

**Working Party on the
Accession of Kazakhstan**

Original: English

**WORKING PARTY ON THE ACCESSION OF
KAZAKHSTAN TO THE WTO**

ADDITIONAL QUESTIONS AND REPLIES

Addendum

The following submission, dated 20 February 2013, is being circulated to Members of the Working Party, at the request of the Delegation of the Republic of Kazakhstan.

- Sanitary and Phytosanitary Measures

Question 1

Paragraph 5 of document JOB/ACC/30/Rev.1: We thank Kazakhstan for the verbal answer provided to our questions regarding the permanent mechanism for the development of draft legal acts on SPS measures in the customs union and looks forward to the forthcoming updates to paragraph 5.

Answer:

We revised paragraph 5 as follows:

"Developing SPS measures at the CU level involved specific technical and administrative expertise via working groups which reported to the Consultative Committee. Functions and interactions of the working groups and the Consultative Committee were defined by specific regulations; the Regulation of Working and Expert Groups on SPS and TBT approved by the Protocol No. 5 of the Coordination Committee on Technical Regulation, Application of Sanitary, Veterinary and Phytosanitary Measures of 7 December 2010 and the Regulation on Consultative Committee on Technical Regulation, Application of Sanitary, Veterinary and Phytosanitary Measures approved by the EEC Collegium Decision No. 161 of 18 September 2012. The current practice for development of draft CU legal acts on SPS measures was as follows:

- a CU Party or the EEC initiated the development of a draft CU legal act. A Party responsible for developing the draft was appointed or the EEC acted as a developer;
- a working group, including representatives of CU Party's competent authorities was established to review the draft;
- a draft document that was discussed and approved at a working group meeting, was then submitted to the Consultative Committee for publishing on the CU official website for public consultations. The period for public consultation was two months;
- after the process of public consultation, all comments and questions were discussed within the working group. A final revision of the draft document was discussed and approved by the working group and submitted to the Consultative Committee;
- the draft document was reviewed at the meeting of the Consultative Committee. In case the draft was approved, it was submitted to the Collegium for approval;
- the Collegium either adopted the CU documents which were under its competence or in other cases approved the drafts before submitting them to the Council for adoption."

Question 2

Paragraph 45 describes plans to implement a common web-interface of the Customs Union register of establishments and a consolidation of national lists of approved establishments. Can Kazakhstan please explain how this consolidation process will be carried out? Will establishments approved to export to one Customs Union member be automatically added to the consolidated list? If not, how will the consolidated list of approved establishments be developed?

Answer:

The Register of third country establishments, although consisting of three national parts, is common. When included into any of these national parts, an establishment of third country may export its goods into any CU Party. Currently, when approving importation of controlled goods (import permit), authorized bodies check all three national parts of the Register.

Question 3

Paragraph 48-60: We would like to thank Kazakhstan for the more detailed explanations of three options for adding establishments to the register included in paragraphs 48 to 60. Our interpretation of the three options is as follows:

- **A systems audit will be carried out at the request of the competent authorities of the third country;**
- **In the event that a systems audit is not the preferred option, establishments can be added to the register based on written guarantees from the competent authorities of the third country based on the criteria set forth in paragraph 60;**
- **Individual establishment inspections may be required in the event an a third country fails to meet relevant criteria referred to in paragraph 60.**

Can Kazakhstan please confirm that this is how the system currently operates in practice?

Answer:

Systems audit is a main principle of ensuring safety of imported goods subject to veterinary control (Paragraph 5 of the Regulation on Joint Inspections approved by CU Commission Decision No. 834). Systems audit is carried out at the request of the competent authorities of the third country (Paragraph 12 of the Regulation);

Pursuant to Paragraph 7 of the Regulation, if audit of foreign official system of control was not conducted or not completed, or as a result of such audit, foreign official surveillance system was not recognized as equivalent to the level of safety in accordance with the CU requirements, Parties may accept inclusion of establishment(-s) into the Register of third country establishments on the basis of (i) joint inspections or (ii) guarantees provided by the competent bodies of third countries;

Competent bodies of third countries are authorised to provide guarantees based on the criteria of Paragraph 43 of the Regulation;

Individual establishment inspections may be required in the event a third country fails to meet relevant criteria referred to in Paragraph 43 of the Regulation.

Question 4

Paragraph 121 states that norms for veterinary drugs are under review and that this work was expected to be finalised no later than December 2012. Could Kazakhstan please provide more information on the nature and purpose of this review? Is the objective to further align requirements with international standards? Is there scope for Members to contribute to this process?

Answer:

MRLs for substances mentioned in Paragraph 119 of the document JOB/ACC/30/Rev.1 were harmonized with Codex by the CU Commission Decision No. 889 of 9 December 2011.

The issue of harmonization of MRLs for nitrates and radio nuclides currently is being discussed within the working group on sanitary measures. The draft CU documents will be available on the CU web-site during public consultation period.

Microbiological standards were harmonized by the CU Commission Decision No. 889.

Question 5

Paragraph 127: We share systemic concerns raised by a number of Members with respect certain CU sanitary requirements, including MRLs for veterinary drugs, which are more restrictive than relevant international standards, guidelines or recommendations. With this in mind, we would like to underscore the importance of the commitments in

paragraph 127, including that measures not based on international standards will not be applied without providing Members the scientific justification (i.e. risk assessment).

Answer:

Sanitary norms for veterinary drugs were harmonized by the CU Commission Decision No. 889 of 9 December 2011. Currently, the results of the previous risk assessments are being revisited within the framework of the works on harmonization of MRLs for remaining veterinary drugs. The results of the risk assessment will be published on the web-sites of the national competent bodies.

The risk assessment for MRL on tetracycline, justifying the MRL adopted by the CU, carried out by the Russian Federation could be found at the following web-link <http://fcrisk.ru/node/652> under the title "Scientific justification to residual levels of antibiotics of tetracycline in food products". Kazakhstan is in the process of conducting its own risk assessment in accordance with international standards for MRLs on tetracycline.

Regarding ractopamine, it should be noted that there are still scientific discussions and disagreements within Codex Alimentarius members on ractopamine. In the light of this situation, Kazakhstan and other CU Parties apply Paragraph 7 Article 5 of SPS Agreement on provisional SPS measures.

Question 6

Paragraph 1: The Kazakh delegation explained that point 1 of CU Commission Decision 625 is no longer operational, as it refers to a CU body (the coordination committee) which has disappeared and been replaced by a new CU body (the consultative committee), and that the principle of public consultation was now included in EEC Collegium Decision 161. In this regards, we have the following questions and remarks:

EEC Collegium Decision 161 should be mentioned in paragraph 1 of the WPR SPS chapter.

Which other CU Decisions, mentioned in paragraph 1, are no longer valid?

Does Kazakhstan confirm that CUC Decision 801, which also refers to the coordination committee, is still operational?

Answer:

Kazakhstan will introduce amendments into the text as proposed.

Currently, there are no other CU Decisions that are no longer valid.

The CU Commission Decision No. 801 is not currently in force. The new Regulation on the Uniform Procedure of Carrying out Examination of Legal Acts of the Customs Union in the Sphere of Implementation of Sanitary, Veterinary and Phytosanitary Measures was approved by Collegium Decision No. 212 of November 6, 2012.

Question 7

Paragraph 15: We seek confirmation that Kazakhstan will inform WTO Members in case it is decided that EurAsEC will resume its work on Technical Regulations (TRs), via information on the Kazakh national enquiry point website, early enough to ensure that WTO Members have an opportunity to comment on draft EurAsEC TRs.

Answer:

Kazakhstan confirms that it will inform Members in case the EurAsEC will resume its work on EurAsEC technical regulations.

Question 8

Paragraph 17: Amongst the 47 TRs included in the CU first priorities, we would like to be informed of which TRs with SPS components are likely to be adopted in 2012 and for which ones the adoption is likely to be postponed to 2013.

Answer:

SPS technical regulations establishing safety requirements to specialized products, including dietetic meals and food additives were adopted by the EEC Council Decision in June and July 2012, respectively.

Four CU technical regulations with SPS components out of 47 priority CU technical regulations approved by CU Commission Decision No. 492 of 8 December 2010 has been transferred to the new Schedule for Development of Technical Regulations of the Customs Union for 2012-2013 adopted by the EEC Council Decision No. 103 of 23 November 2012. These are:

- On Safety of Meat and Meat Products;
- On Milk and Milk Products;
- On Safety of Fish and Fish Products;
- On Safety of Feed and Feed Additives.

These technical regulations will be adopted in 2013.

Question 9

Paragraph 17: We would like to be informed of which TRs with SPS components are envisaged to be included in the 2nd CU list of priorities, currently under discussion.

Answer:

The new Schedule for Development of the CU Technical Regulations for 2012-2013 adopted by the EEC Council Decision No. 103 of 23 November 2012 includes 7 TRs with SPS components:

- On Safety of Meat and Meat Products;
- On Milk and Milk Products;
- On Safety of Fish and Fish Products;
- On Safety of Feed and Feed Additives;
- On Safety of Poultry and its Products;
- On Safety of Potable Water, Bottled;
- On Safety of Products in Contact with Food.

Question 10

Paragraph 20: We are concerned that the inspection guidelines have not yet been adopted, while they had to be adopted by 22 August 2012. We request to be communicated with the draft CU documents concerning, 1) guidelines on audit based on equivalence and, 2) criteria for inspection of establishments.

Answer:

The draft inspection guideline was published for public comments on 16 November, 2012. At the Working group meeting held on 24 January 2013 a decision to prolong public consultations till 5 March, 2013 was made due to comment deadlines established in the Russian Federation's notification to the WTO. Comments that have already been received during public consultation up to now, including comments from third countries will be discussed at the CU Working group meeting in Astana on 19-21 February, 2013.

Question 11

Paragraph 28: We request clarification in the text of which legal documents, mentioned in paragraph 28, are not applicable to import into Kazakhstan. Furthermore, we would appreciate to receive an English translation of Resolution 407.

Answer:

The following documents are not applicable to import into Kazakhstan:

the following documents approved by the Government Resolution No. 407 of 28 April 2003: (1) Rules and Conditions of Compensation to Legal and Natural Persons of the Value of Removed and Destroyed Infected Animals, Products and Raw Materials of Animal Origin, which Constitute High Danger to Animal and Human Health; (2) List of Highly Contagious Animal Diseases, prevention, diagnosis and eradication of which are implemented through the budget; (3) Rules of Organization of Veterinary Control Posts at the State Border and Customs Checkpoints; (4) Rules for Compulsory Seizure and Destruction of Animals, Products and Raw Materials of Animal Origin, which Constitute High Danger to Animal and Human Health, or Mandatory Decontamination (Disinfection) and Processing Without Withdrawal Thereof; (5) List of Highly Contagious Animal Diseases, when Compulsory Seizure and Destruction of Animals, Products and Raw Materials of Animal Origin, which Constitute High Danger to Animal and Human Health are to be Held;

Government Resolution No. 1754 "On Approval of Organization of Slaughtering of Agricultural Animals Intended for Subsequent Sale" of 4 November 2009;

Government Resolution No. 2331 "On Approval of Identification of Agricultural Animals" of 31 December 2009;

Government Resolution No. 149 "On Approval of Rules of Transportation (Movement) of Objects on the Territory of the Republic of Kazakhstan" of 21 January 2012.

Kazakhstan will provide the translation of the Government Resolution No. 407.

Question 12

Paragraph 34: We ask for an update on the process of harmonisation of CU common forms of veterinary certificates and CU common veterinary requirements with OIE and Codex standards, guidelines and recommendations. The Kazakh delegations mentioned 5 blocks of amendments or draft amendments that have been or are in the process of being adopted in order to achieve this alignment. We ask that Kazakhstan identifies these 5 blocks by referring to Decision numbers of CU Decisions or dates of publication of the draft amendments on the CU website.

Answer:

All five blocks of amendments were adopted by the following decisions:

CU Commission Decisions No. 830 of 18 October 2011;
CU Commission Decisions No. 893 of 9 December 2011;
EEC Collegium Decision No. 307 of December 25, 2012;
EEC Collegium Decision No. 254 of December 4, 2012; and
EEC Collegium Decision No. 274 of December 12, 2012.

Question 13

Paragraph 36: We seek an answer from the Kazakh delegation to the Members' concern included in this paragraph.

Answer:

Kazakhstan included the following answer in paragraph 36:

The representative of Kazakhstan replied that during negotiations the CU Parties would propose attestations that followed OIE recommendations except when justified by risk assessment as provided for by the WTO SPS Agreement. The representative noted that Kazakhstan participated in negotiations as time and resources permitted, and had recently participated in negotiations and initialled a number of bilateral veterinary certificates.

Question 14

We ask for inclusion in the section on veterinary certification of the parts related to the CU in paragraphs 824 and 826 of the Working Party Report of the Russian Federation.

Answer:

Kazakhstan will introduce the relevant amendments into the text.

Question 15

Paragraph 39: This paragraph says "producers of certain imported goods were exempted from the registry requirements, such as producers of live animals". In the annex, the line for live fish foresees a registry requirement, which is not in line with paragraph 39. The annex should be aligned with paragraph 39.

Furthermore, concerning the last sentence of the paragraph, we would suggest replacing <http://www.tsouz.ru/> by "at the webpage indicated in paragraph [xxx]" (currently paragraph 45) and to delete "(Section TBD)".

Answer:

Measures applied to live fish are different from measures applied to other live animals due to the peculiarities of risks associated with life fish.

It should be noted that high risks associated with live fish are related not only to health of fish, but they are also related to the safety of its habitat (water). In addition, unlike other live animals, in case of fish, each specimen is not subject to ante-mortem and post-mortem inspection, which in turn increases the risks to human health. Moreover, listing of the establishments of third countries that import live fish, in our opinion, is in line with international practice and international standards and recommendations.

Kazakhstan will add the amendments into the text on the web-page as proposed.

Question 16

Paragraph 39: When the producers of certain products are/will be exempted from the registry requirement, do you confirm that imports of these products can take place from any exporting establishment (regardless of their previous presence in a register), based on the import permit and certification requirements as indicated in Table [xx], and without the need for a successful system's audit of the exporting country?

Answer:

Paragraph 5 of the Regulation on Joint Inspections (the CU Decision No.834) provides that systems audit is the main principle of ensuring safety of goods subject to veterinary control imported to the Customs Union territory. Thus, all countries wishing to export to the CU must undergo systems audit. If the results of audit are unfavourable or audit has not been conducted yet, trade for establishments from such countries is still be possible with the use of the other two options: (i) joint inspection of establishments by CU Parties; (ii) guarantees from competent authorities of

third countries. For countries that have undergone systems audit imports of products exempted from the registry requirement can take place from any exporting establishment.

Question 17

Paragraph 44 and Table [xx]: CU Decision 830, line 0401 reads "Milk and cream, not concentrated nor containing added sugar or other sweetening substances" while Table [xx] reads "Raw milk and cream, not concentrated and without sugar-added or other sweetening substances". The CU Decision should be brought in line with Table [xx].

Answer:

Kazakhstan has initiated the discussion of this issue at the CU level. The Russian Federation stated that they would provide justification for non-fulfilment of their commitment or support the amendments into CU Decision No. 317, in the near future. The latest discussion will take place at the CU working group meeting in Astana on 19-21 February, 2013.

Question 18

Table [xx]: When, for a certain product, certain veterinary measure(s) (i.e. register requirement, import permit requirement, and/or certificate requirement) is(are) applicable only for import into Belarus, how will it be ensured that this is indeed the case only for import into Belarus, taking into account free circulation of goods within the CU territory?

Answer:

Goods subject to veterinary control circulating within the CU are subject to veterinary inspection at the place of destination. Thus, it is the responsibility of veterinary inspectors of Belarus to check the compliance with certain requirements, such as presence of the establishments in the Register. Also, it is a responsibility of traders/cargo owners to double-check on the compliance of the goods to the CU veterinary requirements as the information on the requirements is available on the CU web-site.

Question 19

Paragraph 43: As the statement made in this paragraph is not yet true, as long as the amendment to CU Decision 830 is not in force, we suggest making this clear in the paragraph by adding "pursuant to Decision [xx]".

Answer:

Kazakhstan will add the amendments into the text as proposed.

Question 20

Paragraph 51: We support the Members concern expressed in paragraph 51. In many cases CU partners do not accept listing establishments based on exporting competent authorities' guarantees, without clear and scientifically based justifications. We request that any rejection of guarantees is clearly justified in the answer of the CU partner, and that this justification is based on scientific facts and proportionate. The answer included in paragraph 52 does not address the Members concerns.

Answer:

A decision to reject a guarantee could be based only upon unfavourable results of the analysis conducted in accordance with paragraph 43 of the Regulation on Joint Inspections.

Apparently, the delays or rejections, referred to by a Member, are related to the guarantees sent to the CU Parties after 18 October 2011 which were not accepted because of adoption of the new Regulation on Joint Inspections by the CU Commission Decision No. 384. Pursuant to the Decision No. 834 the legal basis for accepting guarantees entered into force after accession of the first CU Party to the WTO, i.e. 22 August 2012. Therefore, Kazakhstan and other CU Parties could not accept guarantees between 18 October 2011 and 22 August 2012 since there was no legal basis for accepting guarantees.

Question 21

In its answer to question 2 of JOB/ACC/30/Add1, the Delegation of Kazakhstan states "recognising the need for a more detailed mechanism of guarantees, Kazakhstan initiated within the framework of the CU the issue of developing such a mechanism. We would appreciate to be provided with the draft of this mechanism."

Answer:

Kazakhstan will provide draft amendments to Paragraphs 43 and 44 of the Regulation on Joint Inspections approved by the CU Commission Decision No. 834.

Question 22

Paragraph 57: What is the CU legal basis for the statement "all guarantees received by an authorised body of any CU Party had to be approved by the authorised bodies of other CU Parties"? We would also seek clarification of the procedure applicable for this: deadlines for the consultation of other CU Parties, action taken in case of lack of response.

Answer:

The legal basis for the requirement to receive acceptance of other CU Parties in order to include third country establishments into the Register under guarantees is contained in paragraph 7 of the Regulation of Joint Inspections, adopted by the Decision No. 834. In particular, "*if audit of foreign official system of surveillance was not conducted or not completed, or as a result of such audit, foreign official surveillance system was not recognized as equivalent to the level of safety in accordance with the CU requirements, Parties may accept inclusion of establishment(-s) into the Register of third country establishments on the basis of joint inspections or guarantees provided by the competent bodies of third countries*".

In addition, Kazakhstan initiated amendments to the Decision No.834 in order to specify the procedures for accepting guarantees. The draft amendments will be provided.

Question 23

Paragraph 57: We seek clarification on the reason why Kazakhstan added "and the OIE" at the end of the third sentence.

Answer:

The reason for the addition is that audit of the official system of veterinary control includes evaluation of veterinary service of exporting country. Chapter 3.1. "Veterinary services" of OIE Terrestrial Code contains recommendations on evaluation of veterinary services of exporting countries.

Question 24

Paragraph 58: We propose to delete the last sentence of the paragraph, which was added in the Rev1 version but does not clarify the situation, and instead we propose adding "Chapter II, point 4.n" at the beginning of the paragraph, after "Kazakhstan explained that, in this Regulation 834".

Answer:

Kazakhstan will add the amendments into the text as proposed.

Question 25

Paragraph 65: We are concerned by the Kazakh delegation's answer to question 3 in JOB/ACC/30/Add.1, as the definition of "serious systemic failure" proposed in this answer lacks proportionality. We ask for further clarifications.

Answer:

The provision on proportionality is provided in paragraph 164 of the Joint Inspections. In particular, in extraordinary cases CU Commission (now, EEC) may take a decision to suspend imports from a group of establishments or all establishments of a third country as a result of detection of a serious failure of the official system of control of a third country if corrective measures were not taken. Such temporary restrictions shall be proportionate to the risk to human, animal and plant health.

Question 26

Paragraph 75: We are concerned that pursuant to Government Resolution 132, import permits could be refused based on a single non-compliance with CU veterinary-sanitary requirements. Does Kazakhstan intend to amend Resolution 132 in order to ensure that the principle of proportionality is respected and that import permits are denied only if the non-compliance represents a scientifically substantiated risk and if the denial of the import permit is a measure that is proportionate to this risk?

Answer:

Currently, amendments to the Resolution No. 132 that would envisage principle of proportionality to the seriousness of the risk for health when the decision to refuse import permit is made are being drafted.

Question 27

**Paragraph 77: Taking into account the Kazakh delegation's answer to question 36 in JOB/ACC/30/Add1, we would suggest replacing the second sentence of this paragraph by "Furthermore, information on CU veterinary requirements was available on the CU website at the following address:
<http://tsouz.ru/db/techregulation/vetmeri/Pages/default.aspx>."**

Answer:

Kazakhstan will add the amendments into the text as proposed.

Question 28

Paragraph 78: We request confirmation that the epizootic situation of third countries is assessed according to OIE official information and relevant recommendations of the OIE Code.

Answer:

Kazakhstan's authorised body assesses epizootic situation of third countries according to OIE official information and relevant recommendations of the OIE Code, information from official websites and letters of third countries affected and from other competent bodies on the outbreaks of highly hazardous diseases (OIE listed diseases).

Question 29

We suggest inserting, in a new paragraph after paragraph 83, the explanation given by the Kazakh delegation in its answer to question 38 of JOB/ACC/30/Add1.

Answer:

Kazakhstan will insert the answer to question 38 of JOB/ACC/30/Add.1 into the text.

Question 30

Paragraph 105: We ask to clarify if CU partners may lay down in their national legislation additional sanitary safety limits compared to CU requirements, for example if the CU sets a limit for an antibiotic in meat and milk but does not mention any limit for this antibiotic in eggs, are the CU partners allowed to set national standards on eggs.

Answer:

Only sanitary safety limits set at the CU level can be applied on the territory of CU Parties. That is, CU Parties can not adopt specific MRLs or other sanitary requirements at the national level in the absence of those at the CU level.

Question 31

Paragraph 106: We ask for confirmation that the explanation given in this paragraph is also valid for inspections of establishments and consideration of guarantees given in view of establishments' listing. In other words, we request confirmation that the CU partners do not request systematic testing results for each type of exported product and in each establishment visited.

Answer:

The Regulation on Joint Inspections did not contain systematic testing requirements for each lot for all types of exported products. Paragraph 58 of the Regulation on Joint Inspections stipulated that upon arrival to establishment of third country, inspector, among others, had to make analysis on existence of official control and application of production control, such as HACCP, for the purposes of ensuring safety of the goods.

Question 32

Paragraph 116: We ask for confirmation that, pursuant to CU Decision 721, when a WTO member writes a letter notifying that an SPS requirement in force on the CU territory is stricter than an international standard, this international standard is applied unless and until the moment when the WTO member receives an answer with a risk assessment justifying the stricter SPS requirement in force on the CU territory.

Answer:

In cases where a WTO Member officially notifies a CU Party that an SPS requirement in force on the CU territory is more stringent than an international standard, the relevant international standards or parts thereof would be applied by the CU Party unless and until scientific justification of risk is provided, as stipulated in the SPS Agreement. The CU Party would reply within a reasonable period of time to the Member that either the international standard applies or provide relevant scientific justification.

Question 33

Paragraph 119, 121, 123 and 124: We would appreciate receiving an update on progress made towards harmonisation for standards mentioned in paragraph 119, 121, 123 and 124: which standards have already been harmonised and in which CU Decision? Which

harmonisation is in preparation? Have draft amendments been published on the CU website and at which date?

Answer:

MRLs for substances mentioned in paragraph 119 of the document JOB/ACC/30/Rev.1 were harmonized with Codex by the CU Commission Decision No. 889 of 9 December 2011.

Sanitary norms for veterinary drugs were harmonized by the CU Commission Decision No. 889 of 9 December 2011 as well. Currently, the results of the previous risk assessments are being revisited within the framework of the works on harmonization of MRLs for remaining veterinary drugs. The results of the risk assessment will be published on the web-sites of the national competent bodies.

The issue of harmonization of MRLs for nitrates and radio nuclides currently is being discussed within the working group on sanitary measures.

Microbiological standards were harmonized by the CU Commission Decision No. 889.

Question 34

Paragraph 125: We seek an answer from the Kazakh delegation to the Members concern expressed in paragraph 125.

Answer:

The risk assessment for MRL on tetracycline conducted by the Russian Federation could be found at the following web-link <http://fcrisk.ru/node/652> under the title "Scientific justification to residual levels of antibiotics of tetracycline in food products". Kazakhstan is in the process of conducting its own risk assessment in accordance with international standards for MRLs on tetracycline.

Question 35

We suggest that a new paragraph is inserted in the section on Risk Assessment with the explanation given by the Kazakh delegation in its answer to question 58 in JOB/ACC/30/Add1.

Answer:

Kazakhstan agrees to add the answer to question 58 in JOB/ACC/30/Add1 with modification as follows:

"A Member asked for confirmation that risk assessment is carried out prior to the introduction of a restriction on import into the CU/Kazakhstan and that Kazakhstan /CU will provide this risk assessment to the exporting country affected by the restrictions upon request. In reply the representative of Kazakhstan said that pursuant to Article 11 of the EurAsEC Agreement on Coordinated Policy in the Sphere of Technical Regulation, Sanitary, Veterinary and Phytosanitary Measures, SPS measures were developed and applied on the basis of scientific justification and risk assessment results. Pursuant to paragraph 2, Article 26-1 of the Law "On Veterinary", veterinary measures had to be based on scientific justification, objective risk assessment or international standards. The representative confirmed that risk assessment was conducted prior to implementation of introduction of restriction to imports and would provide the results of risk assessment upon request of exporting country, as provided for by the WTO Agreement."

Question 36

Paragraph 148: The end of the paragraph should be updated as it refers to CU Decision 625. Furthermore, reference to the legal basis providing for public consultation on Technical Regulations should be added, given that a number of CU Technical Regulations contain SPS measures.

Answer:

Kazakhstan will add the amendments into the text as proposed.

Question 37

Paragraph 150: We seek confirmation that comments submitted in 2011 on draft Technical Regulations with SPS components will be taken into account in the final version of the TRs.

Answer:

All comments presented to draft technical regulations by interested parties were reviewed and taken into account as appropriate during the discussions within working groups.

Question 38

Paragraph 150: We seek clarification of the procedure applicable for public consultation in accordance with EEC Collegium Decision 161: to whom should the comments be submitted and with which method of communication? According to which procedure are the comments examined, answered and taken into account?

Answer:

Comments to SPS related draft CU documents could be sent to the EEC or any CU Party.

Below are the contacts of the EEC:

Smolenskiy boulevard 3/5
119121 Moscow,
Russian Federation
tel. +7 (495) 604-40-38
fax. + 7 (495) 669-24-15
email: info@tsouz.ru

Question 39

Paragraph 151: We ask for confirmation that Kazakhstan will notify draft SPS measures as foreseen in Annex B of the WTO SPS Agreement including when these SPS measures are developed at the CU or EurAsEC level.

Answer:

Kazakhstan will notify to the WTO draft SPS measures to be applied in Kazakhstan as foreseen in Annex B of the WTO SPS Agreement including when these SPS measures are developed at the CU or EurAsEC level.

Question 40

CU Commission Decision 880 foresees that CU Decision 834 will be amended upon entry into force of the Food Safety Technical Regulation. What aspects of CU Decision 834 are intended to be changed and for which reason?

Answer:

Currently, EEC jointly with CU Parties is analyzing the technical regulation "On Safety of Food Products" and the CU Commission Decision No. 834 for the purposes of determining differences between the two documents. Upon results of the analysis and discussions, amendments to the procedure of registration of CU establishments would be made, if deemed necessary.

Question 41

Paragraph 1: We suggest that this paragraph be divided into 3 paragraphs. Please see text below:

The representative of Kazakhstan stated that the legislative basis for the regulation of the Sanitary and Phytosanitary (SPS) regime in Kazakhstan was established by the following: Eurasian Economic Community (EurAsEC) and Customs Union (CU) Agreements and EurAsEC and CU Decisions. The EurAsEC Agreement on Implementation of Coordinated Policy in the Field of Technical Regulation, Sanitary and Phytosanitary Measures of 25 January 2008 and the EurAsEC Agreement on Establishing the EurAsEC Informative System in the Field of Technical Regulation, Sanitary and Phytosanitary Measures of 12 December 2008. On the Sanitary side, the legislative basis was found in the CU Agreement on Sanitary Measures of 11 December 2009 (as last amended by Decision of the Interstate Council of EurAsEC No. 39 of 21 May 2010), Decision of the Interstate Council of the EurAsEC No. 83 of 19 May 2011 "On Entering into Force of Protocols of 21 May 2010 in the Sphere of Implementation Sanitary, Veterinary-and-Sanitary and Phytosanitary Measures" and CU Commission Decision No.299 of 28 May 2010 "On the Application of Sanitary Measures in the Customs Union" (as last amended by CU Commission Decisions No.342 of 17 August 2010, No. 455 of 18 November 2010, No. 622 of 7 April 2011, No. 828 "On Amendments to the Common List of Goods, Subject to Sanitary and Epidemiological Surveillance (Control) on the Customs Border and the Customs Territory of the Customs Union" of 18 October 2011, No. 829 "On Amendments to the Common Sanitary and Epidemiological and Hygienic Requirements for Goods, Subject to Sanitary and Epidemiological Surveillance (Control)" of 18 October 2011, No. 887 "On the Draft Protocol on Amendments to the Agreement of the Customs Union Concerning Sanitary Measures of 11 December 2009" of 9 December 2011, No. 888 "On Amendments to Regulation on the Procedure for Conduct of State Sanitary and Epidemiological Surveillance (Control) Over the Persons and Transport, Crossing the Customs Border of the Customs Union, Goods Subject to Control, Transferred through the Customs Border of the Customs Union and the Customs Territory of the Customs Union" of 9 December 2011, Decisions of the EEC Council No. 36 "On Amendments to the Section 2 of the Common List of Goods, Subject to Sanitary and Epidemiological Surveillance (Control) on the Customs Border and the Customs Territory of the Customs Union" of 15 June 2012, No. 37 "On Amendments to Regulation on the Procedure for Conduct of State Sanitary and Epidemiological Surveillance (Control) Over the Persons and Transport, Crossing the Customs Border of the Customs Union, Goods Subject to Control, Transferred Through the Customs Border of the Customs Union and on the Customs Territory of the Customs Union" of 15 June 2012, No. 64 "On Amendments to the Common List of Goods, Subject to Sanitary and Epidemiological Surveillance (Control) on the Customs Border and the Customs Territory of the Customs Union" of 20 July 2012, Decisions of the EEC Collegium No. 32 "On Amendments to the Section 2 of the Common List of Goods, Subject to Sanitary and Epidemiological Surveillance (Control) on the Customs Border and the Customs Territory of the Customs Union" of 19 April 2012, No. 33 "On Amendments to Regulation on the Procedure for Conduct of State Sanitary and Epidemiological Surveillance (Control) Over the Persons and Transport, Crossing the Customs Border of the Customs Union, Goods Subject to Control, Transferred through the Customs Border of the Customs Union and the Customs Territory of the Customs Union" of 19 April 2012, No. 34 "On Amendments to the Section 2 of the Common List of Goods, Subject to Sanitary and Epidemiological Surveillance (Control) on the Customs Border and the Customs Territory of the Customs Union" of 19 April, No. 89 "On Application of the Common Sanitary and Epidemiological and Hygienic Requirements for Goods, Subject to Sanitary and Epidemiological Surveillance (Control)" of 13 June 2012, No. 111 "On Amendments to the Common List of Goods, Subject to Sanitary and Epidemiological Surveillance (Control) on the Customs Border and the Customs Territory of the Customs Union" of 19 July 2012, No. 117 "On Amendments to the Common List of Goods, Subject to Sanitary and Epidemiological Surveillance (Control) on the Customs Border and the Customs Territory of the Customs Union" of 19 July 2012, No. 141 "On Amendments to the Decision of the Customs Union No 299 "On Application of Sanitary Measures in the Customs Union" in the Light of Entering into Force of Technical Regulations of the Customs Union"of 23 August 2012). [Make new paragraph] The veterinary framework could be found in the CU Agreement

on Veterinary and Sanitary Measures of 11 December 2009 (as last amended by the Interstate Council of EurAsEC Decision No. 39 of 21 May 2010), CU Commission Decision No. 317 of 18 June 2010 "On the Application of Veterinary-Sanitary Measures in the Customs Union" (as last amended by CU Commission Decisions Nos. 342 of 17 August 2010, 455 of 18 November 2010, 569 of 2 March 2011, 570 of 2 March 2011, 623 of 7 April 2011, 724 of 22 June 2011, 726 of 15 July 2011, 810 of 23 September 2011, 830 of 18 October 2011, 831 of 18 October 2011, 834 of 18 October 2011 and 893 of 9 December 2011), CU Commission Decision No. 607 of 7 April 2011 "On Common Forms of Veterinary Certificates on Imported Goods Subject to Veterinary Control into the Customs Union Territory" as amended by CU Commission Decision No. 832 of 18 October 2011 "On Amendments to the Forms of Common Veterinary Certificates for the Importing to the CU Customs Territory of the Controlled Goods from Third Countries" and CU Commission Decision No. 892 of 9 December 2011 "On Amendments to the Forms of Common Veterinary Certificates for the Importing to the CU Customs Territory of the Controlled Goods from Third Countries", CU Commission Decision No. 624 of 7 April 2011 "On Regulation on the Procedure of Development and Maintenance of the Register of Companies and Persons which Carry out Production, Reprocessing and (or) Storing Products Subject to Veterinary Control (Surveillance) and Imported into the territory of the Custom Union", CU Commission Decision No. 625 of 7 April 2011 "On Harmonization of CU Legal Acts in the Field of Sanitary, Veterinary and Phytosanitary Measures with International Standards" as amended by CU Commission Decision No. 722 of 22 June 2011, CU Commission Decision No. 721 of 22 June 2011 "On Application of International Standards, Recommendations, and Guidelines", CU Commission Decision No. 724 of 22 June 2011 "On Amendment of the Regulation on Common Procedure for Conduct of Veterinary Control at the Customs Border of the Customs Union and within the Customs Territory of the Customs Union", CU Commission Decision No. 726 of 15 July 2011 "On Veterinary Measures", CU Commission Decision No. 801 of 23 September 2011 "On Regulation on the Uniform Procedure of Carrying Out Examination of Legal Acts of the Customs Union in the Sphere of Implementation of Sanitary, Veterinary and Phytosanitary Measures", CU Commission Decision No. 830 of 18 October 2011 "On Amendments to the Common Veterinary (Veterinary And Sanitary) Requirements Applicable to the Goods Subject to Veterinary Control (Surveillance)" and CU Commission Decision No. 893 of 9 December 2011 "On Amendments to the Common Veterinary (Veterinary And Sanitary) Requirements Applicable to the Goods Subject to Veterinary Control (Surveillance)" and CU Commission Decision No. [xxx] of [xxxxx] 2012 "On Amendments to the Common Veterinary (Veterinary And Sanitary) Requirements Applicable to the Goods Subject to Veterinary Control (Surveillance)", CU Commission Decision No. 831 of 18 October 2011 "On Amendments to the Common List of Goods Subject to Veterinary Control (Surveillance)" and CU Commission Decision No. [xxx] of [xxxxx] 2012 "On Amendments to the Common List of Goods Subject to Veterinary Control (Surveillance)", CU Commission Decision No. 33 of 18 October 2011 "On Equivalence of Systems of Inspection of Objects of Veterinary Control (Surveillance)", CU Commission Decision No. 835 of 18 October 2011 "On Equivalence of Sanitary, Veterinary or Phytosanitary Measures and Conduct of Risk Assessment", and CU Commission Decision No. 834 of 18 October 2011 "On Regulation on Common System of Joint Inspections of Objects and Sampling Goods (Products), Subject to Veterinary Control (Surveillance)", Decision of the EEC Collegium No. 150 "On Amendments to Regulation on the Common Procedure for Conduct of Veterinary Control on the Customs Border of the Customs Union and the Customs Territory of the Customs Union" of 30 August 2012. [Make new paragraph] On the phytosanitary side, the CU Agreement on Plant Quarantine of 11 December 2009 (as last amended by the Decision of the Interstate Council of EurAsEC No. 83 of 19 May 2011) and CU Commission Decision No. 318 of 18 June 2010 "On Assurance of Plant Quarantine in the Customs Union" (as last amended by CU Commission Decision No. 528 of 28 January 2011, the Decision of the Interstate Council of EurAsEC No. 76 "On the Process for Transfer of Control from the Russian-Kazakh Border to the External border of the Customs Union" of 15 May 2011, CU Commission Decision No. 894 "On Addenda to Regulation on the Procedure for Conduct of Phytosanitary Control (Surveillance) on the Customs Border of the Customs Union, approved by CU Commission Decision No. 318 of 18 July 2010" of 9 December 2011). In addition, the following six technical regulations of the Customs Union were adopted: CU Commission Decision No. 880 "On Food Safety" of 9 December 2011, CU Commission Decision No. 881 "On Labelling of Food Products" of 9 December 2011, CU Commission

Decision No. 881 "On Products of Fruit and Vegetable Juices" of 9 December 2011, CU Commission Decision No. 883 "On Fat and Oil Products" of 9 December 2011, Commission Decision No. 874 "On Safety of Grain" of 9 December 2011, and EEC Council Decision No. 34 "On Safety of Certain Types of Specialized Products, Including Dietetic Healthy and Dietetic Prophylactic Meals" of 15 June 2012.

Answer:

Kazakhstan accepts the proposed amendments and will introduce them into the text.

Question 42

Paragraph 1: Please clarify the status of CU Commission Decisions. We note that during the October plurilateral, the representative of Kazakhstan explained that certain provisions of some CU Commission Decisions had been replaced, notably, point 1 of CU Commission Decision 625 which dealt with the public consultation mechanism for SPS and TBT measures. It was further elaborated that CU Commission Decision 801 may no longer be operable. Could Kazakhstan please provide the EEC Decision which replaced CU Commission Decision 625? Furthermore, could Kazakhstan please clarify the status of Decision 801 and notify members of any other CU Decisions which are no longer operable? Could Kazakhstan please confirm that there has been a transparency mechanism operating for SPS measures that have been developed and drafted since the formation of the EEC? We note that new EEC amendments are open for public consultation since October 9, 2012? What is a timeframe for submitting comments? We note that the Kazakh representative stated that no new SPS measures had been developed or published since May 21, however, we would consider EEC Decision 161 which replaced the transparency provision of 625 to be a SPS measure. We note that this Decision was not published in draft form and as of the October plurilateral, had not been provided to Members.

Answer:

It should be noted that the CU Commission Decision No. 625 is still in force. The only change that was introduced is revocation of the Regulation on Coordination Committee on Technical Regulation, Application of Sanitary, Veterinary and Phytosanitary Measures approved by CU Commission Decision No. 625 (Paragraph 1), which was later replaced by the Regulation on Consultative Committee on Technical Regulation, Application of Sanitary, Veterinary and Phytosanitary Measures, approved by the EEC Collegium Decision No. 161 of 18 September 2012.

The CU Commission Decision No. 801 was replaced by Regulation on the Uniform Procedure of Examination of Legal Acts of the Customs Union in the Sphere of Application of Sanitary, Veterinary and Phytosanitary Measures adopted by EEC Collegium Decision No. 212 of 6 November 2012.

The transparency mechanism for the development of SPS measures is secured by the EEC Collegium Decision No. 161 of 18 September 2012, which provides for 60 days public comments for draft SPS measures.

The EEC Collegium Decision No. 161 of 18 September 2012 does not seem to be an SPS measure within the meaning of the SPS Agreement that requires notification. Therefore this document was not published for public consultations.

Question 43

Paragraph 2: Please add reference to the EEC Council and Collegium Decisions in the first sentence so that it reads: "The representative of Kazakhstan further stated that national legislation remained in effect to the extent that it did not contradict the CU Agreements, CU Commission Decisions, and EEC Council and Collegium Decisions."

Answer:

Kazakhstan accepts the proposed amendments and will introduce them into the text.

Question 44

Paragraph 4: It is stated that the Council is responsible for adoption, introduction of amendments and addenda into the Common Lists of Goods subject to Sanitary-Epidemiological Surveillance, Veterinary and Quarantine Phytosanitary Control. The Collegium had responsibility for the rest of the issues, including the adoption and introduction of amendments and addenda into the Common Veterinary Requirements and Common Forms of Veterinary Certificates, the Common Sanitary Requirements, and the Common Phytosanitary Requirements.

We note that the Collegium introduced new amendments for public consultation to the Common Veterinary Requirements and the Common Sanitary Requirements. After the Collegium adopts final amendments, does it also have to be approved by the Council when the responsibility falls under the Collegium? Do all final Decisions have to be approved by the Council?

For example, Kazakhstan informed WTO Members during the October plurilateral that the Decision of the EEC Collegium No. 150 "On Amendments to Regulation on the Common Procedure for Conduct of Veterinary Control on the Customs Border of the Customs Union and the Customs Territory of the Customs Union" of 30 August 2012 has to be approved by the Council. What mechanisms will Kazakhstan use to inform public if the Decision is adopted or rejected?

Answer:

Not all decisions have to be approved by the Council. As indicated in Paragraph 4 of the document JOB/ACC/30/Rev.1, only following documents are subject to approval by the Council:

adoption, introduction of amendments and addenda into the Common Lists of Goods subject to Sanitary-Epidemiological Surveillance, Veterinary and Quarantine Phytosanitary Control;

adoption and introduction of amendments and addenda into the Regulation of Sanitary and Epidemiological Control, Regulation on Common Procedure for Conduct of Veterinary Control, Regulation on Common System of Joint Inspections of Objects and Sampling Goods (Products), Subject to Veterinary Control (Surveillance), and the Regulation on Common Procedure for Conduct of Quarantine Phytosanitary Control

Draft EEC Council decisions are subject to EEC Collegium clearance.

Since the competence of introduction of amendments into the Common Procedures of Veterinary Control for Conduct of Veterinary Control on the Customs Border of the Customs Union and the Customs Territory of the Customs Union falls under the competence of the Council, the amendment were first cleared by the Collegium and then passed for Council approval.

Approval or rejection of a draft EEC Council decision cleared by the EEC Collegium are indicated in the related Council decision and were subject to publication on the CU web-site.

Question 45

Paragraph 5: Please clarify the legal basis for the practice of development of draft CU legal acts on SPS measures.

Answer:

Kazakhstan proposes to add the legal basis for development of draft CU legal acts on SPS measures into Paragraph 5 of the document JOB/ACC/30/Rev.1 as follows:

"Developing SPS measures at the CU level involved specific technical and administrative expertise via working groups which reported to the Consultative Committee. Functions and interactions of the working groups and the Consultative Committee were defined by specific regulations; the Regulation of Working and Expert Groups on SPS and TBT approved by the Protocol No. 5 of the Coordination Committee on Technical Regulation, Application of Sanitary, Veterinary and Phytosanitary Measures of 7 December 2010 and the Regulation on Consultative Committee on Technical Regulation, Application of Sanitary, Veterinary and Phytosanitary Measures approved by the EEC Collegium Decision No. 161 of 18 September 2012. The current practice for development of draft CU legal acts on SPS measures was as follows:

- a CU Party or the EEC initiated the development of a draft CU legal act. A Party responsible for developing the draft was appointed or the EEC acted as a developer;
- a working group, including representatives of CU Party's competent authorities was established to review the draft;
- a draft document that was discussed and approved at a working group meeting, was then submitted to the Consultative Committee for publishing on the CU official website for public consultations. The period for public consultation was two months;
- after the process of public consultation, all comments and questions were discussed within the working group. A final revision of the draft document was discussed and approved by the working group and submitted to the Consultative Committee;
- the draft document was reviewed at the meeting of the Consultative Committee. In case the draft was approved, it was submitted to the Collegium for approval;
- the Collegium either adopted the CU documents which were under its competence or in other cases approved the drafts before submitting them to the Council for adoption.

Question 46

Paragraph 15: We appreciate the new information that Kazakhstan provided regarding development of technical regulations (TRs). We note that it states that the development and adoption of EurAsEC technical regulations has been suspended. We note that the paragraph 15 continues however to describe the overlap between CU and EurAsEC technical regulations. Furthermore, paragraph 16 describes the situation with a specific TR being drafted by a EurAsEC member that would then be applied on the Kazakh territory. We seek clarification on the status of the EurAsEC TRs. If EurAsEC TRs are no longer going to be developed, we would propose that the text be amended as follows: Delete the text in paragraph 15 beginning with line 16:

"Members of the Working Party asked for clarification as regards the overlap between the CU priority technical regulations and the EurAsEC priority technical regulations. The representative of Kazakhstan explained that a choice had been made to focus on the adoption of CU technical regulations, since the CU procedure for adoption of technical regulations was faster. These CU technical regulations would then be used as a basis to propose technical regulations covering these products at EurAsEC level. While many of the proposed technical regulations had been put on the CU website for public comments or would be placed on that website once developed, some technical regulations, such as the technical regulations for milk and milk products and grain, fat and oils, and juice had been placed only on the EurAsEC website. Some Members raised concerns regarding whether there had been a meaningful opportunity to provide comments on those technical regulations. Members of the Working Party asked for clarification of the legal provisions applicable in Kazakhstan if technical regulations with diverging provisions covering the same product were adopted at CU and at EurAsEC level. Members of the Working Party also asked whether the draft technical regulations on honey and bottled water safety, to be developed by the Kyrgyz Republic for adoption at EurAsEC level, which are not planned to be adopted at CU level, will be applicable to exports to Kazakhstan."

Furthermore, we would suggest that paragraph 16 be deleted as well. We would further propose commitment language be added after paragraph 15. "The representative of Kazakhstan confirmed that, for so long as Kazakhstan was a EurAsEC Party, if the work on EurAsEC technical regulations was resumed, Kazakhstan would ensure that its enquiry point website would provide information regarding the resumption of that work

and other developments and documents regarding EurAsEC technical regulations. The Working Party took note of this commitment."

Answer:

Kazakhstan accepts the proposed deletions and will consider the proposed draft commitment.

Question 47

Paragraph 17: Could Kazakhstan please provide an update on the status of the 47 priority TRs. We had understood that the EEC as in the process of determining an updated list of additional TRs. Could Kazakhstan please provide information on the elaboration of these TRs related to SPS matters?

Answer:

To date, 31 CU technical regulations have been adopted (of 47 CU technical regulations envisaged in the Schedule adopted by CU Commission Decision No. 492 of 8 December 2010). 8 technical regulations have entered into force in 2012. The remaining 23 technical regulations will enter into force not later than 15 February 2015: in 2013 - 13 technical regulations, in 2014 - 7 technical regulations, and in 2015 - 3 technical regulations.

No technical regulations with SPS components have entered into force in 2012. 2 technical regulations with SPS components are planned to enter into force in 2013, and 2 technical regulations - in 2014.

The Schedule for Development of Technical Regulations of the Customs Union for 2012-2013 was adopted by the EEC Council Decision No. 103 of 23 November 2012 which foresees development of 29 CU technical regulations. The Schedule, envisages development of 7 technical regulations with SPS component: 4 technical regulations which had been planned for development by the previous schedule and 3 new technical regulations with SPS components:

- On Safety of Meat and Meat Products;
- On Milk and Milk Products;
- On Safety of Fish and Fish Products;
- On Safety of Feed and Feed Additives;
- On Safety of Poultry and its Products;
- On Safety of Potable Water, Bottled;
- On Safety of Products in Contact with Food.

Question 48

Paragraph 20: We note that guidelines for conducting inspections of establishments were to have been developed and adopted by the date of Russia's membership in the WTO. During the plurilateral meeting, we had understood that there were multiple documents under development; one on conducting inspections and others pertaining to product specific establishment requirements. Could Kazakhstan please share these draft documents with Members? Could Kazakhstan please explain where these are in the adoption process? When and for how long will they be available for public consultation?

Answer:

The draft inspection guideline was published on the CU web-site for public consultation on 16 November 2012. At the Working group meeting held on 24 January 2013 the decision to prolong public consultation till 5 March 2013 was taken due to the deadlines indicated in the notification of the Russian Federation submitted to the WTO Secretariat. Comments that have already been received during public consultation up to now, including comments from third countries will be discussed at the CU Working group meeting in Astana on 19-21 February, 2013.

Question 49

Paragraph 34: We are concerned with the timing of the development of amendments to the CU common forms and veterinary requirements so that they are based on international standards. The Russian Federation undertook an obligation to harmonize the veterinary requirements by the date of its accession to the WTO. Russia became a WTO Member on August 22. As these are Customs Union requirements, we seek confirmation that the necessary amendments have been made. Furthermore, we are concerned about the scope of the amendments. We note that amendments to only a handful of chapters have been published for public consultation, and that some of the proposed amendments do not appear to reflect the OIE requirements. Furthermore, we are concerned that Kazakhstan and the CU parties appear to consider that all harmonization with international standards has now been concluded with the publication of the last proposed amendments in May 2012. What is the status of that draft amendment? From our perspective, further harmonization is necessary. Does Kazakhstan or the CU intend to make further amendments to the common veterinary requirements and forms?

Answer:

The draft amendments envisaging harmonization of CU veterinary requirements with international standards were divided into five blocks. All five blocks of amendments were adopted by the following decisions:

- CU Commission Decisions No. 830 of 18 October 2011;
- CU Commission Decisions No. 893 of 9 December 2011;
- EEC Collegium Decision No. 307 of December 25, 2012;
- EEC Collegium Decision No. 254 of December 4, 2012;
- EEC Collegium Decision No. 274 of December 12, 2012.

Question 50

Paragraph 36: We welcome the additional Members language that was added to this paragraph. However, we note that there does not appear to be an adequate response from the representative of Kazakhstan to these additional concerns. We strongly suggest that additional language be added to address these specific concerns.

Answer:

Kazakhstan proposes the following answer in Paragraph 36:

The representative of Kazakhstan replied that during negotiations the CU Parties would propose attestations that followed OIE recommendations except when justified by risk assessment as provided for by the WTO SPS Agreement. The representative noted that Kazakhstan participated in negotiations as time and resources permitted, and had recently participated in negotiations and initialled a number of bilateral veterinary certificates.

Question 51

Paragraph 41-44: We are concerned that amendments to the List of products subject to veterinary control have not been adopted yet and that no scientific basis has been provided to support including products into the List. For example, there is an establishment list requirement for live fish (HS0301). We request that Kazakhstan remove the requirement to register establishments for live fish or provide scientific justification for including this requirement. Furthermore, we appreciate that Kazakhstan has initiated amendments to the list similar to those that Russia adopted. Please provide an update on the status of those amendments. We do note however, that we have brought certain discrepancies between Kazakhstan's proposed decision and the table as agreed by the Russian Federation to the delegation of Kazakhstan's attention. For example the word "raw" is missing in line 0401. We were strongly concerned by Kazakhstan's explanation that the discrepancies would only be addressed in a separate

decision to be developed at a later date. Moreover, we are concerned that adoption of these decisions appears to be expected no earlier than February 2013.

Answer:

It should be noted that high risks associated with live fish are related not only to health of fish, but they are also related to the safety of its habitat (water). In addition, unlike other live animals, in case of fish, each specimen is not subject to ante-mortem and post-mortem inspection, which in turn increases the risks to human health. Moreover, listing of the establishments of third countries that import live fish, in our opinion, is in line with international practice and international standards and recommendations.

Kazakhstan had repeatedly initiated the discussion within the CU on the RF commitment with respect to HS 0401. The Russian Federation stated that they would provide justification for non-fulfilment of their commitment or support the amendments into CU Decision No.317, in the near future.

Question 52

Paragraph 45: In the middle of the paragraph, it states that "If a CU Party took a decision to add an establishment to its national list, the other CU Parties had to accept this decision." During the plurilateral meetings, Kazakhstan explained that this was not accurate and referenced the CU Commission Decision 834. In decision 834, we do not see explicit language that all 3 members of the CU have to agree in order for a facility to be added to the list. Please provide the legal basis for this practice. We do acknowledge that in practice it appears that all 3 CU parties have to agree and that this practice has resulted in unjustifiable delays in approving facilities. Additionally, often with no justification, a facility will be rejected by a CU Party. We have raised our strong reservations with this situation often and note that Kazakhstan has referred to amendments it has proposed on clarifying guarantees. Please provide and describe these draft amendments and the proposed mechanism for recognition of guarantees.

Answer:

In order to avoid misunderstanding Kazakhstan proposes to modify the mentioned sentence as follows:

"The addition of an establishment from any country to the national part of the List could only occur after all three CU Parties agreed on the inclusion of the establishment."

The legal basis for the requirement to have consent of other CU Parties for the inclusion of third country establishments into the Register under guarantees is contained in Paragraph 7 of the Regulation of Joint Inspections, adopted by the Decision No. 834. In particular, *"if audit of foreign official system of surveillance was not conducted or not completed, or as a result of such audit, foreign official surveillance system was not recognized as equivalent to the level of safety in accordance with the CU requirements, Parties may accept inclusion of establishment(-s) into the Register of third country establishments on the basis of joint inspections or guarantees provided by the competent bodies of third countries"*.

In addition, Kazakhstan initiated amendments to the Decision No.834 in order to specify the procedures for accepting guarantees. The draft amendments will be provided.

A decision to reject a guarantee could be based only upon unfavourable results of the analysis conducted in accordance with Paragraph 43 of the Regulation on Joint Inspections.

Apparently, the delays, referred to by a Member, are related to the guarantees sent to the CU Parties after 18 October 2011 which were not accepted because of adoption of the new Regulation on Joint Inspections by the CU Commission Decision No. 834. Pursuant to the Decision No. 834 the legal basis for accepting guarantees entered into force after accession of the first CU Party to the WTO, i.e. 22 August 2012. Therefore, Kazakhstan and other CU Parties could not accept

guarantees between 18 October 2011 and 22 August 2012 since there was no legal basis for accepting guarantees.

Question 53

Paragraph 47: In the last sentence, Kazakhstan asserts that since it plans to abolish the listing requirements for third country establishments for certain products, that the transition period was no longer required. We strongly disagree with this statement. In Kazakhstan's draft decision removing the establishment requirement for certain products, Kazakhstan has introduced a timing mechanism, linking entry into force of this decision to Kazakhstan's accession to the WTO. From our perspective, the transition should apply until at least that time.

Answer:

As noted in Paragraph 47, the transitional period was provided for continuation of international trade from the establishments producing certain products not included into the Register while such a requirement had been established as of 1 July 2010. The transitional period was valid until establishment of the Register. However, The CU Commission Decision No. 830 removed the registry requirements for certain products, including live animals, except for fish; genetic material; apicultural products; raw material of animal origin (skins, fur, feather, etc.); feed additives of animal origin; feed of plant origin, composite products which were referenced in Paragraph 11.3 of the CU Regulation "On Veterinary Checks at the CU Border and on the CU Territory." Therefore, the transitional period for these products had lapsed as of 22 August 2012, i.e. the date of entry into force of CU Commission Decision No. 830. For gelatin the transitional period provided in Paragraph 11.3 of CU regulation on Veterinary Checks at the CU border and the CU territory is still applicable, pending the entry into force of EEC Council Decision No. [xxx] of [xxxxx] stipulating removal of certain products from the List of products subject to veterinary control.

Question 54

Paragraph 58: We note that this paragraph contains the definition for CU requirements as found in CU Commission Decision 834. We note the new text that was added to the end of this paragraph from CU Commission Decision 721 and we are concerned that this language complicates the definition instead of providing clarity. We would suggest that this new language be removed and that instead of repeating Decision 721, Kazakhstan add language to clarify the CU requirements definition.

Answer:

It should be noted that pursuant the CU Decision No. 834, the CU Commission Decision No. 721 represents a part of the CU requirements definition. In other words, international standards constitute a part of CU requirements within the meaning of the Decision No. 721.

Question 55

Paragraph 68: We reiterate our concern that we have not yet been provided the drafts of the specific guidelines for inspection which are referenced. We are strongly concerned with the delay in developing and adopting these guidelines which were to have been adopted by the date of Russia's membership in the WTO. Please provide the draft guidelines.

Answer:

The draft inspection guideline was published on the CU web-site for public consultation on 16 November 2012. At the Working group meeting held on 24 January 2013 the decision was taken to prolong public consultation till 5 March 2013 due to the deadlines indicated in the notification of the Russian Federation submitted to the WTO Secretariat. Discussions of the first comments received within the public consultation during first 60 days including third countries are planned at the Working group meetings on 19-21 February 2013.

Question 56

Paragraph 74 (Import Permits): Please provide the status of the amendments to Government Resolution 132. When does Kazakhstan expect them to enter into force?

Answer:

Currently comments received on the draft amendments are under interagency review.

Question 57

Paragraph 91 (Phytosanitary): We note that amendments to CU Commission Decision 318 were recently published for public consultation. We provided specific comments and recently resubmitted the comments to the Kazakh delegation since it appears that there was a problem with coordination of comments among the CU parties. Kazakhstan explained that draft comments were being discussed by the working group with the expectation that a final draft would be published later in October. Is this timing still accurate? We want to reiterate that it appears that phytosanitary control remains for many processed products. Can Kazakhstan confirm that a pest risk assessment was conducted to determine what level of control was necessary for these products and that the control that is being applied reflects the outcome of that assessment? Can Kazakhstan confirm its willingness to share these assessments with Members and provide a copy?

Answer:

The basis of application phytosanitary control on the processed products is the detection of plant quarantine organisms past monitoring of the goods in one of the CU Parties.

The draft common list of quarantine pests and diseases had been developed and undergone public consultations in July 2012. At the moment, the draft was under discussion by CU Parties.

Question 58

In subsection (g)(i) Harmonization with International Standards and Norms, We continue to encourage Kazakhstan and the CU Parties to harmonize their SPS standards with the international standards, recommendations and guidelines. Further, we are concerned by the lack of harmonization of the sanitary requirements with the Codex standards.

We note that Kazakhstan and the CU maintain many MRLs for antibiotics and veterinary drugs which are more stringent than the international standards and we have not received risk assessments done in accordance with the international standards to justify these more stringent standards.

Most recently we have raised our concerns with recent actions taken by the CU with regard to the veterinary drug, ractopamine. These actions come after the Codex adopted an international standard after rigorous evaluation of the science. We request that the CU adopt this international standard, similarly to our request that the CU adopt other international standards for pesticides, antibiotics and other contaminants. We ask that if Kazakhstan or where relevant the CU determines that the appropriate level of protection justifies a more stringent standard, that Kazakhstan and the CU provide a scientific justification and risk assessment to support the more stringent standard.

Answer:

MRLs for substances mentioned in Paragraph 119 of the document JOB/ACC/30/Rev.1 were harmonized with Codex by the CU Commission Decision No. 889 of 9 December 2011.

Sanitary norms for veterinary drugs were harmonized by the CU Commission Decision No. 889 of 9 December 2011 as well. Currently, the results of the previous risk assessments are being

revisited within the framework of the works on harmonization of MRLs for remaining veterinary drugs. The results of the risk assessment will be published on the web-sites of the national competent bodies.

The issue of harmonization of MRLs for nitrates and radio nuclides currently is being discussed within the working group on sanitary measures.

Microbiological standards were harmonized by the CU Commission Decision No. 889.

Regarding ractopamine, it should be noted that there are still scientific discussions and disagreements within Codex Alimentarius members on ractopamine. In the light of this situation, Kazakhstan and other CU Parties apply Paragraph 7 Article 5 of SPS Agreement on provisional SPS measures.

Question 59

Paragraph 116: We strongly support this commitment and would welcome Kazakhstan's favourable consideration of this commitment. We note that CU Commission Decision 721 needs to be fully implemented and we need to see this decision work in practice. We are working on Members language to express the need for assurances from Kazakhstan reflecting the direct application of Decision 721.

Answer:

Kazakhstan considers that Decision No. 721 is applied by CU Parties, as appropriate, during negotiations on bilateral veterinary certificates and conducting systems audit and joint inspections.

Question 60

Paragraphs 148-150 (Transparency): We note that these paragraphs contain references to public consultation mechanism provided for in CU Commission Decision 625, which is no longer operative according to Kazakhstan as well as reference to CU Commission Decision 801, whose status is unclear. Could Kazakhstan please update these paragraphs to accurately reflect the status of these decisions? Could Kazakhstan please confirm that there is currently in place a public consultation mechanism for all draft EEC SPS measures?

Answer:

It should be noted that the CU Commission Decision No. 625 is still in force. The only change that was introduced is revocation of the Regulation on Coordination Committee on Technical Regulation, Application of Sanitary, Veterinary and Phytosanitary Measures approved by CU Commission Decision No. 625 (Paragraph 1), which was later replaced by the Regulation on Consultative Committee on Technical Regulation, Application of Sanitary, Veterinary and Phytosanitary Measures, approved by the EEC Collegium Decision No. 161 of 18 September 2012. The EEC Collegium Decision No. 161 provides for the public consultation mechanism for draft SPS measures developed within the CU framework.

The CU Commission Decision No. 801 was replaced by the Regulation on the Uniform Procedure of Examination of Legal Acts of the Customs Union in the Sphere of Application of Sanitary, Veterinary and Phytosanitary Measures adopted by EEC Collegium Decision No. 212 of 6 November 2012.
