

CHAPTER 11 TRANSPORTATION AND LOGISTICS

OVERVIEW

Vietnam, with its favourable location, labour force, and stable political system, has seen strong growth in its manufacturing sector and corresponding import and export volumes in recent years. High-quality logistics infrastructure, along with effective and efficient customs procedures, are two key goals Vietnam needs to achieve to continue attracting FDI; increase its competitiveness; connect local companies to global supply chains; and become a transportation hub for ASEAN.

I. INFRASTRUCTURE

Relevant authorities: Ministry of Finance (MOF), Ministry of Industry and Trade (MOIT), Ministry of Planning and Investment (MPI), Ministry of Transport (MOT), Ministry of Public Security (MPS) and Ministry of Construction (MOC).

EuroCham members support Decision 708 of MOIT approving Plans for the Improvement of Vietnam's Logistics Performance Index.¹ Transport infrastructure is one of the key factors the Government should address to reduce logistics costs. We also appreciate Decision 1012.² This provides measures to develop the current transport infrastructure system; modernize stations, ports, and warehouses; and ensure the efficient use of land. The aim is to ensure favourable connections between logistics centres and manufacturing sites as well as consumer areas and traffic hubs, meeting the long-term development demand of logistics centres.

Issue description

MOIT's plans to improve the Vietnam's Logistics Performance Index to address the majority of the current concerns. However, more could be done in the specific areas of environmental impact and safety, as these points have received limited attention in the outlined plan. The proposed focus areas in infrastructure are linked to infrastructure access to the main ports as well as the development of quality distribution and logistics centres. Together, the improvement in these areas will lead to reduced logistics costs and enable further growth in Vietnam, especially in the competitive export market to Europe and the US.

To achieve this, investment for renovation and upgrade of the access channels to the major ports complex needs to be accelerated. In the south, the access channel to Go Gia (Cai Mep) needs to be deepened from the current 14 meters to 15.5 meters of the Cai Mep-Thi Vai fairway. This has already been budgeted for in the MOT 2021-2025 medium-term budget plan. Therefore, no additional funding needs to be found. This upgrade will allow for larger vessels to call at Cai Mep Terminals due to fewer tidal restrictions. This, in turn, will reduce vessel delays and allow for more cargo to be shipped to and from Vietnam. Furthermore, it will increase the availability of equipment and the connectivity of Cai Mep with the rest of the world. Similarly, the development of the Lach Huyen International Gateway Port (Hai Phong) will lead to improved connectivity for Northern Vietnam. Both improvements will allow larger vessels and increased capacity for importers and exporters in global markets.

Meanwhile, specifically related to the issue of dredging, the current process to obtain licenses to carry out regular dredging for terminals is time-consuming. This process should be simplified by giving dredging clearance for a 10-year period rather than only on a case-by-case basis.

A second barrier to the logistics safety & security is the fire safety approval.³ Although the fire safety is very

¹ Decision 708/QĐ-BCT dated 26 March 2019 of the Ministry of Industry and Trade approving plans for improvement of Vietnam's Logistics Performance Index (Decision 708).

² Decision 1012/QĐ-TTg dated 3 July 2017 of the Prime Minister approving nationwide logistics centre system development plan to 2020, vision to 2030 (Decision 1012).

³ "Supervision of fire prevention and fighting needs to remove inflammations in the regulations on fire prevention and fighting to create conditions for enterprises", National Assembly, 23 July 2023. Available at: <<https://quochoi.vn/tintuc/Pages/tin-hoat-dong-giam-sat.aspx?ItemID=78153>>, last accessed on 30 October 2023.

important and needs to be complied without compromise, in consideration of the new standards set forth in Circular 06,⁴ it is very hard for warehouses that were already built to be in compliance with the existing standards to upgrade to such new standards of fire protection (especially in-rack sprinklers for racking higher than 5.5 meters which is very costly and was not required in the previous standards). This has raised a lot of concerns from many EuroCham members who are logistics services providers. To temporarily resolve the issue, Vietnam Fire and Rescue Police Department under the MPS issued the Official Letter 1091⁵ which did help to solve the current challenges in the adoption of Circular 06.

We highly appreciate MOC's effort in issuing the Circular 09⁶ in order to amend Circular 06. Notably, Circular 09 permits to apply foreign standards in construction operations in Vietnam provided that this must comply with Vietnamese principles, regulations on firefighting & prevention as well as regulations on application of foreign standards⁷. Standards and minimum requirements are very clear in developed countries, companies can easily understand and follow these requirements as part of their investment without having to seek step-by-step guidance on what is required as well as waiting for delayed and unclear feedback. To avoid challenges to occur in practice when businesses applying foreign standards as set forth in Circular 09, the Circular needs a clear guidelines especially for the remaining requirement of higher than 5.5 meters for racking.

Potential gains/concerns for Vietnam

For private and foreign logistics service providers, the issue of land lease described above creates a major obstacle. It reduces competition in the market, as warehousing and operation options are limited and controlled by a few players. Meanwhile, the running of operations is the core value delivered by logistics service providers. The lack of competition in a rapidly- growing market like Vietnam will lead to service prices remaining high.

Now that the EVFTA has entered into force, facilitating trade and logistics to support export and import activities to ensure Vietnam reaps the full benefits of this agreement should be ensured by the Government.

In our view, the Government's supervision role is emphasized not only to ensure the effective allocation of resources but also to ensure the safety and environmental 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 investment.

Recommendations

We would like to make the following recommendations:

- Issue implementation documents of Decision 1012;
- Simplify the dredging procedure for terminals and allow for a 10-year dredging approval license rather than case-by-case approvals; and
- Standards in firefighting and fire safety regulations need clear guidance. The authorities need to develop a racking standard that clearly states the specification of in-rack sprinklers for racks over 5.5 metres and below 14 metres high. This is then a single standard that is clearly required and only dangerous goods (DG) would need higher requirements.

4 Circular 06/2022/TT-BXD dated 30 November 2022 of the Ministry of Construction on the QCVN 06:2022/BXD, National Technical Regulation on Fire Safety of Buildings and Constructions (Circular 06).

5 Official Letter 1091/C07-P3, P4, P7 dated 11 April 2023 of the Ministry of Public Security of Vietnam on resolving difficulties in fire safety and firefighting operations (Official Letter 1091).

6 Circular 09/2023/TT-BXD dated 16 October 2023 of the Ministry of Construction issuing amendment 1:2023 of OCVN 06:2022/BXD on National Technical Standards on fire safety of Housings and Construction Works. This Circular will become effective from 01 December 2023 (Circular 09).

7 Please see the amendment to Point 1.1.7 in Circular 09.

II. CUSTOMS

Relevant authorities: Ministry of Finance (MOF), General Department of Customs (GDC), Ministry of Industry & Trade (MOIT)

Issue Description

Market access has been significantly opened for more foreign investment and the import of goods of preferential and non-preferential origin. Therefore, importers need to assess risks and protect their benefits at the customs gate. Customs valuation remains one of the most crucial elements of customs-related matters. In addition, in line with Vietnam's ambition to become a global transshipment hub, shipping lines and container terminals require easier change of vessel discharge/loading points both within a customs zone and in a second phase across customs zones. This applies to both empty and laden containers. This flexibility will optimize the current port infrastructure while also making it easier for shipping lines to reroute both international and domestic cargo.

1. Improper declaration and application of preferential tariffs

There are several kinds of preferential tariffs and the procedure applicable to each varies. In practice, importers may not be very well prepared to apply different tariffs corresponding to each imported good. As such, mistakes may happen during goods clearance. In some cases, changes to the imported goods also lead to a different tariff being applied. For example, materials imported for manufacturing exported goods are exempt from import tax. If importers would like to domestically consume these materials rather than use them for manufacturing, tax exemption is not applied. Instead, another preferential tariff may be applied to such materials. However, this becomes complicated when the Certificate of Origin (C/O) of materials expires or the importer has unintentionally provided an incorrect declaration when changing the use purpose of materials. According to the guidelines of customs authorities, in these cases, a preferential tariff will not be applied and the importer will be subject to penalties.

On the reverse side, Vietnam is becoming a more and more potential and favourable country of sourcing globalization procurement. Numerous FDI enterprises have started collaborating with Vietnamese suppliers and factories. Therefore, FTA plays an important role in increasing the competitiveness of the products Made-in-Vietnam and Originate from Vietnam. In parallel, to accelerate and adapt to the development of Importing Countries in the EU and other markets, the digitalization and transformation of governmental processes and systems are the key to helping FDI optimize cost and lead time. Paperless C/O will reduce the cost, lead time and human mistakes in business.

Recommendations

We would like to make the following recommendations:

- Distinguish the application of preferential tariffs from the penalty applicable to a breach of the law;
- Do not cancel the enjoyment of preferential tariffs if an administrative error, such as an incorrect declaration in customs declaration sheets, is made;
- Implement the policy linked to customs procedures of ports to ease the transfer of goods from one port to another (both within as well as in a second phase across customs zones) in case of operational requirements by the terminal or the carrier's vessel; and
- MOIT to work on the process of digitalization on issuance & approval of E-C/O for EU and other countries having FTA with Vietnam.

2. Custom Valuation - Price Consultation

Issue description

In 2020, following the Prime Minister's Directive 11⁸, most Post-Clearance Audits (PCA) conducted at taxpayers' offices were postponed. At the same time, we observed an increase in the number of desktop checks being performed at the border points and a more aggressive stance in the performance of those checks. Of particular note was the increased frequency of price consultations – initiated by customs authority to determine the appropriateness of values declared for goods imported into Vietnam. During these price consultations, customs authority will typically refer to their own databases of values. These are then used to challenge the veracity of the values declared by the importer. Importers are frequently requested to provide explanations for the gap between customs authority's reference prices and those declared. If importers cannot do so, then declared values are uplifted to match those of the customs authority's database. This is despite customs authority assurances that database values are only a reference point.

When importers, during the price consultation, requested customs authority to provide the supporting rationale behind reference prices,⁹ this was refused. The refusal to provide importers with the rationale behind Customs' reference prices undermines the principle of "consultation", creates unnecessary disputes, and results in a lack of trust in the objectivity of the price-consultation process. Since the introduction of Decision 1304¹⁰ on the "one-time price consultation for multiple uses", few importers have applied for the scheme, and only a small percentage of applicants have received an approval.

We understand that by February 2023 the General Department of Customs had approved the Project on reforming customs valuation management until 2023 to improve and enhance the quality of customs valuation management as well as to meet international integration requirements in the context of modern technology application.¹¹ However, it appears that this Project has not been shared publicly. We hope that EuroCham and its TLSC could participate in a similar Project in the coming time under which we could share international experiences to help the General Department of Customs to finalize the custom valuation framework according to international standards and in particular the WTO's Agreement on Customs Valuation.

Recommendations

- Let customs officers, who conduct price consultations, hold the supporting rationale behind the values on the database, and authorize them to disclose that information to importers enabling a more transparent and effective price consultation process; and
- Ensure that the price consultation process will be valid for a 12-month period, provided that declared values in this period do not move outside an acceptable threshold (e.g. +/- 5 per cent), then no further price consultation should be required.

3. HS Code classification: Rulings/Notifications

Issue description

We recognise the efforts to drive consistency in applying HS codes nationally. For instance, Decision 583 regulates the export and import of goods at risk of classifying and applying tax rates.¹² However, there is still concern over the lack of supporting rationale and legal reference sources chosen for making HS code classification decisions. We believe that the additional information will ensure greater transparency in the decision-making process. It will also enable companies to self-assess applicable HS codes of goods imported into and exported from Vietnam. In

8 Directive 11/2020/CT-TTg dated 4 March 2020 of the Prime Minister on urgent objectives and solutions for assisting businesses facing difficulties and assurance of social welfare amid COVID-19 pandemic (Directive 11).

9 For example, what was the relationship between buyer/seller; how were the prices negotiated; trading model; volume of business; specific types of goods etc.

10 Decision 1304/QD-TCHsQ dated 29 April 2020 of the General Department of Customs approving a one-time consultation pilot project, using consultation results many times (Decision 1304).

11 "Reform customs value management to meet integration requirements", Customs Online, 13 February 2023. Available at: < <https://haiquanonline.com.vn/cai-cach-cong-tac-quan-ly-tri-gia-hai-quan-de-dap-ung-yeu-cau-hoi-nhap-171493.html>>, last accessed on 24 September 2023.

12 Decision 583/QD-TCHQ dated 22 March 2019 of the General Department of Customs on the list of export and import goods at risk of classifying and applying tax rates, valid since 1 April 2019 (Decision 583).

doing so, it will reduce the burden on the issuance of guidance on HS code classification, especially when Decision and Circular releases without Clear instruction and the Good application from local authority.

In addition, with the digitalization in Public area and Private area, this practice requires the synchronization of Customs data from one to another area in very short and sharp timing to not interrupt the business of Enterprise. However, the issuance date is in the very short time before application and effective date, is a major obstacle for businesses to proactively comply. In fact, the synchronization on system Customs is sometimes not aligned with the due date, it brings confusion and unintentionally creates the non-compliance of importer and exporter in the transition period.

Recommendations

- Specify the applied supporting rationale behind the HS code classifications provided;
- Continue publishing all legal reference sources of classification online in Vietnamese and English, including those that were listed and committed to be published in Article 6 of Circular 14, but preferably all those within the last five years;¹³
- A more reasonable timeline between the decision issued date, instruction availability date and effective date. The Guidance shall be issued 30 days at least before the Effective date with clear information, and instruction to related parties (GDC, Department of Customs in province/ city, enterprise). Related training and seminar need to be organized in between with question and answer to have active exchange from customs authority and enterprises after the guidance and instruction released, in order that Enterprise have enough time to prepare, and be ready for D-day; and
- When the customs data to be declared and proceeding on system only, the new tariff and data after the modification must be ready at least 07 working days before the Effective date to synchronize with Enterprise's process and data, having no waiting time for the Enterprise.

4. On-spot Import and Export procedures

Issue description

Since Law on Commerce ¹⁴ with a series of decrees of the Government and Circulars of the Ministry of Finance are promulgated from 2005 until the resolution Decree 08,¹⁵ on-spot export and import are allowed. It has created convenience and competitiveness to FDI by having factories in Vietnam to increase the localization rate of "Made in Vietnam" without having to import ingredients from other countries. On-spot exporters & importers save on costs and lead time, increase the readiness and availability of goods in the context of Time to Market, Nearshoring.

In the globalization context, international brands that do not have a presence in Vietnam prefer to develop raw materials and accessories in Vietnam so that they can use those raw materials to produce the final products. During the past time, the three-way trade relationship between the producers of raw materials and accessories in Vietnam (holding technology, skills and processes to develop raw materials for the brand), the factory(ies) producing finished products in Vietnam (signing processing or export production contracts for brands) and international brands (not present in Vietnam) has brought much more benefits to Vietnam business environment in general and local enterprises in particular.

Specifically, Vietnam's on-spot import and export policy helps to reduce logistics costs and delivery time, attracting foreign direct investment from international brands to set up factories into Vietnam as well as increasing Vietnam's import-export volumes due to preferential tax rates under its signed free trade agreements (FTAs).

¹³ Circular 14/2015/TT-BTC dated 30 January 2015 of the Ministry of Finance providing guidance on classification of goods, and analysis for classification of goods; analysis for quality inspection, food safety inspection for food for exported and imported products (Circular 14).

¹⁴ Law on Commerce 36/2005/QH11 dated 14 June 2005 of the National Assembly (Law on Commerce).

¹⁵ Decree 08/2015/ND-CP dated 21 January 2015 of the Government providing specific provisions and guidance on enforcement of the Customs Law on customs procedures, examination, supervision and control procedures (Decree 08).

Potential gains/concerns for Vietnam

The abolition of import-export policy as referred in Article 35.1 of the Decree 08 including its Point c will increase manufacturers' input costs, leading to increased costs of goods produced and processed in Vietnam. Further, delivery of goods through bonded warehouses instead of directly among factories (when applying on-site import and export) or having to import from abroad will increase operating costs for businesses and shipping time, reducing the competitiveness of goods produced in Vietnam. Consequently, Vietnam could no longer become one attractive destination for investment of international brands.

Recommendations

- To keep the effectiveness of Article 35.1 of Decree 08 including its Point c to allow the continuation of the current on-spot import/export practices.

III. SUSTAINABILITY

Relevant authorities: Ministry of Industry and Trade (MOIT), Ministry of Planning and Investment (MPI), Ministry of Transport (MOT), Ministry of Natural Resources and Environment (MONRE)

Issue description

Many multinational companies have made commitments to sustainability goals covering all aspects of their business including upstream sourcing and downstream supply, end of product life, etc. In logistics, the main goals are CO₂ reduction. Meanwhile, the long-term goal is net-zero carbon dioxide emissions (generally by the year 2050). Initial improvements can be renovative (involving maintenance or improvement). But, longer-term, this requires a shift to innovative solutions and more radical adaptations at both business and governmental levels. Progress to date has been relatively limited. However, many multinationals are making commitments that local subsidiaries will be required to follow. International customers, consumers, and representative groups (NGOs, certifying agencies, investment funds, etc.) are expecting greater transparency and action.

A stakeholder forum to review opportunities and share ideas for a roadmap for logistics sustainability would be an ideal next step. This could identify specific actions such as: the maximisation of fleet and asset utilisation (creating a pre-competitive environment to facilitate more environmental transport) to increase fill/load utilisation; the use of equipment fit for purpose; reduce empty return trips/optimize back-haul, etc. For example, the design and authorised use of larger trailers, or dog trailers for long-haul road journeys, should be supported to reduce the number of vehicles on the road. Furthermore, transport modes should be improved, rail and river/sea freight should be increased, and multi-modal transport should be optimised while air freight should be reduced.

The Government's commitment to higher engine efficiency standards is appreciated as is its continued commitment to achieving Euro V and VI equivalent standards by 2030 and Material Handling Equipment (MHE) such as forklift trucks and warehousing utilising Renewable Energy (RE). Furthermore, optimal use of land-plots would lead to less total land being required for residential/commercial/logistics and industrial activities and allow the safeguarding of more land for "green" purposes.

Longer-term plans will need to be more radical. For example, they could take direction from the EU's commitment to move to much lower/or zero-emission vehicles and greater fuel economy;¹⁶ and include a detailed roadmap for the development and transition of these vehicles in Vietnam by 2030. This will require consideration of the impact on city and town planning, refuelling solutions, access, end-of-life, and a commitment to nationwide enforcement of plans and timelines, etc. These plans will also need to include Biogas (generation 2 & 3); Electric RE fleets (short haul/urban planning as the priority, then towards long-haul planning); hydrogen-based fuel, renewable thermal energy, etc.

Besides, it is also important to identify incentives and policies to guide businesses to future requirements and redundancies. Again, these policies should address both transport and logistics infrastructure. For example,

¹⁶ "A European Strategy for low-emission mobility", *European Commission*. Available at: <https://ec.europa.eu/clima/policies/transport_en#tab-0-0>, last accessed on 18 October 2023.

incentives could be given to companies doing business in a sustainable way through having a certain percentage of the fleet being green, a certain percentage of energy consumption being green, and a certain percentage of water being recycled. Incentives could also be given to turn brownfield projects into more sustainable buildings.

We also believe that it is important to prepare a roadmap to sustainability (in transportation and logistics) and to identify the key stakeholders within central government and provincial authorities. This should include a timeline to reach net-zero carbon and what steps must be taken to achieve this. Finally, businesses' support should be obtained, and measures prepared to work with central and provincial authorities to navigate the changes required to deliver the triple bottom-line (people, profit, and planet).

Potential gains/concerns for Vietnam

Vietnam's position as a preferred location for the world's production chains remains well understood, and would be further enhanced by a progressive, clear, and transparent roadmap towards sustainability in logistics and related activities.¹⁷ Vietnam's Green Growth Strategy (VGGs) and Sustainable Development Goals (SDGs) explicitly link development, environmental, and climate planning, bringing conformance to the Kyoto Protocol and the Paris Agreement.¹⁸ There are many secondary benefits to such a progressive approach. These include synergizing with future health benefits, attracting premium tourism, reducing environmental impacts and potential future costs, and generally raising the quality of life, particularly in towns and cities. Ultimately, mitigating and addressing climate change is of particular importance to Vietnam with its large population living in coastal and low-lying regions.

With this perspective and timescale in mind, and tackling priority impacts first, we can see the short, medium, and long-term actions that are necessary – and begin to fit this into a proposed framework, as illustrated in the following diagram.

Figure 7: Vietnam Logistics Strategy and Interventions

| 2020 – 2025: Priority interventions | | After 2025 | |
|--|--|---|--|
| MAINTAIN AND IMPROVE... | | SHIFT TO... | |
| <p>Fleets & assets are shared and used to the max</p> <ul style="list-style-type: none"> • Increase vehicle fill • Fit for purpose • Reduce empty back haul • Synergies, multi drop points • Combine with others industry partners | <p>Transport modes are smartly used and combined</p> <ul style="list-style-type: none"> • Increase use of rail and ocean / water transport • Optimize multi-modal • Reduce Air transport | <p>Fleets & assets are energy efficient</p> <ul style="list-style-type: none"> • Shift to EURO IV, V & VI • MHE using lower emission fuel or 100% electric (RE) • Renewable Electricity (RE) for DC's | <p>Fleets & assets use lowest emissions energy source feasible</p> <ul style="list-style-type: none"> • Biogas (gen2 & 3) • Electric short haul • Electric long haul • Hydrogen • Renewable Thermal Energy (RThE) for DC's |
| <ul style="list-style-type: none"> • Drive a pre-competitive approach • Reduce empty back haul • Multi-load/multi-drop | <ul style="list-style-type: none"> • Improve multi-modal connectivity / infrastructure • Investment in rail / sea / river / ports | <ul style="list-style-type: none"> • Shift to EURO IV, V & VI • Renewable Electricity (RE) for DC's & MHE | <ul style="list-style-type: none"> • AVAILABILITY / ACCESS / INCENTIVES / SUPPORT & INFRASTRUCTURE • Vision and Roadmap |

17 "Vietnam brings cement sector into new climate submission to the UN", *Climate Home News*, dated 14 September 2020. Available at: <www.climatechangenews.com/2020/09/14/vietnam-brings-cement-sector-new-climate-submission-un/> last accessed on 13 October 2023.

18 "Aligning Near- and Long-Term Planning in Vietnam to Meet the Goals of the Paris Agreement". Available at: <www.wri.org/climate/expert-perspective/aligning-near-and-long-term-planning-vietnam-meet-goals-paris-agreement> last accessed on 13 October 2023.

Recommendations

- › Set up a forum with all stakeholders to support a review of opportunities and to share ideas for a roadmap for logistics sustainability;
- › Prepare longer-term plans which need to be more radical to move to much lower/or zero emission vehicles and greater fuel economy;
- › Design a detailed roadmap for the development and transition of these vehicles in Vietnam by 2030;
- › Identify incentives and policies to guide businesses to future requirements and redundancies;
- › Create a roadmap to sustainability (in transportation and logistics);
- › Identify the key stakeholders within both central Government and provincial authorities;
- › Prepare a timeline to reach net-zero carbon and identify what steps must be taken to reach this; and
- › Obtain businesses' support and instigate measures to work with central and provincial authorities to navigate the changes required to deliver the triple bottom-line (people, profit, and planet).

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