

<http://www.mutrap.org.vn/en/library/MUTRAPIII/Technical%20reports/SUPPORTING%20MOIT%20ON%20DRAFTING%20DECISION%20ON%20THE%20PROMULGATION%20OF%20REGULATIONS%20ON%20THE%20ISSUANCE%20CFS.pdf>

<http://mutrap.org.vn/index.php/en/library/reference-documents/mutrap-iii/finish/65/185>



Address: 9th Floor, Minexport Building, 28 Ba Trieu, Ha Noi, Viet Nam

Tel: 04 62702158 Fax: 04 62702138

Email: mutrap@mutrap.org.vn ; Website: www.mutrap.org.vn

Multilateral Trade Assistance Project III – EuropeAid/1263131C/SERNN

[<http://www.mutrap.org.vn/en/default.aspx>]

REPORT

ACTIVITY CODE: CB-3

**SUPPORTING MOIT ON DRAFTING A PRIME MINISTER'S
DECISION ON THE PROMULGATION OF REGULATIONS ON THE
ISSUANCE OF CERTIFICATE OF FREE SALE (CFS)**

Version: Final report

Ha Noi, 30/10/2009

Prepared by: Mr. James John Lenaghan, MUTRAP III Expert

Mr. Jim Sutton, MUTRAP III Expert

This document has been prepared with the assistance of the European Union. The views expressed herein are those of the authors and therefore in no way reflect the official opinion of the European Union nor the Ministry of Industry and Trade

I. Executive summary

Objectives

Activity CB-3 aims at Supporting MOIT on drafting a Prime Minister's Decision on the procedures to be adopted in respect of Certificates of Free Sale (CFS) for imported and exported products. The main objective of MOIT is twofold: first, to create a legal framework for the issuance of CFS to exporters to facilitate the exportation of goods to markets requiring such certificates, and second, to create an efficient legal framework for a proper assessment of the CFS presented by importers in order to control the quality of imported goods.

Issues at Stake

CFS is often required by the authorities of a number of importing states as a requisite for importing certain type of products (e.g., pharmaceuticals, candies, consumption goods, chemical products, washing powder, food, etc.). It is in general required that the CFS must be issued by the health or other competent authorities of the exporting country. Indeed, each country should have CFS legislation both for companies exporting certain type

of products and for the importing authorities, as CFS is often an instrument for ensuring that the quality of imported products satisfies a minimum standard. Currently in Viet Nam there are no homogeneous rules on both for the issuance of CFS for exported goods and requirement of CFS for imported goods. This situation raised serious problems for some Vietnamese exporters that have been denied the access to the market of some countries as the products were not accompanied by CFS and to some foreign importers which do not properly find the appropriate guidance for requiring to their authority the issuance of CFS which are accepted by the competent authority in Vietnam.

The problems regarding the issuance of CFS for products to be exported are quite different from those affecting the regulation of CFS for imported products. While in the first case there is the need to ensure the most efficient administrative system for the prompt issuance of CFS, in the second the main worry regards the minimization of the risks that CFS could be perceived by foreign trade partners as a commercial barrier. Therefore, while the organization of an efficient system for the issuance of export-oriented CFS requires substantially the design of an appropriate flow-chart where the competencies among different agencies and ministries are clearly attributed in an exporter-oriented point of view, the regulation of CFS for imported products needs, first of all, the identification of the products which have to be accompanied by a CFS and the evaluation of the consistency of the regulation with Vietnam's WTO commitments.

Introduction: the CFS

The “Certificate of Free Sale” (in some countries even known as “Certificate of Free Trade”) is an import requirement that has never been challenged before the Dispute Settlement System of the WTO. Neither has it been the subject of any formal request of consultation or of any formal protests before the usual diplomatic channels. From a legal point of view, the certificate is a declaration issued by a competent authority of the exporting country that the products listed in the document may be legally marketed in the country of origin. **However, differently from other certificates, the effective value of the declaration provided in the CFS is questioned.**

For example, the Institute for Trade, Standard and Sustainable Development (ITSSD), referring to the ‘Certificate of Free Sale’ for food and cosmetic products issued by United States, highlighted that it “is insufficient to substantiate safety of the product. The CFS just states that the FDA (Food and Drug Administration) regulates the manufacturer, who is operating in compliance with the law, but gives no assurances about the product per se”¹

The debate on the consistency of the Certificate of Free Sale with international rules is still in an initial phase; among the very few information available about the international practice, the CFS has been mentioned in the discussion focused on trade facilitation² (the CFS is considered another burden penalizing the exporters of the targeted products). Moreover, in a report analyzing the trade barriers for EU exporters, it has been objected that, in some cases, the transshipment of a product through another country may require the issuing of two Certificates (one issued by the country of origin, the other by the country of shipment)³.

1 WTO Notifications: G/TBT/N/COL/65/Add.3 and G/SPS/N/COL/98/Add.3

[http://www.itssd.org/ITSSD%20Comments%20to%20Draft%20Amendments%20to%20Colombian%20Decree%203249%20-%20\(2-26-08\).doc](http://www.itssd.org/ITSSD%20Comments%20to%20Draft%20Amendments%20to%20Colombian%20Decree%203249%20-%20(2-26-08).doc) (pp 6, 13)