RESTRICTED

JOB/ACC/30/Rev.4/Add.1

12 June 2014

(14-3416) Page: 1/27

Working Party on the Accession of Kazakhstan Original: English

WORKING PARTY ON THE ACCESSION OF KAZAKHSTAN TO THE WTO

ADDITIONAL QUESTIONS AND REPLIES

Addendum

The following submission, dated 11 June 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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The following comments and questions relate to documents JOB/ACC/30/Rev.4 and JOB/ACC/30/Rev.3/Add.1.

- Sanitary and Phytosanitary Measures

(a) Legislative Framework

Question 1

Paragraph 5 included new language at the end explaining the relationship between the Food Safety Technical Regulation and the sectoral or vertical technical regulations that are in different stages of adoption. Please explain how the requirements on meat and dairy will co-exist with the sectoral or vertical technical regulations that have recently been approved.

Answer:

According to Article 3, paragraph 1 of the CU technical regulation "On Food Safety", the technical regulation shall be applied taking into account the requirements of the CU technical regulations that establish mandatory requirements for certain types of food products and related requirements to the processes of production (manufacturing), storage, transportation, marketing and utilization, complementing and (or) specifying the requirements thereof. In addition, the requirements for certain types of food products and related requirements to the processes of production (manufacturing), storage, transportation, marketing and utilization established in other technical regulations of the Customs Union cannot change the requirements of the horizontal technical regulation "On Food Safety".

Horizontal technical regulation of the Customs Union "On Safety of Food Products" establishes requirements that are common to all types of food products, in particular:

1) safety requirements (including sanitary and epidemiological, sanitary and veterinary) to food products, and to production processes (manufacturing), storage, transportation, marketing and utilization;

2) the rules of identification of objects of the technical regulation;

3) forms and procedures for assessment (confirmation) of conformity of objects of technical regulation with the requirements of the technical regulation.

Vertical technical regulations of the Customs Union "On Safety of Meat and Meat Products" and "On Safety of Milk and Dairy Products" establish specific requirement to the relevant products, in particular:

1) terminology;

2) safety requirements for meat and meat products, milk and dairy products, as well as the processes of production (manufacturing) , storage, transportation, marketing and utilization, which complement requirements of the technical regulations "On Food Safety";

3) the rules for identification of meat and meat products, milk and dairy products;

4) requirements for labelling of meat and dairy products;

5) conformity assessment schemes.

Question 2

We thank Kazakhstan for further clarifying which SPS measures would apply in Kazakhstan and throughout the territory of the CU in paragraph 6 ("national legislation remained in effect to the extent that it did not contradict the CU Agreements,

CU Commission Decisions and EEC Council and Collegium Decisions"). In Spring 2013, we encountered a case where Kazakhstan was implementing import requirements more stringent than those of the EEC, notably for the import of live bovine animals. While the EEC itself confirmed to us in May 2013 that current certificates for live cattle remain valid for access to the CU, including Kazakhstan, until the new certificate is finalized Kazakhstan continues to impose measures more stringent than those of the EEC. Will Kazakhstan explain how it can maintain its specific import requirements despite the EEC May 2013 confirmation that the current certificates are valid?

Answer:

Currently, within the framework of the State program "Agrobusiness-2020", the Government allocates considerable amount of resources for importation of pedigree cattle into the country with the aim to improve genetic potential of cattle in Kazakhstan. Kazakhstan plans to import more than 70,000 heads of cattle by 2016, whereas more than 35,000 heads have already been imported. The cattle is mainly imported from Australia, Canada, the USA, the Russian Federation, etc.

Thus, currently cattle is imported to Kazakhstan in large quantities virtually from all over the world, i.e. from countries with different epizootic situations, different levels of development of animal breeding and veterinary services.

In some cases, infected animals or animals suspected of being infected with such diseases as brucellosis, leukemia, bluetongue, and animal diseases exotic for Kazakhstan (Schmallenberg disease, bluetongue) have been identified during quarantine.

One of the examples is cattle imported from Austria. In particular, 722 heads at the value of 1,790,100 euros, were imported from this country. During quarantine of those animals 87 heads positively reacted to Schmallenberg disease and diarrhea virus. Therefore, these animals were destroyed. As a result, businesses and state budget incurred significant losses.

Taking into account this incident, businesses included additional requirements into their contracts on the purchase of cattle. In particular, importers shall send a state veterinary inspector to the exporting entity. These inspectors shall visit the exporting establishments during the quarantine of animals to ensure that the animals, which will be imported to Kazakhstan, are healthy, that they come from territories free from infectious and exotic diseases and comply with the relevant documentation.

It should be noted that there are no changes in veterinary certificates.

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

Question 3

We appreciates that Kazakhstan has sought to provide additional information to support its ractopamine ban by drawing our attention to the risk assessment undertaken by the Russian Federation, and we encourage Kazakhstan to look to science as the basis for its measures. In this regard, we would encourage Kazakhstan to submit this risk assessment on ractopamine to the Joint Food and Agriculture Organization/World Health Organization Expert Committee on Food Additives (JECFA) for a third party evaluation of the validity of the assessment. In paragraph 12 of JOB/ACC/30/Rev.4, Kazakhstan reinforces its commitment to international standards through its membership in the OIE, IPPC and Codex Alimentarius. Since the EEC's measures on ractopamine are more stringent than the Codex standard established by JECFA, we would view Kazakhstan's submission of the risk assessment to JECFA for review as a demonstration of its commitment to the Codex standard. With this understanding in mind, would Kazakhstan consider bringing the risk assessment to the attention of the JECFA Secretariat or raise this matter at the next meeting of the Codex Committee on Residues of Veterinary Drugs in Food?

Answer:

Kazakhstan agrees with the conclusion of the risk assessment held by the Russian Federation with respect to ractopamine. SPS Agreement does not require a WTO Member to conduct its own risk assessment if the Member recognizes the results of the risk assessment held by other countries or organizations. Therefore, Kazakhstan considers that there is no need to conduct such human and financial resource consuming assessment at this stage.

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

Question 4

We welcome the new information provided in paragraph 19, but think it would be best to separate this into two paragraphs starting the second paragraph with the sentence, "The EEC placed the draft technical regulation, the notification on its development, and an explanatory note on its official website." In addition, we suggest striking the word "possibility" from the following sentence "Following the consideration by the Consultative Committee, the decision on possibility, starting date, and period of public comment… ." We believe it would be useful to add a sentence about the WTO notification process that will be taken in parallel with the public consultation process. Lastly, as explained in the plurilateral, a secondary notification and public consultation process is possible when significant changes have been made to a draft. Please add this information as well.

Answer:

Kazakhstan will divide paragraph 19 into two paragraphs and will add the mentioned clarification in the following way:

> *19. Responding to a question on how draft technical regulations not based on international standards, recommendations or guidelines could be revised prior to their application, she stated that the applicable laws and CU acts specified the priority use of international standards, recommendations and guidelines, as the basis for technical regulations and that the technical regulation developer (relevant CU Party's authorised body or the EEC) was required to provide his assessment on how the draft was consistent with international standards in his notification of the draft for public comment. The technical regulation developer was also required to identify the standards, recommendations and guidelines, used in developing the draft technical regulation. When Kazakhstan was responsible for developing technical regulations, it designated a state body responsible for development of the draft technical regulation (hereinafter – the developer of draft technical regulation). The developer of draft technical regulation prepared the first draft of the technical regulation and based on proposals from the competent authorities of the CU Parties, formed a CU working group that included experts representing government bodies, academia and business/consumers associations and other interested parties. The draft technical regulation was discussed at the CU working group meetings. The CU working group would take into account the requirement to use international standards, recommendations and guidelines, and, if necessary, propose appropriate changes. Upon completion of the first draft of the technical regulation, the developer of the draft technical regulation sent the draft, an explanatory note, and a notification on development of the technical regulation to the EEC. The EEC ensured 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.* ***In cases when Consultative Committee decided that further revision was*** ~~***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 documents.*

19bis. The public consultation began when *the EEC placed the draft technical regulation, the notification on its development, and an explanatory note on its official website. This information was also published at the official websites of the authorised bodies for technical regulation of the CU Parties. Interested domestic and foreign juridical and natural persons (including those from non-members of the CU), including foreign governments, could submit their comments and proposals on the draft technical regulations to the EEC. The period for comments was at least 60 days following the publication of the first draft of the technical regulation by the EEC.* ***Kazakhstan intended to notify the SPS-related draft technical regulations to the WTO SPS Committee in parallel to the public consultation. In case of significant changes in the draft technical regulation, there would be a new round of public consultations and new WTO notification would be sent to the WTO Secretariat.*** *The EEC processed comments and proposals received from interested parties during public consultations and WTO notification procedure and sent them to the developer of the draft technical regulation. The developer of draft technical regulation within 20 working days from the date of receiving comments and proposals from the EEC ensured the discussion of the comments and proposals by the working group and prepared a summary of comments, which included information on their acceptance or justification for their rejection, and sent it to the EEC. In accordance with EEC Collegium Decision No. 48, the EEC published on its website the table of comments and answers. The developer of draft technical regulation within 30 working days from the date of sending summary of comments to the EEC, revised the draft technical regulation and the related documents taking into account comments and proposals received during the public consultations, specifically those comments that were based on international standards, guidelines and recommendations. The EEC sent the draft technical regulation and related documents to the Parties for their internal approval and published them on the official website. Upon completion of the internal approval of the draft technical regulations by the Parties, the draft technical regulation was sent to the Consultative Committee that submitted it to the EEC Collegium for approval. The draft technical regulation and related documents and disagreements that could not be solved during the negotiations were considered by the EEC Collegium. After the consideration, the EEC Collegium submitted the draft technical regulation and related documents either to the EEC Council for approval, or to the developer for revision. The EEC Council adopted the final draft technical regulation at its meeting. The representative of Kazakhstan noted that any amendments to a technical regulation were adopted by the same procedure.*

Question 5

Paragraph 19: Could Kazakhstan indicate its intention to notify the SPS related draft Technical regulation to the WTO SPS committee in parallel to the public consultation process carried out by EEC? Could Kazakhstan also indicate that significant changes to the draft Technical Regulation would also be the ground for a new public consultation and WTO notification?

Answer:

Kazakhstan will divide paragraph 19 into two paragraphs and will add the proposed information in paragraph 19*bis* in the following way:

19. Responding to a question on how draft technical regulations not based on international standards, recommendations or guidelines could be revised prior to their application, she stated that the applicable laws and CU acts specified the priority use of international standards, recommendations and guidelines, as the basis for technical regulations and that the technical regulation developer (relevant CU Party's authorised body or the EEC) was required to provide his assessment on how the draft was consistent with international standards in his notification of the draft for public comment. The technical regulation developer was also required to identify the standards, recommendations and guidelines,

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Question 6

CU Commission Decision No. 752 of 16 August 2011 had established a minimum transitional period (6 months) for entry into force of all technical regulations. Can Kazakhstan confirm that this decision is still in force? If so, please add this information to paragraph 23.

Answer:

In accordance with Paragraph 2 of the EEC Council Decision No. 48 of 20 June 2012, the CU Commission Decision No. 752 of 16 August of 2011 is no longer in force.

At the same time, Kazakhstan has initiated the amendments into EEC Council Decision No. 48 on minimum transitional period of 6 months for entering into force of the technical regulations of the Customs Union. The proposal was received positively and the amendments will be introduced as soon as possible.

Question 7

Paragraph 23: As it seems the Decision No. 752 of 16 August 2011 has been replaced by Decision No. 48, a Member asks confirmation that the 6 months minimum period between the date of publication of a TR and its entry into force is secured somewhere in the CU legal framework and that its reference now replaces the reference to Decision No. 752.

Answer:

In accordance with Paragraph 2 of the EEC Council Decision No. 48 of 20 June 2012, the CU Commission Decision No. 752 of 16 August 2011 is no longer in force.

At the same time, Kazakhstan has initiated the amendments into EEC Council Decision No. 48 on minimum transitional period of 6 months for entering into force of the technical regulations of the Customs Union. The proposal was received positively and the amendments will be introduced as soon as possible.

Question 8

We are concerned with the overlap between CU horizontal and vertical (or sectoral) technical regulations. In addition, we are concerned about the apparent overlap between technical regulations and other already adopted and in force Customs Union decisions. Members have addressed other areas of overlap in paragraph 25 but these additional concerns are lacking. We propose some new Members language be added to the report following paragraph 24 (included below). We also seek a response from Kazakhstan to be added to the text.

> **24*bis*. Some Members expressed concern about the overlap between CU Technical Regulations and other CU Decisions in the veterinary and sanitary fields. For example, Members noted overlaps and contradictions between CU Decision 299 and CU Technical Regulations, such as the Food Safety Technical Regulation. Members also noted overlaps and contradictions between CU Decision 317, in particular the CU common veterinary requirements, and Annex 5 to the Food Safety Technical Regulation, which appeared to contain veterinary requirements. Members sought clarity on what requirements were applicable for imported goods. In addition, those Members identified overlaps between different Technical Regulations, i.e. between the Food Safety Technical Regulation and the vertical Technical Regulations such as the TR for grain, meat, dairy, etc. They asked if exporters could find all applicable requirements in the vertical TRs.**

Answer:

Kazakhstan will include the proposed Member's language in paragraph 24*bis* and will add the following answer in paragraphs 24*ter* and 24*quarter*:

"24*ter*. The representative of Kazakhstan explained that, with regard to sanitary requirements, in accordance with the CU Agreement on Sanitary Measures, with the adoption of technical regulations relevant sanitary requirements stipulated in CU Decision 299 had to be abolished. The plan of amendments into CU Decision 299 was adopted together with the relevant technical regulations. The delay in amending CU Decision 299 is due to the current discussion between the CU Parties on replacing sanitary requirements incorporated into the CU technical regulations by making references to the CU Common Sanitary Requirements (CU Decision 299) in order to exclude duplications.

With regard to veterinary requirements, Kazakhstan had raised the issue of duplication and inconsistencies in the technical regulations and CU Decisions at the CU level. At present, there were two draft amendments to the CU technical regulation On Food Safety. The first draft went through public discussion in September 2013 and was sent to the CU Parties for internal approval. The second draft had been sent for consideration by CU Parties and then would be published for public consultations. These amendments, among other things, were aimed at elimination of discrepancies in the CU documents.

24*quarter*. Regarding the discrepancy between horizontal and vertical technical regulations, it should be mentioned that with regard to veterinary measures there were no discrepancies. Moreover, according to Article 3, Paragraph 1 of the CU technical regulation On Food Safety, "the technical regulation shall be applied taking into account the requirements of the CU technical regulations that establish mandatory requirements for certain types of food products and related requirements to the processes of production (manufacturing), storage, transportation, marketing and utilization, complementing and (or) specifying the requirements thereof". In addition, the requirements for certain types of food products and related requirements to the processes of production (manufacturing), storage, transportation, marketing and utilization established in other technical regulations of the Customs Union could not change the requirements of the horizontal technical regulation On Food Safety.

Horizontal technical regulation of the Customs Union "On Safety of Food Products" established requirements that are common to all types of food products, in particular:

1) safety requirements (including sanitary and epidemiological, sanitary and veterinary) to food products, and to production processes (manufacturing), storage, transportation, marketing and utilization;

2) the rules of identification of objects of technical regulation;

3) forms and procedures for assessment (confirmation) of conformity of objects of technical regulation with the requirements of the technical regulation.

Vertical technical regulations of the Customs Union "On Safety of Meat and Meat Products" and "On Safety of Milk and Dairy Products" established specific requirement to the relevant products, in particular:

1) terminology;

2) safety requirements for meat and meat products, milk and dairy products, as well as the processes of production (manufacturing), storage, transportation, marketing and utilization, which complement requirements of the technical regulations "On Food Safety";

3) the rules for identification of meat and meat products, milk and dairy products;

4) requirements for labelling of meat and dairy products;

5) conformity assessment schemes.

In general, 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."

Question 9

Paragraphs 5 and 24: The CU has adopted multiple texts introducing requirements for similar commodities. The multiplication of references created an uncertainty on which standard should apply and the reasoning behind. For example:

	Requirement for Chloramphenicol in milk	Requirement for dioxin in milk
CU Decision No. 299 of 28 May 2010	not allowed <0.01 mg/kg <0.0003 as of 01.01.2012 shall not be allowed <0.01 for a series of milk products (no date) listed as "baby food products"	0.000003 (in terms of fat) 2. Dioxins shall be determined in case of reasonable assumption that there is a possibility of their presence in raw materials.
CU Decision No. 880 Food safety technical regulation 9 December 2011 (application 1 July 2013, but this date was later on moved for meat and dairy products by virtue of Decision No. 129 of 11 June 2013)	shall not be allowed (<0.01 mg/kg)	0.000003 (in terms of fat) 2. Dioxins shall be determined in case of reasonable assumption that there is a possibility of their presence in raw materials.
CU decision 67 technical regulation on dairy October 2013	0.01 as of 1 May 2014 0.0003 as of 1 July 2015 A Member's comment: What is the reason for changing back and forth this limit?	not allowed (within the measurement accuracy) A Member's comment: There is no longer a defined compliance level: what will be now the level above which the presence is established for an imported product? If the result depends on the performance of the laboratory which analyses imported products, how a same level will be ensured also for intra cu controls? What level will be used as reference ?

Another example: CU technical regulation on milk and dairy sets limits for penicillins at 0,004 mg/kg whereas the CU Decision 299 establishes two levels according to the substance: 0,004 or 0,03 mg/kg (cloxacillin, dicloxacillin).

CU Decision 129 indicated that provisions of the Food safety technical regulation 880 related to meat and dairy are not applicable, pending the entry into force of corresponding provision in specific technical regulations. However, in the interim period, it is mentioned that either the CU or the national legislation applies, which does not give a lot of clarity to an exporting country.

These technical regulations are now adopted for meat and meat products, and for milk and dairy products.

Is there an intention to repeal the CU provisions in the Food safety technical regulation 880 and in Common sanitary norms CU Decision 299 that would be redundant or differ, compared to the ones of the sectorial CU technical regulation and complement the CU

technical regulation with missing provisions, so that clarity is provided within one single text for a given commodity?

Answer:

Amendments to Decision No. 880 are being introduced in order to eliminate duplicative provisions with respect to milk and meat products. To this end, the EEC Collegium adopted Decision No. 129 of 11 June 2013. Currently, amendments to Decision No. 880 have been developed, which will soon be published for public consultation.

It should also be noted that there is no tolerance level for chloramphenicol, i.e. presence of this substance in food products is prohibited. The levels indicated in the table above are the detection limits of a device used for conducting tests with respect to presence of chloramphenicol and dioxin in food products. The changes in the limits are related to the limited technical capacities of laboratories of CU Parties. The laboratories will be gradually equipped with more advanced equipment, which will allow to reach higher detection limits.

With regard for dioxins, the MRLs for dioxin are established for all food product groups, except for baby foods (dioxins residues are not permitted in food for infants, children of preschool and school age). Monitoring of dioxin shall be carried out by manufacturer (supplier , importer) and (or) by the authorized body only in cases of environmental degradation associated with the accidents, man-made and natural disasters leading to the formation and introduction of dioxin into the environment, and presence of reasonable assumptions about the possibility of their presence in food raw materials.

Comparative Table on the Tolerance Levels of Dioxins in Food Products. (mg/kg, not more)

Product name	Common Sanitary and Hygienic Requirements 299 Chapter. II p.1	CU Technical Regulation 021/2011	Technical Regulation 033/2013
Meat and Meat Products; poultry, eggs and their processed products			
Canned meat (beef, lamb and products thereof); Chicken eggs and products thereof	0,000003 (in terms of fat)	0,000003 (in terms of fat)	
Canned meat (pork and products thereof)	0,000001 (in terms of fat)	0,000001 (in terms of fat)	
Liver and products thereof; Canned liver	0,000006 (in terms of fat)	0,000006 (in terms of fat)	
Poultry and products thereof	0,000002	0,000002	
Milk and milk products	0,000003 (in terms of fat)	0,000003 (in terms of fat)	Not allowed (Annex 10 For children of pre-school and school age)
Creamy vegetable spread, creamy vegetable melted mixture	0,000002 (in terms of fat)	No data	
Fish, non fish species and products produced from them			
All types of fish products and marine mammals, including dried products	0,000004	0,000004	
Fish Oil	0,000002 (in terms of fat)	0,000002 (in terms of fat)	
Oil-bearing raw materials and fat products			
Vegetable oil (all kinds) and theur fractions	0,00000075 (in terms of fat)	0,00000075 (in terms of fat)	
Beef fat, including melted	0,000003 (in terms of fat)	0,000003 (in terms of fat)	
Pork fat, including melted	0,000001	0,000001	
Poultry fat, mixed fat, including melted, fish oil	0,000002	0,000002	

As shown in the table, the tolerance levels for dioxins in Common Sanitary and Hygienic Requirements and CU Technical Regulation 021/2011 "On Food Safety" are the same.

Question 10

What would be the required level for chloramphenicol in dairy after the entry into force of the Technical Regulation for dairy CU 67?

Answer:

Pursuant to the Technical Regulation "On Safety of Milk and Dairy Products" adopted by EEC Council Decision No. 67, chloramphenicol in food products is prohibited. Technical Regulation No. 67 establishes detection limit for chloramphenicol as of 1 July 2015 at the level of less than 0.0003 mg/kg.

Question 11

Sometime a substance is indicated in the table of requirements but no limits are given e.g. dioxin in CU 299 Table 9 "other products": no set level, no absence is required. Sometimes the indication "not allowed" appears without any limit is given e.g. dioxin in CU 299 for biologically active substance Table 10, Table 11, Table 12.

Can an explanation be provided for substances being mentioned in table of requirements without any objective?

Answer:

Such situation occurs with respect to processed food products, for example, food concentrates. For such products, the detection limits should be referred to individual primary products from which the processed product is produced.

Question 12

In the interim period until entry into force of the specific Technical Regulations 67 and 68, could it be clarified which CU technical regulation or which national legislation applies for the dairy and meat products?

Answer:

During the interim period prior to entry into force of the Technical Regulations Nos. 67 and 68, CU Commission Decision No. 299 "On the Application of Sanitary Measures in the Customs Union" and CU Commission Decision No. 317 "On the Application of Veterinary-Sanitary Measures in the Customs Union" apply.

Question 13

In a same CU text, some contradictions were noted: e.g. in Annexes 3 and 5 of Technical Regulation meat CU 68 norms for doxycyclines (molecule part of the tetracyclines family) differ from the generic tetracyclines requirement. We observe that the generic requirement for tetracycline is not compliant to Codex Alimentarius and far more stringent than the one of a Member whereas some other antibiotics MRLs have been aligned with Codex or with this Member' norms (tetracyclines in Annex 5).

How the contradictions within CU requirements (between different CU texts or within a single text) are going to be solved by the CU legislator? Will Codex compliance be used as a basis for this review?

Answer:

The issue of contradiction in the requirements for tetracycline group in the Technical Regulation "On Safety of Meat and Meat Products" has been discussed within the CU. Upon results of the discussion, the decision was taken to exclude the MRLs for doxycycline since they do not comply with the results of the risk assessment. Currently, the draft amendments have been developed and discussed within the CU.

Question 14

A Member proposes a new paragraph 24*bis* to capture these concerns and very much awaits the clarification of Kazakhstan on the CU framework:

> **24*bis*. Some Members expressed concern about the overlap between CU Technical Regulations and other CU Decisions in the veterinary and sanitary fields. For example, Members noted overlaps and contradictions between CU Decision 299 and CU Technical Regulations, such as the Food Safety Technical Regulation. Members also noted overlaps and contradictions between CU Decision 317, in particular the CU common veterinary requirements, and Annex 5 to the Food Safety Technical Regulation, which appeared to contain veterinary requirements. Members sought clarity on what requirements were applicable for imported goods. In addition, those Members identified overlaps between different Technical Regulations, i.e. between the Food Safety Technical Regulation and the vertical Technical Regulations such as the TR for grain, meat, dairy, etc. A member noted discrepancies in tetracyclines levels in the technical regulation for meat on the one hand and in CU decision 299 and Food safety TR on the other hand and asked to confirm that the levels indicated in annex 5 paragraph 43[(1)] of the meat technical regulation were given priority. They asked if CU would eliminate redundant text and consolidate requirements, so that exporters could find all applicable requirements in the vertical TRs.**

[(1)] 43.	Doxiciclin (tetracyclines)	Cattle	meat liver kidneys	0.1 0.3 0.6	
		Hogs	meat pork fat with skin liver kidneys	0.1 0.3 0.3 0.6	

> **24*ter*. Kazakhstan's answer.**

Answer:

Kazakhstan will include the proposed Member's language in paragraph 24*bis* and will add the following answer in paragraphs 24*ter* and 24*quarter*:

> "24*ter*. The representative of Kazakhstan explained that, with regard to sanitary requirements, in accordance with the CU Agreement on Sanitary Measures, with the adoption of technical regulations relevant sanitary requirements stipulated in CU Decision 299 had to be abolished. The plan of amendments into CU Decision 299 was adopted together with the relevant technical regulations. The delay in amending CU Decision 299 is due to the current discussion between the CU Parties on replacing sanitary requirements incorporated into the CU technical regulations by a making references to the CU Common Sanitary Requirements (CU Decision 299) in order to exclude duplications.
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> With regard to veterinary requirements, Kazakhstan had raised the issue of duplication and inconsistencies in the technical regulations and CU Decisions at the CU level. At present, there were two draft amendments to the CU technical regulation On Food Safety. The first draft went through public discussion in September 2013 and was sent to the CU Parties for

internal approval. The second draft had been sent for consideration by CU Parties and then would be published for public consultations. These amendments, among other things, were aimed at elimination of discrepancies in the CU documents.

24*quarter*. Regarding the discrepancy between horizontal and vertical technical regulations, it should be mentioned that with regard to veterinary measures there were no discrepancies. Moreover, according to Article 3, paragraph 1 of the CU technical regulation On Food Safety, the technical regulation shall be applied taking into account the requirements of the CU technical regulations that establish mandatory requirements for certain types of food products and related requirements to the processes of production (manufacturing), storage, transportation, marketing and utilization, complementing and (or) specifying the requirements thereof. In addition, the requirements for certain types of food products and related requirements to the processes of production (manufacturing), storage, transportation, marketing and utilization established in other technical regulations of the Customs Union could not change the requirements of the horizontal Technical Regulation On Food Safety.

Horizontal technical regulation of the Customs Union "On Safety of Food Products" established requirements that are common to all types of food products, in particular:

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Vertical technical regulations of the Customs Union "On Safety of Meat and Meat Products" and "On Safety of Milk and Dairy Products" established specific requirement to the relevant products, in particular:

1) terminology;

2) safety requirements for meat and meat products, milk and dairy products, as well as the processes of production (manufacturing) , storage, transportation, marketing and utilization, which complement requirements of the technical regulations "On Food Safety";

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4) requirements for labelling of meat and dairy products;

5) conformity assessment schemes.

In general, Kazakhstan is 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."

With respect to doxycycline, the issue of contradiction in the requirements to tetracycline group in the Technical Regulation "On Safety of Meat and Meat Products" have been discussed within the CU. Upon results of the discussion, the decision was taken to exclude the MRLs for doxycycline since they did not comply with the results of the risk assessment. Currently, the draft amendments have been developed and discussed within the CU.

Question 15

If we read correctly CU Decision 129, it seems that the national safety limits <u>could still apply</u> for meat and dairy. How are provisions of CU Decision 129 compatible with the

description given on safety limits in Working Party Report paragraph 29 according to which all safety limits at national levels are replaced by CU safety limits (which was a very welcome clarification)?

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

Is the above description anchored in a CU text?

Answer:

In Kazakhstan, only CU documents apply with respect to sanitary requirements to food products subject to regulation at the CU level, including MRLs.

Question 16

Paragraph 30: We request to confirm the absence of compulsory frequency of testing, not only for self checks but also for official checks.

Answer:

The CU legislation does not establish binding requirements on how often self checks or official checks (by the Competent authority of an exporting country) for residues levels, contaminants levels, microbiological levels have to be carried out. This confirmation has been added into paragraph 31 in the following sentence:

She confirmed that there were no binding requirements on how often the producing establishment had to test for residues or microbiological levels in its product ***or how often official checks for residues and microbiological checks should be carried out.***

Question 17

Paragraph 31: We request to confirm that there is no binding requirement applicable in the CU on how often official checks (by the Competent authority of an exporting country) for residues levels, contaminants levels, microbiological levels have to be carried out.

Answer:

The CU legislation does not establish binding requirements on how often official checks (by the competent authority of an exporting country) for residues levels, contaminants levels, microbiological levels have to be carried out. This statement has been added into paragraph 31 in the following sentence:

She confirmed that there were no binding requirements on how often the producing establishment had to test for residues or microbiological levels in its product ***or how often official checks for residues and microbiological checks should be carried out.***

(d) Trade in Goods Subject to Veterinary Control

- (i) Veterinary certificates

Question 18

Paragraphs 35 and 36 of the document JOB/ACC/30/Rev.3/Add.1: The draft amendment to CU veterinary requirements that introduced a new listing obligation for establishments supplying raw materials to establishments that export animal products to the CU has been withdrawn (see notification G/SPS/N/RUS/15/Add.2).

Kazakhstan has now harmonized their measures with the Russian Federation related to goods subject to veterinary control (Annex to JOB/ACC/30/Rev.4). The Annex needs to be updated in accordance with the updated EEC table provided by Russia by the recent notification G/SPS/N/RUS/33. Also, the CN Code 0308 related to aquatic invertebrates seem to be totally missing from the table provided in Annex to JOB/ACC/30/Rev.4.

Answer:

The Annex on veterinary measures has been updated in the SPS text according to the EC Collegium Decision No. 294 of 10 December 2013, which harmonized the veterinary measures with the Russian Federation related to goods subject to veterinary control, including CN Code 0308 "aquatic invertebrates".

Question 19

A Member note that recently adopted Technical Regulations referred to the safety of the products in their title and scope, in spite of containing quality requirements. We are concerned that a products not responding to a quality requirement such as fat content would be considered as unsafe as it had experienced restrictions based on such standards. We request confirmation that emergency measures can only be linked to safety issues and not to quality requirements.

Answer:

Kazakhstan confirms that emergency measures can be linked only to safety issues.

Question 20

Furthermore, we consider its comments on the need for scientific justification not to have been fully taken into account in the final adopted documents. For example, the CU Technical Regulation on dairy sets a principle of control in the event of environmental conditions justifying it for dioxins but not for radionucleids, which is not justified. This is often the basis for CU to require testing of the transformed products for radionucleids, which is more requiring than what would be logic to do: test when there is a suspicion of contamination, and recognising testing of raw material as a sufficient guarantee that transformed products deriving from compliant raw material are also safe.

We see that an approach of testing in case the environmental situation suggests such a need has been included for dioxins. Can Kazakhstan confirm that such an approach is also applicable to radionucleids? Is there an intention to introduce it in the CU requirements?

Answer:

The situation with radionuclides in CU is different than with dioxins. It is well known that territories of Kazakhstan, Belarus and the Russian Federation historically have been subject to radiological contamination, for example, due to Semei nuclear-weapon testing polygon, Chernobyl nuclear catastrophe etc. Thus, the majority of citizens have been affected and the level of accumulated radionuclide level in their bodies is higher than in other countries. Therefore, the CU regulations require testing for radionucleids.

Question 21

Paragraph 38, last sentence states: "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 JOB/ACC/30/Rev.3/Add.1, Kazakhstan states that "Coordination of certificates negotiations currently takes time

because CU Parties have received a large number of applications from third countries and have limited financial and human resources." We continue to have concerns with the lengthy process for negotiating new CU certificates. We note that we have experienced significant delays with CU Parties response to our proposals. For example, after in person negotiations for one of our priority certificates, we followed up with written proposal in July 2012. To this date, we have not received the Customs Union response to our proposal, despite several promises by the EEC and the CU Parties to comment by December 2012. It seems that the Customs Union does not have procedure for coordination of certificate negotiations. Who is responsible for coordination if a third party submitted its request to CU Parties and EEC? We request a standard coordination mechanism so that there is a clear and transparent process in place.

Answer:

CU Commission Decision No. 726 foresees approval of bilateral certificates by reaching consensus between CU Parties. The approval process for veterinary certificates is a negotiating process, on the one hand, between the CU Parties, on the other hand, between CU and the exporting country. This process is consistent with international practice and conducted on an open basis.

Regarding certificate for dairy products noted by a Member, the certificates have been negotiated and initialled by CU Parties and a Member at the end of March 2014.

Question 22

We continue to have concerns with the actual harmonization of veterinary measures with the respective OIE requirements. In addition, we are concerned with Kazakhstan's and the CU's desire for only "freedom from" animal health diseases where the WTO provides for less trade restrictive measures that could allow trade to continue even where freedom from the disease does not exist. In this vein, we would request that additional Members language be added to the text in paragraph 42. The new language (in italics) would be added to the end of the second sentence and would state after "by requiring conditions for animal diseases which were not listed in the OIE Code, *or requiring freedom from animal diseases where less restrictive conditions for trade were provided in the OIE for the concerned commodities.*" We also request that Kazakhstan add a reply that would be added to the text of the Working Party Report.

Answer:

Harmonization of the CU Common Veterinary Requirements was carried out in 2012 as part of Russia's accession to the WTO. In particular, the timeframes of the absence of animal diseases by type of controlled goods were reduced taking into account the regionalization principle. As part of the harmonization process, amendments were introduced into more than 20 chapters of the CU 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 in 2013 and which are currently under consideration by the Working Group due to the comments received during the public consultations.

Requirements for animal diseases established in the CU Common Veterinary Requirements are consistent with the OIE recommendations. In accordance with Article 5.1.1. of the OIE Terrestrial Animal Health Code (hereinafter- OIE Code), there are different options (recommendations) for imports of goods depending on the status of animal health in the country. The Code offers various options because of differences between countries in their animal health situations OIE. As provided in the OIE Code: "*The animal health situation in the exporting country, in the transit country/countries and in the importing country should be considered before determining the requirements for trade. To maximise harmonisation of the sanitary aspects of international trade, Veterinary Authorities of Member Countries should base their import requirements on the standards of the OIE.*" CU countries have chosen one of the options (recommendations) provided by the OIE Code with regard to certain diseases taking into account level of protection that CU countries deem to be appropriate. These requirements are generic and apply for trade within the CU as well as with third countries.

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 is provided by the CU legislation. Such veterinary certificates may contain requirements different from the Common Veterinary Requirements.

The relevant answer will be included into paragraph 42*bis*.

Question 23

Paragraph 42: A Member underlines that the CU requirements for freedom of the disease in the exporting country are in its view not always compatible with the OIE recommendations, and supports additional members' language in paragraph 42 after diseases which were not listed in the OIE code, or "by requiring freedom of the territory or region of origin when less trade restrictive conditions for trade were provided in the OIE Code for the concerned commodity" and Kazakhstan's answer in a new 42*bis*.

Answer:

Requirements for animal diseases established in the CU Common Veterinary Requirements are consistent with the OIE recommendations. In accordance with Article 5.1.1 of the OIE Terrestrial Animal Health Code (hereinafter- OIE Code), there are different options (recommendations) for imports of goods depending on the status of animal health in the country. Because of differences between countries in their animal health situations, the OIE Code offers various options. As provided in the OIE Code: "*The animal health situation in the exporting country, in the transit country/countries and in the importing country should be considered before determining the requirements for trade. To maximise harmonisation of the sanitary aspects of international trade, Veterinary Authorities of Member Countries should base their import requirements on the standards of the OIE.*" CU countries have chosen one of the options (recommendations) provided by the OIE Code with regard to certain diseases taking into account level of protection that CU countries deem to be appropriate. These requirements are generic and apply for trade within the CU as well as with third countries.

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 is provided by the CU legislation. Such veterinary certificates may contain requirements different from the Common Veterinary Requirements.

The relevant answer will be included in paragraph 42*bis*.

Question 24

Paragraph 44*bis*: A Member has a specific concern related to BSE requirement of the CU:

> **44*bis*. A Member of the Working Party expressed concern that bovine spongiform encephalopathy (BSE) requirements set-out in existing bilateral certificates as well as in the CU common veterinary certificate for live cattle, did not conform to OIE standards, since they respectively foresaw testing of animals for BSE and required the absence of a genetic link with animals affected by BSE. The representative of the Kazakhstan clarified that in respect to BSE, as of the date of accession of the Russian Federation to the WTO, bilateral certificates as well as the CU common certificates would, as provided for in the WTO Agreement, be in conformity with OIE standards. The Working Party took note of this commitment.**

Answer:

Kazakhstan will add this commitment language into the SPS text with one modification as following*:*

*44bis. A Member of the Working Party expressed concern that bovine spongiform encephalopathy (BSE) requirements set-out in existing bilateral certificates as well as in the CU common veterinary certificate for live cattle, did not conform to OIE standards, since they respectively foresaw testing of animals for BSE and required the absence of a genetic link with animals affected by BSE. The representative of the Kazakhstan clarified that in respect to BSE, as of the date of accession of ~~the Russian Federation~~ **Kazakhstan** to the WTO, bilateral certificates as well as the CU common certificates would, as provided for in the WTO Agreement, be in conformity with OIE standards. The Working Party took note of this commitment.*

Question 25

We request that Kazakhstan favourably consider adding this commitment language to the text after paragraph 45.

> **"A Member of the Working Party expressed concern that bovine spongiform encephalopathy (BSE) requirements set-out in existing bilateral certificates as well as in the CU common veterinary certificate for live cattle, did not conform to OIE standards, since they respectively foresaw testing of animals for BSE and required the absence of a genetic link with animals affected by BSE. The representative of Kazakhstan clarified that in respect to BSE, as of the date of accession of Kazakhstan to the WTO, bilateral certificates as well as the CU common certificates would, as provided for in the WTO Agreement, be in conformity with OIE standards. The Working Party took note of this commitment."**

Answer:

Kazakhstan will add this commitment language into the SPS text.

Question 26

Regarding the commitment in paragraph 45, we continue to have concerns with some of the bracketed language in the text. One of the main concerns is in the last sentence states "[In accordance with the OIE code, CU veterinary certificates would not include requirements for the exclusion of pathogens or animal diseases which were present in the CU and were not subject to any official control programme. The measures imposed on imports to manage the risks posed by a specific pathogen or disease would not require a higher level of protection than that provided by measures applied as part of the official control programme operating within the CU.] It implies that Kazakhstan can 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. 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 encourage Kazakhstan to remove the sentence.

Answer:

Kazakhstan proposes the following commitment text that replicates the OIE Terrestrial Animal Health Code (paragraph 2 Article 5.1.2):

…The representative of Kazakhstan confirmed that veterinary certificates would not include provisions for diseases that were not transmitted by/relevant to the concerned product, and would not require certification of provisions that were not justified based on mandatory requirements applicable and surveillance carried out within the territory of Kazakhstan ~~or the [whole] CU.~~ [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].

Question 27

Paragraph 45: A Member reiterates its request to ensure non discrimination as to the animal health guarantees required from an exporting country. In certain cases, this Member was requested to provide guarantees whereas for the given disease no or only certain CU members had in place official surveillance and official eradication programmes across the whole country (e.g. only one member had an official programme, or there was only voluntary scheme conducted by operators, such as vaccination schemes). The answer provided by Kazakhstan in the previous round continues to raise concerns as Kazakhstan seems to consider justified that a CU member not having any official control in place for a given disease may still require official freedom to be provided as a guarantee. This Member maintains its request to consider additional language currently in brackets. [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.] and delete the alternative text.

Answer:

Kazakhstan proposes the following commitment text that replicates the OIE Terrestrial Animal Health Code (paragraph 2 Article 5.1.2):

The representative of Kazakhstan confirmed that veterinary certificates would not include provisions for diseases that were not transmitted by/relevant to the concerned product, and would not require certification of provisions that were not justified based on mandatory requirements applicable and surveillance carried out within the territory of Kazakhstan ~~or the [whole] CU.~~ [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].

Question 28

Paragraph 47 also contains a key commitment. Can Kazakhstan please provide the one document would be necessary for processed animal products?

Answer:

When importing processed products of animal origin into the customs territory of the Customs Union and when moving such goods between CU Parties, only one document is required which is veterinary certificate.

Question 29

Paragraph 47 needs to be updated, as the adopted specific Technical Regulations for meat and dairy (CU Decisions 68 and 69) provide for the veterinary certificate to be maintained as the only document for crossing the border. It should be indicated in which document it is provided that the state registration and declaration of conformity are eliminated for those products.

Answer:

The technical regulations on meat and dairy provide for the veterinary certificate are the only document required for crossing the border. These products are not subject to state registration. With regard to declaration of conformity, Kazakhstan will initiate amendments to the Technical Regulation on Safety of Food Products (Decision No. 880) in order to specify in the Technical Regulation that the veterinary certificate shall be the only document for accompanying meat and dairy products upon their importation to the CU.

Question 30

We appreciate the new information that was added in paragraph 49 regarding replacement veterinary certificates. However, we understand that the legal basis for accepting replacement veterinary certificates does not currently exist in the Customs Union legal framework. We understand that an amendment to the veterinary legislation will need to be undertaken. Can Kazakhstan please provide an update on the status of the amendment?

Answer:

Kazakhstan initiated amendments to the Regulation on Common Procedure of Veterinary Control at the Customs Border of the Customs Union and in the Customs Territory of the Customs Union, approved by CU Commission Decision No. 317 to include rules on recognition of a replacement certificate in accordance with paragraph 9 of Article 5.2.3 of the OIE Code.

The amendments were discussed and approved at the Working Group meeting on veterinary-sanitary measures on 4-6 December 2013.

Question 31

Paragraph 49: Could be completed with reference to CU Decision amending CU 317 and allowing replacement certificates.

Answer:

Kazakhstan initiated amendments to the Regulation on Common Procedure of Veterinary Control at the Customs Border of the Customs Union and in the Customs Territory of the Customs Union, approved by CU Commission Decision No. 317 to include rules on recognition of a replacement certificate in accordance with paragraph 9 of Article 5.2.3 of the OIE Code.

The amendments were discussed and approved at the Working Group meeting on 4-6 December 2013 and have been published for public consultation on 31 December 2013 till 10 March 2014. Currently, comments received during public consultation are being consolidated for review within the CU.

Question 32

In JOB/ACC/30/Rev.3/Add.1, Question 19, a Member points out that Kazakhstan's reference to the CU being treated as one country has been inconsistent. Kazakhstan's response indicates that the CU should indeed be treated as one country and that otherwise separate veterinary certificates would have to be negotiated for each of the CU states. However, as pointed out in the Member's question, the CU continues to maintain separate lists of dangerous and quarantine animal diseases under CU Commission Decision No. 455 of 18 November 2010. Could Kazakhstan explain how it intends to standardize the definition of the CU as a single entity in order for the implementation of SPS measures to be consistently applied?

Answer:

The CU territory can be regarded as a single territory because there are no border checkpoints between the CU Parties and controlled goods can freely move within the CU territory. For example, permit to import controlled goods obtained on the territory of one CU Party is also valid for entry into the territory of other CU Parties. Moreover, conditions for movement of controlled goods within CU territory are also common.

The status of the CU as a single space with regard to application of SPS measures is established in the CU legal documents. In particular, there are Common CU Veterinary and Sanitary Requirements, the Unified List of Controlled Goods, common forms of veterinary certificates, and others.

Decision No. 455 that approved the Consolidated List of Hazardous and Quarantined Animal Diseases contains three separate lists of animal diseases of each CU Party. However, these diseases are largely the same.

Thus, in fact, the CU territory can be regarded as a single entity with regard to application of SPS measures.

- (ii) Establishment Approval, Registry and Inspection

Question 33

In paragraph 53, please add the following language to the end of the first sentence, "which would become effective on the date of Kazakhstan's accession to the WTO."

Answer:

Sentence 1 of paragraph 53 will be amended as follows:

"The representative of Kazakhstan replied that Kazakhstan excluded products of plant origin from the list of goods subject to veterinary control in accordance with EEC Council Decision No. 33 of 24 May 2013, **which would become effective on the date of Kazakhstan's accession to the WTO**."

Question 34

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 discussed in paragraphs 55-57. We appreciate the response to Question 12 in JOB/ACC/30/Rev.3/Add 1 where Kazakhstan noted that the related paragraph that had been proposed as an amendment to CU Commission Decision No. 834 had been removed. However, our concerns remain as we understand that Kazakhstan and the CU intend to still maintain the requirement for an establishment list where the requirement had been removed, until after an audit is successfully conducted. We continue to work with Members and Kazakhstan to find an acceptable resolution.

Answer:

CU Commission Decision No. 834 was approved in the course of negotiations of the Russian Federation with WTO Members. Currently, Kazakhstan continues to work actively with CU Parties and WTO Members to address this issue.

Question 35

Paragraphs 64 and 66 should be bracketed as it appears to reflect a draft amendment outlying how guarantees may operate, but it is only a draft. We continue to work with Members and Kazakhstan on this key issue as we need to see a functioning guarantee system in place.

Answer:

Kazakhstan put in brackets description of planned amendments to Decision No. 834 in paragraph 64. The last sentence of paragraph 66 on planned amendments to Decision No. 834 is already in brackets.

Question 36

Regarding paragraph 77, the new language at the end of the paragraph, "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", makes a reference to a developing and establishing a new mechanism

regarding imposing suspensions across the CU territory. Please explain what this means. Members have expressed strong concerns that one CU Party could impose suspensions on imports across the entire CU territory and we were pleased that the proposed amendment that would have incorporated that requirement has been removed.

Answer:

Kazakhstan once again clarifies that the amendment had been withdrawn. Thus, each CU Party imposes restrictions on import of the controlled goods only into its own territory.

Question 37

Paragraph 86 in document JOB/ACC/30/Rev.4 and Question 36 in document JOB/ACC/30/Rev.3/Add.1 relate to a draft amendment that had been proposed to add a new requirement for establishments supplying raw materials to establishments that export animal products to the CU. In response to Members concerns, Kazakhstan states that the new amendment was sent for further elaboration and risk assessment. Could Kazakhstan please provide an update on the status of this amendment?

Answer:

Currently, the new requirement for raw material supplied to establishments has not been considered within the CU.

- (iii) Import Permits

Question 38

Could Kazakhstan please provide an update on the status of the amendments to Government Resolution No. 132 as discussed in paragraph 100?

Answer:

Draft amendments to the Government Resolution of the Republic of Kazakhstan No. 132 are at the final stage of review by the interested government bodies of the Republic of Kazakhstan. The amendments will be submitted for approval to the Government of the Republic of Kazakhstan.

(e) Trade in Goods Subject to Phytosanitary Control

Question 39

Paragraph 122: A Member requests Kazakhstan to confirm that PRAs carried out by one of the CU party are taken on board for designing the CU legislation only if they are valid for the all CU region, i.e. reflect the diversity of the region as to regards climatic and environmental conditions, as well as pest status and official measures of controls on the related pests.

Answer:

The CU legal acts in the field of plant quarantine are developed in order to protect the customs territory of the CU from entry and spread of quarantine objects. Pursuant to paragraph 1 Article 2 of the CU Customs Code, the customs territory of the CU comprises the territories of Belarus, Kazakhstan and the Russian Federation. Border territories of the CU Parties are similar in their agro-climatic, plant cover and weather conditions.

Phytosanitary risk assessment with regard to certain quarantine organisms is conducted taking into account agro-climatic and weather conditions, fodder resources. In addition, PRAs determine the list of quarantine products, which could be a source of introduction and spread of quarantine pests.

At the same time, major emphasis is made to determination of economic injury caused by a quarantine pest with respect to quarantine products during vegetation in open or protected ground as well as during storage and transportation of quarantine products.

Moreover, as it is known in the course of transportation and growing of quarantine products in protected grounds regardless of place of origin (greenhouse, orchard house, storage etc.) conditions favourable for reproduction, acclimatization and further spread of quarantine pests in the territory of the CU are created.

When conducting phytosanitary risk assessment in accordance with the IPPC standards Nos. 11 and 21, a comprehensive study of harmfulness of pest with respect to quarantine product during its growth, transportation, storage etc. is carried out. Therefore, CU Parties when developing CU legal acts use the results of phytosanitary risk assessment conducted by one of the CU Parties.

Question 40

Please break paragraph 128 into separate paragraphs to distinguish between Members language and the reply from Kazakhstan.

Answer:

The paragraph will be separated to distinguish Members language and reply from Kazakhstan.

Question 41

Paragraph 128: A Member requests Kazakhstan to confirm that the system described in this paragraph would not result within the CU:

- **in a system of individual approval for export,**
- **nor of preliminary audit conditioning the possibility for a country to continue exporting,**
- **nor of listing obligations of pest free areas, pest free places of production, pest free sites of production when the corresponding guarantees could be provided by other means foreseen by IPPC, such as certificates and were previously seen as sufficient in existing trade relations.**

Answer:

Audit referred in paragraph 128 will be conducted in special cases, such as establishment of new trade relations, when there is a problem, or in cases of repeated inconsistencies.

In order to reduce the risk of introduction and spread of quarantine objects on the territory of the Republic of Kazakhstan, exporting countries shall provide information on the list of zones, production places, production sites free from quarantine objects regulated on the territory of the Republic of Kazakhstan established by international standards on phytosanitary measures, as well as timely update of previously provided information in accordance with principles and norms of IPPC and NPPO. At the same time, in cases where quarantine objects were detected from imported products and the exporting country had not taken appropriate measures, Kazakhstan may apply emergency (extraordinary) phytosanitary measures to restrict or ban import of such products in accordance with paragraph 6 of Article 7 of the IPPC. Kazakhstan will notify concerned members on application of such measures in accordance with ISPM 13.

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

- (i) Harmonization with International Standards and Norms

Question 42

A Member requests an update on the follow-up given to its request of 15 April 2013 for harmonisation of certain CU norms in accordance with EEC Decision 212. In previous meeting, it was indicated that 4 CU working groups had been set up and should finalise

their assessment of the request around October 2013. What is the outcome of this evaluation?

Answer:

Expert Group meeting has considered this Member's request on harmonization in November 2013 in accordance with EEC Collegium's Decision No. 212 of 6 November 2012. The results of the evaluation will be reported to and approved by the Consultative Committee.

Question 43

Paragraph 144: A Member reiterates its concerns expressed in plurilateral meetings and through written comments regarding foreseen amendments to CU Decision No. 721, and proposed changes to paragraph 144.

Answer:

Amendments have been initiated in order to align the Decision No. 721 with the WTO Agreement on the Application of SPS measures.

Kazakhstan is ready to work with WTO Members on commitment language and subsequently cancel the amendments to CU Decision No. 721.

Question 44

We must reiterate our concerns with the changes that have been proposed to paragraph 144 and the proposed amendments to CU Commission Decision No. 721 that have been notified and published for public comment. We have requested that the amendments to the decision be withdrawn. CU Decision No. 721 of 22 June 2011 was adopted during Russia's accession to the WTO to address Russia's harmonization obligations. There were two components that were addressed, in addition to those found in CU Commission Decision No. 625 of 7 April 2011.

The proposed amendments also fail to account for a key element of CU Decision No. 721. The proposed amendments drop what "measure" applies in the absence of a scientific justification for any element of an EEC SPS measure that provides a more stringent level of protection than that accorded under international standards, recommendations, and guidelines. We will continue to work with Members and Kazakhstan to find language for the commitment paragraph that is acceptable to all parties.

Answer:

Draft amendments do not repeal Paragraph 1 of the CU Decision No. 721 of 22 June 2011. Amendments have been initiated in order to align the Decision No. 721 with the WTO Agreement on the Application of SPS measures. Currently, amendments to the Decision No. 721 have been withdrawn. Kazakhstan is ready to work with WTO Members on commitment language and subsequently cancel amendments to CU Decision No. 721.

(h) Transparency, Notification and Enquiry Point Obligations

Question 45

During the SPS Plurilateral, Kazakhstan agreed to remove the brackets from the around the text in paragraph 185. Please confirm that this will be reflected in document JOB/ACC/30/Rev.5.

Answer:

Kazakhstan removed brackets from the text.

(j) Conclusion

Question 46

A Member requests Kazakhstan to undertake the following commitment:

> **[The representative of Kazakhstan confirmed that from the date of accession all SPS measures would be applied in full conformity with the WTO Agreement, SPS Agreement, and Agreement on Import Licensing Procedures in particular without application of transitional period. The Representative of Kazakhstan confirmed that from the date of its accession to the WTO, all existing in Kazakhstan and Customs Union SPS measures - laws, regulations, orders and decrees, instructions and guidelines and other regulatory measures directly and/or indirectly affecting international trade in agricultural and food products would be brought in conformity with the SPS Agreement. The Representative of Kazakhstan added that Kazakhstan would not introduce any new additional certification, testing requirements or sanitary registration for the products which had been determined safe for use and human consumption by official competent bodies of exporting countries which were duly reported to the relevant international organizations (the International Plant Protection Convention (IPPC), World Animal Health Organisation (OIE) and the Codex Alimentarius (Codex)) had been informed and recognized by Kazakhstan/Customs Union in accordance with SPS Agreement. From the date of accession Kazakhstan/Customs Union shall ensure official publication of criteria for preliminary authorization or protection of certification of imported agricultural products. The Representative of Kazakhstan confirmed that the requirements for SPS and other types of certification in Kazakhstan/Customs Union would be drafted, adopted and implemented in line with the WTO transparency principle and would not create unjustified delays. Upon request of WTO Members Kazakhstan/Customs Union would consult with them as to the impact on trade of such SPS requirements in order to resolve possible trade-related concerns raised by Members. The Working Party took note of these commitments.]**

Answer:

The proposed commitment language is already present in the SPS text JOB/ACC/30/Rev.4 (hereinafter – SPS text) in different paragraphs. In particular,

1) A draft commitment from the date of accession of Kazakhstan to the WTO to apply all SPS measures in conformity with the WTO SPS Agreement is already stipulated in paragraph 194 of the SPS document JOB/ACC/30/Rev.4. This commitment also means that Kazakhstan has to bring all its SPS measures in compliance with the SPS Agreement prior to its accession to the WTO and without recourse to a transitional period.

2) With regard to the Agreement on Import Licensing Procedures, in the Chapter "Quantitative Import Restrictions, including Prohibitions and Quotas" of the draft Working Party Report of Kazakhstan, there is a general commitment in accordance with which the administrative procedures of the Republic of Kazakhstan for the operation of its import licensing regime and their application would, from the date of accession, be in compliance with all relevant provisions of the WTO Agreement, including the Agreement on Import Licensing Procedures (paragraph 417 of WT/ACC/SPEC/KAZ/9/Rev.10).

3) With regard to the introduction of additional certification, testing requirements in sanitary registration of products, it should be noted that SPS Agreement allows WTO Members to adopt any SPS measures in accordance with international standards or based on risk assessment. Moreover, in accordance with the SPS Agreement, such measures shall be applied only to the extent necessary to protect human, animal or plant life or health. The relevant commitment language is provided in paragraphs 193 and 194 of the SPS text. In particular, in accordance with this draft commitment text, Kazakhstan shall apply its SPS measures only to the extent necessary to protect human, animal or plant life or health and they shall not be more trade restrictive than required to achieve the appropriate level of

sanitary or phytosanitary protection of the CU and Kazakhstan. In addition, when determining the appropriate level of sanitary, veterinary, or phytosanitary protection, Kazakhstan or the competent bodies of the CU, shall take into account the objective to minimize negative trade effects in accordance with the WTO SPS Agreement.

4) Concerning the publication and transparency issues, there are several commitment paragraphs in the Draft Working Party Report of Kazakhstan. In particular, in paragraph 102, Kazakhstan is confirming that it would make available to importers, as well as to third-country exporters through the website of the Ministry of Agriculture [www.minagri.gov.kz] full detailed conditions for import of specific products. Furthermore, information on CU veterinary requirements was available on the CU website at the following address: http://www.eurasiancommission.org/ru/act/texnreg/depsanmer/regulation/Pages/Ветеринарно-санитарные-меры.aspx. It further confirms that to this end, it would publish a list on the website of the National Enquiry Point in English of the products which were permitted to be imported into its territory; the countries and establishments authorised to export to Kazakhstan [and the territory of the CU]; and the conditions for import.

In paragraph 191, there is a draft commitment, in accordance with which Kazakhstan shall notify its draft SPS measures applicable to imports into Kazakhstan to the WTO SPS Committee as provided for in the SPS Agreement. Information on all proposed SPS measures and those in effect, as foreseen in Annex B of the WTO SPS Agreement, can also be obtained from the SPS notification authority or from Kazakhstan's SPS enquiry point.

Moreover, paragraph 44 of the SPS Chapter stipulates a draft commitment that if an exporting Member believes that the SPS requirements of the CU or Kazakhstan resulted in a higher level of protection than would be achieved by measures based on the relevant international standards, guidelines or recommendations, Kazakhstan is prepared to consult with the exporting Member on such SPS requirements and, if necessary, as a result of such consultations, will modify its measures in order to bring them into compliance with international standards, guidelines, or recommendations consistent with the WTO SPS Agreement.

Therefore, Kazakhstan considers redundant to undertake the proposed commitment.

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