



General Council
Council for Trade in Goods
**Council for Trade-Related Aspects of Intellectual
Property Rights**
Committee on Market Access
Committee on Sanitary and Phytosanitary Measures
Committee on Trade Facilitation

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**QUESTIONS FROM THE KYRGYZ REPUBLIC TO KAZAKHSTAN
REGARDING TRADE-RESTRICTIVE MEASURES BY KAZAKHSTAN**

The following communication, dated 20 November 2017, is being circulated at the request of the Delegation of the Kyrgyz Republic.

With regard to the current situation on the Kyrgyz-Kazakh border, the Kyrgyz Republic requests Kazakhstan to provide detailed and comprehensive answers to the following questions:

General questions:

1. Please explain why Kazakhstan decided to impose trade-restrictive measures on goods exported from or imported into the Kyrgyz Republic as from 10 October 2017.
2. Please explain why Kazakhstan began to impose trade-restrictive measures on goods exported from or imported into the Kyrgyz Republic specifically on 10 October 2017.
3. Please provide the legal justification, in accordance with international trade laws, for the measures imposed as of 10 October 2017.
4. Please provide the list of all normative acts and orders of governmental bodies of Kazakhstan authorizing implementation of these measures.
5. Please clarify if the measures backed by legal documents explained in Question 4 define the Kyrgyz Republic as the only country of origin of the goods subject to scrutinized control and inspection.
6. If the answer to Question 5 is "No", then please provide further details as to which other countries were subject to scrutinized control and inspection according to the documents indicated in the response to Question 4.

GATT

1. Please explain how the measures applied by Kazakhstan on goods coming from the Kyrgyz Republic comply with GATT Article I, which obliges Kazakhstan to provide to goods exported from and imported into the Kyrgyz Republic all advantages and privileges as it does to goods coming from or going to third countries.
2. Kazakhstan, as geographically the most convenient country for trade between the Kyrgyz Republic and third countries, including the Russian Federation, is committed, according to Article V of the GATT, to provide freedom of transit for goods coming from and going into the Kyrgyz Republic through its territory, and to do so with no distinction based on flag, place of origin, or any circumstances relating to the

ownership of goods and other means of transport. Please explain how the measures imposed by Kazakhstan comply with GATT Article V.

3. GATT Article X sets out that any regulations, judicial decisions, and administrative rulings made effective by any contracting party pertaining to restrictions or prohibitions on imports or exports shall be published promptly and in such a manner as to enable governments and traders to become acquainted with them. However, Kazakhstan did not inform the Kyrgyz Republic prior to 10 October 2017 about any upcoming trade-distorting measures, neither via bilateral channels, nor the WTO Secretariat, nor the mass media. Please explain how do the border restrictions applied by Kazakhstan comply with GATT Article X.
4. Paragraph 2 of GATT Article X establishes that no measure of general application taken by any contracting party imposing a new or more burdensome requirement or restriction on imports shall be enforced before such measure has been officially published. Did Kazakhstan release any official publication of their restrictions on imported goods from the Kyrgyz Republic? If yes, please provide the full list of these publications.
5. Please explain how the trade-distorting actions of Kazakhstan comply with GATT Article XI.
6. Do the restrictive actions by Kazakhstan applied to goods exported from and imported into the Kyrgyz Republic fall under subparagraphs (a), (b) and/or (c) of paragraph 2 of GATT Article XI?

Trade Facilitation Agreement

1. Kazakhstan falls under category A with regard to the following Articles of the Trade Facilitation Agreement:
 - Article 5.2, "Detention";
 - Article 7, paragraph 9, "Perishable Goods";
 - Article 8, "Border Agency Cooperation";
 - Article 11, "Freedom of Transit".Does Kazakhstan agree that, as a developing country, it must apply these substantive provisions of the TFA as of the date of the TFA's entry into force?
2. Did Kazakhstan, in accordance with Article 5.2, promptly inform the carrier or importer when it detained goods for inspection coming from or going to the Kyrgyz Republic? If yes, please provide detailed and complete information.
3. Has Kazakhstan undertaken any necessary measures to release perishable goods coming from the Kyrgyz Republic within the shortest possible time, as stipulated in Article 7.9.1, in order to prevent avoidable loss and deterioration of perishable goods. If yes, please specify.
4. Has Kazakhstan given appropriate priority to perishable goods coming from the Kyrgyz Republic, in accordance with Article 7.9.2? If yes, please specify.
5. Did Kazakhstan's border agencies dealing with the importation, exportation, and transit of goods take all necessary measures in order to cooperate and coordinate with their Kyrgyz counterparts when imposing the trade-restrictive actions at issue? If yes, please specify.
6. What were the reasons for Kazakhstan's decision to impose more burdensome border formalities, documentation requirements, and border controls, other than: (i) identification of goods; and (ii) to ensure the fulfilment of transit requirements.
7. Did Kazakhstan apply any technical regulations and conformity assessment procedures within the meaning of the Agreement on Technical Barriers to Trade on goods in transit from the Kyrgyz Republic to third countries?

8. Please explain how Kazakhstan's actions comply with Article 11 of the TFA.
9. Did Kazakhstan adopt or maintain a risk management system for customs control of goods coming from and going to the Kyrgyz Republic, as set out in Article 7.4.1? If yes, please provide detailed and complete information explaining the system in place.
10. Did Kazakhstan design and apply a risk management policy in such a way as to avoid arbitrary or unjustifiable discrimination, or a disguised restriction on goods coming from and going to the Kyrgyz Republic, as set out in Article 7.4.2? If yes, please explain how.
11. Did Kazakhstan take any actions to concentrate its customs controls and, to the extent possible, other relevant border controls on high risk consignments and to expedite the release of low risk consignments? If yes, which goods were selected for inspection? Please give examples of goods considered high and goods considered low risk.
12. Did Kazakhstan select, on a random basis, any consignments for such controls as part of its risk management strategy? If yes, which goods were selected for inspection?

Agreement on the Application of Sanitary and Phytosanitary Measures

In accordance with Article 5, paragraph 8, of the SPS Agreement, the Kyrgyz Republic requests Kazakhstan to provide full and detailed information regarding its implementation of SPS measures, as follows:

1. Please explain how the trade-restrictive actions by Kazakhstan on goods coming from the Kyrgyz Republic comply with the main goal of the WTO SPS Agreement as set out in its preamble, which stipulates that no Member shall be prevented from adopting or enforcing measures necessary to protect human, animal or plant life or health, subject to the requirement that these measures not be applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Members where the same conditions prevail or be a disguised restriction on international trade. Please provide a comprehensive explanation.
2. Are Kazakhstan's sanitary and phytosanitary measures on goods coming from the Kyrgyz Republic applied only to the extent necessary to protect human, animal or plant life or health as set out in Article 2 of the SPS Agreement?
3. Are Kazakhstan's sanitary and phytosanitary measures based on scientific principles, in accordance with Article 2 of the SPS Agreement?
4. If yes, is there sufficient scientific evidence to justify such massive inspection? Please provide comprehensive information and all relevant scientific findings.
5. As set out in Article 3 of the SPS Agreement, and in order to harmonize sanitary and phytosanitary measures, does Kazakhstan base its sanitary and phytosanitary measures on goods coming from Kyrgyzstan on international standards, guidelines, and recommendations?
6. If yes, please specify which international standards, guidelines, and recommendations?
7. If no, then is there any scientific justification for Kazakhstan applying higher sanitary and phytosanitary measures? Please specify.
8. In case of scientific evidence, can Kazakhstan ensure, in conformity with Article 5, paragraph 2, of the SPS Agreement, that their inspection, sampling, and testing methods, as well as all other SPS measures taken in relation to goods coming from the Kyrgyz Republic, are relevant to any scientific evidence?

9. Did Kazakhstan ensure that their SPS measures were based on an assessment, in accordance with Article 5, paragraph 1, of the SPS Agreement, of the risks to human, animal or plant life or health, taking into account risk assessment techniques developed by the relevant international organizations? If yes, please provide full information for the assessments carried out.
10. How do Kazakhstan's actions comply with Article 5, paragraph 4 of the SPS Agreement, which sets out that Members must take into account, when determining the appropriate level of SPS protection, the objective of minimizing any possible negative trade effects?
11. Has Kazakhstan taken into consideration, when imposing SPS measures on goods coming from the Kyrgyz Republic, the norms envisaged in Article 5, paragraphs 5 and 6, of the SPS Agreement, which set out that Members shall avoid arbitrary or unjustifiable distinctions in the levels considered to be appropriate in different situations, if such distinctions result in discrimination or a disguised restriction on international trade? If yes, please provide a full and detailed explanation.
12. If Kazakhstan has applied the SPS measures based on insufficient scientific evidence, pursuant to paragraph 7 of Article 5 of the SPS Agreement, can Kazakhstan provide any pertinent information, including from any relevant international organization?
13. Please explain how Kazakhstan's actions comply with Article 7 and Annex B of the SPS Agreement, on transparency norms, which set out that Members must notify any changes made to their SPS measures?
14. Were any actions taken by Kazakhstan, in accordance with Annex B of the SPS Agreement, to comply with its notification commitments on a bilateral basis and within the WTO system?

TRIPS

1. Explain how the trade-restrictive actions taken by Kazakhstan with regard to goods coming from the Kyrgyz Republic comply with the goal of the TRIPS Agreement, set out in its preamble, which establishes that Members should ensure that the measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade.
2. Explain how the trade-restrictive actions taken by Kazakhstan with regard to goods coming from the Kyrgyz Republic comply with paragraph 1 of Article 41 of the TRIPS Agreement, which sets out that procedures to enforce intellectual property rights shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.
3. As stipulated in Article 51, does Kazakhstan ensure, prior to application of measures against goods coming from the Kyrgyz Republic that it possesses valid grounds for suspecting them of being counterfeit trademark or pirated copyright goods based on applications from any right holder, in writing, to Kazakhstan's competent authorities, administrative or judicial, requesting further suspension by customs authorities of release into free circulation of any goods at issue? If yes, please specify and provide detailed information.
4. How do Kazakhstan's measures comply with Article 63 of the TRIPS Agreement, which obliges Kazakhstan to publish or make publicly available their administrative rulings and judicial decisions, and in such a manner as to enable the Kyrgyz Republic, in this case, to become acquainted with them? Please provide full information.
5. Please provide all relevant reasons and motives to explain why inspections are carried out only on Kyrgyz cargo transport?

6. Please provide statistical data and other practical and factual evidence to support the allegation that counterfeit production crosses the Kyrgyz-Kazakh border.
