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**Guidance Document**

**Understanding and enhancement of practical implementation of the EU – Vietnam FTA SPS Chapter**

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# I. Introduction

This Guidance Document has been developed to address one of the major concerns regarding the implementation of the EU – Vietnam Free Trade Agreement, i.e. the lack of awareness of the technical implications of its legal provisions, as well as certain misunderstanding in terms of timeframes and concrete actions to be undertaken to comply with it. Therefore, information presented in a format of Questions and Answers, is aimed to clarify the contents of the SPS Chapter looking at each of the Articles in some detail and providing references to the EU practices and experience, which would be helpful for the competent authorities of Vietnam. It explains why SPS measures are often seen as non-tariff barriers to trade and indeed truly become such barriers, when adopted measures are not based on science and not transparent.

The effective implementation of the SPS Chapter of the FTA presumes that SPS measures are adopted only for achieving the legitimate objectives and truly serve for the protection of human health and life, animal health and life and plant health and life. So, within this document certain recommendations are suggested on possible activities as would be appropriate for the preparation for effective implementation of the provisions of the SPS Chapter of the FTA.

# II. General provisions of the SPS Chapter of the EU-Vietnam FTA

### *1.1. What are the main objectives of the SPS Chapter? Why it is necessary to have such Chapter in the FTA?*

The objectives of the SPS Chapter are provided by Article 6.2 and in essence they are similar to the objectives of the WTO SPS Agreement: *to protect human, animal or plant life or health in the territory of each Party while facilitating trade between the Parties and to ensure that SPS measures adopted by each Party do not create unnecessary obstacles to trade.* However, the FTA Chapter devoted to SPS measures aims at enhancing the effective implementation of the principles and disciplines of the SPS Agreement and international standards, guidelines and recommendations developed by relevant international organisations.

Two specific objectives can be considered as of outmost relevance and importance to the Parties:

* To strengthen communication and cooperation on, and resolution of SPS matters that affect trade between the Parties and other agreed matters of mutual interest; and
* To promote greater transparency and understanding in the application of each Party’s SPS measures.

So, that means that it is the intention of this Chapter to support the implementation of the WTO SPS Agreement obligations, which are translated and made more operational within the FTA text.

### *1.2. Are there any new terms used in the SPS Chapter of the FTA?*

Article 6.3 added definitions of two terms: “competent authorities”, meaning each Party’s authorities responsible for developing, implementing and administering SPS measures within its territory and “SPS Committee”, referring to the Committee on Sanitary and Phytosanitary Measures to be established pursuant to Article 17.2 (Specialised Committees).

All other definitions used by the SPS Chapter are those laid down in Annex A of the SPS Agreement. The Parties may agree on other definitions for the application of the SPS Chapter also from the Codex Alimentarius Commission, the World Organisation for Animal Health and the International Plant Protection Convention, if needed.

# 2. Questions in relation to the Competent Authorities

### *2.1. Why there is a need to identify Competent Authorities and Contact Points for the purposes of the FTA?*

Competent Authorities for the purposes of the FTA are necessary for a better communication, greater transparency and understanding of each Party’s SPS measures. Absence of clear designation of Competent authorities and information on contacts points can impact or undermine the implementation of the SPS Chapter of the FTA.

Contact points for the purposes of the SPS FTA and SPS WTO can be the same (that would avoid duplication of work and ensure consistency). This focal point should ensure inter-ministerial coordination amongst the relevant line agencies and thus avoid any contradictory or overlapping requirements stemming from the different agencies (which is a requirement for complying with transparency provisions of Article 6.12 of the SPS Chapter of the FTA).

### *2.2. What are the Vietnamese Competent Authorities for the purposes of the FTA in Vietnam?*

Vietnam has a multiple agency system for the food safety management, where different Ministries and their respective agencies carry out food control activities in accordance with:

1. their legal mandates (recognized and clearly defined by the primary legislation);
2. their decentralized structure (at central, regional and local levels);
3. mechanisms for coordination are provided by the Joint Circular No. 13/2014/TTLT-BYT-BNNPTNT-BCT “Allocation of Tasks and Cooperation among Regulatory Agencies in Food Safety Management”.

Therefore, Article 6.5 states that in Vietnam control of sanitary and phytosanitary issues is shared responsibility between:

* the Ministry of Health,
* the Ministry of Agriculture and Rural Development and
* the Ministry of Industry and Trade.

The Law on Food Safety of the Socialist Republic of Vietnam, 55/2010/QH12 of 17 June 2010 provides in Article 61, Section I “Responsibilities for state management of food safety”, that the Government performs the unified state management of food safety. The Ministry of Health is designated as the main one and answerable to the Government for performing the state management of food safety.

### *2.3. What are the EU Competent Authorities for the purposes of the FTA in the EU?*

For the European Union, responsibilities for food safety are shared between the administrations of the Member States and the European Commission as follows:

* the European Commission is responsible for overall coordination, inspection and audits of inspection systems and the necessary legislative actions to ensure uniform application of standards and requirements within the Union’s internal market.
* as regards exports to Vietnam, the Member States are responsible for all the controls, from the farm to the fork approach, of the production conditions and requirements, including statutory inspections and issuing health and animal certificates attesting the compliance with Vietnam’s standards and requirements;
* as regards imports from Vietnam, the Member States are responsible for controlling compliance of imports with the Union’s import conditions, mainly at Border Inspections posts.

### *2.4. Why only one Contact Point from each Party to be established?*

Indeed, it can be seen that for both Parties – the EU and Vietnam - SPS issues are subject to shared responsibilities (among different Ministries and Agencies, at the national and regional levels), however, for the purposes of the FTA Agreement only one Single Contact Point to be established to facilitate trade, coordination and communication. One Single Contact Point from each Party would coordinate all the requests coming from the EU or Vietnam and share information on SPS matters relevant for EU and Vietnamese exports.

### *2.5.What is the EU Contact Point?*

The **European Commission** is the contact point for the purposes of the SPS Chapter of the FTA. The **EU Delegation** will coordinate the exchange of information between the Vietnamese authorities and the European Commission if necessary.

### *2.6.What is the Vietnamese Contact Point?*

Such contact point is not yet officially designated; however, the authorities have identified a focal point for the purposes of the FTA implementation - the **SPS Office** of the Ministry of Agriculture and Rural Development. Upon the FTA entry into force, the contact point should be able to coordinate all requests coming from the EU and share information on SPS matters relevant for EU exports.

**Recommendations for the effective implementation of Article 6.5 of FTA**

* Define **one single Contact Point** and its competence, ensuring that it can coordinate all requests coming from the EU and share information on SPS matters relevant for EU exports (suggested to be the SPS Office of the MARD).
* Ensure inter-ministerial coordination amongst the relevant line agencies with a purpose of avoiding any contradictory or overlapping requirements stemming from the different agencies.
* No changes are required for the primary legislation, i.e. the Law on Food Safety 55/2010/QH12 of 17 June 2010 of Vietnam.
* Adjustments can be made to the Joint Circular No. 13/2014/TTLT-BYT-BNNPTNT-BCT “Allocation of Tasks and Cooperation among Regulatory Agencies in Food Safety Management”, with a view to referring to the SPS Office coordination in the trade relationship with the EU and establishing a system of coordination among the competent authorities.
* Suggestion for a **new implementing Joint Circular covering imports from the EU** establishing one single Contact Point and defining its competence, as well as procedures and powers for ensuring coordination among the three relevant Ministries.

## 3. Questions in relation to import requirements and procedures – understanding the concept oftheEU as a Single Entity

### *3.1. What are the practical implications of the concept of the EU as a Single Entity?*

Article 6.6 of the SPS Chapter of the FTA provides that the general import requirements of a Party shall be applicable to the entire territory of the exporting Party, without prejudice to the ability of the importing Party to take decisions and measures in accordance with the criteria set out in Article 6.9 (Measures linked to Animal and Plant Health).

This provision presumes understanding the following:

* **The European Union is recognised as a Single Entity** meaning that the same import requirements apply to all EU Member States. This implies putting in place a single, predictable and transparent procedure for all imports coming from the EU through specific legislation, with clear timeframes for the approval process by Vietnam.
* . Member States’ export market access applications will be submitted by Member States to Vietnam via the EU Delegation. The European Commission will negotiate harmonised export certificates for priority commodities.
* Animal and plant health requirements, feed and food safety requirements are defined at the EU level. Member States produce and export based on the same EU standards and controls (Art. 12 of Regulation (EC) N° 178/2002).[[1]](#footnote-1)

From that perspective, it is expected from Vietnam to set **import conditions common to all EU Member States** and to ensure that exports of products produced under similar or comparable conditions from the EU Member States are treated equally. It should be emphasized that Vietnamese commodities enjoy market access into all EU Member States, while it is not necessary to comply with different requirements for the different EU Member States and food products respectively can circulate in the Single Market once they enter through one Member State.

### *3.2. Is the European Union recognised by the international organisations as a Single Entity?*

Yes, **the European Union is a full member of Codex Alimentarius**, alongside with its Member States, and this is essential for ensuring that the primary health and other interests of the European Union Member States are taken into consideration during the preparation, negotiation and adoption of food safety standards, guidelines or recommendations and other provisions developed by the Codex Alimentarius Commission.

**The European Community also a signatory to the IPPC as from March 2008**. All EU Member States have signed the International Plant Protection Convention, an international treaty which works to prevent the spread and introduction of pests of plants and plant products, and to promote appropriate measures for their control.

The European Commission is actively involved in the work of the World Organisation for Animal Health and coordinates the input from EU Member States, as all EU Member States are members of the OIE. The European Commission has a formal observer status at the OIE, established by an exchange of letters in 2004.[[2]](#footnote-2) In 2011, the Commission and the OIE concluded a Memorandum of Understanding concerning their general relations.[[3]](#footnote-3) According to this Memorandum, the Commission provided a “contact point” for all technical or specialist matters concerning OIE. Overall, **the Commission is responsible for coordinating the position of the 28 Member States of the European Union on issues discussed at the OIE and ensures that the EU Member States speak with one voice at the OIE.** In the areas of [animal health](https://ec.europa.eu/food/animals_en), [animal welfare](https://ec.europa.eu/food/animals/welfare_en) and animal production food safety covered by the OIE, the Commission shares the competence with the Member States based on the level of harmonisation of the relevant EU legislation. The Commission and the EU Member States prepare [common EU position](https://ec.europa.eu/food/safety/international_affairs/standard_setting_bodies/oie/eu-comments_en)  on issues discussed in the OIE.

### *3.3. To which extent sanitary and phytosanitary requirements are harmonised at the EU level?*

Sanitary and phytosanitary requirements for live animals and products of animal origin (semen, ova and embryos, products of animal origin for human consumption), animal by-products (not intended for human consumption) and for plants and plant produces (seeds, plants for planting, fruits and vegetables,[[4]](#footnote-4) processed products of plant origin) and composite products **are fully harmonised at the EU level**. That means that the same sanitary standards of plant, animal, feed and food safety destined to EU consumers are applicable to all products regardless of origin – either produced in any of the EU Member States or imported. Sanitary and phytosanitary requirements for commodities originating from non-EU countries have to fulfil the same standards or equivalent standards as those applicable for trade within the EU. Therefore, the same sanitary standards of plant, animal, feed and food safety apply to all EU Member States and trade partners exporting to the EU in a **non-discriminatory manner.**

### *3.4. What are the principles applicable for import requirements and procedures?*

Article 6.6 (3) of FTA contains an obligation for Each Party to adopt only measures that are scientifically justified, consistent with the risk involved and that represent the least restrictive measures available and result in the minimum impediment to trade. This provision is interconnected with Article 2 of the SPS Agreement with an obligation to base all SPS measures on scientific principles.

Principles of proportionality and non-discrimination are laid down in Article 6.6 (4) of FTA in relation to the import requirements and procedures of each party.

According to the SPS Chapter of the FTA, the import procedures shall aim to verify the compliance with the importing Party requirements while minimising negative trade effects. It is an obligation of an importing Party to ensure full transparency of its import requirements and procedures, as stated in Article 6.6 (5). The exporting Party has an obligation to ensure compliance with the import requirements of the importing Party (Article 6.6 (7)).

### *3.5. How to facilitate the checks at the borders?*

Article 6.6 (10) of FTA provides that the importing Party has the right to carry out import checks based on the SPS risks associated with imports. However, it is expected that those checks are carried out without undue delay and with a minimum impediment to trade. If products do not comply with the requirements of the importing Party, any action taken by the importing Party should be in conformity with the international standards and proportionate to the risk caused by the product.

The importing Party should make available the information about the frequency of import checks carried out on products. This frequency may be reviewed in line with verifications or import checks, or by mutual agreement between the Parties.

Any fees imposed for the procedures relating to the import of products under this Chapter should be equitable in relation to any fees charged on like domestic products and shall not be higher than the actual cost of the service.

### *3.6. What is the relevance of the EU - Single Entity concept to plant protection and pest risk analyses?*

For the purposes of plant protection and prevention of introduction of pests, the EU is considered as a Single Entity. The major legal act in the EU in relation to plant protection is Directive 2000/29/EC, as last amended by [Implementing Directive (EU) 2017/1279](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017L1279),[[5]](#footnote-5) which lists certain harmful organisms that may be targeted by specific control measures if they are:

* listed in Annexes I and II (Part A, Section I) and found in the EU for the first time;
* listed in Annexes I and II (Part A, Section II) and found in an EU country where their presence was previously unknown.

Specific control measures may also be targeted at other harmful organisms previously unknown to occur in the EU and which are not listed in the annexes of Directive 2000/29/EC but are of potential economic importance.

If a harmful organism is found in the EU, the country concerned must:

* notify the Commission and the other EU countries;
* eradicate or prevent the spread of the harmful organism.

If there is an imminent danger of introduction or spread of a harmful organism, an EU country should state the control measures, it would like to see taken and may temporarily take additional national control measures.

Important to understand that if any danger comes from consignments of plants, plant products or other objects originating from countries outside the EU, temporary (emergency) control measures may be taken by the EU. The Commission examines the situation in the Plant Health Section of the [Standing Committee on Plants, Animals, Food and Feed](https://ec.europa.eu/food/plant/standing_committees/sc_plant_health_en). It may introduce new EU measures to control the introduction and spread of the harmful organism. Therefore, the coordination role of the Commission in relation to plant protection issues re-affirms the concept of the EU as a Single Entity.

### *3.7. What are the main changes introduced by the new EU pests Regulation concerning protective measures against pests of plants?*

The new Regulation, which will enter into force on 14 December 2019, focuses particularly on the prevention of entry or spread of plant pests within the EU territory. It is based on the conclusion, that it is necessary to allocate more resources at an early stage in order to prevent future heavy losses due to the destruction of EU agricultural production or the environment by those pests.

It sets out detailed rules for the early detection and eradication of Union quarantine pests if found present in the EU territory. These rules establish obligations for the notification of outbreaks by professional operators, surveys and multiannual survey programmes, demarcation of areas for the purpose of eradication, as well as enhanced requirements for the priority pests as described above.

Under the new Regulation, all Member States will have to immediately proceed with the eradication of a Union quarantine pest if found present in an area where it was not known to be present. This means that they will no longer be allowed to proceed unilaterally with containment, namely to skip the eradication step and simply take measures to restrict the presence of the pests in a particular area.

Plant pests currently fall under different legal acts depending on their quarantine status or whether they affect the quality of plant reproductive material. This can lead to confusion among the users of those acts, within and also outside of the EU. It is thus important to ensure clarity and transparency for all affected parties, and notably for the competent authorities and the professional operators concerned.

Therefore, the new Regulation will list all pests together, under three main categories:

* *Union quarantine pests:* Not present at all in the EU territory or, if present, just locally and under official control (examples include *Citrus black spot*, which is not present in the EU, and Xylella which is present in a few specific locations only). Strict measures must be taken to prevent their entry or further spread within the EU due to their increased risk for plant health. These pests have to be eradicated immediately if detected.
* *Protected zone quarantine pests:*Present in most parts of the Union, but still known to be absent in certain demarcated areas called ‘protected zones’ (for example *grape phylloxera*, which is present in the territory of the EU but not in Cyprus which is designated as protected zone for this pest). These pests are thus not allowed to enter and spread within these protected zones. Measures are taken (such as prohibition or restriction of movement of commodities, surveys, etc.) to avoid the introduction of these pests into the protected zones or to ensure their eradication if found present in these zones.
* *Regulated non-quarantine pests:*Widely present in the EU territory but, since they have an impact on the quality of the plants, plant reproductive material on the market should be guaranteed free or almost free from the pest (for example, the *fungus Verticillium albo-atrumis* known to be harmful to the apple production in the EU, therefore certified apple trees are not allowed to enter the EU market if more than 2% of the examined quantity is contaminated with the fungus). This way the starting quality and economic value of many agricultural crops as well as forestry and fruit plants can be ensured.

The new Regulation introduces the concept of “priority pests”. These are the Union quarantine pests with the most severe potential impacts on the economy, environment and/or society of the EU. They will be subject to enhanced measures concerning surveys, action plans for their eradication, contingency plans and simulation exercises. The prioritisation of the most harmful pests is necessary for the EU and the individual Member States in order to focus their resources in the most efficient manner for the protection of the agricultural production and environment. Enhanced EU co-financing to achieve these objectives is foreseen.

The list of these priority pests will be adopted through a delegated act, as close as possible to the date of application of this Regulation (end of 2019). It will be based on the criteria fixed by the Regulation and the assessments of the severity of the impacts of those pests.

Under the new Regulation, the Commission is further required to adopt within two years a list of so-called “high-risk” plants or plant products. The import of these commodities will be prohibited as long as no detailed risk assessment has been carried out to determine if such imports should be acceptable and, if yes, under which conditions.

All living plant material (namely entire plants, fruits, vegetables, cut flowers, seeds, etc.) will only be imported into the EU if accompanied by a phytosanitary certificate confirming their compliance with the EU legislation. The Commission will adopt within two years a list of plant materials to be exempted from that certification if they are deemed safe for the EU territory.

Finally, for specific cases where there is little experience with trade of certain plants or plant products and where related pest risks are still unknown, the new Regulation sets out the possibility to introduce temporarily phytosanitary import restrictions or even a prohibition until more scientific information becomes available.

In addition, passengers will no longer be allowed to introduce into the EU plants/plant products from non-EU countries if they are not accompanied by a phytosanitary certificate. However, harmonised exemptions to this general rule might be granted through a Commission implementing act, setting out the maximum quantity of plant material that might be allowed to be introduced by the passengers into the EU without phytosanitary certificate.

EU Member States’ competent authorities will play a key role in the implementation of these rules. They will be responsible for a great array of activities such as surveys, eradication of outbreaks, contingency plans, simulation exercises, notification of pest occurrences, controls of imports, registration of professional operators, authorisation of professional operators to issue plant passports and other attestations.

In this respect, the new Regulation will be complemented, in the coming months, by the Regulation on Official Controls, which will set out the obligations of the Member States with regards to official controls and other official activities.

### *3.8. What are the obligations of the Parties in relation to phytosanitary requirements under the FTA?*

Phytosanitary import requirements should be restricted to measures ensuring the respect for the appropriate level of protection of the importing Party, and limited to the regulated pests of concern to the importing Party. Without prejudice to Article VI of the IPPC, a Party shall not impose or maintain phytosanitary measures for non-regulated pests.

When a Party undertakes a pest risk analysis, it shall be carried out without undue delay after the initial request of the exporting Party. In case of difficulties, the Parties shall agree within the SPS Committee on a time schedule for carrying out the pest risk analysis.

### *3.9. What is the procedure for imports of products of plant origin to the EU from Vietnam?*

The main objective of the EU plant health measures is to prevent the introduction and/or spread of pests and organisms harmful to plants or plant products across the EU.

Imports of plants and plant products must comply with certain phytosanitary measures that basically require the goods to:

* be accompanied by a phytosanitary certificate, issued by the designated authorities of the exporting country;
* undergo customs inspections at the designated Border Inspection Post at the point of entry into the EU;
* be imported into the EU by a registered importer with a Member State’s official Register; and
* be notified to the customs office before arrival to the point of entry.

Where consignments of plants or plant products originating in third countries, may pose a risk to the territory of the EU, Member States or the EU itself might take [temporary emergency measures](http://ec.europa.eu/food/plant/plant_health_biosecurity/legislation/emergency_measures/index_en.htm).

Besides these mandatory provisions, the placing on the EU market of [seeds and plant propagating material](http://ec.europa.eu/food/plant/plant_propagation_material/index_en.htm) must comply with specific marketing requirements designed to ensure that these products meet the criteria for health and high-quality. The EU legislation establishes specific conditions for Oil and fibre plants, Cereals, Vegetables, Seed potatoes, Beet seed, Vines, Fruit plants, Fodder plants, Ornamental plants and Forests.

Furthermore, EU legislation has also established a system for the protection of plant variety rights. Based on this system, a breeder may be granted a single intellectual property right operative throughout the European Union. The [Community Plant Variety Office (CPVO)](http://www.cpvo.europa.eu/) implements and applies this system.

### *3.10. What should be the procedure for imports of products of plant origin from the EU to Vietnam?*

In principle, importation of plants and plant products to Vietnam should be following the same approach and request compliance with the phytosanitary measures:

* to have a **phytosanitary certificate**, issued by the designated authorities of the EU Member State (list of such authorities is publicly available);
* to be checked at the designated Border Inspection Post at the point of entry into Vietnam;
* be imported into Vietnam by a **registered importer** with a Member State’s official Register (if such system exists for all importers); and
* be notified to the customs office before arrival to the point of entry.

Where consignments of plants or plant products originating in third countries, may pose a risk to the territory of Vietnam, it could take [temporary emergency measures](http://ec.europa.eu/food/plant/plant_health_biosecurity/legislation/emergency_measures/index_en.htm). Besides these mandatory provisions, there could be specific conditions for particular products, but such requirements should be scientifically justified linked to phytosanitary risks.

It is expected that Vietnam will provide the European Commission the import requirements applicable to the relevant plant products. The idea is that import controls should be risk-based, meaning in practice-limited application to the products with minor risk profile and focus on a high-risk profile. Import requirements should be in relation to the categories of products, not making differentiation linked to the origin of goods coming from different EU Member States. Once approval is received from the single Vietnamese Competent Authority to export a particular product from the requested EU MS to Vietnam, each subsequent approval from another EU Member State for the same product should be conducted by the same Competent Authority in an accelerated faster way, focusing only on the specific elements and SPS risks relevant to that particular EU Member State. Clear timeframes should be defined for the aforementioned procedure.

### *3.11. What is the procedure for imports of products of animal origin to the EU from Vietnam?*

For the products of animal origin from Vietnam in order to be imported to the EU, it is necessary to get the approval in accordance with the following procedure.

|  |  |  |
| --- | --- | --- |
| 1. | National Competent Authority submits an official request to the European Commission. | This should include at least the following information:  (a) Type of animal / animal product for which approval is sought (full details of all animal-origin products should be given);  (b) Anticipated volume of trade and main importing EU countries;  (c) Category of animals (eg. breeding, fattening, slaughter) involved;  (d) Description of minimum treatment (heat, maturation, acidification etc.) applied to that products;  (e) Number and type of establishments considered to meet EU requirements.  Such request should also include confirmation that all proposed establishments satisfy the EU requirements. References to the appropriate EU legislation must be given. |
| 2. | The European Commission acknowledges the request and sends the relevant pre-mission questionnaire. | |
| 3. | Vietnam presents completed questionnaire, with the proposed residues monitoring programme for approval, and with copies of the national legislation applicable to the animals / products concerned (if English or French translations are provided this will speed up the processing of the dossiers). | The EU has detailed legislation in place to control the use of, and monitoring for, a wide range of veterinary drugs and other substances in all classes of animals and products intended for human consumption. Legal controls over prohibited substances in respect of the animals and animal products intended for export must be put in place in the third country.  It is one fundamental prerequisite for all third countries wishing to export to the EU that they have in place a monitoring programme for these substances that meets the requirements of this legislation in respect of the animals and/or animal products concerned. This programme must be submitted to the European Commission before the deadline of 31 of March of the year (according to the provisions of Directive 96/23) where it is evaluated and if the evaluation is favourable, approved.  Subsequently the results of each year’s programme, together with an updated programme for the coming year, must be submitted to the European Commission on an yearly basis. |
| 4. | Bilateral contacts between the Vietnamese Authority and the Commission may take place to resolve outstanding issues. | |
| 5. | An audit mission is organised by the European Commission to check whether the Competent authorities have a reliable management control system in place and whether the guarantees are met, they would check the compliance of some establishments (usually random choice) preparing the animal products as well. | |
| 6. | The European Commission adopts a legal act (Implementing Decision) to authorise the importation for particular category of products to the EU. | |

### *3.12. What should be the procedure for imports of products of animal products from the EU to Vietnam?*

In accordance with the SPS Chapter of the FTA, it is expected that for the products of animal origin from the EU in order to import to Vietnam there will be a clear procedure outlined, with set deadlines and reference for communication via one Single Contact point.

|  |  |  |
| --- | --- | --- |
| 1. | EU Member States will submit export applications with list of companies for specific products via the EU Delegation. | This could include the following information:  (a) Type of animal / product for which approval is sought (full details of all animal-origin products should be given);  (b) Class of animals (eg. breeding, fattening, slaughter) involved;  (c) Description of minimum treatment (heat, maturation, acidification etc…) applied to the products;  (d) Number and type of establishments from the EU Member States.  References to the appropriate Vietnam legislation should be given. |
| 2. | Competent Authority of Vietnam acknowledges the request and sends the relevant questionnaire within 10 working days. | |
| 3. | Each questionnaire (per product category) is completed by the Member State interested to export and is sent to the Vietnamese Authority, with copy to the European Commission. | |
| . |  | |
| 4. | Bilateral contacts between the Vietnamese Authority and the Member State concerned to resolve outstanding issues, if any. The European Commission will intervene if necessary. | |
| 5. | Audit missions could be organised by Vietnamese Competent Authority to check the management control system of the Competent Authorities in selected EU MS by Vietnam and with the purpose of checking the compliance of the establishments (following random choice). The costs of such missions are borne by Vietnam. | |
| 6. | Vietnam adopts legal act to authorise the importation for particular category of products from the EU and publishes the list of companies without prior inspection of the individual establishments. | |

It is expected that Vietnam will provide the European Commission the import requirements applicable to the relevant animal products. The idea is that import controls should be risk-based, meaning in practice limited application to the products with minor risk profile and focus on a high risk profile. Import requirements should be in relation to the categories of products, not making differentiation linked to the origin of goods coming from different EU Member States. Once approval is received from the single Vietnamese Competent Authority to export a particular product from the requested EU MS to Vietnam, each subsequent approval from another EU Member State for the same product should be conducted by the same Competent Authority in an accelerated faster way, focusing only on the specific elements and SPS risks relevant to that particular EU Member State. **Clear timeframes** should be defined for the above described procedure.

### *3.13. What are the expectations of the EU from Vietnam in terms of implementation of Article 6.6?*

There are discrepancies between the Vietnamese and EU import requirements and import procedures. Indeed, the EU is looking for a full implementation of the EVFTA provisions and in such respect calls Vietnam for ensuring:

* + An increased **transparency** about import requirements and an increased predictability of procedures (with clear timeframes to avoid undue delays);
  + A clear justification of import requirements to limit the import controls to products presenting a high risk profile based and justified by risk assessments;
  + The implementation of the concept of Single Entity (same import requirements apply to all EU Member States) through a single, predictable and transparent procedure for all imports coming from the EU, which promptly defines the import requirements common to all EU Member States and clear timeframes;
  + A reduction of the administrative burden of the import procedures to the strict necessary and in particular the streamlining of clearance procedures at borders;
  + The consistency between obligations / requirements for products in Vietnam and obligations for products imported from the EU Member States;
  + The consistency of policies and procedures amongst the Vietnamese competent Authorities dealing with imports including: MARD, MOIT and MOH;
  + The development of the necessary guidelines and the amendment of existing procedures and legislation related to the above, including through the definition of a single procedure for EU exports into Vietnam. This could be done by **issuing a specific normative act / circular covering imports from the EU**.

## 4. Questions in relation to verification

### *4.1. What is meant by “verification” in Article 6.7?*

Verification is a key component of quality assurance system. Indeed, regular checks have to be conducted, becoming an element of the system as such to create trust and build confidence between the competent authorities of two Parties. Without verification of compliance, no assurance or presumption of requirements met and respected can be assumed.

In accordance with Article 6.7 of the SPS Chapter, each importing Party has the right to carry out verifications, for confidence in the effective implementation of the SPS Chapter:

* by conducting verification visits (on the spot missions) to the exporting Party to verify all or part of the exporting Party’s control system, in accordance with the relevant international standards, guidelines and recommendations of the Codex Alimentarius, OIE and IPPC; the expenses of such verification visits shall be borne by the Party carrying out the verification visit; and
* by information requests to the exporting Party about its control system and the results of the controls carried out under that system.

Information obtained during the verification missions serves for both trading partners – importing and exporting country, as each Party has an obligation to provide to the other Party the results and conclusions of the verification visits carried out in the territory of the other Party.

### *4.2. What can be within the scope of verification?*

The scope of verification examination may concern the structure, organisation and powers of the Competent Authority responsible for the approval of the establishments under its responsibility and the sanitary guarantees regarding the compliance with the importing Party’s requirements, as well as inspection visits of a representative number of establishments appearing on the list or lists provided by the Exporting Party.

### 4.3. What are the procedures for conducting the verification visits?

If the importing Party decides to carry out a verification visit to the exporting Party, it shall notify the exporting Party of this visit at least 60 working days before such verification visit is carried out, unless agreed otherwise. Any modification to this verification visit shall be mutually agreed by the Parties.

### 4.4. What are the reporting requirements after conducted verification mission?

After each verification mission a verification report should be provided by the Party conducting such mission. Article 6.7 provides the following timing for procedures for verification reports:

* 45 working days are given to the importing Party to provide a draft verification report to the exporting Party for verifications;
* 30 working days are given to the exporting to comment on the draft report;
* 30 working days are granted for the final verification report and completion of the Report, which shall be delivered within. If, during the verification, the importing Party identifies a significant human, animal or plant health risk, it shall inform the exporting Party as quickly as possible and in any case within 10 working days following the end of the verification.

### *4.5. Who is paying for verification visits?*

Financial aspect to be taken into account, as expenses of verification visits are carried out by the Party conducting the verification visit.

### *4.6. What can be recommended for the effective implementation of Article 6.7*

First of all, available information about the exporting Party control system and the results of the controls carried out under that system should be used as reliable means for verification without visits, which is available at the following website:

<https://ec.europa.eu/food/safety/official_controls_en>

In addition, it may be useful to check the work programme of DG Health and Food Safety in the areas of food safety, animal health, animal welfare, plant health and some areas of human health at the following website:

<https://ec.europa.eu/food/audits_analysis/audit_programmes_en>,

Completed by also other reports available at the following website:

- <http://ec.europa.eu/food/audits-analysis/overview_reports/index.cfm>.

Secondly, internal guidelines or national implementing legislation of Vietnam could be developed and contain:

* National procedures for conducting verification visits to the exporting Party to verify all or part of the exporting Party’s control system, in accordance with the relevant international standards, guidelines and recommendations of the Codex Alimentarius, OIE and IPPC.
* National Control Plan coordinating and establishing risk based frequency of official controls of all three competent authorities in Vietnam should be established as a priority.
* Sample of questionnaire and template for a plan of visit can be supplementing the National Control Plan.
* Important to apply a risk-based approach: the scope of the verification mission or approval procedures should be defined and clearly limited to products presenting a high-risk profile to the consumers.
* Database with information on conducted imported verification visits to the exporting Party and/or by information requests to the exporting Party (during the Workshop activities it was communicated that there are no such information database in existance yet).
* Training materials on inspection procedures with precise and harmonised checklists per category of commodity based on international guidelines for inspectors should be developed.

## 5. Questions in relation to procedures for listing of establishments (pre-listing)

### *5.1. Why there is a need to establish a procedure for listing of establishments?*

Such procedure would ensure concise and consistent list of EU establishments that would be allowed to export to Vietnam without prior inspection of individual establishments, thus with the idea of trade facilitation.

### *5.2. What are the requirements for establishments to be listed?*

Only establishments which comply with the importing Party’s requirements for approval and for which satisfactory sanitary guarantees have been provided in accordance with Annex I (Requirement and Procedures for Approval of Establishments for Products).

### *5.3. What has to be done to complete the list of establishments?*

Procedure for Listing of Establishments is provided by Article 6.8, five steps should be followed.

**Step 1 -** Preparation by each Party of the lists of establishments which comply with the importing Party’s requirements for approval and for which satisfactory sanitary guarantees have been provided in accordance with Annex I (Requirement and Procedures for Approval of Establishments for Products).

Specific timing for this process can be preliminary established and agreed by the Parties. Important to specify the categories of establishments – according to the products concerned (for example, for fresh meat of domestic species, for fresh meat of wild and farmed game, for poultry meat, for meat products of all species; for other products of animal origin, for milk and milk products for human consumption, etc.)

**Step 2** - Upon request of the importing Party, the **exporting Party informs the importing Party of its listed establishments.**

So, listed establishments are provided for examination.

As indicated above, questionnaires or checklists can be prepared in advance to ensure uniformity and promptness of the process of examination.

**Step 3 –** Examination of the provided lists of establishments within 45 working days, without prior inspection of individual establishments. During this examination additional information can be requested by the importing party and the time-period referred to in paragraph 2 (45 working days) is extended by up to 30 working days.

However, it should be noted that, at that point no verification missions can be organised. Procedures for examination and documentary checks can be prepared by the Competent Authorities – explaining what are the requirements and the reasons why they are not met by the establishments. Guidelines for conducting verifications are supplementing the Technical Report.

**Step 4 –** Decision on the list of the establishments – endorsement or refusal (however, reasons upon which that rejection was based should be provided without delay). If certain establishments could not be accepted for the reasons clearly stated, that should not be the reason for delaying the process of approving lists of establishments.

**Step 5 -** Following the approval of the list of establishments, the importing Party shall take necessary measures, in accordance with its applicable legal procedures, to allow the importation of products concerned.

### *5.4. Can the list of establishments be modified or amended?*

Indeed, the list of establishments should be updated regularly, with adding new companies or excluding the listed ones for the reasons no longer complying with the import requirements or not importing to Vietnam.

### *5.5. How to obtain information about approved establishments on the list?*

Lists of approved establishments should be publicly available. Annex to the SPS Chapter provides requirements and provisions for approval of establishments for products and refers to an obligation of the Competent Authority of the Importing Party to draw up lists of approved establishments and make them publicly available (see EU example – lists of establishments approved for import of products of animal origin to the EU).

Considering that in Vietnam there are three Competent Authorities responsible for SPS controls, it should be clarified that primer concern would be for the Ministry of Agriculture and Rural Development, as within its competence – products of animal origin.

***5.7. What can be recommended for the effective implementation of Article 6.8?***

* Development of the Guidelines by the Competent Authority for registration of the EU establishments. Such Guidelines can be supplemented by the categories of products considered for importation, Veterinary / Hygiene Certificates required for importation of such products, any specific SPS / TBT requirements for the categories of products.
* Establishment of a procedure for the endorsement of establishments (pre-listing), information on verification missions, regularity of checks by the competent authorities, Questionnaires and Check Lists should be part of this procedure.
* Development of specific check lists / requirements for verifications in accordance with the provisions of Article 6.7 as part of the approval procedure by auditing of a representative number of establishments when considered necessary as defined in EVFTA and in its Annex I.
* In the process of preparation for the implementation of the FTA, verify the EU approval conditions, EU system of official controls and EU Member States country profiles (in relation to food safety, animal and plant health) as providing themselves sufficient and equivalent guarantees to Vietnam requirements.
* Ensure consistency between registration and approval obligations of Vietnam establishments and obligations to EU establishments as well as between MARD, MOIT and MOH practices. The SPS focal point for the EU should ensure effective coordination amongst the relevant Vietnamese competent authorities as main contact point for the EU.

## 6. Questions in relation to measures linked to Animal and Plant Health

### *6.1. What is the importance of the measures linked to animal and plant health?*

Article 6.9 of the SPS Chapter of the FTA has an overwhelming importance for correct application of the SPS measures as it concerns measures linked to animal and plant health. The major difficulty in relation to application of this Article is the practical fact that veterinary and phytosanitary status linked to the animal / plant health situation in the countries is changing rapidly and animal disease outbreaks or pest invasions can happen suddenly and require prompt and urgent actions to prevent negative economic impacts of spread of pests and diseases.

First of all, Article 6.9 reminds that the Parties recognise the concepts of disease-free areas, areas of low disease prevalence, and compartmentalisation in accordance with the SPS Agreement and OIE standards, guidelines or recommendations. The Parties also recognise the animal health status as determined by the OIE. In 2017, there are 116 listed animal diseases by OIE (for more information consult <http://www.oie.int/animal-health-in-the-world/official-disease-status/>).

It also recalls that the Parties recognise the concepts of pest-free areas, areas of low pest prevalence, protected zones and pest free production sites in accordance with the SPS Agreement and IPPC standards, guidelines or recommendations.

Article 6.9 urges the Parties to consider factors such as geographical location, ecosystems, epidemiological surveillance, and the effectiveness of the SPS controls.

It instructs the SPS Committee to define in further detail the procedure for the recognition of the concepts referred to in paragraphs 1 and 2 of the Article taking into account the SPS Agreement and the OIE and IPPC standards, guidelines or recommendations.

### *6.2. What is the concept of self-determination of the animal or plant status?*

In relation to assessment of self-determination Article 6.9 states:

* When the importing Party assesses the self-determination of the animal or plant health status made by the exporting Party, it shall base its own assessment of the animal or plant health status of the exporting Party or parts thereof on the information provided by the exporting Party in accordance with the SPS Agreement and the OIE and IPPC standards, guidelines or recommendations.
* Decision by the importing Party should be provided without undue delay after the request for assessment.
* In case of non-acceptance by the importing party, reasons for such decision have to be explained and, upon request by the exporting Party, consultations to reach an alternative solution should be possible.
* The exporting Party shall provide relevant evidence in order to objectively demonstrate to the importing Party that the animal or plant health status of those areas is likely to remain unchanged.
* Obligation for the exporting Party, upon request by the importing Party, to give reasonable access for inspection, testing and other relevant procedures to the Competent Authorities of the importing country.

### *6.3. What does the principle of regionalisation mean in practical terms?*

The principle of regionalisation means in practice adaptation to the regional conditions, **designation of pest-and disease-free areas to facilitate trade** (which is defined by Article 6 of the WTO SPS Agreement).[[6]](#footnote-6)

Within the European Union, the main goal of zoning is twofold:

* To ensure the effective control of diseases within the affected area and
* To limit the impact of diseases on both the EU internal market and on exports.

In the event of disease outbreaks, the Commission follows the evolution of the disease situation very closely; by working in close cooperation with the affected Member State - and other Member States - in the framework of the Standing Committee meetings.

It guarantees maximum transparency with respect to the disease situation:

* Regular reports are published, usually within 24 hours from the end of the meeting.
* Transparency is further ensured through audits by the Commission of the control measures implemented.
* Such audits may be undertaken during a prolonged outbreak to also inform the decision-making process or after the lifting of restrictions to verify the actions taken.

**Regarding Pest free areas** (PFAs) in the EU Member States, they are determined by NPPO of the concerned country on the basis of the relevant ISPM4 “Requirements for the Establishment of Pest Free Areas”.[[7]](#footnote-7) The establishment, verification and maintenance of PFA in the MS follow the requirements described in ISPM4.

The EU system of Protected Zones is defined by Directive 2000/29/EC and represents one of the options for the maintenance of PFAs within the EU territory. The usual consequence of its establishment is the restriction to specific requirements for movements of certain plants, plant products or other objects into those zones and relevant intensive surveillance in those zones.

Protected Zones are established by Member States with a purpose to protect themselves, and relevant for the internal market. The fact that Member States may decide not to establish Protected Zones may stem from the situation that:

* (a) there are no relevant host plants in this country (and hence no relevant phytosanitary risk); or
* (b) climatic conditions are not favourable for development of specific harmful organisms; or
* (c) specific harmful organisms are either not present or they are present to a very limited extent, and it is considered that costs of designation and maintenance of a PZ are higher than potential benefits from its designation.

### *6.4. What can be recommended for effective implementation of Article 6.9?*

The following can be recommended for the effective implementation of Article 6.9

* Development of procedures for a rapid determination of the animal or plant health status in Vietnam and in supplying countries, **based on international standards and practices** and taking into account information provided by the EU Commission Audit Reports and EU Member States Country Profiles.
* Implementation and application of the concept of regionalisation so that trade measures are only applied to the affected area when an outbreak occurs in the territory of an EU Member State. The information from competent authorities in EU Member States on status of plant pests and animal diseases (including information on areas free or information on the area affected by an outbreak) should be accepted by Vietnam, so that following the notification of a pest or disease only the affected zone or region is subject to the relevant import restrictions **and not the entire country or the EU**.
* This approach shall be risk-based and risk-proportionate, allowing imports into the Vietnam of animals, animal products, plants and plant products from regions, areas or zones which have been recognized and accepted as disease-free or pest-free.
* Recognition and application the concept of free-pest areas, areas of low pest prevalence, (protected zones), and pest free production in accordance with SPS agreement and IPPC standards, guidelines and recommendations.
* Recognition of the EU official animal health status, for OIE listed diseases, as determined by OIE and limit trade restrictive measures only to the area affected by a disease.
* Do not maintain import restrictions for longer than necessary and justified, especially as indicated in the Article 5.7 of the WTO SPS Agreement and in the Terrestrial Animal Health Code of the OIE.
* Through the FTA, the Parties should increasingly place trust in the measures adopted by the exporting Party and use various tools for facilitating trade in products of animal origin, which are recognized as posing highest risks.

## 7. Questions on equivalence

### *7.1. What is meant by “equivalence” in the WTO SPS Agreement?*

Because different SPS measures may reasonably address the same risk to human, animal or plant life or health, the principle of equivalency is central to the SPS Agreement. Article 4 of the SPS Agreement provides that WTO Members must accept the SPS measures of other Members as equivalent, even if these measures differ from their own or from those used by other WTO Members trading in the same product. The exporting country must objectively justify to the importing country that its measures achieve the importing WTO Member’s appropriate level of protection. For this reason, the SPS Agreement provides that exporting countries shall give importing countries “reasonable access for the purpose of inspection, testing and other relevant procedures.” WTO Members are further obligated to enter into consultations with the aim of achieving bilateral and multilateral agreements on recognition of equivalence of specified SPS measures.

Most determinations of equivalence occur on a bilateral basis. However, the SPS Agreement encourages its Members to conduct consultations with the aim of achieving multilateral equivalence agreements as well.

### *7.2. How the principle of equivalence addressed by the SPS Chapter of the FTA*

In Article 6.10, the Parties recognise that the application of equivalence in Article 4 of the SPS Agreement as an important tool for trade facilitation and has mutual benefits for both exporting and importing countries. So, a direct reference to the WTO SPS Agreement is made.

According to the FTA, equivalence can be accepted for a specific SPS measure or measures related to a certain product or categories of products, or on a systems-wide basis. The importing Party shall accept the SPS measures and systems of the exporting Party as equivalent if the exporting Party objectively demonstrates that its measures achieve the importing Party’s appropriate level of SPS protection. To facilitate a determination of equivalence, the importing Party shall, upon request, explain the objective of any relevant SPS measures to the other Party.

There is an obligation in Article 6.10 for the Parties to hold consultations in order to determine the equivalence of SPS measures and systems within 3 months of the receipt by the importing Party of a request from the exporting Party for such recognition.

The importing Party should make a determination of equivalence without undue delay after the exporting Party has demonstrated the equivalence of the proposed SPS measures and systems. It also has to accelerate the determination of equivalence in particular in respect of those products, which it has historically imported from the exporting Party. In case of multiple requests from the exporting Party, the Parties shall agree within the SPS Committee on a time schedule in which they shall initiate the process.

The SPS Chapter of the FTA encourages, in accordance with Article 9 of the SPS Agreement, the importing Party to give full consideration to the requests by the exporting Party for technical assistance to facilitate the implementation of the Article on Equivalence. Such assistance may, *inter alia*, help to identify and implement measures, which can be recognised as equivalent or to otherwise enhance market access. At the same time, the consideration by the importing Party of a request from the exporting Party for recognition of equivalence of its SPS measures with regard to a specific product should not be in itself a reason to disrupt or suspend ongoing imports from that Party of that product. When the importing Party has made an equivalence determination, the Parties shall formally record it and apply it without delay to trade between them in the relevant area.

### *7.3. What can be suggested for future implementation of Article 6.10 – Equivalence?*

The following can be suggested for a future implementation of Article 6.10:

* Identify the products for which measures can be recognised as equivalent;
* Develop procedures for a determination of equivalence based on international standards and practices taking into consideration the following principles: measures guarantee the same level of protection:

1. ensure transparency and predictability,
2. when requirements are clear and known in advance; ensure verification process,
3. when desk study eventually followed up by an audit;
4. target for simplification of imports requirements (consider alternative import requirements),

listing of establishments, etc.

## 8. Questions on the establishment of the SPS Committee

### *8.1. What is the composition of the SPS Committee?*

In accordance with Article 6.11 of the SPS Chapter of the FTA, the Parties agreed to establish a Committee on Sanitary and Phytosanitary Measures. Composition of the SPS Committee is from the representatives of the competent authorities of both Parties. All decisions made by the SPS Committee are by mutual agreement.

### *8.2. Periodicity of meetings?*

The SPS Committee is expected to meet in person within one year of the entry into force of this Agreement. It shall meet at least annually thereafter or as mutually determined by the Parties. It shall establish its rules of procedures at its first meeting. It shall meet in person, via teleconference, video-conference, or through other means as mutually agreed by the Parties.

### *8.3. How the work of the SPS Committee should be organised?*

The SPS Committee may propose to the Trade Committee to establish working groups, which shall identify and address technical and scientific issues arising from this Chapter and explore opportunities for further collaboration on SPS matters of mutual interest.

### *8.4. What are the main responsibilities and functions of the Committee?*

Responsibilities and functions of the SPS Committee, may include but not limited to:

* developing the necessary procedures or arrangements for the implementation of the SPS Chapter;
* monitoring the progress in the implementation of the SPS Chapter;
* providing a forum for discussion of problems arising from the application of certain SPS measures with a view to reaching mutually acceptable solutions and promptly addressing any matters that may create unnecessary obstacles to trade between the Parties;
* providing a forum to exchange information, expertise and experiences in the field of SPS matters;
* identifying, initiating and reviewing technical assistance projects and activities between the Parties; and
* carrying out any other function as mutually agreed between the Parties.

### *8.5. Can other issues of importance to the Parties be addressed by the SPS Committee?*

Yes, the SPS Committee may address any matter related to the effective functioning of the SPS Chapter for the purposes of better facilitation of communication and strengthening cooperation between the parties.

### *8.6. What would be the results of the work of the SPS Committee?*

The Parties may, by decision in the SPS Committee, adopt recommendations and decisions related to the authorisation of imports, exchange of information, transparency, recognition of regionalisation, equivalence and alternative measures, and any other matter referred to under this Article.

Following decision of the SPS Committee reached by mutual agreement, the Parties may adopt:

* Decisions in relation to authorisation of imports,
* Recommendations in relation to exchange of information,
* Guidelines and procedures to ensure transparency,
* Decisions recognizing certain areas as pest free or disease free zones following the principle of regionalisation,
* Decisions on equivalence and alternative measures,
* And any other matter referred to under this Article.

## 9. Questions in relation to transparency, exchange of information and consultations

### *9.1. What is understood by “transparency”?*

While the word “transparency” is often used in the context of the WTO and trade it is not specifically defined by any of the WTO Agreements. But in the SPS Agreement it appears in two places, in the title of Article 7 “Transparency” and in the title of Annex B “Transparency of sanitary and phytosanitary regulations”.

In essence the word transparency in the context of the WTO is used to signify one of the fundamental principles of its agreements: the aim to achieve a greater degree of clarity, predictability and information about trade policies, rules and regulations of Members. In implementing this concept Members use notifications. Under the SPS Agreement, notifications are used to inform other Members about new or changed regulations that may affect their trading partners. Transparency under the SPS Agreement also implies answering reasonable questions and publishing regulations.

### *9.2. What are the obligations of the Parties under the SPS Chapter on transparency?*

Obligations of the Parties to the FTA in relation to transparency and exchange of information are contained in Article 6.12 and they are the following:

1. To ensure transparency as regards SPS measures applicable to trade between them;
2. To enhance mutual understanding of each Party’s SPS measures and their application;
3. To exchange information on matters related to the development and application of SPS measures, including the progress on new available scientific evidence, that affect, or may affect, trade between them with a view to minimising their negative trade effects;
4. Upon request of a Party, communicate the import requirements that apply to the import of a particular product within 15 working days of the receipt of the request; and
5. Upon request of a Party, communicate progress achieved in processing the application for the authorisation of a particular product within 15 working days of the receipt of the request.

*All notifications under the SPS Chapter shall be made to the Contact Points referred to under Article 6.5 (Competent Authorities and Contact Points), this is why establishment of such Single Contact Points is essential for the implementation of Article 6.12 of the SPS Chapter.*

### *9.3. Is it necessary to notify those documents that were already notified to the WTO?*

No, it is not necessary. When a Party has made the information available either by notification to the WTO in accordance with the relevant rules and procedures, or by publication on its official publicly and free of charge accessible websites, the exchange of information pursuant to subparagraphs (c), (d) and (e) of paragraph 1 shall not be required. Indeed, once the information is available via usual sources – there are no additional requirements to provide it.

### *9.4. Are there different time requirements in terms of timing for notifications?*

Provisions of the SPS Chapter on transparency and exchange of information reflect the articles of the WTO SPS Agreement on notification of the new or changes SPS regulations at least 60 days for comments. The commitment on transparency is mandatory for all line agencies and quality assessment and certification institutions (with communication to the Contact Point).

### *9.5. What is the purpose of consultations under the SPS Chapter of the FTA?*

The process of implementation of the SPS Chapter of the FT Agreement is also facilitated by the provision of consultation for the Parties. When a Party considers that an SPS measure affecting bilateral trade warrants further discussion, it may, through the contact points referred to under Article 6.5 (Competent Authorities and Contact Points), request full explanation and, if necessary, request consultations on that SPS measure. The other Party shall respond promptly to such requests. In accordance with Article 6.13, the Parties shall make every effort to reach, within a timeframe agreed upon, a mutually acceptable solution through consultations. Should the consultations fail to resolve the matter, it shall be considered by the SPS Committee. So, there should be a system and procedure in place to reply swiftly to the requests on SPS measures (contact points related to the Competent Authorities, as per Article 6.5) – that can be also addressed by the established SPS Committee.

### *9.6. What can be recommended for facilitation of transparency?*

A number of recommendations and suggestions given for implementation of various Articles of the SPS Chapter of the FTA would also serve for transparency purposes. However, some specific issues can be highlighted below.

* A clear deadline of 15 working days to be set up in the implementing legislation / procedures for the communication of the import requirements for the EU (as a single entity) as well as the progress achieved in processing the authorisation applications of specific products from the EU (in principle, such information should be available even without specific requests, as part of the SPS measures in place, however, any request received from the trading Partner should be treated promptly and reply provided).
* As required by the WTO SPS Agreement, notification of any amendments to the existing or new SPS regulations - at least 60 days for comments, as well as taking provided comments into consideration and replying to concerns raised.
* Those requirements and commitments on transparency should be mandatory for all competent agencies and quality assessment and certification institutions (as also stated by the primary legislation – Food Safety Law). Suggestion to develop Guidelines or Decision implementing transparency provisions – set up an obligation of public authorities to provide information and right to information for consumers, at the same time strengthening the role of National Notification Authority and information contact point to facilitate implementation of transparency obligations.
* As a result of actions suggested above, in Vietnam there is a need to set up a system in place able to furnish swiftly replies to EU’s requests on SPS measures.

## 10. Questions in relation to emergency procedures?

### *10.1. What should be done in case of SPS related risks?*

In accordance with Article 6.14, each Party has agreed to notify in writing to the other Party within 2 working days, of any serious or significant risk to human, animal or plant life or health, including any food emergencies, affecting products for which trade between the Parties takes place. The Emergency Notification Form is contained in the recommended procedures for implementing the transparency obligations of the SPS Agreement, in Annex C.

### *10.2. When a Party can request consultations?*

Where a Party has serious concerns regarding a risk to human, animal or plant life or health affecting products for which trade between the Parties takes place, it may request consultations in accordance with Article 6.13 (Consultations). The consultations shall take place as soon as possible. Each Party shall endeavour to provide in due time all necessary information to avoid disruption in trade.

### *10.3. Can SPS measures be taken without prior notification?*

Yes, the importing Party may take, without previous notification, SPS measures necessary to protect human, animal or plant life or health. For consignments in transport between the Parties, the importing Party shall consider the most suitable and proportional solution in order to avoid unnecessary disruptions to trade.

### *10.4. What information must be provided in relation to adopted measures?*

The Party taking the measures has an obligation to inform the other Party as soon as possible and in any case no later than 24 hours after the adoption of the measure. Either Party may request any information related to the SPS situation and any measures adopted. The other Party shall reply as soon as the requested information is available.

### *10.5. Why section on emergency measures is included into the SPS Chapter?*

In principle, all the provisions in relation to emergency measures are already WTO obligations of both EU and Vietnam. However, the idea of this Article of the SPS Chapter of the FTA is to support the effective implementation of the provisions on notifications in case of emergency measures adopted. This can be therefore supplemented by the following actions:

* Define clear responsibilities about the communication among the Competent Authorities to the Contact Points and notification within the time limits provided.
* To allow effective compliance with this provision of the SPS Agreement and the FTA, a system of Rapid Alert (similar to the EU RASFF) should be developed and implemented in Vietnam, ensuring cooperation and coordination of all involved Ministries and agencies.

## 11. Questions on Technical Assistance and Special and Differential Treatment and conclusion

### *11.1. What kind of technical assistance can be provided to Vietnam?*

Final Article of the SPS Chapter of the FTA deals with the issue of technical assistance. The EU is ready to provide technical assistance to address specific needs of Viet Nam to comply with the EU’s SPS measures, including food safety, animal and plant health, and the use of international standards. Moreover, already this SPS legal assignment is part of the technical assistance.

In accordance with Article 10 of the SPS Agreement, in the case of new SPS measures, the EU is under obligation to take into account the special needs of Viet Nam so, as to maintain the export opportunities of Viet Nam while continuing to achieve the EU’s level of protection.

The SPS Committee will be also engaged and consulted upon request by either Party to reflect on and decide about:

1. longer timeframes for compliance;
2. alternative import conditions in the context of equivalence; and
3. technical assistance activities.

In fact, preparation of this Brochure has been part of the technical assistance provided at the request of the competent authorities of Vietnam.

### *11.2. Could FTA trade facilitation efforts contribute to improvement of the overall food safety situation in Vietnam?*

In conclusion, the Free Trade Agreement SPS Chapter can be seen as a tool not only for facilitating trade but also for enhancing and improving overall the food safety situation in Vietnam. In that respect a few points can be reiterated, globally, and more specifically between the EU and Vietnam there has been a strong and steady increase in agricultural trade, which is, according to economic analyses and studies, is likely to continue. Trade in animal-source foods, produce and processed foods is growing at a faster rate than for other foods, mainly as the result of rapid growth in consumption of these foods, especially in developing countries. This in turn is driven by increasing global incomes and changing dietary preferences – very clearly manifested for Vietnam.

1. 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, *OJ L* 31, 1.2.2002, p. 1–24. [↑](#footnote-ref-1)
2. Exchange of letters between the Commission of the European Communities and the Office international des épizooties, 2004/C215/03, *OJ of the EU, C* 215/03, 27.08.2004. [↑](#footnote-ref-2)
3. Interinstitutional Agreements, Memorandum of Understanding between the European Commission and the World Organisation for Animal Health (OIE) concerning their general relations, 2011/C241/01, OJ C244/1, 19/08/2011. [↑](#footnote-ref-3)
4. For fruits and vegetables [the following issues are regulated at the EU level: control of contaminants in foodstuffs](http://trade.ec.europa.eu/), c[ontrol of pesticide residues in plant and animal products intended for human consumption](http://trade.ec.europa.eu/), h[ealth control of Genetically Modified (GM) food and novel food](http://trade.ec.europa.eu/), h[ealth control of foodstuffs of non-animal origin](http://trade.ec.europa.eu/), [traceability, compliance and responsibility in food and feed](http://trade.ec.europa.eu/), [labelling of foodstuffs](http://trade.ec.europa.eu/), [marketing standards for fresh fruit and vegetables, voluntary - products from organic production](http://trade.ec.europa.eu/). There are some specific requirements for labelling of partucilar food products of non-animal origin per country, but not linked to SPS issues. [↑](#footnote-ref-4)
5. Directive 2000/29/EC, as last amended by [Implementing Directive (EU) 2017/1279](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017L1279), will be repealed on 14 December 2019 and will be replaced by [Regulation (EU) 2016/2031](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016R2031) of the European Parliament and of the Council concerning protective measures against pests of plants. [↑](#footnote-ref-5)
6. In May 2008 the WTO SPS Committee has adopted non-binding "Guidelines to further the Practical Implementation of Article 6 of the SPS Agreement", in order to facilitate the recognition of pest- and disease- free areas or areas of low pest or disease prevalence. These guidelines are intended to provide assistance to WTO Members in the practical implementation of Article 6 by improving transparency, the exchange of information, predictability, confidence and credibility between importing and exporting Members. These guidelines describe in particular the information needed for the recognition of regionalization and the administrative steps an exporting/importing country must take. [↑](#footnote-ref-6)
7. Additional information in relation to International Phytosanitary Measure 4 can be found on <https://www.ippc.int/en/publications/ispm4-pest-free-areas-presentation/>. [↑](#footnote-ref-7)