



WHITEBOOK 2016

**TRADE/INVESTMENT ISSUES
& RECOMMENDATIONS**

8th edition

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Content finalised in November 2015.

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CHAPTER 20 WINE AND SPIRITS

OVERVIEW

Across Vietnam locally produced beer, spirits and 'fruit wine' are widely consumed in towns and cities whereas imported wine and spirits tend to be consumed in modern outlets such as hotels, bars, restaurants and clubs in big cities and typically by high-income consumers. As well as well-known and internationally renowned commercial beverage alcohol, home-made beverage alcohol, consumption of which may be particularly harmful to the health and well-being of consumers is commonplace and particularly popular among lower income households in rural and sub-urban areas.

The Vietnamese beverage alcohol market continues to develop in recent years. Beer (with total consumption standing at nearly 3.1 billion litres in 2014 alone)¹ leads the way, followed by vodka the second fastest-growing category. Cognac consumption remained stable while consumption of wines and whisk(e)y brands have steadily increased. An increasing number of local spirits brands have appeared on the market and are beginning to gain market share.

Vietnam is a priority market for the European wine and spirits industry. A middle-income country with favourable demographics, Vietnam is a market with strong and arguably unfulfilled potential for European imports in this field. With the upcoming implementation of the EU-Vietnam Free Trade Agreement (EVFTA), the industry predicts an increase in consumption of European wine and spirits. The formal Vietnamese spirits market was estimated at more than 4.4 million nine-litre cases with wine at approximately 1.4 million nine-litre cases in 2014. Volumes of imported spirits have increased by over 50% since 2009 whereas volumes of local spirits have increased by over 370% in the same period.² However, these volumes are dwarfed by the volumes of home-made and illicit liquor which is estimated at over 28 million nine-litre cases (around 250 million litres)³. This segment poses major health risks and deprives the Government of Vietnam of significant tax revenue. Eliminating the trade of illicit alcohol should be the primary focus of the National Policy for the Preventing and Fighting against the Harmful Effects of Alcohol Abuse (NAP).⁴

We anticipate rapid growth in imported wine and spirits categories in the coming years as tariff reductions due to various of Free Trade Agreements (FTAs) such as EVFTA, Trans-Pacific Partnership (TPP) etc. and rising incomes encourage more Vietnamese consumers to move away from the illicit sector and switch to premium imported drinks. However, we continue to face a number of trade, tax and regulatory challenges.

Amongst some of the concerns that were mentioned in last year's edition of the Whitebook. The issue of traceability remains important to the industry. It is recommended that a stronger protection of EU wines and spirits producers' original lot codes be enforced by legal prohibitions on the 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 that these producers already conform to. Furthermore, in light of the EVFTA and according to a memo released by the European Commission on 4 August 2015⁵, Vietnam will now provide recognition and protections to the following key European Geographical Indications (GIs): Champagne, Irish Whiskey, Swedish vodka, Cognac and Scotch Whisky. The industry respectfully requests Vietnam to ensure a strict enforcement of Vietnam's IPR laws, especially on GIs, reducing unnecessary burdens for the enforcement procedures and improving cooperation between law enforcement services and brands protected by GIs.

¹ 'Người Việt uống 3,1 tỷ lít bia trong năm 2014', *Vn Express*, 23/01/15. Available at <<http://kinhdoanh.vnexpress.net/tin-tuc/doanh-nghiep/nguoi-viet-uong-3-1-ty-lit-bia-trong-nam-2014-3138223.html>>

² 'IWSR Country Report 2015', *Vietnam International Wines and Spirits Record*, 2015. Available at <<http://www.theiwsr.com/index.aspx?ReturnUrl=%2f>>

³ Industry estimates based on 'Global Status Report on alcohol and health 2014', *World Health Organisation*, 2014, p.296. Available at <http://apps.who.int/iris/bitstream/10665/112736/1/9789240692763_eng.pdf>

⁴ 'Committee to target growth alcohol problem', *Vietnam Plus*, 05/05/2014. Available at <<http://en.vietnamplus.vn/Home/Committee-to-target-growing-alcohol-problem/20145/49791.vnplus>>

⁵ 'EU and Vietnam reach agreement on free trade deal', Press Release from the *EU Commission*, 04/08/15. Available at <http://europa.eu/rapid/press-release_IP-15-5467_en.htm>

Regarding the licensing issue on Decree 94/2012/ND-CP dated 12 November, 2012 on liquor production and trading (Decree 94) which was presented in the 2015 Whitebook, we highly appreciated the promulgation of Circular 60/2014/TT-BCT dated 27 December 2014 of the Ministry of Industry and Trade (MOIT) to replace Circular 39/2012/TT-BCT for implementation of Decree 94, in which there is no requirement on liquor retail license for on-trade/service on the spot channels such as hotel, bars and restaurants. We also noted the promulgation of Decision 2219/QD-BCT dated 12 March 2015 of MOIT regarding the approval of 'Master Plan of the network of liquor trading, distribution and wholesale in Vietnam by 2025, vision up to 2035' in which there are many busy cities/provinces for which the quota for wholesale licenses was already exceeded. Nevertheless, the key concern remains the restriction on the distribution channels of importers. These restrictions run contrary to Vietnam's World Trade Organisation (WTO) accession commitments and ongoing obligations under the WTO. We are deeply concerned about restrictions imposed upon the ability of importers of beverage alcohol to partake freely in distribution and wholesale activities nationwide. We are now at a critical point where an urgent solution is required following our recommendations in last year's Whitebook.

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

I. EU-VIETNAM FREE TRADE AGREEMENT

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

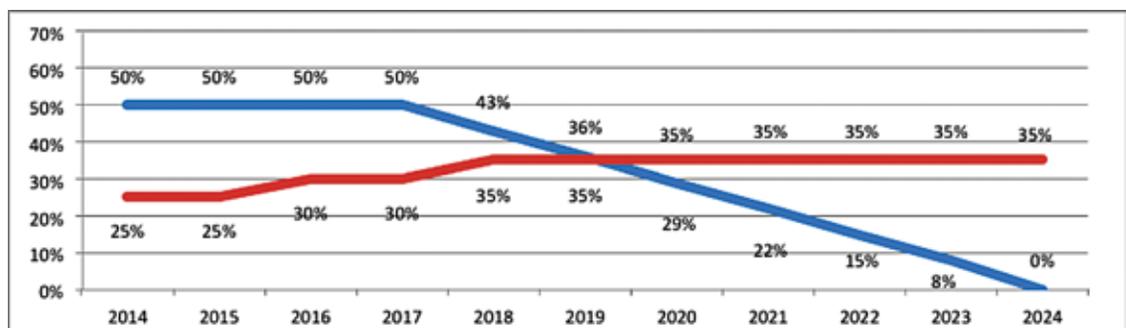
1. Tariff Concession and Elimination

Issue description

Vietnam currently levies import tariffs of 50% on wine, 45% on spirits (blue line).⁶ These tariffs are high and, along with the Special Consumption Tax (SCT) (red line)⁷, create incentives for smuggling and other informal activities, impacting the ability of the Government to collect sufficient tax revenue. We believe the progressive tariff elimination on wines and spirits arising from the EVFTA will help improve the tax-paid proportion of importation of European wines and spirits and will thereby significantly reduce smuggling and other informal activities in Vietnam.

According to a Memo prepared by the European Commission on the EVFTA dated 4 August 2015⁸, the tariff for European wine and spirits will be completely liberalised 7 years after entry-into-force of the FTA.

Figure 16: Anticipated evolution of import tariff and SCT for Wines from 2014-2024.⁹

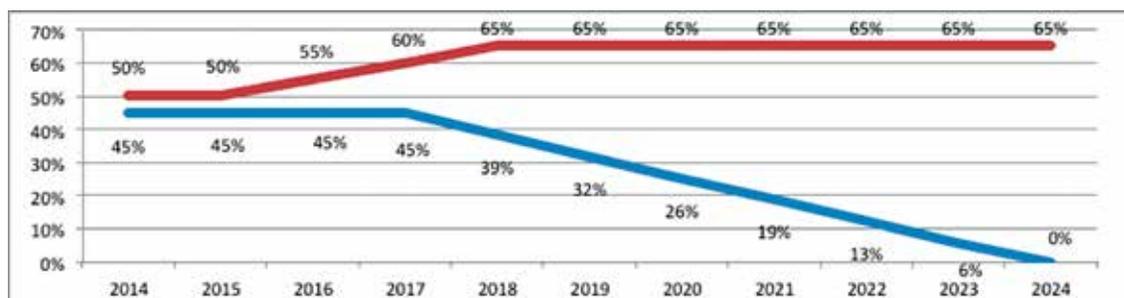


⁶ Circular 164/2013/TT-BTC dated 15 November 2013

⁷ Law 70/2014/QH13 Amendment of some articles of Law on Special Consumption Tax

⁸ 'EU and Vietnam reach agreement on free trade deal', Press Release from the *EU Commission*, 04/08/15. Available at <http://europa.eu/rapid/press-release_IP-15-5467_en.htm>

⁹ These charts are based on the assumption that (1) import tariff: EVFTA will come into force from 1 Jan 2018 and (2) SCT: no change on the tax rate after 2018. Available at <http://trade.ec.europa.eu/doclib/docs/2015/august/tradoc_153674.pdf>

Figure 17: Anticipated evolution of import tariff and SCT for Spirits from 2014-2024.¹⁰

Potential gains and/or loss for Vietnam

Given the price differentiation between locally produced products and imported wines and spirits, it is clear that local and importer categories target different consumer groups. Tariff reduction will therefore have minimal negative effects for the legitimate local industry. A gradual phasing out of import tariff through the implementation of the EVFTA will bring the already very high tax burden on European wine and spirits to a level that will encourage legitimate and tax-paid importation, thereby reducing the economic incentive for smuggling, counterfeit and other forms of illicit activity. The EVFTA will allow EU exporters and investors to access a fast-growing market of more than 90 million people and consolidate their presence in one of the most dynamic regions in the world. It will further enable Vietnamese consumers to enjoy a wider range of high quality consumer products.

Recommendation

- We strongly recommend to the Vietnamese Government that an uncomplicated and stable tax policy which aligns with tariff concession and eliminations agreed under the EVFTA for imported European wine and spirits is maintained. This will capture more tax-paid on imported products, significantly reduce smuggling and other informal activities and protect the health and well-being of consumers in Vietnam.

2. Rules of Origin/Trans-shipment through regional hubs

Issue description

In order to realise the tariff concession benefits arising from the EVFTA, we recommend that the Rules of Origin (ROO) shall take into account the use of Asian hubs to ensure supply chain efficiency in the international trading environment. This will enable the industry to consolidate shipments and ensure compliance with specific domestic requirements of the importing country and necessary non-alteration operations such as storage, splitting of consignments, applying market specific labels and tax stamps (where required), which are all carried out in bonded warehouse under strict customs supervision in Asian hubs. 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 existing FTAs and ROO¹¹ regulations, Vietnam has demonstrated prudence and flexibility by ensuring that ROOs in its FTAs are sufficient to ascertain origin for preferential tariffs and remain compatible with modern supply chain arrangements. This promotes bilateral/regional trade and economic development to its fullest potential.

¹⁰ These charts are based on the assumption that (1) import tariff: EVFTA will come into force from 1 Jan 2018 and (2) SCT: no change on the tax rate after 2018. Available at <http://trade.ec.europa.eu/doclib/docs/2015/august/tradoc_153674.pdf>

¹¹ 'FTA welcomes EU-Vietnam trade deal, but raises concerns on rules of origin', *Foreign Trade Association*. Available at <http://itp.fta-intl.org/news/fta-welcomes-eu-vietnam-trade-deal-raises-concern-rules-origin-1?_ga=1.226680149.939927813.1443156814>

Recommendations

The industry requests a continuation of the prudence applied and requests more flexible ROOs/transshipment requirements in the EVFTA to ensure that the use of the hub model will be accepted while retaining EU goods' eligibility for tariff concession. This could be achieved, for example by the following:

- 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.
- The FTA would enable 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 concession.
- Clarifying whether the intermediary consignee¹² in the regional hub is allowed to put an origin declaration (incl. the approved exporter number of original EU exporter) on the commercial document that would accompany goods from the non-Party country/ies to Vietnam and would be ultimately used as a basis for claiming preferential rate under the FTA.
- The industry respectfully requests to be included in consultation/dialogue related to the implementation of the FTA, including the development of detailed implementation regulations on ROO.

II. TAX POLICIES

 Relevant Ministries: Ministry of Finance (MOF)

1. Special Consumption Tax

Issue description

Law 70/2014/QH13 dated 26 November 2014 amending some articles of Law on SCT will come into force on 1 January 2016. There will be significant changes on SCT rates as follows: - Spirits ($\geq 20\%$ abv.): from 1 January 2016: 55%; from 1 January 2017: 60% and from 1 January 2018: 65% - Wine & Champagne ($< 20\%$ abv.): 1 January 2016 – 31 December 2017: 30% and from 1 January 2018: 35%.

In addition to the increase of tax rates, another proposal on amendment of Law on SCT (the Draft SCT Law) has been tabled in the 10th session of the 13th National Assembly (20 October – 28 November). The industry is deeply concerned about the following change in the latest Draft SCT Law:

1. Change of tax calculation basis from import price to two tier-system, where SCT will be paid on import price; and also on importer's selling price.
2. The importer's selling price might be adjusted by the tax authority if the importer's selling price is lower than % level the average selling price of third party trading units. (Note: % level is 7% as defined in Decree 108/2015/ND-CP dated 28/10/2015 of the Government detailing and guiding implementation of some articles of the Law on Special Consumption Tax and Law on Amendments of some articles of Law on Special Consumption Tax).

This sudden and significant increase in SCT liability, which overlaps with the 3-year phased increase in SCT rates that will come into force from 1 Jan 2016 to 1 Jan 2018, adversely affects the livelihood of imported spirits and wines industry and FDI confidence. The level of increase is not only noted to nullify and impair the benefits of any tariff cut negotiated under the EVFTA or the TPP; but also render Vietnam to be one of the markets with the highest total tax burden in the Asia Pacific region, on par with India, Indonesia and Thailand, even when the import tariff on spirits and wines become zero in the future. By no coincidence, these are also the countries where

¹² 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.

the level of illicit activities is very high.

On 28 October 2015, the Government published Decree No.108/2015/ND-CP that provided guidelines to some articles of the Law on SCT and the law on amendments to the Law on SCT (Decree 108) which will come into force from 1/1/2016. Article 6.2 of the Law on SCT No.27/2008/QH12 (Law No.27) stipulates that the taxed price for imported goods is 'the import-duty calculation price plus the import duty' while on Article 4.1 of Decree No.108 said 'taxed prices of imported goods (other than gasoline) is selling price of importer' and on Article 4.2 'with imported goods, at importation stage, the taxed price is the import-duty calculation price plus import duty'. To our best understanding, the provision in Article 4.1 relating to taxed price for imported goods is contrary to Article 6.2 of Law No.27 and Law No.70/2014/QH13 on amendments to the Law on SCT (no provisions on changing the taxed price for imported goods). Moreover, this article was published without seeking comments from imported European wine & spirits industry whose will be directly impacted.

Potential gains/concerns for Vietnam

While Government revenues might increase in the short term, the increase of SCT could be counterproductive in the long term and would:

- › Jeopardising a stable and predictable business environment.
- › Nullifying and impairing the benefits of any tariff cut negotiated under the EVFTA.
- › Creating huge economic incentive for illicit activities, hence tax leakage.
- › Consumers trading down, hence tax revenue decrease.
- › Thorough assessment and consultation for a revenue sustainable tax policy for long term.
- › Clarity of the law and regulations for certainty and compliance e.g.

Recommendations

- › Create and maintain a stable and predictable tax environment so as to allow businesses (both domestic and foreign) long term planning, including investment.
- › Defer the promulgation of the Draft SCT Law and maintain the tax base for wine and spirits until thorough assessment and consultation;
- › In case of the promulgation of new amendment of SCT Law is necessary, we are seeking the deferral of the implementation of the Draft SCT Law on wine and spirits until a later time when EVFTA, TPP or other FTAs come into force and the impact of the scheduled increase of SCT rates will be also assessed.
- › Repeal provisions in Decree 108 which is contrary to existing SCT laws.
- › 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). 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.

2. Customs Valuations

Issue description

Following its accession to the WTO, Vietnam issued laws and regulations regarding the calculation of customs valuations for imported products, in compliance 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. The use of reference prices for the calculation of customs valuation results in de facto minimum import values and discriminatory high customs levies.

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 boost imports and hence customs revenue.

Recommendation

- › We recommend that the Vietnamese Government assesses the aforementioned to ensure that it is fully compliant with the WTO Agreement on Customs Valuation, both in law and in practice.

III. ALCOHOL SOCIAL POLICY

Relevant Ministries: Ministry of Health (MOH)

Issue description

Vietnam promulgated Decision 244/QĐ-TTg dated 12 February 2014 on the National Policy in relation to Preventing and Fighting against the Harmful Effects of Alcohol Abuse by 2020 (NAP).¹³ The Ministry of Health (MOH) plans on building up the Law on Prevention and Fighting against harmful effects of the abuse of liquor, beer and other alcoholic drinks (hereafter 'the Draft Law'). The general objective is stated as fighting against the harmful effects of alcohol in order to safeguard the health and well-being of the local community and contribute to a more stable social environment.

The Wine and Spirits Sector Committee fully supports the Government's commitment to reduce the harmful effects of alcohol and believe that education as well as moderate and responsible consumption of beverage alcohol is key to bring about effective results in this area.

The Wine and Spirits Sector Committee respectfully recommends that the MOH and the drafting committee work on the Draft Law based on a comprehensive assessment of the NAP. The industry is ready and eager to work constructively and collaboratively with the MOH and other key stakeholders to find meaningful solutions and targeted strategies to reduce the harmful use of alcohol. The Committee is further prepared to work with the MOH and the drafting Committee's members, and share our concerns and recommendations based on international experience on the following policy options proposed in the Draft Law: 1. Name of the Law, 2. Ban or restrictions on sales, 3. Ban or restrictions of promotion and advertisement, 4. Health Warning Label (HWL), 5. Alcohol taxation policy, 6. Health Improvement Fund (HIF).

Potential gains/concerns for Vietnam

Comprehensive assessments and studies based on solid, science-based evidence should be applied when establishing a Draft Law fitting the Vietnamese context.

A fair and balanced NAP/Draft Law 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 towards the black market, negatively impacting tourism and ultimately reducing tax revenue and increasing health risks to consumers.

Recommendations

The Wine and 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.

We fully support Vietnam's ambitions to:

¹³ Vietnam promulgated Decision 244/QĐ-TTg on the National Policy for the Preventing and Fighting against the Harmful Effects of Alcohol Abuse by 2020 (NAP). Available at <<http://thuvienphapluat.vn/archive/Quyết-dinh-244-QĐ-TTg-nam-2014-phong-chong-tac-hại-lam-dung-đo-uong-co-con-den-2020-vb221176.aspx>>

- › 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 drink-driving.
- › Inform citizens about the dangers of harmful use; and
- › Help place those affected by the harmful use of alcohol in recovery programmes.

We are committed and are determined to work in partnership with the Government to promote responsible drinking in communities as evidenced by our work outlined below:

- › Since 2011, wines and spirits companies have developed a diversity of programs to help tackle drink driving in Vietnam.
- › In March 2012, we launched the 'Vietnam Alcohol Industry's Marketing Code – Guidelines for responsible marketing communications'.
- › In early April 2015, with the Sector Committee's initiative, the Vietnam Association for Responsible Drinking (VARD)¹⁴ was formed with key scopes of work, as a response to the CEO's commitment and the Vietnam National Alcohol Policy (NAP).

ACKNOWLEDGEMENTS

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¹⁴ Vietnam Association for Responsible Drinking. Available at <<http://vard.org.vn/>>