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Country follow-up to ECE studies on regulatory and procedural barriers to trade

Follow-up on Economic Commission for Europe country studies: Kyrgyzstan

Summary

This report was prepared by the secretariat to brief member States about the recent efforts of the Kyrgyz Government to implement the recommendations emerging from the ECE study on regulatory and procedural barriers to trade in the country.

The report is presented to the Steering Committee on Trade Capacity and Standards for decision.

I. Introduction

1. In 2015, the ECE carried out a comprehensive survey-based assessment of regulatory and procedural barriers to trade in the Kyrgyzstan, with a view to supporting the Government's activities in the trade sector to diversify export and ensure sustained growth. The findings were published in a study, which featured detailed action-oriented recommendations that were borne out of consultations with public and private stakeholders.¹
2. A consistent theme running through the study was the lack of up-to-date information on trade-related regulations. Even though the laws are published on several State agencies' websites, traders found it difficult to keep abreast of legislative reforms, applied regulatory requirements and associated administrative procedures. Traders reported that they had to piece together information from different sources, with the consequence of assuming additional transaction costs in the form of delays. For small enterprises, such delays often acted as a disincentive to exports.
3. Moreover, published information was invariably in Russian and, therefore, incomprehensible to a significant segment of international partner countries. Buyers and suppliers from these countries have no means to establish an understanding on the country's regulatory requirements, beyond the information obtained from trade promotion institutions and missions abroad.
4. To address this shortfall, the ECE assisted the government in establishing a comprehensive database of applied non-tariff measures (NTMs) using the internationally recognized United Nations Conference on Trade and Development (UNCTAD) administered Multi-Agency Support Team (MAST) classification system. The database was consolidated by a national team of experts from the State Enterprise Single Window Center for Foreign Trade under the Ministry of Economy.
5. The team passed UNCTAD's online training course on the use of the MAST classification system, which was followed by an intensive face-to-face training course in Geneva, Switzerland over the period 22-24 March 2017. The team members also received on the job training over the period May-October 2017, during which they compiled the database under the supervision of a UNCTAD regional expert.
6. The NTM database was validated during a National Stakeholder Meeting that was held at the Ministry of Economy in Bishkek, Kyrgyzstan in March 2018. The database will be used by the Government to strengthen its information dissemination function, and will be integrated into UNCTAD's Trade Analysis Information System (TRAINS).²
7. This report provides an overview of Kyrgyzstan's NTM database, and highlights the Government's plans to further align these measures with the principles and requirements of the multilateral trading system.

¹ <https://www.unece.org/tradewelcome/studies-on-regulatory-and-procedural-barriers-to-trade.html>.

² TRAINS features tariff and non-tariff measures as well as import flows by origin for more than 150 countries at the most disaggregated level of Harmonized System (HS). The data can be accessed at: <http://unctad.org/en/Pages/DITC/Trade-Analysis/Non-Tariff-Measures/NTMs-Data.aspx>.

II. Overview of Kyrgyzstan's non-tariff measures

8. Kyrgyzstan's NTMs totalled 586 in December 2017, of which 369 measures (or around 63 per cent) were approximated to those of the Eurasian Economic Union³ by implementing the Eurasian Economic Union harmonized legislation (the common technical regulations) and integrating the Eurasian Economic Union regulatory requirements into national laws.⁴

9. The remaining NTMs, which totalled 217 measures, were established under 55 legislative acts and pertained to specific sectors/products not covered by the Eurasian Economic Union harmonized legislation. Some of these acts were slated for approximation with those of the Eurasian Economic Union over the period 2018-2025 (Annex, Table 1).

10. Technical barriers to trade (TBT) measures (Chapter B) covering testing, quality, labelling and authorization requirements, represented the largest segment of the remaining NTMs (with a 56.7 per cent share) while sanitary and phytosanitary (SPS) measures (Chapter A) accounted for the third largest segment (18.0 per cent). The most affected products by the TBT and SPS measures and other import-related measures included: beverages, spirits and vinegar (HS 22), albuminoidal substances, modified starches, glues, enzymes (HS 35) and essential oils and resinoids, perfumery, cosmetic or toilet preparations (HS 33).

11. Export-related measures (Chapter P) accounted for 18.9 per cent (or the second largest segment of the country's non harmonized NTMs) and were mainly related to technical requirements not specified under Chapter P, followed by pre-shipment inspection (Chapter C), price-control measures (Chapter F), measures affecting competition (Chapter H), non-automatic licensing (Chapter E) and finance measures (Chapter G), respectively 2.3 per cent, 1.8 per cent, 1.4 per cent, 0.5 per cent and 0.5 per cent. The most affected products under export-related measures include raw hides and skins (other than fur skins) and leather (HS 41), beverages, spirits and vinegar (HS 22), cotton (HS 52) and edible fruit and nuts; peel of citrus fruit or melons (HS 08). A more detailed breakdown of the country's non-harmonized NTMs by MAST Chapter is provided in the Annex (Table 2).

III. Application

12. Around 95 per cent of the non-harmonized import related NTMs, or 167 measures, were applied on an equal basis to all countries. The remaining were applied to third countries, members of the Commonwealth of Independent States (CIS), Eurasian Economic

³ In 2017, the Eurasian Economic Union membership is comprised of Armenia, Belarus, Kazakhstan, Kyrgyzstan and the Russian Federation. The Eurasian Economic Union was established pursuant to the Treaty on the Eurasian Economic Union that was signed by Belarus, Kazakhstan and the Russian Federation on 29 May 2014 and entered into force on 1 January 2015. Armenia and Kyrgyzstan signed separate treaties to accede the Eurasian Economic Union on 9 October and 23 December 2014, respectively. The treaties entered into force on 2 January 2015 (Armenia) and 12 August 2015 (Kyrgyzstan). The main provisions guiding the adoption of harmonized NTMs are established under the Treaty on the Eurasian Economic Union (Article 44, Articles 46-56 and Annexes 6, 7, 8, 9, 12) and the Board of the Eurasian Economic Commission Decision No. 30 of April 21, 2015 "On non-tariff regulating measures".

⁴ For Kyrgyzstan, The Number of Eurasian Economic Union NTMs, established under 46 Eurasian Economic Union legislative acts, stood at 369 measures in December 2017. Mapped against MAST chapters, these comprised 120 Sanitary and phytosanitary (SPS) measures (Chapter A), 234 technical barriers to trade (TBT) measures (Chapter B), 1 pre-shipment inspection and other formalities (Chapter C), 2 non-automatic licensing (Chapter E), and 12 export-related measures (Chapter P).

Union member countries and Kazakhstan. These measures seem to be in contradiction with the Most Favoured Nation (MFN) principle and the national treatment clause and, as such, rank high on the Government's reform agenda (Annex, Table 3).

13. Moreover, the government was in the process of further elaborating the NTMs to ensure a uniform interpretation of affected products. This involved addressing instances where national (non-harmonized) legal acts provide only a definition of affected products (i.e., do not specify affected HS codes).

Annex

Table 1: Eurasian Economic Union legislation scheduled to enter into force in Kyrgyzstan in 2018-2025

<i>Eurasian Economic Union legislation</i>	<i>Scheduled implementation date</i>
Agreement on unified principles and rules of the distribution of pharmaceutical products within the Eurasian Economic Union	31.12.2025
Decision of August 18, 2017 No. 97 "On establishing the tariff-rate quotas for certain agricultural goods imported in 2018 into the Eurasian Economic Union"	01.01.2018
Decision of August 9, 2016 No. 68 "On technical regulation of the Eurasian Economic Union 'Requirements for liquefied petroleum gas to be used as fuel' (EEU TR 036/2016)	01.01.2018
Decision of February 12, 2016 No. 26 "On special sign of distribution of medical products on the territory of Eurasian Economic Union"	31.12.2021
Decision of February 12, 2016 No. 27 "On establishment of unified requirements for safety and efficiency of medical products, requirements for their labelling and requirements for operating manuals/documents"	31.12.2021
Decision of February 12, 2016 No. 46 "On the registration rules and rules of expertise for the safety, quality and efficiency of medical products"	31.12.2021
Decision of November 3, 2016 No. 76 "On requirements for the labelling of pharmaceutical products and veterinary drugs"	31.12.2025
Decision of November 3, 2016 No.6 77 "On good manufacturing practices of the Eurasian Economic Union"	31.12.2025
Decision of November 3, 2016 No. 78 "On rules on registration and expertise of pharmaceutical products for use in the medical sphere"	31.12.2025
Decision of November 3, 2016 No. 80 "On requirements for the distribution practice within the Eurasian Economic Union"	31.12.2025
Decision of November 3, 2016 No. 88 "On requirements for manuals on application of pharmaceutical products and on their common specification for medical use"	31.12.2025
Decision of November 30, 2016 No 157 "On uniform quarantine phytosanitary requirements to quarantinable products and objects applied at the customs border and the on customs territory of the Eurasian Economic Union" ⁵	01.01.2018

⁵ Most of the measures emerging from this legislation were applied as of July 1, 2017 (for all Eurasian Economic Union members). Only one measure will be applied as of January 1, 2018 (for all Eurasian Economic Union members): requirement to import into the customs territory of the Union and displace through the customs territory of the Union the plants with soil or nutritional additive

<i>Eurasian Economic Union legislation</i>	<i>Scheduled implementation date</i>
Eurasian Economic Commission Decision of October 18, 2016 No. 113 “On technical regulation of the Eurasian Economic Union ‘On setting the limits on the contents of dangerous substances in electrical and radio-electronic goods” (EEU TR 037/2016)	01.03.2018
Eurasian Economic Commission Decision of October 18, 2016 No. 114 “On technical regulation of the Eurasian Economic Union ‘On safety of the equipment of theme parks” (EEU TR 038/2016)	17.04.2018
Technical regulation of Customs Union “On requirements for the motor gasoline and aviation motor gasoline, diesel and marine fuels, jet engine fuel and black oil fuel” (CU TR 013/2011) confirmed by Decision of October 18, 2011 No. 826 ⁶	01.01.2018 / 12.08.2019
Technical regulation of Customs Union “On safety of explosives and derivative products” (CU TR 028/2012) confirmed by Decision of July 20, 2012 No. 57 ⁷	01.01.2021
Technical regulation of Eurasian Economic Union “On requirements to mineral fertilizers” (EEU TR 039/2016) confirmed by Decree of November 30, 2016 No. 150 “On technical regulation of Eurasian Economic Union ‘On requirements to mineral fertilizers”	02.06.2021
Technical regulation of Eurasian Economic Union “On safety of equipment for children's playgrounds” (EEU TR 042/2017) confirmed by Decision of May 17, 2017 No. 21	17.11.2018
Technical regulation on safety of chemical products (EEU TR 041/2017) confirmed by Decision of March 7, 2017 No. 19 “On technical regulation of Eurasian Economic Union ‘On safety of chemical products”	02.06.2021

Table 2: Breakdown by MAST chapter of Kyrgyzstan’s non-harmonized NTMs (2-3 digit NTM code)

<i>2-3 digit NTM code</i>	<i>Description</i>	<i>No. of NTMs</i>	<i>% Share</i>
A13	Systems approach	1	0.46

containing soil and potted plants with cultivation soil from those production areas, places and (or) locations that are free from quarantine objects (measure A69 – “Other requirements on production or post-production processes, n.e.s” (not elsewhere specified)).

⁶ According to Decision of the Board of Eurasian Economic Commission No. 11 of January 26, 2016 “On the order of implementation of technical regulations of Customs Union in Kyrgyz Republic”, technical regulation CU TR 013/2011 enters into force on 12 August 2019. This means that from that date the conformity assessment documents, which were issued in accordance to earlier national legislative requirements, shall no longer be issued. However, production and distribution of products, which are subjected to technical regulations in accordance with the requirements established by the legislation of the Kyrgyz Republic, is allowed until August 12, 2021, provided that the products in question have conformity assessment documents issued before August 12, 2019. However, Decision of the Council of Eurasian Economic Commission No. 84 of December 2, 2015 “On amending Technical regulation of Customs Union ‘On requirements for the motor gasoline and aviation motor gasoline, diesel and marine fuels, jet engine fuel and black oil fuel” (CU TR 013/2011), established a quality requirement (for Kyrgyz Republic) for the production and distribution of motor gasoline and diesel of certain ecological classes (e.g. K3) that came into force on 1 January 2018.

⁷ Only one measure remains to be applied on 1 January 2021, which pertains to quality requirement for explosives and derivative products (marking explosives by injecting marker substances and microcarriers). The remaining measures established under this legislation were applied on 12 August 2017

<i>2-3 digit NTM code</i>	<i>Description</i>	<i>No. of NTMs</i>	<i>% Share</i>
A14	Special authorization requirement for sanitary and phytosanitary (SPS) reasons	3	1.38
A15	Registration requirements for importers	1	0.46
A21	Tolerance limits for residues of or contamination by certain (non-microbiological) substances	2	0.92
A22	Restricted use of certain substances in foods and feeds and their contact materials	1	0.46
A31	Labelling requirements	4	1.84
A32	Marking requirements	2	0.92
A33	Packaging requirements	4	1.84
A41	Microbiological criteria of the final product	1	0.46
A42	Hygienic practices during production	1	0.46
A63	Food and feed processing	4	1.84
A64	Storage and transport conditions	5	2.30
A69	Other requirements on production or post-production processes, not elsewhere specified, n.e.s. (not elsewhere specified)	1	0.46
A81	Product registration requirement	2	0.92
A82	Testing requirement	2	0.92
A83	Certification requirement	2	0.92
A84	Inspection requirement	1	0.46
A89	Conformity assessment related to SPS, n.e.s.	2	0.92
B14	Authorization requirement for TBT reasons	13	5.99
B19	Prohibitions/restrictions of imports for objectives set out in the Technical Barriers to Trade (TBT) agreement, n.e.s.	1	0.46
B21	Tolerance limits for residues of or contamination by certain substances	3	1.38
B22	Restricted use of certain substances	2	0.92
B31	Labelling requirements	29	13.36
B32	Marking requirements	4	1.84
B33	Packaging requirements	5	2.30
B41	TBT regulations on production processes	5	2.30
B42	TBT regulations on transport and storage	10	4.61
B49	Production or post-production requirements, n.e.s.	2	0.92
B6	Product identity requirement	4	1.84
B7	Product-quality or -performance requirement	13	5.99

<i>2-3 digit NTM code</i>	<i>Description</i>	<i>No. of NTMs</i>	<i>% Share</i>
B81	Product registration requirement	3	1.38
B82	Testing requirement	13	5.99
B83	Certification requirement	10	4.61
B84	Inspection requirement	2	0.92
B89	Conformity assessment related to TBT, n.e.s.	4	1.84
C3	Requirement to pass through specified port of customs	1	0.46
C4	Import-monitoring and -surveillance requirements and other automatic licensing measures	2	0.92
C9	Other formalities, n.e.s.	2	0.92
E621	Tariff-rate quotas (non-World Trade Organisation): Global allocation	1	0.46
F69	Additional charges, n.e.s.	1	0.46
F71	Consumption taxes	1	0.46
F72	Excise taxes	1	0.46
F9	Price-control measures, n.e.s.	1	0.46
G19	Advance payment requirements, n.e.s.	1	0.46
H9	Measures affecting competitions, n.e.s.	3	1.38
P13	Licensing- or permit requirements to export	11	5.07
P14	Export registration requirements	2	0.92
P19	Export quantitative restrictions, n.e.s.	2	0.92
P4	Measures on re-export	2	0.92
P5	Export taxes and charges	4	1.84
P61	Inspection requirement	1	0.46
P62	Certification required by the exporting country	3	1.38
P69	Export technical measures, n.e.s.	10	4.61
P7	Export subsidies	1	0.46
P9	Export measures, n.e.s.	5	2.30
Total		218	100 ⁸

⁸ Shares do not add up to 100 due to rounding.

Table 3: Consistency of Kyrgyzstan's NTMs with the Most Favoured Nation treatment, as of December 2017

<i>Application</i>	<i>Import-related measures (number and percentage shares)</i>	<i>Legislative basis</i>	<i>Comments</i>
All countries on equal basis	167 (94.94%)	–	–
All third countries	1 (0.06%)	Law No. 175 of December 30, 2014 ⁹	The law establishes one import-related measure (authorization requirement from the Inspector of the State Veterinary Control Department) for products subject to veterinary control. ¹⁰ As the Eurasian Economic Union legislation establishes authorization for veterinary products imported from third countries, ¹¹ this national measure is an additional requirement and contradicts with the MFN treatment principle.
Eurasian Economic Union member countries	3 (1.69%)	Government Decree No. 537 of October 12, 2016 ¹² Government Decree No. 735 of December 30, 2008 ¹³	Government Decree No. 537 of October 12, 2016 establishes minimum import prices on certain products (e.g. sugar) ¹⁴ originating from the Eurasian Economic Union for the purpose of calculation of indirect taxes. While this measure is meant to prevent tax frauds, it may create a non-tariff barrier to trade (it takes three days to obtain necessary information requested by authorities) and products imported at prices inferior to the minimum import prices may be subject to higher taxes Decree No. 735 of December 30, 2008 establishes the requirement of making a deposit payment in amount of five standard units per one liter of alcohol products imported from Eurasian Economic Union member-states. While this measure is meant to ensure proper application of excise stamps, it imposes additional costs for importers. Decree No. 735 also establishes the requirement (i.e. approves Regulation) that imports from Eurasian Economic Union member-states subject to excise labels (namely alcohol and tobacco products) must be marked with excise labels only on the territory of the producer/manufacturer of these products. This measure

⁹ Law of Kyrgyz Republic No. 175 of December 30, 2014 “On Veterinary”.

¹⁰ This is an additional measure to authorization measure imposed by Uniform veterinary (veterinary and sanitary) requirements imposed on the goods subject to veterinary control (supervision) confirmed by Decision of June 18, 2010 No 317.

¹¹ Uniform veterinary (veterinary and sanitary) requirements imposed on the goods subject to veterinary control (supervision) confirmed by Commission of Customs Union Decision No. 317 of June 18, 2010.

¹² Government Decree No. 537 of October 12, 2016 “Procedure for the determination, application and monitor of the minimum level of control price”.

¹³ Government Decree No. 735 of December 30, 2008 “About measures on realization of requirements of articles 98, 242, 255, 257, 258, 280, 281, 287 and 295 of Tax code of Kyrgyz Republic and of article 11 of Law of Kyrgyz ‘About implementation of Tax code of Kyrgyz Republic’”

¹⁴ For full list of affected products see: [http://www.sti.gov.kg/евразийский-экономический-союз/о-минимальном-уровне-контрольных-цен/перечень-товаров-\(мука\)](http://www.sti.gov.kg/евразийский-экономический-союз/о-минимальном-уровне-контрольных-цен/перечень-товаров-(мука)).

<i>Application</i>	<i>Import-related measures (number and percentage shares)</i>	<i>Legislative basis</i>	<i>Comments</i>
			contradicts the MFN treatment principle.
Commonwealth of Independent States (CIS)	2 (1.12%)	Government Decree No. 532 July 21, 2006 ¹⁵	Establishes that potentially dangerous non-food imports of animal origin imports from CIS countries should be accompanied by hygienic certificates and that such products should also undergo veterinary sanitary expertise.
Kazakhstan	3 (1.69%)	Government Decree No. 235 of May 10, 2016 ¹⁶	The Decree establishes that goods imported into Kazakhstan at duty rates lower than the Eurasian Economic Union uniform rates ¹⁷ are subjected to inspection and the requirement to present information for traceability purposes. These measures are also meant to address the influx of relatively cheap imports from third (non- Eurasian Economic Union) countries to Kyrgyz Republic. Nonetheless, they contradict the MFN treatment principle.
Total	176 (100%) ¹⁸		

¹⁵ “On interaction questions during hygienic assessment of potentially dangerous products imported from members of Commonwealth of Independent States”.

¹⁶ The order of state control (supervision) over goods subject to sanitary-epidemiological and veterinary control (supervision).

¹⁷ Due to the Republic of Kazakhstan’s obligations with the World Trade Organisation. The list of products is published in the Council of Eurasian Economic Commission Decision No. 59 of October 14, 2015 (http://www.consultant.ru/document/cons_doc_LAW_187649/) or in Order of Minister of national economy of Republic of Kazakhstan of February 9, 2017 No. 58 (<http://adilet.zan.kz/rus/docs/V1700014867>).

¹⁸ Shares do not always add up to 100 due to rounding.