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Committee on Sanitary and Phytosanitary Measures

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**COMMENTS OF VIET NAM ON THE NEW REGULATION OF THE UNITED STATES ON
MANDATORY INSPECTION OF CATFISH AND CATFISH PRODUCTS
SPS WTO COMMITTEE MEETING
GENEVA, SWITZERLAND, 16-17 MARCH 2015**

COMMUNICATION FROM VIET NAM

The following communication, received on 14 March 2016, is being circulated at the request of the Delegation of Viet Nam.

1.1. The delegation of Viet Nam hereby submits for circulation the following comments regarding the United States' new regulation on Mandatory Inspection of Fish of the Order Siluriformes and Products Derived From Such Fish (i.e., catfish and catfish products), by which regulatory oversight has been transferred from the Food and Drug Administration (FDA) to the United States Department of Agriculture's (USDA) Food Safety Inspection Service (FSIS).

1.2. The USDA Catfish Inspection Programme has been designed on the grounds to meet the food safety standards of the United States, however this is not based on a scientific justification, failing to take into account the following facts:

- Catfish is the only fish that the inspection responsibility has been transferred to USDA, while other fish and seafood remain under the jurisdiction of FDA;
- The USDA itself published a risk assessment in July 2012 establishing that the probability of food poisoning from catfish is very low. A Government Accountability Office report in 2012 has also testified in the US Congress that catfish is a "low risk food". Accordingly, there appears to be no scientific basis to justify removing the catfish inspection programme from under the FDA's regulatory system for aquatic products;
- Internationally, separate health regulations have been established for terrestrial and aquatic animals, as terrestrial animals present greater food safety risks. In placing catfish under its regime for terrestrial animals, unlike any other aquatic product, the United States has failed to establish catfish presents an increased food safety risk;
- To date there has been no scientific evidence to prove that imported and locally produced catfish bring higher food safety risk than the other seafood species that inspection responsibility has to be transferred to the USDA which manage only meat, poultry and eggs;
- In developing the new catfish inspection regulation, the United States appears not to have taken duly into consideration the existing trade in catfish and catfish products with Viet Nam and other countries. Viet Nam has exported catfish to the United States for nearly 20 years and there are no food safety problems with our fish. The implementation of the regulation in its current form is likely to significantly disrupt trade in the affected goods. The differential treatment of catfish compared to any other aquatic products under the US regulatory system is discriminatory; and
- In implementing a new measure such as the catfish inspection regulation, it is customary for developed countries to grant affected developing countries a transitional period of up to five years. However, as the new regulation now stands, the United States provides approximately eighteen months for Viet Nam to comply.

1.3. Therefore, at this important session of the SPS Committee, Viet Nam reiterates our deep concerns that the new catfish inspection regulation of the United States is likely in violation of the WTO SPS Agreement, in particular:

- a. The new catfish inspection regulation appears to be inconsistent with Article 2.2 (Basic Rights and Obligations), which requires that any sanitary or phytosanitary measure be applied only to the extent necessary to protect human, animal or plant life or health, be based on scientific principles, and not be maintained without sufficient scientific evidence;
- b. The new catfish inspection regulation also appears to be inconsistent with Articles 3.1 and 3.3 (Harmonization) of the SPS Agreement, which require that sanitary or phytosanitary measures be based on international standards, guidelines or recommendations. Scientific justification must be presented to impose any higher level of sanitary or phytosanitary protection the United States might deem appropriate for catfish and catfish products;
- c. In addition, the new catfish inspection regulation appears to be inconsistent with Articles 5.1 and 5.6 (Assessment of Risk and Determination of the Appropriate Level of Sanitary or Phytosanitary Protection), which require that sanitary or phytosanitary measures be based on a risk assessment appropriate to the circumstances and not be more trade-restrictive than required to achieve the appropriate level of protection; and
- d. Furthermore, considering Viet Nam's developing-country status, Article 10 (Special and Differential Treatment) requires that account be taken of the special needs of developing countries in the preparation and application of sanitary or phytosanitary measures, allowing for the phased introduction of new measures and longer timeframes for compliance by developing countries.

1.4. In conclusion, Viet Nam hopes the United States will be able to settle the concerns that have arisen in connection with its new regulation on mandatory inspection of catfish and catfish products. As this regulation in its present form would result in a disguised restriction on international trade in violation of the United States' obligations under the WTO agreements, Viet Nam thanks the United States for addressing the above concerns.
