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OVERCOME THE TECHNICAL BARRIERS FOR FOOD AND
AGRICULTURAL PRODUCTS TO THE EU

Vietnamese High Quality Product Business Association

17 August 2018

AGENDA

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- ABOUT ME
- BACKGROUND
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ABOUT ACSV LEGAL

ACSV Legal is a Ho Chi Minh City, Vietnam-based law firm. The firm is led by Managing Partner, Mark Oakley who has been living and working in Vietnam since 2007.

Established in 2014 and most recently, at the end of March 2018, it was rebranded to ACSV Legal, with a new logo and new website: www.acsvlegal.com.

ACSV Legal has a premier corporate/M&A practice in Vietnam and its approach is to understand the legal, commercial and political dynamics of every matter. We have extensive experience in private equity transactions with a focus on a strong commercial approach.

ACSV Legal currently has a team of lawyers who are qualified in Vietnam and abroad in civil and common law jurisdictions. In our offices the following languages are spoken: Vietnamese, German, English, Italian, Dutch, French and Malay.

Our clients are active in a wide range of sectors and industries: manufacturing, food & beverage, hospitality and leisure, education, pharma, health, beauty & fitness, IT, apparel and fashion, retail and public relations.



ABOUT ME

- Business Development Manager at ACSV Legal in HCMC. I have worked as the Knowledge & Business Development Manager of the law firm Gide Loyrette Nouel, Vietnam.
- Former Vice-Chair and Legal Consultant of the Food, Agri and Aqua Business Sector Committee of the European Chamber of Commerce in Vietnam, and Former Chair of the Agribusiness Working Group of the Vietnam Business Forum.
- Before moving to Vietnam in 2011, I held various legal positions in the Netherlands and Belgium.
- Holds an LL.M in European and International Law of the Radboud University, Netherlands and studied a year at the Law Faculty of the University of Poitiers, France.
- Co-author of the article Corporate governance in Vietnam - its significance and challenges as published in the International Journal of Corporate Governance, Vol. 7, No. 1, 2016 and author of the chapter on Food Safety and Agriculture in the Whitebook of the European Chamber of Commerce in Vietnam, edition 2015, 2016, 2017 and 2018.
- Speaks fluent Dutch, French, English, Italian and also Vietnamese, German and Spanish.



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BACKGROUND

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- Vietnam
 - ranks high for exports of black pepper, cashew nuts, coffee and tea, fish, seafood and rice;
 - mainly exports commodities while it should move to high-end manufactured products.

- But, Vietnamese products are
 - perceived as of lower quality and value;
 - competitive on price but not on quality;
 - often rejected by importing countries because of food safety issues.

- This needs to be changed as
 - it does not do justice to the Vietnamese products,
 - it limits export opportunities and impacts the health of the population.



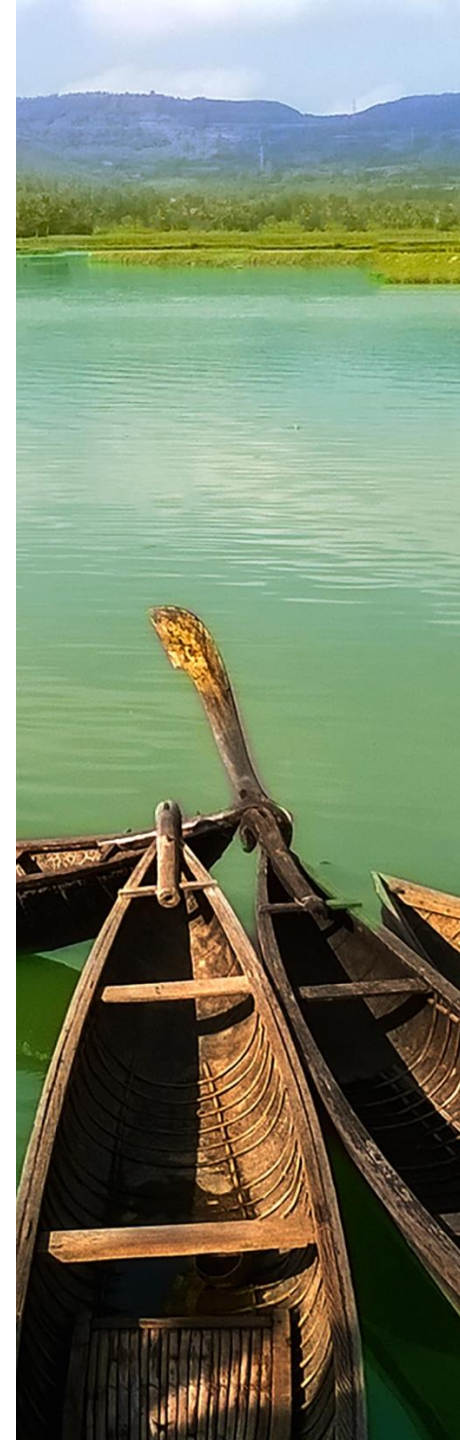
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CURRENT ISSUES

CURRENT ISSUES

- Rejections because of Food Safety (antibiotics, hormones, crop protection products, salmonella, mould, mycotoxins, other harmful chemicals)
- Break of cold-chain during transport and when stored at customs
- Increase in health problems related to Food Safety
- Insufficient enforcement and not strict enough
- Lack of adequate traceability system
- Quality of labs/testing insufficient so results not trusted
- SPS requirements
- Certificate of Origin



CURRENT ISSUES (CONTINUED)

- ➡ Food safety issues limit the possibility to import ingredients and raw materials used to produce products for export or local use; and
- ➡ The lack of an effective mechanism limits the possibilities for local producers to export their products, as importing countries often have higher applicable Quality Standards and Quality Systems.



CURRENT ISSUES (CONTINUED)

Residue levels above MRL for veterinary medicinal products in frozen white tiger prawns from Vietnam.

Unsuitable organoleptic characteristics of frozen tilapia processed in Slovakia, with raw material from Vietnam.

Unauthorised substances carbendazim, hexaconazole, diafenthiuron and chlorfenapyr in fresh chili peppers from Vietnam.



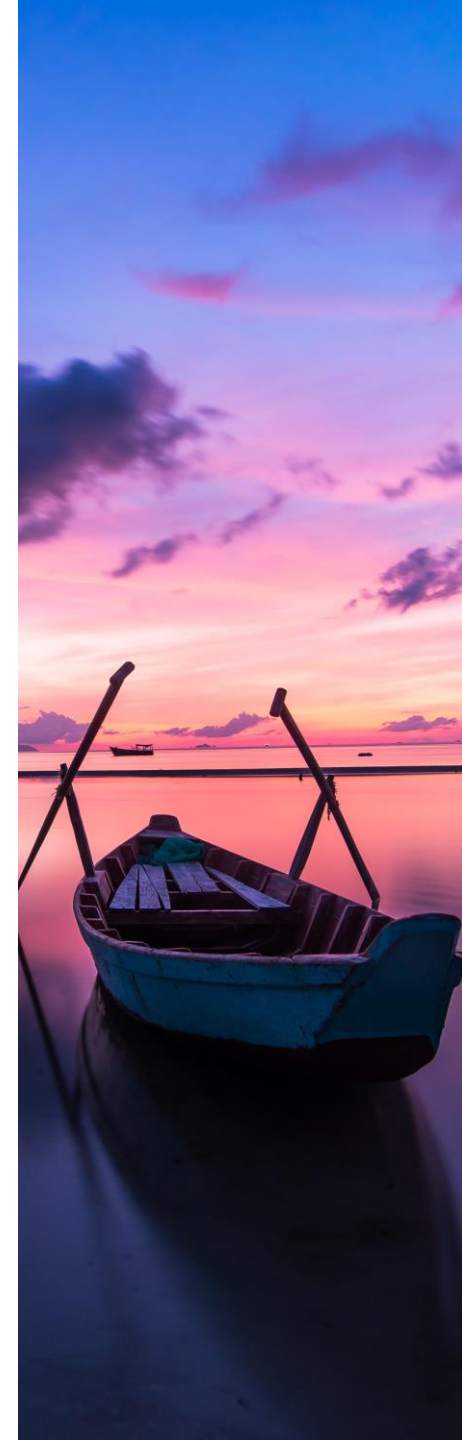
Norovirus in frozen precooked clams in shell from Vietnam.

Salmonella in frozen shrimps from Vietnam.

Prohibited veterinary medicinal products in frozen shrimps from Vietnam.

Metalaxyl and azoxystrobin and unauthorised substance carbendazim in various exotic fruits from Vietnam.

EU issues yellow card warning to Vietnam over fisheries exploitation.



CURRENT ISSUES (CONTINUED)

Vietnam veg, fruit exporters must up safety standards.

EU warns Vietnamese seafood exporters about antibiotics residue.

“Whitefish wars” driving Vietnam’s pangasius away from EU, US.



EU will apply more checks to certain vegetables and fruits imported from Vietnam.

Agricultural products draw repeated warnings from importers.

Food safety vital to win EU market.

Exporters bitter as EU bacterial warning stops Vietnam veggies

RASFF - 2017: 77 notifications / 23 rejected at the border and 2018: 36 notifications / 11 rejected at the border.



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IMPACT EVFTA

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- Technical Barriers to Trade (labelling, packaging, certifications) and Sanitary and PhytoSanitary (SPS) Requirements
- Tax cuts will put a greater burden of competitiveness on domestic producers in terms of prices, product quality, and food hygiene and safety
 - veterinary drugs residue, presence of heavy metals and bacterial contamination are the most common reasons for rejections
- Livestock industry is forecast to be under fierce competition, as taxes on
 - chicken and pork will be cleared under a roadmap for 8-10 years
 - beef, milk, and dairy products will be eliminated within 3 years



IMPACT OF EVFTA (CONTINUED)

- Stringent rules of origin in order to qualify for tax reduction/elimination
 - cashew nut sector depends on 63% of imported materials while it can be only local raw material supply
 - similar issues for shrimp and wood products
- Detailed regulations on procedures and legally binding conditions about time-limit and manner in which procedures for certificate of origin for each specific case must be met



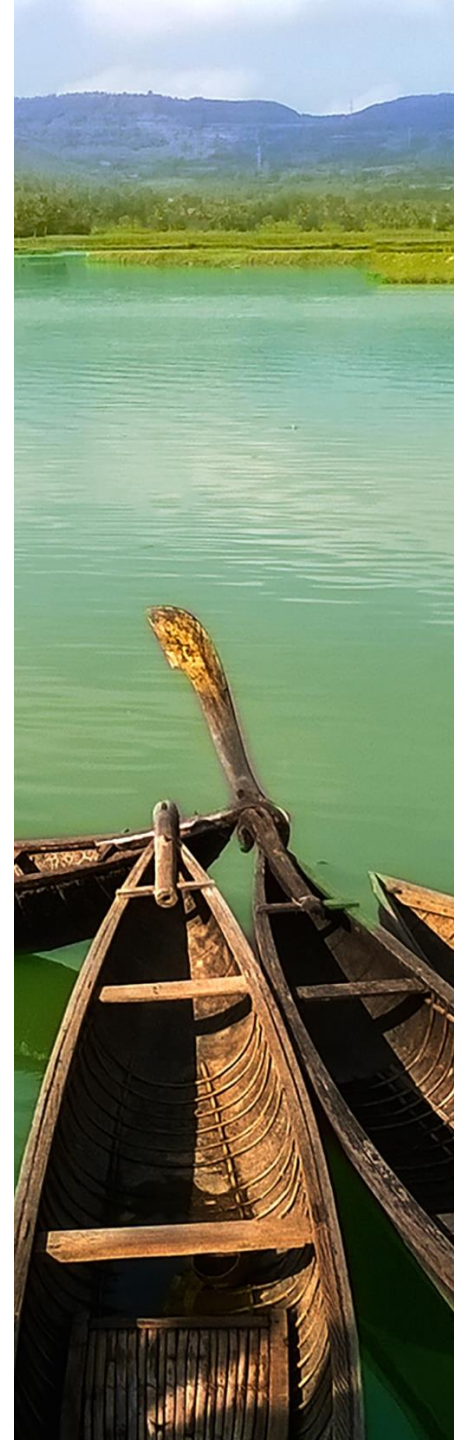
IMPACT OF EVFTA (CONTINUED)

- Vietnam will increase use of international standards in drafting regulations
- Vietnam will liberalise 65% of import duties, remainder of duties gradually eliminated over a 10-year period
 - of which 24% of farm produce tax lines
 - limitation of liberalisation of various husbandry products (frozen pork meat - 7 years, beef - 3 years, and chicken - 10 years), dairy products – maximum 5 years, food preparations - maximum 7 years
- Vietnam will remove almost all its export duties, and will not increase a few that will exceptionally remain in force
- Trade and Investments in agricultural food technology in Vietnam which come with high standards and quality



IMPACT OF EVFTA (CONTINUED)

- EU will liberalise 99% immediately or in steps (also fish/seafood)
 EU will not (yet) fully liberalise some sensitive products, but will apply tariff rate quotas
 - rice, sweet corn, garlic, mushrooms, sugar and high-sugar-containing products, manioc starch, surimi and canned tuna
- Rules of Origin apply in order to qualify for duty reduction/elimination
 - most of basic agricultural products obtained in Vietnam or EU (Korea exception)
 - product specific rules apply (change tariff classification, weight or non-originating limitations)
- Recognition and high level of protection of Geographical Indications for food products
 - 39 Vietnamese GIs (e.g. Moc Chau tea, Buon Ma Thuot coffee, grilled chopped cuttlefish from Ha Long , clam from Quang Ninh)
 - GIs can coexist with prior registered trademarks, cannot become generic
 - new GIs can be added in the future

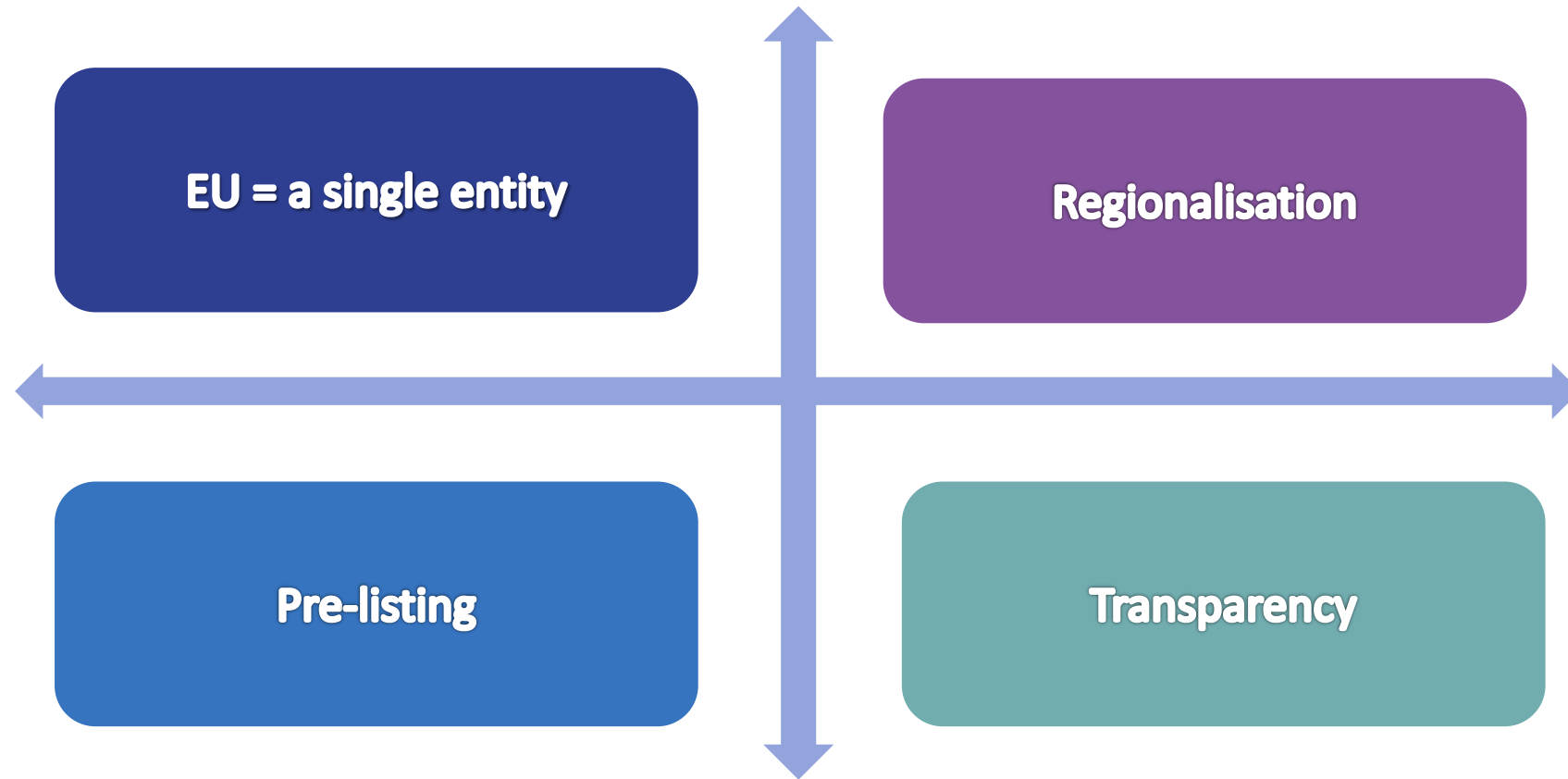


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SPS PROVISIONS

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SPS PROVISIONS (CONTINUED)

- EU = single entity
 - Now sometimes VN has different rules for different EU Member States, this will not be possible anymore.

- Pre-listing:
 - Prior individual inspections of exporting establishment no longer required
 - An EU member-state or Vietnam (on behalf of a company) can ask for a food/agri product it to be put on a list
 - Once this product has been approved by the EU or Vietnam to be put on the list, all companies exporting that product can be asked to be put on the list
 - EU or Vietnam are confident about the capacity of the competent authority of a relevant country.
 - No additional checks will be needed
 - Only if VN has doubts about an establishment (company) VN can check, but has to pay for this check



SPS PROVISIONS (CONTINUED)

- Regionalisation:
 - When there is a disease or problem in a part of the EU/Member State or Vietnam, the export can be blocked for that part, the rest can still export.
- Transparency:
 - These changes increase transparency and imply strict deadlines for communicating relevant information.



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CONCLUSION

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Free Trade Agreement is an opportunity to

- upgrade quality standards;
- improve and upgrade laboratories and testing;
- improve food safety;
- increase the probability to successfully meet foreign standards;
- drive the upgrade of the agriculture sector to ensure the quality of processed food products and the productivity; and
- reduce barriers for import and export.

Further reading

- <http://wtocenter.vn/publications/other-publications>
- http://eeas.europa.eu/archives/delegations/vietnam/documents/eu_vietnam/evft_a_guide.pdf
- http://www.kas.de/wf/doc/kas_43898-1522-2-30.pdf?160114035348




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