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Sanitary and Phytosanitary Issues for the Customs Union of Russian Federation, Belarus and Kazakhstan in Relation to Trade with Other CIS Countries and the EU, with Special Reference to Food of Non-animal Origin and Phytosanitary Controls

Robert BLACK & Irina KIREEVA *

Laws are like cobwebs, which may catch small flies, but let wasps and hornets break through.
Jonathan Swift, *A Critical Essay upon the Faculties of the Mind*, 1707
This article examines the regulatory impact of SPS measures applied by the Members of the Eurasian Customs Union (CU) on trade with other countries, first, by looking at Russia's SPS legislative regime before and after its accession to the World Trade Organization (WTO) and the degree of compliance with the principles of the WTO's SPS Agreement. This includes references to some laws and regulations of the subjects of the Russian Federation (such as Republics, Oblast, Krai)¹ as well as the Federal legislation applicable to the entire territory of the Russian Federation. Second, it analyses the adoption of SPS measures by the CU in relation to trade within the CU and with other countries, taking into account background provided in a related article by the same authors.² Russia is a key for understanding the issues of trade regulation because Russia's case for joining WTO was made on the basis of the CU. For this reason, the adoption of SPS measures by Kazakhstan (in accession negotiations) and by the Kyrgyz Republic (WTO Member since 1998 and candidate for membership of CU) are discussed and compared. The article concludes with a discussion of the key issues about SPS measures and trade in the CU that were raised in the introduction.

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¹ In 1993, when the Russian Federation adopted the current Constitution, there were eighty-nine subjects. On 1 Mar. 2008, following the regional reform merger there were only eighty-three subjects. From 18 Mar. 2014, following the accession of the Republic of Crimea to Russia and the formation of two new entities of the Republic of Crimea and Sevastopol city of federal significance in Russia, the number of subjects of the Russian Federation recognized in Russia is eighty-five.

² See *infra* n. 7.

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It is intended that this will provide the legal/regulatory background for economic analysis of trade in food and other agricultural products within the CU and between the CU and third countries.

1 INTRODUCTION

Sanitary and phytosanitary (SPS) measures³ are essentially border controls imposed on food, live animals and plants and other agricultural products in order to protect human, animal and plant life and health from potentially harmful effects. The three SPS sectors are accordingly food safety, animal health/veterinary controls and plant health. The overriding technical principle of the WTO's *Agreement on the Application of Sanitary and Phytosanitary Measures*⁴ ('SPS Agreement') is that any measures applied to regulate imports must be based on potential risks of harm to humans, animals or plants in order not to be considered as trade barriers. Somewhat more generally:

Members [of WTO] shall ensure that such measures are not more trade-restrictive than required to achieve their appropriate level of sanitary or phytosanitary protection, taking into account technical and economic feasibility. [Article 5.6 of SPS Agreement]

This article examines the regulatory impact of SPS measures adopted by the *Eurasian Customs Union* (CU) on trade with other countries. The Customs Union of the Russian Federation (henceforth referred to as 'Russia'), Belarus and Kazakhstan came into existence on 1 January 2010. The idea of the single territory of the CU is ultimately to allow market access to products proved to be compliant with the requirements of CU *Technical Regulations* that are applicable to various categories of products. Several other countries, including the Kyrgyz Republic, Armenia and even Turkey, have opened [negotiations](#) to join the CU because, with Russia as a major or even dominant trading partner, it is seen to be in their economic interests to do so. This has raised some tensions with plans to offer economic partnership between these countries and the European Union (EU). The political issues apart, the importance of Technical Regulations highlights the pervading influence of the *GOST* (State Standard System) as a legacy of the Soviet Union and the foundation of Russia's

³ According to the *SPS Agreement* (*infra* n. 4) 'sanitary and phytosanitary measures include all relevant laws, decrees, regulations, requirements and procedures including, *inter alia*, end product criteria'.

⁴ http://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm.

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controls of goods entering the market, whether domestically produced or imported. The principal theme of this article is whether the SPS measures of the CU's Technical Regulations are consistent with the normative framework for international trade in live animals and plants, food and other agricultural products provided by the World Trade Organization (WTO) of which Russia has been a member since 2012, in particular, the *SPS Agreement*. The political issues are naturally outside of the scope of this article, but it is entirely appropriate to evaluate how the CU's SPS regime provides the regulatory basis for trade with the EU, both by current and candidate members of the CU, since the EU bases its trade relations on WTO norms and principles.

The likely expansion of the CU should be seen in the context of the Eurasian Economic Community (EurAsEc), founded according to the EurAsEc Treaty in October 2000 by Belarus, Kazakhstan, the Kyrgyz Republic and Russia and now includes Tajikistan with Uzbekistan suspended. The EurAsEc was originally conceived to go as far as the achievement of monetary union for countries in the Commonwealth of Independent States (CIS)⁵ and could be seen as a counter to the economic partnerships being offered to the CIS by the EU. However, the current idea is ultimately to dissolve the EurAsEc in favour of the *Eurasian Union*.

Kazakhstan as a founder member and the Kyrgyz Republic as a candidate for membership of the CU illustrate some of the difficulties of accommodating SPS regimes of both the CU and the EU/WTO. [Kazakhstan's membership of WTO was approved in July 2015, with only ratification awaited at the time of writing. The country had to take steps to adjust its SPS legal and regulatory frameworks to be consistent with the SPS Agreement.](#)⁶ The Kyrgyz Republic has been a WTO member since 1998. As an early member, it has not been subject to serious scrutiny over its compliance with WTO rules, and so it will be interesting to see whether accommodation to the CU's SPS requirements also takes into account consistency with the *SPS Agreement*. National legislation is important because the CU's Technical Regulations are still being developed and will not be fully in force before 2015. Correspondingly, whenever there is a new member of the CU, that country will have a transitional period to adjust to the CU regime.

⁵ For more information <http://www.cisstat.com/eng/cis.htm>.

⁶ Kazakhstan's WTO Accession Working Party was established on 6 Feb. 1996. [The Working Party adopted Kazakhstan's accession package in mid-2015 and the WTO General Council approved Kazakhstan's membership on 27 July 2015.](#) http://www.wto.org/english/thewto_e/acc_e/a1_kazakhstan_e.htm.

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In examining SPS issues in the CU, the focus will be on a number of key issues. First is the extent to which SPS measures adopted by the CU are based on risk of harm from imported goods and/or based on international standards, in compliance with the WTO *SPS Agreement*. The second issue is the effect on the movement of goods of agricultural origin between the CU and other countries and on transit through the CU between non-EU countries. Third, the likely impact of the expansion of the CU on general trends of harmonization of SPS measures according to the *SPS Agreement*.

In dealing with these issues, Russia's legal and regulatory framework for SPS measures pre- and post-WTO accession will first be analysed followed by a survey of CU's legislation relevant to the SPS area. Also to be taken into account is any regional legislation in force in areas bordering other CU members or non-members that might potentially affect import and export of products subject to veterinary and phytosanitary inspection, for example SPS legislation of Russian Federal Subjects (such as Republics, 'Oblasts' and autonomous districts and regions). Finally, current processes in Kazakhstan and the Kyrgyz Republic towards WTO accession and CU membership, respectively, will be examined. Attention will be drawn in particular to differences in the phytosanitary controls in place in these two countries as well as food control systems.

Reference will be made to another article by the same authors⁷ in which the details about the Russian ex Soviet systems of the GOST and Sanitary and Veterinary Norms (SanPins) have been highlighted and therefore will not be repeated in this article. However, this article is intended to provide a stand-alone discussion of regulation of trade in food of non-animal origin and phytosanitary controls, and therefore some of the detailed descriptions will be summarized here. No reference is made to the Customs Code of the CU except to say that it is the only piece of primary legislation that applies throughout the CU.⁸ Correspondingly, the article will not cover 'trade facilitation' and other wider issues of border controls. A study by the Organisation for Security and Cooperation in Europe (OSCE) on these matters has considerable

⁷ I. Kireeva & R. Black *Sanitary and Veterinary Hygiene Requirements for Imports of Fish and Fishery Products into Russia - Tensions between Regional Integration and Globalization*, 15 *ERA Forum* 495-518 (2014).

⁸ I. Krotov Customs. *Union between the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation within the Framework of the Eurasian Economic Community*, 5 *World Cust. J.* 129-137 (2012).

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relevance to the CIS and Central Asia.⁹ Primary laws ('zakon' in Russian) relating to SPS sectors are a matter for national jurisdiction of the CU members. However, there are Agreements as well as Customs Union common sanitary and epidemiological requirements on SPS matters equivalent to treaties between the CU members.¹⁰

2 RUSSIAN SPS LEGAL AND REGULATORY FRAMEWORKS IN THE SPS AREA

The background on Russia and its Federal Subjects has been already provided in another article,¹¹ as well as discussion of sanitary and veterinary controls on fisheries products in Russia and the CU. Legislation in the SPS area prior to Russia's accession to WTO was previously reviewed by the authors,¹² emphasizing the importance of the GOST and technical regulations to be taken alongside laws in the SPS area for effecting SPS controls. Accession negotiations concluded with the Working Party Report that recommended accession; this was reviewed as part of a study of SPS in Central Asia.¹³

The main items of Russian legislation in the SPS area are summarized in Appendix A. All but the *Law on Veterinary Medicine*, are relevant to this article and Russian Laws are relevant to a discussion of CU provisions on SPS for three reasons. First, because CIS countries and the CU have followed the format and structure of the Russian 'model' (itself a legacy of the Soviet Union) for Laws under their jurisdiction. Second, because Russia predicated its accession to WTO on the CU rather than as a sovereign nation. Third, because the Soviet/Russian system lacks the supremacy ascribed to a single primary law in a particular field, characteristic of legislation in most other jurisdictions. Normative Acts including 'Technical Regulations' are extremely important in Russian and CIS regulatory frameworks because their functions go beyond straightforward secondary/subordinate legislation

⁹ OSCE (2012). Handbook of best practices at border crossings – A trade and transport facilitation perspective, electronically available at <http://www.osce.org/node/88200>.

¹⁰ See Decision N° 28 of December 11 of 2009. On the international agreement and other regulatory legal acts in the field of application of sanitary measures in the Customs Union, http://ec.europa.eu/food/international/trade/sps_requirements_en.htm.

¹¹ See *supra* n. 7.

¹² R. Black & I. Kireeva, *General Overview of the Russian Federation Sanitary and Phytosanitary Legislation in Light of the WTO SPS Agreement and EU Principles of Food Safety*, 35 Rev. C. & E. Eur. L. 225–255 (2010); I. Kireeva & R. Black, *International Trade and Protection Issues – Example of Plant Quarantine Law of the Russian Federation*, 44 J. World Trade 591–609 (2010).

¹³ Asian Development Bank (2013). Modernizing sanitary and phytosanitary measures to facilitate trade in agricultural products. Report on the development of an SPS Plan for the CAREC countries. [Prepared by Robert Black] <http://www.adb.org/publications/modernizing-sps-measures-facilitate-trade-agricultural-and-food-products>.

equivalent to say ‘regulations’. Normative Acts may originate as Decrees or Decisions at Cabinet or even Presidential level that do not have to follow the provisions of a primary law, yet they may contain basic principles and declaratory provisions along with the technical details. This may be advantageous when there is a lack of political will to reform primary laws and a country faces time constraints. An example of this will be given when SPS legislation in Kazakhstan is considered.

However, this approach to legislative initiatives unavoidably leads to creation of a multiplicity of organizations with overlapping or even conflicting mandate, when the scope of any given jurisdiction is not clear. Examples of this can be seen in the SPS regulatory systems in both Kazakhstan and Belarus, as well as in the Kyrgyz Republic. Furthermore, outdated or superseded Normative Acts or even Laws tend not to be repealed entirely and some provisions continue to have effect or be referred to.

The *Law on Technical Regulation* in the first place uses terms that are ambiguous and possibly misleading in the WTO context, as has been pointed out previously,¹⁴ particularly with terms ‘technical regulation’ and ‘standards’. The use of the term ‘technical regulation’ in the WTO’s *Agreement on Technical Barriers to Trade* (TBT Agreement) and the *SPS Agreement*’s term ‘sanitary and phytosanitary measure’ imply mutually exclusive regulatory initiatives. Furthermore, the TBT concept of ‘standards’ being ‘voluntary’ does not apply in the *SPS context* as it is clear that ‘standards’ in the TBT sense are the scientific/technical basis for technical regulations, which serve for creating some minimum technical requirements and a uniform basis for production. In the *Law on Technical Regulations*, there is a clear overlap between ‘standards’ and ‘technical regulations’ and any one technical regulation in relation to food products may be a mixture of genuine food hygiene and safety standards, product specifications and regulatory rules. However, in the 2011 Working Party Report on Russia’s accession to WTO,¹⁵ Russia (on behalf of the CU) insisted on using the term ‘technical regulation’ to include SPS measures but would distinguish ‘SPS Technical Regulations’ from other Technical Regulations. Overall, the State Standard System (GOST) in the TBT and SPS context is not just about standards, as it may appear at first glance, but is a fully established and administratively sound but cumbersome food control system which works in parallel with other competent authorities with focus on food safety issues. In this respect, it is

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¹⁴ See *supra* n. 12.

¹⁵ WT/ACC/RUS/70; WT/MIN(11)/2. Available from the WTO Information Centre (<http://wto.org>).

also conspicuous as an extremely costly method of regulation, to the extent of repeated accusations of rent seeking.¹⁶

The other major factor to be considered is the dual system of SanPin for health-protection import controls (based in the *Law on the Sanitary and Epidemiological Welfare of the Population*) and the GOST-Technical Regulation approach to authorizing food to be placed on the market. This has been fully described elsewhere by the authors, as is a comparison with the food safety systems in the EU.¹⁷ The application of this approach in CIS and Central Asia has also been specifically discussed.¹⁸ To some extent, the contents of the SanPins have been incorporated in a consistent manner into the Technical Regulations (GOST), but the result has been a continuation of the prescriptive end-product certification approach and continued merger of ‘quality’ and all related aspects (such as environment protection and social policy) and food safety requirements.¹⁹ This is irrespective of whether HACCP as an element of internal control has also been introduced and encouraged for use through the new generation of Technical Regulations (after Russia’s accession to WTO). Furthermore, food safety factors may not necessarily be risk-based. Similar considerations apply to the *Law on Food Product Quality and Safety*. By contrast, the Kazakh Law on Safety of Food Products (No. 301 of 2007) was substantially amended by the Law no. 190 of 2009 and again in 2012 to incorporate concepts based on international norms. This is discussed later in more detail.

The most important SanPins for food of non-animal origin concern maximum residue limits for pesticides and other agricultural chemicals and mycotoxins in some cereal grains, pulses and other products. Russia’s pre-accession approach to setting pesticide MRLs has been noted, particularly for ‘zero tolerance’ or ‘zero MRLs’.²⁰ In certain cases, this involved using the technically established Limit of Determination (LOD) as zero rather than the standardized ‘effective zero of 0.01 mg/kg adopted in the EU or taking the Codex Alimentarius approach of ‘no MRL’ or ‘MRL revoked’. A consequence was that for some fruits and vegetables the Russian government could

¹⁶ See Michalopoulos, Constantine & David G. Tarr, *The Economics of Customs Unions in the Commonwealth of Independent States*, 38 *Post-Soviet Geography & Econ.* 125–143 (1997); Petrovskaya, Galina, *Belarus, Rossia, Ukraina. Obrechennye na trgovye konflikty* (Belarus, Russia, Ukraine. Doomed for trade conflicts 2012), Deutsche Welle, June 14. <http://www.dw.de/dw/article/0,16023176,00.html>; see also *supra* n. 11.

¹⁷ Kireeva & Black (2010) *supra* n. 12.

¹⁸ See *supra* n. 13.

¹⁹ The meaning of ‘quality’ in this context has been explained separately. See *supra* n. 12.

²⁰ I. Kireeva & R. Black, *Chemical Safety of Food: Setting of Maximum Residue Levels (MRLs) for Pesticides and Other Contaminants in the Russian Federation and in the EU*, 6 *Eur. Food & Feed L. Rev.* 174–186 (2011).

claim that they had higher safety standards than the EU as a justification for denying entry to some EU products. A positive trend is that, Codex having adopted the EU approach of standardized ‘effective zero’ of 0.01 mg/kg, Russia has done the same consequent to WTO accession. This follows the Decree of the Government N 761 from 28 September 2009 ‘On implementing harmonization of the Russian sanitary-epidemiological, veterinary and phytosanitary measures in compliance with international standards’, requiring all SPS measures to be brought in line with international standards. A recent innovation is the adoption by Russia of a food alert system (SIRANO) exactly analogous to the EU Rapid Alert System for Food and Feed (RASFF).²¹ This works with a new system of laboratory analysis of food and feed of animal origin, again closely modelled on the EU’s own plans.

Finally the *Law on Plant Quarantine*, reviewed pre-accession by the authors,²² deserves mention because of amendments made in 2011, after the publication of the Working Party report on Russia’s accession to WTO. Whereas the previous version of this law confusingly referred to pests and particularly quarantine pests in several ways, the 2011 amendments clearly incorporate concepts consistent with the International Plant Protection Convention (IPPC) in its 1997 version with new definitions of ‘hazardous organism’ and ‘quarantine hazardous organism’; these being equivalent to ‘pests’ and ‘quarantine pests’ in the IPPC. Furthermore, ‘quarantine objects’ and similar terms have been replaced by ‘quarantine products’ and most significantly there is a definition of ‘quarantine phytosanitary requirements’. This demonstrates the importance given to pest risk analysis (Article 5 of the law) which must be used firstly to determine which pests are quarantine pests and then which quarantine pests can legitimately be placed under control because of associated pest risks. Hence, it can be said that the current *Law on Plant Quarantine* adopts the important principles of the 1997 IPPC and is therefore consistent with the *SPS Agreement*. This makes interesting comparisons with the plant health laws of the Kyrgyz Republic, a candidate to join the CU.

3 SPS-RELATED LEGISLATION OF BELARUS

As will be seen from Appendix B, the SPS-related laws in Belarus generally have the characteristics of the equivalent laws in Russia before recent reforms. For food of

²¹ Overview of the SIRANO is electronically available at <https://vetrf.ru/vetrf-docs/content/.../sirano1.ppt>.

²² Black & Kireeva (2010) *supra* n. 12.

non-animal origin, the most modern approach is demonstrated in the *Law on Consumer Protection*. This pertinently covers labelling and ‘harmful substances’ meaning that risk is taken into account. The *Law on Protection of Plants* is the one instance of thorough reform to achieve compliance with the 1997 IPPC and to unify plant protection and quarantine.

4 HOW SUBJECTS OF THE RUSSIAN FEDERATION IMPLEMENT SANITARY AND PHYTOSANITARY MEASURES

Originally, Articles 6, 7 and 8 of the *Law on Food Products Quality and Safety* gave powers to the Subjects of the Russian Federation to enact laws and regulations in accordance with the laws of the Federation. The basic provision is in Article 2:

Article 2. Legal regulation of relations in the field of assurance of food product quality and safety

Relations in the field of assurance of food product quality and safety are legally regulated by this Federal Law, other Russian Federation Federal Laws and standard legal acts adopted in conformity with them as well as laws and other standard legal acts of the Subjects of the Russian Federation.

Federal Laws, laws of the Russian Federation Subjects and other standard legal acts adopted in conformity with them shall contain no norms contradicting this Federal Law in their parts concerning assurance of food product quality and safety.

.....

Then Article 6 provides:

Article 6. Powers of the Russian Federation in the field of assurance of food product quality and safety

...

2. Governmental authorities of the Russian Federation Subjects have a right to participate in the execution of powers of the Russian Federation in the field of assurance of food product quality and safety through:

adoption of laws and other regulations of the Subjects of the Russian Federation according to federal laws;

development, approval and implementation of regional programmes on assurance of food product quality and safety;

execution of control and surveillance for food product quality and safety jointly with the competent Federal Executive Authorities.

(Point 2 is introduced by the Federal Law N 199-FL of 31 December 2005)

Articles 7 and 8 were repealed according to the Federal Law N 122-FL of 22 August 2004.

Article 7. Powers of the Russian Federation in the field of quality assurance and food safety

The authority of the subjects of the Russian Federation in the field of quality assurance and food safety include:

implementation of a unified state policy and the implementation of federal laws;

adoption of laws and other normative legal acts of the Russian Federation;

development and implementation of targeted programs to ensure the quality and safety of food products, materials and products manufactured in the territories of the Russian Federation;

....

Article 8. Powers of local authorities in the area of quality assurance and food safety

Local governments may be endowed with certain state powers in the field of quality assurance and food safety in accordance with the legislation of the Russian Federation.

Although the above-stated provisions in Article 6 remain in force, in the opinion of the authors, this only gives authority to the Subjects to implement surveillance in the field of food safety and quality and does not give them powers to regulate cross-border trade independently of the provisions of the laws of the Russian Federation.

For the record, there were at least nine Laws of the Altai Krai, bordering Kazakhstan and Mongolia, covering food safety and quality but these were all repealed in April 2014.

5 CU LEGISLATION ON SANITARY FOR FOOD OF NON-ANIMAL ORIGIN AND PHYTOSANITARY MEASURES

CU legislation relevant to trade in food of non-animal origin and phytosanitary controls falls into several categories (Table 1 a–d).²³ Four interrelated issues relevant to food of non-animal origin discussed in this section are: (i) the transitional nature of the Technical Regulations of the CU, (ii) the technical requirements at the borders of the CU and for ‘circulation of products’, (iii) the means of verifying conformity with the requirements, and (iv) how far the CU has adjusted to the norms of the international trading system.

With the collapse of the Soviet Union, the approach of CIS countries to the adoption of international norms for import controls varied to the extent that some countries began approximating to the EU system, but all countries maintained the GOST system and technical regulations. Sources for technical requirements for food of non-animal origin and the primary legal authority for such measures are given in Table 1.

The Agreement on SPS measures (Decision 28, Table 1a) and the adoption of Technical Regulations at CU-level were the means to create uniformity. Currently, development of national technical regulations is suspended, awaiting the end of the transitional period and the coming into effect of CU Technical Regulations.²⁴ It is worth referring back to the controversy over whether Technical Regulations should include SPS measures because the latter two concepts are held to be mutually exclusive under the TBT and SPS Agreements. Russia’s response in the accession notifications was to adopt ‘SPS Technical Regulations’ as distinct from technical

²³ A convenient source of the legislation of the CU is found on the European Commission website (http://ec.europa.eu/food/international/trade/sps_requirements_en.htm). However, not all the legal instruments posted on this site are available in English and the entries may not be up-to-date. The official website of the Customs Union (<http://www.eurasiancommission.org/en/Pages/default.aspx>, Documents page) is comprehensive but Russian language only. There is also the ‘CIS.-legislation’ website (<http://cis-legislation.com>) but a subscription is necessary for full access.

²⁴ The end of the transitional period is not provided in the text of the Agreement, as it is conditional on the establishment of the supra-national bodies and preparation of all the necessary documents for the application of the Customs Union provisions.

regulations on non-SPS matters. To date, CU regulations have been produced on food safety (covering some foods of animal origin) as well as on grain and fruit juices (Table 1b). The draft Technical Regulation on fisheries products has the customary mixture of product specifications and food safety requirements, not necessarily risk-related. Although new research-based information may not feature in SanPins or TRs but through the new alert system (see above), it appears it is possible to respond to threats as they arise. For example, for grain, pesticide MRLs are provided for DDT and other obsolete organochlorine pesticides that are most unlikely to be present in grain in the twenty-first century while more modern pesticides that could have residues do not feature in the Technical Regulation on grain. According to the latest information available, pesticide MRL setting in the CU still uses the pre-WTO accession approach of Russia to ‘zero MRLs’.²⁵

A further complication is the emergence of EurAsEC Technical Regulations. Where they exist, they will have primacy over CU Technical Regulations. This is important for the Kyrgyz Republic that is currently a member of EurAsEC but a candidate for the CU. There will be further discussion of progress towards adoption of CU Technical Regulations when SPS measures in Kazakhstan and the Kyrgyz Republic are discussed in more detail.

Apart from the technical requirements as possible barriers to trade, the biggest obstacle to trade between CU members and for non-CU countries trying to export to the CU is the conformity assessment regime, linked primarily to the GOST-based requirements as well as SanPins. Goods requiring mandatory certification must be accompanied by a certificate of conformity, now exempting food products (Table 1c) but in the transitional period, CU members may have lists of goods subject to certification under national rules. In the transitional period, there are still national registers of manufacturers that eventually will form a CU-level register. Reports that declarations of conformity based on the Kazakh register not being recognized in Russia cannot be verified.

The lower-level requirement for a declaration of conformity does not require each consignment of products to bear a certificate of conformity but the procedures to be satisfied are a lot more complex than that required under the internationally recognized HACCP approach. There are also issues for Kazakh and Belarus producers being eligible under this scheme that is certainly not available to non-CU food producers. As stated above, end-product certification is not included in

²⁵ <http://www.ustr.gov/sites/default/files/2013%20SPS.pdf>.

international food safety norms except for very specific products and very specific contaminants. (A distinction is made here for international health certificates required for food of animal origin.)²⁶ Laboratories providing certificates of conformity are subject to approval or registration, potentially causing additional problems for food manufacturers in Kazakhstan and Belarus.

The CU abides by the Tier Carnet agreement that sealed containers should not be tampered with unless there is suspicion of contraband.²⁷ The widespread use of scanners (using which even different kinds of fruit may be distinguished) has limited the need for physical inspection at the border. The bulk of commercial imports of food of plant origin subject to food safety or phytosanitary inspection are fresh, frozen or chilled fruits and vegetables in sealed containers. Generally, they are only inspected if at all at the destination, effectively Customs warehouses in major cities, either for the presence of plant pests or compliance with SanPins.

Table 1d indicates a number of instruments to promote and ensure harmonization of CU's SPS regime with the international trading system and with international standards. Some of these instruments pre-date the approval of Russia's accession to WTO while the CU Decision 835 of 2011, even though amended in 2014, still states that the Decision shall come into force '... not earlier than the date when the first of the Parties joins the World Trade Organization'.

Table 1a Sanitary Requirements of the CU Relevant to Food of Non-animal Origin

<i>Type of Instrument</i>	<i>Title</i> <i>* Russian Text only</i>	<i>Date</i>	<i>Comments</i>
Decision of CU Commission	Decision 28 on the international agreement and other regulatory legal acts in the field of application of sanitary measures in the Customs Union	11 December 2009	
	Decision No 299. – List of goods subject to sanitary and epidemiological requirements at the Customs Union border	28 May 2010	as amended by Decisions No 341 of 17 August 2010, No 383 of 20

²⁶ A case concerning yoghurt was identified in the ADB SPS study (*supra* n. 13). Yoghurt had been produced in Ukraine by a company originally Kazakh-owned taken over by the French company President. At that point, the yoghurt could not be imported into Kazakhstan through Russia because of the conformity assessment rules.

²⁷ OSCE report *supra* n. 9.

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	<ul style="list-style-type: none"> – Regulation on sanitary and epidemiological surveillance at the Customs Union border – Annexes – Common form of documents confirming the safety of products 		September 2010, No 432 of 14 October 2010, No 456 of 18 November 2010
Regulation	Regulation on sanitary and epidemiological surveillance at the Customs Union border	28 May 2010	
Regulations	Common form of documents confirming the safety of products	28 May 2010	
Customs Union common sanitary and epidemiological requirements	<p>Chapter I. General requirements*</p> <p>Chapter II section 15. Requirements for pesticides</p> <p>Chapter III: Procedure for amending the Customs Union common sanitary and epidemiological requirements*</p>	<p>11 December 2009</p> <p>28 May 2010</p> <p>-</p>	<p>Decision No 28 of 11 December 2009 of the Customs Union Commission</p> <p>Decision No 299 of 28 May 2010 of the Customs Union Commission, as amended by Decisions No 341 of 17 August 2010, No 383 of 20 September 2010, No 432 of 14 October 2010, No 456 of 18 November 2010</p>

Table 1b Technical Regulations Related to the Supply Chain (Food of Non-animal Origin)

<i>Type of Instrument</i>	<i>Title</i>	<i>Date</i>	

Decision of CU Commission	Decision No 874 of the Customs Union Commission: Technical Regulation on the safety of Grain	09 December 2011	
	Decision No 882 of the Customs Union Commission: Technical Regulation on Fruits' and Vegetables' Juices	09 December 2011	

Table 1c Certification of Conformity and Development of Technical Regulations

<i>Type of Instrument</i>	<i>Title</i> <i>* Russian text only</i>	<i>Date</i>	
Agreement	Agreement on single principles and rules of technical regulation in the Republic of Belarus, the Republic of Kazakhstan and in the Russian Federation of 18 November 2010	18 November 2010	
Decision of the Customs Union Commission	Decision No. 620 on the Single list of products which is subject to the obligatory assessment (confirmation) of compliance within the Customs union with issue of single documents Decision No 319 of 18 June 2010 of the Customs Union Commission. – Regulation on the inclusion of the certification bodies and testing laboratories (centres) into the Common register* – Regulation on the Common Register of certificates of conformity and declarations of conformity * – Common forms of certificate and	07 April 2011 18 June 2010	Repealing Decision No. 319

	<p>declaration of conformity*</p> <ul style="list-style-type: none"> – Regulation on a procedure for imports into the territory of the CU of products subject to mandatory confirmation of conformity * – Regulation of the CU's Coordination Committee on Technical regulation, and application of Sanitary, Veterinary and Phytosanitary Measures* – List of products, subject to mandatory confirmation of conformity* 		
		Repealed on 18 June 2010	
Decision of the Eurasian Economic Commission	<p>Decision No 27 of 11 December 2009: CU agreements in the field of technical regulation</p> <ul style="list-style-type: none"> – Agreement on circulation of products, subject to mandatory assessment (confirmation) of conformity* – Agreement on mutual recognition of labs* – Plan of actions* 	11 December 2009	
	Decision No. 48: Regulation on Development, Adoption, Amendment and Cancellation of Technical Regulations of the Customs Union	20 June 2012	
Decision of the EEC Council	Decision No. 103 of the EEC Council approving the Plan of Development of Technical Regulations of Customs	23 November 2012	

	Union for 2012–2013		
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Table 1d CU Decisions on the Development and Harmonization of SPS Legislation.

<i>Type of Instrument</i>	<i>Title</i>	<i>Date</i>	
Decision of the EurAsEc Interstate Council	Decision No 87 of the EurAsEC Interstate Council: Treaty on the functioning of the Customs Union in the framework of the multilateral trading system	19 May 2011	
CU Decision	<ul style="list-style-type: none"> – Decision 721. Application of international standards, recommendations and guidance – Decision 625. Harmonization of CU SPS legal texts with international standards – Decision 835 on Equivalence and Risk Assessment as amended by of EECC Decision 17 of 11 February 2014 	22 June 2011 07 April 2011 18 October 2011	
Decision of the Eurasian Economic Commission Collegium	Decision 212 Uniform Procedure of Examination of Regulatory Acts in Application of SPS Measures	06 November 2012	Replaces Decision 801 of the CU Commission – Adopting implementing measures for Decision No 625 (23 September 2011)

Decision of EEC Council	Decision No 103 approving the Plan of Development of Technical Regulations of Customs Union for 2012–2013	23 November 2012	No food of non-animal origin apart from potable bottled water
Decision of the CU Commission	Annex 2 to Decision 424 of the CU Commission – Action plan for phytosanitary measures	18 November 2011	

The Eurasian Economic Commission (formerly Customs Union Commission) is the regulatory body of the CU as well as EurAsEc. The Commission is supervised by the EurAsEc Council. Regulatory bodies responsible for SPS controls in the CU countries and the Kyrgyz Republic are indicated in Table 2. Whereas in Russia competent authorities for each SPS sector are readily identifiable, this is not the case in Belarus and Kazakhstan where inter-agency relationships are very complex. The situation in the Kyrgyz Republic at the time of writing is even more confused with things in a state of flux, as discussed below.

Table 2 Competent Authorities and Other SPS Regulatory Bodies in CU Members and Kyrgyz Republic

<i>Country</i>	<i>Ministry</i>	<i>Regulatory Body</i>	<i>Mandate</i>
Russia	Agriculture	Rosselkhodnadzor	Veterinary and phytosanitary surveillance
	Health	Rospotrebnadzor	Food Safety ('SanPins')
Belarus	Ministry of Agriculture and Food	Department of Veterinary and Food Surveillance	Food safety, veterinary controls
	Health		Food of non-animal origin (contaminants in fresh food)
	(Council of Ministers)	State Committee for Standardization of the Republic of Belarus	Surveillance of food production/processing and food on the market
	Trade		Surveillance of food

			distribution and sale and enforcement actions
Kazakhstan	Agriculture	Veterinary and food safety Department	Primary food safety and veterinary policy. Inspection of abattoirs.
		Committee for Veterinary Control and Surveillance	Veterinary and food safety risk assessment
		Committee for State Inspection	Food of non-animal origin risk assessment, MRLs, etc., pest risk assessment
		Phytosanitary Department	Phytosanitary policy Containment and eradication of quarantine pests, NOT pest risk analysis
	(Government)	Consumer Protection Agency	Surveillance of food on the market (GOST)
	Finance	State Customs Committee	Primary responsibility for SPS border inspections
Kyrgyz Republic	Health	Department of Sanitary and Epidemiological Welfare	Public health/SanEpid
	Economy	Centre of Standardization and Metrology	Nearest thing to Competent Authority for Food Safety
	Agriculture	Department of Chemicalization and Plant Protection	No legal enforcement functions but responsible for containment and

			eradication of quarantine pests
	(Government)	State Inspections	Veterinary and phytosanitary border controls

6 PRACTICAL IMPLEMENTATION OF PHYTOSANITARY MEASURES IN CU IN RELATION TO TRADE WITH THIRD COUNTRIES

Phytosanitary matters ('plant quarantine') have no direct connection with safety of food of animal origin. What is sometimes referred to as [domestic/inland] plant protection may involve pesticide and other agrochemical use that has a direct bearing on the safety of plant products for consumption (as well as environmental safety).

However, the IPPC is only concerned with maintaining borders against the introduction of quarantine pests and what needs to be done should the border be breached, recognizing that the latter also involves 'inland' operations. Hence the development and adoption of phytosanitary measures in the CU is not tied to the GOST-legacy. The principles of phytosanitary controls with reference to Russia's pre-WTO accession legislation were discussed in an earlier article by the authors.²⁸

Russia along with other CIS countries had primary plant health legislation consistent with the original version of the IPPC. However, the revision of the IPPC to bring it in line with the *SPS Agreement* (1997 version) came into force in at a time when the CIS was still adapting to the post-Soviet era. Hence, even by 2010²⁹ Russia's Law on Plant had not adopted the principles of the 1997 IPPC but as stated above, this is no longer the case. Phytosanitary legislation of the CU is given in [Appendix C](#).

The Regulation on Phytosanitary Control at the CU Border uses appropriate terminology in distinguishing quarantine objects (harmful organisms) and regulated products. Furthermore, regulated products are differentiated according to high and low risk; and low risk products do not require a phytosanitary certificate, in accordance with international practice. Together with this is the preparation of phytosanitary import requirements based on pest risk and the parallel abolition (in

²⁸ Black & Kireeva, *supra* n. 12.

²⁹ *Ibid.*

most cases) of import permit requirements. All this of course is contingent on the capacity for Pest Risk Analysis (PRA) to determine what are the quarantine pests in the first place, then appropriate phytosanitary requirements according to the risks and to justify any other phytosanitary measures. In the CIS Azerbaijan, Kazakhstan, Kyrgyz Republic, Russia, Ukraine and Uzbekistan are members of the European and Mediterranean Plant Protection Organisation (EPPO) that has been providing computer-assisted technology for PRA and associated training.

Comparing the Regulation on Phytosanitary Control at the CU Border and the Regulation on Phytosanitary Control in the CU, it has been stated that checks on plant products entering the CU from other countries are ‘more complicated and expensive’ than for products traded across the borders of CU members.³⁰ This is ostensibly because for trade within the CU plant products will only be subject to physical inspection at the destination. However, as stated above, sealed containers entering the territory of the CU will only usually be inspected at the destination in any case. It is further stated that the origin of the alleged discrimination is because CU members will ‘mutually recognize’ each others phytosanitary certificates (according to [the Agreement on phytosanitary controls](#)) ([Appendix C](#)) and pointing out that what ‘mutual recognition’ means is unclear. It would indeed be strange if there were ‘mutual recognition’ because the Phytosanitary Certificate is the only document accorded international status in the IPPC and must be recognized universally. In fact, the word ‘mutual’ or ‘mutually’ does not appear in the English translation of this Agreement and according to the Summary Decision No. 318 of the Customs Union, even for ‘high risk’ products entering the CU territory. Import permits have been abolished and Phytosanitary certificates are not now required for the following:³¹

Quarantinable products of high phytosanitary hazard:

- moving within the customs territory of the CU in mail, hand-luggage of passengers, members of the crew of vessels, planes, passenger coaches, motor vehicles, provided that the specified quarantinable products are not planting material or seeds or potatoes;
- wood packing and fixing material. The official of the competent authority, when examining and inspecting the specified quarantinable products, checks the presence of the special international mark in accordance with the legislation of the Side [ISPM 15];
- quarantinable products, located in the transport vehicle and intended for food use of its team and crew without the right to take it away outside the transport vehicle. By the order of the official of the competent authority, the food stocks located in the transport vehicles, contaminated by the quarantine objects (quarantine harmful organisms), have to be decontaminated, destroyed or sealed in the special warehouse for the period of transport vehicle location at the customs territory of the CU.

The CU does not function in the same way as the EU in phytosanitary terms. The members of the CU still have national phytosanitary laws and are responsible for the security of their own territories. In the EU, there are no border controls at all between

³⁰ N. Djamankulov (2011). On conditions for access of goods from the Kyrgyz Republic to the Customs Territory of the Customs Union regarding technical regulation and the application of sanitary, veterinary and phytosanitary measures. Analytical Study. USAID’s Regional Trade Liberalization and Customs Project (RTLCC).

³¹ Full details of the CU phytosanitary requirements in English may be seen at http://ec.europa.eu/food/international/trade/sps_requirements_en.htm. In this case, the information appears to be up-to-date (*supra* n. 23).

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Member States for plants and plant products and therefore phytosanitary certificates are not used for cross-border movement within the EU. Instead, there are ‘plant passports’ for movement of certain high-risk material into ‘protected zones’.

7 SPS MEASURES IN KAZAKHSTAN AND THE KYRGYZ REPUBLIC

In this section, we will examine the legislation relevant to food (mostly of non-animal origin) and to phytosanitary measures in Kazakhstan and the Kyrgyz Republic alongside a review of institutional responsibilities. The infrastructure and technical capacity in the two countries to carry out the necessary controls will not be examined.

The main legislation in the sanitary and phytosanitary area is given in [Appendix D](#).

7.1 KAZAKHSTAN

Kazakhstan is the largest of CIS countries being the world’s largest landlocked country. Cereals grains were the mainstay of the country’s economy in the early Soviet period and Kazakhstan is still a major grain producer. However, huge reserves of oil and gas are the main sources of the country’s wealth today. Kazakhstan was exporting significant amounts of potatoes until the introduction of a quarantine pest affecting potato (potato eelworm).

WTO accession negotiations started in 1996 but were dormant until Russia’s accession. It was assumed that Kazakhstan’s accession would happen rapidly because Russia predicated its own position on the CU. However, whereas Russia has not been subject to serious scrutiny post-accession, Kazakhstan’s accession negotiations, [although now successfully concluded](#), met some stumbling blocks, including concern about SPS measures.³² Accession to WTO is seen as opening up other markets to Kazakhstan’s products and there is particular interest in the EU. To this end, Kazakhstan is moving towards the adoption of EU standards.³³

Against this background, however, the legacy of the GOST is still operating with the new Consumer Protection Agency³⁴ responsible for surveillance of processed food

³² http://www.wto.org/english/news_e/news13_e/acc_kaz_23jul13_e.htm.

³³ F.G. Carneiro 92 (2013). What promise does the Eurasian Economic Union hold for the future? *Economic Premise* No. 108, February 2013
<http://siteresources.worldbank.org/EXTPREMNET/Resources/EP108.pdf>.

³⁴ From previous SPS study in Central Asia, it appeared that the Committee on Standardisation and Metrology was de facto Competent Authority for food. MoH formally handed over responsibility to MOA for raw food by 2012 but has now handed over responsibility for market surveillance to CPA (Table 2).

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(manufacturers, processors, distributors and retailers of food of animal origin in circulation). The Ministry of Agriculture is responsible for surveillance of raw food (Table 2). SanPins have been incorporated into Technical Regulations and whereas clear food safety requirements including adoption of Codex standards are indicated,³⁵ there are still requirements for certification based on a raft of criteria and specifications. It is clear from a recent study³⁶ that tensions exist within the system. There is a moratorium on market surveillance until the end of 2014 to allow businesses to adjust.

In all this, the high-level technical expertise in Kazakhstan is recognized within the CU. On 9 March 2010, the Government of the Russian Federation adopted Resolution № 132 ‘On mandatory requirements for specific types of products and related requirements for their design processes (including exploration), production, construction, installation, adjustment, operation, storage, transportation, sale and disposal contained in the technical regulations of the Republic of Kazakhstan that is a CU state member.’ According to this normative legal act, within the territory of the Russian Federation thirteen technical regulations of the Republic of Kazakhstan may be used.³⁷

The other factor to be considered however is responsibility for border inspections (including inland inspections at Customs Warehouses). This has been handed over to Customs, a trend seen in other countries in the regions arising from trade facilitation initiatives. At the time of writing, the implications of this in terms of the fate of existing Ministry of Agriculture inspectors is not clear. However, it is important to consider the source of fruit and vegetables in this context. First, the effect of CU tariff regime has generally reduced the quantity of high quality products from the EU³⁸ in favour of Russia but significantly 70% of Kazakhstan’s fruit and vegetables imports now come from China. To supply the urban population around the capital Astana, there is now a ‘green channel’ at the border with China at Horgas resulting from a high-level trade agreement between the two countries. Advance electronic notification is now standard at all Kazakhstan’s border inspection posts handling freight but at Horgas trucks carrying fruit and vegetables are facilitated through without inspections once the documents have been checked electronically and the vehicles scanned for

³⁵ Carneiro (2013) *supra* n. 33.

³⁶ ADB funded study into SPS in CAREC, in progress at time of writing.

<http://www.carecprogram.org/index.php?page=sps-workshop-bishkek>

³⁷ UNECE (2014). Regulatory and procedural barriers to trade in Kazakhstan. Needs assessment.

http://www.unece.org/fileadmin/DAM/trade/Publications/ECE-TRADE_407E-Kazakhstan.pdf.

³⁸ Carneiro *supra* n. 33.

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contraband. Furthermore, China has set up production zones for fruit and vegetables on the border with Kazakhstan especially to supply this market. There is local concern that there is no monitoring of pesticide residues when the use of pesticides is known to be uncontrolled in China, and Kazakhstan's water supply coming from China may be polluted with agrochemicals. (There are conflicting accounts of whether there are ultimately any physical inspections at the destination.)

Kazakhstan's adoption of phytosanitary measures is relatively straightforward. The Law on Plant Quarantine as amended is not fully compliant with the IPPC 1997 version. 'Quarantine objects' refers to both regulated products and pests, but quarantine pests are also referred to as 'alien types' (cf. original Russian law on Plant Quarantine). However, creative use of Normative Acts has ensured that official quarantine pests lists based on pest risk analysis are published (although not updated very frequently). Moreover, as is common to most of the CIS, [inland](#) plant protection, together with pesticide regulation and use management, comes under a different Law from the Law on Plant Quarantine. Nevertheless, both laws are implemented by the Phytosanitary Department that consequently has jurisdiction internally for enforcement of plant quarantine when the borders are breached (compare with the Kyrgyz Republic).

There is however, an anomaly in that the Committee for State Inspections under the Ministry of Agriculture is responsible for PRA (and risk analysis of food of non-animal origin) just as the Committee on Veterinary Inspections is responsible for risk analysis of food of animal origin and animal diseases and zoonoses. Phytosanitary import requirements follow the CU classification of high and low risk products and phytosanitary certificates not required for the latter. Import permits have been abolished.

7.2 KYRGYZ REPUBLIC

The adoption and implementation of SPS measures in the Kyrgyz Republic provides an interesting comparison with Kazakhstan. The Kyrgyz Republic as a long-standing member of WTO has been able to follow the former Soviet models for SPS matters untroubled. The country is now negotiating to join the CU as this remains the major market for exports and the source of most imports, there being no discernible orientation towards the EU. However, even continuing with 'more of the same' is fraught with difficulties because of institutional rivalries and near chaos resulting from frequent political upheavals since independence.

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Unlike in Kazakhstan, there is no overarching Law covering food, even in draft.³⁹ A new Technical Regulation on Hygiene of Foods came into effect in June 2014 with some principles of horizontal control of food production and processing (farm-to-fork). It is to be applied to industry and recognizes current concepts in food safety but does not specifically mention HACCP, nor is there any evidence of risk factors being taken into account. There are a number of Technical Regulations on specific categories of food that continue the prescriptive approach of the GOST. The plan is to replace these Technical Regulations with those adopted in the CU when the Kyrgyz Republic joins the CU.

Moreover, the difficulties and uncertainties seen in Kazakhstan because of the role assumed by Customs in inspections are multiplied in the Kyrgyz Republic. There was a similar plan in the latter country but this failed. Instead, a State Inspection Service was created that has taken over veterinary and phytosanitary inspections. However, the consequent dissolution of the State Veterinary Department was disputed by the state veterinarians all the way to the Supreme Court. In the meantime, the Ministry of Health has resumed responsibility for sanitary and epidemiological safety at the borders. Because of this unfortunate situation and in spite of the fact that the dispute over veterinary inspections has now been called off, the epizootic situation in the country has deteriorated to the extent that the country can no longer export meat, milk and other food of animal origin to Kazakhstan and Russia. The Ministry of Agriculture is reluctant to exert any policy influence in SPS matters in any of the three sectors.

The phytosanitary situation is hardly any better. The *Law on Plant Quarantine* does not comply with IPPC and although the high risk/low risk lists of the CU are used in the Kyrgyz Republic, phytosanitary certificates are still required for all plant products and import permits needed comprehensively for all but the smallest private imports. Low risk goods are not subject to inspection.

There is separate legislation for plant quarantine and [domestic] plant protection/chemical control of pests. However, the Department of Chemicalization and Plant Protection, although concerned in practice with containment and eradication of quarantine pests, has no enforcement functions; these are reserved for the State Inspection Service that has no specialist policy or advisory unit to which it can refer

³⁹ Djamankulov (2011) *supra* n. 30; Central Asia AIDS Control Project (200111). Analysis of the food safety situation and development of a regional action plan, Central Asia, Final Country Report Kyrgyz Republic. CAAP for World Bank.

for guidance on inspections. The meagre resources of the above-mentioned Department are already fully stretched in controlling several serious quarantine pests that were introduced in recent years. It is difficult to see how this situation is sustainable and further incursions of quarantine pests are likely. At the moment there is serious consideration being devoted to drafting and ultimate adoption of a new plant health law that will consolidate the now separate laws on plant quarantine and [domestic] ‘plant protection’. How these plans will unfold in the future is uncertain, given the Ministry of Agriculture’s abrogation of responsibility for SPS.

8 CONCLUSIONS

Coming back to the raised issues about SPS measures and trade in food products of non-animal origin raised in the Introduction of this article (paper), some conclusions may now be drawn. The legacy of the Soviet-era GOST regime, in spite of the legal reforms and changes to the approach on food safety, still remains with the concept of prescriptive, end-product-based specifications for market access of food provided by Technical Regulations. Although the dual system of SanPins and GOST is gradually disappearing with the incorporation of SanPins into Technical Regulations, specific food safety requirements are not necessarily risk-based and are still bundled together with other requirements, such as quality and various technical specifications. The example was given of the MRLs for obsolete pesticides in the Technical Regulation on grain and the absence of limits for other pesticides that might relate to real risks. However, fresh food of non-animal origin, mainly fruit and vegetables, are not subject to this kind of technical specification and therefore escape most of the problems associated with the GOST. Furthermore, one of the latest developments is that Russia has harmonized its approach to ‘zero MRL’ with the EU and Codex, thus removing a potential problem for imports of fruit and vegetables into Russia from the EU.

Phytosanitary measures are independent of the GOST and have a different legal conceptual basis. There is a definite trend to national plant health laws adopting the principles of the 1997 IPPC while CU normative acts have approached phytosanitary requirements from the perspective of pest risk analysis. CU regulations exempt ‘low-risk’ plant products from the requirement of a phytosanitary certificate and import permits have been abolished in favour of extensive phytosanitary import requirements. Whether CU countries have at present the capacity for comprehensive and effective pest risk analyses is outside the scope of this article.

The elaborate system of conformity assurance perhaps poses the greatest barrier to imports into the CU from other countries. The requirement of a ‘declaration of conformity’ tends to align with the HACCP approach and obviates the need for a ‘certificate of conformity assurance’ that is such a prominent feature of the GOST-based system. In theory, this would help trade in food products with other countries because those products are exempted from mandatory certification. However, non-CU manufacturers are not eligible to register for ‘declarations of conformity’ and some food manufacturers, for example, in Kazakhstan may similarly be denied access to this facility to penetrate Russian markets. The conformity assurance requirements may also pose barriers to processed food originating in non-CU countries transiting the CU to other countries, but these requirements do not apply to fresh fruits and vegetables. As appears, according to the regulations of the CU, there are no significant extra phytosanitary barriers to be overcome in the entry of plants and plant products into the territory of the CU from other countries.

As Kazakhstan negotiated for WTO accession, it adopted a ‘modern’ food law that addresses all the internationally accepted principles of food safety and is in fact modelled on the EU food law. This allows risk-based requirements (formerly SanPins) to be set for food of non-animal origin, including appropriate pesticide MRLs and requirements for mycotoxins, together with labelling requirements strictly following the EU law. Kazakhstan’s approach to Technical Regulations on food products incorporates these requirements and HACCP but continues to face the demands of encompassing non-safety aspects of food specifications. A recent and encouraging sign is the recognition of Kazakhstan’s technical expertise in drafting CU technical regulations. Kazakhstan showed progressive approach to phytosanitary measures but still suffers to some extent from the legal separation of ‘plant quarantine’ and domestic plant protection as well as the slowness of legislative reform in this area.

The Kyrgyz Republic as a long-standing member of WTO has never had to demonstrate its compliance with the WTO *SPS Agreement*. Because of the country’s economic situation, membership of the CU is the primary target and as far as food safety is concerned is likely only to replicate the CU approach to international norms and standards, as limited or not as that may be. However, institutional and organizational problems that beset the SPS-related agencies of the Kyrgyz Republic at the time of writing, rather than outdated legislation, pose the greatest obstacles to achieving risk-based food and phytosanitary controls.

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Appendix: Laws of the Members of the Eurasia Customs Union and Kyrgyz Republic in Sanitary and Phytosanitary Area

A Russian Federation

<i>Title</i>	<i>Year of Last Amendment</i>	<i>Scope</i>
Federal Law N° 184 'On Technical Regulation'	2014	Basic law implementing the obligatory requirements ('standards' in a wide sense of this word).
Federal Law N° 29 'On Food Product Quality and Safety'	2011	Covers food product requirements; does not fully address fundamental food safety principals, even as last amended.
Order FS-NV-2/17358 of 25 December 2012 on SIRANO system	2012	Introduces rapid alert system for food and feed exactly analogous to EU RASFF.
Federal Law N° 4979 'On Veterinary Medicine'	2011	Covers issues of veterinary medicine and animal health. See further details in other article by the same authors.
Federal Law N° 52 'On the Sanitary and Epidemiological Welfare of the Population'	2014	Legal basis for SanPins.
Federal Law of 2000 N° 99 'On Plant Quarantine'	2011	Plant health law consistent with 1997 IPPC.

B Belarus

<i>Title</i>	<i>Year of Last Amendment</i>	<i>Scope</i>
Law No. No. 90-Z 'On Consumer Protection.'	2012	Covers food labelling; harmful substances.
Law No. 397-3 'On Sanitary and Epidemiological Well-being of the Population.'	2014	Basis for development and adoption of SanPins.
Law No. 217-Z 'On Quality and Safety of Alimentary Raw Materials and Foodstuffs.'	2012	Does not follow general international principles and concept of food safety based on risk assessment and does not distinguish safety and quality issues which are crucial for risk determination.
Law No. 161-3 on Veterinary Activities	2014	Organization of State veterinary controls. Covers issues of veterinary medicine and animal health.
Law No. 262-Z 'On Technical Regulation and Standardization' 2005	2008	Almost identical to the Russian Law, it is a basic law implementing the obligatory requirements ('standards' in a wide sense of this word).
Law on Protection of Plants	2009	Unifying plant protection and quarantine. Consistent with 1997 IPPC.

C Eurasian Customs Union Phytosanitary Legislation

<i>Type of Instrument</i>	<i>Title</i>	<i>Date</i>	<i>Comments</i>
CU Decision	Decision No. 30 On the international agreement and other regulatory legal acts in the field of application of phytosanitary measures in the Customs Union within the frame of the Eurasian Economic Community <ul style="list-style-type: none"> – Customs union Agreement on phytosanitary measures – Annex 	11 December 2009	
	Decision No 318 of 18 June 2010 of the Customs Union Commission <ul style="list-style-type: none"> – Regulation on phytosanitary control at CU border – List of products subject to phytosanitary control – Decision No 894 of Customs Union Commission amending phytosanitary control procedure at the CU border and its annex – Regulation on phytosanitary control in the CU – Summary of Decision No 318 of the Customs Union 	18 June 2010	as amended by Decision No 454 of 18 November 2010

			Import permit not required after 31 December 2010.
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D Kazakhstan and Kyrgyz Republic Compared

<i>Subject Matter</i>	<i>Kazakhstan</i>	<i>Kyrgyz Republic</i>
Primary food safety law	Law No. 301 'On Safety of foods Products' (21 July 2007)	None
Other food related law		Law No. 67 'On the Principles of Technical Regulations' (2004)
		Law No. 70 'On Procedure of Inspections of Businesses' (25 May 2007)
		Law No 248 'On Public Health Care' of (24 July 2009)
Technical Regulations and Normative Acts	The order of the Government of the Republic of Kazakhstan from 17 January 2012 of No. 88 'About approval of Health regulations 'Sanitary-and-epidemiologic requirements to objects of wholesale and retail trade by food products'. Appendices concern specification of retail premises, not food items.	The law of the Kyrgyz Republic No. 86 Technical Regulation 'On Hygiene of Production of Foodstuffs' (No. 88 of 1 June 2013)
		The law of the Kyrgyz Republic No. 86 Technical regulation 'About marking of foodstuff' (30 May 2013)
Primary plant health law	Law No. 344-I 'About quarantine of plants' (11 February 1999)	Law No. 26 'About Plant Quarantine' (27 June 1996)
	Law No. 331-II of No. 331-II'About	Law No. 12 About

	protection of plants' (3 July 2002)	chemicalization and protection of plants' (25 January 1999)
Normative Acts		The order of the Government of the Kyrgyz Republic from 30 December 2006 of No. 901 'About determination of measures for safety in the field of veterinary science, the plant quarantine, the epidemiology, sanitary science and ecology' (Current state on 15 February 2012)