

# WORLD TRADE ORGANIZATION

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**Working Party on the  
Accession of Kazakstan**

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## **ACCESSION OF KAZAKSTAN**

### Additional Questions and Replies

The Ministry of Energy, Industry and Trade of the Republic of Kazakstan have submitted the replies to the additional questions submitted by Members. The replies are reproduced hereunder

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## TABLE OF CONTENTS

	Question No.	Page No.
<b>II. ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE</b>		
<b>2. Economic Policies</b>		
(a) Main directions and goals	1	1
Pricing policy	2-4	3
<b>III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES AFFECTING FOREIGN TRADE IN GOODS AND TRADE IN SERVICES</b>	5	4
<b>4. Any Legislative Programmes or Plans to Change the Regulatory Regime</b>	6-8	5
<b>5. Laws and Legal Acts</b>	9	6
<b>IV. POLICIES AFFECTING TRADE IN GOODS</b>		
<b>1. Import Regulation</b>		
(a) Registration requirements for engaging in importing	10-11	7
(c) Tariff quotas and tariff exemptions	12	7
(d) Other duties and charges, specifying any charges for services rendered	13-26	8
(e) Quantitative import restrictions, including prohibitions, quotas and licensing systems	22	13
(h) Customs valuation	23-24	13
(i) Other customs formalities	25-27	14
(k) Application of internal taxes on imports	28-38	16
(l) Rules of origin	39	24
(m) Anti-dumping regime	40	24
(n) Countervailing duty regime	40	24
(o) Safeguard regime	40	24
<b>3. Internal Policy Affecting Foreign Trade in Goods</b>		
(a) Industrial policy, including subsidy policies	41-45	24
(b) Technical regulations and standards, including measures taken at the border with respect to imports	46-55	26
(c) Sanitary and phytosanitary measures, including measures taken with respect to imports	56	29
(d) Trade-related investment measures	57	29
(e) State-trading practices	58	30
(l) Government procurement practices	60	30
<b>4. Policies Affecting Foreign Trade in Agricultural Products</b>		
(b) Exports	61-68	31
(e) Internal policies	69-82	33

	Question No.	Page No.
<b>V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME</b>		
<b>1. General</b>	83	37
(d) Application of national and M.F.N. treatment to foreign nationals	84	37
<b>2. Substantive standards of protection, including procedures for the acquisition and maintenance of intellectual property rights</b>		
(a) Copyright and related rights, including rights of performers, producers of phonograms and broadcasting organizations	85-87	38
(b) Trademarks, including service marks	88-89	40
(g) Layout designs of integrated circuits	90	40
(h) Requirements on undisclosed information, including trade secrets and test data	91	41
<b>4. Enforcement</b>	92-100	41
<b>VI. TRADE-RELATED SERVICES RÉGIME</b>	101	45
<b>VII. INSTITUTIONAL BASIS FOR TRADE AND ECONOMIC RELATIONS WITH THIRD COUNTRIES</b>		
<b>1. Bilateral or Plurilateral Agreements Relating to Foreign Trade in Goods and Trade in Services</b>	102	45
<b>2. Economic Integration: Customs Union and Free Trade Area Agreements</b>	103-104	46

## II. ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE

### 2. Economic Policies

#### (a) Main directions and goals

##### Private sector development/privatization

##### Question 1.

As noted at the last meeting, we appreciate Kazakhstan's willingness, noted in its response to Question 1 in WT/ACC/KAZ/11, to undertake a commitment to additional transparency as its privatization and reform programmes proceed.

We would appreciate an update prior to the next meeting on its privatization efforts, describing how privatization is proceeding and including a chart similar to those produced for Latvia and the Kyrgyz Republic Working Party reports to indicate progress.

##### Answer:

The Kazakhstan privatization programme is implemented in three stages. This programme had been initiated from "mass privatization" as well as "small privatization". Mass privatization has been implemented through the allocation of coupons, as well as by way of the assignment of assets to the ownership of employees of such enterprises. Small privatization has been completed with the privatization of retail sale enterprises and the enterprises in the sphere of services. The second stage, which covers the privatization of "middle" enterprises (with the number of employees from 200 up to 5000 people) also will be completed soon. The third stage includes the privatization of separate big enterprises about 150 enterprises, including the enterprises of power complex, oil and gas pipelines) banks, airports and other objects.

In 1998, on a case-by-case privatization project, ten enterprises have been tendered, out of them eight enterprises were sold, and among them one of the biggest banks of Kazakhstan - JSC of the close type "Turan Alem Bank" has been privatized (100 per cent of the State package of shares, sales value is US\$72 million, and US\$69 million have been paid to the budget). The information on the number of the privatized enterprises for the period 1991-1998 is presented in Table 1. As to the privatization methods for the period 1991-1998, the information is presented in Table 2.

Table 1: Sectoral Privatization Data Profile for 1991-1998

Sector	Number of Enterprises of State Property as of 1 January 1991	Number of Privatized Enterprises as of 31 December 1997	Percentage of Privatized Enterprises as of 1 January 1999
Industry	1,988	1 451	73.0
Consumer Services	5,894	5 103	86.6
Trade and Public Catering	9,127	9 127	100.0
Agriculture	2,120	2 120	100.0
Construction	620	413	66.0
Transport	880	703	80.0
Other sectors	3,242	3 242	100.0
Total	23,871	22 159	93.0

Table 2: Sectoral Privatization Data Profile by Privatization Modes For 1991-1998

Sector	Privatization Mode	Number of Privatized Objects
Industry	Lease with subsequent buy-out	
	Auctioning	
	Sale through auctions	850
	Sale through tenders	
	Gratis transfers	
	Direct sale to private entities	601
	Direct sale to labor collectives	
Consumer Services	Incorporation (Joint-Stock Companies)	
	Lease with subsequent buy-out	
	Auctioning	
	Sale through auctions	3,860
	Sale through tenders	
	Direct sale to private entities	
	Direct sale to labor collectives	1,243
Trade and public catering	Incorporation (Joint-Stock Companies)	
	Lease with subsequent buy-out	
	Auctioning	
	Sale through auctions	6,546
	Sale through tenders	
	Direct sale to private entities	
	Direct sale to labor collectives	2,581
Agriculture	Incorporation (Joint-Stock Companies)	
	Lease with subsequent buy-out	
	Auctioning	
	Sale through auctions	
	Sale through tenders	
	Direct sale to private entities	
	Direct sale to labor collectives	2,120
Construction	Incorporation (Joint-Stock Companies)	
	Lease with subsequent buy-out	
	Auctioning	
	Sale through auctions	160
	Sale through tenders	
	Direct sale to private entities	
	Direct sale to labor collectives (bodies)	253
Transport	Incorporation (Joint-Stock Companies)	
	Auctioning	272
	Sale through tenders	
	Direct sale to private entities	
	Direct sale to labor collectives (bodies)	431
	Incorporation (Joint-Stock Companies)	

Sector	Privatization Mode	Number of Privatized Objects
Other sectors	Lease with subsequent buy-out	2,040
	Auctioning	
	Sale through auctions	
	Sale through tenders	
	Direct sale to private entities	
	Direct sale to labor collectives	
	Incorporation (Joint-Stock Companies)	1,202

### Pricing policy

#### Question 2.

**Based on the information provided in WT/ACC/KAZ/14, can Kazakhstan confirm that there are, at this time, no price controls on goods in Kazakhstan with the exception of energy products, and that all other prices for goods and services in every sector are determined by market forces?**

#### Answer:

Kazakhstan confirms that, at this time, there are no price controls on goods with the exception of energy products.

With respect to services, currently only the following activities provided by natural monopoly entities are subject to price controls:

- transportation of oil and oil products through trunk pipelines;
- transportation of gas and gas condensate through trunk and distribution pipelines;
- transmission and distribution of electric power and heat;
- operation of railroad routes;
- air-navigation, port and airport services;
- rendering telecommunication services via local line networks;
- water supply and sewerage services;
- postal services.

(Law of the Republic of Kazakhstan "On Natural Monopolies", Article 4, 9 July 1998, submitted to WTO in November 1998).

Entities, which provide utility services, are subject to the State regulation. Besides, the Authorized Body is entitled to undertake measures to establish fixed prices, mandatory for the subjects, which have a dominant position in the market. (The Law "On Housing Relations," the Resolution of the Government of the Republic of Kazakhstan of 29 September 1997, N 1377, the Law of the Republic of Kazakhstan " On Development of Competition and Restriction of Monopolistic Activity").

#### Question 3.

**Can Kazakhstan confirm that from the date of accession, the price controls in place and any applied in the future will be applied in a WTO-consistent fashion, taking account of the interests of exporting WTO members as provided for in Article III:9 of the GATT 1994?**

Answer:

Kazakstan confirms that from the date of accession, the price controls in place and any applied in the future will be applied in a WTO-consistent fashion, taking account the interests of exporting WTO members as provided for in Article III:9 of the GATT 1994.

**Question 4.**

**Will Kazakstan publish the list of notified goods and services subject to state price controls in its Official Gazette and any future changes from those notified?**

Answer:

The list of goods and services subject to State price controls is regularly published in the official print media ("The State Register of Natural Monopolies of the Republic of Kazakstan").

### **III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES AFFECTING FOREIGN TRADE IN GOODS AND TRADE IN SERVICES**

**Question 5.**

**In response to Question 8 in KAZ/14, Kazakstan states that "the imperative, provided in the constitution (Article 4(3)), therefore, does not require a special law, establishing a procedure to apply a ratified and effective treaty on the territory of Kazakstan."**

**Please explain in detail and with specific examples, based on WTO inconsistent measures currently applied by Kazakstan, how ratification of its protocol package would, from the date of accession, be translated operationally as Kazakstan law.**

**For example, would Kazakstan cease its practice of exempting CIS imports from VAT, would its customs fee be abolished automatically, would any applied tariffs in excess of the bindings negotiated automatically cease to be applied at customs borders, would any promulgation of standards related laws or regulations become illegal without publication for prior comment?**

Answer:

As noted in the response to Question 8 of WT/ACC/KAZ/14, Article 4(3) of the Constitution of the Republic of Kazakstan provides that international agreements ratified by Kazakstan have priority over its national legislation, such as acts of the President, or Resolutions of the Government and Orders of the Prime Minister of the Republic of Kazakstan and other normative legal acts, including implementing regulations thereof, and such international agreements are applied directly except in those cases where it can be inferred from the international agreement that it is necessary to adopt a law for such an agreement to become applicable. Pursuant to Article 22 of the Presidential Decree with the force of law "On the Procedure for Conclusion, Execution and Denunciation of International Agreements of the Republic of Kazakstan" (of 12 December 1995), the Government and other concerned State bodies are obligated to ensure that Kazakstan fulfills all obligations it assumes under international agreements of Kazakstan.

Obligations, which Kazakstan will assume upon accession to the WTO, and which contradict the provisions of international agreements of the Republic of Kazakstan, will take effect in Kazakstan only after incorporation of appropriate amendments to such international agreements and/or after the expiry of their duration or their denunciation pursuant to the Decree of the President of the Republic of Kazakstan "On the Procedure for Conclusion, Execution and Denunciation of International



Agreements of the Republic of Kazakhstan” of 12 December 1995, and the Vienna Convention “On International Treaty Law of 23 May 1969.

A concrete example of how such changes become part of the Kazakhstan law is the agreement that Kazakhstan entered into on 10 June 1997, with Azerbaijan to apply VAT at the point of destination (import) rather than the point of production. In accordance with Article 54 of the Constitution, the Parliament of the Republic of Kazakhstan ratified this Agreement (“Law on Ratification of Agreement with Azerbaijan Regarding Indirect Taxes” (29 June 1998, No. 239-1). After the Parliament of Azerbaijan also ratified the Agreement, the parties exchanged ratification instruments, and, thereafter, the Agreement took effect and became obligatory for execution by all interested ministries and agencies. The obligations resulting from this Agreement became part of the Kazakhstan legislation through issuance of internal instructions by the Customs Committee of the Ministry of State Revenues and after obligations of Kazakhstan resultant from this Agreement were clarified.

### **Any Legislative Programmes or Plans to Change the Regulatory Regime**

#### **Question 6.**

**The response to questions 17 and 19 of WT/ACC/KAZ/11, gave a status report on efforts to meet requirements of key WTO agreements and the statement that Kazakhstan "plans to enact new legislation and amend existing legislation in order to conform to the WTO agreements."**

**We would appreciate an update and expansion of the table indicating which laws have been enacted, and if they have been submitted to the Working Party for review in their revised state.**

#### Answer:

Since the reply to the previous set of questions in February 1998, the following laws have been enacted:

- Law on Joint Stock Companies, enacted 10 July 1998 (WT/ACC/KAZ/18);
- Law on Natural Monopolies, enacted 8 July 1998 (WT/ACC/KAZ/18);
- Law on Limited Liability Partnerships, enacted 22 April 1998 (WT/ACC/KAZ/18);
- Law on Unfair Competition, enacted 9 June 1998 (WT/ACC/KAZ/18);
- Law on Safeguards, enacted 28 December 1998 (WT/ACC/KAZ/20);
- Law on Plant Quarantine, enacted 11 February 1999 (WT/ACC/KAZ/20);
- Law on Payments and Money Transfers, enacted 29 June 1998 (WT/ACC/KAZ/18).

The following draft laws are expected to be on the agenda of the Parliament for 1999:

- Draft Amendments to the Customs Code (WT/ACC/KAZ/21);
- Draft Law on Anti-Dumping Measures;
- Draft Law on Subsidies and Countervailing Measures and Subsidies;
- Draft Law on Trade Marks, Service Marks and Appellations of Places of Origin of Goods;
- Draft Law on Standardization WT/ACC/KAZ/21;
- Draft Law on Certification WT/ACC/KAZ/21.

Drafts of these Laws will be forwarded to the Secretariat of the WTO after approval by the Government of the Republic of Kazakhstan.

**Question 7.**

**Can Kazakhstan report on the fate of the draft Customs Code, which was slated for enactment earlier this year?**

Answer:

The draft was meticulously further elaborated in the course of a year due to the necessity to introduce changes and amendments to the Customs Legislation in addition to those needed for Kazakhstan's accession to the WTO, including those aimed at simplifying of customs clearance procedures, shortening the period of time for customs clearance, and other proposals for amendment of the Customs Code. The developed draft includes provisions related to customs valuation, country of origin, adoption of a preliminary decision, as well as provisions related to the authorities of the Customs Bodies in respect of protection of objects of intellectual property. Currently, the Draft Law, approved by the Government of the Republic of Kazakhstan (Resolution of the Government of March 16, 1999, N 248) was submitted to Majilis of the Parliament for consideration and was forwarded to the WTO Secretariat.

**Question 8.**

**In order to ensure that the next meeting makes substantive progress towards the completion of the negotiations for terms of WTO accession, we believe that Kazakhstan should be prepared to provide copies of all the relevant legislation that will address these issues and/or a description of how Kazakhstan has met its WTO obligations in these areas, prior to the scheduling/scheduling of the next Working Party meeting.**

Answer:

After approval by the Government of the Republic of Kazakhstan, Kazakhstan will submit to the WTO Secretariat the draft laws, which are aimed at bringing its legal basis in compliance with the WTO Agreements. Please see the response to question 6 regarding Kazakhstan's legislative drafting agenda for this year.

**5. Laws and Legal Acts**

**Question 9.**

**This member fully agrees with the Chairman's conclusion that further meaningful discussion of the Kazak trade regime will be difficult until the Kazak delegation is able to supply:**

- **Copies of legislation already cited;**
- **A precise legislative action plan setting out the state of pending legislation, and a timetable for its achievement. This list should cover, but not be limited to, the pending legislation, which the Kazakhstan delegation itself has already referred, including, taxation, the Customs Code (covering inter alia, Rules of Origin, Customs Valuation, fees for services rendered), Licensing, TBT, SPS, TRIPS, TRIMs, Services.**

Answer:

The following draft laws are to be reviewed by the Parliament in 1999:

- Draft Amendments to the Customs Code(WT/ACC/KAZ/21);
- Draft Law "On Anti-Dumping";

- Draft Law “On Subsidies and Countervailing Measures”;
- Draft Amendments to the Law “On Trademarks, Service Marks and Appellations of Origin of Goods”;
- Draft Law “On Standardisation” (WT/ACC/KAZ/21);
- Draft Law “On Certification” (WT/ACC/KAZ/21).

These draft laws will be forwarded to the WTO Secretariat after their approval by the Government of the Republic of Kazakhstan.

These documents should be submitted before the next session of the Working Party.

#### **IV. POLICIES AFFECTING TRADE IN GOODS**

##### **1. Import regulation**

###### **(a) Registration requirements and trading rights**

###### **Question 10.**

**Can Kazakhstan confirm that the former State monopoly in foreign trade has been abolished and that no restrictions exist on the right of foreign and domestic individuals and enterprises to import and export goods and services within Kazakhstan's customs territory except as provided for in WTO agreements?**

Answer:

Kazakhstan confirms that there is no State monopoly on foreign trade and there are no restrictions on the right of foreign and domestic individuals and enterprises to import and export goods and services except as provided for in WTO agreements.

###### **Question 11.**

**Can Kazakhstan confirm that individuals and firms are not restricted in their ability to import or export based on their registered scope of business, and the criteria for registration of companies in Kazakhstan are generally applicable and published in the Official Gazette?**

Answer:

Kazakhstan confirms that there are no restrictions to import or export based on registered scope of business. The criteria for registration are set out in the “Law on State Registration of Legal Entities” (No. 2198) of 17 April 1995 and are applicable to all companies in Kazakhstan and are of normative nature. The law was published in the Official Gazette (Vedomosti Verkhovnogo Soveta Nos. 3-4, 15-16, and 20 (1995); Vedomosti Parlamenta 1,14 (1996), 12 (1997), and Kazakstanskaya Pravda 20.04.95).

###### **(c) Tariff quotas, tariff exemptions**

###### **Question 12.**

**Are Kazakhstan's laws covering tariff exemptions set out in the Customs Code in Chapter 22 implemented in regulations? If not, why not?**

Answer:

Normative acts have been issued to further implement the concerned statutory provisions that are related to all customs duty exemptions set out in Chapter 22 of the Customs Code, except for cases related to the issues of border trade with the non-CIS neighbouring countries. For example, these include regulations on duty-free importation of humanitarian aid (Government Regulation No. 1090, 7 August 1995, as amended); goods imported by natural persons (Government Regulation No. 1712, 13 December 1996, as amended); temporary importation of goods (Government Regulation No. 342, 25 March 1996); goods imported for re-export (Government Regulation No. 1003, July 20, 1995), and goods exported for processing outside the customs territory (Customs Committee Order No. 118, 3 June 1996).

- (d) **Other duties and charges, and charges and fees for services, whether or not for customs purposes.**

**Question 13.**

**Excise duties still discriminate between domestic and imported products in the case of alcohol, tobacco and automobiles. Please specify what steps are being taken to remove this discriminations.**

Answer:

Excise duties on alcohol, tobacco, automobiles, gasoline and diesel fuel differ as a result of efforts undertaken at present to harmonise rates of excise taxes on imported goods and domestic goods. Certain measures have been undertaken to decrease the excise taxes on domestic production in order to protect domestic producers in the area of production and distribution of ethyl spirits and alcoholic products as well as in the area of oil production. This has been done with the intention to stabilise the markets for alcoholic and oil products and to weaken the existing shadow businesses in these areas. Work to harmonise the rates of excise taxes will continue in the future.

**Question 14.**

**The response to questions 10 and 12 of WT/ACC/KAZ/14 states that a review to evaluate state fees and duties to ensure they reflect the cost of services rendered was ongoing, in addition to efforts to bring the 0.2 percent customs fee into line with article VIII of the GATT, and that Kazakstan will conduct a review of its licensing fee in June 1998 and provide the WTO with a proposal for changing such fee in July 1998.**

**Could Kazakstan give a status report on these reviews? Could Kazakstan provide a list in a single chart of all fees for service currently applied to imports and in other cases covered by WTO provisions, noting where applicable the rate applied to imports differs from that applied to similar domestic goods subject to the same service? These include, but may not be limited to fees for import/export licenses, veterinary certificates, certificates of origin, and certificates of conformity to standards.**

Answer:

Fees and Charges for Services Provided in Respect of Imports

Fee	Unit of Measure Rate	Normative (Legal) Act
1. Customs fees for the Customs processing of goods in transit by railroad transport	US\$ 14	The Resolution of the Government of the Republic of Kazakhstan 3 March 1999 N 258
2. Customs Fees for Clearance of Goods Carried through the Customs Border by Legal and Natural Persons	0.2% of their Customs Value	Resolution of the Government of the Republic of Kazakhstan # 1479 7 November 1995
3. Customs Fees for Customs Clearance of Goods and Vehicles Outside of the Designated Areas and Regular Office Hours	Double the normal rate	Resolution of the Government of the Republic of Kazakhstan #1479 7 November 1995
4. Customs Fee for Storing Goods at a Temporary Storage Warehouse established by Customs	0.04 EURO for one gross kilo per night (or 24 hours)	Resolution of the Government of the Republic of Kazakhstan #1479 7 November 1995
5. For Storing Vehicles Transported as Goods	3 EURO for a Vehicle per night (or 24 hours)	Resolution of the Government of the Republic of Kazakhstan #1479 7 November 1995
6. Customs Fees for Storing Goods at Warehouses founded by the Customs Bodies	0.02 EURO for one gross kilo per night (24 hours)	Resolution of the Government of the Republic of Kazakhstan #1479 7 November 1995
7. Customs Fees for Storing Goods at a Warehouse established by the Customs Bodies on specially adjusted premises (e.g. special equipment, maintenance of temperature at a certain required level)	0.03 EURO per one gross kilo per night (24 hours)	Resolution of the Government of the Republic of Kazakhstan #1479 7 November 1995
8. Customs Fees for Convoying Goods within a Customs Region	100 EURO	Resolution of the Government of the Republic of Kazakhstan #1479 7 November 1995
9. Customs Fees for Convoying Goods outside the Customs Regions	200 EURO	Resolution of the Government of the Republic of Kazakhstan #1479 7 November 1995
10. Fees for Information and Consulting Services	5 EURO	Resolution of the Government of the Republic of Kazakhstan #1479 7 November 1995
11. Fee for Import Licensing	20 Monthly Evaluation Indices	The Resolution of the Cabinet of Ministers of the Republic of Kazakhstan 16 August N 1127
12. Fee for issuing of Certificate of Origin	450-10,000 Tenge (300 per hour 1.5 hour - 32 hours)	

Fee	Unit of Measure Rate	Normative (Legal) Act
13. Fee for Certification of Conformity	500-1,500 Tenge + 300 tenge per hour (testing works)	The List of Paid Services Rendered by the Governmental Bodies pursuant to the Legislative Acts of the Republic of Kazakhstan 29 April 1997 (negotiable prices)
14. Fee for Veterinary Certification	Issuing of veterinary documents- 40 tenge, examination of animals- 30 tenge, examination while loading or unloading per one ton - 56 tenge.	The List of Paid Services Rendered by the Governmental Bodies pursuant to the Legislative Acts of the Republic of Kazakhstan 29 April 1997 (prices to be approved by Anti-monopoly Bodies )
15. Fee for Phytosanitary Certification	500-1500 tenge + 300 tenge per hour ( testing)	Decree #3928 of the President of the Republic of Kazakhstan 27 April 1998, "On the Protection of Rights of Citizens and Legal Persons to Freedom of Entrepreneurship" repealed Resolution #1093 of the Government of the Republic of Kazakhstan of 10 July 1997, "On Amendments to Resolution #676 of the Cabinet of Ministers of the Republic of Kazakhstan of 13 August 1992," which charged the Ministry of Economy and Trade of the Republic of Kazakhstan with the approval of the price list for services rendered by the Chief State Plant Quarantine under the Ministry of Agriculture of the Republic of Kazakhstan to enterprises and organizations.
16. Fee for Electronic Declaration	USD 56 per one copy declaration, VAT included	Order #1136 of 30 June 1997, of the Ministry of Energy, Industry and Trade

#### Question 15.

**We would like to see a specific, detailed plan on how Kazakhstan plans to bring its licensing fees, its 0.2 percent customs fee, and any of the other fees listed into conformity with Article VIII. This plan should include the levies of application, a menu of fees for service, and timetable with specific dates for implementation.**

**We believe that Kazakhstan's fees for service applied to imports should be consistent with WTO provisions prior to accession.**

Answer:

In accordance with the Edict of the President of the Republic of Kazakhstan of 27 April 1998, No. 3928 "On Protection of the Rights of Citizens and Legal Entities to the Freedom of Entrepreneurial Activity," and Resolution No. 651 of the Government of the Republic of Kazakhstan of 9 July 1998, the following has been approved:

- Rules on the provision of chargeable services by the state bodies;
- Rules on establishment and determination of the amount of fee for the state bodies services;
- Rules on keeping the State Register of chargeable services, rendered by the state bodies.

In accordance with the Order of the Agency of the Republic of Kazakhstan "On Regulation of Natural Monopolies and Protection of Competition" of 19 March 1999 N 16-OD, the list of the State fees has been determined, the cost of which shall be equivalent to the cost of the services actually provided and this list is presented in the response to question 14.

Fees for the issuance of licenses by the Customs Bodies, as well as the customs fees charged by the customs bodies for the customs processing of goods, storage of goods in the temporary storage warehouses, as well as customs accompanying of goods, in accordance with the Customs Code, are the customs payment, being forecasted for transfer to the state budget. In this connection, transferred customs fees can not be included in the State Register of Chargeable Services, which is being formed in accordance with the rules, established by the Resolution of the Government of the Republic of Kazakhstan of 9 July 1998, N 651. At the same time, non-incorporation of the above fees in the Register, does not mean absence of the necessity to establish the amounts thereof within the limits of the sums, not exceeding the amount of actually provided services. That is why the fee rate (0.2 per cent of the customs processing) for the customs processing of goods in transit by the railroad transport has been changed by the Resolution of the Government of 18 March 1999, N 258 to US\$14 per unit of transported vehicle.

**Customs fees and charges****Question 16.**

**Could Kazakhstan provide an update on the steps they are taking to bring their customs fees into line with WTO requirements. Regarding the reply to question 10 of WT/ACC/KAZ/14, we would be grateful if Kazakhstan could explain:**

**Why will it not be possible for Kazakhstan to fully meet GATT Article VIII requirements as of the date of accession? What obstacles are there which can not be overcome prior to accession?**

Answer:

Kazakhstan has begun to persistently work towards meeting the requirements set forth in Article VIII of GATT 1994 by way of adopting Resolution No. 258 of the Government of the Republic of Kazakhstan on 18 March 1999, which changes the rate of customs fee charged for customs clearance of goods in railroad transit (from 0.2 per cent of the customs value) to US\$14 per cargo unit transported.

**Question 17.**

**What exactly is meant by setting the price of import processing fees in accordance with "internationally accepted principles of accounting"?**

Answer:

The reference is intended to have the same meaning as "generally accepted accounting principles" as defined in the General Note to Annex 1 (the Interpretative Notes) to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994.

**Question 18.**

**What are the specified maximum and minimum limits for import processing fees?**

Answer:

Single fees are charged for customs processing at the rate of 0.2 per cent of the customs value.

**Question 19.**

**Why are import processing fees made to depend upon the value of the goods within these specified limits rather than the cost of the service that is rendered?**

Answer:

To bring the Kazakhstan customs processing fee into conformity with GATT 1994, the customs processing fee that is applied in the United States has been taken as a model. According to this model, customs processing fee is an *ad valorem* fee with maximum and minimum limits.

**Question 20.**

**Can Kazakhstan clarify whether import processing fees are levied in the same manner on all imported goods regardless of the country of origin.**

Answer:

The current import processing fee is levied in the same manner on all imported goods regardless of country of origin. The Republic of Kazakhstan Government Resolution No. 258 of 18 March 1999, changes the rate of fee charged for railroad transit of goods (from 0.2 per cent of the customs value) for US\$14 per transported cargo unit.

**Storage requirements for customs clearance**

**Question 21.**

**The situation portrayed in question 16 of WT/ACC/KAZ/14 and in Kazakhstan's reply is clearly inconsistent with GATT Article VIII. The mandatory storage requirements for customs processing will therefore need to be eliminated prior to accession. Could Kazakhstan clarify whether the State Customs Committee has reviewed these requirements and if so, what was the outcome of the review.**



Answer:

The purpose of the temporary storage regime provided under the Customs Code is to ensure that goods imported to Kazakhstan are held and not released into commerce until Customs has determined that all legal requirements are met and payment of any required duty, taxes or fees is assured. As stated in the response to question 16 of WT/ACC/KZA/14, this regime used to be implemented initially through use of warehouses licensed by the State Customs Committee. As noted in the response to question 16 of WT/ACC/KAZ/14, the Customs Committee took measures to permit alternatives to mandatory warehousing of imported goods on 8 July 1997. The State Customs Committee issued an order to provide for expedited Customs processing of urgent consignments, which allows such goods to be released directly to the importer upon arrival without placement in a temporary storage warehouse (State Customs Committee Order No. 176-P). Similarly, in an order registered with the Ministry of Justice on 7 August 1997, the State Customs Committee of the Ministry of State Revenues has provided for a pre-arrival declaration procedure (under which goods may be customs cleared prior to their arrival to Kazakhstan) and a periodic declaration procedure which permits an approved importer to file one declaration for multiple shipments over a month (State Customs Committee Order No. 161-P). Under both procedures, goods may be released directly to the importer without placement in a temporary storage warehouse. In addition, by regulation of the Customs Committee of the Ministry of State Revenues, no physical placement of goods in a temporary storage warehouse is required where goods are cleared by Customs within three hours of presentation and the owner of the nearest temporary storage warehouse agrees to assume responsibility for such goods within this period of time.

**(e) Quantitative import restrictions, including prohibitions, quotas and licensing systems**

**Question 22.**

**Does Kazakhstan still limit alcohol imports to 20 percent of domestic consumption? If so, this is a violation of Article XI of the GATT, and the practice should be eliminated as soon as possible, but in no case later than the date of accession.**

Answer:

In the future, the Republic of Kazakhstan will use import quotas as a temporary measure to regulate foreign trade, the application of which will be in compliance with WTO requirements.

**(h) Customs Valuation**

**Question 23.**

**Kazakhstan states in KAZ/14 that amendments to the Customs Code that implement the WTO Agreement on Customs Valuation will be enacted in March 1998.**

**Has the Customs Code been revised? When will we be able to review these amendments?**

Answer:

See the response to question 7, above.

**Question 24.**

**We seek a WTO consistent customs valuation regime fully implemented in Kazakhstan prior to accession. This includes the full incorporation of the interpretive notes in Kazakhstan law, and the adoption of the decisions on the valuation of software and other relevant decisions.**

Answer:

With regard to the Amendments to the Customs Code, which do not include changes necessary to conform the Code to the clarification provision the WTO Agreement on Customs Valuation, but cover the norms, which do not comply with the above Agreement, please see response to question 7, above. However, right after the adoption of the amendments to the Customs Code, the implementing regulations of the normative acts will be brought into compliance with the above documents. Kazakhstan will incorporate the interpretive notes and WTO Valuation Committee decisions into Kazakhstan law prior to accession.

**(i) Other customs formalities**

**Question 25.**

**In question 15 of WT/ACC/KAZ/14, a member noted certain requirements for customs documentation that appeared to constitute arbitrary and costly burdens on importation. Kazakhstan stated in response that it was "currently in the process of analyzing this practice and will provide information during the next Working Party meeting". Is Kazakhstan prepared to respond to question 15 of WT/ACC/KAZ/14?**

Answer:

The introduction of a Unified Automated Information System ("UAIS") is necessary to fulfill obligations of the Customs Committee to provide the external trade with full and reliable information and statistics and to comply with international standards (electronic copies are used in the United States, European Union and other members). In order to establish an UAIS, the Government of the Republic of Kazakhstan attracted an investor, the closed joint stock company "Akcept." Based on the assessment method of investment projects developed by UNIDO, a temporary fee in the amount of US\$56 was established for the issuance of an electronic copy of a cargo customs declaration (CCD). In 1999, this amount of the fee will be at the same level. In the future, the Government of the Republic of Kazakhstan will consider the opportunity to decrease this temporary fee. Taking into account that the electronic customs declaration is a standard in world practice, the temporary fee in the amount of US\$56 for the purpose of the UAIS development has been conditioned by the value of costs for the implementation of the project. Such United States companies as Sun Microsystems, Informix Inc, Dell and Hewlett Packard, which won the tender, participated in the implementation of the Project on Introduction of UAIS, which was supported by the United States Embassy in Kazakhstan. Measures on protection of confidential information of the participants of external economic activity are envisaged in UAIS. The introduction of new technologies required gradual cancellation of the previous one and that is the reason of use of paper customs declaration.

**Question 26.**

**In question 16 of WT/ACC/KAZ/14, certain questions were raised on the issue of temporary customs warehouse storage Kazakhstan stated that it was "reviewing the issue". What are the results of the review?**

Answer:

The purpose of the temporary storage regime provided under the Customs Code is to ensure that goods imported to Kazakhstan are held under Customs control and not released into commerce until Customs has determined that all legal requirements are met and payment of any required duty, taxes or fees is assured. As described in question 16 of WT/ACC/KAZ/14, this regime has been implemented primarily through use of warehouses licensed by the State Customs Committee. As noted in the response to question 16 of WT/ACC/KAZ/14, the State Customs Committee has taken measures to permit alternatives to mandatory warehousing of imported goods. On 8 July 1997, the State Customs issued an order to provide for expedited Customs processing of urgent consignments, which will allow such goods to be released directly to the importer upon arrival without placement in a temporary storage warehouse (State Customs Committee Order No. 176-P). Similarly, in an order registered with the Ministry of Justice on 7 August 1997, the Customs Committee of the Ministry of Revenues has provided for a pre-arrival declaration procedure (under which goods may be customs cleared prior to their arrival to Kazakhstan) and a periodic declaration procedure (which permits an approved importer to file one declaration, as permitted by Customs, for multiple shipments over a month) (State Customs Committee Order No. 161-P). Under both procedures, Customs goods may be cleared and released directly to the importer without placement in a temporary storage warehouse. In addition, by regulation of the State Customs Committee of the Ministry of State Revenues, no physical placement of goods in a temporary storage warehouse is required where the goods are cleared by Customs within three hours of presentation, and where the owners of a nearest temporary storage warehouse agree to assume responsibility for such goods within this period.

**Question 27.**

**We understand that Kazakhstan requires traders to have an import or export "transaction passport" which contains a copy of certain information contained on customs documentation normally required for clearance, e.g., price paid for the goods, the name of the purchaser, the date of delivery, etc.**

**This would appear to be an unnecessary duplication of documentation already available to customs authorities. Are fees charged for the "passport"? If so, please indicate. How long does it take to acquire this document? What approvals are necessary? Why is it required?**

Answer:

The purpose of the procedure for the use of a transaction passport is to control the use of currency funds by importers and exporters in accordance with the currency legislation of Kazakhstan. Currency controls shall ensure that currency earnings flow into the country in full and in a timely fashion as well as to ensure justified use of funds in foreign currency and Tenge for the purpose of import.

The basic document of currency control is the transaction passport. The transaction passport on import is used in order to implement the monitoring of import deliveries, equivalent in value to the funds, which have been transferred abroad in accordance with the requirement of the currency legislation. The transaction passport on export is aimed at implementation of the monitoring of the obligation of exporters to ensure the receipts of foreign currency funds to a bank account in Kazakhstan, in value equivalent to the exported goods.

The passport contains the information on the nature of the transaction, terms of payment, currency of payment, the value of contract, the amount of monetary funds subject to receipt (transference), payee (payer), bank details of a resident of the Republic of Kazakhstan. Customs Bodies do not charge for the transaction passport.

The transaction passport is issued within four days. This term has been established in order to consider documents in the customs bodies and a bank, to check the consistency of the submitted documents with the terms of the contract, to verify signatures, to confirm the existence of a bank account, and exchange the documents between the customs body and the bank. It should be taken into account that this term for issuing of the transaction passport does not cause any delays in customs processing of goods or payments because, in accordance with the regulation, a participant of the external activity shall complete the transaction passport registration prior to the initiation of the customs processing or before the payments is due.

**(k) Application of internal taxes on imports**

**Concerning value added taxes:**

**Question 28.**

**Kazakstan's reply to question 17 of WT/ACC/KAZ/14 refers to a number of categories of VAT exemptions, applied to imports. We would appreciate clarification of the following exemptions: Regarding category (ii) of VAT exemptions, what are the "norms of duty-free import of goods" which apply? Are any such exemptions in any way conditional on the origin of good or services?**

Answer:

In the answer to question 17 of WT/KAZ/14 the reference to "import of goods by individuals in accordance with the norms of the duty-free import of goods" means those goods that are under the personal exemption from duty for non-commercial importation by individuals. Article 108 of the Customs Code provides that, under terms established by the Government, physical persons may import goods exempt from duty not intended for production or other commercial activities. Pursuant to Government Regulation No. 1712 (31 December 1996), physical persons may import without payment of duty goods the value of which does not exceed \$2000 and weigh not more than 70 kilograms. In accordance with Article 61 of the Decree of the President of the Republic of Kazakstan "On Taxes and Other Obligatory Payments to the Budget" (the law referenced in the answer to question 17 of WT/KAZ/14) such goods are also exempt from VAT on importation. The exemption is not conditional on the origin of the goods.

**Question 29.**

**Regarding category (iii) of VAT exemptions, what "organizations funded by the state budget" enjoy this exemptions? For example, does any private organization receiving a subsidy receive exemptions? Are any such exemptions in any way conditional on the origin of the good or services?**

Answer:

Beginning 1 April 1999, the VAT exemptions are granted to all organizations that acquire technological equipment with state budgetary funds. At the same time, imports of other goods by such organizations, including State ones, are not VAT exempt.

**Question 30.**

**Regarding category (v) of VAT exemptions, could Kazakhstan please provide details of the provisions of the treaties under which these exemptions are provided and how the reciprocal payments are provided?**

Answer:

“Category v” described in the response to question 17 of WT/ACC/KAZ/14 refers to Articles 57 and 61 of the Tax Code, which provide an exemption for import of goods supplied under international agreements to which Kazakhstan is a party. At present, this exemption is applied only to imports from certain CIS countries pursuant to an agreement of 13 March 1992 (“Agreement between the Governments of CIS Countries on Coordinated Principles of Tax Policy”). Article 2 of that Agreement provides for a uniform system for calculation and payment of VAT assessment among CIS countries, pursuant to which VAT is collected at the point of production rather than destination, thus continuing the practice that existed prior to division of the Soviet Union into the independent countries of the CIS. As noted in the response to question 25, below, Kazakhstan has entered into separate agreements with the Kyrgyz Republic, Moldova and Azerbaijan, and is actively negotiating with the remaining CIS countries, to change to a system of VAT assessment at the point of destination (import).

**Question 31.**

**Kazakhstan states in the reply to question 17 of WT/ACC/KAZ/14 that "VAT is currently being applied on an MFN basis" to "all imports subject to VAT."**

**Will Kazakhstan commit to applying VAT on an MFN basis in the future?**

Answer:

At present, Kazakhstan does not collect VAT on imports from certain CIS countries. Goods imported from Georgia, Ukraine, Uzbekistan, Russia, Belarus, Turkmenistan, Tajikistan and Armenia are not subject to VAT on import. However, Kazakhstan is negotiating with these CIS countries to change to a system of charging VAT on imports in accordance with the destination principle. As soon as the relevant agreements with these CIS countries are reached and ratified, VAT will be charged on imports without regard to the country of export of the goods. Such agreements have been reached with Kyrgyz Republic, Moldova and the Republic of Azerbaijan.

**Question 32.**

**The response to question 17 in WT/ACC/KAZ/14 stated that "all imports subject to VAT are charged VAT regardless of source." VAT is currently being applied on an MFN basis. Products originating in CIS and non-CIS countries are charged VAT."**

**WT/ACC/KAZ/17, however, states that the newly promulgated presidential edict "on taxes and other mandatory payments to the budget" 1998 No. 260 of 10 July 1998, eliminates "double taxation" for CIS- countries vis-a-vis VAT.**

**Does this mean that Kazakhstan now does not apply VAT taxes to imports from CIS?**

Answer:

See the response to question 5.

In accordance with the Agreement of 13 November 1992 between the governments of the CIS countries "On Coordinated Principles of Tax Policy in Settlement for Goods, Works and Services within CIS Countries" the "place of origin" principle for collection of VAT has been established correspondingly. VAT is not levied on the import of goods from the CIS countries.

Upon conclusion of agreements between Kazakhstan and separate CIS countries on principals of levying indirect taxes on export and import of goods, Kazakhstan is going to use the "place of destination" principle in levying VAT. For example, with respect to the goods, which are imported from the Kyrgyz Republic and the Republics of Azerbaijan (the countries with which the agreements on principals of levying of indirect taxes on import and export of goods have already been concluded and become effective), VAT shall be paid on importation thereof to Kazakhstan.

Similar agreements have been signed with the Republic of Belarus, Ukraine, the Republics of Uzbekistan, Moldova and Georgia will become effective after the fulfillment of intrastate procedures (with respect to the Agreement with the four latter countries, the Republic of Kazakhstan has already fulfilled all intrastate procedures). Agreements with the Republics of Turkmenistan and Tajikistan are currently at the stage of signing. Procedure for the collection of excise taxes on import and export is similar to the procedure of the collection of VAT.

### **Question 33.**

**Where do matters stand on the harmonization of excise rates for imported goods and domestically produced goods (reply to question 19 of WT/ACC/KAZ/14 refers). When will harmonization be completed for all of the products for which excise is not presently applied on a national treatment basis?**

#### Answer:

At present, excise rates for imported and goods produced domestically are the same with the exception of five categories of goods: alcohol, tobacco, automobiles, gasoline and diesel fuel. The process of harmonization will continue in 1999.

### **Question 34.**

**The Kazak delegation has noted that, while it has signed bilateral agreements with Uzbekistan, Moldova and Azerbaijan for the application of VAT at destination, Kazakhstan is still in negotiation with Russia. We would welcome an update on the progress in those negotiations.**

#### Answer:

VAT is levied on goods imported from the Kyrgyz Republic and Republic of Azerbaijan at destination. Similar bilaterals have been signed with the Republics of Belarus, Ukraine, Uzbekistan, Moldova and Georgia. They will take effect after the concerned countries complete all appropriate internal legal procedures (Kazakhstan has already completed all internal legal procedures in respect of the bilaterals with the last four countries of the aforementioned). Bilaterals with the Republic of Belarus, Turkmenistan and Tajikistan are in the process of being signed. Negotiations with Russia are still in progress in terms of the further elaboration of the content of the Bilateral and the timeline for its conclusion. The procedure to levy excise taxes on imports and exports of goods is similar to the procedure used to collect VAT.

The Agreement of 13 November 1992, between the governments - CIS members on the concerned principles of tax policy in respect of goods, works and services distributed in the territories

of the CIS members provides that VAT is collected at the place of origin. Therefore, VAT is not collected on importation of goods from the CIS member states.

While agreements on principles of collection of indirect taxes on imports and exports of goods are being concluded with the CIS member states. Kazakhstan is switching over to VAT collection at destination. For example, goods that are imported from the Kyrgyz Republic and the Republic of Azerbaijan (the states with whom Kazakhstan has appropriate agreements on the principles of collection of indirect taxes that have taken effect) are subject to VAT payments on their importation into Kazakhstan.

#### **Question 35.**

**WT/ACC/KAZ/17 also seems to indicate that Kazakhstan does apply VAT to imports from the Kyrgyz Republic and Azerbaijan.**

**Can Kazakhstan list all the CIS countries to which it applies the destination principle in VAT application?**

Answer:

See the response to question 32, above.

#### **Question 36.**

**Please update information on which countries are exempted from application of the VAT to their exports to Kazakhstan. Please indicate when Kazakhstan will bring its VAT application into line with Article II of the GATT.**

Answer:

See the response to question 32, above. Products from CIS countries (Georgia, Ukraine, Uzbekistan, Russia, Belarus, Turkmenistan, Armenia and Tajikistan) are not subject to VAT on import. Kazakhstan is negotiating with these CIS countries to change to a system of charging VAT on imports in accordance with the "destination principle". Agreements have been reached with the Kyrgyz Republic, Moldova and the Republic of Azerbaijan. As soon as similar agreements with the other CIS countries have been reached and ratified, VAT will be charged on imports regardless of the exporting country.

#### **Question 37.**

**Concerning excise taxes:**

**The response to question 17 in WT/ACC/KAZ/14 stated that "as for excise taxes ... goods originating and imported from CIS countries are charged excise taxes at source rather than destination."**

**The response to question 19 states "work towards further harmonization is currently in progress".**

Answer:

Excise taxes will be charged on imports from all CIS countries in accordance with the destination principle as soon as the relevant agreements have been ratified with CIS countries, to

which this principle does not yet apply. Kazakhstan has to date reached agreements to charge excise taxes in accordance with the destination principle with two CIS countries (Moldova and Azerbaijan). An agreement with the Kyrgyz Republic has also been negotiated.

**Question 38.**

**Please update the response to question 19 in WT/ACC/KAZ/14 and list by HS number all domestic and imported products to which an excise tax is applied, and list the rate at which it is assessed on imports and domestic products, and what is being done to harmonize rates among import suppliers**

**As has been indicated in previous meetings, it is imperative that Kazakhstan state categorically when it will adopt the destination principle in application of domestic taxes (both VAT and excise) to imports from all its trading partners. There is no Article XXIV exception from application of domestic taxes to imports from other customs union or FTA trading partners. Exemption of CIS imports from VAT and excise taxes, when the tax is applied to other imports, is discriminatory and a violation of Article II of the GATT.**

Answer:

Updated information in the requested format is provided herewith. With regard to the question about what is being done to harmonize rates among import suppliers, please see the responses to questions 20 and 23, above.



Attachment 1 to the Resolution of the Government  
of the Republic of Kazakhstan of 26 June 1998 N 608

EXCISE TAX RATES

on excisable goods, produced in the Republic of Kazakhstan and imported to the customs territory  
of the Republic of Kazakhstan, and gambling business

Commodity code	Description of products	Unit of measurement	Excise rates on produced goods (in EURO per unit or in % to the value in whole selling price without VAT and Excise taxes; Tenge per kilowatt in hour)	Excise rates for imported goods (in EURO per unit or in % to the customs value in tenge per kilowatt in hour)
1	2	3	4	5
2402	Tobacco items, other tobacco items, contain tobacco	1000 units	0,75	2,0
Ex 0301, 0302, 0303, 0304, 0305, 1604	Sturgeon and Salmon, Caviar of Sturgeon and Salmon, delicacy of Sturgeon and Salmon and Caviar		100%	100%
Ex 7113, 710239000, 7114, 7116	Jeweler's items of gold, platinum or silver		10%	10%
Ex 701321, 701331, 701391, 940510500	Lead crystal items, crystal lamps	-	-	-
From 9303, 9304, 9305	Firearms and gas arms		10%	10%
271600 000	Electricity	tenge/ kilowatt per hour	0,03	0,03
8703	Cars			10%, but not less than 0,5 EURO/cub.cm (only for the cars with engine capacity more then 3000 cub.cm)
	Gambling business		20%	

Attachment 1 to the Resolution of the Government  
of the Republic of Kazakhstan of 22 April 1999 N 455

EXCISE TAX RATES

on excisable goods, produced in the Republic of Kazakhstan and imported to the customs territory  
of the Republic of Kazakhstan, and gambling business

Commodity code	Description of products	Unit of measurement	Excise rates on produced goods (in EURO per unit or in % to the value in whole selling price without VAT and Excise taxes; Tenge per kilowatt in hour)	Excise rates for imported goods (in EURO per unit or in % to the customs value in tenge per kilowatt in hour)
1	2	3	4	5
271000270 - 271000360	Gasoline	1 ton	5000	133 EURO
	Except for: Exported to CIS countries where indirect taxes are levied according to the principal country of origin	1 ton	2000	
From 271000610, 271000650, 271000690	Diesel fuel	1 ton	600	88 EURO
From 270900	Crude oil, including gas condensate	1 ton	-	-

Attachment 5 to the Resolution of the Government  
of the Republic of Kazakhstan of 24 April 1999 N 465

EXCISE TAX RATES

on excisable goods, produced in the Republic of Kazakhstan and imported to the customs territory  
of the Republic of Kazakhstan, and gambling business

Commodity code	Description of products	Unit of measurement	Excise rates on produced goods (in Tenge per unit or in % to the value in whole selling price without VAT and Excise taxes; Tenge per kilowatt in hour)	Excise rates for imported goods (in EURO per unit or in % to the customs value in tenge per kilowatt in hour)
1	2	3	4	5
Ex. 2207 2208	All kinds of spirits (except those delivered for the production of medical and pharmaceutical items, if the producer has a license in the Republic of Kazakhstan for the right to produce such items, as well as spirits delivered to medical institutions)	1 litre	300	3
	From all kinds of spirits, delivered for the production of liquor-vodka items, strong beverages, strong juices, wine, balsam, if the producer has a license of the Republic of Kazakhstan for the right to produce such items	1 litre	30	0.3
-	Vodka, Liquor-vodka items, Strong beverages, strong juices and balsam,	1 litre	70	1.7
-	Brandy	1 litre	20	1.7
Ex 2204 (except 2204 30), 2205, 2206 00	Wine	1 litre	10	0.4
-	Sparkling wine	1 litre	20	0.4
-	Wine materials	1 litre	10	0.4
2203 00	Beer	1 litre	5	0.2

Kazakhstan will adopt the destination principle in application of VAT and excise taxes to CIS countries after concluding appropriate agreements, since as indicated in the response to the preceding questions, Kazakhstan is actively negotiating agreements with other CIS countries for this purpose.

**(l) Rules of origin**

**Question 39.**

**We still hope to see the amendments to the Customs Code that are intended to address the issues we raised in question 31 of WT/ACC/KAZ/11.**

Answer:

With regard to the status of amendments to the Customs Code, which include changes necessary to conform the Code to the WTO Agreement on Rules of Origin, please see the response to question 7, above.

**(m) Anti-dumping regime**

**(n) Countervailing duty regime**

**(o) Safeguard regime**

**Question 40.**

**Has Kazakstan provided the most recent drafts and texts of its antidumping, countervailing duties, and safeguard laws for Working Party review? If not, please do.**

Answer:

The Law of the Republic of Kazakstan "On Measures of Protection of Internal Market of Goods" was adopted and took effect on 28 December 1998. This law have been submitted to the WTO. The laws "On Anti-dumping" and "On Subsidies and Countervailing Measures" are currently at Majilis of the Parliament. Upon translation thereof, they will be submitted to the WTO Secretariat.

**3. Internal Policies Affecting Foreign Trade in Goods**

**(a) Industrial policy, including subsidy policies**

**Question 41.**

**We understand that Kazakstan is currently discussing the development of an industrial policy programme.**

**Could Kazakstan describe these proposals, including information on any trade-related measures, state-ownership proposals, local content requirements, budgetary subsidies, or subsidies of any other kind that are being contemplated?**

Answer:

At this time, the concept of the industrial policy is under debate within the Government. Kazakstan will provide the requested information to the Working Party when the final draft is approved.

**Question 42.**

**Would this plan involve the establishment of any State enterprises with special or exclusive mandates or other benefits?**

Answer:

In connection with the restructuring of the State bodies, the functions, which are not typical for such bodies, have been transferred to the State enterprises, which implement their activity in the area of state monopoly.

**Non-agricultural subsidies**

**Question 43.**

**In question 38 of WT/ACC/KAZ/14, the US noted Kazakhstan's responses to question 47 of WT/ACC/KAZ/11 and question 68 of WT/ACC/KAZ/6 which reported that Kazakhstan intends to notify some prohibited subsidies and seek a transition period within which to bring them into conformity with the subsidies agreement or eliminate them. Kazakhstan noted that subsidies for food, light, coal, machinery building and construction materials industries were involved.**

**When will these proposals be tabled? What steps has Kazakhstan taken during the last year to provide for the eventual elimination of these prohibited subsidies? By what fixed date is Kazakhstan prepared to have eliminated these programmes?**

Answer:

Kazakhstan acknowledges that certain sectors of its economy receive prohibited subsidies at present. As noted in document WT/ACC/KAZ/14, Kazakhstan intends to take advantage of Article 29 of the WTO Agreement on Subsidies and Countervailing Measures from the moment of accession to the WTO to begin gradual elimination of such prohibited subsidies during the following seven years as indicated in the response to question 38 of document WT/ACC/KAZ /14.

**Question 44.**

**Regarding the response to question 48 of WT/ACC/KAZ/11 please confirm that regional subsidies (so-called) are budget transfers to regional governments solely for the purpose of carrying out governmental activities, e.g. creating local infrastructure, running schools, making social income support payments unrelated to production of goods, etc. If this is not correct, please elaborate on the original response to clarify the issue.**

Answer:

In accordance with the Law "On Budgetary System" No. 3571 of 1 April 1999, subventions are official transfers, which lower level budgets will receive from higher level budgets within the limits of the approved amounts for the purpose of targeted use or programmes. Amounts of official transfers of budget-supported oblasts for each fiscal year are determined by the Law of the Republic of Kazakhstan "On Republican Budget" for the appropriate year. Official transfers (subventions) are forwarded to the budget of oblasts first of all for the financing of expenditures, which are not subject to sequestrating, in other words for payment of wages to the employees of budgetary sphere, fees to the state social insurance fund, as well as payment of the state social benefits. The Ministry of Finance of the Republic of Kazakhstan implements control over specific purpose use of transfers, which are transferred from the republican budget to the budgets of oblasts.

**Question 45.**

**Concerning Article 7 of the law on State support to direct investment of 28 February 1997 which stipulates that the State Committee of the Republic of Kazakhstan on Investments may grant income tax exemptions aimed at supporting direct investments and developing new industries:**

**Will Kazakhstan alter this law to ensure conformity with the WTO Agreement on Subsidies and Countervailing Measures?**

Answer:

The Law "On the State Support of Direct Investments" is in compliance with the WTO Agreement on Subsidies and Countervailing Measures. Pursuant to Article 7 of this Law and other relative normative acts of the State Committee for Investments of the Republic of Kazakhstan, enterprises that invest in amounts less than US\$10 million in the priority sectors of the economy receive standard tax benefits (privileges) for a limited period of time depending of the sector of the economy and the amount of such investments. The priority sectors of the economy are determined on the basis of the "List of Most Important Productions for the Attraction of Domestic and Foreign Investments until the Year 2000" approved by the State Committee for Investments of the Republic of Kazakhstan. Such benefits are not prohibited under the WTO Agreement on Subsidies and Countervailing Measures, because neither expansion of exports nor import substitution is amongst the criteria for granting such benefits.

**(b) Technical regulations and standards**

**Question 46.**

**We appreciate the information provided by Kazakhstan to date. The information in Annex 5 of WT/ACC/KAZ/3 is particularly interesting. We have some concerns, however.**

**Question 42 of WT/ACC/KAZ/14 asks for information on "technical regulations" but the response refers to "standards".**

**Does Kazakhstan recognize a difference in law and in practice between "technical regulations" and "standards".**

Answer:

In the standardization system of the Republic of Kazakhstan, technical regulations are contained in the normative document "standard" as well as other normative documents. A "standard" includes mandatory and recommended requirements. The requirements in the standard that are mandatory are called technical regulations.

**Question 47.**

**Is Kazakhstan interpreting "technical regulations" to mean "mandatory standards"? Is Gosstandard truly the only organization in Kazakhstan empowered to issue technical regulations/mandatory standards?**

Answer:

See the response to question 46 concerning the definition of technical regulations.

The Committee on Standardization, Metrology and Certification of the Ministry of Energy, Industry and Trade is the only body empowered to issue official standards.

**Question 48.**

**While responses to questions in WT/ACC/KAZ/3, WT/ACC/KAZ/6 and WT/ACC/KAZ/14 address publication of draft standards (which possibly includes technical regulations as well), it is not clear that Kazakhstan has in place a system for soliciting comments on these drafts or for considering these comments in drafting final regulations.**

**Please clarify if Kazakhstan has in law or regulation a procedure requiring prior publication for comment and a process to accept comments on standards related proposals.**

Answer:

Currently, interested parties may submit comments on draft standards.

The comments are taken into account in the process of finalizing draft standards. A standard is adopted only after comments are received, listed and attached thereto, and agreement is reached between the interested organizations.

The new draft Law "On Standardization" (WT/ACC/KAZ/21) contains a provision stating that in the absence of an international standard, when a standard is being developed, annotations to such standards are to be published in the mass media and special editions of the Committee on Standardization, Metrology and Certification of the Ministry of Energy, Industry and Trade for comment by interested parties. Under this Law, the state standardization system establishes a procedure to process and analyze comments.

**Question 49.**

**On a related issue, the response to Question 73 in WT/ACC/KAZ/6 states that "standards in Kazakhstan have mandatory and recommended requirements. Thus it appears that it would be necessary for a manufacturer or importer to identify any relevant standards for their product, and then to obtain copies of these standards and read them to determine which requirements are mandatory and which are only recommended,**

**If this is the case, how does this meet the transparency requirements of the WTO?**

Answer:

The recommended requirements that were referenced in Question 73 in WT/ACC/KAZ/6 are contained in each standard on products along with the mandatory requirements. Any interested party can obtain necessary information at the Inquiry Point.

**Question 50.**

**In the response to question 42, in WT/ACC/KAZ/14, Kazakhstan also notes that the law on standardization and certification is being amended.**

**Has the law been amended? If so, please provide a copy of the new law.**

Answer:

The Republic of Kazakhstan is currently in the process of drafting two new laws that will meet the requirements of the WTO TBT Agreement: a Law "On Standardization" and a Law "On Certification." Copies of these two Laws have been forwarded to the WTO Secretariat (WT/ACC/KAZ/21).

**Question 51.**

**In ACC/KAZ/14, the response to question 44 states that "manufacturer" self declaration (for mandatory certification) may be used only in cases where the testing of a product is not possible by any of the accredited bodies (foreign or domestic) of Gosstandard."**

**This seems somewhat counterintuitive, since manufacturers' self declaration is more common for products where specified requirements are well defined and relevant tests easily replicated. The Kazak definition appears to reserve manufacturers self-declaration for products that cannot be adequately tested or certified by a qualified third party. Please clarify.**

Answer:

The procedure for certification of products provides that a manufacturer's declaration can be filed for products, for which relevant tests can be easily replicated and can be performed by the producer and in respect of products, which cannot be adequately tested by a third party.

Other documents are also required to be presented, such as records of the testing procedures performed and documents that guarantee safety of the product. Upon review of all necessary documents, a certificate may be issued by an accredited laboratory (center).

**Question 52.**

**Our exporters have identified a number of problems with Kazakhstan's standards certification system. These are mostly issues of transparency, burdensome and unnecessary procedures, and due process that would appear to engage the TBT Agreement provisions in Annex III:E that state that standards should not be applied with the effect of creating unnecessary obstacles to international trade.**

**Why are original certificates of conformity necessary at each step in the approval process? Would not certified copies be sufficient?**

Answer:

Copies of the certificate may be used, however, they must be issued and certified by the body that issued the original certificate of conformity. This procedure is designed to prevent use of fraudulent certificates. The importer can obtain as many copies as needed. Such copies are issued on blank forms that are numbered and registered, and contain watermarks. The cost of the forms is 7-8 Tenge .

**Question 53.**

**Does Kazakhstan have regulations addressing procedures for sampling in the certification process, to ensure that excessive samples are not taken?**



Answer:

The number of samples that are required for testing for each product are listed in the standard on the concerned product or in a separate document called "Rules of Certification of Certain Products." Information on the required number of samples for each product can be obtained from the Inquiry Point.

**Question 54.**

**Why is it necessary to receive separate permission from the chief veterinarian to transport imports within the Kazakhstan market even after obtaining a valid certificate of conformity?**

Answer:

Such permission from the chief veterinarian for importation of certain products, even with the certificate of conformity, is legally justified under Article 2 of the Agreement on Technical Barriers to Trade, namely the intention to protect the health and safety of people or animals. This procedure is obligatory for importers and domestic producers of goods in transporting goods that are subject to the state veterinary control (#06-1-4-216 of 2 August 1996).

**Question 55.**

**Why must new certificates of conformity be obtained for pharmaceutical imports identical to those that have already obtained the certificate before?**

Answer:

In order to protect the health and safety of people and animals, pharmaceutical products are included on the official list of products that require mandatory certification.

**(c) Sanitary and phytosanitary measures, including measures taken with respect to imports**

**Question 56.**

**We appreciate Kazakhstan's candor in response to question 45 outlining the deficiencies in its SPS regime. We look forward to reviewing the proposed draft legislation, to assist Kazakhstan in developing WTO-consistent legislation prior to the next Working Party meeting.**

Answer:

The Law on Plant Quarantine was enacted on 19 February 1999, and submitted to the WTO in March 1999 (WT/ACC/KAZ/20).

**(d) Trade-related investment measures**

**Question 57.**

**We appreciate Kazakhstan's identification of TRIMs inconsistent measures (i.e., the preference for the use of local inputs in foreign investment activities) in the Law on petroleum and the law on subsurface utilization.**

**We expect that Kazakhstan will initiate efforts to eliminate these TRIMs inconsistent measures now, in the course of accession negotiations.**

**We believe that Kazakhstan should contemplate the elimination of the practice prior to its accession.**

**If Kazakhstan has a different proposal, it should incorporate a fixed date for the elimination, based on Kazakhstan's understanding now that the practice is inconsistent with WTO membership.**

Answer:

The law "On Petroleum" and the law "On Subsoil" contain provisions requiring use of domestic equipment, materials, and final products manufactured in Kazakhstan, if they are competitive in terms of ecological and technical qualities, price, working parameters, and terms of delivery. Kazakhstan, as a country with transition economy, offers to have these inconsistencies eliminated within the transition period after the accession to the WTO.

**(e) State-trading practices**

**Question 58.**

**Please confirm that the laws and regulations governing the trading activities of state owned enterprises in Kazakhstan, whether or not notified as state trading enterprises, will be applied in conformity with the relevant provisions of the WTO Agreement, including where relevant, Article XVII of the GATT 1994, the WTO Understanding on that article, and Article VIII of the GATS.**

Answer:

Kazakhstan confirms that laws and regulations regulating trade activity of state owned enterprises will be applied in accordance with the WTO Agreement.

**Question 59.**

**Please confirm that for any enterprise whose activities were subject to Article XVII of the GATT 1994, the WTO Understanding on that Article, and Article VIII of the GATS, Kazakhstan will abide by the provisions for notification, non-discrimination, and the application of commercial considerations for trade transactions incorporated in those provisions.**

Answer:

Kazakhstan confirms that for any enterprise whose activities are subject to Article XVII of the GATT 1994, the WTO Understanding on that Article, and Article VIII of the GATS, Kazakhstan will abide by the provisions for notification, non-discrimination, and the application of commercial considerations for trade transactions incorporated in those provisions.

**(l) Government procurement practices**

**Question 60.**

**We note Kazakhstan's commitment to join the WTO Agreement on Government Procurement after accession, and to make alterations in its laws to meet its provisions.**

Answer:

It is the intention of the Republic of Kazakhstan to bring its legislation governing state procurement of goods and services into conformity with the requirements of the WTO Agreement on Government Procurement after Kazakhstan's accession to the GPA. Kazakhstan offers to discuss the timetable and procedures for acceding to the GPA during negotiations.

**4. Policies Affecting Foreign Trade in Agricultural Products**

**(b) Exports**

**Agricultural Export Subsidies**

**Following are additional questions on WT/ACC/SPEC/KAZ/2:**

**Question 61.**

**We appreciate Kazakhstan's submission of its revised WT/ACC/4 information and note that this document represents an improvement over the original WT/ACC/4 submission. Nevertheless, we have additional modifications to suggest and additional information to request.**

**We appreciate the additional details and descriptive information provided in the answer to question 38 of WT/ACC/KAZ/11.**

**However, it would be helpful if Kazakhstan would resubmit another revision of its WT/ACC/4 document with these details included in the document itself**

**It would also be very helpful to the Working Party if Kazakhstan would consult with the WTO Secretariat for guidance on use of the proper format for completing the supporting tables on domestic support, using the guidelines outlined in technical memo WT/ACC/4.**

**For example, merely copying the descriptions from Annex 2 does not help to clarify Kazakhstan's domestic policies. Please resubmit these tables following the guidelines for completing ACC/4.**

**We again ask the Government of Kazakhstan to provide a complete description of all measures listed under 2.(f) and provide full justification for listing these items under DS:1 as green box measures.**

Answer:

Kazakhstan is completing the preparation of an updated version of document WT/ACC/4, where the agricultural subsidies for the period from 1996 up to 1998 will be presented.

In attached table DS:1, Kazakhstan continues to insist that its state procurement of grain as public stockholding is carried out only for food security purposes.

**Question 62.**

**We are unsure that Kazakhstan's grain procurement programme meets the criteria of paragraph 3 of Annex 2, which requires that purchasing for public stockholding for food security purposes be made at market price. Could Kazakhstan clarify how these purchases are made?**

Answer:

The state procurement of grain for food security purposes were effectuated by the State Product Contract Corporation since 1996 (please, see the responses to questions 54-55 in Document WT/ACC/KAZ/6/Add.1) at market prices at the commodity exchange, i.e. in compliance with the requirements of paragraph 3 of Annex 2. Therefore, they were included in the "green box" measures.

**Question 63.**

**Will Kazakhstan please explain the difference between preferential credits to agriculture (in table DS:2) and direct credits to agricultural producers (in tables DS:4, DS:9)**

Answer:

See the response to Question 61.

**Question 64.**

**Please clarify for the Working Party what is meant by "repay the debts on salaries" in tables DS:4 and DS:9 for 1994? Are these wages to state sector workers or are they a form of income support?**

Answer:

See the response to Question 61.

**Question 65.**

**We appreciate the inclusion of value of production in Kazakhstan's supporting tables, including production values for specific products.**

**It would be helpful if Kazakhstan also added in the value of production for sugar beet, potato, and corn seeds.**

Answer:

The updated version of document WT/ACC/4, the part related to domestic agricultural support measures, contains all required data on the volumes of production for subsidized agricultural products.

**Question 66.**

**This member would appreciate further clarification and descriptive information on measures reported in supporting tables DS:9, especially the items "reschedule of arrears, foreign forgiven debt, and farm's development."**

Answer:

See the response to Question 61.

**Question 67.**

**In WT/ACC/4 Kazakhstan indicates that it does not apply export subsidies to agricultural products. Can Kazakhstan pledge that it will not use export subsidies of any kind in the future?**

**Finally, we note that Kazakhstan reports certain items in Tenge and others in US Dollars. Please resubmit all AMS calculations in local currency, including share of AMS in total production.**

Answer:

See the response to Question 61.

**Question 68.**

**We are pleased that Kazakhstan has indicated that it does not use export subsidies. We expect that export subsidies will be bound at zero as appears to be indicated by the table on export subsidies.**

Answer:

Kazakhstan is finalizing an updated version of document WT/ACC/4 that will contain agricultural subsidies for 1996 - 1998.

**(e) Internal Policies**

**Question 69.**

**The Kazak delegation noted during the Working Party that further information on agriculture support programmes in year 1997 would be submitted by 10 November 1998. We would welcome early submission of that information.**

Answer:

Kazakhstan is completing its work to prepare an updated version of Document ACC/4 which will contain subsidies provided from 1996 to 1998.

**Agricultural domestic support**

**Question 70.**

**Some of our concerns raised by the original tables have been addressed in the revision. We note however that in the revised tables provided there have been changes in the level of figures from the earlier ones provided. We hope that some of the changes are the result of further examination of the domestic support programmes and not an attempt to increase the amount of the aggregate measure of support (AMS) to allow greater flexibility to introduce new amber box policies in the future, when the budgetary position may be better.**

**Could Kazakhstan confirm that the figures provided in the tables are actual expenditure rather than budgetary estimates.**

Answer:

Kazakhstan is finishing its work to update document WT/ACC/4.

### **Supporting table DS:1 - Green Box policies**

#### **Question 71.**

**We note that Kazakhstan continues to include state procurement of grain under (3) public stockholding for food security purposes. We would appreciate more details about the state procurement of grain and whether purchases and sales are made at current market prices**

Answer:

The state procurement of grain for the purpose of food security was implemented by the State Products Contract Corporation (please see the responses to questions 54-55 in document WT/ACC/KAZ/6/Add.1) at market prices through the commodity exchange, i.e. in compliance with the requirements set forth in paragraph 3 of Annex 2 to the Agreement on Agriculture, and, therefore, has been included among the green box measures.

#### **Question 72.**

**We notice that while the period 1994-96 has been used in both sets of tables, figures for some programmes have increased substantially, for example, support for research appears much larger in the revised tables. We realize that this is green box support and therefore has no bearing on the aggregate measure of support AMS. But we would be interested in the reasons for the change.**

Answer:

Kazakhstan is finalizing an updated version of document WT/ACC/4.

### **Supporting table DS:2 - special and differential treatment**

#### **Question 73.**

**Kazakhstan is seeking developing country status under the Agriculture Agreement. This is an issue that will need to be considered multilaterally. We note that neighbouring Kyrgyz Republic has agreed to treatment as a developed country for its agriculture commitments, and has agreed to use five per cent *de minimis*. We would expect that the same commitment will be sought from Kazakhstan.**

Answer:

Given objective criteria, such as its GDP per capita and its low level of economic development, particularly in the agricultural regions, Kazakhstan would like to be granted developing country status in this context.

#### **Question 74.**

**We would be interested in more details on the programmes, "preferential credit to agriculture" and "state guarantees on external loans". We note that in the most recent tables (WT/ACC/SPEC/KAZ/2), there are changes in the figures from those of earlier tables. Support**

for preferential credits to agriculture decreased for 1994 and 1996, while support for state guarantees on external loans had increased. Could Kazakhstan provide information on the reasons for changes in the support levels of these programmes?

Answer:

Please see the response to question 68.

#### **Supporting table DS:4 Calculation of total AMS**

##### **Question 75.**

We welcome the provision of information on the value of total agricultural production for 1994, to enable us to determine whether its agricultural support is *de minimis* (as no product specific support was provided in 1994). However, we note that for 1995 and 1996, Kazakhstan has used the total of its product specific support and non-product specific support to work out the share of AMS in agricultural production. Kazakhstan should determine its AMS/agricultural production for each agricultural product (as it appears to have done in supporting table DS:6) to determine whether there is *de minimis* for product-specific support and a separate calculation of its total agricultural production to determine *de minimis* for non-product specific support.

Answer:

Kazakhstan is finalizing an updated version of document WT/ACC/4, which will list domestic support measures for 1996-1998.

#### **Supporting table DS:6 - non-exempt direct payments**

##### **Question 76.**

It appears from the information provided by Kazakhstan that support for fruit, cattle and sheep is under five per cent, and would therefore be under developed country *de minimis* levels of support.

We would be interested in further details of the value of production for sugar beet, potatoes and maize, to enable us to clarify the level of support and whether they also have *de minimis* levels of support.

Answer:

Kazakhstan is finalizing an updated version of document WT/ACC/4.

##### **Question 77.**

We note that in the revised tables provided, for 1996 the figures for seeds of grain crops, seeds of potatoes, seeds of maize, cattle and sheep have increased, and would be interested in the reasons for this increase.

Answer:

Please see the response to question 73.

**Question 78.**

**It appears that in the revised table, fruits has now been included for 1996, while poultry has been excluded. Could Kazakhstan provide the reasons for these changes? Does this mean that there was no product-specific support for poultry?**

Answer:

Please see the response to question 73.

**Supporting table DS:9**

**Question 79.**

**We note that for 1995, the reschedule of arrears has increased from T 525,193,000 in the original table to T 35,922,300,000 (although table DS:9 refers to US dollars). We understand that this is the amount of debt of agricultural producers reallocated to the agricultural support fund in 1995 under government resolutions No. 224 of 3 March 1995 and No. 1719 of 14 December 1995. This appears to be the amount of the loans - is the amount of the loans the same as the amount of revenue foregone (in other words what is the actual amount of the subsidy)? Kazakhstan should provide further details on how this programme operates.**

Answer:

Kazakhstan is finishing its work to finalize an updated version of document WT/ACC/4.

**Question 80.**

**We note that in the tables provided as an annex to WT/ACC/KAZ/3, Kazakhstan had indicated that in 1994, it did not provide any product-specific or non-product specific support. However, in the revised table for 1994, there are now three items included under non-product specific support - (1) to repay the debts on salaries, (2) to carry out spring field works, and (3) direct credits to agricultural producers.**

Answer:

Please see the response to question 76.

**We would be interested in further information on these programmes and why they were not included in the first set of tables provided. Could Kazakhstan advise whether the repayment of debt on salaries applies only to the agriculture sector?**

Answer:

Please see the response to question 76.

**Question 81.**

**We would be interested in further details on the carrying out of spring field works.**

Answer:

Please see the response to question 76.



**Question 82.**

**We would also like further details on how the programme on direct credits to agricultural producers is administered.**

Answer:

Please see the response to question 76.

**V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME**

**1. General**

**Question 83.**

**All countries acceding to the WTO should apply the provisions of the TRIPS Agreement on the date of their accession in accordance, without recourse to any transition period**

**We are interested in Kazakstan's plans to bring its laws, regulations and procedures into full compliance with the obligations of the TRIPS Agreement.**

Answer:

Kazakstan is working continually towards bringing its National Legislation into compliance with the requirements of the TRIPS Agreement. To this end and with regard to the area of legal protection of industrial property, new drafts of the Patent Law of the Republic of Kazakstan, the Law of the Republic of Kazakstan "On Trademarks, Service Marks and Appellations of Places of Origin", the Law of the Republic of Kazakstan "On Selective Breeding Achievements", the Law of the Republic of Kazakstan "On Commercial Secret", the Regulation "On Legal Protection of Integrated Microcircuits", which take into account the requirements of all relative Articles of the TRIPS Agreement, have been prepared and are being reviewed by the Legislative Bodies of the Republic of Kazakstan.

**(d) Application of national and M.F.N. treatment to foreign nationals**

**Question 84.**

**In document WT/ACC/KAZ/10 of 25 July 1997 and document WT/ACC/KAZ/11 of 5 August 1997, the Government of Kazakstan stated that it plans to phase-out existing differentiation in fees between domestic and foreign applicants for industrial property rights, but that certain preferences might be retained for applicants from countries with an annual GDP per capita of less than US\$ 3,000.**

**Please describe phase-out plans aimed at complying with the national treatment and the most-favoured nation treatment obligations of the TRIPS Agreement.**

Answer:

It is planned to eliminate the existing differences during the transition period by establishing a single scale (schedule) for procedural patent duties and duties collected to maintain valid patents. It is expected to introduce a scheme of preferences for applicants originating from countries where the GDP per capita is less than US\$ 3,000 in order to account for the differences in so-called "purchasing

power/capacity” between developed and developing countries. If there are several applicants, each of them must meet these criteria. The list of such countries will be developed in accordance with the UN Classification of Countries based on their GDPs in order to determine the amount of annual contributions.

- 2. Substantive standards of protection, including procedures for the acquisition and maintenance of intellectual property rights**
- (a) Copyright and related rights, including rights of performers, producers of phonograms and broadcasting organizations**

**Question 85.**

**In response to Question 68 of document WT/ACC/KAZ/11 of 5 August 1997, the Government of Kazakstan states that violators of copyright and related rights may be fined an amount ranging from 500 monthly evaluation index (US\$ 3,766) to 1,500 monthly evaluation index (US\$ 11,300) but that if experience proves that the established fines are not effective deterrents, fines will be raised. Given the amounts of money that can be realized from copyright piracy of software, audio and video recordings because the cost of copying is minor, making profits substantial, this member does not believe that the penalties indicated are sufficient to deter persons who pirate such works. The fines indicated would be considered nothing more than a cost of doing business. Because the fines are so minor in relation to the cost of enforcement actions, government officials also would be unlikely to bring actions for violations of the law.**

**We urge the government of Kazakstan to increase the penalties for copyright piracy and impose penalties for trademark counterfeiting that are sufficient to act as a deterrent to potential pirates and counterfeiters and to encourage Government officials to pursue actions against those who do pirate copyrighted works and counterfeit trademarked products.**

Answer:

In our opinion, the measures provided in the legislation of the Republic of Kazakstan in respect of infringements of copyright and neighbouring rights are sufficiently strict.

For example, Article 184 of the Criminal Code provides in paragraph 1 for monetary penalties equivalent to 100 to 500 Monthly Evaluation Indexes or the salary or income collected by the infringer over a period up to five months.

Furthermore, pursuant to Article 49 (paragraph 1) of the Law of the Republic of Kazakstan “On Copyright and Neighbouring Rights,” the protection of copyright and neighbouring rights is enforced by court by way of:

- Paragraph 4) indemnifying for losses, including lost profits;
- Paragraph 5) recovering profits received by the infringer as a result of his/her infringement upon somebody else’s copyright and neighbouring rights;
- Paragraph 6) paying a compensation in the amount from 20 to 50 thousand minimal monthly wages and in case of infringement upon the author’s rights in a computer program or database, in the amount from 500 to 50,000 monthly evaluation indices as established by the Legislation of the Republic of Kazakstan.

- The amount of compensation is determined by the court instead of indemnification for losses or recovery of profits.
- Paragraph 7) applying other measures provided by legislative acts as relevant to the protection of such rights.
- The measures set forth in paragraphs 4, 5 and 6 of this Article are applied at the discretion of the owner of copyright and neighbouring rights

Article 8 of the Law “On Unfair Competition” provides that losses incurred by a legal entity, physical person or consumers as a result of unfair competition shall be subject to compensation pursuant to the procedure established by the legislation ( in other words pursuant to court procedure). The profit, which has been obtained by the subject of market relations as a result of unfair competition, shall be seized in favour of the state budget in accordance with court determination.

Actions aimed at limitation or elimination of lawful competition shall be subject to imposition of a penalty according to and in the amount, determined by the applicable statutory procedure.

#### **Question 86.**

**Kazakhstan provides protection for copyrighted works created on or after 27 May 1973, the date on which the former Soviet Union became a member of the Universal Copyright Convention. The TRIPS Agreement, which incorporates Article 18 of the Berne Convention by reference, requires that existing works of other WTO members be given copyright protection if they are still under copyright in their country of origin and have not fallen into the public domain in the acceding country through expiry of the term of protection previously granted. TRIPS Article 14.6 requires that the provisions of Article 18 of the Berne Convention apply also to the rights of performers and producers of phonograms.**

**Please describe the plans of the Government of Kazakhstan for providing protection for existing works of other WTO members on the date of accession.**

#### Answer:

Recently, the Republic of Kazakhstan adopted a Law “On the Accession of the Republic of Kazakhstan to the Berne Convention on the Protection of Literary and Artistic Works.” Paragraph 1 of Article 18 of this Convention states: “This Convention shall apply to all works which, at the moment of its coming into force, have not yet fallen into the public domain in the country of origin through the expiry of the term of protection.” Since it has been adopted without any reservations and conditions, Kazakhstan intends to adhere to its requirements in full.

#### **Question 87.**

**We urge the Government of Kazakhstan not to wait until its accession to the WTO but to provide such so-called "retroactive" protection for copyrighted works and to the rights of performers and phonogram producers as soon as possible.**

#### Answer:

As stated in the answer to question 85, the Republic of Kazakhstan acceded to the Berne Convention on 10 November 1998, without any reservations. This means that Kazakhstan extends protection to works that by the moment of its accession to the Convention have not fallen within the public domain of their countries of origin by virtue of the expiry of protection attached thereto.

**(b) Trademarks, including service marks**

**Question 88.**

**In response to question 61 of document WT/ACC/KAZ/10 of 25 July 1997, the Government of Kazakhstan states that well-known trademarks are protected without restriction by classes of products and services as is required by the TRIPS Agreement. The Government of Kazakhstan states further, however, that the criteria for determine what is 'well known' are not yet completely defined by WIPO and, therefore, demonstrating the authenticity of the trademarks should fall upon the trademark owner.**

**What is meant by the phrase "demonstrating the authenticity"?**

Answer:

Upon review, the use of the phrase "demonstrating the authenticity of the trademark" in the response to question 61 of WT/ACC/KAZ/10 was not accurate. The intention was to state that "the criteria for determining what is 'well known' are not yet completely defined by WIPO and therefore the trademark owner bears the burden of establishing that the mark is 'well known.'" In that regard, please also see the response to question 89, below.

**Question 89.**

**What evidence would be required from the owner of a trademark to demonstrate that its mark was well-known in Kazakhstan?**

Answer:

In order for a trademark to be recognized well known in Kazakhstan, its owner is required to prove that the following factors are present:

- the existence of production and sales of goods with this trademark attached;
- the cost/value of the trademark;
- the extent to which the trademark is recognizable by wide circles of consumers;
- the presence of intensive advertising of the trademark and its distribution.

**(g) Layout designs of integrated circuits**

**Question 90.**

**In to question 64 of document WT/ACC/KAZ/11 of 5 August 1997, the Government of Kazakhstan states that a Draft "Regulation on the legal protection and of topologies or integral micro-schemes" is currently being prepared. An English translation of the aforementioned draft regulations will be forwarded to the WTO Secretariat as soon it has been officially approved.**

**What is the status of the approval process? When will the translation be provided to the WTO Secretariat? When is it expected that the regulation will be implemented in Kazakhstan?**

Answer:

The process of adoption of the prepared draft Regulation “On Legal Protection of Integrated Microcircuits” can be started after the adoption of the Special Part of the Civil Code of the Republic of Kazakhstan. At present, the Special Part of the Civil Code of the Republic of Kazakhstan is being reviewed by the Senate of the Parliament of the Republic of Kazakhstan.

**(h) Requirements on undisclosed information, including trade secrets and test data**

**Question 91.**

**Article 39.3 of the TRIPS Agreement requires that WTO Members protect against unfair commercial use undisclosed data submitted as a condition for obtaining marketing approval of pharmaceuticals and agricultural chemicals utilizing new chemical entities. The data also is to be protected against disclosure.**

**Does the Government of Kazakhstan require submission of undisclosed data as a condition for obtaining marketing approval of pharmaceuticals and agricultural chemicals, if so, please describe how such data are protected from unfair commercial use and disclosure.**

Answer:

The information required for marketing pesticides is set out in the Ministry of Agriculture regulation “On Registration of Tests and Pesticide Registration in the Republic of Kazakhstan,” which was authorized by Governmental Resolution No. 399 (8 April 1996). Article 5.7 of that regulation provides that submitted test results and their registration are the property of the applicant and shall not be transferred to third parties without permission.

Disclosure or unfair commercial use of any information required to obtain approval for distribution of pharmaceuticals and agricultural chemicals that is a commercial secret is prohibited by Article 126 of the General Part of the Civil Code of the Republic of Kazakhstan.

Moreover, Article 200 of the Criminal Code prohibits collection of information that constitutes a commercial or banking secret by the person who has received such information in a job or work capacity, including disclosure or use of such information for mercenary or other personal interest without the consent of the owner. Such disclosure is punishable by imprisonment for up to three years, fines, arrest, or sentencing to correctional works.

**4. Enforcement**

**Question 92.**

**In answer to question 65 of document WT/ACC/KAZ/11 of 5 August 1997, the Government of Kazakhstan describes the Code on Administrative Violations of the Republic of Kazakhstan that applies to:**

**Illegal use of a trade mark or similar sign for the homogeneous goods, and 8150 places of origin of a product (Articles 170-2);**

**Sales, rent and other illegal use of copies of masterpieces or phonograms an commercial purposes (Articles 170-3);**

**Refusal in giving necessary information on profits/income and also submission at wrong data on profits/income received due to the use of author's rights (Articles 170-4);**

**And states that facts of violation are considered by the Administrative Commissions of local authorities and in case of real Violation the guilty party is imposed with a penalty.**

**Please describe in detail the procedures followed by the administrative Commissions in reviewing allegations of violation and describe the remedies the Commissions can impose.**

Answer:

Under the Administrative Code, a case to review a violation of the Code may be initiated on the basis of the following:

- direct finding by the concerned official of the fact of commitment of an administrative violation;
- information from law-enforcement agencies as well as from other state bodies, and self-governing (non-governmental) bodies;
- notification or application received from natural persons and legal entities and also notice received through the official press.

Protocols on administrative violations, stipulated by the Articles 170-2(b), 170-3(b) and 170-4 shall be drawn up only by those bodies so authorized by the Administrative Code. For example, the body authorized under the Code to draw up a protocol on trademark violations is the Patent Office of the Ministry of Energy, Industry and Trade; the authorized body with respect to violations of copyright is the Copyright Committee of the Ministry of Justice. The case is then reviewed by the body so authorized under the Administrative Code, which may include Administrative Commissions.

Review of the case starts with the introduction of the members of the Commission or other review body, or single officials in cases where the Administrative Code permits such review.

The chairman of the body meeting or the official that is reviewing the case shall announce the case that constitutes the subject matter of review, name the involved parties subject to administrative review, and explain their rights and duties. The Protocol on Administrative Violation is also announced.

Petitions shall be permitted during meetings, the persons that participate in the review of the case shall be given a hearing, and the evidence shall be examined.

In reviewing the case, the body shall keep a protocol or a record of the proceeding which later shall be signed by the chairman of the meeting and the secretary.

After consideration of the case, the administrative body shall issue one of the following resolutions:

- to impose an administrative sanction;
- to terminate the proceedings.

The body that has reviewed the case on administrative violation can impose the following sanctions:

- for violations stipulated in Articles 170-2, a penalty;

- for violations stipulated in Article 170-3, a penalty with confiscation of counterfeit materials, works and phonograms;
- Confiscated works or phonograms are subject to destruction unless the copyright holder or neighbouring rights possessor requests them;
- for violations stipulated in Article 170-4, a penalty;
- If the parties disagree with the Administrative Commission decision, they shall have the right to apply to the court of appropriate jurisdiction.

**Question 93.**

**Please explain what is included in the definition of "masterpiece" in the second item?**

Answer:

There appears to be an error in translation of the answer to question 65 of document WT/ACC/KAZ/11 of 5 August 1997. The word "masterpiece" does not appear in Article 170-3 of the Administrative Code. Rather, Article 170-3 concerns "sale or release or other illegal use of works or phonograms."

**Question 94.**

**Please describe in detail what steps a foreign party would take to have an administrative commission consider a violation of that party's intellectual property rights.**

Answer:

To have an administrative commission consider a violation of its intellectual property rights, a foreign party should submit an application to the Patent Office or the Copyright Committee of the Ministry of Justice, depending upon the nature of the right violated. The Committee would review the application and, where a violation is found, draw up a protocol on violation. As described in the response to Question 91, the protocol shall be sent to the appropriate administrative body. If the violation involves actions described in Article 170 of the Administrative Code, the appropriate administrative body as defined by the Code is the Administrative Commission of the Akimat (a local government authority). The Administrative Code also authorizes the Patent Office to review violations of 170-3 and 170-4.

**Question 95.**

**In answer to Question 66 of document WT/ACC/KAZ/11 of 5 August 1997, the Government of Kazakhstan states that amendments to the Customs Code, establishing a procedure for customs detention of goods suspected of bearing counterfeit trademarks or of being pirated copies of copyrighted works, would be finalized by the end of September 1997 and that a copy of these draft amendments will be submitted to the WTO in early October 1997. Have the amendments been finalized?**

Answer:

See the response to question 7 above regarding the status of amendments to the Customs Code.

**Question 96.**

**Please describe the amendments in detail and indicate when copies will be made available to the WTO.**

Answer:

The draft amendments to the Customs Code will establish a procedure for intellectual property right owners to apply to Customs to suspend release of imported goods suspected of violating their rights. The amendments provide that Customs may suspend release of the goods for a period of ten days upon application of the owner of the right. Customs may extend the period of suspension for an additional ten days. The amendments will require Customs to notify the applicant and the importer of the suspension of release of the goods. The amendments provide that the right owner will be required to provide a security to Customs to protect the importer's rights (should a court determine that the application for suspension is groundless).

Within the ten day period (as extended), the owner of the right is required to apply to a court to enforce his rights against the infringing goods and the importer of the goods. If the right owner fails to provide Customs with evidence that court proceedings have been initiated, Customs is required to release the goods upon expiration of the ten day period (or 20 day period, if extended).

With regard to when the draft amendments will be available to WTO members, please see the response to question 8, above.

**Question 97.**

**When is enactment of these amendments expected?**

Answer:

See the response to question 7, above.

**Question 98.**

**In answer to question 67 of document WT/ACC/KAZ/11 of 5 August 1997, the Government of Kazakhstan refers to provisions to prevent trade in counterfeit trademarked goods contained in Article 199 of the Draft criminal code (Special Part).**

**What is the status of this draft on Criminal Code? When is it expected that the Code will be enacted?**

Answer:

The provisions to prevent trade in goods with counterfeit trademarks contained in Article 199 referenced in the answer to question 67 of document WT/ACC/KAZ/11 came into force on 1 January 1998.

**Question 99.**

**What efforts are being made to educate the police, prosecutors, and judges in Kazakhstan regarding trademark counterfeiting so that when the draft Code comes into force, those responsible will be able carry out their responsibilities.**



Answer:

In September 1997, the National Patent Office (Kazpatent) in cooperation with the WIPO and the European Patent Office (EPO) conducted an international regional seminar dedicated to the issues of application of legislation in the area of patents and trademarks. The seminar was held for judges, customs officers, police and the CIS patent offices. As a result of this seminar, a compilation of materials was prepared and published and further circulated and distributed for public notice.

In November 1998, a similar international seminar to address a variety of issues related to patents, trademarks and copyright was held in Tashkent. This seminar was also attended by judges, customs and police officials, patent office officials and officials of the Copyright Committee of the Ministry of Justice of Kazakhstan.

**Question 100.**

**What efforts being made to educate the public to avoid activities that infringe the rights of trademark owners?**

Answer:

The National Patent Office (Kazpatent) conducted in 1997-99, and will conduct until 2000, a series of regional seminars to explain the Legislation of the Republic of Kazakhstan relating to the area of protection of objects of intellectual property. These seminars are conducted on the premises of regional scientific and technical libraries for a wide segment of inventors, scientific and technical workers, specialists and professionals. Officials of the Kazpatent appear on radio and television shows, and publish and disseminate materials related to the area of protection of industrial property through the mass media in Kazakhstan.

**VI. TRADE RELATED SERVICE REGIME**

**Question 101.**

**We look forward to receiving Kazakhstan's revised services offer.**

Answer:

The revised Offer on Services will be submitted to the WTO Secretariat after approval by the Government of the Republic of Kazakhstan.

**VII. INSTITUTIONAL BASIS FOR TRADE AND ECONOMIC RELATIONS WITH THIRD COUNTRIES**

**1. Bilateral, Plurilateral and Multilateral agreements relating to foreign trade in Goods and trade in services**

**Question 102.**

**We remain interested in Kazakhstan's adherence at the time of accession to the WTO Agreement on Trade in Civil Aircraft, and adoption of "zero" duties for the importation of aircraft and parts.**

Answer:

At this time, Kazakhstan is not planning to join the WTO Agreement on Trade in Civil Aircraft by the date of accession.

## **2. Economic Integration: Customs Union and Free-trade Area Agreements**

### **Question 103.**

**Please, provide an update on the extent of tariff harmonisation between Kazakhstan, Belarus and Russia.**

Answer:

Further work to formulate a Single Customs Tariff (SCT) between the three countries, i.e. Kazakhstan, Belarus and Russia, is still in progress. The rates of import duties on goods from 22 nomenclature groups that make up 57 per cent of the CIS NG FEA are similar and provide a foundation for the SCT. The other duties for the rest of the nomenclature groups are similar to various extents. A principle of further harmonisation of rates of import duties that are different have been developed, including a schedule to formulate a SCT with due consideration given to 15 per cent of the total imports of “sensitive” products of each state.

### **Question 104.**

**In light of its customs union with Russia, what measures is Kazakhstan taking to harmonise to recent Russian legislation on the production, sale and distribution of alcohol?**

Answer:

Analysing the experience of Russia related to the regulation of its market for alcoholic products in terms of production, the Republic of Kazakhstan pursues the policy designed to strengthen the state regulation in this area with the intention to increase the quality and competitiveness of domestic products, to collect taxes to a maximum extent and to protect domestic producers of goods. All types of activities in the area of production and distribution of ethyl spirits and alcoholic products are subject to licensing pursuant to the Presidential Decree “On Licensing.” The number of producers and distributors of alcohol is augmented with the intention to expand the size of the legal market in the area based on tightened qualification requirements.

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