



March 14, 2014

H.E. Mr. Dinh Tien Dung
Minister of Finance
Socialist Republic of Vietnam
28 Tran Hung Dao, Hoan Kiem, Hanoi

Price Control Practices and Procedures

Your Excellency,

On behalf of the memberships of the EuroCham and AmCham, we offer our compliments to your Excellency, and request your attention to the recent difficulties companies face with implementation procedures for the price control mechanisms.

Since 2010, when the Circular 122/2010/TT-BTC was issued, EuroCham, AmCham, and many others have expressed concerns about the price control mechanism - in which companies are not allowed to determine their price and compete freely in pricing based on the market mechanism, but are subject to the approval of authorities. Decree 177/2013/ND-CP dated November 14, 2013 and the recent draft Circular on Price make these procedures even more complicated. Government policy to "manage" business activities has caused some foreign companies to rethink their business and expansion plans, and this administrative burden conflicts with fundamental principles on free trading and fair competition set forth by the WTO. Our members believe that price controls are counterproductive.

EuroCham and AmCham share the government's concern over the dangers of rising inflation. However, we do not believe that price controls and some recent practices and procedures by your Ministry will help promote economic and social development in Vietnam. Rather than price controls, consideration should be given to liberalizing the supply chain for distribution to make it more efficient as a more effective means of making products more affordable.

We are particularly concerned about the targeted treatment of dairy products. Attached is a paper that outlines four particular points of concern. We thank you for your consideration and we are grateful for the opportunity to have our opinions considered on this important issue.

EuroCham and AmCham members want Vietnam to succeed and we remain committed to working with you and your team at the Ministry of Finance to improve the business and




investment climate here. Please do not hesitate to contact us if you have any questions for our respective Chambers.

Respectfully yours,



Preben Hjortlund
Chairman, EuroCham



Gaurav Gupta
Chairman, AmCham

cc:

H.E. Mr. Vu Van Ninh, Deputy Prime Minister
H.E. Mr. Vu Huy Hoang, Minister of Industry and Trade
H.E. Mr. Bui Quang Vinh, Minister of Planning and Investment
H.E. Mr. Ha Hung Cuong, Minister of Justice
H.E. Mr. Nguyen Bac Son, Minister of Information and Communications
H.E. Mr. Nguyen Van Nen, Minister, Chairman, Office of the Government

Attachment: Concerns on the Recent Price Control Practices and Procedures

Concerns on the Recent Price Control Practices and Procedures

Background

In 2010, a Circular on pricing (Circular 122) issued by the Ministry of Finance ("MOF") came into effect. From then, Vietnamese government consecutively issued many legal documents to control the market price - from the Price Law dated June 20, 2012, Decree 109/2013/ND-CP dated September 24, 2013 on the administrative sanctions for violation in price, Decree 177/2013/ND-CP dated November 14, 2013 to the recent draft of the Circular on Price which has been posted to the website of MOF. These legislations expand the scope of price control to include private sector enterprises (whether local or foreign invested)¹ as well as increasing the number of products subject to price regulation².

However, vague and non-transparent conditions have created problematic issues for the application. Eurocham and AmCham memberships have experienced difficulties in the course of business operation, particularly for dairy companies.

Changes in Practices and Procedures

First and foremost, the price controls, in nature, is a non-market intervention from the government and therefore, it cause a lot of issues for market – oriented companies to comply. We highlight the following four points in particular:

1. Price controls intervened in daily transaction

Dairy companies received a number of requests from distributors, supermarkets, customers etc. to show proof of MOF approval otherwise, they refuse to accept dairy products as a "legal product". Therefore, a price dossier with the "Incoming Correspondent Stamp" of the clerk at MOF's office has become a "legal proof" for price adjustment. Furthermore, we receive repeated requests from provincial Department of Finance to provide price dossier "for exercising state management in price field". With this practice, it seems that beside the administrative burden to explain with authorities, we bear some more administrative burdens to explain with business partners and retailers.

2. Repeated explanation request and inspection

The current legislations impose three basic levels of regulation: price stabilization measures, price registration, and price declaration with respective templates. However, after submitting the templates, companies received repeated requests from authorities to explain more and more in details, together with supporting documents. On the one hand, the administrative processes triggered by such explanation requests have been a major trouble and added expense for each enterprise handling any of the listed products - manufacturers, importers, wholesalers, and retailers. On the other hand, these explanations apparently go beyond the legal process of Circular 112, Price

¹ Circular No. 104/2008/TT-BTC, dated November 13, 2008, of the Ministry of Finance guiding the implementation of Decree No. 170/2003/ND-CP dated 25 December 2003 of the Government detailing the implementation of some articles of the Ordinance on Prices and Decree No. 75/2008/ND-CP dated June 9, 2008 amending and supplementing some articles of Decree 170/2003/ND-CP dated December 25, 2003 of the Government detailing the implementation of some articles of the Ordinance on Prices: Price registration would apply to enterprises that 1) conduct wholesale business; 2) conduct both wholesale and retail business, 3) are simultaneously importers and exclusive distributors; 4) are distributors; or 5) are sales agents.

² Expand from 16 products and services to 19 products and services.

Law and Decree 117 to turn themselves to be a burden. After the explanation, it can be a lengthy time period before companies know whether their price dossier is sufficient or not.

After the implementation of Circular 122 in 2010, our dairy company members experienced more than 20 inspections and audits on price as compare to the zero for the period before 2010. All inspection could not find out any serious violation (for example, false price registration, wrong product name, buy at 1, sell at 6 etc.) and yet very negative news continues to be spread to the media repeatedly after each inspection.

3. Input factors – the only ones to determine a “reasonable price”

While the Price Law and other legal documents clearly defined the price management by market mechanism and respect the right to determine the price and compete in pricing of companies, the MOF sent out many documents stating that companies “shall not increase the price if the input factors remain unchanged”. We would like to note that input factors are only one among other market factors to be taken in price decision for any product: market research, competition activities, price of global and regional markets, selection of consumers all go into pricing. Therefore, the request based on “input factors only” has caused a conflict with fundamental principles on free trading and fair competition set forth by WTO as well as by the Price Law of Vietnam.

Even with input factors, it seems that authorities have not considered the balance on price between SKUs and brands. When a company adjust the price of few products and keep the price of the others unchanged, our memberships have no chance to reflect this balance to justify the price point of each SKU/brand and the relationship between them.

4. Unfair announcement to media

In recent years, the wording “foreign dairy companies increased price unreasonably”, “increase price without approval of MOF” or “violated the laws on price” have often been in the Vietnamese media with many of them referencing interviews of authorities. On February 24, 2014, MOF circulated a press release to all media to “make public the dairy companies that violated the administration regulation in price management (Appendix 2)”. In Appendix 2, MOF listed 4 companies (Mead Johnson, Nestle, Vinamilk, Friesland Campina) and their products. In fact, such an announcement lacked legal basis in that no violation record and no official decision has been made on violation for these companies.

In this press release, there is not mention of the recent sharply increase of the raw milk price worldwide (average price in Europe increased 30% from 3950 USD/ton at 2 March 2013 to 5125 USD/ton at 1 March 2014). While the cost of material increased, prohibiting the industry to raise the price proportionally is not a market measure.

The average price of milk formulas for children under 12 months in Vietnam remains is in the medium range in the region, compared with Hong Kong, Singapore, Malaysia, China, Philippines, Indonesia, and Thailand, as proved by a survey conducted in April 2012 by Consumer Unity & Trust Society following a request by VCAD-MOIT.

This survey also proved that the milk price in Vietnam only increased at the similar level of the inflation rate, and that there are multiple choices for consumers on different brands and a wide range of prices and products for the Vietnamese customer to choose from.

For the foregoing practical and legal reasons, we urge the Government of Vietnam to avoid measures that would have prejudicial effects on dairy products, and would move us further away from a dynamic modern market economy operating under the principles of competition.