

# Legal Aspects of EU Markets for Seafood Products from Vietnam

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**Abstract:** *This paper focuses on the EU legislation concerning food safety and quality as this is the major export market for seafood products from Vietnam. The development of the current EU food safety perspective is described. Then, the regulations and directives of seafood products imported from third countries are analyzed. And, the practices at border inspection posts for veterinary control are presented.*

**Keywords:** seafood products, EU food safety, quality assurance

## 1. Introduction

Food safety has become a top priority for the public and the private sector in Europe (Luning et al., 2006). European food legislation has been shaped by a blend of scientific, societal, political and economic forces to establish and maintain a high level of protection of human health (FAO, 2002). This has to be accomplished in such a way that it does not arbitrarily discriminate against any international trading partner (Van Plaggenhoef et al., 2003).

The principle of EU food safety is based on a comprehensive and integrated approach (Knura et al., 2006). This covers the total food chain (from farm to table) across all food sectors to ensure a high level of consumer protection. The farm to table policy is based on the general food law (GFL) and aims to harmonize food safety laws for the EU. The GFL seeks to accomplish three objectives namely (1) to lay down the principles on which modern food legislation should be based in the EU; (2) to establish the European Food Safety Authority; and (3) to establish procedures for reactions to food safety crises including the so-called Rapid Alert systems.

## 2. EU legislations governing seafood products safety and quality

### 2.1 The role of European Commission's Directorate-General

The European Commission's Directorate-General for Health and Consumer Protection (DG SANCO) is responsible for food safety in the EU. The EU import rules for seafood products seek to guarantee that all imports fulfill the same high standards as products from the EU member states with respect to hygiene and consumer safety and quality. The EU bases its system on government-to-government assurance. Hence, imports of seafood products into the EU are subject to official certification, which is based on the recognition of the competent authority (CA) [1 Competent authority is responsibility for checking the safety and quality of seafood exports] of the non-EU country by the European Commission (EC). This formal recognition of the reliability of the CA is a pre-requisite for the country to be eligible and authorized to export to the EU. Key elements are:

- The exporting country must be on a positive list of eligible countries for the relevant product
- The exporting country must have a competent authority (CA) which is responsible for official controls throughout the production chain
- A control plan on residues of veterinary drugs must be in place to verify compliance with EU requirements for veterinary checks. The often-amended regulation 2377/90 (the MRL regulation) contains procedures for evaluating the safety of veterinary medicines.
- Inspections by the commission's food and veterinary office (FVO) are necessary to confirm compliance with the above requirements. Such an inspection mission is the basis of establishing confidence between the EU commission and the CA of the exporting country
- Seafood products must be presented at a community border inspection post (BIP) for being submitted to an import control.

The first three elements relate to what exporting countries have to implement to fulfill the requirements of the EU market. This will be discussed in section 6.3 for the case of Seafood export from Vietnam.

The EU delegates the control of food safety to a CA in each country who in turn ensures that exporting farms, vessels and processors are producing safe food under a system equivalent to that in the EU. EU legislation consists of directives and regulations. A directive can be seen as a number of guidelines that can be transformed by member states into national law. In the case of directives, there is some space for adaptation to the specific national situation. EU regulations, on the other hand, are literally taken over by member states.

An EU regulation relevant for the seafood chain is the council regulation (EC) No 2406/96 of 26 November 1996. This regulation lays down common marketing standards for seafood products. It includes requirements on freshness, size, and traceability of products from third countries (CBI, 2001) based on the principles of HACCP: (1) seafood products are prepared or processed in certified plants and establishments. The certification process requires that the plant meets minimal requirements in terms of layout, design and construction, hygiene and sanitation; (2) the industry

takes responsibility in seafood safety control and implements HACCP based in-plant quality control programs; (3) a regulatory competent authority is in charge of certifying seafood plants and establishments, approving and monitoring HACCP-based in-plant quality control programs and certifying seafood and seafoodery products before distribution; (4) where necessary, national surveillance programs of the harvesting areas should be in place to control the threats of bio-toxins and other biological and chemical pollutants; and (5) an additional control can be exercised by the importing party and involves an audit of the national control system of the exporting country to ensure that it meets the requirements of the importing country. This should lead to the signing of mutual recognition agreements between trading countries (Source: FAO, 2005).

Third countries are categorized as List I or II. List I comprises countries and territories which have been approved to export to the EU following an inspection by the Commission Services. List II comprises those countries which have submitted satisfactory dossiers and prepare an inspection by the Commission Services. List II also include some countries that have received inspections but will remain on list II pending the receipt of satisfactory guarantees that certain observed deficiencies have been rectified. In addition, imports from third countries must be accompanied by health certificates, and originate from approved establishments or factory vessels. Approval of establishments by the competent authorities of the third country is a result of compliance with the requirements equivalent to those laid down in the directive. For identification purposes, the exporting firms are given registration numbers. Thus, imports from the third countries carry an identification mark with the license number of the establishment so that the source of the seafoodery product can be easily traced.

Practically, for seafoodery products, in order to assure consumer safety, only countries whose sanitary control system has been approved by competent EU-authorities are allowed to export seafoodery products to the EU. At the moment, Vietnam is on list I for the harmonized countries (see appendix 6.1) and can export to every country in the EU. EU legislation strives for a quality assurance system that is based on the recognition that microbiological hazards exist at various points in the production and processing of seafoodery products but that, through a rational approach and by applying the necessary measures, it is possible to control them. Its main purpose is to avoid systematic detention, heavy sampling, and laboratory checks at the point of entry in the EU. This means that a shift from traditional end product inspection and certification to this preventive assurance approach is required. It means that the actual control will take place in the third countries instead of at the point of entry in the EU. This has various implications for developing countries such as implementing new regulations which will have to be updated regularly, organizing inspection services, improving production procedures.

Although the USA constitutes a minor export market [The reason for this issue is a conflict about anti-dumping and the use of the name catseafod. Since 2003, the vulnerability of

rapid expansion in international markets was illustrated by the anti-dumping case brought against Vietnam in the U.S. by the Catseafod Farmers of America (CFA) in response to the cheap import of Seafood after the normalization of trade relations with Vietnam (Bush et al., 2008). Tariffs between 37-65% were placed on Vietnamese exporters, equivalent, it was argued, to the dumping rates. Imports of Seafood to the US fell by around 50%, at an estimated loss of US\$24 million (Tung et al. 2004). Processing companies responded to the loss of the US market by rapidly diversifying to other export markets in Europe and the ASEAN region. The success of the industry since the anti-dumping case has also led to changes in production practices to comply with international quality standards such as EU countries. ] at the moment it is important to compare the EU rule with the USA requirements as the later market may become more important in the future (Table 1).

**Table 1:** Comparison of seafood import systems in the EU and the USA

Exporter (s)	Importing country or region	
	European Union (EU)	United States of America (USA)
Role of exporting government for exports to the importing country/region	EU certifies a CA in exporting country	Can voluntarily create an agreement with US
Role of exporters for exports to the importing country/region	Apply GMP/HACCP (own checks) to be certified by their own country's CA following physical inspections, documentation review and final product checks.	Apply SSOP/HACCP based program and make necessary documentation available to FDA through importer
Role of importing governments on the importing country/region	Run inspection system to ensure EU legal and technical requirements are met  Has border inspection posts	Run inspection system to ensure US legal and technical requirements are met, but not mandatory as for US  Has border inspection posts
Role of importers in the importing country/region	Check GMP/HACCP plans of exporting firms and make them available to FVO inspectors  Notify authority of all imports	Check SSOP/HACCP plans of exporting firms and make them available to FDA inspectors  Notify authority of all imports
Frequency of documentary and identity checks at the border in the importing country/region	All imports	All imports
Frequency of physical checks at the border in the importing country/region	Variable frequency depending on the status of the country of original and company' history	Variable frequency depending on the status of the country of original and company' history
Type of microbiological tests done when required in the importing	At discretion of inspector but includes L. monocytogenes, Salmonella, Faecal coliforms, E.coli,	At discretion of inspector but includes Salmonella, Faecal coliforms, E.coli, S.aureus, Vibrio spp.

country/region	S.aureus, Vibrio spp.	
Type of chemical tests done when required in the importing country/region	At discretion of inspector but includes histamine, heavy metals, veterinary drugs	Includes histamine, heavy metals, veterinary drugs (refer to table 6.5)

Source: adapted from FAO, 2010

Table 1 shows there are minor differences between the border control systems used by EU and US countries. For example, both markets apply HACCP standards for exporters. Moreover, the type of chemical and microbiological tests is rather similar. NAFIQAD (2011) revealed that the tests of substances and maximum residue limit (MRL) of seafood export to the EU and US markets are the same.

**2.2 The role of Food and Veterinary Office (FVO)**

As a commission service, the FVO assures that the seafoodery products placed in EU markets meet hygienic and sanitation conditions at least equivalent to the requirements laid down in the EU legislation (Council Directive 91/494/EEC). It verifies the availability of a seafoodery legislative in the country, the competency of the CA, and the assurance that the third country is in compliance with the standards in the EU directive. The task of the FVO is not to evaluate the performance of processing plants but to assess and report whether relevant authorities in third countries meet their responsibilities in ensuring that legislation is properly implemented in their territories. The FVO will conduct on-site inspections of seafoodery processors and the seafood safety system administered by the third government periodically. During the inspection visits, the FVO will check the control system governing the production of seafoodery products intended for export to the EU and the control of veterinary medicinal products that are used to treat seafood diseases (EU Commission, 2007).

The findings of each inspection are published in an inspection report. The CA of the country visited is given the opportunity to comment on the report. The FVO makes recommendations to the country’s competent authority to deal with any shortcomings revealed during the inspections. The competent authority is requested to present an action plan to the FVO on how it intends to address the shortcomings. Together with other Commission services, the FVO evaluates this action plan and monitors its implementation through a number of follow-up activities.

FVO inspection missions are currently undertaken in all exporting countries and they are the basis for establishing confidence between the EU Commission and the CA of the exporting country. All inspection visit reports are publicly available and published on the FVO website. The mission of FVO was carried out in Vietnam from 27 September to 8 October, 2007. The object of this mission was to evaluate the control system governing the production of seafoodery products intended for export to the EU

**2.3 EU border control practices**

As described by DG SANCO, all seafoodery products imported from third countries have to be inspected by a border inspection post (BIP). One of the seven approved BIPs in the Netherlands is Eurofrigo in Rotterdam. Eurofrigo inspects imported containers with seafood, meat, vegetables, fruit and plant products. With its long experience in handling imported products, Eurofrigo is able to carry out such inspections quickly and cost-effectively for its customers. We conducted a desk survey at this BIP to analyze how import regulations in Rotterdam influence quality assurance of Seafood products from Vietnam.

The structure of the inspection service at the Eurofrigo port consists of two parts the quality assurance office and the laboratories. The quality assurance office performs internal audits on documents. The laboratories deal with physical tests.

The documentary check is carried out on all consignments. It involves checking the health certificate accompanying the seafood products. These include requirements of an approved country [Approved country is a country whose sanitary control system has been approved by the EU’s competent authorities and allowed to export seafoodery products to the EU], a published list [The EU publishes list of processing companies on list I countries which can export to every country in the EU. Each approved company has an EU code that can trace the products from which companies] with recognized companies, a health certificate and analyses report that issued by the CA (NAFIQAVED). A Seafood consignment passes the documentary check if there is a properly filled out and issued by the EU recognized CA in the country of origin (NAFIQD for Vietnam).

The identity check is also carried out on all consignments. It involves checking that the data on the certificate are consistent with the imported product. It checks the seal and health marks identifying the country and establishment of origin. Moreover, the name of the importer is also checked (Table 6.2).

**Table 2:** Consignment checks at EU borders

Consignments that do not arrive in containers	Check on some packages to ensure that the stamps, official marks, and health marks identifying the country and establishment of origin are present and conform to those on the certificate or document
Consignments that arrive in containers with official seals	Documentary and identity checks for all consignments, Some may not need to be opened in order to complete an identity check provided official seals have been used in the country of dispatch and the seal numbers are clearly recorded in official veterinary certification
Consignments that arrive in containers with no official seals	If official seals have not been used, or there is doubt over whether the seal number was recorded by the certifying veterinarian, the container would need to be opened and a check made on the packages therein to ensure that the stamps, health marks and other marks identifying the country and establishment of origin are present and conform to those on the certificate or document

Source: Council directive 97/78/EC.

- In principle, a physical check is required for all consignments [A consignment is defined as a quantity of products of the same type covered by one health certificate, conveyed by the same transport and from the same third country. A separate health certificate is required for each consignment and must be submitted by the importer or agent to the BIP]. However, as Seafood products are fully harmonized with the import rules of the EU, the physical check is carried out on a sample. The size of the sample varies according to the product and country of origin (Table 3). The purpose of the physical check is to ensure that the product still complies with the regulatory requirements as. The detailed rules for physical checks on products exported to the EU were presented in the decision 94/360/EC.

**Table 3: Summary of physical checks at BIPs**

<p><i>Category I – 20% of consignments of:</i> Seafood products in hermetically sealed containers (stable at ambient temperature), fresh/frozen seafood, dried/salted seafoodery products</p>
<p><i>Category II - 50% of consignments of:</i> Other seafoodery products other than those in Category I and bivalve molluscs</p>
<p><i>Category III – minimum 1% - maximum 10% of all consignments of:</i> No seafood products in this category</p>

Source: Decision 94/360/EC.

Seafood products belong to category I. Laboratory staff checks the veterinary specifications as mentioned in the health certificate provided by NAFIQAD in Vietnam (Regulation 854/2004/EC). Once a physical check has been completed the inspectors reseal the container with a BIP seal. But, if the consignment fails the physical checks for any reason, then the official inspector will destroy or sent back the products. If the consignment is sent back to the export country, other Community BIPs are noticed by the EU RASFF (Rapid Alert System for Food and Feed) to prevent illegal re-entry of the consignment.

#### 2.4 Rapid Alert Systems for Food and Feed

The Rapid Alert System for Food and Feed (RASFF) is a tool that the EU uses to enable the quick and effective exchange of information between member states. The legal basis of the RASFF is found in article 50 of regulation 178/2002/EC. It has become an indispensable tool for protecting and re-assuring European consumers. If food safety problems are identified, information about the product and the country of origin are transmitted immediately throughout the EU. Exporters with an EU approval code that appear in the RASFF system maybe de-listed from the published list of EU approved establishments.

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The CA of the country of origin has to make a full investigation and report back to the EU to avoid recurrences. The EU publishes a yearly Report on RASFF providing data on the number of notifications received during the year, as well as details on the origin of the notifications, the products and countries involved, and the identified risks. As of 26 May 2003, the EU began posting a weekly internet report with information on all notifications from the RASFF (<http://europa.eu.int/comm/food/food/rapidalert>).

Prior to 2001, the main quality problems in seafood products exported to the EU concerned mercury and cadmium of the cases in 1999 and 2000. However, in 2001 and 2002, three new chemical agents appeared: Chloramphenicol, Nitrofurans, and Malachite green. Nitrofurans and Chloramphenicol are broad-spectrum antibiotics widely used to control and treat infection in seafood farms. However, due to their toxic character, their use is prohibited in the EU. Malachite green is a fungicidal dye with pharmacological activity whose use as a veterinary medicinal product for food-producing animals is not authorized in the community. The reason for this sudden and steep increase of these three veterinary drugs is due to rigorous testing regimes imposed in 2001 and 2002 on seafood imports from various Southeast Asian countries by the European Union (FAO, 2005).

### 3. Conclusion and recommendations for Better Seafood Products Quality Assurance System

The EU set up a quality assurance system to protect their markets from unsafe seafoodery products and to harmonize a level playing field where all suppliers (domestic and foreign) face the same requirements. The exports of seafoodery products to the EU have to meet the EU regulations that lay down conditions for seafood imported from third countries. The EU council directive 91/493/EEC urges all seafood business to develop an HACCP system. The HACCP based regulations of importing countries provide working procedures to determine the equivalence of processing conditions and document the compliance. Vietnam is on list 1, implying that they are allowed to export to the EU. The competent authority in Vietnam (NAFIQAVED) inspects the exports according to the EU rules and regulations. Despite this organization Vietnam had 4 RASFF notifications in 2007 which showing that the system still needs improvement. The quality assurance at export level and processing firms is met the quality requirements of EU. However, there is no tracking and tracing at farm level. It is important to improve the quality assurance system at farm level. At the moment, there are some concerns in niche market share (organic) and not yet operated (Eurep-GAP). Moreover, the NAFIQAVED is preparing the traceability system for the future when these systems will become more important.

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