

# Plant Quarantine for Exporting Agriculture Products from Vietnam – Comparison with Correlative EU Regulations

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**Abstract:** When Vietnam exports agricultural products to many markets around the world, they are often either returned or destroyed because they do not meet the importing country's plant quarantine regulations. This article examines the provisions of Vietnamese law governing plant quarantine for agricultural products exported from Vietnam. Simultaneously, research and compare the plant quarantine regulations of the European Union (EU) in order to evaluate and recommend improvements to the regulations in question in Vietnam.

*Keywords:* agricultural products, plant quarantine, export, EU, Vietnam

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## 1. The concept of plant quarantine

The term "quarantine" is derived from the Italian phrase "quaranta giorni," which means "forty days". To prevent the plague from spreading in Europe, the Republic of Venice enacted a rule in 1403 requiring people from the Levant and Egypt to be quarantined in a hospital for 40 days for monitoring disease[1]. FAO defines phytosanitary activities as "all activities aimed at preventing the introduction or spread of quarantine pests or ensuring their official control"[2].

Plant quarantine, according to Vietnam's regulations in Clause 3, Article 3 of the Law on Plant Protection and Quarantine 2013 (amended and supplemented in 2018), is an activity to prevent, detect, and control plant epidemics and controlled objects, as well as strange, harmful organisms. A harmful organism with the potential to cause serious damage to plants, which has not yet existed or is present but has a limited distribution in Vietnam, is the subject of plant quarantine[3]. Plant quarantine shall be carried out for objects subject to plant quarantine for import, export, transit, and domestic plant quarantine in accordance with the provisions of the Law on Plant Protection and Quarantine, unless otherwise specified, with the exception of plant quarantine in accordance with the Minister of Agriculture and Rural Development's regulations[4]. The Minister of Agriculture and Rural Development will issue the following lists based on the specific situation:

- (i) A list of plant quarantined objects;
- (ii) List of objects subject to plant quarantine and pest risk assessment before being imported into Vietnam;
- (iii) List of plant quarantine objects;

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(iv) A list of the objects that must be controlled.

The phytosanitary measures currently in use by countries around the world can be classified into five categories[5]:

*First*, prevent the introduction of pests and weeds from other countries (international quarantine).

*Second*, measures to prevent pests, diseases, and weeds from spreading from one region of a country to another (domestic quarantine).

*Third*, farmers must implement measures to effectively control and prevent disease damage (farmer quarantine).

*Fourth*, measures to prevent pesticide adulteration and mislabeling, as well as determining the maximum allowable residue levels in food for each pesticide (Food quarantine).

*Fifth*, measures to control people who participate in pest control activities and use hazardous pesticides (Quarantine for pest control operations).

*Thus*, Plant Quarantine is defined in the broadest sense as measures implemented by a government agency to prevent the entry or spread of pests, weeds, and pathogens harmful to agriculture or the environment as a result of the movement of crops, planting materials, plant products, soil, living organisms, and so on from one country or region to another[6]. Plant quarantine for exported agricultural products can be defined as measures used to control and prevent pests and diseases from spreading on agricultural products during transportation and distribution to foreign markets. Phytosanitary measures are among the sanitary and epidemiological measures prescribed in the SPS Agreement to reduce the spread of pests and diseases on a large scale in order to protect consumers' health and animals, as well as the environment in the importing country. Phytosanitary measures are typically implemented in the exporting country, but in some cases, both the exporting and importing countries may be involved[7].

### **2. The role of regulations governing on plant quarantine for agricultural products**

The following roles are played by the legal provisions on plant quarantine for goods in general and agricultural products for export in particular:

*To begin*, phytosanitary measures are taken to protect human health based on consumer protection theory. Phytosanitary measures protect public health by lowering the risk of foodborne disease transmission; they protect consumers from unsanitary, dirty, mislabeled, or adulterated food; and they contribute to economic development by maintaining consumer trust in the food system and providing a solid legal foundation for domestic and international food trade[8].

*Second*, from the standpoint of state administration. Plant quarantine is considered a post-inspection stage to re-check compliance with legal regulations and scientific recommendations while using pesticides to re-evaluate the suitability and effectiveness of plant quarantine regulations on pesticide management and use while ensuring the effectiveness and safety of people who directly use the drugs, food safety, minimizing environmental pollution, and protecting the ecological system, serving the sustainability. Furthermore, the enforcement of phytosanitary regulations demonstrates the exporting country's responsibility for the safety of human, animal, and plant health, the environment, and the food security of other countries around the world.

*The third point to consider is the economic significance*. If the plant quarantine is not strictly enforced, it will result in significant economic losses. As a result, if a shipment of goods is inspected and chemical, physical, and biological hazards are detected early on[9], appropriate treatment measures can be applied promptly to retain the consignment and prevent damage during storage, transportation, or subsequent use. If both the exporting enterprise and the exporting country's authorities ignore the

phytosanitary issue, the consignment may be rejected or destroyed by the importing country. It would cause significant economic harm to export enterprises while also having a negative impact on the export activities of other businesses. As a result, plant quarantine protects the economic interests and reputation of exporting enterprises and countries. Furthermore, plant quarantine protects the importing country's economic interests because if these two inspection activities are not strictly implemented, it can lead to the spread of diseases to the importing country, causing serious economic damage such as infected importing citizens, having to suspend production and business activities, crops being infected with pests and diseases, infected livestock, and costly time and cost to remedy the co-infection.

### **3. Plant quarantine procedures for export and issuance of phytosanitary certificates in accordance with Vietnamese law**

The order of registration for export plant quarantine and issuing a phytosanitary certificate is specified in Article 33 of the Law on Plant Protection and Quarantine 2013, and detailed instructions are specified in Articles 9 and 10 of the Minister of Agriculture and Rural Development's Circular No. 33/2014/TT-BNNPTNT dated October 30, 2014, stipulating the order and procedures for plant quarantine for import, export, transit, and post-importation of objects subject to plant quarantine [10].

*First, apply for plant quarantine.*

Before exporting plant quarantined objects, organizations and individuals (object owners) must register and submit a single set of quarantine registration dossiers (usually 1-2 days before shipment). The certificate of plant quarantine registration for export is prepared in accordance with Appendix IV of Circular 33/2014/TT-BNNPTNT, and can be submitted directly to the nearest Plant Protection Sub-Department or through PQS (Plants Quarantine System) software to declare phytosanitary procedures [11].

*The second step is to receive, check records, and inspect objects.*

The plant quarantine agency is in charge of receiving and immediately verifying the validity of the dossier. Based on the results of the dossier inspection, the plant quarantine agency shall immediately decide the location and arrange for officials to inspect the batch of objects in the following order:

- (i) Initial inspection. External inspection of the batch of objects, packaging, and mode of transportation; crevices, crevices, and places where pests can hide; collection of flying, crawling, or clinging insects outside the batch of objects.
- (ii) Double-check the details. Inspect the inside of the consignment and collect samples in accordance with QCVN 01-141: 2013/BNNPTNT. National technical regulation on sampling methods for plant quarantine; collection of symptomatic objects and harmful organisms; analysis and assessment of collected samples of objects and harmful organisms

*Third, a phytosanitary certificate should be issued.*

Within 24 hours of the start of the plant quarantine of objects that meet the phytosanitary requirements of the importing country, the plant quarantine agency shall issue a Phytosanitary Certificate (in the form specified in Appendix V issued in conjunction with Circular 33/2014/TT-BNNPTNT) to the batch of objects. If it lasts longer than 24 hours due to professional and technical requirements, the plant quarantine agency must notify or respond in writing to the owner of the objects subject to plant quarantine, clearly stating the reason. If it is discovered that a batch of objects does not meet the phytosanitary requirements of the importing country, the plant quarantine agency must refuse to issue a phytosanitary certificate and notify the object owner.

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As a result, before exporting goods of plant origin in general, and agricultural products in particular, two procedures must be followed:

*First and foremost*, there is the food safety inspection procedure. The following conditions must be met for exported goods to be granted a Notice of Satisfaction of Food Safety Conditions: (i) meet Vietnam's food safety assurance conditions; (ii) follow the importing country's food safety regulations under a contract or an international agreement, an international agreement on mutual recognition of the results of the assessment of conformity with the importing country's country or territory.

*Second*, institute plant quarantine. The phytosanitary regulations emphasize that the export consignment must meet the phytosanitary requirements of the importing country.

Enterprises exporting agricultural products must follow both of the preceding procedures in order to be eligible for customs clearance. One thing to keep in mind here is that the food safety inspection procedures for goods of plant origin, as well as the phytosanitary procedures before export, are handled by the Sub-Department of Food Protection at the nearest location of the exporting enterprise, and the food safety inspection dossier almost entirely covers the phytosanitary procedures (checking for both physical, biological and chemical risks). As a result, the author believes that keeping these procedures separate is unnecessary and that they should be combined into a single procedure: food safety inspection and phytosanitary inspection. As a result, the exporting enterprise (object owner) will only submit one set of "Registration for food safety inspection and plant quarantine" to the nearest Plant Protection Sub-Department within 02 working days of receiving the valid dossier, and the Plant Protection Sub-Department must issue a certificate of food safety and plant quarantine. The addition of the dossier and the quarantine step of the specimen to the food safety inspection process will be the foundation of the dossier and settlement process. It is also worth noting that, despite combining the food safety inspection process with plant quarantine, the authorities still issue a Phytosanitary Certificate to the enterprise. Assume the two inspection and quarantine processes described above are combined. It will aid in the reform of administrative procedures, the unification of the inspection process, and the keeping of records on food safety assurance for agricultural products, but it will also provide many benefits to exporters in terms of both cost and time for customs clearance of goods [10].

After being inspected for food safety and phytosanitary purposes by Vietnamese authorities, agricultural products must still be collected in sample order to be double-checked upon arrival at the port of the importing country. As a result, the author will analyze the EU's phytosanitary regulations in the following content to highlight the points to consider for Vietnam's agricultural exports when exporting to this market.

#### **4. Plant quarantine on agricultural imports under the EU regulations**

Phytosanitary issues in the EU were implemented in accordance with Directive 2000/29/EC prior to December 14, 2019. However, on October 26, 2016, the European Parliament and Council approved Regulation (EU) 2016/2031 on protective measures against plant pests ("Plant Health Law"). This regulation went into effect and was implemented on December 14, 2019. Regulation (EU) 2016/2031 was enacted to modernize the plant health regime, promoting more effective measures to protect the EU's territory and agricultural sector, as well as ensuring safe trade and mitigating the effects of climate change on crop health[12].

Regulation (EU) 2019/2072[13] will replace the Annexes to Directive 2000/29/EC on December 14, 2019. As a result, unless such goods are listed in Annex XI of Regulation (EU) 2019/2072, all plants (including live parts of plants) will be required to be accompanied by a phytosanitary certificate issued by the competent authority of the exporting country for entry into the EU (the phytosanitary certificate is not required). The plants, plant products, and other objects subject

to plant quarantine, exempt from plant quarantine, and not permitted to be transported into EU territory, as well as other special cases, are specified. Articles 3 to 14 of Regulation (EU) 2019/2072 are detailed in the Regulation (EU) 2019/2072 Annexes.

The importation of plants and plant products into the EU is subject to phytosanitary measures under Regulation (EU) 2016/2031, and the goods must meet the following requirements[14]:

*To begin*, a phytosanitary certificate must be issued by the exporting country's competent authorities in accordance with the provisions of Clause 1, Article 71 of Regulation (EU) 2016/2031. Furthermore, a Phytosanitary Certificate is only recognized by the EU if it fully complies with the provisions of Article 76 of Regulation (EU) 2016/2031, which requires that all three of the following conditions be met[15]: (i) Certificate of using at least one of the EU's 24 official languages; (ii) Identification of the EU importing country's plant protection authority; and (iii) The certificate is issued no later than 14 days from the date of departure from the country of export[16].

*Second*, under Article 65 to Article 70 of Regulation (EU) 2016/2031, the importation of plants, plant products, and other objects into the EU must be carried out through a "professional operator" registered to operate in an EU member state.

*Third*, perform customs inspection procedures at the designated Border Check Station at the point of importation into the EU and notify the customs authority prior to arrival at the import point. The process of taking samples of goods for food safety inspection (pesticide MRL check) will take place concurrently with the phytosanitary sampling procedure [17].

The EU has specific regulations on the use of wood for packaging goods, in addition to the mandatory quarantine for imported agricultural products. As a result, Articles 43 and 96 of Regulation (EU) 2016/2031 state that wooden packaging materials used in the carriage of goods may be imported into the EU only if all of the following conditions are met:

- (i) Wood that has been properly treated using one or more approved treatment methods and has met the applicable requirements outlined in Annex 1 of International Standard for Phytosanitary Measures No. 15, Regulation of Wood Packaging Material in International Trade (Regulation of Wood Packaging Material in International Trade - ISPM15);
- (ii) Wood has been marked with the mark specified in Annex 2 of ISPM15 to certify that it has been treated in accordance with the treatments specified in Annex 1 of the International Standard for Control Measures. Number 15 in the list of animal and plant epidemics.

When consignments of plants or plant products from third countries pose a risk to the EU's territory, Member States or the EU itself may impose temporary emergency measures. It's time to take care of the pests [18]. Furthermore, fruits and vegetables imported and distributed on the EU market must meet the marketing standards outlined in Regulations (EC) 1234/2007 and (EU) 543/2011.

Because Vietnam and the EU have a free trade agreement, Vietnam's agricultural exports are not subject to the general conditions specified in Regulations (EC) 2016/2031 and (EU) 2019/2072; however, they must still comply with the commitments on food safety control and plant quarantine in the SPS Chapter of the EVFTA. Some important SPS Chapter contents that are directly related to food safety inspection and plant quarantine are as follows[19]:

*To begin*, under Clause 7 Article 6.6 of the SPS Chapter, both Vietnam and the EU must establish and update lists of controlled pests and diseases, using scientific names, and making these lists available to the other Party for better phytosanitary and hazard control coordination.

*Second*, according to Article 6.8 of the SPS Chapter, at the request of the importing Party, the exporting Party must compile a list of enterprises that meet the importing Party's food hygiene and safety requirements in order for the importing Party to approve the list. This list includes the names of

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the businesses as well as the codes assigned to the exported goods by the state management agencies. Only companies on the approved list are permitted to export goods to the importing Party. Enterprises on the importing Party's approved list will be able to export goods that correspond to the codes granted to the importing Party's market without the need for an enterprise inspection[20]. However, if the importing Party discovers that the exporting enterprise does not comply with food hygiene and quarantine regulations, it will be removed from the list.

*Third*, the two sides' Sanitary and Epidemiological Committees will agree on details on animal and plant health measures, particularly the issues of pest-free areas, low pest levels, protected areas, and pest-free production areas, thereby promoting agricultural trade between the two sides.

*Fourth*, because Vietnam's socioeconomic conditions differ significantly from those of the EU, the EU will provide technical assistance to Vietnam to improve its response, according to Article 6.15 of the SPS Chapter. European food safety, hygiene, and phytosanitary standards. Depending on the specific product and the parties' agreement, if Vietnamese goods do not fully meet EU regulations, the EU has the following options: (i) a sufficient transition period for Vietnam South to meet EU regulations; (ii) Vietnam proposes a sanitary and phytosanitary measure for equivalence; and (iii) the EU supports Vietnam with other technical measures.

*Thus*, in order for an enterprise to export agricultural products to the EU market, the following conditions must be met: (i) the enterprise named in the approved list is eligible to export to the EU with the exported goods registration; (ii) the goods must be issued with a Phytosanitary Certificate by the Plant Protection Department and a Notice of Satisfaction on Food Safety; and (iii) the growing area must be registered and monitored for production and processing in accordance with EU standards. Furthermore, because Vietnam benefits from preferential tariffs and export quotas under the EVFTA, Vietnamese agricultural products must also meet the conditions of origin (Certificate of origin or self-recognition)[21].

### **5. Shortcomings in Vietnam's legal regulations governing plant quarantine exports and recommendations**

By studying current Vietnamese legal regulations and comparing them to corresponding European Union regulations, the author believes that the regulations on phytosanitary export in Vietnam have the following flaws [10]:

*First*, the Ministry of Finance has currently only issued a fee schedule for quarantine and plant protection activities in the agricultural sector, based on the quantity or weight of the consignment, without specifying the amount "travel costs", meals, lodging, and working-trip expenses for officials directly performing sampling and inspecting objects"[22]; Specific remuneration will be negotiated between the enterprise and the quarantine officer, which may result in negative situations during specimen collection and quarantine. As a result, the standard framework of quarantine costs related to "travel, accommodation, and business trip expenses for staff directly carrying out sampling and checking objects" must be supplemented. Furthermore, the provisions of the Plant Protection and Quarantine Law of 2013 (amended and supplemented in 2018) and relevant implementing documents do not specify the responsibilities of the plant quarantine agency in the event that this agency does not follow the correct procedure for collecting and inspecting samples of export consignments, resulting in the export consignment being granted a Phytosanitary Certificate but being discovered by the importing country to be contaminated. Failure to ensure disease prevention may necessitate measures such as destruction, return, or other treatment, causing damage and incurring additional costs for exporters. Although the 2017 Law on State Compensation Liability specifies cadres' and civil servants' responsibilities while performing their duties, there are acts of non-compliance with the law that cause

damage to organizations, and individuals must be held accountable for compensation; however, the contents of the 2017 Law on State Compensation Liability are still quite general, lacking in guiding documents and falling within the scope of the State's compensation liability in there are Furthermore, the determination of damage to be compensated from Article 22 to Article 28 of the State Law on Compensation Liability in 2017 does not provide for compensation for damage if a law enforcer fails to perform their responsibilities strictly and causes harm to the person on duty [23]. As a result, in addition to supplementing regulations on remuneration for plant quarantine, it is also necessary to supplement regulations on handling the responsibilities of the plant quarantine agency in the event that the export consignment is destroyed, returned, or handled by other measures caused by plant quarantine that are not regulated, causing damage to the exporting enterprise.

*Second*, the requirement that goods comply with domestic law as well as export contracts or regulations of the importing country reveals flaws and leaves no room for error. Typically, if the case of using Glyphosate to treat chrysanthemum and carnation flowers exported to Australia complies with Vietnam's regulations, the authorities will not accept it; if produced according to Australian regulations, the authorities will accept it. The possibility that Vietnam does not allow export, as well as differences in pesticide lists and MRLs between Vietnam and the US, EU, and other countries around the world, will present significant challenges for exporters when carrying out procedures for inspection and accreditation of food safety and plant quarantine. As a result, in addition to maintaining this regulation, it is necessary to refer to the EU's experience in adding to Article 41 of Vietnam's Food Safety Law in 2010, which states: "If the goods do not meet Vietnamese regulations, they may still be exported if they meet the export contract and the regulations of the importing country.

## **6. Conclusion**

The findings of the study clarified phytosanitary regulations for exported agricultural products as well as EU regulations on imported plant quarantine. Specifically:

*To begin*, before exporting agricultural products, they must submit a dossier to the nearest Plant Protection Sub-Department to ensure food safety. When exporting agricultural products and strictly complying with the agreements in the export contract and the laws of the importing country, they must also comply with the Law on Food Safety provisions with relevant Vietnamese laws, which is a very important condition stipulated by the Law on Food Safety 2010. If the goods are produced, processed, and packed in accordance with the export contract or the regulations of the importing country but do not comply with Vietnamese regulations, the export will be denied.

*Second*, the owner of the agricultural product for export must file a phytosanitary certificate application. This dossier is also forwarded to the Plant Protection Sub-department that is closest to the consignment.

*Third*, the EU requires imported agricultural products to have a phytosanitary certificate issued by the exporting country's competent authority. Vietnam currently has no agricultural production areas registered and recognized by the US Department of Agriculture, particularly for the EU market; Vietnam currently only has Lemons, Grapefruits, and Mangoes granted planting area codes to export to the EU.

To improve the effectiveness of plant quarantine for exported agricultural products, Vietnam's current legal provisions must be amended and supplemented to ensure compatibility with global regulations, particularly those governing the quarantine of imported plants from developed countries.

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- Hazards in food include the following, according to the TCVN 5603:2008 Code of Practice on General Principles of Food Hygiene: (i) Physical hazards are hazards of potentially harmful foreign bodies in food. food and are not normally present in the manufacturing process, such as glass fragments, metal fragments, stones, and so on, which are hazardous to users; (ii) Chemical hazard is a hazard caused by chemical contamination at any stage of food production and processing, such as pesticides and antibiotics. A biological hazard is one that is caused by bacteria, viruses, or parasites. The most common food contamination hazards are microbial contamination hazards. TCVN 5603:2008 complies with HACCP and CAC/RCP Standard 1-1969, REV.4-2003: Hazard Analysis System and Critical Control Point.
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Vietnam has 49 approved seafood export enterprises that are eligible to export to the EU market as of September 26, 2021. The Department of Agro-Forestry-Fisheries Quality Control provides detailed information on its website: <http://nafiqad.gov.vn/danh-sach-doanh-nghiep-che-bien-thuy-san-viet-nam-du-dieu-kien-bao-dam-an-toan-thuc-pham-va-xuat-khau-va-o-cac-thi>

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