

# CHAPTER 11 TRANSPORTATION AND LOGISTICS

## OVERVIEW

The Transportation & Logistics Sector Committee of EuroCham highly values the continuous efforts of the Government in recent years to improve Vietnam's transportation infrastructure and its import-export procedures. Vietnam, with its favourable conditions in terms of geographic location, labour force, and stable political environment, has seen a strong growth of its manufacturing sector and corresponding import and export volumes.

In the first ten months of 2018, compared to the same period the previous year, the total import and export turnover of the country reached US\$396.85 billion, increasing 13.8 per cent. Of this, the value of exports reached US\$202.03 billion, increasing 15.2 per cent, and imports reached US\$194.82 billion, increasing 12.4 per cent.<sup>1</sup> In light of this rapid development, Vietnam has a valuable opportunity to position itself as a key player not only in the manufacturing industry, but also in the transportation and logistics industry.

High-quality logistics infrastructure, along with effective and efficient customs procedures, are two key elements Vietnam needs to achieve in order to continue to attract foreign direct investment; to increase its competitiveness compared to other countries in the region; to connect local Vietnamese companies into global supply chains; and to become a transportation hub for ASEAN.

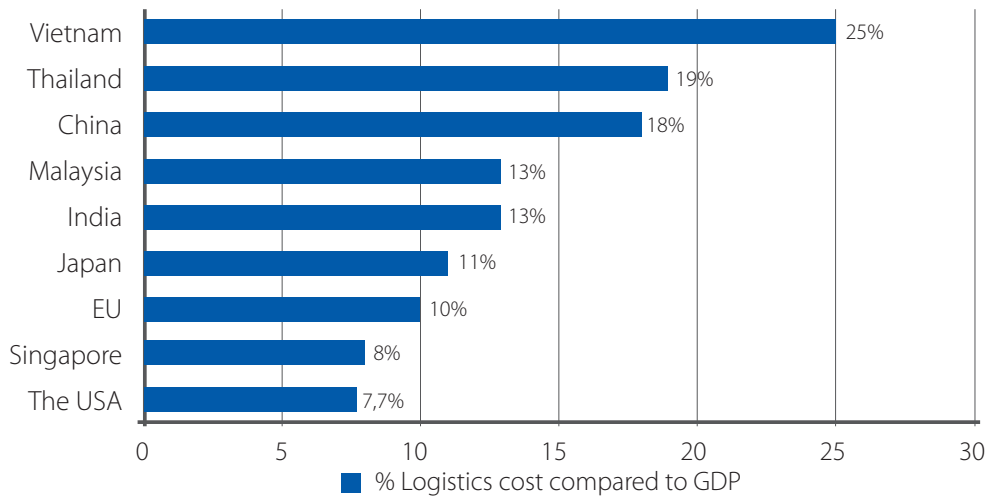
## I. INFRASTRUCTURE

Relevant Ministries: Ministry of Transport (MOT), Ministry of Finance (MOF), Ministry of Planning and Investment (MPI)

Transport infrastructure has been identified as one of the key factors the Government should address in order to reduce logistics costs. Indeed, the cost of logistics in Vietnam is relatively high compared to others in the region and the world, as described in Figure 7. This makes Vietnam less attractive as a rising logistics hub. Therefore, businesses in the transportation and logistics industry are encouraged by Directive 21.<sup>2</sup> Acknowledging that there are certain drawbacks with the current transport infrastructure system in terms of uniformity, synchronism and connectivity, this Directive has shown the determination of the Vietnamese Government to improve logistics infrastructure in the country.

1 "The situation of export and import of goods of Vietnam in October 2018 and 10 first months of 2018", *Vietnam Customs*, 2018. Available at: <<https://www.customs.gov.vn/Lists/ThongKeHaiQuan/ViewDetails.aspx?ID=1509&Category=Ph%C3%A2n%20t%C3%ADch%20%C4%91%E1%BB%8Bnh%20k%E1%BB%B3&Group=Ph%C3%A2n%20t%C3%ADch>> last accessed on 24 February 2019

2 Directive 21/CT-TTg dated 18 July 2018 of the Prime Minister promoting the implementation of solutions to reduce logistics costs and effectively connect transport infrastructure.

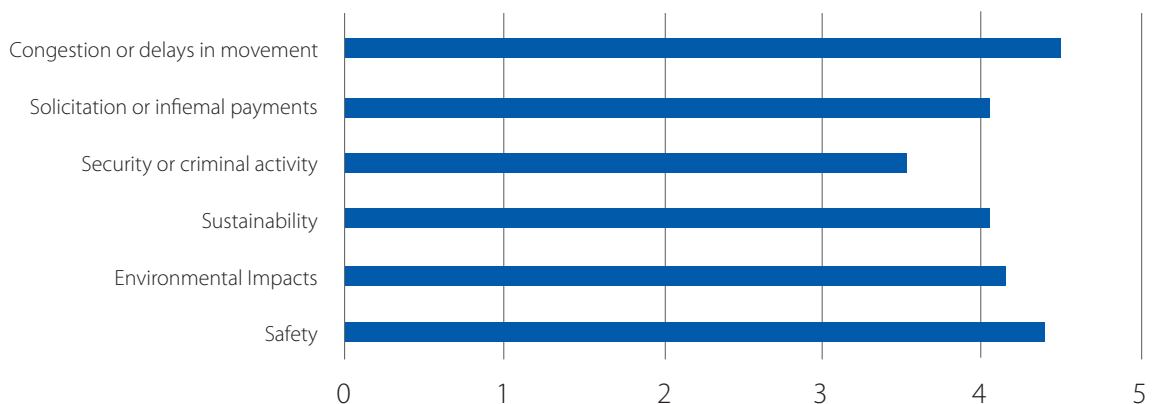
**Figure 7. Logistics cost compared to GDP in Vietnam and other countries**

Source: Center for Statistics and Science and Technology Information of Ho Chi Minh City

However, the journey to improve transport infrastructure in Vietnam will be long and challenging. There are key aspects that need to be addressed urgently with further and focused investment. In 2018, we conducted an internal online survey, with questions adapted from the World Bank's logistics performance index studies, to conduct an overall evaluation of the current situation of Vietnam's transport infrastructure from the perspective of business. The survey results show that most issues are under the management and direction of the Government, while the private sector can contribute to certain other issues. Therefore, the development of transport infrastructure in Vietnam needs to involve tight cooperation between the Government and the business community.

### Issue description

Our 2018 survey points out that most businesses are concerned about safety when using the logistics infrastructure systems within Vietnam as well as the limited capacity of the systems, resulting in congestion or delays in movement. Matters such as solicitation, informal payments and paying under the table have been positively changed in recent years thanks to the effort of the Government, but still, they remain an area of concern for businesses.

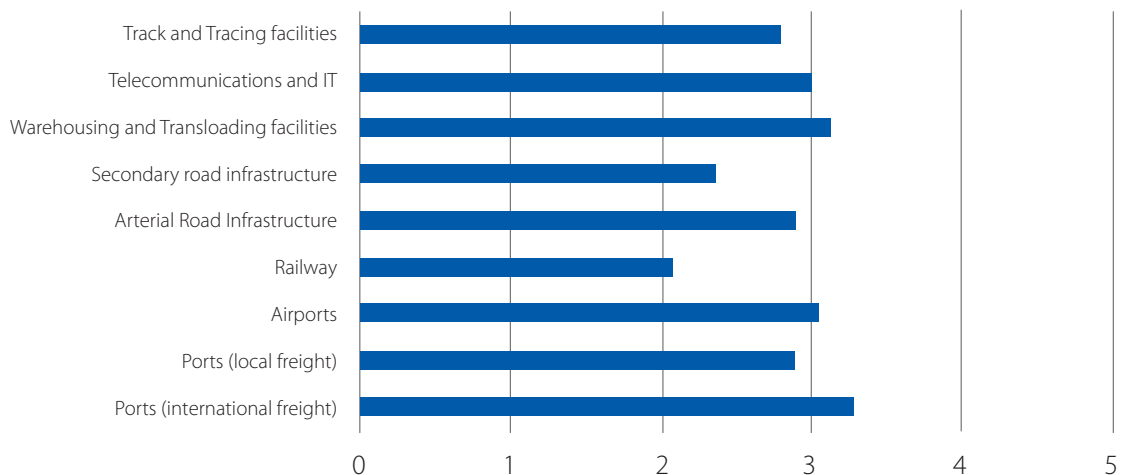
**Figure 8: Major concerns from business for transport infrastructure in Vietnam**

Source: EuroCham Transportation and Logistics Sector Committee Survey conducted in 2018

Regarding the service quality of the infrastructure system, the survey results show that most infrastructure in Vietnam, from road to railway, from aviation to waterways, has not completely met the expectations of business. In particular:

- **For roads:** Although there are many new expressways being constructed under Public-Private Partnerships, the quality of these expressways, their operation and management (e.g. fee systems), have resulted in their under-utilisation, and not alleviated the issue of congestion on subsidiary/alternative routes. More attention needs to be given by the Government to these important issues.
- **For waterways:** The ports and ICDs in Vietnam, especially in the South, have generally fulfilled the current demand of business. However, the congestions at ports, typically at Cat Lai terminal during peak periods or after long holidays, has created extreme difficulties for businesses in terms of costs and timings.
- **For railways:** The designed system and geographical coverage still need to be improved. They do not meet international standards in terms of speed, quality of service and so on. In practice, railways should be one of the most efficient and commonly used means of transport. Therefore, we are delighted to know that in July 2018, the National Assembly Standing Committee allocated VND 7,000 billion for 4 projects, aiming to upgrade rail and rail-bridges in Vietnam.<sup>3</sup>
- **For aviation:** Although currently Vietnam has in total 21 airports, only 4 among them have separate cargo terminals. The lack of logistics service centers in, or close to, airports also prevents Vietnam from taking full advantages of freight transport.
- **For telecommunications and IT infrastructure:** The implementation of the National Single Window and the ASEAN Single Window has initially been a success. The VNACCS/VCIS system has contributed greatly to the customs clearance processes in terms of shortening time, simplifying paperwork and minimising the risk of solicitation and informal payments though these do still occur during direct interactions with Customs officers. However, we observe that there continue to be delays caused by the administration in connecting their specialised procedures to the National Single Window and the ASEAN Single Window.<sup>4</sup> These delays have created negative impacts compared to the ultimate goals of the Government of reforming specialised inspection for imported and exported goods and customs and trade facilitation from 2018 to 2020.

**Figure 9: Service quality evaluation for transport infrastructure in Vietnam**



Source: EuroCham Transportation and Logistics Sector Committee 2018 Survey

<sup>3</sup> "Allocation of 7 billion VND for 4 railway projects", *ThanhNien*, 3 August 2018. Available at: <<https://thanhnien.vn/tai-chinh-kinh-doanh/cap-7000-ti-dong-cho-4-du-an-duong-sat-989777.html>> last accessed on 3 December 2018.

<sup>4</sup> "Many ministries still delay connecting to National Single Window", *CustomsNews*, 20 October 2018. Available at: <<https://customsnews.vn/many-ministries-still-delay-connecting-to-national-single-window-8696.html>> last accessed on 3 December 2018.

### Potential gains/concerns for Vietnam

Vietnam has great potential and an ideal location to capitalise on further investments and improvements in logistics infrastructure. This could drive Vietnam into a stronger competitive position, within the upper quartile of regionally competing countries. Positioning Vietnam as the new ASEAN transportation hub compliments and aligns with the Government's policies both economically and socially.

However, the relatively low-level of priority for improving the current infrastructure systems, results in the reduced effectiveness of Vietnam's transportation and logistics industry, and has caused a comparative increase in costs. If planned new projects lack conformity and connectivity between different modes of transport, then the infrastructure system will still not be optimised. A large-scale infrastructure improvement plan requires effective implementation. Management and oversight by Government is critical, but quality management of the construction projects should be the top priority for Vietnam, to ensure resources and finances are effectively, and efficiently, allocated.

All the above matters prevent Vietnam from reaching its significant positioning within ASEAN both in terms of transport, logistics management and other aspects.

### Recommendations:

- Inland waterways, railway and aviation development are important to release the pressure on road transport. Considering future developments, equal priority should be given to the effective movement of both passengers/commuters and transported goods. The inefficiencies in coordination of one area will immediately impact the other.
- We request the Vietnamese Government conducts in-depth research on the connectivity between different modes of transport among the infrastructure systems. Inter-ministerial cooperation is crucial in terms of planning and locating new manufacturing and distribution areas to optimise the usage of the future intermodal transport infrastructure;
- The supervision role of the Government is emphasised in order to not only ensure the effective allocation of resources, but also ensure the safety and the sustainability of these constructions. This would also contribute to the trust of business and society, as well as elevate the image of Vietnam for further FDI investment;
- The implementation of high-tech solutions in transport infrastructure, typically the National Single Window and the ASEAN Single Window, needs to be synchronised across all engaged Ministries to ensure optimal solutions for reducing logistics cost. We propose a clear deadline, ideally at the end of 2019, for all involved Ministries to finish incorporating their procedures to the common system, and;
- For the long-term planning, the Vietnamese Government should consider applying new technologies such as Blockchain, e-DO (electronic delivery order) for LCL shipments, e-Ports, e-tolls etc. to simplify import, export & transport procedures and support business.

## II. CUSTOMS

EuroCham members welcome Vietnam's notification, in late 2018, on Category commitments under the WTO's Agreement on Trade Facilitation. We see this as a vital step in the continued drive towards a lean, efficient, and transparent trade environment. We also believe that Vietnam's proactive actions in implementing these commitments will support the approval of the EVFTA. EuroCham, and its members, are keen to support Vietnam's fulfillment of such commitments; especially those listed in Category C in the schedule, and would welcome opportunities for on-going dialogue on these issues.



## 1. Customs valuation

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

### Issue description

The issuance of Circular 39<sup>5</sup> was welcomed by EuroCham members, as it provides clarity on the basis for customs value verification and on the grounds for rejection of declared customs values. However, the shifting of the verification process from post-clearance to border Customs appears to have had little impact on improving the quality of Customs' assessments.

In a recent survey on customs conducted by TLSC among EuroCham members, nearly 40 per cent of respondents reported frequent challenges from Customs at the import border point. A particular concern was seen in the assessment of the quality of the price consultation process conducted by border Customs, which was only rated as slightly above average, with lowest marks given to the "Technical knowledge of Customs officers on the valuation methodology".

Circular 39 requires declarants of imported goods to prove to border Customs that they qualify for the Transaction-Value method by presenting documents prescribed in the Circular. In general practice, enterprises are only able to evidence their qualification for the Transaction-Value method with reference to accounting records, which is unrealistic to provide at the border clearance point.

During the price consultation process, several issues remain unresolved. Specifically, our members have reported that:

- There were no clear explanations provided by border Customs on what "grounds" they have to reject the declared value, or on how the new customs value (that Customs thinks should be applied) has been determined.
- Customs reject the declared value based on the "form" rather than "substance" (please refer to the Wine & Spirits Chapter on Customs Valuation for more detail), or Customs simply state that "presentation and supporting documents were not sufficient" without providing any evidence that the transaction values were not acceptable; and
- For non-commercial goods (where there is no formal price consultation process) arbitrary values are often advised to the importer. Importers do not receive any explanation as to the basis of this value, and seemingly there is no recourse to challenge it.

### Potential gains/concerns for Vietnam

Transparency, predictability and the consistent application of Customs regulations are key factors when enterprises, especially MNCs, are considering making long-term investments in Vietnam.

Border Customs' lack of knowledge on valuation methodology makes the price consultation process inefficient. This makes the customs process very time-consuming and costly for business, instead of being a helpful channel for improving the declarants' compliance in the future.

The lack of certainty as to whether the declared values will be accepted by Customs makes it difficult for enterprises to plan financially. This also leads to a failure to have an open, and formally documented price negotiation process. Furthermore, it leaves the door open for individual Customs officers to take advantage of grey areas, and for resolving pending issues through informal payments by declarants.

<sup>5</sup> Circular 39/2018/TT-BTC dated 20 April 2018 of the Ministry of Finance amending Circular 38/2015/TT-BTC dated 25 March 2016.

### Recommendations:

We would like to recommend that increased focus should be given to improving the quality and consistency of the price consultation process. Specifically, it is suggested that:

- Further regulations/guidelines should be issued by the Customs:
  - Stipulating what type of documents the declarants should present in the price consultation process (in comparison to the documents presented at post-clearance audit) to support their use of transaction value, particularly, where trade is between parties with a special relationship;
  - Clarifying that the burden of proof for determining and declaring the customs value initially lies on the declarant, but also stating that:
    - + Customs can only reject Transaction Value where they have grounds (supported by evidence) that the parties have not traded as if they were unrelated;
    - + The evidence that Customs have identified is formally shared with the declarant, and;
    - + Business practices adopted by enterprises in determining the Transaction Value of imported goods should be respected, and assessed as genuine practice, unless Customs can provide evidence that it is not.
- Border Customs undergo further capacity training to raise their understanding of valuation methodology and sector and industry practice, to ensure the price consultation process is more equitable and effective;
- The Government should offer a more practical scheme to support enterprises obtain rulings on customs valuation;
- Customs should, when assessing the acceptance of Transaction Values, formally take into consideration corporate tax transfer pricing policies and documentation, and;
- The price-consultation procedure should be extended to cover non-commercial imports.

## 2. HS Code classification

### Issue description

Certainty of treatment on the HS classification codes that will be accepted by Customs is another key issue for enterprises. Importers of finished goods into Vietnam are particularly impacted by changes to the HS codes that result in an increase in duty liabilities. The retrospectively-applied charges (covering duties, late payment interest, and penalties) are often backdated 5 years, can rarely be passed on by the importers to their customers, and so have a direct impact on the viability of the enterprise.

We recognise the recent efforts of Vietnam Customs in driving consistency in the application of HS codes nationally, through (i) regular reviews on the application and declaration of HS codes at all border points, and (ii) centralised issuance of classification Rulings.

However, despite these positive steps, our members still have serious concerns regarding the following:

- Inconsistencies in the classification opinions provided by Vietnam Customs. Specifically, there have been many instances where Customs have issued classification opinions, but have subsequently changed their opinions, and sought to collect retrospective tax duties, late payment interest, and penalties.
- Significant differences in the classification opinions of Vietnam Customs when compared to the HS codes accepted by Customs in the exporting countries. This has particular impact where Vietnam Customs have a



different opinion on the acceptable HS code (at even 2- or 4-digit level) to that stated on the Certificate of Origin (COO) issued and accepted in the exporting country. Although differences of opinion on HS codes has been considered a minor issue, and one which should not affect the validity of the COO, in practice we are increasingly facing rejection by Customs on the validity of COO due to the HS differences.

### Potential gains/concerns for Vietnam

Aggressive re-classification and collection by Vietnam Customs would make the business environment less secure for investors to maintain and/or expand their business in Vietnam. Meanwhile, limited classification guidance/reference are published by Vietnam Customs to facilitate the self-assessment of applicable HS codes of the declarants.

### Recommendations

Determining the applicable HS code classification for goods is often a challenging process for both enterprises and Customs. In order to support enterprises to classify their goods, and improve compliance, it is recommended that:

- Vietnam Customs publish on their official website (in both Vietnamese and English) all the legal reference sources of classification (issued within the last 5 years) and, at a minimum, those that were listed and committed to be published in Article 6 of Circular 14/2015/TT-BTC dated the 30<sup>th</sup> of January 2015;<sup>6</sup>
- The Classification Ruling database should incorporate a search tool to facilitate research by enterprises;
- Until the legal sources committed to under Article 6 of Circular 14 are published and accessible to enterprises, Customs should waive retroactive collection of duties, late payment interest and penalties;
- With respect to the verification of COO, to comply with Article 15.6 of Circular 38/2018/TT-BTC,<sup>7</sup> clear instructions from GDC should be issued regarding HS code differences which should not be the basis of COO rejection (regardless at which digit level) by Customs, unless there is clear evidence that different goods are presented at import);
- Where Customs change their opinion on the HS code to be applied to a product, they must provide the declarant with their decision in writing, with clearly stated rationale/grounds for changing their opinion, and;
- Customs regulations should be revised to regulate that, where all information requested by Customs was provided by the declarant at the time the original opinion was being considered and issued:
  - Any revised opinion(s) would apply from the date of issuance, and will not have retrospective effects; and
  - Customs would not seek to recover any historic additional duties, penalties and late payment interest arising from a change in Customs opinion.

### 3. On-the-spot export manufacturing/processing

#### Issue description

It is recognised by both the Ministry of Finance (MOF) and General Department of Customs (GDC) that Decree 134<sup>8</sup> did not provide clear guidance on the customs duty treatment of goods when traded under the on-the-spot export-import model.<sup>9</sup>

Recent rulings from GDC (including Official Letter 5826<sup>10</sup>) state that on-the-spot export is not regarded as an

6 Circular 14/2015/TT-BTC dated 30 January 2015 of the Ministry of Finance on customs procedures, customs supervision and inspection, export duty, import duty, and tax administration applied to exports and imports

7 Circular 38/2018/TT-BTC dated 20 April 2018 of the Ministry of Finance on regulations on identification of origin of imported and exported goods

8 Decree 134/2016/ND-CP dated 1 September 2016 of the Government providing guidelines for the Law on the Export and Import Duties.

9 "Will have tax exemption for On-the-spot exported and imported products", 27 November 2018, *Tuoitre News*, available at: <<https://tuoitre.vn/se-mien-thue-hang-hoa-xuat-nhap-khau-tai-cho-20181127221859165.htm>>, last access on 15 February 2019.

10 Official letter 5826/TCHQ-TXNK dated 5 October 2018 of the General Department of Customs on tax consequences for the on-the-spot exports.

“export activity” and, therefore, is not entitled to enjoy duty relief (or refund). This has been seen by EuroCham members as a harsh interpretation of Decree 134 and one which is in direct conflict with the VAT regulations.

The interpretation adopted by GDC has resulted in a large number of members facing significant potential exposure to retrospective collection of exempted/refunded duties on imported materials for export manufacturing and processing, and application of late-payment interest and penalties.

### Potential gains/concerns for Vietnam

Inconsistency in customs and tax regulations (both governed by MOF), and treatment by GDC of on-the-spot export creates confusion and uncertainty to enterprises. The approach of GDC also results in double taxation of import duty, namely on both input (i.e. materials at importation) and output (i.e. finished goods from such materials upon on-the-spot import) of one production process.

The rigid and narrow interpretation of “export activities” by Customs limits enterprises’ ability to engage with local Vietnamese companies within their supply chain; increases production costs; and results in products being less competitive on the global market. A number of our members indicate that their expansion plans are being seriously re-considered due to the harsh approach of Vietnam Customs.

### Recommendations

EuroCham members welcomed the statement by the Vice-Minister of Finance, Ms. Vu Thi Mai, on the 27<sup>th</sup> of November 2018 that the MOF, following the issuance of Official Letter 5826 of GDC, had taken note of enterprises’ concerns and, as a consequence, MOF has included in the revision of Decree 134 a proposal to the Government that import duty relief (or import duty refund) is permitted on materials/components imported under the on-the-spot export-import model.<sup>11</sup>

We look forward to seeing the issuance of the new Decree revising Decree 134 soon, and EuroCham additionally requests that, when the new Decree is published, it is accompanied by a clear statement from MOF and GDC that this interpretation will apply to all exports made under the on-the-spot export-import mode since September 2016.

## 4. Transparency of customs procedures

### Issue description

In our recent survey of EuroCham members, enterprises recognise the efforts of Vietnam Customs in making customs regulations more transparent. However, some issues remain in need of resolution, specifically where import practices do not meet the expectations of the business community. In particular, several members have reported that:

- There is a continued use of unofficial communication channels to address import/export issues, despite the existence of E-customs; and
- Some regulations are still vague and hard to understand, leaving room for different interpretation of border Customs officers.
- In some instances it had been indicated to them that unless informal fees were paid, their customs declarations could be subject to more rigorous processing checks and there could be delays in clearance of their shipments.

<sup>11</sup> “Will have tax exemption for On-the-spot exported and imported products”, 27 November 2018, *Tuoitre News*, available at: <<https://tuoitre.vn/se-mien-thue-hang-hoa-xuat-nhap-khau-tai-cho-20181127221859165.htm>>, last access on 15 February 2019.



**Potential gains/concerns for Vietnam**

EuroCham recognises that the practices can vary according to local conditions, and we acknowledge that some Department of Customs are more advanced in fighting against those practices particularly thanks to a greater use of e-customs

That said, lack of transparency in import regulations, and inconsistency in the application of customs procedures, are major difficulties for enterprises (especially FDI firms). These also create harmful effects to the economy of Vietnam, as they:

- › Discourage enterprises from developing and promoting good compliance practice;
- › Reduce confidence to invest in and trade with Vietnam; and
- › Result in the benefits of FTAs (including the upcoming EVFTA) not being fully utilised.

**Recommendations**

EuroCham members encourage GDC to take further actions to enforce transparency in the implementation of customs laws nationwide. Specifically, we recommend that:

- › Each provincial Customs department should have their own anonymous hotline for enterprises to report issues of concern (separate to the GDC hotline) so that GDC will not be overloaded and issues can be resolved in a shorter timeframe at the local level first;
- › GDC publishes an Annual Account on cases reported through the hotlines, and the outcomes (anonymous). This would raise awareness and provide confidence to businesses that actions are being taken; and
- › The E-customs declaration system should be revised to facilitate documented communication between all levels of Customs authorities and the business community, thereby reducing unofficial channels of communication, and opportunities for unofficial payments.

**ACKNOWLEDGEMENTS**

EuroCham Transportation and Logistics Sector Committee