



Perception of the Business Environment in Vietnam December 2018

In a few months, AmCham will celebrate 25 years of working in partnership with our many friends in the government to help improve business conditions that strengthen the private sector and promote economic and social development here.

Our members have had a transformative role in the development of Vietnam. From managerial practices and technologies, to service standards and business ethics, the US business community here has affected Vietnam in many positive ways. The United States is one of the top investors here and Americans are in Vietnam investing in manufacturing and infrastructure, as well as providing high quality consumer goods, agricultural and industrial products, and technology and services. American companies have invested billions of dollars here, integrating Vietnam into the global supply chain, creating quality jobs, and helping the country become more productive, efficient, safe and cleaner. The US is also Vietnam's biggest export market, including a year-over-year increase of 14 percent already this year.

Since our founding, AmCham has said that high-quality foreign investors not only help grow Vietnam's economy, but also help grow the entire ecosystem of local companies and entrepreneurs here. We fully support the government's commitment to the development of Vietnamese SME's and their increased participation in global supply chains. AmCham is now working in close coordination with USAID's new \$22 million LinkSME program that aims to improve and expand the supplier-buyer relationships between Vietnamese and foreign firms. This project will raise productivity and increase Vietnam's capacity to supply products to larger companies both inside and outside Vietnam. These types of programs not only help foreign investors find good partners, but also help to develop Vietnam's economy from top to bottom.

In addition, the United States government recently announced the US-ASEAN Smart Cities partnership. This new effort - which includes Danang, Hanoi and Ho Chi Minh City - will seek ways that American companies can help combat growing urban challenges ranging from traffic congestion, water and air quality, to digital security. AmCham members will be deeply involved in this effort.

People say that yesterday is history and tomorrow is a mystery. Nevertheless, right now, we see tremendous opportunities in Vietnam - for both the domestic and foreign business sectors.

Capitalizing on US-China Trade Tensions

Ongoing US-China trade tensions have highlighted the risk of concentrating production bases in a single country and are triggering supply chain reorganization. A recent AmCham survey of US firms in China showed that one-third either had moved or were considering moving some production abroad amid the trade tensions. A separate survey of foreign companies from other countries found that half were considering relocation with Southeast Asia as their top choice.

China will remain a very important player in the global supply chain. However, we do see companies and suppliers shifting some production out of China and Vietnam is gaining some of that business. The question is how Vietnam can fully capitalize on this opportunity in order to continue its rapid upward economic trajectory.

It is no secret that Vietnam attracts a lot of foreign investment. Some government officials, however, question whether having so many foreign companies is good for Vietnam's economy. For example, a member of the National Assembly recently said, "With FDI businesses accounting for over 70 percent of total exports, Vietnam will suffer when they leave the country".

AmCham wants to make sure there is no reason that companies should leave Vietnam. That is why we need to see continued and tangible progress on the issues that we discuss with our partners in the government. Importantly, non-productive red tape must be controlled and the country's regulatory and tax framework must be stable and predictable.

Foreign investors need a level playing field, not only to attract more investment in the future, but also to maintain the investment that is already here. Frequent and retroactive changes of laws and regulations - including tax rates and policies - are significant risks for foreign investors in Vietnam. These changes affect the investment and business plans of already-licensed projects. AmCham recommends that the government consider an instruction on investment protection to prevent negative and retroactive binding effects of new laws and regulations on existing projects.

Vietnamese and foreign invested businesses alike need a supportive and fair environment to thrive, and as you well know, that means their relationship with the administrative agencies should be mutually supportive and transparent.

Today, we will focus comments on a few key areas that are vitally important for Vietnam's competitiveness.

Energy to Power Vietnam's Future

The quality of Vietnam's operating environment and indeed the quality of life of its citizens rely on environmentally friendly and dependable infrastructure. With respect to power needs, there is a clear and urgent need to address the growing shortfall in the supply vs. the demand for electrical power. Our member companies are global leaders in this sector and want to help ensure that Vietnam's energy development meets the environmental, health, economic and geopolitical security goals of the country. We continue to encourage the government to move forward quickly on the Blue Whale project, the Son My LNG project, and meaningful renewable projects. Vietnam should also update and improve energy transmission delivery mechanisms by utilizing a wide arrange of resource-efficient wire and cable technologies that will promote better, safer and less wasteful energy use. Our companies are ready to partner and to invest and these projects will help the power shortfall in a manner that is sustainable from a financial, environmental and supply chain perspective.

The government has made policy decisions on how to price power generation and power sales that do not reflect the need to encourage efficiencies and cleaner energy – we hope PDP8 can adequately address these pricing issues. Specifically, to capture the billions of dollars in private sector investment, job creation and technology that Vietnam needs in this sector, we need a bankable Power Purchase Agreement, more efficient and timely decision-making procedures for investment projects, a tariff and tax regime that reflect government priorities, and a market-driven power pricing road map for the next five years.

Facilitating Trade and the Flow of Goods

Vietnam has made improvements in customs clearance and efficiency. However, very frequent – and largely unnecessary – post-import audits are creating burdens for companies. One company had over ten audits in a two-month period even though there has been little reason for Customs to consider the company a high-risk importer. We encourage Customs to adopt a more focused approach to target reviews of high-risk importers, rather than legitimate traders. This includes providing clearer differentiation in customs clearance process, customs inspections, price reviews and audits between AEO-qualified importers and general importers.

Additionally, our companies are facing recurring tax audits often questioning long-standing procedures. We encourage the government to use OECD procedures for transfer pricing regulation and implement the awarding of Advance Pricing Agreements or APA, which has been long awaited. We stand ready to work with you on APA procedures.

Modernizing Education and Ensuring Appropriate Labor Costs

The foundation for improving the operational efficiency and competitiveness of Vietnamese-based businesses is workforce productivity. Numerous studies show that educational curricula in Vietnam are outdated, teachers overwhelmed and underpaid, and graduates lack the job-ready skills sought by the private sector. To continue attracting investment and to upgrade the skills of its workforce, the government should take further action to modernize and upgrade its national education system, particularly at the vocational and university levels. Modernizing education will ensure that Vietnam has a skilled workforce of managers, engineers, and manufacturing and construction technicians that can move up the value chain as the economy grows. In addition, companies that are looking to shift production to Vietnam are looking closely to see if the workforce has the skills required for their business.

Workforce development initiatives – particularly vocational – will improve worker output, but efficiency also depends on one critically important input: labor costs. Over the years, the rises in wages and the costs of mandatory insurance schemes have simply not been matched by increases in productivity. The result is that many companies across Vietnam are experiencing declines in productivity for each dollar invested in human resources. This is simply not sustainable. A particular cost concern is the controversial new requirement for expat workers in Vietnam to contribute into Vietnam's social insurance fund. This has raised concerns among foreign workers and businesses regarding aggravated costs and is unjustified given the likelihood foreign employees will ever benefit from such contributions.

In addition to working with us on many subjects, AmCham greatly appreciates the commitment by the Prime Minister and his team to keep reducing administrative burdens.

Unlocking the Full Potential of Vietnam's Digital Economy

We are also encouraged by the Prime Minister's enthusiasm to work with AmCham to help build Vietnam's digital economy because, in today's world, you cannot separate the digital economy from the real economy.

The digital economy can significantly reduce costs, provide products and services to a broader range of consumers, and increase access to newer and bigger markets. In Vietnam, businesses in every sector and of every size are increasingly dependent on a secure, stable and trusted Internet to carry out their daily operations. This is why AmCham strongly supports the government's objective of

promoting the development of the Internet and digital economy in Vietnam while ensuring data security and the protection of Vietnamese Internet users.

The benefits of the digital economy can be threatened by the cost of cyber-attacks and cybercrime, unless the online environment is adequately protected. A clear need exists for a national cybersecurity strategy that encourages defenses that are proactive, intelligence driven, and capable of protecting against a broad threat spectrum. That is why AmCham also strongly supported – and continues to support – Vietnam's effort to establish a legal framework on cybersecurity.

Our member companies operate around the world and have experience with dozens of national approaches aimed at addressing cyber risk. This background has afforded our members a sophisticated understanding of what type of regulatory approach can reduce the risk of threats to critical services in an increasingly digitized world.

We believe a well-crafted cybersecurity framework can facilitate a robust cybersecurity ecosystem and avoid provisions that impose unnecessary burdens without corresponding benefits. Such troublesome provisions not only dissuade trade and investment, but they also have an adverse effect on cybersecurity.

In the digital economy, global services are underpinned by the free-flow of data. Everything from payments to email to shipping relies on data being allowed to flow freely across borders. We are concerned that the Cybersecurity Law and the implementing draft decrees would force localization of data, which may cause severe economic harm to Vietnam's economy by impeding the free flow of data upon which the global digital economy is built. For example, a report about the ASEAN Economic Community by Deloitte last year indicated that over two-thirds of investors are uncomfortable investing in countries that they are obligated to store data locally.

Preventing the free flow of data makes connectivity less affordable for people and businesses at a time when reducing connectivity costs is essential to expanding economic opportunity in Vietnam, boosting the digital economy and creating additional wealth. It also undermines the viability and dependability of cloud-based services in a range of business sectors that are essential for a modern digital economy.

In contrast, liberalizing Vietnam's framework on cross-border data flows would have a very positive impact on economic growth. A 2016 report from our partners at the US Chamber of Commerce indicated that such liberalization would:

- Increase Vietnam's GDP by \$3.46 billion
- Increase investment in Vietnam by \$920 million
- Add \$130 million in government revenue
- Add almost 73,000 new jobs in Vietnam

Governments across the Asia-Pacific with the most advanced digital economies, as well as those that are prioritizing digital economic growth, are supporting the free flow of data. These governments include Singapore, Malaysia, Thailand, Japan, Australia, and Hong Kong. It is important that Vietnam remain competitive with others in the region and adhere to international best practices.

We look forward to working with Vietnam's leadership on effective deterrence policies, and increased cyber defenses through industry-led standards, best practices, and risk-based frameworks. Together, we can achieve an open, innovative, and secure online environment that fosters commerce. Ensuring the free flow of data is very important and we look forward to working with Vietnam's leadership on policy approaches that will advance the underlying objectives of the Cybersecurity Law while minimizing disruption to businesses, the economy, and Vietnam's development.

Specifically, we would ask that the cyber decree reduce the covered services, establish an extensive open process before inflicting the severe cost and risk of requiring data localization, and request that the Prime Minister be involved in that assessment and determination. We also hope that we can engage with the government further on the draft decree before it is implemented and that we be able to continue that dialogue with the relevant ministries on ways to combat cybercrime without affecting the digital economy. We thank MPS for opening the comment period and AmCham will be submitting recommendations this month. In addition, there is text in the draft decree that is unclear and we will soon submit a list of questions for clarification.

Creating a more Attractive, Transparent and Stable Business Environment

As major investors here, American companies have an interest in Vietnam's continued success. The issues raised above highlight our belief that the business climate can best be helped by actions that increase productivity and reduce the costs and risks of doing business in Vietnam. More importantly, decreasing the cost and complication of doing business will benefit Vietnamese-owned businesses - many of which are SME's - and will spur entrepreneurship, which will, in turn, ensure Vietnam's future competitiveness and growth. AmCham will continue to play a helpful and constructive role, not just to complain but also to work to identify and implement solutions, and to be a strong advocate for a better business environment and a stronger private sector in Vietnam.

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