

CHAPTER 19 WINE AND SPIRITS

OVERVIEW

Vietnam completed the 2011-2015 social-economic development five-year plan and 2016 marks the first year of implementation of the next five-year plan. Vietnam reached 13/14 targets set for 2015, including Gross Domestic Product (GDP) growth rate of 6.68% (exceeding the official target of 6.2 %), the highest rate in the last 5 years; and Consumer Price Index (CPI) increased 0.63% instead of 5%, the lowest since 2001. Even though the economic performance of Vietnam in 2015 was quite positive, there are still many difficulties, especially in regards to the State Budget. Vietnam's State revenue was severely hurt by the collapse of oil prices, the budget collection of which fell 34% short of its target. The government suffered a budget deficit that equals to 5% of its GDP, whereas public debt is forecasted to make up 61.3% of the 2015 GDP. Vietnam caps its sovereign debt at 65% of GDP.¹ To execute the Resolution of the Twelfth National Congress of Communist Party of Vietnam and achieve socio-economic development objectives for the period of 2016-2020, Vietnam shall undergo a considerable economic restructuring, enhance the economic growth index on the basis of innovations, initiatives, information and technology, focus on private enterprises and take them as a driving force for economy competitiveness and autonomy, the Government issued Resolution 19/2016/NQ-CP of 28th April, 2016 on major tasks and solutions to improve the business environment and enhance national competitiveness in two years from 2016 to 2017, with a vision to 2020 and Resolution 35/NQ-CP of 16th May, 2016 on business development policy to 2020. Both documents set very specific tasks for ministries, branches and localities.

The National Assembly approved a special consumption tax (SCT) increase schedule on wine & spirits and other excisable goods applied from 1st January 2016. On top of the scheduled increase, Decree 108/2015/ND-CP of 28th October 2015² introduced key changes on the taxable price of imported products which came into force also from 1st January 2016, resulting in a sharp increase of the tax burden that dramatically impacted the retail prices of imported products. This may in turn result in substantial loss of sales of legally imported products, thereby negatively impacting government revenues.

The Vietnamese beverage alcohol market has continued to develop in recent years. The boom of beer bars has made the beer category one of the strongest-performing segments. Total consumption of beer stands at nearly 3.4 billion litres in 2015. The two largest State-owned breweries Sabeco and Habeco have been requested by the State Audit to pay for a large amount of SCT arrears for the period from 2012 to September 2015. The Government also decided to divest their stakes in these two companies with an expected amount of USD 2.4 billion from the state stake sales, which attracted interest from foreign beers. For spirits, there are local spirits brands on the market starting to take away market share from imported spirits. The formal spirits market was estimated at more than 4.62 million nine-litre cases; and wine at approximately 1.59 million nine-litre cases in 2015.³

The population in Vietnam in 2016 is above 91 million.⁴ Every year, 1 million new consumers enter the legal-drinking-age bracket.⁵ We anticipate that Vietnamese consumers will move away from the illicit products and switch to quality imported drinks as a result of rising incomes and tariff reduction from future Free Trade Agreements (FTA) such as the EU - Vietnam Free Trade Agreement (EVFTA), etc. However, the SCT increase and the hasty reform of taxable price on imported products has increased the tax burden dramatically and therefore the retail prices of imported wine & spirits, making them less affordable for Vietnamese consumers even if FTAs start to come into force.

Amongst the concerns 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

¹ General Statistics of Vietnam, 2016. Available at <<http://www.gso.gov.vn/default.aspx?tabid=621&ItemID=15507>>

² Decree 108/2015/ND-CP dated 28 October 2015, which provides details for implementation of SCT Law 2008 and Amended SCT Law 2014

³ International Wine and Spirits Record (IWSR) Report, June 2016. Available at <http://www.theiwsr.com/iwsr_core_reports.html>

⁴ Vietnam, *The World Bank*, 2016. Available at <<http://data.worldbank.org/country/vietnam>>

⁵ IWSR Report, *op.cit.*



(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, Vietnam will now provide recognition and protections to the following key European Geographical Indications (GIs): Champagne⁶, Irish Whiskey, Swedish vodka, Cognac and Scotch Whisky. EU Geographical Indications will be protected automatically upon entry into force of the FTA. The industry respectfully requests Vietnam to ensure a strict enforcement of Vietnam's Intellectual Property Rights laws, especially on GIs, to reduce unnecessary burdens in enforcing the proprietary rights; and improve cooperation between law enforcement services and owners of brands/products protected by GIs.

Vietnam has confirmed and 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. The Industry recommends 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. 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.

Labelling requirements and technical regulations for alcoholic beverage shall also be reviewed and harmonised with international practices that assure product quality and safety for consumption without imposing unnecessary technical barriers to trade.

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)

Issue description

At the time of writing, the EU Vietnam Free Trade Agreement is under legal scrubbing. The agreement will then be translated into Vietnamese and all EU official languages, followed by the approval and signature of the text, and the ratification by the European Parliament. Both sides expect the EVFTA could enter into force in 2018. The text of the Agreement was published in February 2016 and it is overall a very good outcome for the wines and spirits sector including some key notes below:

- Vietnam will liberalize tariffs over a 7-year period. From 45% tariff for spirits and 50% for wine will be reduced to zero in equal stage.
- The rules of origin agreement will facilitate the use of regional hubs by EU exporters.
- Vietnam will not apply any discriminatory quantitative and/or qualitative vertical or horizontal restrictions on licensing.

Vietnam currently imposes high tariffs along with the SCT which has been significantly increased from 1st January, 2016 due to the new tax rate⁷ and new taxable price mechanism⁸, the aggregated tax burden is even higher. The tax barrier creates difficulties for legitimate wines and spirits import and distribution businesses but provides incentives for smuggling and other non-tax paid activities which impact the level of tax collection. We believe the

⁶ Champagne will be fully protected after a transition period of 10 years, during which all users incompatible with GI protection, including translation and transliterations in Vietnamese should be phased out. 'Alcoholic Beverages', *EVFTA Guidebook*, EEAS Vietnam, p.32. Available at < https://eeas.europa.eu/delegations/vietnam/documents/eu_vietnam/evfta_guide.pdf>

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

⁸ Decree 108/2015/ND-CP dated 28th October 2016 of the Government providing guidance on some articles of Law on SCT and amendments of SCT Law

progressive tariff elimination on wines and spirits arising from the EVFTA, along with a reasonable SCT tax rate, will help improve the tax-paid proportion of European wines and spirits' imports. According to Article 7, Annex 2-c and Annex 2-c-ii of Chapter 2 of the EVFTA published in early February 2016⁹, the tariff for European wine and spirits will be completely liberalized 7 years after the entry-into-force of the FTA.

The W&S SC emphasises that the Rules of Origin (ROO) taking into account the state of the modern supply chain arrangement of using transportation and distribution hubs is at the heart of a functioning EVFTA. In today's international trade environment, the use of Asian hub gives supply chain efficiency in response to Asian markets' demand. Non-alteration operations are carried out in bonded warehouses 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 carried out to provide further flexibility. This model adds efficiency, saves costs, and decreases order fulfilment time without diminishing the origin status of EU goods.

In the context of the EVFTA, companies using hubs shall also be entitled to the agreed tariff preference as long as there is no alteration. We highly appreciate that the Agreement reflects the use of regional hub by EU exporters for non-alteration operations e.g. storing, re-labelling, splitting up of consignment, etc. via the non-alteration clause contained under the below rule of origin.¹⁰ W&S SC would like to cooperate closely with relevant authorities, especially MOIT in development of legal documents for implementation of agreed principles to prove EU origin according to the ROO in EVFTA (including non-party invoice, self-certification by EU exporter etc).

In the EVFTA, Vietnam has committed to ensure that the conditions for distribution and sales of spirits will not become more restrictive than at present and that it will not apply any discriminatory quantitative and/or qualitative vertical or horizontal restrictions on licensing for wine & spirits. Before and after promulgation of Decree 94/2012/ND-CP of 12th November 2012, on liquor production and trading (Decree 94), W&S SC has been sharing the key implementation concerns/difficulties resulting from the quota, one trader one type of liquor trade license, and selling activities restrictions: e.g. run-out of licenses in some busy areas; geographical scope of distributions licensees; inconsistency of the Decree 94 vertical distribution system and the actual distribution and sales network/practices, etc.

W&S SC welcomes MOIT to have a comprehensive assessment and thoroughly reviewed Decree 94 after four years of implementation to create opportunity for impacted industry to provide comments on Draft Decree for replacing Decree 94, which has been posted on MOIT's website on 12th August 2016¹¹ and via TBT Notification system G/TBT/N/VNM/86 dated 26th August 2016 (the Draft Decree). The Draft Decree contains positive changes removing the abovementioned restrictions to facilitate the management and operation of liquor distribution and sale in Vietnams in line with Vietnam's EVFTA commitments. W&S SC acknowledges and welcomes the proposed positive changes in the Draft Decree, which removed the restrictions and practical difficulties on liquor trading and distribution activities from Decree 94, specifically (1) Removal of quota of trading licenses based on inhabitants; (2) Removal of restriction that one trader is only allowed to apply one type of liquor trade license; (3) Removal of sales restrictions from the vertical distribution system in Decree 94; (4) Reviewed and amended the conditions for obtaining liquor trading license, which is more consistent with practical situation.

Potential gains/concerns for Vietnam

Given the price differentiation between locally produced products and imported wines and spirits, it is clear that local and imported wines & spirits products are targeting 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 on wines and spirits that is equivalent to or lower than the level calculated with the tax rate and tax base applied when EVFTA was concluded, will bring the already very high tax burden on EU wines 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 introduce a wide range of quality wines and spirits to Vietnam, a fast-growing market of more than 91 million people and enable Vietnamese consumers to choose and trade up for higher quality products.

⁹ WTO Center, 02/02/2016. Available at <<http://www.trungtamwto.vn/vn-eu-fta/toan-van-hiep-dinh-thuong-mai-tu-do-giua-viet-nam-va-lien-minh-chau-au-evfta>>

¹⁰ Chapter 4. Clause 13 of EVFTA Available at <http://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154205.%20institutional%20-%20for%20publication.pdf>

¹¹ MOIT website. Available at <http://legal.moit.gov.vn/default.aspx?page=document_bill&do=detail&doc_id=711&rand=636113612913631949>

With reference to existing FTAs and ROO 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.¹² This promotes bilateral/regional trade and economic development to its fullest potential.

It is estimated that around 200 million liters (70%) of alcohol consumed in Vietnam is unrecorded - i.e. outside the legitimate production, distribution, tax and regulatory channels¹³. 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. We believe that removal of unnecessary restrictions will support effective management of the distribution and sale network in Vietnam and support consumers' confidence in the safety and quality of the alcohol products they purchase from retailers.

Recommendations

- We strongly recommend the Vietnamese Government to maintain an uncomplicated and stable SCT policy on wines and spirits, together with the implementation of tariff concession and eliminations agreed under the EVFTA. The gradual alleviation of the tariff barrier will support tax-paid wines and spirits importation and reduce economic incentives to smuggling and other informal activities, benefiting legitimate businesses, government revenue and the health and well-being of consumers in Vietnam. We expect MOF to promulgate the legal normative documents that implement the tariff concession and eliminations schedule for EU wines and spirits agreed under the EVFTA at least 6 months before effective date of the EVFTA. This would support the industry to build up business plans for the entire period from first elimination until the final elimination.
- The W&S SC would appreciate the opportunity for an in-depth exchange and discussion with relevant authorities, MOIT, Import-Export, Foreign Trade Department etc. in development of draft normative legal documents for implementation of agreed principles of ROO in EVFTA. W&S SC has prepared a list of concerns/clarifications¹⁴ to check for the documentary requirement to prove the origin by COO or self-declaration for getting the agreed tariff concession in the scenario of direct shipment and also transshipment via non-party of EU wines and spirits to Vietnam and hopes to have clear guidance to be stipulated in legal documents of MOIT.
- The EuroCham's Wine and Spirits Sector Committee, therefore, requests to incorporate the positive changes on liquor trading licenses in the final draft for promulgation; and requests that any further change(s) to the liquor trading licenses system shall only be more trade facilitating than the one in the draft decree; synchronize the requirements for the organization of distribution network between domestic producers of liquor and foreign traders, because if differences remain in place, it would be a significant impediment for business development for foreign operators and against the commitment of Vietnamese Government under World Trade Organization (WTO) Agreement. There should be reconsideration of the new proposal on requirement of liquor on-trade license (e.g. restaurants and bars etc.), which already have business license and allowed to serve drinks including alcoholic beverages together with food. Therefore, the new proposal will create unnecessary administrative burden to these businesses but would not support the management of small unlicensed vendors selling home-made/village liquors which accounts for majority of consumption.

II. TAX POLICIES

Relevant Ministries: Ministry of Finance (MOF)

Issue description

Special Consumption Tax (SCT)

Vietnam is gaining a reputation within ASEAN and the region as an important destination for Foreign Direct

¹² FTA welcomes EU-Vietnam trade deal, but raises concern on rules of origin', *Foreign Trade Association*, 2016. Available at <http://itp.fta-intl.org/news/fta-welcomes-eu-vietnam-trade-deal-raises-concern-rules-origin-1?_ga=1.226680149.939927813.1443156814>

¹³ 'Người Việt uống bia, rượu ở mức nguy hại', *Thanh Nien News*, dated 27th September 2016. Available at <<http://thanhnien.vn/doi-song/nguoi-viet-uong-bia-ruou-o-muc-nguy-hai-748750.html>>

¹⁴ The list of concerns/clarifications focus on Title III Territorial requirements: Article 13 (4); Title IV Proof of Origin Article 15(1)(b)(i); Article 15(1)(c); Article 16(1); Article 17; Article 19(3); Article 19(5); Article 21(1); Annex VII Specimen of a Certificate of Origin Box 3,5,6,8,10

Investment based on its openness to engage with the investor community concerning matters that affect the overall investment environment. A stable and predictable tax policy is a cornerstone of that success.

W&S SC welcomes the change in Law 106/2016/QH13¹⁵ on special excise duty and the Law on tax administration that remove the requirement of importer's taxable price be referenced to the selling price an independent trading establishment as set in Decree 108/2015/ND-CP (Decree 108). However, the adoption of Decree 108 has introduced key changes on the taxable price of imported products that resulted in a sharp increase of the tax burden and dramatically impacted the retail prices of imported products, making them even less affordable for Vietnamese consumers. This excessively high tax increases the economic incentive for illicit cross-border activities and counterfeit of popular high value items, resulting in substantial loss of sales of legally imported products and thereby negatively impacting government revenues. This may in turn result in substantial loss of sales of legally imported products, thereby negatively impacting government revenues and affecting the public's health.

It is more worrying that the SCT reform will nullify the benefits of the tariff reductions negotiated under the EVFTA. Even assuming a zero import duty, the amount of SCT payable under the new regime is substantially higher than the total taxes (SCT + import duty) payable under the old SCT regime that uses CIF as tax base. In practical terms, the FTAs will bring little improved access to the Vietnamese market. Thus, the adoption of the new SCT regime sends a very negative signal to Vietnam's trading partners.

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:

- › Jeopardise a stable and predictable business environment.
- › Nullify and impairing the benefits of any tariff cut negotiated under the EVFTA.
- › Create huge economic incentive for illicit activities, hence tax leakage.
- › Tax revenue decrease; as consumers trade down.

Indeed, a stable domestic tax policy is critical to maintain and attract foreign investments in Vietnam. The stability of the excise tax base serves as a firm ground on which excisable industries develop their business, thereby helping the domestic commerce and retail trade to prosper. This effectively generates jobs and contributes to the government budget every year. Unpredictable changes without a roadmap and the lack of transparency would therefore discourage existing and prospective investors and impair trust in a stable business environment in Vietnam.

Recommendations

Taking all this into consideration, we would encourage the Vietnamese government to consider the following:

- › In order to address the pressing issue faced by business operators who need to adjust their business plan and who face business difficulties caused by the hastily promulgated Decree 108 in today's reality: from 1st January 2016 to 30th June 2016, taxable price of imported products based on Decree 113/2011/ND-CP dated 8th December 2011 of the Government, amended and supplemented some articles of Decree 26/2009/ND-CP dated 16th March 2009 of the Government detailing some articles of Laws on Special Consumption Tax and relevant circulars shall continue to be applied. Therefore, enterprises will have the right to get deductions for SCT incremental which have been paid since 1st January 2016 based on Decree 108. A clear deduction mechanism and timeline would be needed.
- › In order to ensure a stable tax environment for business operators in Vietnam and to maintain sound relationships with trade partners, we further request the Government to review the SCT tax base and tax rate on alcoholic beverages in order to restore the favourable tax environment, reduce the tax burden on European operators. This would only support the development of the legitimate spirits market and would be fully in line the objective set in Resolution 19 to improve the business environment in 2016-2017 and with principle of trade liberalisation, which is the basis of the EVFTA.

¹⁵ Law 106/2016/QH13 dated 6th April 2016 regarding amendments to some articles of the Law on value added tax (VAT), the Law on special excise duty and the Law on tax administration

III. ALCOHOL SOCIAL POLICY

Relevant Ministries: Ministry of Health (MOH); Ministry of Industry and Trade (MOIT); Ministry of Finance (MOF)

Issue description

The Sector Committee fully supports the dual goals of the National Alcohol Policy (NAP) and the anticipated Law 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'.¹⁶ We also believe moderate and responsible consumption of alcohol and beer is a key pillar of this sustainable development that the Government, the private sector and individual consumers play a major role to re-define the alcohol and beer consumption culture/norm and take collective action to reduce harmful use and/or abuse.

We understand that the MOH is building a draft law to prevent the harmful effects of the abuse alcoholic beverages (Draft Law). We fully support the health objective to prevent the harmful effects of alcoholic beverages abuse of the Draft Law. We respectfully suggest that the MOH consult with experts and relevant stakeholders from both public and private sectors who could share regulatory best practices/public-private partnership/Corporate Social Responsibility (CSR) programs being applied in Vietnam and in other countries in order to effectively control/mitigate the abuse and at the same time, promote awareness of moderate and responsible consumption and positive behavioral change.

We would like to draw your attention on the problem of illicit/unrecorded alcohol which is prevalently consumed (70%) and abused. This category poses the high risk of food safety and other harmful effects to consumer as its production, distribution and consumption is not in any way regulated. This is one of the key areas that we sincerely suggest MOH/Government to focus on.

The EuroCham Wines & Spirits Sector Committee is prepared to work with the MOH and the drafting Committee's member, 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 to understand the Vietnamese situation is important for the establishment of an effective draft law fit to the Vietnamese context.

A fair and balanced draft law will reduce the harmful use of alcohol across Vietnam while protecting Government revenue, commercial freedoms and economic activity. An overly strict alcohol trading 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 alcohol beverages industry has been actively participating in various initiatives with the efforts to reduce harmful effects of abuse of alcoholic beverages and promote responsible drinking. The Committee appreciates opportunity to work with the Government who coordinates the MOH, and other stakeholders to develop a robust and competent alcohol policy regime and collectively tackle the harmful use of alcohol problem(s) in Vietnam:
- To support an evidence-based, proportionate and targeted policy intervention to effectively manage individual consumption behaviour and harmful use of alcoholic beverages problem without excessively restricting market access/legitimate business activities.
- To adopt a comprehensive and integrated approach to manage harmful use of alcohol, coupling with rigorous

¹⁶ Decision 244/QĐ-TTg dated 12th February 2014 on the National Policy in relation to Preventing and Fighting against the Harmful Effects of Alcohol Abuse by 2020 (NAP)

evaluation of outcomes of all strategies implemented based on nationally agreed targets.

- › To strengthen and ensure appropriate enforcement of existing regulations.
- › To facilitate multi-stakeholders dialogue to share information/concerns/experience and deliberate effective strategies to manage identified harmful behaviours, e.g. unrecorded consumption.
- › To promote public/private partnership to set up a responsible consumption environment/norm in Vietnam e.g. through responsible serving training.

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