

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

ADDITIONAL QUESTIONS AND REPLIES

Addendum

The following submission, dated 8 May 2013, is being circulated to Members of the Working Party, at the request of the Delegation of the Republic of Kazakhstan.

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The following comments and questions relate to the draft SPS Chapter of the Working Party Report, in document JOB/ACC/30/Rev.2

- **Sanitary and Phytosanitary Measures**

(a) Legislative Framework

Question 1

In paragraphs 1-4, we note that these paragraphs will need to be updated to reflect any new decisions and amendments taken by the EEC before the Working Party is concluded. We ask Kazakhstan to continue to provide updates for the EEC decisions.

Answer:

Paragraphs 1-4 have been updated to reflect EEC decisions and amendments.

Question 2

Paragraph 3: We suggest adding a web address for the link to the consolidated version of the CU Commission Decision No. 317 at the end of paragraph (as you have in paragraph 2 for CU Commission Decision No. 299).

Answer:

The following web address for the link to the consolidated version of the CU Commission Decision No. 317 have been added at the end of the paragraph 3: <http://www.tsouz.ru/db/techregulation/vetmeri/Pages/default.aspx>.

Question 3

Paragraph 4: We suggest adding a web address for the link to the consolidated version of the CU Commission Decision No. 319 at the end of paragraph (as you have for paragraph 2 for CU Commission Decision No. 299).

Answer:

Paragraph 4 refers to the CU Commission Decision No. 318, not No. 319. The following web address for the link to the consolidated version of the CU Commission Decision No. 318 have been added at the end of the paragraph: <http://www.tsouz.ru/db/techregulation/fitosan/Pages/default.aspx>.

Question 4

Paragraph 5: We ask to re-insert the word "quality and" after "which set" in the second line. This reflects the current content of CU Technical Regulations and is descriptive text.

Answer:

In paragraph 5 the word "quality and" was re-inserted.

(b) Competent Authorities for the Regulation of Trade in Agricultural Products

Question 5

Paragraph 9: A Member requests clarification of the EEC's role in the development of SPS measures. Could you please elaborate further on the decision-making process within the EEC, specifically regarding the time it takes from the development of a measure to the measure's adoption.

Answer:

The EEC coordinated development of CU legal acts on SPS by the CU Parties or could act as a developer of the draft SPS legal act. Moreover, the EEC experts could provide their recommendations on developed and approved SPS measures.

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 are 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 is as follows:

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

Currently, the fixed time-frame – 60 days – is established only for public consultations on SPS measures. The length of the other stages of the process of development and approval of SPS legal acts depends on the time required for reaching a consensus by all CU Parties.

Question 6

Paragraph 9: This paragraph needs to be revised to take into account the new procedure introduced by EEC Collegium Decision No. 31 of 5 March 2013.

Answer:

The paragraph has been revised in the following way:

"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. The comments were collected by the Department of the Sanitary, Phytosanitary and Veterinary Measures of the EEC;
- After the process of public consultation, all comments and questions were discussed within the working group. The Department of the Sanitary, Phytosanitary and Veterinary Measures within ten days after expiration of the public consultation period compiled a summary table of comments and answers and published it on the official CU website. 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 7

Paragraphs 7-12: Competent Authorities for the Regulation of Trade in Agriculture Products: In response to a question from a Member during 19 March 2013, plurilateral meeting on sanitary and phytosanitary (SPS) measures, Kazakhstan indicated that it is currently gathering information in order to conduct a risk assessment on ractopamine and would share progress on its website. This Member kindly requests that Kazakhstan provide a status update and advise when it expects to complete the risk assessment. Furthermore, this Member requests that Kazakhstan share the link to the website where this information can be found.

Paragraphs 13-31: Development of Technical Regulations/Mandatory Requirements on SPS: While this Member appreciates that Kazakhstan has stated that it will follow international standards, the Member remains concerned with Kazakhstan's commitment to put this into practice. Referencing paragraph 14*bis*, Kazakhstan has stated in a previous written response that it applies Article 5.7 of the WTO SPS Agreement to justify implementing the EEC prohibition on ractopamine, notwithstanding the Codex standard on ractopamine maximum residue limits, which was adopted in July 2012. The first sentence of Article 5.7 states:

[i]n cases where relevant scientific evidence is insufficient, a Member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information, including that from the relevant international organizations as well as from sanitary or phytosanitary measures applied by other Members.

This Member notes that in its July 6, 2012, announcement of the adoption of MRLs, the FAO stated that Codex had "agreed on a set of residue limits for the veterinary drug ractopamine in animal tissues" and that this "decision was made after a rigorous process of scientific assessment to ascertain that the proposed limits of residues have no impact on human health. This assessment was carried out by the Joint Expert Committee on Food Additives, which is a group of independent experts convened by the FAO and the WHO."

Given the above, does Kazakhstan consider the relevant scientific evidence (i.e. the Joint Expert Committee on Food Additives assessment) underpinning the Codex ractopamine maximum residue limits to be insufficient? If so, could Kazakhstan provide its rationale?

Answer:

Currently, ractopamine is not registered in the territory of the Customs Union. Thus, ractopamine is not included into the Register of Veterinary Drugs and Food Additives Authorised for the Use in the Territory of the Customs Union.

At the same time, it should be noted that the legitimacy of the Codex standards for ractopamine, approved in July 2012, is being challenged by many countries. In this regard, number of countries, including WTO Members, banned the use of ractopamine as food additive and established zero tolerance for its presence in meat and meat products.

The Russian Federation conducted risk assessment on ractopamine which is published on the official website of the Federal Service for Supervision of Consumer Rights Protection and Human Well-being of the Russian Federation. On the basis of this analysis, it was concluded that consumption of products with maximum residue level of ractopamine recommended by the Commission Codex Alimentarius (3 mg/kg), may result in an unacceptable additional level of risk of functional disorders and diseases of cardiovascular system (diseases characterized by high blood pressure, atherosclerotic heart disease).

Scientific institutions of Kazakhstan have analysed results of the risk assessment conducted by the Russian Federation, and agreed with its findings. In this regard, Kazakhstan has decided not to carry out separate risk assessment and rely on the data provided by the risk assessment carried out by the Russian Federation.

(c) Development of Technical Regulations/Mandatory Requirements on SPS

Question 8

Paragraph 17, Line 7 – It states that TR's development has been suspended at the EurAsEC level. We have reviewed Decision No. 575 which we had understood provided the legal basis for the suspension, however, in reviewing this decision we do not see any reference to suspension of EurAsEC TRs. Could Kazakhstan please confirm that this is the correct decision and if so, please add language to the text identifying this decision?

Answer:

Kazakhstan confirms that the EurAsEC Inter-state Council Decision No. 575 "On Elimination of Technical Barriers in Mutual Trade of EurAsEC member-States on the Basis of the Technical Regulations System of the Customs Union" served as a basis for suspension of the development of the EurAsEC technical regulations. Relevant language will be added into paragraph 17 of the SPS text.

Question 9

Paragraph 20, Line 11 – It states that the Schedule on Development of CU Technical Regulations for 2012-2013 was adopted by EEC Council Decision No. 103 of 23 November 2012. Can Kazakhstan confirm that all CU draft Technical Regulations per EEC Council Decision No. 103 will be subject to the public consultation procedure allowing for at least 60 days for third parties comments?

Answer:

All CU technical regulations listed in EEC Council Decision No. 103 will be subject to the 60 days public consultation procedure except for draft technical regulations that have been previously published for public consultations under the Schedule for Development of First Priority Technical Regulations of the Customs Union adopted by the CU Commission Decision No. 492 of 8 December 2010, namely: "On Meat and Meat Products", "On Fish and Fish Products", "On Feed and Feed Additives", "On Milk and Milk Products". These technical regulations have undergone public consultations procedure in 2011–2012 and are currently under internal approval procedures.

Question 10

Paragraph 21: We would like to propose some modifications to the paragraph:

[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's website would provide

information regarding the resumption of that work, and notify and provide draft EurAsEC SPS related technical regulations and other related documents in accordance with Annex B of the WTO SPS Agreement. ~~[and therefore] and provide the possibility to provide comments to the drafts.]] and other developments and documents regarding EurAsEC technical regulations.~~ The Working Party Members took note of these commitments.]

Answer:

The proposed commitment text has been added into paragraph 21 of the SPS Chapter.

Question 11

We ask that our comments on the draft CU Technical Regulations for meat and meat products, fish and fishery products, feed and feed additives, milk and milk products, submitted in 2011 during the process of public consultation, are answered and reflected in the final version of these texts.

Answer:

Kazakhstan is currently trying to gather all comments received in 2011 on 4 draft technical regulations. Taking into account that comments were sent and considered two years ago, when there was no requirement for publishing answers to the comments on the official CU website, this task requires considerable amount of time and work. Moreover, Kazakhstan was responsible for developing only three out of four technical regulations ("On Meat and Meat Products", "On Feed and Feed Additives" and "On Fish and Fish Products"). As soon as this work is completed, Kazakhstan will provide answers to the comments to the relevant WTO Members.

Question 12

Paragraph 19: We propose to add "notably those comments that proposed improved alignment with international standards, recommendations and guidelines" at the end of the penultimate sentence.

Answer:

The proposed text was added to paragraph 19.

Question 13

Paragraph 20: We propose to specify which TRs concern food safety in the schedule of EEC Council Decision No. 103 and to start a new paragraph after this sentence.

Answer:

The proposed changes were made in paragraph 20. The information on TRs concerning food safety stipulated in the Schedule of the EEC Council Decision No. 103 was added in the last sentence of the paragraph:

The Schedule on Development of CU Technical Regulations for 2012-2013 was adopted by EEC Council Decision No. 103 of 23 November 2012, which included the following SPS technical regulations: "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 14

Paragraph 28: We ask to insert the sentence:

"She clarified that only sanitary safety limits set at the CU level could be applied on the territory of CU Parties. This is, CU Parties could not adopt specific MRLs or other sanitary requirements at the national level in the absence of those at the CU level."

Answer:

The proposed sentence was added into paragraph 28.

(d) Trade in Goods Subject to Veterinary Control

Question 15

Could Kazakhstan inform whether a schedule for CU audits and inspections in third countries is established, according to which criteria and how it is communicated? We ask to add a new paragraph, after paragraph 80: "Some Members requested more information on the timing of the audit once the audit request was sent to a CU Party. These Members expressed concerns that this implementation of the audit system seemed lengthy and burdensome", and seek an answer.

Answer:

Audit of the official system of control of third countries was introduced in August 2012. Request for audit can be sent to one of the CU Parties. The CU Party that received the request will be responsible for coordinating audit process in this third country. To date, Kazakhstan has not received any requests from third countries to carry out an audit. On the basis of the requests received by other CU Parties, a draft Schedule of Audits and Inspections for 2013 have been prepared by the CU Parties. However, publication of the Schedule is not provided in the CU legislation. In this regard, at Kazakhstan's initiative the issue of publication of the Schedule on the official website of the EEC is currently discussed at the EEC level. The timing of audits depends on the number of requests received from third countries and the availability of financial and human resources for conducting such audits.

The proposed Members' language has been added after paragraph 80.

Question 16

We ask that our comments to the draft amendments to CU Commission Decision No. 834 on the audit, inspection and listing procedures, submitted in the process of public consultation (draft published on the CU website on 1 February 2013), are taken into account. We have expressed serious concerns about the draft amendments published. In particular we asked that paragraph 179, in the final provisions, be deleted. We asked for a more streamlined and effective procedure for listing of establishments based on written guarantees as foreseen in paragraphs 43 and 44. We are concerned by the disparity of approach between the procedure for listing establishments based on guarantees, which is very cumbersome and requires the agreement of all CU Parties, and the procedure for suspension foreseen in the draft amendment, which would allow an immediate suspension after the decision of one CU Party, valid for the entire CU territory.

Answer:

1. All comments submitted during public consultations to the draft amendments into CU Commission Decision No. 834 were considered during the EEC working group meeting on veterinary measures (held on 2-3 April 2013). The draft amendments were revised in accordance with the received comments and published on the EEC official website for another round of public consultations on 10 April 2013.

2. Draft amendments into Decision No. 834 have clarified mechanism for accepting guarantees from competent authorities of third countries (paragraphs 43-44) taking into account WTO Members' comments and proposals on time-frames for considering requests, provision of reasons for refusal in accepting the guarantee, terms and scope of the guarantee.

In particular, the draft amendments established that the competent authority of a third country shall send request to accept its guarantee on compliance of the goods subject to veterinary control produced by specific establishment (establishments) to the authorised body of a CU Party, with information required in accordance with paragraph 43-1 of the Decision attached to the request, including the list of establishments with names of produced products. Guarantee of the third country's competent authority is accepted on each group of products according to the HS Codes. The authorised body of the Party that received the request for guarantee evaluates the request based on the criteria provided in paragraph 43-1 of the Decision No. 834, and upon favourable evaluation prepares final decision and sends it to the authorised bodies of other CU Parties for approval. Time-frame for the approval by the CU Parties shall not exceed 10 working days. The authorised bodies of the Parties shall approve the final decision on accepting the guarantee in written form or shall send letter indicating the reasons for not approving the decision to the CU Party that received the request within the established time-frame. In the absence of the written reply during the established time-frame the decision is deemed to be approved.

The amendments also envisage that in case the decision is approved by the CU Parties, the authorised body of the Party that received the request shall send written notification to the competent authority of the third country on accepting the guarantee. If the initial request contained the list of third country establishments, the authorised body of the Party includes them into the Register not later than one month since the date of approval of the favourable decision on accepting the guarantee. In case of the negative decision on accepting the guarantee the authorised body of the Party prepares the conclusion that is then sent to the competent authority of the third country with indication of the reasons for refusal.

The amendments also provided that the competent authority of the third country whose guarantee have been accepted in the prescribed manner can send additional list of establishments to the authorised body of the Party for considering their inclusion into the Registry. Following the consideration, the authorised body of the Party notifies the decision to include/not include establishments into the Registry with indicating the reasons.

3. Paragraph 179 has been included into the draft amendments to Decision No. 834 in order to establish a provisional scheme that can be applied for imports of products subject to veterinary control pending the audit results.

In accordance with Article 5 of Decision No. 834, audit is the main principle for ensuring safety of products of animal origin imported to the CU. Additionally, products of animal origin from countries that have not been audited can be imported to the CU based on inclusion in the Register of Establishments of Third Countries.

Since Decision No. 834 had come into force, products for which listing is required under Decision No. 830 can be imported to the CU based on three methods provided in Decision No. 834:

- audit;
- acceptance of guarantee from competent authorities of third countries; and
- joint inspections of establishments of third countries.

At the same time, products for which listing of establishments is not required in accordance with Decision No. 830 can be imported only after favourable audit results. Taking into account that the audit is a complex and lengthy process, in order not to stop trade in these products, the CU Parties agreed to apply provisional scheme that will be applied until all CU trade partners undergo audit. Under these scheme products for which listing is not required under Decision No. 830, before audit is carried out, can be imported to the CU based on listing of establishments. Listing of establishments can be done based on the guarantee of third countries' competent authorities or joint inspections. Thus, listing of establishments for products, for which listing is not required under Decision No. 830, will be carried out until audit is completed and the official system of a respective country is recognised as equivalent. The CU Parties agreed to introduce relevant amendments into Decision No. 834. These amendments have been published for public discussion on the EEC official website on 10 April 2013.

4. Inclusion of establishments into the Register is carried out by the CU Parties in coordinated manner because goods exported from these establishments can freely move within the CU and have access to the territory of all CU Parties. In contrast, exclusion of establishments from the

Register as an extreme measure can only be done at the request of the establishment or the competent authority of a third country.

Temporary suspensions of imports from an establishment are not imposed automatically. They can be imposed only at the request of a third country or in case of repeated identification of non-compliances which is notified to the competent authority of the exporting country and which poses significant risk to human and animal life and health.

In other instances, consistent measures, such as increased laboratory monitoring, warning, special requirements, such as application of additional or replacement measures, are applied in order not to stop exports from such establishments. Such decisions are made by a CU Party based on repeated violations of the CU requirements and they cannot contradict principles and spirit of the SPS Agreement.

5. Restrictions on imports imposed by one CU Party will be automatically effective throughout the whole CU territory due to the absence of internal borders between the CU Parties and the fact that goods are moving freely within the CU.

Question 17

We ask that our comments to the draft amendment to the CU common veterinary requirements, submitted in the process of public consultation (draft published on the CU website on 1 February 2013), are taken into account. The notified draft would amend the general requirements so as to specify that third country establishments, which produce products containing components of animal origin for export to the CU, are obliged to use raw materials of animal origin produced by establishments which are approved to supply products to the Customs Union territory. We ask to restrict this obligation to meat and meat products exports. We ask to include a new Members' concern in a paragraph after paragraph 75: "Members expressed concerns about a draft amendment to CU common veterinary requirements that introduced a new listing obligation for establishments supplying raw materials to establishments that exported animal products to the CU", and seek an answer.

Answer:

The comments from a Member received during public consultations have been considered at the EEC working group meeting. The CU Parties have established that the requirement for third country establishments, which produce products containing components of animal origin for export to the CU, to use raw materials of animal origin produced by establishments which are approved to supply products to the Customs Union territory, would be applicable only to food products of animal origin imported to the CU territory.

This requirement is aimed at addressing the high risk associated with raw products of animal origin used in production of food products intended for human consumption.

The proposed Member's language has been added after paragraph 75.

Question 18

A Member has concerns that Kazakhstan imposed restrictions due to the Schmallenberg virus, which is not an OIE listed disease, while Kazakhstan has not demonstrated that, based on surveillance data, it is free from this disease.

Answer:

Schmallenberg is an exotic disease for Kazakhstan and has historically never been detected at the territory of Kazakhstan.

The CU has imposed temporary restrictions in connection with Schmallenberg virus due to the absence of sufficient scientific information. The disease was first identified in the second half of 2011 in Germany and quickly spread on the territory of many EU countries. Currently, research

with regard to this virus is continuing, and there is still not enough data on the routes of transmission of this disease among animals, there are no methods for prevention of the disease and treatment of animals. In February 2013, the OIE updated recommendations with regard to Schmallenberg disease that tightened conditions for the importation of semen of cattle and small cattle from infected areas in connection with the discovery of additional ways of transmitting the Schmallenberg virus.

It should be mentioned that some WTO Members have also imposed temporary restrictions on imports from EU countries with regard to Schmallenberg disease for the same reasons.

- (i) **Veterinary Certificates**

Question 19

Paragraph 36: Please provide additional information regarding who among the CU Parties or the EEC was responsible for providing feedback to third countries' certificate negotiation proposals and requests.

Answer:

The CU Party that received initial request from a third country to initiate the negotiation on veterinary certificates, or the EEC, if the third country had sent its request to it, is responsible for organization and coordination of negotiations on veterinary certificates, as well as preparation and provision of feedback on third countries' proposals and requests regarding veterinary certificates.

Question 20

Paragraph 39: Please provide a status update on the ongoing harmonization of CU common veterinary requirements and certificates with international standards. A Member continues to review the amendments that the CU Parties have undertaken regarding the common veterinary requirements. We note that from our perspective, further harmonization with the international standards, particularly the OIE appears to be necessary. We ask that Kazakhstan provide more information on how they intend to pursue further harmonization with the OIE in order to ensure that Kazakhstan can fulfil this commitment.

Answer:

Currently, systematic work on harmonization of the Common Veterinary Requirements and certificates with the OIE recommendations has been completed. The CU Parties continue to analyse the Common Veterinary Requirements in order to identify areas for further improvement and alignment with international standards.

In addition, any third party may send request to the CU Parties indicating discrepancy of these requirements with international standards, which will be considered in accordance with EEC Collegium Decision No. 212 of 6 November 2012 "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".

Question 21

Paragraph 41: A Member notes that pursuant to CU Decision No. 726, this Member is currently engaged with the CU in bilateral veterinary certificate negotiations with requirements that differ from CU common veterinary requirements. Based on our experience, we continue to have concerns that the CU is not moving toward international standards and intends to stay as close to CU Common requirements and forms as possible, without providing a scientific justification for these requirements. We are also concerned with the time it takes to arrange negotiations, time it takes to receive feedback (in some cases, we are in eight month of waiting for CU's feedback to our proposal), and the lack of consistency in participation among the CU Parties during negotiations.

- **Can you please explain who is responsible for coordinating negotiations and providing feedback to third countries?**
- **What role does the EEC play in certificate negotiations?**

Answer:

The CU Party that received initial request from a third country to initiate the negotiation on veterinary certificates, or the EEC, if the third country had sent its request to it, is responsible for organization and coordination of negotiations on bilateral veterinary certificates, as well as preparation and provision of feedback on third countries' proposals and requests regarding veterinary certificates. Kazakhstan has not received any requests from this Member on bilateral certificates. The EEC experts could organize and coordinate the negotiation process. Moreover, the EEC experts could provide their recommendations.

When negotiating veterinary certificates the CU Parties follow international standards, unless scientific justification for a more stringent standard is provided.

Question 22

Paragraph 34: We ask that the process of harmonization of CU common veterinary requirements and common forms of certificates with international standards and in particular OIE standards be pursued.

Answer:

Currently, systematic work on harmonization of the Common Veterinary Requirements and certificates with the OIE recommendations has been completed. The CU Parties continue to analyse the Common Veterinary Requirements in order to identify areas for further improvement and alignment with international standards.

In addition, any third party may send request to the CU Parties indicating discrepancy of CU requirements with international standards, which will be considered in accordance with EEC Collegium Decision No. 212 of 6 November 2012 "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".

Question 23

Paragraph 43: We ask for the removal of the brackets for the sentence "would not include provisions for diseases that were not transmitted by/relevant to the concerned product". We ask to replace the penultimate sentence by "In accordance with the OIE code, in cases where at least one, but not all, CU Parties had in place in the relevant territory either a control or eradication programme for a disease, or surveillance programme demonstrating that the disease was not present, veterinary attestations for that disease would only be required for goods destined to the CU Party(-ies) having the relevant programme in place."

Answer:

Brackets for the sentence "would not include provisions for diseases that were not transmitted by/relevant to the concerned product" have been removed.

With regard to the sentence starting with "In accordance with the OIE code...", Kazakhstan notes that the proposed commitment is not in line with OIE standard. Taking into account that CU has no internal borders between the CU countries, and once imported products could freely move through the CU territory, the CU territory can be considered as a territory of a single country within the meaning of the OIE code. In this regard we propose the following commitment language that fully corresponds to the provisions of paragraph 2 of Article 5.1.2 of the OIE Code:

[In accordance with the OIE code, CU veterinary certificates would not include requirements for the exclusion of pathogens or animal diseases which were present in the CU and were

not subject to any official control programme. The measures imposed on imports to manage the risks posed by a specific pathogen or disease would not require a higher level of protection than that provided by measures applied as part of the official control programme operating within the CU. The Working Party took note of this commitment.]

Question 24

Paragraph 45: We ask for the removal of the brackets for the sentence:

"For example the TR on Food Safety, adopted by CU Commission Decision No. 880 of 9 December 2011, provided that only veterinary certificates would be required for non-processed animal products, while only a declaration of conformity or State Registration certificate would be required for products, that have undergone a treatment which, based on scientific evidence, eliminated contamination."

- **Can Kazakhstan clarify which type of document will be required for treated products upon the entry into force of CU Commission Decision No. 880 and which are the procedures applicable for this type of document?**
- **Can Kazakhstan clarify when the relevant legal text containing the corresponding implementing measures will be published for public consultation?**

Answer:

Brackets for the sentence in paragraph 45 have been removed.

The Republic of Kazakhstan has repeatedly initiated the discussion of the issue at the EEC level. However, currently the CU members did not reach a common position. In this regard, the issue was also raised at the EEC Council meeting which was held in Moscow on 23 April 2013. Following this meeting, the EEC Council commissioned the EEC Parties to submit their positions to the next EEC Council meeting before 10 June 2013. Thus, the type of the document that will be required for processed animal products has not been established yet.

- **(ii) Establishment Approval, Register and Inspections**

Question 25

Paragraph 46: A Member is concerned that amendments to the List subject to veterinary control has not been adopted yet. Moreover, the draft amendment published on 9 October 2012 still required registration of establishment for some products with no scientific basis provided to support this measure. In particular, the listing of establishment is not required for any living organisms except for live fish (HS 0301), but Kazakhstan has not provided scientific justification for its inclusion. This Member provided comments on this draft amendment and asked that the requirement for establishment list for live fish is removed. In addition, draft amendment required the list of registered facilities for all milk products within HS 0401. This Member requested Kazakhstan to remove the listing requirement for all milk except for "raw" milk. Other veterinary control measures, including a veterinary certificate and import permit would continue to apply to all milk and milk products.

Answer:

1. On milk products within HS 0401

The Republic of Kazakhstan has initiated the discussion of these issues at the EEC level several times. In particular, on February 2013, Kazakhstan has proposed to separate the HS 0401 into two lines- raw milk and processed milk - and remove the listing requirement for processed milk.

The CU Parties have not developed a common position on Kazakhstan's proposal. In this regard, Kazakhstan has initiated discussion of these issue at the level of the EEC Council (the EEC Council members are Deputy Prime Ministers of the CU Parties), that convened in Moscow on 23 April 2013. The EEC Council has adopted a Decision in accordance with which the CU Parties

together with the EEC Collegium have to develop a uniform position on the issue and introduce relevant amendments into the Common Veterinary Requirements.

2. On live fish

The Customs Union requires listing of facilities of third countries importing live fish into the CU territory for the following reasons:

a. due to the risks associated with live fish's habitat (aquatic environment). In particular, the habitat can be the reason for live fish containing residues of harmful substances, toxic substances, heavy metals, infectious and parasitic diseases. In case infestation of fish by parasitic diseases or its contamination by harmful substances is identified, there is a need for conducting analysis of reservoir's water and soil samples;

b. live fish is often placed on the market as food product and, unlike other live animals, in case of fish, each specimen is not subject to *ante-mortem* and *post-mortem* inspection. Moreover, each specimen of fish is not subject to veterinary and sanitary expertise. These factors increase the risks of hazardous food products being placed on the market.

c. 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.

It should also be mentioned that Decision No. 830 has been agreed in the result of negotiations with the WTO Members.

Question 26

In addition, please provide an update on the status of the amendment referenced in paragraph 46. When is it likely to be adopted?

Answer:

Draft amendments into the CU Decision No. 810 of 23 September 2011 were approved by the EEC Decision of 9 April 2013 and will be submitted for approval at the next EEC meeting.

Draft amendments to the Annex of the Common Veterinary Requirements approved by the CU Commission Decision No. 317 of 18 June 2010 on removal of certain veterinary control measures, have been agreed upon by the CU members except for amendments on processed milk products.

The Republic of Kazakhstan has initiated the discussion on milk products at the EEC level several times. In particular, on February 2013, Kazakhstan has proposed to separate the HS 0401 into two lines- raw milk and processed milk - and remove the listing requirement for processed milk. The CU Parties have not developed a common position on Kazakhstan's proposal. In this regard, Kazakhstan has initiated discussion of these issue at the level of the EEC Council (the EEC Council members are Deputy Prime Ministers of the CU Parties), that convened in Moscow on 23 April 2013. The EEC Council has adopted a Decision in accordance with which the CU Parties together with the EEC Collegium have to develop a uniform position on the issue and introduce relevant amendments into the Common Veterinary Requirements.

Question 27

Paragraphs 51-52: We have strong reservations with the addition of the last sentence in paragraph 51 that states: "Trade would then be possible for these commodities without listing upon favourable audit results". A Member requests that this language be removed from the text. Decision No. 834 and Decision No. 830 do not state that audits are a pre-requisite for removing the listing requirements. We have strong reservations with Kazakhstan's connection and interpretation of CU Commission Decisions Nos. 834 and 830. We also note that amendments to Decision No. 834 were published which did not resolve our concerns.

Answer:

In accordance with Article 5 of Decision No. 834, audit is the main principle for ensuring safety of products of animal origin. The audit of official foreign systems of control is based on international standards and is in line with international practice. Many developed countries apply audit (approval of exporting countries) as the main condition for exporting products of animal origin to their territories. Thus, in these countries products of animal origin cannot be imported to their territories before this country is included into the list of exporting countries based on audit of its official control system.

In the CU products of animal origin from countries that have not been audited can also be imported based on inclusion in the Register of Establishments of Third Countries.

Since Decision No. 834 had come into force, products for which listing is required can be imported to the CU based on three methods provided in Decision No. 834.

- audit;
- acceptance of guarantee from competent authorities of third countries; and
- joint inspections of establishments of third countries.

At the same time, products, for which listing of establishments is not required in accordance with Decision No. 830, can be imported to the CU only upon favourable audit results. Taking into account that the audit is a complex and lengthy process, in order not to stop trade in these products, the CU Parties agreed to apply provisional scheme that will be applied until all CU trade partners undergo audit. Under these scheme products, for which listing is not required under Decision No. 830, before audit is carried out, can be imported to the CU based on the listing of establishments. Listing of establishments can be done based on the guarantee of third countries' competent authorities or joint inspections. The listing of establishments for such products will be carried out until audit is completed and the official system of a respective third country is recognised as equivalent. The CU Parties agreed to introduce relevant amendments into Decision No. 834. These amendments have been published for public discussion on the EEC official website.

It should be mentioned, that all establishments included into the Register prior to enforcement of Decision No. 834 (21 August 2012) will remain in the Register and could continue importation of their products to the CU.

Question 28

Paragraph 53: We are strongly concerned with Kazakhstan's interpretation of CU Commission Decisions No. 834, in particular with Kazakhstan's reply that "according to Article 5 of the Decision No. 834 an audit of foreign control systems was a prerequisite for access of products subject to veterinary control to the CU market. This language is not an accurate reflection of the text of Article 5 of Decision No. 834. We request that brackets be placed around the paragraph. The CU Commission Decisions No. 834 outlines three possibilities for exporting countries' establishments to become eligible to export to the CU:

- **through a joint inspection conducted by all CU Parties;**
- **the exporting country provided guarantees to the CU that the establishment met the requirements of the CU;**
- **a systems audit to determine if the official system of supervision of that third country was capable of providing a level of protection at least equivalent to that provided by CU requirements per request of the competent authorities of the third country.**

Answer:

Audit is the main mechanism of access of products of animal origin to the CU market, both for which listing of establishments is required and those, for which listing is not required.

Establishments can be listed based on audit results, or alternatively, based on guarantees of competent authorities of third countries or on results of joint inspections of third country establishments.

For further explanation, please, refer to answer to Question 27.

Question 29

We are also concerned that the provisions for accepting guarantees are not fully implemented. CU Decision No. 834 allows Kazakhstan and its CU Partners to accept guarantees as a means of listing new establishments, but it has not been done in practice.

Answer:

Kazakhstan applies and is going to apply guarantees from competent authorities of third parties in future as one of the mechanisms for listing new establishments in accordance with Decision No. 834. To date Kazakhstan has received requests for accepting guarantees from two countries and has been following all the procedures established in the Decision No. 834.

Question 30

Please confirm that where Kazakhstan or other parties of the CU had in practice accepted the guarantees of a third country prior to the adoption of Decision No. 834, that these third countries would not be expected to start over in the process of accepting guarantees. A Member requests confirmation that Kazakhstan and the CU take into account background/historical trade of exporting countries and authorised establishments when accepting guarantees. Again, we note that draft amendments to Decision No. 834 regarding guarantees had been published for public consultation. We have provided comments on these proposed amendments and we look for confirmation that our comments will be considered. We would like to note that the mechanism for accepting guarantees should be a transparent and streamlined mechanism that provides a clear process for including establishments, when required, into the register. Historically, Kazakhstan had not maintained a register of approved establishments and relied on the agreed certificates as the guarantee. We look forward to seeing further revisions to the CU Decision No. 834 that reflect a streamlined mechanism.

Answer:

Prior to adoption of Decision No. 834 Kazakhstan had not applied mechanism of listing of third country establishments based on guarantees. The procedures for accepting guarantees from competent authorities of third countries will be carried out based on the application by competent authority of third country in accordance with the procedures stipulated in CU Commission Decision No. 834 of 18 July 2011. Kazakhstan confirms that when considering guarantees from competent authorities of third countries it will take into account history of trade with these countries.

A Member's comments to the draft amendments to Decision No. 834 have been considered by the CU Parties at the working group on veterinary and sanitary measures on 2-3 April 2013. The draft amendments to Decision No. 834 revised taking into account comments received during public consultations, including on guarantee mechanism, was published for another round of public consultations at the official EEC website on 10 April 2013.

Question 31

Can Kazakhstan provide further details on the CU process for audits? Is the CU schedule for audits publicly available?

Answer:

All procedures for conducting an audit are stipulated in Decision No. 834. Currently, the CU Parties are preparing the uniform schedule of audits/inspections and is considering the issue of its publication on the official CU website.

Question 32

Paragraph 55: We would like to note that the list of goods as set-out in table would be virtually meaningless if Kazakhstan considers audits to be a pre-condition to removing the requirement for an establishment list. We would like to stress again that this is an issue that needs to be favourably resolved.

Answer:

In accordance with Article 5 of Decision No. 834 audit of foreign official control system is the main principle for ensuring safety of products of animal origin. The audit of official foreign control systems is based on international standards and is in line with international practice. Many developed countries apply audit (approval of exporting countries) as main condition for exporting products of animal origin to their territories. Thus, in these countries products of animal origin cannot be imported to their territories before the exporting country is included into the list of exporting countries based on audit of its official control system.

Question 33

Paragraph 56: We are strongly concerned with changes to sentence (line 8).

"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 Regulation on Joint Inspection allows for the inclusion into the register if a Party (singular, not Parties) agreed to accept guarantees. While we appreciate that the changes to the sentence appear to reflect the practice as it is currently being applied, this appears to contradict the actual language and process established in the decision.

Answer:

Inclusion into the Register is carried out by the CU Parties in a coordinated manner. This is due to the fact that goods imported to the CU can freely move throughout the whole CU territory. Products from third country establishments included in the Common Register have access to the territory of all CU Parties.

Relevant amendments were introduced into the Decision No. 834 in order to clarify the procedures for accepting guarantees from competent authorities of third countries, including the timing for receiving the approval from the other CU Parties. In particular, the following provisions have been added into the Decision No. 834:

"Upon favourable evaluation of the request on accepting the guarantee the authorised body of the Party prepares the final decision and sends it to the authorised bodies of the other CU Parties for approval. The time-frame for the approval is not more than 10 working days.

The authorised bodies of the Parties shall approve the final decision on accepting the guarantee in the written form or shall send letter indicating the reasons for not approving the decision within the established time-frame. In the absence of the written reply during the established time-frame the decision is deemed to be approved".

These and other amendments into the Decision No. 834 are currently published for public consultation.

Question 34

Paragraph 59, in line 6, the representative explained that the three parties of the CU must agree to rely on guarantees for a country to be able to utilise this mechanism for establishment approval.

- **Could Kazakhstan please provide more information on the internal process used within the CU to coordinate?**
- **To whom should the competent authority of the third country present the request for guarantees?**

Paragraph 60: Please provide more information on the decision-making process and the timing of the mechanism.

Answer:

The competent authority of a third country may send its request to accept its guarantee on compliance of the goods subject to veterinary control produced by specific establishment (establishments) to the authorised body of any CU Party. The authorised body of a Party that received the request is responsible for coordinating the process of consideration of the request for providing the guarantee and for agreeing its decision with the authorised bodies of the other CU Parties.

In particular, the authorised body of the Party that received the request evaluates the request based on the criteria provided in the paragraph 43 of Decision No. 834, and upon favourable evaluation prepares the final decision and sends it to the authorised bodies of other CU Parties for approval. In accordance with the amendments into Decision No. 834 that are currently published for public discussion, time-frame for the approval by the CU Parties shall not exceed 10 working days. Moreover, in accordance with the amendments the authorised bodies of the Parties shall approve the final decision on accepting the guarantee in written form or shall send letter indicating the reasons for not approving the decision to the CU Party that received the request within the established time-frame. In the absence of the written reply during the established time-frame the decision is deemed to be approved.

The amendments also envisage that in case the decision is approved by the CU Parties, the authorised body of the Party that received the request shall send written notification to the competent authority of the third country on accepting the guarantee. If the initial request contained the list of third country establishments, the authorised body of the Party includes them into the Register not later than one month since the date of approval of the favourable decision on accepting the guarantee. In case of the negative decision on accepting the guarantee the authorised body of the Party prepares the conclusion that is then sent to the competent authority of the third country with indication of the reasons for refusal.

In case the guarantee of the competent authority of the third party is accepted, the competent authority of the third country shall prepare a list of establishments and send it to the authorised body of the Party. The authorised body of the Party evaluates the provided list of establishments within one month and makes a decision on including the listed establishments into the Registry. The authorised body of the Party notifies the competent authority of the third country of the decision to include/not to include establishments into the Registry with indicating reasons.

The competent authority of the third country whose guarantee have been accepted in the prescribed manner can send additional list of establishments to the authorised body of the Party for considering their inclusion into the Registry. Following the consideration, the authorised body of the Party notifies the decision to include/not include establishments into the Registry with indicating the reasons.

Question 35

Paragraph 62: We note that Kazakhstan added last sentence "Amendments to these criteria were being considered by the EEC". Can you please provide an update on the status for this amendment?

Answer:

These amendments have been revised in accordance with the comments received during the public consultation and published for additional public consultations on 10 April 2013.

Question 36

Paragraph 68: We note that 8th line from the bottom states: "The representative of Kazakhstan further clarified that decision on suspension of exports from establishments was made based on obvious facts of inconsistencies with CU requirements that posed substantial risk to life and health of humans and/or animals. Thus, such decision could be made individually by a CU Party".

- Can you please confirm that suspension of exports would be made only for the territory of the CU Party took the decision?
- Please confirm that suspensions of exports are based on an assessment of the risk to animal, plant or human life or health.

Answer:

In accordance with Decision No. 834 temporary suspension of imports from an establishment could be imposed only in the following situations:

- a. at the request of a competent authority of a third country;
- b. repeated identification of non-compliances with the CU requirements either during the on-site inspection or/and during the enhanced monitoring and enhanced laboratory control of goods, which was notified to the competent authority of a third country, if the non-compliance posed significant threat to human or animal life and health.

Thus, temporary suspension of exports from third country establishments were not imposed automatically; they could be imposed only at the request of the third country or on the basis of assessment of risk that the repeated violation posed to human and animal life and health.

Suspension of exports imposed by one CU Party were automatically effective throughout the whole CU territory due to the absence of internal borders between the CU Parties and the fact that goods were moving freely within the CU.

Question 37

Paragraph 69: Please remove the bracketed language [and the OIE] in the penultimate sentence as the relevant international standards for conducting an audit of foreign official system of veterinary control are set by the Codex.

Answer:

Kazakhstan agrees to remove words [OIE] from the paragraph.

Question 38

Paragraph 77: We appreciate the information provided in this paragraph, however, it appears to need revisions based on information provided by Kazakhstan. Please update the paragraph to reflect the status of the inspection guidelines that were to have been adopted and enacted by the date of accession of the first CU party to the WTO.

- Please confirm that these guidelines are being drafted based on the Codex guidelines.
- Could Kazakhstan please provide a draft of the inspection guidelines?

In addition, as there are not currently CU inspection guidelines, please provide information on what the CU Parties currently use when inspecting third country

facilities. We would like to note that we provided comments on the Guidelines referenced in this paragraph and we ask that our comments be taken into account and that these guidelines are quickly adopted.

Answer:

The draft Guidelines for Inspectors on Taking Decisions with Respect to Equivalency of Veterinary-Sanitary Measures Related to Conducting Inspections of Establishments Subject to Veterinary Control (Supervision) (hereinafter - draft Guidelines) has undergone public consultations procedures. The draft Guidelines have been revised in accordance with the comments received, and decision to divide the draft into two separate documents – guidelines on taking decision with the respect to equivalency of veterinary-sanitary measures and guidelines for conducting inspections - have been made. These two draft documents will be published for another round of public consultations in May 2013.

Kazakhstan confirms that these guidelines have been developed in accordance with the Codex Alimentarius standards. The draft guidelines will be available during public consultations in May 2013.

Pending the approval of these guidelines, when inspecting third country facilities the CU Parties use national legislation or international standards, if necessary.

Question 39

Paragraph 46: Decisions [xx] and [xx]: We would ask to be kept informed of the state-of-play of the amendment of the CU common veterinary requirements relating to the list of goods subject to veterinary control and corresponding veterinary measures applicable for each CN code. We ask that our comments submitted in the public consultation process are taken into account. In particular we asked that only raw milk and cream be subjected to the establishment listing requirement, and not processed milk and cream – as it is foreseen in the table of JOB/ACC/30/Rev.2. We ask that live fishes are not subject to the establishment listing requirement. Consequently, in paragraphs 39 and 58 "except for live fish" should be bracketed.

Answer:

Draft amendments into CU Decision No. 810 of 23 September 2011 were approved by EEC Decision of 9 April 2013 and will be submitted for approval at the next EEC meeting.

Draft amendments to the Annex of the Common Veterinary Requirements approved by CU Commission Decision No. 317 of 18 June 2010 on removal of certain veterinary control measures, have been agreed upon by the CU members, except for amendments on processed milk products.

1. On milk products within HS 0401

Kazakhstan has initiated the discussion of these issues at the EEC level several times. In particular, in February 2013, Kazakhstan has proposed to separate HS 0401 into two lines - raw milk and processed milk, and remove the listing requirement for processed milk.

The CU Parties have not developed a common position on Kazakhstan's proposal. In this regard, Kazakhstan has initiated discussion of these issue at the EEC Council (the EEC Council members are Deputy Prime Ministers of the CU Parties) meeting in Moscow on 23 April 2013. The EEC Council has adopted a Decision in accordance with which the CU Parties together with the EEC Collegium have to develop a uniform position on the issue and introduce relevant amendments into the Common Veterinary Requirements.

2. On live fish

The Customs Union requires listing of facilities of third countries importing live fish into the CU territory for the following reasons:

- a. due to the risks associated with live fish's habitat (aquatic environment). In particular, the habitat can be the reason for live fish containing residues of harmful substances, toxic substances, heavy metals, infectious and parasitic diseases. In case infestation of fish by parasitic diseases or its contamination by harmful substances is identified, there is a need for conducting analysis of reservoir's water and soil samples;
- b. live fish is often placed on the market as a food product and, unlike other live animals, in case of fish, each specimen is not subject to *ante-mortem* and *post-mortem* inspection. Moreover, each specimen of fish is not subject to veterinary and sanitary expertise. These factors increase the risks of hazardous food products being placed on the market.
- c. 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.

It should also be mentioned that Decision No. 830 has been agreed in the result of negotiations with the WTO Members.

Question 40

Paragraphs 51, 53 and 69: We express serious concern that audit is described as a pre-requisite for the elimination of the listing requirement. We ask that CU Decision No. 830 of 18 October 2012, formally in force since 22 August 2012, is applied. This notably includes the absence of listing requirement for certain commodities. It has to be noted that this does not mean removing veterinary measures for those commodities. Indeed, according to CU Decision No. 830, the sanitary guarantees which allow access to the CU market are to be provided by veterinary certificates and by import permits (except for feed of plant origin which will not be subject to veterinary controls). These remaining mechanisms will provide safety guarantees which are proportionate to the potential risks derived from these commodities. Furthermore, nothing in the current CU legal framework provides that a successful audit is necessary for CU Decision No. 830 to be applied. As regard JOB/ACC/30/Rev.2, we ask for the removal of the last sentence in paragraph 51. In paragraph 69, we ask to add "but this was not a prerequisite" at the end of the penultimate sentence.

Answer:

Decision No. 834 and Decision No. 830 have been developed based on international standards and recommendations and approved during the negotiations on accession of the Russian Federation to the WTO.

In accordance with Article 5 of Decision No. 834, audit is the main principle for ensuring safety of products of animal origin. The audit of official foreign control systems is based on international standards and is in line with international practice. Many developed countries apply audit (approval of exporting countries) as main condition for exporting products of animal origin to their territories. Thus, in these countries products of animal origin cannot be imported to their territories before the exporting country is included into the list of exporting countries based on audit of its official control system.

In the CU products of animal origin from countries that have not been audited can also be imported based on inclusion in the Register of Establishments of Third Countries.

Since Decision No. 834 had come into force, products for which listing is required can be imported to the CU based on three methods provided in Decision No. 834:

- audit;
- acceptance of guarantee from competent authorities of third countries; and
- joint inspections of establishments of third countries.

At the same time, products, for which listing of establishments is not required in accordance with Decision No. 830, can be imported to the CU only after favourable audit results. Taking into account that the audit is a complex and lengthy process, in order not to stop trade in these

products, the CU Parties agreed to apply provisional scheme that will be applied until all CU trade partners undergo audit. Under these scheme products, for which listing is not required under Decision No. 830, before audit is carried out, can be imported to the CU based on the listing of establishments. Listing of establishments can be done based on the guarantee of third countries' competent authorities or joint inspections. The listing of establishments for such products will be carried out until audit is completed and the official system of a respective third country is recognised as equivalent. The CU Parties agreed to introduce relevant amendments into Decision No. 834. These amendments have been published for public discussion on the EEC official website.

It should be mentioned, that all establishments included into the Register prior to enforcement of Decision No. 834 (21 August 2012) will remain in the Register and could continue importation of their products to the CU.

Question 41

Paragraph 52: We ask to add the following sentence at the end: "Specifically some Members were concerned that, in the implementation of these Decisions, the CU Parties were requesting a successful audit as a pre-condition to removing the listing requirement for certain products as established in CU Decision No. 830."

Answer:

The proposed Members' language has been added to paragraph 52.

Question 42

Paragraph 53: We ask to replace the first sentence by "The representative of Kazakhstan replied that, according to Article 5 of CU Decision No. 834, the basic principle used by CU Parties to ensure safety of controlled goods is an audit of a foreign official system of supervision." In the same paragraph, we ask to replace "trade for establishments from such countries" by "listing of establishments from third countries, when required".

Answer:

Kazakhstan agrees to modify the first sentence in paragraph 53 as proposed. We agree to replace "trade for establishments from such countries" by "listing of establishments from third countries when required".

Question 43

Paragraph 68: We ask to add ", if listing was required for such products" at the end of the third sentence. We propose to divide this paragraph into two with a new paragraph starting with "The representative of Kazakhstan explained that, with respect to requirement for authorisation to provide guarantees, the CU Party that received ...".

Answer:

Kazakhstan will make proposed amendments in paragraph 68.

Question 44

After paragraph 68 we ask to insert a new paragraph of Members' concerns:

"Some Members expressed concerns that the procedure for listing establishments based on guarantees was more cumbersome than that for suspending an establishment, since the former required the consent of all CU Parties while the latter required a decision by only one CU Party. Members viewed such disparity of treatment as unjustified and contrary to the spirit of the WTO Agreements. Furthermore, Members expressed concerns regarding the lack of effectiveness and

predictability of the mechanism of listing based on guarantees, the lack of a clear time frame for being granted the authority to provide guarantees, the lack of justification of refusals to accept guarantees, and the absence of definition of the scope of these guarantees. Those Members also had concerns over statements by the Kazakh representatives as well as over draft CU amendments to CU Commission Decision No. 834. These amendments indicated that a suspension of trade from an establishment or for a type of product, while decided by one CU Party, was applied to the whole CU territory. These Members had experienced that suspensions decided for an establishment was disconnected from the risk or no proportionate to the risk involved."

We ask for an answer to these concerns.

Answer:

The proposed members concern has been added as a new paragraph following paragraph 68.

1. Draft amendments into Decision No. 834 have clarified mechanism for accepting guarantees from competent authorities of third countries (paragraphs 43-44) taking into account WTO Members' comments and proposals on timeframes for considering requests, provision of reasons for refusal in accepting the guarantee, terms and scope of the guarantee.

In particular, the draft amendments established that the competent authority of a third country shall send request to accept its guarantee on compliance of the goods subject to veterinary control produced by specific establishment (establishments) to the authorised body of a CU Party, with information required in accordance with paragraph 43-1 of the Decision attached to the request, including the list of establishments with names of produced products. Guarantee of the third country's competent authority is accepted on each group of products according to the HS Codes. The authorised body of the Party that received the request for guarantee evaluates the request based on the criteria provided in paragraph 43-1 of the Decision No. 834, and upon favourable evaluation prepares final decision and sends it to the authorised bodies of other CU Parties for approval. Time-frame for the approval by the CU Parties shall not exceed 10 working days. The authorised bodies of the Parties shall approve the final decision on accepting the guarantee in written form or shall send letter indicating the reasons for not approving the decision to the CU Party that received the request within the established time-frame. In the absence of the written reply during the established timeframe the decision is deemed to be approved.

The amendments also envisage that in case the decision is approved by the CU Parties, the authorised body of the Party that received the request shall send written notification to the competent authority of the third country on accepting the guarantee. If the initial request contained the list of third country establishments, the authorised body of the Party includes them into the Register of third country establishments not later than one month since the date of approval of the favorable decision on accepting the guarantee. In case of the negative decision on accepting the guarantee the authorised body of the Party prepares the conclusion that is then sent to the competent authority of the third country with indication of the reasons for refusal.

The amendments also provided that the competent authority of the third country whose guarantee have been accepted in the prescribed manner can send additional list of establishments to the authorised body of the Party for considering their inclusion into the Registry of Establishments of Third Countries. Following the consideration, the authorised body of the Party notifies the decision to include/not include establishments into the Registry with indicating the reasons.

2. Inclusion of establishments into the Register is carried out by the CU Parties in coordinated manner because goods exported from these establishments can freely move within the CU and have access to the territory of all CU Parties. In contrast, exclusion of establishments from the Register as an extreme measure can only be done at the request of an establishment or the competent authority of a third country.

Temporary suspension of imports from an establishment is not imposed automatically. It can be imposed only at the request of the third country or in case of repeated identification of non-compliances which is notified to the competent authority of the exporting country and which poses significant risk to human and animal life and health.

In other instances, consistent measures, such as increased laboratory monitoring, warning, special requirements, such as application of additional or replacement measures are applied in order not to stop exports from such establishments. Such decisions are made by a CU Party based on the repeated violations of the CU requirements and they cannot contradict principles and spirit of the SPS Agreement.

3. Restrictions on imports imposed by one CU Party will be automatically effective throughout the whole CU territory due to the absence of internal borders between the CU Parties and the fact that goods are moving freely within the CU.

This answer has been added into a new paragraph following paragraph 68 of the SPS Chapter.

Question 45

Paragraph 69: In the penultimate sentence we ask to delete "and the OIE" as the relevant international standards for conducting an audit of foreign official system of veterinary control, are set by the Codex Alimentarius. We ask to add "but this was not a pre-requisite" at the end of this sentence.

Answer:

Kazakhstan agrees to delete words "and the OIE".

At the same time, we do not agree to add "but this was not a pre-requisite". In this paragraph we explain three ways to include establishments into the register – audit, guarantee mechanism and joint inspection. In order to be included into the register one of the three mechanisms has to be used. Thus, it is not correct to say that audit, as well as guarantee mechanism and joint inspections, are not a pre-requisite for add establishments into the Register.

Question 46

Paragraph 77 on the inspection guidelines: We ask that our comments, submitted in the process of public consultation (draft published on 16 November 2012), are taken into account. We note that Codex Guideline 53-2003 does not seem to be the appropriate reference for equivalence consideration in the context of guidelines for auditors as this Guideline is aimed at central governmental authorities examining a request for equivalent recognition. Codex Guideline 53-2003 would be more appropriate for an implementing text of CU Commission Decision No. 835. We ask for inspection criteria for establishments that are clear and in line with international standards. We ask for the rapid adoption of this text. In paragraph 77 we ask to add "adopted by EEC Collegium Decision [xx] and [xx]" after "Guidelines for Inspectors on Taking Decisions with respect to Equivalency of Veterinary-Sanitary Measures Related to Conducting Inspections of Establishments Subject to Veterinary Control (Supervision)".

Answer:

The draft Guidelines for Inspectors on Taking Decisions with Respect to Equivalency of Veterinary-Sanitary Measures Related to Conducting Inspections of Establishments Subject to Veterinary Control (Supervision) (hereinafter - draft Guidelines) has undergone through the public consultations procedures. The draft Guidelines have been revised in accordance with comments received during public consultations and decision to divide the draft into two separate documents – guidelines on taking decision with the respect to equivalency of veterinary-sanitary measures and guidelines for conducting inspections - have been made. These two draft documents will be published for another round of public consultations in May 2013.

Kazakhstan confirms that these guidelines have been developed in accordance with the Codex Alimentarius standards. The draft guidelines will be available during public consultations in May 2013.

The proposed language will be added in paragraph 77.

Question 47

A Member would like to ask for some further clarifications with regard to the mechanism allowing registration of establishments and acceptance of guarantees outlined in paragraph 68 of JOB/ACC/30/Rev.2, specifically the passage: "The CU Party that received the request for audits or for joint inspections of establishments notified the competent authorities of other CU Parties of the request and invited them to participate. If a CU Party declined to participate or did not respond within the prescribed time, that CU Party authorised the participating CU Party or Parties to act on its behalf and accepted the decision of the participating CU Party or Parties on the relevant matter."

In this context, this Member would like to know the exact meaning of the wording to "act on its behalf". This Member understands "to act on its behalf" as the delegation of authority from a CU Party or Parties to another CU Party or Parties to conduct the audit or joint inspections (explained as well in paragraph 65), and, in case of successful audit or joint inspection, to further allow third countries to submit a list of establishments to enter the Registry, based on guarantees that were issued by competent third country authorities. Is this line of argument correct?

Answer:

Expression "to act on its behalf" means that CU Parties are allowed not to participate in audits and in joint inspections. In this case, the CU Party that did not participate in audit or inspections shall accept the results of the audit or inspection that have been carried out by other CU Parties (Party).

In case of successful audit of the exporting country's official control system, the competent authorities of this country may submit list of establishments to the CU Parties for its inclusion into the Register of Establishments of Third Countries.

In case of joint inspection, only inspected establishments could be added into the Register of Establishments of Third Countries.

Question 48

Furthermore, this Member would like to know more about the relation between the situation described above, that is, the content of paragraph 68 of JOB/ACC/30/Rev.2, and the following statement in paragraph 69. In paragraph 69, Kazakhstan states that "all guarantees, received from third countries by an authorised body of any CU Party, were subject to approval by the authorized bodies of other CU Parties." Specifically, the Member would like to know whether guarantees that were accepted subsequent to an audit or a joint inspection as described in paragraph 68 (where a CU Party or Parties acted on behalf of another CU Party or Parties) were still "subject to approval by the authorised bodies of other CU Parties" (as implied by paragraph 69). This Member's reading of paragraph 68 is as follows: By definition of the mechanism, if an audit or a joint inspection has been conducted by a CU Party or Parties on behalf of a CU Party or Parties, the decision by this very Party or Parties extends to the other or others as well (delegation of authority), hence, no further approval of, say, guarantees, is needed. Is this reasoning correct and if so, could this possibly be further clarified in the text?

Answer:

Inclusion of establishments into the Register of Establishments of Third Countries is possible using three mechanisms:

1. audit of third country's official system of control;
2. joint inspections of establishments of third countries; and
3. acceptance of guarantee from competent authorities of third countries.

Competent authority of third country can submit request on inclusion of its establishments in the Register based on any of these three procedures. In accordance with Decision No. 834, in case of audit or joint inspection, CU Parties may not participate in audit and joint inspections. In this case, they shall recognise decisions made by the CU Parties (Party) that carried out audit or inspection. Inclusion of establishments into the Register of Establishments of Third Countries based on third mechanism – acceptance of guarantees from competent authorities of third countries – requires approval of the guarantee by all CU Parties. It should be clarified that the guarantee mechanism does not envisage on-site inspections of third party establishments.

The detailed description of these three mechanisms is provided in paragraph 68.

- (iii) **Import Permits**
- (iv) **Transit Permits**

Question 49

Sections on import and transit permits: We ask that our comments on the draft amendment to Government Resolution No. 132 on Import and Transit Permits (notably our disagreement with the possibility to refuse an import permit after a single non-compliance) are taken into account and ask to be informed as soon as the amendment is adopted. The sections on import and transit permits of JOB/ACC/30/Rev.2 will need to be amended after this adoption.

Answer:

Kazakhstan has taken into account a Member's comments on the draft amendment to Government Resolution No. 132 "On Import and Transit Permits". Government Resolution No. 132 does not contain provisions that envisage possibility to refuse an import permit after a single non-compliance. Kazakhstan will inform the WTO Members as soon as the amendment is adopted.

(e) Trade in Goods Subject to Phytosanitary Control

Question 50

Paragraph 104: Kazakhstan states that a draft common list of quarantine pests and diseases had been under discussion by CU Parties.

- Can you please provide an update on the draft?

Answer:

Draft CU Common List of Quarantine Pests and Diseases have undergone public consultation procedures. Currently CU Parties are revising the draft CU Common List of Quarantine Pests and Diseases taking into account comments received from interested parties during the public consultation. The Common Phytosanitary Requirements of the Customs Union and the Common List of Quarantine Objects of the Customs Union are expected to be adopted in 2014.

Question 51

Paragraph 109: The first sentence states that: "The existing list of products under quarantine (regulated goods) that were subject to quarantine phytosanitary control at the customs border of the CU and the territory of the CU was divided into two groups: (i) quarantine products of high pest risk; and (ii) quarantine products of low pest risk". We are concerned that Kazakhstan maintains phytosanitary control for many processed products (HS 1101 00 - Wheat or Meslin Flour, 1102 - cereal flours, 1103 - cereal groats, 1104 cereal grains, etc.).

- Can Kazakhstan confirm that a pest risk analysis (PRA) was conducted to determine what level of control was appropriate for these products?
- Can Kazakhstan share its PRAs with Members?

Answer:

Classification of quarantine products as of high pest risk was based on the data for detection of quarantine objects in quarantine products, on risk analysis conducted by at least one of the CU Parties, and international standards on phytosanitary measures. The Republic of Kazakhstan is ready to share pest risk analysis conducted for quarantine objects.

Question 52

Please confirm that Kazakhstan will accept replacement certificates as foreseen by internationally guidelines (ISPM12:2011)?

Answer:

Recognition of phytosanitary certificates that is issued as replacement for legitimate certificates and is aimed at ensuring phytosanitary safety of quarantine products is possible provided the national body on quarantine and plant protection (hereinafter- the NBQPP) of the exporting country in accordance with international standard of phytosanitary measures No. 12 ensures and confirms the following:

- phytosanitary safety of quarantine products;
- prior to exporting quarantine products the NBQPP of the exporting country have carried out sampling, inspection and treatment of quarantine products necessary to comply the phytosanitary requirements of the Republic of Kazakhstan;
- integrity of quarantine products from the moment of shipment until importation of quarantine products;

If these requirements are not met, replacement phytosanitary certificates will be deemed invalid.

Question 53

Paragraph 104: Could Kazakhstan inform of the targeted date for the adoption of the CU common list of quarantine pests and for the CU common phytosanitary requirements? We ask that our comments to the draft CU list of quarantine pests submitted in the process of public consultation are taken into account.

Answer:

Draft CU Common List of Quarantine Pests and Diseases have undergone public consultation procedures. Currently CU Parties are revising the draft CU Common List of Quarantine Pests and Diseases taking into account comments received from interested parties during the public consultation. The Common Phytosanitary Requirements of the Customs Union and the Common List of Quarantine Objects of the Customs Union are expected to be adopted in 2014.

Question 54

Paragraph 109: In the seventh sentence, a Member proposes to modify the sentence as follows:

"In line with international practice, when products subject to phytosanitary control were imported from countries with registered cases of spread of quarantine organisms in certain areas, imports of products under plant quarantine control from pest-free areas, or pest-free places of production or pest free production sites, in application of ISPMs Nos. 4 and 10, were still allowed, if appropriate information in additional declaration of phytosanitary certificate was provided."

In the penultimate sentence, we ask to add "and with ISPM No. 13" after "in accordance with paragraph 6, Article 7 of IPPC".

Answer:

Kazakhstan agrees to modify the sentence in the following way:

"In line with international practice, when products subject to phytosanitary control were imported from countries with registered cases of spread of quarantine organisms in certain areas, imports of products under plant quarantine control from pest-free areas, or pest-free places of production or pest free production sites, determined in accordance with ISPMs Nos. 4 and 10, could be allowed, if norms and principles of ISPM 20 have been applied".

With regards to adding "and with ISPM No. 13", we would like to note, that the penultimate sentence of paragraph 109 says about the possibility to introduce urgent (emergency) phytosanitary measures in accordance with paragraph 6, Article 7 of IPPC. Taking into account that ISPM No. 13 does not regulate introduction of urgent (emergency) phytosanitary measures, we believe it is inexpedient to add reference ISPM No. 13 in the penultimate sentence. We would like to state that in case of introduction of urgent (emergency) phytosanitary measures Kazakhstan will inform interested parties of such measures.

(f) Protection of Human Health**Question 55**

Paragraph 119: Could Kazakhstan clarify the exact meaning of the last sentence? Could Kazakhstan explain what aspects CU inspectors are checking when they look at the existence of official controls at the level of an exporting establishment?

Answer:

In the last sentence of the paragraph existence of official control means that inspectors will check whether the establishment is subject to control by competent authorities of the exporting country, such as on-site inspections by the competent authority of the exporting country (frequency of such inspections, inspection criteria, results and records of the inspections) and registration of facilities.

(g) Compliance of the SPS Regime with Specific Provisions of the WTO SPS Agreement**- (i) Harmonization with International Standards and Norms****Question 56**

General Comment: We continue to encourage Kazakhstan and the CU Parties to harmonize their SPS standards with the international standards, recommendations and guidelines to the maximum extent possible. 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:

Kazakhstan will continue its work on harmonizing its SPS measures with international standards, recommendations and guidelines, when necessary. If Kazakhstan or any other the CU Party determines that international standard is not sufficient to achieve the appropriate level of protection, Kazakhstan and the CU will provide a scientific justification and risk assessment in accordance with the SPS Agreement.

Question 57

Paragraph 129: We are very concerned by the changes that were made to this commitment paragraph without any notice to Members or any addition of brackets to reflect that changes had been made. We would like to propose an alternative formulation for this paragraph as follows:

The representative of Kazakhstan confirmed that, in cases in which no mandatory requirements on veterinary or phytosanitary, or sanitary epidemiological and hygienic requirements had been established at CU or national level, the CU Parties would apply the relevant standards, guidelines and recommendations, or parts thereof, of the OIE, IPPC and Codex respectively. Similarly, if veterinary, phytosanitary or sanitary- epidemiological and hygienic requirements in effect in the territory of the CU were more stringent than relevant international standards, guidelines and recommendations, or parts thereof, in the absence of scientific justification of risk to human, animal or plant life or health, CU Parties would apply the relevant international standards, guidelines and recommendations or parts thereof. The representative of Kazakhstan confirmed that this obligation currently was included in the CU legal framework through CU Commission Decision No. 721, and would continue to be a mandatory part of the CU legal framework in the future. The Working Party took note of these commitments.

Answer:

In order to avoid misinterpretation of the commitment, Kazakhstan insists on using the exact wording of the SPS Agreement in the text of the commitment and proposes the following text in brackets:

[The representative of Kazakhstan confirmed that, in cases in which no mandatory requirements on veterinary or phytosanitary, or sanitary epidemiological and hygienic requirements had been established at CU or national level, the CU Parties would apply the relevant standards, guidelines and recommendations, or parts thereof, of the OIE, IPPC and Codex respectively. Similarly, if veterinary, phytosanitary or sanitary- epidemiological and hygienic requirements in effect in the territory of the CU [were more stringent than] [resulted in a higher level of sanitary and phytosanitary protection then would be achieved by measures based on] relevant international standards, guidelines and recommendations, or parts thereof, in the absence of scientific justification of risk to human, animal or plant life or health, CU Parties would apply the relevant international standards, guidelines and recommendations or parts thereof, [as provided for in the SPS Agreement]. [The representative of Kazakhstan confirmed that this obligation currently was included in the CU legal framework through CU Commission Decision No. 721, and would continue to be a mandatory part of the CU legal framework in the future]. The Working Party took note of these commitments].

The proposed amendments, including the added reference to the SPS Agreement, will ensure that Kazakhstan fully complies with the SPS Agreement.

Kazakhstan proposes to move the reference to Decision No. 721 to the description part of the text.

Question 58

Paragraph 140: We are strongly 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; such as tetracyclines, veterinary drugs; and, feed additives, such as ractopamine, which are more stringent than the international standards. We note that CU Commission Decision No. 721 needs to be fully implemented and we need to see this decision work in practice. This Member has not been provided with the science to support these stringent standards and requests that Kazakhstan adopt and apply the international standards in the absence of the scientific justification to support more stringent standards.

Answer:

The Republic of Kazakhstan applies and is going to apply its standards in accordance with international standards, guidelines and recommendations, unless there is a scientific justification to support more stringent standards. Kazakhstan is ready to provide its risk assessment to support the CU standard on tetracycline.

Question 59

Paragraph 141: Please provide an update on the status for the risk assessment for tetracycline.

- **When can you share it with Members?**

Answer:

The preliminary conclusion of the risk assessment on tetracycline has been published at http://www.npc-ses.kz/index.php?option=com_content&view=article&id=89%3A2010-11-29-09-50-15&catid=45%3A2010-11-29-05-41-50&Itemid=111&lang=ru and <http://www.nutritest.org/?p=111> and is under the peer review process. To date no comments have been received.

Question 60

Paragraph 129: We propose a new formulation of this paragraph:

"The representative of Kazakhstan confirmed that, in cases in which no mandatory requirements on veterinary or phytosanitary, or sanitary epidemiological and hygienic requirements had been established at CU or national level, the CU Parties would apply the relevant standards, guidelines and recommendations, or parts thereof, of the OIE, IPPC and Codex respectively. Similarly, if veterinary, phytosanitary or sanitary - epidemiological and hygienic requirements in effect in the territory of the CU were more stringent than relevant international standards, guidelines and recommendations, or parts thereof, in the absence of scientific justification of risk to human, animal or plant life or health, CU Parties would apply the relevant international standards, guidelines and recommendations or parts thereof. The representative of Kazakhstan confirmed that this obligation currently was included in the CU legal framework through CU Commission Decision No. 721, and would continue to be a mandatory part of the CU legal framework in the future. The Working Party took note of these commitments."

Answer:

In order to avoid misinterpretation of the commitment, Kazakhstan insists on using the exact wording of the SPS Agreement in the text of the commitment and proposes the following text in brackets:

[The representative of Kazakhstan confirmed that, in cases in which no mandatory requirements on veterinary or phytosanitary, or sanitary epidemiological and hygienic requirements had been established at CU or national level, the CU Parties would apply the relevant standards, guidelines and recommendations, or parts thereof, of the OIE, IPPC and Codex respectively. Similarly, if veterinary, phytosanitary or sanitary - epidemiological and hygienic requirements in effect in the territory of the CU [were more stringent than] [resulted in a higher level of sanitary and phytosanitary protection then would be achieved by measures based on] relevant international standards, guidelines and recommendations, or parts thereof, in the absence of scientific justification of risk to human, animal or plant life or health, CU Parties would apply the relevant international standards, guidelines and recommendations or parts thereof, [as provided for in the SPS Agreement]. [The representative of Kazakhstan confirmed that this obligation currently was included in the CU legal framework through CU Commission Decision No. 721, and would continue to be a mandatory part of the CU legal framework in the future]. The Working Party took note of these commitments].

The proposed amendments, including the added reference to the SPS Agreement, will ensure that Kazakhstan fully complies with the SPS Agreement.

Kazakhstan proposes to move the reference to Decision No. 721 to the descriptive part of the text.

Question 61

Paragraphs 134, 135, 138 and 139: Could Kazakhstan inform of the state-of-play of harmonisation concerning pesticides, veterinary drugs, nitrates, microbiological standards and radionuclides?

- **Which items have been harmonised in which piece of legislation?**
- **Are there new draft amendments under preparation? For which items?**
- **Could Kazakhstan provide an answer to the question raised in paragraph 135?**

Answer:

Draft amendments and addenda to section 15 of Chapter II of the Common Sanitary and Epidemiological and Hygienic Requirements, which are currently under consideration by the CU Parties, have provided for amendments in respect of the following pesticide: chlorothalonil, klofentizin, propamocarb-hydrochloride (promokarb), pirimicarb, cyprodinil, kresoxim-methyl, carbendazim.

Moreover, CU Commission Decision No. 889 of 9 December 2011 harmonised requirements for the following pesticides: azoxystrobin, fosetyl aluminum, benomyl, glyphosate, deltamethrin, diquat (dibromide), difenoconazole, diflyufenikan, izoksaflyutol, imazapyr, imidacloprid, indoxacarb, clomazone, clothianidin, klofentizin, mesotrione, metconazole, penconazole, pencycuron, pyraclostrobin, propamocarb hydrochloride, rimsulfuron, a mixture of non-ionic surfactants of constant composition (adjuvant Amigo, KS), spinosad (spinosin A spinosid D) spiroxamin, sulfometuron-methyl, tebuconazole, tiabendozol, thiacloprid, thiamethoxam, tetraconazole, thiram, tris (2-ethylhexyl phosphate adjuvant), famoxadone, fluazinam, flutriafol, Chlorantraniliprole, cymoxanil, cyprodinil.

The Decision also harmonised microbiological standards for *E.sakazakii*, Enterobacteriaceae.

Requirements for nitrates have been harmonized, except for melon crops, for which there are minor discrepancies.

Microbiological standards have been harmonized with the exception of *L. Monocytogenes*, *E.coli* (14), coagulase-positive staphylococci, coliforms.

Regulatory radionuclides are developed in accordance with recommendations of the IAEA BSS 115, and there are no discrepancies with international standards.

MRLs for veterinary drugs have been harmonized with international standards, except for the cases when scientific justification for a more stringent standard has been provided.

Question 62

Paragraph 140: We have provided comments to the document on tetracyclines published at <http://fcrisk.ru/node/652>, highlighting that the document does not represent a risk assessment in line with international standards.

- **How were these comments taken into account in the document mentioned in paragraph 141?**

Answer:

Preliminary conclusion of the risk assessment on tetracycline has been published at http://www.npc-ses.kz/index.php?option=com_content&view=article&id=89%3A2010-11-29-09-50-15&catid=45%3A2010-11-29-05-41-50&Itemid=111&lang=ru and <http://www.nutritest.org/?p=111> and is under the peer review process.

The comments provided to the risk assessment on tetracycline conducted by the Russian Federation have been considered by Kazakhstan's scientists. The responses to these comments will be provided.

Question 63

Paragraph 141: Could Kazakhstan share an English translation of the preliminary conclusion of the Kazakh institute concerning tetracyclines? According to our information, tetracyclines are authorised for use in animal production in Kazakhstan with the same withdrawal period as in the EU. Therefore we find it not consistent with the very strict CU MRL for tetracyclines and have concerns regarding discriminatory treatment.

Answer:

The preliminary conclusion of Kazakh Institute Concerning Tetracycline are available in Russian at the following links: http://www.npc-ses.kz/index.php?option=com_content&view=article&id=89%3A2010-11-29-09-50-15&catid=45%3A2010-11-29-05-41-50&Itemid=111&lang=ru and <http://www.nutritest.org/?p=111>. Unofficial English translation will be provided to the Working Party shortly.

- (ii) Risk Assessment**Question 64**

Paragraph 145: Can Kazakhstan confirm in the Working Party text that Kazakhstan bases its risk assessments on the international principles and recommendations according to paragraphs 144 and 145?

Answer:

Kazakhstan confirms that principles and recommendations developed by the relevant international organizations described in paragraphs [144] and [145] are used in conducting risk assessments for SPS measures applicable to imports into the Republic of Kazakhstan.

Question 65

Paragraph 149: The last sentence states that a risk assessment would be conducted prior to any restrictions on imports. Moreover, this risk assessment would be provided to the third country upon request. Please explain if this is also applied to temporary restrictions that may be applied to a group of establishments or products subject to veterinary control.

Answer:

Temporary restrictions of imports from group of establishments or all establishment can be applied in case serious violations in the official system of control of a third country are identified and if measures required to address these violation were not undertaken. These temporary measures shall be proportionate to the risk that this violation poses to human and animal health.

Temporary restrictions of imports of products subject to veterinary control were applied in cases of serious violations of relevant CU requirements that posed significant risk to human and animal health.

Thus, prior to applying temporary restrictions to a group of establishments or products subject to veterinary control the CU Parties assess risks associated with the violation.

Question 66

Paragraph 145: Can Kazakhstan confirm that the internationally recognised principles and recommendations described in paragraphs 144 and 145 are used in risk assessments for SPS measures applied in Kazakhstan. We ask that this confirmation is inserted in the text.

Answer:

Kazakhstan confirms that principles and recommendations developed by the relevant international organizations described in paragraphs [144] and [145] are used in conducting risk assessments for SPS measures applicable to imports into the Republic of Kazakhstan. This information has been added into a paragraph following paragraph 145.

- (iv) Equivalence**Question 67**

Paragraph 155: It states "[S]He explained that CU Commission Decision No. 835 of 18 October 2011 "On Equivalence and Risk Assessment", and all procedures necessary to apply this Decision, would be in effect prior to the date of accession of Kazakhstan to the WTO".

- Can Kazakhstan provide an update for the development of procedures necessary to apply CU Decision No. 835?**

Answer:

Kazakhstan has initiated this issue at the EEC level. The draft Guidelines for Inspectors on Taking Decisions with Respect to Equivalency of Veterinary-Sanitary Measures Related to Conducting Inspections of Establishments Subject to Veterinary Control (Supervision) (hereinafter - draft Guidelines) has been developed and undergone through the public consultations procedure. The draft Guidelines have been revised in accordance with the comments received, and decision to divide the draft into two separate documents – guidelines on taking decision with the respect to equivalency of veterinary-sanitary measures and guidelines for conducting inspections - have been made. These two draft documents will be published for another round of public consultations in May 2013. The Guidelines have been developed in accordance with Codex Alimentarius standards.

With regard to procedures on recognising equivalency in accordance with OIE and IPPC standards, this issue is currently discussed at the EEC level.

Question 68

Paragraph 155: Could Kazakhstan inform of the state-of-play on adoption of procedures necessary to apply CU Decision No. 835 as regards equivalence recognition?

Answer:

Kazakhstan has initiated this issue at the EEC level. The draft Guidelines for Inspectors on Taking Decisions with Respect to Equivalency of Veterinary-Sanitary Measures Related to Conducting Inspections of Establishments Subject to Veterinary Control (Supervision) (hereinafter - draft Guidelines) has been developed and undergone public consultations procedure. The draft Guidelines have been revised in accordance with the comments received, and decision to divide the draft into two separate documents – guidelines on taking decision with the respect to equivalency of veterinary-sanitary measures and guidelines for conducting inspections - have been made. These two draft documents will be published for another round of public consultations in May 2013. The Guidelines have been developed in accordance with Codex Alimentarius standards.

With regard to procedures on recognising equivalency in accordance with OIE and IPPC standards, this issue is currently discussed at the EEC level.

(h) Transparency, Notification and Enquiry Point Obligations**Question 69**

We are concerned with the process that the Customs Union has in place to receive and consider comments from third countries. We have submitted comments for technical regulations and for proposed CU Commission decisions and amendments. It is not clear

to us who to send comments to, who reviews the comments, or what the basis is to incorporate or reject comments.

- **Could Kazakhstan please clarify the procedures?**
- **Would Kazakhstan provide its feedback to received comments?**

Answer:

In accordance with Decision No. 48 of 20 June 2012 and Decision No. 31 of 5 April 2013 comments and proposals from interested parties, including third countries, on draft technical regulations and EEC decisions shall be sent to the EEC.

With regard to technical regulation, the EEC sends the comments and proposals to the authorised body of a CU Party that is responsible for developing draft technical regulation (hereinafter - developer of draft technical regulation) as they are received, but not later than 10 working days after public consultation is closed. The developer of draft technical regulation revises the draft technical regulation and related documents taking into account received comments and proposals. For each comment and proposal, the developer of the draft technical regulation specifies information on its acceptance or justification for its rejection. The EEC ensures subsequent publication of the summary of comments on the draft technical regulation, including decisions on each of them and reasons for such decisions, on the official website of the EEC.

With regard to EEC decisions, the Department of the Sanitary, Phytosanitary and Veterinary Measures of the EEC gathers all the comments and proposals received during public consultations and organizes their discussion by working groups. The Department within 10 days after expiration of the public consultation period compiles a summary table of comments and answers and publishes it on the official CU website.

Question 70

Could Kazakhstan please explain the role of the national enquiry point with regard to EEC Decisions?

- **At what point in the development of an EEC SPS measure will Kazakhstan notify WTO Members?**
- **Would Kazakhstan provide 60 day comment period through WTO notification if the EEC public comment period is closed?**
- **Can Kazakhstan detail the steps in respect to SPS notifications of the EEC decisions and its process for comments review?**

Answer:

Kazakhstan's Information Center on TBT/SPS (Enquiry Point on TBT and SPS) will notify all SPS measures that will apply on Kazakhstan's territory. Thus, it will notify not only SPS legislation adopted by Kazakhstan's Government, but also EEC Decisions and other EEC legal acts on SPS.

Kazakhstan will notify WTO Members on EEC SPS measure once the first draft of the SPS document is approved by the working group and then by the Consultative Committee for public consultation. Thus, the Information Center on TBT/SPS will send notification to the WTO approximately at the same time when the draft SPS document will be published for public consultation by the Consultative Committee. Kazakhstan will provide 60 day comment period through WTO notification even if the EEC public comment period is closed.

Contact point for sending comments and proposals to the notified EEC document will be indicated in the notification and it can be either the Enquiry Point, or to the EEC, or both. The Information Center on TBT/SPS will forward the received comments and proposals to the relevant authorised body of Kazakhstan, which, in turn, will forward them to the EEC. The received comments and proposals will be considered at the EEC working group meeting. In accordance with Decision No. 31 the Department of the Sanitary, Phytosanitary and Veterinary Measures within 10 days after expiration of the public consultation period shall compile a summary table of comments and answers to these comments and publish it on the official EEC website.

Question 71

Paragraph 168: It states: "In response to specific questions, the representative of Kazakhstan replied that Kazakhstan's legislation contained no restrictions on foreign participation in the development of sanitary and phytosanitary standards (e.g. participation in technical committees meetings, providing comments). Proposals and comments should be submitted through the enquiry point".

- **Can Kazakhstan explain the process for foreign participation based on its Law No. 124-III "On Private Entrepreneurship"?**

Answer:

In accordance with the Law "On Private Entrepreneurship" state bodies that develop a regulatory act that affects interests of private entrepreneurs shall submit the draft regulatory act to the expert council, which consists of business associations, for consideration. The expert council shall provide its expert opinion on the draft regulatory act. The state body shall revise the draft regulatory act in accordance with the expert opinion or, in case of non-acceptance of some of the comments, shall reply to the business associations indicating reasons for non-acceptance of the comments. At the request of the business associations the expert council meeting shall be convened to discuss the presented comments.

Question 72

Paragraph 166: Could Kazakhstan describe in details the steps that will take place for SPS notification of draft CU texts, both for the notification and for the consideration of the comments received, taking into account the articulation with the Russian Federation SPS notification requirement and the CU public consultation obligations?

Answer:

Kazakhstan will notify WTO Members on EEC SPS measures once the first draft of the SPS document is approved by the working group and then by the Consultative Committee for public consultation. Thus, Kazakhstan's SPS/TBT Enquiry Point will send notification to the WTO approximately at the same time when the draft SPS document will be published for public consultation by the Consultative Committee. The Russian Federation will notify the same document through its national notification authority. The 60 day comment period through WTO notification will be provided even if the EEC public comment period is closed.

Contact point for sending comments and proposals to the notified EEC document will be indicated in the notification and it can be either the SPS/TBT Enquiry Point, or to the EEC, or both. The SPS/TBT Enquiry Point will forward the received comments and proposals to the relevant authorised body of Kazakhstan, which, in turn, will forward them to the EEC.

The received comments and proposals will be considered at the EEC working group meeting. In accordance with Decision No. 31 the Department of the Sanitary, Phytosanitary and Veterinary Measures within 10 days after expiration of the public consultation period shall compile a summary table of comments and answers to these comments and publish it on the official EEC website.

Question 73

Paragraph 169: We ask for confirmation that Kazakhstan will follow SPS Committee Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement (G/SPS/7/Rev.3).

Answer:

Kazakhstan will follow the SPS Committee recommended procedures for implementing the transparency obligations of the SPS Agreement G/SPS/7/Rev3.
