

# AmCham EU supports conclusion EU-Vietnam FTA

## ***Conclusion of a comprehensive EU FTA with Vietnam would benefit the two trading partners and the entire ASEAN region***

### **Executive summary**

Members of the American Chamber of Commerce to the European Union (AmCham EU) support the conclusion of a comprehensive free trade agreement (FTA) with Vietnam securing open, free and unrestricted reciprocal access to markets with transparency and non-discriminatory regulatory treatment.

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*AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled €2 trillion in 2013 and directly supports more than 4.3 million jobs in Europe.*

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## **Introduction**

Members of the American Chamber of Commerce to the European Union (AmCham EU) support the conclusion of a comprehensive free trade agreement (FTA) with Vietnam securing open, free and unrestricted reciprocal access to markets with transparency and non-discriminatory regulatory treatment.

With bilateral trade in goods reaching over €23.8 billion in 2012, the further opening of the markets will increase the trade flow in goods and enhance growth, jobs and innovation.

AmCham EU's membership is composed of producers, exporters, importers and users of products and services in different sectors. Therefore, we have both offensive and defensive interests. For some members, Vietnam is one of their major sourcing and manufacturing countries. It is also one of the fastest growing markets in Southeast Asia with substantial potential for consumption of their goods and services.

In addition to full and immediate tariff reduction on goods, AmCham EU also supports a comprehensive approach in relation to the scope of the FTA to remove non-tariff barriers (NTBs) as well as the broadest range of services, investment, regulatory issues, intellectual property rights (IPRs), trade facilitation, public procurement and sustainable development that are of major importance to AmCham EU members.

A successful conclusion of the EU–Vietnam FTA would not only be beneficial for the two trading partners but also for the entire ASEAN region as it would support the ambitions of reaching an interregional trade agreement between the EU and ASEAN in the future.

## **Considerations related to all sectors**

AmCham EU members' priorities in the EU–Vietnam FTA are tariff dismantling, elimination of non-tariff barriers, a free and open internet, and transparent, non-discriminatory and predictable regulation. We also believe a meaningful agreement must promote clear and flexible rules of origin (RoO), adequate enforcement of IPRs, improved access to services and modern investment rules.

### *Tariffs*

We urge EU negotiators to press for commercially meaningful annual reductions on tariffs for EU exports to Vietnam. Accordingly, AmCham EU supports the goal of totally dismantling import duties for a minimum 90% of tariff lines for Vietnamese and European exports across all tariff lines of the Harmonised System.

To maximise the benefits for companies and consumers, we urge negotiators to press for full and immediate elimination of duties for footwear (HS Chapter 64), apparel (HS Chapters 61-62), bags (HS 4202) and wine and spirits (HS 2204 and HS 2208) without phase-out periods.

### *Market access issues and non-tariff barriers*

Emphasis should be put on the dismantling of NTBs within Vietnam to improve access for European exporters, service providers, ICT services and business conditions for companies operating in Vietnam. Members strongly believe that Vietnam should ensure that they fully respect their WTO commitments and eliminate any WTO-inconsistent measures prior to the conclusion of the FTA.

Members of AmCham EU have experienced some market access difficulties in Vietnam. Notably they are calling for:

- The elimination of export tariffs still applied on some exports from Vietnam to the EU;
- Ensuring that import licenses are distributed on a non-discriminatory basis;
- Guarantees that current practices to afford preferential treatment to domestic firms are abandoned; and
- The removal of the attribution of trading licenses in Vietnam, quotas for distribution and trading licenses, as well as the limitation to one type of license (distribution, wholesale or retail) in Vietnam.

Before European businesses can open a retail outlet in Vietnam, they have to apply for a business license and undergo the cumbersome Economics Needs Test. Clear rules explaining the criteria and the application of an Economics Needs Test would help businesses with getting a license for the opening a retail store.

Current practices do not match official documented processes. While import licenses for chemicals products can be granted for a 12-month time period, in practice they are only issued for three to four months at a time. This can result in the expiration of the license prior to the arrival of the products at the port and reduced product availability, as well as additional costs and efforts related to the application of an extension of the license. AmCham EU members encourage Vietnam to ensure that import licenses for chemical products are granted within the full time period defined by law, in addition expired licenses for which a renewal has been submitted shall be deemed to remain valid until the renewal has been granted or specific grounds for its denial provided.

Concerns also exist about the increasingly repressive attitude towards free expression and the free flow of information on the Internet.

Beyond the issues outlined above relating to market access hurdles, AmCham EU members would particularly like to call on both the EU and its Vietnamese counterparts on enhancing their collaboration with specific sectors, particularly the pharmaceuticals sector. As has been the case in previous EU FTA negotiations, the EU should include a pharmaceuticals annex in the EU-Vietnam FTA. The domestic regulatory framework and processes pertaining to government pricing and reimbursement should be fair, transparent, reasonable and equitable, regularly conducted, with decisions justified based on verifiable criteria. Industry would seek the FTA to include rules in line with the EU Transparency Directive and other EU FTAs (including with Korea). This annex should establish also an institutional framework, in the form of a working group that allows for regular dialogue on the operation of the pharmaceutical market and oversees the enforcement of the FTA commitments as well as providing a platform to advance key policy areas.

### *Regulatory issues and technical barriers to trade (TBT)*

Vietnam government offices will sometimes conduct public consultations on draft standards or technical regulations. Even though this gives private entities (both domestic and foreign investors) and industry associations an opportunity to submit comments and feedback, AmCham EU would like these consultations to become more systematic and that they are conducted through a transparent and more inclusive process that will ensure the participation of all operators directly affected by the technical regulation.

Regulatory hurdles delay entry of innovative pharmaceutical products. The FTA should seek further harmonisation to ensure regulatory frameworks that are consistent with international/EU standards, and efficient and transparent approval of pharmaceutical products (including a streamlining of regulatory processes domestically and across the region, e.g. clinical trial regulation and labelling). Among other things, Vietnam should address long regulatory approval times and delays in renewal of market authorisation registrations as well as burdensome requirements for retesting and labelling, and waive the requirement for local clinical trials for products that have already been reviewed and approved by major reference agencies such as the EMA and FDA.

### *Rules of origin*

It is of the utmost importance to secure rules of origin (RoO) that allow for the use of regional hubs – a cornerstone of a lot of economic operators' supply chain model that allow for economies of scale – while retaining the eligibility for preferential tariff rates agreed in the FTA.

Appropriate RoO are key to the growth of European exports in the region since the hub model is a necessity to keep pace with modern supply chain models. Asian hubs, such as Singapore, enable operators to ship goods from Europe, consolidate shipments of non-country specific goods, and apply country-specific labels and tax stamps on some goods such as wine and spirits, and ship on to final markets. This model significantly decreases order fulfilment time for customers, provides for significant cost savings and adds flexibility.

AmCham EU strongly supports the harmonisation of rules of origin across ASEAN partners and the region. The rules of origin should be easy to use, objective, transparent, fit for the sector of industry concerned and predictable. AmCham EU members support rules of origin that allow for full regional cumulation between countries with which the EU has FTAs, even beyond ASEAN.

Rules of origin should recognise the realities and benefits of modern global supply chains. Therefore, AmCham EU urges the introduction of simpler and more transparent rules of origin with Vietnam. Complex RoO can often lead to loss of preferential duties and impose considerable additional costs on supply chain management for companies.

For the textiles and clothing sector, the General System of Preferences (GSP) double-transformation rules mean that Vietnam cannot benefit from preferences where imported fabric is used to make finished garments, as Vietnam does not have the infrastructure to supply the amounts of fabric used in production. A move toward a single-transformation rule would provide very significant benefits for the garment industry in Vietnam, and for the European consumer.

### *Intellectual property rights (IPRs)*

While we recognise that in recent years the legal framework for protection of IPRs has evolved toward greater compliance with international standards (and notably TRIPS), counterfeiting and piracy are still a significant challenge in Vietnam and IPR protection and enforcement remains deficient in several areas.

An effective IPR regime with commensurate enforcement is essential for branded goods manufacturers to trade with Vietnam and to manufacture in Vietnam (including enhancement of the protection afforded to key geographical indications). As such, AmCham EU would like to see more effective criminal prosecution of counterfeiters. Today, the criminal enforcement framework applied to IPR infringements does not constitute a deterrent. In addition, Vietnamese law should explicitly define the export of counterfeit products as illegal. The export of trademark infringing products remains accepted and ignored by customs enforcement authorities.

Effective protection and enforcement of IPRs are essential for innovative EU pharmaceuticals companies, which currently face a substandard level of protection and difficult enforcement conditions in Vietnam. As with other FTA negotiations with ASEAN countries, the EU should seek to strengthen and enhance domestic IPR standards in Vietnam, along the lines of EU standards. The EU should seek commitments from Vietnam to apply an effective regulatory data protection mechanism along EU and international standards. The EU should seek to improve the IPRs enforcement standards and related procedures in Vietnam, by supporting technical cooperation and encouraging training of both judges and enforcement authorities. The EU should ensure the patentability of use claims in general, including secondary medical use inventions, in Vietnam.

Protection of European geographical indications (GIs) could be enhanced. While Vietnam has taken some positive steps, such as recognition of some EU GIs, we believe there is room for improvement. We strongly support protection of a short list of key EU wine and spirits GIs, similar to the successful outcome reached in the EU-Korea negotiation.

An additional comment relates to the importance of ensuring lot codes on EU products are not removed or tampered with. There is no legitimate reason to remove product lot codes as this is the only way that they can be traced back to the source. The removal of lot codes by some economic operators prevents an effective recall of the products by their producers, which causes a health risk when it comes to ingested products such as food or drinks.

### *Investment*

Vietnam's WTO commitments, as well as some bilateral and regional trade agreements, set out restrictions on services and investment. The WTO commitments set out quantitative restrictions on foreign investment in a few business sectors by capping the level of foreign ownership in entities operating in those restricted areas, requiring a joint venture with a local party. While some business lines simply require a joint venture, other business lines have a specific limit on the proportion of foreign investment in the joint venture. For example, entities operating in advertising must have a joint venture, but there is no specific cap on the level of foreign investment. In contrast, entities providing freight transportation services must have a joint venture in which the foreign party's ownership is limited to no more than 51% of the entity's charter capital. Some caps are scheduled to phase out over time, and some are permanent. AmCham EU members would welcome the inclusion of provisions that allow for unrestricted foreign ownership by EU entities, including the establishment of local branches in Vietnam.

More than five years after WTO accession, granting of import rights is yet to be legally implemented for the pharmaceutical sector, which was committed to by Vietnam. Currently pharmaceutical companies operate in Vietnam via representative offices. The rights of these offices, including distribution rights, are vaguely defined. The authorities should provide clarity to address the rights of the representative offices.

The very nature of pharmaceutical operations is such that restrictions on distribution, as it has been defined by Vietnam, pose a fundamental challenge to the ability of companies to operate and expand in Vietnam. Regardless of Vietnam's WTO commitments and their level of implementation, trading rights without distribution means that freedom of operation remains restricted. Even if Vietnam were brought into compliance with its WTO commitments, the continued presence of distribution limitations means that companies cannot operate on a level-playing field with domestic companies.

The EU wine and spirits industry has concerns regarding the new licensing scheme put in place by the Vietnamese authorities in 2013 (Decree 94/2012/ND-CP). By preventing operators from holding more than one type of licence (either a distributor, wholesaler or retailer license), restricting the importation to distribution licence holders and imposing a quota on the number of licenses available, the new system could threaten the operations of foreign companies in Vietnam. On top of appearing non-WTO compliant, these measures contradict the commitment of Vietnam to open up its market in the framework of the upcoming FTA.

Given that importation and distribution are two sides of the same coin, we believe that the Vietnamese authorities should be called on to address unmet commitments on importation as per their commitments upon joining to the WTO. In addition, we ask that the FTA deliver on the imperative need to enable companies to operate effectively through the lifting of restrictions on distribution, thereby removing artificial barriers whose continued presence serves first and foremost to protect the interests of domestic companies and competitors.

Furthermore, domestic laws set out substantive conditions on investment in certain areas. For example, real estate businesses must comply with the investment conditions set out in the Law on Real Estate Business, credit institutions with the conditions set out in the Law on Credit Institutions, and so on. AmCham EU members support more clarity and consistency in these areas.

The Vietnamese licensing authority often suspends the process of granting an investment certificate until it has obtained feedback from the respective ministry that is responsible for a specific sector, which can take very long. Further delays are also caused by the need to legalise/authenticate all foreign documents. AmCham EU members recommend that a specific timeline be defined (i.e., 15 or 30 working days), by which the respective ministries need to respond to the licensing authority. In case of no-response within that deadline, the licensing authority would be authorised to proceed with issuing an investment license. Furthermore, we advocate removing the requirement for document legalisation for EU investors/EU-based companies.

With regard to hiring and work permits, Decree No. 46 of 17 June 2011, which requires companies to offer training/apprenticeships contracts to Vietnamese employees (expected to substitute the respective foreign employees) upon the renewal of work permits for foreign employees, as well as cumbersome bureaucratic processes for obtaining work permits, are restricting recruitment of foreign employees in Vietnam, including from the EU. The agreement should simplify reporting and documentation requirements, and eliminate government interference in the foreign employee recruitment process, such as, removing the requirement to publicly post a recruitment notice 30 days in advance to allow



for domestic applications and remove requirement for training local employees. In addition, it should ensure that once a work permit is granted to a foreign employee, intra-company transfers across various subsidiaries in Vietnam are allowed. Furthermore, the Vietnamese government should provide visa exemption for EU citizens who have a short stay in Vietnam, especially for those who come to Vietnam for business purposes.

### *Services and public procurement*

AmCham EU members are aware of the Prime Minister's Directive no. 494/CT-TTg of 20 April 2010 on the use of domestic materials and goods in bidding for state-funded projects. Based on this directive, international bidding is held only if domestic goods, materials and equipment cannot meet package requirements or those cannot be provided locally. This legal document together with other provisions discouraging the importation of many products has a significant effect on market access.

The EU-Vietnam FTA should include provisions on digital economy issues, including clear benchmarks for freedom of expression and the free flow of information online. The FTA also needs to ensure cross-border data flows and remove local data storage requirements. Data flow commitments should be negotiated to complement cross-border services commitments and promote responsible and accountable treatment of data. This should be achieved through binding provisions in the EU-Vietnam FTA, balancing the need to protect data with the right to move data. The EU and Vietnam need to work together to develop approaches to data security and protection that will instil confidence in, and reduce resistance to, cross-border data flows. It could reduce the government's perceived need to restrict data flows and provide greater opportunities for cross-border trade in services.

### *Trade facilitation*

AmCham EU members encourage more efficient, coherent and simplified customs procedures to accelerate the release and customs clearance of goods. They would therefore welcome improved transparency of regulatory information and procedures. In particular, the rules governing customs and tariffs should be available online, up-to-date and published in a common language.

AmCham EU members face a wide range of issues with Vietnamese customs authorities with regard to procedures, processes and requirements for imports, exports and transit of goods. This is due to:

- Complex processes and regulations;
- Different approaches, treatment and interpretation of regulations as well as changing requirements across customs working in different zones as there is very limited cooperation between the regional customs zones;
- Poor infrastructure leading to problems with transit;
- Poor communication from authorities; and
- Higher administrative burden due to outdated computer systems.

AmCham members recommend a central point of contact so that business has an avenue to resolve differences in treatment and interpretation of regulations.

AmCham EU also supports the adoption of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. This would ensure that prices paid for transactions between related parties are in line with the prices that would have been extended if the parties were independent third parties.