

Voluntary Report – Voluntary - Public Distribution

Date: January 13, 2022

Report Number: UP2022-0002

Report Name: Ukrainian Draft Order Rescinds EU Equivalency

Country: Ukraine

Post: Kyiv

Report Category: FAIRS Subject Report

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Report Highlights:

The Ministry of Economy of Ukraine published a draft order which, if passed, establishes a general framework for food safety system equivalency determination. As a part of this framework, Ukraine plans to cancel the Ukraine-EU equivalency status for products of animal origin, which was established in April 2014. This move may result in market access restriction for third country suppliers of products of animal origin which rely on EU approval for their access to Ukrainian market.

General Information

On December 9, 2021 the Directorate for Sanitary and Phytosanitary (SPS) Measures of the Ministry of Economy of Ukraine published a Draft Order called “[On Equivalency Determination Recognition of the Exporting Country System of State Control](#)” (in Ukrainian). Within the draft order is an addendum titled “[Equivalence of State Control Determination Procedure](#)” (in Ukrainian). An unofficial translation of both documents in English is provided in the end of this report. The draft order was notified to the WTO as [G/SPS/N/UKR/168](#) on December 17, 2021. The deadline for both domestic and foreign partners’ comments is February 15, 2022.

One aspect of the draft order cancels [Order #118](#) (in English), which was adopted in April 2014 and recognizes the EU’s system of state control of production and circulation of products of animal origin and raw materials as equivalent to the Ukrainian control system. Order #118 also allowed unrestricted imports from facilities that are registered by European Commission that have confirming numbers (EU numbers). A short overview of Order 118 is provided in this [2014 GAIN Report](#). If the draft order is passed, and no other regulation is adopted to recognize EU equivalency, it could impact global agricultural trade.

This isn’t the first time Ukraine has attempted to rescind Order #118. On July 8, 2021 Ukraine submitted WTO notification [G/SPS/N/UKR/163](#) revoking Ukraine - EU equivalency. The notified draft was very similar to current proposal, but it never entered the internal regulatory chain for public discussion and approval. On September 13, 2021 Ukraine withdrew its early notification by [G/SPS/N/UKR/163/Add.1](#).

Trade Impact

Per the most recent [USDA FAIRS Report](#), Ukraine’s single food safety authority (State Service of Ukraine for Food Safety and Consumer Protection – SSUFSCP) maintains a list of eligible countries and facilities that may export live animals, reproductive materials, food products of animal origin, composite products, fish and seafood, and feeds (of both plant and animal origin). There are three different ways U.S. exporting facilities can get become eligible for export, listed below. However, only two will allow U.S. facilities to be listed on the Ukrainian export eligibility list.

1. A processing facility may undergo an individual audit, or the U.S. food/animal safety system for a specific product group must undergo system audit, with positive results. Consent from the U.S. competent authority will be needed to conduct a system audit. If the audit is successful, an individual facility (or all facilities declared by U.S. competent authority, in case of system audit) would obtain market access. An individual facility audit can be requested through a direct petition to SSUFSCP, or through a petition by the exporting country’s Competent Authority. All audited facilities will be included in Ukraine’s official Lists of Countries and Foreign Establishments that can export to Ukraine. The SSUFSCP [website contains two lists](#) – one for products and another one for live animals and reproductive materials (right click to Google-

translate the linked page to English).

2. The second way a U.S. facility can get listed is by the use of the “historic eligibility clause” that is contained in the ending remarks of the Law of Ukraine 2042, called “[On State Control Over Enforcement of Legislation for Foods, Feeds, Byproducts of Animal Origin, Animal Health and Wellbeing](#)” (right click to Google-translate the linked page to English). If a facility/farm/genetics center exported to Ukraine between April 4, 2013 and April 4, 2018, it may petition for automatic inclusion on the list. Note that verification of a company’s previous export history and the procedure for listing can take over two months or longer. Foreign facilities with an older export history (per older version of the Law 1602) that kept their registration active will remain on the list. Although this option was used by many U.S. exporters and FAS Kyiv assisted with such registrations, it becomes more and more difficult to provide proof of previous exports as time passing by, as many facilities only keep records for a specified length of time – for example, five years.

FAS KYIV DOES NOT EXPECT U.S. FACILITIES THAT ARE INCLUDED IN UKRAINE’S OFFICIAL LIST OF APPROVED COUNTRIES AND FACILITIES TO BE IMPACTED BY SUGGESTED REGULATION.

3. The third way for U.S. companies to get access to the Ukrainian market without being listed in in Ukraine’s official Lists of Eligible Countries and Foreign Establishments is to be a third country establishment approved by the European Union. FAS Kyiv is aware that many U.S. companies, including a significant number of seafood exporters, use this method to gain access to the Ukrainian market. All U.S. establishments listed in European Commission’s [Third Country Establishment List](#) are eligible due to the equivalence recognition acknowledged in Order #118. Should Order #118 be rescinded with no similar legislation in place, all U.S. suppliers utilizing this EU-Ukraine equivalency option will lose market access.

SHOULD MINISTRY OF ECONOMY OF UKRAINE ADOPT THE PROPOSED REGULATION WITHOUT ANY TRANSITION PERIOD OR ALTERNATE LEGISLATION (DESPITE A MAJOR EFFORT OF BUSINESS COMMUNITY TO PROVIDE IT), FAS KYIV EXPECT U.S. FACILITIES THAT ARE INCLUDED INTO EU’S LIST OF THIRD COUNTRY ESTABLISHMENTS WILL LOSE MARKET ACCESS TO UKRAINE.

Suggested Actions

U.S. exporters of live animals, reproductive materials, food products of animal origin, composite products, fish and seafood, and feeds (of both plant and animal origin) should use the first two suggested options to get formally listed in Ukraine’s List of Approved Countries and Facilities.

U.S. companies are recommended to get in touch with their Ukrainian buyers to stay informed on the situation developments.

FAS Kyiv will continue to work with Ukraine's competent authorities to improve the regulatory environment for U.S. agricultural products. If you are a U.S. company that has questions, please contact the Office of Agricultural Affairs at the U.S. Embassy in Kyiv at AgKyiv@usda.gov.

**MINISTRY OF ECONOMY OF UKRAINE
(Ministry of Economy)
ORDER
Kyiv**

**On the approval of equivalence recognition procedure
of the exporting country state control system**

According to Paragraph 4 of Article 62 of the Law of Ukraine "On State Control Over Compliance with Legislation on Food, Feed, Animal By-Products, Animal Health and Welfare" and Paragraph 9 of the Statute of the Ministry of Economy of Ukraine, approved by the Cabinet of Ministers of August 20, 2014, № 459 (with amendments),

I ORDER:

1. To approve the Procedure for exporting country state control system equivalence recognition, attached.
2. To dismiss the Order of the Ministry of Agrarian Policy and Food of Ukraine № 118 "On Equivalence Recognition of the European Union Control System over Production and Circulation of Products and Raw Materials of Animal Origin", adopted on April 1, 2014, and registered with the Ministry of Justice of Ukraine on April 16, 2014, with registration number № 431/25208.
3. The Directorate for State Policy in the Area of Sanitary and Phytosanitary Measures should ensure submission of this Order for state registration to the Ministry of Justice of Ukraine in accordance with the procedure, established by the law.
4. This order becomes effective from the date of its official publication.
5. Control over the implementation of this order shall be vested to the Deputy Minister of Economy of Ukraine in accordance with the division of responsibilities.

**First Vice Prime Minister of
Ukraine - Minister of Economy of Ukraine Yuliia SVYRYDENKO**

**PROCEDURE for
Recognizing the Equivalence of the Exporting Country System of State
Control**

1. This Procedure determines the mechanism and procedure for decision making on the equivalence recognition of the exporting country state control system (hereinafter - the recognition of equivalence).
2. In this Procedure, the term "controlled objects" means:
 - 1) live animals;
 - 2) feed of non-animal origin;
 - 3) products;
 - 4) food products of non-animal origin.

Other terms are used in the meanings provided in the Laws of Ukraine "On Basic Principles and Requirements for Food Safety and Quality", "On Veterinary Medicine", "On State Control over Compliance with Legislation on Food, Feed, Animal By-Products, Health and Animal Welfare" (hereinafter - the Law).

3. To recognize equivalence, the competent authority of the exporting country must submit to the State Service of Ukraine on Food Safety and Consumer Protection (SSUFSCP) a request, which contains the following information:
 - 1) the specific types of controlled objects that are intended to be imported (shipped) to the customs territory of Ukraine, indicating the codes of such controlled objects in accordance with the Harmonized Trade System.
 - 2) expected volume of imports of controlled objects from the exporting country.
 - 3) the number and types of facilities that, in accordance with exporting country's guarantees of compliance (equivalence) of its control system to legislation of Ukraine on food, feed, animal health and welfare, are considered as meeting the requirements of Ukrainian legislation.
 - 4) guarantees that the system of state control of the exporting country ensures the level of safety and/or health and well-being of controlled facilities equivalent to the level established by the legislation of Ukraine for the same controlled facilities.

4. Within one month after receiving the request, the SSUFSCP shall apply to the competent authority of the exporting country with request to obtain the information listed in Paragraph 3 of Article 59 of the Law (hereinafter - the request).

The request must contain information about:

- 1) the veterinary and sanitary status of the exporting country.
- 2) the results of risk assessment related to the controlled objects that are intended to be imported (shipped) to the customs territory of Ukraine, as well as the measures taken in the exporting country based on risk assessment.
- 3) any discovered deficiencies of controlled objects that were imported (shipped) into the customs territory of Ukraine within three years preceding the date of receipt of the request.

5. If the information received from the competent authority of the exporting country in response to the request confirms equivalence of the state control system of the exporting country, SSUFSCP verifies compliance (equivalence) of the state control system of the exporting country with Ukrainian legislation (hereinafter - verification).

6. The inspection is carried out in the manner prescribed by the Resolution of the Cabinet of Ministers of Ukraine of July 5, 2019 № 589 "On Approval of the State Control Procedure in Exporting Countries" (hereinafter - the Procedure for State Control).

7. Based on the inspection report provided after State Control Procedure, the SSUFSCP has the right to adopt a decision recognizing the equivalence of the state control system of the exporting country (a separate part of such system) to the state control system of Ukraine.

8. The Head of the SSUFSCP may make a decision on equivalence recognition if the following conditions are met simultaneously:

- 1) information received from the competent authority of the exporting country in response to the request indicates equivalence of the system of state control of the exporting country (a separate part of such a system) and the system of state control of Ukraine;
- 2) the results of the inspection confirm equivalence of state control system of the exporting country (a separate part of such a system) to the system of state control of Ukraine.

9. The decision on recognition of equivalence shall include:

- 1) the specific types of controlled objects.
- 2) coverage: the exporting country or its separate territory, zone or compartment.
- 3) whether the equivalence of the state control system of the exporting country and the state control system of Ukraine (in whole or in part) is recognized.

4) the general measures of state control to be applied during the import (sending) of controlled objects from the relevant exporting country or its separate territory (zone or compartment), provided by law.

5) the conditions of import of controlled objects from the respective exporting country or its separate territory (zone or compartment), envisaged by the Law.

10. In addition to the information specified in Paragraph 13 of this Procedure, the decision on the recognition of equivalence may include special import requirements, as envisaged in Paragraph 1, Article 60 of the Law.

11. The decision on equivalence recognition may serve as justification for automatic entry of facilities located in the exporting country and listed in the register of approved facilities maintained by such exporting country into the “Register of Approved Countries and Facilities from which Imports (sending) of Products to the Customs Territory of Ukraine is Allowed”.

12. In case if the decision on equivalence recognition does not envisage automatic entry of facilities in Register of Approved Countries and Facilities from which Imports (sending) of Products to the Customs Territory of Ukraine is Allowed, state control of facilities located in exporting countries from which import (sending) of products to customs territory of Ukraine is allowed, is carried out in accordance with the requirements listed in the Order of the Ministry of Agrarian Policy and Food of Ukraine № 262 “On Approval of the Procedure for State Control of Facilities Located in Exporting Countries from which Imports are Allowed and Maintenance of the Register of Approved Countries and Facilities from which Imports (sending) of Products to the Customs Territory of Ukraine is Allowed” adopted on June 11, 2018, and registered with the Ministry of Justice of Ukraine on July 4, 2018 under № 776/32228.

Facilities that are already listed in the Register of Approved Countries and Facilities from which Imports (sending) of Products to the Customs Territory of Ukraine is Allowed are exempted from this requirement, provided that during the last three years the result of state control measures carried out by the SSUFSCP does not show systemic deficiencies.

14. The equivalence recognition decision may be revoked by the SSUFSCP:

1) in case of violation of equivalence recognition conditions listed in the Decision on recognition of equivalence, unless otherwise is envisaged by law;

2) in other cases envisioned by law.

The decision on equivalence recognition may also be revoked in the event of significant changes in the state control system of the exporting country that affect the ability of the state control system of the exporting country to ensure safety or health and well-being of controlled objects at a levels equivalent to those established by the Ukraine’s regulations.

15. SSUFSCP shall inform the competent authority of the exporting country about equivalence recognition cancellation no later than the next working day from the date of such decision.

**Director of the State Policy Directorate
in the Area of Sanitary and Phytosanitary Measures**

Andriy PIVOVAROV

Attachments:

No Attachments.