



**MULTILATERAL TRADE ASSISTANCE PROJECT VIETNAM II
(MUTRAP II)**

Ministry of Industry and Trade in Partnership with the European Commission
ASIE/2003/005711



Activity Code: SPS/TBT-2

Assistance for Implementation of the SPS/TBT Agreements

REPORT

on

**THE REVIEW OF VIETNAM'S LAWS AND REGULATIONS
AND THE OPERATION OF VIETNAM'S SPS ENQUIRY
POINTS AND NOTIFICATION AUTHORITIES
IN RELATION TO NATIONAL OBLIGATIONS
UNDER THE SPS AGREEMENT**

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Hanoi, November 2007

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INTRODUCTION

Background:

After over 11 years of preparation and negotiations for WTO accession, Vietnam became the 150th member of the organization on 11 January, 2007. One of the commitments given by Vietnam on accession to the WTO was that the Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement) would be implemented fully as from the date of accession.

Purpose:

The European Community's MUTRAP II project is assisting Vietnam to implement its WTO commitments in the SPS area. In this report the aim is to review the laws, regulations and the operation of the SPS enquiry point and notification authorities related to the implementation of SPS Agreement, particularly to establish whether actions are needed to amend or strengthen the legal framework.

Some comments on WTO compliance:

Vietnam's obligations under the SPS Agreement are outlined in Annex 1. As for other WTO Members, it is a matter for Vietnam to decide how it meets these obligations. The SPS Agreement does not require Members of the WTO to introduce legislation of any particular kind or for any particular purpose. Vietnam cannot, however, introduce or maintain legislation or make decisions or statements about administrative practices and procedures that are not consistent with the SPS Agreement. Beyond that, it is a matter for the Government of Vietnam whether it will give formal expression to the specific SPS obligations in its legislation, or use other means (such as policy directives to and within Ministries, or internal working procedures) to ensure that WTO requirements are not violated.

It also follows that the review of relevant legislation in this report cannot demonstrate whether or not Vietnam is meeting its obligations under the SPS Agreement; it can only reveal the extent to which these obligations are either specifically reflected in legislation or are explicitly contradicted by legislative provisions. In the field of SPS, as in many other areas of public policy, compliance with international obligations must also be fully achieved in every relevant administrative action of government, whether or not there is formal guidance available to decision-makers. This means that the day-to-day decisions of a quarantine officer inspecting cargo imports at a wharf must be in conformity with Vietnam's WTO obligations just as the plant quarantine law must be.

It should also be noted that this report does not aim to form a judgment about the adequacy of Vietnam's legal framework from the perspective of the maintenance of biosecurity and food safety. This is an extremely important, but separate issue.

Structure and methodology of the report:

In this report, the relevant legislation is reviewed under four headings: plant health, animal health, protection of fisheries and aquaculture, and food safety. The relevant legislation was identified and described by the local experts contracted by MUTRAP. The report also takes into account the previous report prepared by Professor Kevin Kennedy for USAID's RAISE/SPS project.¹ A separate section comments on progress in implementing the SPS transparency obligations through operation of an enquiry point and a notification authority. This latter section was prepared following a visit to the National SPS Office and reviews of relevant reports.

SPS LEGISLATION

Plant health legislation

- o Current status of the phytosanitary legal framework of Vietnam

Vietnam has established a system of legal documents regulating all plant health activities (see Annex 2 for listing). The principal legal instrument is the Ordinance on Plant Protection and Quarantine, approved by the Standing Committee of the National Assembly on 25 July 2001. Under this Ordinance is Decree No 58/2002/ND, enacted by the Vietnamese Government on 3 June 2002, which provides for the regulation of plant quarantine, plant protection and pesticides management. Additionally, there are about 40 normative legal documents concerning plant protection, such as regulations, technical standards, circulars, decisions and plant quarantine procedures. In particular, the Decree on Plant Quarantine No. 02/2007/ND was issued by the Government of Vietnam in 2007 to meet the requirements of the SPS Agreement.

- o Comparative assessment of the gaps between the SPS Agreement and Vietnam's phytosanitary legal framework.
 - a) Basic obligations (SPS Agreement, Article 2)

In general there is no inconsistency between the legal framework for plant protection and Vietnam's basic obligations under Article 2 of the SPS Agreement, which require that measures be no stricter than necessary, that they be based on scientific principles and not maintained without sufficient scientific evidence, and that they do not discriminate in an arbitrary or unjustifiable way either between other countries exporting to Vietnam or in favour of Vietnamese producers.

¹ USAID: *The Government of Vietnam's Implementation of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures*, RAISE SPS Country Diagnostic Report # 26, March 2007. (It should be noted that this report is not an authoritative reference on the interpretation of the SPS Agreement.)

It is not necessary for these principles to be explicitly stated or reflected in Vietnam's legislation, so long as the principles are adopted and applied by the Ministries (i.e. MARD) that are responsible for developing and implementing plant protection measures.

b) Harmonization (SPS Article 3)

Regarding this obligation, relevant legal instruments of Vietnam include Decree No. 02/2007/ND-CP on Plant Quarantine (Article 5, point 7) and Decision No 88/2003/QD-BNN of the Minister of Agriculture and Rural Development on the regulation on functions, missions and rights of the Plant Protection Department.

Generally, these legal documents are consistent with SPS Agreement. However, the determination and development of Vietnamese phytosanitary standards in line with International Standards for Phytosanitary Measures (ISPMs) is still lagging. To date, there are 29 ISPMs that have been published by IPPC. These are the international standards/ guidelines/ recommendations on which WTO Members must base their own measures. They cover matters such as import regulations; export certification; compliance procedures; exotic pest response; pest management; post-entry quarantine and reference standards. Of the 29 there are 12 that have been adopted and issued as national standards for Vietnam.

The implementation of ISPMs is difficult for many countries, particularly developing countries like Vietnam. In general, the existing ISPMs are more stringent than Vietnam's national standards, and could not be enforced under present circumstances. As well, there are shortfalls in human resources, technical capacity and technical information, and the awareness of stake holders in respect of ISPMs is limited. Vietnam could progressively implement the ISPMs if there were a specific action plan applicable to some specified ISPMs.

Vietnam became a contracting party to the IPPC in October, 2005. Representatives of Vietnam take part in the annual meeting of the International Commission on Phytosanitary Measures, and every second year attend the meeting of the Asia and Pacific Plant Protection Commission. Vietnam has set up a national contact point as required under IPPC rules.

c) Equivalency (SPS Article 4)

This principle is stipulated in Decree No. 02/2007/ND-CP on Plant Quarantine (Article 5, point 5) and the standard on procedure for the determination and recognition of equivalence of phytosanitary measures was issued by Decision No. 4096/QD-BNN-KHCN. Consequently Vietnam has the legal capacity to receive and process requests from other WTO Member countries to recognize that their SPS measures applied to their exports to Vietnam are equivalent to (i.e.. have the same effect as) the import requirements specified by Vietnam.

In practice, however, it will be difficult for Vietnamese authorities to process such requests, because Vietnam lacks the technical capacity to check, test and recognize the equivalence of many of the phytosanitary measures that might be proposed by other countries. Fortunately requests from trading partners for recognition of equivalence are rather rare (there has been one, from the USA, since accession) and at least some of the requests that are received will not be complex and will be relatively easy to deal with.

d) Assessment of risk and determination of the Appropriate Level of Sanitary or Phytosanitary Protection (SPS Article 5)

Pest risk assessment (PRA) issues are covered by Decree No. 02/2007/ND-CP on Plant Quarantine (Chapter II, Articles 10 and 11), the sectoral standard on pest risk analysis procedure for importing plants and plant products issued by Decision No. 4096/QD-BNN-KHCN, and the national standard No.6098:2001 on Phytosanitary measures - Import regulations - Guideline for pest risk analysis.

While Vietnam has, therefore, the legal framework necessary for conducting PRA and for using the results of PRA reports as scientific evidence in developing appropriate phytosanitary measures, there is a significant lack of expertise and databases for carrying out PRA on products from other countries. It should be noted that, contrary to suggestions that are sometimes attributed to Vietnamese officials², there is no obligation on Vietnam under the SPS Agreement to provide risk assessment in support of its requests to other countries for market access for its products, although it may be called upon to provide data on the presence and prevalence of quarantine pests and to demonstrate the efficacy of control measures that it proposes to limit risks identified in the risk analysis of the importing country.

Additionally, the determination of Vietnam's appropriate level of phytosanitary protection, and the application of this concept in a way that maintains a consistent approach to risk management, is (as for every WTO Member) very difficult.

e) Adaptation to regional conditions, including pest- or disease-free areas and areas of low pest or disease prevalence (SPS Article 6)

This principle is mentioned in Decree No. 02/2007/ND-CP on Plant Quarantine (Article 5, points 4 and 8) but practical aspects of the establishment and maintenance of areas of low pest or disease prevalence are still not covered by current legal instruments.

Furthermore, Vietnam has no experience of setting up, controlling, and maintaining pest free areas or areas of low pest or disease prevalence. Nor does Vietnam have the technical expertise to properly evaluate claims by another country that it has an area or areas free of certain pests or diseases of quarantine that are of bio-security concern.

² See for example USAID, op. cit., p.5, which says: "In connection with risk assessments, Department representatives commented on the difficulty Vietnam is having with the USDA Agriculture and Plant Health Inspection Service in resolving the fruit fly issue associated with imports of Vietnamese dragon fruit and litchi. Vietnam believes that it has conducted a proper risk assessment that should satisfy APHIS."

This means that it will be very difficult for Vietnam to meet its obligation to take claims of freedom from pests or diseases into account in setting its import conditions for a particular product from another country, while at the same time satisfying itself that importation could occur in a safe way.

f) Transparency (SPS Article 7)

Article 5 of Decree No. 02/2007/ND-CP on Plant Quarantine says that the responsibilities of the plant quarantine authority include providing sufficient information on plant protection and quarantine to importing countries in accordance with the SPS Agreement and the International Plant Protection Convention. The regulation does not mandate that 60 days should be allowed for getting comment from other countries and relevant agencies on draft new phytosanitary measures that are not based on an international norm and that could significantly affect the trade of other Members of the WTO.

g) Control, Inspection and Approval Procedures (SPS Article 8)

The legal documents relevant to this set of obligations include: the Ordinance on Plant Protection and Quarantine (Article 14, point 2); the Decree on Plant Quarantine No. 02/2007/ND-CP; Decision No 88/2003/QD-BNN of the Minister for Agriculture and Rural Development on the regulation of the functions, missions and rights of the Plant Protection Department; and many other procedures and standards for control, inspection and approval issued by the Minister.

o Summary

The legal framework for plant health does not contain specific provisions that reflect every provision of the SPS Agreement, but nor is it necessary for there to be such provisions in respect of every obligation under the Agreement provided that Vietnam does not take actions that are in violation of the Agreement. Generally speaking, the framework of plant health legislation in Vietnam is contemporary and well developed, and further improvements to strengthen alignment with the SPS Agreement are planned or in progress.

Animal health legislation:

o Current status of Vietnamese legislation on animal health

At present, Vietnam has 70 existing national legal documents and 104 standards and procedures on animal health, most of them based on the standards, guidelines and recommendations of the World Organization for Animal health (OIE) and the Codex Alimentarius (Codex). Vietnam's Veterinary Ordinance, which specifies the responsibilities of MARD for terrestrial animals and of MOFI for aquatic animals and products, came into effect in 2004. It covers the areas of disease prevention and control,

quarantine and veterinary hygiene, drug management, and veterinary practice. However, Vietnam's legislation on animal health is still insufficient and not comprehensive: animal health issues are not dealt with in detail in the legal texts; some issues related to trade have not been regulated, such as risk assessment; and most of Vietnamese regulations are less strict than international ones. According to the World Bank, there is no legal document that stipulates quarantine requirements.

- o Comparative assessment of the gaps between WTO/ SPS Agreement and Vietnamese legislation on animal health

With the support of MUTRAP II, 18 relevant national legal documents on animal health concerning trade of animals and animal products (See Annex 3) have been reviewed. The findings below give the gaps between the provisions of the SPS Agreement and Vietnamese legislation on animal health.

a) Basic obligations (SPS Agreement, Article 2)

In general there is no inconsistency between the legal framework for animal health protection and Vietnam's basic obligations under Article 2 of the SPS Agreement, which require that measures be no stricter than necessary, that they be based on scientific principles and not maintained without sufficient scientific evidence, and that they do not discriminate in an arbitrary or unjustifiable way either between other countries exporting to Vietnam or in favour of Vietnamese producers.

b) Harmonization (SPS, Article 3)

As mentioned above, Vietnamese animal health legislation, including the Veterinary Ordinance and the Decree 33/2005/ND-CP, have been based on standards, guidelines and recommendations of OIE (the Terrestrial Animal Health Code and the Manuals), this legislation does not contain detailed regulations for animal disease prevention and control, animal quarantine and inspection, or drug and vaccine control consistent with OIE's guidelines and recommendations. Five national standards have been established for meat processing, and there are more than fifty for residue and bacterial contamination, but in general they are less stringent than the corresponding international standards.³

Vietnam has been an official member of OIE since 1991. The Chief Veterinary Officer (CVO), who is the Director of the Department of Animal Health, participates in all of OIE's annual general meetings, and he or his nominees also participate in the other meetings of OIE to promote the development and periodic review of standards, guidelines and recommendations on animal health.

c) Equivalence (SPS, Article 4)

There are 14 Agreements and Memoranda of Understanding (MOUs) on animal health cooperation signed between Vietnam and other countries, and they provide for

³ World Bank 2006

equivalence determinations. There is no other legal text that provides a basis for recognition of the equivalence of another country's measures to those applied by Vietnam.

d) Risk assessment (SPS, Article 5)

According to the Article 5 of SPS Agreement, Members shall ensure their sanitary or phytosanitary measures are based on an assessment of risks to human, animal or plant life or health, taking into account risk assessment techniques develop by the relevant international organizations. The OIE's Terrestrial Animal Health Code includes Section 1.3: Risk analysis and Section 1.5: Risk analysis for Biologicals for Veterinary Use. These sections give the guidelines for import risk analysis of animals and animal products, vaccines and bio-products. In December 2006, the Minister of Agriculture and Rural Development issued Decision No. 4086/QD-BNN-KHCN promulgating procedures for risk analysis on import of animals, import of animal products, and import of vaccines and bio-products for veterinary use. However a legal text which requires that the SPS measures must be based on a risk analysis does not exist.

e) Adaptation to regional conditions, including pest or disease free areas and areas of low pest or disease prevalence (SPS, Article 6)

The establishment of disease-free zones in Vietnam is mentioned in the Veterinary Ordinance (Chapter II, Article 9, 14) and Decree 33/2005/ND-CP (Chapter II, Article 12), and Decision No. 62/2002/QD/BNN of 11 July 2002. However the criteria for recognizing these zones stipulated in the Veterinary Ordinance and the other legal documents are not yet mentioned detailed diseases of the OIE Terrestrial Animal Health Code. Vietnam will modify some of articles of Decision No.62/2002/QD/BNN of 11 July 2002 which are consistent of guidelines and recommendations of OIE for adaptation to regional condition.

f) Transparency (SPS, Article 7)

No animal health legislation provides explicitly for the soliciting of comment by interested parties on draft proposals for new sanitary measures, although it is apparently the practice to conduct such consultations in a limited way.

g) Control, inspection and approval procedures (SPS, Article 8)

These activities are regulated in the Veterinary Ordinance (Chapter II, Articles 23-30), Decree 33/2005/ND-CP (Chapter III, Articles 29, 30, 33-36 and 37; Chapter IV, Articles 38-48), the Ministerial Decisions No. 45/2005/QD-BNN, No. 46/2005/QD-BNN, No. 64/2005/QD-BNN, No. 15/2006/QD-BNN, No. 08/2005/QD-BTC and some other legal documents.

The regulations concerning the control, inspection and approval procedures are applied for animals and animal products for export/import as well as for domestic

consumption. However, due to the lack of suitable equipment, facilities and staff, the time taken for the implementation of these procedures is often longer than necessary. Nor do Vietnamese laboratories have enough equipment and technical capability to certify some importers' requirements on quality testing of animal products.

Fisheries health legislation

- o Current status of development and application of SPS-related regulations and standards in fishery foods production in Vietnam

Implementation of the Government's long-term strategy for consumer health protection and seafood export from 1994 required the Ministry of Fisheries (MOFI) to develop and implement a legal framework for control of quality and safety of fishery products, in line with Codex standards and the access conditions of Vietnam's major fish export markets in the EU and USA.

The key requirements are to base the legal framework on the HACCP (hazard analysis and critical control point) approach and on the application of a system of inspection and approval of establishments by an assigned competent authority. These are therefore the corner-stones of the policy and principles applied by MOFI. In addition to the system of inspection and approval of hygienic conditions and food safety systems of fishery processors, MOFI has introduced certain monitoring programs for those food safety hazards that cannot be controlled in handling and processing, such as contaminants, toxic algae and biotoxins in bivalve mollusks and residues of certain harmful substances in aquaculture products. Regulations on use of chemicals and veterinary medicinal products in aquaculture were also adopted (see the full list of relevant legislation at Annex 4). The two monitoring programs implemented by the Ministry of Fisheries and related agencies for hazards that cannot be controlled during handling and processing of food and raw materials are in compliance with international recognized principles and with EU regulations, and they are recognised by the EU, the USA, Canada and other importing countries.

The set of laws on animal and plant health including aquatic animals and plants (fisheries law, ordinance on quality of commodities, ordinance on food hygiene, ordinance on animal health, ordinance on plant protection) has recently been revised and adopted by the National Assembly. A number of decrees providing detail on the implementation of these laws have also been promulgated. The most important regulations on the system and procedure for implementation of the legislation related to aquatic animal and plant health protection were issued by the Minister of Fisheries, including sector standards on hatcheries and grow-out aquaculture systems, and sector standards on specific requirements for seed and feed. However the legal framework is not complete and there is a need for establishment/revision of a very large number of subordinate regulations and standards to ensure health protection .

Fishery products are classified as high risk food, so all kinds of food fishery products are in the list of products subject to state mandatory inspection and certification that is attached to Prime Minister Decision No 50/2003/QĐ-TTg. Products that are not in the list are, in principle, not subject to any quality inspection at import, although the Customs

Service can require inspection in suspect cases. According to the ordinance on food hygiene and safety, the inspection of imported fishery products for immediate domestic consumption (i.e. without further processing) is assigned to relevant agencies under the Ministry of Health while the import of fishery products for further processing for local sale or for re-export is under the responsibility of NAFIQAVER (National Fisheries and Quality Assurance Veterinary Directorate), Ministry of Fisheries.

- o Comparative assessment of the gaps between the SPS Agreement and Vietnamese legislation on SPS in the fisheries sector
 - a) Basic obligations (SPS Agreement, Article 2)

There is no apparent inconsistency between Vietnam's fisheries sector legislation and the basic obligations set out in Article 2 of the SPS Agreement.

- b) Harmonization (SPS, Article 3)

The legal framework of sanitary measures applied in the fishery sector comprises the law and ordinances establishing the general policies and principles for setting up and application of SPS measures, and subordinate legislation (government decrees, Ministerial regulations and standards) which guide the implementation of the law and provide detailed requirements. This system of legislation has the advantage of flexibility but requires that contemporary subordinate legislation must be available to complement and give effect to the head laws. As mentioned above, the principal laws relating to SPS in the fisheries sector have recently been revised in parallel with the process of Vietnam's negotiation for WTO accession, so that the provisions in these laws and ordinances are in compliance with relevant international regulations and standards (OIE's Aquatic Animal Health Codes, Manual on Aquatic Animal Health and other relevant texts; and relevant Codex Alimentarius codes of practice, recommendation, guidelines, and standards). However the subordinate legislation is not fully up to date, and the level of sanitary protection implicit in the existing legislation is typically lower than in international norms. (For example, the international maximum residue limits of certain contaminants and additives are higher than Vietnam's, and in some instances Vietnam has yet to regulate certain substances.)

The participation of Vietnamese experts in the activities of the relevant international standard-setting bodies (CODEX and OIE) began relatively recently and is still very limited. The fishery sector has sent experts to meetings of bodies such as the Codex Committee on Fish and Fish Products (CCFFP), the Codex Committee on Food Hygiene (CCFH), the Codex Committee on Food Inspection and Certification Systems (CCFICS), the Codex Committee on Residues of Veterinary Drugs in Foods (CCRVDF) and the annual general meeting of OIE.

- c) Equivalence (SPS, Article 4)

The Ordinance on Veterinary does not explicitly permit the possibility of variation of import conditions where a supplier country demonstrates that it has other ways of achieving Vietnam's appropriate level of protection. The Vietnamese authorities would nevertheless accept the request from a supplier country for evaluation of a claim for recognition of equivalence. As a practical matter, imports of aquatic animals and their products are only in very limited quantities and from few countries. As well, Vietnam's inspection and quarantine procedure is claimed to be consistent with the OIE code of aquatic animal health. There has as yet been no request for recognition of equivalence from countries supplying aquatic animals or their products to Vietnam. Vietnam has asked the Republic of Korea and China for mutual evaluation and recognition of equivalence of the regulations and control system for food safety in the fisheries sector. Each side has reviewed relevant laws and regulations submitted by the other side and experts have been sent between the countries to conduct in-country inspections. As the results of these activities, arrangements on mutual recognition of food safety control systems in fisheries production, fishery products inspection and certification have been signed between Vietnam and Korea, and Vietnam and China. Under these arrangements each side allows import of fishery products from fishery establishments on an approved list and with an attached health certificate issued by the other side's competent authorities.

d) Risk assessment (SPS, Article 5)

According to the Article 5 of SPS Agreement, Members shall ensure their sanitary or phytosanitary measures are based on an assessment of risks to human, animal or plant life or health, taking into account risk assessment techniques develop by the relevant international organizations. Guidelines have been developed by Codex on food safety risk analysis, and the OIE Aquatic Animal Health Code's section 1.4 deals with import risk analysis of aquatic animals and animal products, vaccines and bio-products.

Existing legal texts concerning SPS measures for the fisheries sector are based on Codex and OIE recommendations, guidelines and standards, but no SPS measure has been established based on risk analysis carried out by the authorities of Vietnam because of a lack of capacity, because procedures for conducting risk assessment appropriate to the circumstances of Vietnam have not been prepared, and because the necessary data are not available. Experts have attended a number of training courses on general risk assessment.

e) Adaptation to regional conditions, including pest or disease free areas and areas of low prevalence of pests and diseases (SPS, Article 6)

The OIE Aquatic Animal Health Code provides very detailed guidelines for zoning in general (part 1, chapter 1.4.4) and for establishment, sustaining and restoration of disease free status for an aquaculture establishment, compartment, zone or country. The principle of disease free zone is mentioned in the Veterinary Ordinance (Chapter II, Article 9, 14) and Decree 33/2005/ND-CP (Chapter II, Article 12), but the regulations

and guidelines detailing the specific conditions and procedures in Vietnam for establishment, sustaining and restoration of disease free areas do not yet exist.

As an initial step in relation to this issue, NAFIQAVED in cooperation with the Department for Aquaculture under the Southeast Asian Fisheries Development Center (SEAFDEC) is in process of establishing Koi Herpes Virus (KHV) and Spring Viraemia of Carp (SVC) disease-free status for some establishments and compartments in Ho Chi Minh City and Dong Nai province where ornamental carp and other KHV and SVC-susceptible species are cultured for export to the USA and EU. Based on the experience obtained from this activity NAFIQAVED plans to draft the detailed regulations and guidelines for conditions, procedures and implementation mechanisms for aquatic animal disease freedom for areas of Vietnam.

f) Transparency (SPS, Article 7)

According to the law on promulgation of legal documents, the draft text of legal documents is to be made available for comment from different stakeholders including relevant central and local administrations, and industry sectors, both in Vietnam and in other countries. In the fisheries sector the draft texts are also published on the website and usually a meeting with relevant stakeholders is conducted for better exchange of comments.

g) Control, Inspection and Approval Procedures (SPS, Article 8)

Border inspection and quarantine measures for prevention of exotic pests and diseases into Vietnam are also regulated in the Ordinance on Veterinary and Decree No 33/2005/ND-CP guiding the implementation of the Ordinance. The guidelines for this task were adopted by the Director General of NAFIQAVED. The capacity for implementation of this activity is very limited in both human resources and testing/examination facilities. Vietnam is one of leading aquaculture countries so in the future the trade of live aquatic animal, bloodstock and seed between Vietnam and neighbouring countries will increase, and therefore the completion of regulations and standards as well as capacity-building in this aspect are a priority.

IV. Food safety legislation

- o Current status of development and application of SPS-related regulations and standards for food safety in Vietnam

The Ordinance on Food Hygiene and Safety of July 2003 commits the Government of Vietnam to encourage adoption by food producers and retailers of contemporary food quality assurance systems for ensuring food safety. While there are regulations and standards for all aspects of food safety control, inspection and certification, and the recently established or revised regulations and standards are consistent with international

guidelines or recommendations, there is still a very large number of old standards on specific food commodities with lower requirements than specified in international norms.

Vietnam's legislation relevant to food safety is listed in Annex 5.

- o Comparative assessment of the gaps between the SPS Agreement and Vietnamese legislation on food safety
 - a) Basic obligations

The Ordinance on Food Hygiene and Safety of July 2003 allows imported food that has been certified as satisfying Vietnam's food hygiene and safety requirements by countries which have signed with Vietnam international treaties on mutual recognition of quality certification to be inspected if signs of violating the provisions of Vietnamese law on food hygiene and safety are detected. The Ordinance also says that imported food that is appropriately certified may be entitled to reduction of the number of food hygiene and safety inspections.

The Decree of 2004 on the implementation of the Ordinance says that all imported materials, chemicals used in food processing, packages in direct contact with food, food additives and imported food must be subject to food hygiene and safety examination, except for food not intended for marketing in Vietnam. Unprocessed food of animal or plant origin must have sanitary or phytosanitary certificates, granted by competent Vietnamese State agencies.

The imported food inspection program is risk-based in the following respects. Initially all food consignments of a certain kind and origin are subject to full documentation checks and appropriate physical examination and testing. To reduce the number of examinations for subsequently imported lots of goods of the same kind and origin, if five consecutive lots are examined and satisfy food hygiene and safety requirements, subsequent lots will have their dossiers checked and shall be subject to random examination only at the discretion of the border authority. If under this reduced checking regime a consignment is found to violate Vietnamese standards, 100 per cent checking is resumed until five lots in succession are found to be in compliance. There are no differences in frequency of inspection for high risk foods by comparison with lower risk foods, but for high risk foods⁴ samples are tested for all relevant food safety parameters while for low risk foods the samples are tested only for parameters indicating the hygiene and safety condition of consignments.

The Decree also says that for food materials and food additives, their remaining use time must be at least over two thirds of their use life inscribed on their labels as from the time the good lots are imported into Vietnam. This provision is in process of revision, which is expected to be achieved soon.

⁴ According to the World Bank (2006), Decree 163-2004-ND-CD provides detailed regulations for implementing the Ordinance and specifically identifies and regulates in detail ten food products vulnerable to breaches of food safety and hygiene standards.

In theory the same standards are applied for both imported foods and foods that are produced and sold in Vietnam.

b) Harmonisation

As mentioned above, a proportion of Vietnamese food standards are based on Codex standards⁵, and some fishery sector standards are also based on EU and US standards in order to satisfying these importing countries' requirements. There are still old standards with less strict requirements than Codex standards. Vietnam's policy is to harmonise national standards with Codex ones and there is program for bringing Vietnam's standards into line with Codex standards.⁶ There are no Vietnamese standards that are significantly stricter than a corresponding Codex standard.

So far as it is able Vietnam participates in relevant work of the Codex Alimentarius Commission and its subsidiary bodies including the annual general session of the Commission, the Codex Committee on Food Import and Export Inspection and Certification Systems, the Codex Committee on Fish and Fish Products, the Codex Committee on Food Hygiene, the Codex Committee on Residues of Veterinary Drugs in Food. Support from Codex Trust Fund for attendance at meetings is very limited and mostly used for participation in the general session of the Codex Alimentarius Commission; consequently government funding is needed to send experts to those subsidiary bodies of Codex which are most related to Vietnam's food production and import/export activities.

The Codex Contact Point for Vietnam is located within the Directorate for Standards and Quality within the Ministry of Science and Technology.

c) Equivalence

Relevant legislation in Vietnam apparently allows for the possibility of granting a request from another WTO Member for recognition of the equivalence of its food safety measures. Vietnam has signed agreements with certain countries for mutual recognition of the equivalence of food safety measures; however there is not enough technical capacity (especially knowledge and skills of officials) to adequately assess a claim for recognition of equivalence.

⁵ In 2006 a World Bank study reported the Ministry of Health's advice that about 48 percent of the national health standards comply with the CODEX standards (as of March 2005). The study recommended completion of the gap analysis between national and international standards and establishment of priorities for harmonization of standards, based on their importance for public health, their relevance to cross-border trade, and their enforceability. See World Bank 2006 in the attached list of references. According to Kennedy (2007), the Ministry of Health estimates that approximately 60 percent of all Codex standards and guidelines have been adopted to date.

⁶According to Prime Minister's Decision No. 43120061qd-ttg of February,2006, approving the national action plan for food safety and hygiene, the target is that 80% of food standards are compliant with international norms by 2010.

Para. 3 of Article 5 of the Ordinance on Food Hygiene and Safety states:

“ [The] Government encourages and creates the favorable conditions for the international cooperation in assurance of food hygiene and safety for consumers”

However the regulations on procedures for evaluation and recognition of equivalence of the food control systems of the countries exporting to Vietnam are not yet available.

d) Risk Assessment

Vietnam lacks capacity - expert personnel and data - to conduct proper risk assessment in support of the development of food safety measures. This is not, however, a significant problem from the perspective of compliance with the SPS Agreement, at least insofar as standards and other measures are based on or are less stringent than a relevant Codex norm. Where there are Vietnamese standards but no corresponding Codex standards, it is possible that Vietnam might be requested by another WTO Member to provide a risk assessment in support of the standard in accordance with Article 5 of the Agreement.

e) Transparency

The Ministry of Health does not have written procedures in place to ensure that the notification obligations under the SPS Agreement are met, but it is said that the responsible officials are well aware of what must be done.

By Article 3 of the Law on the Enactment of Legal Normative Documents, as revised in 2002, all draft legal normative documents including those related to SPS issues are to be published for comment and enter into effect a minimum of fifteen days from the date of publicity in the Official Gazette.

f) Control, inspection and approval procedures

Vietnam is now reviewing, revising and supplementing verification and control procedures related to food import and export in general, and registration regulation of food in particular in line with the requirements of the SPS agreement.

Under the procedure for approving food additives for use in Vietnam:

- A committee within the Ministry of Health's maintains a list of food additives approved for use in Vietnam. For the time being this list is based on translation of related Codex and JECFA recommendations/standards.
- The list is circulated for comments from other related Ministries, industry, and scientific institutions
- The Ministry of Health's elaboration committee may conduct workshops for clarification of issues.
- Final draft proposals are submitted to the Ministry of Health for adoption.

The procedure for approving new pesticides and veterinary drugs for use in Vietnam and for establishing related residue limits in foods is as follows:

- The producer of a new pesticide or veterinary drug proposed for use in Vietnam has to make application to the different institutions with responsibility for approval of new pesticides and veterinary drugs for use. (The Department of Plant Protection approves pesticides, the Department of Animal Health approves veterinary drugs for terrestrial animals, and NAFIQAVED approves veterinary drugs for aquatic animals.) The applicant must provide scientific and trial data that establishes the safety of the substance to humans and animals, and the must propose related residue limits in foods.
- The National Advisory Committee on pesticides and veterinary drugs assesses the application.
- Based on the application and the recommendation of National Advisory Committee, the Ministry of Agriculture approves or rejects the application.

According to the report of the WTO's Working Party on Accession⁷:

A Member expressed reservations about Viet Nam's current legislation on veterinary drugs, in particular the requirement that new drugs put forward for circulation in Viet Nam be re-trialled in Viet Nam, which generated additional costs and duplicated the trials already performed by the producer, and that the quality of a drug be reviewed in case of complaints and denunciations, which could lead to abuse for non-health and safety reasons. In response, the representative of Viet Nam said that under Article 48 of the Veterinary Ordinance, only veterinary drugs produced in foreign countries, imported for the first time into Viet Nam, and not included in the list of veterinary drugs permitted for circulation in Viet Nam, had to be registered for importation. Viet Nam was developing procedures on drug registration for circulation in Viet Nam, which would specify the types of drugs subject to re-trial. The procedures on veterinary drug registration have been promulgated by Decision No. 10/2006/QD-BNN of 10 February 2006. Concerning the requirement for quality review in case of complaints and denunciations, he noted that the assessment would be based on inspection or testing results by the veterinary drug control agencies upon request of the government management body.

TRANSPARENCY OBLIGATIONS

SPS enquiry point and notification authority

o SPS obligation:

Under the transparency provisions of the SPS Agreement, Vietnam must nominate and maintain a single **enquiry point** to answer the questions of other Members and provide relevant documents regarding SPS measures and related matters.

⁷WTO, 2006

Vietnam must nominate and maintain a single national **notification authority** to implement specified notification procedures for its measures that are not based on a relevant international norm and which may have a significant affect on the trade of other Members. In particular, proposed new measures must be notified to other Members in advance, and their comments must be taken into account.

Formats for notifications of measures (normal and emergency) have been adopted by the SPS Committee, and the WTO Secretariat has published a guidance document on implementation of the SPS transparency provisions. The Secretariat takes responsibility for distribution to all Members of notifications that are submitted through it.

o Legislation:

By Prime Minister's Decision No. 99/2005/Q§-TTg of 9 May 2005 the SPS notification authority and enquiry point have been set up as a single entity within the Ministry of Agriculture and Rural Development. Under this Decision, government authorities responsible for food safety, plant and animal health - namely the Departments of Plant Protection (PPD) and Animal Health (DAH) under the Ministry of Agriculture and Rural Development; the National Fisheries Quality Assurance and Veterinary Directorate (NAFIQAVED) under the Ministry of Fishery; the Viet Nam Food Administration (VFA) under the Ministry of Health; the Department of Science and Technology (DST) under the Ministry of Industry; and the Directorate for Standards, Measurement and Quality (STAMEQ) under the Ministry of Science and Technology - are, within their respective spheres of responsibility, to coordinate with the Ministry of Agriculture and Rural Development and Viet Nam's National SPS Office to carry out the obligation of notification and enquiry in accordance with the provisions of the SPS Agreement.

Decisions by the Minister for Agriculture and Rural Development have established the list of functions of the National SPS Office (Decision No. 1733) and located it within the International Cooperation Department of MARD (Decision No. 1632. Decision No. 1117 (April, 2006) promulgated organizational regulations and prescribed operational coordination between the National SPS Office and the focal points identified within the concerned Ministries.

A further decree of the Prime Minister was drafted by MARD in March 2007 and circulated to other interested Ministries, and consensus has been reached on this draft. The new decree would reinforce MARD's authority, through the SPS unit, to implement Vietnam's transparency obligations under the SPS Agreement, inter alia by establishing an SPS network and detailing the responsibilities of the Ministries involved. The draft Decision calls for posting on a web-site of both final decisions and regulations and draft SPS-related documents. The Decree is expected to be made formal later this year.

o Functions:

The responsibilities of the SPS unit are in two categories:

- to meet Vietnam's formal obligations to make notifications and answer questions specifically directed by other countries to the Enquiry Point;

- to carry out ancillary or related activities as required by the government, such as liaising with stakeholders in the commercial sector and implementing public education on the SPS Agreement.

In practice, the first category of functions requires relatively little resource (perhaps two persons at most) for effective implementation.

o Resources:

The SPS unit in MARD is apparently quite well resourced, from both the Government of Vietnam and from MUTRAP. There are currently seven staff members:

- Director (part function)
- animal health, plant health and food safety technical specialists;
- legislation expert;
- IT expert;
- office secretary.

The total complement of staff is expected to be eight persons. Staff who participated in a meeting with the consultant on 3 August 2007 impressed as well qualified, well informed and positive about their tasks.

MUTRAP has equipped the unit with extensive IT infrastructure, and funded a substantial amount of training for staff including international study tours.

o Activities:

- Enquiries and notifications:

Since joining the WTO in January 2007 Vietnam has received 11 SPS enquiries to the SPS Enquiry Point. The SPS unit reports that these enquiries were dealt with according to the timelines internally established (i.e. maximum 5 day turn around). The unit also says that some other enquiries may have been made to the Ministry of Health or the Ministry of Fisheries, who may have responded directly.

No notifications have been made during the seven months since accession to the WTO. It is not clear whether this is the case because there has been no need to make a notification, or because the notification procedure has yet to be put into operation by the SPS unit in conjunction with the relevant Ministries.

- Other activities:

A web portal to allow public access to SPS-related documents and links is under design, and there is a live site (without content yet) on the web.

It is intended to mount on this site various databases. One of these would be a listing of sanitary and phytosanitary access conditions for products exported to Vietnam. The planned completion date for this database is end-2007; resources have been allocated within line areas of MARD for this very ambitious project.

It is also intended to establish SPS offices at the provincial level to liaise with stakeholders, implement education initiatives, disseminate information on Good Agricultural Practice and market conditions, and so forth. Again, this is a very ambitious goal.

The SPS unit advised that it intended to play a role in the handling of all SPS-related questions directed to line Ministries from other countries, whether specifically addressed to the Enquiry Point or not. It was pointed out to the SPS unit that this would mean intervening in a large number of routine procedures that occur on a daily basis between counterpart agencies in trading partner countries. There seemed to be agreement that the SPS unit's role in such interactions would as a practical matter have to be limited to monitoring rather than direct participation.

When it receives a notification from another WTO member the SPS enquiry point and notification authority has responsibility to classify and circulate it to a relevant line ministry's SPS focal point, which is in turn responsible to forward the notification to all relevant stakeholders. In case of a draft regulation or standard notified by another WTO member, the line Ministry is in charge of collecting and processing comments submitted by stakeholders and sending a summary of comments to the SPS unit for relaying to the WTO member.

o Problems:

When invited to nominate any particular problems it faced in carrying out the functions of the unit, staff mentioned only "lack of experience".

SUMMARY OF THE PRESENT SITUATION:

Legislation:

According to the Government's Action Plan for the period following accession to the WTO⁸, Ministries, ministerial agencies, Government-affiliated agencies and the People's Committees of centrally-administered provinces and cities are to:

- note Vietnam's accession commitments and other obligations in WTO; determine contents of commitments that can be implemented directly and those that need to be put into domestic legislation; [and] develop a plan for amending and supplementing laws, ordinances and related legal documents;

⁸ Action Plan of the Government Implementing Resolution of the 4th Congress of the Central Committee of the Party term X about several grand guidelines, policies so that our country would develop rapidly and stably when Vietnam accesses WTO (*Attached with Resolution No. 16 /2007/NQ-CP dated February 27, 2007 by the Government*).

- thoroughly and carefully review the existing legislative framework, then determinedly remove regulations that are inconsistent with commitments;
- improve technical standards and food safety standards in accordance with international regulations to protect the domestic market and [export?] customers.

Vietnam has a large body of relatively up-to-date legislation to equip the responsible authorities to implement an effective, WTO-compliant SPS regime. This study has identified no major deficiencies in the legal framework, which is hardly surprising given that Vietnam has only very recently joined the WTO and previously had undergone a protracted and intense scrutiny of all of its relevant laws and procedures during the accession process. Commendably, there appears to be a general predisposition on the part of the Government to formally reflect WTO obligations in “black letter law”, in preference to reliance on legal/administrative interpretation in the implementation of laws, regulations and so forth to reflect proper, WTO-compliant practice. Putting WTO obligations explicitly into law is perhaps, for the time being at least, rather uncomplicated because there are relatively few existing program activities that substantially impede import trade through SPS measures - in other words, new laws do not have to be designed around or to forcibly constrain established practices. It is opportune, therefore, to press on with the elaboration of the SPS legal framework in Vietnam.

In the exceptional case where a legal requirement appears to be directly contrary to WTO rules - for example, where a Decree says that for food materials and food additives, their remaining use time must be at least over two-thirds of their use life inscribed on their labels as from the time the goods are imported into Vietnam - this has been acknowledged and an appropriate amendment is expected to be achieved soon.

There is some further confirmation of the compliance of Vietnam’s SPS regime in the fact that at the three meetings of the SPS Committee held so far this year there does not appear to have been any mention of specific concerns about the implementation of Vietnam’s commitments.

Transparency obligations:

Vietnam has a very well established capacity now to implement its transparency obligations under the SPS Agreement. Indeed the resources allocated to the National SPS Office are substantially more than are needed to perform the minimum functions of making notifications (of which there are likely to be few in the immediate future) and answering enquiries received from other WTO Members (on which most of the work has to be done by the line agencies where the detailed knowledge and expertise resides).

Consequently there is significant capacity in the National SPS Office to carry out other SPS-related tasks, amongst which the most important must be the transmission of relevant information to those sectors of the Vietnamese economy and society that most need to be informed about SPS matters. The Action Plan attached to Government Resolution No. 16 /2007/NQ-CP of February 2007 commits agencies to:

“use various channels of information and means of communications, training courses to disseminate opportunities and challenges when Vietnam accesses WTO as well as contents of specific commitments for relating subjects (governmental agencies, manufacturing and business subjects, professional associations) so that these subjects would fully understand contents of the commitments as well as what need to be done. Information must be oriented appropriately to the policies and guidelines of the Party and the State, inaccurate information about impact of WTO should be timely corrected. To use mass of media to assist businesses in having thoroughly grasp of the economic-social developing policies of Vietnam and rules and regulations of WTO.”

Some recommendations on how this task might be approached are set out below.

RECOMMENDATIONS FOR ACTION

Legislation:

No specific recommendations are made in this report for amendment of Vietnam’s existing suite of SPS-relevant legislation in order to bring about conformity with WTO obligations.⁹ The process of amending, supplementing and developing new components of the SPS regulatory framework (like the proposed veterinary and plant protection laws) in conformity with SPS Agreement should, of course, continue.¹⁰ Similarly the relevant international standards, guidelines and recommendations should be progressively taken up in official Vietnamese standards.

Transparency:

⁹ This recommendation is broadly consistent with the thrust of the World Bank’s *Food Safety and Agricultural Health Action Plan*, whose list of priority actions has very little to say about necessary legislative developments.

¹⁰ Professor Kennedy’s conclusion on the legislation issue in his report for USAID in March of 2007 was as follows:

- Vietnam is in the process of undertaking a systematic and comprehensive review of its entire SPS legal regime. It will be a top to bottom review of all of its SPS laws with the goal of bringing its national SPS standards up to international standards on food safety and animal and plant health. For at least the next three years Vietnam’s SPS legal regime will be in a state of flux.
- Vietnam is just entering the first phase of bringing its SPS legal regime up to international standards. It is too early to say whether or not it will succeed, but the political will to fully implement the SPS Agreement seems to exist.
- Vietnam’s proposed timetable is ambitious: to revise and amend all of its SPS laws to bring them into conformity with international standards by 2010. Without generous technical assistance from donor countries and organizations, especially in conducting risk assessments, Vietnam’s timetable may be unrealistic.

The National SPS Office should have a central role in preparing and disseminating information about SPS issues and the WTO to interested stakeholders. This vital task should be carried out in a systematic way, which means that goals, objectives and intended outcomes must be specified and a plan drawn up to implement the information program. Key aspects will include the identification of target audiences, especially in the private sector, and the establishment of effective mechanisms for communication with them. The work can be assisted by using the various information and training materials that are available through the WTO and STDF web-sites, but staff of the National SPS Office will have to be given the necessary training so that they can effectively deliver the information program.

The information program should have a number of elements, including:

- general education concerning the provisions and significance of the SPS Agreement;
- response to specific requests by stakeholders for information;
- circulation to interested parties of notifications by other WTO Members of new or revised SPS measures that may affect Vietnam's exports;
- circulation of information about proceedings of the SPS Committee, and relevant dispute settlement cases;
- circulation of information about developments in Vietnam (e.g. new or revised standards, or new legislation) relevant to sanitary or phytosanitary control.

Other action:

Legislation and notification/enquiry point development aside, there are very many things that need to be done in Vietnam to strengthen SPS capacity. (SPS capacity is the ability of a country such as Vietnam to identify, evaluate and control sanitary and phytosanitary risks.) Among the areas brought to attention during the compilation of this report were:

- modernization of equipment and facilities
- human resource development programs
- a national procedure for the determination of equivalence
- a national standard for establishment of areas of low pest or disease prevalence, and strengthened risk assessment capability in order to evaluate any requests that Vietnam may receive for recognition of equivalence or recognition of pest and disease free areas or areas of low pest or disease prevalence
- a phytosanitary operational manual in line with international regulations.

On the issue of the implementation of Article 5 on risk assessment, Vietnam may be asked by another WTO Member to provide the risk assessment upon which one of its SPS measures is based, where that measure is not based on an international standard, guideline or recommendation. As for many WTO Members who are challenged in this way, no such risk assessment will in fact have been carried out. In these circumstances Vietnam must either remove the measure or it will have to claim that the measure in

question is being applied on provisionally, and that an assessment will be conducted within a reasonable period of time. If a risk assessment is to be attempted, it might be possible for Vietnam to purchase the service of international experts for the task - but this is expensive and no more than a short term solution. Consequently Vietnam must build up its own risk assessment capability, which in any event will be useful in facilitating adoption of a appropriate risk-based approach in many areas of administration of Vietnam's SPS regime.

Regarding the suggested SPS capacity-building initiatives, the preferred approach should be to implement the action plan developed by local experts and the World Bank, as summarised in the Action Plan Matrix appended to the World Bank Report No. 352331 VN. Since a comprehensive, expert assessment of SPS capacity-building needs has already been carried out in this report, there is no need to repeat the exercise; and the Action Plan provides a strong foundation for the relevant ministries to seek the funding required to enable them to perform their functions effectively in the future.

Annex 1: Vietnam's obligations under the SPS Agreement

Scope of the Agreement:

SPS measures are defined in Annex A of the Agreement on the Application of Sanitary and Phytosanitary Measures. In practice, the Agreement applies to actions taken by the government of a WTO Member country to ensure the safety of food and to protect animal and plant health in that country, where such actions could adversely affect the trade of other Members of the WTO.

SPS measures can include laws, regulations, decrees by Ministers, standards¹¹, official requirements for inspection, certification, sampling, testing, and so forth.

Basic right:

As a WTO Member, Vietnam has the right to take any measure that is necessary to protect human, animal or plant life or health provided that its measures are otherwise consistent with the provisions of the Agreement.

Vietnam can decide what level of protection against SPS risks it wants to maintain, but in making that decision it should take into account the objective of minimising negative effects on trade.

Basic obligations:

Vietnam's SPS measures cannot be more strict than is necessary to achieve sufficient protection of human, animal or plant life or health.

Vietnam's SPS measures must be based on scientific principles.

Vietnam's SPS measures cannot be maintained without sufficient scientific evidence, unless they are being implemented on a provisional basis while the necessary scientific evidence is being gathered and assessed.

Vietnam's SPS measures cannot favour domestically-produced goods by comparison with similar¹² imported goods (so-called "national treatment"); nor can they favour goods imported from one country by comparison with similar goods imported from another country.

¹¹ Under the SPS Agreement a *standard* is a norm intended for mandatory application (such as a pesticide residue limit in food); under the TBT Agreement a standard is a norm that is intended for voluntary use by industry (such as a technical specification for recording video material on to a replayable disc).

¹² In this context, "similar" means taking into account the degree of sanitary or phytosanitary risk associated with goods from different sources.

Use of international norms¹³:

Where relevant standards, guidelines and recommendations made by the Codex Alimentarius Commission, the World Organisation for Animal Health (OIE), and the organisations that operate within the framework of the International Plant Protection Convention are available, Vietnam must base its SPS measures on these international norms except where the international norms are not strict enough to achieve the appropriate level of protection or there is a scientific justification for not using the international norm.

Vietnam's measures that are based on international norms are consistent with the SPS Agreement.

Measures not based on international norms:

If there is no relevant international norm, or one is available but not strict enough to achieve Vietnam's appropriate level of protection, the SPS measure of Vietnam must be based on an appropriate risk assessment. The risk assessment must take into account risk assessment techniques developed by the relevant international organisations, which include Codex, OIE and IPPC.

When selecting the SPS measure that will reduce the assessed risk to an acceptably low level (that is, will achieve Vietnam's appropriate level of protection), Vietnam should maintain a consistent approach to risk management. A higher level of risk should not be accepted in one instance, by comparison with other situations, if the result would be discrimination against one of more trading partners or a disguised restriction on international trade.

There may be various methods by which SPS measures can reduce an assessed risk to an acceptably low level. Vietnam must choose the SPS measures that achieve its appropriate level of protection with the least negative effect on trade from other WTO Members.

Measures can be implemented without a prior risk assessment if there is not enough scientific information available. However Vietnam must take into account the information that is available when it establishes the provisional measure, and Vietnam must seek the information that is needed for a proper risk assessment and carry out that assessment within a reasonable period of time.

Equivalence:

Another WTO Member that wants to export a product to Vietnam can propose that SPS measures that are different from the ones specified by Vietnam be used by the exporting Member to manage risk. Vietnam must accept such a proposal if the other Member can

¹³ *International norms* are the standards, recommendations and guidelines made by certain international standard-setting bodies.

show that the measures it proposes to use will be just as effective in managing risk as the measures specified by Vietnam.

If Vietnam is making a claim of equivalence in respect of its exports, it must give the importing country reasonable access to the territory of Vietnam for inspection, testing and other procedures necessary to verify Vietnam's claim.

Adaptation to regional circumstances:

When it is considering the risk associated with import of a particular product from another Member, Vietnam must take into account that the other country may be free of a pest or disease of concern to Vietnam, or that there are areas of the other country that are free of the pest or disease, or that a pest or disease may be present but only at low prevalence. Similarly Vietnam's assessment of risk and the SPS measures it applies should take into account the prevalence of pests and diseases within Vietnam.

Control, inspection and approval procedures:

If Vietnam uses control, inspection and approval procedures to ensure that its SPS requirements are being met, these procedures must be reasonable, prompt, non-discriminatory, and transparent. Any fees imposed must be applied in a non-discriminatory way and must be no higher than the actual cost of the procedure. There should be a procedure to review complaints concerning the operation of control, inspection and approval procedures.

Transparency:

Vietnam must nominate and maintain a single enquiry point to answer the questions of other Members and provide relevant documents regarding SPS measures and related matters.

Vietnam must nominate and maintain a single national notification authority to implement specified notification procedures for its measures that are not based on a relevant international norm and which may have a significant affect on the trade of other Members. In particular, proposed new measures must be notified to other Members in advance, and their comments must be taken into account.

Provincial and local governments:

The national government of Vietnam is responsible to ensure that provincial and local governments in Vietnam comply with the provisions of the SPS Agreement.

Other obligations:

Vietnam must participate fully (so far as its resources allow) in the work of the Codex Alimentarius Commission, the OIE and the IPPC standard-setting processes.

Annex 2 . List of main legal documents on plant quarantine and protection relating to the SPS Agreement

Order	Name	Level of issuance
1	Order of State President number 11/2001/L/CTN dated 08/8/2001 proclaiming the Ordinance on Plant Protection and Quarantine.	State President
2	Decree number 58/2002/N§-CP dated 03/6/2002 on Plant Protection Regulation, Plant Quarantine Regulation and Pesticide Management Regulation.	Government
3	Decree on Plant Quarantine number 02/20072/N§-CP dated 05/1/2007	Government
4	Decree number 26/2003/N§-CP dated 19/3/2003 on penalties for administrative violation in the field of plant protection and quarantine	Government
5	Decision No 84/2002/QD/BNN of 24 September 2002 of the Minister of Agriculture and Rural Development on State management over the fumigation and disinfection of regulated articles.	Ministry of Agriculture and Rural Development (MARD)
6	Circular No 73/2003/TT-BNN guiding the implementation of domestic plant quarantine.	MARD
7	Ministerial circular No 17/2003/TTLT/BTC-BNN & PTNT-BTS dated 14/3/2003 guiding the inspection, supervision of import and export commodities subject to plant quarantine, animal quarantine and fish quarantine.	Ministerial Circular between Ministry of Finance, MARD and Ministry of Fishery
8	Vietnamese standard TCVN 4731-89 dated 04/9/1989 – Plant Quarantine sampling method.	State Science and Technology Commission
9	Vietnamese standard 3937 : 2000 – KDTV – Glossary of Phytosanitary Term and Definitions	Ministry of Science, Technology and Environment
10	Vietnamese Standard 6908 : 2001 – Phytosanitary measure – Imported regulation-Guiding on Pest Risk Analysis (PRA).	Ministry of Science, Technology and Environment
11	Vietnamese Standard 6907: 2001 – Phytosanitary measure- Principles of plant quarantine relating to international trade.	Ministry of Science, Technology and Environment
12	Decision of Minister of Agriculture and Rural Development No 117/2000/ Q§- BNN- BVTV dated 20/11/2000 on the issuance of the List of Plant Quarantine Pests of the Socialist Republic of Vietnam	MARD
13	Decision of Minister of Agriculture and Rural	MARD

	Development No 56/ 2001/ Q§- BNN- BVTV dated 23/5/2001 on the issuance of the list of regulated articles for import, export, re-import, re-export and transit.	
14	Decision 16/2004/BNN-BVTV of 20 July 2004 of the Minister of Agriculture and Rural Development providing Procedures for Plant Quarantine Inspection and Recording of Regulated Articles.	MARD
15	Decision of Minister of Agriculture and Rural Development No 89/2002/ Q§- BNN- KHCH dated 8/10/2002 on the issuance of plant quarantine regulations on imported plant seeds and beneficial organisms.	MARD
16	Decision of Minister of Agriculture and Rural Development No 70/1998/ Q§- BNN- KHCH dated 6/5/1998 on the issuance of technical fumigation procedures.	MARD
17	Circular of Minister of Finance No 11/2003/ Q§- BTC dated 21/9/2003 on the issuance of plant protection and quarantine fees	Ministry of Finance
18	Decision No. 4096 QD/BNN-KHCH on Promulgation of sectoral standards include (i) 10 TCN 337:2006 - Phytosanitary - Method of inspecting seeds for import, export and transit (ii) 10 TCN 949:2006 - Phytosanitary - The procedure of identification for Khapra beetle and Larger cabinet beetle - Plant Quarantine Pest of Vietnam (iii) 10 TCN 950:2006 - Phytosanitary - Method of inspecting live plants for import, export and transit (iv) 10 TCN 951:2006 - Phytosanitary - Regulations for phytosanitary certificates (v) 10 TCN 952: 2006 - Phytosanitary - Fumigation procedure for ships and barges by Methyl Bromide (vi) 10 TCN 953: 2006 - Phytosanitary - Fumigation procedure for potato moth (<i>Phthorimaea operculella</i> Zeller) in imported potatoes by Methyl Bromide (vii) 10 TCN 954: 2006 Phytosanitary - Procedure for Identification of fruit fly species belong to <i>Anastrepha</i> genus - Plant quarantine pest of Vietnam (viii) 10 TCN 955: 2006 - Phytosanitary - Pest risk analysis procedure for importing plants and plant products (ix) 10 TCN 956: 2006 - Phytosanitary - Plant quarantine procedure for preservation and handling of samples	MARD

	<p>(x) 10 TCN 957: 2006 - Phytosanitary - Procedure for identification of fruit fly species belong to Bactrocera genus - Plant quarantine pest of Vietnam</p> <p>(xi) 10 TCN 959: 2006 - Phytosanitary - Procedure for identification of nematode species Ditylenchus destructor and Ditylenchus dipsaci - Plant quarantine pest of Vietnam</p> <p>(xii) 10 TCN 960: 2006 - Phytosanitary - the phytosanitary procedure</p> <p>(xiii) 10 TCN 961: 2006 - Phytosanitary - Procedure for the determination and recognition of equivalence of phytosanitary measures</p> <p>(xiv) 10 TCN 962: 2006 - Phytosanitary - Procedure for identification of fruit fly species belong to Ceratitis genus - Plant quarantine pest of Vietnam</p>	
19	Decision of Minister of Agriculture and Rural Development No. 34/2007/QD-BNN on promulgation of list of Articles for which PRA must be conducted before importing into Vietnam	MARD
20	Decision of Minister of Agriculture and Rural Development No. 48/2007/QD-BNN on promulgation of procedure for issuing import permit for Articles for which PRA must be conducted before import into Vietnam	MARD

* Remarks: In addition, there are other several technical procedures and standard concerning with pest diagnosis and pesticide maximum residue levels.

ANNEX 3. List of Main legal documents on animal health relating to the SPS Agreement

No.	Title	Level of issuance
1	Revised Veterinary Ordinance dated 12 May 2004	State President
2	Decree 33/2005/ND-CP of 15 March, 2005, Regulation on the implementation of Veterinary Ordinance	Government
3	Decree 129/2005/ND-CP dated 17 October 2005 Regulation on punishing administrative violation in veterinary field	Government
4	Decision 10/2006/QD-BNN of 10 Feb. 2006, Regulations on procedures for the registration of production, importation, circulation of veterinary drugs, materials for veterinary drug production, biological products, micro-organisms and chemicals for veterinary use	Ministry of Agriculture and Rural development (MARD)
5	Decision 15/2006/QD-BNN of 18 March 2006 Regulation on Procedures for Quarantine of Animals and Animal products and Veterinary Hygiene Inspection	MARD
6	Decision 03/2006/QD-BNN of 12 January 2006 Promulgating the lists of veterinary drugs that are permitted to circulate, restrict and prohibited in Vietnam	MARD
7	Decision 04/2006/QD-BNN of 12 January 2006 Promulgating the lists of vaccines, bio-products, micro-organism strains, substances for veterinary use that are permitted to circulate in Vietnam	MARD
8	Decision 45/2005/QD-BNN of 25th July 2005 Promulgation of the list of animals and animal products subject to quarantine	MARD
9	Decision 46/2005/QD-BNN of 25 July 2005 Promulgation of the list of objects under veterinary hygiene inspection; list of objects under compulsory veterinary hygiene inspection; list of objects under compulsory veterinary hygiene inspection with the application of veterinary hygiene standards	MARD
10	Decision 47/2005/QD-BNN of 25 July 2005 Specification on the quantity of animal, the weight of products from animals to undertake the	MARD

	quarantine during delivery out of district, and those exempted from quarantine	
11	Decision 48/2005/QD-BNN of 5 July 2005 Specification on the slaughter control seal, and stamp for veterinary hygiene inspection	MARD
12	Decision 86/2005/QD-BNN of 26 December 2005 Regulation on forms of dossiers of animal and animal product quarantine, forms of dossiers of veterinary hygiene inspection	MARD
13	Decision 64/2005/QD-BNN of 13 October 2005 Promulgating the lists of diseases that must be declared, contagious diseases, and diseases for which compulsory prevention measures must be applied	MARD,
14	Decision 63/2005/QD-BNN of 13 October 2005 Regulation on compulsory vaccination for cattle and poultry	MARD,
15	Decision 87/2005/QD-BNN of 26 December 2005 Regulation on Procedures of animal slaughter inspection	MARD
16	Decision 08 /2005/QD-BTC of 20 January 2005 Regulation on fees in the veterinary field	Ministry of Finance
17	Inter-Ministerial Circular No. 17/2003/TTLT/BTC-BNN&PTNT-BTS of 14 March 2003 Guidance on control and monitoring of exported and imported animals and animal products, plants and plant products that have to be inspected.	Ministerial Circular between Ministry of Finance – MARD and Ministry of Fisheries
18	Decision No. 62/2002/QD/BNN-TY of 11 July 2002 Regulation on disease free zones	MARD

Annex 4: Legal Framework on SPS regarding production, distribution of fishery products

	Number and name of main legal documents	Issues addressed
General Principles and Policies	<p>Fishery law Ordinance on Quality of commodities Ordinance on Food Hygiene and Safety Ordinance on Animal Health Ordinance on Plant Protection Law on promulgation of technical regulations and standards Decree No 179/2004/ND-CP guiding implementation of Ordinance on Quality of Commodities Decree No 163/2004/ND-CP guiding implementation of Ordinance on Food Hygiene and Safety Decree No 33/2005/ND-CP guiding implementation of Ordinance on Animal Health Decree No 89 on labeling Decree No 43/2003/ND-CP on functions, responsibilities and organization of Ministry of Fisheries Decree No 15/CP of 19/3/1996 on management of animal feeds</p>	Regulate principles and policies and government's assignment for implementation of SPS measures for fishery sector
Regulations related to organization of related agencies within Ministry of Fisheries	Decision No 07/2003/QD-BTS on function, responsibilities and organisation of NAFIQAVED	Assignment of Minister of Fisheries on the implementation of all TBT/SPS measures in fishery sector to NAFIQAVED
Regulations on inspection and approval of establishments	<p>Decision of the Minister of Fisheries No 649/2000/QD-BTS on inspection and approval of fishery establishments</p> <p>Decision No 03/2001/QD-BTS on management of veterinary drugs in aquaculture</p>	<p>Details on system and procedure of inspection and approval of fisheries establishments</p> <p>Details on system and procedure of inspection of producers of vet. drugs and pond/water treatments</p>

	Circular 02/1998/TT-BTS of 14/3/1998 guiding implementation of Decree No 15/CP of 13/9/1996	for use in aquaculture Details on system and procedure of inspection of producers of aquatic animal feeds and feed supplement products
Regulations on food hygiene and safety monitoring programs	<ol style="list-style-type: none"> 1. Decision of the Minister of Fisheries, 640/1999/QD-BTS, 22/9/1999 2. Decision of the Minister of Fisheries, 863/1999/QD-BTS, 30/11/1999 3. Decision of the Minister of Fisheries, 641/1999/QD-BTS, 22/9/1999 4. Decision of Ministry of Fisheries No15/2002/QD-BST 	<p>The regulation specifies basic principles, responsibilities, procedures and methods for management of the monitoring program for presence of contaminants and certain biotoxins due to growth of algae in harvest areas for bivalves.</p> <p>The regulation specifies basic principles, responsibilities, procedures and methods for management of a monitoring program for heavy metals, and residues of pesticides and veterinary drugs in aquaculture products of Vietnam.</p>

<p>Regulations on inspection and approval/certification of products</p>	<p>1. Decision of Prime Minister No 50/2003/QD-TTg on products state inspection and certification</p> <p>2. Decision of Minister of Fisheries No 650/2000/QD-BTS</p> <p>3. Decision of Minister of Fisheries No 15/2006/QD-BTS</p> <p>4. Circular No 17/2003/TTLT/BTC-BNN&PTNT-BTS between Ministry of finance/Directorate General of Customs, Ministry of Agriculture and Ministry of Fisheries</p> <p>5. Guidelines of Director General of NAFIQAVED on inspection and quarantine of fish and fishery products</p> <p>6. Decision of Minister No 07/2005/QD-BTS</p> <p>7. Decision of Minister of Fisheries No 03/2007/QD-BTS</p> <p>8. Circular 15/2001/TTLT/YT-TS between Ministry of Health and Ministry of Fisheries</p> <p>Decision of Minister of Fisheries No 18/2002/QD-BTS</p>	<p>List of products subjects for state inspection and certification; name of authorised inspection and certification bodies; criteria to be applied for inspection and certification</p> <p>Regulation on inspection and certification for quality and food safety of fishery products</p> <p>Regulation on approval for import export of certain fishery species, feeds, vet. drugs, chemical biological products for use in aquaculture</p> <p>Specifying details of cooperation between ministries in inspection and quarantine of fish and fishery products</p> <p>System and detailed procedure of inspection and quarantine of fish and fishery products</p> <p>Promulgating list of banned substances; list of substances with MRLs in use for aquaculture</p> <p>Regulation on evaluation and approval of vet. drugs and other products permitted for use in aquaculture</p> <p>Cooperation for prevention of puffer fish poisoning</p>
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<p>Sector standards which are references for inspection</p>	<p>1. Decision of the Minister of Health No 876/1998/QD-BYT dated 4 April 1998 on promulgating list of Food and Foodstuff standards</p> <p>2. Decision of the Minister of Health No 1329/2002/QD-BYT dated 18 April 2002 on promulgating list standard of drinking water</p> <p>3. 28:TCN 129:1998. Fish processing Establishments – HACCP based program for Food Quality and Safety Assurance.</p> <p>4. 28:TCN 130:1998. Fish processing Establishments - General Conditions for Food safety</p> <p>5. 28:TCN 135:1999. Fishing Vessels - Conditions for Food Safety.</p> <p>6. 28:TCN 136:1999. Bivalve Mollusc Enterprises – Conditions for Food Safety</p> <p>7. 28:TCN 137:1998. Canned products – Conditions for Food Safety</p> <p>8. 28:TCN 138:1998. Establishments for Processing of Ready to Eat Products – Conditions for Food Safety</p> <p>9. 28:TCN 139:2000. Dried Fish Processing Establishments. – Conditions for Food Safety</p> <p>10. 28:TCN 156:2000. Regulations on using Food Additives in Fish Processing</p> <p>11. 28:TCN 163:2000. Fishing Ports</p>	<p>The regulation specifies basic principles and technical standards for processing factories approval for production. The factory shall meet specified requirements to hygienic conditions and quality management according to HACCP, in order to be allowed to operate and distribute products for human consumption. The standards include two basic standards (28:TCN:129-1998 and 28:TCN:130-1998), which all processing companies have to comply with, and additional standards with specific requirements for specific productions. TCN 28:130 specifies technical requirements to hygienic conditions, and to good manufacturing practices and sanitation practices. TCN 28:129 specifies requirements for development, implementation and maintenance of the HACCP system, incl. prerequisite programs. The content of the two standards is based on requirements in US and EU regulations for exporting countries. The HACCP standard is further developed to include requirements concerning system</p>

	<p>– Conditions for Food Safety</p> <p>12. 28:TCN 164:2000. Fish trading Establishments – Conditions for Food Safety</p> <p>13. 28 TCN 105:1997</p> <p>14. 28 TCN 101:1997</p> <p>15. Sector standards on specific products (attached list)</p>	<p>documentation and system management following relevant ISO standards.</p> <p>Units for handling and transport of raw materials are subject only to implementation of HACCP pre-requisite programs (Good Manufacturing and Sanitation Practices) and are not yet required to comply with requirements in TCN 28:129</p>
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ANNEX 5: List of principal legal documents on food safety relating to the SPS Agreement

No.	Title	Level of issuance
1.	Ordinance on Food hygiene and safety dated on 26 th July, 2003	State President
2.	Decision of Prime Minister No 50/2006/QĐ-TTg on commodities quality state inspection and certification	
3.	Decree No 163/2004/ND-CP guiding implementation of Ordinance on Food Hygiene and Safety	Government Decree
4.	Decision of Minister of Health No 867/QĐ-BYT of 4/4/1998 promulgating hygiene and safety standards of food and foodstuffs	MOH
5.	Decision of Minister of Health No 3742/2001/QĐ-BYT of 31/8/1998 promulgating list of authorised food additives	MOH
6.	Decision of Minister of Health No 11/2005/QĐ-BYT regulating MRL of 3-MCPD in soya bean and oyster sauces	MOH
7.	Decision of Ministry of Health No.39/2005/QĐ-BYT General requirements on food hygiene and safety in food processing	MOH
8.	01/2005/QĐ-BYT Requirements on food hygiene and safety in drinks production	MOH
9.	4282/2004/QĐ-BYT Requirements on food hygiene and safety in milk and dairy products processing	MOH
10.	39/2005/QĐ-BYT General requirements on food hygiene and safety in food processing	MOH
11.	01/2005/QĐ-BYT Requirements on food hygiene and safety in drinks production	MOH
12.	4282/2004/QĐ-BYT Requirements on food hygiene and safety in milk and dairy products processing	MOH
13.	39/2005/QĐ-BYT General requirements on food hygiene and safety in food processing	MOH
14.	01/2005/QĐ-BYT Requirements on food hygiene and safety in drinks production	MOH
15.	Requirements on food hygiene and safety in milk and dairy products processing	MOH
16.	3616/2004/QĐ-BYT Requirements on food hygiene and safety for radiation of food	MOH
17.	928/2002/QĐ-BYT Requirements on food hygiene and safety in food additives production, trade and use.	MOH
18.	3512/2000/QĐ-BYT Requirements on food hygiene	MOH

	and safety in beer and low alcohol drinks production	
19.	43/2005/QĐ-BYT Requirements on food safety knowledge for food producers and traders	MOH
20.	3339/2001/QĐ-BYT Requirements on food hygiene and safety of food plastic packages or containers	MOH
21.	2244/2002/QĐ-BYT Requirements on food hygiene and safety of slaughter/processor of meat and meat products	MOH
22.	41/2005/QĐ-BYT Requirements on food hygiene and safety for food and drinks trading and retailing establishments	MOH
23.	4128/2001/QĐ-BYT Requirements on food hygiene and safety for canteen and food catering establishments	MOH
24.	3199/2000/QĐ-BYT Requirements on food hygiene and safety for street sale food establishments	MOH
25.	23/2007/QĐ-BYT Regulation on state inspection on quality and safety of imported foods	MOH
26.	818/QĐ-BYT Promulgating list of imported foods in harmonized system subject to food safety inspection	MOH
27.	11/2006/QĐ-BYT Regulation on certification of compliance with food safety conditions for high risk food processors and traders	MOH
28.	Decisions on Food Labeling: - Government's Decree No 89/2006/ND-CP on labeling of commodities	Government
29.	Decision of Minister of Science and Technology No. 09/2007/TT-KHCN guiding implementation of Decree No 89/2006/ND-CP on labelling of commodities	Ministry of Science and Technology (MOST)
30.	Decision of Minister of Health on labelling of food No 15/2000/TT-BYT	MOH
31.	- Decision of Minister of Fisheries No 03/2000/TT-BTS on labelling of fishery products	MOH

Annex 6: References

USAID: *The Government of Vietnam's Implementation of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures*, RAISE SPS Country Diagnostic Report # 26, March 2007

World Bank: *Vietnam Food Safety and Agricultural Health Action Plan*, Report No. 35231-VN, February 2006

WTO Working Party on the Accession of the Republic of Vietnam: *Report*, October 2006