

EVFTA REPORT 2018

**THE EU-VIETNAM FREE TRADE AGREEMENT:
PERSPECTIVES FROM VIETNAM**



THE EU-VIETNAM FREE TRADE AGREEMENT: PERSPECTIVES FROM VIETNAM

Presented to the European Parliament, European Commission and Government of Vietnam,
October 2018

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Deloitte Vietnam, for its assistance with our member questionnaire and data visualisation

Deloitte.

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Overview of EuroCham Advocacy Services



EuroCham is one of the largest foreign Business Associations in Vietnam and the region. We are recognised by Vietnamese and European authorities as well as international organisations as a powerful and effective strategic and advocacy advisor for the business community in the country. We take seriously our role as a facilitator and bridge between the European business community and central and provincial Government and authorities, as well as European and regional institutions. EuroCham actively engages with many local and international stakeholders on different levels and through a wide range of forums. The Chamber is recognised as the key factor enhancing cooperation and investment between the EU and Vietnam.

There have been considerable improvements in the business environment in Vietnam in recent years. However, a number of constraints to business growth and potential remain. If these issues are left unresolved, they could inhibit Vietnam's sustainable growth and create detrimental conditions for both the local and foreign business communities. Our success and progress in addressing these issues is built on our Sector Committees and members. From individuals to start-up companies and multinational corporations, our members all have a significant role in making Vietnam a better business environment. EuroCham offers a plethora of opportunities for members to get involved in Chamber activities. Through our Sector Committees, for instance, EuroCham provides members with various channels to share information, network and advocate business interests and issues.

Sector Committees provide an effective advocacy forum for our members to address common affairs through voicing business interests to the Vietnamese Government. Sector Committees represent a wide range of industries and are an integral part of EuroCham's advocacy mission. Over the years, our Sector Committees have grown in both quantity and efficiency.



EuroCham has 16 Sector Committees, connecting members all over Vietnam. Their scope of work includes meeting and discussing common topics and drafting EuroCham's position papers, which subsequently form the basis of our annual Whitebook and advocacy mandate. Other works also include contributing to reports on the EU-Vietnam Free Trade Agreement and other EuroCham publications and attending and speaking at EuroCham's regular meetings and advocacy events with Government and authorities.

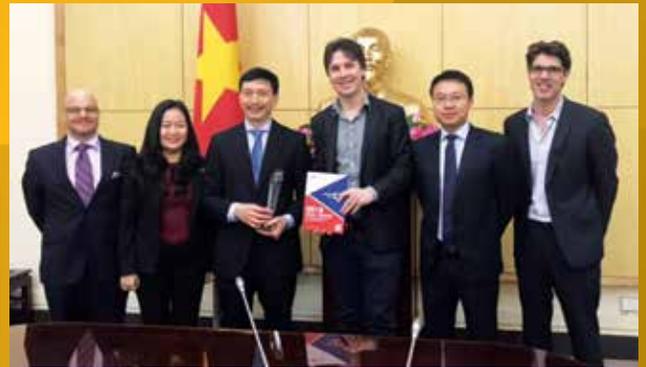
On a regular basis, EuroCham brings the European business community and the high-level and provincial Vietnamese Government together. EuroCham is also a founding member of the Vietnam Business Forum, which brings together all major

SECTOR	CHAIR
CropLife Vietnam	Mr. Kohei Sakata
Food, Agri and Aqua Business	Mr. Thierry Rocaboy
Human Resources and Training	Ms. Sarah Galeski; Mr. Joshua James
Green Growth	Mr. Tomaso Andreatta
Intellectual Property Rights	Ms. Nga Nguyen
International Quality Generics	Mr. Torben Minko
Medical Devices and Diagnostics	Mr. Fabrice Leguet
Information and Communication Technology	Mr. Amanuel Flobbe
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Tourism and Hospitality	Mr. Martin Koerner; Mr. Vu Minh Anh
Wine and Spirits	Mr. Shivam Misra; Mr. Paul Auriol

international business organisations in the country, as well as the World Bank and Vietnamese Chambers of Commerce to address legislative shortcomings to the highest levels of Government. Through our engagement with the EU-ASEAN Business Council, EuroCham members can also voice their concerns in regional position papers that are presented to ASEAN and EU authorities. Through the European Business Organisations Worldwide Network (EBOWWN), we also exchange globally on trade policies and implications of EU economic diplomacy in third markets. We organise 80 events per year, on average, including training, seminars, conferences and advocacy activities. We provide our members with opportunities to talk directly with many high-level Government officials at meetings and seminars. We also organise a number of in-depth dialogues with the Government, as part of our involvement in the Prime Minister's Advisory Council for Administrative Procedure Reform (ACAPR) and Ministries to follow up on the Whitebook issues.

On top of these high-profile public activities, we continue to advocate on behalf of our members and keep them informed about the important changes that affect their business. When our members raise concerns with the Government about trade and investment in Vietnam at our events, we follow up with the relevant Ministers to ensure that these issues remain high on their agenda.

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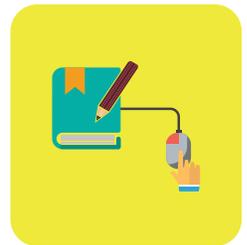
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EU-VIETNAM BUSINESS NETWORK (EVBN)

The EU-Vietnam Business Network (EVBN) project was established in 2013 and is co-founded by the European Union (EU). EVBN's overall objective is to increase EU exports & investments to Vietnam, with a special focus on SMEs, while facilitating market access to strengthen the EU Business sector in Vietnam.

WE OFFER

Events & Business Services

- Trade missions: B2B tailored meetings
- Events: exhibitions, trade shows, business luncheons, webinars
- Tailored services for individual companies



Pre-market Consultation

- Free-to-download market studies & reports
- "Ask the expert": accessible on the website
- Free database of service providers in Vietnam

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- Comprehensive startup facilities for European companies

UPCOMING EVENT

FOOD & BEVERAGE TRADE MISSION

14 - 18 January 2019
20 European companies
Ho Chi Minh City & Hanoi



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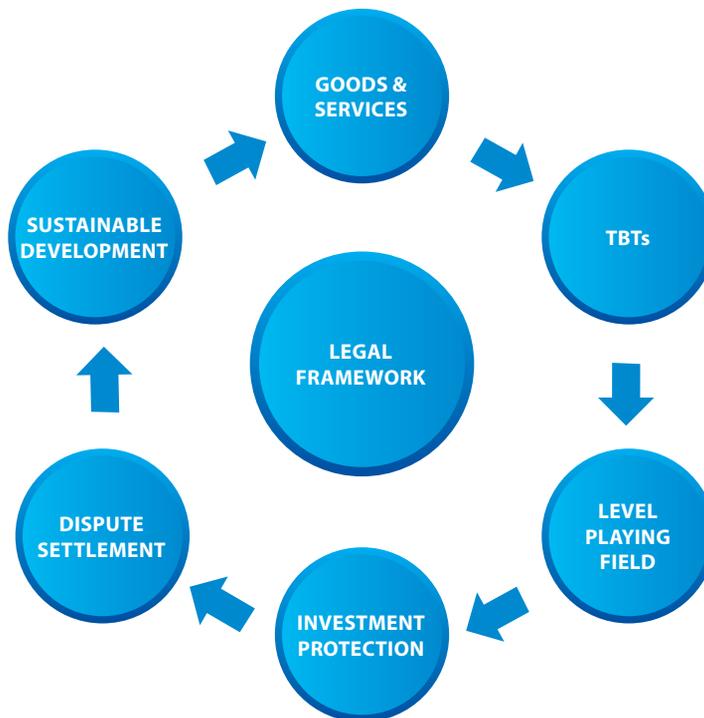
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EXECUTIVE SUMMARY

The EU-Vietnam Free Trade Agreement (EVFTA) represents an historic change in EU-Vietnam relations. It will boost trade and investment on both sides, and help Vietnam to further integrate into the global economy and the international community.



Source: EU Delegation to Vietnam

1. Tariff Reductions: The EVFTA will eliminate almost all tariffs between the EU and Vietnam. It will remove tariffs on 65 percent of the value of EU exports the moment the FTA enters into force, with the remaining tariffs being phased out over the next decade. Meanwhile, 71 percent of EU imports from Vietnam will be tariff-free once the EVFTA enters into force, rising to more than 99 percent over the following 7 years.

2. Customs Duties: Customs duties will be almost eliminated over a transitional period of 7 years for Vietnamese goods and 10 years for EU goods. This will be a 'win-win' for business and consumers, in the form of lower prices and greater competitiveness.¹

3. Market Access for EU Service Providers: In the EVFTA, Vietnam has gone further than the World Trade Organisation (WTO) in terms of market access granted to EU service providers. Additional (sub)sectors will be opened up, giving the EU the best possible access to Vietnam's market. The FTA also contains a 'Most-Favoured Nation' clause.²

¹ "Guide to the EU-Vietnam Free Trade Agreement" *Delegation of the European Union to Vietnam* (2016) p. 24.

² "EuroCham's Interim Report and Survey Results on the EU-Vietnam Free Trade Agreement" *European Chamber of Commerce in Vietnam* (2017) p. 46.

1

**VIETNAM:
A POLITICAL AND
SOCIO-ECONOMIC
OVERVIEW**

1. VIETNAM: A POLITICAL AND SOCIO-ECONOMIC OVERVIEW

1.1 POLITICAL LANDSCAPE

Vietnam is a single-party Socialist Republic. The State of Vietnam is represented by the State President, and the Government is represented by the Prime Minister. The 496-member National Assembly, Vietnam's legislative body, elects the State President and ratifies his choice of Prime Minister, who both serve 5-year terms. The Prime Minister proposes Government Ministers, who are also subject to the approval of the National Assembly.

Tran Dai Quang served as President and Head of State from 2016, when he was elected at the Communist Party of Vietnam's 12th National Congress, until his passing in September 2018. Nguyen Xuan Phuc was elected Prime Minister of Vietnam in 2016, while Nguyen Thi Kim Ngan was elected Chairwoman of the National Assembly. Secretary-General of the Communist Party Nguyen Phu Trong was re-elected in 2016 for a second term, after first being elected in 2011. He is also Head of the Politburo, Vietnam's highest decision-making forum. The next elections are set to take place at the 13th National Congress in 2021. Meanwhile, provincial People's Councils, elected by the local population, are responsible for local administration.³

1.2 ECONOMIC OVERVIEW

The last three decades have been a period of profound growth and development for Vietnam. The Đổi Mới reforms of 1986, in which Vietnam embraced 'socialist-oriented market economics', triggered major socio-economic changes, transforming Vietnam from one of the poorest countries on earth to one of middle-income status.⁴

Vietnam is now one of the fastest-growing economies in the world, with an annual GDP per capita growth of 5.3 percent since Đổi Mới – the second-strongest growth in the region, behind China.⁵ That strong economic growth has created new jobs and raised standards of living for millions of people: 670,000 new jobs were created in 2017 alone, and average real wages are estimated to have increased 5 percent.⁶ To highlight just how far Vietnam has come: in 1993, more than half of the population lived on less than US\$1.90 a day. Now, that figure is just 3 percent.⁷ Meanwhile, its GDP per capita has grown from US\$360 in 1998 to over US\$2,000 in 2018.

Moreover, infrastructure improvement has led to a dramatic uplift in living conditions: in 1993, less than half of households in Vietnam had access to electricity; today, access is almost universal. Even in the most rural areas and remote islands, electricity is available. More than 75 percent of people now have access to clean water and sanitation, up from less than half the population. Vietnam has also achieved several of its Millennium Development Goals (MDG) ahead of time.⁸

Looking ahead, the Asian Development Bank (ADB) has predicted that Vietnam's strong growth will continue in the short term, projected at 6.5 percent.⁹ Over the next few decades, professional services firm PricewaterhouseCoopers (PWC) predicts that Vietnam will be one of the fastest-growing economies in the world, with an estimated average annual growth rate of 5 percent between 2014 and 2050.¹⁰ Vietnam's demographic dividend is fueling this growth: according to Deloitte, around 70 percent of people in Vietnam are of working age. On top of this, domestic demand is high, rates of unemployment are low, and FDI inflows mean that exports remain strong.¹¹ This growth is set to make Vietnam the 20th-largest economy in the world, and in the top 10 in Asia, in 2050.¹²

3 "The Report: Vietnam 2017" *Oxford Business Group* (2017) pp. 11-12.

4 "Asia's Next Tiger" *The Economist*, 6 August 2016. Available at: <<https://economist.com/news/finance-and-economics/21703376-having-attained-middle-income-status-vietnam-aims-higher-good-afternoon-vietnam>> last accessed on 17 July 2018.

5 "Sustaining Vietnam's Growth: the Productivity Challenge" *McKinsey Global Institute* (2012) p. 9.

6 "Taking Stock: an Update on Vietnam's Recent Economic Developments" *The World Bank* (2018) p. 9.

7 "The World Bank in Vietnam: Overview" *The World Bank*. Available at: <<http://www.worldbank.org/en/country/vietnam/overview>> last accessed on 13 July 2018.

8 Data from the World Bank. Available at: <<https://data.worldbank.org/indicator/NY.GDP.PCAP.CD>> last accessed on 13 July 2018.

9 "Vietnam Economy" *Asian Development Bank*. Available at: <<https://www.adb.org/countries/viet-nam/economy>> last accessed on 16 July 2018.

10 "The World in 2050" *PricewaterhouseCoopers* (2015) p. 17.

11 "Asia Pacific Economic Outlook" *Deloitte* (2017) p. 18.

12 "Spotlight on Vietnam: the Leading Emerging Market" *PricewaterhouseCoopers* (2017) p. 10.

1.3 BUSINESS CLIMATE

Vietnam celebrates three decades of Foreign Direct Investment (FDI) in 2018. FDI now contributes over 50 percent of the value of the manufacturing sector, and over 70 percent of Vietnam's export turnover.¹³ However, domestic consumption is becoming ever more important in Vietnam's economic growth.

The Government has made significant strides to improve the trade and investment environment over the last few decades. This can be seen in the number of new business enterprises: over 120,000 opened in 2017 alone. That is an annual increase of six thousand new businesses compared to 2016. Meanwhile, provincial authorities have cut over five thousand administrative procedures, creating simplified licensing procedures and offering opportunities for Small and Medium-Sized Enterprises (SMEs) to enter the market.

Government Ministries, such as the Ministry of Planning and Investment (MPI) and the Ministry of Industry and Trade (MOIT), continue to improve administrative procedures and remove business conditions.¹⁴ For instance, in September 2017, MOIT signed a Decision to reduce and streamline 675 business conditions (over half of the total) in 2017-18.¹⁵

These positive legislative changes are being reflected on the ground. Vietnam jumped 14 places in the 2017 World Bank Doing Business report, rising to 68 out of 190 economies around the world for ease of doing business.¹⁶ The World Bank found that, alongside Indonesia, Vietnam had implemented the greatest number of reforms over the preceding 15 years and it is now performing above the regional average for ease of doing business.¹⁷ Vietnam maintained this position in 2018, ranking ahead of regional competitors like Indonesia (72) and the Philippines (113).¹⁸

Through our Business Climate Index (BCI), EuroCham has been taking the pulse of European businesses operating in Vietnam since 2010. The BCI gives us up-to-date, on-the-ground insight from member companies and their perceptions of the business environment each quarter. Through our questionnaire, EuroCham members give us their view of the business situation and outlook in the Vietnamese market. Our most recent BCI shows that European companies remain positive about the business environment in 2018, with sentiment in quarter 2 of 2018 showing an increase on the previous 4 quarters, and just below the all-time peak of 2016.

Figure 1: EuroCham Business Climate Index



Source: EuroCham Business Climate Index 2018¹⁹

13 "Whitebook 2018: Trade and Investment Issues and Recommendations" *European Chamber of Commerce in Vietnam* (2018) p. 13.

14 *Ibid.*

15 Decision 3610a/QD-BCT.

16 "Doing Business: Measuring Business Regulations" *The World Bank* (2017). Available at: <<http://www.doingbusiness.org/data/explore/economies/vietnam>> last accessed on 1 February 2018.

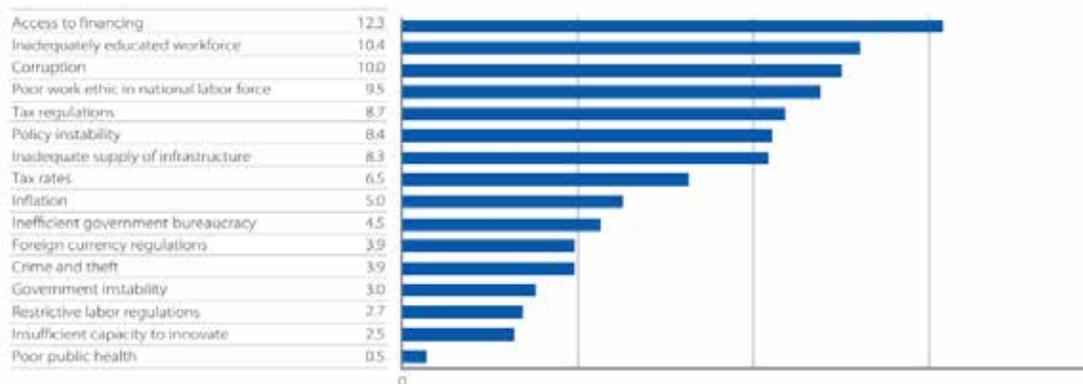
17 "Vietnam Improves Significantly in Ease of Doing Business" *Nhan Dan*, 1 November 2017. Available at: <<http://en.nhandan.com.vn/business/economy/item/5608702-vietnam-improves-significantly-in-ease-of-doing-business-world-bank.html>> last accessed on 1 February 2018.

18 "Doing Business: Reforming to Create Jobs" *The World Bank* (2018) p. 4.

19 "EuroCham Business Climate Index" *European Chamber of Commerce in Vietnam*. Available at: <<https://www.eurochamvn.org/bci>> last accessed on 25 September 2018.

However, despite these positive steps, more remains to be done. The World Economic Forum's (WEF) Global Competitiveness report highlights some areas where Vietnam needs to further improve. These include basic requirement factors, higher education and innovation.²⁰ The WEF also pinpoints the most problematic factors for doing business in Vietnam, as the table below shows.

Figure 2: Most Problematic Factors for Doing Business in Vietnam



Note: From the list of factors, respondents to the World Economic Forum's Executive Opinion Survey were asked to select the five most problematic factors for doing business in their country and to rank them between 1 (most problematic) and 5. The score corresponds to the responses weighted according to their rankings.

Source: World Economic Forum²¹

The Government recognises these challenges, and has passed a series of Resolutions to improve the business environment and increase Vietnam's competitiveness, aiming to reach the ASEAN-4 average in 2020.²²

The Government's commitment to greater international integration is also helping to address this. Vietnam's involvement in 12 bilateral and multilateral FTAs with 56 economies around the world has led to the Government taking further steps to reform its administrative procedures, improve the legal framework to create a more favourable business climate, restructure State-Owned Enterprises (SOEs) and ensure more transparent administration.²³ The EVFTA, as we will show in this report, will help Vietnam go further.

20 "The Global Competitiveness Report 2017-18" *World Economic Forum* (2018) p.308.

21 *Ibid.*

22 "Taking Stock: an Update on Vietnam's Recent Economic Developments" *The World Bank* (2018) p. 37.

23 "EuroCham's Interim Report and Survey Results on the EU-Vietnam Free Trade Agreement" *European Chamber of Commerce in Vietnam* (2017) p. 21.

2

**THE EVFTA:
WHERE ARE
WE NOW?**

2. THE EVFTA: WHERE ARE WE NOW?

Negotiations on the EVFTA began in June 2012. Fourteen rounds of negotiation followed, alternating between Europe and Vietnam, before concluding in December 2015. Now, after legal scrubbing and translation into 22 European languages and Vietnamese, the EVFTA will be presented to the European Commission and European Parliament for signature and ratification.

For a European perspective on the EVFTA, we asked two political and diplomatic leaders who have been following the FTA since negotiations first began, and who have a long-standing connection to Vietnam, for their input and insight.

2.1 REFLECTIONS FROM EUROPE: BERND LANGE MEP

Bernd Lange is a Member of the European Parliament (MEP) and Chair of the Committee on International Trade (INTA). Mr. Lange has visited Vietnam several times, most recently in the Summer of 2018. Below, he shares his thoughts on the issues Vietnam needs to address ahead of the ratification of the FTA, and the progress the Vietnamese Government has made.



Bernd Lange MEP visits German textile manufacturer van Laack in Hanoi, July 2018

What are your reflections after your recent visit to Vietnam?

“There is a lot of movement in the country, and the interest in strengthening ties with the EU has increased. I see the opportunity for the EU and Vietnam to strengthen their partnership, not only on an economic level but going much beyond that. We need to ensure that we establish a basis for discussions on areas of mutual interest, but also on topics on which we don’t see eye to eye.”

What are the next steps to ratification of the EVFTA?

“There are a number of important steps that need to be taken before we can even think about implementing a deal. One is of course a vote in the European Parliament, which will take place after we have received and analysed the agreement. No FTA can enter into force without the support of this house. Right now we are waiting for the completion of the translation of the deal and then for Member States to pronounce themselves in favour or against the agreement. Only then will our work officially begin.”

What progress has Vietnam made to address the outstanding issues on its side?

“It is no secret that the European Parliament puts an emphasis on fair and sustainable trading practices when it scrutinises trade deals, and the deal with Vietnam will be no exception. We are therefore closely following the reform of the Labour Code, but also other topics which are “trade+”, like human rights and the question of political freedoms. A clear timeline for the ratification and implementation of ILO core labour standards for example, would be very important for many members of this house.”

How will the EVFTA benefit Vietnam, over and above increased trade and investment?

“The EU is a values-driven actor, and therefore interested in deep and stable relationships with partners across the globe. We are convinced that to create lasting benefits we need to go beyond economic exchanges and establish partnerships which are able to weather the occasional storm. In combination with the Partnership and Cooperation Agreement we could establish such a platform and ensure that we are at the same table when discussing the broad range of challenges and opportunities that Vietnam is facing.”

2.2 REFLECTIONS FROM EUROPE: BRUNO ANGELET, EU AMBASSADOR TO VIETNAM AND HEAD OF THE EU DELEGATION TO VIETNAM

Bruno Angelet has been the EU Ambassador to Vietnam and Head of the EU Delegation since 2015. Prior to this he was the Belgian Ambassador to Vietnam from 2011. Bruno first worked in Vietnam in 1994, when he was First Secretary of the Belgian Embassy.



BRUNO ANGELET

European Union Ambassador and
Head of the EU Delegation to Vietnam

What would ratification of the EVFTA mean for Europe and Vietnam?

“The EU-Vietnam FTA is the most ambitious and comprehensive FTA the EU has ever concluded with a developing country. It shows Vietnam’s dynamic approach in pursuing integration in global value chains for the benefit of its citizens. Thanks to the FTA, the EU stakeholders will benefit from a stable and predictable legal framework when they are doing business in Vietnam and enjoy a level playing field.”

“Vietnam is the EU’s second largest market in ASEAN. EU exporters will benefit for the first time from preferential access to a large and rapidly growing economy of almost 100 million consumers. Upon entry into force of the FTA, 65 percent of the value of EU exports will enter Vietnam duty-free, and the remaining will be gradually eliminated over a maximum period of 10 years. Tariff elimination will boost trade between both partners, but it is not sufficient as such.”

“The FTA will also reduce non-tariff barriers for EU exports. Vietnam has committed to increasing the use

of international standards as a means to facilitate trade. The FTA also contains enhanced transparency provisions to ensure economic operations are aware of the relevant provisions applied in Vietnam. The Sanitary and Phytosanitary provisions of the FTA should lead to the recognition of the EU as a single entity. This will accelerate the approval of EU exports of agro-food products and avoid discriminatory treatment.

“With the FTA, EU companies will be allowed to participate in Vietnamese public contracts, opening for the first time new opportunities for EU businesses in a very dynamic country. On Intellectual Property Rights, Vietnam will offer the EU a high level of protection, going beyond the standards of WTO: EU innovations, artworks and brands will be better protected against being unlawfully copied, including through stronger enforcement provisions. Furthermore, the FTA contains specific provisions to enhance the presence of the pharmaceutical sector in Vietnam as well as to address non-tariff barriers that the automotive sector is currently facing.

“The EU has to offer high quality and sustainable investment to Vietnam, and thus the FTA is expected to create new opportunities for our investors. EU investors will benefit from increased market access through the FTA, and will also enjoy enhanced protection provisions thanks to the high-level investment protection standards and a reformed investment dispute resolution mechanism that the EU and Vietnam have agreed under the Investment Protection Agreement that accompanies the FTA.

“Finally, sustainable development is at the core of our bilateral trade and investment relationship. It is crucial that our FTA helps to support economic growth, social development and environmental protection. We have included strong provisions to respect the core labour standards, ensure sustainable management of forests and fisheries and promote fair and sustainable trade.

“The EU-Vietnam FTA can be seen as a model on how to govern economic globalisation and combat protectionist trends. Both the EU and Vietnam need to work jointly to prepare for a swift implementation in the coming months.”

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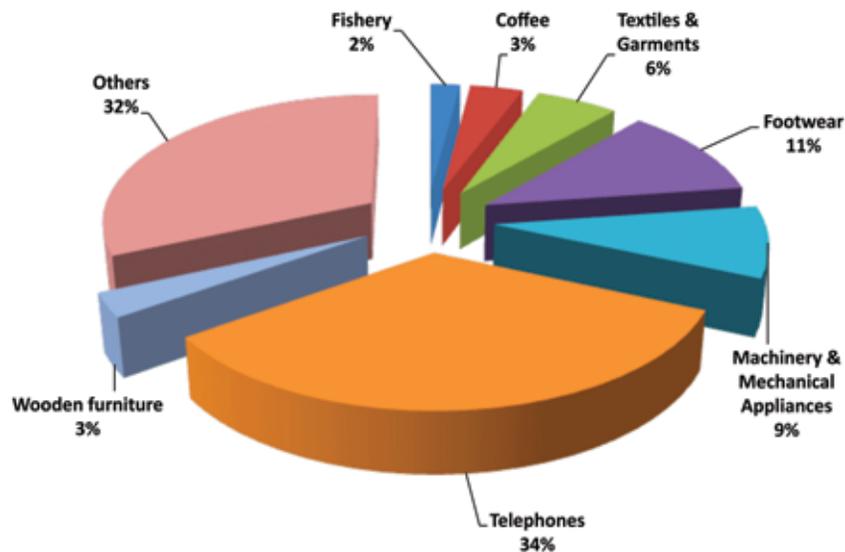
THE ECONOMIC IMPACT OF THE EVFTA

3. THE ECONOMIC IMPACT OF THE EVFTA

The European Union is the fifth-largest foreign investor in Vietnam. Figures from Vietnam's MPI show that, in 2017, European firms had almost 2,500 investment projects worth around US\$44 billion in Vietnam, making up 10 percent of total FDI projects and 14 percent of FDI capital.²⁴

In 2017, trade in goods between the EU and Vietnam was worth over €47 billion: European imports from Vietnam accounted for €37 billion, including products such as footwear, textiles and clothing, coffee, rice, seafood and furniture.²⁵

Figure 3: Vietnamese Exports to the EU



Source: EU Delegation with data from EuroStat²⁶

Meanwhile, European exports to Vietnam accounted for €10 billion, including products such as electrical equipment, aircraft, vehicles and pharmaceutical products.²⁷

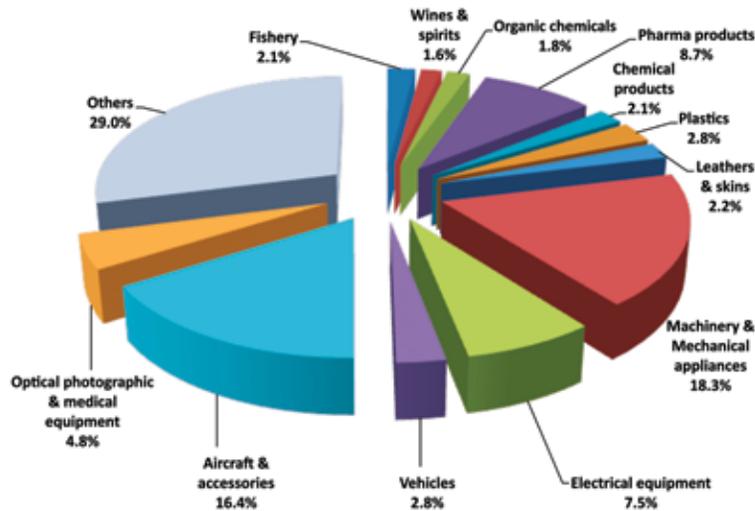
24 "EU Inflows to Ride Out EVFTA Delays" *Vietnam Investment Review* 18 September 2018. Available at: <<http://www.vir.com.vn/eu-inflows-to-ride-out-evfta-delays-52302.html>> last accessed on 21 September 2018.

25 European Delegation to Vietnam with data from EuroStat.

26 *Ibid.*

27 *Ibid.*

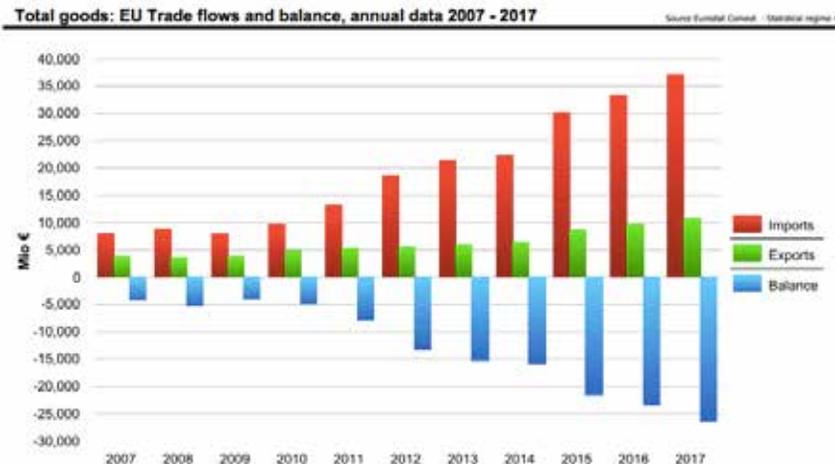
Figure 4: EU Exports to Vietnam



Source: EU Delegation with data from EuroStat²⁸

Trade between Europe and Vietnam has been growing over the last decade, as the graph below shows. However, once ratified and implemented, the EVFTA will trigger a gradual reduction of 99 percent of tariffs across a range of products, boosting trade even further. This increase in trade is set to have a significant impact on economic growth in Vietnam.

Figure 5: EU Trade Flows and Balance 2007-2017



Source: European Commission Directorate General for Trade²⁹

The European Trade Policy and Investment Support Project (MUTRAP) predicts that, over the implementation period to 2025, Vietnam's economic growth will be around 7 to 8 percent higher than would have been the case without the EVFTA. Vietnam's exports to the EU are set to be 50 percent higher in 2020, with imports also seeing significant growth. This should reduce the trade deficit shown in Figure 5 above, as consumption levels in Vietnam increase. Meanwhile, real wages for unskilled workers are estimated to rise around 3 percent and household income will rise even faster, as additional labour provides a boost to earnings.³⁰

28 *Ibid.*

29 Op. Cit. European Commission Directorate General for Trade (2018).

30 Baker, P. Vanzetti, D. and Huong, P.T.L. "Sustainable Impact Assessment: EU-Vietnam FTA" MUTRAP (2014) pp. 48-49.

The last few decades have been a period of profound change for Vietnam, as described in Chapter 1. The Government has liberalised markets and embraced FDI, and, in turn, the living standards, livelihoods and welfare of millions has improved. This trend is set to continue. But, as the EU-funded MUTRAP project notes, the EVFTA will accelerate progress in lifting people out of poverty in both rural and urban areas.³¹

In the rest of this report, we will show how the impacts of the EVFTA will be felt far and wide, not just in the living standards and livelihoods of workers, but throughout the entire economic, social and environmental fabric of Vietnam.

3.1 THE VIEW FROM VIETNAM: 30 YEARS OF REFORM



PHAM CHI LAN

Economist

“In the three decades since the launch of Đổi Mới (economic renovation), Vietnam has built an impressive record of fast, stable, and inclusive economic growth. GDP growth per capita has averaged 5.5 percent a year since 1990, yielding a three-and-a-half-fold increase in average income. Growth has been remarkably stable, with volatility declining markedly and becoming among the lowest in the world. Growth has been highly inclusive too. Per capita income of the bottom 40 percent has grown by 9 percent annually since the early 1990s, outpacing income growth of the top 60 percent, thereby ensuring shared prosperity and significant reductions in poverty.

“The Vietnamese population is also better educated and has a higher life expectancy than most countries with a similar income. In recent international tests, Vietnamese students outperformed the OECD average. Access to basic infrastructure has also improved substantially. Electricity is now available to almost all households while more than 75 percent have access to clean water and modern sanitation, up from less than half in 1993.

“This strong growth record has been underpinned by a rapid accumulation of factors of production, with the labour force almost doubling in size and the capital stock growing sixfold in real terms since 1990. Growth has also been reinforced by impressive gains in human capital and a strong initial burst of TFP growth. The rapid increase in the labour force reflects favourable demographics, coinciding with economic liberalisation and a rising demand for labour, enabling productive absorption of the labour force increase which has translated into higher GDP growth. The reduction in the dependency ratio also helped increase the national savings rate—from 3 percent in 1990 to more than 30 percent now—which helped finance a major surge in productive investment.

“Economic growth has brought economic transformations and modernisation, manifest in four mutually reinforcing ways. Structural transformation shifts resources, labour and GDP from agriculture to manufacturing and services. The economy orients outward with rapid growth of external trade and foreign direct investment, lodging Vietnam more deeply in global value chains. A centrally planned and state-dominated economy moves to a market-oriented system with the private sector taking an increasing role. Spatial transformation shifts population from rural to urban areas.

“Growth and economic transformations were rooted in a sequence of reforms after the onset of Đổi Mới to remove market distortions, stabilise macroeconomic conditions, leverage the forces of global integration better, and deepen human capital development.”

³¹ *Ibid.*, p. 57.

4

**THE EVFTA:
THE VIEWS OF
EUROPEAN
BUSINESS**

4. THE EVFTA: THE VIEWS OF EUROPEAN BUSINESS

Since our formation in 1998 with just 60 members, EuroCham has grown to become one of the largest foreign business associations in Asia. We now represent over a thousand members, including some of the world's leading enterprises in all sectors and industries. Our active and growing membership, from start-ups and SMEs to long-established multi-nationals, gives us unrivalled insights into trade and investment in Vietnam, and a stronger understanding of the challenges and opportunities of its business environment.

To better understand the tangible impact of the EVFTA on the ground in Vietnam, we asked our members for their views. In total, 132 responded – over 10 percent of our membership. This is our second membership consultation on this topic, following our *Interim EVFTA Report* in 2017.

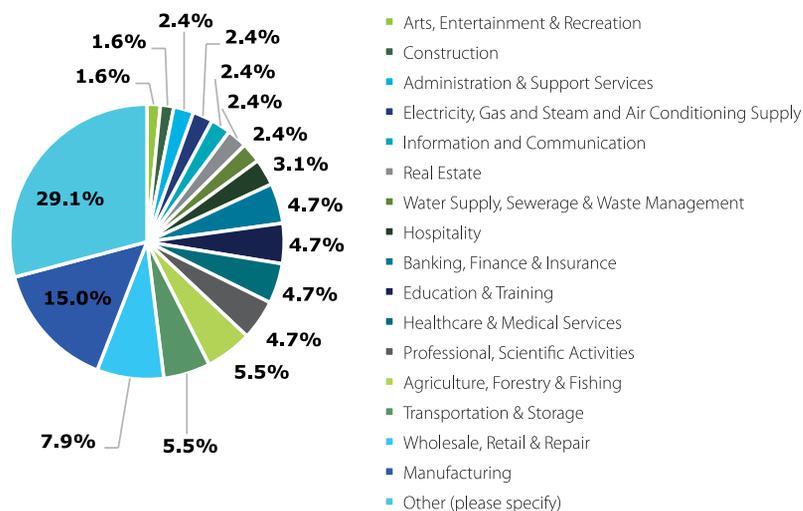
Our members paint a positive, optimistic picture of the EVFTA. The lion's share said that the FTA would have either a "significant" or "moderate" impact on their business or investment plan in both the medium (78.9 percent) and long-term (85.6 percent) – a finding consistent with our 2017 report. Furthermore, 72 percent agreed that the EVFTA will help Vietnam to become a hub for European companies in ASEAN.

On top of the clear economic benefits of the EVFTA, our members believe that it will have a positive impact on a range of social and environmental issues, from welfare (88 percent) and environmental protection (85 percent) to knowledge transfer (88 percent) and workers' rights (65 percent). In short, an overwhelming 93 percent of our members believe that the EVFTA should be implemented in 2019, or as soon as possible thereafter, to be of most benefit to European business in Vietnam. This echoes data from elsewhere in the region: The 2018 EU-ASEAN Business Sentiment Survey found that 98 percent of European businesses who responded felt that the EU should accelerate trade deals with ASEAN.³²

This chapter presents our members' perspectives on a range of issues in more detail, from the EVFTA's impact on their business and investment plan to its wider implications for the social and economic fabric of Vietnam.

SECTION 1: DEMOGRAPHIC OF SURVEY RESPONDENTS

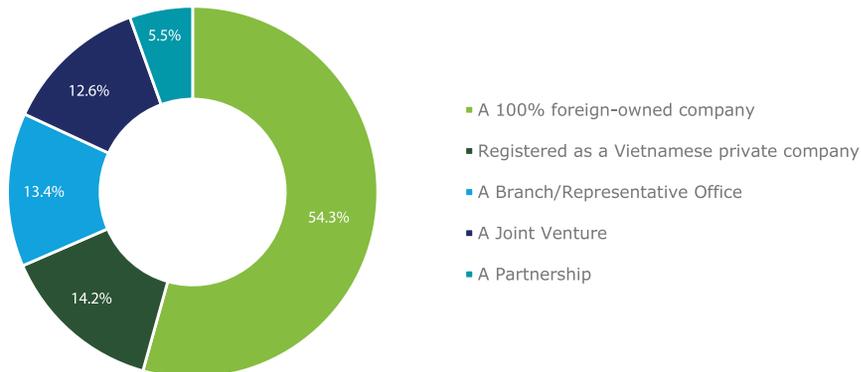
Figure 7. Business sector distribution of survey respondents



32 "2018 EU-ASEAN Business Sentiment Survey" *EU-ASEAN Business Council* (2018) p. 17.

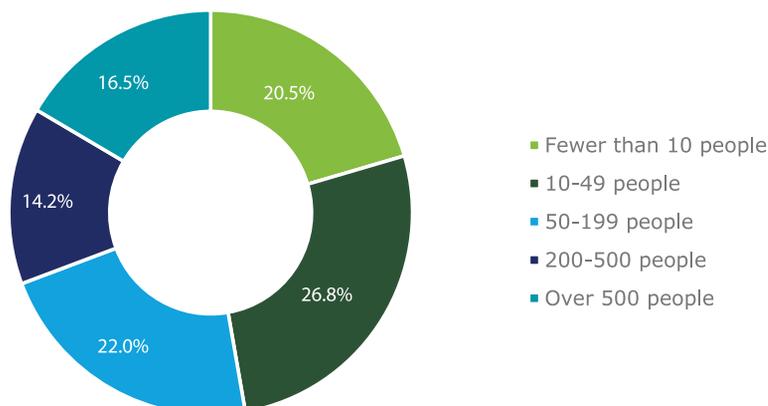
As Figure 7 shows, respondents come from almost every sector within the business community. "Manufacturing" accounts for 15 percent, followed by "Wholesale, Retail and Repair" at 7.9 percent; "Transportation & Storage" at 5.5 percent; "Agriculture, Forestry & Fishing" at 5.5 percent; "Education & Training" at 4.7 percent and "Hospitality" at 3.1 percent. Some sectors have a modest share: "Arts, Entertainment & Recreation" and "Construction" both making up just 1.6 percent.

Figure 8. Business type distribution of survey respondents



More than half of respondents are from 100 percent foreign-owned companies. Other businesses participating in the survey come under the categories of "Vietnamese-registered company" (14.2 percent), "Branch Representative Office" (13.4 percent) and "Joint Venture" (12.6 percent). The smallest group of respondents are "Partnerships" with just 5.5 percent.

Figure 9. Workforce distribution of survey respondents



Just over 20 percent of respondents come from companies with fewer than 10 employees. Companies with 10-49 employees and 50-199 account for 26.8 percent and 22 percent, respectively. Meanwhile, just under a third (30.7 percent) come from companies with over 200 employees.

SECTION 2: BUSINESS PLAN (MEDIUM AND LONG-TERM)

Figure 10. Business/investment plan of survey respondents in the short term (1-3 years)

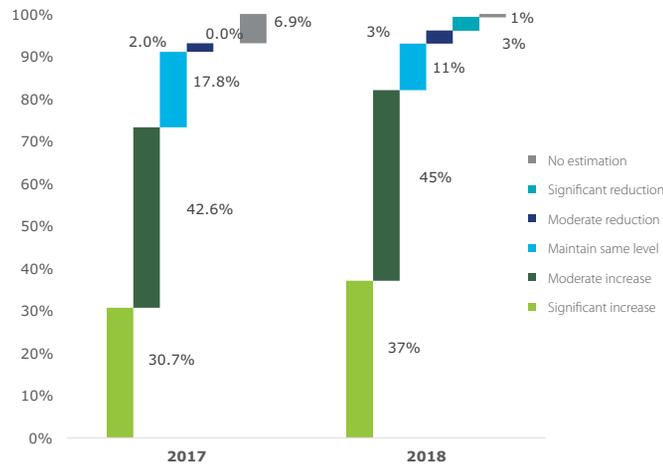
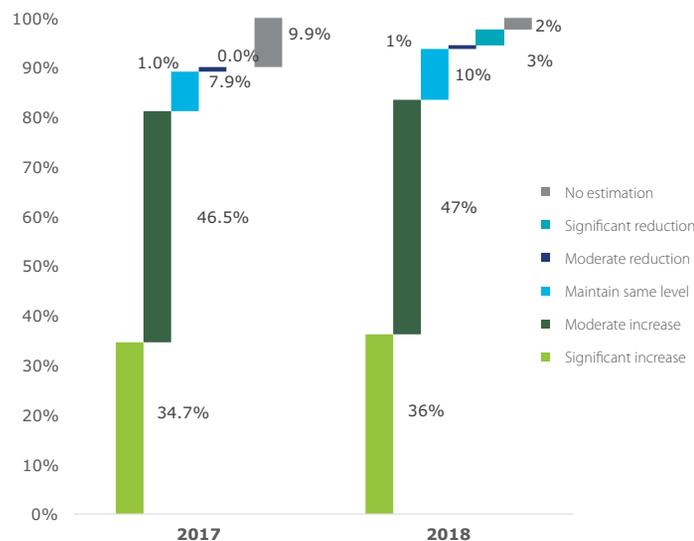


Figure 10 shows that over 80 percent of respondents indicate the likelihood of business expansion in 2018, of which 37 percent confirm “significant increase” and 45 percent confirm “moderate increase”, slightly higher than last year’s results in each category. Meanwhile, the number of respondents reporting “no estimation” has declined from 6.9 percent to 1 percent, indicating a lower level of uncertainty.

Figure 11. Business/investment plan of survey respondents in the medium term (3-5 years)



The prediction for medium-term business plans show a similar pattern. More respondents show optimism than last year, as 36 percent report that their business will make a “significant increase” and 47 percent report a “moderate increase”. Nearly 10 percent of respondents anticipate that their business will “maintain the same” level, up from 7.9 percent in 2017. The indication of business reduction is low, implying that European businesses still have a strong commitment to further development in Vietnam.

SECTION 3: THE EVFTA AND PERCEIVED IMPACT ON BUSINESS



BUSINESS'S FAMILIARITY WITH THE CONTENT OF THE EVFTA



However...

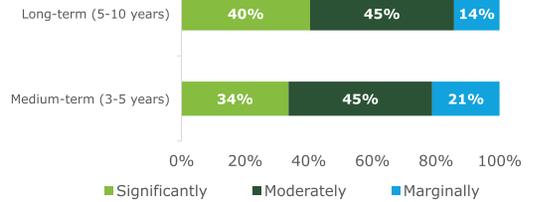


...are either **extremely familiar** or **slightly familiar** with the content of the EVFTA

...nearly a third **remain vague** about the EVFTA's content



BUSINESS SENTIMENT OF THE EVFTA'S IMPACT ON MEDIUM/LONG-TERM BUSINESS PLANS



34%

...reported that the EVFTA will **significantly impact** medium-term business plans.

40%

...reported that the EVFTA will **significantly impact** long-term business plans.

and...

45%

...reported that the EVFTA will **moderately impact** both medium and long term business plans.



IMPORTANCE OF THE EVFTA COMMITMENTS

In general, businesses still pay the most attention to **trade, tariff and customs-related commitments**:



58%

Of respondents cite **Market Access and Tariff Reduction** as the most important commitment once the EVFTA comes into force



33%

Of respondents consider **Customs and Trade Facilitation** as the 2nd most important commitment



24%

Of respondents select **Technical Barriers to Trade** as the 3rd most important commitment



24%

Sanitary and Phytosanitary Measures emerge as one of the notable commitments, with nearly one-fourth citing this as the 4th most important commitment

SECTION 4: EXPECTATIONS OF EUROCHAM MEMBERS

BUSINESSES HAVE HIGH EXPECTATIONS OF THE EVFTA

36% ...report that the EVFTA will **significantly improve** "Economic Development and Welfare Improvement"

33% ...report that the EVFTA will **significantly improve** "Sustainable Development and Environmental Protection"

37% ...report that the EVFTA will **significantly improve** "Knowledge Transfer and Local Workforce Advancement"



21% report that the EVFTA will **significantly improve** "Rule of Law", while **58%** believe that EVFTA will **moderately enhance** this dimension

51% report that the EVFTA will **moderately improve** "Transparency and Accountability in Public Administration"

44% report that the EVFTA will **moderately improve** "Human Rights and Social Justice", while **37%** doubt that this agreement would have any impact on this dimension

53% report that the EVFTA will **moderately improve** "Workers' Rights and Civil Society", while **32%** doubt that this agreement would have any impact on this dimension

THE EVFTA WILL ENHANCE VIETNAM'S COMPETITIVENESS

80% of respondents agree that the EVFTA is **very likely/likely** to **enhance Vietnam's competitiveness** compared to other countries such as China, Japan, Korea and the U.S.



72% of respondents either **strongly agree** or **agree** that the EVFTA will help Vietnam **become a hub for EU companies** to access the ASEAN market.

EUROCHAM MEMBERS HOPE THAT THE EVFTA WILL COME INTO EFFECT AS SOON AS POSSIBLE IN ORDER TO BENEFIT

54% believe that EVFTA ratification will be most beneficial if it is completed **during 2019**

39% prefer that EVFTA ratification would be completed as **soon as possible after 2019**



50% of respondents anticipate **negative effects** on their companies' operations if the EVFTA does not come into effect in 2019.



5

**OPPORTUNITIES
FOR EUROPEAN
BUSINESS &
VIETNAM'S
DEVELOPMENT**

5. OPPORTUNITIES FOR EUROPEAN BUSINESS & VIETNAM'S DEVELOPMENT

5.1 LABOUR RIGHTS AND SOCIAL JUSTICE

EuroCham welcomes the fact that the EVFTA will do more than reduce tariffs and barriers to trade – essential though this is. It will also contribute to improving labour rights, protection at work and social justice.³³

Vietnam became a member of the ILO in 1992. Its growing international integration, including membership of the WTO in 2007, has led to greater awareness of international labour standards.³⁴ Indeed, the Government of Vietnam has made important strides in this regard, amending labour market legislation to create a better environment for industrial relations.³⁵

In particular, Vietnam's legal framework has good regulations on collective bargaining, which require regular dialogue to discuss work-related issues. The Government has also passed specific laws to abolish child labour and ratified ILO Convention 138 on minimum age to work. Moreover, the law is quite comprehensive on non-discrimination³⁶, and Vietnam has well-established commitments to gender equality at work.³⁷

But despite this progress, challenges remain. First among these is the urgent need for Vietnam to meet its full obligations under the ILO Conventions, such as freedom of association and collective bargaining as embedded in the ILO fundamental Conventions still not ratified by Vietnam (Convention 87 and Convention 98 respectively). This would cover the possibility to allow the constitution of independent trade unions. The now-defunct Trans-Pacific Partnership (TPP) was the first FTA in which the Government of Vietnam agreed to enforceable labour commitments such as freedom of association.³⁸ In parallel, through the EVFTA, the Government is showing further positive signals in this area. It has committed to publish a new draft Labour Law in September 2018, for public consultation, and following consultation with ILO and other interested parties, including EuroCham, this should be put before the National Assembly in the Spring of 2019.

Article 3, Chapter 13 of the EVFTA on Trade and Sustainable Development requires Vietnam to “reaffirm its commitments to respect, promote and effectively implement the principles concerning the fundamental rights at work.” These include: “freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour, and; the elimination of discrimination in respect of employment and occupation.”³⁹

Therefore, with the EVFTA, Vietnam has shown its willingness to integrate international standards into its domestic legislation. Ms. Cecilia Malmström, European Commissioner for Trade, has said that “trade has many benefits, but it should not come at any cost. It should be based on values.”⁴⁰ It is in this spirit that we support the EVFTA: it will do more than further European business interests, it will also help to promote European values. It will benefit not just companies and consumers on both sides through job creation and economic growth, but millions of Vietnamese workers and their families who will gain improved labour rights and better protection at work.

33 “Guide to the EU-Vietnam Free Trade Agreement” *Delegation of the European Union to Vietnam* (2016) p. 23.

34 “Decent Work Country Programme 2017-2021” *International Labour Organisation* (2017) pp. 1-8.

35 “Labour and Social Trends in Vietnam 2012-2017” *International Labour Organisation* (2018) p. 10.

36 “EuroCham’s Interim Report and Survey Results on the EU-Vietnam Free Trade Agreement” *European Chamber of Commerce in Vietnam* (2017) pp. 57-59.

37 Aeberhard-Hodges, J., Huong, T., and Urbano, M. “Labouring Under False Assumptions?” *International Labour Organisation* (2018) p. 1.

38 Massman, O. “The TPP: a Win for Vietnam’s Workers” *The Diplomat*, 20 April 2016. Available at: <<https://thediplomat.com/2016/04/the-tpp-a-win-for-vietnams-workers/>> accessed on 8 August 2018.

39 “The EU-Vietnam Free Trade Agreement” Chapter 15: Trade and Sustainable Development, *European Commission* (2016) p.2.

40 “Speech by Cecilia Malmström, European Commissioner for Trade, UNAM University” *European Commission* (2017).

PERSPECTIVE FROM VIETNAM



CHANG-HEE LEE

Director of the International Labour
Organisation Office for Vietnam

IMPROVING LABOUR RIGHTS

How will the EVFTA benefit labour rights in Vietnam?

"Today, we witness retreat from democracy and commitment to universally-accepted principles in many corners of the globe. While Vietnam has its own problems, it is one of a few countries where we see progress towards aligning its labour laws and institutions with ILO standards.

"The Vietnamese Government is now revising the Labour Code, which, if adopted, will represent major progress towards alignment with the 1998 ILO Declaration on Fundamental Principles and Rights at Work. In parallel, the Government is working towards ratification of the three remaining ILO core conventions – Convention 98 on collective bargaining in 2019, Convention 105 on forced labour in 2020, and Convention 87 on freedom of association by 2023. This is a core requirement under the Sustainable Development and Trade Chapter of the EU-Viet Nam FTA.

"Looking back on my early days of work in Vietnam more than 10 years ago, when the terms 'freedom of association' and 'effective recognition of collective bargaining' were still a political taboo, I am amazed how far the country has come along. Now, we are working together to create a new legal and institutional industrial relation framework aligned with ILO Conventions on Freedom of Association and Collective Bargaining. The new generation of FTAs has played as important a role as the domestic need for Vietnam to modernise its labour law and industrial relations.

"Of course, we can never be sure whether Vietnam will complete its reform as planned. There is an unpredictable global environment, temptation for the status quo and concerns about an uncertain future. That is why the EU-Vietnam FTA, together with the CPTPP, is important to encourage political leaders and policy-makers to stay on the course of reform within the parameters set by the ILO standards and the FTAs. The ratification of the EU-Vietnam FTA will provide Vietnam with solid encouragement and incentive to continue its journey towards democratic governance in labour markets, as the Sustainable Development and Trade Chapter intends to achieve."

5.2 GENDER ISSUES

The Government of Vietnam has a strong track record on gender equalities and has legislated to protect women's rights. In 2006, it passed the Law on Gender Equality, then in 2007 the Law on the Prevention and Control of Domestic Violence.⁴¹ Vietnam now ranks 69th out of 144 countries in the WEF Global Gender Gap report, and 7th in the East Asia and Pacific Region.⁴²

However, in spite of this positive legislation, women in Vietnam continue to face discrimination. Despite one of the highest female work-participation rates in the region (72.6 percent in 2011)⁴³ women earn, on average across all sectors, 33 percent less than men. Moreover, women are overrepresented in low-paid, labour-intensive industries like footwear and textiles (78.5 percent) and food manufacturing and processing (66.8 percent).⁴⁴

Though, as the International Monetary Fund has noted, the apparel and garment industries are often the first step on the road to development. These industries provide jobs to women who would otherwise have few opportunities for work, and offer higher salaries than other low-skilled sectors such as agriculture or domestic services. In short, in providing economic opportunities for women, these industries help to boost growth and development while reducing poverty.⁴⁵

Indeed, exports in these sectors have been instrumental in creating the strong economic growth that has seen Vietnam go from low- to middle-income status. Textile exports alone accounted for 12 percent of Vietnam's GDP (US\$23.8 billion) in 2016, helping to create millions of jobs and raising the incomes and living standards of some of its poorest people.⁴⁶

The garment and footwear industries are set to be among the biggest beneficiaries of the EVFTA. The garments sector alone is predicted to increase 200 percent compared to a 2007 baseline, just behind leather goods and far ahead of most other sectors, according to a report from MUTRAP.⁴⁷

This is good news for European business and women in the workplace. European companies are investing for the long-term, implementing international standards and best practices and, in the process, raising the bar for gender and equal rights at work. For instance, EuroCham is working with ActionAid to address the issues of women in the workplace.

The EVFTA will increase European investment in Vietnam, and in so doing, it will help to raise awareness of gender rights and equal opportunities in the workplace, as more European companies bring their international labour codes, practices, and values to Vietnam.

41 "Gender in Vietnam" *The United Nations*. Available at: <<http://www.un.org.vn/en/component/content/article.html?Itemid=&id=1081:cross-cutting-themes-gender>> last accessed on 11 July 2018.

42 "The Global Gender Gap Report" *World Economic Forum* (2017) pp. 11-16.

43 "Report on the 2011 Viet Nam Labour Force Survey" *General Statistics Office* (2012) Hanoi, p. 6.

44 "Even It Up: How to Tackle Inequality in Vietnam" *Oxfam* (2017) pp. 19-20.

45 Canuto, O. "Sewing Success: How Textile Jobs Help Reduce Poverty" *The World Bank*, 13 June 2012. Available at: <<http://blogs.worldbank.org/growth/sewing-success-how-textile-jobs-help-reduce-poverty>> last accessed on 26 August 2018.

46 "Stitching a Better Future: Is Vietnam's Boom in Garment Manufacturing Good for Women?" *ActionAid* (2017) pp. 4-8.

47 "Sustainable Impact Assessment EU-Vietnam FTA" *MUTRAP* (2014) pp. 51-76.

PERSPECTIVE FROM VIETNAM



NGUYEN THI THUY

Seamstress, van Laack Textile Factory, Hanoi

BETTER OPPORTUNITIES FOR WOMEN IN THE WORKPLACE

How long have you been working for van Laack?

"I have been working here for 10 years."

How has your life, and that of your family, benefited from working for van Laack? How does this workplace compare to other textile manufacturing operations in Vietnam?

"I had worked in several textile factories before. But, when I moved to van Laack, I have stayed here for 10 years because this job is very suitable for me. Firstly, we work on office hours instead of shifts, so it is easier for working mothers with little kids. Secondly, the job here is very stable, so I can be assured in terms of monthly income. Thirdly, the working atmosphere is very friendly and comfortable, we treat each other like sisters."

You have 2 children in the kindergarten at van Laack. Do they like it?

"My children really like the kindergarten here. When coming back home every day, they usually tell me what has happened during the day with excitement. The teachers are very caring and enthusiastic."

How long do you want to stay with van Laack?

"My hope is that I can work here until retirement."



5.3 INNOVATION AND INTELLECTUAL PROPERTY RIGHTS PROTECTION

The Government of Vietnam has made a concerted effort to improve the laws concerning Intellectual Property Rights (IPR). It has issued and amended a number of regulations to meet international commitments, such as membership of the WTO and the Agreement on Trade-Related Aspects of IP Rights (TRIPS).⁴⁸

However, despite this progress, challenges remain: a 2018 report from the U.S. Chamber of Commerce found that Vietnam's IPR environment is improving, thanks in part to changes to the Criminal Code. However, the report still ranked Vietnam 40th out of 50 countries included in the research – and below the regional average – highlighting weaknesses including online infringement and a lack of enforcement measures.⁴⁹

Counterfeit products such as cosmetics, garments, food products, wines & spirits, electrical items, pharmaceuticals and other consumer goods continue to be sold in Vietnam. Counterfeiters are becoming more sophisticated in their methods, making it difficult to distinguish between genuine products and counterfeit goods which could be harmful to consumers.⁵⁰

The EVFTA will help Vietnam go further in improving IPR protection, to the benefit of IPR owners and consumers. First, in signing the EVFTA, Vietnam will accede to the World Intellectual Property Organisation (WIPO) Internet Treaties. These treaties set standards to prevent unauthorised online access to or use of creative work, protect the rights of owners, and address the challenges that new technologies and methods of communication pose to IPR.⁵¹

Second, the EVFTA will grant automatic registration and protection to 169 European and 39 Vietnamese Geographical Indications (GIs). In particular, it will give European GI products the same recognition in Vietnam as in Europe. In doing so, the EVFTA will boost investor confidence in Vietnam and further encourage FDI in its markets. On top of this, the EVFTA will also increase consumer confidence and protection, as it will refuse to grant GI status to products using misleading claims about their origin or nature.⁵²

Of course, effective IPR protection requires more than comprehensive legislation: it also requires strong enforcement. The EVFTA clarifies the obligations of Customs officers and authorities in Vietnam, and gives them better tools to tackle infringements through provisions to improve the legal framework and act against violations, including the blocking of bank accounts and other assets.⁵³

48 "IP Factsheet: Vietnam" *South-East Asia IPR SME Helpdesk* (2016) p. 2.

49 Pugatch, M., Chu, R. and Torstenson, D. "Create: U.S. Chamber International IP Index" *Global Innovation Policy Center* (2018) pp. 161-162.

50 "Intellectual Property Protection in Vietnam" *EuroCham Vietnam Intellectual Property Rights Sector Committee*, p. 1. Available at: <https://www.eurochamvn.org/sites/default/files/4_IP%20Position%20Paper_FINAL.pdf> last accessed on 19 August 2018.

51 "Guide to the EU-Vietnam Free Trade Agreement" *Delegation of the European Union to Vietnam* (2016) p. 42-44.

52 "EuroCham's Interim Report and Survey Results on the EU-Vietnam Free Trade Agreement" *European Chamber of Commerce in Vietnam* (2017) p. 51.

53 Op.Cit *Delegation of the European Union to Vietnam* (2016) p. 43.

PERSPECTIVE FROM VIETNAM



NGA NGUYEN

Counsel, Hogan Lovells Vietnam

PROTECTING IPR HOLDERS AND CONSUMERS

How will the EVFTA improve IPR protection in Vietnam?

“The activities surrounding the negotiation, signing and implementation of the EVFTA have and will continue to make a great contribution to helping businesses and consumers in Vietnam become more aware of the importance of developing Intellectual Property Rights (IPRs) and adhering to the law and regulations relating to IPR protection. The Government has been encouraging and helping businesses in Vietnam to develop and register their IPRs at home and abroad. This will lead to a significant increase in public awareness, including among State regulators, businesses and consumers, about the protection of IPRs. Thanks to a series of efforts, alongside Government support and media campaigns, businesses have invested more and more in creating and registering their IPRs, as well

as respecting IP regulations and creating specific mechanisms to avoid infringing the rights of others in their production and business activities. This will further improve and strengthen the protection of IPRs in Vietnam.”

How will the EVFTA help to protect consumers in Vietnam?

“Any tourist visiting Vietnam would agree that it is very easy to buy replicas of famous brands or pirated CDs. Of course, the quality of these counterfeit products is far outweighed by the quality of genuine goods, not to mention that consumers do not have much hope of enjoying after-sales services when buying counterfeit products. With much more stringent requirements for IPR protection, especially enforcement, along with its tariff reduction schedule, the EVFTA will certainly give Vietnamese consumers access to the quality, genuine products of EU manufacturers at reasonable costs with better after-sales service. This is the hope of Vietnamese consumers for this new-generation Free Trade Agreement.”

5.4 ENVIRONMENTAL IMPACT

Over the last few decades, Vietnam's economic growth has created jobs, improved education levels and raised standards of living for millions. However, like other developing countries, these changes have created new problems that threaten the health of its people and the future of its natural environment.

The ADB notes how rapid industrialisation, urbanisation and agricultural intensification – while driving economic growth – have also contributed to rising levels of pollution and environmental degradation.⁵⁴ Indeed, Vietnam ranked 132nd out of 180 countries in the Yale Centre for Environmental Law Environmental Performance Index, behind Thailand (121), the Philippines (82) and Malaysia (74).⁵⁵

The Government of Vietnam is alive to the challenges of sustainable development, passing legislation such as the Environment Law as long ago as 1993.⁵⁶ In 2012, the Prime Minister launched a National Green Growth Strategy, with a Green Growth Action Plan following in 2014. Then, in 2016, Vietnam signed the Paris Agreement on climate change.⁵⁷ However, problems persist, not least in terms of public awareness of the need for environmental protection and sustainable practices.⁵⁸

EuroCham contains some of the world's leading enterprises, and our members have a crucial role in promoting sustainable development. Our companies bring responsible, sustainable and innovative business practices to Vietnam, and EuroCham members have been working with the public and private sector to help Vietnam meet its environmental commitments. In 2017, EuroCham published the Greenbook – its first comprehensive report on green and environmental issues – to share best practice with the Government, provincial authorities and domestic companies. In particular, the Greenbook discusses sustainability-related sections of the EVFTA, comparing them with the situation on the ground in Vietnam. It also showcases European companies and projects in the areas of renewable energy, waste and water treatment, green building and smart cities.

Several European embassies, organisations and individuals have launched initiatives to tackle some of the pressing environmental challenges and to promote sustainable solutions and technologies. For example, in September 2018, the Dutch Embassy launched a 'Re-Think Plastic' Vietnam campaign to raise awareness of the need to curb plastic waste, in particular in the ocean.

The EVFTA will help Vietnam to go further. Chapter 13 on Trade and Sustainable Development will ensure that the benefits of increased trade do not come at the cost of environmental protection. It sets obligations for both sides, including the implementation of all ratified Multilateral Environmental Agreements, such as those on climate change, endangered species and biological diversity. It also prevents either side from lowering or not enforcing current environmental standards to attract trade or investment.⁵⁹

54 "Vietnam Environment and Climate Change Assessment" *Asian Development Bank* (2013) pp. 2-4.

55 "2018 Environmental Performance Index" *Yale Centre for Environment Law and Policy* (2018) p. 4.

56 "The Real Cost of Developing Vietnam" *Asia Society*. Available at: <<https://asiasociety.org/real-cost-developing-vietnam>> last accessed on 18 August 2018.

57 "The Greenbook" *European Chamber of Commerce in Vietnam* (2017) p. 7.

58 Op. Cit *Asia Society*.

59 "Guide to the EU-Vietnam Free Trade Agreement" *Delegation of the European Union to Vietnam* (2016) pp. 60-61.

PERSPECTIVE FROM VIETNAM



ADAM WARD

Country Representative for Vietnam,
Global Green Growth Initiative

The key is to develop cities in a green way – a way that enhances economic growth but also ensures environmental sustainability.”

How can European business help Vietnam to address these challenges?

“The role of private sector investment is essential for green growth, which the Government estimates will need around \$30 billion nationwide by 2030. European businesses have a crucial role to play by delivering investment and expertise and there have already been some successes in this area: the partnership between Siemens and Vinfast to produce electric buses, ABB’s efficient cement production, and Dragon Capital’s investment in renewable energy. However, there needs to be more partnerships like this in both finance and technological solutions to deliver on Vietnam’s much needed green growth commitments. For example, European businesses can invest and provide renewable energy, and solutions to tackle the challenge of waste management in Vietnam’s cities; through technologies such as waste-to-energy, recycling and composting. Finally, better access to platforms such as the Luxembourg Green Exchange can provide the necessary investment for green projects.”

HIGHER ENVIRONMENTAL STANDARDS

What are the major environmental challenges facing Vietnam?

“There are three main environmental challenges facing Vietnam. First, impacts from climate change: rising temperatures lead to increased intensity and frequency of storms, and sea level rise causing flooding and coastal erosion, especially in the Mekong Delta where millions of homes and livelihoods are at risk. Second, emissions caused by coal fired power: Vietnam has a rapidly expanding energy demand and plans to meet this through coal, causing deteriorating air quality and environmental pollution but also worsening future climate change impacts. Third, the environmental challenge caused by Vietnam’s rapidly expanding cities: increased urban populations create more economic growth, but without the necessary public transportation systems and waste treatment facilities we also see deteriorating air quality and increased pollution.

5.5 THE INTERNET AND DIGITAL COMMUNICATIONS

Vietnam is embracing the Internet. Since its introduction two decades ago, Vietnam has seen an astonishing growth in the number of people going online. More than 50 million people now have access to the Internet (over half of the population) up from just 17 million in 2007. That's above the global average of 46 percent,⁶⁰ putting Vietnam in the top 20 in the world.⁶¹

Meanwhile, 53 percent of people in Vietnam now own a smartphone. That figure has more than doubled since 2014, putting Vietnam far ahead of other countries in South East Asia like the Philippines (44 percent) and Indonesia (27 percent), according to the Pew Research Centre.⁶²

Social media has become second nature, with 88 percent of people aged 18 to 30 using platforms like Facebook in Vietnam.⁶³ This is opening up new opportunities: Young people in particular use Facebook not just to socialise, but to run small businesses selling products like cosmetics and clothes.⁶⁴ The Internet has thus opened up new opportunities for people to make a living who might otherwise struggle to access the labour market.

Of course, the Internet brings new challenges as well as opportunities; not least striking the right balance between personal privacy and public security. Countries around the world are wrestling with this issue, and Vietnam is no different. In June 2017, the Government issued the first draft of its Law on Cybersecurity, which requires service providers to store data in Vietnam and offshore entities to open a branch or representative office. The law also introduces greater control of illegal content posted online. Following some revisions, the National Assembly passed the law in June 2018, and it will come into effect in the New Year.⁶⁵

EuroCham has raised concerns with the Government, in particular regarding its broad definition of 'cybersecurity' in the law as it stands. In our view, the law should instead adopt the standard international definition, and limit the scope of its application to measures to protect computer networks and data from attack or unauthorised access.

While the law will evolve over time, as most do when seeking to address emerging and unprecedented challenges, EuroCham will continue to share the insights and recommendations of our members, in the hope that this will help Vietnam to align its legislation with international norms over time.

60 "Internet Users Account for 54 percent of Vietnam's Population after 20 Years" *Vietnam Net*, 23 November 2017. Available at: <<http://english.vietnam.net.vn/fms/science-it/190837/internet-users-account-for-54-of-vietnam-s-population-after-20-years.html>> last accessed on 15 December 2017.

61 "Top 20 Countries with the Highest Number of Internet Users" *Internet World Stats: Population and Statistics*. Available at: <<https://www.internetworldstats.com/top20.html>> last accessed on 23 August 2018.

62 Bishop, C., Chwe, H. and Poushter, J. "Social Media Use Continues to Rise in Developing Countries but Plateaus across Developed Ones" *Pew Research Centre* (2018) p. 7; 27.

63 *Ibid.* p. 12.

64 Luu Van Dat "Vietnam's Business Owners are Loving Facebook" *Bloomberg*, 8 November 2017. Available at: <<https://www.bloomberg.com/news/articles/2017-11-07/vietnam-relies-on-once-banned-facebook-to-kick-start-businesses>> last accessed on 23 August 2018.

65 "Vietnam Approves New Law on Cyber Security" *Vietnam Briefing*. Available at: <<http://www.vietnam-briefing.com/news/vietnam-approves-new-law-cybersecurity.html>> last accessed on 26 August 2018.

PERSPECTIVE FROM VIETNAM



DENISE THI

Managing Director, Isobar Vietnam

EMBRACING THE 4TH INDUSTRIAL REVOLUTION

How has the growth in the Internet and social media created new opportunities in Vietnam?

“The growth in Internet use, together with the rise of new social media platforms, has created opportunities for lots of unique business models to emerge; from micro to SMEs and large enterprises. For example, we started as a local communications agency, taking advantage of new platforms at the time like Facebook. We were able to grow and become one of the first digital agencies in the market; riding the wave of digital consumer maturity to become one of the top agencies in Vietnam and, later, part of the global Isobar network. Now, we are also witnessing lots of new micro business models emerging, among the more noticeable are micro or social e-commerce activities: people on Facebook or Instagram using social media platforms as a marketplace to sell goods, from hand-carried products to handmade ones. These models are easy to start, quick to set

up, involve no hassle in operations and do not require big investment.”

How will increased trade and investment between Europe and Vietnam create new opportunities in the future?

“Increasing trading as well as investment activities between Europe and Vietnam will create lots of competition, but also opportunities as well. Where there is competition, this means re-adjustment, re-focusing and self-advancement. Foreign competitors bring innovation and management knowledge at a large scale, which is valuable for Vietnamese enterprises who are mostly family business and SMEs. These businesses are not well enough equipped with professional skills in business and change management. Meanwhile, competition with European companies will bring a greater motivation to grow, to be more agile and think at a larger scale. Furthermore, European enterprises do not enter the Vietnam market alone, but with institutions, organisations, and platforms of investment to grow both the local consumer market and their own influence. This is a great opportunity for local talent and businesses who best understand our fast-changing consumer behaviour and have the connections and access to resources – capital and network – funded by those European business groups, accelerators or incubators.”

5.6 FOOD QUALITY AND SAFETY

Food safety is a major concern in Vietnam. People are worried about the integrity of the supply chain, and whether the food bought and sold at traditional markets is safe to eat. Media reporting of food safety issues has contributed to this growing public awareness, prompting the Government to act.

Since 2010, Vietnam has modernised its regulatory framework and improved administrative procedures. In particular, as the World Bank notes, Vietnam has made significant improvements to its food safety control policies. However, despite this progress, there is still more to do, particularly in terms of implementation.⁶⁶

Once ratified and implemented, the EVFTA will help Vietnam to go further and improve a whole range of issues throughout the food chain.

Chapter 6 of the EVFTA on Sanitary and Phytosanitary (SPS) measures provides a framework to ensure that international standards and guidelines covering issues from plant and animal health to food safety, such as the WTO SPS Agreement, are implemented at the ground level.

The EVFTA will also create an SPS Committee, which will hold an annual dialogue to discuss the implementation of the Agreement, address potential problems and increase trust on both sides.⁶⁷

The EVFTA will also reduce barriers and tariffs for the import of European produce to Vietnam, as it introduces the recognition by Vietnam of the EU as a single entity. In particular, the same import requirements will be applied regardless of which Member State a product originates from. Under the FTA, Vietnam will no longer carry out individual inspections of establishments and will automatically approve the establishments of the authorised EU Member State (known as pre-listing). The principle of regionalisation will limit trade-restrictive measures only to the areas affected by a disease.⁶⁸

European consumers value clean, safe and sustainable food. Once it enters into force, the EVFTA will see an increase in products like pepper, coffee, seafood and nuts imported to Europe, and these products must meet Europe's strict requirements. This will contribute to increasing the quality of Vietnamese production.

Thus, the FTA will do more than help Vietnam grow its agricultural sector. It will also help to raise awareness of safe and sustainable farming practices and food safety in Vietnam, benefitting both consumers and the food chain.⁶⁹



66 "Vietnam Food Safety Risks Management: Opportunities and Challenges" *The World Bank* (2016) pp. 6-21.

67 "Guide to the EU-Vietnam Free Trade Agreement" *Delegation of the European Union to Vietnam* (2016) pp. 40-41.

68 *Ibid.*

69 "EuroCham's Interim Report and Survey Results on the EU-Vietnam Free Trade Agreement" *European Chamber of Commerce in Vietnam* (2017) p. 48.

PERSPECTIVE FROM VIETNAM



John Keogh

Founder, Shantalla

IMPROVING THE FOOD CHAIN IN VIETNAM

What are the major issues around food quality and safety in Vietnam?

“That’s actually a complex question to address. This is because we can look at the current issues from different perspectives such as supply chain standards, regulations, food safety standards, local culture and norms, auditing and analytical testing and of course education and training. I firmly believe the ‘real issue’ is a lack of a more holistic approach to food quality and food safety that incorporate most, if not all, of these perspectives. For example, local culture and norms must be considered in tailoring training and education programs and this takes time, many months if not years to get right. Similarly, the hype around blockchain as the solution to many issues is distracting and implementations will fail if a holistic approach is not taken. On this latter point, blockchain, or any other software for that matter, cannot guarantee that a food

product is safe. It also cannot guarantee the product is genuine or that claims such as pesticide free are authentic. Similarly, a blockchain is being touted as a guarantee of provenance. None of these claims are accurate and the only way to verify a foods quality, safety, authenticity and provenance is through analytical testing.”

How can the EVFTA and a greater European presence in Vietnam help to overcome these challenges?

“I recently spoke to a CEO of a European food regulatory body and learned that they have sent experts to Vietnam several times to train them on EU regulations and food safety practices. The feedback is that there is a huge and significant cultural, knowledge and language barrier. We are launching the Vietnam Food Integrity Centre (VFIC) in October and our goal is to help bridge this gap through local language training and a coherent program that touches on many of the earlier discussed aspects of food safety and food quality. I believe it’s possible to enable Vietnamese farmers to make significant gains in productivity, quality and food safety but we need to work with the farmers and help them to earn more. Today, Vietnam has traders and distributors who add little value but gain significant margin from these programs. We need to figure out how to get more money into the hands of the farmers, so they can see the value in improving their on-farm practices. Initiatives like the VFIC will be very important, we believe.”

5.7 ILLEGAL, UNREGULATED AND UNREPORTED (IUU) FISHING

Vietnam's growing international integration in general, and its relationship with the European Union in particular, is helping to improve standards in a range of sectors and industries. One of the clearest recent cases is Vietnam's fisheries sector.

In October 2017, the EU issued Vietnam with a 'Yellow Card', raising the prospect of a possible ban on seafood imports unless Vietnam took action to tackle Illegal, Unregulated and Unreported (IUU) fishing. This Yellow Card – in practice, a warning – also came with 9 areas that Vietnam should address, in order to have the card removed. These include changes to the legal framework to bring it into line with international rules on conservation and management of fisheries, and ensuring the effective implementation of enforcement measures and sanctions.

The EU's Yellow Card, and the potential damage to the reputation of Vietnam's seafood in international markets, prompted the Government and the fisheries sector to act.⁷⁰ IUU education campaigns have raised awareness among fishermen, there is greater recording and oversight of where fish are caught, and new legislation has been passed introducing strict sanctions for IUU fishing.⁷¹

However, this is neither simple nor straightforward: Vietnam has a coastline of over 3,000 km and over 100,000 fishing vessels, most of which are small boats. The Government is working hard to fit tracking equipment to all these vessels, but this is a time-consuming and cost-intensive process. So, while progress is being made, it still has further to go. The EU will visit Vietnam again in the New Year to monitor its progress in tackling IUU fishing.⁷²

Seafood is one of Vietnam's major exports, worth US\$7 billion in 2016 alone.⁷³ But, despite its size, in a lot of places it is still a traditional trade.⁷⁴ However, Vietnam's positive global integration – not least its relationship with the European Union – is helping to raise standards and awareness throughout the sector, to the benefit not just of fishermen, but also consumers and the natural environment.



70 "EC Delegation to Inspect IUU Fishing in Vietnam" *Vietnam News*, 28 April 2018. Available at: <<https://vietnamnews.vn/economy/427050/ec-delegation-to-inspect-iuu-fishing-in-vn.html#zM6OBKIMLsoRFL43.97>> last accessed on 21 September 2018.

71 "Vietnam Acts to Meet Requirements on IUU Control" *Vietnam Net*, 22 May 2018. Available at: <<https://english.vietnamnet.vn/fms/business/200989/vietnam-acts-to-meet-requirements-on-iuu-control.html>> last accessed on 21 September 2018; "Positive Actions Adopted to Fight IUU" *Vietnam News*, 19 April 2018. Available at: <<https://vietnamnews.vn/society/426444/positive-actions-adopted-to-fight-iuu.html#8Rto4G0Et8iKBXCj.97>> last accessed on 21 September 2018.

72 "European Commission to Review Yellow Card against Vietnamese Fisheries in Early 2019" *Vietnam News*, 27 June 2018. Available at: <<https://vietnamnews.vn/politics-laws/450637/european-commission-to-review-yellow-card-against-vietnamese-fisheries-in-early-2019.html#t9WToCUAFGElsY70.97>> last accessed on 12 September 2018.

73 "Vietnam's Top Ten 2016 Exports" *Vietnam Net*, 2 March 2018. Available at: <<https://english.vietnamnet.vn/fms/business/172030/vietnam-s-top-ten-2016-exports.html>> last accessed on 21 September 2018.

74 Op. Cit. *Vietnam News*, 19 April 2018.

PERSPECTIVE FROM VIETNAM



NGUYEN VAN BINH

Director, Halong Canfoco
Da Nang Co. Ltd.

RAISING STANDARDS FOR VIETNAM'S FISHING SECTOR

How has the EU 'Yellow Card' changed fishing practices in Vietnam?

"When the EU issued the Yellow Card in October 2017, provincial authorities had to adapt their processes to combat Illegal, Unregulated and Unreported (IUU) fishing. This took 4 to 5 months, but there are now 28 stations monitoring what is going on in ports and harbours. But, for me, the biggest change has been the attitudes of the fishermen themselves. It's simple economics. Profit margins at local markets are low and demand is unpredictable: this week people want tuna, next week it's snapper. On the other hand, factories like mine who sell canned and frozen fish to Europe are much more predictable. However, our customers have strict requirements and won't import uncertified fish. So, if I'm a fisherman and I want a reliable income, I go out and catch fish that meet EU standards."

What practical steps are being taken to meet EU standards?

"Fishermen and fish processing companies now have to meet lots of new regulations. If we want to sell fish to the EU, our haul has to be stamped to confirm that it was caught in compliance with the rules. When a fisherman arrives with his catch in the port, he needs to show his fishing license, a logbook with GPS data, and provide a detailed catch statement. That's a huge change. Fishing boats are also being fitted with GPS monitors, so there is more official oversight. Of course, it's still not perfect, but we are moving in the right direction; 25 committed companies created the Tuna Club and together we push for the implementation. However, it's not just about the fishermen. Businesses no longer want to sell illegal fish stocks, and the Vietnam Association of Seafood Exporters and Producers now publishes a list to name and shame fishing boats that break the law. In other words, it's not just the Government taking action, but the fisheries sector as a whole. The EU Yellow Card has hurt business, but we see huge opportunities so it's in all our interests to raise standards."

Once Vietnam meets these standards, how will the fisheries sector be affected?

"The EU is a huge market for seafood, and our companies want to sell more produce to Europe. The tuna business is labour intensive and low margin, so tariff reduction under the EVFTA is a fantastic chance for us. To meet the demands of European consumers, we will have to take on more staff, creating new jobs in factories and throughout the entire fishing sector – lots of these jobs will be in poorer coastal areas. Once the EVFTA comes into force, our business plan anticipates hiring around 5 times more people. So the EVFTA is good for jobs, but it will also help to raise awareness of higher standards and sustainable practices throughout the food chain."

6

**EUROCHAM
AND THE EVFTA**

6. EUROCHAM AND THE EVFTA

6.1 ABOUT EUROCHAM

Since its establishment with just 60 members in 1998, EuroCham has grown to represent over 1,000 European businesses, counting among its members some of the world's leading enterprises. With offices in both Hanoi and Ho Chi Minh City, and Chapters in the Central, Northeastern and Southeastern regions of Vietnam, EuroCham's mission is to represent the business interests of our members in Vietnam and to improve the business environment in the country for the benefit of all.

The Chamber is the leading organisation representing European business interests in Vietnam, and is also an umbrella organisation gathering affiliated European business associations: the Belgian-Luxembourg Chamber of Commerce in Vietnam (BeluxCham); the Central and Eastern European Chamber of Commerce in Vietnam (CEEC); the Chamber of Commerce and Industry Portugal-Vietnam (CCIPV); the Dutch Business Association Vietnam (DBAV); the French Chamber of Commerce and Industry in Vietnam (CCIFV); the German Business Association in Vietnam (GBA); the Italian Chamber of Commerce in Vietnam (ICham); the Nordic Chamber of Commerce in Vietnam (NordCham); and the Spanish Business Group in Vietnam (SBG). The British Business Group Vietnam (BBGV) and the Swiss Business Association (SBA) are close partner organisations. EuroCham is a founding member of the inter-foreign-chamber platform Vietnam Business Forum (VBF) and chairs it in 2018 for the first time since it was established in 1997.

EuroCham is a member of the European Business Organisation Worldwide Network ASBL (EBOWWN), representing European businesses in almost 40 countries across the globe and addressing common trade and investment-related issues to the European Commission. In the region, EuroCham is a member of the EU-ASEAN Business Council. Since the end of 2015, EuroCham has been the implementing partner of the South East Asia IPR SME Helpdesk, providing free-of-charge advice and support on intellectual property protection when entering and expanding in the ASEAN market. EuroCham is also a consortium partner of the EU-Vietnam Business Network (EVBN), an EU co-funded project under the ICI+ programme which aims to support EU small and medium enterprises interested in doing business in Vietnam, while promoting the country and ASEAN's business opportunities in Europe. In 2017, EuroCham was awarded Best Large Chamber of the Year at the Asia Pacific International Chambers of Commerce Awards.

For more information about EuroCham: www.eurochamvn.org

To download the Whitebook: www.eurochamvn.org/whitebook

To download the Greenbook and access the Greenbook website: www.greenbookvietnam.com

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6.2 EUROCHAM: SUPPORTING THE EVFTA

EuroCham is not just the voice of European business in Vietnam. The Chamber is also one of the strongest advocates of Vietnam in Europe and has acted as a bridge between the Government of Vietnam and the highest levels of decision making in Brussels and EU Member States. Over the last two decades, we have used our unique role to foster stronger partnerships between both sides.

In this spirit, EuroCham has been a leading voice in favour of the EVFTA ever since discussions first began in 2012. The Chamber provided input throughout 14 rounds of negotiations, ensuring that the insights of EuroCham members are reflected in the final text of the EVFTA.

Since the Agreement was concluded in late 2015, ensuring its swift ratification and implementation has been at the heart of our activities. That's because the EVFTA will do more than reduce barriers to trade and accelerate Vietnam's growth and development across industries and sectors – essential though this is. It will also help to modernise Vietnam's legal framework, strengthen the trade and investment environment, improve safety and quality standards and boost exports to the EU's 500-million-strong single market. This will benefit not just companies and consumers, but also the welfare, wages and living standards of millions of people in Vietnam.

Since December 2015, our activities have focused on raising awareness of the EVFTA, sharing our recommendations to overcome the challenges to implementation, and helping companies and authorities in Vietnam to prepare for a new trade and investment environment. Below are just some of the highlights of our efforts to promote the EVFTA since the agreement was concluded:

In June 2016, EuroCham organised a conference with the EU-Vietnam Business Network (EVBN), bringing business leaders and investors together with the chief negotiators from Europe and Vietnam to better understand the impact of the agreement.



EuroCham and its Sector Committees contributed to the EVFTA Implementation Roadmap, providing sector-specific insights, advice and recommendations to the EU Delegation to Vietnam. This culminated in a joint workshop with the EU Trade Policy and Investment Support Project (MUTRAP) and the Central Institute for Economic Management (CIEM) assessing the long-term impacts of the EVFTA.

Throughout 2017, EuroCham continued to bring together business leaders and decision makers to discuss the impact of the EVFTA at a national and international level. 'The EVFTA: a Game Changer for Vietnam in ASEAN' conference discussed how the FTA could make Vietnam a hub for European business in the region, while 'The EVFTA: What's in it for SMEs?' event focused on its impact on small business.

In the Summer of 2017, EuroCham published an Interim EVFTA Report, highlighting the importance of the agreement to European companies in Vietnam and recommendations for its effective implementation. This report also included the insights and opinions of over 100 EuroCham members who responded to a survey on the EVFTA and its impact on their business.



In September 2017, EuroCham led a delegation of 25 European companies to Brussels to push for the swift ratification of the EVFTA and present our Interim EVFTA Report. The delegation met with senior officials, including the President of the European Commission Jean-Claude Juncker and EU Trade Commissioner Cecilia Malmström, and participated in a Monitoring Group Hearing in the European Parliament with the EU's Chief Negotiator for the EVFTA, and the Chair and Vice-Chair of the Committee for International Trade (INTA). EuroCham also organised a joint conference with Business Europe, the EVBN and spiritsEurope: 'The EVFTA – What's in it for European Enterprises and Vietnam's Reform Progress?'

The last two editions of the Whitebook, EuroCham's annual report on trade and investment issues in Vietnam, contained dedicated chapters on the EVFTA. These chapters included on-the-ground insights from our members in all sectors and industries across Vietnam, highlighting the challenges Vietnam faces to implement the EVFTA and providing actionable recommendations to overcome them.



In the Spring of 2018, EuroCham organised the 'Meet Europe 2018' conference with the Ministry of Foreign Affairs (MOFA), attracting over 700 delegates, including the Prime Minister of Vietnam Nguyen Xuan Phuc and ambassadors and business leaders from across Europe. EuroCham brought together the Prime Minister and the EU Ambassador to Vietnam at 'Meet Europe 2018' to discuss trade and investment relations between both sides, ahead of the EVFTA's coming into force.



Following 'Meet Europe 2018', EuroCham visited Brussels again at the conclusion of the EVFTA's legal review phase, taking part in a briefing at the European Parliament, 'EU-Vietnam FTA: The Final Push', and a roundtable discussion on FTAs with emerging markets. EuroCham also met with senior officials from the European Commission including DG Trade, DG Growth and DG Just.

In August 2018, EuroCham's Secretariat met with counterparts at the European Chamber of Commerce in Korea to discuss how to support European companies after a free trade deal has been concluded.



EuroCham's activities have been recognised both in Vietnam and Europe. Vuong Dinh Hue, Deputy Prime Minister of Vietnam and also responsible for economic integration, has described EuroCham as the "driving force behind Vietnam-Europe trade and investment collaboration."⁷⁵

EuroCham is poised to continue supporting European companies, as well as Vietnamese partners, to ensure that both sides can take full advantage of the EVFTA. Through our 16 Sector Committees and advocacy work, we are best-positioned to highlight barriers to this, and to contribute ideas to ensure the EVFTA's successful implementation.

⁷⁵ "Deputy Prime Minister Lauds EuroCham's Support to Vietnam", *Vietnam News*, 30 August 2017. Available at: <<https://vietnamnews.vn/economy/392948/deputy-pm-lauds-eurochams-support-to-vn.html#B1ST5ZBH13fzjilm.97>> accessed on 7 August 2018.

7

TECHNICAL INSIGHTS AND RECOMMENDATIONS FROM EUROCHAM'S SECTOR COMMITTEES

ACKNOWLEDGEMENTS

EuroCham Vietnam would like to thank the Project Leads and Sector Committees listed below for their authorship of this chapter.

GENERAL EXPECTATIONS

Project Leads: Jean-Jacques Bouflet (EuroCham Vice Chairman) and Le Thanh Binh (EuroCham Senior Advocacy Manager)

INSIGHTS FROM EUROCHAM SECTOR COMMITTEES

Food, Agri and Aqua Business Sector Committee
Green Growth Sector Committee
Information & Communication Technology Sector Committee
Intellectual Property Rights Sector Committee
EuroCham Healthcare Forum:
Pharma Group
Medical Devices and Diagnostics Sector Committee
Mobility Sector Committee
Wine & Spirits Sector Committee

7. TECHNICAL INSIGHTS AND RECOMMENDATIONS FROM EUROCHAM'S SECTOR COMMITTEES

Although EuroCham is aware that during the process of so-called “legal scrubbing”, the text of the EVFTA has been updated and modified, it has been made accessible to the public only recently (24 September 2018), at a time when EuroCham could not use it as a basis for the comments and recommendations in this section. Therefore, we are constrained here to refer to the older version, which was available on the EU website as of 1st January 2016. Although there are substantial changes, like the so-called “splitting” of the Agreement into two parts, the comments made by EuroCham concerning the implementation are of a more substantial nature and are not linked to the precise and detailed legal wording. Our comments remain, therefore, generally accurate. Of course, a fine-tuning might be needed once the official version is re-examined in depth by our Sector Committees.

7.1 General Expectations

The EVFTA could be considered one of the most comprehensive and ambitious trade and investment agreements that the EU has ever concluded with a developing country. It is the second agreement in the Association of South East Asian Nations (ASEAN) region, after Singapore, and it will intensify the bilateral relations between Vietnam and the EU. Vietnam will have access to a potential market of 512 million people. In return, exporters and investors from the EU will have further opportunities to access one of the fastest-growing countries in the region, with more than 96 million people, and indirect access to the ASEAN market with a combined population of approximately 636 million people.

The EVFTA is a catalyst that can push Vietnam’s development in a positive way, making it ready not just for the EU market, but as a global player at the highest level of the world’s economies and exploiting its comparative advantages in a smart and responsible manner. The EVFTA is set to be Vietnam’s reference point in terms of its global trade relations and beyond. Conversely, it also makes Vietnam the most promising business destination for European companies in Southeast Asia. This is not only because of its own undeniable potential but also as a future hub for businesses in the ASEAN region. Above all, EuroCham sees it as an important tool in our mission to assist in placing Vietnam among the most important trade partners for Europe in Asia, and in developing Vietnam into a hub within the ASEAN Economic Community. With the EVFTA, Vietnam can also become a role model for other ASEAN countries, increasing its visibility and competitiveness, not just on a macro level, but on a sectoral level as well.

The implementation of the FTA will promote institutional changes and improve the legal framework with more transparent rules in Vietnam. It will also bring innovative dispute resolution and investment protection mechanisms to all EU and other foreign investors, which shall significantly raise their confidence and the country’s profile.

However, EuroCham understands that the EVFTA not only promotes development in trade and investment; it also brings a new attitude towards business. This Agreement will create conditions for European know-how to reach Vietnam more easily, with new, cutting-edge, smart and environmentally-friendly solutions and technology. It will also allow for the two parties to learn more from each other on high-quality services, advanced management practices and training for local employees. More EU businesses in Vietnam also means more awareness on corporate responsibility and environmental protection, higher quality standards and food safety, IPR protection, and recognition of local products under Geographical Indications.

With all our efforts and activities, we hope that the European Parliament and the European Commission will continue and further enhance the dialogue and cooperation with Vietnam towards making the EVFTA a reality in a timely manner, as an alliance which can help shape a better future for both Europeans and Vietnamese. It is because the EVFTA is of such importance for facilitating and boosting trade in Vietnam that EuroCham is seeking the early entry into force of the Agreement.

Market Access for Goods

As Vietnam is a developing country, it will liberalise 65 percent of the value of EU exports to Vietnam, representing around half of the tariff lines, at entry into force. The remaining duties will be eliminated over the next ten years. For some products, such as motorcycles with engines larger than 1500cc, car parts and about half of the EU's pharmaceutical exports, Vietnamese duties will be eliminated over a 7-year period. The market will be opened for most EU food products, i.e. wine, spirits and frozen pork meat after 7 years. For dairy products, it will be after a maximum of 5 years. This is a relatively unprecedented, far-reaching tariff elimination for a country like Vietnam, proving its targets for deeper integration and trading relations with the EU. However, in view of the long transitional period of 10 years and of the early entry into force of the ASEAN Economic Community in 2018, it is important for European goods to keep pace for an early entry into force.

Meanwhile, the EU has agreed to eliminate duties for 84 percent of the tariff lines for goods imported from Vietnam immediately at the entry into force of the FTA. Within 7 years from the effective date of the FTA, more than 99 percent of the tariff lines will have been eliminated for Vietnam. The small remaining number will be partially liberalised through duty-free quotas. The EU will eliminate duties for some sensitive products in the textile and footwear sector over a 5-7-year period, with a double transformation rule (instead of a strict yarn-forward rule) and will allow Vietnam to import fabrics from South Korea as an exception to the general rule. The EU also offers access to some sensitive Vietnamese agricultural products via duty-free quotas (including rice, canned tuna, surimi, sweet corn, and sugar products).

Market Access for EU Service Providers

Although Vietnam's World Trade Organisation (WTO) commitments are used as a basis for the services commitments, Vietnam has not only opened additional (sub)sectors for EU service providers but also commits deeper than in the WTO, offering the EU the best possible access to Vietnam's market. (Sub)sectors that are not committed under the WTO, but under which Vietnam makes commitments, include: Interdisciplinary Research and Development (R&D) services, nursing services, physiotherapists and para-medical personnel, packaging services, trade fairs and exhibitions services and building-cleaning services. Moreover, the EVFTA contains a 'Most-Favoured Nation' clause, regulating that each Party shall accord to investors of the other Party and to their enterprises, with respect to establishment in its territory, treatment no less favourable than that accorded, in like situations, to its own investors and to their enterprises. Moreover, a Party shall accord to investors of the other Party and to their enterprises, with respect to the operation of those enterprises, treatment no less favourable than that accorded, in like situations, to its own investors and to their enterprises.

We set out below certain commitments of Vietnam in key sectors with reference to its commitment to the WTO.

Distribution Sector

The WTO requires an Economic Needs Test (ENT) for the establishment of outlets for retail services (beyond the first one). The EVFTA requires the same but adds cases for ENT exemption and a timeline for ENT abolition after five years.

Distribution of cigarettes and cigars, publications, precious metals and stones, pharmaceutical products and drugs, explosives, processed oil and crude oil by foreign investors are still prohibited.

WTO	EVFTA
<p>The establishment of outlets for retail services (beyond the first one) shall be allowed on the basis of an Economic Needs Test (ENT).</p>	<p>Under Article 23, Decree 09/2018/ND – CP guiding the implementation of Law on Commerce¹, when establishing an outlet of less than 500m², located in the commercial center and which is not a convenience store or mini supermarket, ENT is not required.</p> <p>5 years from the date of entry into force of the Agreement, the requirement of the ENT will be abolished.</p>

Power/Energy

WTO	EVFTA
N/A	Commitments are made in 3 sub-sectors: (i) Production of electricity; transmission and distribution of electricity on own account; (ii) Manufacture of gas; distribution of gaseous fuels through mains on own account; and (iii) Production of steam and hot water; distribution of steam and hot water on own account.

Maritime Transport

SUB-SECTORS	WTO	EVFTA
Maritime Transport Services	Mode 3 Market Access (MA): joint venture with maximum 49% foreign ownership	Mode 3 MA: joint venture with maximum 70% foreign ownership
Internal Waterways Transport Passenger transport Freight transport	Mode 1: No commitment Mode 3: Joint venture with maximum 49% foreign ownership	Mode 1: No restriction Mode 3: Joint venture with maximum 51% foreign ownership

Securities Services

WTO	EVFTA
Commitments on 6 sub-sectors	Same commitments in 6 sub-sectors Commitments on 2 additional services: Provision and transfer of financial data processing; and credit reference and analysis. Mode 3: Same as the WTO
Mode 3: foreign securities service suppliers are permitted to establish representative offices and joint ventures with maximum foreign ownership of 49%.	
After 5 years from the date of accession, securities service suppliers with 100% foreign-invested capital shall be permitted.	

Telecommunication Services

Regarding non-facilities-based services, the EVFTA is a more ambitious framework, allowing for 75 percent foreign ownership within 5 years of its entry into force, while the WTO Framework Agreement on Services (AFAS) has this limit at a maximum of 65 percent foreign ownership. Other services - Virtual Private Network (VPN): maximum 70 percent foreign ownership for services without network infrastructure and 49 percent with network infrastructure, and 75 percent within 5 years after entry into force.

7.2 Insights from EuroCham's Sector Committees

7.2.1 Food and Agri-Aqua Business Sector Committee

The EuroCham Food, Agri and Aqua Business Sector Committee (FAABS) works towards the improvement of the business environment in Vietnam, particularly in the areas of:

- importing and exporting agricultural products, processed fine foods, meat and aquaculture products
- applying technology and advanced methods for more efficient and sustainable agriculture and food processing
- raising awareness and addressing the need for capacity building in international standards of laboratory testing, food safety and SPS measures
- protecting IPR for food and agricultural products, especially in regards to Geographical Indications.

We believe the EVFTA presents unique opportunities in regards to the topics and affairs we focus on. Below are some of the matters that FAABS firmly believes can be improved under an efficient implementation of the EVFTA. Many of the issues and recommendations FAABS has been working on are equally elaborated on in the text of EVFTA itself, while others, despite not explicitly treated, will fall indirectly under its scope and are relevant to discuss here.

In recent years, FAABS has concentrated its efforts on improving the competitiveness of the Food, Agri and Aqua Business Sector in Vietnam. In particular, the Sector Committee has worked extensively to improve the safety of food for human-beings and of feed for animals through a supply-chain approach. Given that many companies in our sector are SMEs and cooperate closely with local producers, we aim to create a level playing field for small, large, local and international companies regardless of legal entity, size and nationality. Workshops with Vietnamese business associations and seminars in provinces reflect this inclusive approach.

Given Vietnam's high potential to further grow in this sector, and in light of its vulnerability to rising sea levels, salination, typhoons and land erosion, our main objectives are to participate in the creation of a sustainable Food, Agri and Aqua Business sector in the long term and in the increase of efficiency and climate resilience of Vietnam in the sector.

With the EVFTA, the volume of Vietnamese produce like pepper, coffee, seafood or cashew nuts exported from Vietnam to Europe is expected to increase. Rice, for example, is set to see an increase of over 60 percent by 2025. The safety of imported food that European consumers buy is of critical importance. We strongly believe that the requirement to abide by the high hygiene and food safety standards set by EU regulations will also have a positive impact on the Vietnamese internal market. Together with Vietnamese citizens, the many Europeans working in Vietnam are entitled to access safe food in their daily meals. FAABS strongly believes that resolving the challenges mentioned below is not only fundamental for the success of the EVFTA, but crucial to ensure a trade facilitation framework with adequate conditions to ensure safer food, water and agricultural products for citizens of the EU and Vietnam.

Capacity Building in Laboratory Testing and Quality Control

We are in regular contact with local authorities, including the National Agro-Forestry-Fisheries Quality Assurance Department (NAFIQAD) which is in charge of quality accreditation in Vietnam.

Thanks to donors like the EU and UNIDO, there is a fair amount of adequate equipment to carry out standard laboratory testing and quality control. However, equipment is not put to proper use due to the lack of adequately qualified personnel with up-to-date knowledge and a lack of coordination between involved stakeholders. We, therefore, suggest providing practical support in the area of capacity building, i.e. vocational training, to ensure that laboratory testing and quality control are carried out reliably.

With the only recently (end of June 2017) introduced guidelines and rules on organic farming in the EU, controls on imported organic products will also be tougher: private control bodies in non-EU countries that certify organic products will have to comply with EU standards when deciding whether a product to be exported to the EU

market is organic or not. This is certainly an attractive growth market, yet one where both Vietnamese authorities and producers lack expertise on how to implement and control those rules which are so important for consumer confidence when paying a premium for organic products.

Customs Clearance Procedures

Vietnam, like any other country, has to control the goods entering its territory. But this process should not penalise companies or be excessive in terms of time and cost. Unfortunately, many companies trading European foods (as well as wine and spirits) that comply with the highest European quality standards still encounter major administrative challenges, delays and additional costs both for regular imports and special imports for promotional trade fairs into Vietnam. In the spirit of the EVFTA, FAABS recommends that imported products from the EU should benefit from simplified customs clearance procedures in all parts of the Vietnamese territory - including for trade promotion purposes like samples used at trade fairs.

Re-qualification of HS Codes

We would like to see the recognition of the customs code applied within the EU as an integral part of the implementation of the EVFTA. Many companies have experienced HS code requalification, sometimes even after more than 10 years of imports under a given HS code. In some cases, we experience discrepancies between a European classification, a Vietnamese laboratory classification and the HS code given by customs. Besides the re-classification process, companies also go through a re-valuation process in terms of customs and tax obligations. Companies have to pay taxes for the previous 4 years plus interest. They also have to pay an administrative penalty equivalent to at least 20 percent of the amount of taxes in the assessment of the customs in charge of the file. Companies involved in that re-classification process suffer a huge burden and an unstable working environment.

A cooperation program between EU and Vietnamese customs could be implemented to share experiences in this matter to facilitate trade and to ensure compliant, effective implementation of the EVFTA expected to be ratified in 2019.

Registration of Products

In addition to the length of the process, the complexity and uncertainty of the rules and registration procedures do not often allow for a clear application of the directives and respective follow-up. This leads to significant delays. Our members, in the provision of innovative products, have found that some product registration processes took more than one year without being completed. We would like to suggest that processes should be simplified, especially for companies that have been operating in Vietnam with a good record for a long time. Products from countries recognised for their know-how and reliability in terms of food safety should enjoy special treatment. We hope that this will be realised under the EVFTA.

Sanitary and Phytosanitary Measures

The chapter of the EVFTA on Sanitary and Phytosanitary (SPS) measures aims to provide a framework and system to facilitate trade. It encourages the development and adoption of international standards, guidelines and recommendations, and promotes their implementation by the Parties, based on the respect of the SPS Agreement of the WTO and relevant standards developed by international bodies. We would like to bring in mind some of the important principles with regard to SPS, particularly: the EU as a single entity, regionalisation and pre-listing.

Vietnam should apply the same import requirements to products coming from all EU Member States, which should accelerate the approval of EU exports applications and avoid discriminatory treatment (single entity concept). Regionalisation is also important, as it means that in case of diseases, trade-restrictive measures shall only be applied to the affected area(s), while the rest of the country can continue to export. Finally, the adoption by Vietnam of the principle of pre-listing will facilitate imports because prior individual inspections of exporting establishments are no longer required and will, therefore, speed up the process.

Pre-listing means that once Vietnam has approved a category of food product from the EU and is confident about the capacity of the competent authority of that particular EU Member State to control the compliance of EU food safety requirements, imports from all the other establishments submitted by that country will automatically be allowed. This does not mean that Vietnam gives up control of food safety checks because if there are doubts

about a particular establishment, Vietnam could still undertake an inspection visit but – as stated in the EVFTA – the costs of such an inspection should be borne by Vietnam. We also believe that the to-be-established SPS Committee will help to address some of the current issues caused by the existing division in responsibility under three Ministries.

Please note that the issues described in the previous paragraphs will have an impact on the export and import position of Vietnam when the EVFTA enters into force. This applies in particular to food safety, diversification, high-end manufactured products; and sustainability and modernisation of the agricultural sector.

So far, the Law on Food Safety was guided on some aspects by Decree 15/2018/ND-CP of the Government issued on 15th January 2018. Decree 15/2018/ND-CP replaces Decree 38, a move which has been strongly welcomed by the business community, as its provisions are supposed to be in line with international practices. Under the previous Decree 38, products must be declared as conforming with food safety regulations before being circulated in the Vietnamese market and must be certified by competent agencies. This kind of certificate is considered a “sub-license”, but the food safety management agency is not held responsible for its certification. The introduction of Decree 15 improved and helped to resolve the biggest hurdles of Decree 38 - the procedure related to declaration of conformity - and which only led to a waste of time and costs for enterprises in the past.⁷⁶

Since Decree 15 came into effect, enterprises should be able to announce the declaration of conformity to food safety regulations for their foods, and the Ministry of Health shall only ask enterprises to register the declaration of conformity for a limited number of products. It is estimated that Decree 15 will help to reduce over 90 percent of administrative fees but, more importantly, the Decree shows how the Government has addressed the recommendations of the business community, including EuroCham, who has been working on the topic closely with the Government and the Advisory Council for Administrative Procedures Reform. However, the implementation and compliance will be key. EuroCham and FAABS will monitor the path of effective implementation of such measures, especially regarding the self-declaration of products by companies to ensure the past challenges faced by Sector Committee members are fully addressed.

Further actions of cooperation could be developed to accompany the modernisation of the legal framework and its effective implementation, and the capacity building for adapting to these new challenges. EuroCham is particularly ready to partner with Vietnamese producers in sharing and spreading technology and capacity for the application of modern standards and techniques.

7.2.2 Green Growth Sector Committee

EuroCham's Green Growth Sector Committee (GGSC) advocates for renewable energy, an efficient and sustainable energy market and sustainable, energy-saving and environmentally friendly buildings. These topics are covered by chapters on non-tariff barriers to trade and investment in renewable energy generation and on Trade and Sustainable Development of the EVFTA.

If the EVFTA is implemented in 2019, the Government should raise awareness among the authorities and society on the issues related to the GGSC recommendations as follows.

Article 1 of the EVFTA chapter on non-tariff barriers to trade and investment in renewable energy generation regulates that “To this effect, the Parties shall cooperate towards removing or reducing non-tariff barriers and fostering cooperation, taking into account, where appropriate, regional and international standards”. We recommend the Government first removes non-tariff barriers and fosters cooperation in accordance with EVFTA commitments. The Government or the National Assembly should also introduce clear and practical legislation, so as to facilitate and incentivise investment in renewable energy. The general principles with respect to

76 According to the Central Institute for Economic Management (CIEM), Ministry of Planning and Investment, the Food Safety Department under the Ministry of Health granted around 35,000 certificates in 2017 and the figure was estimated at 45,000 in 2017. To get a certificate, each enterprise had to pay VND 10 million for normal foods and VND 30 million for functional foods (including official and unofficial fees). In addition, the process of granting such certificate may be four months on average.

renewable energy found in the EVFTA should be addressed in a new and comprehensive Renewable Energy Law (e.g. the definition of 'renewable energy' in accordance with Article 2(f), chapter on non-tariff barriers to trade and investment in renewable energy generation, EVFTA). The new Law should supersede current conflicting regulations, which are widely scattered over several laws and a myriad of secondary legal documents.

Article 4(1)(e) of the EVFTA chapter on non-tariff barriers to trade and investment in renewable energy generation provides that: "A Party shall ensure that the terms, conditions and procedures for the connection and access to electricity transmission grids are transparent and do not discriminate against suppliers of the other Party." We recommend the Government adopts a faster timeline for the implementation of the Competitive Wholesale Market (CWM), so that EU suppliers can participate in the market. Renewable energy in this CWM should be treated as equal or even preferable to coal, fossil fuels, gas and oil.

In Article 5(2) of the EVFTA chapter on Trade and Sustainable Development, the commitments on climate change include that Vietnam and the EU agree to engage in a dialogue and share information and experience in, inter alia, the promotion of energy efficiency, of low-emission technology and of renewable energy.

Article 15 of the EVFTA chapter on Trade and Sustainable Development states: "The Parties shall establish a Specialised Committee on Trade and Sustainable Development. The Specialised Committee on Trade and Sustainable Development shall comprise senior officials from the relevant administrations of each Party or officials they designate. [...] Each Party shall convene new or consult existing domestic advisory group(s) on sustainable development with the task of advising on the implementation of this Chapter." The Green Growth Sector Committee suggests an overseeing mechanism and institutional set-up in accordance with EVFTA commitments. This could work by appointment of a 'higher authority' of the Vietnamese Government to supervise and rule on investments involving sustainable development (e.g., renewable supplier and off-taker issues). The higher independent authority would be in charge of coordinating regulations and implementation between the Ministries and EU partners. It would help to secure objective, transparent, non-arbitrary, non-discriminating procedures and capacity building with respect to the renewable energy market. Moreover, foreign direct investors should have the right to directly appeal decisions from local authorities to this higher authority, which should have the power to overrule the decisions of local authorities. EuroCham's GGSC would be pleased to cooperate, support and be part of this new authority.

Article 2.2 of the chapter on Cooperation and Capacity Building states that: "to achieve the objectives referred to in Article 1, the Parties attach particular importance to cooperating in the following areas: [...] e) Sustainable development, notably in its environmental and labour dimensions". The Government should provide such capacity building activities and organise joint workshops and seminars between the Ministry of Industry and Trade, Ministry of Planning and Investment, Ministry of Finance, Ministry of Construction, Ministry of Natural Resources and Environment and other related Vietnamese Governmental bodies with EuroCham's GGSC. EuroCham is also keen to exchange information on other levels, such as providing studies and investor surveys on renewable energy and direct meetings with Vietnamese Governmental agencies and regulators.

Moreover, Article XVIII of Chapter 9, Government procurement, provides the parties' commitment on the domestic review: "1. Each Party shall maintain, establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to review, in a nondiscriminatory, timely, transparent and effective manner, a challenge by a supplier of: (a) a breach of this Chapter; or (b) where the supplier does not have a right to challenge directly a breach of this Chapter under the domestic law of a Party, a failure of a procuring entity to comply with a Party's measures implementing this Chapter, arising in the context of a covered procurement, in which the supplier has, or has had, an interest. The procedural rules for all challenges shall be in writing and made generally available."

Vietnam would be well advised to prepare opening up EVN procurement to EU investors in accordance with chapter 9 of the EVFTA on Government procurement. Especially, this should include provisions to ensure a transparent tender process, including bid confidentiality and independent dispute resolution authority as required under Article XVIII.1, Chapter 9, of the EVFTA.

Overall, EU suppliers will be more comfortable investing more into Vietnam if Vietnam can provide legal certainty on the various treaty rights, well before the EVFTA comes into force.

7.2.3 Information & Communication Technology Sector Committee

On this topic, the key element was the recent adoption of the new Vietnamese Law on Cybersecurity dated 14 April 2018 valid since 1st January 2019. This law constitutes the basic legal framework, however it will need to be supplemented by guiding regulations. Only then it will be possible to have full knowledge of its precise implementation, particularly in terms of balancing public safety as well as ensuring citizens' right to privacy.

EuroCham has actively engaged in dialogues with Vietnamese authorities to ensure the most accurate balance in line with international standards as well as basic principles contained in the EVFTA. Therefore, the present section is framed so has to allow the reader to have a better view on the process in course while not giving definitive comments on the implementing requirements deriving from the EVFTA. After re-calling the basic relevant principles and commitments of the FTA, the Sector Committee has elaborated a detailed report of the process in course as well as the basic points on which EuroCham ICT SC is still working with the Vietnamese authorities.

Section V Regulatory Framework, chapter 8. Trade in services, investment and E-Commerce, EVFTA text as of 1st January 2016⁷⁷

Article (...), page 2/90, Chapter I. General Provisions - objectives, coverage and definitions

"1. The Parties, reaffirming their respective commitments under the WTO Agreement and their commitment to create a better climate for the development of trade and investment between the Parties, hereby lay down the necessary arrangements for the progressive liberalisation of trade in services and investment and for cooperation on E-commerce.

"2. Consistent with the provisions of this Title, each Party retains the right to adopt, maintain and enforce measures necessary to pursue legitimate policy objectives such as the protection of society, the environment and public health, the integrity and stability of the financial system, the promotion of security and safety, and the promotion and protection of cultural diversity.;"

Article (...), page 76/90 Access to and Use of Public Telecommunications Networks and Services

"1. Each Party shall ensure that all service suppliers of the other Party have access to and use of any public telecommunications network and service of a major supplier, including private leased circuits, offered within or across the borders of that Party on reasonable, non-discriminatory and transparent terms and conditions, including as set out in paragraphs 2 and 3.

"2. Each Party shall ensure that suppliers of public telecommunications services requesting to have access to the network of a major supplier are permitted to: (a) purchase or lease, and attach terminal or other equipment which interfaces with the public telecommunications network; (b) interconnect private leased or owned circuits with public telecommunications networks and services in its territory, or across its borders, or with circuits leased or owned by other service suppliers; and (c) use operating protocols of their choice, other than as necessary to ensure the availability of telecommunications networks and services to the public generally.

"3. Each Party shall ensure that all service suppliers of the other Party may use public telecommunications networks and services for the movement of information in its territory or across its borders, including for intra-corporate communications of such service suppliers and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party. Any new or amended measures of a Party significantly affecting such use shall be notified to the other Party and shall be subject to consultations.

"4. The Parties shall ensure that suppliers that acquire information from another supplier in the process of negotiating access use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored";

⁷⁷ Source: EU-Vietnam Free Trade Agreement text, available at: http://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154210.pdf, last accessed 18th September 2018

Article (...), Page 79/90 on Confidentiality of Information

"Each Party shall ensure the confidentiality of telecommunications and related traffic data by means of a public telecommunication network and publicly available telecommunications services without restricting trade in services."

EuroCham and its Information & Communication Sector Committee (ICT SC) note that the Law on Cybersecurity was passed by the National Assembly on the 12th of April 2018 with an effective date of the 1st of January 2019. This legislation is undoubtedly a milestone for Vietnam, which has taken tremendous strides in the IT sector in the past decade, as an effort to ensure secure and reliable networks at a national level. As such, the industry is ardently advocating the need for the healthy implementation of the Cyber Security Law, since the Government is currently consulting on draft legislation to implement these regulations. European companies will adhere to the laws of Vietnam that have been passed by the National Assembly.

Cyberspace presents many opportunities, such as the sustained economic growth generated from the free use of the Internet, as well as challenges that relate to cyber-espionage. Cybersecurity requires a sensitive and pragmatic balance between people's right to privacy and national security and public safety. Cybersecurity threats are relatively new to the world, and each country is trying to address this unprecedented challenge in a way that best strikes this balance, and Vietnam is no different.

The law will evolve over time, as most laws do – particularly when addressing new, unprecedented challenges – and we hope to see Vietnam's Cybersecurity Law increasingly aligned over time with international cybersecurity standards and norms. EuroCham welcomes the opportunity to share European experience with the Vietnamese Government at any time, as a valued and trusted strategic partner.

Some notable provisions under the Cybersecurity Law that are continuing to raise concerns among EU-based companies doing business in Vietnam include: (i) the data localisation and local office requirement; (ii) the broad power of Vietnamese authorities to conduct a cybersecurity audit of information systems of enterprises, and; (iii) content restriction rules that are more detailed than that of existing laws.

From the Government's standpoint, the Cybersecurity Law is set to create a more secure network environment and cyberspace for European companies investing and/or doing business on a cross-border basis in Vietnam. For example, if the Vietnamese Government uses reasonable discretion in exercising its authority to restrict content, the Cybersecurity Law's content restrictions have the potential to be a very effective tool to "clean up" the network environment, specifically targeting hate speech, fake news and trading of illegal goods. In addition, the Cybersecurity Law may not explicitly address data privacy issues, but the Government's stance is that the Cybersecurity Law is ultimately contributing to the further development of Vietnam's data privacy legal framework as a whole. As the underlying idea of the data localisation requirement is to protect data from unnecessary exposure and analysis for illegal purposes, the Cybersecurity Law effectively gives authorities a greater legal and technical basis to enforce data privacy regulations.

We hope that with the law, the implementation will reflect its purpose to give the ability to secure information, information systems and human activities on cyberspace without harming national sovereignty, national interests and security, social order and safety, State secrets, and importantly: the legitimate rights and interests of organisations and individuals.

As EuroCham has been following the Law, we also have seen positive changes in the provisions since its initial draft, following comments by EuroCham and other stakeholders. In particular: removing the requirement for businesses to be licensed for the provision of network security services. Instead, foreign and domestic Internet companies will have to have their head office or representative offices in Vietnam under Article 26. Accordingly, Foreign-Invested Enterprises will have to confirm the data of users, save a database of users in Vietnam, provide information to the Ministry of Defense when needed, remove or block the forbidden information following a request from the Ministry of Defense or Ministry of Information and Communication and act in accordance with Ministries' requests in case of violations.

However, there are some points that need the Government's further guidance to ensure implementation within the spirit of the Law. In EuroCham's position paper sent to the Ministry of Defense in 2017, we raised concerns about Article 3.3, particularly its interpretation, in that the Law adopts a unique definition of cybersecurity. It refers to its

specific purposes of protecting national sovereignty, national interest and security, social stability, and “legitimate rights and benefits of organisations and individuals” (Article 2.1). Such a definition is well beyond the traditional sphere of cybersecurity and implies a broad application of the Law, as well as potential overlaps with relevant laws and authorities. Given its unique definition of cybersecurity, the Draft may fail in its objective to “assure a certain conformity of the country’s cybersecurity tasks with international practices and assure the conditions for international integration in cyber security”. ICT SC recommends that the Law should adopt the common standard definition of cybersecurity⁷⁸ and limit the scope of its application to measures to protect networks, computer systems, and data from cyber-attacks or unauthorised access. We also recommended specifying in Article. 2.12 the criteria of the risk of violation (when there are signs of potential violations to the order, safety of society and also the legitimate rights and benefits of organisations and individuals); as well as actions constituting the breach of these rights.

The ICT SC would like to seek further clarifications on the handling of violations and information containing incitement to mobilise large numbers of people to disturb security and order on cyberspace as well as measures to take when there are cyber-security risks. Moreover, many other provisions of the Cybersecurity Law are expressed in unprecise and unclear terms, and thus many key questions remain unanswered. For example, the scope of the data localisation and local office requirements remain unclear, and for the time being, is termed in such a way, that it covers all offshore businesses with users in Vietnam. It seems that the Government understands such concerns and it is expected to provide further details through implementing Decrees and Circulars. Mr. Hoang Phuoc Thuan, Director of the Cybersecurity Department under the Ministry of Public Security (MPS), has declared that MPS will carefully limit the enterprises that would be subject to the data localisation and local office requirements and will issue very detailed guidance to bring full clarity.⁷⁹

Furthermore, in a recent letter addressed to Deputy Prime Minister Vu Duc Dam, EuroCham and ICT SC have also pointed out the new General Data Protection Regulations (GDPR) of the European Union on the protection of privacy which came into effect on the 25th of May 2018.⁸⁰ Article 8 establishes the Charter of Fundamental Rights⁸¹ of the EU, under which everyone has the right to the protection of their personal data. This data must be processed fairly for specified purposes and subject to the consent of the person concerned or to other legitimate grounds regulated by law. Everyone has the right to access data which has been collected concerning them, and the right to have it rectified. It is important that Vietnam adopts and reflects such a spirit for its own application of GDPR, ensuring principles such as: “Lawfulness, fairness and transparency; Purpose limitation; Data minimization; Accuracy; Storage limitation; Integrity and confidentiality or security as well as Accountability”. This will help Vietnam to take significant steps towards greater alignment with the EU’s new standards in the implementation of the upcoming EVFTA as well as in enhancing E-Commerce opportunities.

The cybersecurity law provides an opportunity for public and private organisations to work together without losing the knowledge or freedom that the Internet has brought us. The legal implications should not lead to an undue increase in the cost of doing business or limit the easy use of the Internet. We recommend the Government works with innovators to provide standards-based cybersecurity capabilities which should balance both national security and business needs. This will accelerate the adoption of security technologies across industries and; provide guidelines to establish hardware and software infrastructure with practical ways to implement cost-effective cybersecurity solutions. Moreover, a single data privacy law which protects end-consumers’ private

78 Cyber security is commonly defined as the measure of technologies, processes and practices of protecting networks, computers, programs, data and systems to protect computer or computer system against the criminal, unauthorised access or attack. More details can be found on the website of the European Union Agency for Network and Information Security (ENISA), Definition of Cyber Security – Gaps and overlaps in the standardisation, v.1.0, December 2015 available at: <<https://www.enisa.europa.eu/publications/definition-of-cybersecurity>>, last accessed 19th September 2018.

79 Nguyen Hoai “Cyber-security Law cannot abuse rights” *Tien Phong Gazette*, 16 June 2018. Available at: <<https://www.tienphong.vn/xa-hoi/luat-an-ninh-mang-khong-the-lam-quyen-1285732.tpo>> last accessed 19 September 2018.

80 EU Regulation 2016/679 - General Data Protection Regulation, applicable as of 25th May, 2018 in all EU Member States to harmonise data privacy laws across Europe. Available at:<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0679> last accessed 19 September 2018

81 The rights mentioned include: Right to be informed (privacy notices); Right to access; Right to rectification; Right to erasure; Right to strict processing; Right to data portability; Right to object; and Right not to be subject to automated decision-making, including profiling.

information stored on their systems should also be developed.

As the EVFTA is positively progressing and is expected to be signed and implemented soon, we would like to see the implementation of the new Cybersecurity Law brought in line with EU values and common commitments to ensure the stability of the national economy as well as bilateral trade.

In July 2018, EuroCham and ICT SC have also been active in working with other stakeholders, such as the Vietnam Business Forum, to further advocate for guiding regulations and follow-up with the Government on this issue. We hope to work with other EU Institutions to further promote EU values and GDPR in Vietnam so that, when the EVFTA comes into force, both parties can accept and mutually recognise their new standards.

Regarding the transparency of the adoption process, the Cyber Security Law has been passed by a majority of National Assembly members. However, it is important to enable a public and transparent re-transmission of National Assembly hearings and voting procedures, especially on such sensitive issues affecting the public and the privacy of citizens. EuroCham also looks forward to commenting and working on the draft regulations guiding the implementation of the Cyber Security Law to ensure its consistent implementation.

7.2.4 Intellectual Property Rights (IPR) Sector Committee

The EVFTA will help to raise awareness and better protect businesses and the wider community. IPRs are important for businesses from Europe and Vietnam, especially during this crucial phase of international economic integration. We expect that Vietnam will pursue national information programs to help consumers and businesses to fight against the consequences of counterfeiting.

Major Achievement on Geographical Indications

The protection of Geographical Indications (GIs) was a key interest for the European Union during the negotiations of the EVFTA, as it represented a large potential market for EU small- and medium-sized enterprises. The adopted text of the EVFTA is meant to set a higher protection of IPR in the field of GIs, but, to date, it is uncertain whether the Vietnamese regulations will be able to comply effectively with the agreed provisions of the EVFTA.

The automatic registration and protection of 169 listed European GIs and 39 Vietnamese GIs is one of the major provisions of the EVFTA. Consequently, GI owners will benefit from recognition and protection on the Vietnamese market similar to the protection level on the EU market. This should help boost foreign investment in Vietnam and reassure European investors on the country's commitments to protect foreign GIs.

A higher level of protection in the EVFTA is also ensured through the refusal to grant GI protection to a product using a designation or presentation misleading the consumer on its origin or nature, notably through the use of expressions such as 'kind', 'type', 'style', or 'imitation'. This is a great improvement for GI protection in Vietnam. However, no similar provisions exist under current regulations and failing to implement them in a timely manner will hinder the effectiveness of the protection.

Other material differences persist between the EVFTA and the Vietnamese legislation: including the silence of Vietnamese regulations on the differentiation of homonymous GIs or the existence of an effective procedure to signify the other party that a GI has ceased to be protected in Vietnam.

The higher level of protection of EU and Vietnamese GIs is a significant achievement for the development of IP regulations in the country and the attractiveness of the Vietnamese market to foreign investors. Vietnamese consumers and businesses have little knowledge of GIs and of the differences between products benefiting from GI recognition and other similar goods. The procedural length of registration of GIs and the overall difficult enforcement of IPRs in Vietnam also pose a serious threat to the application of EVFTA provisions. Despite gaps remaining between the provisions of the EVFTA and of the Vietnamese Law on intellectual property, authorities are pursuing efforts to amend conflicting regulations so as to ensure a complete and effective implementation of the EVFTA before its entry into force.

EuroCham recommends amending the legislation to incorporate the relevant procedures to explain the circumstances under which the protection of a GI will cease and how it will be notified to the other party, to adopt regulations on the differentiation of homonymous GIs, in order not to mislead consumers into believing that

a product comes from another territory than the one where it originates. Furthermore, the general enforcement provisions and specific provisions relating to GI enforcement should be implemented as provided under the EVFTA to ensure a sound IP environment for foreign Intellectual Property Rights holders.

7.2.5 EuroCham Healthcare Forum⁸²

Pharma Group

The EU-Vietnam FTA (EVFTA) brings a number of benefits to Vietnamese patients and to the innovative pharmaceutical industry, and has the potential to propel Vietnam forward on a number of fronts. The commitments relating to pharmaceuticals, when fully implemented, will go a long way towards improving patients' access to innovative medicines, whilst providing international companies with a stronger legal framework for their operations.

In particular, it should be noted that Vietnamese patients would enjoy faster access to new, innovative medicines because the local clinical trial requirement will be lifted and administrative procedures shortened.

Furthermore, the reiteration of Vietnam's WTO commitment to provide foreign pharmaceutical companies with the right to establish Foreign Invested Enterprises with associated rights, will be of great importance in providing companies with the legal clarity needed to establish a more sustainable presence with broader scope of activities in the Vietnamese market.

Today, the pharmaceutical industry represents one of the largest industries in terms of export from the EU to Vietnam, with value representing close to 10 percent of total EU exports in 2016. The implementation of the EVFTA commitments will help ensure the viability of the innovative pharma industry's exports to Vietnam, and help correct the EU-Vietnam imbalance in goods trade.

However, the real challenge now lies in the implementation. Following the Pharma Law (issued in 2016) and Decree 54/2017/ND-CP (issued in 2017), where some EVFTA commitments were introduced at a high level, the Vietnamese Government is developing a large number of legislations that are expected to provide implementing guidance. Key legislations include the Circular guiding Pharmaceutical Registration, Circular guiding Tender of pharmaceuticals in public healthcare establishments (public procurement) among others. It remains to be seen if and how the positive developments signaled by the EVFTA and Pharma Law will become reality, as there can be technical or administrative barriers introduced in these Circulars that can be challenging for European companies at the implementation phase.

Pharma Group remains a committed partner as Vietnam establishes itself as strong trade partner with the EU, building on the overarching objective to develop a high-standard, patient-centric healthcare sector and pharmaceutical industry.

⁸² EuroCham's Healthcare Forum is a coordination platform for Sector Committees operating in the Healthcare industry – at present International Quality Generics (IQGx), Medical Devices and Diagnostics (MDD SC) and Pharmaceuticals (Pharma Group). The Healthcare Forum enables industry representatives to discuss, share and advocate on common interests and topics. Given its inherently diverse nature, it also covers different interests of those industry representatives. All Sector Committees are equally supported by EuroCham

EVFTA Commitments and Vietnam's Legislative Development

An extensive amount of legislation guiding the Pharma Law (effective since 1st January, 2017) and Decree 54/2017/ND-CP (effective since 1st July 2017), expected to be issued not long after the Law and Decree 54 took effect, are still under development. While the direction of Vietnam's legislation today is largely in line with the spirit of the EVFTA, implementing guidance can pose technical, administrative challenges for EU companies.

The table below provides an overview of Vietnam's commitments in the EVFTA as well as how these commitments are currently addressed in published and draft legislations.

	Summary of EVFTA commitments	Addressed in VN legislations
Legal Entity & Rights	<p>Pharmaceutical companies can establish Legal Entities to perform:</p> <ul style="list-style-type: none"> › importation › sell to distributors or wholesalers › build own warehouses (or use 3rd parties) › provide information to Healthcare professionals (HCPs) › undertake clinical study/testing 	<p>Yes – these rights are mentioned in the Pharma Law 105/2016/QH13 and Decree 54/2017/ND-CP</p> <p>However, a viable legal framework for implementation is key for EU and other foreign companies (presence in Vietnam as Representative Offices today) to make the decision to establish Legal Entities in Vietnam as FIEs.</p>
Registration of pharmaceutical products	<ul style="list-style-type: none"> › Amendments to the existing legislation in order to abolish (i) the requirement of a minimum period of existing authorisation in the territory of the EU, prior to the submission of a request for a marketing authorisation in Vietnam, and (ii) any extra requirements related to clinical studies going beyond those stipulated in international practices (in particular, ICH guidelines) for the granting of marketing authorization of pharmaceuticals (including drugs, vaccines, biologics). 	<p>Yes - local clinical trials are exempted for pharmaceuticals (drugs, vaccines, biologics) – Draft Circular guiding Drug registration, dated 15 September 2018.</p> <p>It is positive to note that in recent drafts, Vietnam MOH refers to the EU (and European Medicines Agency) as one of the stringent, trusted regulatory authorities, and products already approved by the EMA will be subject to less administrative requirements.</p>

<p>Government Procurement & Reimbursement</p>	<p>For each calendar year following the date of entry into force of this Agreement, Vietnam may set aside from the obligations of this Chapter the respective percentage of contract value of pharmaceutical products as below:</p> <p>Year 1-2: 100% for VN Year 10-15: 60% for VN Year 3-9: 65% for VN Year 16 onward: 50% for VN</p> <p>This Chapter does not cover procurement of distribution services of pharmaceutical products that form a procurement contract or form a part of, or are incidental to, a procurement contract. In case these services form a part of, or are incidental to a procurement contract, the successful supplier of that procurement shall have the right to choose any licensed pharmaceutical distributor in Vietnam.</p> <p>Transparency:</p> <ul style="list-style-type: none"> ➤ Negative decisions require a statement of reasons based upon objective and verifiable criteria that is sufficiently detailed to understand the basis of the decision. ➤ Provisions on transparency in pricing and reimbursement and reference to international standards and guidelines (WHO and OECD). 	<p>Not yet (Tender Circulars issued in 2016, currently under revision: Circular 11/2016/TT-BYT, Circular 09/2016/TT-BYT and Circular 10/2016/TT-BYT)</p> <p>It is important to note that in the National Strategy for the Pharmaceutical Industry to 2020 and vision towards 2030 (Decision 68/QĐ-TTg of Prime Minister dated 10 January 2014), Vietnam's key objective is to ensure 80% value of the Pharmaceutical market is locally manufactured.</p>
<p>Intellectual Property</p>	<p>Regulatory data protection (RDP): non-reliance by applicants other than the person submitting the data for a "reasonable period", which "shall normally mean not less than five years from the date on which the Party granted" marketing authorisation for the product.</p> <ul style="list-style-type: none"> ➤ Reaffirmation of obligations under the Patent Cooperation Treaty and simplify and develop patent registration procedures using the Patent Law Treaty as reference point. ➤ A patent term restoration system for a period of up to two years. ➤ A yearly IPR special committee will be set up 	<p>Not yet (Pharma Law 105/2016/QH13)</p> <p>Legislations under revision: Registration Circular (relating to RDP), Law on Intellectual Property</p>

Summary of Pharma Group Recommendations

1. The right to establish a legal entity with all of its associated rights: The rights for foreign investors already committed under WTO, and reconfirmed in the EVFTA, are finally introduced in the Pharma Law and Decree 54. Foreign companies who are present in Vietnam today as Representative Offices finally have the option to establish a more stable, sustainable legal entity as Foreign Invested Enterprise to import pharmaceuticals and perform a broader scope of activities.

To turn this positive development into reality, EU and foreign pharmaceutical companies today need to have a viable, feasible legal framework that provide clarity for the new operating model, as well as a feasible transition roadmap in order to continue operating with the high quality standards required, and fulfilling their obligations

with regards to quality and safety of medicines. The industry, with support from the EU Delegation and Embassies, is holding dialogues with the Vietnamese Government to identify solutions on the implementation aspect.

2. Registration of pharmaceuticals: The EVFTA has removed extra requirements relating to clinical studies going beyond ICH guidelines for all pharmaceuticals including drugs, vaccines and biologics. The Pharma Law also heads in this direction by removing the previous 5-year of existing authorisation requirement, as well as the local clinical trials requirement, which is a major improvement in accelerating patient access to high quality, innovative pharmaceuticals.

The Circular guiding registration of pharmaceuticals is being drafted by the Ministry of Health, which includes very positive provisions that are in line with the EVFTA commitments. This key legislation, expected to be issued in October, represents an opportunity for Vietnam to streamline the current registration process and facilitate better access for EU pharmaceutical products. It is positive to note that in recent drafts, Vietnam Ministry of Health refers to the European Medicines Agency as one of the stringent, trusted regulatory authorities, and products already approved by the EMA will be subject to fewer administrative requirements.

The EVFTA ratification will help ensure EU pharmaceutical products can fully benefit from these positive developments during the implementation phase.

3. Government Procurement & Reimbursement: Commitments to gradually increase market access for EU companies in government procurement are not yet included in Vietnam's legislation. It is also important to note that in the National Strategy for the Pharmaceutical Industry to 2020 and vision towards 2030, Vietnam's key objective is to ensure 80 percent of the value of the Pharmaceutical market is locally manufactured.

Furthermore, current legislation across registration, Government procurement and reimbursement of pharmaceutical products are fragmented and do not facilitate a sustainable system. It is important to ensure a holistic approach during the development of these legislations to meet the demands of a modern universal healthcare system.

4. Effective implementation and enforcement mechanisms for Intellectual Property (IP) and data protection rights: As Vietnam is revising legislations relating to IP, it would be important to ensure commitments in the EVFTA are honored, including but not limited to the adoption of patent protection, a strong enforcement system, automatic Regulatory Data Protection (RDP), patent term adjustment for Marketing Approval delays, and other intellectual property protections that conform to international standards, in order to create a more predictable environment for investment, promote innovation, and help address the critical health issue of counterfeit medicines.

The industry, therefore, believe it is of critical importance that attention is paid to the current policy direction of Vietnam in light of the EVFTA ratification, to fully address technical and administrative barriers in implementing guidance that can undermine the positive outcomes negotiated for the European pharmaceutical companies.

Medical Devices and Diagnostics

Under the EVFTA, chapter on national treatment and market access for goods, Article 13.2 on import and export restrictions, the FTA provides that: "The Parties understand that the rights and obligations in paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, a Party from adopting or maintaining: (a) import licensing conditioned on the fulfillment of a performance requirement; or (b) voluntary export restraints." However, some restrictions are still applied in practice such as: in Vietnam, import licenses are still required on certain imported goods and the list can be adjusted from time to time; imported goods are subject to Vietnam technical regulations and quality standards and there are conditions set on related certificates and licenses (e.g. ISO, CFS, CE Mark Certificate) and restrictions on the import of used goods.

The Sector Committee has been working on recommendations that Vietnam should consider abolishing the "certificate of eligibility for drug business" to be abolished for IVD reagent importers and there should be harmonisation of dossier requirements and the registration process of import licenses in line with EVFTA commitments. The Sector Committee believes that the issue will be resolved once Decree 36 is put into effect (so far, the validity period has been delayed to the 1st of January 2019, with risk of further delay) and the related guiding Circulars implemented in line with the respect and spirit of the intended harmonisation on international standards.

Nevertheless, the Sector Committee would like to draw attention to the fact that, under the EVFTA commitments on refurbished/remanufactured goods, on national treatment and market access for goods, Article 5 states that the Parties shall accord to remanufactured goods the same treatment as that provided to new-like goods. A Party may require specific labelling of remanufactured goods in order to prevent the deception of consumers. The application of this Article is subject to a transitional period of no longer than three years from the entry into force of the EVFTA. As mentioned above, in Vietnam import of used equipment is prohibited, there is no definition of “used equipment” or of refurbished equipment, or of remanufactured goods in current local regulations. Therefore, the refurbished goods are usually considered used goods which are then prohibited from being imported.

It is recommended that Vietnam provides specific regulations and definitions on refurbished goods/remanufactured goods - medical devices for future trade. The international Medical Device community is providing guidance to the Vietnamese Government on this topic, based on knowledge and practices from other countries.

7.2.6 Human Resources and Training Sector Committee

The Implementation of ILO's Core Labour Standards

Under the EVFTA, Chapter 15, Trade and Sustainable Development, each of the Parties to the treaty commits to implement ILO standards. Article 3 addresses multilateral labour standards and agreements, and Article 3.2 provides that each Party reaffirms its commitments to respect, promote and effectively implement the principles concerning the fundamental rights at work, namely: a) the freedom of association and the effective recognition of the right to collective bargaining; b) the elimination of all forms of forced or compulsory labour; c) the effective abolition of child labour; and d) the elimination of discrimination in respect of employment and occupation. These rights must be reflected in Vietnamese regulations, in the Labour Code⁸³ and the Statutes of Vietnamese Trade Unions⁸⁴ and effectively implemented in practice.

a. *The right to freedom of association and the effective recognition of the right to collective bargaining (International Labour Organisation (ILO) Conventions No. 87 & 98)*

(i) Freedom of Association

ILO Convention No. 87, addressing the right to freedom of association and protection of the right to organise, has not yet been ratified by Vietnam, but some of its principles are already reflected in Vietnamese law. Furthermore, Vietnam has committed to ratify ILO Convention No. 87 by 2020.⁸⁵

Regarding the establishment of trade unions, according to ILO Convention No. 87, both employers and employees are allowed to freely establish, be subject only to the rules of the organisation concerned, and to join organisations of their own choosing without previous authorisation.⁸⁶ Under the Vietnamese Constitution and legal framework, employees may establish, join and operate trade unions. However, the order and procedures for establishing, joining and operating trade unions must comply with the Statutes of the Vietnamese Trade Union.⁸⁷ Furthermore, Vietnam is also unique because it generally does not have an industry-wide or trade-specific concept of a trade union, as in other countries. Currently, there is only one trade union system under the Vietnam General Confederation of Labour Unions (VGCL).⁸⁸

83 Article 189, Law 10/2012/QH13 passed by the National Assembly on 18 June 2012, effective from 1 May 2013 (Labour Code).

84 Article 7, Labour Code.

85 Article 3.b, Section II, Decision 2528/QĐ-TTg dated 31st December 2015 approving the plan of implementation and proposal to access the Conventions of the United Nations and the International Labour Organisation in the Labour Organisation in the Labour and Social fields of the period 2016-2020; Article 2.10 of Resolution 06-NQ/TW of the IV Plenum of the Party Central Committee dated 5th November 2016.

86 Article 2, International Labour Organization (ILO), Freedom of Association and Protection of the Right to Organise Convention, C87, 9 July 1948, C87, available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312232:NO [accessed 25 July 2018] (“ILO Convention No. 87”).

87 Articles 10, 25, 63 of Vietnamese Constitution 18/2013/L-CTN, Labour Code 10/2012/QH13 dated 18 June 2012; Articles 4,10,14,15 and 24 of the Law on Trade Unions 12/2012/QH13 valid from 1st January 2013; Article 63; Decree 60/2013/ND-CP of the Government dated 19 June 2013 guiding details on the Article 63.3 guiding on democracy mechanism at workplace; Official letter 1755/HD-TLĐ of the Vietnam Confederation of Labour Unions dated 20 November 2013 guiding on the participation of trade unions in establishing and implementing democracy mechanism at workplace.

88 Vietnam General Confederation of Labour Unions was established on 28th July 1929 by the Politburo of the Central Committee of the Communist Party of Vietnam. Further information on the website: <http://www.congdoan.vn/aboutus>, last accessed 11th September 2018

According to ILO Convention No. 87, employees' organisations have the right to draw up their own rules, be subject to such rules, and to join organisations of their own choosing without prior authorisation.⁸⁹ They also have the right to organise their administration and activities/programmes.⁹⁰ In addition, under Article 5 of ILO Convention No. 87, employees' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of employees.

Under Vietnamese law, trade unions are allowed to establish domestic federations and confederations. There are still no provisions permitting Vietnamese employee organisations to affiliate with international representative organisations of employees. However, in practice, the VGCL has partnered with foreign trade union support and solidarity organisations: the German Friedrich Ebert Stiftung (FES) and the Australian Union Aid Abroad.⁹¹ The VGCL and the FES signed a cooperation agreement to implement the project entitled "Trade Unions in Vietnam and the empowerment of workers".⁹² Furthermore, the VGCL has been working with the ILO, the Global Union Federations (GUF) and Trade Union Solidarity Support Organisations (TUSSOs) since 2016 to implement other reforms for future industrial and trade relations conditions anticipated to arise from Vietnam entering into the EVFTA and other trade agreements.

In addition to ratifying ILO Convention No. 87, the Government intends to amend the Vietnamese legal framework in order to reflect the full nature of "freedom of association" and to comply with its EVFTA commitments. On the 5th of November 2016, the Party Central Committee of Vietnam issued Resolution No. 06- NQ/TW,⁹³ which addresses the review and amendment of the legal system to facilitate Vietnam's integration with the global economy. In this resolution, it is very clear that a new institution, Workers' Representative Organizations (WROs), which are trade unions independent from the VGCL, will be a part of Vietnam's legal framework.

Vietnam commenced the Labour Code revision process several years ago, but it was stalled after the United States withdrew from the Trans-Pacific Partnership Free Trade Agreement. However, the Labour Code revision process was restarted in late 2017, and at that time, the Ministry of Labour, Invalids and Social Affairs (MOLISA) issued a report on the practicality and enforcement of the 2012 Labour Code.⁹⁴ In this report, the MOLISA proposed that the principle of freedom of association be fully incorporated into Vietnamese law by allowing employees to formulate trade unions independent from the VGCL, which currently regulates all trade unions in Vietnam.

Indeed, the latest draft⁹⁵ of the revised Labour Code includes provisions on WROs. Under the draft Labour Code, WROs would be permitted to be formed within one enterprise and would require a minimum of 20 members to become established.⁹⁶ WROs would draft their own constitutions, setting out their mandates and purposes, and would register with State agencies.⁹⁷ The draft Labour Code also includes numerous amendments to include WROs in the consultation procedures on major labour management steps which presently only require consultation with VGCL trade unions. Activities requiring consultation include the formulation of internal labour regulations (the working rules of the employer), the formulation of a labour usage plan in the case of redundancy and the formulation of a bonus policy.⁹⁸

While these amendments show the Government's clear commitment to implementing the right to freedom of association into Vietnamese law, there is still some preferential treatment given to VGCL trade unions. For example, the founding members of a WRO must not have been convicted of certain criminal offences, whereas

89 Article 3.1, ILO Convention No. 87.

90 Article 3.1, ILO Convention No. 87.

91 Anita Chan, "Trade Union Reform in One-Party States: China and Vietnam Compared", *Made in China*, Issue 3, 2017, available at: <http://www.chinoiresie.info/trade-union-reform-china-vietnam-comparison/> [accessed 25 July 2018].

92 European Union Press Release, "The EU supports the empowerment of Vietnamese industrial workers", dated 28 January 2013, available at: http://eeas.europa.eu/archives/delegations/vietnam/documents/press_corner/2013/20130128_en.pdf [accessed 25 July 2018].

93 Resolution 06-NQ/TW of the IV Plenum of the Party Central Committee dated 15th November 2016 ("Resolution 06").

94 Summary Report of the Labour Code, available at: <http://duthaovanban.molisa.gov.vn/detail.aspx?tab=2&vid=580>, [accessed 17th September 2018]

95 Amendment of the Labour Code, Draft No.0, dated 13 July 2018 ("Draft Labour Code"); Draft No.1 available at MOLISA website: <http://www.molisa.gov.vn/vi/Pages/DanhSachGopYDuThaoVanBan.aspx?iDuThao=889> [accessed 11 September 2018].

96 Articles 151 & 152.2, Draft Labour Code.

97 Article 150.2 & 153, Draft Labour Code.

98 For example, please see Articles 44.2, 79.2 and 97.3, Draft Labour Code.

this restriction would not apply to a VGCL trade union.⁹⁹ WROs are also prohibited from engaging in political activities under the draft Labour Code. Nonetheless, considering the size and well-established nature of the VGCL trade union system, Vietnam's approach to gradually amending its law to introduce independent trade unions is reasonable and necessary to prevent upheaval in Vietnamese society. The amendments included in the draft new Labour Code demonstrate that Vietnam is taking the first key steps to fully and effectively implement the right of freedom of association into its legal framework. The draft Labour Code is anticipated to be submitted to the National Assembly in May 2019, and it is expected to be passed by October 2019.¹⁰⁰

Collective Bargaining

ILO Convention No. 98, addressing the right to organise and collectively bargain, has also not yet been ratified by Vietnam. Nonetheless, there is presently a detailed legal framework in Vietnam which reflects the key concepts outlined in ILO Convention No. 98 well. The draft law to ratify ILO Convention No. 98 will be submitted to the National Assembly in May 2019 and is expected to be passed in October 2019 along with the new Labour Code.¹⁰¹

Under ILO Convention No. 98, workers shall enjoy protection against acts of anti-union discrimination in respect of their employment, which includes making the employment of a worker conditional upon his or her agreement not to join a union or relinquishing trade union membership, or dismissing or prejudicing a worker based upon his or her union membership.¹⁰² Currently, under Article 8.1 of the Labour Code, employers are prohibited from discriminating against employees on the basis of the employee's act of joining or participating in a trade union. Employers are also restrained in the termination of the labour contracts of employees who are also union officers. If the labour contract of an employee who is a part-time trade union officer expires while such officer is still within his or her term of office, the employer must extend that individual's labour contract until the end of his or her term of office.¹⁰³ Moreover, employers may only unilaterally terminate or apply disciplinary action against a part-time trade union officer after obtaining the written agreement of the executive committee of either the corporate-level trade union, or upper immediate level trade union (usually the district trade union) where a corporate-level trade union does not exist. If the parties ultimately cannot agree, the employer has the right to make a decision while bearing full responsibility for such a decision. Furthermore, the employer must first notify the labour authority at least 30 days in advance of applying any action.¹⁰⁴

The draft new Labour Code includes detailed provisions prohibiting the discrimination and harassment of trade union members,¹⁰⁵ and MOLISA has also stated that implementing legislation to be drafted will increase administrative fines for these violations.

ILO Convention No. 98 also prohibits the interference with either workers' or employers' organisation. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference.¹⁰⁶ Vietnamese law forbids employers from carrying out various acts of interference with employees establishing, joining or participating in a trade union.¹⁰⁷ There are no provisions similarly restraining workers from interfering with employers' organisations.

The fact that the Vietnamese trade union system allows members of management to participate in the unions

99 Article 152.3, Draft Labour Code. Please also note that a WRO would require 20 members to become established in comparison to the requirement for only five members to establish a VGCL trade union (Article 152.1, Draft Labour Code).

100 Resolution 549/NQ-UBTVQH14 of the Standing Committee of the National Assembly dated 30 July 2018, available at: <https://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Nghi-quyet-549-NQ-UBTVQH14-2018-thuc-hien-Nghi-quyet-ve-Chuong-trinh-xay-dung-luat-phap-lenh-389810.aspx> [accessed 14 September 2018].

101 *Ibid.*

102 Article 1, International Labour Organization (ILO), Right to Organise and Collective Bargaining Convention, C98, 1 July 1949, C98, available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312243:NO [accessed 25 July 2018] ("ILO Convention No. 98").

103 Article 192.6, Labour Code.

104 Article 192.7, Labour Code.

105 Article 158, Draft Labour Code.

106 Article 2, ILO Convention No. 98.

107 Article 190, Labour Code.

has been criticised as constituting an act of employer interference in the trade union. Vietnam has taken steps to remedy the challenges of its trade union system, and has issued Guidance 238/HD-TLD dated 4 March 2014 on the Implementation of the Charter of Vietnam Trade Union which prohibits individuals holding the following positions to join the trade union: "Owners of enterprises, chairpersons of boards of directors, chairpersons of boards of members, general directors, directors, persons authorised to manage non-state-owned enterprises or conclude labour contracts with employees working for such enterprises or foreign-invested enterprises, including: vice-chairpersons of boards of directors, deputy general directors, deputy directors or human resources directors."¹⁰⁸ The provisions of the draft new Labour Code addressing WROs, or trade unions independent from the VGCL, also prohibit employees exercising management functions from participating in WROs,¹⁰⁹ which appears to be a first step in implementing this rule in respect to trade unions in general.

Under ILO Convention No. 98, acts which are considered to be "interference" include the provision of financial support by the employer to the employees' organisation, with the object of placing such organisations under the control of the employer.¹¹⁰ Presently, trade unions are funded in Vietnam by a trade union fee paid on a monthly basis by employers which is equal to 2 percent of the employer's payroll, capped at the same rates for social and health insurance contributions, which as of 1 July 2018 is VND 27.8 million. All enterprises are required to contribute the trade union fee, even if they lack their own corporate-level trade union. Such a fee must be entirely submitted to the upper-level trade union (i.e. district-level trade union) to fund its operations, or partially submitted in case enterprises have their own corporate-level trade unions. Furthermore, in addition to the trade union fee contribution mentioned above, in order to maintain the day-to-day operations of corporate trade unions, employees participating in trade unions would contribute "membership dues", equivalent to 1 percent of their salaries used to determine social insurance contribution to the trade union and the capped contribution amount is 10 percent of the base salary (i.e. general minimum salary) prescribed by the Government, which as of 1 July 2018 is VND 1,139,000 (EUR 42).¹¹¹ Such membership dues are managed by the trade unions themselves. Corporate trade unions have their own financial capacity to run their operations, without being funded by employers. The draft new Labour Code also prohibits employers from manipulating trade unions through financial support or economic measures.¹¹²

Article 4 of ILO Convention No. 98 requires measures appropriate to national conditions to be put into place to encourage and promote the development and utilisation of mechanisms to facilitate voluntary negotiation between employers' organisations and workers' organisations. Under Vietnamese law, employers are required to organise periodical employees' dialogue at work, once every quarter, discussing employment-related issues.¹¹³ Employees also have the right to request collective bargaining at any time they wish. These regulations have not been largely implemented in practice and there is still room for improvement.¹¹⁴ MOLISA has issued a draft decree which simplifies and streamlines procedures to implement employee dialogue in the workplace, which will likely encourage employers to actually carry out the procedures outlined in these regulations. In practice, we are also aware of the labour authority focusing on the issue of employer compliance with dialogue in the workplace regulations in labour audits. As a result, we have seen more employers draft policies to implement dialogue in the workplace, so this mechanism for voluntary negotiation appears to be strengthening.

The Vietnamese authority's emphasis on dialogue in the workplace is also demonstrated by the new proposed revised Labour Code. The latest draft of the revised Labour Code includes detailed provisions on dialogue in the workplace, including the creation of a Labour Management Board for enterprises with over 50 employees, which would comprise of representatives of the employer and the WROs within the enterprise.¹¹⁵ Labour Management

108 Article 1.2(b), Section 1.1 of Guidance No. 238/HD-TLD dated 4 March 2014 of Vietnam General Confederation of Labour on implementation of the Charter of Vietnam Trade Union, with effect from 4 March 2014, available at <http://www.congdoan.vn/tra-cuu-van-ban/chi-tiet-1529.tld> [accessed on 11 September 2018].

109 Article 153.3, Draft Labour Code.

110 Article 2.2, ILO Convention No. 98.

111 Decision No. 1908/QĐ-TLĐ, issued by the Vietnam General Confederation of Labor ("VGCL") on 19 December 2016, available at <http://www.congdoan.vn/tra-cuu-van-ban/chi-tiet-2043.tld> [accessed 11 September 2018].

112 Article 158.1 (d), Draft Labour Code.

113 Article 65.1, Labour Code.

114 According to a recent survey of 139 employers done by MOLISA (Bao Cao Tong Ket BLLD), 82% of employers comply with the requirement to organise quarterly employee dialogue. Of note, 30% reported to have monthly employee dialogue, available at: <http://duthaovanban.molisa.gov.vn/detail.aspx?tab=2&vid=580> [accessed 17 September 2018].

115 Article 164, Draft Labour Code.

Boards would participate in dialogue in the workplace, as well as consult on major labour management steps, such as the formulation of internal labour regulations (the working rules of the employer).¹¹⁶

The draft revised Labour Code also includes provisions to facilitate the resolution of collective disputes, which constitutes a mechanism to facilitate voluntary negotiation between employers' organisations and workers' organisations.¹¹⁷ Presently, collective labour disputes are first subject to a conciliation procedure before the parties are permitted to either petition the chairman of the district people's committee to resolve a dispute regarding rights or, in the case of a collective labour dispute about benefits, to petition a labour arbitration council.¹¹⁸ Under the draft revised Labour Code, under one optional provision, this preliminary conciliation procedure will no longer be required. While under the current Labour Code, arbitration as a dispute resolution procedure is available only where the dispute is interests-based,¹¹⁹ another optional provision within the new draft provides that arbitration may also be used for rights-based disputes as well.¹²⁰ Furthermore, the new draft eliminates the involvement of the chairman of the district people's committee in the rights-based collective dispute resolution.¹²¹ This streamlining of procedure and introduction of a wider array of dispute-resolution mechanisms would facilitate employee and employer organisations to reach consensus.

In addition, the draft new Labour Code introduces a new approach to collective bargaining which shifts the focus from one negotiation session to an ongoing process. It also links an unsuccessful attempt to collectively bargain to a dispute resolution mechanism.¹²² The draft new Labour Code also introduces procedures to allow collective bargaining which will involve multiple enterprises.¹²³

b. The elimination of all forms of forced or compulsory labour (ILO Conventions No. 29 & 105)

Vietnam has ratified the ILO Convention No. 29 on forced labour, but has not yet ratified ILO Convention No. 105, however, Vietnam has committed to do so in 2020.¹²⁴

Under ILO Convention No. 29, forced labour is defined as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily", but includes various exceptions to this definition such as compulsory military service and the normal civic obligations of the citizens to their country.¹²⁵ ILO Convention No. 105 includes a stricter definition of forced labour, and defines it as the following under Article 1: (a) a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; (b) a method of mobilizing and using labour for purposes of economic development; (c) a means of labour discipline; (d) punishment for having participated in strikes; or, (e) as a means of racial, social, national or religious discrimination.

The current Labour Code presently prohibits "labour coercion"¹²⁶ and also prohibits labour practices associated with forced labour and human trafficking such as: (i) making false promises or conducting false advertising in order to deceive employees, or taking advantage of employment services or taking workers out of the country under contracts to commit illegal acts;¹²⁷ (ii) retaining originals or personal papers, degrees and certificates of employees;¹²⁸ and (iii) requiring an employee to provide security measures by way of cash or assets to guarantee

116 Please see Articles 44.2, 79.2, 97.3 and 164.1, Draft Labour Code.

117 Articles 195 & 196, Draft Labour Code.

118 Article 204, Labour Code.

119 Article 204.2(b), Labour Code.

120 Article 202, Draft Labour Code.

121 Article 203, Draft Labour Code.

122 Article 171.2, Draft Labour Code.

123 Articles 172 & 173, Draft Labour Code.

124 Article 3. Section II, Decision 2528/QĐ-TTg dated 31st December 2015 approving the plan of implementation and proposal to access the Conventions of the United Nations and the International Labour Organisation in the Labour Organisation in the Labour and Social fields of the period 2016-2020; Article 2.10 of Resolution 06-NQ/TW of the IV Plenum of the Party Central Committee dated 5th November 2016.

125 Article 2, International Labour Organization (ILO), Forced Labour Convention, C29, 28 June 1930, C29, available at: <http://www.refworld.org/docid/3ddb621f2a.html> [accessed 25 July 2018] ("ILO Convention No. 29").

126 Article 8.3 Labour Code.

127 Article 8.3 & 8.6, Labour Code.

128 Article 20.1, Labour Code.

performance of the labour contract.¹²⁹ Employers who violate items (ii) and (iii) of the foregoing list are liable for an administrative fine ranging from VND 20 million to 25 million.¹³⁰

However, further detailed guiding legislation to assist with the implementation of these provisions is required in order to comply with Article 23.1 of ILO Convention No. 29, which compels its signatories to issue complete and precise regulations governing the use of forced or compulsory labour.

While regulations regarding labour coercion are not clearly set out in Vietnam's labour law, more detailed regulations are available under other pieces of legislation. Vietnam's Law on Anti-Human Trafficking,¹³¹ effective since 1 January 2012, addresses human trafficking prevention, detection and handling of human trafficking violations and the support and protection of victims.

The new Penal Code, which came into effect on 1 January 2018, also establishes criminal sanctions for forced labour under Article 297. Pursuant to this provision, any person who forces another to work may face a fine ranging from VND 50 million to 200 million, or a prison sentence ranging from three years' community service to 12 years' imprisonment, depending upon the circumstances of the crime.¹³²

According to the latest draft of the revised Labour Code, the requirement for a Labour Inspector to give advance notice before an inspection has been eliminated.¹³³ This revision will bring the Labour Code regulations into compliance with ILO Convention No. 81 on Labour Inspection.¹³⁴ More importantly, it will also enable the Labour Inspectorate to more effectively detect and deter acts of forced labour in addition to other labour violations.

Vietnam has also recently established National Alliance 8.7. Alliance 8.7, or the Global Alliance to Eradicate Forced Labour, Modern Slavery, Human Trafficking and Child Labour, was originally launched in 2016 to assist countries to abolish forced labour, modern slavery, human trafficking and all forms of child labour, which is the 7th target of Sustainable Development Goal 8, of the United Nations Development Programme. On 25 June 2018, Vietnam re-affirmed its commitment to end forced and child labour by establishing National Alliance 8.7 with cooperation from the MOLISA and the ILO.¹³⁵

c. *The abolition of child labour (ILO Conventions No. 138 & 100)*

Regarding the abolition of child labour, Vietnam has ratified the ILO conventions on child labour - the Convention No. 138 on minimum age to work and the Convention No. 182 on the elimination of worst forms of child labour.¹³⁶

The ILO makes a distinction between the concepts of "child labour" and "child work". ILO Conventions No. 138 and 182 lack specific definitions of "child labour". However, the contents of these conventions imply that the term "child labour" is intended to address activities which hinder a child's education or development.¹³⁷ Notably, Article 7.1 of Convention No. 138 states that national laws may permit persons aged 13 to 15 to perform light work which is not likely to be harmful to their health or development, and which will not prejudice their educational opportunities.

¹²⁹ Article 20.2, Labour Code.

¹³⁰ Article 5, Decree No. 95/2013/ND-CP dated 22 August 2013 of the Government on administrative penalties in labour, social insurance and overseas manpower supply by contract effective 10 October 2013, as amended by Decree No. 88/2015/ND-CP dated 7 October 2015 effective on 25 November 2015 ("Decree No. 95").

¹³¹ Law No. 66/2011/QH12 passed by the National Assembly on 29 March 2011, with effect from 1 January 2012 ("Anti-Human Trafficking Law").

¹³² Article 297, Penal Code No. 100/2015/QH13, dated 27 November 2015, of the National Assembly ("Penal Code").

¹³³ Article 227, Draft Labour Code.

¹³⁴ This provision had been included in the previous version of the Labour Code, Labour Code 1994. However, in the process of drafting the current Labour Code, Labour Code 2012, this provision was removed to comply with the Law on Inspectorate 2010, which provides that the labour inspectorate must inform parties in advance of conducting inspections. The Draft Labour Code will restore the provision which had been included as Article 187 of the Labour Code 1994.

¹³⁵ "National Alliance to fight child labour in Vietnam", International Labour Organization, available at https://www.ilo.org/hanoi/Informationresources/Publicinformation/newsitems/WCMS_633121/lang--en/index.htm [accessed 25 July 2018].

¹³⁶ "Ending child labour in supply chains is increasingly important in economic integration", International Labour Organization, 14.06.2016, available at: http://www.ilo.org/hanoi/Informationresources/Publicinformation/Pressreleases/WCMS_490746/lang--vi/index.htm, [accessed 10 July 2018].

¹³⁷ Eric V. Edmonds, "Defining Child Labour: A Review of the Definitions of Child Labour in Policy Research," November, 2008, Geneva, ILO, International Programme on the Elimination of Child Labour.

At the national level, according to Article 37.1 of the Constitution 2013 of Vietnam, children (under 16 years old) are protected, cared for and educated by the State, family and society. Since 2012, the Vietnamese Government has issued many Decisions¹³⁸ to reduce child labour. On 7 June 2016, the Prime Minister, Mr. Nguyen Xuan Phuc, also approved the program to prevent and reduce child labour in the period 2016-2020.¹³⁹ This is a demonstration of the political will of Vietnam for the achievement of a better future for children, which was recently re-affirmed on 25 June 2018, by the establishment of Alliance 8.7 in Vietnam as described above.

Under Vietnamese law, there is no specific definition of “child labour” but the law states that “minor” employees are under 18 years old.¹⁴⁰ Minor employees are divided into three categories of age groups: (i) 15 to 18 years old, (ii) 13 to 15 years old, and (iii) under 13 years old. Children under 13 years of age are only permitted to engage in work provided in a list stipulated by the MOLISA,¹⁴¹ which presently allows children under 13 years of age to engage in work in only two job categories: (i) actors and actresses and (ii) gifted athletes.¹⁴²

Children aged 13- 15 years of age are similarly only permitted to engage in a limited number of light jobs issued by MOLISA, and employers must arrange working hours which do not adversely affect the school study hours of the worker.¹⁴³ This list of jobs reflects traditional work which children would normally do in rural areas in cooperation with their families, and comprises of the following:¹⁴⁴

- (i) Traditional jobs: drawing dots on ceramic, sawing clams, painting lacquer, making poonah paper, conical hats, making incense, drawing dots on hats, mat weaving, drum making, brocade weaving, making rice noodles, bean sprouts, making rice noodle (vermicelli);
- (ii) Arts and crafts: embroidery, art wood, make horn comb, weaving net, making Dong Ho paintings, moulding toy figurines;
- (iii) Wicker, making home appliances, fine art crafts from natural materials such as rattan, bamboo, nehouzeaua, coconut, banana and water hyacinth;
- (iv) Rearing silkworms; and
- (v) Packing coconut candy.

Minors are also prohibited from engaging in heavy, hazardous and dangerous jobs or jobs negatively affecting their personal development under the list issued by MOLISA in coordination with the Ministry of Health¹⁴⁵, which has been elaborated upon in a new draft Circular described in further detail below. Employers are also prohibited from employing minors to perform jobs relating to the manufacture and trade in alcohol, wine, beer, tobacco, stimulants and addictive substances.¹⁴⁶ The Children’s Law also provides that children have the right to be protected, in any form, from labour exploitation. They are prohibited from working when they are below the legal age stipulated by law, and are not permitted to work overtime or do arduous, harmful or dangerous work as regulated by the law. They are protected from being forced to do jobs or attending workplaces which could have an adverse influence on their personality and comprehensive development.¹⁴⁷

138 Decision No. 1555/QĐ-TTg dated 17th October 2012 of the Prime Minister Nguyen Tan Dung on approval of National action plan for children 2012-2020, Decision No. 2361/QĐ-TTg dated 22 December 2015 of Deputy Prime Minister Vu Duc Dam on approval of program of children’s protection 2016-2020.

139 It focuses on “preventing and minimising child labour while timely detecting and assisting child labourers and vulnerable children in accessing opportunities for development”. Accordingly, young labourers and vulnerable children will be provided with life and community-integration skills. In addition, children should be provided with education and vocational training to prepare them for seeking employment in the future. Meanwhile, the program also supports children’s families with their means of livelihood and income, which is believed to help decrease the child labour in the country.

140 Article 161, Labour Code.

141 Article 164.3, Labour Code.

142 List appended to Circular No. 11/2013/TT-BLĐTBXH of the Minister of Labor, Invalids and Social Affairs dated June 11, 2013 (“Circular No. 11”) promulgating the list of light works allowed using persons under 15 years old to work.

143 Article 164.2(b), Labour Code.

144 List appended to Circular No. 11.

145 Article 163.1, Labour Code.

146 Article 163.4, Labour Code.

147 Article 26, Law No. 102/2016/ND-CP passed by the National Assembly on 5 April 2016 with effect from 1 June 2017 (“Children’s Law”).

Employers who fail to comply with the above regulations may be subject to an administrative fine or even criminal prosecution. Under labour legislation, an employer could face an administrative fine ranging from VND 10 million to 25 million for violating the above regulations.¹⁴⁸

Article 296 of the new Penal Code introduces much harsher penalties for breaching obligations on child workers. Article 296 provides that any person employing a person under 16 to do difficult or dangerous work or work that involves contact with harmful substances on the list compiled by State authorities shall be liable for a fine ranging from VND 30 million to VND 200 million or face a sentence ranging from three years' community service to up to 10 years' imprisonment, depending upon the circumstances of the violation.¹⁴⁹

Vietnamese law also compels third parties to report violations of regulations on child workers. Any organisation or individual who is aware of acts harmful to children, which would include the violation of regulations on child workers, must immediately report this to the National Telephone Exchange for Child Protection, MOLISA or public security agencies of any level or commune-level of the Peoples' Committees of the localities where the cases occur.¹⁵⁰

Recent legal developments also demonstrate Vietnam's commitment to abolishing child labour. In May of 2018, MOLISA issued a new Draft Circular on the prohibition of using minor labourers for certain jobs and in certain workplaces. This document was open for public comments from 15 May to 15 July 2018. It is going to replace Circular 10/2013/TT-BLDTBXH dated 10 June 2013 on the same matter. The draft Circular sets out four general categories of jobs in which minors are prohibited to work and also lists and forbids minor employment in 88 specific jobs that are dangerous, hazardous, highly stressful or otherwise harmful to minors.¹⁵¹ Specifically, children are banned from jobs with the following elements:

- a. being in contact with hygiene elements and substances not up to national technical standards;
- b. being in contact with factors that may cause contagious diseases;
- c. working for over four hours per day in an uncomfortable and narrow space, which sometimes requires labourers to go on their knees, to lie or to stoop; or
- d. working on high scaffolds or ropes hung over two meters higher than the working floor; working on hills and mountains with an incline of over 30 degrees.

The 88 job categories for which children are banned are those which involve: (a) a high level of risk, noise, pollution or stress; (b) regular contact with toxic substances or harmful microorganisms; or (c) heavy weights or outdoor conditions.

d. *Elimination of Anti-Discrimination (ILO Conventions No. 100 & 111)*

Vietnam has ratified ILO Convention No. 100 on Equal Remuneration and ILO Convention No. 111 on Discrimination (Employment and Occupation).

ILO Convention No. 100 provides at Article 2 that each signatory must ensure the application to all workers the principle of equal remuneration for male and female workers for work of equal value. Vietnam has adopted this principle in its Law on Gender Equality and the Labour Code and its implementing legislation, which include provisions stating that men and women must have equal rights in respect to remuneration, promotions, statutory insurance and working conditions.¹⁵²

148 Article 19, Decree No. 95.

149 Article 296, Penal Code.

150 Article 25.1, Decree 56/2017/ND-CP dated 9 May 2017 of the Government detailing a number of articles under the Children's Law with effect from 1 July 2017.

151 Draft circular to replace Circular No. 10/2013/TT-BLDTBXH dated 10 June 2013, available at: <http://duthaovanban.molisa.gov.vn/detail.aspx?tab=2&vid=597> [accessed 17 September 2018].

152 Article 153.1, Labour Code; Article 5.1, Decree No. 85/2015/ND-CP detailing a number of articles the Labor Code in terms of policies for female employees of the Government dated 1 October 2015 with effect from 15 November 2015 ("Decree No. 85"); and Article 13.1, Law No. 73/2006/QH11 passed by the National Assembly on 29 November 2006 with effect from 1 July 2007 ("Law on Gender Equality").

ILO Convention No. 111 defines “discrimination” as any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality or opportunity in the treatment in employment or occupation; and any other characteristic as may be determined by the signatories to the convention.¹⁵³ “National Extraction” is defined by the ILO as distinctions made on the basis of a person’s place of birth; ancestry or foreign origin; for instance, national or linguistic minorities, nationals who have acquired their citizenship by naturalisation, and/or descendants of foreign immigrants. “Social Origin” is defined to include social class, socio-occupational category and caste.¹⁵⁴

Vietnamese law has been quite comprehensive on non-discrimination in respect to employment and occupation. The Labour Code includes many provisions favourable to different types of employees such as females, junior employees or elderly ones. However, the definition of “discrimination” stated in Vietnamese law under Article 8.1 of the Labour Code does not cover all items mentioned in Article 1 of the ILO Convention No. 111. In particular, protection from discrimination under the ILO’s perspective should also include the following grounds, which have not been reflected under Vietnamese regulations: “political opinion”; “national extraction”; and “any other distinction having the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation”. However, the draft new Labour Code brings Vietnam’s prohibitions against discrimination closer in line with those advocated by the ILO. The draft new Labour Code has broadened the grounds of protection from discrimination to include the following new grounds: ethnicity, national extraction, social origin, maternity and family responsibilities.¹⁵⁵

Vietnam’s legal framework is particularly supportive of eliminating discrimination towards women. The Law on Gender Equality provides a framework to ensure gender equality in all fields of politics, economy, culture, society and family; and the Labour Code and its implementing legislation include numerous provisions to create positive working conditions for women and to accommodate the demands of motherhood.¹⁵⁶ The Labour Code also encourages employers to prioritise the hiring and advancement of female employees.¹⁵⁷ Vietnam has also issued a national strategy on gender equality until 2020 to improve public awareness, close the gender gap, heighten women’s status, protect women’s rights, and fight discrimination against women.¹⁵⁸

Culturally, motherhood is extremely valued. For this reason, MOLISA, together with the Ministry of Health, issued a list of jobs which are prohibited for women.¹⁵⁹ These jobs are those which are considered to be harmful to a woman’s health and fertility. It is stated that preventing women from engaging in these jobs is discriminatory, so the Circular setting out this list of jobs should be repealed.

e. *EuroCham’s activities and other relevant developments*

On 16 August 2018, the HR&T SC Co-Chairs and other representatives of EuroCham met with representatives from the UN Women’s Development Program to discuss EuroCham’s cooperation in an upcoming initiative to empower women in the workplace. The HR & Training Sector Committee is currently working on a project to have female role models from various member companies participate in a panel event and mentorship program.

In August 2018, EuroCham also met with ILO and other international labour organisations to discuss further cooperation and advocacy support in order to facilitate the smooth implementation of EVFTA and Vietnam’s labour commitments. EuroCham is also working on a project with the ILO, entitled “Responsible Supply Chains in

153 Article 1, International Labour Organization (ILO), Discrimination (Employment and Occupation) Convention, C111, 25 June 1958, C111, available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO:12100:P12100_INSTRUMENT_ID:312256:NO [accessed 25 July 2018] (“ILO Convention No. 111”)

154 International Labour Organization (ILO), Helpdesk for Business on International Labour Standards, Q&As on business, discrimination and equality, available at: http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_BDE_FAQ_EN/lang--en/index.htm [accessed 31 July 2018].

155 Article 8.1, Draft Labour Code.

156 For example, the Labour Code provides a six-month maternity leave (Article 157) and more favorable and flexible working conditions for women raising young children, such as reducing the work day of a woman nursing a child under 12 months old by one hour while maintaining the same rate of pay (Article 155).

157 Article 153, Labour Code; Article 5.2, Decree No. 85.

158 Decision No. 2351/QĐ-TTg of December 24, 2010, approving the 2011-2020 national strategy for gender equality.

159 Circular No.26/2013/TT-BLĐTBXH dated 18 October 2013 of the Ministry of Labour, War Invalids and Social Affairs promulgating a list of jobs for which women may not participate with effect from 13 December 2015.

Asia”, which focuses on improving labour conditions within the seafood and forestry sectors. EuroCham will assist by surveying the sourcing practices of its members, and by providing training in best labour practices, among other things.

On the 28th and 29th of August 2018, MOLISA and the ILO organised a two-day consultative workshop in Ho Chi Minh City focusing on industrial relations, and in particular, the provisions of the Draft Labour Code relating to WROs, collective bargaining and labour dispute resolution mechanisms. The Co-Chairman of EuroCham’s HR&T SC attended this workshop and discussed the practical implications of these changes with representatives of the ILO and MOLISA, including proposals for further revisions to the draft Labour Code.

On the 30th of August 2018, EuroCham’s HR&T SC together with MOLISA jointly organised a conference entitled “EVFTA and the ILO Convention: Road ahead for Vietnam”. This conference addressed the progress of Vietnam’s ratification of the three remaining ILO conventions and the legislative process for implementing the fundamental rights at work in the draft Labour Code. Participants were informed about the relevant timelines for the passing of key laws, as well as the challenges and proposed solutions to implementing Vietnam’s labour obligations under the EVFTA.

The HR & Training Sector Committee notes that MOLISA is in the process of implementing many positive developments, such as the right of employees to form their own independent trade unions, granting more rights for both employers and employees to terminate labour contracts, a broadened definition of non-discrimination, an increase in overtime hours, improving the employee dialogue process, and while not required under the EVFTA, the inclusion of arbitration, in addition to mediation, as a means of dispute resolution. The Sector Committee has been very active in working with MOLISA to revise the Labour Code and proposing the incorporation of international standards. Over the years, the HR&T SC has constantly provided its comments and recommendations to MOLISA on issues related to labour legislation such as work permits for foreign workers in Vietnam, Labour Code’s revision, regional minimum wage, trade union, visa, social insurance for foreign workers. In addition, our members have also actively joined other associations such as Vietnam Business Forum or Vietnam Chamber of Commerce and Industry to hold dialogues with respective Ministries to raise and follow up on their positions related to the Labour Code and human resource issues.

With the aim of increasing awareness of the Ministries of our concerns and proposals, HR&T SC also speaks at various workshops, and conferences of MOLISA which consults with business associations and the business community. The Sector Committee itself also has held many events to disseminate the new regulations (on visa, work permit, insurance policies, etc.) to support updating EuroCham members. EuroCham also supported MOLISA to conduct a survey among European members in Vietnam regarding draft regulation on compulsory social insurance for foreign workers in Vietnam to assess the actual demand and concerns of businesses. The Sector’s members also support the improvements of the workplace for disabled people and actively participate in the UNICEF consultation meeting with Ho Chi Minh City leaders on the Child-Friendly City Initiative.

Besides the matters mentioned above, we also see that there are other positive developments in social aspects. Vietnam has issued a new Law on Religions and Beliefs dated 18th November 2016 and valid from 1st January 2018, which protects an individual’s right to freedom of religion. Vietnam also has a new Civil Code 2015, which at Article 37, legalised sex reassignment surgery and introduces the right to legal gender recognition for transgender people who have undergone such surgery.

Recently, the Government has also passed regulations to support private businesses and SMEs through the national level policies such as Resolution No. 10/NQ-TW dated 3rd June 2017 on development of private businesses as the motivation for the market economy and passing the Law on Support for SMEs dated 12th June 2017. Under these regulations, the Government encourages developing start-ups and innovation, increasing the efficiency of SMEs as well as supports the Programs for start-up women in the period 2017-2027 with a target of reaching 35 percent of female-owned enterprises out of a total of 1 million enterprises by 2020. While not required to be implemented into Vietnamese law under the EVFTA, social insurance policy reform is also in the works. Resolution No. 28-NQ/TW dated 21st May 2018 issued by the Central Executive Committee of the Communist Party prescribes general instructions on social insurance policy reform, to gear policy towards a mixed compulsory and voluntary system while ensuring that special categories of citizens, such as farmers, low-income workers, or the elderly without retirement pay, can have access to social insurance.¹⁶⁰

160 Available at: <http://baochinhphu.vn/Tin-noi-bat/Toan-van-Nghi-quyet-so-28NQTW-ve-cai-cach-chinh-sach-bao-hiem-xa-hoi/337267.vgp> [accessed 25 July 2018].

In conclusion, the ratification of the EVFTA would be a very significant step forward to improve labour and social rights in Vietnam. The ratification and implementation of the EVFTA would be a strong impetus for change in Vietnam. In the absence of FTA ratification and implementation, there will be negative consequences for millions of Vietnamese children, working women, and labourers. Without this pressure to reform, we anticipate that these individuals would not benefit from the protections required under the EVFTA, as both legislative reform and the implementation of these changes in practice may not occur. EuroCham appreciates the current changes and efforts that the Government has made and will continue to actively update and support further policy changes and facilitate better developments of both economic and social aspects in Vietnam.

7.2.7 Mobility Sector Committee

The EVFTA, under Chapter 20 on Institutional, General and Final provisions, Article 7 provides the following on Taxation:

"1. Nothing in this Agreement shall affect the rights and obligations of either Viet Nam or the Union or one of its Member States under any tax agreement between Vietnam and 5 any Member State or States of the Union. In the event of any inconsistency between this Agreement and any such agreement, that agreement shall prevail to the extent of the inconsistency."

"2. Nothing in this Agreement shall be construed to prevent the Parties from distinguishing, in the application of the relevant provisions of their fiscal legislation, between taxpayers who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested."

"3. Nothing in this Agreement shall be construed to prevent the adoption or enforcement of any measure aimed at preventing the avoidance or evasion of taxes pursuant to the tax provisions of agreements to avoid double taxation or other tax arrangements or domestic fiscal legislation"

Table 1. Tax deduction from 2016 to 2018

	2016	2017	2018	
ATIGA	40%	30%	0%	
MFN	70%	70%	70%	51% for 4WD with engine over 3.0 l
EVFTA		78%		reduced over 9-10 years divided in 11 equal steps (10 for 4WD) ⁹

Source: EuroCham Mobility Sector Committee

In light of the high importance of the EVFTA, we focus more strongly on questions of import than traditionally local manufacturing. Under the EVFTA commitments on national treatment and market access for Annex 2-b: Motor Vehicles, Article 2: International Standards, the FTA provides that:

"The Parties recognise that the UNECE Regulations of WP.29 are the relevant international standards for the products covered by this Annex. Automatic acceptance and no further test requirement for EU products having equal/higher technical standards certified by EU".

Moreover, under the Article 12 on National Treatment, Chapter National Treatment and Market Access for Goods, Vietnam as a Party of EVFTA *"shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994."*

Since 1st January 2018, Decree 116/2017/ND-CP (Decree 116) and its Circular 03/2018/TT-BGTVT (Circular 03) enforced new conditions in the automotive sector. According to Article 6.2.a of Decree 116, imported CBU vehicles are required to pass homologation tests (emission and safety) for each and every shipment. A similar vehicle to one imported in a different shipment needs to be tested again. Decree 116 also requires all models to obtain a Vehicle Type Approval (VTA) certification issued by authorities of the exporting country. VTA certifications show that the vehicle meets the standards of the country in which it will be sold and is normally issued by domestic entities of the importing country. In practice, automotive certifying authorities test vehicles according to their country specifications, for instance, Europe. These authorities are not in a position to test vehicles for export markets with each export country specifications. From January to June 2018, the number of CBU imports from the European Union to Vietnam declined 42 percent. There was hardly any homologation of CBU vehicles from Europe. As a

temporary relief, Vietnamese Authorities then requested Ministry of Transport to instruct Vietnam Register to accept the manufacturers' certificates for vehicle homologation in Vietnam. This decision helped resume the importation of CBU vehicles but as it is temporary, the testing issue needs to be resolved. Repetitive testing of identical CBU models generates additional costs and unnecessary obstacles contrary to Article III of the General Agreement on Tariffs and Trade (GATT) 1994. The fact that vehicles produced in Vietnam only undertake tests every 36 months shows that this is also a discriminatory treatment between imported and domestically-produced models according to Article 2 of the WTO Agreement.

We propose that the first homologation of CBU - including European-made vehicles until the EVFTA is ratified - should last 36 months for CBU imported vehicles in line with CKD vehicles locally assembled. Since Vietnam has signed EVFTA and has committed to accept UNECE/ECE certificates or test reports emission certificates, the current practice of testing and retesting is in contradiction with the EVFTA.

We recommend that European-made vehicles should only undergo the first homologation without subsequent retesting as Vietnam National Technical Regulations on Safety and Environmental Protection for Automobiles refer to United Nations Economic Commission for Europe (UNECE/ECE) standards and regulations for vehicles as well as automotive components for assembly.

According to Articles 6.1.b and 6.1.c. of Decree 116, CKD components are to be tested in Vietnam. These include safety parts, tires, lamps, mirrors, glass, wheels and fuel tanks. That means parts imported from the EU with UNECE/ECE certificates or test reports will no longer be accepted for test exemption unless the certificate or test report provided is from a country which has signed a Mutual Recognition Agreement (MRA) with Vietnam. This is despite the fact that Vietnam National Technical Regulations on Safety and Environmental Protection for Automobiles refer to UNECE/ECE standards and regulations. We recommend that the Government keeps the current practice of accepting UNECE/ECE certificates for parts that completely align with existing Vietnam National Technical Standards. For imported parts and equipment, a valid UNECE/ECE-type approval and/or test report attached to a product should be considered sufficient evidence of a valid certificate. This will help businesses to cut costs and administrative workload, save time, aligning with the target of administrative reforms in Vietnam as well as the objectives and principles of the EVFTA, namely promoting mutual recognition and eliminating and preventing non-tariff barriers to bilateral trade.

Moreover, comparing to the same Annex 2-b, the current certification of parts and equipment is still required in practice. It is expected that the EVFTA will reduce the administrative burden significantly. The requirements for component certification include: Type approval; Test report; and COP assessment. If only requirements No. 1 and No. 3 can be satisfied, then the component is to be tested in Vietnam lot-by-lot.

For cases where only the type approval and the COP assessment are available, we recommend that component testing will only be required for the first shipment (provided that this has the same component, i.e. same type, model code, manufacturer). In such cases, the component certificate granted should be valid for the same period as the locally assembled vehicles (36 months) year, instead of following the current requirement of testing the components lot-by-lot.

7.2.8 Wines and Spirits Sector Committee

The European Union wine and spirits industry has been supportive of an ambitious FTA with Vietnam from the very beginning as it expected to benefit from a mutual opening of markets. The EVFTA will facilitate the market access of EU wines and spirits to Vietnam through tariff concessions, and ultimately elimination, on EU originated wine and spirits based on non-alteration rules and a clear set of guidelines and requirements to prove origin in order to be qualify for the concession benefits, European brand and Geographic Indications (GIs) protection, as well as trade facilitating reforms to simplify administrative measures and to harmonise the technical regulations with international practices. We would respectfully request the Vietnamese Government to conduct a speedy and smooth ratification of the EVFTA for implementation. Under the frame of the EVFTA, the industry expects a stricter enforcement of Vietnam's Intellectual Property Rights laws, especially on Geographical Indication (GI) for key European wine and spirits' GIs such as Champagne, Cognac, Scotch Whisky etc. Any changes to labelling requirements, food safety or technical regulations for alcoholic beverage should be harmonized with international practices that assure product quality and safety for consumption without imposing unnecessary technical barriers to trade.¹⁶¹

¹⁶¹ Guide to the EU-VN Free Trade Agreement 2016 (Page 32-33)

Special Consumption Tax

Updating on the current customs and trade facilitation practices, we would like to note that the European wine and spirits industry has suffered from successive reforms of the Special Consumption Tax (SCT), combining a progressive increase of the rates from January 2016 to January 2018 (from 25 percent to 35 percent for wine and 50 percent to 65 percent for spirits) and a change of the taxable price (from the import price, i.e. CIF to the importers' selling price) also starting from January 2016. The negative impact of these reforms on our operators is very significant as the tax burden on importers has in some instances more than doubled, particularly on more premium EU wine and spirits products.

The amount of SCT payable under the new regime, introduced after the conclusion of EVFTA in December 2015, is substantially higher than the total taxes (SCT + import duty) payable under the old SCT law. This means that at zero import duty from full implementation of EVFTA from the 7th year, the tax barrier will be at the same level and there will be no improved access to the Vietnamese market for legitimate importers despite the achievement from the EVFTA negotiation. The successive reforms of SCT have fully nullified the good outcome of the EU-Vietnam FTA. It would consequently lead to more cross-border activities, consumption of unrecorded alcohol as well as counterfeit of popular high-value items, and thereby exacerbate revenue loss from tax leakage and increase the risks to public health.

Our Sector Committee would also like to engage with the Government and the Ministry of Finance (MOF) to initiate a positive dialogue and explore an evidence-based alcohol tax roadmap that addresses public health concerns around harmful consumption while supporting the competitiveness of legitimate operators vis-à-vis the illicit ones. Furthermore, we would like to request greater transparency in MOF's evaluation and impact assessment of SCT regime reforms since 2016 before moving to any new proposal, including the plan in Ho Chi Minh City. We believe in time public consultations of any proposed change to the SCT regime would bring predictability and stability for long-term businesses planning and will benefit revenue collection in Vietnam too.

Wines and spirits represent less than 3 percent of the legal alcohol consumed in Vietnam in which European imported ones account for a very small part. We believe that a fair and reasonable taxation system should weigh equally on each component of the alcohol industry in Vietnam, including unrecorded alcohol which amounts to more than 70 percent of the alcohol consumed in the country.¹⁶²

Customs Valuation and Trade Facilitation

Our members have experienced that administrative errors (e.g. checking the wrong box on a declaration form) seem to increasingly be the focus of many tax and customs audits instead of the substance. The nature of the administrative errors, such as inconsistencies in a customs declaration or what is considered a failure to follow a non-tax procedure, is simply an administrative mistake, which does not change the nature and substance of the transaction. Therefore, it should not be used as the pretext for the customs or tax authorities to apply tax arrears and penalties or deny a tax refund.

The Government should assess the long-term impact of these practices vis-à-vis business confidence. Our members would like to work with and support the Government to achieve its tax-management ambitions. On customs valuation, we urge a focus on substance over form. In addition, we seek more transparency from the government to share their rationale and evidence as to how they come to their decisions with affected businesses. This would ensure compliance with WTO rules, improve transparency and allow companies to set the right market price, which benefits consumers and ultimately boosts both imports and customs revenue.

In the long run, we hope the government can take a principled, 'light touch' approach to regulation, focusing on substance over form. We hope to work closely with the Customs authorities to champion their role not only as regulators, but also as facilitators for businesses. This would create conditions for a more predictable and consistent source of tax revenue for the Government, and a pro-business environment that promotes growth in Vietnam.

¹⁶² WHO Global Status Report on Alcohol and Health, 2014 – Country Profiles: http://www.who.int/substance_abuse/publications/global_alcohol_report/profiles/vnm.pdf

Comments on the Draft Law on Prevention and Fighting against Harmful Effects of Alcohol Beverages

The W&S SC supports the Government's efforts to prevent and counter harmful impacts of alcohol abuse. We, however, are very concerned with some of the very restrictive measures proposed by the Draft Law on Prevention and Fighting against Harmful Effects of Alcoholic Beverages (the "Draft Law"). The Draft Law suggests to further increase SCT to reduce alcohol consumption, impose ban on e-commerce, more restrictions on advertisements and promotion, ban of sale at certain times of day, control shop density, ban on sponsorship for cultural and sports events, etc. which are merely commercially disruptive measures rather than addressing public health concerns. In addition, it proposes a compulsory financial contribution into a Health Improvement Fund or earmarked tax on alcoholic beverages, which will be inconsistent with the Government's policies and efforts to reduce non-budgetary funds and reform organisational and management structure of Government authorities. In the context that imported alcoholic beverages are already subject to significantly high tax, the compulsory contribution will only create additional tax burdens on EU wine and spirits importers.

It is recommended that the Government should allocate some revenue collected from the industry for tackling the harmful use of alcohol instead of imposing an earmarked tax or additional compulsory contribution. The Draft Law should focus on (i) improving public health protection through strengthening the control of production and circulation of unrecorded alcohol; (ii) changing the mind-set and behaviours of consumers through education and communications, especially at the grassroots levels; and (iii) prevention of violations caused by alcohol abuse through strict remedies and penalties.



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