

AGRIBUSINESS POSITION PAPER

*Prepared by
AgriBusiness Working Group*

INTRODUCTION

Vietnamese agricultural products are mainly known for low price and quality which does not do justice to the products. However, when Vietnam does not take steps to improve food safety issues and modernise the sector in a sustainable way a consequence might be that Vietnam will not become a top agricultural products and food exporting country. Especially as neighbouring countries are competing for this position.

We would like to thank the MARD for the detailed answers that were sent to MPI on 13 April 2016. However, not all issues raised in that paper have been addressed yet or in a satisfying way, and new ones have arisen.

The Agribusiness Working Group of the Vietnamese Business Forum would like to raise its voice on several issues of primary concern in the agribusiness sector. The topics are all intertwined and closely connected, but for clarity we have divided them in the following three main topics. Food safety because these issues cause Vietnam to lose export opportunities and to increase healthcare costs (rise in cancer cases is believed to be related to unsafe food). We are aware that this topic is also a major concern to the Government, the newly appointed Minister of Agriculture, the National Assembly and last but not least the population of Vietnam.

Secondly, we would like to address concerns over market access both in Vietnam and neighbouring countries including seeds, pesticides and fertilisers.

These issues are connected to our final point: sustainability of the agricultural sector. Creation of a sustainable and high-tech agricultural sector is one of the main objectives of the Government. By improving sustainability it is believed that Vietnam can continue to have a productive agricultural sector without impacting on the environment and potential future productivity. As Vietnam moves towards greater International recognition it is important that it deals with the issues of the environment and sustainability as this is often a requirement of importers but also laid down in agreements such as the Free Trade Agreements.

Several of the issues have been previously brought to your attention by this Working Group but they are raised again because in our view they have not been (properly) addressed or are still not resolved. At the end of this paper we will give a short overview of those issues including status and what in our view needs to be done.

The paper starts with an executive summary containing a short overview of the various issues in four sections as well as recommendations related to that part. After that you will find a detailed description of these issues as well as what the impact is, but also how we believe they should be addressed.

We would like to thank the people that have provided input for this paper, as we need the knowledge and expertise of the members to put the paper together.

EXECUTIVE SUMMARY

The first part of this paper is on food safety; because currently it causes Vietnam to lose export opportunities and increases healthcare costs (rise in cancer cases is believed to be related to unsafe food). In particular we will raise issues and give solutions related to traceability, an independent centralised Food Safety Agency, the improvement of the quality of laboratories and testing, legal enforcement and risk-based assessment.

Secondly, we address concerns over market access both in Vietnam and neighbouring countries for foreign and domestic companies. We give specific consideration for opening the market to FDI which would help stimulate the economy, allow innovation and modernisation of the agricultural sector and thus raise the production standard of Vietnamese products. Here we will also address issues related to seeds, crop-protection products and fertilisers which are connected to our final point: sustainability of the agricultural sector.

In the last part we would like to consider the impact of climate change and the use of natural resources such as water on the sustainability of the agricultural sector.

OVERVIEW ISSUES ANNUAL VBF 2015

FOOD + AGRICULTURE			
	Issue/topic	Details	Action/status
1	Food Safety	<ul style="list-style-type: none"> ▪ Traceability ▪ Legal enforcement ▪ Labs and testing ▪ Cooperation and harmonisation ▪ Develop best practices ▪ Create independent centralised Food Safety Agency 	to be developed or improved
2	Market Access	<p>Companies</p> <ul style="list-style-type: none"> ▪ Domestic market access for Vietnamese companies ▪ Domestic (Vietnam) market access for foreign companies ▪ Foreign market access for domestic companies <p>Technology</p> <ul style="list-style-type: none"> ▪ Registration procedure changes ▪ Procedural bottlenecks for introducing new technologies ▪ Good quality agricultural input competitiveness and adoption (including IPR and tax) ▪ Selection and application of appropriate technologies suited to Vietnam market 	to be developed or improved
3	Quality Standards	<ul style="list-style-type: none"> ▪ Seeds and seedlings 	to be developed or improved
4	Policy Implementation	<ul style="list-style-type: none"> ▪ The role of local authorities and industry associations ▪ Compliance ▪ Burdens in implementing administrative procedures ▪ Too many provisions in too many texts and conflicts among legal texts ▪ Default of guidance for implementation of Laws and regulations 	to be developed or improved

		<ul style="list-style-type: none"> ▪ Unreasonable legal provisions (particularly on re-import of exported goods) 	
5	Sustainable Agriculture	<ul style="list-style-type: none"> ▪ Draft Decree on Policies promoting Foreign Investment in Agriculture ▪ Create level-playing field for all kind of companies (foreign and Vietnamese) ▪ Quality Agricultural Inputs including Pesticides and Fertilisers ▪ Modernisation and Sustainability of the Agriculture Industry 	to be developed or improved

FULL TEXT

1. Food Safety

1.1. Introduction

Food Safety has already been an issue for many years in Vietnam and it is affecting the view the world has on Vietnamese products. Vietnam does not have a good reputation with regard to food safety so importing countries are reluctant to import finished products. The products are seen as of low quality and therefore cheap, but also not safe. In the recent months there have been several food safety related issues that have more concerns amongst global consumers and therefore importers. Regularly warnings are issued and shipments blocked because there are food safety issues, such as excessive levels of antibiotics, pesticides, hormones or bacteria. Or products are not bought because it is considered carcinogenic and therefore banned by importing countries.

We are aware that food safety is a major concern for the Government, the former but also the newly appointed Minister of Agriculture, the National Assembly and last but not least the population of Vietnam. We also know that various initiatives have been taken and projects started to improve this. However, in our view more needs to be done and especially the following issues need to be addressed in order to increase food safety and restore trust in Vietnamese agricultural and food products so Vietnam can become a top producer and exporter of food and agricultural products.

We are pleased with the various initiatives that have taken to increase awareness, but also availability of safe food, such as the food safety action month in April 2016, creation of safe food places, safe food production and supply chain both by public and private players. Newspaper articles have shown though that still much needs to be done though. On national and local level Government officials have underlined the need to identify the responsibilities of agencies concerned with food safety management as it is now unclear. It is necessary to develop a supply-chain approach to address food safety efficiently.

Food safety issues are caused by the use of banned chemicals and additives in animal breeding/feed and food production, smuggled goods, the misuse and overuse of plant protection chemicals in agricultural cultivation, but also by improper production, post-harvest handling, preservation/storage and transportation, as well as the quality of laboratories and not strict enough legal enforcement.

In consideration of food safety, this position paper will touch upon the issues of food safety management, risk-based assessment, traceability, awareness and training, labs and testing, Veterinary Law Amendment and Animal Welfare, regulation and legal enforcement, low quality and counterfeit pesticides/antibiotics/fertilisers.

1.2. Food Safety Management

Despite the actions taken by the Government and their agencies Food Safety Management is not yet working properly. It is currently divided over 3 Ministries and various agencies and therefore causes more food safety issues than necessary. Often each agency has its own regulations that often overlap or even contradict each other. Like for example the Ministry of Agriculture and Rural Development has banned the import of salbutamol, but the Ministry of Health allows import as it is a necessary chemical in the production of medicines. Further to this the agencies do not always have the authority to punish offenders. In our view an independent Centralised Food Safety Agency (FSA) would address this issue. An FSA could also harmonise and coordinate the drafting of laws and regulations as well as the application and enforcement. We

are therefore pleased with the initiative to set up an independent agency in Ho Chi Minh City and we hope this example will be followed.

Recommendations

- Approve initiative to create an independent Food Safety Agency in HCMC;
- Monitor this initiative closely;
- Create a national independent Food Safety Agency.

1.3. Counterfeit and low quality products

The use of unauthorised, counterfeit and sometimes illegally imported crop protection materials, antibiotics, food processing materials, fertilisers, seed, food additives as well as sub-standard products causes food safety issues. A related issue is that the label or usage instructions are unclear. Farmers and processors are not always aware of this and subsequently use the wrong product or the incorrect dose. We believe that lack of training or awareness of the risks of responsible use of crop protection products, antibiotics and additives contribute to the negative impact on safe end products and health. Often farmers are not aware of the risks of misusing crop protection products and antibiotics which affects not only their own health, but also the aquaculture industry and drinking water in a negative way. Moreover, the irresponsible use of antibiotics causes resistance to antibiotics and the resistance rate in Vietnam is already one of the highest in the world. When farmers are aware of the risks they may still misuse crop protection products and antibiotics. The first because they believe it reduces the risk of a lower crop production and the latter to avoid their livestock catches diseases. The Government is aware that resistance is an issue, but this awareness needs to be disseminated to the level of producers, retailers and end-users. Research has shown that training and raising awareness have positive effects on reduction of use.

1.3.1 Criminal Code

We also look forward to the effect of the amended criminal code that entered into force 1 July last with regard to combatting the use of counterfeit and banned substances. We hope this amended law will result in reduction of food safety violations and increase the reputation of Vietnam as a safe agricultural and food producer.

We believe though that a clearer division should be made between health impacting violations and other kind of violations, such as incorrect labeling. These other violations should be treated as economic offenses and fall under the MOIT. This will result in more inspectors available for really health threatening food safety issues.

1.3.2 Counterfeit

The use of counterfeit fertilisers, or products with lower percentages than what the label indicates, is increasing which harms the agricultural sector and the people working in it in many ways. We are aware that counterfeit fertilisers – as well as banned chemicals in animal husbandry sector – are a major concern for MARD. In 2014 the management of the inorganic fertiliser industry moved from MARD to MOIT. We agree with the General Secretary of Vietnam Fertiliser Association that weak management is – as for food safety - caused by the fact that 2 ministries are in charge of different parts of the industry. This causes – again as for food safety – confusion, lack of transparency and not strict enough punishment of offenders. Another issue is that there are too many varieties of fertilisers available making it more difficult for farmers to distinguish counterfeit from real, and too many companies to be able to check all.

The Government is aware of smuggling of counterfeit products being an issue, but now it has to be addressed more strictly. We hope that the amended criminal law that entered into force on 1 July last will help with this and there will be stricter control. We already suggested that one Ministry should be made responsible for the fertiliser industry because combatting counterfeit

products would become easier resulting in increased food safety, better agricultural products and less harm done to environment and human's health. So better enforcement combined with increased awareness and training, as mentioned in the introduction, will make that Vietnam can become a global agricultural and food products producer and exporter.

Recommendations

- Increase awareness under farmers, producers and retailers on the negative consequences of irresponsible use of counterfeit and sub-standard products;
- Raise awareness on consequences of irresponsible use of (counterfeit and sub-standard) crop protection products, antibiotics, and food additives amongst farmers, producers and retailers;
- Train farmers on responsible use of crop protection products, antibiotics, and additives with the input and support of the private sector.

1.4. Traceability

Traceability is important to address food safety issues, and we hope that producers will use it more and more, and that the authorities will enforce existing regulations. From the newspapers it is clear that consumers do not trust the label 'safe' and 'organic' because they do not know if they can trust this label as there are cases where the label has been misused. The same can apply for traceability information on packaging material. In those circumstances the abuser should be severely punished. This kind of offense is not yet covered by the amended criminal law. It is recommended that the enforcement of labeling laws be more heavily enforced in supermarkets as they sell a higher proportion of packaged and theoretically reputable products. As such they often charge a premium to sell these products to consumers who expect quality to be assured, without this always being the case. Farmer compliance with food safety expectations can then be driven by both government regulation and retailer control of the products they are selling. Movement to a supermarket based economy will improve the ability for the government to ensure the source and quality of the products being sold.

Recommendations

- Amend the Criminal Law and make abuse of using the words 'safe' and 'organic' referring to products a criminal offense;
- Amend the Criminal Law and make incorrect of traceability information and labels a criminal offense.

1.5. Laboratories and laboratory tests

However, even with a good traceability system and strict legal enforcement, Vietnamese laboratories and laboratory tests are not yet up to standard to guarantee safe food and therefore do not inspire confidence as food safety issues that could easily be discovered go undetected.

A broad spectrum analysis of active ingredients would easily detect MRLs but unfortunately cannot be performed in Vietnam. Furthermore, the current testing method for heavy metal presence should focus only on those types of heavy metals that actually affect human, animal and plant health. The same applies for pesticides or antibiotics residue. The sample quantity is often not representative for the quantity imported or exported. Besides this, results can differ per test and per laboratory, which harms the trust people have in the Vietnamese laboratories. Costs for companies increase because they have to retest (several times) and this will make Vietnamese products less competitive. The contradicting results also impact the health of the population because it is very difficult to know when a product is safe.

Even though there are limits, retailers do not comply and rarely random samples are taken to keep producers and retailers alert and products safe. Regularly random sampling with (financial or other) consequences if not compliant, will force retailers to take more responsibility for the

products they sell and producers for products they put on the market and export with reduced number of rejections as a result.

Test results of Vietnamese laboratories are in general also not comparable to results of other laboratories and therefore do not inspire trust. This is amongst other things caused by the fact that the Vietnamese Accreditation System (VILAS) is basically just meant for ISO 17025 accreditation. VILAS does not ensure the reliability of results or high quality standards and does not provide proper guidelines and best practices for important parameters. The Government should in our view look at how these high standards, guidelines and best practices can be developed, for example by looking at models such as the French Accreditation Committee (Cofrac) model 36. The Bureau of Accreditation or another governmental entity can develop such a standard. Laboratories should meet these requirements on top of any ISO 17025 accreditation. Mutual recognition and trust in testing results will be ensured as the added requirements will provide high reliability of methods and as a consequence of the testing results. In our view this new high quality standard accreditation model will result in importers regaining trust in test results from Vietnamese laboratories and subsequently demand of Vietnamese products will increase.

Recommendations

- Regulate and control the use of heavy metals in water and soil used to grow agricultural produce or feed and grow animals such as shrimps;
- Encourage use of machinery and methods by manufactures and producers to control raw materials and finished products (such as AAS, ICP-OES or ICP-MS);
- Create and encourage creation of a reliable network of laboratories;
- Improve the sampling method by taking representative samples and using the correct sampling method;
- Set up a system of random sampling and testing;
- Enforce regulations with regard to food safety when companies and individuals are not compliant;
- Develop a model similar to Cofrac 36 on top of VILAS;
- Establish a committee of experts consisting of representatives of government and (foreign) private labs to study existing standards in other countries; and develop and implement clear standards for the various parameters used in food safety management.

1.6. Risk-based assessment

According to the Agreement on Sanitary and Phytosanitary Measures (SPS) of the World Trade Organisation (WTO) risk assessments are an indispensable SPS tool that all WTO members must be able to conduct. Vietnam does not comply yet fully with the SPS Agreement and therefore businesses cannot take full advantage of free trade agreements and domestic consumption is not considered safe (enough). As encouraged by the SPS Agreement Vietnam should, in our view, accept SPS Certificates from countries exporting to Vietnam, that have the same (or higher) level of health protection as Vietnam and not require retesting. In this respect it is also important that Vietnam adopts measures that are consistent with international standards.

We have understood that currently a review of the Food Safety Law is on its way and we would like to recommend strengthening the possibility to use this risk-based method, but more importantly, to improve capacity to apply this method. Several useful tools, such as the one developed by SSAFE, have already been developed for business to assess the various risks when producing food. Such a tool can form the basis to develop a tool for the Government to use. We finally believe that an independent Food Safety Agency can help in developing and managing this.

Recommendations

- Finalise implementation of the WTO SPS Agreement;
- Apply risk-based assessment;
- Bring SPS requirements up to global standards;
- Accept SPS Certificates from exporting countries that have the same (or higher) level of health protection and do not require retesting.

1.7. Regulation and Legal Enforcement

1.7.1 Introduction

We know that regulations can vary in each country, but some markets are considered as “referent”. We believe that in order for Vietnam to achieve a leading exporter position it is recommended to follow these ‘referent’ countries and regulate in the same way and draft the same type of regulations. This is especially important for additives, as big international brands and consumers raise concerns as they are more and more aware of the negative health impacts.

1.7.2 Veterinary Law and Animal Welfare

In many countries, such as Australia, the European Union, the United States, animal welfare is considered an important issue. We are encouraged by the extensive review of the Law on Veterinary Medicine No. 79/2015/QH13 that came into effect on 1 July last. This law will assist with the enforcement of food safety issues during production and improve control measures on animals and animal products during processing. The specific inclusion of the reference to animal welfare is noteworthy. Recently there have been news reports about the horrifying way animals were slaughtered in Vietnam. It is therefore important to strictly enforce this new law. We would encourage further development of the article on animal welfare and to develop standards in line with International Organisation of Animal Health (OIE) guidelines for animal welfare.

In our view it is important to legalise internationally approved modern slaughter equipment for the use in abattoirs such, as devices that can be used to stun animals before slaughter. We believe that setting up and enforcing standards in line with the OIE would improve trading relationships with international partners and improve food safety for consumers. Legalising modern slaughter equipment will also improve occupational safety for workers, decrease the pain and stress experienced by the animals, and increase the quality of the meat. These steps must be in conjunction with the improvement, consolidation or closure of smaller and lower quality abattoirs. This will promote a more level playing field for those investing in improved slaughter practices and food safety.

Recommendations

- Create a working group that includes representatives of various industries who have regional and international experience to assist Vietnam in analysing if all relevant topics with regard to additives are covered and thus enabling Vietnam to be in line with international standards and expectations;
- Enforce strictly the recently amended Law on Veterinary Medicine;
- Develop standards for animal welfare in line with those of the OEI;
- Legalise internationally approved modern slaughter equipment for use in Vietnam;
- Develop a strategy to improve, consolidate or close smaller and lower quality abattoirs creating a level-playing field.
- Enforce strictly the recently amended Criminal Law with regard to food safety violations;
- Make a clearer division between health impacting violations and other kind of violations.
- Monitor and supervise use of crop protection materials, food additives, food processing materials more strictly;
- Reduce the number of licensed fertilisers to create clarity for users and ease combat of counterfeit products;

- Enforce existing regulation on prohibition of (willingly) selling, producing and smuggling counterfeit and sub-standard products, on use of counterfeit and illegal products and on use of clear labels and instructions for products such as crop protection products, antibiotics.

1.8. Communication

Finally, we believe that the Government together with the media should develop a strategy how to best communicate food safety issues. Lack of consistency in reporting in for example the environmental disaster in central Vietnam and lead in URC beverages caused greater concern amongst the population than in our view should have been necessary.

Recommendation

- Develop a communication strategy how to communicate about food safety issues.

1.9. SPS requirements

With regard to SPS requirements we would like to point out that for mushrooms there are contradictions between Circular 30/2014/TT-BNNPTNT and Decision 2515 of MARD.

Recommendation

- Eliminate contradictions on SPS requirements between existing regulations.

2. Market Access

2.1. Introduction

Currently Vietnam imports more agricultural products (including raw materials) than it imports and the imported products compete with the locally produced products on both quality and price. Furthermore, Vietnam depends for its import and export much on one country, being China. In our view this can and needs to be changed for various reasons. However, in order to achieve this several issues need to be addressed and resolved. In the earlier paragraph we already mentioned food safety which is a main cause why Vietnam does not export as much as it could.

2.2. Good Customs Practice

Vietnam wants to have a sustainable agricultural sector. In order to achieve this, it is important that farmers can obtain high-quality products¹ produced in Vietnam or imported if not produced locally. However, lately it has – in our experience – become more and more difficult to import products (not available here) needed to achieve this goal. In our view this is amongst others caused by unclear laws and regulations that can be interpreted in (too) many ways, complex and therefore costly and time-consuming procedures, and lack or insufficient good customs practice delaying import for unclear and unnecessary reasons. We understand that controls need to take place, but the basis for those should be clear, not open for various interpretations, more risk-based and high-trust; with of course strict consequences if companies are not compliant. This complexity, multiple interpretation and unclarity give in our view too much leeway for facilitation and therefore undermine the trust in Vietnam.

Recommendation

- Develop a clear legal framework to facilitate trade including import and export.

2.3. Access to neighbouring countries

Vietnam imports a lot of agricultural products from neighbouring countries such as Thailand and China. However, Vietnam exports relatively small quantities to neighbouring countries. We believe that Vietnam should negotiate better market access conditions for its products.

¹ These products can be machines, crop protection products, seeds, fertilisers, etc.

Recommendation

- Create market access for agricultural products in neighbouring countries.

2.4. Fertilisers

2.4.1 Introduction

In 2014 the management of part of the fertiliser sector was moved from MARD to MOIT with the idea that this would eliminate non- or bad performing manufacturers as they would not meet the license requirements, and reduce the number to 300. This step was deemed necessary to increase competitiveness of the sector and increase the quality of the products. However, it seems that this intention has not been achieved as according to the fertiliser association producers there are currently about 1,000 producers and even those that did not meet the requirements still managed to obtain a license or are – without legal consequences – operating without a license. In our view it is a lost opportunity and has resulted in an increased quantity of fake and sub-standard products entering the market which in return impacts food safety negatively. In our view the management of this industry should be under responsibility of one Ministry because now contradicting regulations cause issues.

2.4.2 Contradicting regulations

In the meantime we would like to suggest that regulations issued by the MARD should be withdrawn insofar they conflict with the regulations issued by the MOIT applicable to the management of the inorganic fertiliser industry. Hereafter we will list some examples of contradictions that cause issues.

2.4.1.1 Documents needed and time-line

Both Circular 29/2014/TT-BCT and Circular 04/2015/TT-BNNPTNT list the documents an importer needs to submit to have a shipment cleared. However, the kind of documents needed and method to declare conformity differ from each other which complicates import. It is in our view important to have if clear time-line and list of type and kind of needed documents published on the Customs website and office. In this way importer and Customs know what the time-line is and what documents are needed. This will leave no space for interpretation and ease import and therefore access to high-quality products for farmers. Another issue resulting from contradicting Circulars is that the issuer of the Certificate of Conformity differs depending which Circular you apply. This causes issues with customs clearance as Customs sometimes will not accept the certificate supposedly issued by the wrong authority.

2.4.1.2 Validity Certificate of Conformity

Another issue caused by contradicting Circulars: both Circular 29/2014/TT-BCT and Circular 41/2014/TT-BNNPTNT require fertiliser importers to make a conformity declaration. However, currently import of fertilisers is delayed because the Department of Industry and Trade (DOIT) asks for this declaration for every shipment as no time duration is mentioned in the Circular. We would like to suggest a longer validity as to declare conformity for every shipment is time-consuming and cost-increasing, especially when a company imports many shipments of the same product per month. When there is a change the importer needs to submit a revised dossier. The consequence if an importer does not comply with this requirement, could be that the importer needs to submit documents for every shipment for a certain period of time, or he could even be excluded to import for a certain period of time. If time and costs are reduced it results in increased access to high quality products for farmers.

2.4.1.3 Issuer of Certificate of Conformity

Another related issue that causes issues with clearance is the issuer of the Certificate of Conformity. Depending on which circular Customs applies this can cause issues.

2.4.1.4 Declaration of Conformity

Final example: both Circular 04/2015/TT-BNNPTNT and Circular 29/2014/TT-BCT contain lists with approved inorganic agrochemicals. When a company would like to import a product they need to request a Certificate of Conformity or a declaration of conformity. Once this has been awarded the DOIT informs MOIT. Every quarter MOIT (Vietnam Chemicals Agency) should publish an updated list on their website which is used for customs clearance without an import license. For some time already MOIT has not updated this list and products that had received a Certificate of Conformity already cannot be cleared because they are not mentioned on the website.

2.4.3 Recognition of foreign certificate (exception)

Related to the issuance of a Certificate of Conformity is the following. Recently it became clear that a Government accredited company issued Certificates of Conformity that should not have been issued. As a result all certificates are annulled and products need to be recalled and retested, even those already being sold. In our view this decision is not proportional. Firstly because the importer should be able to rely on the government accreditation of an organisation and the company acted in good faith. Secondly because products imported from Europe have to meet high standards and are tested various times already before being shipped. We therefore would like to suggest that for the intermittent period the results from foreign laboratories with similar or higher standards than Vietnam would be considered sufficient for products already on the market.

2.4.4 Laboratories and testing

Laboratories are not only important to find out if food and feed are safe for consumption by human-beings and animals. The quality is also relevant for market access of fertilisers after issuance of the Certificate of Conformity. It now happens too often that the laboratories checking products before they enter the market find different results from the laboratories used before issuing the Certificate of Conformity. The test will be redone till a satisfying result is obtained increasing costs and reducing faith and trust in the laboratory and testing methods.

2.4.5 Import tax and VAT

Good quality inputs are not affordable to small farmers because these products – not being produced – are charged with a 6% import duty. If a company imports the ingredients to make NPK fertilisers and mix it in Vietnam, the import tax will be 0%. However, the quality and results are not the same as the ready mixed products. The use of these cheaper locally mixed products can limit (or even damage) crop productivity, affects produce quality and food safety (humans' health) and even result in acidifying and contaminating the soil. This can result in an increased usage of fertilisers while Vietnam is already one of the highest fertiliser consumers per hectare in the world.

Recommendations

- Make 1 Ministry responsible for the management of the whole fertiliser industry;
- Withdraw regulations issued by MARD insofar conflicting with regulations issued by MoIT;
- Make the validity for a conformity declaration 1 year with possibility to renew;
- Instruct Customs to accept issued Certificates of Conformity or declarations of conformity even though the product is not listed on the website;
- Impose strict sanctions on companies not complying with the obligation to provide information in relation to conformity declaration;
- Draw up a time line and list with required documents for import of agrochemicals;
- Instruct Customs about this time line and list with required documents;
- Publish this time line and list of documents on the Customs' website and in the Customs' office;

- Accept – during the transition period – test results of European laboratories for products that have already received a Certificate of Conformity (for products being sold already and accept new Certificate of Conformity for products in storage);
- Eliminate the 6% import duty for high-quality fertilisers not being produced in Vietnam.

2.5. SPS Certificate

Another issue related to market access and SPS is that under the existing regulations certain products should be quarantined before being imported into Vietnam. The list of products that require an SPS Certificate is based on the 8-digit HS code and includes raw, frozen and preserved (cooked/sterilised) products. This means that cooked food products are examined according to the requirement of the raw material it is made of. Based on Vietnamese regulations importers have to submit an SPS Certificate from the exporting country. However, obtaining this certificate is sometimes difficult because there is difference in classification criteria between Vietnam and other countries. In general a SPS Certificate is needed for fresh² fruit and vegetables and when these products have been cooked they are no longer considered fresh. Therefore no SPS Certificate will be granted and therefore import will be denied. Conducting a risk-based assessment will not justify the SPS Certificate for these products though.

We would like to suggest that cooked/steamed/prepared products that according to EU or other third country regulations do not need an SPS Certificate are also exempted for Vietnam. It should in our view be sufficient that the product is tested before import and registered with the Vietnam Food Administration.

Recommendations

- Bring the Vietnamese regulations in line with the applicable global SPS regulations;
- Delete the SPS Certificate requirement for cooked/preserved fruit and vegetables.

2.6. Health Safety Certificate

A company would like to export locally grown fruit to the EU. On this fruit a natural wax is applied to prevent dehydration of the fruit. In Vietnam currently only wax is sold which is allowed by the USA, but not approved by the EU. Therefore the company would like to import wax that is approved by the EU. Based on Circular 38/2015/TT-BTC and Circular 19/2012/TT-BYT the company needs to obtain a Certificate of Conformity in order to be able to import it. In order to get this Certificate of Conformity the company needs to prove that the wax belongs to one of the following categories: processed foods, food additives, processing aids, utensils, packaging materials or containers in direct contact with food. Wax does not belong to either of those, even though Vietnam considers it a food additive. The company needs to submit an official document, Health Safety Certificate, with stamps by the exporting country. The problem is that the country of origin does not issue such a document. If Vietnam allows import of this product it gains an opportunity to export a product that can compete with products from other fruit exporters in the world. These fruit exporters are already allowed to use this wax, and therefore their fruits are appealing to the consumers in importing countries, such as the EU. Vietnamese products have the same potential.

Recommendations

- Delete the requirement to submit a Health Safety Certificate;
- Allow import of a product that can be legally used in the EU based on documents that prove that it is allowed;
- Apply a risk-based analysis for this product based on the SPS Agreement.

² We use fresh here, but for Vietnam dried and fresh are covered.

2.7. Certificate of Origin

A company that sends in Vietnam produced products from locally grown fruits needs to submit a Certificate of Origin to the importing country. This Certificate of Origin is issued by the Chamber of Commerce after the red invoice is submitted of all suppliers. The shipment contains products made from 20 different kinds of fruit and other ingredients bought from up to 50 suppliers per ingredient (in total 850 small farmers). The first difficulty is that is that producer cannot source directly from the farmers and secondly the farmers cannot provide a red invoice. However, to obtain the Certificate of Origin, invoices from all 50 suppliers for all 20 different products need to be submitted. On top of this, the Trade & Commerce Department is currently also asking a commitment letter from each supplier to be sure their raw material is from VN as there are companies buying abroad and mix in with Vietnamese products. When the order is divided in 2 shipments the authorities require submission of all documents for both shipments. If there is another order for the same client the same process needs to be followed again. This delays the delivery of the goods. The process to obtain a Certificate of Origin is time-consuming and inefficient and hinders export because transit time for sending the products takes less time than requesting the Certificate of Origin. This means that a buyer has to wait a long time for the shipment can be cleared in the country of destination. Therefore customers will import similar products from other countries with faster clearance. We understand that checks need to be done, but another solution needs to be found.

Recommendations

- Apply the high trust procedure to provide the Certificate of Origin again once it has been issued for a certain product for a certain client so documents do not need to be submitted again;
- Enforce strictly when a company violates the requirements;
- Apply random checks to see if a company is compliant;
- Enforce regulations with regard to false documents about Vietnamese origin of products by mixing of Vietnamese raw material and foreign raw material.

2.8. Crop Protection Products

Earlier this year MARD temporarily suspended the new and renewed registration of glyphosate, an important ingredient in crop protection products. This was due to contradicting reports on safety of this ingredient. However, the government of New Zealand has confirmed that there is no health risk in using this crop protection product and the EU has renewed the license of producers. Therefore in our view registration of this product should be allowed again.

Recommendation

- Allow registration of glyphosate again.

3. Sustainable Agriculture

3.1. Fertilisers

3.1.1 Innovation

Vietnam wants to have a sustainable agricultural sector. In order to achieve this, it is important that farmers use a fertiliser having a positive impact on the produce and that does not harm the environment nor affects human health. We have already addressed some issues under the paragraph market access. Here we would like to address another issue which – if addressed – will allow a more sustainable sector. It is important for producers to interact with farmers to learn more about the best suitable fertiliser with multi-nutrition elements as this will allow producers to innovate and create new and better suitable products. This in itself is already complicated because of the permit requirements. However, once the producer has learned what the best product would be, he can only produce what is mentioned in the production license obtained. Products are listed with HS codes in the license and therefore producers cannot

innovate and make products suitable to create a sustainable sector. This means that when 2 products are imported and mixed in Vietnam, even though only the very small rate of 0.5% is added of a nutrition element, according to the legislation a new product is created which is not in the license. As a result no Certificate of Conformity will be issued. In our view this process limits the creation of a sustainable agriculture, because it is important to use products that are most suitable for a certain environment.

3.1.2 Farmers' meetings

The irresponsible use of crop protection products and fertilisers impacts food safety and quality of agricultural produce. However, companies that are willing to introduce best practices to farmers need to take various administrative hurdles to get a license to organise farmers' meetings. We would like to ask for easing this process as written under § 2.2 in our December 2015 paper.

Recommendations:

- Change the current method of licensing and issuance of Certificates of Conformity to allow tailor-made innovation.
- Ease and harmonise permit requirements to organise farmers' meetings.

3.2. Direct buy and buy-back contracts

Currently foreign companies are prohibited from buying directly from farmers even if they have provided them the materials to grow crops. This means that middle-men need to be used who buy the products from farmers. The problem is that they often do not care about quality and food safety issues, as just the price is important for them. As a result products with and without food safety issues; of good and bad quality end up being mixed with the final result having an average quality and maybe even being unsafe. We would like to suggest liberalising this under certain circumstances. For example, only if a company is willing to invest long-term in the relation with the farmer and if certain requirements are met, like for example the necessity to train the farmers, or to transfer knowledge and technology to the farmers. This will eliminate the necessity to use a middle-man and it means the farmer will have a higher income. On top on this food safety and quality will improve, so this topic could have been listed under food safety as well.

Recommendations

- Allow foreign companies – who meet certain criteria – to buy directly from farmers;
- Develop criteria, such as necessity to conclude long-term contracts, provide training, transfer of knowledge/technology, that foreign companies need to meet in order to be allowed to buy directly from farmers.

3.3. FDI

The Government would like to create a sustainable agricultural sector and increase foreign investment in (high-tech) agriculture. The sector itself also would like to attract more FDI. In the past, several projects have been put in place as high-tech agriculture seems to be the key to develop a competitive sector improving both quality and efficiency; as well as meeting the increasingly diversified consumer demand. In the introduction we already pointed out the success of precision or smart farming, and the importance of it for the development of a sustainable agricultural sector.

We are pleased with Resolutions 19/2016/NQ-NP and 35/2016/NQ-NP that in general aim to improve competitiveness and to create a favourable business environment for private businesses considered the motor of Vietnam's industrialisation and modernisation. MARD is currently reviewing the investment conditions and conditional sectors in the agricultural and a draft has been submitted reducing the conditional business lines from 99 to 32. We fully support this

review and underline the necessity of this because the number of investors in the agricultural sector is lower than in other sectors. Investing in agriculture is considered risky because of natural disasters, the changing climate, price fluctuation, small-scale farming, low mechanisation, lack of supporting services, and low quality and insufficient infrastructure facilities, and finally low return on investment. Furthermore, the land policy also limits investments for projects that need large areas of land as a balance needs to be found between what farmers need and land can be made available for investment projects. A solution might be that – as suggested by the Government – farmers and businesses cooperate together. It is also necessary to create a level-playing field and to finalise the equitisation and restructuring of State-owned enterprises in the agricultural sector as soon as possible. We understand that this review process needs to be done carefully to ensure (better) quality of products and production processes, while creating favourable conditions and reducing administrative procedures at the same time.

The draft decree on Policies promoting Foreign Investment in Agriculture was – with several amendments – was a good start to attract FDI as currently mainly Vietnamese companies are investing. We have understood though that this draft has been withdrawn and a decree will be drafted that covers both domestic and foreign companies. We support the idea to cover all in one decree achieving a level-playing field. However, it is important to create an advantageous investment climate as soon as possible. This sector is considered risky because of the changing climate, fluctuating prices, small-scale farming, low mechanisation, lack of supporting services and infrastructure facilities. Foreign companies could bring the so much needed hi-tech and innovative knowledge to develop a sustainable and competitive agricultural sector.

Recommendation

- Finalise drafting of a Decree on Policies promoting Foreign Investment in Agriculture.

3.4. Production and supply chain

To keep its current position as agricultural producer and exporter Vietnam needs not only increase the scale, the quality and food safety, Vietnam needs to develop a sustainable agricultural production and supply chain which will help to increase scale, quality and food safety as a result. Various initiatives in this direction have already been developed both by the Government and businesses, for example with regard to pork and vegetables both consumed in large quantities by the Vietnamese population. Safe food sources in general are created too. This is because currently it is not clear where you can buy safe food and it is not easy to know if that what is offered as safe or organic can be trusted. More needs to be done though, so that people do not have to worry about this anymore.

When farmers cooperate with businesses, farmers can generate higher income by increased efficiency, performing market research and a better negotiation position. The Vietnamese Government should encourage farmers to join cooperatives by for example giving financial incentives. The small scale cultivation of land, the smallest in the region needs to be addressed to improve competitiveness of the sector and achieve the export goal.

Recommendations

- Encourage development of a sustainable agricultural production and supply chain;
- Encourage farmers to join cooperatives by giving financial incentives.

3.5. Technology

We hope more initiatives will be developed to innovate more and apply technology such as precision farming on the field and advanced chemical analysis techniques in the laboratories, because currently the sector relies too much on natural resources and cheap labour force. The

droughts in the Central Highlands and salt intrusions in the Mekong Delta have made it clear that something needs to be done to reverse the impact of climate change. It is not possible for Vietnam to stop the climate change on its own. However, it can support farmers to find out what seeds and fertilisers are suitable to deal with these changes. Farmers themselves need to ensure that income comes from different sources.

As we mentioned already the sector needs to be restructured and become large-scale. We are therefore pleased with the intention of the newly appointed Minister for Agriculture, His Excellency Mr Nguyen Xuan Cong as this will allow the use of technology and increase quantity and especially quality of the produce. However, the current import tax for agricultural machines is 5% and sometimes up to 20%, even for machines that are not produced in Vietnam. Further to this an importer also has to check the quality of all machines that are imported costing between VND 3,375,000-20,250,000 (USD 150-900) for the check as well as storage costs, while this is a similar procedure as followed for registration. In our view this quality check is not necessary. Further to this the use of different HS codes for similar machines (tractors³) has an impact on the import tax and VAT while in fact it is the same kind of machines. Finally, it is also problematic for farmers to obtain financing to buy the machines as they cannot be used as collateral.

For a sustainable and good quality producing agricultural sector it is also important to modernise the sector by using machines. It is currently difficult to achieve this because the import taxes, VAT and clearance costs are high and access to finance to buy agricultural machines are low.

Recommendations

- Support farmers in adapting to climate change and find suitable products to continue agricultural production in a sustainable way that provides enough income;
- Delete the import tax for agricultural machines that are not produced in Vietnam;
- Lower import tax for agricultural machines needed to modernise the sector and make it competitive;
- Cancel the requirement to check the quality for new agricultural machines when imported;
- Give the same HS code to machines (tractors) that are in fact the same;
- Facilitate finance possibilities for farmers when they buy agricultural machines needed to modernise the sector and make it sustainable.

3.6. Crop conversion

Vietnam is one of the top 5 rice exporters but mainly because of the low price. Vietnam imports corn, soy bean and animal feed. Therefore it is advisable that Vietnam shifts from rice to other – more profitable – crops. Moreover, shifting will also make that less material needs to be imported for animal feed. This will support development of local animal feed production. The Government should provide financial assistance to help farmers convert from rice to corn, and provide support in technical aspects of cultivation as well. Earlier this year the Government issued Decree 915. Based on this decree farmers will get an amount of 3 million VND per hectare to buy seed if they convert from rice to corn. However, till now no Circular providing guidelines for this Decree has been issued, thus hindering this conversion.

Recommendation

- Issue a Circular with guidelines to implement Decree 915 as soon as possible.

3.7. Seed sector reform

Development of high quality plant varieties and making them available at reasonable prices in the market would improve the agriculture value chain and greatly benefit farmers. To-date, key constraints of the seed sector are the absence of a strong legal framework to control

³ Tractor can be translated with máy kéo and máy cày in Vietnamese.

seed/seedling quality, unduly long registration periods for strategic crops including cereal and industrial crops such as rice, maize, coffee, etc. In addition to this there is a lack of incentives and business opportunities for the private sector such as support to improve seed quality, and research and development. The current seed sector environment also places unnecessary burdens on stakeholders. According to the World Bank's Report on Enabling the Business of Agriculture 2016 the registration of rice varieties in Vietnam takes 901 days and costs USD 8,050. This is one of the longest period and most expensive procedures among 40 countries covered in this report. Further to this the seed sector is also plagued by the proliferation of low quality seeds and a lack of confidence in branding. This all seriously undermines farmers' trust and willingness to pay for quality seed of high value varieties.

Over the past several years, many policy dialogues, consultation workshop have been conducted between the Government and key-stakeholders. Major burdens and weaknesses of the legal framework were clearly defined. As a result, the Government has put a lot of efforts in improving the legal system including revision of Decision 95 and the Seed Ordinance with the intention to bring it into effect by the end of 2016. However, till now none of these efforts have materialised into an acceptable Seed Ordinance due to changes in Government's plan. Only recently the Government and National Assembly decided not to work on the Ordinance but to develop a Seed Law. While we believe it is essential to draft a Seed Law to regulate the seed sector in the long term, it is expected that the law making process will take too much time. In the meantime the issues described before will remain unsolved for some more years.

Recommendations

- Develop an immediate solution to rapidly and effectively address registration and quality issues by revising existing regulations on seed licensing, certification and control;
- Consult the private sector when drafting the Seed Law.