholesaler can only sell to retailers in the province for which it is licensed and is not allowed to sell to any other province nor to any other wholesaler in the same province. A wholesale licence cannot be held by any entity with a distribution licence (i.e. any importer).
- **District level:** a retailer licence is issued by the district authority and the retailer can only sell to consumers at the retailer address registered on its licence.

The key concern is the imposition of restrictions on the distribution activities of importers of wines and spirits. These restrictions are against Vietnam's WTO accession commitments and ongoing obligations under the WTO, and in addition damage consumers and Vietnamese businesses. The most concerning issue is the restriction on the ability of importers of alcoholic beverages to undertake both distribution and wholesale activities nationwide. This is compounded by the exemption of local producers from these restrictions under Article 10.6 of the Decree.

Potential gains/concerns for Vietnam

It is in Vietnam's self-interest to have a transparent and functioning approach to licensing the importation, manufacturing, distribution and sale of beverage alcohol.

Regrettably, Decree 94 restricts our companies from trading directly with retailers that hold retail licences (such as reputable supermarket chains). We believe that allowing this would help boost consumer confidence in the safety and quality of the alcohol products they purchase from retailers.

The quota system on distribution licences has also created a quantitative restriction on importers that would appear contrary to Vietnam's WTO accession commitments, sets a negative precedent in the region, and may impact the growth of one of the EU's most successful export products in the medium term.

A report from the World Health Organisation in 2014 noted that still 50% of all alcohol consumed

[11] Decree 94/2012/ND-CP-Chapter III Article 18 and Chapter II Article 6,7 and 10

in Vietnam is unrecorded – i.e. outside the legitimate production, distribution, tax and regulatory channels^[12]. Creating new restrictions on distribution of imported products will only increase this number, negatively impacting the health and safety of consumers, Government tax revenue and economic development.

Recommendations

- The Vietnamese Government should effectively resolve this issue before the conclusion of the EU-VN FTA negotiations by increasing the effective regulation of the alcohol market in Vietnam. We recognise that this may require controlling the quality of the operators at different levels in the supply chain. However needlessly restricting the operations of EU wines and spirits companies, who are often large investors in Vietnam, is not only unnecessary, but in fact counterproductive.

As such, distribution licences could be amended to make them 'nationwide distribution and wholesale licences'. This would impact a much smaller number of potential licence holders (the quota for distribution licences is approximately 230-250), thus preserving the core elements of Decree 94 and ensuring that MOIT's oversight would remain robust.

- As an alternative to the above suggestion, the discrimination could be addressed by harmonising the treatment of local producers and importers by inserting a sub-clause 5 under Article 18 of Decree 94 to the effect of:

5. Traders which make an application under Article 10 of Circular 39/2012/TT-BCT dated 20 December 2012 of Ministry of Trade, which import liquor on behalf of foreign producers of alcoholic beverages located outside of Vietnam, are able to receive the same rights as Vietnamese enterprises holding licences for industrial production as detailed in Article 10.6 of Decree 94, and are exempt from the quantitative restrictions imposed in 18.1 a of Decree 94, if they submit to MOIT (i) the production licences in the countries of origin of the entities for the brands to be imported and distributed and (ii) documentation from the entities which hold those production licences to demonstrate that the Trader is the designated representative entity in Vietnam.

This essentially extends the exemption in Article 10.6 of Decree 94 to importers who can get brand owners to provide supporting documentation that they are representing brand owners, consistent with the MOIT's intention to reduce trade fraud and non-tax paid activity. It would impact a small number of operators, maintain the core control elements of Decree 94, and satisfy trade partners that imported products would not be at a disadvantage to local products.

We also strongly recommend that a more flexible quota structure be applied for retailer licenses especially in the downtown / central business district areas where most bars, restaurants and other trade outlets are located, in order to reduce bottlenecks and ensure that tax paid quality products are readily available for consumers who choose to drink and to minimise the penetration of non-tax paid and illicit alcohol. There should also be greater transparency of licences and their official conditions/prices, so that information can readily be accessed regarding licensed wholesalers and outlets.

[12] The World Health Organization, *Global Status Report on Alcohol and Health 2014*. Available at: http://apps.who.int/iris/bitstream/10665/112736/1/9789240692763_eng.pdf

3.12.6 A robust and appropriate National Alcohol Policy

Relevant Ministries: Ministry of Health (MOH)

Decision 244/2014/QĐ-TTg on the National policy of preventing and fighting against the abuse of liquor, beer and other alcoholic drinks by 2020 was ratified by the Prime Minister on 12 February 2014 [hereafter 'the NAP']^[13]. Its General Objective is to 'prevent and fight against the harmful effects of the abuse of liquor, beer and other alcoholic drinks to help protect the local community's health and contribute to stable socio-economic growth.'

The Ministry of Health (MOH) is planning to issue a law on the prevention and fight against harmful effects of the abuse of liquor, beer and other alcoholic drinks (hereafter 'the Draft Law').

Potential gains/concerns for Vietnam

A full implementation with comprehensive assessment of the NAP will provide the solid foundation to issue the Draft Law fitting the Vietnamese context based on science and evidence.

A fair and balanced NAP will reduce the harmful use of alcohol across Vietnam while protecting Government revenue, commercial freedoms and economic activity. An overly strict NAP may be counterproductive, driving people to the black market, impacting tourism and reducing tax revenue. We fully support Vietnam's ambitions set out in the NAP to:

- Complete a detailed set of policies and regulations by 2020;
- Tackle the issue of illicit alcohol;
- Prevent underage consumption;
- Prevent consumption in the workplace;
- Prevent consumption by drivers;
- Inform citizens about the dangers of harmful use; and
- Help place alcohol abusers in recovery programmes.

However, we are concerned by some proposals, such as those seeking to:

- Ban the sale of alcohol after 10pm;
- Continue discriminatory advertising restrictions; and
- Target overall per capita consumption of alcohol in Vietnam.

Recommendations

The EuroCham Wine & Spirits Sector Committee supports an evidence-based, proportionate and targeted policy approach to effectively manage the problems linked to individual consumption behaviour and harmful use of alcohol without excessive restrictions on market access/legitimate business activities. The full implementation and a comprehensive assessment of the NAP are essential for issuing an effective law to prevent and fight against the harmful effect of abuse of alcohol and beer in Vietnam.

We support regulatory and licensing systems that are fair, transparent and effective, and that balance local needs for public order and safety with the legitimate demands of consumers, producers and retailers. We support reasonable regulations about the location and density of outlets as well as the hours and days of sale of alcohol, in line with social, religious and cultural considerations.

[13] <http://thuvienphapluat.vn/archive/Quyết-dinh-244-QĐ-TTg-nam-2014-phong-chong-tac-hai-lam-dung-do-uong-co-con-den-2020-vb221176.aspx>

We are committed to promoting responsible drinking as well as to investing in the communities in which we operate. Since 2011, wines and spirits companies have developed a diversity of programmes in Vietnam, notably to help tackle drunk driving.

In March 2012, we launched the 'Vietnam Alcohol industry's Marketing Code – Guidelines for responsible marketing communications', designed to provide a self-regulation framework to alcohol brand marketing communications in the context of the Vietnamese social and cultural landscape. It is in strict compliance with relevant legislation and aims to ensure that advertising or promotional activities conducted in Vietnam do not encourage or condone excessive consumption or misuse of any kind.

These actions are supplemented by the commitment of 13 leading companies who have undertaken to implement a consortium of initiatives dedicated to helping reduce the harmful use of alcohol^[14].

We stand ready to work with the Vietnamese Government to develop a regulatory framework that leads to a safer and more productive industry, while tackling illicit activity, promoting social and health policy objectives and improving Government revenues.

In particular, the incentives for engaging in illicit trade need to be examined. The risks of handling smuggled or counterfeit alcohol are relatively low, but the rewards are potentially great (because the fines are low and the profit margins are high). Improving enforcement mechanisms and raising the fines payable to a higher level would help tackle illicit trade.

[14] See here for more information on the 'Global Actions on Harmful Drinking': <http://www.global-actions.org/> and/or <http://www.producerscommitments.org/about.aspx>

