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AMCHAM REPRESENTATIVE JOINS MEETING OF ADVISORY COUNCIL ON ADMINISTRATIVE PROCEDURE REFORM

Ha Noi, Aug 16, 2017, at the request of Prime Minister Nguyen Xuan Phuc, representative of AmCham Board of Governors, HCMC, Mr. Fred Burke, Managing Partner, Baker & McKenzie joined the meeting of the Advisory Council on Administrative Procedure Reform (ACAPR) at the Office of the Government. The ACAPR meeting was convened by the Prime Minister to survey the effects of prior administrative procedure reforms for the first 7 months of 2017, and discuss the Council's activities.

On behalf of AmCham Vietnam, HCMC, Mr. Fred Burke delivered our comments which focused on unofficial costs and fees that enterprises endure when complying with the current administrative procedure requirements. Mr. Burke offered solutions for the reduction of these burdens as well as strategies to introduce WTO compliant regulatory programs. These comments focused on the trading and distribution sector, under the management of the Ministry of Industry and Trade (MOIT). The details of the comments and suggestions are as follows:

1. Economic Needs Test (ENT) for Retail Enterprises: Enterprises in the retail sector are facing an inconsistent review process. The MOIT does not accept the results of an ENT review by the ENT council, where the review is commenced at the ENT council's discretion. Rather the MOIT often requests additional documentation from enterprises following their affirmative decision from the ENT council. This approach is not consistent with Decree 23/2007 which accepts one affirmative opinion from the ENT council as conclusive of economic needs.

Suggestion: A Decree replacing Decree 23 must provide clear guidelines establishing procedures, timelines, and obligations of each of the authorities involved in the ENT in order to reduce the temporal and economic burden on enterprises caused by the secondary review. Additionally The Decree must clarify that the ENT applies for the 2nd physical store onward only.

2. Investment Licensing: Foreign invested companies in the trading, and distribution sector that were issued an Investment Certificate under Investment Law 2005 and Decree 23/2007 completed the MOIT approval

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process in order to obtain their Investment Certificate, which currently serves as their Trading License and First Store Establishment License. Under Investment Law 2015, Investment Certificates are split into 3 separate licenses. Investment Law 2015 applies retroactively, consequently, existing enterprises holding a valid Investment Certificate must now obtain these 3 additional licenses incurring a substantial cost in the process.

Suggestion: A Decree replacing Decree 23 must recognize the continued validity of the Investment Certificate issued under the previous law. Furthermore, the decree must provide for fast-track procedures for existing enterprises to acquire a Trading License.

3. Sale promotion: Under the current regulations, enterprises wishing to conduct a promotional sale are subject to many restrictions such as a value cap of 50% of products, time limitations, and onerous notification and registration procedures. In practice, the costs for complying with the notification and registration procedures are often prohibitive.

Suggestion: A Draft decree replacing Decree 37/2006 on sales promotions should eliminate unreasonable restrictions and procedures. This will reduce costs for enterprises and benefit consumers.

4. Under the current Enterprise Law, shareholders/investors must contribute charter capital within 90 days from the date of issuance of the Enterprise Registration Certificate. Due to the stringent KYC procedures at most banks, many enterprises fail to contribute within the 90 day window. In this case, the Enterprise Law does not provide a solution, and the MPI does not have any suggested solution.

Suggestion: A Government decree should be issued to provide a solution to this issue.

5. HS Code Requirement for FIE Trading License

Suggestion: A Decree replacing Decree 23 should provide that FIEs' licenses do not need to refer to HS codes, instead the license should state that they may trade any products that are not legally prohibited.

AmCham Vietnam, HCMC is grateful for the opportunity to present our members' interests at this meeting. We hope that our constructive comments will contribute to an accessible and prosperous trade and investment environment in Vietnam.



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ABOUT AMCHAM

AmCham Vietnam in HCM City is an independent association of American and international businesses. With more than 450 member and associate companies, and over 1,000 representatives, our membership of manufacturing, brand management, transportation and logistics, professional services, and travel and tourism firms is unified by a common objective to promote trade and investment between Vietnam and the United States. Since 1996, AmCham Vietnam in HCM City has been a Member of the [U.S. Chamber of Commerce](#), which represents 3,000,000 businesses, 2,800 states and local chambers, 830 business associations, and 102 [American Chambers of Commerce](#) in 82 countries.