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REPORT

OVERCOMING SPS BARRIERS TO ENHANCED EXPORTS OF VIETNAMESE PRODUCTS TO THE EUROPEAN UNION

ACTIVITY CODE: WTO-7

**“ASSISTANCE TO THE IMPLEMENTATION OF WTO COMMITMENTS
RELATING TO SPS AND TBT, AWARENESS-RAISING, CAPACITY-BUILDING
AND ASSISTANCE TO VIETNAMESE EXPORTERS TO COMPLY
WITH EU’S TBT AND SPS REQUIREMENTS”**

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ACRONYMS and ABBREVIATIONS

EU	European Union
FFV	Fresh Fruit and Vegetables
HACCP	Hazard Analysis and Critical Control Points
MARD	Ministry of Agriculture and Rural Development
MOIT	Ministry of Industry and Trade
MUTRAP	Multilateral Trade Assistance Project
SPS	Sanitary and Phytosanitary
TBT	Technical Barriers to Trade
VASEP	Viet Nam Association of Seafood Exporters and Producers
VFA	Viet Nam Food Administration
Viet Nam	The Socialist Republic of Viet Nam

I. EXECUTIVE SUMMARY

1. Compliance with TBT and SPS requirements of the WTO and those of the EU and other major markets of is a precondition for Vietnamese exporters to be successful. Raising awareness of the sophisticated requirements of the EU in the field of TBT and SPS rules needs systematic engagement on the side of Viet Nam's TBT and SPS Offices, other central and local authorities, and industry.

2. The present project under MUTRAP III involves a survey on the EU's TBT and SPS rules which concern exports of interest to Viet Nam , identification of the difficulties faced by Vietnamese exporters in complying with these requirements, analysis of the impacts of these measures on Viet Nam's affected export sectors, examination of the contacts between the SPS and TBT Offices and exporters, and appropriate recommendations.

3. The European market presents significant challenges to any exporter of food and other agricultural commodities. With few exceptions European food safety requirements are as high or higher than any in the world. Fortunately, for some important Vietnamese exports, like coffee, tea, nuts and pepper, SPS requirements do not pose major impediments to trade. For other products, like fish, export to Europe is only possible if a comprehensive sanitary system is maintained over every aspect of production, processing and distribution.

4. At the present time, the EU is importing substantial volumes of Vietnamese products, and trade is proceeding with little evidence of interruption or constriction by the EU's SPS requirements. Certainly it is costly for Vietnam's producers to maintain the very high standards that are demanded, but the same or similar standards apply in other developed country markets as well. The rapid growth of exports of fish and fishery products in particular suggests that exporting is profitable despite the cost of producing to a very high standard. Nevertheless there is always the question of how profitability can be maximized, by means such as cost minimisation and greater value adding, and by the avoidance of risk to trade arising from hazards that are not properly anticipated and controlled. There is also the question of how export activity can be increased in commodities that are currently traded in low volumes or not at all.

5. Vietnam's major exports of agriculture and fishery/aquaculture products are fish and shellfish, coffee, rice, cashew, tea, pepper, timber, fruit and vegetables, and honey. The technical problems that are experienced by Vietnamese enterprises in exporting agricultural products to the EU are not usually attributable to excessively strict SPS barriers to trade, or to a lack of information about what the technical requirements are for products to enter the EU market. Rather the problem appears to lie in conducting the production and processing activities in the proper way in Viet Nam.

6. After examining the situation concerning SPS barriers to Vietnam's exports into the European Union, this draft report lists twelve possible actions by government, in cooperation with the private sector, to enhance export success. These options are presented for discussion at three stakeholder workshops to be conducted in June-July 2009 in Hanoi, Ho Chi Minh City and Hue. There are many other actions that could also be considered, and readers are encouraged to submit their own suggestions.

II. MAIN REPORT

Introduction

1. This activity is a constituent part of first component of the MUTRAP III Project (“improvement of capacity of the MOIT to coordinate and implement WTO commitments including progress on sector specific issues”) and is expected to contribute to the promotion of Vietnamese exports to the EU through the development of human resources and coordinative capacities at the level of ministries dealing with TBT and SPS and business enterprises engaged in producing and exporting products to the EU.

2. Compliance with TBT and SPS requirements of the WTO and those of the EU and other major markets of is a precondition for Vietnamese exporters to be successful. Raising awareness of the sophisticated requirements of the EU in the field of TBT and SPS rules needs systematic engagement on the side of Vietnam’s TBT and SPS Offices, other central and local authorities in terms of disseminating information to business and building appropriate administrative and technical capacities. The present activity involves a survey on EU’s TBT and SPS rules which concern the export interests of Vietnam, identification of the difficulties of Vietnamese exporters to comply with these requirements, analysis of the impacts of these measures on Viet Nam’s affected export sectors, examination of the contacts between the SPS and TBT Offices and exporters, and appropriate recommendations.

3. This report deals only with SPS requirements that must be met in accessing the European market. TBT issues are dealt with in a parallel report.

SPS measures and export market access

4. In broad terms, SPS measures are requirements imposed by governments to protect animal and plant health and to protect humans against certain food safety risks and against diseases carried by animals. The SPS Agreement says that WTO members may impose any measures that are necessary to protect against the risks addressed by the Agreement, subject to certain constraints designed to ensure that only legitimate measures are applied in a transparent and non-discriminatory manner.

5. The SPS measures applied by the European Union are generally regarded as very strict. However very few of them have been challenged under the procedures available to WTO members. The measures reflect the stringent attitude of the EU to acceptable risk, and there is little chance that the measures will be modified in response to the complaint of a trading partner.¹ Consequently most countries that trade with the EU accept that the EU SPS requirements must be met in order to achieve and maintain market access. The challenge for exporters to the EU is to, firstly, have a very clear understanding of what the EU’s SPS requirements are and then to find cost-effective and competitive ways of reliably conforming with them.

6. This task is complicated somewhat by the fact that the EU is continuously upgrading its regulatory regime in keeping with contemporary approaches to protection against sanitary and phytosanitary risks. While only a few requirements may be subject to

¹ There have been instances in the past where SPS measures proposed or implemented by the EU have been modified in response to concerns expressed by trading partners, but these cases are exceptional rather than normal.

change at any point in time, exporters must nonetheless keep up to date with both current and prospective requirements.

7. Typically the primary means by which exporters are made aware of SPS requirements for entry to the EU market is via their commercial trading partners – that is, by EU importers. The importers have a strong self-interest in ensuring that the consignments that they purchase from Viet Nam can enter the EU without undue delay or cost, and are likely to be well informed on relevant SPS requirements. The technical problems that are experienced by Vietnamese enterprises in exporting agricultural products to the EU are not usually attributable to excessively strict SPS barriers to trade, or to a lack of information about what the technical requirements are for products to enter the EU market. Rather the problem appears to lie in conducting the production and processing activities in the proper way in Viet Nam.

8. The production of food and other agricultural products that are capable of being exported to the EU is primarily the responsibility of the private sector. The government has many complementary responsibilities, including the maintenance of an appropriate legal framework, the control of certain hazards (for example, illegal use of pesticides), the operation of competent authorities to supervise production and issue export certification, the provision of laboratory analysis capability, and so forth. The government of Viet Nam also has the role of managing the relationship with the relevant authorities of the EU.

Exports subject to SPS requirements

Current exports

9. Vietnam's major exports of agriculture and fishery/aquaculture products are fish and shellfish, coffee, rice, cashew, tea, pepper, timber, fruit and vegetables, and honey. Of these coffee and tea, timber and rice do not usually encounter significant technical barriers to international trade in the form of sanitary/phytosanitary measures, although there may be applicable requirements in many importing countries for freedom from excessive residues of agricultural chemicals and from insect infestation. On the other hand, fish and fish products (including crustaceans) are normally subject to very intensive controls to ensure food safety and zoo-sanitary health. Trade in fresh fruit and vegetables also tends to be constrained by SPS measures.

10. The most valuable export to the EU amongst these commodities is fish and fish products. The development of this trade has required the Government of Viet Nam to prepare legislation, and organize state agencies which have jurisdiction in food quality control and safety. The production conditions of establishments must meet requirements in food safety and hygiene (including infrastructure and operational procedures based on HACCP principles). Over the past two decades fish exports have expanded at a very rapid rate, and the composition of these exports is changing in favour of higher-value products in ready-to-cook form for supermarket shelves. Viet Nam now has more than three hundred establishments eligible to participate in the export of fish and fish products to the EU. An important side benefit of the maintenance of very high standards in export-eligible commodities like fish and fish products is that the same safe products are sold into domestic markets as well.

11. Perhaps one fifth of Vietnam's exports of fresh fruit and vegetables (FFV) go to the EU, but these exports account for only a very small fraction of total FFV imports by

the EU (the world's largest importer). In 2005 the 15 countries of the EU imported about \$120m. of FFV from Viet Nam. Exports of fresh dragon fruit are a key area of growth in Vietnam's FFV exports; baby corn, chilies and mushrooms may become growth sectors too in the future. Current exports of products that are canned, dried, juiced, frozen, pickled or otherwise processed are inherently less likely to encounter SPS barriers to market access than fresh product.

12. Viet Nam is a major exporter of cashew nuts. The USA is probably the largest market, and the Netherlands is also an important destination.

13. Viet Nam is not a significant exporter of livestock products (other than honey) at the present time, and at least for the immediate future would find it difficult to compete in the EU market against the major international producers of beef, pork and chicken meat even if all of the necessary steps were taken to ensure compliance with EU SPS requirements.

Applicable SPS requirements

14. There is a large number of specific sanitary and (to a lesser extent) phytosanitary requirements to be met by products entering the EU market. These include the following:

Food safety requirements:

- Basic food hygiene requirements (Regulation (EC) 852/2004) covering general requirements for primary production, technical requirements, HACCP for food handling and processing, registration/approval of food businesses and national guidelines for good practice;
 - Regulation (EC) 852/2004 sets detailed HACCP-based requirements, but the use of HACCP is not mandatory in the case of primary production; however, the use of HACCP is mandatory in packinghouses in the case of semi-processed and processed fruit and vegetables and products that are pre-packed in the exporting country.
- Other food safety requirements for both animal and plant products (Regulation (EC) 853/2004);
- The organization of official controls for products of animal origin intended for human consumption (Regulation (EC) 854/2004);
- The general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (Regulation (EC) 178/2002);
- Certification requirements for import of fishery products, live bivalve molluscs, echinoderms, tunicates and marine gastropods intended for human consumption (Regulation (EC) 1250/2008);
- Official controls performed to ensure verification of compliance with feed and food law (Regulation (EC) 882/2004);
 - Under Regulation (EC) 882/2004 developing countries exporting food products to the EU need to provide information on the general organization and management of their national food control system, including assurance of compliance or equivalence with the requirements of Community legislation;
- Food additive requirements (Directives 89/107/EEC and 95/2/EC);
- Food labeling requirements (Directive 2000/13/EC);

- Animal health requirements for food of animal origin from third countries (Directive 2002/99/EC) concerning production, processing, distribution and introduction for human consumption;
- Chemical residues control programmes for cultured fisheries (Directive 96/22/EEC and Directive 96/23/EEC);
- Maximum residue levels (Regulation 396/2005/EC; Regulation 2377/90/EC; Regulation 2073/2005, as amended by Regulation 1022/2008/EC; Directive 96/22/EEC and Directive 97/98/EEC);
- Microbiological criteria (EC 2073/2005).

15. The legislation applicable to fishery and aquaculture products is set out in detail in Annex 1.

Plant health requirements:

16. Directive 2000/29/EC provides for protective measures against the introduction of organisms harmful to plants or plant products and against their spread within the EU. The Directive lists all harmful organisms, plants and plant products whose introduction into the EU is prohibited, and provides for restrictions on the introduction of certain plants and plant products into the EU. Certain fruits and vegetables, including cherimoyas, mangoes, passion fruit and guavas, must be accompanied by a phytosanitary certificate and are subject to plant health inspections upon arrival in the EU. No plant health risk analysis is required to import fruit and vegetables into the EU; restrictive measures in the EU are implemented only in cases where a specific problem has been detected.

17. Copies of all EU legislation can easily be downloaded from the website <http://eur-lex.europa.eu>.

Compliance difficulties

a. Fishery products:

18. The development of a capability for Viet Nam's fishery products to meet the requirements of developed country markets like the EU has necessitated enormous efforts by both government and industry starting some fifteen years ago. A fundamental shift has been achieved from traditional regulation of the industry, based on government checking to ensure conformity to official standards, to contemporary co-regulation built around the implementation of auditable producer-operated quality control systems. The new, HACCP-based approach aims to limit risk by thorough identification and continuous control of key food safety hazards at every production stage. The production of EU-eligible fishery products had implications for the fishing fleet, landing stages, aquaculture farms, storage facilities, processing plants, analytical laboratories, and so forth. There have had to be parallel developments staff training in the private sector, and the establishment of credible government in production practices, management capability and oversight agencies. The cost of all of these initiatives is unknown, but certainly very large. The benefits are evident in Viet Nam's ability to supply highly reputable products not only to Europe but also to the United States, Japan, Australia and other markets that maintain very high sanitary standards. The continuing rapid development of export trade indicates that both buyers and sellers are able to work profitably within the sanitary requirements of the importing countries.

19. The development of the trade in fishery products into the EU has, of course, not been without occasional difficulties (as is typical in the trading of raw and semi-processed foodstuffs around the world). In earlier years problems could arise because there were differences between the requirements of the Community – for example, in relation to permissible levels of coliform contamination – and the related requirements of individual Member States. The use in Viet Nam in aquaculture production and in product transport of antibiotics not permissible under EU requirements has also created problems, especially when some importing countries in the EU adopted analytical methods that lowered the level of detection of residues of nitrofurans, chloramphenicol and malachite green. Consequential rejections of shipments in the period 1999-2003 brought losses of USD 30m. It is not clear whether these problems were occasioned by a lack of knowledge on the part of the Vietnamese producers about the EU rules, or by a failure to adhere to proper practices in the use of chemicals. NAFIQAD is able to access the EU's Rapid Alert System for Food and Feed website to get information about rejected shipments as soon as possible.

b. Other products:

20. An analysis of reports from the EU's Rapid Alert System for Food and Feed for the past sixteen months shows 37 instances of rejections of import consignments from Viet Nam. (See table at Annex 2.) A simple summarisation of these data is that by far the majority of cases (23) concerned the use of unauthorised colouring agents or other ingredients. There were three instances of contamination by a fungal toxin, two instances of microbiological contamination, two of chemical contamination, and one of contamination with a foreign material. There were also two instances where rejection was for phytosanitary reasons (i.e. the presence of plant pests).

21. In none of the cases were residues of agricultural chemicals the cause of rejection, although there have been rejections for this reason in earlier periods. Nevertheless, the problem of excessive pesticide residues in fresh fruit and vegetables in particular in Viet Nam remains acute. In 2007, a survey by the Plant Protection Department of MARD found pesticides on 30 to 60 percent of the vegetables tested in Ha Noi markets, including substances that are banned in Viet Nam and other countries.² One of them was the insecticide metamidophos which, according to a report on this survey by Agence France Presse³, has been linked to health problems in China, Hong Kong, South Korea and the United States. Dragon fruit shipments have encountered problems in several different markets because of pesticide residues. A major Vietnamese fruit and vegetable exporter consulted for this project commented that it is possible to control pesticide residues where the enterprise itself manages the land and production activity, but much more difficult when farmers manage themselves. In the light of information such as this, it seems very probable that a significant increase in exports of fresh fruit and vegetables to the EU market might be accompanied by an increase in the number of consignments rejected because of excessive chemical residues. An additional SPS problem for fruit and vegetable exports from Viet Nam is the need to control for the presence of fruit fly or larvae that could be quarantine pests in the destination country.

22. In June 2007 consumers in Viet Nam reportedly boycotted domestically-made soy sauce after health authorities found levels of 3MPCD – a carcinogenic contaminant – at levels 10 to 100 times legal limits. (The Viet Nam standard is 1mg/kg; the Codex

² It should be noted that products available in markets in Hanoi might include some from other countries (e.g. China) that supply imports to Viet Nam.

³ 11 September 2007

standard is 0.4mg/kg; but the EU standard is 0.02mg/kg.) The presence of 3-MPCD is apparently a chronic problem in soy sauce made in Viet Nam, and it has been the cause of rejections of Viet Nam-origin soy sauce exported to the EU.

Impact of SPS measures on exports

23. There is no doubt that there are costs for producers and traders in complying with sanitary and phytosanitary requirements. And in situations where standards ruling in export markets are significantly stricter than domestic standards within Viet Nam, it could be said that the standards of importers like the EU impose heavy costs on Viet Nam's export industries. For example, the cost of conducting laboratory tests to demonstrate freedom from pesticide residues in export consignments can be very high relative to the expected profit from the trade. But it cannot be concluded from this that the EU's standards are therefore "too high" in some sense. As the SPS Agreement says, any WTO member can choose the level of protection that it wants to maintain and can impose any measures that are necessary to protect human, animal or plant life or health provided that the measures conform with the provisions of the Agreement. Even if the EU imposes requirements that are stricter than the corresponding international standard (as in the case of its standards for aflatoxin contamination or 3-MPCD in food products), this is still permissible under the SPS Agreement provided that the measure is supported by an appropriate risk assessment, and risk is being managed by the EU in a consistent way.

24. It follows that, unless Viet Nam believes that it could sustain a case against an EU SPS requirement in a WTO dispute settlement proceeding, it is necessary to accept the EU import requirements as given – certainly in the short term – and get on with the necessary actions to ensure compliance by Viet Nam's exports. From this perspective, the costs involved are largely a matter for business enterprises to consider when deciding whether to export to the EU.

Fishery products

25. From the perspective of Viet Nam, the most important effect of the EU's regime of SPS measures applicable to imports of fishery products has been to prescribe how the Vietnamese industry should be developed in order to export to this major market. Since conformity to the very detailed EU standards is the pre-requisite for market access, Viet Nam has had no choice than to invest in the creation of an international standard export fish industry if it wanted to sell to Europe. The profitability of the industry now strongly suggests (but does not prove) that the investment, and the on-going costs of maintaining conformity with the EU standards, are being justified by the returns.

26. At the same time the development of the fish export industry serves as a model for other initiatives aiming at establishing access for Vietnamese primary products in high-value developed country markets.

27. There are costs involved in maintaining the necessary conformance with EU requirements, but that conformance also has benefits in assisting access to other markets beside the EU. The costs associated with eliminating antibiotic residues in exported fish products are not attributable solely to EU requirements, because other markets (e.g. Australia) may apply similar standards. Since sanitary standards are broadly similar in most developed-country markets, the achievement of EU standards by the Vietnamese fishery-based industries will assist access to many other markets as well. After recognition of the Vietnamese fishery product control system by the EU, other countries

including Japan, South Korea, Canada, Norway, Switzerland and Taiwan recognized Viet Nam as eligible to export fishery products.

28. With regard to the costs associated with the rejection of non-conforming consignments by the European authorities, it is not appropriate to say that these costs are caused by the EU's SPS measures. In international trade as in domestic transactions, sellers must satisfy buyers and European importers cannot legally import products that do not meet official EU requirements. In the first instance a rejection is the result of failure on the part of the producer and/or the exporter, not the importer.

Other products

29. For the most part the cases listed in Annex 2 (the rejections of import consignments notified under the EU's Rapid Alert System) do not indicate that the EU's SPS requirements are in some way too strict or unreasonable. However in about 10 per cent of cases the problems arising concerned aflatoxin and 3-MPCD residues. In these cases the EU standards are stricter than the corresponding Codex standard⁴, and the SPS Agreement says that in such situations the importing country must have a scientific justification for its approach or be able to show that the international norm would not achieve the appropriate level of protection. Although a challenge to the EU standards could be pursued through the WTO's dispute settlement system, the process would be long and expensive and a successful outcome would not be likely.

Improving compliance

30. Key elements in export success, both for current activities and for future growth, include:

- i. Sound analysis of business opportunities and risks;
- ii. Good information on importing country SPS requirements;
- iii. Prioritization of export targets where large investments are necessary to achieve market access;
- iv. Government initiatives to assist the creation of a favourable operating environment for export businesses;
- v. Good cooperation between government and private sectors in the planning and implementation of infrastructure development and appropriate production processes, and in the management of risks;
- vi. Detailed monitoring of progress and performance.

31. Each of these elements contributes to achievement of a high level of compliance with importing country requirements.

- i. Analysis of opportunities and risks:

Generally it is the responsibility of the private sector to identify and evaluate business opportunities in terms of the potential for profits and the risk of losses. Different products and markets present different challenges in order to meet buyer specifications. Compliance costs have to be factored in to the decision-making about whether to enter or remain in a particular market. Unless adequate returns are available, it will be very difficult for producers

⁴ Even though, in the case of the aflatoxin limit, concerted opposition to the original proposed limit was expressed by a number of exporting countries in the SPS Committee with the result that the standard finally adopted was not so stringent.

and traders to continuously maintain the infrastructure and procedures that ensure that buyer expectations are met and there is good compliance with importing country requirements.

ii. Information on SPS requirements

For some exported products, especially raw and semi-processed primary products, there are not only private specifications but also official requirements to be met. Information about these official requirements can be obtained in many different ways. Often an exporter learns about the SPS requirements of an importing country through the importer. Alternatively, the exporter may obtain information directly from other sources in the exporting country (e.g. from a web site maintained by the relevant government authorities), from other exporters, from business associations in the exporting country, from the local SPS enquiry point, from other government sources (particularly the specialised areas of the ministry of agriculture and the ministry for trade), from paid consultants, and so forth.

The information gathered will not achieve its maximum value unless it is made available in the Vietnamese language and it is interpreted for application in Viet Nam.

iii. Prioritisation of export targets

As in the growth of the fishery/aquaculture-based industries in Vietnam, the pre-requisites for export success may include a very large investment of money and time to bring enterprises and related government institutions up to international standard. Because there are many potential markets and only limited resources, decisions must be made about where potential export earnings are greatest. Because there must be complementary development in both the public and private sectors, prioritisation must be decided jointly by government and industry.

iv. Favourable environment for exports

There are many ways in which government can help to create a favourable environment export growth:

- By encouraging the formation of industry associations to assist individual enterprises and to liaise with government on their behalf;
- By promulgating relevant standards and supporting the application of appropriate technologies and practices by producers and processors;
- By international export promotion;
- By implementing effective control regimes for products intended for the domestic market;
- By establishing effective government-to-government relations with the relevant authorities of importing countries;
- By promoting efficiency in the operation of export ports;

- By negotiating with importing countries over their application of SPS measures;

and so forth. Obviously taxation and excise regimes are also important.

v. Government/private sector cooperation

Apart from the creation of a favourable environment, there are other, very specific things that the government must do, in concert with the private sector, to facilitate exports. For example, export certification is often provided by a designated competent authority, which may rely upon analytical data obtained from an accredited testing laboratory. The provision of competent authorities and analytical capacity is usually a function of the public sector in developing economies. The public and private sectors must cooperate in defining the needs and arranging appropriate timing for the creation of this capacity to support export activity.

In certain instances, it will be appropriate for government and industry to jointly develop and implement strategic plans for enhancement of export flows of specific commodities (like tea, for instance) to markets like the EU.

vi. Monitoring

Maintenance of export market access and the national reputation as an exporter of compliant products requires constant vigilance over export production, as well as rapid and effective follow up and corrective action in response to incidents where non-complying consignments are detected by an importing country.

32. In general, Vietnamese agricultural, fishery and food products have a good record of compliance with the SPS requirements of the European Union, as demonstrated by the data available from the EU's Rapid Alert System on rejected consignments. Compliance by fishery products, which are traded in high volume, is in fact remarkably good. Nevertheless it is important to reinforce the infrastructure and good practices that have been serving Vietnam's exporters well, and to draw lessons that will assist the broadening and deepening of export success in future.

Some current problems

33. Even if the recent record of Vietnamese exports in complying with applicable SPS requirements is relatively good, there are still some issues of concern that warrant attention.

34. In relation to fishery and aquaculture products, for example, it has been suggested that under the new arrangements within MARD where NAFIQAD replaced NAFIQAVED, the spreading of the responsibilities of the latter body over various parts of MARD may have reduced coherence and allowed the possibility of internal inconsistency. Formerly when NAFIQAVED was affiliated to the Ministry of Fisheries, all activities of fisheries safety and quality control, veterinary and pest safety control were within the responsibilities of the one organisation. Consequently the fisheries sector achieved a high degree of harmonization in methodology and operations from the centre to the local level and throughout the production chain. When NAFIQAVED was affiliated to MARD and re-named NAFIQAD, its responsibilities for veterinary drugs and control of aquatic diseases were assigned to the Department of Animal Health of MARD.

NAFIQAD's responsibilities are limited to implementing national programmes, food safety and quality certification of final consignments and inspecting production conditions for establishments in the fisheries industry. Consequently a number of departments of MARD must now discuss and synchronize perceptions, plans and especially implementation.

35. Also of concern in respect of fisheries is that the integration of the Ministry of Fisheries and MARD at the local level has progressed more slowly than at the centre. Even now some provinces and cities have still not established provincial sub-departments on agro-forestry-fisheries quality assurance. Since these units have a key role in disseminating information to industry, their establishment is a matter of urgency, to be followed by training of the combined staff of the new structures.

36. Meanwhile out-moded infrastructure and methods are still quite common at the production level in the fishery/aquaculture industries, and it is at this stage where most of the food safety hazards occur. Communication with industry participants at this level is more difficult than with the processing establishments and exporters, but appropriate training of producers must be carried out so that they have a clear understanding of market requirements.

Future issues

37. It is important to note that official requirements are not the only technical barrier to entry to the EU market. Increasingly there are **private standards** too – that is, standards set by private sector buyers of products from other countries like Viet Nam. Such standards cover much the same ground as official requirements relating to food safety, but they may also deal with other matters like animal welfare, environmental protection, and so forth. Often the private standards provide detailed prescription of how the safety of food is to be assured – for example, by the application of an audited quality system like HACCP – but do not ultimately impose a stricter food safety end-point than the official requirements; but in some instances the private standards are more restrictive than the requirements imposed by the government of the importing country. (There is a report that one EU supermarket chain proposes to list a large number of pesticides whose use cannot be permitted on the products that it purchases, even though the same pesticides are permitted under EU law.) In any event, if a buyer in Europe chooses to apply private standards as a condition of purchase of products from a country such as Vietnam, these private standards have a similar effect as official requirements; that is, if the private standards are not met, then the product consignment will not be able to be sold in the importing country through the original purchaser.

38. Private standards may be developed by large supermarket chains (Tesco, Carrefour, etc), or by collective bodies (e.g. the British Retail Consortium, GlobalGAP, etc.). It has been argued that private sector standards assist producers in complying with government regulations by setting out specific measures that ensure compliance with mandatory regulations and provide verifiable means of demonstrating this compliance. However many exporting countries, especially the developing ones, are unhappy about the application of private voluntary standards as a condition of trade for reasons such as the cost of compliance – especially auditing of quality systems – and the fear that private standards are setting the bar ever higher for exporters. Some developing countries are seeking to minimise costs by having their own national GAP (good agricultural practices) systems benchmarked against the private sector requirements.

39. Private sector standards are not directly addressed by the WTO's TBT and SPS Agreements, and analysis suggests that it is unlikely that their use can be subjected to WTO trade disciplines. Therefore private exporters, supported appropriately by government, will have to deal with sanitary and other standards imposed by importers in a pragmatic way through commercial channels. It may be that this is a matter on which targeted technical assistance from donors could be particularly valuable.

40. The EU's official **phytosanitary requirements** may also present a significant challenge to the expansion of exports especially of fresh fruit and vegetables to Europe. The government and exporters in Viet Nam will have to be aware of the presence and distribution of quarantine pests that are not found in Europe, and to comply with the relevant EU restrictions (or propose measures that are equivalent to the EU requirements); disinfestation facilities (e.g. vapour heat treatment, fumigation, etc.) may also be needed. There will have to be effective controls over the use of pesticides and the observance of pre-harvest withholding periods. Augmentation of laboratory capacity may be necessary to support export certification of freedom from pesticide residues.

The SPS Office

Current operations

41. Viet Nam's SPS Office was established in MARD by Prime Minister's Decision 99/2005/QD-TTg and the function, tasks and power of the SPS Office were regulated by Decision 1173/2005/QD-BNN-TCCB. The Office incorporates the enquiry point and notification authority required by the SPS Agreement. It has a staffing complement of 7 full-time personnel, with expertise in animal and plant health, food processing, agri-business/exporting, law and government administration, information technology, and so forth. The Office is well equipped with computers and its own intranet, but its budget is very limited. Some supplementation of budget funding has been available from donors for specific purposes. There is a view within the Office that the making of detailed action plans is not worthwhile because resourcing is so constrained.

42. There is a network of six SPS focal points, four of them in MARD (in NAFIQAD, the Plant Protection Department, the Animal Health Department and the Department of Fishery Exploitation and Fishery Resources), and one each in the Viet Nam Food Administration (in MOH) and the Department of Import and Export of MOIT. Due to the changes in the structure of government institutions, for example the merging of the Ministry of Trade with the Ministry of Industry to form MOIT and the absorption of the Ministry of Fishery into MARD, decision 04/2008/QD-BNN on organisation and coordination between Viet Nam's SPS Office and the focal points in Ministries was issued by MARD in January 2008. The focal points have the role of disseminating information within their Ministries and monitoring activities to ensure that any notifiable new SPS measures are advised to the SPS Office.

43. The Office carries out the mandatory requirements of the transparency provisions of the SPS Agreement with reasonable success. Viet Nam made four SPS notifications in 2008, and there have been three more to date in 2009. Arrangements to ensure that all notifiable SPS measures in Viet Nam are actually notified have been strengthened. A few enquiries (e.g. from Singapore concerning access conditions for pet food) have been received and dealt with, and many documents have been supplied to enquirers following up SPS notifications made by Viet Nam.

44. In addition, Viet Nam has been meeting its obligation to participate in the activities of the SPS Committee by sending delegations to most meetings. It has also used the occasion of the SPS Committee meeting in October 2007 to work with other WTO members (China and Thailand) to advance common interests (concerns about Australia's restrictions on prawn imports). Viet Nam has not raised any matter in the SPS Committee concerning trade with the EU.

45. As for voluntary activities by the Office, each week the SPS Office views between 20 and 40 new SPS notifications made by other WTO members and selects those that may be significant to Viet Nam's trade. These are then circulated via the focal points for information and comment by competent authorities, who in turn may consult private sector stakeholders. (The SPS Office does not deal directly with industry representative bodies.) However it is reported that the competent authorities find it difficult to make substantive reactions because they do not have strong English language skills or they lack the necessary technical expertise. Viet Nam commented on perhaps three notifications by other countries last year. The Office and the focal points have also attempted to gather information on importing country requirements, and some seminars have been held; for example, the VFA held a seminar in 2008 to introduce the importing requirements of Korea.

46. The official website maintained by the SPS Office (the creation of which was sponsored by MUTRAP II) aims to provide information on legal documents of Viet Nam on food safety, animal health and plant health to WTO members, and also to inform Vietnamese exporters and importers on SPS matters in trade.

47. In 2007 and 2008 the SPS Office organised five training workshops for central and provincial government officials and some participants from the private sector. Three more workshops, at a more detailed level, are planned for 2009.

SPS focal points

48. Activities of focal points and the SPS Office are coordinated via a steering committee on which other Ministries are also represented. Meetings of the steering committee are supposed to be held at least quarterly, but this schedule is apparently not being maintained.

49. The SPS focal point in the Ministry of Industry and Trade is located in the Department of Import-Export. The focal point has three to four staff who spend at least some of their time on SPS matters. However these staff are relatively new to the function and lack necessary training. The focal point reported that it had not received from the SPS Office in MARD any notifications by other WTO members. It was also remarked that to date there had been only one meeting of the SPS network.

50. The USA has funded two training programs for the staff of the SPS focal points in MARD, in 2005 and 2006, and an overseas training course on inter-government coordination for managers of the SPS office and staff of Ministry SPS focal points.

Proposed activities

51. In 2009 the Office proposes, in association with the technical focal points, to collect information on the import requirements of main markets and organize information seminars for exporters focusing on the USA, EU, China, Japan and ASEAN markets. The workshops to be conducted as part of the current MUTRAP III project will facilitate this objective. The building up of a database on SPS laws and regulations of main importing

countries such as EU will allow the Office to improve the communication channel between Vietnamese exporters and in-country managers on specific SPS matters and help producers to maintain compliance with the EU SPS regulations.

52. It should be noted that since 1994 NAFIQACEN, and its successor NAFIQAD, have collected EU regulations relevant to fishery products and translated them into Vietnamese, and amended and established additional or new regulations equivalent to the EU's SPS requirements.

Possible improvements

53. The SPS portal, developed with the assistance of MUTRAP II, is in operation although it is as yet not fully functional. Its main orientation, correctly, is towards providing information on the SPS regime prevailing in Viet Nam. As presently configured, it is not providing advice to exporters on the SPS requirements in destination markets. This should, in any event, be the primary responsibility of the relevant Departments of MARD (plant health, animal health, NAFIQAD, etc.).

54. There is little that the SPS Office can do, via its formal functions under the SPS Agreement, to assist exporters to resolve current problems with trade. For some problems, the government may be able to assist, for example through the Plant Protection Department or the Animal Health Department of MARD, and through government-to-government trade and diplomatic channels in relation to problem shipments, but in most instances the private importers and exporters will have to solve problems by themselves. Occasionally it may be of assistance to lodge an enquiry in a formal way via the EU's SPS enquiry point regarding the applicable legislation, but such enquiries can equally be made by the PPD or AHD with their counterparts in the EU administration.

55. Although Viet Nam has not raised any matter in the SPS Committee concerning trade with the EU, a number of other countries have raised concerns about the EU's SPS measures. Amongst these several might conceivably have been of interest to Viet Nam: pesticide residue limits, limits on ochratoxin in coffee, and limits on heavy metals and 3-MPCD in soy sauce. In each of these cases the raising of the issue pre-dated Viet Nam's accession to the WTO.

The value of bilateral agreements

56. Talks on a Free Trade Agreement between the EU and ASEAN were launched in May 2007. There has been mention of the possibility of a Viet Nam-EU free trade agreement, especially in view of the slow progress of the EU-ASEAN talks, but such an agreement is not under negotiation. An FTA between Viet Nam and the EU might have a favourable impact on the tariffs, quotas and similar measures applying to Viet Nam's exports.⁵

57. However it is unlikely that a free trade agreement would have any significant impact on the SPS conditions that apply to Viet Nam's exports to Europe. It is normally the case in free trade agreements around the world that they bring about no substantive change to SPS measures unless one or other of the parties has been maintaining measures

⁵ The website maintained by the SPS Office lists five bilateral agreements on fishery product matters, with Cambodia, Canada, China, Korea and Thailand. There are also agreements on plant quarantine issues with Chile, Korea, Mongolia and Romania, on animal health matters with China, and an agreement with the USA on animal and plant health. There are no bilateral agreements listed on food safety issues.

without adequate justification or in violation of WTO rules. The exception to this might be where an importing country maintains a positive list system so that certain commodities (e.g. bananas) cannot be imported unless and until specific SPS import conditions have been established for that commodity from nominated supplier countries; in this situation an FTA might cause the importing country to speed up its consideration of an access request from its partner in the agreement, but the provisions of the FTA should not influence the outcome of the importing country's risk analysis.

III. CONCLUSIONS AND RECOMMENDATIONS FOR ACTION

58. The European market presents significant challenges to any exporter of food and other agricultural commodities. With few exceptions European food safety requirements are as high or higher than any in the world. Fortunately, for some important Vietnamese exports, like coffee, tea, nuts and pepper, SPS requirements do not pose major impediments to trade. For other products, like fish, export to Europe is only possible if a comprehensive sanitary system is maintained over every aspect of production, processing and distribution.

59. At the present time, the EU is importing substantial volumes of Vietnamese products, and trade is proceeding with little evidence of interruption or constriction by the EU's SPS requirements. Certainly it is costly for Viet Nam's producers to maintain the very high standards that are demanded, but the same or similar standards apply in other developed country markets as well. The rapid growth of exports of fish in particular suggests that exporting is profitable despite the cost of producing to a very high standard. Nevertheless there is always the question of how profitability can be maximized, by means such as cost minimisation and greater value adding, and by the avoidance of risk to trade arising from hazards that are not properly anticipated and controlled. There is also the question of how export activity can be increased in commodities that are currently traded in low volumes or not at all.

60. It is not within the scope of this project to conduct a detailed examination of industry cost structures and export opportunities for Viet Nam's primary products in the EU market. It is, however, reasonable to assume that Viet Nam has the capacity to build substantially on the existing trade flow, by both broadening and deepening. SPS barriers to trade will be one of the important factors influencing such an expansion. The paragraphs below list a number of aspects of sanitary/phytosanitary control that may warrant attention by the Government of Viet Nam and/or the business sector. They are set here as a starting point for consultation with stakeholders in the second phase of the present project.

Reinforcing existing trade

- Business risk analysis

61. Business risk analysis is a well-established discipline used by many organisations to systematically identify and evaluate the things that can go wrong with a business activity. It uses conventional risk analysis methodology, applied in a qualitative or quantitative manner. That is to say, hazards that may occur in any business process are identified and evaluated, possible risk management measures are considered, and appropriate control measures are implemented. The methodology may be especially valuable in a situation where a particular kind of activity – like exporting fish to the EU – is maturing and there is a risk that managers are becoming complacent about risk at the level of individual enterprises and more broadly in the industry at large.

Action: Viet Nam's fishery product export industry has overcome many difficulties to reach its present success. It may now be timely to appoint an industry-government taskforce, with expert external assistance, to review how well

sanitary risks are being managed and to consider what new challenges may emerge for the industry over, say, the next five years.

- Survey of information and training needs

62. One aspect of business risk is situations where industry participants lack sufficient knowledge and/or training to reliably carry out their responsibilities. Several of the organisations consulted during the first phase of the present project commented that small-scale producers lacked the information and skills necessary to ensure that sanitary and phytosanitary requirements are met. It is inevitable that the level of expertise present in an industry will decay unless new entrants are properly informed and trained and existing participants are kept up to date. Industry associations have a key role to play in this regard (see below) as well as responsible government agencies. However training is expensive for providers and also has costs for recipients, and so it must be carefully targeted.

Action: It would be valuable to conduct surveys, where this information is currently lacking, to find out what are the key information and training needs on sanitary issues in selected SPS-vulnerable export industries, and then to design and implement training programs and information flows to remedy the deficiencies. The fishery and aquaculture industry and the fresh fruit and vegetable industries would be prime candidates for study under such an initiative, especially at the level of the smaller producers. The application of modern quality control methodology should be a particular focus for training of managers.

- More effective traceability systems

63. Export supply chains are typically longer than domestic ones, making it more difficult to trace back from defects found at the consumption end of the chain to the earlier stage where sanitary or phytosanitary controls failed. At the same time, defects discovered in importing countries damage the national reputation of the exporting country as well as the business reputation of the exporter. Traceability systems backed by effective mechanisms for penalizing bad practices are crucial means of giving producers, processors and traders the incentive to ensure that products meet buyer requirements in every respect, particularly in respect of food safety and biosecurity attributes. Maintaining traceability costs money, but the burden can be equitably shared across an industry by applying the principal that participants at every stage must be aware of who every input came from, and who every output was purchased by (“one forward and one back”).

Action: Industry associations and the Government of Viet Nam should cooperate in a review of the status of traceability systems in all significant export industries that are subject to SPS requirements in export markets and formulate plans to remedy any defects that are not already being addressed.

- Protocols for follow-up of rejections of export consignments

64. Export consignment rejections are a key indicator of problems in the supply chain. Some importing countries, like the EU, apply effective controls at their borders and make detailed information available on rejected consignments and the reasons for rejection. Analysis of these data can be extremely useful in pointing to the need for

corrective action focused on systems or individual supply chain actors. Traceability (see above) has a major role in making this possible.

Action: The Ministry of Industry and Trade logically has the responsibility for formulating generic protocols to be applied by line Ministries, in cooperation with industry, in following up every export consignment rejection, and for monitoring and reporting on the performance of the responsible agencies in this regard. For rejections attributable to violation of SPS requirements, this responsibility could rest with the SPS Office in MOIT.

- Development of industry associations

65. The possible actions that are outlined above and below refer in a number of instances to the role of industry representative bodies. The export sector in Viet Nam has a number of such bodies – VASEP is an outstanding example – but many industries apparently do not have well-resourced and capable organisations to fully represent their interests on the national and international level and to cooperate effectively with government. Ideally such organisations would be developed in parallel with, or even in advance of, significant export activity by an industry, but it will normally be the case that evolution of the industry association will lag behind.

Action: The Government, through MOIT and MARD, could consider the need for more rapid development and strengthening of industry associations for the export sector, and the best means for catalyzing their evolution.

- Strengthening controls over imports

66. Paradoxically, SPS controls over imports to Viet Nam have a role to play in supporting Viet Nam's SPS-vulnerable export industries. For example, unless there are effective controls to ensure that products imported into Viet Nam from neighbouring countries conform with the relevant domestic standards, it is more difficult to provide assurance that Vietnam's exports are of appropriate sanitary/phytosanitary standard. There are specific concerns about the presence of pesticide residues on imported fresh fruit and vegetables. (Of course the protection of the health of domestic consumers is an even more important consideration here.)

Action: The Government, through MARD and MOIT, should initiate a study of the risks to export industries posed by ineffective SPS controls over imports into Viet Nam, and formulate project proposals to implement appropriate corrective action.

Preparing for major expansion of exports to the EU

- Business planning for expansion

67. The expansion of Viet Nam's fishery-based export industry provides a model for development of a trade-oriented industry sector. A key element of the model is the intensive cooperation between the public and private sectors as they carried out their complementary roles. A similar approach will be warranted in any situation where there are significant SPS criteria to be met by exports. Such would be the situation if it were believed that Viet Nam could profitably produce a substantially greater surplus of fresh

fruit and vegetables of high enough quality to export to developed country markets like the EU. The successful export of organic foods also requires the creation and maintenance of a complicated apparatus to verify and certify organic status of crops, livestock and their products.

68. Elements of a business plan to organise a major effort to access export markets could include:

- (i) a realistic analysis of the competitive position of specific crops, and related strengths and weaknesses, as well as the SPS barriers that would have to be overcome;
- (ii) building supply capacities to meet external requirements (e.g. infrastructure, institutions, including national standards, testing and quality assurance systems, awareness-raising and the development of management skills);
- (iii) the promotion of national GAP programmes and GlobalGAP certification (either directly or through benchmarking);
- (iv) improvement of market information channels;
- (v) specific support for smallholders and their collective organizations;
- (vi) donor support for the design and implementation of the selected implementation strategies.

Action: MARD should review previous relevant studies on export opportunities for primary products, carry out any further studies as appropriate, and implement a business planning approach to address SPS aspects of export expansion of primary products into major markets.

o Strengthening controls on agricultural chemicals

69. One category of SPS controls that is both pervasive and extremely sensitive in export markets is residues of agricultural chemicals, including pesticides and veterinary drugs. There is evidence that control of agricultural chemicals still has some way to go in Viet Nam before the situation could be said to be fully satisfactory. So long as this is the case, it will be problematic to export primary products especially, but not only, to developed countries without intermittent disruptions to trade because of the detection of violative consignments. One of the matters to be addressed could be the effective prohibition of sale and use of fertilizer/pesticide combinations unless specifically approved by the relevant authorities. The training needs of primary producers are also a key consideration.

70. Without effective control of the use of agricultural chemicals, it will be impossible for Viet Nam to sustain a significant organic agriculture sector, or to adopt longer term export marketing strategies such as the promotion of a clean/green image for Vietnamese products.

Action: MARD should prepare advice for the Government on how its efforts to exert better control over the distribution and use of agricultural chemicals could be strengthened in view of the importance of this control to future export opportunities for primary products.

Strengthening public sector support to export trade

- Enhancing the performance of the SPS Office

71. The activities of the SPS Office are sound and useful, but more needs to be done. The focal point network needs to be energized by agreeing with each focal point what specific activities it will carry out in the forthcoming period and by providing regular opportunities for reporting on achievements. Appropriate protocols or standard operating procedures should be developed if they do not already exist. Where focal points lack necessary facilities, such as computers and internet access, resources (possibly from a donor) should be provided. Additionally, staff in the focal points and in the SPS Office require a high level of training to familiarize themselves with real-world SPS issues.

72. Very careful consideration should be given to the Office's possible role as manager of a database of SPS requirements in export markets: the creation and maintenance of such a database would be costly, and might not be necessary if the relevant plant and animal health and food safety agencies (where the specialised technical expertise lies) meet their responsibilities to provide necessary information and advice to exporters. The preferred role of the SPS Office might instead be to act as a facilitator, referring exporters' questions on to the agencies best placed to respond, and assisting industry representative bodies to build their own capacity to assist their members.

73. The absence of an action plan or program for the Office at the present time is perhaps understandable, but this deficiency should be remedied as soon as possible so that staff are clear on what must be achieved and the Office is properly accountable for the resources that it uses. One of the elements of the action plan must be a program for liaising with the business sector by workshops, newsletters and other means in order to raise the general level of awareness of SPS issues. To facilitate such activities, the Office should compile a database of interested stakeholders.

Action: Further impetus should be given to the work of the SPS Office and the related focal points, possibly by the design of a technical assistance project for submission to potential donors.

- Emergency preparedness

74. Export trade, as in the case of the export of fishery products to the EU, can be immediately and drastically undermined by unexpected events such as disease or pest outbreaks, detection of widespread contamination by illegal chemicals, evidence of critical failure in food safety controls, and so forth. To minimise the impact of such events governments cooperate with industry to develop emergency response plans that describe the circumstances in which the plan will be activated, identify the roles of key agencies and personnel in the implementation of emergency response, outline communication protocols and plans, and provide for necessary resourcing. The plans may be specific to an industry or commodity, or they may be more generic in their approach.

Action: MARD should review the need for emergency planning in support of the export of primary products to the European Union and other markets.

- Strengthening the provincial/communal administrative structures that support export trade

75. On the ground implementation of government programs for phytosanitary control and initiatives to assist export industries to achieve their objectives in the EU and other markets is very often through provincial administrations and at the communal level. Inadequate performance at these levels, which might be attributable to many different factors, can prevent the achievement of national objectives and frustrate the private sector. As at the national level, administrative machinery must be prepared for its role by planning, organisation, resourcing, training and management.

Action: MARD and MOIT, in consultation with exporters and their representative bodies, should review the administrative arrangements at provincial and local level to identify any deficiencies that are impeding or undermining Viet Nam's export performance in the EU market, and develop proposals for necessary improvements with a view to programmed improvement using budget and/or donor funding as appropriate.

- Settling national arrangements to ensure food safety

76. There are very important linkages between the infrastructure and programs that are designed to ensure the safety of food in the domestic market and the quality of food products that are exported to the EU. Viet Nam's national food safety system has not reached full capability principally because resources are scarce, but improvement of the present situation will no doubt follow from the adoption of the new food safety law that is currently being drafted and from the adoption of better definition and articulation of the roles and responsibilities of the responsible government agencies. Better food safety on the domestic scene will, indirectly, make it easier for exporters to achieve the food safety requirements of importing countries and also support Viet Nam's national reputation of as a producer of safe food.

Action: MARD and MOIT should work actively and positively with the Viet Nam Food Authority and the Ministry of Health to finalise the draft Law on Food Safety and to work out comprehensive, non-duplicative arrangements for implementation of programs under the law.

IV. ACKNOWLEDGEMENTS

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Annex 1

EU legislation relevant to fishery and aquaculture products

1. General food safety legislation with fish-specific provisions

Regulation (EC) 852/2004: Hygiene of foodstuffs

Lays down general rules for food business operators on the hygiene of foodstuffs; applies to all stages of production, processing and distribution of food and to exports, and specifies requirements for record keeping.

Regulation (EC) 853/2004: Specific hygiene rules for food of animal origin

Complementary to Regulation (EC) 852/2004. Specific hygiene provisions for fishery products (included in Annex III, Section VIII) cover the following:

- Fishing, factory and freezer vessels, work and storage areas, refrigeration and freezing installations (structural, equipment and hygiene requirements);
- Hygiene during and after landing;
- Establishments, including vessels handling fishery products;
- Fresh, frozen, mechanically separated and processed fishery products;
- Concerning parasites and health standards;
- Fish oil for human consumption;
- Wrapping and packaging;
- Storage and transport.

Regulation (EC) 854/2004: Official controls on products of animal origin intended for human consumption

Annex II and Annex III specify in detail official controls of production and placing live bivalve molluscs and fishery products on the market. Food business operators must cooperate with relevant competent authorities so as to permit them to carry out official controls. Official controls of fishery products include requirements as specified in Regulation 853/2004 (listed above). The health standards include at least the following elements: organoleptic examinations, freshness indicators, histamine, residues and contaminants, microbiological checks, parasites and poisonous fishery products.

Regulation (EC) 396/2005: Maximum residue levels (MRLs) of pesticides

Establishing the MRLs of pesticides permitted in foodstuffs including fishery and aquaculture products.

Regulation (EC) 2377/90: Maximum residue levels for veterinary medicinal products

Establishing the MRLs for veterinary medicinal products including fishery and aquaculture products.

- Annex I lists all the pharmacological substances for which the MRLs have been fixed.
- Annex II lists all the substances for which there are no MRLs.
- Annex III lists the substances for which MRLs have been provisionally fixed.
- Annex IV lists the substances for which no MRLs can be fixed (banned substances); these include: *Aristolochia* spp, Chloramphenicol, Chloroform,

Chlorpromazine, Colchicine, Dapsone, Dimetridazole, Metronidazole, Nitrofurans (including furazolidone) and Ronidazole.

Regulation (EC) 2074/2005, as amended recently by Regulation (EC) 1022/2008, implementing measures for certain food products

The Regulation specifies the obligations of food business operators relating to detection of parasites in fishery products. It sets limit values for the *total volatile basic nitrogen* (TVB-N) for fishery products and specifies the analytical methods to be used (Annex II): Annex VI of the Regulation includes the model health certificate for importing fish (Appendix IV, Annex VI) and bivalve molluscs (Appendix V).

Regulation (EC) 2073/2005: Microbiological criteria for foodstuffs

Foodstuffs should not contain micro-organisms or their toxins or metabolites in quantities that present an unacceptable risk for human health. Regulation sets criteria for fishery products that have undergone enzyme maturation treatment in brine, manufactured from fish species associated with a high amount of histidine in particular fish species of the families Scombridae, Clupeidae, Engraulidae, Coryfenidae, Pomatomidae, Scombrosidae.

Commission Regulation (EC) 2076/2005 of 5 December 2005 laying down transitional arrangements for the implementation of Regulations (EC) No 853/2004, (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council and amending Regulations (EC) No 853/2004 and (EC) No 854/2004.

Regulation (EC) 1881/2006: Maximum levels of food contaminants

Regulation sets maximum levels relevant for fishery and aquaculture products for the following contaminants (Annex I, Sections III, V and VII):

- Heavy metals: lead, cadmium and mercury (Annex I, Section III)
- Dioxins and PCP (Annex I, Section V)
- Polycyclic aromatic hydrocarbons- PAHs (Annex I, Section VII)

Directive 96/22/EEC: Substances with hormonal and thyrostatic performance including β -antagonists

Placing on the market of aquaculture animals from a farm where substances having a thyrostatic, oestrogenic, androgenic or gestagenic action and beta-agonists have been administered is prohibited in the EU. With regard to aquaculture animals, young fish may be treated for the first three months for the purpose of sex inversion with veterinary medicinal products that have an androgenous action and are authorized.

Directive 96/23/EEC: Monitoring measures on certain substances and residues thereof in live animals

- Unauthorized substances for aquaculture animals include: stilbenes, steroids, compounds included in Annex IV to Regulation (EEC) 2377/90
- Veterinary drugs and contaminants forbidden in aquaculture animals are: antibacterial substances (includes sulphonamides, quinolones, and carbamates/pyrethroids), organochlorine compounds including PCBs, organophosphorus compounds and chemical elements.

Directive 97/78/EC laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries.

Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.

Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules.

2. Legislation specific for fishery and aquaculture products

Decision 97/296/EC: List of authorized countries for the import of fishery products

The Decision as amended lists countries from which the Member States are authorized to import fishery products. Before exports from a non-EU country are allowed, several requirements need to be fulfilled on a country level. These are:

- The animal health satisfies EU requirements for imports of the animals or products;
- National authorities in a non-EU country can provide rapid information on the existence of certain infectious or contagious animal diseases on their territory;
- There is effective legislation, monitoring and an inspection program on the use of prohibited and authorised substances (e.g. hormonal, thyrostatic, veterinary medicines) their distribution, release onto the market and monitoring of the residues thereof in live animals and animal products, including fish, for which export approval is sought;
- The veterinary services are capable of enforcing the necessary health controls and there are effective measures to prevent and control infectious or contagious animal diseases.

If these requirements are met, the country can be included on a positive list of countries that can export fishery and aquaculture products to the EU.

Directive 2006/88/EC: Animal health requirements for aquaculture animals

The Directive governs any placing of aquaculture animals on the market within each Member.

State, the intra-community trade (i.e. trade between Member States) and imports into the EU. In general terms, this means that aquaculture animals and products from both within the EU and from third countries must broadly fulfill similar animal health requirements before they can be moved across national borders. Rules governing imports from third countries are established in Chapter IV of the Directive.

Decision 2003/858/EC: Animal health conditions and certification requirements for imports of live fish

Specifies conditions on importation of fish and fishery products into community. Annex II includes sample of health certificate for fish imported to the EU.

Decision 2003/804/EC: Animal health conditions and certification requirements for imports of molluscs

Decision lists conditions on import of molluscs into community. Annex II includes sample of health certificate for molluscs imported to the EU.

Regulation (EC) 1093/94: Terms of landing of non-EU fishing vessels on EU territory and marketing catches

Sets the terms under which fishing vessels of a third country may land directly and market their catches at Community ports.

Regulation (EC) 104/2000 and Regulation (EC) 2065/2001: Labelling of fishery and aquaculture products

Regulation (EC) 104/2000 specifies CN coding system and consumer information requirements. According to the Regulation, all Member States had published a list of species with the scientific name and in their official language which need to be used on the label.

All fishery products must include **appropriate marking and labelling** including:

- Commercial designation of the species (scientific name, name in official language);
- Production method (caught at sea, inland waters or farmed);
- The catch area.

Regulation (EC) 2065/2001 (Article 4) specifies labelling requirements for the production methods: ‘*caught*’...or...’*caught in freshwater*’... or ... ‘*farmed*’... or ... ‘*cultivated*’. Production methods must be specified on the label in the official language of the Member States in which the fishery product is marketed. The indication of the catch area (Article 5) must be also indicated as specified in an Annex of the Regulation.

Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption

(Source: Center for the Promotion of Imports from developing countries <http://www.cbi.eu>, website of EU law <http://eur-lex.europa.eu> and website of Ministry of Agriculture and Rural development, National Agro-Forestry-Fisheries Quality Assurance Department NAFIQAD <http://www.mofi.gov.vn/nafi/>)

Annex 2

***EU Rapid Alert System for Food and Feedstuffs:
rejections of Vietnamese products from 2008 to present (12/5/2009)***

2008						
No.	DATE	NOTIFIED BY	REF.	REASON FOR NOTIFYING	NOTIFICATION BASIC	STATUS
1	08/01/2008	Italia	2008.0016	Aflatoxins (B1 = 6.3; Tot. = 9.8 µg/kg - ppb) in cashew flour from Viet Nam	Official control on the market	Distribution restricted to notifying country / product (to be) seized
2	18/01/2008	The United Kingdom	2008.0062	Tflatoxins (B1 = 160; Tot. = 220 µg/kg - ppb) in salted roasted peanuts without shell from Viet Nam	Official control on the market	Distribution restricted to notifying country / product (to be) withdrawn from sale
3	11/03/ 2008	The Czech Republic	2008.AKZ	Aflatoxins (B1 = 12.3; Tot. = 16.4 µg/kg - ppb) in roasted peanuts with coconut juice from Vietnam	Border rejection	Product (to be) re-dispatched
4	16/04/2008	The United Kingdom	2008.AQB	Suffocation risk as a result of the consumption of fruit jelly cups from Vietnam, via Malaysia containing unauthorised E 425 - konjac	Border rejection	Product (to be) destroyed
5	24/04/2008	Sweden	2008.0467	Suffocation risk as a result of the consumption of fruit jelly cups containing unauthorised E 406 - agar from Viet Nam	Official control on the market	Distribution restricted to notifying country / product (to be) withdrawn from sale
6	02/6/2008	Sweden	2008.0635	Unauthorised colour Orange RN and unauthorised use of colour E 160b - annato/bixin/norbixin in dried chilli powder from Vietnam, dispatched from the Netherlands	Official control on the market	Distribution on the market (possible) / product (to be) withdrawn from recipient(s)

7	22/07/2008	The Slovak Republic	2008.0885	3-monochlor-1,2-propanediol (3-MCPD) (75.50 µg/kg - ppb) in soy sauces from Vietnam, via the Czech Republic	Official control on the market	Distribution on the market (possible) / product (to be) withdrawn from recipient(s)
8	29/07/2008	Germany	2008.0915	Unauthorised colours Rhodamine B (<5 mg/kg - ppm) and Orange II (700 mg/kg - ppm) and unauthorised use of colour E 124 - Ponceau 4R / cochineal red A (20 mg/kg - ppm) in dried chilli powder from Vietnam, via the Netherlands	Official control on the market	Distribution on the market (possible) / product (to be) withdrawn from the market
9	30/07/2008	Belgium	2008.0925	Unauthorised use of colour E 160b - annato/bixin/norbixin (> 50 mg/kg - ppm) in curry powder from Vietnam, via the Netherlands	Official control on the market	Distribution on the market (possible) / product (to be) destroyed
10	07/08/2008	The Czech Republic	2008.BFT	Suffocation risk as a result of the consumption of fruit jelly cups from Viet Nam containing unauthorised E 407 - carrageenan	Border rejection	Product (to be) destroyed
11	08/08/2008	The United Kingdom	2008.BGH	Suffocation risk as a result of the consumption of mini jelly cups containing unauthorised seaweed extract from Viet Nam	Border rejection	Product (to be) destroyed
12	14/08/2008	Norway	2008.0995	E 425 - konjac unauthorised in assorted flavours mixed fruit jelly cups from Viet Nam	Official control on the market	Distribution restricted to notifying country / product (to be) destroyed
13	19/08/2008	Germany	2008.1007	E 211 - sodium benzoate unauthorised in mango flavour fruit yoghurt from Viet Nam	Official control on the market	Distribution on the market (possible) / product (to be) recalled from consumers
14	22/08/2008	Germany	2008.1023	E 210 - benzoic acid unauthorised and unauthorised use of colour E 123 - amaranth in fruit yoghurt from Viet Nam	Official control on the market	Distribution restricted to notifying country / product (to be) detained
15	26/09/2008	The United Kingdom	2008.1144	Salmonella in various fresh herbs from Viet Nam	Official control on the market	Distribution restricted to notifying country / product (to be) recalled

						from consumers
16	20/10/2008	Norway	2008.1284	Suffocation risk as a result of the consumption of mini jelly cups containing unauthorised seaweed extract (0.3 %) from Viet Nam	Official control on the market	Distribution restricted to notifying country / product (to be) destroyed
17	31/10/2008	The Czech Republic	2008.1367	Too high content of E 210 - benzoic acid (214 mg/l) in energizing drink from Viet Nam	Official control on the market	Distribution restricted to notifying country / product (to be) destroyed
18	28/10/2008	The United Kingdom	2008.BRL	Suffocation risk as a result of the consumption of mini jelly cups containing unauthorised seaweed extract from Viet Nam	Border rejection	Product (to be) destroyed
19	24/11/2008	Lithuania	2008.BVI	Altered organoleptic characteristics of dried bananas from Viet Nam	Border rejection	Product (to be) redispached or destroyed
20	08/12/2008	Poland	2008.BYJ	Abnormal smell (chemical smell and taste) of white rice from Viet Nam	Border rejection	Product (to be) re-dispatched
21	18/12/2008	Germany	2008.1647	Unauthorised novel food (Stevia Rebaudiana) inginger tea from Viet Nam	Official control on the market	Distribution restricted to notifying country / product (to be) destroyed
22	19/12/2008	Norway	2008.1667	Salmonella Stanley in white hing choi (Amaranthus tricolor) from Vietnam, via Thailand	Official control on the market	Distribution restricted to notifying country / product (to be) destroyed
23	22/12/2008	Poland	2008.CAU	Altered organoleptic characteristics (chemical smell and taste) of white rice from Viet Nam	Border rejection	Product (to be) re-dispatched
24	29/12/2008	Germany	2008.1699	E 210 - benzoic acid unauthorised and unauthorised use of colour E 123 - amaranth in mixed flavour fruit jelly from Viet Nam	Official control on the market	Distribution on the market (possible) / product (to be) withdrawn from the market

2009						
No.	DATE	NOTIFIED BY	REF.	REASON FOR NOTIFYING	NOTIFICATION BASIC	STATUS
1	05/01/2009	The United Kingdom	2009.AAP	Suffocation risk as a result of the consumption of and E 407 - carrageenan unauthorised in mini jelly cups from Viet Nam	Border rejection	Product (to be) redispached or destroyed
2	14/01/2009	Germany	2009.0037	E 210 - benzoic acid unauthorised in pineapple flavoured fruit jelly from Viet Nam	Official control on the market	Distribution on the market (possible) / product (to be) recalled from consumers
3	16/01/2009	Poland	2009.ACP	Altered organoleptic characteristics of black pepper from Viet Nam infested with insects	Border rejection	Product (to be) re-dispatched
4	16/01/2009	Greece	2009.ACR	Cashew nut kernels from Viet Nam infested with insects	Border rejection	Product (to be) redispached or destroyed
5	04/02/2009	Germany	2009.0132	Unauthorised placing on the market of herbal infusion from Viet Nam containing Senna leaves	Official control on the market	Distribution restricted to notifying country / product (to be) seized
6	05/02/2009	Norway	2009.0142	Unauthorised novel food ingredient Stevia rebaudiana in bitter gourd tea from Viet Nam	Official control on the market	Distribution restricted to notifying country / product (to be) destroyed
7	06/02/2009	Germany	2009.0146	E 210 - benzoic acid (730 mg/kg - ppm) unauthorised in coconut flavoured fruit jelly from Viet Nam	Official control on the market	Distribution on the market (possible) / product (to be) withdrawn from the market
8	11/02/2009	Norway	2009.0171	Unauthorised novel food ingredient Stevia rebaudiana in artichoke tea from Viet Nam	Official control on the market	Distribution restricted to notifying country / product (to be) destroyed
9	03/03/2009	Germany	2009.0257	Unauthorised novel food ingredient Stevia rebaudiana in ginger tea from Vietnam, via the Netherlands	Official control on the market	Distribution restricted to notifying country / product (to be) withdrawn from the market

10	03/03/2009	Germany	2009.0258	Unauthorised novel food ingredient <i>Stevia rebaudiana</i> in ginger tea from Vietnam, via the Netherlands	Official control on the market	Distribution restricted to notifying country / product (to be) withdrawn from the market
11	09/03/2009	Spain	2009.0290	Chinese star anise (<i>Illicium verum</i>) from Viet Nam contaminated with Japanese star anise (<i>Illicium anisatum</i>)	Food poisoning	Distribution on the market (possible) / product (to be) withdrawn from the market
12	12/03/2009	The Czech Republic	2009.0297	3-monochlor-1,2-propanediol (3-MCPD) (70.1 µg/kg - ppb) in soy sauce from Viet Nam	Official control on the market	Distribution restricted to notifying country / product (to be) destroyed
13	06/05/2009	Estonia	2009.0581	Glass fragment (5x2cm) in pickled gherkins in glass jar from Vietnam, via Lithuania	Consumer complaint	Distribution on the market (possible) / product (to be) detained