

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

MYRON A. BRILLIANT
SENIOR VICE PRESIDENT,
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February 5, 2010

H.E. Vu Van Ninh
Minister
Ministry of Finance
28 Tran Hung Dao
Hanoi, Vietnam

H.E. Nguyen Xuan Phuc
Minister
Office of the Government
Hanoi, Vietnam

Dear Minister Ninh and Minister Phuc:

The U.S. Chamber of Commerce is impressed with Vietnam's economic progress in recent years and the growing trade and investment ties between our two countries. We thank the Vietnamese government for the regular access provided by senior officials and the embassy in Washington to U.S. companies to discuss issues that affect their growing operations in Vietnam.

With this letter we are following up our letter of December 15, 2009, regarding the draft circular under consideration by the Ministry of Finance to implement price controls on a wide list of products. Attached please find the comments of the U.S. Chamber and our member companies about the potential problems these new price controls could create.

We sincerely hope that the Vietnamese government will reconsider the strategy of using price controls to address price fluctuations in the market. The Chamber and U.S. companies would be willing to work with your government to develop strategies that will help reduce Vietnam's vulnerability to price volatility without distorting the market or causing disruptions in trade.

H.E. Vu Van Ninh
H.E. Nguyen Xuan Phuc
February 5, 2010
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We thank you in advance for considering our request.

Sincerely,

A handwritten signature in blue ink, appearing to read 'My Brilliant', is positioned above the typed name.

Myron Brilliant
Vice President, Asia

cc Amb. Le Cong Phung, Embassy of Vietnam



February 5, 2010

POSITION PAPER

ON

VIETNAM'S DRAFT CIRCULAR ON PRICE CONTROLS

Vietnam's Ministry of Finance on December 24, 2009, posted on its website a new draft circular on pricing regulations. Implementing this circular would significantly expand the scope of Circular 104 beyond state-owned enterprises and increase the number of products subjected to possible price regulations.

The U.S. Chamber of Commerce and our member companies have several concerns about the draft circular:

- The proposed currency controls send a confusing and mixed message about Vietnam's economic policy direction. This proposed measure represent a significant move away from the economic reforms launched in Vietnam over the last 20 years that have generated significant economic growth, expanded trade, and attracted foreign investment.
- The draft circular would significantly expand price registration requirements to include private enterprises. Under previous Circular No. 104, the only enterprises that are required to register their prices are those in which state funds have accounted for over 50% of the charter capital.
- Under the draft circular, price registration would apply to all private foreign and domestic enterprises, retail shops, distributors, trading companies, family households, and individuals—everyone conducting business in products covered under the circular including sugar, milk, infant formula, rice, salt, gas, petroleum products, fertilizer, animal feed, pellets for catfish/basa and shrimp, maize, soybeans, coal, paper, autos, steel, and other products. The circular allows the prime minister to add "other goods and services" to the list of

covered products, creating further uncertainty for manufacturers, distributors, and retailers.

- The circular requires the creation of extensive bureaucratic procedures, running contrary to the prime minister's objective of reducing redundant regulations and administrative procedures by 30% under Project 30.
- In an application for price registration, the applying company, distributor, and/or retailer must disclose sensitive and business confidential information about production costs, selling expenses, enterprise management expenses, expected profit, and other information. Officials can request enterprises to explain and re-submit their price registrations, if they determine that a price registration application includes "unreasonable price constituents."
- Imported products are likely to contain more price components and therefore become subject to more procedural requirements. Examination of import pricing would fail to account for the potential added impact of fluctuating exchange rates.
- Price controls would subject producers, distributors, and retailers to further economic uncertainty and would constrain their ability to adjust and manage fluctuations in the costs of production, transport, warehousing, and distribution.
- Many of the products included in the draft circular are highly specialized and are either imported in total or produced using imported materials. It is not possible for a central government entity or provincial authorities to determine, either realistically or fairly, the costs and prices for manufacturers, distributors, and thousands of retail enterprises for all of the product variations that fall within the draft circular's scope. In addition, price controls could cause diversion of supplies, resulting in a negative impact on consumers.
- The draft circular raises concerns regarding Vietnam's WTO commitments, particularly with respect to national treatment and the obligation to avoid to the fullest extent the prejudicial effects caused to the interests of contracting parties supplying imported products when applying internal maximum price control measures. It contains several vague provisions, such as the unquantifiable terms used to describe the conditions when price stabilization measures would be applied. Such provisions could enable the authorities to act at their discretion in applying price control measures under the draft circular, which exposes Vietnam's trading partners to prejudicial conditions.

- The draft circular may also be incompatible with the requirement that imported products be accorded treatment no less favorable than that accorded to like products of national origin. By nature of being foreign and imported, foreign goods are affected by more cost variables, such as those due to exchange rate fluctuations. Because imported products are significant in the market and their high prices expose them to more risks of being considered “having unreasonable price constituents,” the requirement to explain and revise, at the request of authorities, such price controls would in practice be imposed more on imported products than on similar domestic products. Similarly, the draft circular lacks transparency and enables the application of price control mechanisms to be imposed in such a way as to provide protection for domestic production.
- Overall, the circular proposes a major expansion of controls that will constrain free commerce, discourage further investment, and create distortions in trade.
- The best way to encourage moderation in prices is to allow markets to function freely so that price signals can be transmitted efficiently. Reform and liberalization allows markets to function more effectively.
- Future work in APEC and the Food Security Summit is expected to explore regional strategies for reducing vulnerability to price volatility without creating market distortion or disrupting trade.
- The proposed expansion of price controls could jeopardize Vietnam’s efforts to attain “market economy” status from the United States. In making this determination, the U.S. government considers the extent to which a government exerts control over the allocation and output decisions of enterprises, including the number of goods and services subject to price controls. In past, the U.S. Department of Commerce has only conferred market economy status on those countries in which price controls, if any, were minimal and limited to such goods and services as public transportation and utilities, postal, and communication rates.
- The introduction of price controls could affect Vietnam’s negotiations on a bilateral investment treaty with the United States and affect its participation in the Trans-Pacific Partnership trade agreement.
- U.S. companies are willing to work with the Vietnamese government to develop strategies that will help reduce vulnerability to price volatility without distorting the market or causing disruptions in trade.