



## **FAO Regional Office for Europe and Central Asia**

### ***Policy Studies on Rural Transition No. 2015-5***

The harmonization of Eurasian Economic Union  
sanitary and phytosanitary measures and technical  
regulation for agricultural goods with the provisions of  
the WTO for the international trade development

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# Abbreviations

<b>APEC</b>	Asia-Pacific Economic Cooperation;
<b>CES</b>	Common Economic Space
<b>CIS</b>	Commonwealth of Independent States
<b>CU</b>	Customs Union of the Republic of Belarus, Republic of Kazakhstan and the Russian Federation
<b>CUC</b>	Customs Union Commission
<b>EAEU</b>	Eurasian Economic Union
<b>EEC</b>	Eurasian Economic Commission
<b>EU</b>	European Union
<b>EurAsEC</b>	Eurasian Economic Community
<b>FAO</b>	Food and Agriculture Organization of the United Nations
<b>GOST</b>	CIS interstate standard
<b>HACCP</b>	Hazard Analysis and Critical Control Points
<b>IEB</b>	International Epizootic Bureau
<b>ILAC</b>	International Laboratory Accreditation Cooperation
<b>IPPC</b>	International Plant Protection Convention
<b>ISPM</b>	International Standard for Phytosanitary Measures
<b>SanPiN</b>	Sanitary Regulations and Norms
<b>SPS</b>	sanitary, veterinary and sanitary, phytosanitary
<b>TBT</b>	Technical Barriers to Trade
<b>UN</b>	United Nations
<b>UNCTAD</b>	United Nations Conference on Trade and Development
<b>WTO</b>	World Trade Organization

# SECTION A. Introduction

## Chapter I. Background

The early years of the post-Soviet period demonstrated dynamic activities of a newly formed CIS associated with the establishment of a legal trade and economic cooperation framework. CIS member countries adopted the following agreements: The Agreement on the Establishment of Economic Union dated 24 September 1993 and the Agreement on free trade area, agreements on plant quarantine and veterinary cooperation, on ensuring sanitary and epidemiological safety of population, on pursuing consistent policy in standardization, metrology and certification. It should be noted that the Agreement on the Establishment of Economic Union was declarative, while the other specified agreements were pithier and of a more applicable nature.

In 1995 the leaders of Belarus, Kazakhstan and the Russian Federation signed the Customs Union Agreement<sup>1</sup>, to which the Kyrgyz Republic, the Republic of Tajikistan and the Republic of Uzbekistan became signatories later. However, the intent was more to establish a unified trade regime, rather than an act of establishment. In 2000 the leaders of these states created EurAsEC as an international organization, with the objective of *forming the CU and the CES*. In 2007 – within the EurAsEC – the leaders of Belarus, Kazakhstan and Russia executed the Agreement on the establishment of common customs territory and CU formation<sup>2</sup>. On 29 May 2014 the leaders of Belarus, Kazakhstan and Russia signed the EurAsEC Agreement that came into force on 1 January 2015<sup>3</sup>.

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<sup>1</sup> Hereinafter the CU and EAEU abbreviations used herein in possessive with regard to any authorities, documents etc. shall be interpreted as substitutable.

<sup>2</sup> Due to various reasons, Kyrgyzstan and Tajikistan did not accede to this Agreement.

<sup>3</sup> Armenia has also acceded to the EAEU Agreement since January 2015. The Kyrgyz Republic is expecting to become a fully-fledged EAEU member starting with May 2015.

# Chapter II. EAEU SPS system and technical regulation background

## 2.1. The effect of technical regulation and SPS measures on trade

As compared with tariff measures, the effect of non-tariff measures – in the form of technical barriers and SPS measures – on international trade is not so well understood. However, over recent years awareness of their significance has been increasing. As evidence, a number of examples can be provided. The first example has already become rather a textbook case; we can consider the findings of the fundamental research held by the APEC Economic Committee in mid-2000, which show that the measures used to harmonize technical regulations measures have an economic impact on APEC countries, which twice exceeds the effect of reducing customs tariffs. The most recent agricultural trade research conducted by UNCTAD bring us to conclusion that in high income countries, TBT non-tariff measures add roughly 4 percent to the average 2 percent tariff. The impact of trade policy on agricultural sector in high and average income countries constitutes an average of almost 30 percent of produce value, with non-tariff measures accounting for 20 percent.

The next example is closely related to the subject of this Report. In 2011 the CU representatives initiated a discussion in the joint consultancy meetings of CU and EU veterinary offices regarding the elimination of existing disparity in food commodities trade between the CU and the EU. Approximately 5 000 EU enterprises had veterinary and sanitary permits to supply goods of animal origin to CU countries, while only 10 such CU enterprises had such permits to export to the EU.<sup>4</sup> This was due to consistent enforcement of food safety measures in EU countries. The adoption of the Regulation of the European Parliament and of the Council No. 178/2002 dated 28 January 2002, “*laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety*”<sup>5</sup>, initiated the development of a new EU food law for food safety. The application of, and compliance with, new EU requirements based on the international standards of the Codex Alimentarius proved unsustainable for the Russian food sector and for other post-Soviet countries. First of all, such requirements include the mandatory traceability of food safety along the Farm-to-Table food supply chain and food safety system based on HACCP principles.

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<sup>4</sup> Over the past years such disparity rate preserved until in spring 2014 the Russian Federation introduced embargo to certain EU food commodities.

<sup>5</sup> Access to European Union Law: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32002R0178>

Pursuant to the EEC report on restrictive measures applied by CU member states to non-member countries in the first six months of 2014<sup>6</sup>, 109 restriction measures were applied by non-member countries on commodities originating from EAEU (CU) member countries. Of these, 14 refer to TBT and SPS measures, which constitute 13 percent. Given the fact that more than 50 percent of all the restrictions account for anti-dumping measures, it is possible to conclude that the percentage of TBT and SPS measures is significant.

It should be noted that SPS and technical regulation reforms, implemented in the CU, have had a significant impact on the conditions applicable to the access of commodities in Belarus, Kazakhstan and Russia. The CIS countries were especially sensitive to this. The new technical and SPS requirements and procedures introduced cancellation of arrangements on recognition of compliance certificates, laboratory testing findings and other assessment procedures. They also caused serious technical and sanitary barriers to agricultural trade.

## **2.2. EAEU legal system**

The following legal system structure has been formed in EAEU in terms of SPS measures and technical regulation:

- EAEU Agreement;
- International treaties within the EAEU;
- bilateral treaties between EAEU member states that may be concluded with a view to enhancing integration and provided that they do not affect the exercise of their rights and fulfillment of obligations under EAEU Agreement and international treaties within the EAEU by themselves and other member countries.
- Instruments of the Supreme Eurasian Economic Council
- Instruments of the Eurasian Intergovernmental Council;
- Instruments of the EEC. These may be adopted in the cases stipulated in the EAEU Agreement, EAEU international treaties, instruments of the Supreme Eurasian Economic Council and Eurasian Intergovernmental Council;
- National legislation. The national legislation may be adopted within the EAEU in the cases stipulated by the EAEU Agreement, EAEU international treaties, EEC instruments.

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<sup>6</sup> Source: [http://www.eurasiancommission.org/ru/act/trade/dotp/SiteAssets/dostup/doklad\\_2014.pdf](http://www.eurasiancommission.org/ru/act/trade/dotp/SiteAssets/dostup/doklad_2014.pdf)

## **EAEU international treaties on technical regulation and SPS measures**

The starting point for the establishment of the CU (EAEU) technical regulation and SPS measures legal framework is *the EurAsEC Agreement on pursuing consistent technical regulation and SPS policy* dated 25 January 2008. Based on the title and content of this document, it is apparent that the EurAsEC considered technical regulation and SPS measures as a unified system.<sup>7</sup> This Agreement contemplated the development and application of EurAsEC technical regulations. However, as the EurAsEC no longer exists, this subject is irrelevant.<sup>8</sup>

In 2009 and 2010 the following international treaties were adopted by the CU:

- CU plant quarantine agreement dated 11 December 2009;
- CU veterinary and sanitary measures agreement dated 11 December 2009;
- CU sanitary measures agreement dated 11 December 2009;
- Agreement on the circulation of commodities subject to mandatory compliance assessment on the CU customs territory dated 11 December 2009;
- Agreement on the mutual recognition of the accreditation of certification bodies and testing laboratories carrying out compliance assessment activities dated 11 December 2009;
- Agreement on generalized technical regulation principles and rules in the Republic of Belarus, Republic of Kazakhstan and Russian Federation dated 18 November 2010.

As the EAEU Agreement of 29 May 2014 came into force, the above international treaties terminated starting 1 January 2015.

*The EAEU Agreement dated 29 May 2014* establishes the general SPS and technical regulation principles and rules for their application in the EAEU.<sup>9</sup>

Thus, Section X Technical Regulation thereof contains the following articles:

- General Principles of Technical Regulation;
- Technical Regulations of the EAEU and standards;

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<sup>7</sup> In execution of the Resolution issued by the CU Commission dated September 20, 2010, the draft 2011 - 2015 Strategy for the Development of a **Generalized** Technical Regulation and SPS Measures System was developed. However, this Strategy was never adopted.

<sup>8</sup> During the negotiation process on the accession to the WTO, Russia paid close attention to EurAsEC technical regulations. Over the period of EurAsEC existence not a single set of technical regulations was adopted by it.

<sup>9</sup> The EAEU Agreement is based on the provisions of previously existent international treaties on SPS measures and technical regulation, specified in cl. (ii).

- Circulation of Products and Technical Regulations of the EAEU;
- Accreditation;
- Elimination of Technical Barriers in Mutual Trade with Third Countries.

As well as:

- *Annex 9* Protocol on Technical Regulation within the Eurasian Economic Union;
- *Annex 10* Protocol on Conducting Coordinated Policy in the Sphere of Ensuring Uniformity of Measurements;
- *Annex 11* Protocol on Acceptance of the Results of Works on Accreditation of the Conformity Assessment Bodies.

Section XI SPS Measures includes the following articles:

- General Principles of the Application of Sanitary, Veterinary and Sanitary and Phytosanitary Quarantine Measures;
- Application of Sanitary Measures;
- Application of Veterinary and Sanitary Measures;
- Quarantine phytosanitary measures.

As well as:

- Annex 12 Protocol on the Application Of Sanitary, Veterinary And Sanitary And Phytosanitary Quarantine Measures.

Three EAEU international treaties are expected to be developed by 31 December 2015 pursuant to the Decision of the EEC Council dated 16 July 2014 No. 58:

- On legislation harmonization principles and approaches in the sphere of state control (inspection) over compliance with EAEU technical regulations requirements;
- On commodities safety assurance and circulation rules and procedures, where such are not covered by the EAEU technical regulations requirements;
- On the procedure and conditions applicable to the elimination of technical barriers to mutual trade with non-member countries.

### **2.3. Key SPS and technical regulation powers of the EEC and the bodies of EAEU member countries**

In accordance with the *CU Agreement dated 6 October 2007*, a supranational authority was established in the form of the Customs Union Commission (CUC). This authority was made up of three representatives from each of the CU countries in the rank of Government deputy executive and was authorized to adopt instruments binding on CU countries, including those pertaining to SPS measures and technical regulation.

In accordance with the *EEC Agreement dated 18 November 2011* the EEC was established as a legal successor for the CUC. The EEC is a single standing regulator of the EAEU, enjoying the status of the EAEU supranational governance body.

The EEC has two levels: the Council and the Board. The Council consists of the representatives from each EAEU member state in the rank of government deputy executives. The Board consists of nine staff members in the rank of Ministers, who are approved by the EAEU Supreme Council.<sup>10</sup>

The EEC Board member, Technical Regulation Minister, also supervises SPS-related matters, which in institutional terms evidences that technical regulations and SPS measures are considered a single system within the confines of the EAEU with respect to agricultural commodities.

Within the EEC structure there is the Department for Technical Regulation and Accreditation and the Department for SPS measures. Within the EEC there are technical regulation and SPS Consultative Committees, which operate with a view to elaborate the proposals for the EEC Board and hold consultations with the representatives of EAEU member states authorities.<sup>11</sup> The EEC does not have its own authorities and institutions in the form of offices, inspectorates or laboratories.

The main goal of the EEC is to ensure favorable conditions for the EAEU operation and development. It has the power to adopt instruments binding on the entire EAEU, including those pertaining to SPS measures and technical regulation. The EEC may be granted the right to sign international treaties on matters that fall beyond EEC competence by the Supreme Eurasian Economic Council.

In the EAEU there is a trend for complete transfer of rule-making powers to the EEC for the establishment of the following uniform instruments for EAEU member states:

- Lists of commodities, subject to SPS measures and technical regulation;

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<sup>10</sup> As Armenia and then the Kyrgyz Republic are going to accede to the EAEU the compositions of the Board and the Panel will be modified.

<sup>11</sup> As used herein, the authorities of the EAEU member states shall mean any state authorities that are granted certain powers under the national law

- Mandatory requirements to the commodities that are subject to SPS measures and technical regulation;
- Compliance assessment procedures;
- Compliance documents forms;
- Control procedure applicable to the entry of commodities at the EAEU customs border and their movement from one EAEU member state to another one;
- Interaction rules for the authorities of EAEU member states.

The EEC has no SPS measures enforcement and technical regulation functions on EAEU territory, including the functions of control and surveillance, arbitration, introduction of quarantines, bans, restrictions and temporary SPS measures.

In respect of the powers granted to the authorities of EAEU member states, it should be noted that EAEU member states have certain rule-making powers and enforcement functions with regard to the provisions of the EAEU Agreement and other instruments, adopted by the EAEU.

### **Distribution of powers related to phytosanitary measures.**

#### **At supranational level the EEC approves the following:**

- The list of quarantineable products<sup>12</sup>;
- General list of EAEU items subject to quarantine<sup>13</sup>;
- Generalized EAEU quarantine phytosanitary requirements<sup>14</sup>;
- Generalized EAEU plant quarantine rules and norms<sup>15</sup>;
- Requirements to phytosanitary supervising stations at checkpoints, designed for the movement of quarantineable products through EAEU customs border<sup>16</sup>
- Procedure of quarantine phytosanitary control (inspection) at the EAEU customs border<sup>17</sup>;

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<sup>12</sup> Adopted by the Decision of the CU Commission dated 18 June 2010 No. 318.

<sup>13</sup> In accordance with the Decision of the EEC Council dated 16 July 2014 No. 58 the development thereof is expected by 31 December 2015.

<sup>14</sup> In accordance with the Decision of the EEC Council dated 16 July 2014 No. 58 the development thereof is expected by 31 December 2015.

<sup>15</sup> In accordance with the Decision of the EEC Council dated 16 July 2014 No. 58 the development thereof is expected by 31 December 2017.

<sup>16</sup> In accordance with the Decision of the EEC Council dated 16 July 2014 No. 58 the development thereof is expected by 31 December 2016.

- Procedure of quarantine phytosanitary control (inspection) at the EAEU customs border<sup>18</sup>;
- Interaction procedure for the competent authorities of EAEU members states in connection with the temporary phytosanitary measures enforcement<sup>19</sup>;
- Laboratory support to quarantine phytosanitary measures procedure<sup>20</sup>.

### **The national authorities of EAEU member states**

- Adopt national phytosanitary requirements, applied until the generalized EAEU phytosanitary requirements come into force.
- Introduce temporary phytosanitary measures in the territories of their states for products from non-member countries or other EAEU member states that are subject to quarantine. In Belarus, Kazakhstan, Russian Federation the above powers are vested in the Government. Exercise phytosanitary control at checkpoints upon the entry of quarantineable products to the EAEU customs border. In Belarus such powers are vested in the Ministry of Agriculture and Food, in Kazakhstan they are vested in the Public Revenue Committee of the Ministry of Finance (Customs Control Committee). In the Russian Federation they are vested in the Federal Department for Veterinary and Phytosanitary Surveillance of the Ministry of Agriculture (Rosselkhoznadzor).
- Exercise phytosanitary control upon the movement of quarantineable products from one member state to another one. In Belarus such powers are vested in the General State Inspectorate for Seed Production, Quarantine and Plant Protection of the Ministry of Agriculture and Food; in Kazakhstan they are vested in the Committee for State Inspection in Agro-Industry of the Ministry of Agriculture and in the Russian Federation they are vested in Rosselkhoznadzor.
- Issue phytosanitary certificates for commodities, supplied to other EAEU member-states and non-member countries. In Belarus such powers are vested in the General State Inspectorate for Seed Production, Quarantine and Plant Protection of the Ministry of Agriculture and Food; in Kazakhstan they are vested in the Committee for State Inspection in Agro-Industry of the Ministry of Agriculture and in the Russian Federation they are vested in Rosselkhoznadzor.

### **Distribution of powers related to veterinary measures**

#### **At supranational level the EEC approves the following:**

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<sup>17</sup> Adopted by the Decision of the CU Commission dated 18 June 2010 No. 318.

<sup>18</sup> Adopted by the Decision of the CU Commission dated 18 June 2010 No. 318.

<sup>19</sup> In accordance with the Decision of the EEC Council dated 16 July 2014 No. the development thereof is expected by the end of 2016

<sup>20</sup> In accordance with the Decision of the EEC Council dated 16 July 2014 No. 58 the development thereof is expected by 31 December 2017.

- The general list of commodities subject to veterinary control;<sup>21</sup>
- Generalized EAEU veterinary requirements to the commodities subject to veterinary control;<sup>22</sup>
- Generalized EAEU veterinary requirements to veterinary control items;<sup>23</sup>
- Generalized veterinary control procedure to be applied at the EAEU customs border and on the EAEU customs territory;<sup>24</sup>
- Generalized rules and methodology for laboratory tests in the course of veterinary control<sup>25</sup>;
- Uniform EAEU veterinary certificates;<sup>26</sup>
- Generalized audit procedure for official veterinary surveillance systems of non-member countries and for joint inspections of veterinary control items;<sup>27</sup>
- Generalized regulation rules for veterinary medicines circulation; veterinary diagnostic aids; feed supplements; and disinfectants, insecticides and acaricides on the EAEU territory;<sup>28</sup>
- Interaction procedure for the competent authorities of members states in connection with the introduction of temporary veterinary and sanitary measures;<sup>29</sup>
- Generalized rules and methodology for making laboratory tests in the course of veterinary control.<sup>30</sup>

### **National authorities of EAEU member states**

- Establish a permit issue procedure for import (export) and transit of commodities subject to veterinary control, as well as veterinary certificates processing procedure. In Belarus, Kazakhstan and the Russian Federation these functions are vested in the Governments of these states.

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<sup>21</sup> Approved by the CUC Decision dated 18 June 2010 No. 317.

<sup>22</sup> Approved by the CUC Decision dated 18 June 2010 No. 317.

<sup>23</sup> In accordance with the Decision of the EEC Council dated 16 July 2014 No. 58 the development thereof is expected by the end of 2017.

<sup>24</sup> Approved by the CUC Decision dated 18 June 2010 No. 317.

<sup>25</sup> In accordance with the Decision of the EEC Council dated 16 July 2014 No. 58 the development thereof is expected by 31 December 2015.

<sup>26</sup> Approved by the Decision of the CUC dated 18 November 2010 No. 455.

<sup>27</sup> Approved by the Decision of the EEC Council dated 9 October 2014 No. 94.

<sup>28</sup> In accordance with the Decision of the EEC Council dated 16 July 2014 No. 58 the development thereof is expected by 31 December 2015.

<sup>29</sup> In accordance with the Decision of the EEC Council dated 16 July 2014 No. 58 the development thereof is expected 31 December 2016.

<sup>30</sup> In accordance with the Decision of the EEC Council dated 16 July 2014 No. 58 the development thereof is expected by 31 December 2015.

- Establish a procedure for holding veterinary and sanitary examination of unprocessed food products of animal origin.<sup>31</sup> In Belarus, Kazakhstan and the Russian Federation such powers are vested in the Ministries of Agriculture.
- Introduce temporary veterinary and sanitary measures in the territory of their states applicable to regulated commodities from non-member countries. In Belarus, Kazakhstan and the Russian Federation such powers are vested in the Governments.
- Audit official foreign veterinary inspection systems. In Belarus these powers are conferred on the Department for Veterinary Inspection of the Ministry of Agriculture and Food (State Veterinary Inspectorate), in Kazakhstan they are conferred on the Veterinary Control and Inspection Committee of the Ministry of Agriculture, and in the Russian Federation on Rosselkhoznadzor.
- Issue permits for the entry of regulated commodities from non-member countries or for the transit thereof. In Belarus these powers are conferred on the Department for Veterinary Inspection of the Ministry of Agriculture and Food (State Veterinary Inspectorate). In Kazakhstan they are conferred on the Veterinary Control and Inspection Committee of the Ministry of Agriculture, and in the Russian Federation on Rosselkhoznadzor.
- Exercise border veterinary control at checkpoints over commodities moved through EAEU customs border. In Belarus these powers are conferred on the Department for Veterinary Inspection of the Ministry of Agriculture and Food (State Veterinary Inspectorate). In Kazakhstan they are conferred on the Public Revenue Committee of the Ministry of Finance (Customs Control Committee), and in the Russian Federation on Rosselkhoznadzor.
- Exercise veterinary control upon the movement of regulated products from one member state to another one. In Belarus these powers are conferred on the Department for Veterinary Inspection of the Ministry of Agriculture and Food (State Veterinary Inspectorate). In Kazakhstan they are conferred on the Veterinary Control and Inspection Committee of the Ministry of Agriculture, and in the Russian Federation on Rosselkhoznadzor.
- Formalize EAEU (CU) uniform veterinary certificates for the movement of regulated commodities in the territory of other EAEU member states. In Belarus these powers are conferred on the Department for Veterinary Inspection of the Ministry of Agriculture and Food. In Kazakhstan they are conferred on the Veterinary Control and Inspection Committee of the Ministry of Agriculture, and in the Russian Federation on Rosselkhoznadzor.

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<sup>31</sup>This is contemplated by the EAEU technical regulations "On food safety".

- Reconcile with the competent authorities of non-member countries the sample veterinary certificates for regulated commodities that enter the territory of their state. In Belarus these powers are conferred on the Department for Veterinary Inspection of the Ministry of Agriculture and Food (State Veterinary Inspectorate). In Kazakhstan they are conferred on the Veterinary Control and Inspection Committee of the Ministry of Agriculture, and in the Russian Federation on Rosselkhoznadzor.
- Issue veterinary certificates for commodities supplied to other EAEU member states, as well as to non-member states. In Belarus these powers are conferred on the Department for Veterinary Inspection of the Ministry of Agriculture and Food (State Veterinary Inspectorate). In Kazakhstan they are conferred on the Veterinary Control and Inspection Committee of the Ministry of Agriculture, and in the Russian Federation on Rosselkhoznadzor.

## **Distribution of powers related to sanitary measures**

### **At supranational level the EEC approves the following:**

- General list of commodities, subject to state sanitary control;<sup>32</sup>
- Generalized sanitary requirements to commodities subject to sanitary control;<sup>33</sup>
- Procedure of state sanitary control at the EAEU customs border and on the EAEU customs territory;<sup>34</sup>
- Procedure for the development, approval and application of generalized sanitary requirements and procedures;<sup>35</sup>
- Interaction procedure for the competent authorities of EAEU member states in connection with the introduction of temporary sanitary measures.<sup>36</sup>

### **The national authorities of EAEU member states:**

- Introduce temporary sanitary measures to the territories of their states for regulated commodities originating from non-member countries or other EAEU member states. In Belarus, Kazakhstan and the Russian Federation these powers are vested in the Governments.

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<sup>32</sup>Approved by the CUC Decision dated 28 May 2010 No. 299. If EAEU (CU) technical regulations come into force the relevant products will be excluded from the General list.

<sup>33</sup>Approved by the CUC Decision dated 28 May 2010 No. 299. Are included in the EAEU technical regulations for the relevant products.

<sup>34</sup>Approved by the CUC Decision dated 28 May 2010 No. 299.

<sup>35</sup>In accordance with the Decision of the EEC Council dated 16 July 2014 No. 58 the development thereof is expected by 31 December 2014. As of 1 March 2015 the draft has not yet been published on the EEC web-site.

<sup>36</sup>In accordance with the Decision of the EEC Council dated 16 July 2014 No. 58 the development thereof is expected by 31 December 2016.

- Exercise sanitary control over regulated commodities at checkpoints of member states, located at the EAEU customs border and on EAEU customs territory. In Belarus these powers are vested in the Ministry of Health. In Kazakhstan they are vested in the Agency for Consumer Rights Protection and in the Russian Federation in the Federal Service for Consumer Rights Protection and Human Safety Inspection of the Ministry of Health and Social Development (Rospotrebnadzor).

## **Distribution of powers pertaining to technical regulation**

At supranational level the EEC approves the following:

- General list of products subject to EAEU technical regulations;<sup>37</sup>
- Procedure for the development and adoption of EAEU technical regulations;<sup>38</sup>
- EAEU technical regulations;
- Procedure for the inclusion of certification bodies and testing laboratories to the EAEU universal registry of compliance assessment bodies, as well as its establishment and maintenance;<sup>39</sup>
- EAEU uniform compliance certificate and compliance declaration;<sup>40</sup>
- Uniform state registration certificate for products pursuant to the requirements of EAEU technical regulations and the rules applicable to its formalization;<sup>41</sup>
- Establishment and maintenance procedure for the universal registry of issued uniform compliance certificates and registered compliance declarations;<sup>42</sup>
- Procedure for standard schemes application in the assessment of compliance with technical regulations requirements;<sup>43</sup>
- Statute on the registration of declaration on products compliance with EAEU technical regulations requirements;<sup>44</sup>

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<sup>37</sup> Approved by the CUC Decision dated 28 January 2011 No. 526.

<sup>38</sup> Approved by the Decision of the EEC Council dated 20 June 2012 No. 48.

<sup>39</sup> Approved by the CUC Decision dated 18 June 2010 No. 319. The universal EAEU registry is made up of the national parts provided by EAEU countries.

<sup>40</sup> Approved by the CUC Decision dated 18 June 2010 No. 319.

<sup>41</sup> In accordance with the Decision of the EEC Council dated 16 July 2014 No. 58 the development thereof is expected by 31 December 2014.

<sup>42</sup> Approved by the CUC Decision dated 18 June 2010 No. 319.

<sup>43</sup> Approved by the CUC Decision dated 7 April 2011 No. 621.

<sup>44</sup> Approved by the decision of EEC Board dated 9 April 2013 No. 76.

- Procedure for the entry of products that are subject to established EAEU mandatory requirements to the EAEU customs territory;<sup>45</sup>
- Procedure for the development and approval of the standards list necessary to ensure compliance with EAEU technical regulations requirements and for compliance assessment;<sup>46</sup>
- Conformity mark for EAEU member states markets.<sup>47</sup>

**The national authorities of EAEU member states:**

- Establish procedure for state control (inspection) over compliance with EAEU technical regulations requirements on their territories and responsibility for failure to comply with EAEU technical regulations requirements. In Belarus, Kazakhstan and the Russian Federation such powers are vested in the Governments.
- Exercise state control over compliance with EAEU technical regulations requirements in the territories of their states. In Belarus such powers are vested in the Ministry of Health, the State Standardization Committee. In Kazakhstan they are vested in the Agency for Consumer Rights Protection, and in the Russian Federation in Rospotrebnadzor.
- Establish accreditation procedure for compliance assessment bodies, provide accreditation to compliance assessment bodies and include them in the EAEU universal registry. In Belarus such powers are vested in the State Standardization Committee. In Kazakhstan they are vested in the Kazakh Accreditation Center, and in the Russian Federation in the Federal Accreditation Authority of the Ministry of Economic Development (Russian Accreditation Authority).
- Provide state registration of specialized food products and new types of products, and maintain the national parts of the EAEU universal registries. In Belarus such powers are vested in the Ministry of Health. In Kazakhstan they are vested in the Agency for Consumer Rights Protection, and in the Russian Federation in Rospotrebnadzor.

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<sup>45</sup> Approved by the Decision of the EEC Board dated 25 December 2012 No. 294.

<sup>46</sup> Approved by the Decision of the EEC Board dated 25 December 2012 No. 306.

<sup>47</sup> Approved by the CUC Decision dated 15 July 2011 No. 711.

# **SECTION B. Harmonization of technical regulation and SPS measures in the EAEU with WTO provisions**

## **Chapter I. Background**

At the various stages of this integration union formation, EAEU member states intended to accede to the WTO together. However, they later relinquished such intent. Each state now accedes to the WTO independently.

In May 2011, the **Treaty on the Functioning of the Customs Union in the framework of the Multilateral Trading System** was executed, in which the general approaches with regard to accession to the WTO were agreed upon. The following may be pointed out among the crucial ones:

First, each EAEU member state joins the WTO based on conditions reconciled with other members.

Second, in the process of their accession to the WTO, CU member states develop their own scope of obligations that is most consistent with the obligations of the member state that was the first to accede to the WTO. In August 2012 Russia became an official WTO member, while Belarus and Kazakhstan are currently at the various stages of negotiation process. It is important to point out that Russia – being a member of the Working Parties for the accession of Belarus and Kazakhstan to the WTO – in a certain way influences the process so that Belarus and Kazakhstan follow Russia's obligations recorded in the Report of the Working Party on the Accession of the Russian Federation to the WTO.<sup>48</sup> The EAEU has no common obligations to the WTO, as, for example, the European Union does. EAEU member states have their own individual obligations to this international organization.

Third, WTO norms and rules, including the obligations assumed by EAEU member states as conditions for their accession to the WTO, prevail over the relevant provisions of the EAEU international treaties and decisions made by EAEU bodies.

In August 2012, the Russian Federation officially acceded to the WTO. The general overview of Russian Federation obligations incurred when it acceded to the WTO pertaining to SPS measures and technical regulations is given below:

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<sup>48</sup> document WT/ACC/RUS/70 dated 16 November 2011

- From the date of accession of the Russian Federation to the WTO, all SPS measures would be developed, whether by the Russian Federation or the competent bodies of the CU, and applied in the Russian Federation in accordance with the WTO SPS Agreement. In particular, SPS measures would be applied only to the extent necessary to protect human, animal, or plant life or health. They would be based on scientific principles and, where they exist, on international standards, guidelines, and recommendations; and, would not be more trade restrictive than required to achieve the appropriate level of protection applied in the Russian Federation. SPS measures would not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail, including between the territory of the Russian Federation and that of other Members. SPS measures would not be applied in a manner which would constitute a disguised restriction on international trade, and would not be maintained without sufficient scientific evidence, except as provided for in Article 5.7 of the WTO SPS Agreement.<sup>49</sup>
- All technical regulations, standards and compliance assessment procedures will be developed and applied in the Russian Federation in accordance with the provisions of the WTO TBT Agreement.<sup>50</sup>

It is necessary to emphasize that the Russian Federation assumed obligations to the WTO to ensure that SPS measures and technical regulation will be exercised in accordance with WTO provisions, both in the Russian Federation, and in the CU as a whole.

Also it may be reasonable to briefly highlight the relation of technical regulation systems and SPS measures application in the EAEU.

Pursuant to the EAEU Agreement, EAEU *technical regulations may contain sanitary requirements and procedures, as well as veterinary and sanitary, as well as quarantine phytosanitary requirements of general nature*. This means that CU (EAEU) technical regulations establish requirements and procedures that refer to SPS measures, applicable to a group of commodities of animal and plant origin, including ready-made meals. These EAEU specifics are different from international practice, including from that of the European Union, where there is a clear division between technical regulation and SPS measures.

"*Of general nature*" notion is not interpreted in the EAEU laws. The adopted EAEU technical regulations contain requirements that in no way may be referred to "general nature" requirements. For instance, "On grain safety" technical regulations standardize maximum permissible rates of pest contamination, which refer to phytosanitary requirements, and "On meat and meat products safety" and "On milk and dairy products safety" technical regulations establish requirements applicable to non-processed products, which refer to veterinary and sanitary requirements, the compliance with which must be verified based on veterinary and sanitary examination. Such an approach is not a direct deviation from WTO

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<sup>49</sup> Cl. 1062 of the Report of the Working Party on the Accession of the Russian Federation to the WTO.

<sup>50</sup> Cl. 728, 813 of the Report of the Working Party on the Accession of the Russian Federation to the WTO.

provisions, although WTO member countries need to take these specifics into account. If any disputes arise with EAEU countries, which have acceded to the WTO, regarding the trade in such commodities, most likely they will need to rely on the SPS Agreement, regardless that technical regulation-related issues are specified in the TBT Agreement.

## **Chapter II. Assessment of EAEU and member states SPS system compliance with WTO SPS Agreement provisions**

The consistency of SPS measures in the EAEU as a whole and in member states with WTO provisions is assessed based on the following factors.

First, as law-making measures in the form of generalized EAEU requirements, rules and procedures, SPS measures are jointly developed by the state authorities and scientific institutions of EAEU member countries and are adopted by the EEC. Prior to the introduction of generalized phytosanitary requirements, each state adopts the national phytosanitary requirements.

Second, SPS measures are only enforced by the authorities of EAEU member states.

Third, EAEU member states may introduce temporary SPS measures on their respective territories. In this case, the EEC only approves the Interaction procedure for the competent authorities of EAEU member states in connection with the introduction of such temporary measures.

### **2.1. Principles of SPS measures application stipulated in the EAEU Agreement**

**Principle 1.** SPS measures are applied based on **scientific justification** principles and only to the extent necessary to protect human, animal or plant life and health.

This principle is consistent with art. 2 cl. 2 of the "*Basic Rights and Obligations*" of the WTO SPS Agreement. The scientific justification in the development of SPS measures should be supplied by the relevant competent authorities and scientific institutions. In such case it is necessary to emphasize the leading role of the Russian Federation. Therefore, this principle is secured in the Russian Federation by obligations assumed in its accession to the WTO.<sup>51</sup> Scientific rationale is supplied by: the Ministry of Health and Social Development and Rospotrebnadzor; the Ministry of Agriculture and Rosselkhoznadzor; and more than 200 various institutions, of which the key ones are the FSI "Federal Center for Animal Health Protection" and FSI "National State Center for the Quality and Standardization of Animal Medicines and Feed" and the Federal Center for Hygiene and Epidemiology (reports to the Rospotrebnadzor), F.F. Erisman Federal Scientific Center for Hygiene (reports to Rospotrebnadzor), Nutrition Research Institute of the Russian Academy of Science, National Grain Research Institute, National Plant Quarantine Center.

In Kazakhstan this principle is stipulated in the Law "On veterinary" (article 4) and "On plants quarantine" (article 4). Scientific justification is supplied by: the Ministry of Agriculture and its agencies

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<sup>51</sup> Cl. 1009 of the Report of the of the Working Party on the Accession of the Russian Federation to the WTO.

(Committee for Veterinary Control and Inspection and the Committee for State Inspection in Agro-Industry of the Ministry of Agriculture); the Ministry of Health; the Agency for Consumer Rights Protection; more than 25 research institutes (North and South-Eastern research and development agricultural centers; the research and development livestock breeding and veterinary center; the research and development crop and plant farming center; the research and development grain farming center; the Kazakh Nutrition Academy and the Republican methodological center for phytosanitary diagnostics and forecasts etc.)

As for Belarus, this principle is stipulated in the Law "On plants protection" (article 5) and the Law "On veterinary activities (article 3). Scientific justification is supplied by: the Ministry of Agriculture and Food and its agencies (General State Seed Farming, Quarantine and Plant Protection Inspectorate; Belarus State Veterinary Center; Research and Practice Center of the Belarus National Academy of Science for food; Plant Protection Institute); Ministry of Health and its agencies represented by the Republican Center for Hygiene, Epidemiology and Public Health.

**Principle 2.** *SPS measures are based on international and regional standards, guidelines and (or) recommendations, save for cases in which such measures, based on the relevant scientific justification, ensure higher SPS protection, as compared with those based on the relevant international and regional standards, guidelines and (or) recommendations.*

This principle is consistent with cl. 1 and 3 article 3 *Harmonization* of the WTO SPS Agreement. EAEU member states being the members of Codex Alimentarius Commission, IEB and IPPC must actively engage in the development of international SPS measures standards.

In respect of this principle enforcement, EEC members refer to the CUC Decision dated 7 April 2011 No. 625 *On the harmonization of CU SPS legal instruments with international standards* and the CUC Decision dated 23 September 2011 No. 801 *Statute on the generalized due diligence procedure for CU SPS legal instruments*. Pursuant to such documents, stage-wise procedures are used to ensure that the EAEU (CU) regulations in force are harmonized with international standards:

1. Written statement of the Governments of non-member countries and other stakeholders on the inconsistency of such documents with international standards;
2. Due diligence of such documents to identify whether they are more restrictive as compared with international standards in absence of scientific justification;
3. Their alignment with international standards.

It is noteworthy that in terms of their substance, such Decisions demonstrate that EEC is uncertain that current CU SPS instruments are harmonized with international standards to certain extent.

There is also the CUC Decision dated 22 June 2011 No. 721 *On the application of international standards, recommendations and guidelines*. Such Decision contains 2 cases when international standards should be applied:

Case 1. *If EAEU (CU) documents or national laws of EAEU (CU) member states contain no requirements to SPS measure items.*

Case 2. *If SPS requirements in force on the CU territory are more rigorous than the relevant international standards and are applied in the absence of scientific justification to the threat to human, animal or plant life or health.*

It should be noted that in accordance with the obligations of the Russian Federation:

- mandatory requirements applicable to SPS measure items in any case should be based on the international standards (Case 1);
- the Case 2 is not permitted.

It is hard to find summarizing information in official EEC reports regarding the harmonization rate of SPS measures with international standards due to the various areas of SPS measures and the nature of the standards themselves: for products, processes, compliance assessment rules, including testing and certification methods, management systems. Altogether, the review of documents and various analytical materials enables to draw certain conclusions and assumptions.

Generalized EAEU veterinary requirements are adopted based on IEB Codes or have direct references to it. However, EAEU member states do not perform or only partially perform a number of important requirements, such as animal identification, zoning and compartmentalization, establishment and operation of statutory bodies and laboratory monitoring of prohibited and harmful substances residues in the bodies of live animals.

The harmonization rate of EAEU technical regulations sanitary requirements applicable to food ingredients and products with the international standards of Codex Alimentarius is approximately **40 percent**. The former Chief Sanitary Inspector of the Russian Federation G.Onishchenko points out the following in the article of Nutrition Issues magazine (No. 2, 2013): "*More than 7 000 sanitary and epidemiological indicators are established in the Russian Federation and on the CU territory pertaining to food ingredients and product*

safety. When the CU regulatory framework was being prepared, more than 3 000 indicators were harmonized."<sup>52</sup>

Plant quarantine systems that are used in EAEU states are not entirely consistent with the ISPM.

In the Russian Federation the principle of harmonization with international standards is secured by the obligations assumed in its accession to the WTO.<sup>53</sup> Here the explanations from the representative of the Russian Federation that he provided during negotiations may be helpful: "*The aim of CU and Russian Federation legislative and enforcement efforts is to ensure harmonization with IEB, IPPC and Codex Alimentarius standards, guidelines and recommendations. Such efforts, in his opinion, would allow to achieve full consistency of Russian SPS regime, regardless of whether a measure is applied at EurAsEC, CU or the Russian Federation level, with WTO SPS Agreement requirements, starting with the date when the Russian Federation accedes to the WTO.* In the course of negotiations on its accession to the WTO, Russia confirmed its commitment to the development and application of international SPS standards by maintaining membership and active engagement in the activity of Codex Alimentarius Commission, IEB and IPPC."<sup>54</sup>

During negotiations process the members of the Working Party on the Accession of the Russian Federation to the WTO posed a number of questions regarding the inconsistency of SPS measures applied in Russia with international standards. For the sake of fairness, it should be noted that Russia works on adjusting SPS measures pursuant to feedback from Working Party members. At the same time, there are examples of the opposite. Therefore, requirements on antibiotics residue (in particular, tetracyclines), stipulated in the statutes of Russia and CU, are more rigorous than international standards provisions. Working Party members hold that they were adopted without sufficient scientific justification. Discussion on this issue continues up to the present day.

In Kazakhstan this principle is stipulated in the Law "On veterinary" (article 4) and "On plants quarantine" (article 4). In accordance with the order issued by the Agency of the Republic of Kazakhstan for Consumer Rights Protection dated 27 June 2014 No. 165, the Interagency Codex Alimentarius Coordination Council was established. The goal of such Council is to assist in the development of the national and EAEU SPS instruments in accordance with the international standards of Codex Alimentarius.

In Belarus no principle of harmonizing SPS measures with international standards is directly set forth in the relevant laws. By its Decree No. 1156 dated 28 December 2013 the Council of Ministers of the Republic of Belarus established a Work Group for the consideration of issues pertaining to technical

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<sup>52</sup> Pursuant to the Minutes of the All-Russian meeting of food hygiene specialists dated 27 April 2012 *more than 2 000 indicators were harmonized in the course of development of the regulatory framework for the CU Agreement on sanitary measures.*

<sup>53</sup> Cl. 829, 1009 of the Report of the Working Party on the Accession of the Russian Federation to the WTO.

<sup>54</sup> Cl. 846 of the Report of the of the Working Party on the Accession of the Russian Federation to the WTO.

regulation, use of SPS measures in the CU environment, with one of its goals being the harmonization of national and EAEU instruments with international standards.

**Principle 3.** *Pursuit of a common policy by EAEU member states through joint development, adoption and implementation of international SFS treaties and EEC instruments.*

At the same time, it should be noted that in accordance with the EEC Agreement, each EAEU member state retains the right to develop and introduce additional SPS requirements and procedures.

**Principle 4.** *Each of EAEU member states is entitled to introduce **temporary SPS measures** both in respect of commodities from non-member countries, and in respect of commodities, produced in other EAEU member states.*

This principle is consistent with cl. 7 article 5 "Assessment of Risk and Determination of the Appropriate Level of Sanitary or Phytosanitary Protection" of the WTO SPS Agreement.

No temporary SPS measures may be introduced on the entire EAEU territory. In accordance with the Work Plan for the Development of Instruments and International Treaties in accordance with the EAEU Agreement dated 29 May 2014 approved by the Decision of the EEC Council dated 16 July 2014 No. 58, by 31 December 2016 it is expected to develop the Interactions procedure for the competent authorities of EAEU member states in connection with the introduction of **temporary SPS measures**. It should be noted that in the absence of such document there is a tendency of perceiving temporary SPS measures with respect to mutual restrictions for the supply of food products, introduced by the EAEU member states for each other, as political acts, rather than SPS measures. An illustrative example to this may be the reaction of Belarus to certain bans introduced by Russia in the second half of 2014 to food products import from Belarus. It is obvious that a number of critical statements of the President of Belarus on the restrictions of food products supplies from Belarus to Russia<sup>55</sup> undermine the trust in the SPS measures in the EAEU, both in terms of ensuring safety for human, animal and plant life and health, and in terms of the reasonableness of their introduction and use, including for non-member countries.

## **2.2. Principles of the WTO SPS Agreement that are not clearly stipulated in the EAEU Agreement**

It is noteworthy that the EAEU Agreement does not contain a number of key principles of the WTO SPS Agreement. However, to certain extent they are included in current EEC (CU) instruments, as well as in the national laws of the EAEU member states.

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<sup>55</sup> Source [http://president.gov.by/ru/news\\_ru/view/poseschenie-gosudarstvennogo-komiteta-sudeyx-ekspertiz-10474/](http://president.gov.by/ru/news_ru/view/poseschenie-gosudarstvennogo-komiteta-sudeyx-ekspertiz-10474/).

## **Principle of no direct or indirect adverse effect on international trade from SPS measures whether developed or applied**

This is the key WTO SPS principle, while others are the ways to enforce this principle.

### **Principle of no arbitrary and unjustified discrimination**

It is necessary to point out that the EEC brochure "Sanitary, phytosanitary and veterinary measures" published in Eurasian Integration Library section on the EEC official web-site ([www.eurasiacommission.org](http://www.eurasiacommission.org)) also contains no such principle in the list of the key SPS principles declared by the EEC. The presentation of the Director of the EAEU Department for SPS Measure O. Arnautov, posted in the Internet and titled "On veterinary and phytosanitary safety assurance measures in the territory of the CU and the CES" states that the principle of *non-discrimination* is enforced in the CU based on the CUC Decision dated 22 June 2011 No. 721 "On the application of international standards, recommendations and guidelines". However, the substance of this CUC Decision has no direct relation to this principle. It should be noted that there have been the cases of discrimination in the EAEU in the application of SPS measures. The exemplary cases will be given below.

This principle is secured in the Russian Federation by obligations assumed in its accession to the WTO<sup>56</sup> and article 29 of the Federal Law of the Russian Federation "On the foundations of the state regulation of foreign trade activities", pursuant to which *technical, pharmacological, SPS and environmental requirements, as well as requirements on mandatory compliance verification are applicable to the commodities having a foreign state as a place of origin, similarly, as the same would be applicable to the equivalent commodities of Russian origin*. During the negotiation process for the accession of the Russian Federation to the WTO, Working Party members expressed their concern that the products imported are tested for veterinary preparations residuals in the lab of the National State Center for the Quality and Standardization of Animal Medicines and Feed, which is the only laboratory in the Russian Federation equipped with the most sensitive and precision equipment (LC-MS/MS), while other laboratories that exercise official control in the Russian Federation over domestic products usually use less sensitive and less precise methods. In the opinion of the Working Party members this fact evidences the discriminatory attitude to imported goods as compared with domestic products. In response to this, the representative of the Russian Federation assured that generalized methods and unified equipment, as well as generalized approach to the assessment of imported and local products will be used for control procedure.<sup>57</sup>

In Kazakhstan, pursuant to cl. 3 article 17 of the Law "On technical regulation" the non-discrimination principle does not cover SPS measures.

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<sup>56</sup> Cl. 1032 - 1035 of the Report of the Working Party on the Accession of the Russian Federation to the WTO.

<sup>57</sup> Cl. 1034, 1035 of the Report of the Working Party on the Accession of the Russian Federation to the WTO.

In Belarus the non-discrimination principle pertaining to SPS measures is not directly stated in the relevant legislation.

### **Principle of equivalent recognition**

The relevant former CU international SPS treaties contained no direct reference to this principle, however it was detailed in a number of CUC (EEC) instruments. Therefore, the substance of the CUC Decision dated 18 October 2011 No. 835 "On the equivalence of sanitary, veterinary and phytosanitary measures and on risk assessment" is consistent with article 4 of the WTO SPS Agreement. The key provision of the Decision No. 835 is as follows: "*CU member states must recognize the SPS measures of other states as equivalent, even if such measures are different from those of the CU and (or) CU member states, provided that the exporting state can reasonably prove that its measures afford for appropriate sanitary and (or) veterinary safety or phytosanitary safety of the CU member country*". At the same time, it states that the recognition of equivalence may be legally formalized by the execution of bilateral and multilateral agreements based on mutual consultations with the exporting states at their request.<sup>58</sup>

It should be noted that the enforcement of this principle is at various stages dependent on the spheres of SPS measures application. Therefore, in phytosanitary measures there is almost no mechanism for the implementation of this principle in this sphere, which must stem out of ISPM No.24 "Guidelines for the determination and recognition of equivalence of phytosanitary measures".

With regard to veterinary measures the following may be noted. First, in accordance with cl. 6 of the Statute on a generalized procedure for the joint inspections of veterinary control items and taking of commodity samples, approved by the Decision of the EEC Council dated 9 October 2014 No. 94, the key principle used by the EAEU (CU) member states to ensure the safety of regulated goods upon their manufacture, processing, transportation and (or) storage in non-member countries, is *the audit of foreign official inspection system*; i.e. the determination of its ability to ensure the safety of regulated commodities, which is at least equivalent to the safety established by EAEU (CU) requirements. It should be added that the content of the *Guidelines for inspectors for the determination of the equivalence of veterinary measures applied in non-member countries for the inspections of items subject to veterinary control and audit of official control systems of non-member countries*, established by the Annex 2 to the above Statute, are consistent with the *EU Commission Decision 98/140/EC dated 4 February 1998 establishing the precise detailed rules regarding veterinary field inspections performed by EU Commission experts in other countries*. Second, the CUC Decision dated 18 October 2011 No. 833 "On the equivalence of inspection systems for veterinary control (inspection) items" the veterinary control inspection systems, established by the bodies of the Russian Federation, the Republic of Belarus and the Republic of Kazakhstan are recognized as equivalent, which enables the competent authorities of such countries to inspect veterinary control items, located in the

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<sup>58</sup> As of 15 April 2015 there is no information on such agreements.

territories of their countries, with a view to include them in the CU enterprises registry in accordance with the national laws without engagement of inspectors from other countries. It should be noted that this Decision was made *a priori*, with no prior evaluation of veterinary control systems condition in such countries by the CUC (EEC). However, such "presumption of compliance" does not cover other countries, including new EAEU members. For example, due to its accession to the EAEU, the Kyrgyz Republic will have to undergo the audit of veterinary and sanitary control system by the veterinary services of other EAEU member states. In this case, the issue of discrimination may be raised to certain extent.

This principle is secured in the Russian Federation by obligations assumed in its accession to the WTO.<sup>59</sup> It is necessary to add that the representatives of Russia in the negotiation process referred to the CU Statute on a generalized procedure for the joint inspections of veterinary control items and taking of commodity samples as an evidence that Russia adheres to the equivalence recognition principle.

In Kazakhstan the principle of recognizing the equivalence of other countries' veterinary and sanitary measures is stipulated in the Law of the Republic of Kazakhstan "On veterinary" (article 7). There is no direct reference to this principle in legislation on phytosanitary measures.

In Belarus no SPS equivalence recognition principle is directly stated in the relevant legislation.

### **Risk assessment principle**

This principle is specified in CUC (EEC) instruments. Pursuant to the CUC Decision dated 18 October 2011 No. 835 *CU member states must ensure that SPS measures rely on the assessment of the relevant risks pertaining to human, animal or plant life and health, subject to risk assessment methods, developed by the relevant international organizations.* At the same time, as of 15 February 2015 no risk assessment methods for the development and introduction of SPS measures have been yet adopted in the EAEU.

This principle is secured in the Russian Federation by obligations assumed in its accession to the WTO.<sup>60</sup> Institutional support to the enforcement of this principle is delineated in terms of scientific justification application. Altogether, some questions raised by the Working Party on the Accession of the Russian Federation to the WTO regarding the fact that a number of existing SPS measures are adopted without proper risk assessment, remain ultimately unsettled. Therefore, Working Party members emphasize the need for risk assessment analysis in accordance with the international standards, for instance, the standards of Codex Alimentarius CAC/GL-62-2007 "Working Principles for Risk Analysis for Food Safety for Application by Governments", CAC/GL/30-1999 "Principles and Guidelines for the Conduct of

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<sup>59</sup> Cl. 1022 - 1031 of the Report of the Working Party on the Accession of the Russian Federation to the WTO.

<sup>60</sup> Cl. 1022 - 1031 of the Report of the Working Party on the Accession of the Russian Federation to the WTO.

Microbiological Risk Assessment", with FAO document "Principles and methods for the risk assessment of chemicals in food".

In Kazakhstan this principle is stipulated in the Law "On veterinary" (article 26.1) and "On plants quarantine" (article 7). Institutional support to the enforcement of this principle is described in cl. 2.1. of the same article.

In Belarus the application of mandatory risk assessment principle forms an integral part of SPS scientific justification. Institutional support to the enforcement of this principle is described in cl. 2.1. of the same article.

### **Regionalization principle**

Previous CU international SPS treaties contain no direct definition of this principle. It is noteworthy that EEC brochure "Sanitary, phytosanitary and veterinary measures", published in Eurasian Integration Library section on the official web-site of the EEC.<sup>61</sup> does not include the regional approach in the list of key SPS principles, declared by the EEC. This principle is specified in a number of CUC (EEC) instruments. Therefore, in accordance with cl. 13 of the CUC Decision dated 18 October 2011 No. 835 "On the equivalence of sanitary, veterinary and phytosanitary measures and risk assessment", the CU (EAEU) member states must take into account pests- and diseases-free zones in their risk assessment. In accordance with cl. 10 of the Statute on a generalized procedure for the joint inspections of veterinary control items and taking of commodity samples, approved by the Decision of the EEC Council dated 9 October 2014 No. 94, the audit of other countries' official inspection systems requires the application of *regionalization principle (zoning)*.

At the same time, there are no EAEU instructions on the relevant areas, based on international standards, such as ISPM No. 4, No.8, No. 10 and No. 22; chapter 4.3. of the IEB Terrestrial Animal Health Code.<sup>62</sup>

This principle is secured in the Russian Federation by obligations assumed in its accession to the WTO.<sup>63</sup> In Kazakhstan this principle is stipulated in the Law "On veterinary" (article 26.1) and "On plants quarantine" (article 7). In Belarus no enforcement of regional approach in the development and introduction of SPS measures with regard to import is stipulated in the national laws.

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<sup>61</sup> [www.eurasiancommission.org](http://www.eurasiancommission.org)

<sup>62</sup> In accordance with the Work Plan for the Development of Instruments and International Treaties in accordance with EAEU Agreement dated 29 May 2014 approved by the Decision of the EEC Council dated 16 July 2014 No. 58, the Procedure for compartmentalization regionalization is expected to be developed by 31 December 2015 .

<sup>63</sup> Cl. 944, 950, 1019-1021 of the Report of the Working Party on the Accession of the Russian Federation to the WTO.

## **Transparency principle**

In the EAEU the enforcement of this principle is stipulated in the EEC Board Decision dated 5 March 2013 No. 31 "On ensuring transparency of EEC SPS instruments adoption process", pursuant to which the drafts of EEC SPS decisions should be published on the official EEC web-site for the provision of feedback within 60 calendar days. The review of the feedback obtained, as well as necessary consultations should be held by the SPS Department of the EEC. It should be noted that the matters of compliance with article 7 and Annex B of the WTO SPS Agreement pertaining to ensuring transparency do not cover the EEC, but rather form an obligations of EEC member states in their accession to the WTO.

This principle is secured in the Russian Federation by obligations assumed in its accession to the WTO.<sup>64</sup> WTO/TBT Russian Information Center has been established and is operational.

In Kazakhstan, the single TBT/SPS Information Center has been established under the Committee for Technical Regulation and Metrology of the Ministry of Industry and New Technology of the Republic of Kazakhstan. Due to the forthcoming accession of Kazakhstan to the World Trade Organization, the Decree of the Government of the Republic of Kazakhstan dated 11 July 2005 No. 718 approves the "Rules for the establishment and operation of the Technical Barriers to Trade, Sanitary and Phytosanitary Measures Information Center".

In Belarus the National TBT and SPS Center has been established under the Gosstandart of the Republic of Belarus, which in the future is expected to assume the transparency-related functions in the WTO.

## **2.3. SPS measures in agricultural trade in the EAEU**

### **Phytosanitary measures**

Phytosanitary measures are applied under the following conditions:

**Condition 1.** *Pursuant to the EAEU Agreement the produce specified in the list of products subject to quarantine phytosanitary control at the EAEU customs border and on the EAEU customs territory, must be compliant with the EAEU generalized phytosanitary requirements.*

Until the EAEU generalized phytosanitary requirements are adopted, the products subject to quarantine, which are imported to the EAEU customs territory, must be in compliance with the phytosanitary requirements of the EAEU member state, where the destination of such products is located, namely:

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<sup>64</sup> Cl. 936, 1037, 1041, 1043, 1044, 1046, 1052 of the Report of the Working Party on the Accession of the Russian Federation to the WTO.

- *phytosanitary requirements, imposed on quarantineable products, imported to the Republic of Belarus*, approved by the decree of the Ministry of Agriculture and Food of the Republic of Belarus dated 19 November 2010 No. 84;
- *phytosanitary requirements, imposed on quarantineable products*, approved by the Decree of the Government of the Republic of Kazakhstan dated 30 December 2011 No. 1674.
- *plant quarantine rules applicable to the import of quarantineable products to the Russian Federation, as well as to their storage, transportation, processing and use*, approved by the Order of the Ministry of Agriculture of the Russian Federation dated 29 December 2010 No. 456.

It should be noted that in EAEU countries plant quarantine system is based on the principles and approaches that were formed in the Soviet times, and it is not consistent with the fundamental principles of the WTO SPS Agreement. There is no background of applying phytosanitary measures based on phytosanitary risk analysis in accordance with the ISMP. Therefore, Kazakhstan joined the IPPC during the process of preparation to its accession to the WTO.<sup>65</sup> The Government of Kazakhstan developed draft amendments to the Law of the Republic of Kazakhstan "On plant quarantine" pertaining to the legislative enforcement of mandatory phytosanitary risk analysis. In the explanatory notes to the drafts it is pointed out that there is no experience of system research for SPS measures in Kazakhstan.

It is fair to mention, that the new version of the Federal Law of the Russian Federation "On plants quarantine" dated 21 July 2014 No. 206-FZ has been adopted to enforce the country's WTO obligations. Therefore, in accordance with article 3 of this Law, the application of ISMP phytosanitary measures is established as a legal regulation measure of plants quarantine. At the same time, there is no delegated legislation for the practical enforcement of this regulation.

In the EAEU (CU) the issue of shifting to the Generalized phytosanitary requirements and the General list of quarantineable items has been posed since 2011. However, in the course of negotiations on the accession of Russia to the WTO, its representatives did not update the Working Party members on the intent to approve any CU generalized requirements. They emphasized that phytosanitary requirements are adopted solely by the national authorities of CU countries.<sup>66</sup> In accordance with the Work Plan for the Development of Instruments and International Treaties in accordance with the EAEU Agreement dated 29 May 2014, approved by the EEC Council Decision dated 16 July 2014 No. 58, it is expected that the following will be developed: EAEU generalized phytosanitary requirements, general list of quarantineable items by 31 December 2015; Generalized plants quarantine rules and norms by 31 December 2016. It is obvious, that as a WTO member, Russia will have to further prove that such phytosanitary measures are adopted in accordance with the provisions of the WTO SPS Agreement and international standards, in particular, ISPM No. 1

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<sup>65</sup> Order of the President of the Republic of Kazakhstan dated 29 April 2010 No. 980.

<sup>66</sup> Cl. 839 of the Report of the of the Working Party on the Accession of the Russian Federation to the WTO.

"Phytosanitary principles for the protection of plants and the application of phytosanitary measures in international trade", ISPM No. 20 "Guidelines for a phytosanitary import regulatory system", ISPM No. 29 "Recognition of pest free areas and areas of low pest prevalence".

Kazakhstan and Belarus that are in the process of negotiations on their accession to the WTO may also face such question from WTO member states.

**Condition 2:** *The products included in the list of quarantineable products with high phytosanitary risk, must be imported to the EAEU customs territory or moved from one EAEU member state to another one, subject to the available phytosanitary certificate, issued by the national plants quarantine authority of the importing country based on the IPPC form.*

In the course of negotiations on Russia's accession to the WTO, Working Party members raised questions regarding unreasonable inclusion of a number of commodities in the List of quarantineable products subject to quarantine phytosanitary control in the CU. Russia responded in a due manner. Such commodity items, as cane raw sugar, sugar beet, fish flour, protein concentrate, protein and vitamin concentrate and protein premixes were excluded from the List of commodities.

**Condition 3:** *EAEU member states mutually recognize the phytosanitary certificates, issued by the competent authorities of such states for the commodities with high phytosanitary risk, when such are moved from one EAEU member state to the other EAEU member state.*

Available phytosanitary certificates are mandatory when the commodities with high phytosanitary risk are imported to the EAEU from non-member countries, and when such are moved within the EAEU, that is why if there are no EAEU uniform phytosanitary certificates the essence of mutual recognition remains unclear.

If the Statute on quarantine phytosanitary control procedure on the CU customs territory (case I) and the Statute on quarantine phytosanitary control procedure at the CU customs border (case II) are collated, one can see significant differences.

For instance, in Case I the examination of quarantineable products batch and possible assignment of laboratory testing of selected samples takes place only if any *organisms that are similar with quarantineable items based on their morphological characteristics, symptoms of plant diseases, signs of damage caused to quarantineable products by quarantine items are discovered during the examination of quarantineable items on their surface, in the package*, while in the Case II, the examination of products is a mandatory procedure that requires taking samples for analysis and laboratory testing, even if *the compliance of quarantineable products with information specified in commercial, transportation documents, phytosanitary certificate is established, as well as if no quarantine items are found on the surface of quarantineable products*. It is obvious that admittance of products from other countries to EAEU member states is more complex and

expensive in administrative and financial terms, than for the products supplied from another CU member state. This fact may be qualified as hidden restrictions to trade.

Moreover, pursuant to the Statute on quarantine phytosanitary control (inspection) procedure at the EAEU customs border, if any quarantine items are discovered, quarantineable products may be subject to disinfection only *if conditions for disinfection are available at the location of quarantine phytosanitary control*. Otherwise, such products are subject to import ban or disposal. The lack of requirements to phytosanitary posts of EAEU member states pertaining to mandatory conditions for commodities disinfection may lead to import restriction and to certain corruption.

## **Veterinary measures**

Veterinary measures are applied under the following conditions:

**Condition 1:** *In accordance with the EAEU Agreement, the commodities specified in the EAEU general list of commodities subject to veterinary control, must comply with the EAEU generalized veterinary requirements.*

**Condition 2.** *In accordance with the EAEU Agreement, each batch of regulated commodities is imported to the EAEU customs territory, provided that it is accompanied by a permit, issued by the competent veterinary authority of the EAEU member state, where such commodities are destined, and by the veterinary certificate issued by the competent authority of non-member country (the country of origin for such commodity).*

The issue of import (export) and transit permit for regulated goods and processing of veterinary certificates is effectuated by the competent veterinary authority of EAEU member state in accordance with the laws of such member state.

During negotiations on the accession of the Russian Federation to the WTO, Working Party members raised the questions pertaining to the reasonableness of including certain commodities in the General list of commodities subject to veterinary control. At the initiative of the Russian Federation, the CUC Decision dated 23 September 2011 No. 810 cancelled 27 commodity items subject to the application of veterinary measures by the Russian Federation. It means that Russia recognized the fact of veterinary measures application with respect to such commodities as inconsistent with the WTO SPS Agreement in terms of its scientific justification and risk assessment. It also enables to state that Kazakhstan and Belarus apply SPS measures to such commodities within the EAEU unreasonably, thus creating impediments to international trade.

## **Veterinary certificates.**

The CU Commission Decision dated 9 December 2011 No. 892 approves 40 templates of uniform veterinary certificates for regulated goods, imported to the EAEU customs territory from non-member countries. After veterinary control in connection with the import of commodities from non-member countries is completed, the veterinary certificates issued by exporting countries are getting re-processed into the CU uniform veterinary certificates, which are approved by the CUC Decision dated 18 November 2010 No. 455.

In accordance with cl. 3.9. of the Statute on generalized veterinary control procedure at the CU (EAEU) customs border and on the CU (EAEU) customs territory, the competent authorities of EAEU member countries are entitled to independently reconcile the forms of veterinary certificates for regulated goods, imported to the territories of such EAEU member states, which are different from the uniform veterinary certificates with the competent authorities of non-member countries (exporting countries), if any requirements apply other than the requirements and conditions applicable to the import of such commodities to other EAEU member states.

Pursuant to the List of regulating measures applied by the competent authorities of CU and CES member states to commodities imported to the CU customs territory,<sup>67</sup> various requirements may be applied to a number of regulated commodities, included in the General list of commodities subject to veterinary control, when such are imported from non-member countries to the territories of EAEU member states pertaining to the availability of veterinary certificates, related to the CUC Decision dated 23 September 2011 No. 8 “On cancellation of veterinary measures with respect to commodities included in the General list of commodities subject to veterinary control (inspection)” and to the timing of Kazakhstan's accession to the WTO. Until Kazakhstan accedes to the WTO, 27 commodities should be imported to the territory of Kazakhstan and Belarus subject to the availability of veterinary certificates, which are not required when such commodities are imported to the Russian Federation. These commodities include:

- processes cheese with less than 50 percent of animal components (code TN VED TS 0406);
- ice-cream with less than 50 percent of animal components (code TN VED TS 2105 00);
- other finished food products with less than 50 percent of animal components (code TN VED TS 2106);
- fats and vegetable oils and their fractions (code TN VED TS 1516 20);
- fats and vegetable oils and their fractions with less than 50 percent of animal components (code TN VED TS 1518 00);

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<sup>67</sup> This list is established by Annex 1 to the Generalized veterinary requirements to commodities subject to veterinary control (inspection) approved by the CUC Decision dated 18 June 2010 No. 317 and includes 110 commodity items.

- inactive yeast (code TN VED TS 2102 20);
- products with no animal components used for feeding animals (code TN VED TES 2309);
- nine types of feed grain (codes TN VED TS 1001 19 000 0, 1001 99 000 0, 1002 90 000 0, 1002 90 000 0; 1003 90 000 0, 1004 90 000 0, 1005 90 000 0, 1201 90 000 0);
- cereal chaff and straw (code TN VED TS 1213 00 000 0);
- turnip, leaf beet (mangold), feeding root crops, hay, alfalfa, clover, sainfoin, borecole, lupin, vetch and similar feed stuff (code TN VED TS 1214);
- plant manure (code TN VED TS 3101 00 000 0);

After Kazakhstan joins the WTO the veterinary certificate for such commodities will be required only for their import to Belarus.

### **Import permit for regulated commodities**

In accordance with the Statute on generalized veterinary control procedure at the CU (EAEU) customs border and on the CU (EAEU) customs territory in force since 15 April 2015 the import of regulated commodities to the CU (EAEU) customs territory is permitted for exporting enterprises specified in the Registry of organizations and individuals that manufacture, process and (or) store regulated commodities imported to the CU customs territory (Registry of non-member countries' enterprises) as stipulated by the Statute on a generalized procedure for the joint inspections of veterinary control items and taking of commodity samples.

The grounds for including enterprises in the *Registry of non-member countries' enterprises* are:

- Positive audit of official inspection system, which means that this country has the equivalent protection in respect of regulated commodities, which enables it to independently include certain enterprises in the Registry of non-member countries' enterprises;
- Guarantees of non-member country's competent veterinary authority in respect of a specific enterprise;
- Positive results of joint inspection of certain enterprises held by the competent authorities of EAEU countries.

Audit procedures are established in Section IV of the EAEU (CU) Statute on a generalized procedure for the joint inspections of veterinary control items and taking of commodity samples, approved by the decision of the EEC Council dated 9 October 2014 No. 94. The key audit objective is to establish that the veterinary inspection system in non-member countries with provides equivalent protection level as established

by CU requirements.<sup>68</sup> Annex 2 of the Statute on a generalized procedure for the joint inspections of veterinary control items and taking of commodity samples, approved by the Decision of the EEC Council dated 9 October 2014 No. 94 establishes *the Guidelines for inspectors for the determination of the equivalence of veterinary measures applied in non-member countries for the inspections of items subject to veterinary control and audit of official control systems of non-member countries.*

Pursuant to the List of regulating measures applied by the competent authorities of CU and CES member states to the commodities imported to the CU customs territory,<sup>69</sup> various requirements may be applied to a number of regulated commodities, included in the General list of commodities subject to veterinary control, when such commodities are imported from non-member countries to the territory of EAEU member states pertaining to the availability of veterinary certificates, related to the CUC Decision dated 23 September 2011 No. 8 “On cancellation of veterinary measures with respect to commodities included in the General list of commodities subject to veterinary control (inspection)” and to the timing of Kazakhstan’s accession to the WTO. Until Kazakhstan accedes to the WTO, 40 commodities should be imported to the territory of Kazakhstan and Belarus subject to the availability of veterinary certificates, which are not required when such commodities are imported to the Russian Federation. Such commodities include:

- processed cheese (separate positions under Code TN VED TS 0406);
- ice-cream (code TN VED TS 2105 00);
- natural honey (Code TN VED TS 0409 00 000 0);
- beebread, pollen (Code TN VED TS 1212 99 950 0);
- propolis (Code TN VED TS 1301 90 000 0);
- fat of cattle, sheep or goat (Code TN VED TS 1502);
- fats, oils and their fractions, of fish or marine mammals (Code TN VED TS 1504);
- noodle products with fish, crustaceans, mollusks, or other aquatic invertebrates, sausages, meat, meat by-products, blood or the products of 04 TN VED TS group, or any combination thereof (Code TN VED TS 1902 20);

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<sup>68</sup> In this Statute the CU requirements mean international standards, guidelines and recommendations as interpreted by the CUC Decision dated 22 June 2011 No. 721 “On the application of international standards, recommendations and guidelines”, related to veterinary and sanitary requirements applicable to regulated goods, CU technical regulations, Generalized veterinary requirements and (or) various requirements of member states, reconciled with non-member countries in veterinary (import) certificates in accordance with Section “Final and Interim Provisions” of the Generalized veterinary requirements, as well as mandatory national requirements of member states to commodities.

<sup>69</sup> This list is established by Annex 1 to the Generalized veterinary requirements to commodities subject to veterinary control (inspection) approved by the CUC Decision dated 18 June 2010 No. 317 and includes 110 commodity items.

- Products of vegetables, fruits or other plants parts processing and their mixtures, with the content of sausage, meat, meat by-products, blood, fish, crustaceans, mollusks, or other aquatic invertebrates, or the products of 04 TN VED TS group or any combination thereof (from the group code TN VED TS 20);
- Soups and pre-made broth and intermediate goods for the preparation thereof (other than vegetable broths); homogenized compounded ready-made meals, containing sausage, meat, meat by-products, blood, fish, crustaceans, mollusks, or other aquatic invertebrates, or the products of 04 TN VED TS group or any combination thereof (Code TN VED TS 2104);
- other ready-made food products (code TN VED 2106), not included in other positions of TN VED TS;
- pharmaceuticals (for use in veterinary) (from group Code TN VED TS 30);
- insecticides, rodenticides, disinfectants (Code TN VED TS 3808);
- diagnostic reagents (Code TN VED TS 3822 00 000 0)
- 9 types of feed grain (codes TN VED TS 1001 19 000 0, 1001 99 000 0, 1002 90 000 0, 1002 90 000 0; 1003 90 000 0, 1004 90 000 0, 1005 90 000 0, 1201 90 000 0).

After Kazakhstan joins the WTO the veterinary certificate for such commodities will be required only for their import to Belarus.

**Condition 3.** When regulated commodities are imported to the EAEU (CU) customs territory or transported in transit through it, veterinary control takes place at border veterinary check points (BVCP) by competent veterinary authorities of EAEU (CU) member states in accordance with the Statute on generalized veterinary control procedure at the CU (EAEU) customs border and on the CU (EAEU) customs territory.

Pursuant to the CUC Decision dated 23 September 2011 No. 810 "On cancellation of veterinary measures with respect to commodities included in the General list of commodities subject to veterinary control (inspection)" when 27 commodities included in the EAEU (CU) general list of commodities are imported to Russia no veterinary control is held, which is the result of negotiations on the accession of Russia to the WTO. It also means that Kazakhstan and Belarus effectuate the veterinary control of such commodities import unreasonably from the perspective of the WTO SPS Agreement, thus creating unreasonable impediments to trade. Moreover, in general, the EAEU system for the veterinary control of imported goods is based on international and European approaches, established in Section 5 of the IEB Terrestrial Animal Health Code, as well as in EC instruments, in particular in Council Directive 97/78/EC dated 18 December

1997, Commission Regulation No. 206/2010 dated 12 March 2010, EU Directive 2002/99/EC, Council Directive 90/675/EEC. At the same time, some EEC instruments do not take account of the provisions of the WTO SPS Agreement. Therefore, pursuant to the *CU Statute on generalized veterinary control procedure at the CU (EAEU) customs border*, the examination and frequency of regulated goods laboratory testing are effectuated in a similar way regardless of their regions of origin; i.e. disease-free zones are not taken into account.

During negotiations for accession to the WTO the Russian representatives announced that the CU member countries are establishing a single information system to include the data on foreign and mutual trade of conducted by CU member states, which will be used to issue import veterinary permit and for the statistics of products subject to veterinary control. However, as of 15 April 2015 each CU member-state has its own information system.

In the Russian Federation there is an automated system for applications review and issue of refusals for import, export and transit of freight regulated by the State Veterinary Inspectorate through its territory, which is called Argus. In Kazakhstan the accounting and analysis of regulated freight traffic is effectuated through the country's own information system called the "Generalized agro-industry automated management system". It should be noted, that Rosselkhoznadzor complained to the Committee for Veterinary Control of the Ministry of Agriculture of Kazakhstan for not using Russian Argus system. The reason for this was that Kazakhstan did not respond to the decision made by Rosselkhoznadzor on the restriction for Belarus food products to go in transit through Russia. Rosselkhoznadzor addressed the competent Belarus authorities for cancellation of transit permit for goods from Kazakhstan in transit through its territories if the route of such commodities goes through Russia. Also Rosselkhoznadzor requested that Belarus cease processing and issuing transit permits for Kazakhstan and non-member countries.

**Condition 4.** When the regulated goods, manufactured in the territory of EAEU member states are transported from the member state to another EAEU member state, such commodities must be accompanied by the CU uniform veterinary certificates issued by the competent authority of the CU member state, which is the country of origin. The CU uniform veterinary certificates are issued upon the load of such commodities based on the results of an examination (screening) held by the competent authorities of the EAEU member states, where such commodities are manufactured and loaded, provided that such commodities are included in the CU Registry of enterprises.

During negotiations on the accession of Russia to the WTO, the members of the Working party expressed their opinion that the procedures for the inclusion of enterprises in the Registry of non-member countries are more rigorous than the procedures applicable to the inclusion of enterprises located in the EAEU member states to the CU registry. This means that there is discrimination in respect of non-member

countries.<sup>70</sup> The representative of the Russian Federation stated that in his opinion, the new CU *Statute on a generalized procedure for the joint inspections of veterinary control items and taking of commodity samples approved by the CUC Decision dated 18 October 2011 No. 834, as well as procedures and requirements applicable to audits and inspections are consistent with WTO rules and requirements*. However, these matters remain unsettled. Therefore, in accordance with cl. 107 of a new version of the Statute, approved by the Decision of the EEC Council dated 9 October 2014 No. 94, the competent authority of the EAEU member state is entitled to include the enterprises located in such state, in the CU Register of enterprises without any joint inspection, if the *system of examinations (inspections) of veterinary control items in one member state is recognized equivalent by the CUC Decision*. As of 15 April 2015 the CUC Decision dated 18 October 2011 No. 833 is in force, pursuant to which the CUC *a priori* recognizes the systems of veterinary control items inspection in Belarus, Russia and Kazakhstan as equivalent, while audit is required to verify the equivalence of official veterinary inspection systems in non-member countries. This is a vivid example of protectionism towards local enterprises in Belarus, Russia and Kazakhstan as compared to foreign enterprises

EAEU member states mutually recognize veterinary certificates, issued by the competent authorities based on CU uniform templates. The basis for making the CU uniform veterinary certificates are the reports on the examination of regulated commodities, held in laboratories that are specified in the EAEU universal registry of compliance assessment bodies.<sup>71</sup>

## **Sanitary measures**

The commodities included in the General list of commodities subject to sanitary control at the EAEU customs border and EAEU customs territory must comply with *the EAEU generalized sanitary requirements*. The EAEU generalized sanitary requirements to the commodities, which fall under the EAEU technical regulations, are included into such technical regulations.

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<sup>70</sup> Cl. 933 of the Report of the of the Working Party on the Accession of the Russian Federation to the WTO.

<sup>71</sup> Information on the EAEU universal registry of compliance assessment bodies is presented in Chapter III. Harmonization with the WTO TBT Agreement.

# Chapter III. Assessment of EAEU and member states technical regulation consistency with the provisions of the WTO TBT Agreement

## 3.1. Technical regulation principles stated in the EAEU Agreement

**Principle 1.** The establishment of generalized mandatory requirements in EAEU technical regulations or national mandatory requirements in the laws of member states applicable to the products that are included in the general list of products that fall under mandatory requirements.

The wording of this principle introduces elements of uncertainty and unpredictability to the supply of commodities to the EAEU markets. The word *OR* could mean that starting with the date on which the EAEU technical regulations come into force, the relevant mandatory requirements, established by the laws of EAEU member states will cease to be applied. In practice, the state authorities of EAEU member states may interpret this *OR* literally; i.e. inspect imported goods that fall under the EAEU technical regulations that have already come into force, in terms of their compliance with the requirements, established in the national legislation. In addition, the settlement of duplication issue between the EAEU technical regulations and national regulations, which was raised by the members of the Working Party on the Accession of the Russian Federation to the WTO, remains relevant.<sup>72</sup>

In the territories of EAEU member states when commodities that fall under the CU (EAEU) technical regulations that have already come into force are inspected, the state inspectors continue to request compliance with the national sanitary standards and rules. Therefore, the Russian Union of Entrepreneurs and Manufacturers in its report "On sanitary and veterinary protection of Russia following its accession to the WTO" points out that *Russia's obligations associated with its accession to the WTO, CU legislation and the national regulations constitute some dense "legal mix", which is supplemented with interagency competition. For instance, the matters of frost content in frozen fish products are regulated by three structures: Russian Rospotrebnadzor and the Ministry of Health, as well as by the supranational EEC.*

**Principle 2.** *Application and enforcement of EAEU technical regulations in member countries with no exceptions.*

Pursuant to article 53 of the EAEU Agreement *the member states ensure the circulation of products compliant with EAEU technical regulations requirements on their territories with no requirements in addition to those contained in the EAEU technical regulations applicable to such products and with no additional*

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<sup>72</sup> Cl. 831, 858, 956 of the Report of the Working Party on the Accession of the Russian Federation to the WTO.

*compliance assessment*. However, the same article further contains a reservation that *this provision does not cover the application of SPS measures*; i.e. in addition to EAEU technical regulations, the national legislation of member states may establish additional SPS requirements and compliance assessment procedure for agricultural and food products. Such reservations that are not supported with the relevant explanations and interpretation can cause uncertainty and unpredictability in the EAEU trade regime, thus creating additional impediments to trade. Below is the exemplary case. On 13 February 2015 Rosselkhoznadzor published information on its web-site that starting from 27 January 2015 Belarus enforces the amendments to the Statute on temporary procedure for the veterinary control of commodities from Russia, approved by the Decree of the Council of Ministers of Belarus dated 29 August 2013 No. 758 "On additional measures aimed at the liquidation and prevention of spread of African swine fever and other dangerous animal diseases". Rosselkhoznadzor believes that *the inclusion in the new list of commodities that do not bear the risk of communicating the causative agent of "African swine fever and other dangerous animal diseases", and the measures stipulated in the Decree itself are excessive and restrict the supply of Russian products to Belarus market*. It should be noted that such situation occurs in the mutual trade between EAEU member states.

**Principle 3.** *Consistency of the EAEU technical regulation with economic, as well as scientific and technical development of member states.*

This principle is consistent with the WTO TBT Agreement, in particular with respect to the right to apply measures at the level, which WTO members consider *expedient*. However, there are cases in which mandatory technical regulations requirements are introduced without accounting for EAEU member states preparedness to their application of compliance with and due assessment, which creates certain additional impediments to trade. For instance, starting on 1 May 2014 the provisions of the CU technical regulations "On food safety" and "On meat and meat products safety" came into force with regard to the obligation to slaughter production animals in specialized industrial facilities only that maintain state registration effectuated by the competent authorities of EAEU countries. Such requirements stem from international standards of Codex Alimentarius and IEB Terrestrial Animal Health Code. However, the existing structure of livestock breeding sectors in EAEU countries is not ready for the application of, and compliance with, this provision of the technical regulations, where based on various estimates, 60-80 percent of slaughters take place in private courtyards, primarily due to the lack of proper slaughter facilities. For example, a large Russian region such as Novosibirsk province, as of December 2014, had only 29 such facilities. Here it is reasonable to cite the statement of the Head of Russian Rosselkhoznadzor, which he made prior to the CU technical regulations effectiveness: *It is most likely that Russia will face difficulties in its implementation of the CU technical regulations due to the unpreparedness of its infrastructure. If we want to do anything in a civilized way, first we need to make a plan, and then to introduce such technical regulations*". It is obvious that the inspection bodies are unlikely to be able to constrain or at least significantly reduce "shadow" production and circulation of meat and meat products in the nearest future. Another example: The CU technical regulations for the food

of animal origin establish dioxine content requirements. However, there are provisions such as "*dioxine (melamine) content shall be established if it is reasonably assumed that such may be present in the product*", and there are no explanatory documents for their practical application. Unclear wording ("*reasonably assumed that they may be present*") entitles inspectors to commence laboratory testing of imported food ingredients at their own discretion. In practice such discretion may cause the situations in which the inspector at customs border (for instance, in Vladivostok) assigns dioxine testing for the imported products in the laboratories that are located hundreds of kilometers away from the border, for example in Vladimir. This example demonstrates that the improper condition of laboratory infrastructure may significantly impede international trade and promote corruption.

**Principle 4.** *Mutual recognition of compliance assessment bodies accreditation in the national accreditation systems of member states and non-competition.*

This principle is consistent with article 6 of the WTO TBT Agreement, but its force is limited with EAEU confines. There are no such agreements on recognition executed with the countries that are not EAEU states. Earlier bilateral and multilateral agreements on mutual and/or unilateral recognition ceased to be in legal force after CU international treaties on technical regulation were adopted. Pursuant to article 55 of the EAEU Agreement by 31 December 2015 it is expected that the draft EAEU *international treaty on the procedure and conditions applicable to the elimination of technical barriers to mutual trade with non-member countries* will be developed. However, one can expect that this will be a framework treaty, rather than a directly applicable instrument. For the implementation it will be necessary to enter into separate treaties with other countries on the recognition of compliance assessment findings, including accreditation.

It should be noted that EAEU member states are not entitled to independently enter into treaties with other countries on the recognition of compliance assessment results. One may expect that it will be the domain of the EEC. The example may be the substance of the Treaty of CU member states on the elimination of technical barriers in the mutual trade with CIS member states that are not CU member states dated 17 December 2011. It should be added, that as of 15 April 2015 this Agreement has not been ratified by all EAEU member states.

During negotiations on the accession to the WTO, the Russian Federation expressed its commitment to adhere to article 6 of the TWO BTB Agreement with regard to the recognition of the results of compliance assessment held in other countries, after Russia joins the ILAC and other international accreditation organizations.<sup>73</sup>

With regard to Kazakhstan, there is one aspect. Therefore, since 2010 the National Accreditation Authority of Kazakhstan has been a fully-fledged member of the ILAC, which implies Kazakhstan's

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<sup>73</sup> . Cl. 771 - 772 of the Report of the Working Party on the Accession of the Russian Federation to the WTO.

recognition of the results of products testing carried in the laboratories accredited by ILAC members. However, within the EAEU Kazakhstan will not be able to ensure the same recognition for other ILAC members as the national accreditation bodies of Russia and Belarus are not ILAC members. During negotiation process on the accession to the WTO, Kazakhstan representatives need to expect the questions regarding the recognition of compliance assessment results, in particular products testing in the laboratories accredited by ILAC bodies.

**Principle 5.** *Consistency of research (testing) and measurements rules and methods used for mandatory compliance assessment procedures.*

This principle is not at variance with the WTO TBT Agreement.

**Principle 6.** *Consistent application of EAEU technical regulations requirements regardless of transactions types and (or) specifics.*

This principle is not at variance with the WTO TBT Agreement. WTO has certain reservations. Therefore, the matters of manufacturing and consuming the commodities that are subject to public procurement are governed by the provisions of the Public Procurement Agreement, rather than TBT Agreement.

**Principle 7.** Prohibition of competition restriction in compliance assessment.

This principle is not at variance with the WTO TBT Agreement.

In accordance with the EAEU Agreement, accredited certification bodies and testing laboratories that assess products compliance with EAEU technical regulations requirements must be included in the EAEU universal registry of compliance assessment bodies in accordance with the current Statute, approved by the CUC Decision dated 18 June 2010 No. 319. Pursuant to this Statute such bodies and laboratories must be the legal entities of EAEU states; i.e. certification bodies and laboratories of other country have no right to provide certification and products testing services for the purposes of declaring their compliance with EAEU technical regulations. In this case there is no sense in discussing competition in terms of international approaches. This is also at variance with cl. 6.4. of the WTO TBT Agreement.

**Principle 8.** *Voluntary application of standards*

This principle is not at variance with the WTO TBT Agreement.<sup>74</sup>

In EAEU documents and the national laws of EAEU member states, the matters of voluntary application of standards are among the key provisions of technical regulation system. The National Standardization Authority of the Russian Federation relies on the Code of voluntary practice for the development, approval and application of WTO TBT Agreement standards.

However, it is necessary to note that this principle does not cover SPS standards. There are certain cases of deviations from this principle. In accordance with the Protocol on technical regulation within the EAEU (Annex 9 to the EAEU Agreement) the EEC approves the list of standards that contain testing and measurements rules and methods that are necessary for the application and enforcement of EAEU technical regulations requirements and products compliance assessment. It should be noted that this list is a classified document. The application of the standards included in this list only, with prohibition to use any other standards for similar testing methods actually makes such standards mandatory. It should be added that pursuant to the Law of the Republic of Belarus "On technical measurements and standardization" the application of state standards is voluntary. However, the same Law contains the provision pursuant to which the standards are deemed mandatory, if the technical regulations of the Republic of Belarus contain direct reference to such standards.

**Principle 9.** *Harmonization of technical regulations and inter-country standards with international and regional standards.*

This principle is not at variance with the WTO TBT Agreement.

In accordance with the Protocol on technical regulation within the EEC (Annex 9 to the EAEU Agreement) the relevant international standards should be used as a basis for the development of EAEU technical regulations. Given the fact that sanitary requirements form a part of the EAEU technical regulations for agricultural and food products, the harmonization of EAEU technical regulations with the international standards of Codex Alimentarius may be estimated at the rate of 40 percent.

This principle is secured in the Russian Federation by obligations assumed in its accession to the WTO.<sup>75</sup> In Kazakhstan this principle is stipulated in cl. 4 article 18 of the Law "On technical regulation". In Belarus it is stipulated in article 16 of the Law "On technical measurements and standardization".

**Principle 10.** Consistency of mandatory compliance assessment rules and procedures

This principle is not at variance with the WTO TBT Agreement.

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<sup>74</sup> This principle does not cover SPS standards.

<sup>75</sup> Cl. 713, 714 of the Report of the Working Party on the Accession of the Russian Federation to the WTO.

**Principle 11.** *Harmonization of member-state legislation pertaining to state control over compliance with EAEU technical regulations requirements*

This principle is not at variance with the WTO TBT Agreement.

In accordance with the EAEU Agreement the state control over the compliance with EAEU technical regulations requirements is exercised in the manner established by the laws of each EAEU member state. As mentioned above, by 31 December 2015 it is expected that an international treaty on the harmonization principles and approaches for EAEU member states in this sphere will have been developed. It should be mentioned that EAEU member states exhibit similar problems pertaining to the efficiency of food ingredients and finished products inspection. One of the key problems is the lack of coordination between various inspection authorities controlling the traceability of food products safety along the entire "Farm-to-Table" chain. The problem of duplicating inspections by state veterinary and sanitary inspection bodies became rather common. Therefore, the Government of the Russian Federation adopted a special Decree dated 14 December 2009 No. 1009 to split up the functions of Rosselkhoznadzor and Rospotrebnadzor and their interactions in quality control and food safety. At the same time, in reality inspections continue to be duplicated by these agencies, in particular, the inspections of non-processed food products of animal origin, the safety of which is governed by both technical regulations and veterinary and sanitary requirements.

The similar situation also exists in Kazakhstan and Belarus. Therefore, in Kazakhstan the sanitary inspection functions were transferred from the Ministry of Health to the Agency for Consumers Rights Protection under the state governance optimization process. Currently the inspection of food products for their compliance with technical regulations is effectuated by the special department of this Agency, while the inspection for compliance with veterinary and sanitary requirements is held by the Committee for state inspection in agro-industry of the Ministry of Agriculture. As for Belarus, the inspection of food products for safety is held there by three authorities - the Ministry of Health for compliance with sanitary standards and rules; the Ministry of Agriculture - for compliance with veterinary and sanitary requirements, the State Committee for Standardization of the Republic of Belarus - for compliance with technical regulations. It is obvious, that the harmonization of state control over compliance with EAEU technical regulations requirements will also require generalized approach to institutional matters pertaining to ensuring and controlling food safety at all stages of its production and distribution. For instance, in the EU there is a Food Safety Authority established in accordance with the Regulation of the European Parliament and of the Council No. 178/2002 dated 28 January 2002, and in a number of countries universal food inspectorates are established. It is noteworthy that the procedure for the state control over agricultural and food commodities in EAEU member states is at variance with the recommendations of international organizations, in particular with the FAO's Risk-based food inspection manual.

### **3.2. Principles of the WTO TBT Agreement that are not directly stipulated in the EAEU Agreement**

The EAEU Agreement contains do direct designation of a number of crucial principles of the WTO TBT Agreement, but to certain extent they are stipulated in existing EEC (CU) instruments and the national laws of the EAEU member states.

#### **Principle of national regime application and non-discrimination.**

EEC (CU) instruments on technical regulation do not contain the direct designation of national regime application and non-discrimination principle.

This principle is secured in the Russian Federation by obligations assumed in its accession to the WTO.<sup>76</sup> Pursuant to article 29 of the Law of the Russian Federation "On the fundamentals of foreign trade activities state regulation" and article 7 of the Federal Law "On technical regulation", *technical regulations, including SPS measures and mandatory compliance assessment procedures, should be applied in a similar manner and to equal extent, regardless of the country and place of products origin.* In Kazakhstan, this principle is stipulated in cl. 3 article 17 of the Law of the Republic of Kazakhstan "On technical regulation", *save for SPS measures imposition and application.* In Belarus, pursuant to article 17 of the Law "On technical measurements and standardization" the technical regulations are applied similarly and consistently regardless of the country and (or) place of products origin.

*The principle of recognizing the equivalence of other WTO members' technical regulations.* This principle of the WTO TBT Agreement is not mandatory. It encourages WTO members to consider adopting the equivalent technical regulations of other members, even if such regulations differ from theirs, provided that they make certain that such regulations adequately ensure the goals of their own regulations.

EEC instruments and the national laws of EAEU member states do not have a direct designation of such principle, but it is applied when technical regulations are developed. Therefore, in accordance with the Statute on the procedure for the development, adoption, amendment and cancellation of CU technical regulations, approved by the Decision of the EEC Council dated 20 June 2012 No. 48, regional documents, national technical regulations of other countries may be used as a basis for draft technical regulations. For instance, the explanatory notes to draft CU (EAEU) technical regulations on food products safety state that the provisions of the relevant EU Directives and Regulations were used.

#### **Transparency principle.**

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<sup>76</sup> Cl. 713, 714 of the Report of the Working Party on the Accession of the Russian Federation to the WTO.

In the EAEU, transparency matters are specified in the Statute on the procedure for the development, adoption, amendment and cancellation of CU technical regulations, approved by the Decision of the EEC Council dated 20 June 2012. Its content is consistent with the rules, established by article 2 of the WTO TBT Agreement. There was a quite important comment in the course of negotiations on Russia's accession to the WTO. The representative of Russia announced that *when the national technical regulations will be completely replaced with the CU and EurAsEC technical regulations, new Universal information center for the CU and EurAsEC will be established.*<sup>77</sup> Pursuant to the Customs Union technical regulations development plan, approved by the Decision of the EEC Council dated 1 October 2014, the development of draft CU technical regulations continues in 2015, but the entire replacement with EAEU technical regulations is not going to happen until 2016. It is necessary to add that currently the responsibility for compliance with the transparency provisions of the WTO TBT Agreement only covers the EAEU member states, which are WTO members.

This principle is secured in the Russian Federation by obligations assumed in its accession to the WTO. WTO/TBT Russian Information Center has been established and is operating, which fulfills the duties related to the implementation of article 10 "Information about technical regulations, standards and conformity assessment procedures" of the WTO TBT Agreement. In Kazakhstan there is a single TBT/SPS Information Center in place, which performs the functions within the WTO. Belarus has the National TBT and SPS center under the Gosstandart of the Republic of Belarus, which implements the functions within WTO.

### **3.3. Technical regulation of trade in agricultural produce within the EAEU**

Pursuant to art. 51 of the EAEU Agreement the products *specified in the General list of products subject to EAEU mandatory requirements*, must be compliant with the generalized mandatory requirements, established in the EAEU (CU) technical regulations *or* the requirements, established in the national laws of EAEU states. The technical regulation of the products included in the General list is conditionally divided into the following periods:

- period until the CU (EAEU) technical regulations come into force;
- period when the CU (EAEU) technical regulations come into force with interim provisions;
- period of full CU (EAEU) roll-out, with the termination of interim provisions.

During negotiation process regarding accession to the WTO, the representatives of the Russian Federation announced that by 31 December 2012 *the CUC shall adopt all 47 priority technical regulations*

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<sup>77</sup> Cl. 769 of the Report of the Working Party on the Accession of the Russian Federation to the WTO.

*(including those applicable to food products), which will come into force not later than 31 December 2014. By such date, all other national mandatory technical requirements, applied in CU member states, will be replaced with the CU technical regulations or will not be applied any longer. However, these intents were never accomplished.*

### **Specifics of technical regulation prior to EAEU technical regulations effectiveness**

Until the relevant EAEU (CU) technical regulations come into force, the products specified in the General list of products subject to mandatory compliance verification within the CU with the issue of uniform documents, approved by the CUC decision dated 7 April 2011 No. 2011, are permitted for import and circulation on the entire EAEU territory subject to the available compliance verification documents, specified in such List.

As of 15 February 2015 only the EAEU technical regulations on feed compound for animals, poultry and fish commodity items (code TN VED 2309) have not yet come into force among those that pertain to agricultural produce in the specified List.<sup>78</sup> These types of products must comply with the CU generalized veterinary and sanitary requirements and standards, which must be verified by a compliance declaration, accepted only by EAEU member states persons (residents). The basis for compliance declaration acceptance is the testing of commodities samples held in laboratories that form a part of the EAEU universal compliance assessment bodies registry.

Until the relevant EAEU technical regulations come into force, the products that are not specified in the General list, approved by the CUC Decision dated 7 April 2011 No. 620, are imported to the EAEU member states in accordance with the national laws. Such types of products include the poultry meat products.

### **The EAEU technical regulations**

The CU (EAEU) technical regulations for agricultural products may be conditionally divided into horizontal and vertical technical regulations.

*Horizontal technical regulations* establish requirements that are common for all types of food products and specific for the most types of food products. They include the CU (EAEU) technical regulations "On food safety" and "Food products in terms of marking".

*Vertical technical regulations* establish requirements applicable only to these certain types of food products.

Such EAEU (CU) technical regulations structure is similar to the EU food safety law. At the same time, it should be noted that "horizontal" EU instruments determine requirements that are common for all

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<sup>78</sup> Draft CU (EAEU) technical regulations "On feed and feed supplements safety" undergoes public discussion.

types of food products (hygiene, marking, HACCP). The requirements for certain product types are established by vertical instruments only.

The situation is slightly different in the EAEU. Therefore, the CU (EAEU) technical regulations "On food safety" in addition to common requirements establish specific requirements applicable to certain types of products, which are covered by the vertical EAEU (CU) technical regulations. Meaning that they are duplicated, which creates uncertainty for food vendors.

As of 15 April 2015:

The following CU (EAEU) technical regulations are in force, with their interim provisions being terminated:

- On food safety (TP TS 021/2011);
- Food products in terms of marking (TP TS 022/2011);
- Technical regulations on fruit and vegetable juices (TP TS 023/2011);
- Technical regulations on fat and oil products (TP TS 024/2011);
- On the safety of certain types of specialized food products, including health and protective diet food (TP TS 027/2012);
- Requirements on the safety of food additives, flavors and technological processing aids (TP TS 029/2012);
- On grain safety (TP TS 015/2012);
- On packaging safety (TP TS 005/2011).

The following CU (EAEU) technical regulations are in force, with interim provisions terminating on 31 December 2015:

- On the safety of milk and dairy products (TP TS 033/2013);
- On the safety of meat and meat products (TP TS 034/2013).
- The following technical regulations are at drafting stages.<sup>79</sup>
- On alcoholic products safety;

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<sup>79</sup> Pursuant to the Plan for CU technical regulations development and amendment of the CU technical regulations, approved by the Decision of the EEC Council dated 1 October 2014 No. 79

- On fish and fish products safety;
- On the safety of poultry meat products and the products resulting from their processing.

### **3.4. The conditions for the access agricultural commodities that fall under the EAEU technical regulations that came into force to the EAEU customs territory**

The release of commodities for circulation within the EAEU takes place following one of the following procedures for assessing compliance with the EAEU technical regulations: *compliance declaration; state registration; veterinary and sanitary examination.*

The commodities that have completed one of the above compliance verification procedures are marked with the EAEU conformity mark. EAEU conformity mark is approved by the CUC Decision dated 15 July 2011.

Commodities circulating within the EAEU must be accompanied by shipping documentation, which ensures the traceability of these products. As of 1 March 2015 there are no EEC guidelines or instructions on this matter, including the availability of shipping documentation standard forms, which results in the actual situations, when EAEU member states inspectors set the requirements to the form and substance of shipping documentation at their own discretion, which causes problems for agricultural produce vendors, especially for those from non-member countries.

#### **Compliance declaration**

Compliance declaration is effectuated based on the patterns stipulated in the EAEU technical regulations. Based on its results, uniform CU (EAEU) compliance declaration is accepted.

The uniform CU (EAEU) compliance declaration is accepted for all types of food products, save for unprocessed food products of animal origin; new and specialized food products.

The uniform CU (EAEU) compliance declaration is accepted only by legal entities or individuals of EAEU member countries, which enter into special agreement on responsibility for compliance with CU (EAEU) technical regulations with the manufacturers of non-member countries.

The uniform CU (EAEU) compliance declarations are subject to registration with the competent authorities of EAEU (CU) member-states and are included in the Universal registry in accordance with the Decision of the EEC Board dated 9 April 2013 no. 76.

Upon its accession to the WTO, the Russian Federation assumed the obligations entitling the manufacturers from non-member states to accept the uniform CU compliance declarations.<sup>80</sup> Pursuant to cl. 15 of the Action plan for the adaptation of CU and CES international treaty framework to the conditions of functioning in multilateral trade system, approved by the Decision of EEC Board dated 31 May 2012 No. 54, the relevant CU instruments were to be amended in terms of *granting the rights to foreign manufacturers to accept compliance declarations*. However, up to the present day, non-member countries manufacturers are not entitled to accept the uniform CU compliance declarations, which is *per se* the discrimination.

Compliance declaration must be accepted based on the results of products testing (examinations) held in testing laboratories, included in the EAEU universal registry of compliance assessment bodies. The universal registry includes only those laboratories, which are accredited in the national accreditation systems of EAEU member states and that are legal entities of EAEU member states. The fact that the laboratories of non-member countries are not entitled to be included in the EAEU universal registry of compliance assessment bodies creates excessive impediments to trade and is at variance with cl. 6.4. of the WTO TBT Agreement.

The EAEU requirements on the mandatory registration of compliance declarations are significantly different from EU compliance declaration system and it also creates excessive impediments to trade.

### **State registration**

In accordance with the CU technical regulations "On food safety", specialized food products and new food products are subject to state registration with the issue of EAEU uniform state registration certificate. Specialized food products include: baby food; diet products; mineral water; sport products and products for pregnant and nursing women; food supplements. New food products include the products that previously were not used as human food on the EAEU territory, in particular containing GMO and nanomaterials.

One need to expect questions if food manufacturer from a non-member country believes that its product is a "*similar commodity*", rather than "*new commodity*", and in such case pursuant to article III of the GATT such manufacturer may insist on its products compliance verification in the form of declaration rather than state registration.

State registration is effectuated by the competent authorities of EAEU member states for sanitary and epidemiological safety. The examination of products for the purposes of issuing state registration certificate is effectuated in the laboratories, included in the EAEU universal registry of compliance assessment bodies.

The information on state registration is included in the EAEU universal registry of registered products. In accordance with the Action plan for instruments and international treaties development pursuant

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<sup>80</sup> Cl. 771 - 772 of the Report of the Working Party on the Accession of the Russian Federation to the WTO.

to the EAEU Agreement dated 29 May 2014, approved by the Decision of the EEC Council dated 16 July 2014 No. 58, *Procedure for the establishment and maintenance of the products state registration certificates universal registry in accordance with the requirements of the EAEU technical regulations*. However, as of 15 February 2015 it has not yet been approved by the EEC.

### **Veterinary and sanitary inspection**

Non-processed food products of animal origin are subject to veterinary and sanitary inspection for the purposes of identifying the compliance of products, as well as its manufacturing, storage, transportation, sale and disposal processes with the requirements of EAEU technical regulations; and for the purposes of ensuring veterinary safety of farms that supply animals.

Veterinary and sanitary inspection and processing of its results is effectuated in accordance with the national laws of the CU member states.

The EAEU regulations have no definition of veterinary and sanitary inspection. The national laws of the EAEU member states define veterinary and sanitary inspection as an assessment of the products of animal origin for compliance with veterinary and sanitary requirements; i.e. actually with the CU generalized veterinary and sanitary requirements. Pursuant to the CU technical regulations "On food safety", the veterinary and sanitary inspection is a form of non-processed products compliance assessment. However, EEC instruments have no mutual references stating that the requirements applicable to non-processed products of animal origin established by the CU (EAEU) technical regulations are similar to the CU generalized veterinary and sanitary requirements.

Given the fact that the release to circulation also means import, the requirements applicable to veterinary and sanitary inspection cover the non-processed products from non-member countries. The import of such products to the EAEU requires the document on veterinary and sanitary inspection in accordance with the national laws of the EAEU member country (recipient country), CU uniform veterinary certificate for non-member countries, as well as permit for import in accordance with the CU Statute on generalized joint inspection procedure. If one collates the CU technical regulations and the Statute on generalized joint inspection procedure, it is possible to discover that the purposes of veterinary and sanitary inspection and those of joint inspections are similar. There are duplicating provisions, and the members of the Working Party on the Accession of the Russian Federation to the WTO emphasized this fact.

### **The state registration of manufacturing facilities**

Manufacturing facilities that receive and process non-processed food ingredients of animal origin (animals slaughter; collection of raw milk; egg production; aquaculture production) are subject to state registration with the competent authorities of EAEU member states with further inclusion in the registry of industrial facilities for the manufacturing of food products.

Pursuant to the CU *Statute on joint inspections procedure* the inclusion of the manufacturing facilities to the non-member countries registry based on the positive audit of official inspection system or joint inspection of enterprise, means that the products are compliant with CU requirements, including the CU technical regulations requirements. However, it does not mean that the product may bear Conformity Mark, and that it is permitted to import to the CU.

Collating the content of articles 31-36 of the CU technical regulations "On food safety" and the CU Statute on joint inspections procedure, one may come to conclusion that the essence of the state registration of manufacturing facilities with further inclusion in the food manufacturing facilities – as a form of assessment of manufacturing processes compliance with technical regulations requirements, as well as joint inspections of manufacturing facilities producing the products subject to veterinary and sanitary control, with the purpose of inclusion in non-member countries registry – are duplicated in many instances.

## **Chapter IV. Laboratory support of EAEU member states pertaining to EAEU SPS measures application and technical regulation**

In the previous chapters, the matters of institutional support for SPS measures application and technical regulation in the EAEU were considered in terms of access to agricultural produce from non-member countries to the EAEU customs territory and their effect on international trade, as well as consistency with the provisions of the WTO SPS and TBT Agreements. This chapter considers the general assessment of EAEU laboratory infrastructure, which is a technical basis for SPS measures and technical regulation.

In the EAEU the legal framework for the recognition of compliance assessment bodies accreditation is formalized as the Protocol, which forms Annex No. 11 to the EAEU Agreement dated 29 May 2014.

It should be noted that the matters of developing EAEU laboratory infrastructure pertaining to SPS measures and technical regulation are settled at the national level, including accreditation system. For example, there are 10 reference centers of Rosselkhoz nadzor in place in Russia in the form of Federal State Budget-Funded Institutions, which fulfill a wide range of laboratory research that covers not only veterinary and phytosanitary safety, but also the matters pertaining to sanitary measures and technical regulation. In Kazakhstan and Belarus there are no such integrated institutions. In such countries the laboratory structures are usually specialized ones.

With respect to the EAEU it should be noted that there are no common or joint strategies and programs in this area. At the same time, the establishment or assignment of status to EAEU reference laboratories would be expedient, taking into account the common commodities market in the EAEU, necessity of holding reference research (test) in disputable cases, as well as their inclusion in the reference laboratories and centers network for IEB cooperation.

### **4.1. Phytosanitary measure issues**

The EEC is planning to develop the Procedure for quarantine phytosanitary measures laboratory support by 31 December 2017. One can assume that such long-term nature stems from the absence of a generalized approach to the application of phytosanitary measures in the EAEU. For instance, the discussions on transfer to CU generalized phytosanitary measures have been going for four years already.

Moreover, there is no clarity as to the mandatory inclusion of phytosanitary laboratories in the EAEU universal registry of compliance assessment bodies. Therefore, the Statute on the procedure for the inclusion of bodies and testing laboratories in the universal registry approved by the CUC Decision No. 319 dated 18

June 2010, state that phytosanitary laboratories must be included in the universal registry. However, other EAEU phytosanitary instruments contain no such requirement.

It is also worth paying attention to the discussions regarding the expert institutions that hold phytosanitary research. Pursuant to the Statute on quarantine phytosanitary control procedure at the CU customs border, approved by the CUC Decision dated 18 June 2010 No. 318, any organizations that have qualified staff and are technically equipped for phytosanitary research may act as expert organizations. However, the Decision of the EEC Council dated 16 August 2013 No. 50 introduced a condition requiring that officially recognized laboratory research is only fulfilled by the expert organizations that are part of the EAEU plant quarantine competent bodies structure. It significantly narrows down the capacity and technical competence of laboratory infrastructure in the EAEU member states pertaining to phytosanitary measures application.

Currently it is not possible to assess the condition of laboratory infrastructure in EAEU member states pertaining to the application of phytosanitary measures. Based on various materials, including the Reports issued by the CIS Executive Committee on Cooperation for Plant Quarantine, reports of the Asian Development Bank "Modernizing Sanitary and Phytosanitary Measures to Facilitate Trade in Agricultural and Food Products" (2013), "Promoting Cooperation in Sanitary and Phytosanitary Measures for Central Asia Regional Economic Cooperation" (2015), one may expect that in EAEU countries the situation is almost similar. Almost all customs posts and political divisions (districts, provinces) have the structural units of state quarantine authorities (respectively, in Kazakhstan - the Committee for state inspections in agro-industry of the Ministry of Agriculture; in Belarus - General state inspectorate for seed farming, quarantine and plant protection; in Russia - Rosselkhoz nadzor, which fulfills various inspections: entomological, mycology, bacteriological, virological, phytohelminthological and herbological. The common problems for all phytosanitary laboratories in EAEU countries are the lack of laboratory means and methods enabling to fulfill research beyond technical microscopy possibilities, as well as the introduction and use of regional standards of the European and Mediterranean Plant Protection Organization for laboratory diagnostic of regulated pests (EPPO STANDARD PM).

## **4.2. Veterinary measures issues**

Veterinary research is carried out in the following cases:

- diagnostics of animal diseases;
- veterinary certification;
- veterinary and sanitary inspection of non-processed food products of animal origin;

- state veterinary and sanitary control of products for their import and circulation.

Over the past years the EAEU countries demonstrate some progress in upgrading state veterinary laboratories. For example, by mastering high sensitivity methods of enzyme linked immuno-sorbent assay (ELIZA), polymerase chain reaction (PCR). In the Russian Federation for the purposes of risk analysis the Plan for state veterinary laboratory monitoring of residuals of banned and harmful substances in the animal organisms, products and feed is drawn up annually in accordance with IEB requirements and EU directive 96/23/EC dated 29 April 1996.<sup>81</sup>

At the same time, the common problem for EAEU countries is still the use of so called "classic" diagnostics methods, established by GOSTs of the Soviet times. The poor technical level of veterinary laboratories in Russia as compared with the EU was emphasized in the Russian meeting titled "Organization of veterinary laboratories operation and active monitoring", held by Rosselkhoznadzor in the city of Krasnodar in June 2013. Therefore, the deputy of Rosselkhoznadzor N.Vlasov pointed out that in order to achieve the level of European laboratories, the upgrade of one veterinary laboratory of Rosselkhoznadzor territorial division requires the investments of approximately 1 billion. Rubles (roughly EUR 30 million at the exchange rate as of that date). It is a good illustration of Russia's lagging behind in this area as compared with the EU. The same situation as in the Russian Federation may be observed in other EAEU states.

Based on the information posted on the web-site of the Department for veterinary and food inspection of the Ministry of Agriculture of the Republic of Belarus, the universal compliance assessment bodies registry includes 18 accredited veterinary laboratories, of which 15 are state veterinary and sanitary institutions operating at province and inter-district level. It should be added that the Belarus state veterinary center is included in the List of laboratories that are entitled to test food ingredients and food products of animal origin using testing methods in accordance with requirements of the EU Commission Decision dated 14 August 2002 No. 2002/657/EC with regard to analytical methods and interpretation of their results in accordance with their relevant spheres of accreditation.

In Kazakhstan the National reference center for veterinary of the Committee for state inspection in agro-industry of the Ministry of Agriculture has been established. The main laboratory infrastructure, included in the EAEU universal registry of compliance assessment bodies, is centered in the Republican veterinary laboratory of the Committee for veterinary control and inspection of the Ministry of Agriculture of the Republic of Kazakhstan, which maintains 15 branches in provinces. At district level there are approximately 160 veterinary laboratories.

In the Russian Federation there are 10 reference centers, 20 interregional veterinary laboratories that are parts of the Rosselkhoznadzor structure, as well as more than 1 500 laboratories of various forms of

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<sup>81</sup>In other EAEU countries such monitoring is still effectuated.

incorporation that fulfill laboratory research and testing. At the same time it should be noted that due to Russian Accreditation Authority establishment, the matters of veterinary laboratories accreditation/certification have not yet been consummated. Inter-agency disputes thereon are still going. Therefore, the makers of the draft new version of the Federal Law "On veterinary" propose to vest the laboratories accreditation functions in the sphere of veterinary in the competent veterinary authority, while due to the establishment of the Russian Accreditation Authority all powers for the provision of accreditation to compliance assessment bodies are transferred to this new agency. There is even a judicial precedent. Therefore, Rosselkhoznadzor department for Primorye Territory and Sakhalin Region didn't recognize legitimate both the veterinary and sanitary inspection, and the findings of inspections held for the frozen fish by the laboratory center for standardization, metrology and testing (SMC). The reason for that was that the laboratory of Sakhalin SMC is not certified by the Rosselkhoznadzor. As it is accredited in the Russian Accreditation Authority system, the vendor brought action to the Sakhalin arbitration court to recognize the results of testing by this laboratory, which made a judgment in favor of the plaintiff.

### **4.3. Sanitary measures and technical regulation issues**

In the EAEU the sanitary measures in the form of sanitary requirements and their compliance assessment forms are included in the technical regulations for agricultural and food products and it enables to consider laboratory support matters from one point of view.

The key center of EAEU laboratory infrastructure is made up of the laboratories that are or were supervised by the state sanitary and epidemiological surveillance and state standardization bodies, as well as the laboratories of specialized research institutes.

The EAEU technical regulations allow food manufacturers to accept the compliance declaration based on the results of testing held in their own laboratories. However, the technical capabilities of production laboratories are limited even at large enterprises, that is why enterprises have to address the laboratories included in the EAEU universal register of compliance assessment bodies that are entitled to test products for compliance with the EAEU technical regulations requirements to get compliance declaration. It is frequent that food vendors have to use the services of the laboratories located in different country regions to accept the declaration. For example, in order to test the products of animal origin for dioxine content, one needs to send a sample from Vladivostok to Vladimir.

The most laboratories in the EAEU are cross-functional facilities and are able to test the food products of both animal and vegetable origin, as the testing methods by microbiological indicators, by pesticide content, heavy metals, mycotoxins, radioactive nuclide are mostly similar.

For the sake of fairness it should be noted that the upgrade of food laboratory infrastructure in EAEU countries exhibits certain progress. However, it is rather difficult to make the general assessment of the technical level of the laboratories included in the EAEU universal registry of compliance assessment bodies. This registry does not unify the laboratories by the areas of their technical competence by the indicators of tested products, that is why in order to make such research it is necessary to analyze the technical competence of each laboratory and then to aggregate the results.

The data of Rospotrebnadzor with regard to the harmonization rate of the EAEU technical regulations requirements for food products with the international standards of the Codex Alimentarius enable to assume that in EAEU countries the level of laboratory infrastructure in terms of the use of food products international testing methods is approximately 40 percent. The article written by V.Hanina "Harmonization of Russian and international analytical control methods. Problems associated with the introduction of international standards and rules and food industry" (published on [www.worldico.org](http://www.worldico.org)), gives an example highlighting the lack of international ISO 5725 standard "Accuracy (trueness and precision) of measurement methods and results" for the determination of maximum permissible aflatoxin M1 content in the List of standards necessary for the application and enforcement of the requirements of the EAEU technical regulations "On food safety".

In Belarus as of 15 February 2015 the EAEU universal compliance assessment bodies registry includes 102 laboratories that test food products, with the majority of those supervised by the Ministry of Health and the State Committee for Standardization. The Belarus national part in the registry is made up of 240 laboratories. Food laboratories constitute 42 percent.

In Kazakhstan as of 15 February 2015 the EAEU universal compliance assessment bodies registry includes 65 laboratories that test food ingredients and products. It constitutes 30 percent of total laboratories, included in the national part of the EAEU universal registry.

In the Russian Federation as of 15 February 2015 the EAEU universal compliance assessment bodies registry includes 1452 laboratories that test food ingredients and products. It constitutes 70 percent of total laboratories, included in the national part of the EAEU universal registry.

## SECTION C. Conclusions and Recommendations

1. The integration processes in the EurAsEC, CU and EAEU cover almost all spheres, related to the production of, and trade in agricultural and food commodities. It is necessary to emphasize that SPS measures and technical regulation matters are considered significant in the EAEU Agreement dated 29 May 2014.

2. There are certain specifics that formed in the EAEU. In accordance with the EAEU Agreement dated 29 May 2014 SPS requirements are included in the technical regulations for agricultural produce, including non-processed products, that is why the conclusions in this Report, made with regard to SPS measures also cover technical regulation in terms of adherence to the principles of harmonization, equivalence, non-discrimination, transparency that have a great effect on international trade. On the other hand, the EAEU Agreement contains reservations, pursuant to which the technical regulation principles do not cover SPS measures.

In the EAEU there is a tendency to establish single rules for the access of commodities to the EAEU customs territory in the form of generalized technical and SPS requirements applicable thereto, generalized procedures and documentary compliance verification forms, which are adopted by the supranational regulator; namely, the EEC. At the same time, it is not always obvious that the commodities imported to the EAEU customs territory, after all necessary customs procedures, including SPS measures and technical regulations procedures are completed, and the *CU commodity status* is obtained in accordance with the CU Customs Code, may freely circulate on the entire EAEU territory. Therefore, the effectiveness of EAEU generalized requirements and rules for commodities import and circulation in terms of SPS measures and technical regulation means that the relevant instruments of the national laws of the EAEU member states are not applicable, but at the same time, not terminated. The lack of EEC documents for the interpretation and explanation of such reservations and wordings may regularly result in disputable situations and significantly misrepresents the key WTO principle of *not creating excessive and arbitrary impediments to international trade*, and this is also true for the mutual trade within the EAEU, which is evidenced by the precedents of disputes between Russia and Belarus, Russia and Kazakhstan. In respect of agricultural commodities in addition to the requirements, established by generalized EAEU technical regulations, the instruments of the national legislation allow to establish additional SPS requirements and their compliance assessment procedure.

There are a number of comments to the quality of EAEU legal and regulatory system pertaining to the application of SPS measures and technical regulation.

First, the national laws contain the provisions, pursuant to which the EEC instruments form a part thereof. At the same time there are problems with the codification and incorporation of EEC legislation and

national legislation, which creates inconveniences for their users, especially for the vendors of products from non-member countries.

Second, the number of requirements applicable to food products is at the same time duplicated by the CU technical regulations "On food safety" and the CU technical regulations for certain types of products.

Third, the assessment procedures with respect to the products of animal origin that are subject to both veterinary measures and compliance assessment under technical regulations are actually duplicated. Therefore, in order to import non-processed products to EAEU territory it is necessary to obtain veterinary and sanitary permit and veterinary certificate to verify compliance with the CU generalized veterinary and sanitary requirements, as well as the document to evidence the completion of veterinary and sanitary inspection for compliance with the CU technical regulations requirements, consistent with the generalized veterinary and sanitary requirements.

Fourth, there is uncertainty in the wording of some EAEU (CU) technical regulations requirements. For instance, the EAEU technical regulations contain the provision pursuant to which the determination of dioxide and melamine content in the products of animal origin should be based on "*assumption*". In the absence of official EEC clarifications and instructions, in reality it enables inspectors to interpret this provision at their discretion, which in turn may cause arbitrary barriers and corruption schemes.

### **Recommendations (2):**

- Amend the EAEU regulations so that the national legislation on technical regulation and application of SPS measures would be *cancelled* after the relevant EAEU technical regulations and other EEC instruments come into force.
- Amend the EAEU regulations, so that in case there are additional SPS requirements and procedures based on scientific justification and risk analysis in the national laws with regard to commodities that are covered by the already effective EAEU technical regulations, then such additional SPS requirements would be included in the EAEU technical regulations as special parts.
- Exclude from the CU technical regulations "On food safety" the requirements that are established in the technical regulations for individual products.
- Exclude from the EAEU technical regulations and EEC regulations the duplicating various procedures for compliance assessment of the same products requirements.
- Provide explanations in the EAEU technical regulations regarding compliance assessment for dioxine and melamine content in the products of animal origin.

3. The EEC Agreement provides the policy of harmonizing SPS measures and technical regulations with WTO norms, rules and principles. In the course of its accession to the WTO, Russia assumed obligations that *all SPS measures, technical regulations, standards and compliance assessment procedures will be developed and applied, both in the Russian Federation and in the CU (i.e. in the EAEU) in accordance with WTO Agreements*. Belarus and Kazakhstan currently are at the different stages of negotiation process for the accession to the WTO. It is important to point out that Russia as a member of the Working Parties on the accession of Belarus and Kazakhstan to the WTO will in a certain manner influence the process so that these countries would follow the obligations assumed by Russia, as the first EAEU state that acceded to the WTO, in accordance with the Treaty on the Functioning of the Customs Union in the framework of the Multilateral Trading System dated 19 May 2011.

At the same time, it is important to note the following. First, according to Rosselkhoznadzor, the harmonization rate of sanitary requirements of the CU technical regulations for food products with international standards constitutes approximately 40 percent. The CUC Decision "On the harmonization of CU SPS legal instruments with international standards" dated 7 April 2011 No. 625 makes it unlikely that the consistent efforts are invested for harmonization with international standards in the development of SPS measures. Based on this Decision, SPS measures applied in the EAEU will be aligned with international standards based on the written statements from non-member countries on inconsistency of such measures with the international standards.

Second, there are some facts that the EAEU legislation establishes more rigorous SPS requirements as compared with the international standards without sufficient scientific justification. For instance, more rigorous requirements of the EAEU technical regulations with regard to residuals of tetracycline antibiotics in the products of animal origin.

Third, there are no EEC instructions on scientific approaches and risk assessment, based on the relevant international standards pertaining to SPS measures application. For the sake of fairness, it should be noted that EAEU states commenced profound reforms in plant quarantine and protection in accordance with IPPC principles, however in practical sense they do not work on introducing the ISPM.

Fourth, Belarus and Kazakhstan do not always follow the obligations of Russia assumed by it when it acceded to the WTO. Pursuant to the List of regulating measures applied by the authorized bodies of the CU and CES member states to commodities imported to the CU customs territory, Belarus and Kazakhstan continue to apply veterinary regulating measures to a number of commodity items, while such measures are cancelled for their import to Russian territory.

### **Recommendations (3):**

- Ensure the regular inventory of EEC SPS and technical regulation legislation in order to assess their consistency with international standards and their further harmonization.
- Hold consultations on the scientific reasonableness of establishing quantitative content of tetracycline antibiotics in the products of animal origin in the WTO SPS Committee.
- Exclude from the general list of commodities subject to veterinary and sanitary control, the commodity positions covered by the CUC Decision No. 810 dated 23 September 2011 "On cancellation of veterinary measures with respect to commodities included in the General list of commodities subject to veterinary control (inspection)".

4. The non-discrimination principle in accordance with WTO provision is stipulated in EAEU laws. It should be noted that one of the results of negotiation process for the accession of Russia to the WTO is the recognition of the SPS measures applied by other states as equivalent even if such measures differ from EAEU measures. For the enforcement of this principle EEC (CU) guidelines and instructions have been adopted. However, in certain cases there may be discriminatory deviations from it. For instance, based on the CUC Decision dated 18 October 2011 No. 833 the EEC *a priori* recognizes the equivalence of veterinary control inspection systems, established by the authorities of Russia, Belarus and Kazakhstan with EAEU requirements, while new EAEU member states and non-member states have to prove it through audit, which enables to consider this as a deviation from discrimination principle.

### **Recommendations (4):**

- Develop EAEU international treaty "On the procedure for concluding treaties with non-member countries on the recognition of SPS measures equivalence".
- Cancel the CUC Decision dated 18 October 2011 No. 833 and oblige the EEC to audit official veterinary inspection systems in Russia, Kazakhstan and Belarus.
- Develop the EEC guidelines on determining the equivalence of phytosanitary measures, applied in non-member countries.

5. The EAEU and member states have no mechanism for regionalization principle enforcement in the development and application of SPS measures with respect to commodities supplied by non-member countries, including the recognition of pest- and disease-free zones.

### **Recommendations (5):**

- The EEC needs to develop and adopt instructions on the enforcement of regionalization principle in SPS measures based on IEB Codes and ISPM.

6. The EAEU as a whole and member states pay close attention to ensuring *transparency* in the development and application of SPS measures and technical regulations in accordance with WTO provisions. It is noteworthy that the matters of responsibility for compliance with transparency principle from WTO point of view cover only the EAEU member states that are WTO members. In the WTO Russia assumed obligations on ensuring transparency both with regard to EAEU regulations and with regard to national legislation. In anticipation of their accession to the WTO, Belarus and Kazakhstan established the national SPS/TBT information posts. At the same time, there are problems with ensuring the transparency of national legislation, which is not cancelled when the relevant EEC instruments are adopted or that constitutes additional requirements and procedures, which create serious problems for the import of commodities to the EAEU and their circulation on the national territories. Commodities vendors do not have consistent and clear understanding of conditions they need to satisfy in order to gain access for their commodities to the EAEU markets.

#### **Recommendations (6):**

- Establish universal EEC TBT/SPS information center.
- Develop guidelines/reference books on the access of agricultural and food commodities from non-member countries to EAEU member countries describing the aspects of SPS measures and technical regulation.

7. The EAEU and the national legislations state that the application of standards is voluntary, which is consistent with the fundamental principle of the WTO TBT Agreement. The EAEU Agreement contains the following provisions, pursuant to which the EEC approves the List of standards applied voluntarily for the purposes of fulfilling requirements of the EAEU technical regulations. If such standards included in such list are not applied, the compliance assessment is effectuated based on *risk analysis*. However, the absence of such EEC instructions for the implementation of this provision forces commodities manufacturers to address GOSTs thus making them actually mandatory. In the EAEU the testing (research) of products for compliance with the EAEU technical regulations requirements may be held based on the rules and methods, established in the standards, the list of which is approved by the EEC. The current system allows only those standards to be applied that are included in the classified list and it also makes them mandatory.

#### **Recommendations (7):**

- Develop and adopt compliance assessment procedure based on risk analysis in the cases, when standards recommended by the EEC for compliance with EAEU technical regulations cannot be applied.
- Amend the EAEU regulations in order to make it possible to directly apply the international standards that are not a part of the List of standards, containing the research (test) rules and methods, necessary

for the application and fulfillment of the EAEU technical regulations requirements and compliance assessment of technical regulation items.

**8.** The access of food commodities to the EAEU territory is conditional upon the availability of a uniform compliance declaration. However, there are certain factors that create significant impediments to international trade.

First, the manufacturers of non-member countries are not entitled to independently accept the CU uniform compliance declaration, regardless of the fact that when Russia acceded to the WTO it assumed obligations to eliminate such type of discrimination.

Second, the basis for accepting the CU (EAEU) uniform compliance declaration is the testing of commodities only in the laboratories that are specified in the EAEU universal registry of compliance assessment bodies, which includes the legal entities of EAEU member states only. Testing held in the laboratories of non-member countries – even in those accredited in ILAC – may not serve as a basis for compliance declaration acceptance. This is at variance with cl. 6.4. of the WTO TBT Agreement.

Third, the EAEU exhibits no intent to implement article 6 of the WTO TBT Agreement on the recognition of compliance assessment results provided by non-member countries. Therefore, the Agreement of CU member states on the elimination of technical barriers to mutual trade with CIS member states, executed on 17 December 2011, has been awaiting ratification by EAEU member states for more than four years already. The draft EAEU framework agreement on the procedure and conditions for the elimination of technical barriers to mutual trade is expected to be developed by the end of 2015.

**Recommendations (8):**

- Amend the EAEU legislation to provide the rights: 1) to non-member country manufacturers to independently accept the CU uniform compliance declaration; 2) to non-member country laboratories accredited in ILAC, to be included in the EAEU universal registry of compliance assessment bodies.
- EAEU member states are to accelerate the ratification of the Agreement between CU member states on the elimination of technical barriers in the mutual trade with CIS member states dated 17 December 2011.
- For the development of the draft EAEU international treaty on the procedure and conditions for the elimination of technical barriers to mutual trade with non-member countries, to rely on articles 2 and 6 of the WTO TBT Agreement.

**9.** Within the EAEU the institutional support to SPS measures application and technical regulation is not efficient enough. First, the EEC, which enjoys the powers to adopt mandatory regulations on the entire EAEU territory, has no rights to officially provide the explanations about the provisions of EAEU

international treaties on SPS measures and technical regulation, representation functions in international organizations, including the WTO, enforcement functions, including arbitration. The latter becomes rather relevant due to more and more frequent disputes on the matters of SPS measures and technical regulation between EAEU member states regarding mutual trade, import and transit of agricultural commodities from non-member countries.

Second, the state control system that regulates the compliance with EAEU mandatory requirements is established by the national laws, which contemplate no risk analysis for the traceability of food safety along "Farm-to-Table" chain. Almost all EAEU member countries require optimization of their state systems for control over the safety of food ingredients and products in accordance with international practices. There is no due coordination and cooperation between the EAEU state inspection bodies for compliance with SPS requirements and EAEU procedures and it not only hinders the promotion of the SPS agricultural commodities safety, but also precludes their free circulation on the EAEU unified customs territory. Pursuant to the Work plan for the development of instruments and international treaties in accordance with the EAEU Agreement dated 29 May 2014 it is expected to develop an international treaty on the principles of, and approaches to, the harmonization of the laws of EAEU member states pertaining on the state control (inspection) of compliance with the EAEU technical regulations requirements.

#### **Recommendations (9):**

- Grant additional powers to the EEC to interpret and officially explain the provisions of the EAEU Agreement pertaining to technical regulation and SPS measures; to enforce certain SPS measures within the EAEU; arbitration functions in disputes arising between the EAEU member states with respect to goods import from non-member countries to the EAEU customs territory or the movement thereof from one EAEU member state to another one; representation functions in international organizations.
- Consider establishing a single EAEU body for ensuring food safety along the entire "farm-to-table" supply chain.

**10.** Regardless of certain progress with the upgrade of laboratory infrastructure in EAEU member countries, their technical level is rather low as compared with the European level. Therefore, based on the estimates of Rosselkhoznadzor, in order to bring one veterinary laboratory subordinated to Rosselkhoznadzor in compliance with the EU regulations, investments of EUR 30 million are required. There is a need of establishing reference laboratories that deliver reference tests within the EAEU.

#### **Recommendations (10):**

- Develop a generalized strategy to enhance the technical characteristics of laboratory infrastructure in EAEU member states for testing agricultural commodities based on international methods.

- EAEU member states are to take necessary steps to expand the technical competence of laboratory infrastructure for testing agricultural commodities.

# ANNEX 1. Terms used in the Report

The Report contains a number of notions that have the meaning below:

**Accreditation:** official recognition by accreditation body of the competence of a compliance assessment body (certification body, testing laboratory) for the fulfillment of works in a certain area of compliance assessment;

**Audit of foreign official inspection system:** procedure used to identify foreign official inspection system ability to ensure the safety of commodities, subject to veterinary control, which is at least equivalent to the generalized veterinary requirements;

**Veterinary (veterinary and sanitary) measures:** mandatory requirements and procedures, applied for the purposes of preventing the diseases of animals and protecting population from diseases that are common for animals and humans, due to the appearance of risks, including in case of their transport or spread by animals, with feed, raw materials and products of animal origin, as well as by transportation vehicles that carry them, within the EAEU customs territory;

**Veterinary control (inspection):** activities carried out by the competent veterinary authorities aimed at the prevention of entry and spread of contagious animal disease agents, including diseases that are common for human and animals, and of commodities non-compliant with the generalized veterinary requirements, as well as prevention, identification and elimination of the violations of international treaties and instruments requirements that form the EAEU Law and the veterinary legislation of EAEU member states;

**Veterinary certificate:** a document issued by a competent veterinary authority for commodities that are subject to veterinary control that are to be moved (transported) and that verifies their safety in veterinary and sanitary terms and (or) safety of the administrative territories of such commodities manufacturing location from contagious animal diseases, including those that are common for humans and animals;

**Release of products for circulation:** delivery or import of products for the purposes of distributing those on the EAEU territory in the course of commercial activities whether on paid or unpaid basis;

**Harmonization** - the establishment, recognition and application of common sanitary and phytosanitary measures by different Members (WTO SPS Agreement);

**State control (inspection) of compliance with EAEU technical regulations requirements:** activities carried out by the competent authorities of member states aimed at the prevention, identification and elimination of the violations of EAEU technical regulations requirements;

**State registration:** assessment form of technical regulation items compliance with the EAEU technical regulations requirements, carried out by a competent authority of a member-state;

**Compliance declaration:** a document used by applicant to verify the compliance of commodities released in circulation with the EAEU technical regulations requirements;

**Compliance declaration:** a mandatory verification form of the compliance of commodities released in circulation with the EAEU technical regulations requirements;

**EAEU conformity mark:** a mark used to inform the purchasers and consumers on the compliance of the products released in circulation with the EAEU technical regulations requirements;

Products identification - procedure of referring the products to the area of CU technical regulations application and identification of products compliance with the technical documentation for such products;

**Generalized veterinary (veterinary and sanitary) requirements:** requirements applicable to regulated commodities, their circulation and items subject to veterinary control;

**Generalized quarantine phytosanitary requirements:** requirements applicable to quarantineable products subject to quarantine phytosanitary control at the EAEU customs border and on the EAEU customs territory, its circulation and quarantineable items;

**Generalized plants quarantine rules and norms:** rules, procedures, instructions, methods of quarantine phytosanitary examinations, screening methods applicable to quarantineable products subject to quarantine phytosanitary control at the EAEU customs border and on the EAEU customs territory, identification of quarantine items, laboratory research and tests, disinfection and other important activities, carried out by competent plants quarantine authorities;

**Plants quarantine:** a legal regime contemplating the system of measures for plants and vegetable products protection from quarantine items on the EAEU customs territory;

**Inter-country standard:** a regional standard adopted by the CIS Intergovernmental Council for Standardization, Metrology and Certification;

**International standard:** a standard adopted by the international standardization organization ;

**National standard:** a standard adopted by the standardization authority of EAEU member-state;

**Technical regulation item:** products or products and design (including research), production, construction, installation, setup, operation, storage, transportation, sale and disposal processes, related to requirements applicable to products;

***Mandatory compliance verification:*** documentary evidence of the compliance of products and design (including research), production, construction, installation, setup, operation, storage, transportation, sale and disposal processes with the EAEU technical regulations requirements;

***Accreditation authority:*** an authority authorized to hold accreditation in accordance with the laws of EAEU member state;

***Compliance assessment:*** direct or indirect identification of compliance with the requirements applicable to a technical regulation item;

***Quarantineable products (quarantineable freight, quarantineable materials, quarantineable commodities):*** plants, products of vegetable origin, cargo, soil, organisms, materials, containers, packaging, included in the list of quarantineable products subject to quarantine phytosanitary control at the EAEU customs border and at the EAEU customs territory, and moved through the EAEU customs border and through the EAEU customs territory;

***Regulated commodities:*** commodities, included in the general list of commodities subject to veterinary control (inspection);

***Permit for import or transit of commodities subject to veterinary control:*** a document that determines the procedure and conditions applicable to the use of commodities subject to veterinary control based on the epizootic situation in the exporting countries at the time of the import and transit of the commodities subject to veterinary control issued by an officer of the competent veterinary authority authorized in accordance with the laws of the EAEU member states;

***Regional standard:*** standard adopted by the regional standardization organization;

***State registration certificate:*** a document that verifies the compliance of technical regulation item with the EAEU technical regulations requirements;

***Sanitary, veterinary and sanitary and quarantine phytosanitary measures:*** mandatory sanitary, veterinary and sanitary and quarantine phytosanitary requirements and procedures;

***Sanitary and phytosanitary measures:*** all the relevant laws, decrees, rules, requirements and procedures including, *inter alia*, end product criteria; processes and production methods; testing, inspection, certification and approval procedures; quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and packaging and labeling requirements directly related to food safety (WTO SPS Agreement);

***Sanitary measures:*** mandatory requirements and procedures, including the requirements applicable to end products, methods of processing, manufacturing, transportation, storage and disposal, sampling procedure, methods of research (testing), risk assessment, state registration, requirements to marking and package, directly aimed at ensuring products safety with a view to protect human life and health;

***Standard:*** a document that establishes products criteria, rules and characteristics of design process (including research), manufacturing, construction, installation, setup, operation, storage, transportation, sale and disposal, fulfillment of works and provision of services, research (testing) and measurements rules and methods, sampling rules, requirements applicable to terminology, brands, packaging, marking or labeling and the rules of their application, for the purposes of multiple use;

***EAEU technical regulations:*** document, adopted by the Eurasian Economic Commission and establishing requirements to technical regulation items binding on the entire EAEU territory;

***Technical regulation:*** legal regulation of relations pertaining to the establishment, application and enforcement of mandatory requirements to products or products and design (including research), production, construction, installation, setup, operation, storage, transportation, sale and disposal processes related to requirements applicable to products, as well as the legal regulation of relations pertaining to compliance assessment;

***Competent veterinary authorities:*** state authorities and institutions of member states, carrying out veterinary activities;

Competent sanitary and epidemiological safety authorities – state authorities and institutions of EAEU member states carrying out sanitary and epidemiological safety assurance activities in accordance with the laws of member states and instruments of the Eurasian Economic Commission;

***Competent plants quarantine authorities:*** national quarantine and plant protection organizations;

***Phytosanitary measures:*** mandatory requirements, rules and procedures, applied for the purposes of the protection of the EAEU customs territory from the entry and spread of quarantineable items and reduction of losses caused by them, as well for the elimination of impediments to international trade in quarantineable products;

***Phytosanitary control:*** activities of competent plant quarantine authorities aimed at the identification of quarantine items, identification of quarantine phytosanitary conditions of quarantineable products, fulfillment of international obligations and compliance with the laws of EAEU member states pertaining to plant quarantine;

***Phytosanitary control post:*** plants quarantine post established at the checkpoints at the CU customs border and in other places in accordance with the laws of member states;

***Phytosanitary certificate:*** international document that accompanies quarantineable products and that is issued by the competent plant quarantine authority of exporting (re-exporting) country in the form, established by the International Plant Protection Convention dated 6 December 1951 and certifying that quarantineable products comply with the phytosanitary requirements of importing country.

# ANNEX 2

**Assessment Table**  
**of EAEU SPS measures and technical regulation compliance with WTO provisions**

No.	EAEU laws	Problem	WTO Agreements principles	How to align EAEU laws with WTO principles
<b>SPS measures</b>				
1.	<p>EAEU Agreement, article 56: <i>"Sanitary, veterinary and sanitary and phytosanitary quarantine measures applied within the EAEU shall be based on <b>international and regional standards, guidelines and (or) recommendations</b> except for the cases when, based on <b>appropriate scientific justification</b>, sanitary, veterinary and sanitary and phytosanitary quarantine measures that ensure a higher level of sanitary, veterinary and sanitary and phytosanitary quarantine protection than measures based on relevant international and regional standards, guidelines and (or) recommendations are applied".</i></p>	<p>1. The EAEU Agreement is consistent with the WTO SPS Agreement</p> <p>2. However, there is deviation from these principles. For instance, more rigorous EAEU requirements applicable to tetracycline content in the products of animal origin as compared with international standards are adopted without sufficient scientific justification.</p> <p>3. According to Rosselkhoznadzor, harmonization rate of sanitary requirements established by the EAEU technical regulations with the international standards of Codex Alimentarius constitutes approximately 40 percent. Generally, the EAEU technical regulations requirements are either less rigorous than the relevant international standards or are not</p>	<p>Articles 2, 3 of the WTO SPS Agreement:</p> <p><i>1. 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 <b>scientific principles and is not maintained without sufficient scientific evidence, except as provided for in paragraph 7 of Article 5.</b></i></p> <p><i>2. To harmonize sanitary and phytosanitary measures on as wide a basis as possible, Members shall base their sanitary or phytosanitary measures on <b>international standards, guidelines or recommendations</b>, where they exist, except as otherwise provided for in this Agreement, and in particular in paragraph 3</i></p> <p><i>3. Members may introduce or maintain</i></p>	<p>1. Align the EAEU technical regulations for food products with the international standards, where more rigorous requirements are established without scientific justification as compared with the international ones.</p> <p>2. Ensure regular inventory of the EEC legislation pertaining to SPS measures and technical regulation in order to assess their consistency with international standards and their further harmonization.</p>

		regulated.		
1.1.	1. The CUC Decision dated 7 April 2011 No. 625 <i>"On harmonization of the CU SPS legislation with international standards"</i> .	Based on the content of this CUC Decision, SPS measures applied in the EAEU will be aligned with international standards based on the written statements from non-member countries on inconsistency of such measures with the international standards. It evidences uncertainty that regular work is fulfilled for harmonization with international standards upon the application of SPS measures.	<i>sanitary or phytosanitary 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, if there is a scientific justification.</i>	
2.	The EAEU Agreement, article 56: <i>"Coordinated policy is implemented through joint development, adoption and implementation of international agreement and acts of the Commission by the member States in the field of application of sanitary, veterinary and sanitary and phytosanitary quarantine measures"</i> .	Each EAEU state reserves the right to develop additional SPS requirements and procedures in certain cases, which imposes restrictions for commodities import and circulation in EAEU market due to the lack of proper cooperation in their introduction and application.	Preamble of the WTO SPS Agreement:  <i>Members desiring the establishment of a multilateral framework of rules and disciplines to guide the development, adoption and enforcement of sanitary and phytosanitary measures in order to minimize their negative effects on trade.</i>	The EEC should develop and approve "Procedure of <b>temporary</b> SPS measures introduction and interactions between the competent authorities of EAEU members states in the introduction thereof" specifying that additional SPS requirements are temporary SPS measures.
3.	The EAEU Agreement does not contain the <b>principle of risk assessment</b> for SPS measures introduction, but it is specified in the CUC (EEC) regulations and national laws.	1. No structured risk assessment methods for the introduction and development of SPS measures in accordance with the international documents have yet been adopted in the EAEU.	Article 5 of the WTO SPS Agreement:  <i>Members shall ensure that their sanitary or phytosanitary measures are based on an assessment, as appropriate to the circumstances, of the risks to human, animal or plant life or health, taking into account risk assessment techniques developed by the relevant international organizations.</i>	The EAEU is to develop risk assessment methods for the introduction of SPS measures, based on the documents of international organizations.
3.1.	Pursuant to the CUC Decision dated 18 October 2011 No. 835 <i>CU member states must ensure that SPS measures are based on the assessment of the relevant risks to human, animal or plant life and health, subject to risk assessment methods, developed by the</i>			

	<i>relevant international organizations.</i>			
3.2.	<p>This principle is secured in the Russian Federation by obligations assumed in its accession to the WTO.</p> <p>In Kazakhstan this principle is stipulated in the Law "On veterinary" (article 26.1) and "On plants quarantine" (article 7).</p> <p>In Belarus the application of mandatory risk assessment principle forms an integral part of SPS measures scientific justification.</p>			
4.	<p>The EAEU Agreement, Art. 56:  <i>"Each member State has the right to develop and implement temporary sanitary-epidemiological, veterinary and sanitary and phytosanitary quarantine measures"</i>.</p>	<p>1. In the EAEU there have been cases of unjustified SPS measures enforcement.</p>	<p>Cl. 7 article 3 WTO SPS Agreement:   <i>In cases where relevant scientific evidence is insufficient, a Member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information, including that from the relevant international organizations as well as from sanitary or phytosanitary measures applied by other Members.</i></p>	<p>The EEC is to develop and approve <i>"Procedures of the interactions between the competent authorities of EAEU member states for the enforcement of <b>temporary</b> SPS measures.</i></p>
5.	<p>The EAEU Agreement contains no <b>non-discrimination principle.</b></p>	<p>There have been the cases of discrimination in the EAEU. Example. The CUC Decision dated 18 October 2011 No. 833 recognizes the veterinary control items inspection systems established by the authorities of Belarus, Kazakhstan and Russia as <i>a priori</i> equivalent, while new EAEU members will have to prove it through the audit.</p>	<p>Cl. 3 article 2 of the WTO SPS Agreement:   <i>Members shall ensure that their sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail, including between their own territory and that of other Members.</i></p>	<p>1. Take into account the non-discrimination principle in the EAEU international treaty <i>"On the procedure and conditions applicable to the elimination of technical barriers to mutual trade with non-member countries"</i> that is being developed.</p> <p>3. Cancel the CUC Decision dated 18 October 2011 No. 833 "On the equivalence of veterinary control (inspection) inspection systems".</p>
5.1.	<p>The CUC Decision dated 18 October 2011 No. 833 "On the equivalence of veterinary control (inspection) systems".</p>			
5.2.	<p>The discrimination principle in the national laws is as follows:</p> <p>1. In the Russian Federation this principle is secured with the obligations assumed in its accession to the WTO, as well as established by the Federal Law "On the foundations of the</p>			

	<p>state regulation of foreign trade activities".</p> <p>2. In Kazakhstan, cl. 3 article 17 of the Law "On technical regulation", establishes non-discrimination principle in technical regulation, but does not cover SPS measures.</p> <p>3. In Belarus the non-discrimination principle in relation to SPS measures is not directly stated in the relevant legislation.</p>			
6.	The EAEU Agreement contains no <b>equivalence principles</b> with regard to SPS measures, but it is specified in the number of CUC (EEC) regulations.	<p>1. There are no bilateral and multilateral agreements with non-member countries.</p> <p>2. As for phytosanitary measures there is almost no mechanism for the implementation of this principle, which must stem out of ISPM No.24 "Guidelines for the determination and recognition of equivalence of phytosanitary measures".</p>	<p>Article 4 of the WTO SPS Agreement:</p> <p>Cl. 1. <i>Members shall accept the sanitary or phytosanitary measures of other Members as <b>equivalent</b>, even if these measures differ from their own or from those used by other Members trading in the same product, if the exporting Member objectively demonstrates to the importing Member that its measures achieve the importing Member's appropriate level of sanitary or phytosanitary protection</i></p> <p>Cl. 2: <i>Members shall, upon request, enter into consultations with the aim of achieving <b>bilateral and multilateral agreements on recognition of the equivalence of specified sanitary or phytosanitary measures.</b></i></p>	<p>1. Develop the EAEU international treaty "On the procedure applicable to the execution of agreements with non-member countries on the recognition of SPS measures equivalence".</p> <p>2. Cancel the CUC Decision dated 18 October 2011 No. 833 "On the equivalence of veterinary control (inspection) systems".</p> <p>3. Develop EEC guidelines on the equivalence determination and recognition of phytosanitary measures, applied in non-member countries.</p>
6.1.	The CUC Decision dated 18 October 2011 No. 835 "On the equivalence of sanitary, veterinary and phytosanitary measures and on risk assessment". The main provision of this Decision: " <b><i>CU member-states must recognize the SPS measures of other states as equivalent, even if such measures are different from those of the CU and (or) CU member states, provided that the exporting state can reasonably prove that its measures enable to reach the appropriate sanitary and (or) veterinary safety of the CU or phytosanitary safety of the CU member country.</i></b> "			
6.2.	Statute on a generalized procedure for the joint inspections of veterinary control items and taking of commodity samples, approved			

	by the Decision of the EEC Council dated 9 October 2014 No. 94. This Statute approves <i>the Guidelines for inspectors for the determination of the equivalence of veterinary measures applied in non-member countries for the inspections of items subject to veterinary control and audit of official control systems of non-member countries.</i>			
7.	The EAEU Agreement contains no <b>regionalization principles</b> with regard to SPS measures, but it is specified in the number of CUC (EEC) regulations.	There are no EAEU instructions on the implementation of this principle in the relevant areas, based on international standards, such as international standards on phytosanitary measures ISPM No. 4, No.8, No. 10 and No. 22; chapter 4.3. of the IEB Terrestrial Animal Health Code.	Article 6 of the WTO SPS Agreement:  <i>Members shall ensure that their sanitary or phytosanitary measures are adapted to the sanitary or phytosanitary characteristics of the area — whether all of a country, part of a country, or all or parts of several countries — from which the product originated and to which the product is destined.</i>  <i>«Members shall, in particular, recognize the concepts of pest — or disease-free areas and areas of low pest or disease prevalence.</i>	The EEC is to develop and adopt guidelines and instructions on the application of regionalization principle pertaining to SPS measures based on international IEB and ISPM standards.
7.1.	In accordance with cl. 13 of the CUC Decision dated 18 October 2011 No. 835 "On the equivalence of sanitary, veterinary and phytosanitary measures and risk assessment", <i>the CU (EAEU) member states must take into account pest- and disease free areas in their risk assessment.</i>			
7.2.	In accordance with cl. 10 of the Statute on a generalized procedure for the joint inspections of veterinary control items and taking of commodity samples, approved by the Decision of the EEC Council dated 9 October 2014 No. 94, the audit of other countries' official inspection systems requires the application of regionalization principle (zoning).			
8.	The EAEU Agreement contains no <b>transparency principles</b> with regard to SPS measures, but it is specified in the number of	1. Within the WTO the transparency principle does not cover the EAEU, but rather it covers its member states that	Article 7 of the WTO SPS Agreement.  <i>Members shall notify changes in their</i>	1. Establish single EEC TBT/SPS information center.

	the CUC (EEC) regulations.	are the members of the WTO.	<i>sanitary or phytosanitary measures and shall provide information on their sanitary or phytosanitary measures in accordance with the provisions of Annex B.</i>	2. Develop guidelines/reference books on the access of agricultural and food commodities from non-member countries to EAEU member countries describing the aspects of SPS measures and technical regulation.
8.1.	In accordance with the Decision of the EEC Board dated 5 March 2013 No. 31 " On ensuring transparency of EEC SPS instruments adoption process ", <i>the drafts of EEC SPS decisions should be published on the official EEC web-site for the provision of feedback within 60 calendar days.</i>	2. There are problems with ensuring transparency of national legislation, which is not cancelled due to the adoption of the relevant EEC instruments or that constitute additional requirements and procedures and it creates serious problems for the import of commodities to the EAEU and their circulation on the national territories. Venders have no complete view of the commodities access conditions to the EAEU markets.	<i>Extracts from Annex B:</i> <i>1. Members shall ensure that all sanitary and phytosanitary regulations which have been adopted are published promptly in such a manner as to enable interested Members to become acquainted with them.</i> <i>2. Each Member shall ensure that one enquiry point exists which is responsible for the provision of answers to all reasonable questions from interested Members as well as for the provision of relevant documents</i>	
8.2.	In EAEU member states this principle is enforced as follows:  1. This principle is secured in the Russian Federation by obligations assumed in its accession to the WTO. WTO/TBT Russian Information Center has been established and is operational.  2. In Kazakhstan, the single TBT/SPS Information Center has been established under the Committee for Technical Regulation and Metrology of the Ministry of Industry and New Technology of the Republic of Kazakhstan. Due to the forthcoming accession of Kazakhstan to the World Trade Organization, the Decree of the Government of the Republic of Kazakhstan dated 11 July 2005 No. 718 approves the "Rules for the establishment and operation of the Technical Barriers to Trade, Sanitary and Phytosanitary Measures Information Center ".  3. In Belarus the National TBT and SPS Center has been established under the			

	Gosstandart of the Republic of Belarus, which in the future is expected to assume the functions of ensuring transparency in the WTO.			
<b>Technical regulation</b>				
9.	The EAEU Agreement specifies <b>the principle of the EAEU technical regulations consistency with the economic development of its member states, as well as scientific and technical development</b> . This principle is not at variance with the WTO TBT Agreement.	1. There are cases when technical regulations mandatory requirements are introduced with no account of the EAEU member states preparedness to enforce them, comply with them and effectuate their due assessment. The example on the lack of preparedness of livestock breeding sector to comply with the mandatory requirements on slaughtering animals in specialized facilities only is of inter-country nature, but may affect the international trade. Another example. The CU technical regulations on food products of animal origin specify the possibility to assign dioxine content test based on "assumption". The reason for using such unclear wording is poor laboratory infrastructure.	Preamble of the WTO TBT Agreement:  <i>No country should be prevented from taking measures necessary to ensure the quality of its exports, or for the protection of human, animal or plant life or health, of the environment, or for the prevention of deceptive practices, at the levels it considers <b>appropriate</b></i>	Develop a generalized strategy to enhance the technical characteristics of laboratory infrastructure in EAEU member states for testing agricultural commodities based on international methods.

10.	The EAEU Agreement establishes the <b>principle of mutual recognition of compliance assessment bodies accreditation in the national accreditation systems of EAEU member states and prevention of their competition.</b>	<p>1. This principle is in force only between the EAEU member states</p> <p>2. Upon its accession to the WTO, Russia announced its intent to recognize accreditation in non-member countries, only after the Federal accreditation service joins ILAC. It should be noted that it is possible to recognize the accreditation by the bodies that are the members of international organizations without the need to join such organizations. Therefore, Kazakhstan, being ILAC member, cannot refer to the ILAC Agreement on mutual recognition, as Belarus and Russia are not its members.</p> <p>3. The results of laboratory testing, held in non-member countries, which are the members of ILAC cannot serve as a basis for the acceptance of the CU compliance declaration.</p>	<p>Article 6 of the WTO TBT Agreement.</p> <p><i>Members shall ensure, whenever possible, that results of conformity assessment procedures in other Members are accepted, even when those procedures differ from their own, provided they are satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to their own procedures.</i></p> <p><i>Members are encouraged to permit participation of conformity assessment bodies located in the territories of other Members in their conformity assessment procedures under conditions no less favourable than those accorded to bodies located within their territory or the territory of any other country.</i></p>	<p>1. In the development of the EAEU draft international treaty on the procedure and conditions for the elimination of technical barriers to mutual trade with non-member countries, to rely on articles 2 and 6 of the WTO TBT Agreement.</p> <p>2. Amend the EEC legislation pertaining to the provision of rights to the laboratories of non-member countries that have ILAC accreditation, in order to be included in the universal register of EAEU compliance assessment bodies.</p>
11.	The EEC Agreement specifies the <b>principle of no competition restriction in compliance assessment.</b>	Pursuant to the EAEU agreement, mandatory compliance assessment with the EAEU technical regulations is effectuated by the bodies specified in the EAEU universal registry. i.e. the certification bodies and testing laboratories of non-member countries may not be included in the universal registry. In this case there is no sense	<p>Cl.6.4. of the WTO TBT Agreement:</p> <p><i>Members are encouraged to permit participation of conformity assessment bodies located in the territories of other Members in their conformity assessment procedures under conditions no less favourable than those accorded to bodies located within their territory or the</i></p>	<p>1. In the development of the EAEU draft framework international treaty on the procedure and conditions applicable to the elimination of technical barriers to mutual trade with non-member countries, to rely on articles 6 of the WTO TBT Agreement.</p> <p>2. Amend the EEC legislation pertaining</p>
11.1.	Pursuant to the Statute on the procedure for the inclusion of certification bodies and testing laboratories to the EAEU universal registry of compliance assessment bodies, as well as its establishment and maintenance,			

	approved by the CUC Decision dated 18 June 2010 No. 319, certification bodies and testing laboratories may be included thereto provided that they are the legal entities of EAEU member states.	in discussing competition in terms of international approaches. It is also at variance with cl. 6.4. of the WTO TBT Agreement.	<i>territory of any other country.</i>	to the provision of rights to the laboratories of non-member countries that have ILAC accreditation, in order to be included in the universal register of EAEU compliance assessment bodies.
12.	The EAEU Agreement establishes the <b>principle of voluntary standards application</b> . This principle is not at variance with the WTO TBT Agreement	1. Pursuant to the EAEU Agreement <i>in order to fulfill the EEC technical performance requirements the EEC approves the list of standards that may be applied voluntarily. If such standards included in such list are not applied, the compliance assessment is effectuated based on <b>risk analysis</b></i> . However, the absence of documented risk analysis methods makes such standards mandatory.	Annex 1 of the WTO TBT Agreement contains the following definition:  <i>Standard - a document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, <b>with which compliance is not mandatory</b>.</i>	1. Develop and adopt the Procedure of compliance assessment based on risk analysis in the cases, when standards recommended by the EEC for compliance with EAEU technical regulations cannot be applied.
12.1.	In accordance with the national laws of the EAEU member states, the application of standards is voluntary.	2. Pursuant to the EAEU Agreement, for products testing against the technical regulations requirements the EEC approves the list of standards. i.e. the application of the standards included in this List only, with prohibition to use any other standards for similar testing methods actually makes such standards mandatory. It may be an arbitrary obstacle to the application of international standards that are not specified in this list.  3. In Belarus the state standard is mandatory if there is a reference thereto in the technical regulations.		2. Amend the EAEU regulations in terms of making it possible to directly apply the international standards that are not a part of the List of standards, containing the research (test) rules and methods, necessary for the application and fulfillment of EAEU technical regulations requirements and compliance assessment of technical regulation items.

13.	The EAEU Agreements <b>establishes the principle of technical regulations and interstate standards harmonization with international and regional standards.</b>	The rate of harmonization of EAEU technical regulations with the international standards of Codex Alimentarius is estimated at 40 percent, i.e. the harmonization rate is low.	Cl.2.4. of the WTO TBT Agreement:  <i>Where technical regulations are required and relevant <b>international standards</b> exist or their completion is imminent, Members shall use <u>them, or the relevant parts of them, as a basis for their technical regulations</u> except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfillment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.</i>	Ensure continuous and regular inventory of EAEU technical regulations with a purpose of their assessment for consistency with international standards and further harmonization.
14.	The EAEU Agreement and EEC instruments contain <b>no principles for the application of national regime and non-discrimination.</b>	There are cases of deviation from non-discrimination principle. The manufacturers from non-member countries are not entitled to accept the CU uniform compliance declarations, which is a condition for their access to the EAEU customs territory.	Cl.2.1. of the WTO TBT Agreement:  <i>Members shall ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country.</i>	Amend the EEC instruments pertaining to granting the right to manufacturers from non-member countries to independently accept the CU uniform compliance declaration.
14.1	These principles are as follows in the national laws:  1. In the Russian Federation these principles are secured with the obligations assumed in its accession to the WTO. Pursuant to article 29 of the Law of the "On foundation of state regulation of foreign trade activities" and article 7 of the Federal Law "On technical regulation" <i>technical regulation, including SPS measures and mandatory compliance assessment procedures, should be applied in a similar manner and to equal extent, regardless of the country and the place of origin of products.</i>  2. In Kazakhstan these are specified in cl. 3			

	<p>article 17 of the Law of the Republic of Kazakhstan "On technical regulations".</p> <p>3. In Belarus, pursuant to article 17 of the Law "On technical measurements and standardization" the technical regulations are applied similarly and equally regardless of the country and (or) place of origin of products.</p>			
15.	<p><b>The principle of recognizing the equivalence of the technical regulations of other WTO member countries</b> is of non-binding nature. The EAEU Agreement contains no such principle.</p> <p>In accordance with the Statute on the procedure for the development, adoption, amendment and cancellation of the CU technical regulations, approved by the Decision of the EEC Council dated 20 June 2012 No. 48, <i>regional documents, national technical regulations of other countries may be used as a basis for draft technical regulations.</i></p>		<p>Cl.2.7. of the WTO TBT Agreement:</p> <p><i>Members shall give positive consideration to accepting as equivalent technical regulations of other Members, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfill the objectives of their own regulations.</i></p>	<p>In the development of the EAEU draft international treaty on the procedure and conditions applicable to the elimination of technical barriers to mutual trade with non-member countries, to rely on cl. 2.7 of the WTO TBT Agreement.</p>
16.	<p><b>Transparency principle</b> is not specified in the EAEU Agreement. In the EAEU, transparency matters are specified in the Statute on the procedure applicable to the development, adoption, amendment and cancellation of the CU technical regulations, approved by the Decision of the EEC Council dated 20 June 2012 No. 48.</p>	<p>1. In the WTO the transparency principle does not cover the EAEU, but rather it covers its member states that are the members of the WTO.</p> <p>2. There are problems with ensuring transparency of national legislation,</p>	<p>Cl. 2.9. and 2.10. of the WTO TBT Agreement in their entirety.</p> <p>Cl.2.11. 2.11.:</p> <p><i>Members shall ensure that all technical regulations which have been adopted are published promptly or otherwise made</i></p>	<p>1. Establish unified EEC TBT/SPS information center.</p> <p>2. Develop guidelines/reference books on the access of agricultural and food commodities from non-member countries to EAEU member countries describing the aspects of SPS measures</p>

		which is not cancelled due to the adoption of the relevant EEC instruments or that constitute additional requirements and procedures and it creates serious problems with the import of commodities to the EAEU and their circulation on the national territories. Venders have no complete view of the commodities access conditions to EAEU markets.	<i>available in such a manner as to enable interested parties in other Members to become acquainted with them.</i>	and technical regulation.
16.1.	<p>In EAEU member states this principle is enforced as follows:</p> <p>1. This principle is secured in the Russian Federation by its obligations assumed in its accession to the WTO. WTO/TBT Russian Information Center has been established and is operational.</p> <p>2. In Kazakhstan, the single TBT/SPS Information Center has been established under the Committee for Technical Regulation and Metrology of the Ministry of Industry and New Technology of the Republic of Kazakhstan. Due to the forthcoming accession of Kazakhstan to the World Trade Organization, the Decree of the Government of the Republic of Kazakhstan dated 11 July 2005 No. 718 approves the "Rules for the establishment and operation of the Technical Barriers to Trade, Sanitary and Phytosanitary Measures Information Center".</p> <p>3. In Belarus the National TBT and SPS Center has been established under the Gosstandart of the Republic of Belarus, which in the future is expected to assume the functions of ensuring transparency in WTO.</p>			

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