

Legal framework of exporting food products to Vietnam

OAV – WEBINAR, on September 9, 2019



BUSINESS MODELS

- Export of EU food products to Vietnam ✓ – our topic today
-
- Supported by sales organisation in VN
 - Rep. Office
 - Wholly-owned subsidiary
 - Export of VN food products to EU (Sourcing) ✓
 - Supported by sourcing organisation in VN
 - Rep. Office
 - Wholly-owned subsidiary
 - Manufacturing of food products in Vietnam (except e.g. alcoholic drinks, soft drinks, dairy processing, fishery) ✓
 - Wholly-owned subsidiary
 - Joint Venture

PART 1: IMPORT PROCEDURES



PART 1: IMPORTING FOOD TO VIETNAM

- As a principle, food can be freely imported into Vietnam from every corner of the world and subsequently traded nationwide, if it:
 - Conforms with Vietnamese technical regulations
 - Has been duly registered
 - Satisfies regulatory inspection
- Additional requirements for “special food products”, such as:
 - Functional food
 - Micronutrient fortified food
 - Genetically modified food
 - Irradiated food



Certificate of Free Sale/
Health Certificate

PART 1: HOW TO BRING YOUR PRODUCT TO MARKET IN VIETNAM

- In order to bring food products into the country the respective product requires a „Registration of technical regulations conformity“:
 - Simplified process since 2018 (Decree No. 15/2018/ND-CP) via:
 - ❖ Self-announcement (most products, including prepackaged processed food products), or
 - ❖ Registration of announcement (special food, including dietary supplements, food for special medical purposes, food for special dietary uses, food for children under 36 months of age, mixed food additives)
 - Any changes to the composition of the product will require a new announcement
- **Food Safety Inspection:**
 - Imported food also needs to satisfy the regulatory inspection for safety to be circulated in Vietnam.
 - Three modes of inspection:
 - ❖ Common inspection
 - ❖ Tightened inspection
 - ❖ Simplified inspection

PART 2: FOOD LABELLING



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- Basic principles:
- All imported food must bear labels, unless it is raw or fresh food, or processed food that is directly sold to consumers.
- All compulsory declarations on the list of contents must be displayed in Vietnamese. Any translations must be consistent with the original label text.

PART 2: FOOD LABELLING

- The labels must bear (at least) the following information:
 - ❖ product name
 - ❖ ingredients
 - ❖ product weight and volume
 - ❖ production date
 - ❖ shelf life
 - ❖ usage instruction
 - ❖ name of the person or the organization responsible for the goods
 - ❖ country of origin
 - ❖ number of registration of technical regulations conformity in accordance with the laws of food safety and
 - ❖ advisory statement and warnings on food safety

HOW TO LABEL YOUR PRODUCT FOR IMPORT TO VIETNAM:

- Further requirements for labelling:
 - Information and images, pictures, graphics and symbols on labels must be truthful and avoid any confusion, as well as creating any misleading, deceptive or erroneous impressions regarding its character and effects in any respect.
 - It is prohibited to use wordings, symbols and patterns that refer to or imply other products directly or indirectly and cause confusion between the products with other products.
 - Labels must ensure their durable existence and cause no effect on the product quality.
 - Pictures or information relating to sovereignty dispute and other sensitive information which may affect security, politics, economy, society, diplomatic relations and tradition of Vietnam are not allowed.

- Details provided by Decree No. 43/2017/ND-CP (“Decree 43”) and Circular 34/2014TTLTBYT-BNNPTNT-BCT (“Circular 34”)

- **Functional Food** is subject to a particular regime of labelling requirements also set out in Circular 34 (see next slide)

FUNCTIONAL FOOD

Food for Special Medical Purposes: Food administered orally or with feeding tubes which are designated to regulate the patient's diet and are only used under the supervision of health workers

Supplemented Food ordinary food supplemented with micronutrients and other elements conducive to health such as vitamins, minerals, amino acids, fatty acids, enzymes, probiotics, prebiotics and other biologically active substances.

Health Supplement, Food Supplement, Dietary Supplement means product made in the form of capsules, pellets, tablets, glues, granules, powder, liquid and other processed forms containing vitamins, minerals, amino acids, fatty acids, enzymes, probiotics and other biologically active substances, or active ingredients naturally derived from animals, minerals, and plants through extraction, isolation, concentration, and metabolism processes.

Food for Special Dietary Uses for dieters, the elderly and other special users means food processed or blended according to special formulae to meet the requirements of particular diets suitable for certain physical or medical conditions and disorders of users.

PART 3: FOOD ADVERTISING



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- Principle: food that is eligible for free sale in Vietnam can be advertised freely nationwide.
- A foreign manufacturer with no establishment in Vietnam can only advertise through a Vietnamese advertising agency.

HOW TO MAKE YOUR PRODUCT POPULAR IN VIETNAM:

- Campaigns should be carefully examined for politically sensitive contents prior to launch.
- Only products of which conformity with Vietnamese technical regulations has been duly announced are allowed to be advertised.
- the content of any advertisement of any goods must accurately reflect the form, quality, usage, label, design, classification, packing, origin, shelf life, storage period and warranty period of the goods.
- an advertisement which contains a word/phrase such as "*the only*", "*best*", "*number one*" or similar ones must be verified by a legitimate document (e.g. a market research report prepared by a qualified market research organization)

HOW TO MAKE YOUR PRODUCT POPULAR IN VIETNAM:

- Breast milk substitutes for infants under 24 months of age and complementary products for infants under 6 months of age are strictly prohibited from advertising
- Functional food:

advertisements should not cause confusion with medicine in any aspect.

To serve this principle, the subsequent term is required to be expressly displayed or read:

“Thực phẩm này không phải thuốc và không có tác dụng thay thế thuốc chữa bệnh”

[English: “this product is not intended to diagnose, treat, cure or prevent any disease”]

- Advertisements of these special products are banned from using or citing or showing images, equipment, uniforms, documents of health facilities, physicians, pharmacists, health workers, gratitude letters, articles written by health facilities, physicians or pharmacists.

HOW TO MAKE YOUR PRODUCT POPULAR IN VIETNAM: BEVERAGES

- Special regulations for beverages:
 - Alcoholic drinks:
 - Decree No. 105/2017/ND-CP imposes a tightened legal framework for distribution (including import), wholesaling, retailing of alcoholic drinks and sale of alcoholic drinks for on-premises consumption facilities.
 - **Alcohol trading activities** require specific licenses in Vietnam
 - Beer and fermented juice containing less than 5 % alcohol are exempt from the application scope of the regulations applicable to “alcoholic drinks”

PART 4: ADMINISTRATIVE PRACTICE



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- Three ministerial bodies involved in food management, including:
 - Ministry of Health (overall supervision)
 - Ministry of Industry and Trade
 - Ministry of Agriculture and Rural Development
- At local levels, the People's Committees execute the management of food safety in their respective localities.
- Food labels are managed by the Directorate for Standards, Metrology and Quality (STAMEQ), a subdivision of the Ministry of Science and Technology.
- **Vietnam Food Administration (VFA)**
 - subdivision of the Ministry of Health
 - Entrusted with general management of food safety in Vietnam in both manufacture and circulation phases
- Department of Science and Technology and Market Surveillance Agency (MSA) are entrusted with the management of liquor, beer, beverage, processed milk, vegetable oil, powder and starch processed products.

PART 4: ADMINISTRATIVE PRACTICE - CONSEQUENCES OF VIOLATIONS

- In order to enforce the laws of Vietnam with regard to the import, labelling, distribution, advertising of food products, Vietnamese authorities have the competence to sanction any company or individual in breach of these regulations.
- These sanctions can consist of:
 - Imposing an administrative fine
 - Recall and destruction of any questionable goods not in compliance with applicable regulations
 - Civil law suit against the breaching individual or entity
- The law provides tables to determine the amount of the applicable administrative fine.
- The amounts are mostly fixed to the relation of the illegal profits made in a condition of breach of Vietnamese food regulations and amount to up to **4-5 times the amount of the illegally gained profits.**

PART 4: ADMINISTRATIVE PRACTICE - CONSEQUENCES OF VIOLATIONS

- Recall of food products (Art. 55 LoFS)
- The following food must be recalled:
 - ❖ Expired food that is in circulation;
 - ❖ Food that does not conform to applicable technical regulations;
 - ❖ Food created from new technology, the circulation of which is not allowed
 - ❖ Spoiled food;
 - ❖ Food made of a prohibited substance or which contain polluting agents which exceed applicable limits;
 - ❖ Imported food that contains polluting agents which can cause personal injury and which have been identified publicly as harmful by the exporting country, by another country, or by any international organization.
- In case of a defective product, the traders and the manufacturers must publicly announce the recall thereof in five successive issues of a central daily newspaper or have the news of the recall broadcast on a central radio station or a central television station on five successive days.
- The law provides a list of compulsory contents of this recall activity in Circular No. 17/2016/TT-BYT ("Circular 17")

PART 4: ADMINISTRATIVE PRACTICE - CONSEQUENCES OF VIOLATIONS

- **Civil Claim:**
 - In addition to the prior two administrative enforcement measures, the responsible entity will also carry the (1) **tort liability**, (2) **liability for compensation of damages** and the possibility of (3) **consumer right protection lawsuits**
- (1) **tort liability** may arise to food traders and food manufacturers when consumer rights are infringed because the qualities thereof are not ensured (Art. 608 Civil Code)
 - Exemption from tort liability if loss or damaged is caused due to a force majeure event or due entirely to the fault of the aggrieved party.
- (2) **liability for compensation of damages:**
 - organizations and individuals trading goods are liable to pay compensation for loss and damage if the goods which they supply are defective and cause loss of life or damage, including situation where they are unaware of the defect.
- (3) **Consumer rights protection lawsuits**
 - might be launched by Social organizations duly established in accordance with the Vietnamese laws that are entitled to engage in consumer right protection.

LEGAL SERVICES OF SNB – FOOD SECTOR VIETNAM

- Market entry advise for European food companies. Establishment of distribution companies, representative offices in Vietnam
- Regulatory advise on food products to be imported into Vietnam
- Contract advise (Import/Export Contracts, Distribution and Agency, Joint Ventures)
- Trademarks
- Advise in relation to food advertising, consumer complaints, and recalls

THANK YOU VERY MUCH FOR YOU
ATTENTION!



PLEASE GET IN TOUCH!



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