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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 1 September 2014, is being circulated to Members of the Working Party, at the request of the Delegation of the Republic of Kazakhstan.

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*Unless otherwise indicated, reference in this document to "paragraph" means the paragraph number in JOB/ACC/30/Rev.5, the Draft SPS Chapter; and reference to "question" or "response to question" means the question numbers in JOB/ACC/30/Rev.4/Add.1, Replies to Additional Questions Raised by Members on the Draft SPS Chapter.*

## **- Sanitary and Phytosanitary Measures**

### **Question 1**

**Draft SPS Chapter: Could Kazakhstan update the references to the CU legislation and reflect the changes introduced with the Eurasian Economic Union (EAEU) Treaty in all relevant paragraphs.**

Answer:

The SPS Chapter has been duly updated to reflect the references and changes introduced by the EAEU Treaty.

### **Question 2**

**Draft SPS Chapter: We would like to note that the text will need to be updated to reflect the EAEU Treaty and we expect Kazakhstan to provide English translation of EAEU Treaty regarding SPS measures as soon as possible to Members of Kazakhstan's Working Party.**

Answer:

The SPS Chapter has been duly updated to reflect the references and changes introduced by the EAEU Treaty.

The English translation of the EAEU Treaty has been provided in document WT/ACC/KAZ/85/Rev.1 of 15 July 2014.

### **Question 3**

**Draft SPS Chapter: We would like to note that all commitments are still in brackets. We would like to ask Kazakhstan to indicate to Members which commitments are stable or which commitments Kazakhstan favourably considers.**

Answer:

Kazakhstan believes that the following commitments can be regarded as stable: paragraphs 35, 41, 49, 50, 65, 86, 88, 89, 90, 108, 109, 112, 113, 121, 127, 136, 167, 182, 185, 200, 201 indicated in document JOB/ACC/30/Rev.5.

## **(a) Legislative Framework**

### **Question 4**

**Paragraphs 1-4: We note that these paragraphs will need to include any new decisions and amendments taken by the EEC before the Working Party is concluded. We ask Kazakhstan to continue provide updates for the EEC decisions.**

Answer:

The SPS Chapter has been updated to reflect the new decisions and amendments taken by the EEC.

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**(b) Competent Authorities for the Regulation of Trade in Agricultural Products****Question 5**

**Paragraphs 10 – 12 discuss national authorities. We seek clarification on whether or not national authorities can continue to develop and adopt new national veterinary requirements?**

**Answer:**

As provided in General Provisions of the Common Veterinary Requirements of the EAEU, with regard to the requirements for controlled products imported from third countries and (or) moved between the member States, which are not established by the Common Veterinary Requirements of the EAEU, the national requirements of the member States, to whose territory the controlled product is imported or moved, are applied.

Thus, national veterinary authorities of the EAEU member States can develop and adopt national veterinary requirements for products and processes, which are not regulated at the EAEU level. For example, in practice, such veterinary requirements as animal identification rules, requirements to transportation are mostly established at the national level. Paragraphs 6 and 27 of JOB/ACC/30/Rev.5 describe veterinary requirements established at the national level.

**Question 6**

**Paragraph 11: We understand that there is a new national sanitary authority. Can Kazakhstan please explain the functions of this new authority and revise the SPS text accordingly?**

**Answer:**

The Committee for Consumer Rights Protection of the Ministry of National Economy has replaced the Committee of State Sanitary and Epidemiological Surveillance of the Ministry of Health. The Committee implements governance and regulation in the area of consumer rights protection, sanitary and epidemiological welfare of population, control and supervision over compliance with requirements established by technical regulations and legislative acts on products and services, as well as in the sphere of safety of food on the stage of its marketing.

Kazakhstan has updated the Draft SPS Chapter due to institutional reorganization related to the Committee.

**(c) Development of Technical Regulations/Mandatory Requirements on SPS****Question 7**

**In paragraph 24, Kazakhstan notes:**

**"[A minimum period of six months between the date of publication of a technical regulation and the date of its entry into force was established in the Decisions adopting the technical regulations in order to allow entities to be able to comply with the provisions of a new technical regulation or amendments to a technical regulation. Currently, amendments into Decision No. 48 were being considered in order to envisage this rule in the CU legislation.]"**

- **Can Kazakhstan explain why the language is bracketed and provide an update on the initiation of amendments into Decision No. 48? From our perspective, it is important that this interim period that allows for producers to adjust to new technical regulations is enshrined in the legal framework not just in specific technical regulations.**

Answer:

This text was bracketed at the request of the Member. Kazakhstan does not object to removal of the brackets.

Kazakhstan has initiated amendments into Decision No. 48 in order to introduce into the EAEU legal framework the transitional period of minimum 6 months.

**Question 8**

**Paragraph 24: Can Kazakhstan update on the amendments of Decision No. 48?**

Answer:

Kazakhstan has initiated amendments into Decision No. 48 in order to introduce into the EAEU legal framework the transitional period of minimum 6 months.

**Question 9**

**In paragraph 27, Kazakhstan explains that with adoption of technical regulations that contain sanitary requirements, the relevant sanitary requirements stipulated in CU Decision No. 299 had to be abolished.**

- **Can Kazakhstan confirm that while the work on the removal of inconsistencies between technical regulations and CU decisions remain in progress, the sanitary requirements from technical regulations supersede sanitary requirements stipulated in CU Decision No. 299?**

Answer:

Kazakhstan with other EAEU member States continues to work on removal of overlaps and inconsistencies between technical regulations and EAEU decisions, when such overlaps or inconsistencies exist.

This issue has also been discussed within the framework of the EAEU Treaty. It is envisaged that Decision No. 299 would still remain as a "reference document" for sanitary requirements for all types of products while sanitary requirements contained in relevant technical regulations will have to be identical to the sanitary requirements provided in CU Decision No. 299.

When a sanitary requirement will be changed, public consultation of amendments into the Common Sanitary Requirements and the relevant EAEU technical regulation will be held simultaneously.

**Question 10**

**In paragraph 28, Kazakhstan notes that:**

**"Kazakhstan was planning to initiate amendments to the adopted CU technical regulations or CU Decisions, in order to eliminate overlaps and contradictions between the horizontal and vertical technical regulations, or between the CU technical regulations and CU Decisions, when such contradictions and/or overlaps existed."**

- **Can Kazakhstan provide an update on its initiation of amendments to eliminate overlaps and contradictions between the horizontal and vertical technical regulations, and between CU technical regulations and CU Decisions? Can Kazakhstan specify which documents are required for trade in dairy and meat products according to CU technical Regulation on Food Safety and CU Technical Regulations? We understand that this process may have changed with the adoption of the EAEU Treaty.**

**Answer:**

With regard to veterinary requirements, Kazakhstan had raised the issue of duplication and inconsistencies in the technical regulations and CU/EAEU decisions at the EAEU level. At present, there were two draft amendments to the technical regulation "On Food Safety". The first draft went through internal approval procedure and comments received from EAEU member States are being considered. With regard to the second draft, it went through public consultations, which ended on 3 July 2014, and after being reviewed by the working group taking into account the comments received during public consultations, the draft will be forwarded for the internal approval to the member States. These amendments, among other things, were aimed at elimination of discrepancies in the CU/EAEU documents. For example, the draft amendments will remove specific veterinary requirements from the Food Safety technical regulation (Annex 5).

The technical regulations "On Safety of Meat and Meat Products" and "On Safety of Milk and Dairy Products" provide that the veterinary certificate is the only document required for crossing the border. These products are not subject to state registration. Kazakhstan initiated relevant amendments to the Technical Regulation on Safety of Food Products (Decision No. 880).

**Question 11**

**Paragraphs 27 and 28: Can Kazakhstan update on the developments removing inconsistencies and overlaps between technical regulations and CU decisions.**

**Answer:**

With regard to veterinary requirements, Kazakhstan had raised the issue of duplication and inconsistencies in the technical regulations and CU/EAEU decisions at the EAEU level. At present, there were two draft amendments to the technical regulation "On Food Safety". The first draft went through internal approval procedure and comments received from EAEU member States are being considered. With regard to the second draft, it went through public consultations, which ended on 3 July 2014, and after being reviewed by the working group taking into account the comments received during public consultations it will be forwarded for the internal approval to the member States. These amendments, among other things, were aimed at elimination of discrepancies in the CU/EAEU documents. For example, the draft amendments will remove specific veterinary requirements from the Food Safety technical regulation (Annex 5).

The technical regulations "On Safety of Meat and Meat Products" and "On Safety of Milk and Dairy Products" provide that the veterinary certificate is the only document required for crossing the border. These products are not subject to state registration. Kazakhstan initiated relevant amendments to the Technical Regulation on Safety of Food Products (Decision No. 880).

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

**We express concern about Kazakhstan's introduction of unilateral measures that require freight originating in Ukraine to carry specific Customs Union samples of veterinary documents (according to the forms approved by the Commission of the Customs Union on 7 April 2011 No. 607).**

**We strongly believe that the application of these CU specific measures is unlawful and inconsistent with the principles of the WTO SPS Agreement.**

**According to Article 4 paragraph 2 of the SPS Agreement, Members shall, upon request, enter into consultations with the aim of achieving bilateral and multilateral agreements towards recognition of equivalent SPS measures.**

**We would therefore like Kazakhstan to enter into bilateral talks and undertake the task to fulfil the commitments pertaining to such bilateral harmonization. This aspect specifically pertains to an agreed scope, content and procedure of initialling equivalent veterinary certificates issued for import of goods subject to veterinary control.**

**Note: According to the Regulation on the procedure for issuing veterinary certificates for livestock loads which are under the control of state veterinary supervision in CIS countries (approved by the Inter-governmental Council on cooperation in the sphere of veterinary science of CIS countries of 26 April 1997 in Bishkek) freight imports originating from Ukraine, subject of veterinary control, to the territory of other CIS countries (including Russian Federation, Republic of Belarus and Republic of Kazakhstan) is carried out with veterinary certificates following the CIS forms number 1, 2, 3. According to Article 14 of the Agreement on Cooperation in the field of veterinary science (Eng/Rus) of 12 March 1993, parties shall abide by common veterinary requirements of cargo at the import border under the control of state veterinary supervision. On this basis, the parties may bilaterally coordinate and initial samples of veterinary certificates for imported goods of animal origin from the state veterinary service of the exporting State.**

Answer:

There are three possibilities for exporting countries with respect to veterinary certificates for exportation to the EAEU: 1) EAEU Common forms of veterinary certificates; 2) old bilateral veterinary certificates; and, 3) new bilateral veterinary certificates.

Pursuant to the Common Veterinary Requirements, EAEU Common forms of veterinary certificates are used in trade with third countries, except for the following instances:

- old bilateral veterinary certificates concluded before 1 July 2010 are used in cases when an exporting country requested an EAEU member State(s) before 1 January 2013 for conclusion of a veterinary certificate different from the Common Veterinary Requirements;
- new bilateral veterinary certificates different from the Common Veterinary Requirements concluded between exporting country and the EAEU member States.

This practice is compatible with the OIE Terrestrial Code.

**Question 13**

**We would like to emphasize to Kazakhstan the inadmissibility to create technical barriers to trade and the necessity to bring any requirement on trade in goods subject to veterinary control in full compliance with the recommendations of the OIE Terrestrial Animal Health Code (OIE).**

**The OIE is a key reference of the WTO in accordance with the SPS Agreement. The International Office of Epizootics imposed the obligation to develop the standards, guidelines and recommendations with respect to all aspects of sanitary and phytosanitary measures.**

Answer:

The harmonization of veterinary requirements with international standards, recommendations and guidelines begun in 2012 as part of Russia's accession to the WTO and is ongoing process. As part of the harmonization process, amendments were introduced into more than 20 chapters of the EAEU Common Veterinary Requirements as the result of consultations with some of the WTO Members. In addition, with the aim of further harmonization with OIE recommendations, amendments are planned to be introduced to certain chapters of the Common Veterinary Requirements, which passed public consultation and which are currently under consideration by the Working Group due to the comments received during the public consultations.

Kazakhstan informs that all veterinary requirements will be harmonized with relevant international standards, recommendations and guidelines as described in paragraph 154 of JOB/ACC/30/Rev.5.

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- (i) **Veterinary certificates**

**Question 14**

In paragraph 42, Kazakhstan stated that:

"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."

In answer to Question 21 in JOB/ACC/30/Rev.4/Add.1, Kazakhstan explained the approval process for reaching consensus between CU Parties and noted the agreement with a Member on a dairy certificate in March of 2014. We would like to note that even though the agreement was reached on a dairy certificate, it was a long process that lasted approximately two (2) years and required several reminders in order to receive CU's feedback. We would like to remind that we submitted its request to negotiate approximately 30 veterinary certificates with the Customs Union at the end of 2012, but we have not received CU's feedback. Thus, we continue to be extremely concerned with the time it takes to arrange negotiations or receive CU's feedback.

Answer:

With regard to the Member's concern, it should be noted that the EAEU has the Common forms of veterinary certificates that can be used by third countries to export their products to the EAEU. These certificates do not have to be agreed between the EAEU and exporting countries. Moreover, CU Decision No. 726 allows using bilateral forms of veterinary certificates agreed prior to Russia's accession to the WTO.

Thus, there are three possibilities for exporting countries to use veterinary certificates to export to the EAEU: 1) EAEU Common forms of veterinary certificates; 2) old bilateral veterinary certificates; and, 3) new bilateral veterinary certificates.

With regard to the negotiation of new bilateral certificates, it should be taken into account that the speed of the process on bilateral certificates agreement depends on both sides, on their mutual readiness to compromise.

To date, Kazakhstan has not received any requests to negotiate veterinary certificates.

**Question 15**

**Paragraph 47:** We thank Kazakhstan for providing an answer to Question 22 in JOB/ACC/30/Rev.4/Add.1. We remain concerned with the actual harmonization of veterinary measures with the respective OIE requirements. While OIE provides different options for imports of goods depending on the status of animal health in the country, CU countries choose the most restrictive measures.

**Kazakhstan states:**

"At the same time, given the different status of animal health in the exporting countries and the level of development of the country, and with the aim to promote trade, a procedure for negotiating bilateral veterinary certificates between the CU and the exporting countries was provided by the CU legislation. Such veterinary certificates could contain requirements different from the Common Veterinary Requirements".

We would like to note again that we don't see CU's willingness to deviate from CU requirements during certificate negotiations.



Answer:

It should be noted that the EAEU member States agreed veterinary certificates with third countries that have veterinary requirements that deviate from the EAEU Common Veterinary Requirements. For example, the EAEU member States have agreed bilateral veterinary certificates on certain products, such as meat, fish, poultry, live horses, with some WTO Members, which contain requirements deviating from the Common Veterinary Requirements.

**Question 16**

**Paragraph 47: Kazakhstan provided an answer to Question 22 in JOB/ACC/30/Rev.4/Add.1. The concern remains that the CU countries choose the most restrictive OIE recommendations despite different options provided by OIE.**

**There is a limited willingness to apply international standards depending on the country animal health status.**

Answer:

The OIE Terrestrial Animal Health Code (hereinafter- the OIE Code) provides different options (recommendations) for imports of goods depending on the status of animal health in the country. The EAEU member States have chosen one of the options (recommendations) provided by the OIE Code with regard to certain diseases taking into account level of protection that EAEU member States deem to be appropriate. These requirements are generic and apply for trade within the EAEU as well as with third countries. Thus, requirements for animal diseases established in the EAEU Common Veterinary Requirements are consistent with the international standards, in particular, with the OIE recommendations.

At the same time, given the different status of animal health in the exporting countries and the level of development of these countries, and with the aim to promote trade, a procedure for negotiating bilateral veterinary certificates between the EAEU and the exporting countries is provided by the EAEU legislation. Such veterinary certificates may contain requirements different from the Common Veterinary Requirements. In this regard, the EAEU member States are open to negotiate with exporting countries other options provided by the OIE recommendations.

**Question 17**

**In paragraph 48, Kazakhstan states that:**

**"The representative of Kazakhstan replied that during negotiations the CU Parties would propose attestations that followed OIE recommendations except when justified by a risk assessment as provided for by the WTO SPS Agreement."**

**We would like to note that we continue to have significant concerns with CU's reluctance to follow OIE recommendations or provide risks assessment for the animal health disease attestations that are more stringent than OIE requirements. For example, a CU Member failed to provide its risk assessment for the animal health disease attestations beyond OIE standards; we agreed to exclude that CU Member from issuance of certificates.**

Answer:

The OIE Terrestrial Animal Health Code (hereinafter- the OIE Code) provides different options (recommendations) for imports of goods depending on the status of animal health in the country. The EAEU member States have chosen one of the options (recommendations) provided by the OIE Code with regard to certain diseases, taking into account level of protection that EAEU member States deem to be appropriate. These requirements are generic and apply for trade within the EAEU as well as with third countries. Thus, requirements for animal diseases established in the EAEU Common Veterinary Requirements are consistent with the international standards, in particular, with the OIE recommendations

At the same time, given the different status of animal health in the exporting countries and the level of development of these countries, and with the aim to promote trade, a procedure for negotiating bilateral veterinary certificates between the EAEU and the exporting countries is provided by the EAEU legislation. Such veterinary certificates may contain requirements different from the Common Veterinary Requirements. In this regard, the EAEU member States are open to negotiate with exporting countries other options provided by the OIE recommendations.

In the case mentioned in the question, the EAEU member State that did not provide risk assessment and, thus, was excluded from issuance of the certificates, is not a WTO member.

#### Question 18

**Paragraph 48: Serious concerns remain about the application of the risk assessment tool according to OIE recommendations for the animal health disease certifications that are more stringent than OIE requirements.**

Answer:

Kazakhstan will establish requirements that are more stringent than international standards based on risk assessment, as provided in paragraph 174 of JOB/ACC/30/Rev.5.

#### Question 19

**In the commitment paragraph 51, in answer to Question 22 in JOB/ACC/30/Rev.4/Add.1, we note again that this commitment paragraph included the bracketed text which implies that Kazakhstan can request veterinary attestations from an exporting country for a disease for which there are no programme in place in Kazakhstan but there is a programme in place in Belarus. Based on our experiences, the CU seeks to implement disease free attestations for the entire CU where only one CU Party has surveillance in place. Moreover, no CU risk assessments have been provided to justify the measures.**

We also continue to have concerns with some bracketed language in the text:

**"[Veterinary certificates for goods destined to Kazakhstan could contain veterinary attestations for the diseases, for which Kazakhstan, but not other CU Parties, had in place in the relevant territory either a control or eradication programme, or surveillance programme demonstrating that the disease was not present.]"**

The suggested language appears to imply that there is an option for exporting countries to negotiate certificates for exports to Kazakhstan only instead of to the Customs Union. According to CU Decision No. 726, exporting countries can negotiate bilateral certificates with the CU that deviate from CU common certificates. In fact, during our negotiations, we were told that the certificate must be for the entire CU and not individual CU Members. Can Kazakhstan reference the legal basis that would allow Kazakhstan or any CU Parties to negotiate a certificate that is specifically destined to Kazakhstan? Can Kazakhstan please describe it in practice?

We encourage Kazakhstan to remove the sentence and to continue to work with interested Members towards a solution.

Answer:

The new language proposed by Kazakhstan does not imply an option for exporting countries to negotiate veterinary certificates for export to Kazakhstan only. The proposed language refers to veterinary certificate for imports to the entire EAEU territory, either of a common form or bilateral.

At the same time, the proposed commitment text implies that this veterinary certificates may contain certain veterinary attestations that would apply only for goods destined to Kazakhstan, if Kazakhstan, and not other EAEU member States, has in place in the relevant territory either a

control or eradication programme, or surveillance programme demonstrating that the disease was not present.

In other words, if, for example, Kazakhstan has no control or surveillance programme for a particular disease, while other EAEU member State has, the EAEU veterinary certificates accompanying products imported to Kazakhstan shall not contain relevant veterinary attestation for this disease.

#### Question 20

**Paragraph 51: Could Kazakhstan explain how the described application of a control or eradication programme, or surveillance programme demonstrating that the disease was not present will be applied/implemented.**

Answer:

The commitment text proposed by Kazakhstan implies that veterinary certificates of the common EAEU form or bilateral veterinary certificates may contain certain veterinary attestations that would apply only for goods destined to Kazakhstan, if Kazakhstan, and not other EAEU member States, has in place in the relevant territory either a control or eradication programme, or surveillance programme demonstrating that the disease was not present. This will be clearly specified in the veterinary certificates.

In other words, if, for example, Kazakhstan has no control or surveillance programme for a particular disease, while other EAEU member State has, the EAEU veterinary certificates accompanying products imported to Kazakhstan shall not contain relevant veterinary attestation for this disease.

#### Question 21

**In the commitment paragraph 53, Kazakhstan states:**

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

**Can Kazakhstan explain the reason for brackets for "[as effective of the date of adoption]"?**

**Further Kazakhstan states:**

**"[For example, Technical regulation on Milk and Dairy Products adopted by EEC Council Decision No. 67 and Technical Regulation on Meat and Meat Products adopted by EEC Council Decision No. 68 of 9 October 2013 provided that only veterinary certificates would be required for non-processed milk and meat and for processed milk and meat products.]"**

**We suggest simplifying the last part of the sentence to read: "for non-processed and processed milk and meat products".**

**We seek a clarification on what form is required for "processed" products. Kazakhstan explained that according to the Technical Regulation on Food Safety, only a declaration of conformity or State Registration certificate would be required for products, that have undergone a treatment, but according to Technical Regulation on Milk and Dairy Products and Technical Regulation on Meat and Meat Products, only veterinary certificates would be required for processed milk and meat products.**

According to Technical Regulation on Food Safety Article 30, item 1) "Processed food products of animal origin shall not be subject to veterinary-sanitary inspection." However, according to Technical Regulation on Milk and Dairy Products and Technical Regulation on Meat and Meat Products Decision, and CU Decision No. 317, a veterinary certificate is required as an accompanying document.

Answer:

Kazakhstan proposed to replace the following commitment text:

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

with the following commitment text that reflects the current situation to simplify the last part of the sentence in this commitment text as proposed:

**"[For example, Technical regulation on Milk and Dairy Products adopted by EEC Council Decision No. 67 and Technical Regulation on Meat and Meat Products adopted by EEC Council Decision No. 68 of 9 October 2013 provided that only veterinary certificates would be required for non-processed and processed milk and meat products]"**.

The type of document required to accompany certain product will be specified in the vertical technical regulations. In case of non-processed and processed meat and dairy products, this document is veterinary certificate.

In accordance with item (1) of Article 30 processed food products of animal origin indeed are not subject to veterinary-sanitary inspection. Veterinary certificates for such products can be issued by veterinary inspector without conducting veterinary-sanitary inspection.

## **Question 22**

**In paragraph 55, Kazakhstan notes that it had initiated amendments into CU Decision No. 317 in order to include provision on acceptance of Parties of replacement veterinary certificates. Can you please provide an update on the amendment and include it in the text? Since the amendment has not been adopted yet, we would like to request to bracket this paragraph until the amendment is adopted.**

Answer:

The amendments to CU Decision No.317 on acceptance of replacement certificates have undergone public discussions and have been approved by the Subcommittee on Veterinary Measures taking into account comments received from interested parties, including WTO Members.

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

### **Question 23**

**Could you please clarify whether listing in the Register of Entities and Persons Producing, Processing and/or Storing Goods Subject to Veterinary Control Imported into the Customs Territory of the Customs Union is not automatic whereas de-listing of that register is automatic? In case this difference between listing and de-listing exists, could you please inform whether the government of Kazakhstan is taking any steps to unify both listing and de-listing in the mentioned Register under an unique automatic system?**

Answer:

Inclusion of enterprises and persons producing goods subject to veterinary control to the Register of the Third Country Establishments (hereinafter- the Register) is carried out in accordance with the Regulation on Common Procedure of Carrying out Joint Inspections approved by Decision of the CU Commission of 18 October 2011 (hereinafter – the Regulation), upon request of the competent authority of a third country. In accordance with the Regulation, inclusion into the Register can be done through one of the following three mechanisms at the third country's choice: 1) in the result of joint inspection of establishments by the EAEU member States; 2) after the audit of official system of supervision of third country; or 3) acceptance of the guarantee of the competent authority of third country.

Exclusion of establishments from the Register is not automatic. In accordance with paragraph 163 of the Regulation, exclusion of establishments from the Register can be carried, upon request of these establishments or upon request of the competent authority of third country.

Except for emergency situations, in relation to establishments of third countries, restrictions on import of products from these establishments can be imposed in following cases:

- a) at the request of the establishment or the competent authority of the third country;
- b) repeated detection of inconsistencies to the EAEU requirements registered either during the on-site inspection and/or repeated inspection of the establishment, or in the result of monitoring and increased laboratory control of controlled products produced by this establishment, of which the competent authority of the third country was informed, if the revealed inconsistencies constitute significant threat to live and health of humans and animals.

Thus, inclusion and exclusion of establishments from the Register is carried out upon request of the competent authority of third country. In addition, exclusion of an establishment from the Register can be done at the request of this establishment, this is an additional opportunity.

**Question 24**

**At the SPS Plurilateral meeting held on 25 June 2014, the Kazakhstan Delegation said that the three websites (Belarus, Kazakhstan and Russia) where exporting establishments can be listed will be provided. In that sense, we kindly ask for those websites.**

Answer:

Links to the national parts of the Register of Third Country Establishments of the EAEU Member-states (hereinafter referred as – Register) are published on the official website of the Eurasian Economic Commission on the following web link:

<http://www.eurasiancommission.org/ru/act/texnreg/depsanmer/vetsanmeri/Pages/Reestrorg.aspx>

Moreover:

- 1) National part of the Register of the Republic of Kazakhstan is published on the official website of the Ministry of Agriculture of the Republic of Kazakhstan: <http://mgov.kz/napravleniya-razvitiya/veterinarnaya-bezopasnost/> in the Section "Veterinary and Sanitary Measures of the Customs Union";
- 2) National part of the Register of the Russian Federation is published on the official website of the Russian Federation's Federal Agency for Veterinary and Phytosanitary Supervision: <http://fsvps.ru/fsvps/importExport>;
- 3) National part of the Register of the Republic of Belarus is published on the official website of the Department for Veterinary and Food Supervision of the Ministry of Agriculture and Food of the Republic of Belarus: <http://www.dvvn.gov.by/uploads/download/reestr-3stran13.htm>.

**Question 25**

**Paragraphs 61 – 63: A key issue that remains unresolved is the issue of completion of a successful audit as a pre-condition to the implementation of CU Commission Decision No. 830 as amended by EEC Decision No.294 to remove listing requirement for certain products. This is one of critical issues that must be resolved prior to Kazakhstan's accession to the WTO.**

**We would like to ask Kazakhstan to provide its update on addressing this issue.**

**We request a commitment that Kazakhstan will remove the listing requirement without a precondition to favourable audit. We propose the following language:**

**"The representative of Kazakhstan confirmed that Kazakhstan would eliminate the requirement for an establishment to be included in the register in accordance to the EEC Decision No. 294 and as set out in Table [xx]. The representative of Kazakhstan confirmed that Kazakhstan would not require a successful audit as a pre-condition to the implementation of the EEC Decision No. 294 and as set-out in Table [xx]. The Working Party took note of these commitments."**

**In addition, we are concerned with Kazakhstan's statement that the audit is the main mechanism of access of products of animal origin to the CU market for which listing of establishments is required and would like to request the following commitment language:**

**"The representative of Kazakhstan confirmed that Kazakhstan would provide three possibilities for exporting countries' establishments to become eligible to export to the Customs Union and added to the registry where required pursuant to Table XXXX including through a system audit, or a joint inspection or alternatively, based on guarantees of competent authorities of third countries. The Working Party took note of this commitment."**

Answer:

First, it should be noted that the listing itself is not a veterinary measure. Registry is only a system to collect and present (display, publish) current data on statuses and rights of establishments. This is a very useful and convenient system that is used by many countries. In a sense, registry is just a technical tool and with regard to export rights of this or that establishment, it is just a place (or table, or digital system) where the establishment (and other interested entities) can look into to learn its status.

Second, in this context, the real veterinary measure is not listing itself. The real veterinary measure is "pre-checking" (checks aimed at further granting the exporting right) of an establishment.

The aim of pre-checking is to establish whether this particular establishment complies with the requirements or not. There are two important questions here:

- (1) On compliance with what requirements it is necessary to pre-check?
- (2) Who has to perform pre-checking?

The answer to these questions depends on the rights of the competent authority of the third country.

There are three options:

- Option 1. With regard to this particular country, the audit of the foreign official system of surveillance was successfully completed.

Option 2. With regard to this particular country, the audit of the foreign official system of surveillance was not successfully completed (started but not completed, completed unsuccessfully, failed to take place). Nevertheless, based on the risk analysis and positive past experience of trade in such products, the right to provide guarantees was provided to this Competent authority.

Option 3. With regard to this particular country, the audit of the foreign official system of surveillance was not successfully completed and based on the risk analysis and negative past experience of trade in such products (or absence of such experience), the right to provide guarantees was not provided to this Competent authority.

In the context of the first option, the EAEU legislation does not require pre-checking of establishments that produce "low risk products". The reason is that the foreign official system is recognized as being able to provide the same (or higher) safety level as required by the EAEU legislation. It means that all establishments (within this particular sector of production) of this third country are recognized as manufacturing safe products (based on equivalence principle). However, the establishments have to be controlled by the competent authority of this third country under the procedure, established by the legislation of this third country. It does not mean that EAEU member States will not have a register of these establishments. They will, but it will represent only a technical tool for collecting and presenting (displaying, publishing) information on the exporting establishments. So, pre-check of an establishment and its inclusion into the Register are not pre-condition (prerequisite) for getting right to export in this case.

In case of the third option, the EAEU legislation does require pre-checking of establishments. The reason is that the foreign official system is not recognized as being able to provide mentioned safety level. It means that each establishment has to be pre-checked by the EAEU officials (based on equivalence principle). The aim of pre-check is to detect whether this particular enterprise complies with the EAEU requirements (NB: not with this third country's requirements as in case of the first option) or not. If the establishment complies, it will be included into the Register. The establishment gains the right to export from the moment of successful completion of the pre-check and hence from its inclusion into the Register.

In case of the second option, the EAEU legislation does require pre-checking of establishments. The reason for that is the same - the foreign official system was not recognized as being able to provide the same safety level. It means that each establishment has to be pre-checked before it gains the right to export. But, in this case, the right to check the establishments is provided to the competent authority of this third country. Using this right, the competent authority of the third country has to check this establishment for compliance with the EAEU requirements, and in case it complies with these requirements, the competent authority may provide guarantees of that. Based on this guarantees, the establishment will be included into the Register and it gains the right to export from this moment.

Thus, the following answers can be provided for each case:

(1) On compliance with what requirements it is necessary to pre-check?

- a. Audit is successfully completed: pre-check is not required, the establishment has to comply with the requirements of the third country.
- b. Audit has not been successfully completed, but the right to provide guarantees was provided to the Competent authority of the third country: pre-check is required, the establishment has to comply with the EAEU requirements.
- c. Audit has not been successfully completed, the right to provide guarantees was not provided to the Competent authority of the third country: pre-check is required, the establishment has to comply with the EAEU requirements.

(2) Who performs pre-checking?

- a. Nobody.
- b. Competent authority of the third country.
- c. EAEU officials.

This information demonstrates that the EAEU legislation provides a third country with three options to get access to the EAEU internal market (audit, providing guarantees and inspection). Many of the WTO member countries (including Members of Working Party on the Accession of Kazakhstan to the WTO) provide only one option for accessing their market - audit. So, obviously, EAEU legislation is more trade-facilitative in this area than legislation of many of the WTO member countries.

Based on the above, the prelisting itself is not a veterinary measure, and, in fact, it is pre-checking of the enterprises for compliance with the EAEU requirements that constitutes a veterinary measure which some member countries request to revoke.

Kazakhstan disagrees with this request. Obviously, in order to be an exporter, the establishment has to comply (and this should be verified) with the requirements of either the exporting country or the importing country.

To create a possibility to export products from the establishments that comply with the requirements of the exporting country, international standards recommend using audit mechanism and the EAEU follows this recommendation.

In case there is no possibility to conduct audit at the given moment, the EAEU legislation (in contrast to the legislations of many other WTO member states) allows to use 2 alternative mechanisms and a third country is free to choose from the three options for different production sectors.

#### Question 26

**Paragraphs 61-63: One key issue remains to be solved the request for an audit as a pre-condition to remove listing of certain low risk products (Decision No. 830 amended by Decision No.294). Could Kazakhstan update on the latest developments addressing this issue.**

#### Answer:

First, it should be noted that the listing itself is not a veterinary measure. Registry is only a system to collect and present (display, publish) current data on statuses and rights of establishments. This is a very useful and convenient system that is used by many countries. In a sense, registry is just a technical tool and with regard to export rights of this or that establishment it is just a place (or table, or digital system) where the establishment (and other interested entities) can look into to learn its status.

Second, in this context the real veterinary measure is not listing itself. The real veterinary measure is "pre-checking" (checks aimed at further granting the exporting right) of an establishment.

The aim of pre-checking is to establish whether this particular establishment complies with the requirements or not. There are two important questions here:

- (1) On compliance with what requirements it is necessary to pre-check?
- (2) Who has to perform pre-checking?

The answer to these questions depends on the rights of the competent authority of the third country.

There are three options:

Option 1. With regard to this particular country the audit of the foreign official system of surveillance was successfully completed.

Option 2. With regard to this particular country the audit of the foreign official system of surveillance was not successfully completed (started but not completed, completed



unsuccessfully, failed to take place). Nevertheless, based on the risk analysis and positive past experience of trade in such products, the right to provide guarantees was provided to this Competent authority.

Option 3. With regard to this particular country the audit of the foreign official system of surveillance was not successfully completed and based on the risk analysis and negative past experience of trade in such products (or absence of such experience), the right to provide guarantees was not provided to this Competent authority.

In the context of the first option, the EAEU legislation does not require pre-checking of establishments that produce "low risk products". The reason is that the foreign official system is recognized as being able to provide the same (or higher) safety level as required by the EAEU legislation. It means that all establishments (within this particular sector of production) of this third country are recognized as manufacturing safe products (based on equivalence principle). However, the establishments have to be controlled by the competent authority of this third country under the procedure, established by the legislation of this third country. It does not mean that EAEU member States will not have a register of these establishments. They will, but it will represent only a technical tool for collecting and presenting (displaying, publishing) information on the exporting establishments. So, pre-check of an establishment and its inclusion into the Register are not pre-condition (prerequisite) for getting right to export in this case.

In case of the third option, the EAEU legislation does require pre-checking of establishments. The reason is that the foreign official system is not recognized as being able to provide mentioned safety level. It means that each establishment has to be pre-checked by the EAEU officials (based on equivalence principle). The aim of pre-check is to detect whether this particular enterprise complies with the EAEU requirements (NB: not with this third country's requirements as in case of the first option) or not. If the establishment complies it will be included into the Register. The establishment gains the right to export from the moment of successful completion of the pre-check and hence from its inclusion into the Register.

In case of the second option, the EAEU legislation does require pre-checking of establishments. The reason for that is the same - the foreign official system was not recognized as being able to provide the same safety level. It means that each establishment has to be pre-checked before it gains the right to export. But, in this case, the right to check the establishments is provided to the competent authority of this third country. Using this right the competent authority of the third country has to check this establishment for compliance with the EAEU requirements and in case it complies with these requirements the competent authority may provide guarantees of that. Based on this guarantees the establishment will be included into the Register and it gains the right to export from this moment.

Thus, the following answers can be provided for each case:

(1) On compliance with what requirements it is necessary to pre-check?

- a. Audit is successfully completed: pre-check is not required, the establishment has to comply with the requirements of the third country.
- b. Audit has not been successfully completed, but the right to provide guarantees was provided to the Competent authority of the third country: pre-check is required, the establishment has to comply with the EAEU requirements.
- c. Audit has not been successfully completed, the right to provide guarantees was not provided to the Competent authority of the third country: pre-check is required, the establishment has to comply with the EAEU requirements.

(2) Who performs pre-checking?

- a. Nobody.
- b. Competent authority of the third country.
- c. EAEU officials.

This information demonstrates that the EAEU legislation provides a third country with three options to get access to the EAEU internal market (audit, providing guarantees and inspection). Many of

the WTO member countries (including Members of Working Party on the accession of Kazakhstan to the WTO) provide only one option for accessing their market - audit. So, obviously, EAEU legislation is more trade-facilitative in this area than legislation of many of the WTO member countries.

Based on the above, the prelisting itself is not a veterinary measure, and, in fact, it is pre-checking of the enterprises for compliance with the EAEU requirements that constitutes a veterinary measure which some member countries request to revoke.

Kazakhstan disagrees with this request. Obviously, in order to be an exporter the establishment has to comply (and this should be verified) with the requirements of either the exporting country or the importing country.

To create a possibility to export products from the establishments that comply with the requirements of the exporting country, international standards recommend using audit mechanism and the EAEU follows this recommendation.

In case there is no possibility to conduct audit at the given moment, the EAEU legislation (in contrast to the legislations of many other WTO member states) allows to use 2 alternative mechanisms and a third country is free to choose from the three options for different production sectors.

#### **Question 27**

**In paragraphs 70 – 72, Kazakhstan describes its draft amendment outlining how guarantees may operate, but this draft is still under consideration and subject to further revision. Can Kazakhstan explain how guarantees work now in the Customs Union?**

**We continue to work with Members and Kazakhstan on this key issue as we need to see a functioning guarantee system in place prior to Kazakhstan's accession to the WTO.**

#### Answer:

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.

The competent authority of a third country sends its request on accepting its guarantees to the authorized body of one of the EAEU member States.

The authorized body of the member State that received the request shall make decision on granting the competent authority of the 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. level 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 EAEU 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 EAEU 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 the authorised body sends its decision with supporting materials to other EAEU member states for approval. Upon approval by the EAEU member States, a notice is sent to the competent authority of the exporting country, which then prepares a list of establishments and sends it to the authorised body. The 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.

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

#### **Question 28**

**Paragraphs 70 – 72: This is another substantial issue where clearly functioning mechanisms have to be laid down prior to Kazakhstan's accession to the WTO.**

#### Answer:

Currently, amendments to Decision No. 834 are being discussed in order to clarify and improve the procedures for accepting guarantees from competent authorities of third countries. In drafting these amendments, the EAEU member States take into account comments and proposals received from the WTO Member States.

#### **Question 29**

**In the commitment paragraph 79, we ask Kazakhstan to remove the brackets:**

**"[If listing of establishments for a type of product was not required, the absence of the establishment on a list would not be a ground for rejection of the import.]"**

#### Answer:

This bracketed language refers to the issue of the audit of official systems of supervision of third countries as a pre-condition for importing products to the EAEU. Thus, Kazakhstan prefers to keep the brackets until this issue is resolved.

#### **(e) Trade in Goods Subject to Phytosanitary Control**

#### **Question 30**

**In paragraph 123, Kazakhstan describes the development of common CU phytosanitary requirements. Can you please provide an update on the development of common phytosanitary requirements?**

#### Answer:

Currently, the draft Common phytosanitary requirements prepared by the Eurasian Economic Commission have been sent to EAEU member States for discussion. According to the draft Schedule of development and adoption of documents in the sphere of sanitary and phytosanitary measures, Common phytosanitary requirements are envisaged for adoption by December 2015. As soon as all the necessary procedures are completed, they will be posted on the official website of the EEC.

**Question 31**

**Paragraph 123: Could Kazakhstan update on the development of common phytosanitary requirements?**

Answer:

Currently, the draft Common phytosanitary requirements prepared by the Eurasian Economic Commission have been sent to EAEU member States for discussion. According to the draft Schedule of development and adoption of documents in the sphere of sanitary and phytosanitary measures, Common phytosanitary requirements are envisaged for adoption by December 2015. As soon as all the necessary procedures are completed, they will be posted on the official website of the EEC.

**Question 32**

**In paragraph 135, new language states:**

**"[Kazakhstan confirmed that audits as described in this paragraph would be carried out only in exceptional cases, and would aim to check the phytosanitary system of the exporting country, but would not result in a system of individual approval for export.]", as proposed by a Member.**

**"[Kazakhstan confirmed that audits as described in this paragraph would be carried out only in special cases, for example, when new trade relations were established or there was a problem, and in case of repeated inconsistencies.]", as proposed by Kazakhstan.**

**We suggest to revise Kazakhstan's proposal to the following:**

**"Kazakhstan confirmed that audits as described in this paragraph would be carried out only in special cases, for example if there was evidence of repeated violations of food safety requirements (such as the detection of contaminants above regulated levels), as opposed to incomplete or inconsistent paperwork infractions."**

Answer:

Kazakhstan proposes the following alternative language:

[Kazakhstan confirmed that audits as described in this paragraph would be carried out only in special cases, for example, when new trade relations were established or there was a problem, and in case of repeated inconsistencies or non-compliance with quarantine phytosanitary requirements.]

**(g) Compliance of the SPS Regime with Specific Provisions of the WTO SPS Agreement**

**- (i) Harmonization with International Standards and Norms**

**Question 33**

We continue to encourage Kazakhstan and the CU Parties to harmonize their SPS standards with the international standards, recommendations and guidelines to the maximum extent possible. We ask that if Kazakhstan or where relevant the CU determines that the appropriate level of protection justifies a more stringent standard, that Kazakhstan and the CU provide a scientific justification and risk assessment to support the more stringent standard.

**Answer:**

As stated in Kazakhstan's draft commitment in paragraph 174 of JOB/ACC/30/Rev.5, the veterinary measures applied to each category of goods will comply with international standards, recommendations and guidelines or based on science and a risk assessment.

Moreover, as indicated in paragraph 51 of JOB/ACC/30/Rev.5, if Kazakhstan or the EAEU seeks to have stricter animal health requirements than those set-out in the OIE, Kazakhstan or the EAEU must demonstrate that, based on risk assessment, as well as active and passive surveillance in Kazakhstan or the EAEU territory for animal diseases that can be present on the territory of Kazakhstan or the EAEU, the animal health status of Kazakhstan or the EAEU for the disease concerned is such that it justified such stricter requirements.

**Question 34**

**Could Kazakhstan be more proactive harmonizing SPS standards with the international standards, recommendations, etc. The risk assessments should be prepared according to international recommendations to support the more stringent standards.**

**Answer:**

Kazakhstan will continue to be proactive in harmonizing SPS standards with the international standards, recommendations and guidelines. Moreover, Kazakhstan will follow relevant international recommendation in conducting risk assessment when determining more stringent standards.

**Question 35**

**Commitment paragraph 151: We thank Kazakhstan for withdrawing its amendment for CU Decision No. 721. We note that in its answer to Questions 43 and 44 (JOB/ACC/30/Rev.4/Add.1), Kazakhstan agreed to work with Member's on commitment language. We ask Kazakhstan to remove its addition of "[resulted in a higher level of sanitary and phytosanitary protection then would be achieved by measures based on]" and keep "[were more stringent than]".**

**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."**

**We ask Kazakhstan to keep this paragraph in line with CU Decision No. 721.**

**Answer:**

Kazakhstan considers that "more stringent" SPS measures do not always result in a higher level of SPS protection. Article 3.3 SPS Agreement stipulates that Members may introduce or maintain SPS measures, which result in a higher level of sanitary or phytosanitary protection than would be achieved by measures based on the relevant international standards, guidelines or recommendations, provided that there is a scientific justification or risk assessment. Therefore, the commitment language proposed by the Member is "WTO plus" requirement which Kazakhstan is not ready to accept.

**Question 36**

**Paragraph 153: We ask Kazakhstan to remove the bracketed text "[as stipulated in the SPS Agreements]" to keep it in line with CU Decision No. 721.**

Answer:

Kazakhstan considers that "more stringent" SPS measures do not always result in a higher level of SPS protection. Article 3.3 SPS Agreement stipulates that Members may introduce or maintain SPS measures, which result in a higher level of sanitary or phytosanitary protection than would be achieved by measures based on the relevant international standards, guidelines or recommendations, provided that there is a scientific justification or risk assessment. Therefore, the commitment language proposed by the Member is "WTO plus" requirement which Kazakhstan is not ready to accept.

**Question 37**

**In paragraph 161, the representative of Kazakhstan confirmed that the maximum levels of nitrates would be revised in accordance with international standards, recommendations, and guidelines. In paragraph 162, the representative of Kazakhstan stated that radio nuclide levels and microbiological standards were being revised in accordance with international recommendations.**

**According to the WTO SPS Agreement, they refer to the Codex Alimentarius standards. At the same time, the Codex Alimentarius maximum levels of nitrates have not been established (nitrates as contaminant, certain requirement for nitrates, which are used as food additives contained in the standards of some cheeses). A similar situation exists with microbiological indicators. Codex Alimentarius doesn't determine specific microbiological criteria.**

**In this regard, we would like Kazakhstan to clarify precisely what international standards and guidelines it intends to use.**

Answer:

**Nitrates.** MRL norms of nitrates in EAEU hygienic regulations have been established on the basis of results of the risk assessment conducted taking into account Codex Alimentarius standard in accordance with the Working Principles for Risk Analysis for Food Safety for Application by Governments (CAC/GL 62-2007).

In accordance with the results of the risk assessment, when introduced into organism with food and water, nitrates quickly absorb into digestive system while 20 per cent of nitrates contained in blood plasma enter into salivary glands where it concentrates and secrete with saliva.

In the mouth, concentration of nitrates were reduced (approx. for 5-7%, in some cases 7-9%) and turned into nitrites due to the work of microorganisms. In stomach, nitrates under the impact of chlorohydric acid may participate in synthesis of nitrosamines and other nitrogen metabolites.

Significant amount of adsorbed nitrates is released with urine. However, certain amount of nitrates is discharged with bile and saliva is absorbed back into digestive system.

Adverse effect to health caused by nitrates occurs by the means of turning nitrates into nitrites in the course of metabolism.

Lancinating toxic properties of nitrates/nitrites results from acidification of ferrum ions (Fe<sup>2+</sup>) of the dioxigemoglobin molecules to Fe<sup>3+</sup> with formation of metgemoglobin, which is incapable to bind with and transport oxygen.

Depending on the share of metgemoglobin, clinical manifestations of a disease, including cyanosis, heart rhythm disorder, blood circulation disorder of organs and tissues, disorder of cerebrospinal nervous system were revealed.

Facts of occurring of metgemoglobin as a result of introduction of nitrates are detected in experiments on rats during 14 weeks with the use of drinking water with concentration of sodium nitrate of 0,375, 750, 1500, 3000 or 5000 ppm equivalent to daily dose of 30, 55, 115, 200 and

310 mg of sodium nitrate per kilo for male and 40, 80, 130, 225 and 345 mg of sodium nitrate per kilo for female. In all cases, increase of metgemoglobin has been detected.

Majority of described cases of metgemoglobin are related with content of nitrates in drinking water used for preparation of infant formula products on the level of 20 mg per liter. Cases of metgemoglobin related to concentration of 11 and 20 mg per liter of nitrates in water usually were accompanied with bacterial contamination.

Chronical impact of nitrates is related to occurrence of nitroso compounds majority of which have cancerogenic potential. However, the results of the epidemiologic research have not detected correlation of introduction of nitrates and nitrites via drinking water with increase of risk of cancer.

In the research, impact of nitrates and nitrites led to development of cancer when amines, were introduced in parallel, which are capable to nitrification apparently as a result of endogenous transformation of cancerogenic amines.

**Microbiology.** Methodology of microbiological food rationing in the EAEU does not contradict the standard of the Codex Alimentarius Commission (CAC/GL 21-1997). In accordance with the standard, microbiological criteria shall be established based on the information from food producers that meet hygiene requirements and producing safe products and equipped with methods of identification of regulated microorganisms and for products of high-risk groups - scientific justified using the methodology of microbiological risk assessment.

MRL norms of nitrates and microbiological parameters in products are stipulated in the following international standards:

Commission standard "Codex Alimentarius" CODEX STAN 193-1995 Codex General Standard for Contaminants and Toxins in Food and Feed;

"Principles and Guidelines for the Establishment and Application of Microbiological Criteria Related to Foods" CAC/GL 30-1999;

"Principles and Guidelines for the Conduct of Microbiological Risk Management (MRM)" CAC/GL 63-2007.

### Question 38

**Paragraph 163: Could Kazakhstan update on the developments aligning MRLs for tetracyclines to the Codex standards.**

Answer:

Kazakhstan has conducted risk assessment for MRLs on tetracycline in accordance with international standards. The conclusion was published at [http://www.npc-ses.kz/index.php?option=com\\_content&view=article&id=89%3A2010-11-29-09-50-15&catid=45%3A2010-11-29-05-41-50&Itemid=111&lang=ru](http://www.npc-ses.kz/index.php?option=com_content&view=article&id=89%3A2010-11-29-09-50-15&catid=45%3A2010-11-29-05-41-50&Itemid=111&lang=ru) and <http://www.nutritest.org/%D0%B4%D0%B5%D0%BD%D1%8C-2/>.

### Question 39

**A Member has a matter of concern regarding CU and Codex standards, as follows:**

**According to the Technical Regulations of the Customs Union on the fat and oil products TR CU 024/2011 (approved by CU Commission Decision from 9 of December 2011 No. 883), the peroxide value is 10,0 mEq/kg for vegetable oil – includes all types, vegetable oil fractions.**

**Also, the State Standard Specification 31647-2012 Palm purified deodorized oil for food industry, technical conditions (state standard, used in providing the evidence foundation of CU Technical Regulation 024/2011) established an index of peroxide value – 0,9.**

**This Member would like to point out that above mentioned index value does not exist in the relevant standard of Codex (CODEX STAN 210).**

**According to State Standard of Ukraine 4306:2004 Palm oil, General Technical requirements set peroxide value for the Palm purified deodorized oil – not more then 3,0 mEG/kg.**

**Thus, Kazakhstan's establishment of the norm 0,9 mEG/kg based on CU rather than Codex can be a barrier to the export of this product from Ukraine to CU territory.**

**This Member therefore requests Kazakhstan for scientific justification for the proposed established standards to provide clarity for what appears to be an arbitrary value unsupported by international Codex standards.**

Answer:

Requirements for peroxide value established in the EAEU technical regulations on the fat and oil products are compliant with standard of Codex Alimentarius (Codex Stan 210) and set at a level not exceeding 10 meq/kg. State Standard Specification 31647-2012 is a standard, which is not a mandatory requirement and therefore is not enforceable in Kazakhstan.

In order to circulate on the territory of the EAEU, products shall conform with the requirements established in the technical regulations.

#### **Question 40**

**Despite the fact that Kazakhstan has undertaken commitments during its WTO accession process to ensure that the SPS and TBT measures will comply to the relevant international standards, the CU remains in force and appears to have taken precedence over adopting new requirements which conform to the international standards.**

- **A Member requests Kazakhstan to provide a detailed comparative analysis between their standards and relevant international SPS measurements in order to rectify the above mentioned issue.**
- **This Member requests that Kazakhstan provide scientific justification of its standards and methodology which conforms to internationally recognized approaches in those cases where Kazakhstan sets SPS standards which are more stringent than the relevant international standards (or in cases where such standards are absent).**

Answer:

Pursuant to Decision of the Commission of the Customs Union No. 721 of 22 June 2011 "On Application of International Standards, Recommendations and Guidelines", in cases in which the Eurasian Economic Commission or the national authorities had not established mandatory requirements in the veterinary, or phytosanitary, or sanitary epidemiological and hygienic sphere, the EAEU member States would apply standards, recommendations and guidelines of the OIE, IPPC, and the Codex Alimentarius (Codex), respectively. Similarly, if the EAEU veterinary, phytosanitary and sanitary-epidemiological and hygienic mandatory requirements were more stringent than relevant international standards, guidelines and recommendations, in the absence of scientific justification of risk to human, animal, or plant life or health, relevant international standards, guidelines, and recommendations, or parts thereof, would be applied.

Moreover, according to CU Commission Decision No. 625 of 7 April 2011 "On Harmonization of CU Legal Acts in the Field of Sanitary, Veterinary and Phytosanitary Measures with International Standards", EAEU SPS measures that, after examination, were recognised as more stringent than international standards, without scientific justification for such restriction or risk to human, animal or plant life or health would be brought into conformity with international standards.



In addition, currently, 14 amendments have been introduced in to the Common Veterinary Requirements and four amendments to the Regulation on Common Procedure of Conducting Veterinary Control. All these amendments were introduced in order to bring EAEU SPS regulations into compliance with international requirements. Moreover, Kazakhstan initiated amendments to the Regulation on Joint Inspections, approved by Decision of CU Commission No. 834, and to the Regulation on Common Procedure of Conducting Veterinary Control, approved by Decision of CU Commission No. 317 with respect to replacement of veterinary certificate.

- **(ii) Risk Assessment**

**Question 41**

In paragraph 173, last sentence reads:

**"The representative confirmed that risk assessment was conducted prior to implementation of introduction of restriction to imports and would provide the results of risk assessment upon request of exporting country, as provided for in the WTO Agreement".**

We are concerned with Kazakhstan's decision to introduce a temporary sanitary measure to ban the import and sale of chilled beef due to Trenbolone acetate which is a CODEX approved hormone. We request that Kazakhstan provide the legal basis for this restriction.

- **Has Kazakhstan conducted the risk assessment prior to instruction of ban on Trenbolone acetate?**
- **Can Kazakhstan share its risk assessment?**

Answer:

Trenbolone acetate is highly effective synthetic anabolic steroid that is used in veterinary for increasing muscle mass in cattle. In accordance with risk assessment held by the Scientific Committee for Veterinary Measures relating to Public Health of the EU, trenbolone acetate and other five types of synthetic hormones have risks of endocrine, developmental, immunological, neurobiological, immunotoxic, genotoxic and carcinogenic effects.

As the SPS Agreement allows using risk assessment conducted by other WTO Members, Kazakhstan used this risk assessment conducted by the EU with respect to trenbolone acetate.

**Question 42**

**The WTO SPS Agreement provides that WTO Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence (except as provided for in paragraph 7 of Article 5).**

- **Can Kazakhstan please provide the scientific evidence or pertinent information to substantiate Kazakhstan's application of SPS measures on beef imports? In particular, Kazakhstan has banned the use of trenbolone acetate in the production of beef.**
- **Has Kazakhstan performed a risk assessment on the use of trenbolone acetate? If so, would Kazakhstan kindly provide a copy of the assessment? If not, what was the basis for Kazakhstan banning trenbolone acetate?**
- **Why has Kazakhstan not relied on the international standard (Codex Alimentarius Commission) allowing for the safe use of trenbolone acetate?**

Answer:

Trenbolone acetate is highly effective synthetic anabolic steroid that is used in veterinary for increasing muscle mass in cattle. In accordance with risk assessment held by the Scientific Committee for Veterinary Measures relating to Public Health of the EU, trenbolone acetate and other five types of synthetic hormones have risks of endocrine, developmental, immunological, neurobiological, immunotoxic, genotoxic and carcinogenic effects.

As the SPS Agreement allows using risk assessment conducted by other WTO Members, Kazakhstan used this risk assessment conducted by the EU with respect to trenbolone acetate.

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