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SPS REGULATIONS AND ACCESS OF KYRGYZ GOODS TO THE CUSTOMS UNION

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Bishkek

April 2011

This report was prepared for AECOM International Development, Inc., for review by the United States Agency for International Development (USAID).

USAID REGIONAL TRADE LIBERALIZATION AND CUSTOMS PROJECT (RTLCL)

Kazakhstan, Kyrgyzstan, Tajikistan

USAID Contract No.: 176-C-00-07-00011-08

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This publication is made possible by the support of the American people through the United States Agency for International Development (USAID). The content is the sole responsibility of AECOM International Development and does not necessarily reflect the views of USAID or the United States' Government.

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Introduction

Compliance with sanitary, veterinary and phytosanitary (SPS) regulations is an increasingly important requirement for exports of Kyrgyz food products to the developing Customs Union (CU) of Russia, Belarus and Kazakhstan. The CU members are developing unified SPS regulations that will govern, apparently on a non-discriminatory basis, both domestic and imported products in the CU. Kyrgyz products must comply with these regulations if they are to continue to reach their traditional markets.

The objective of this study is to analyze the current status of SPS regulations in the CU and the readiness of the Kyrgyz government and the private sector to meet these requirements. The development of SPS regulations in the CU is a continuing process, carried on by the Coordination Committee on Technical Regulation and SPS Measures (“CU Coordination Committee”), under the CU Commission, but within the context of the Eurasian Economic Community (EurAsEC), of which Kyrgyzstan is a member. This allows Kyrgyzstan an opportunity to observe the development process closely and perhaps to influence the result to some degree. Because of this developing process, however, the conclusions of this study can be no more than a description of current status and are subject to change fairly rapidly.

PART I. GENERAL CONDITIONS of ACCESS OF GOODS TO THE CUSTOMS UNION

As of 1 March 2011, over 20 normative documents concerning SPS technical regulations have been adopted by the Customs Union. The development of the common system of SPS measures may be divided into two periods, divided by the enactment of the CU/EurAsEC Technical Regulations.¹

1.1 Transition Period

A provisional legal environment with respect to SPS measures in the CU was created by adoption of the following agreements among the CU members on December 11, 2009:

- Agreement on Circulation of Goods Subject to Compulsory Conformity Assessment (Confirmation) on the Customs Territory of the Customs Union (“Agreement on Circulation of Goods”);
- Agreement on Mutual Recognition of Accreditation of Certification Bodies (Conformity Assessment and Testing Laboratories) Which are Conducting Conformity Assessment Activities (“Agreement on Mutual Recognition);
- CU Agreement on Sanitary Measures;
- CU Agreement on Veterinary and Sanitary Measures;
- CU Agreement on Plant Quarantine Measures.

These agreements are based on provisions of the EurAsEC Agreement on Conducting Coordinated Policy in the Area of Technical Regulations for Sanitary and Phytosanitary Measures of January 25, 2008. To implement these agreements, the CU Commission approved a number of normative acts, the basic provisions of which will be described in details in subsections below.²

1.1.1 Technical Regulations

To implement the Agreement on Circulation of Goods and the Agreement on Mutual Recognition, the following documents were approved by Decision No. 319, dated June 18, 2010, of the CU Coordination Committee:

- Common List of Goods Subject to Compulsory Conformity Assessment within the CU Accompanied by Issuance of Uniform Documents (“CU Common List”) – a list of goods for which the requirements are the same in all three CU members;
- Common Forms of Certificate and Declaration of Conformity;
- Regulation on Procedure for Import of Products (Goods) Subject to Compulsory Conformity Assessment;
- Regulation on Procedure for Drawing Up and Maintaining the Common Register of Certificates of Conformity and Registered Declarations of Conformity Completed under the Common Form;
- Regulation on Procedure for Inclusion of Certification Bodies and Testing Laboratories (Centers) into the CU Common Register of Certification Bodies and Testing Laboratories (Centers) and Procedure for Drawing up and Maintaining the Register.

Lists of Goods Subject to Conformity Assessment, and Different Approaches

There are several different lists of goods subject to mandatory conformity assessment in the CU, and different approaches to conformity assessment may be used:

¹ Prior to enactment of new CU/EurAsEC Technical Regulations, CU legislation and national legislation of the CU member-countries are equally valid in the CU member-countries.

² References to the CU acts in this study are based on the texts as of 1 March 2011. Because of rapid developments in this area, citations herein should not be assumed to be currently accurate without further checking.

CU Common List. The CU Common List comprises **205** commodity items, of which **154** items are subject to simple declaration of conformity, and **51** items are subject to certification. These goods must conform to applicable standards and to Common Sanitary and Epidemiological and Hygienic Requirements to Goods Subject to Sanitary and Epidemiological Supervision (Control)³, and Common Veterinary and Sanitary Requirements to Goods Subject to Veterinary Control (Supervision).⁴

The 538 standards to which goods on the CU Common List must conform include:

- Interstate standards (GOST CIS) - 314;
- Russian national standards (GOST R) – 141;
- Belarusian national standards (ST B) – 77;
- Kazakh national standards (ST RK) – 6.

By agreements with the CU members, Kyrgyzstan may directly apply directly the national standards of these countries as Kyrgyz national standards. As of March 1, 2011, Kyrgyzstan has approved application of 336 of the GOST CIS and GOST R standards. Kyrgyzstan has not adopted any national standards from Belarus or Kazakhstan.

Russia: Current Russian and CU legislation provides for a number of regimes for compulsory conformity of goods. Goods may be:

- Subject to Technical Regulations enacted in Russia, of which 13 were in force as of 11 April 2011, with 11 more in preparation;
- Goods on the Common Lists of Goods Subject to Compulsory Certification and Declaration of Conformity, approved by the Russian Government's Resolution No. 982, dated December 1, 2009; or
- Goods on the CU Common List.

Certification Bodies in Russian may be either:

- Certification bodies accredited under the procedure established in Russia, which issue Certificates of Conformity and register Declarations of Conformity in accordance with the national legislation of Russia;
- Certification bodies included in the CU Common Register of Certification Bodies and Testing Laboratories (Centers), which issue Certificates of Conformity and register Declarations of Conformity in the unified form adopted within the CU.

Four different **Operating Regimes** of mandatory conformity assessment may be employed:

- **Regime 1** is applied to goods in the List of Goods Subject to Compulsory Conformity Assessment, approved by the Russian Government's Resolution No. 982, dated December 1, 2009;
- **Regime 2** covers the goods with respect to which the Russian Federation's Technical Regulations are applied;
- **Regime 3** is applied to certain commodities for which the Russian Government introduced mandatory requirements, stated in the Technical Regulations of the CU member-countries or CU documents.⁵ Goods covered are those on the List of Goods Subject to Compulsory Conformity Assessment, the Technical Regulations of the RF,⁶ as well as by safety requirements for light industry goods. This is of particular interest to Kyrgyzstan with respect to conditions for clothing exports to the RF.
- **Regime 4** covers the goods on the CU Common List.

³ CU Commission Decision No. 299, 28 May 2010.

⁴ CU Commission Decision No. 317, 18 June 2010.

⁵ The Law of the RF "On Technical Regulation in the Russian Federation" establishes this regime as an alternative to be applied before enactment of corresponding Technical Regulations.

⁶ Decree No. 329 of the Ministry of Trade and Industry of the RF, (April 27, 2010).

Because of overlap of goods on different lists, producers may have a choice of the regime to be applied. Depending on the regime used, the conformity confirmation document may be:

- A Certificate of Conformity issued following the Rules for Certification System GOST R, (Declaration of Conformity adopted under the Procedure for Adoption and Registration of Declaration of Conformity, approved by the RF Government Resolution No. 766, dated July 7, 1999)
- A Certificate of Conformity or Declaration of Conformity issued or adopted in accordance with Rules established by respective Technical Regulations;⁷ with regard to the; *or*
- A Certificate of Conformity or Declaration of Conformity of the CU Common Form.

Kazakhstan: List of goods and services subject to mandatory certification and List of Goods Conformity of Which may be Confirmed by the Declaration of Conformity, approved by the RK's Government Resolution No.367, dated April 20, 2005. Some 73 Technical Regulations have been adopted for a number of products;

Belarus: List of Goods Subject to Compulsory Certification of Conformity and List of Goods Subject to Compulsory Declaration of Conformity, approved by Resolution No.60 of the State Standardization Committee of Belarus, December 16, 2008. Some 17 Technical Regulations have been adopted in Belarus for a number of products.

Significant technical barriers to trade in goods not on the CU Common List exist between Belarus, Kazakhstan and Russia. These barriers have emerged due to different approaches to the transition to international and European standards, and because of efforts to protect domestic producers. For example:

- Each country has its own required mark of conformity. Significant differences also exist between lists of goods subject to mandatory conformity assessment.
- Food products in Russia have been subject only to declaration of conformity since 14 February 2010, while Belarus and Kazakhstan still require mandatory certification of such goods.⁸

Summary of documentary confirmation of conformity assessment within the CU

1. For goods on the CU Common List, producers and importers may either:

- Obtain Certificate of Conformity under CU Common Form, which would be valid on the territories of all CU members, or
- Obtain Certificate of Conformity of the national system of a single country, which would be valid within that country;

2. For goods not on the CU Common List but subject to mandatory certification under national legislation, producers and importers must obtain a certificate of conformity under the national system, which would be valid only in that country.

3. For products on the CU Common List requiring only a declaration of conformity, producers within the CU may register a declaration of conformity with the national system, which would be valid only within that country, or register a declaration of conformity under the Common Form, which would be valid in all CU members. Registration of declarations of conformity under the Common Form is performed by the accredited bodies included in the Common Register of CU Certification Bodies and Testing Laboratories (Centers).

4. Importers of products from outside the CU must register a declaration of conformity under the national legislation of the country of destination, of which the importer must be a resident. A declaration of conformity under the CU Common Form will not be accepted for products from outside the CU.

⁷ RF Government Resolution No.1028, December 25, 2008.

⁸ V. Koreshkova, (Chairman of the State Standardization Committee of Belarus), "Trade Promotion without Barriers," in *Economy of Belarus 2010*.

5. For products subject to declaration of conformity under national legislation and not included in the CU Common List, producers of CU member-countries may register declarations of conformity as stipulated by such legislation, and circulate the goods throughout the CU.

The Common Register and Mutual Recognition

Only certification bodies included in the Common Register of CU Certification Bodies and Testing Laboratories (Centers) (“Common Register”) are allowed to issue certificates or register declarations of conformity under the CU Common Form, or to test samples for such purposes. As only legal entities within the CU may be on the Common Register, Kyrgyz certification bodies may not issue certificates or register declarations of conformity under the CU Common Form, nor may they test samples for such purposes.

The Common Register includes lists for each CU member country, which are maintained by the authorized bodies of each CU member. Certification bodies and testing laboratories must be accredited by the national accreditation systems and meet criteria set by CU regulations.⁹ CU members have agreed to mutual recognition of testing done and certificates or declarations of conformity issued by or registered by bodies on the Common Register.¹⁰ However, Kyrgyzstan has no agreement with the CU on mutual recognition of accreditation of bodies for conformity assessment and testing laboratories.

The principle of mutual recognition was also accepted more broadly within the CIS,¹¹ but with significant practical reservations. Under the CIS agreements, importing countries may require additional testing if the testing and certification of the exporting country does not fully meet the requirements of the importing country.¹² In particular, goods subject to national technical regulations in a CU member are not covered by the CIS agreements on mutual recognition. Given this situation and the generally low level of testing available in Kyrgyzstan, it is to be expected that Kyrgyz products will be subject to further testing for compliance when imported to CU members.

1.1.2 Sanitary Measures

To implement the CU Agreement on Sanitary Measures, the CU Commission Decision of 28 May 2010 approved the following CU normative and legal acts:

- Common List of Goods Subject to Sanitary and Epidemiological Supervision (Control) at the Customs Border and on the Customs Territory of the Customs Union (“Sanitary Common List”);
- Common Sanitary and Epidemiological and Hygienic Requirements for Goods Subject to Sanitary and Epidemiological Supervision (Control) (“CU Common Sanitary Requirements”);
- Regulation on Procedure for Conduct of State Sanitary and Epidemiological Supervision (Control) over Persons and Vehicles Crossing the Customs Border of the Customs Union, Controlled Goods Moved Across the CU Customs Border and on the CU Customs Territory (“Regulation on Sanitary and Epidemiological Supervision”); and
- Common Form of the Certificate of the State Registration Confirming Safety of Products (Goods).

⁹ Regulation on Procedure for Inclusion the CU Certification Bodies and Testing Laboratories (Centers) into the Common Register of CU Certification Bodies and Testing Laboratories (Centers), and Procedure for Drawing up and Maintaining this Register. Updated information on the Common Register is available at the CU Commission’s official website: www.tsouz.ru.

¹⁰ Agreement on Mutual Recognition of Accreditation of Certification Bodies (Conformity Assessment (Confirmation)) and Testing Laboratories (Centers) Performing Conformity Assessment Works.

¹¹ Agreement on Principles for Mutual Conduct and Recognition of Works on Certification by National Bodies for Standardization, Metrology and Certification of Countries-Participants to the Intergovernmental Agreement on Conduct of Coordinated Policy in the Area of Standardization, Metrology and Certification of CIS countries (dated March 13, 1992); Rules for Intergovernmental Standardization PMG (No. 36-2001), that is “The Procedure for Recognition of Certificates of Conformity in CIS country-participants”.

¹² PMG 36-2001, point 4.6.

The CU Common Sanitary Requirements establish the criteria for safety of goods on the Sanitary Common List, which are divided into 21 commodity chapters that include foods, garments, footwear, children's goods and other products. The CU Common Sanitary Requirements are in force throughout the CU for both domestic and imported goods.

Goods on the Sanitary Common List may be imported to the CU only at specific border crossing points with facilities for control. The list of such crossing points is available at the CU Commission's official website (www.tsouz.ru).

In accordance with the CU Agreement on Sanitary Measures, the import and circulation of controlled goods requires a document confirming conformity of goods to the Common Sanitary Requirements, issued by authorized bodies of the CU countries.¹³ Under the Regulation on Sanitary and Epidemiological Supervision, this document is the Certificate of State Registration required for goods in Part II of the Sanitary Common List, which includes 11 commodity groups.¹⁴ The Certificate of State Registration is issued based on laboratory testing by laboratories on the Common Register, which means that testing by Kyrgyz laboratories would not be acceptable. Although Kyrgyz producers could request a Certificate of State Registration based on testing by a CU body on the Common Register, the expense might be too much for a Kyrgyz SME, which would effectively prevent exporting legally to the CU, and provides an incentive for smuggling.

1.1.3 Veterinary Measures

To implement the CU Agreement on Veterinary and Sanitary Measures, CU Commission Decision No. 317 of 18 dated June 2010 approved the following normative acts:

- Common List of Goods Subject to Veterinary Control (supervision) ("Veterinary Common List");
- Common Veterinary (Veterinary and Sanitary) Requirements to Goods Subject to Veterinary Control (Supervision) (hereinafter referred to as ("Common Veterinary Requirements");
- Common Forms of Veterinary Certificates of the Customs Union;
- Regulation on a Common System of Veterinary Control at the Customs Border of the Customs Union and on the Customs Territory of the Customs Union ("Regulation on Common System of Veterinary Control");
- Regulation of a Common System of Joint Inspections of Sites and Sampling Products (Goods) Subject to Veterinary Control (Supervision) ("Regulation on Common System of Joint Inspections").

Kyrgyzstan and the CU members are parties to the CIS Agreement on Cooperation in the Area of Veterinary, dated March 12, 1993.¹⁵ However, imports of goods on the CU Veterinary Common List are now governed by the CU Agreement on Veterinary and Sanitary Measures and other CU veterinary-related documents. The main provisions of the CU normative acts on veterinary measures are:

Goods on the Veterinary Common List imported into the CU must meet the Common Veterinary Requirements. The Veterinary Common List includes 114 commodity items, of which 22 are foodstuffs that are subject to veterinary control with respect to epizootic well-being. Imports of goods on the Veterinary Common List require an Import Permission issued by the authorized

¹³ In Russia the authorized body is the Federal Service for Supervision and Protection of Consumers' Rights and Human Welfare (Rosпотребнадзор), in Belarus it is the Ministry of Health Care, and in Kazakhstan the Committee for State Sanitary and Epidemiological Supervision of the Ministry of Health.

¹⁴ These include foodstuffs derived from genetically engineered organisms, food products for children and pregnant and nursing women, dietary nutrition products, nutrition products for athletes, and organic products. Not all food products are subject to compulsory state registration in the CU, and not every piece of clothing products covered by the CU Common Sanitary Requirements, is subject to the state registration. Only children clothing should be registered with respect to the first stratum.

¹⁵ To implement this Agreement, the Interstate Council of CIS countries for Cooperation in the Area of Veterinary approved the Veterinary Requirements for import of controlled goods (April 4, 2000) and Common Rules for the State Veterinary Supervision at International and Interstate Movement of Animal Cargo (November 5, 2003).

body of the CU Member into which the goods are being imported.¹⁶ The Import Permission, valid for a year for a specified quantity, will be granted on the basis of the epizootic status of the place of their production or storage, and provided that the enterprises engaged into production, processing and storage of these goods are included in the Directory of Organizations and Individuals, Engaged in Production, Processing and Storage of Controlled Goods Imported into the Customs Union ("CU Directory of Enterprises").

Imports to Russia of Kyrgyz animals and animal products, fodder, and supplements have been prohibited since 2007, as a result lack of control by the Kyrgyz State Veterinary Service. In late 2009, officials of Rosselkhoznadzor made an inspection trip to evaluate the epizootic status in Kyrgyzstan and the work of State Veterinary Service, and concluded that:

- Information provided by the State Veterinary Service was inadequate and required reports to the OIE had not been made;
- There was no information on national programs to control animal diseases, no plan for anti-epizootic activities, no information on animal diseases in Kyrgyzstan in recent years, and no information on procedures for certification of laboratories or their equipment and methods;
- The financial provision for the State Veterinary Service was only 25% of the amount required;
- There was a risk of contagious animal diseases being transmitted to Russia;
- Inspection of five enterprises in Kyrgyzstan showed lack of control by the State Veterinary Service; lack of proper inspection of animal products, and a failure to fully implement veterinary and sanitary rules; and
- As a result, it was not possible to lift the prohibitions on exports to Russia.

Restrictions on imports of Kyrgyz animal products to Russia, reconfirmed 29 April 2010, remain in force as a result of outbreaks of foot and mouth disease in cattle and of pox in sheep in goats, the extent of which in Kyrgyzstan is not known. The fact that the core areas of animal diseases outbreak have not even been identified in Kyrgyzstan testifies to the inadequate work of the state veterinary service.

Imports into the CU of goods on the Veterinary Common List are allowed only from enterprises on the Directory of Enterprises, in accordance with the Regulation on Common System for Joint Inspections. Kyrgyz enterprises may be included in the Directory of Enterprises on the basis of inspections requested by the State Veterinary Service and carried out by CU authorized bodies. The CU could in principle accept the results of inspections by the Kyrgyz State Veterinary Service, but that appears unlikely given the current situation. As of 20 March 2011, the CU Directory of Enterprises includes "Issyk-Kul Export LLC" for fish and fish products, and ten dairy producers, based on inspections conducted 17-22 February 2011 by the Committee of State Inspection of the Ministry of Agriculture of Kazakhstan.

When imported into the CU, goods on the Veterinary Common List must have veterinary certificates issued by competent authorities of exporting countries. Because Kyrgyz state laboratories are not accredited to test for compliance with the CU Common Veterinary Requirements, such a certificate issued by Kyrgyz authorities would not be accepted.¹⁷

Movement of goods on the Veterinary Common List from one CU member to another country must be accompanied by a Veterinary Certificate in the CU Common Form issued by an authorized body of the CU member. Such veterinary certificates are issued at shipment on the basis of examination by authorized bodies of the CU member in which the goods are produced

¹⁶ The authorized body in Russia is the Federal Services for Veterinary and Phytosanitary Supervision (Rosselkhoznadzor), in Belarus it is the Ministry of Agriculture and Food, and in Kazakhstan the Ministry of Agriculture.

¹⁷ Under an agreement between Russia and the EU, the EU has agreed that consignments for export to Russia will only be sourced from farms, regions and establishments that can guarantee and certify that the animals, products or material meet the Russian requirements. A similar commitment would presumably be required before Kyrgyz veterinary certificates would be accepted in Russia.

and shipped, provided that such goods are produced at the enterprises included in the CU Directory of Enterprises. Within the CU, veterinary controls are exercised the point of origin rather than at the border crossing points.

1.1.4 Phytosanitary Measures

To implement the CU Agreement on Plant Quarantine, CU Commission Decision No. 318 of 18 June 2010 approved the following:

- A list of goods subject to phytosanitary quarantine (“Quarantine List”)
- Regulations on phytosanitary quarantine control at the CU customs border; and
- Regulations on phytosanitary quarantine control within the Customs Union.¹⁸

Each lot of goods on the Quarantine List is subject to control upon import. The List includes 127 items in two parts: Part 1 is for products of high phytosanitary risk (84 items), and Part 2 - for products with low phytosanitary risk (43 items). Imports of goods of high phytosanitary risk must be accompanied by a Phytosanitary Certificate issued by the competent authority of the exporting country in the form established by the International Convention on Plant Protection. In Kyrgyzstan this is the State Service for Plant Quarantine under the Ministry of Agriculture.

Despite attempts to harmonize phytosanitary controls within the CU, and the acceptance in principle that phytosanitary certificates issued by one CU member will be recognized by all CU members, this may not be true in practice in all cases. In addition, the differing regulations on control at the border and control within the CU effectively place a heavier burden on imported products than on products originating within the CU.

1.2 Technical Regulations of the Customs Union

The heads of the CU member-countries signed the Agreement on Common Principles and Rules of Technical Regulation in the three members of the CU on 18 November 2010. This effectively establishes the law on TRs within the CU, although by its terms it applies only to the three current members – which may cause problems for future members.

Acting under Article 3 of the Agreement, CU Commission approved a Common List of Products for which TRs are required within the CU.¹⁹ The Common List consists of 61 products, including food, alcohol beverages, light industry products, building materials and other articles. These products are to subject only to CU TRs, and only products on the Common List are subject to TRs within the CU; CU members may not establish TRs affecting other products.²⁰ However, the Agreement also specifies that EurAsEC Technical Regulations are to take precedence over CU TRs. Drafting of technical regulations is currently in progress within both EurAsEC and the CU. Decision No. 521 of 19 November 2010 of the EurAsEC Interstate Council approved a schedule under which 35 EurAsEC Technical Regulations should be drafted in 2011. Meanwhile, CU Commission Decision No. 492 of 8 December 2010 requires that 47 CU Technical Regulations be drafted in 2011.

Within EurAsEC, TRs on “Honey and Beekeeping Products”, and “Safety of Bottled Water” are to be drafted, and TRs on these products are not planned under the Customs Union. Kyrgyzstan is responsible for drafting both of these TRs. Within the CU, TRs on fish and fish products, meat and meat products, and safety of light industry goods will be of interest to Kyrgyz producers.

¹⁸ The relevant regulations are: in Belarus, Ministry of Agriculture and Food Resolution No. 84 of 19 November 2010; in Russia, Ministry of Agriculture Decree No. 456 of 29 December 2010; and in Kazakhstan, Government Resolution No. 1295 of 10 December 2002. The draft Common Phytosanitary Requirements are available at www.tsouz.ru.

¹⁹ CU Commission Decision No.526 of 28 January 2011.

²⁰ The Agreement is not entirely clear on as to whether TRs are to include SPS measures, and in this regard may not be entirely compatible with the WTO TBT and SPS Agreements.

Since EurAsEC TRs take precedence over CU TRs, Kyrgyz goods meeting EurAsEC requirements should be acceptable within the CU. However, this will not eliminate technical and sanitary barriers to trade with the CU countries in the absence of agreements on mutual recognition of conformity assessments, accreditation, documents on confirmation of conformity, and results of laboratory tests.

There is a significant discrepancy between EurAsEC and the Customs Union with respect to TRs on energy efficiency: the EurAsEC agreement specifies that there shall be no TRs on energy efficiency, while the CU provisions require that such TRs be adopted. This is likely to mean that conventional light bulbs manufactured in Kyrgyzstan will become unacceptable in the CU.

The CU Technical Regulations establish the rules for conformity assessment. A declaration of conformity can only be accepted from an individual or legal entity registered in the CU member in which the declaration is made. Thus producers from third countries must have a resident of the CU member country acting as an applicant for this purpose.

Products certified as conforming carry the Common Mark of Circulation of Products, which is a condition of free circulation in the CU.²¹ There is also a EurAsEC Common Mark of Circulation, but it is not clear whether that mark is sufficient in all cases for circulation in the CU.

Conformity of goods to CU TRs must be assessed by certification bodies on the Common Register of Certification Bodies and Testing Laboratories. As the Common Register includes only the residents of CU member countries, this means that Kyrgyz certification bodies and testing laboratories may not perform this function. Kyrgyz enterprises must arrange with organizations on the Common Register to do this work, which increases costs on exports of goods to CU countries.

The CU Agreement on Mutual Recognition of Accreditation of Certification Bodies²² provides that conformity assessment carried out by organizations on the Common Register will be recognized throughout the CU. As there is no similar agreement on mutual recognition of conformance to EurAsEC TRs, however, certification of such conformance does not greatly facilitate trade between EurAsEC countries.

Supervision of conformance to CU Technical Regulations remains the responsibility of authorized national bodies of the CU members, guided by certain common principles and rules. Creation of supranational CU bodies to perform this function has been discussed, and the intention to create a common veterinary inspection service of the CU has been declared, following the concept of the European Food Safety Authority.

²¹ CU Commission Decision of 7 April 2011.

²² 11 December 2009.

II. Specific Application of Technical Regulations and SPS Measures to Certain Products

2.1 Live Animals

The following should be highlighted concerning exports of commodity group “Live Animals” to the Customs Union countries.

- Only the CU normative acts on veterinary measures regulate the importation of live animals; CU technical regulations do not apply. Imports from Kyrgyzstan require a Veterinary Certificate issued by the Kyrgyz State Veterinary Service confirming conformity to the CU Common Veterinary Requirements *and* permission of an authorized veterinary body of the importing CU member.
- CU Common Veterinary Requirements and the procedure for veterinary control over importation of animals into the CU are more stringent than requirements adopted under the CIS framework.
- It would be very difficult for Kyrgyz breeders of live animals to fulfill the CU Common Veterinary Requirements and Section IV of the CU Regulation on Common Procedure for Conducting Joint Inspections. As of March 20, 2011, no Kyrgyz breeders were included into the Directory of Third Countries, which would indicate satisfaction of the CU requirements.
- As discussed in PART I, management of animal diseases by the Kyrgyz veterinary service is inadequate, and the condition of veterinary diagnostic laboratories is quite poor. Funding of the Veterinary Service of Kyrgyzstan is inadequate. Although a strategic plan for development of the Service over the period 2008-2012²³ requires annual funding of \$3.6 million to control animal diseases, actually disbursed funds amount to only 25% of this amount. The CU restriction on import or transit of live animals and animal products from Kyrgyzstan is a result of this situation.
- The Scientific and Research Institute of Animal Breeding, Veterinary and Pastures, a network of veterinary clinics, and 28 diagnostic laboratories operate under supervision of the State Veterinary Department. However, no laboratory was accredited as of April 20, 2011. Laboratory equipment is obsolescent; means for diagnostic testing are not available; training is inadequate.²⁴
- Despite the prohibition on imports of live animals introduced in 2008, and the fact that no veterinary certificates or permissions to import to Kazakhstan were issued after that date, official data show substantial exports of horse, cattle, sheep and goats to Kazakhstan in 2009 and 2010, although the accuracy of these data is questionable.²⁵
- No legal exports of live animals to the CU countries can be expected in the future unless adequate anti-epizootic measures are undertaken in Kyrgyzstan and the CU import restrictions are withdrawn.

2.2. Alimentary Raw Materials and Foodstuffs of Animal Origin

Meat and Meat Products

Meat and meat products exported to the CU must meet the CU Common Veterinary Requirements and Common Sanitary Requirements. At present, the same lack of control of foot-and-mouth disease and sheep and goats pox that has resulted in prohibitions on imports of live animals to the CU has also resulted in prohibitions of imports of meat and meat products. Under the Common Veterinary Requirements, meat must come from the slaughter of healthy

²³ Approved by Government Resolution No.62 of 25 February 2008.

²⁴ See letter from N.Vlasov, Deputy Head of Rosselkhoznadzor (No. FM-NV-2/4411 of 7 May 2010) to S. Joldoshev, Chief State Veterinary Inspector of Kyrgyzstan, following the inspection visit of Rosselkhoznador experts in November 2009.

²⁵ Ministry of Agriculture data show exports of 1113 horses in 2009 and 1232 in 2010. For cattle, the data show exports to Kazakhstan worth \$2.06 million in 2009 and \$476.07 million in 2010 (the latter figure obviously wrong).

animals on farms certified to be free of disease, and the farms themselves must be registered in the Directory of Third Countries.²⁶ Despite that these requirements cannot be met by any producers in Kyrgyzstan, meat and meat products have been substantial exports in recent years, as indicated by the following table:

Export of Meat over 2006-2010 (tons)²⁷

Commodity Item	2006	2007	2008	2009	over 11 months of 2010
Meat and meat products	135,2	54,3	97,4	509,0	1093,4

Meat and meat products are included in the Common List of Goods subject to border controls, and are subject to the CU Common Sanitary Requirements. They must be tested for conformity to the Common Sanitary Requirements before their import to the CU, including testing for dioxin. However, Kyrgyzstan has no laboratories able to test for dioxin using chromatography-mass spectrometry, which is the only method providing the necessary precision. While such tests could be done in Russian laboratories, the cost is \$1000 - \$1500 per sample, which is prohibitive for small enterprises. It is also doubtful that Kyrgyz laboratories can do the required tests for antibiotics, hormonal agents, N-nitrosamine, benzopyrene, microbiological indicator *L. monocytogenes* in 25 g, and strontium 90. All this makes access to the CU market for Kyrgyz meat and meat products highly problematical.

The CU Common Sanitary Requirements also control the use of pesticides, and require that information on pesticides used be provided for all imports of foodstuffs of both animal and vegetable origin. This raises several issues in Kyrgyzstan:

- Testing for pesticides using thin layer chromatography, which common in Kyrgyzstan, has not been recognized as a quantity method by the Codex Alimentarius, which adopts international food standards. Although there is one laboratory in Kyrgyzstan able to test for pesticides using gas-liquid chromatography, this is not enough to meet the demand for high-accuracy measurements, as nearly all foodstuffs require such testing.
- There is also evidence of serious violation of the requirements concerning the registration of pesticides in Kyrgyzstan.²⁸ For example, in 2007 the fungicide RAKSIL Art, produced by a Chinese company, was registered for use in Kyrgyzstan,²⁹ followed by a complaint from Bayer Crop Sciences, the German manufacturer of RAKSIL, that the Chinese company involved was violating Bayer trademarks and copyright. It is also doubtful that the registration tests of **RAKSIL Art** were done properly, as there is no laboratory in Kyrgyzstan with the technical competence to perform such tests in full scope.
- Another example concerns the herbicide Pivot, registered for use in Kyrgyzstan as manufactured by the Russian company "Altayhimprom Trade House Closed JSC," despite the fact that the product is not registered in Russia, and that Pivot is a well-known trademark of the Swiss company BASF.

Dairy Products

Dairy products have been a major export to the CU countries, in particular to Kazakhstan. According to the Kyrgyz Ministry of Agriculture, in 2010 total exports to Kazakhstan were over \$65 million, and 40% was the share of "Bishkek Sut" JSC (Wimm-Bill-Dan Company). About 50% of all Kyrgyz-manufactured dairy products are exported to Kazakhstan.

²⁶ See Section V of the CU Regulation on Joint Inspections and Sampling of Goods Subject to Veterinary Control.

²⁷ Source: Ministry of Agriculture data, as reported in AkiPress, 14 Feb 2011. As the Ministry of Agriculture also reports that only 24 tons (about 2% of the total) went to CU countries in 2010, it is quite unclear where these exports went.

²⁸ See Kyrgyz Interdepartmental Commission on Streamlining the Normative and Legal Framework for Regulation of Entrepreneurial Activity (meeting on September 14, 2009), Protocol No. 13.

²⁹ Registration (No. III-84).

Dairy products are included in the Common List of CU Goods Subject to Veterinary Control for Epizootic Well-Being. At the beginning of 2011, Kazakhstan prohibited imports of dairy products from Kyrgyzstan as a result of implementation of SPS measures by the CU. Under these measures, enterprises that produce or store dairy products must be included in the Directory of Third Countries. The prohibition on imports from Kyrgyzstan forced Kyrgyz dairy producers to reduce production by nearly 50%, with correspondingly reduced purchases of raw milk from dairy farms. The fact that prices of dairy products in Almaty increased by 40% in February 2011 – causing the Kazakh State Body on Competition Protection to conduct an investigation -- appears to have been one result.

During February 17-22, 2011, experts of the Committee of State Inspection of the Ministry of Agriculture of Kazakhstan conducted inspection of 13 dairy enterprises in Kyrgyzstan in accordance with the CU Regulation on Joint Inspections. The inspection found ten enterprises, including Bishkek-Sut JSC (Wimm-Bill-Dan Company), to be in compliance with the main requirements of CU veterinary regulations, and these enterprises were included in the Directory of Enterprises of Third Countries.

Despite this relative success, it is important to note that inclusion of dairy products enterprises into the Directory of Enterprises of Third Countries is a necessary, but not sufficient condition to stabilize dairy products exports. The Kyrgyz Government should make a major effort to improve epizootic controls, with the objective not only the elimination of restrictions on animal product exports to the CU but also to ensure domestic food security safety.

The CU Common Sanitary Requirements with respect to dairy products are based on the Technical Regulations on safety of milk and dairy products of Russia and Kazakhstan, which include requirements based on international standards of the Codex Alimentarius. They require that dairy products, as well as other controlled goods, be tested for conformity to Common Sanitary Requirements before being imported to the CU. The allowed content of dioxin and melamine in dairy products under these regulations cannot be tested for in Kyrgyzstan because of lack of required technical competence of laboratories. Testing could be accomplished in Russian laboratories, but would be prohibitively expensive for most companies. At present, Kyrgyz laboratories also lack the technical ability to test dairy products for some antibiotics (penicillin and streptomycin) and strontium-90.

Bishkek-Sut JSC (Wimm-Bill-Dan Company) and several other dairy producers have obtained certificates of conformity issued by Kazakh certification bodies. Such certificates significantly simplify access of products to the Kazakh market. But this solution may be temporary, as the CU intends to adopt a CU Technical Regulations on safety of foodstuffs, including dairy products, in 2011.³⁰ These CU Technical Regulations will replace the existing Russian and Kazakh TRs, and will set requirements for the traceability of foodstuffs and compulsory conformity assessment in the form of registration of producers by authorized bodies of CU countries and inclusion in the Register of Food Producers. This will cause serious problems for small and medium businesses in Kyrgyzstan, which could not meet the requirements for inclusion in the Register. This is particularly true for ensuring the traceability of foodstuffs along production chain, from animals, including fodder, to the final products. Readiness of food enterprises to meet such requirement is very low, in particular, at the stage of fodder control.

Natural Honey

Kyrgyzstan has good conditions for producing natural honey. The country is registered in the list of countries having the right to export honey to EU countries. For many years, natural honey from Kyrgyzstan has been in demand in Russia. Over the last three years, honey produced by enterprises of the Kyrgyz Association of Beekeepers and exported to Russia has totaled some 250-300 tons, and there is good potential to increase exports. Under the EU Project in 2009, the Road Map for Honey Export to the EU was implemented. The focus of the Road Map was

³⁰ CU Commission Decision No. 274 of 20 May 2010.

efficient control of residual quantities of veterinary preparations, pesticides and heavy metals in the honey.

CU Common Veterinary Requirements are harmonized with the international requirements of OIE. With respect to honey exports from the KR, the CU member-countries have no restrictions related to epizooty. Natural honey and apiculture goods produced by farms free from dangerous diseases of agricultural and domestic animals are allowed to be imported. However, recently 12 tons of honey from Jalalabad oblast were detained by Russian authorities at Chelyabinsk, on grounds that the accompanying veterinary documents did not certify the absence at the place of origin of the product of American foulbrood, European foulbrood, and Nosema disease in.³¹

This case indicates that provisions of the CU Common Veterinary Requirements and other CU normative acts must be strictly followed by suppliers of honey to the CU. Under the CU Common Veterinary Requirements the presence of the remains of such medications as chloramphenicol, chlorpharmazine, colchicine, dapson, dimetridazol, nitrofurans, ronidazol, and also coumaphos not more than 100 mkg/kg and amitraz not more than 200 mkg/kg in natural honey and beekeeping products is not allowed. In this case, it should be noted that only the Republican Center of Veterinary Diagnostics has the capability to identify these substances, and this Center, as of 20 April 2010, has not been accredited.

To ensure that honey can continue to be exported to the CU, honey producers should be included into the Directory of Enterprises of Third Countries. However, the effort required to accomplish such registration has not been started so far by the State Veterinary Service. Therefore, the permission to import honey to the CU customs territory may be blocked by the CU authorities.

Natural honey must also conform to the CU Common Sanitary Requirements. Until the adoption of a new Technical Regulation, the condition for access of natural honey to Russia is a Declaration of Conformity accepted by a supplier-resident of the RF, based on its own evidence or evidence received from an accredited testing laboratory or certification body included in the Common Register. As noted above, in 2011 a new technical regulation for natural honey is planned within EurAsEC, the preparation of which is the responsibility of Kyrgyzstan. As the CU Commission had not included a TR for honey in its plans, it is assumed that the requirements of the EurAsEC TR will become provisions of the CU Common Veterinary Requirements and Common Sanitary Requirements, and will be harmonized with respective EU regulations and international standards on natural honey. It is clear that the Kyrgyz Republic should continue the works initiated on implementation of the Road Map for Export of Honey.

2.3 Vegetable Origin Products

“Vegetables and some edible roots and tuber crops” and “Edible fruits and nuts” Commodity Groups

These commodity groups (potatoes, onion, fresh tomatoes, carrot, beans, apples, apricots, and walnuts) are stable exports to Russia and Kazakhstan. In 2010, about 535 thousand tons of vegetables and fruits amounting to \$95 million were supplied to Russia and Kazakhstan. Exports to the CU are subject to the phytosanitary requirements of member-countries, the CU Common Sanitary Requirements and interstate standards. In 2011, the adoption of CU Common Phytosanitary Requirements is planned.

Phytosanitary Measures: These products are of high phytosanitary risk. Imports to the CU must be accompanied by a phytosanitary certificate of conformity to phytosanitary requirements of the country of destination and issued by the Kyrgyz government bodies for plant quarantine.

³¹ See information posted on January 28, 2011 on Rosselkhoznadzor website (www.fsvps.ru).

As of 2011, Import Quarantine Permission (IQP) is not required. Exports to CU countries should be stable in 2011 and beyond if other requirements are met. If a skillful marketing strategy is in place and proper organization measures are undertaken, greater exports of beans to Russia appears achievable, given the quality of beans grown in Talas Oblast and increased demand for bean cultures in Russia.

However, elimination of IQP should not be considered as an easing of requirements by the CU countries. CU authorities will significantly strengthen phytosanitary control over import of quarantinable products and step up requirements for phytosanitary certificates. A joint audit will be held regularly to assess compliance of the system of phytosanitary certification with the rules of the International Plant Protection Convention, including requirements as to the place of origin, storage, packing and shipment of quarantinable products to be exported to the CU. In this regard, a particular focus should be given to topical issues of phytosanitary certification raised by the Interdepartmental Commission on Streamlining the Normative and Legal Framework for Regulation of Entrepreneurial Activity. Under the International Standard On Phytosanitary Measures (ISPM) No. 7 "Export Certification System" the Kyrgyz authorities for plant quarantine must ensure the validity of the phytosanitary certification system, in order to ensure that phytosanitary certificates will be recognized by importing countries. Non-recognition of such documents would result in rejection of imports of goods, or require additional phytosanitary measures which would lead to additional costs for exporters.

The Kyrgyz government body for plant quarantine should strictly follow the provisions of ISPM No. 7, ISPM No. 12 "Guidelines for Phytosanitary Certificates" and other documents of the International Plant Protection Convention:

- Personnel of this body should have a level of expertise and updated information on phytosanitary requirements of foreign countries appropriate for the duties and responsibilities of the positions being occupied. **Comment:** At present, there is no personnel management system in place, no certification of experts in phytosanitary certification, and no system to provide information on phytosanitary requirements set by importing countries;
- The authorized body should have adequate equipment and devices to perform phytosanitary certification to confirm conformity of an exported good to phytosanitary requirements of an importing country. **Comment:** The current level of technical competence in Kyrgyzstan is very poor. Only two laboratories are equipped – in Bishkek and Osh – and they have not yet been accredited.
- The government body for plant quarantine should develop and maintain guidance documents, procedures and work instructions covering every aspect of the certification system with regard to procedures for issuance of phytosanitary certificates, including undertaking security measures over seals and marks, sampling for inspection, examination and other assessments, consignment identification, traceability, and security, record keeping, etc. **Comment.** The Kyrgyz government body for plant quarantine has no duly documented system for phytosanitary certification under the ISPM No. 12. In addition, the government body for plant quarantine has not yet identified pest free areas and areas of low pest prevalence. The implementation of ISPM No. 4 "Requirements for the establishment of pest-free areas", ISMP No. 10 "Requirements for the establishment of pest free places of production and pest free production sites", and ISPM No. 29 "Recognition of pest free areas and areas of low pest prevalence" would reduce costs for exporters.

Sanitary Measures: Kyrgyz laboratories are capable of making the tests for these goods required by the CU Common Sanitary Requirements. Export of these goods to Russia or Kazakhstan may be done with certificates of conformity issued by the Kyrgyz certification bodies, which would then be re-registered to certificates of conformity of Kazakhstan or declaration of conformity recognized by a Russian supplier-resident. Fresh vegetables and fruits are not in the Common List of Goods Subject to Compulsory Conformity Assessment.

The technologies using genetically engineered modified transgenic organisms have not been used in the country as organic products are not produced, therefore, there is no need to undergo initial registration at the CU authorized bodies. Meanwhile, the issue is to ensure traceability of products and safety of foodstuffs which are stipulated by the draft CU Technical Regulations.

“Fruits and Vegetables” Commodity Group

Canned vegetables and fruits and fruit and vegetable juices produced in Kyrgyzstan, have a good export potential. In 2010, 20 thousand tons of juices amounting to \$415 thousand were exported to Russia and Kazakhstan – twice as much as in 2009. Kyrgyzstan has the technical capacity to perform conformity assessment for all indicators set by the CU Common Sanitary Requirements, excluding pesticides. However, adoption of CU Technical Regulations for safety of foodstuffs, food products marking and safety of juices would create specific organizational and financial difficulties for producers regarding traceability of products, pesticide issues, as well as provision of data on pesticides in use.

“Alcohol and Non-Alcohol Beverages” Commodity Group

Exports of these commodity groups are not large, despite a very good export capacity of mineral waters and alcohol drinks produced by AYU LLC.

The CU Common Sanitary Requirements and interstate standards are established for these commodity items. Bottled drinking water packaged in containers, tonic beverages, alcoholic beverages, and beer are in Part II of the Common List of Goods Subject to Sanitary-and-Epidemiologic Supervision. Thus import to the CU is allowed only with a certificate of state registration of the CU Common Form issued by the CU authorized body for sanitary measures. In addition, at import these goods must have a certificate or declaration confirming conformity in accordance with the national legislation of the CU. Kyrgyzstan has the technical capacity to tests products for the main requirements; the issues of pesticides are not resolved. Adoption of a CU Technical Regulation “On Safety of Alcohol Beverages” is planned in 2011. This TR will set strict rules for access of alcoholic beverages to the CU market, including registration and provisions to ensure traceability.

As noted above, Kyrgyzstan has undertaken a commitment to draft a EurAsEC Technical Regulation “On Safety of Bottled Water”.

“Tobacco and Tobacco Products” Commodity Group

The programs for development of the Kyrgyz tobacco sector adopted earlier were based on the idea that Reemstma-Kyrgyzstan Company, which was granted an exclusive right to produce cigarettes for 10 years, would meet the domestic demand and export 40% of production. However, these expectations were not realized. Although its production capacity is 12 billion pieces per year, the factory actually produces only 3 billion pieces per year, of which 30-40 million pieces are exported to Afghanistan and Tajikistan. Total demand for cigarettes in Kyrgyzstan is about 7,5 billion cigarettes, of which about 60% is imported. No tobacco products are exported to the CU.

Over the last five years, production of fermented tobacco in Kyrgyzstan has varied from 7500 to 8500 tons. About 5000 tons are exported, of which about 20-25% goes to CU countries.

Current conditions for access of cigarettes and tobacco raw materials are established in Part II, Section 13 of the CU Common Sanitary Requirements, and normative acts of the CU countries are acceptable for the products made in Kyrgyzstan. However, the draft CU Technical Regulation for tobacco products and draft EurAsEC Technical Regulation will toughen a number of requirements in order to bring the content of nicotine, tars and carbon monoxide of cigarettes into compliance with European standards. Stricter requirements are also planned regarding the information for consumers. These activities may represent a serious problem for Kyrgyz tobacco producers.

2.4 Apparel

The recent statement of Kyrgyz Prime Minister Atambaev,³² that “the clothing industry is a locomotive of the Kyrgyz economy,” suggests the expectations for development of the industry, which exported at least \$126 million worth of garments in 2010, mainly to Russia.³³

Clothing articles exported to Russia must have either the Declaration of Conformity required by Russian legislation or the Certificate of Conformity in the CU Common Form issued by a certification body on the CU Common Register. In practice, declarations of conformity from Kyrgyz companies in the “Legprom” association are accepted. This situation facilitates exports to Russia. The relatively small share of children’s clothing, which are listed in Part II of the Common List of Goods Subject to Sanitary-and-Epidemiologic Control, must have the certificate of state registration of the CU Common Form issued by the CU authorized body for sanitary measures.

Adoption of a new CU Technical Regulation “On Safety of Light Industry Products” is planned in 2011, which will incorporate Section 10 “Requirements for materials of products contacting human skin” of the CU Common Sanitary Requirements. This will impose a number of new requirements, for which it will not be feasible to test for conformity in Kyrgyzstan.³⁴ About 80% of the tests that will be required by the CU TR, especially those related to dyes and exudation, cannot be done in Kyrgyzstan, which will force Kyrgyz producers to rely on Russian laboratories, at substantially increased cost. Issues concerning the conformity of fabrics imported from China and other countries to the new CU TR, including required supporting documents, should be settled by Legprom on a centralized basis. To increase the sustainability of clothing manufacture and export, a Center for Textile Testing should also be created.

Some Comments on CU draft Technical Regulations

Three draft CU Technical Regulations, “On Safety of Foodstuffs”, “On Safety of Light Industry Goods”, and “On Safety of Products for Children and Teenagers” are of particular interest for Kyrgyz producers, especially those in the clothing industry. Below is information on some aspects of these drafts.

Foodstuffs

- The draft TR “On Safety of Foodstuffs” will establish sanitary and epidemiological, hygienic, and veterinary requirements based on the CU Common Sanitary Requirements and harmonized with Codex Alimentarius international standards and related EU directives. The requirements for ensuring safety and traceability in the production of foodstuffs will be emphasized.
- The draft TR “On Safety of Foodstuffs” is seen as a broad “horizontal” TR establishing principles, with additional detailed “vertical” TRs on certain foodstuffs to follow.
- This TR introduces a mechanism for risk management based on categories of foodstuffs. If hygienic risks are related to technological processes, as in the case of products of animal origin, state registration of production facilities will be required. Unprocessed products of animal origin must have the Veterinary Certificates, while other products, excluding special-purpose products, vinegar, salt and sugar, should have the Declaration of Conformity.

³² At the 5th International Trade Fair “Fashion Industry: Articles and Equipment-2011”, on February 25, 2011.

³³ According to official statistics. Unofficial estimates are significantly higher; the true figure could be as much as \$500 million. The Ministry of Economic Regulation (MER) estimates that Kyrgyzstan has a 6% share of the Russian market, or about \$1.8 billion at retail, but that estimate includes substantial amounts that are actually manufactured in China, but sold as Kyrgyz. The MER’s Strategy for Development of Textile and Clothing Industry for 2010-2011, has ambitious objectives, including a 35% increase in exports.

³⁴ See ANNEX 2, “Analysis of Technical Competence of Laboratories in the Kyrgyz Republic (Center for Standardization and Metrology, DSSSES) on Conduct of Tests of Apparel for indicators of CU Common Sanitary Requirements”).

- State registration for both CU-produced and imported goods must be performed by national registration bodies, although a common CU registration body may be formed.

Products for Children and Teenagers

Requirements for safety of apparel, textile, leather, fur articles, and knitwear are based on the CU Common Sanitary Requirements. Mandatory certification of items covered by the TR is proposed; state registration of children apparel is not to be required.

Light Industry Goods

Requirements of this draft Technical Regulation are based on the CU Common Sanitary Requirements and Eco-tex standards. Confirmation of conformity may be in the form of Certification or Declaration. Certification is required for underwear, bed-linen of fabric and knitted fabric, swimsuits, towels and footwear, excluding felt. Other light industry goods are subject to Declaration.

III. Issues of Technical Regulations and SPS Measures Related to Kyrgyzstan's Possible Joining of the Customs Union

Prime Minister Atambaev has repeatedly stated that Kyrgyzstan is going to join the Customs Union, and the Government has created an Interdepartmental Commission to prepare the way.³⁵ The Treaty on Creation of Common Customs Territory and Formation of the Customs Union³⁶ provides that Kyrgyzstan, as a EurAsEC member, may accede to the CU under the terms of a procedural Protocol.³⁷ The Protocol provides for a list of treaties in two parts, Part 1 comprising international treaties within the framework of EurAsEC, and Part 2 comprising the treaties that make up the contractual legal framework of the Customs Union. Importantly, the CU treaties in Part II may be acceded to by any EurAsEC member *provided that an acceding state expresses its consent, without reservation, to the mandatory nature of all international treaties included in Part 2.*

Given the complexity of this process, and the further complications presented by Kyrgyzstan's membership in WTO and the political situation in the country, an extended debate on accession to the CU is inevitable. Given also the fact that Kyrgyzstan's main export markets for both agricultural products and textiles are in the CU, whether to join the CU is unquestionably the most important decision Kyrgyzstan must make in developing its foreign trade policy.

With respect to SPS measures and technical regulations:

- **CU Rules will control:** It is apparent that the standards set by the CU will increasingly dominate trade in the region, and the less restrictive rules developed under EurAsEC and the CIS will become increasingly irrelevant. Regardless of whether Kyrgyzstan joins the CU, CU rules will apply to a large fraction of Kyrgyzstan's exports.
- **Testing of goods at present:** Because no treaties on mutual recognition of conformity assessment or accreditation exist between Kyrgyzstan and the CU, documents on conformity to the CU requirements required to import Kyrgyz goods to the CU must be issued or accepted by certification bodies and testing laboratories included into the CU Common Register.³⁸ Similarly, goods subject to state registration for sanitary and epidemiological control can be tested only at laboratories on the Common Register, with certificate of registration issued under the CU Common Form. The costs of this, which may be as much as five to ten times the cost of similar work in Kyrgyzstan, will reduce the competitiveness of Kyrgyz goods on the CU markets.
- **Testing of goods if Kyrgyzstan were a member of the CU:** If Kyrgyzstan became a member of the CU, its laboratories could be accredited and included in the Common Register, their testing results and certifications would be recognized by all CU members, goods so certified could circulate freely within the CU. For this to happen, however, Kyrgyzstan would have to make the necessary investments to bring its laboratories and veterinary and phytosanitary systems up to CU standards, and goods would have to meet the requirements of CU technical regulations.
- **Technical Regulations:** If Kyrgyzstan became a member of the CU, there would be no need to draft national TRs; the CU TRs would apply. This would save substantial effort, but Kyrgyzstan could achieve the same effect without joining the CU by simply adopting CU TRs nationally.
- **Effect of CU Standards on Kyrgyz Producers:** At least in the short term, a serious disadvantage of adopting CU standards generally would be the effect on Kyrgyz food

³⁵ Resolution No.150 of 11 April 2011.

³⁶ Signed by heads of state of Belarus, Kazakhstan and Russia 6 October 2007, in Dushanbe.

³⁷ Protocol on the Procedure for the Entry into Force of International Agreements Which Are Intended to Form a Contractual Legal Framework for the Customs Union and for Withdrawal from and Accession to the Customs Union, signed 7 October 2007 in Dushanbe.

³⁸ Only legal entities registered in the CU may be on the Common Register.

producers unable to meet these standards. For example, the cost to ensure traceability of foodstuffs over the production chain might increase the cost of goods of small enterprises by 15%, and perhaps as many as 90% of such enterprises would not meet the requirements of state registration of their products. If Kyrgyzstan were to become a CU member, these producers would be forced out of business unless they could adapt.

- **Possibility of partial harmonization:** The CU members are moving rapidly towards fully harmonized SPS measures and technical regulations,³⁹ which may not be a practical option for Kyrgyzstan. Membership in the CU would deprive Kyrgyzstan of the possibility of a more gradual transition to CU standards through a policy of partial harmonization, in which producers for the local market would not immediately have to meet CU standards. In the absence of such a policy, there is a real threat of mass stoppage of food enterprises and an increase of the “shadow” economy. If Kyrgyzstan were to remain outside of the CU, producers for the domestic market could be brought to higher standards over a period that would allow adjustments without undue dislocation.

Partial Harmonization

At this stage of the CU there is **partial harmonization** of technical regulations and SPS measures, in which products meeting the CU Common Requirements circulate freely throughout the CU, while products produced under the national rules may circulate only within the relevant member. The intent, however, is complete harmonization among the CU members, to be achieved by:

- Establishment of the Common List of Products for Which Mandatory Requirements are Established within the CU;
- Adoption of Common Technical Regulations;
- Incorporation of international and regional standards in Technical Regulations;
- Establishment of Common Schemes and Forms for Conformity Confirmation and unified or comparable tests methods for products;
- The Common Register of Certification Bodies and Testing Laboratories;
- Common Form of Documents on Conformity Confirmation (Certificate and Declaration);
- The Common Register of Issued Certificates and Declarations of Conformity;
- The Common Mark of Products Circulating throughout the Customs Union.

Financial costs of adjusting to the CU requirements: The CU requires that the following activities be funded by individual CU members:⁴⁰

- Equipping of border crossing points to perform efficient sanitary, veterinary, and phytosanitary controls at national sites of the CU customs border;
- Funding of national bodies for state control of SPS measures and technical regulations, including equipment expenses;
- Development of national information systems able to be integrated into the ISFMT;
- Creation of a laboratory system able to do the testing required by SPS measures and TRs; and
- Development of technical staffs with necessary training and education.

These requirements would impose substantial costs. For the food industry, these costs might be estimated as follows:

- As noted above, anti-epizootic activities would require about \$3.5 million annually;

³⁹ See accompanying box.

⁴⁰ Strategy for Development of the Common System of Technical Regulation, Application of SPS Measures in the Customs Union for the period 2011-2015, approved by the CU Commission 2 March 2011.

- According to the Ministry of Agriculture, to equip eight international Veterinary Border Control Checkpoints about \$1.6 million is required, and to bring each diagnostic veterinary laboratory to an adequate standard about \$3 million is needed.
- The Ministry of Economic Regulation estimates \$5-8 million are needed to fully equip laboratories in all KR's regions to test foodstuffs for indicators included into the CU Common Sanitary Requirements. To establish phytosanitary laboratories throughout Kyrgyzstan about \$4 million is required.
- About \$2 million is needed to develop and support the Kyrgyz national metrology system at an adequate level.

IV. Recommendations

Regardless of whether Kyrgyzstan accedes to the Customs Union, improving the national system for technical regulation and SPS measures is necessary to promote exports to the CU, attract foreign direct investments, and create a proper system of food safety. Essentially, Kyrgyzstan must harmonize its system with the CU. The priorities are agricultural and food products, textiles and apparel.

This requires the following:

- The Government should ensure institutional support to these issues through a special council for technical regulation and SPS measures.
- The Government should adopt a program for development of the national system for technical regulation and SPS measures based on the Strategy for Development of Common System of Technical Regulation, Application of SPS Measures of the Customs Union for 2011-2015.
- The Government should consider applying CU rules to goods entered in the Common List of Goods for which the Mandatory Requirements were set within the CU.⁴¹ Taking into account the capabilities of food producers, the period should be determined for introducing rules on content of dioxin, melamine, residual content of some veterinary preparations, requirements to ensure traceability of foodstuffs, as well as to introduce a system to ensure safety of foodstuffs.
- The Interdepartmental Commission on Negotiations on Accession of Kyrgyzstan into the Customs Union should develop a negotiating position providing for a transition period in applying CU technical regulations and SPS measures.
- The Ministry of Economic Regulation together with relevant government bodies and business associations should develop the Action Plans to promote exports of meat and dairy products, fresh vegetables and fruits, juices, and textiles and apparel.
- The Ministry of Health Care, together with Legprom and Soyuztextile should establish a center for certification and testing of textiles.
- The State Veterinary Service should immediately undertake anti-epizootic and other activities to eliminate the prohibitions on export of live animals and animal products to the CU.
- The State Veterinary Service should assist enterprises engaged in processing, production, and storage of animal products with their inclusion into the Directory of Enterprises of Third Countries.
- The Ministries of Economic Regulation, Health Care, and Agriculture should assist food enterprises to introduce systems of traceability of goods and ensuring the system of safety of foodstuffs.
- The Ministry of Agriculture should create a documentary system for veterinary and phytosanitary certification in accordance with standards of the International Office of Epizootics (OIE) and the International Plant Protection Convention.
- The Ministries of Health Care and Agriculture should upgrade laboratories of the state sanitary epidemiological, veterinary and quarantine services in order to test for indicators set by the CU normative acts.
- The Ministry of Agriculture should bring the system of state registration of pesticides and agrochemicals in Kyrgyzstan into compliance with international rules and requirements.

⁴¹ CU Commission Decision No. 526, 28 January 2011.