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Working Party on the Accession of Kazakhstan

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

ADDITIONAL QUESTIONS AND REPLIES

Addendum

The following submission, dated 16 September 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.3.

- Sanitary and Phytosanitary Measures

Question 1

Throughout the text: please update all CU web-links to take into account the new CU website. Could you clarify where on the new CU website interested parties can find draft SPS CU Decisions submitted to public consultation? Are the texts published on <http://www.eurasiancommission.org/ru/docs/projects/Lists/List/AllItems.aspx> those open for public consultation?

Answer:

The web links in paragraphs 2, 3, 4, 5 have been updated to the new EEC website links. The remaining links throughout the text will be regularly updated upon their transfer to the EEC website. Texts open for public consultation since the launch of the new EEC website are currently available at the following web link: <http://www.eurasiancommission.org/ru/act/txnreg/depsanmer/publ/Pages/default.aspx>. At the same time, draft SPS CU Decisions submitted for public consultation before the launch of the new web site can be found at the old CU website at the following web-link: <http://www.tsouz.ru/db/techregulation/Pages/Publichnoe.aspx>.

(a) Legislative Framework

Question 2

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.

We note that EEC launched its new website: www.eurasiancommission.org.

Can Kazakhstan provide some information about this website? Does it replace www.tsouz.ru? Will all CU/EEC Regulations including amendments be published at new website? If yes, we ask Kazakhstan to update all of the links in the text.

Answer:

Paragraphs 1-4 have been updated to reflect any new decisions and amendments taken by the EEC.

The www.tsouz.ru will be gradually replaced by the new website www.eurasiancommission.org.

The new EEC website is still under construction, thus, the old website www.tsouz.ru is still operational. All the documents published at the www.tsouz.ru will be gradually shifted to the new www.eurasiancommission.org website. The links in the SPS text will be changed accordingly. Eventually, all CU/EEC Regulations, including amendments, will be available at the new website.

Question 3

Paragraph 5: We suggest adding a web address for the link adopted technical regulations (as you have in paragraphs 2-4).

Answer:

The following link for adopted technical regulations have been added in paragraph 5: <http://www.eurasiancommission.org/ru/act/txnreg/deptexreg/tr/Pages/tecnicareglament.aspx>.

Question 4

Paragraph 3 mentions that a consolidated version of CU Decision No. 317 can be found on the CU website. Concerning the CU common veterinary requirements, the page <http://www.tsouz.ru/db/techregulation/vetmeri/Documents/Ед.вет.треб.%20с%20измен.%2025.12.12.pdf> mentions that it contains the amendment adopted by CU Decision No. 830 in the title, however the table of veterinary measures adopted under CU Decision No. 830 is not included as an Annex to this consolidated text.

- **Could you clarify if and when this will be rectified?**

Answer:

The Table of Veterinary Measures adopted by CU Commission Decision No. 830 is included to the CU Common Veterinary Requirements as an Annex. The reference to this Annex can be found in the text in the first sentence of the Article "General Provisions" of the Common Veterinary Requirements (one should click on the word "Annex" in order to be redirected to the table).

Question 5

Kazakhstan has explained that the table of veterinary measures adopted in Annex to CU Decision No. 830 is applicable only for goods imported into the CU.

- **Could you quote the legal basis stating that this is the case?**
- **Could you clarify what veterinary measures are applicable for circulation within the CU and the legal basis specifying this?**

We suggest that these clarifications are included in the SPS text.

Answer:

As stated in the Article "General Provisions" of the CU Common Veterinary Requirements "*The goods subject to veterinary control imported to the customs territory of the Customs Union are subject to regulatory measures indicated in the Annex to these Requirements*".

As for goods moving from the territory of one CU Party to the territory of another CU Party, in accordance with the Article "General Provisions" they:

- shall be accompanied by a veterinary certificate of a common CU form issued by the competent authority of the exporting CU Party;
- shall be imported from the establishments included into the Register of Establishments and Persons that Produce, Process and(or) Store Goods Moving from the Territory of one CU Party to the Territory of another CU Party.
- do not require permits issued by the competent authorities of the CU Parties.

Question 6

Paragraph 6: Could you clarify if the legal text mentioned at the EPPO website (http://www.eppo.int/ABOUT_EPPO/EPPO_MEMBERS/countries/animation/kazakhstan.htm) is an amendment to Government Resolution No. 1295? If it is the case, we suggest that this amendment is mentioned in paragraph 6.

Answer:

The Government Resolution No. 1351 of 11 September 2009 published on the EPPO web site is an amendment to Government Resolution No. 1295 of 10 December 2002. Paragraph 6 has been updated to reflect the amendment.

(b) Competent Authorities for the Regulation of Trade in Agricultural Products**Question 7**

Paragraph 9: We thank Kazakhstan for providing clarifications of the EEC's role in the development of SPS measures, and on the decision making process within the EEC, specifically regarding the time it takes from the development of a measure to the measures adoption (document JOB/ACC/30/Rev.2/Add.1 - Question 5). In the last paragraph Kazakhstan states: "Currently, the fixed time-frame – no less 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". Can Kazakhstan add this clarification to paragraph 9 of the SPS text?

In fourth sub-bullet, Kazakhstan states: 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.

Can Kazakhstan confirm that published summary table will include the results of consultation? We note that a table with received comments is currently published for amendments to veterinary requirements (4 March 2013), but without conclusion from the Customs Union. Can Kazakhstan provide a time frame when feedback will be published?

Answer:

Paragraph 9 will be updated to include the clarification from the Answer to Question 5 of document JOB/ACC/30/Rev.2/Add.1.

Kazakhstan confirms that the published summary tables will include answers to the comments received during the public consultations. The summary table of comments to the draft EEC act On amendments into the Common Veterinary Requirements to the goods subject to veterinary control (published on 4 March 2013), currently available at the <http://www.tsouz.ru/db/techregulation/Pages/Publicnoe.aspx>, now includes results of the public consultations.

Question 8

Paragraph 9: We suggest to clarify that the publication of the compiled summary of questions and answers is a new procedure, implemented by virtue of EEC Collegium Decision No. 31 of 5 March 2013 (in force since 5 April 2013).

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. We have seen that the draft TR for meat and dairy have recently been adopted by the EEC Collegium and submitted for adoption to the Council. Do these versions take our comments into account?

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. The previous Kazakh answer mentioning a lack of data does not exempt Kazakhstan from the obligation to demonstrate that its territory is free from the disease.

Answer:

1. Kazakhstan will clarify in the text in paragraph 9 that the publication of the compiled summary of questions and answers is a new procedure, implemented by virtue of EEC Collegium Decision No. 31 of 5 March 2013 (in force since 5 April 2013).

2. Comments to the draft technical regulations on meat and meat products, fish and fishery products, feed and feed additives, milk and milk products, submitted in 2011 during the process of public consultations, have been taken into account when drafting these technical regulations.

Kazakhstan has prepared summary table of comments submitted in 2011 on technical regulations for meat and dairy products with answers to these comments and will provide it to the relevant WTO Members. Kazakhstan is in the process of preparing the summary table of comments received in 2011 and answers to them for technical regulations on feed and feed additives and fish and fishery products.

New comments have been received for technical regulations on feed and feed additives and fish and fishery products from WTO Members. These comments have been sent to the CU Parties for their further discussion. They will be considered and taken into account when preparing the final drafts of these technical regulations.

3. Schmallenberg is a new disease that was first identified in the second half of 2011. Currently, there is no sufficient scientific data available on the disease, including the routes of its transmission among animals, and there are no methods for prevention of the disease and treatment of animals. The research on this disease is still continues. Thus, for example, 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.

Taking into account the absence of sufficient scientific information, the CU has imposed temporary restrictions in connection with Schmallenberg virus. The measure was introduced in compliance with Article 5.7. SPS Agreement which stipulates that in 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.

It should also 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.

Schmallenberg is an exotic disease for Kazakhstan and has historically never been detected at its territory. Kazakhstan has not been conducting surveillance for Schmallenberg due to its recent discovery. Currently, it is planned to start surveillance programme for Schmallenberg in the country.

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

Question 9

Paragraph 20: In Question 9 of Q&A document JOB/ACC/30/Rev.2/Add.1, Kazakhstan informed that 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.

We note that we submitted in 2011 comments on the above-mentioned draft CU Technical Regulations for:

- **On Meat and Meat Products – to Kazakhstan 27 July 2011;**
- **On Fish and Fish Products – CU Commission 8 November 2011;**
- **On Feed and Feed Additives – to Kazakhstan 8 August 2011;**
- **On Milk and Milk Products – to the Russian Federation 17 August 2011.**

We would like to note that the draft of Technical Regulation of the Customs Union on safety milk and milk products was not open for public comments but was simply announced that it would use the EurAsEc draft TR of 2010 as CU TR. We provided our comments in August 2011.

In 2011, we also submitted comments on TRs for Food Safety, Oil and Fats, Grains, Alcohol and Food Labelling.

We also would like to note that the Russian Federation has notified some of these TR to WTO's SPS and TBT Committees, so we will also submit its comments again for:

**G/SPS/N/RUS/18 - G/TBT/N/RUS/4: Meat and Meat Products;
G/SPS/N/RUS/19 -G/TBT/N/RUS/12: Milk and Milk Products;
G/SPS/N/RUS/20 - G/TBT/N/RUS/9: Feed and Feed Additives; and
G/SPS/N/RUS/21 - G/TBT/N/RUS/15: Fish and Fish Products (G/SPS/N/RUS/21) –
sent on 21 May 2013 to EEC;**

- **Can Kazakhstan confirm comments received from Members will be reviewed, answered and reflected in the final versions of the texts?**

Answer:

Comments to the draft technical regulations submitted in 2011 during the process of public consultations, have been taken into account when drafting these technical regulations.

Prior to the adoption of the EEC Council Decision No. 48 of 20 June 2012, CU procedures did not provided for publication of answers to comments received during the public consultations. In this regard, answers to comments received in 2011 have not been published.

At the WTO Member's request, Kazakhstan has prepared summary table of comments submitted in 2011 on technical regulations for meat and dairy products with answers to these comments and will provide it to the relevant WTO Members. Kazakhstan is in the process of preparing the summary table of comments received in 2011 and answers to them for technical regulations on feed and feed additives and fish and fishery products.

New comments have been received for technical regulations on feed and feed additives and fish and fishery products from WTO Members. These comments have been sent to the CU Parties for their further discussion. They will be reviewed, answered and taken into account when preparing the final drafts of these technical regulations.

Question 10

Paragraph 26, second sentence states: The representative responded that the EEC had responsibility for establishing specific product requirements, except in the area of phytosanitary requirements. Second sentence from bottom states: Thus, the competence for phytosanitary requirements would be transferred from national authorities to the EEC Collegium.

- **Can Kazakhstan explain who will be responsible for the development of common phytosanitary requirements for the Customs Union? Would it be the EEC Collegium?**

Answer:

The CU Parties are responsible for developing CU common phytosanitary requirements. The requirements then will be adopted by the EEC Collegium.

Question 11

Paragraph 28: Has the plan of harmonisation at CU level in the phytosanitary sector, adopted by CU Decision No. 454, been updated?

Answer:

The plan of priority actions adopted by CU Commission Decision No. 454 has not been implemented fully. In particular, the CU Common List of Quarantine Organisms and Common Phytosanitary Requirements have not been adopted yet. No new plan of priority actions has been adopted yet at the CU level.

(d) Trade in Goods Subject to Veterinary Control**Question 12**

Paragraph 33: We are extremely concerned with EEC amendments to the Regulation of Joint Inspection, CU Decision No. 834. The first CU Draft was published on 1 February 2013. We submitted extensive comments on 29 March 2013 but only few were taken into consideration in the second draft published on 10 April 2013. However, the 10 April draft was withdrawn from the CU website with new version published on 8 May 2013.

We remain concerned with proposed changes, in particular with addition of paragraph 179 in Decision No. 834 in the final provisions which would require favourable audit before the trade in products that do not require listing/inspection is allowed. We are also significantly concerned that the new provision allows one CU Party to impose restrictions for the entire CU without the consent of all CU Parties. However, the consensus from all CU Parties is required when the CU accepts guarantees and approves establishments. We consider the disparity between the procedure to accept guarantees and impose restriction to be contrary to the principles of the WTO Agreements. We asked Kazakhstan to take into consideration the comments received on 29 March 2013.

We also are very concerned that listing based on guarantees as stipulated in the CU Decision No. 834 is not functioning within the Customs Union.

Answer:

1. The last public consultation on draft amendments to CU Decision No. 834 have been closed on 12 July 2013. All the comments received during three public consultations periods have been reviewed recently at the EEC working group meeting. Summary table with comments received during the second public consultation (from 10 April) currently published at the EEC website with replies. Comments received during last public consultation were reviewed at the EEC working group meeting on 8-9 August. Almost all comments were taken into account and included into the draft. Summary table on those comments will be published in September 2013.

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

CU Decisions No. 830 and No. 834 have been adopted in the result of negotiations on accession of the Russian Federation to the WTO. Prior to Russian Federation's accession into the WTO the authorised body of the Russian Federation has sent a letter to the WTO Members with the description of the provisional measure that will be applied pending the audit of foreign official system of control. Paragraph 179 was included into the draft with the aim to envisage this provisional measure and link CU Decisions No. 830 and No. 834.

However, taking into account comments received from interested parties during public consultation, paragraph 179 has been excluded from the draft amendments to CU Decision No. 834.

3. Consensus of all three CU Parties when accepting guarantees is required because CU Parties make this decision based on the comprehensive analysis that includes assessment of trade experience of each CU Party with the exporting country.

At the same time, temporary suspension of imports from an establishment is introduced based on the prescriptive criteria stipulated in paragraph 164 of the Regulation on Joint Inspection. In accordance with these criteria, 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 are notified to the competent authority of the exporting country and which pose significant risk to human and animal life and health.

Prior to introducing the temporary suspension of imports CU Parties apply consistent measures, such as increased laboratory monitoring, warning, special requirements, such as application of additional or replacement measures, in order not to stop exports from such establishments. Such decisions are made by a CU Party based on identification of repeated violations of the CU requirements and based on risk assessment and they do not contradict principles and spirit of the SPS Agreement.

Following the EEC working group meeting in August 2013 it was decided to exclude from the draft amendments to Decision No. 834 the provision, in accordance with which restriction of imports from an establishment imposed by one CU Party automatically applies to the entire CU territory. CU Parties agreed that it was necessary to develop and establish a certain mechanism within the CU for making coordinated decisions when imposing suspensions of imports into the CU territory.

- (i) Veterinary certificates

Question 13

Paragraph 37: In the last sentence Kazakhstan stated "The Representative of Kazakhstan also added that the CU Party that received a 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, was responsible for coordinating the certificate negotiations and CU Parties' negotiating positions, as well as preparation and provision of feedback on third countries' proposals and requests regarding veterinary certificates".

We thank Kazakhstan for providing clarification, but continue to have concerns not only with the process for negotiating new CU certificates but also with the substance. On process for example, there is excessive time required for the CU to review proposals and send feedback to interested Members. Just as important, with regard to the substance, the CU appears to seek to maintain restrictive animal health disease attestations despite OIE requirements or the exporting country's animal health status. Can Kazakhstan explain the timing of EEC coordination of CU Parties' negotiating positions and time-frame established within the Customs Union to provide feedback on third countries' proposals?

Answer:

When negotiating veterinary certificates, Kazakhstan considers epizootic status of an exporting country and OIE recommendations.

Coordination of certificates negotiations currently takes time because CU Parties have received large number of applications from third countries and have limited financial and human resources. Moreover, bilateral CU veterinary certificates with third countries shall be agreed by the authorised bodies of all CU Parties on the basis of consensus and the competent authority of the third country. Thus, in cases when there are disagreements between the CU Parties on some issues, the negotiations may be delayed pending consensus between the CU Parties. There is no certain time-frame established within the Customs Union to provide feedback on third countries' proposals on veterinary certificates taking into account human and financial resources of the CU Parties.

It should be noted that pursuant to paragraphs 5 and 6 of "Final and Transitional Provisions" of Common Veterinary Requirements, veterinary certificates negotiated before establishment of the

CU remain in force until enforcement of new veterinary certificates currently being negotiated, provided that the substantiated application had been submitted prior to 1 January 2013.

Question 14

Paragraph 39: In Question 20 of document JOB/ACC/30/Rev.2/Add.1, Kazakhstan stated "Currently, systematic work on harmonization of the Common Veterinary Requirements and certificates with the OIE recommendations has been completed. The CU Parties continue to analyze the Common Veterinary Requirements in order to identify areas for further improvement and alignment with international standards".

We would like to note that we have submitted detailed comments on CU common veterinary requirements throughout 2011 – 2013.

We note that from our perspective, further harmonization with the international standards, particularly the OIE appears to be necessary. As an example, on 7 May 2013, we submitted on EEC Collegium Decision on amendments to the Common veterinary (veterinary and sanitary) requirements, adopted by the Decision of the Customs Union (CU) Commission No. 317 as of 18 June 2010 published on 4 March 2013. We note that our comments have been published in "Summary reviews the draft document" but without EEC's conclusion after consideration. Can you confirm that your conclusions will be published and within what time-frame? We request that further harmonization work be completed.

Answer:

Kazakhstan confirms that answers to the comments received during the public consultation on the amendments into the CU Common Veterinary Requirements, including the reasons for such answers, will be published at the EEC website (within the summary table of comments).

The summary table of comments was published without CU Party's conclusion due to the technical problems and short period of time available for preparing conclusions on received comments established by the EEC Collegium Decision No. 31. In order to address this problem Kazakhstan proposed to amend Decision No. 31 with the view of extending the time-frame for providing feedback on the comments received during public consultations from 10 to 30 days.

For conducting further harmonization work in the field of veterinary, Kazakhstan has initiated the creation of a special CU expert group. The expert group will analyze the CU Common Veterinary Requirements on their compliance with international standards on a permanent basis.

Question 15

Paragraph 40: According to this paragraph, based on the Commission Decision No. 726 of 15 July 2011 "On Veterinary Measures", veterinary certificates between exporting countries and Kazakhstan would be valid for import into the territory of the Customs Union if exporting country submit substantiated request to negotiate new veterinary certificate with the Customs Union, in which case, the certificates remain valid until negotiations for new certificates are completed.

However, recently, Kazakhstan has imposed additional requirements for certain products, requirements that are not included in our bilateral certificate. In addition, these requirements are not CU requirements. Kazakhstan has stated that these are new Kazakh requirements. This raises several questions. One, under what authority does Kazakhstan institute new veterinary requirements given that the CU has competence over veterinary requirements? Two, what is the scientific basis for these new requirements? We would also point out that these requirements were not officially notified to the exporting country competent authority nor were they presented in a manner to minimize trade disruption. These actions call into question Kazakhstan's commitment to the basic tenets of the SPS agreement.

We would like to see a confirmation from Kazakhstan that Kazakhstan would:

- **follow bilateral agreements as stipulated in the CU Decision No. 726;**
- **avoid arbitrary, unexpected and unannounced changes to veterinary diagnostic requirements for animal imports;**
- **engage in international trade on a consistent, dependable and scientific basis; and**
- **implement a systematic means of establishing science-based veterinary health requirements.**

Answer:

Kazakhstan confirms that it would follow bilateral veterinary certificates in accordance with Decision No. 726 and OIE recommendations when importing products subject to veterinary control. At the same time, due to the increased incidence of importation of infected cattle and registration of exotic diseases during the quarantine of imported cattle, Kazakhstan was forced to introduce provisional veterinary measures. These measures are aimed at enhancing responsibility of foreign trade partners with regard to high risks associated with trade in live animals and excluding unfair suppliers. Within Kazakhstan briefings with the participation of representatives of embassies of third countries that import live animals to Kazakhstan have been held. Moreover, in the framework of the 81st session of the OIE a number of meetings have been held with the representatives of veterinary services of Australia, US, Hungary, Canada, EU with regard to application of these measures.

Question 16

Paragraph 41: In Question 21 of document JOB/ACC/30/Rev.2/Add.1, Kazakhstan stated that "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".

We note again that our substantive concern is the lack of Customs Union response and that the Customs Union does not appear willing to deviate from CU common requirements to agree on less stringent bilateral certification provisions or provide scientific justification for more stringent measures.

Answer:

According to CU Decision No. 726, third countries can send the request to one of the CU Parties or the EEC and one of them will coordinate the negotiating process. At the same time this request can be sent to all CU Parties and the EEC.

Bilateral CU veterinary certificates with third countries shall be agreed by the authorised bodies of all CU Parties on the basis of consensus and the competent authority of the third country. Thus, in cases when there are disagreements between the CU Parties on some issues, the negotiations may be delayed pending consensus between the CU Parties. During the process of negotiations on veterinary certificates CU Parties follow international principles and standards. It should be noted that the OIE provides several options for import of certain goods and during the process of negotiations CU Parties discuss which option is more acceptable for particular product.

Question 17

Paragraph 44: We have concerns with some of the proposed changes to this commitment paragraph. We will continue to work with Kazakhstan and other interested Members to find agreeable text. One of the main concerns is in the fourth sentence states "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.] Based on

our experiences, the CU seeks to implement disease free attestations where only one CU Party has surveillance in place. Moreover, no risk assessments have been provided to justify the measures.

Answer:

The proposed addition of Kazakhstan into the draft commitment text is in line with paragraph 2 Article 5.1.2 OIE Code which reads as follows:

"The international veterinary certificate should not include requirements for the exclusion of pathogens or animal diseases which are present in the importing country and are not subject to any official control programme. The measures imposed on imports to manage the risks posed by a specific pathogen or disease should not require a higher level of protection than that provided by measures applied as part of the official control programme operating within the importing country".

We consider that CU is "a country" within the meaning of Article 5.1.2. OIE Code for the following reasons:

- there are no cross-border veterinary checks in mutual trade between CU Parties;
- goods are accompanied by the veterinary certificates of the unified form, which are recognized by all veterinary inspectors within the CU;
- the same rules apply in trade between CU Parties and trade within different regions within one CU Party.

Therefore, pursuant to Article 5.1.2. OIE Code, CU Parties when negotiating common veterinary certificate with third country can require exclusion of pathogens or animal diseases if there is an official control programme in any CU Party. Subsequently, imported goods accompanied with a common veterinary certificate may freely circulate within the CU without additional requirements, inter alia when goods were initially imported into one CU Party and later moved to the territory of another CU Party.

If CU is not "a country" within the meaning of Article 5.1.2. OIE Code, then an importing country would have to negotiate individual veterinary certificates with each CU Parties separately.

Question 18

Paragraph 40: Work is still needed to achieve harmonization with OIE in the CU common veterinary requirements and CU common forms of certificates by the date of accession to the WTO. What is the plan of the CU to fulfil this commitment? For instance, we consider as not in line with OIE the practice by which the CU systematically uses the time periods recommended by OIE for a country to be considered as free as the time period for which official freedom is required to allow import in the CU (e.g. if the OIE recommends that a country having no cases of a certain notifiable disease for 24 months is considered free, and sets subsequent recommendations for import, both from free or not free country, the CU only requires as condition a freedom for 24 months of the relevant disease). This ignores the principle of non-discrimination (as it supposes that all the CU countries are equally monitoring and have all a free status for that disease) and disrespects the conditions recommended by OIE for safe import of countries with a different status. As another example: The draft amendment to chapters 25 and 40 of the CU common veterinary requirements, published on the CU website on 4 March 2013, was quoted by Kazakhstan as an example of harmonization work with reference to paragraph 40. In our view, the draft published on 4 March 2013 is still not in line with OIE on a number of points, which we will detail in specific comments to the CU on this draft.

Answer:

Harmonization of the CU Common Veterinary Requirements launched in 2011 was conducted in close cooperation with the competent authorities of major WTO members exporting to the CU market. This work had been completed by the end of 2012.

Taking into account comments from WTO Members, Kazakhstan has initiated the creation of a CU expert group which will analyze the CU veterinary requirements on their compliance with international standards.

Moreover, interested third countries may send their comments to the CU Common Veterinary Requirements indicating certain requirements that should be further harmonized with international standards in accordance with EEC Collegium Decision No. 212 of 6 November 2012.

Question 19

Paragraph 44: The penultimate sentence is proposed in 2 different bracketed versions. We believe that the first version is the correct one, and is in the line with OIE. The second one is not in line with OIE as it could allow e.g. Kazakhstan to request veterinary attestations from an exporting country for a disease for which there is no programme in place in Kazakhstan but there is a programme in place in Belarus. This is not in line with OIE. Referring to Kazakhstan's previous comment that the CU should be considered as one country, we do not believe that it is appropriate to consider the CU as one country in this case, since animal health official control programmes differ from one CU country to another (e.g. CU Commission Decision No. 455 of 18 November 2010 provides for 3 lists of dangerous and quarantine animal diseases, one for each CU country). However, even if the CU would be considered as one entity, the official veterinary attestation can only be required when the goods are destined to the part of this entity where the programme is applied.

Answer:

The proposed addition of Kazakhstan into the draft commitment text is in line with paragraph 2 Article 5.1.2 OIE Code which reads as follows:

"The international veterinary certificate should not include requirements for the exclusion of pathogens or animal diseases which are present in the importing country and are not subject to any official control programme. The measures imposed on imports to manage the risks posed by a specific pathogen or disease should not require a higher level of protection than that provided by measures applied as part of the official control programme operating within the importing country".

We consider that CU is "a country" within the meaning of Article 5.1.2. OIE Code for the following reasons:

- there are no cross-border veterinary checks in mutual trade between CU Parties;
- goods are accompanied by the veterinary certificates of the unified form, which are recognized by all veterinary inspectors within the CU;
- the same rules apply in trade between CU Parties and trade within different regions within one CU Party.

Therefore, pursuant to Article 5.1.2. OIE Code, CU Parties when negotiating common veterinary certificate with third country can require exclusion of pathogens or animal diseases if there is an official control programme in any CU Party. Subsequently, imported goods accompanied with a common veterinary certificate may freely circulate within the CU without additional requirements, *inter alia* when goods were initially imported into one CU Party and later moved to the territory of another CU Party.

If CU is not "a country" within the meaning of Article 5.1.2. OIE Code, then an importing country would have to negotiate individual veterinary certificates with each CU Parties separately.

- **(ii) Establishment Approval, Registry and Inspection**

Question 20

Paragraph 47: The second sentence states: "However, the representative noted that pursuant to CU Commission Decision No. 830 of 18 October 2011 [and xxx of xx], the CU

had agreed to remove certain veterinary control measures for specific goods in order to minimize the overlapping of control mechanisms.

In December 2012, we submitted our comments on 9 October 2012 draft amendment to uniform veterinary-sanitary requirements approved by the CU Decision No. 317. Can Kazakhstan provide an update for the status of its amendment to the list of goods?

Answer:

The draft amendments to the Annex of the Common Veterinary Requirements approved by the CU Commission Decision No. 317 have been discussed by the CU Parties several times in order to address questions and comments received from interested parties during public consultations. All comments were taken into account and approved at the EEC Working group meeting in August. Taking into account that the amendments change measures currently applied by the Russian Federation, and thus, they will affect current trade, it was decided to publish the revised draft amendment for another round of public consultations.

Question 21

In document JOB/ACC/30/Rev.2/Add.1 – Question 25: Kazakhstan stated that it proposed to ECC to separate HS 0401 into two lines for milk – raw milk and processed milk. Kazakshtan also noted that 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.

We would like to note again that we request Kazakhstan to remove the listing requirement for all milk except for "raw" milk. We seek adoption and implementation of this amendment prior to Kazakhstan's accession to the WTO.

As to Kazakhstan's answer for live fish, we would like to note again that 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.

Answer:

1. On milk products within HS 0401

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 proposal was approved at the EEC working group.

2. On live fish

In order to find mutually acceptable solution, Kazakhstan has filed a proposal to the EEC to divide HS position for life fish 0301 into two positions: 1) for live fish intended for consumption as food; 2) live fish not intended for consumption as food (ornamental fish, breeding fish). The proposal will envisage that the listing requirement will apply only to live fish intended for consumption as food. The proposal was approved at the EEC working group in August.

Question 22

In document JOB/ACC/30/Rev.2/Add.1 – Question 26: Kazakhstan stated the 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. Can Kazakhstan provide the number of EEC Decision of 9 April 2013?

Kazakhstan also stated that "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."

In December 2012, we submitted our comments on 9 October 2012 draft amendment to uniform veterinary-sanitary requirements approved by the CU Decision No. 317.

- **Can you confirm that our comments have been reviewed and taken into account upon agreement by the CU members? When can we expect CU's feedback for our comments?**

Answer:

Amendments into CU Commission Decision no. 810 have been adopted by the EEC Council Decision No. 33 of 16 May 2013.

The draft amendments to the Annex of the Common Veterinary Requirements approved by the CU Commission Decision No. 317 have been discussed by the CU Parties several times in order to address the questions and comments received during public consultations. All comments were taken into account and approved at the EEC working group meeting in August. Taking into account that the amendments change measures currently applied by the Russian Federation, and thus, they will affect current trade, it was decided to publish the revised draft amendment for another round of public consultations.

Question 23

Paragraph 50: The second sentence states: She further noted that in accordance with the Common Veterinary Requirements, for several products of animal origin with low risk, an import permit and veterinary certificate was required to indicate the name and (or) number of the establishment assigned by the official veterinary authority of the exporting country. We would agree that this is what Decision No. 830 states; however, this is not what CU Parties are applying.

The CU Parties have implemented a new requirement that requires favourable audit results before products of animal origin with low risk can be imported in the CU with only port permit and veterinary certificate. As an example, according to the CU Decision No. 830, for Products used for animal feed: "Inclusion to the Register is not required, but names and/or numbers of the establishments should be indicated in the import permit and in the Veterinary certificate".

However, the Customs Union continues to request a list of establishments for shipping pet food products.

Answer:

Pursuant to the Regulation on Joint Inspections of Objects and Sampling of Goods Subject to Veterinary Control adopted by CU Decision No. 834 of 18 October 2011, the basic principle used by the CU members to provide import safety is an audit of foreign official surveillance system.

So far none of the third countries have been audited by the CU Parties. Products of animal origin for which listing is required from countries that have not been audited can be imported to the CU based on inclusion in the Register of Establishments of Third Countries.

Currently, within most of the sectors, establishments of third countries producing different controlled goods have an access to the CU market based on the corresponding Register of establishments.

Products, for which listing of establishments is now not required in accordance with Decision No. 830, have lost the possibility to have an access to the CU market based on the listing into the Register and, at the same time, they have not yet authorised to export based on positive audit results.

Taking into account that the audit is a complex and lengthy process, in order not to stop trade, 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, pending the audit results, can be imported to the CU based on listing of establishments.

It should be noted that 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.

Question 24

Paragraphs 52-53: We continue to have strong reservations with the addition of the last sentence in paragraph 52 that states "Trade would then be possible for these commodities without listing upon favourable audit results". We request 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. We submitted our comments on 29 March 2013, but majority of comments were not taken into consideration in updated draft that was published for public consultation on 10 April and 8 May.

Answer:

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

CU Decisions No. 830 and No. 834 have been adopted in the result of negotiations on accession of the Russian Federation into the WTO. Prior to Russian Federation's accession into the WTO the authorised body of the Russian Federation has sent a letter to the WTO Members with the description of the provisional measure that will be applied pending the audit of foreign official system of control. Paragraph 179 was included into the draft with the aim to envisage this provisional measure and link CU Decisions No. 830 and No. 834.

However, taking into account comments received from interested parties during public consultation paragraph 179 has been excluded from the draft amendments to CU Decision No. 834.

2. Comments received during first two public consultations on draft amendments to Decision No. 834 (4 March, 10 April 2013) have been reviewed at the meeting of the EEC working group on "Veterinary-sanitary measures". Summary table of comments and proposals have been published on the EEC official website on 19 July 2013. The new comments received from third countries on the draft notified by the Russian Federation SPS/N/RUS/14/Add.2 of 12 July (the draft published on 8 May 2013) were considered recently at the EEC working group meeting in August 2013 by the CU Parties and summary table of comments and answers will be published at the EEC website in September.

Question 25

Paragraph 54: We are strongly concerned with Kazakhstan's interpretation of CU Commission Decision No. 834, in particular with Kazakhstan's addition to first sentence that according to Article 5 of the Decision No. 834 an audit of foreign official control systems was the basic principle used by CU Parties to ensure safety of products subject to veterinary control.

We are concerned with Kazakhstan's answer provided in Question 29 of document JOB/ACC/30/Rev.2/Add.1 that "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 are not required". As Kazakhstan stated "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".

We note again that the CU Commission Decision 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:

The CU Commission Decision No. 834 establishes that audit is the main principle for ensuring safety of products imported into the CU. In other words, to ensure safety of products of animal origin imported to the CU territory, they shall be imported from the countries whose official control systems have been audited by the CU Parties.

The audit of official foreign control systems as pre-condition for imports does not contradict WTO rules and is in line with international practice. Many developed countries apply audit (approval of exporting countries) as a main condition for exporting animals and products of animal origin to their territories. Thus, in these countries animals and products of animal origin cannot be imported to their territories before the exporting country is included into the list of eligible exporting countries based on audit of its official control system.

In this regard, we believe that the CU Parties, as any other WTO Member, have a sovereign right to apply audit as the main condition for importing products subject to veterinary control to their territory.

Question 26

Paragraph 54: We are strongly concerned with Kazakhstan's addition "At the same time, products, for which listing of establishments was not required in accordance with Decision No. 830, could be imported to the CU only after favourable audit results. Taking into account that audit was a complex and lengthy process, in order not to stop trade in these products, the CU Parties had agreed to apply provisional scheme that would be applied until all CU trade partners undergo audit. Under these scheme products, for which listing was not required under Decision No. 830, before audit was carried out, could be imported to the CU based on the listing of establishments. Listing of establishments could be done based on the guarantee of third countries' competent authorities or joint inspections. The listing of establishments for such products would be carried out until audit was completed and the official system of a respective third country was recognised as equivalent. The CU Parties agreed to introduce relevant amendments into Decision No. 834. These amendments had been published for public discussion on the EEC official website.

We request that this new language be removed from the text. Again, 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 note again that amendments to Decision No. 834 were published which did not resolve our concerns. We submitted our comments on 29 March 2013, but majority of comments were not taken into consideration in updated draft that was published for public consultation on 10 April and 8 May.

Answer:

1. The CU Commission Decision No. 834 establishes that audit is the main principle for ensuring safety of products imported into the CU. In other words, to ensure safety of products of animal origin imported to the CU territory, they shall be imported from the countries whose official control systems have been audited by the CU Parties.

The audit of official foreign control systems as pre-condition for imports does not contradict WTO rules and is in line with international practice. Many developed countries apply audit (approval of exporting countries) as a main condition for exporting animals and products of animal origin to their territories. Thus, in these countries animals and products of animal origin cannot be imported to their territories before the exporting country is included into the list of eligible exporting countries based on audit of its official control system.

In this regard, we believe that the CU Parties, as any other WTO Member, have a sovereign right to apply audit as the main condition for importing products subject to veterinary control to their territory.

2. Comments received during first two public consultations on draft amendments to Decision No. 834 (4 March, 10 April 2013) have been reviewed at the meeting of the EEC working group on "Veterinary-sanitary measures". Summary table of comments and proposals have been published on the EEC official website on 19 July 2013. The new comments received from third countries on the draft notified by the Russian Federation SPS/N/RUS/14/Add.2 of 12 July (the draft published on 8 May 2013) were considered at the EEC working group meeting on 8-9 August 2013 by the CU Parties and summary table of comments and answers will be published at the EEC website in September.

Question 27

In Question 29 of document JOB/ACC/30/Rev.2/Add.1, Kazakhstan states that "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".

- Can Kazakhstan describe procedures it follows in accepting guarantees?

We would like to note that we continue to have significant concerns with Customs Union refusal to implement CU Decision No. 834 provisions for accepting guarantees in practice. We are also significantly concerned that the CU insists that we provide guarantees that product meets Customs Union (CU) requirements even though according to the CU Decision No. 726, the trade should continue under agreed bilateral certificates with the Russian Federation and Kazakhstan.

Answer:

1. Inclusion of establishment into the register of third country establishments based on guarantees from competent authorities of third countries is carried out in accordance with paragraphs 43-44 of CU Decision No. 834.

Authorised body of Kazakhstan shall make decision on granting the competent authorities of third countries with the right to provide guarantees with regard to compliance of controlled goods produced by specific establishment (establishments) based on the following criteria:

- a. degree of development of the competent authority of the third country;
- b. degree of justification of guarantees granted by the competent authority of the third country;
- c. risk of entry into the territory of the third country and further spread of pathogens of infectious animal diseases, including diseases common to humans and animals;
- d. epizootic situation in the third country;

- e. results of monitoring tests of goods subject to control imported into the Customs Union territory from the third country;
- f. data of monitoring of goods subject to control conducted by the competent authority of the third country;
- g. compliance with the requirements of the competent authority, as provided in paragraph 10 in respect of goods subject to control imported to the territory of the CU from the third country;
- h. results of inspections by the competent authority of the Parties of establishments located in the territory of the third country.

After making the decision on granting the right to provide guarantee Kazakhstan's authorised body sends its decision with supporting materials to other CU Parties for approval. Upon approval by the CU Parties a notice is sent to the competent authority of the exporting country, who then prepares a list of establishments and sends it to the authorised body of Kazakhstan. Kazakhstan's authorised body has to assess the proposal within one month and make a decision on including the listed establishments into the Registry of Establishments of Third Countries. In case of two requests received by Kazakhstan, the third countries have already attached the list of their establishments to the request letters.

Currently, relevant amendments were being introduced into the Decision No. 834 in order to clarify and improve the procedures for accepting guarantees from competent authorities of third countries.

2. The listing requirement and requirement to provide veterinary certificates are two separate veterinary requirements and they are not interchangeable. When making decision on accepting the guarantees from third countries, the CU Parties take into account the requirements bilaterally agreed between the CU Party and third countries.

We would like to note that import of products of animal origin based on agreed bilateral certificates is a transitional measure. According to the provision of Decision No. 726 those certificates will be applicable until bilateral certificates are agreed between the CU and a third country. In this regard, upon inclusion of establishment into the register of third country establishments based on guarantees from the competent authority of the third country it is necessary to provide guarantee of compliance with CU requirements, not national requirements.

Question 28

In Question 30 of document JOB/ACC/30/Rev.2/Add.1, Kazakhstan stated that "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".

We are significantly concerned with Kazakhstan's response to this question. We strongly believe 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 and taking into account background/historical trade of exporting countries and authorised establishments when accepting guarantees. We note again, that historically, Kazakhstan had not maintained a register of approved establishments and relied on the agreed certificates as the guarantee.

Kazakhstan also stated that "Members 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".

We note again that majority of comments submitted on 29 March 2013 were not incorporated into another round of public consultation. In particular, we remain concerned with the addition of paragraph 179:

This Member notes the contradiction of additional requirement "In accordance with the regulatory measures, established by the Unified veterinary requirements for controlled goods, imported to the customs territory of the Customs Union, which are not subject to the listing in the Register of establishments of third countries, the following scheme shall apply: "with points 1, 2, and 3 that require the establishment to be listed". If an audit of a foreign official system of supervision was not carried out or is not completed, or if, as a result of such audit, the foreign official system of supervision is not recognized as being capable to provide a level of protection at least equivalent to the level of protection provided by the CU requirements".

This Member notes that the Russian Federation committed to eliminate the requirement that establishments producing certain low risk products (e.g. dairy, pet food) be registered with CU members prior to export.

According to the Russian Federation's Working Party Report, paragraph 907: "The representative of the Russian Federation explained that the CU Commission Decision No. 830 of 18 October 2011 amended CU Commission Decision No. 317 to specify, for each type of good included in the list of goods subject to veterinary control, which veterinary measures (import permits, veterinary certificates and/or listing of establishments) applied to that particular good. In some cases, the form of veterinary control had been modified or eliminated. For example, the requirement for veterinary certificates and/or import permits had been eliminated. Similarly, the requirement for an establishment to be included in a Register had been eliminated or amended to require only the provision of the name or number of the final establishment dealing with the goods prior to export to the territory of the CU, which was included in the import permit or veterinary certificate.

Per the Russian Federation's commitment in the Working Party Report, paragraph 908: "With regard to the list of goods as set-out in Table 41, the representative of the Russian Federation confirmed that categories of goods would be added to the list of goods subject to veterinary control or the form of veterinary control applied to categories of goods on the list would be modified only if such action was in compliance with the provisions of the WTO SPS Agreement. The Working Party took note of this commitment."

In addition, per the Russian Federation's commitment in the Working Party Report, paragraph 935: "The representative of the Russian Federation confirmed that, by the date of the accession of the Russian Federation to the WTO, the new Regulation, as described in the Working Party Report, would be applied in compliance with the WTO SPS Agreement, including Article 2.3 thereof, and the GATT 1994. In particular, he confirmed that the new Regulation would not arbitrarily or unjustifiably discriminate between Members, where identical or similar conditions prevail, including between CU Parties which were members and other Members, with regards to requirements for on-site inspections, including for purposes of determination and maintenance of equivalence of the systems of control of products; and that the new Regulation would not be applied in a manner which would constitute a disguised restriction on international trade. The Working Party took note of this commitment. This Member views the new addition to the Regulation on Joint Inspection as an additional restriction on international trade.

This Member notes that according to CU Decision No. 830, the CU removed the requirement to provide the list of establishments exporting milk and dairy products (excluding raw milk and raw cream), feed of animal origin, feed of plant origin, casings, gelatin, hatching eggs, table eggs, and live animals to the Russian Federation (to the whole CU territory in the case of live animals) but provide veterinary certificates and by import permits except for feed of plant origin which will not be subject to veterinary controls. Veterinary certificates and import

permits provide a more than adequate basis to continue the trade in these goods without audit.

This Member also notes that on 9 October 2012 the EEC also introduced draft amendment to CU Decision No. 317 to remove the listing requirement per CU Decision No. 830 for Kazakhstan. This Member requests full implementation of the CU Decision No. 830.

This Member requests to delete the proposed paragraph 178 requiring an audit as precondition to implement the Russian Federation's commitments to the WTO, CU Decision No. 830, and the 9 October 2012 EEC amendment to CU Decision No. 317 as proposed requirement would hinder instead of promote trade in these goods.

We ask Kazakhstan to reconsider comment received from us.

Answer:

1. Prior to the adoption of Decision No. 834, the Customs Union did not accept guarantees from third countries. Some of the CU Parties have accepted guarantees on compliance with their national requirements in accordance with their national legislation. This guarantee was accepted only by this particular CU Party.

With the adoption of Decision No. 834 the legal basis for accepting guarantees by the Customs Union (by all three CU Parties) for compliance with the CU requirements has been established. In this regard, all the countries wishing to be listed in the CU Register based on guarantees have to undergo the new CU procedures.

2. Comments received during first two public consultations on draft amendments to Decision No. 834 (4 March, 10 April 2013) have been reviewed at the meeting of the working group on "Veterinary-sanitary measures". Summary table of comments and proposals have been published on the EEC official website on 19 July 2013. The new comments received from third countries on the draft notified by the Russian Federation SPS/N/RUS/14/Add.2 of 12 July (the draft published on 8 May 2013) were considered at the working group meeting by the CU Parties in August and summary table of comments and answers will be published at the EEC website in September.

Question 29

In Question 31 of document JOB/ACC/30/Rev.2/Add.1, Kazakhstan stated "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".

- Can Kazakhstan provide further details on its publication of the schedule for audits?

Answer:

Currently the requirement on annual publication is not provided in the CU legislation. However, in order to provide transparency of joint inspections and audit CU Parties plan to publish the plan of conducting joint inspections and audits on a regular basis. Kazakhstan proposed to include the relevant provision into Decision No. 834. This proposal recently has been discussed at the EEC working group meeting in August. EEC will consider publication of the semiannual schedule agreed by the CU Parties.

Question 30

Paragraph 56: We would like to note again 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 in order for the SPS text to move forward.

Answer:

The audit of official foreign control systems as pre-condition for imports does not contradict WTO rules and is in line with international practice. Many developed countries apply audit (approval of exporting countries) as a 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 eligible exporting countries based on audit of its official control system.

In this regard, we believe that the CU Parties, as any other WTO Member, have a sovereign right to apply audit as the main condition for importing products subject to veterinary control to their territory.

Question 31

Paragraph 56: We remain 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.

We are concerned by Kazakhstan's answer in Question 33 of document JOB/ACC/30/Rev.2/Add.1 that "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".

We believe changing the legal basis to create more burdensome requirements during its accession to the WTO indicates that Kazakhstan has no intention of abiding by the principals and obligations outlined in the WTO Agreements. We would like to note again that we submitted our comments on the EEC amendment expressing significant concern with new provision allows one CU Party to impose restrictions for the entire CU without the consent of all CU Parties. However, the consensus from all CU Parties is required when the CU accepts guarantees and approves establishments. We consider the disparity between the procedure to accept guarantees and impose restriction to be contrary to the principles of the WTO Agreements. Based on updated version of amendment as published on 10 April and 8 May, our comments were not taken into consideration.

Answer:

It is not correct to seek for proportionality between the acceptance of guarantees and suspension of imports from establishments. Acceptance of guarantees shall be compared with the permanent exclusion of an establishment from the list of establishments. The latter can only be performed at the request of the establishment or a competent authority of an exporting country.

Consensus of all three CU Parties when accepting guarantees is required because CU Parties make this decision based on the comprehensive analysis that includes assessment of trade experience of each CU Party with the exporting country.

At the same time, temporary suspension of imports from an establishment is introduced based on the prescriptive criteria stipulated in paragraph 164 of the Regulation on Joint Inspection. In accordance with these criteria, 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 are notified to the competent authority of the exporting country and which pose significant risk to human and animal life and health.

Prior to introducing the temporary suspension of imports CU Parties apply consistent measures, such as increased laboratory monitoring, warning, special requirements, such as application of additional or replacement measures, in order not to stop exports from such establishments. Such decisions are made by a CU Party based on identification of repeated violations of the CU requirements and based on risk assessment and they do not contradict principles and spirit of the SPS Agreement.

Following the EEC working group meeting in August 2013 it was decided to exclude from the draft amendments to Decision No. 834 the provision in accordance with which restriction of imports from an establishment imposed by one CU Party automatically applies to the entire CU territory. CU Parties agreed that it was necessary to develop and establish a certain mechanism within the CU for making coordinated decisions when imposing suspensions of imports into the CU territory.

Question 32

Paragraph 60: In line 6, the representative explained that the 3 parties of the CU must agree to rely on guarantees for a country to be able to utilize this mechanism for establishment approval. In Question 34 of document JOB/ACC/30/Rev.2/Add.1, Kazakhstan explained the process that would be used within the Customs Union per its amendments that are open for public consultation. We note that new amendment was published on 8 May with a comment period of at least 60 days. The amendments will be in force 30 days after it is published in its final form after the completion of the review of comment received during public consultation. We reiterate our concerns with the process for accepting guarantees and with the draft amendments regarding guarantees that have been proposed. In our view, the draft procedures are time consuming and burdensome, and are not intended to facilitate trade. We ask Kazakhstan to modify the procedures in order to streamline the mechanism for accepting guarantees. In answer to Question 29, Kazakhstan stated that it received a request from two countries. Can you describe your current internal process used within the CU to coordinate the third country request to accept guarantees? Please provide more information on the decision making process and the timing of the current mechanism?

Answer:

Draft amendments into Decision No. 834 have been initiated in order to meet WTO Member's concern and to clarify mechanism for accepting guarantees from competent authorities of third countries (paragraphs 43-44), including time-frames for considering requests, provision of reasons for refusal in accepting the guarantee, terms and scope of the guarantee.

The last public consultation on draft amendments to CU Decision No. 834 have been closed on 12 July 2013. Now, all the comments received during public consultations periods will be reviewed by the EEC working group and taken into account when developing the final version of the draft.

Currently, when considering guarantees from third countries Kazakhstan follows the procedures established in paragraphs 43-44 of the current version of Decision No. 834. In particular, the authorised body of Kazakhstan makes decision on granting the competent authorities of third countries with the right to provide guarantees with regard to compliance of controlled goods produced by specific establishment (establishments) based on the following criteria:

- a) degree of development of the competent authority of the third country;

- b) degree of justification of guarantees granted by the competent authority of the third country;
- c) risk of entry into the territory of the third country and further spread of pathogens of infectious animal diseases, including diseases common to humans and animals;
- d) epizootic situation in the third country;
- e) results of monitoring tests of goods subject to control imported into the Customs Union territory from the third country;
- f) data of monitoring of goods subject to control conducted by the competent authority of the third country
- g) compliance with the requirements of the competent authority, as provided in paragraph 10 in respect of goods subject to control imported to the territory of the CU from the third country
- h) results of inspections by the competent authority of the Parties of establishments located in the territory of the third country

After making the decision on granting the right to provide guarantee Kazakhstan's authorised body sends its decision with supporting materials to other CU Parties for approval. Upon approval by the CU Parties a notice is send to the competent authority of the exporting country, who then prepares a list of establishments and sends it to the authorised body of Kazakhstan. Kazakhstan's authorised body has to assess the proposal within one month and make a decision on including the listed establishments into the Registry of Establishments of Third Countries. In case of two requests received by Kazakhstan, the third countries have already attached the list of their establishments to the request letters.

Question 33

Paragraph 71: In Question 36 of document JOB/ACC/30/Rev.2/Add.1, a Member asked for a confirmation that if a decision on suspension of exports was made individually by a CU Party, that suspension of exports would be made only for the territory of the CU Party took the decision.

We are significantly concerned that Kazakhstan stated that "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."

We note that recently Belarus imposed restrictions on Kazakhstan's poultry because of an outbreak of Newcastle Disease in Eastern Kazakhstan. Did the Russian Federation also impose the ban on Kazakhstan's poultry?

Answer:

Currently CU Party's establishments are included into the Register of Establishments and Persons that Produce, Process and (or) Store Controlled Goods Moving from the Territory of one CU Member-State to the Territory of Another CU Member-state by the competent authorities of the CU Party, at whose territory the establishment is situated. This is due to the fact that systems of official control of CU Parties have been recognized as equivalent in accordance with CU Commission Decision No. 833. In case of disease outbreak in an establishment of a Party, the competent authority of this Party changes the status of this establishment to "Temporary suspended". In this regard, the Russian Federation does not have to introduce additional restrictions on establishments situated in the zones with unfavourable epizootic situations of other CU Parties, because their status in the Register has already been changed by the competent authority of the relevant CU Party.

Question 34

Paragraph 73: We are significantly concerned with explanations provided by Kazakhstan. In particular by the "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".

We note that this statement is not in line with current provisions in CU Decision No. 834. The statement above appears to be from a draft provision that is still under public consultation. In addition, this draft provision is controversial to several Members and appears contrary to the provisions of Decision No. 726 which allow for trade under bilateral veterinary certificates that may contain different requirements to continue. If one CU Party introduces "temporary restrictions" based on the violations of exporting country bilaterally agreed requirements with that CU Party, other CU Parties should not have a basis to impose temporary restrictions on the exporting country.

We are also concerned that the new provision allows one CU Party to impose restrictions for the entire CU without the consent of all CU Parties. However, the consensus from all CU Parties is required when the CU accepts guarantees and approves establishments. We consider the disparity between the procedure to accept guarantees and impose restriction to be contrary to the principles of the WTO Agreements. Moreover, we are concerned that that temporary restrictions are taken without regard to the actual risk of the alleged violation being considered. As such, we request that the Customs Union modify the mechanism to impose temporary restrictions to ensure that these restrictions are based on a risk assessment.

Answer:

1. The provision that suspension of exports imposed by one CU Party were automatically effective throughout the whole CU territory has been recently withdrawn from the draft amendments into the CU Decision No. 834. The public consultations period for these amendments has just been closed and comments received from third countries have been considered at the EEC working group in August. The results of the discussion will be published at the EEC website in September.

2. It is not correct to seek for proportionality between the acceptance of guarantees and suspension of imports from establishments. Acceptance of guarantees shall be compared with the permanent exclusion of an establishment from the list of establishments. The latter can only be performed at the request of the establishment or a competent authority of an exporting country.

Consensus of all three CU Parties when accepting guarantees is required because CU Parties make this decision based on the comprehensive analysis that includes assessment of trade experience of each CU Party with the exporting country.

At the same time, temporary suspension of imports from an establishment is introduced based on the prescriptive criteria stipulated in paragraph 164 of the Regulation on Joint Inspection. In accordance with these criteria, 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 are notified to the competent authority of the exporting country and which pose significant risk to human and animal life and health.

Prior to introducing the temporary suspension of imports CU Parties apply consistent measures, such as increased laboratory monitoring, warning, special requirements, such as application of additional or replacement measures, 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 do not contradict principles and spirit of the SPS Agreement.

Following the EEC working group meeting in August 2013 it was decided to exclude from the draft amendments to Decision No. 834 the provision in accordance with which restriction of imports from an establishment imposed by one CU Party automatically applies to the entire CU territory. CU Parties agreed that it was necessary to develop and establish a certain mechanism within the CU for making coordinated decisions when imposing suspensions of imports into the CU territory.

Question 35

Paragraph 81: We note Kazakhstan added Members concerns regarding a draft amendment to CU veterinary requirements that introduced a new listing obligation for

establishments supplying raw materials to establishments that exported animal products to the CU.

We would like to note that on 1 April 2013, we submitted our comments to this draft amendment to Uniform Veterinary - Sanitary Requirements approved by Decision No. 317.

We are strongly concerned with this addition to the CU requirements that seem to impose additional restrictions on products that are currently eligible for export to the Customs Union. We would request the scientific basis underpinning this requirement, and details regarding the scope of this measure.

Can Kazakhstan also confirm that published summary table will include the results of consultation? We would like to note that according to paragraph 9, 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.

Answer:

Draft amendment to the CU Common Veterinary Requirements that introduced a new listing obligation for establishments supplying raw materials to establishments that exported animal products to the CU was sent for further elaboration and risk assessment.

Question 36

Paragraph 82: We request a clarification on the scope of products that would be affected by new requirements.

Does this new requirement apply to products intended for purposes other than human consumption?

For example, could salted hides intended for use in the clothing industry only be exported from facilities approved to export meat to Russia?

For example, would the chicken in chicken noodle soup need to only come from poultry establishments eligible to export to the Customs Union?

We note that this appears to be an attempt to add an establishment list requirement where the list requirement has been removed, and does not appear to be consistent with the recommendations of the World Organisation for Animal Health or Codex. In addition, in the Russian Federation's WTO obligations, the Russian Federation agreed to not add additional requirements unless they were based on a risk assessment.

We note that veterinary certificates and import permits provide a more than adequate basis to continue the trade in goods which include components of animal origin produced by establishments that are not registered with the CU. If exported product meets the bilaterally agreed requirements for finished products, then there should be no further requirements for the raw materials. Compliance with agreed requirements provides safety guarantees which are proportionate to the potential risks derived from commodities. The appropriate mitigations a country should require for a processed product are different than those they should require for raw materials.

Answer:

Draft amendment to the CU Common Veterinary Requirements that introduced a new listing obligation for establishments supplying raw materials to establishments that exported animal products to the CU was sent for further elaboration and risk assessment. Kazakhstan will inform the Working Party members of the State of CU Parties' considerations on this matter.

Question 37

Paragraph 47, 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.

Concerning live fishes, we thank Kazakhstan for its previous answer explaining the CU reasoning for requiring the listing of establishments for live fish. We understand the safety objectives of Kazakhstan however the listing of fish farms by the importing country is not the least trade restrictive measure to achieve these objectives. It is therefore not considered to be in line with Articles 2.1 and 5.4 and 5.6 of the WTO SPS Agreement. On this basis, we maintain our request that live fishes are not subject to the listing requirement.

Answer:

1. On milk products within HS 0401:

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 proposal has been recently approved by the CU working group.

2. On live fish:

In order to find mutually acceptable solution, Kazakhstan has filed a proposal to the EEC to divide HS position for life fish 0301 into two positions: 1) for live fish intended for consumption as food; 2) live fish not intended for consumption as food (ornamental fish, breeding fish). The proposal will envisage that the listing requirement will apply only to live fish intended for consumption as food. The proposal was approved at the EEC working group in August.

Question 38

Paragraphs 52 and 54: 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. We are concerned by the explanation given the second part of paragraph 54. We are also concerned by a draft amendment to CU Decision No. 834 (see next question) which would maintain the listing requirement until a successful audit.

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 are very concerned that the new version of those draft amendment, published on the CU website on 8 May, does not take into account our comments. 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. Paragraph 179 has been included into the draft amendments to Decision No. 834 in order to establish a provisional measure that can be applied for imports of products subject to veterinary control pending the audit results.

CU Decisions No. 830 and No. 834 have been adopted in the result of negotiations on accession of the Russian Federation into the WTO. Prior to Russian Federation's accession into the WTO the authorised body of the Russian Federation has sent a letter to the WTO Members with the description of the provisional measure that will be applied pending the audit of foreign official system of control. Paragraph 179 was included into the draft with the aim to envisage this provisional measure and link CU Decisions No. 830 and No. 834.

However, taking into account comments received from interested parties during public consultation paragraph 179 has been excluded from the draft amendments to CU Decision No. 834.

2. Comments received during first two public consultations on draft amendments to Decision No. 834 (4 March, 10 April 2013) have been reviewed at the meeting of the EEC working group on "Veterinary-sanitary measures". Summary table of comments and proposals have been published on the EEC official website on 19 July 2013. The new comments received from third countries on the draft notified by the Russian Federation SPS/N/RUS/14/Add.2 of 12 July (the draft published on 8 May 2013) were considered at the EEC working group meeting in August 2013 by the CU Parties and summary table of comments and answers will be published at the EEC website in September.

3. It is not correct to seek for proportionality between the acceptance of guarantees and suspension of imports from establishments. Acceptance of guarantees shall be compared with the permanent exclusion of an establishment from the list of establishments. The latter can only be performed at the request of the establishment or a competent authority of an exporting country.

Consensus of all three CU Parties when accepting guarantees is required because CU Parties make this decision based on the comprehensive analysis that includes assessment of trade experience of each CU Party with the exporting country.

At the same time, temporary suspension of imports from an establishment is introduced based on the prescriptive criteria stipulated in paragraph 164 of the Regulation on Joint Inspection. In accordance with these criteria, 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 are notified to the competent authority of the exporting country and which pose significant risk to human and animal life and health.

Prior to introducing the temporary suspension of imports CU Parties apply consistent measures, such as increased laboratory monitoring, warning, special requirements, such as application of additional or replacement measures, in order not to stop exports from such establishments. Such decisions are made by a CU Party based on identification of repeated violations of the CU requirements and based on risk assessment and they do not contradict principles and spirit of the SPS Agreement.

Following the EEC working group meeting in August 2013, it was decided to exclude from the draft amendments to Decision No. 834 the provision in accordance with which restriction of imports from an establishment imposed by one CU Party automatically applies to the entire CU territory. CU Parties agreed that it was necessary to develop and establish a certain mechanism within the CU for making coordinated decisions when imposing suspensions of imports into the CU territory.

Question 39

Paragraph 57: The web-link for the Kazakh national list of establishments authorised for import into the CU does not work. Could you correct the link?

Answer:

The Kazakhstan's national list of establishments authorised for import into the CU is available at the web-link <http://mgov.kz/veterinarnaya-bezopasnost/> under section Veterinary and Sanitary Measures of the Customs Union.

Question 40

Paragraph 59: We ask to delete "except for live fish" (see previous comment).

Answer:

Kazakhstan has filed a proposal to the EEC to divide HS position for live fish 0301 into two positions: 1) for live fish intended for consumption as food; 2) live fish not intended for consumption as food (ornamental fish, breeding fish). The proposal will envisage that the listing requirement will apply only to live fish intended for consumption as food. The proposal was discussed at the EEC working group meeting in August 2013 and this proposal was approved by CU Parties.

Question 41

Paragraph 61: This paragraph describes the draft amendments (as published on the CU website on 8 May 2013) to paragraph 43 and 44 of CU Decision No. 834, regarding the procedure for listing establishments based on guarantees of the competent authority of the exporting country. We are concerned that this procedure is still very burdensome and does not provide the trade facilitation tool that it should be.

The reasons for refusing to accept guarantees or refusing a specific establishment should be clearly laid down and should be in line with the WTO SPS Agreement's principles. If the exporting country is required to provide information to support the criteria of paragraph 43, these criteria should be revised. Requiring the results of monitoring of goods by the competent authority of the third country in a procedure of listing based on guarantees is not proportionate. The whole procedure should be streamlined.

Answer:

Draft amendments into Decision No. 834 have been initiated in order to meet WTO Member's concern and to clarify mechanism for accepting guarantees from competent authorities of third countries (paragraphs 43-44), including time-frames for considering requests, provision of reasons for refusal in accepting the guarantee, terms and scope of the guarantee.

The last public consultation on draft amendments to CU Decision No. 834 were closed on 12 July 2013. All the comments received during public consultations periods have been reviewed and taken into account by the EEC working group in August. The results of the discussions will be published at the EEC website in September.

Question 42

Paragraphs 72 and 73: We continue to be concerned by the disparity of treatment between the procedure for listing establishments based on guarantees and that for suspending an establishment, since the former would require, according to draft amendments to CU Decision No. 834, the consent of all CU Parties while the latter would require a decision by only one CU Party.

Answer:

It is not correct to seek for proportionality between the acceptance of guarantees and suspension of imports from establishments. Acceptance of guarantees shall be compared with the permanent exclusion of an establishment from the list of establishments. The latter can only be performed at the request of the establishment or a competent authority of an exporting country.

Consensus of all three CU Parties when accepting guarantees is required because CU Parties make this decision based on the comprehensive analysis that includes assessment of trade experience of each CU Party with the exporting country.

At the same time, temporary suspension of imports from an establishment is introduced based on the prescriptive criteria stipulated in paragraph 164 of the Regulation on Joint Inspection. In accordance with these criteria, 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 are notified to the competent authority of the exporting country and which pose significant risk to human and animal life and health.

Prior to introducing the temporary suspension of imports CU Parties apply consistent measures, such as increased laboratory monitoring, warning, special requirements, such as application of additional or replacement measures, in order not to stop exports from such establishments. Such decisions are made by a CU Party based on identification of repeated violations of the CU requirements and based on risk assessment and they do not contradict principles and spirit of the SPS Agreement.

Following the EEC working group meeting in August 2013 it was decided to exclude from the draft amendments to Decision No. 834 the provision in accordance with which restriction of imports from an establishment imposed by one CU Party automatically applies to the entire CU territory. CU Parties agreed that it was necessary to develop and establish a certain mechanism within the CU for making coordinated decisions when imposing suspensions of imports into the CU territory.

Question 43

Paragraphs 81 and 82: 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. This is highly burdensome, trade restrictive, neither justified nor disproportionate. This is also contradictory with the commitment to withdraw the listing requirement for a number of commodities. The explanation of paragraph 82 does not address those concerns since they refer to "the high risk associated with raw products of animal origin" while the amendment would apply to exports to the CU of processed products of animal origin.

Answer:

Draft amendment to the CU Common Veterinary Requirements that introduced a new listing obligation for establishments supplying raw materials to establishments that exported animal products to the CU was sent for further elaboration and risk assessment.

Question 44

Paragraph 84: We ask for an update on the adoption of the Decision referred to in this paragraph.

Answer:

We will update the information as soon as the Decision is adopted.

Question 45

Paragraph 90: Please clarify if the publication of the audit and inspection schedule will be carried out each year and in which document this is foreseen. Please inform of where to find the schedule for 2013.

Currently, the requirement on annual publication is not provided in the CU legislation. However, in order to provide transparency of joint inspections and audit CU Parties plan to publish the plan of conducting joint inspections and audits on a regular basis. Kazakhstan proposed to include the relevant provision into Decision No. 834. This proposal recently has been discussed at the EEC working group meeting in August. EEC will consider publishing of semiannual schedule agreed by CU Parties.

Question 46

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 will need to be amended after this adoption.

Answer:

Comments to the draft amendments to Government Resolution No. 132 have been taken into account and Kazakhstan will notify WTO Members as soon as the amendments are adopted.

Question 47

Division of competence in the field of SPS measures:

Please clarify division of competence between CU, EEC and Kazakhstan concerning goods imported to the CU with respect to lawmaking, acceptance of third country establishments and certificates. In which cases have the CU countries legal competence to make national laws in the SPS field?

Answer:

The CU/EEC regulations cover the following SPS measures/issues: 1) common lists of goods subject to veterinary, sanitary, and phytosanitary control; 2) common CU veterinary and sanitary requirements to products, 3) procedures for carrying out veterinary, sanitary and phytosanitary control upon importation of products into the CU territory and movement of products within the CU territory, 3) procedures of listing of establishments in the Register of Third Country Establishments; 4) common forms of documents certifying the safety of products (e.g. common forms of veterinary certificates, state registration certificates, etc.). Paragraphs 1-5 of the document JOB/ACC/30/Rev.2 list all adopted CU regulations on SPS measures.

Other SPS measures/issues, such as rules for issuing import permits, exportation, transit, rules of veterinary, sanitary and phytosanitary control (surveillance) on the territory of a CU Party, requirements to border posts, and etc. are regulated by national legislation of the CU Parties. The list of national legislation of the Republic of Kazakhstan on SPS measures is listed in paragraph 6 of the document JOB/ACC/30/Rev.3.

Question 48

Access for goods to the CU territory:

Do products from establishments listed on the third country list of one of the members of the CU countries, have free access to all the CU countries?

Answer:

Products exported from the establishments listed on the List of Third Country Establishment of one of the CU Parties, have free access to all CU Parties, i.e. they can freely circulate within the territory of the Customs Union.

Question 49**System audits:**

Can a country freely choose to which of the CU countries they apply for third country listing, and accordingly choose the country with most available capacity for system auditing?

Answer:

A third country can freely choose to which of the CU countries they apply listing their establishments, and accordingly choose the country with most available capacity for system auditing.

(e) Trade in Goods Subject to Phytosanitary Control**Question 50**

Paragraph 113: In Question 50 of document JOB/ACC/30/Rev.2/Add.1, Kazakhstan stated that "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".

- **Can Kazakhstan add this clarification to the text?**

Answer:

The clarification will be added to the text.

Question 51

Paragraph 118: 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 remain concern 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). We submitted our comment in July 2012 asking the Customs Union to remove phytosanitary control from many processed products or provide its scientific justification.

In Question 51 of document JOB/ACC/30/Rev.2/Add.1, Kazakhstan confirmed that "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.

- **Can Kazakhstan share its PRAs in English for the products noted above with us?**

Answer:

English translations of risk analysis for pests associated with the processed products stated in the question (HS 1101 00 - Wheat or Meslin Flour, 1102 - cereal flours, 1103 - cereal groats, 1104 cereal grains, etc.), namely PRAs for Khapra beetle (trogoderma granarium) and Bruchid beetle (callosobruchus maculates F.) are provided in document WT/ACC/KAZ/79.

Question 52

Paragraph 119: We note that based on our experience since June 2011 the Customs Union members in practice do not recognize replacement phytosanitary certificates.

Specifically, on 4 February 2013, we were informed by a CU member that according to paragraph 4.1.6.2 of the Regulation of Quarantine Phytosanitary Control (Surveillance) on the Customs Territory of the Customs Union adopted by the Decision of the Customs Union Committee No. 318 of 18 June 2010, the phytosanitary certificate is considered invalid if it is issued for the shipment of regulated products after its actual departure from the territory of the Exporter.

However, on 6 February 2013 in response to our comment about replacement certificate for Customs Union Decision No. 318 submitted in July 2012, Kazakhstan stated:

The draft amendments to the Regulations on the Procedure for Quarantine Phytosanitary Control (Supervision) on Customs Border of the Customs Union approved by the Decision of the Customs Union Commission of 18 June 2010 No. 318 (hereinafter – the Regulations) published on 6 November 2012 on the official website of Eurasian Economic Commission for public comment <http://www.tsouz.ru/db/techregulation/Pages/Publicchnoe.aspx> provides for a new wording of paragraph 4.1.6.

In accordance with the amendments to paragraph 4.1.6 of the Regulation, the principles and norms of the International Standard for Phytosanitary Measures No. 12 on the recognition of legitimacy of a phytosanitary certificate issued for replacement were taken into account.

Can Kazakhstan provide an update on the status of amendment? When it will be published in final form and implemented?

We have significant concerns with challenges we continue to encounter regarding acceptance of the replacement phytosanitary certificate. We stated in its several letters that we are greatly concerned that the international measures outlined in the most recent version of International Standards for Phytosanitary Measures (ISPM) No. 12 dated March 2011 are not implement by Kazakhstan or the CU.

Answer:

EEC Council Decision No. 50 of 16 August 2013 approved amendments into paragraph 4.1.6 of the Regulation on the Procedure for Quarantine Phytosanitary Control (Supervision) on the Customs Border of the Customs Union approved by CU Commission Decision No. 318 of 18 June 2010, which provided norms on recognition of phytosanitary certificates issued as replacement.

Such certificates are recognized provided that the competent authority of the exporting party provides and confirms the following:

- phytosanitary safety of regulated products;
- the competent authority of the exporting country has carried out sampling, inspection and treatment of regulated products, which are required to meet quarantine phytosanitary requirements prior to the shipment of regulated products;
- the integrity of regulated products from the moment of shipment till the moment of importation of regulated products into the customs territory of the Customs Union.

Question 53

Paragraph 118: Please clarify why the following sentence was changed and how concretely this descriptive sentence is understood by the Kazakh side: *"In line with international practice, when products subject to phytosanitary control were imported*

from countries with registered cases of quarantine spread of quarantine organism 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". What is concretely meant with the reference to ISPM 20? In the penultimate sentence, we ask to add "being notified emergency measures according to ISPM 13" after "emergency (extraordinary) phytosanitary measures".

Answer:

1. In most cases pest-free areas are maintained continuously for several years, while it is not so for pest-free places and pest-free production sites. Moreover, according to ISPM 10 the concept of places and sites of production recognized as free from quarantine pests implies that such places or sites of production are situated in an infected area, which in turn poses significant pest risk of introduction of pests into the territory of the importing country due to the risks of contamination of quarantine products and vehicles when they transit through the infected zone.

Taking into account the sovereign right provided by the IPPC to take measures to prevent the introduction and/or spread of regulated pests into the country's territory, Kazakhstan in order to reduce the phytosanitary risks when importing regulated products from such pest-free places and production-sites will apply phytosanitary measures provided for in ISPM 20.

It should be noted that in accordance with paragraph 4.2.1.2 of ISPM 20 Kazakhstan recognizes that exporting countries may designate on their territories pest free zones, areas and production sites.

2. In paragraph 118 Kazakhstan refers to its right to apply emergency phytosanitary measures. This right is established in paragraph 6 Article 7 of the IPPC, while the ISPM No. 13 establishes exact procedures for notification of non-compliance and emergency action. In this regard, Kazakhstan will add the following sentence into paragraph 118*bis*.: Taking into account ISPM No. 13 *Kazakhstan would notify the relevant Member of application of such measures.*

Question 54

Paragraph 118: Is the division into quarantine products of high pest risk and quarantine products of low pest risk based on ISPM 32? What are the phytosanitary measures to be respected for low risk quarantine products? Is there a phytosanitary check at import into the CU for those commodities? Do you confirm that the products not included in the list of goods subject to phytosanitary controls are allowed to enter into the CU without phytosanitary restrictions?

Answer:

1. Classification of quarantine products to high and low pest risks in the list of quarantine products approved by CU Decision No 318 was based on risk assessment of possible contamination and infestation by quarantine pests, biology and hazard posed by quarantine pests, which can spread in certain quarantine products, conducted by at least one of the CU Parties taking into account ISPM 32.

2. In accordance with the Regulation on the Procedure of Quarantine Phytosanitary Control (Surveillance) at the Customs Border of the Customs Union approved by the CU Commission Decision No. 318 of 18 June 2010, quarantine products (of high or low pest risk) imported into the territory of the Republic of Kazakhstan shall comply with the phytosanitary requirements of the Republic Kazakhstan approved by the Government Resolution of the Republic of Kazakhstan No. 1674 of 30 December 2011. In accordance with paragraph 3.1. of the Regulation each lot of quarantine products listed in the List of Quarantine Products is subject to quarantine phytosanitary control (surveillance). At the same time, in accordance with paragraph 4.1.1 sub-paragraph 2 of this Regulation phytosanitary certificate is required only for quarantine products of high phytosanitary risk.

3. Products not included in the list of goods subject to phytosanitary controls are allowed to enter into the CU without phytosanitary restrictions.

Question 55

Paragraph 121: If there are no mitigation measures in place in case of exports of commodities from areas affected by certain quarantine pest that means from a practical point of view that no export is possible until the mitigation measures are defined. It can have important consequences in trade. Are the mitigation measures proposed by the exporting country? What is a reasonable period of time?

Answer:

Currently, legislative acts of the Republic of Kazakhstan do not specify what kind of mitigation measures can be applied in each case. However, the Republic of Kazakhstan is ready to assess mitigation measures proposed by exporting countries within a reasonable time-frame, as provided for in international standards, guidelines and recommendations.

Question 56

Paragraph 123: Could Kazakhstan clarify what is meant by "*in specific cases, where large amounts of products were imported from countries with phytosanitary conditions that had not been adequately examined, the authorised body on plant quarantine could send an expert to the exporting country for inspection of the places of production, processing, packaging and dispatch of the product*". A system of approval of individual production or processing side by the importing party would be contrary to IPPC.

Answer:

In accordance with paragraph 5.1.5.1 ISPM No. 20 import regulations of the importing country often may include specific requirements that should be done in the country of export, such as production procedures (usually during the growing period of the crop concerned) or specialized treatment procedures. Moreover, in certain circumstances, the requirements may include, in cooperation with the NPPO of the exporting country, an audit in the exporting country by the NPPO of the importing country of elements such as:

- production systems
- treatments
- inspection procedures
- phytosanitary management
- accreditation procedures
- testing procedures
- surveillance.

Thus, such audit does not contradict both the International Plant Protection Convention and regulations and principles of International Standards for Phytosanitary Measures.

The paragraph 123 will be amended to take into account these provisions.

(f) Protection of Human Health

Question 57

Paragraph 129: Could Kazakhstan confirm that testing of products by food business operators' self-checks are accepted by the CU and that CU inspectors do not request testing in official laboratories for the conformity with CU requirements? We propose that this is included in the text.

Answer:

Kazakhstan confirms that testing of products by food business operators' self-check are accepted and CU inspectors do not request testing in official laboratories for the conformity with CU requirements.

(g) Compliance of the SPS Regime with Specific Provisions of the WTO SPS Agreement**- (i) Harmonization with International Standards and Norms****Question 58**

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.

Paragraph 139: We continue to be very concerned by the changes that were made to this commitment paragraph.

In Question 57 of document JOB/ACC/30/Rev.2/Add.1, Kazakhstan stated "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: *[were more stringent than] [resulted in a higher level of sanitary and phytosanitary protection then would be achieved by measures based on]*."

We would like to note that second paragraph of Customs Union Decision No. 721 reads: "If the veterinary, phytosanitary and sanitary and epidemiological and hygienic requirements in force on the territory of the Customs Union, are more restrictive than the relevant international standards, in the absence of scientific evidence of risk to life or health of humans, animals or plants in relevant part, apply international standards". Can Kazakhstan explain its concern with "misinterpretation"? We are strongly concerned with Kazakhstan's refusal to implement CU Decision No. 721 to apply international standards based on what appears to be a misinterpretation of the decision. Furthermore, we are concerned that the working groups within the EEC are considering amendments to this decision which would seek to expand exceptions to the principles of applying international standards.

Answer:

1. In order to be fully in line with the WTO SPS Agreement, Kazakhstan has initiated amendments into CU Commission Decision No. 721. These amendments do not seek to expand exceptions to the principles of applying international standards. On the contrary, the amendments bring the provisions of the Decision No. 721 in full compliance with the provisions of Article 3.3 of the SPS Agreement. In particular, paragraph 2 of the Decision has been modified as follows:

"2. Parties may introduce or maintain sanitary, veterinary (veterinary-sanitary) or phytosanitary measures that result in a higher level of protection than measures based on relevant international standards, guidelines or recommendations if there is a scientific justification, or if Parties determine that this level of protection is appropriate in accordance with the provisions of the WTO Agreement On the Application of Sanitary and Phytosanitary measures".

The proposed Draft will be published for public consultations and WTO Members will have an opportunity to present their comments.

Question 59

Paragraph 150 (commitment): The third line states "Proposals would be transmitted to the CU Commission". We suggest referencing the EEC Commission.

Answer:

Relevant changes will be made in the text.

Question 60

Paragraph 152: Kazakhstan stated that it was in a process of conducting a risk assessment on tetracycline; the preliminary conclusion of the risk assessment on tetracycline has been published and is under the peer review process. According to paragraphs 139 and 141, and CU Decision No. 721, Kazakhstan would apply international standard until scientific justification of risk was provided.

We are significantly concern that Kazakhstan applies more stringent standards while in a process of conducting a risk assessment. We are analysing the information provided by Kazakhstan.

Answer:

CU Parties established the CU MRLs based on international standards or on the available risk assessment results. With regard to tetracycline, CU Parties established MRLs based on the risk assessment conducted by the Russian Federation.

Due to the concerns raised by the WTO Members, Kazakhstan has decided to conduct its own risk assessment on tetracycline.

Question 61

Paragraph 139: We ask to keep this paragraph in line with CU Decision No. 721.

Answer:

Regarding the proposed commitment language in paragraph 139, Kazakhstan would like to note the following. Under the SPS Agreement there is no obligation for WTO Members to apply relevant standards, guidelines and recommendations, or parts thereof, of the OIE, IPPC and Codex respectively if there are no national mandatory SPS requirements has been established. The SPS Agreement only provides that WTO Members shall base their SPS measures on international standards, guidelines and recommendations, where they exist, unless there is a scientific justification or risk assessment that justify higher level of SPS protection (Article 3).

The WTO does not prohibit the use of standards adopted by the regional organizations or SPS measures of other countries if they are WTO consistent.

The Decision No. 721, as it stands now, goes beyond WTO obligations. That is to say, CU Parties collectively took a decision to apply international standards in the absence of respective CU regulations at this stage of development of the CU. However, this decision of CU Parties was not intended to deny the ultimate right of the CU Parties under the WTO to apply WTO compatible regional standards or SPS measures of other countries.

Therefore, we would like to keep this text as purely descriptive as it is in the Russian Working Party Report. Alternatively, we propose to keep in the commitment text only those obligations that are envisaged by the WTO SPS Agreement. In this case, we shall take the first and penultimate sentences out of the commitment text and move it into the descriptive part of the text:

139. *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].*

Question 62

Paragraph 146: This answer is not clear and does not address the Members' concerns. Could you clarify how withdrawal period are set in Kazakhstan? How is it made sure that those withdrawal periods allow achieving the very strict MRLs applicable for some veterinary drugs? Could Kazakhstan provide the legal basis according to which the adjunction of antibiotics to feed is prohibited in Kazakhstan? We cannot agree that the withdrawal period is dependent on the frequency of the use of the veterinary drugs.

Answer:

The package of documents submitted by the applicant for registration of veterinary drugs and feed additives contains information about the period during which the drug is eliminated from the body completely, or reduced to a level corresponding to the MRLs established for these drugs. This information is confirmed by scientific research. The period of withdrawal of the drug from the body is checked during the approbation research conducted by the competent authority. Kazakhstan has allowed the use of antibiotics in feed, but only in accordance with the instruction accompanying the particular veterinary drug.

Question 63

Paragraphs 144, 147, 149 and 150: We thank Kazakhstan for its answer to Question 61 in JOB/ACC/30/Rev.2/Add.1 and have some follow-up questions: which standards have been adopted for E. sakazakii and Enteriobacteriaceae? Is there an intention to carry out harmonization for L. Monocytogenes, E.coli (14), coagulase-positive staphylococci, coliforms? With which timetable? At which levels nitrates have been harmonized? In which CU Decision? Is the draft amendment mentioned in relation to pesticides MRL the one which was published for public consultation in April 2012? Will it be adopted?

Answer:

1. With regard to E. Sakazakii, standard established in the EU Regulation 1441/2001 of 5 December 2007 have been adopted.

In accordance with the amendments introduced by the Decision No. 889 of 9 December 2011, with regard to standards for E. Sakazakii and Enterobacteriaceae the following amendments have been made:

For products based on soy protein isolate; dry milk high protein foods; products based on total protein hydrolysates; and products without or with phenylalanine levels or with its low content for children under the age of 1 year old, in the section "Safety indicator" – "Microbiological standards" – asterisk has been added for "Pathogenic, including Salmonella". The asterisk makes reference to the following footnote: *"in case of detection in normalized mass of the product intended for*

children under 6 months, of bacteria Enterobacteriaceae, which does not belong to Salmonella, absence of the pathogen E.sakazakii is controlled in 300 g of the product";

For adapted milk formula (dry, liquid, sweet and sour milk) and products based on partially hydrolysed protein in the section "Safety indicator" asterisk has been added. The asterisk makes reference to the following footnote: *"for products intended for feeding infants from 0 to six months and from 0 to 12 months: upon control of E.coli and pathogenic microorganisms, including Salmonella, and upon detection in a normalized mass of product of bacteria Enterobacteriaceae, which does not belong to E. coli and Salmonella, the absence of pathogen E.sakazakii is controlled in 300 g of the product";*

For low-lactose and lactose-free products in the section "Safety indicator" – "Microbiological standards" – asterisk has been added for "Pathogenic, including Salmonella and L. monocytogenes". The asterisk makes reference to the following footnote: *"upon control of E.coli and pathogenic microorganisms, including Salmonella, and detection in normalized mass of the product intended for children under 6 months of bacteria Enterobacteriaceae, which does not belong to E.Coli and Salmonella, absence of the pathogen E.sakazakii is controlled in 300 g of the product";*

2. Concerning L.Monocytogenes, E.coli (14), coagulase-positive staphylococci, coliforms, these standards will be reviewed for their compliance with international standards in response to the request received from the General Directorate of European Commission on Health and Consumer Protection (EC SANCO G7/LC/mh (2013) 531454) under the procedures established in the EEC Collegium Decision No. 212.

3. Levels of nitrates have been harmonized by the CU Technical Regulation "On Safety of Food Products" as of 1 July 2013. Please, refer to Annex 1 that contains MRLs for nitrates established by the Technical Regulation.

The MRLs are set for vegetables and fruits, fresh mushrooms, pickled, marinated, pickled, soaked, fermented, dried. When dry food products are used the levels shall be recalculated for the original product taking into account content of dry substances (solids).

4. Draft amendment on pesticides MRLs has undergone public consultations on 31 October 2012 – 1 November 2012. The issue of its adoption will be resolved at the meeting of the EEC working group in August-September 2013.

- (ii) Risk Assessment

Question 64

Paragraph 152: We note that Kazakhstan is in the process of conducting its own risk assessment for tetracyclines. We understand that for ractopamine, Kazakhstan does not intend to conduct its own risk assessment, but instead will rely on the information provided by Russia. What is the standard operating procedure for conducting risk assessments in the CU? Will each CU Party conduct its own assessment? What would be the rationale to conduct separate assessments? Will all three Parties work together to conduct a risk assessment? Please explain further given that in these two cases Members see two distinct ways of proceeding.

Answer:

The legislation of the Customs Union establishes the common regulatory framework for sanitary measures, including the common list of controlled products and common sanitary - epidemiological and hygienic requirements.

The common CU sanitary requirements have been developed by the working group on Harmonization of Sanitary - Epidemiological and Hygienic Requirements, which included experts of CU Parties on risk assessment and risk management.

Currently, each CU Party has the right to conduct its own risk assessment. Results of risk assessment can be submitted to the EEC Secretariat for consideration by the other CU Parties.

Moreover, the Eurasian Economic Commission has announced a tender for the right to conduct scientific research for official use by the EEC on the following topic: "Harmonization of the Methodology of Assessment of Risk to Human Health when Exposed to Chemical, Physical and Biological Factors in Determining the Food Safety Indicators for Products (Goods) with International Standards".

Question 65

Paragraph 152: This paragraph says that the Kazakh preliminary conclusions on tetracyclines would be subject to a peer review process. Could Kazakhstan inform if this has been the case, and if yes specify the scientific journal in which the publication was made?

Answer:

The risk assessment has been published in the scientific journal "Consilium" (No. 1 (43) 2013) (website of the journal: www.medzdrav.kz), which is a specialized medical publication included in the list of scientific publications recommended by the Committee for Control in the Field of Education and Science of the Republic of Kazakhstan. The peer review process for the risk assessment on tetracycline has been completed successfully and approved by health, food and veterinary scientists.

Question 66

Paragraph 157: We ask to include at the beginning of the paragraph the confirmation that Kazakhstan would follow the internationally recognised principles and recommendations as described in the two previous paragraphs when conducting risk assessments for SPS measures applicable for import into Kazakhstan.

Answer:

Kazakhstan will include the following sentence in paragraph 157:

"Kazakhstan confirmed that principles and recommendation developed by the relevant international organizations described in paragraphs [155] and [156] were used in conducting risk assessment for SPS measures applicable to imports in the Republic of Kazakhstan".

Question 67

Risk assessment section: We ask Kazakhstan to confirm that the risk assessment used to justify stricter SPS measures applicable for import into KZ will be based on the relevant international standards, guidelines and recommendations, in particular CAC/GL 62 2007, Section IV of the Codex Alimentarius Commission Procedural Manual, Chapter 2.1 of the OIE Terrestrial Animal Health Code and 2.2 of the OIE Aquatic Animal Health Code, ISPMs No. 2, 11, 21 and 32.

Answer:

In accordance with Article 5 of the SPS Agreement, WTO Members shall take into account risk assessment techniques developed by relevant international organizations. The meaning of the word "base on" is more stringent than "take into account". To take into account is not the same as to base on, or follow. As Panel stated in case Japan - Apples that these techniques should be "considered relevant", but "a failure to respect each and every aspect of them would not necessarily, per se, signal that the risk assessment is not in conformity with the requirements of Article 5.1".

Moreover, we note, that Section IV of the Codex Alimentarius Commission Procedural Manual establishes procedures for conducting risk assessment when developing international standards by

Codex Alimentarius Commission. Thus, it is not relevant for risk assessment conducted by Governments when developing national standards.

As for ISPM 32, it deals with categorization of commodities according to their pest risk, but it does not establish techniques for conducting pest risk analysis.

In this regard, Kazakhstan confirms that as provided for in the Article 5 of the SPS Agreement it will take into account risk assessment techniques developed by the relevant international organizations, including CAC/GL 62 2007, Chapter 2.1 of the OIE Terrestrial Animal Health Code and 2.2 of the OIE Aquatic Animal Health Code, ISPMs Nos. 2, 11, and 21. Furthermore, Kazakhstan will take into account the categories of commodities according to their pest risk established by ISPM 32.

Question 68

Paragraph 165: In Question 67 of document JOB/ACC/30/Rev.2/Add.1, Kazakhstan states "With regard to procedures on recognising equivalency in accordance with OIE and IPPC standards, this issue is currently discussed at the EEC level".

- Can Kazakhstan provide an update on its discussion with the EEC?

Answer:

Kazakhstan has already prepared draft procedures on recognizing equivalency in accordance with OIE, Codex Alimentarius and IPPC standards. These draft procedures have been submitted to the EEC, which, in turn sent it to the Parties for consideration.

Question 69

Paragraph 166: Please provide an update on the development of procedures necessary to apply Decision No. 835 on equivalence.

Answer:

Kazakhstan has prepared draft procedures on recognizing equivalency in accordance with OIE, Codex Alimentarius and IPPC standards. These draft procedures have been submitted to the EEC and then sent to the CU Parties for consideration.

(h) Transparency

Question 70

In Question 69 of document JOB/ACC/30/Rev.2/Add.1, Kazakhstan explained CU procedure in place for considering comments from third countries. Can Kazakhstan confirm that described procedure would be followed and the summary of comments on the draft technical regulation would be published, including decisions on each comment and reasons for such decisions for draft TR on "Safety of Food Products" and for draft TR "On Safety of Grain" as published on EEC on 29 April 2013?

Can Kazakhstan also confirm that it will publish summary of comments for TR for "Meat and meat Products (2011), "Milk" (2012), "Safety of feed and feed products" (2011), "Fish and Fish products" (2011)? We would like to note that the we submitted comments for all mentioned above.

Answer:

Prior to the adoption of the EEC Council Decision No. 48 of 20 June 2012, CU procedures did not provided for publication of answers to comments received during the public consultations. In this regard, answers to comments received during public consultations that took place in 2011 will not be published.

Kazakhstan confirms that CU Parties will follow the procedures described in the answer to Question 69 of document JOB/ACC/30/Rev.2/Add.1 and summary of comments on draft technical regulations received during the public consultations that took/will take place after the adoption of the EEC Council Decision No. 48 of 20 June 2012, decisions on each of them and reasons for the such decision will published on the EEC website.

Question 71

Paragraph 177 (new): We thank Kazakhstan for providing detailed steps that Kazakhstan would take for SPS notifications of draft EEC texts.

Will the same procedure apply for TBT notifications?

In eight line, Kazakhstan states that: "She clarified that the 60 day comment period through WTO notification would be provided even if the EEC public comment period was closed".

Last two sentences state: "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 ten 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".

Can Kazakhstan explain how this would work?

According to EEC Decision No. 31, received comments and proposals will be considered at the EEC working group meeting and a summary table of comments and answers would be compiled within ten days after the EEC public procedure closes.

How would Kazakhstan ensure that EEC would still take into consideration comments received from Kazakhstan's SPS enquiry point if the EEC comment period is closed and a summary table is published?

Answer:

1. Procedures for notification of draft technical regulations are described in the WPR Section on TBT. In particular, paragraph 618 contains the following description:

"564. ... The EEC ensured the consideration of the first version of the draft technical regulation and related set of documents at the meeting of the Consultative Committee. Following the consideration by the Consultative Committee, the decision on possibility, starting date and period of public consultations on the draft technical regulation was made, which was formalised by a Protocol. If necessary, the Developer of the draft technical regulation within the period established by the Consultative Committee revised the draft technical regulation and the set of related document.

565. ... The Enquiry Point would notify the WTO of a draft technical regulation that would affect international trade approximately at the same time when it was published for public consultations. This would allow to synchronize the process of receiving comments through both mechanisms. The representative of Kazakhstan also clarified that in cases when the deadline established in the notification to the WTO exceeded the public consultation period, CU Parties would still continue to consider comments received from WTO Members.

618. ... From the date of accession of Kazakhstan to the WTO, the TBT/SPS Enquiry Point would fulfil all obligations on notifications specified by the WTO Agreements on TBT and SPS, including notifications on the proposed technical regulations of the Customs Union to the WTO Secretariat and would provide WTO Members with copies of proposed technical regulations upon request. In reply to a specific question, the Representative of Kazakhstan noted that Kazakhstan would confirm receipt of comments whenever comments were received from WTO Members on notified legislation. Moreover, in accordance with the Regulation on Development, Adoption, Amendment and Cancellation of Technical

Regulations of the Customs Union, during public consultations CU draft technical regulations and notifications about the commencement and completion of public consultations on draft CU technical regulation were published on the official website of the EEC. The same information was also published on the official website and bulletin of the Committee on Technical Regulation and Metrology of the Republic of Kazakhstan as well as the website of the Enquiry Point on TBT/SPS of the Republic of Kazakhstan. Upon development of the first draft of a technical regulation or upon completion of public consultations, a developer of the draft technical regulation (a designated State body of Kazakhstan) prepared and sent the relevant notification to the Enquiry Point on TBT/SPS of the Republic of Kazakhstan.

616. ... All comments received from third countries would be sent by the CU members to the EEC. The EEC was responsible for processing all the comments, publishing them on the official website of the Commission and forwarding them to developer of the draft technical regulations (relevant competent authority of the CU Party)".

2. Kazakhstan has initiated amendments to the EEC Decision No. 31 that envisage extension of the time-frame for consideration and preparation of summary table of comments and answers from 10 to 30 days. This proposal was considered at the working group meeting on 4-6 June 2013 on veterinary and sanitary measures and approved by the CU Parties.

Question 72

Paragraph 177: Do you confirm that the Kazakh notification authority / enquiry point will provide answers to WTO Members' comments provided in the context of the SPS notifications? When the comments relate to a draft CU text, how will these answers be coordinated with the Russian notification process and to the answers in the CU consultative process?

Answer:

Kazakhstan confirms that its Enquiry point will provide answers to WTO Member's comments provided in the context of the SPS notifications.

The Enquiry Point will notify the WTO of a draft technical regulation approximately at the same time when it is published for public consultations. This will allow to synchronize the process of receiving comments through both mechanisms. Moreover, after Kazakhstan's accession to the WTO, its Enquiry Point will coordinate the notification process with the Russian Federation's notification authority in order to ensure that similar dates for comments are established in the notifications of the same draft document.

We note that comments received through the notification process will be considered even if they are received after the public consultation period is closed.

Question 73

Paragraph 182: We ask to include in the next commitment paragraph the confirmation that Kazakhstan will follow SPS Commission Recommended procedures G/SPS/7/Rev 3 for its SPS notifications, currently in paragraph 182.

Answer:

The SPS Committee Recommended Procedures for Implementation of the Transparency Provisions of the SPS Agreement G/SPS/7/Rev.3 is a non-binding document. These recommended procedures are intended to facilitate Members' implementation of the notification provisions of the SPS Agreement, while not creating additional legal obligations.

In this regard Kazakhstan would not like to make reference to these recommended procedures in the commitment paragraph, but is ready to make reference to it in the descriptive part of the text in paragraph 182.

ANNEX 1: MRLS FOR NITRATES

Product Groups	Permissible levels, mg / kg, not more	Note
Potatoes (<i>Solanumtuberosum L.</i>)	250	
White cabbage (<i>Brassicaoleracea L.</i>) early (till 1 September)	900	
White cabbage (<i>Brassicaoleracea L.</i>) late	500	
Carrots (<i>Daucussativus</i> (Hoffm.) Roehl. (<i>Daucuscarota L. subsp. Sativus</i> (Hoffm.) Arcang.) early (before 1 September)	400	
Carrots (<i>Daucussativus</i> (Hoffm.) Roehl. (<i>Daucuscarota L. subsp. Sativus</i> (Hoffm.) Arcang.) late	250	
Tomatoes (<i>Lycopersiconesculentum Mill.</i>)	150	
	300	protected ground
Cucumbers (<i>Cucumissativus L.</i>)	150	
	400	protected ground
Red beet (<i>Betavulgaris L.</i>)	1400	
Onion (<i>Alliumcepa L.</i>)	80	
Green onion (<i>Allium cepa L.</i>)	600	
	800	protected ground
Leafy vegetables (lettuce, spinach (<i>Spinaceaoleracea</i>), sorrel (<i>Rumexacetosa L.</i>), cabbage of lettuce cultivars (<i>Lactucasativa L. var. SecalinaAlef.</i>), parsley (<i>Petroselinumsativum Hoffm.</i>), celery (<i>Apiumgraveolens L.</i>), coriander (<i>Coriandrumsativum L.</i>), dill (<i>Anethumgraveolens L.</i>), etc.	2000	
Sweet pepper (<i>Capsicum annum L.</i>)	200	
	400	protected ground
Zucchini (<i>Cucurbitapepo L. var. Giromontia Duch.</i>)	400	
Watermelon (<i>Citrullus vulgaris Schrad.</i>)	60	
Melons (<i>Melosativus Sager. Et M. Roem. (Cucumismelo L.)</i>)	90	
Lettuce, fresh		
- cultivated in protected ground from 1 October to 31 March	4500	
- cultivated in non-protected ground from 1 October to 31 March	4000	
- cultivated in protected ground 1 April to 30 September	3500	
- cultivated in non-protected ground from 1 April to 30 September	2500	
lettuce, iceberg type		
- cultivated in protected ground	2000	
- cultivated in non-protected ground	2500	
Meat and cereal cans with vegetables	200	
Food supplement based on algae	1000	
Food for pregnant and nursing women: the products on fruit and vegetable basis (fruit and vegetable juices, nectars and drinks, fruit drinks)	200	on fruit and vegetable basis, on fruit basis
	50	
Food for young children nutrition: products on fruits and vegetables basis, fruit and vegetables cans (fruit, vegetable, fruit and vegetable juices, nectars and drinks, fruit drinks, puree products on fruit and (or) vegetable-basis, fruit and dairy, fruit and grain puree):	50	on fruit basis (except for those containing bananas and strawberries) on vegetable-and fruit-vegetable basis, as well as containing bananas and strawberries
	200	
Food for young children nutrition: meat and cereal cans (vegetable-meat cans), fish and vegetable cans.	150	For products containing vegetables

Product Groups	Permissible levels, mg / kg, not more	Note
Food for preschool and school children: Culinary products from fish and non-fish species; fruit and vegetable cans (juices, nectars, drinks, fruit drinks, puree products on fruit and (or) vegetable basis, fruit and dairy, fruit and grain puree, combined products	150 50 200	for products containing vegetables. on fruit basis, on vegetable and fruit vegetable-basis, as well as containing bananas and strawberries
Basic raw materials and components used in the manufacture of baby foods: a) fruit, fresh vegetables, puree - semi-finished products beet cabbage vegetables, bananas, strawberries fruit b) fruit juice, concentrate, aseptic canning or frozen	600 400 200 50 100	fruits