

CHAPTER 19 NUTRITION AND MILK FORMULA PRODUCTS

OVERVIEW

The EuroCham Nutritional Foods Group (NFG) is a non-profit, non-governmental representative body of world-leading nutrition companies operating in Vietnam. NFG was established to improve the nutritional well-being of the Vietnamese people and remains committed to fostering international industry best practice to cultivate a responsible and sustainable market for milk and nutritional products in Vietnam.

Our objectives include:

1. Promoting science-based nutrition knowledge to support the development of effective policies and practices on safe and good nutrition for Vietnamese people;
2. Promoting the highest food quality and global harmonisation standards;
3. Fostering robust business ethics in the dairy and nutrition sector through observation of strict and comprehensive self-regulation policies;
4. Contributing to the development of science-based regulations governing the industry;
5. Participating in open discussions with the Government and other stakeholders to facilitate broad-based industry support for stakeholder efforts to encourage breastfeeding and to improve the nutrition of the Vietnamese people; and
6. Raising awareness and capacity-building in the field of nutrition to support the public health goals of good nutrition.

Vietnam currently has around 7.5 million children, of whom around 25 per cent are shorter than average and 14.1 per cent are less weigh than their peers, according to the National Institute of Nutrition.¹ Malnutrition has been declining more slowly in the past few years, while the number of children with micro-nutrient deficiencies has remained high.² Therefore, accessibility to nutritional foods that improves nutritional status, physical development, as well as the health of Vietnamese must be ensured. Accordingly, Government policies and regulations should create favourable conditions for these products to be widely consumed.

NFG would like to raise three issues: i) the proposed Special Consumption Tax on sugar-sweetened beverages by the Ministry of Finance in the draft Law amending the Law on Special Consumption Tax; ii) good labelling according to Circular 05/2019/TT-BKHCHN of the Ministry of Science and Technology; and iii) the Letter No. 5189/TCHQ-GSQL of General Customs to apply a penalty if the labels of imported goods do not sufficiently contain mandatory information (please see below for more details). We hope that our perspectives can support the Government as it pursues strong, evidence-based public policies that are both grounded in the local Vietnamese context and international best practice, benefit the people of Vietnam and the country's economic development goals.

NFG remains hopeful that the persistent efforts of the Government to improve the business environment will yield more positive and concrete results in the coming year. NFG members are committed to working alongside the Government and relevant Ministries on reforms as Vietnam pursues sustainable development and economic integration with the world.

¹ Databank on Child nutrition situation in Vietnam (from 1999 to 2015), *National Institute of Nutrition*.

² 'Vi chất dinh dưỡng - Thực trạng và giải pháp hiện nay', [Micro-nutrients - current status and solutions], *National Institute of Nutrition*, May 25, 2016. Available at <http://viendinhduong.vn/vi/tin-tuc/vi-chat-dinh-duong-thuc-trang-va-giai-phap-hien-nay.html> last accessed on 8 December 2019.

I. PROPOSED EXCISE TAX ON SUGARY DRINKS

Relevant authorities: Ministry of Finance (MOF), Ministry of Health (MOH)

Issue description

In August and November 2017, the Ministry of Finance released the draft law amending the Law on Value Added Tax, Special Consumption Tax (SCT), Corporate Income Tax, Personal Income Tax and Natural Resource tax. This draft law is still under the Government's consideration. This draft proposes introducing a SCT of 10 per cent on "sugared drinks, except for milk products". Such a definition of drinks subject to SCT is too broad and vague, and may lead to serious difficulties during implementation.

The term "sugared drinks" may contain any drinkable liquid products containing any type of sugar, not only beverages for thirst-quenching purposes, but also medicines and nutritional food products with health benefits which need to be encouraged for use. For example:

- There are many liquid medicines containing sugar (e.g. cough syrup and others) and these products play an important role in medical treatment;
- Liquid infant formulas (in which some formulas are not made from milk but from soy protein or whey protein - used for lactose-intolerant children, or cow-allergy children - and liquid food for special medical purposes for patients). These products are categorised by the Ministry of Health as supplemented food for special dietary purposes and medical foods, not as milk;
- Dietary supplements in liquid form: These contain vitamins, minerals, amino acids, fatty acids, enzymes, probiotics and other biologically active substances to prevent the deficiency of these substances in public health; and
- Other functional foods in liquid form: These include nutritional liquid products for special dietary use for dieters, the elderly, or pregnant women, etc.

Potential gains/concerns for Vietnam

The imposition of SCT on products with health benefits will make it harder for Vietnamese people to access nutritional products. Hence, this will have a detrimental effect on realising the Government's goals of Resolution 20-NQ/TW dated 5 October, 2017 of the Party's Central Committee (Resolution 20) and the National Health Program stipulated in the Prime Minister's Decision 1092/QĐ-TTg dated 2 September, 2018 (Decision 1092).

While SCT on sugared drinks would create a new revenue stream for the Government, it would also negatively impact sales, company profits, and employment in Vietnam – all of which contribute to State taxes through value added tax, corporate and personal income taxes. Additionally, the increase in the price of milk and functional foods as the result of SCT may contribute to increased cross-border smuggling, especially given that other countries, for an example China, do not impose SCT on sugar sweetened beverages. Any increase in illicit flows of these products into Vietnam would lead to tax loss and damage to local industry.

Recommendations

In Official Letter No. 4808 / BTC-HTQT of the Ministry of Finance's response to the draft Whitebook, we would like to express our sincere appreciation to the Ministry of Finance for taking into consideration EuroCham's recommendations in the course of researching and amending the Draft Law on SCT. We look forward to receiving the updated Draft Law on SCT with amendments that excise tax will not be imposed on sugary drinks. In case Vietnam's Government considers that an excise tax on sugary drinks is necessary, NFG recommends replacing the term "sugared drinks" with "sugared thirst-quenching beverages" in the draft law amending the Law on SCT and other taxes: the term "thirst-quenching beverage" clearly communicates the products' use, making it easy for State management bodies to distinguish thirst-quenching beverages from products with different uses (such as nutritional supplements and medical foods). Vietnam has issued a National Standard on Beverage (TCVN 12828: 2019) with a very clear definition which will be convenient to apply. This replacement facilitates the implementation of the law and aligns with the requirement of specifying product uses stipulated in Circular 43/2014/TT-BYT³ on regulating the management of functional foods. Furthermore, it truthfully reflects the purpose of the SCT, which is

³ Circular 43/2014/TT-BYT dated 24 November, 2014 of Ministry of Health on regulating the management of functional foods.

to tax sugar-sweetened thirst-quenching beverages. Furthermore, we suggest excluding “milk, milk products and functional foods” from the coverage of SCT’s taxable items. These exclusions should seek to clarify tax coverage and facilitate the implementation of the tax as well as ensuring that health-related products will not be affected. “Milk, milk products and functional foods” play a critical role in achieving national goals of improving public health as per Resolution 20 and Decision 1092.

II. HARMONISING INTERNATIONAL LAW ON “GOODS LABELING”

Relevant authorities: Ministry of Science and Technology (MOST)

Issues description

Article 8 of Circular 05/2019/TT-BKHCN⁴ (Circular 05) dated 26 June, 2019 providing details for a number of articles of Decree 43/2017/ND-CP of the Government on goods labels (Decree 43) has a new requirement: “In case the label of a product indicates that the product does not contain or does not have added one or several ingredients, these ingredients should not exist in both the product and its ingredients”.

This new requirement is unsuitable because the phrase “should not exist” means the measurable level is 0. However, in nature, there is almost no substance which has a level of 0. This unsuitable requirement will lead to the situation where many food products have to revise their labels or withdraw their products from the market, despite their original labels being in-line with international practice and their products consumed widely for many years. For example, phrases like “lactose-free milk”, “no preservative fruit juices...” cannot be at zero-level as these substances always exist in nature, but at a very low level. This requirement creates an unsuitable trade barrier, and might negatively impact on trade and production for both local and imported products.

Potential gains/Concern for Vietnam

In EuroCham’s annual dialogue with the Prime Minister’s Advisory Council for Administrative Procedures Reform (ACAPR) on the 12th of December 2019 in Hanoi, NFG raised the above issue and received feedback from the Ministry of Science and Technology (MOST) that this new requirement is in line with international standards and protects consumers. NFG would like to address MOST’s statement with the following arguments:

- The international requirements of Codex stipulates the requirements for certain substances such as sugar, salt, energy, fat..., and defines the specific level for each substance (e.g. “sugar free” means <0,5g/100g; “energy-free” means <4kcal/100g, and “fat-free” means <0,5g/100g). In contrast, Circular 05 is applicable for all substances, and all levels are set as zero. This contradicts Codex stipulations and requires the support of a more scientific basis
- For necessary claims for consumer health, such as “lactose free”, “no preservatives”, etc. which are not included in Codex but which have been used in many countries: Due to Circular 05 and its unrealistic setting of zero-level, these cannot be used in labelling food products in Vietnam. These claims will, indeed, have negative impacts on Vietnamese consumers, instead of protecting consumers as MOST intended.
- For reference, if the phrase “does not exist” (zero-level) in Circular 05 was to be applied for dioxin, almost all the soil in the South of Vietnam would be considered “dioxin contaminated”, since the dioxin level detected is around 1-2 ppt. If the soil is considered “dioxin contaminated”, this could put at risk the international reputation and global sales of Vietnam’s agricultural products. For comparison, in the U.S., the standard for free-dioxin agriculture soil is 27 ppt, and in the EU it is 10 ppt.
- We sincerely appreciated the response no. 5290/SHTT-PCCS of the National Office of Intellectual Property of Vietnam (IP Vietnam) dated 6 April 2020 under the Ministry of Science and Technology’s authorisation on the draft Whitebook. However, we think that the IP Vietnam response to this issue of the NFG is not comprehensive because Codex absolutely does not require “that ingredient does not exist” for the announcement “does not contain or does not have added” as in Circular 05, but always give a specific level. The Codex Vietnam Committee, Vietnam Food Administration of Ministry of Health, Department of Standards and Quality of

⁴ Circular 05/2019/TT-BKHCN dated 26 June 2019 of the Ministry of Science and Technology providing details for a number of articles of Decree 43/2017/ND-CP of the Government on goods’ labelling.

General Department of Standards, Metrology and Quality also disagree with this article of Circular 05, which is not stated correctly as in the response of the IP Vietnam.

Recommendations

We propose amending Article 8 of Circular 05/2019/TT-BKHCN to be consistent with the standards of Codex on Labels Nutrition CAC/GL 23-1997. Specifically, we recommend:

- › Removing Clause 2, Article 8; or
- › Adding to the end of Clause 2, Article 8 the following sentence: “If the above conditions are not met, when Vietnam does not have a specific level that could be published, the regulations or recommendations of another country, or a scientific organisation should be used instead. The name of the regulation/recommendation, together with the name of the country or scientific organisation, should be indicated on the label.”

III. LABELLING OF IMPORTED GOODS FOR CUSTOMS CLEARANCE:

Relevant authorities: General Department of Customs (GDC)

Issues description

Clause 2, Article 21 of the Draft Regulation on sanctioning of administrative violations in the field of customs regulates: “Importing goods with original labels showing insufficient compulsory contents according to the provisions of the Law on goods’ labelling shall be penalized”. Furthermore, Point d.2.6, Item 1, part III of Letter 5189/TCHQ-GSQL of GDC which has just been abolished also stipulated: “If labels of imported goods do not fully show required information prescribed in clause 1 and 2 of Article 10 in the Decree No. 43/2017/ND-CP, prescribed penalties must be imposed.”

Potentials/concerns for Vietnam

This requirement is not in harmonised with Point 4, Article 9 of Decree 43/2017/ND-CP which stipulates that “For goods imported into Vietnam with original labels uncomformable with the provisions of this Decree, the importer shall make supplementary labels in accordance with the provisions of Clause 3 Article 7 and Clauses 3,4 Article 8 of this Decree before putting such goods into circulation together with their original labels”.

Currently, many products are imported into Vietnam with original labels, and GDC allows the importers to clear customs at the ports as long as they make proper supplementary labels before selling the products to market. This is fully aligned with Decree 43/2017/ND-CP. Now, according to the Draft Regulation on sanctioning of administrative violations in the field of customs, the importers will be penalised regardless of whether or not they make supplementary labels. This will create an unreasonable trade barrier, against current Vietnamese laws, and seriously impact many businesses. Although the General Department of Customs issued Official Letter No. 1512 / TCHQ-PC of March 11, 2020, repealing Point d.2.6, Clause 1, Part III of Official Letter 5189 / TCHQ-GSQL, the Draft Regulation on sanctioning of administrative violations in the field of customs has not abandoned this regulation yet.

Recommendations

GDC should remove Clause 2, Article 21 of the Draft Regulation on sanctioning of administrative violations in the field of customs.

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