

# WORLD TRADE ORGANIZATION

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## **ACCESSION OF KAZAKHSTAN**

### Additional Questions and Replies

The following submission, dated 14 January 2005, is being circulated at the request of the Delegation of the Republic of Kazakhstan.

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## ECONOMIC POLICIES

### - Monetary and Fiscal Policy

#### Question 1

**Which corporate tax rate is paid by companies extracting oil and gas and other minerals, the normal rate of 30 per cent, or the reduced rate for those "using land as the main production medium"?**

Answer:

For taxpayers extracting oil, gas, and other mineral resources the corporate tax represents 30 per cent in accordance with Article 135-1 of the Tax Code of Kazakhstan.

The 10 per cent corporate tax is established for taxpayers for whom the land is the main production factor, i.e. for producers of agricultural products.

#### Question 2

**What is the "social tax" applied regressively from 20 per cent to 7 per cent?**

Answer:

The social tax was introduced to cover budgetary expenses on social protection of the population. Income received by an employee from its employer is subject to social tax.

The social tax is applied to:

- legal entities resident in Kazakhstan as well as non-residents conducting business in Kazakhstan through permanent establishment, branches and representative offices of foreign legal entities. In particular, taxation applies to employer's expenses paid as:
  - resident employees' income in cash or in kind, in the form of material, social, or other benefits;
  - non-resident employees' income for their work in Kazakhstan within the framework of individual labour contracts or other civil contracts; as fees to executives and/or other payments to the management (members of board of directors, or other executive boards) for implementation of assigned managerial functions pertaining to the resident legal entity; as bonuses paid to recover living expenses in Kazakhstan; as reimbursement of expenses incurred by the employer or contractor to recover the cost of material, social or whatsoever benefits of non-resident natural persons working in Kazakhstan, including expenses for meals, living, education of children in schools, recreation/vacations of their families, and payments to the natural persons by onerous service contracts; and
- entrepreneurs, private notary officers and lawyers: the taxation applies to the number of employees, including taxpayers themselves.

Legal entities resident in Kazakhstan as well as non-residents making business through a permanent establishment, branches and representative offices of foreign legal entities shall pay the social tax at the following rate:

	Taxed employee's income amount	Rate
1	15 annual calculation indices and less (165,420 tenge and less)	20% of taxed income amount (33,084 tenge and less)
2	From 15 to 40 annual calculation indices (from 165,420 to 441,120 tenge)	The amount of tax from 15 annual calculation indices + 15% of the sum exceeding that amount (33,084 tenge + 15% of the sum exceeding 165,420 tenge)
3	From 40 to 200 annual calculation indices (from 441,120 to 2,205,600 tenge)	The amount of tax from 40 annual calculation indices + 12% of the sum exceeding that amount (74,439 tenge + 12% of the sum exceeding 441,120 tenge)
4	From 200 to 600 annual calculation indices (from 2,205,600 to 6,616,800 tenge)	The amount of tax from 200 annual calculation indices + 9% of the sum exceeding that amount (286,177 tenge + 9% of the sum exceeding 2,205,600 tenge)
5	Over 600 annual calculation indices (over 6,616,800 tenge)	The amount of tax from 600 annual calculation indices + 7% of the sum exceeding that amount (683,185 tenge + 7% of the sum exceeding 6,616,800 tenge)

Legal entities resident in Kazakhstan as well as non-residents making business through a permanent establishment, branches and representative offices of foreign legal entities shall pay the social tax for foreign administrative and executive specialists as well as foreign specialists with technical/engineering skills at the following rates:

	Taxed employee's income amount	Rate
1	40 annual calculation indices and less (441,120 and less)	11% of the taxed income amount (48,523 tenge and less)
2	From 40 to 200 annual calculation indices (from 441,120 to 2,205,600 tenge)	The amount of tax from 40 annual calculation indices + 9% of the sum exceeding that amount (48,523 tenge + 9% of the sum exceeding 441,120 tenge)
3	From 200 to 600 annual calculation indices (from 2,205,600 to 6,616,800 tenge)	The amount of tax from 200 annual calculation indices + 7% of the sum exceeding that amount (207,326 tenge + 7% of the sum exceeding 2,205,600 tenge)
4	Over 600 annual calculation indices (over 6,616,800 tenge)	The amount of tax from 600 annual calculation indices + 5% of the sum exceeding that amount (516,110 tenge + 5% of the sum exceeding 6,616,800 tenge)

### Question 3

**Please clarify that the "rent tax" rate is applied on a sliding scale (1 per cent to 33 per cent of the blended "market price" of oil), with the level of application increasing as the price of a barrel of oil increases? Where is the "rent tax" found in Table 2 of WT/ACC/KAZ/50?**

**We note that according to Table 2 of WT/ACC/KAZ/50 "taxes imposed on international trade" account for 4.2 per cent of total government revenues. Does this include tariffs, VAT, excise taxes? Anything else?**

Answer:

In accordance with paragraph 1 of Article 304-2 of the Tax Code of the Republic of Kazakhstan, the rent tax for exported crude oil is calculated based on the value of exported crude oil, which is set based on the actual volume of exported crude oil and its market price (depending on oil quality) excluding transportation costs.

Paragraph 2 of Article 304-2 of the Tax Code defines the market price for exported crude oil by adding the average weighted price prevailing among world market prices on similar sorts of crude oil in the reported period (daily). Thus, in accordance with the Article 304-4 of the Tax Code of the

Republic of Kazakhstan, the rent tax rate is established on a sliding scale depending on world prices for crude oil.

In accordance with the Draft Law of Kazakhstan "On Addenda and Amendments to the Tax Code" (which is currently being reviewed in the Parliament), the procedures for calculation and payment of rent tax for the export of crude oil and gas condensate are separated from Section 10 "Taxation of Subsurface Users" and added into a separate Section 9-1 "Rent Tax On the Export of Crude Oil and Gas Condensate". Thus, not only users of subsurface resources, but also all legal entities and natural persons engaged in the export of crude oil and gas condensate will be subject to rent tax.

Under Article 304-4 of the Tax Code of Kazakhstan, the amount of the rent tax for the export of crude oil shall be defined as follows:

Quotation Level Market Price	Rate
US\$ 19 per barrel	1%
US\$ 20 per barrel	4%
US\$ 21 per barrel	7%
US\$ 22 per barrel	10%
US\$ 23 per barrel	12%
US\$ 24 per barrel	14%
US\$ 25 per barrel	16%
US\$ 26 per barrel	17%
US\$ 27 per barrel	19%
US\$ 28 per barrel	21%
US\$ 29 per barrel	22%
US\$ 30 per barrel	23%
US\$ 31 per barrel	25%
US\$ 32—33 per barrel	26%
US\$ 34—35 per barrel	28%
US\$ 36 per barrel	29%
US\$ 37 per barrel	30%
US\$ 38—39 per barrel	31%
Over US\$ 40 per barrel	33%

In 2003, the share of revenues from foreign trade represented 4.2 per cent of total state revenues, which included import and export customs duties; customs duties applied at uniform rate for goods imported by natural persons; income received for services rendered by customs (excluding VAT, excise and other taxes). In January-September 2004, the share of revenues from international trade represented 3.9 per cent of total state revenue.

#### - Foreign Exchange and Payments

##### Question 4

**Questions 8 and 9 of document WT/ACC/KAZ/50: Would it be correct to say that the Government currently does not apply any of the restrictions, including licensing requirements, authorized by Article 3 of the Currency Law?**

Answer:

Article 3 of the Law of Kazakhstan "On Currency Regulation" (hereinafter referred to as the Law) entitles President of the Republic of Kazakhstan and the National Bank with the right to introduce additional restrictions in addition to the existing currency regulation regime in case of emergency and/or under potential security threat to the national economy.

The regime on mandatory sale of export currency proceeds, stipulated in paragraph 2 of Article 3 of the Law, was temporarily introduced in practice last time in April 1999, when the National Bank shifted to the new currency exchange rate regime, and discontinued in December 1999. No other restrictions, stipulated in Article 3 of the Law, had been introduced since the Law became effective.

The existing licensing requirements originate from the provisions of the Law "On Currency Regulation", which defines the principles and procedures for currency transactions in Kazakhstan (a copy of the Law is available from the Secretariat through document WT/ACC/KAZ/57/Add.1).

### Question 5

**Are the forms of restriction described in this section cover all such restrictions provided for in Article 3? Does that mean that the requirements to register the importation and/or to get a licence for the foreign exchange are not currently operational?**

Answer:

In addition to Article 3 of the Law, the replies provided to Questions 8 and 9 of WT/ACC/KAZ/50 cover the existing requirements of the current currency regime, which are based on the following principles:

- Repatriation - if a non-resident fails to supply goods (services), the export proceeds or import prepayment shall be transferred to the accounts of residents in authorized Kazakh banks within 180 days or within 365 days for certain categories of exported products (paragraphs 5 and 6 of Article 1-2 of the Law). The foreign currency obtained by resident, as a loan from non-resident, shall be also transferred to the resident's account in an authorized Kazakh bank.

All payments and transfers related to transactions between residents and non-residents shall be made in the currency of the Republic of Kazakhstan only (paragraph 1 of Article 7 of the Law) except for cases stipulated in legal acts of the National Bank of Kazakhstan as well as in the Tax Code and the Customs Code.

- Payments for transactions between residents and non-residents shall be made in any currency, the parties concerned agreed upon, (paragraph 5 of Article 7 of the Law) through authorized banks and organizations (paragraph 1 of the Rules for Currency Transactions in the Republic of Kazakhstan).
- Authorized banks shall make international bank payments and transfers within current operations with no restrictions (paragraph 1 of Article 11 of the Law).
- International bank payments and transfers made within capital transactions shall be made in accordance with the procedure set forth by the National Bank (paragraph 2 of Article 11 of the Law).

The procedures for payments and transfers made within capital transactions (including, under paragraph 4 of Article 1-2 of the Law, payments for export/import operations for goods (services) for the period exceeding 180 days) requires from residents to obtain a licence or registration certificate, which allows:

- residents, who are parties to external economic deals, to make currency transactions that go beyond the requirements, stipulated in paragraphs 1-3 above; and
- the National Bank to obtain timely reliable information (supported with documents) on the most important and large-scale currency transactions for the purpose of statistical data collection and analysis of the international balance of payment and foreign debt, of excessively detailed and operative-regular statistical reports from banks and other residents.



For instance, the licence issued by the National Bank of Kazakhstan (NBK) for export-import transactions allows residents to provide trade loans to foreign partners for the period defined by the terms of the export-import deal, with no accountability for violation of the above mentioned repatriation requirement. The resident itself can define the time frame, necessary for receipt of export proceeds or return of the prepayment by simply making a brief justification of the term. In addition, the National Bank obtains the primary information on the foreign trade statistics, terms of contracts and international payments and accounts terms.

### Question 6

**The response to Question 6 states that licensing rules are laid out in Annex 1 of the Questions and Replies document (Annex VI of WT/ACC/SPEC/KAZ/8/Rev.1). These licensing requirements, however, appear to be related exclusively licensing the right to import or to export specific goods or categories of goods. They do not appear related to any financial operations. The licensing requirements laid out in the response to Question 10 go through the National Bank, not through the Ministry of Trade and Industry, and do not appear to be the same requirements as those listed in Annex 1.**

**Please clarify.**

Answer:

Annex 1 to document WT/ACC/KAZ/50 (and similar Annex VI to the Factual Summary) indeed provides information on licensing requirements for export and import of products, which is within the competency of the Ministry of Industry and Trade and Ministry of Finance (for a limited number of specific group of products).

Under the Law No. 2200 "On Licensing" of 17 April 1995 (WT/ACC/KAZ/4 refers), licensing requirements extended to the following types of transactions with currency valuables:

- retailing and provision of services in cash for foreign currency;
- opening of accounts by residents, excluding opening of accounts by:
  - banks;
  - resident natural persons in foreign banks in OECD member-states with the required rating of one of the rating agencies; and
  - natural persons, temporarily residing outside Kazakhstan, for purposes of employment, education, medical treatment, or recreation.
- investments of residents placed abroad, excluding:
  - dealing bank operations; and
  - investments into securities of non-residents, meeting requirements set out in the currency and banking legislation of Kazakhstan; investments into authorized capitals of juridical persons of OECD member-states and/or states, who are parties to international agreements on facilitation and protection of investments, signed and ratified by the Republic of Kazakhstan, under which the investing resident will have the right to 50 per cent or more of voting shares (50 per cent or more of votes) of an investment object;
- transfers by residents to non-residents as payment for transactions transferring property rights to real estate, with the exception of the property of the same status;

- transfers of residents to non-residents made as payment for importation of goods, works, and services that requires advance payments for a period of more than 180 days; as well as extension of the deadline for receipt of earnings in foreign currency made as payment for exportation of goods, works, services by residents for a period of more than 180 days after the actual date of exportation.
- receipt by residents of payments from non-residents for export of goods, included in the Schedule developed by the Government of the Republic of Kazakhstan, in cases, when the period between the date on which the goods were exported and the date on which export receipts were collected, exceeds 365 days;
- granting by residents (other than banks) of loans to non-residents for a period of more than 180 days;
- crediting foreign currency, received by resident as a loan granted by a non-resident, to an account of a third-party, unless there was a provision to the contrary in the currency legislation of the Republic of Kazakhstan;
- transfer of currency valuables to beneficial ownership, effected by a resident to a non-resident.

Licensing requirements for the above mentioned operations are described in response to Question 10 (paragraph 15 of document WT/ACC/SPEC/KAZ/8) .

Licensing requirement applies only to residents-parties to foreign economic deals. In case a resident does not have a licence of the NBK, the authorized banks are not allowed to carry out currency transactions. No deposit requirements are necessary to obtain a licence.

As to the response to Question 6 of document WT/ACC/KAZ/50, it should be underlined that the licensing requirements set forth in paragraph 15 of the document WT/ACC/SPEC/KAZ/8 refer to the control over capital transactions and establish the procedures stipulated in paragraph 9 of the same document (see the response to the previous question).

In addition to response to Question 10 of the document WT/ACC/KAZ/50 concerning the approval of licensing requirements by the IMF, it should be noted that Kazakhstan submits annual reports to the IMF on the applied currency regime and currency restrictions. For instance, the currently applied licensing requirements have been covered in the report for the year 2003 and extensively discussed with regular IMF missions to Kazakhstan. Up to date, the IMF have not made any comments with regard to incompliance of Kazakhstan's currency regime with Article VIII or any other provisions of the IMF Agreement.

### **Question 7**

**What/who is a "resident" for the purposes of seeking a licence from and registering the importation with the National Bank?**

Answer:

Requirement to obtain a licence applies only to residents, who are parties to foreign economic deals.

A definition of "a resident" stipulated in Article 1-1 of the Law "On Currency Regulation" is used in order to implement norms of the currency legislation, including obtaining the licence or registration certificate for import operations.

According to Article 1 of the Law of the Republic of Kazakhstan "On Currency Regulation",

1) Residents are:

- natural persons with the domicile on the Republic of Kazakhstan, including the persons temporarily living abroad or employed as officials of the Republic of Kazakhstan abroad; and
  - juridical persons of the Republic of Kazakhstan with the domicile in the Republic of Kazakhstan, as well as their branches and representative offices located either in Kazakhstan or abroad.
- 2) Non-residents include all other juridical persons and natural persons located either in the Republic of Kazakhstan or abroad, as well as their branches and representative offices, not covered in the definition of "resident". Most specifically, non-residents are:
- foreign citizens, including those temporary living in Kazakhstan, excluding foreign citizens possessing a permanent residency right in the Republic of Kazakhstan;
  - juridical persons, established in accordance with the foreign legislation, located outside the territory of the Republic of Kazakhstan, as well as their branches and representative offices located both in the territory and outside of the Republic of Kazakhstan;
  - diplomatic, trade and other official representative offices of foreign states in the Republic of Kazakhstan; and
  - all other juridical and natural persons not defined by this Law as residents.

Branches and representative offices of foreign juridical persons, working on the territory of the Republic of Kazakhstan, are considered as non-residents.

#### **Question 8**

**Paragraph 21 records that Kazakhstan's current foreign exchange and currency liberalization plans are contained in the Currency Regime Liberalization Concept, approved by Resolution No. 369 of the National Bank Board of 11 September 2002.**

**Please include information from the response to Question 15 on the draft Currency Regime Liberalization Program for the period of 2005-2007.**

**Does Kazakhstan intend to eliminate the licensing and registration requirements with the National Bank? If so, please provide a timeline for this liberalization.**

#### Answer:

The Government of the Republic of Kazakhstan approved the Program for Liberalization of the Currency Regime in the Republic of Kazakhstan for 2005-2007 by its Resolution No. 705 as of 25 June 2004. The adopted Program for Liberalization of the Currency Regime in the Republic of Kazakhstan for 2005-2007 includes the measures laid out in the response to Question 15 of the document WT/ACC/KAZ/50.

In order to implement the Liberalization Program for 2005-2007, a new draft Law of the Republic of Kazakhstan "On Currency Regulation and Control" has been developed. The draft law has been submitted to the Parliament of Kazakhstan by the Resolution of the Government No. 1007 as of 30 September 2004 and is being reviewed.

The draft Law of the Republic of Kazakhstan "On Currency Regulation and Control" (hereinafter referred to as the draft Law) stipulates the following:

- retaining the existing repatriation requirement (see Section I above) until the year 2007. From 2007 and onwards the repatriation requirement will require that a resident ensures a transfer

- of export proceeds or import prepayment to the bank account in one of the Kazakh banks within the time-period stipulated by the foreign trade contract;
- removal of the requirement for a resident to transfer a loan in foreign currency received from a non-resident to the account in one of the Kazakh banks;
  - expansion of the list of transactions among residents, payments for which can be made in foreign currency;
  - expansion of the list of transactions among residents without requirement that such transactions should be undertaken through authorized banks; and
  - simplification of procedures for international bank payments by: (i) reducing the list of capital transactions subject to licensing by the year 2007; and as from 2007 and onwards (ii) complete elimination of licensing requirement for capital transactions; and (iii) replacement of registration requirements for certain kinds of currency transactions with the notification regime.

The notification on currency transaction will be submitted to the NBK by a resident, who is a party to currency transaction or by Kazakh bank serving such transaction after completion of the transaction. As a result, the notification regime in contrast to the registration requirement will provide residents with the opportunity to conduct currency transactions without any proof or supporting documents from the NBK.

As of 2007 and onwards, the National Bank will only issue licenses for the transactions made in cash in foreign currency, such as: (i) exchange transactions by exchange bureaus; (ii) retailing at duty free shops; and (iii) international cargo transportation services. Thereafter, the existing licensing and registration requirements with regard to capital transactions (paragraph 15 of WT/ACC/SPEC/KAZ/8, paragraph 17 of WT/ACC/SPEC/KAZ/8/Rev.1, and paragraph 17 of WT/ACC/SPEC/KAZ/8) will be changed as shown in the attached table (see Annex 1).

Loans issued by residents to non-residents for the period exceeding 180 days will remain subject to licensing requirement until the year 2007 (until transition to the repatriation principle by contractual term).

The registration requirement with regard to direct investments, financial loans for the period exceeding 180 days, and purchase of exclusive intellectual property rights will be retained as of the year 2007 and onwards, due to complexity of these transactions in terms of accurate classification in the balance of payment statistics. For large-scale transactions, the National Bank will refer to primary source of information (contract) in order to accurately reflect both assets and liabilities of residents in the balance of payment account.

Monetary loans and foreign investments represent key components of the balance of payment account and foreign debt of Kazakhstan. Along with export proceeds, they also serve as the main sources of foreign currency inflow to Kazakhstan. In this regard, information submitted by residents in the course of registration (including registration of commercial loans) is used as a primary source of data for conducting analysis and prognosis of the balance of payment and foreign debt statistics, and for evaluation of sustainability of foreign economic policy of the country.

At the same time, taking into account the position of some Working Party members, the National Bank is reviewing the possibility of removing as of the year 2007 and onwards the registration requirement towards commercial loans, which require transaction passport in order to ensure their compliance with the repatriation requirement based on the contractual term.

Therefore, banks' data on payments made and customs agency's information on the movement of goods based on transaction passports will be submitted directly to the National Bank for assessment of assets and liabilities within commercial loans.

All other commercial loans will still be subject to registration as of 2007 and onwards.

- **Investment Regime**

**Question 9**

**Paragraph 30 of WT/ACC/SPEC/KAZ/8/Rev.1 states "Pursuant to Article 65 of Law No. 242-II "On Architectural, Town-Building and Construction Activities in the Republic of Kazakhstan" of 16 July 2001, the share of foreign participation in joint ventures' charter capital could not exceed 49 per cent."**

**Does that mean that foreign investors cannot own more than 49 per cent of the equity of any joint venture, in any sector, e.g., in services enterprises? If not, please clarify.**

**Is the list of restrictions on foreign investment in paragraph 30 complete? Could Kazakhstan list, for the Working Party, the exhaustive list of industries, services sectors, or enterprises in which foreign investment is prohibited or restricted?**

Answer:

In accordance with the Law No. 42-II "On Architectural, Town-Building, and Construction Activities in the Republic of Kazakhstan" of 16 July 2001 the share of foreign ownership in the charter capital of juridical persons of Kazakhstan may not exceed 49 per cent. This restriction applies only to joint ventures in architectural, town-building and construction services. At the same time, branches of foreign juridical persons could obtain a one-time licence, which allows to work on one construction site at a given time.

In accordance with Article 36 of the Law No. 136-I "On Pensions in the Republic of Kazakhstan" of 20 July 1997 the total charter capital of open saving pension funds with foreign participation may not exceed 25 per cent of the total declared charter capital of all open saving pension funds in Kazakhstan.

In accordance with the Article 35 of the Law "On insurance activity" dated 18 December 2000, non-residents could establish insurance (reinsurance) companies in the form of juridical persons of Kazakhstan under the following conditions:

- The total paid-up capital of insurance institutions, with foreign participation, may not exceed 25 per cent of the aggregate paid-up capital of insurance institutions of Kazakhstan (for non-life insurance companies); and
- The total paid-up capital of insurance institutions, with the participation of non-residents of Kazakhstan, may not exceed 50 per cent of the aggregate paid-up capital of insurance institutions of Kazakhstan (for life insurance companies).

In accordance with the Law of the Republic of Kazakhstan "On banks and banking activity", the total paid-up authorized capital of banks, with foreign participation, may not exceed 50 per cent of the aggregate paid-up capital of the banks of Kazakhstan.

As provided by the Law of the Republic of Kazakhstan "On communications" No. 568 as of 5 July 2004, foreign juridical and natural persons, persons without citizenship have no right to possess in direct and/or indirect ownership, use, dispose and/or operate with more than 49 per cent of stocks of juridical person owning the terrestrial (cable, including optical fibre, radio relay) communication lines and executing activity in the field of telecommunications as the operator of long distance and/or

international communication. The abovementioned restriction applies only towards the operators of terrestrial lines, providers of long distance and international communication.

In accordance with the Law of the Republic of Kazakhstan "On mass media", with the purpose of establishing and strengthening the national information protection system, including state information resources as well as public interests, there is a norm restricting participation of foreign juridical and natural persons, persons without citizenship to possess, use, dispose or operate more than 20 per cent of stock/share of juridical person owning a mass-media resource or conducting activity in the mass media sector in Kazakhstan.

#### **Question 10**

**Please list the priority investment sectors provided in Government Resolution "On Some Issues of Enforcing the Law "On Investments" of 8 May 2003 No. 436, that are eligible for preferential investment treatment.**

Answer:

The list of the priority investment projects at the sub-sectors level, for which certain tax preferences are granted, are approved by the Government Resolution dated 8 May 2003 No. 436 (a copy of the List is provided in Annex 2)

The conditions and requirements for receipt of tax preferences by an investor are described in Article 15, 16, and 17 of the Law "On investments" (a copy of the Law is available from the Secretariat through document WT/ACC/KAZ/57/Add.1).

#### **Question 11**

**Paragraph 30: The representative of the Government of the Republic of Kazakhstan stated that "there could be certain areas in which investment activities were limited or banned because of national security considerations". The paragraph then lists limitations on the aggregate charter capital of banks operating with foreign capital participation. Is this limitation taken because of national security concerns, and if so can the government of the Republic of Kazakhstan please explain the link between national security concerns and limitations on foreign bank participation in the Kazakh economy?**

Answer:

The limitation on the maximum foreign share in the aggregate charter capital of all second tier banks is not linked to the national security concerns.

This measure has been introduced with the aim to develop and strengthen local financial institutions. Due to limited experience, relatively low capitalization and lack of skilled management, the national financial sector could not compete on a fair basis with foreign banks. Hence, the requirement on the maximum foreign capital share in the aggregate charter capital of all second tier banks has been introduced. This limitation ensures the optimal ration of foreign and local investors.

- **State Ownership and Privatization**

**Question 12**

**Question 24 asks "Does the state retain partial ownership in firms and enterprises slated for privatization?" The response does not answer the question. Please describe, as appropriate, how the state retains partial ownership in privatised firms.**

Answer:

In accordance with the legislation of the Republic of Kazakhstan the state can sell state owned objects in full or partially based on its strategic interests and favourable market conditions.

In accordance with the Decree of the President of the Republic of Kazakhstan, having the power of a Law, "On privatization" dated 23 December 1995, the state retains no ownership in privatized organizations (companies).

In cases when state owned shares in charter capitals of limited partnerships or joint stock companies are privatized partially, i.e. not the total state owned shares, the state owns the rest-not privatized-shares.

Moreover, in accordance with the abovementioned Decree, privatization of state-owned shares in charter capitals of limited partnerships and joint stock companies is done in compliance with the Kazakh legislation on joint stock companies, limited partnerships and securities.

**Question 13**

**Paragraph 39: Please list the areas that will not be subject to privatization, such as state property exempted from privatization until 2006, as approved by Presidential Decree No. 422 of 28 July 2000 and Government Resolution No. 1587 of 24 October 2000.**

Answer:

According to the Decree of the President of the Republic of Kazakhstan No. 422 "On the List of State Property Objects Exempted from Privatization" of 28 July 2000 (available from the Secretariat through document WT/ACC/KAZ/57/Add.1), the following forms of state property were exempted from privatization or its preliminary stages:

- Land (excluding land that may be privately owned under conditions and within limits set by the legislation of the Republic of Kazakhstan), subsurface and water resources, flora and fauna;
- Natural zones under special protection;
- Military organizations and sites, including property thereof, required to ensure the national security of the Republic of Kazakhstan;
- Main railroads, Republican highways, forming a part of the network of international routes; and those designed for defence purposes, including accompanying engineering structures; navigable waterways, lighthouses, navigation devices and seamarks, regulating navigation and ensuring its safety;
- Main oil and gas pipelines, and interregional electric networks of 220,500 and 1,150 kW;
- Water reservoirs and hydraulic works, water control pivots, dams and barrages on water sources;
- First-aid medical organizations operating in rural areas, specialized medical centres (blood banks, maternity welfare centres, centres of radiological medicine, oncology centres;

tuberculosis, HIV and AIDS centres; STD centres; mental hospitals), as well as other organizations and centres, where they act as the only source of medical services in a specific area;

- Social protection services, children's homes, orphanages, nursing homes, rest homes, hospitals and health resorts for the disabled, veterans of the World War II and individuals of the same status, children, and the aged;
- Organizations of secondary education, implementing the constitutional rights of every citizen of the Republic of Kazakhstan to education; and
- Historic and cultural sites protected by the State.

The Government Resolution No. 1587 "On the List of State Property Objects Exempted from Privatization" of 24 October 2000 (available from the Secretariat through document WT/ACC/KAZ/57/Add.1) contains:

- the schedule of non-privatisable state property (including preliminary stages of privatization process) until 2006; and
- the schedule of joint-stock companies with non-privatisable public shares (including preliminary stages of privatization process) until 2006.

#### Question 14

**Please list the largest state owned firms, and indicate their lines of business.**

Answer:

The Government Resolution No. 182 "On Approval of the List of National Companies" of 16 February 2004 provides the list of 12 national companies:

	Name	Main Lines of Business
1	Joint-Stock Company (JSC) "National Company 'KazMunaiGaz'"	Participation in implementation of the state oil and gas policy, ensuring efficient use of national oil and gas resources, participation in development of the strategy on use, reproduction and further expansion of oil and gas resources, representation of Kazakhstan in production sharing agreements, supply of oil and gas transportation services, etc.
2	Open Joint-Stock Company (OJSC) "Kazakh Company Electric Network System Administration"	Wholesale power supply through national electric network, technical maintenance and repair of the network, ensuring effective work of the single electric network system of Kazakhstan, etc.
3	OJSC "Kazpost"	Receipt, processing, transportation, and delivery of letters, post packages, parcels; postal money orders; issuing state postal marks; special communication; pension, social subsidies, etc payment service; express and courier delivery service, distribution of periodicals, etc
4	JSC "Food Contract Corporation"	Purchase, forming, accounting, storage, renewal, transportation and sale of the state resources grain and processed grain products.
5	Closed Joint-Stock Company (CJSC)"National Atomic Company "Kazatomprom"	Acts as national operator for export and import of uranium and its compounds, nuclear fuel for nuclear power plants, special equipment and technologies, reusable materials.
6	CJSC "National Information Technologies"	Development and organization of national information systems network in Kazakhstan and their integration into the world information infrastructure, ensuring informational independence of Kazakhstan by creating favorable environment for the Single Information Area.



	Name	Main Lines of Business
7	JSC "National Company Kazakhstan Temir Zholy"	Construction, maintenance and modernization of the railway system, administration of railway traffic, supply of international railway transportation services, rail freight, etc
8	CJSC "State Pension Accumulating Fund"	Collection of compulsory pension contributions from population, payment of pensions, creation of pension assets, investing pension assets, etc
9	JSC "Kazakhtelecom"	Acts as national operator of Kazakhstan for building, installation, operation and technical maintenance of public and private telecommunication network.
10	CJSC "International Airport Astana"	Receiving, dispatching and maintenance of aircrafts, supply of services for passengers; handling luggage, freight, and post; repair and maintenance of airport infrastructure and utilities, aviation security service, etc.
11	OJSC " National Company Kazakh Information Agency" (Kazinform)	Collection, processing and distribution of news and information materials, dissemination of information covering the work of governmental bodies and Parliament of the Republic of Kazakhstan in local and foreign mass media, monitoring materials of foreign mass media and their dissemination in mass media of Kazakhstan, etc
12	"Kazakhstan Engineering" National Company" OJSC (Kazakhstan Engineering)	Participation in implementation of the state policy pertaining to the development, production, distribution, and liquidation of defence, civil and multipurpose products, etc

### Question 15

**Please clarify how foreign investors may participate in Kazakhstan's privatization programs.**

Answer:

In accordance with the Decree of the President of the Republic of Kazakhstan, which has the status of Law, No. 2721 "On Privatization" of 23 December 1995 (hereinafter referred to as the Decree), the main principles of privatization include: transparency, competition, legal succession, accountability of officials for legitimacy of the privatization process and credibility of information related to objects put for sale.

According to the Decree, the seller and the buyer shall be the participants of the process of privatization. Seller means the state body authorized to carry out privatization. Buyer means a physical person, private legal entity or foreign legal entity which purchase assets in the course of privatization. When Buyer consists of several entities participating on behalf of the Buyer, they act jointly.

The following may not be the Buyers in privatization:

- juridical persons, in whose charter fund the share of the state exceeds 20 per cent; and
- juridical persons, who in accordance with legislative acts of the Republic of Kazakhstan or their foundation documents, have no right to engage in the types of activities, the performance of which is a pre-condition for buying the property at the auction.

In the course of selling a state block of shares, the Buyer which is a joint stock company may not acquire more than 25 per cent of shares of the joint stock company if the latter owns shares of the Buyer. The Seller shall have the right to hire an intermediary to organize the process of privatization.

The full list of requirements and conditions for participation of national and foreign investors in the state owned property privatization process are listed in the Decree (available from the Secretariat through document WT/ACC/KAZ/57/Add.1).

- **Pricing Policies**

**Question 16**

**Paragraph 46: As there is no legal definition of the term "state monopoly," can Kazakhstan clarify if state monopolies actually operate as monopolies, or is there direct competition?**

Answer:

The existing laws of the Republic of Kazakhstan provide that only government bodies and state enterprises with the exclusive rights for operation in certain sectors of the national economy can conduct certain activities, which fall under the category of state monopoly.

Subparagraph 2-1) of Article 1 of the Law of the Republic of Kazakhstan "On Government Procurement" provides that the state monopoly in government procurement is a type of activity to be operated exclusively by government bodies and/or state owned enterprises in accordance with the laws of the Republic of Kazakhstan as well as in situations when competition is not reasonable due to the following concerns: national security, ensuring the legal order, security of top level officials, defence system and defence industry.

The Government of Kazakhstan defines the list of state monopolies and their application areas. Paragraph 2 of Article 25-1 of the given Law stipulates that economic activities with information system developed to conduct government procurement process is a state monopoly.

Subparagraph (2) of paragraph 1 of Article 13 of the Law of the Republic of Kazakhstan "On Licensing" provides that activities can be added to the state monopoly category through the adoption of certain legislative acts of the Republic of Kazakhstan.

Subparagraph (3) of paragraph 1 of Article 2 of the Law of the Republic of Kazakhstan "On State Enterprises", for instance, stipulates that the main functions of state enterprises consists of activities defined as state monopoly areas or government functions.

The Law of the Republic of Kazakhstan "On Guarding Activity" defines guarding of the national security objects as a state monopoly, which can be carried out exclusively by specialized security subdivisions of the interior ministry. At present guarding of the national security objects is provided by the National Central Board, Oblast (State) divisions, city and rayon (district) units of a specialized security service of the Ministry of Interior of the Republic of Kazakhstan.

Article 11 of the Law of the Republic of Kazakhstan "On Veterinary" stipulates that the Government of the Republic of Kazakhstan creates state enterprises for the purpose of executing the following functions defined as the state monopoly:

- identification of extremely dangerous animal diseases, included into the special list approved by the Government of the Republic of Kazakhstan;
- registration tests, testing veterinary medication, feed and fortified feeds, as well as control of consignments of veterinary medication claimed for replacement;
- liquidation of sources of extremely dangerous animal infections included into the list approved by the Government of the Republic of Kazakhstan;
- disinfection of vehicles at veterinary check points at the national boulder; and

- storage of the national stock of veterinary medications.

At present "National Veterinary Laboratory" National State Enterprise of the Ministry of Agriculture of the Republic of Kazakhstan carries out the abovementioned state monopoly functions.

Article 4 of the Patent Law of the Republic of Kazakhstan defines the state monopoly functions in the area of industrial property protection. The authorized government body is the national patent organization, which processes the industrial property applications, examines them, issues documents of title, issues a bulletin with information on the industrial property objects and carries out other functions of the patent agency.

Article 3 of the Law of the Republic of Kazakhstan "On Trademarks, Service Marks and Indications of Places of Goods' Origin" defines the state monopoly functions in the area of protection of trademarks and indications of places of goods' origin. The authorized governmental body is the national patent organization, which processes applications for trademark registration, registration and entitling with the right to use the indications of places of goods' origin, examines the applications, and issues certificates, makes official publications of information on registration of trademarks and right holders of geographic indications of goods' origin, as well as carries out other function of the patent agency.

Article 10 of the Law of the Republic of Kazakhstan "On Plants Protection" defines phytosanitary monitoring of extremely hazardous organisms as a state monopoly. At present "Phytosanitary" National State Enterprise of the Ministry of Agriculture of the Republic of Kazakhstan conducts phytosanitary monitoring of extremely hazardous organisms.

The Forestry Code of the Republic of Kazakhstan stipulates that "forest regulation concerning determination of the national forest fund boundaries, wood inventory, and forestry planning on the national forest fund lands is a state monopoly".

Article 1 of the Law of the Republic of Kazakhstan "On Legal Protection of Integrated-Circuit Layouts" defines the state monopoly functions in the area of legal protection of integrated-circuit layouts.

In addition, there are legal acts, which provide that certain sectors and areas are conducted exclusively by the governmental bodies and state enterprises. Such legislative acts entitle governmental bodies and state enterprises with the exclusive right; however, they do not qualify such operations as the state monopoly.

Paragraph 11 of Article 1 of the Law of the Republic of Kazakhstan "On Architectural, Town Planning and Construction Activity" (hereinafter referred to as the Law), for instance, defines the state appraisal of projects as the compulsory form of a complex appraisal of projects (draft projects or design estimates), being a single state system, whose functions can not be overlapped.

The legal entity authorized by the Government of the Republic of Kazakhstan makes the state appraisal of projects. At present NSE "National Independent Commission of Experts on Project Appraisal" under the Construction Committee of the Ministry of Industry and Trade of the Republic of Kazakhstan has the exclusive right for state appraisal of projects as defined in paragraph 4 of Article 64 of the Law.

Article 5 of the Presidential Decree "On State Registration of the Rights for Realty and Realty Operations" and the Land Code of the Republic of Kazakhstan entitle NSE "Realty Centres" under the Registration Service Committee of the Ministry of Justice of the Republic of Kazakhstan with the

exclusive right for registration of the rights for realty and realty operations, issuance of realty value acts, provide information on encumbrance (if any) on the land lot or on the land tenure right.

The Land Code of the Republic of Kazakhstan entitles the Agency of the Republic of Kazakhstan on Land Resources Management with the exclusive rights for maintaining the State Land Cadastre, monitoring of lands, as well as issuance of land lot plans.

All of the abovementioned legal acts qualify certain kinds of operations as state monopolies to be carried out by governmental bodies and state enterprises. However, they do not provide a single uniform definition of the state monopoly area. Therefore, there has been a need to develop a legal act, which could clearly regulate the issues of the state monopolies.

In accordance with the Legislative Action Plan for 2005 of the Government of the Republic of Kazakhstan the Agency of the Republic of Kazakhstan on Natural Monopolies Regulation and Protection of Competition initiated development of the draft Law of the Republic of Kazakhstan "On State Monopoly," which should be developed by the end of the first quarter of 2005.

This law is based on specific criteria for qualification of certain activities as the state monopoly, following the guidelines of paragraph 1 of Article 39 of the Constitution of the Republic of Kazakhstan, which provides that the rights and freedoms of a person and citizen may only be limited by laws and only to the extent that is necessary to protect the constitutional and public order, rights and freedoms of people, health and morale of the population.

The draft law defines the fundamental principles of governmental regulation taking into account the existing approach to the regulation of the market participants acting as state monopolies, as well as organizational and legal foundations of the governmental regulation of the state monopoly relations and areas.

Adoption of such law aims to define the legal framework for the governmental control and regulation of operations qualified as the state monopoly, and to bridge the gap in laws.

This draft law will provide a clear separation of existing vague interpretation of the state monopoly and the exclusive right, which is qualified as the governmental function in the Republic of Kazakhstan.

Adoption of the draft law is necessary to regulate the market participants operating as state monopolies as well as to achieve a balance of interests of both consumers and state monopolies.

At the same time, in the view of various interpretation of the translation of the "state monopoly" term from Russian into English, please be advised that one should read the term "state monopoly the Republic of Kazakhstan" as the exclusive right for production and sale of goods (works and services) in a certain market, as stated in the legislative acts of the Republic of Kazakhstan to the governmental bodies and/or state enterprises for the purposes of ensuring protection of constitutional and public order, human rights and freedoms, health and protection of the population.

#### **Question 17**

**Paragraph 49: Please explain how there is competition for the "natural monopolies" regulated by Kazakhstan? On what basis would the Government of Kazakhstan sanction direct competition with its holdings in these industries?**

Answer:

Currently the Government of the Republic of Kazakhstan is pursuing policy measures aimed at further liberalization of key sectors of the national economy by facilitating competition and "narrowing down" the list of areas defined as natural monopolies.

- Railway transport sector

Until recently the railway transport operations, including transportation operations and management of trains, rolling stock and locomotives, maintenance of the infrastructure providing functions on the repair and maintenance of the railway lines, rolling stock and locomotives have been qualified as natural monopolies.

To encourage competition and liberalize this sector Kazakhstan adopted the Program on Restructuring of the Railway Transport for the period 2004-2006 approved by Government Resolution No. 145 of 6 February 2004. The program provides for the basic measures aimed to create competitive environment, mobilize private investments to and facilitate business environment in the railway transport.

According to the Program the railway transport natural monopoly's area will be "limited" to the services of the main-line railway (infrastructure). The transportation operations with the use of own or rented rolling stock as well as maintenance operations (including railway, cars and locomotives repair) will belong to the competitive sector. For this purpose, non-discriminatory legal and technological conditions for the access to the services of the main-line railway are created for all carriers.

In the framework of the Program implementation some service enterprises have been excluded from "Kazakhstan Temir Zholy" NC" JSC by sale of shares packages to private investors.

The law of the Republic of Kazakhstan "On Natural Monopolies" has been changed to include the main-line railway services into the natural monopolies. The Law "On Railway Transport" stipulates that the main-line railway network is a public railway transport object in the entire territory of Kazakhstan and it is not subject to privatization.

Agency Ordinance No. 242-OD of 25 May 2004 deregulates the tariff rates for the transportation of goods and for the first time approves the tariffs for the services of the main-line railway, which took force on 20 July 2004. After introduction of the tariffs for the main-line railway services, the freight carriers shall independently set the tariffs for transportation of goods.

- Power Supply

Regional Electricity Supply Network Companies (RECs) used to have two functions:

- transmission of electricity by the regional and local networks; and
- power supplies operations.

That is why the Agency used to regulate the tariffs for the electricity supply services as well as the selling tariffs for the service of supplying end users with electrical power.

Governmental Resolution No. 190 of 18 February 2004 approved the Concept on the Further Development of Market Relations in the Power Industry of the Republic of Kazakhstan, and on 9 July 2004 they adopted the new Law "On Power Industry".

In accordance with the provisions of the new Law and the Concept, RECs excluded the power supply operations into the competitive sector by creating power supply organizations (PSO). Therefore, at present RECs only provide the service of transmission of electrical energy.

Today the selling tariffs for the power supply to end-users are defined in the competitive market. The Law of the Republic of Kazakhstan "On Natural Monopolies" regulates the services for transmission of electrical energy by the inter-regional networks ("KEGOC" OJSC) and for transmission of electrical energy by regional and local networks ("in" tariff).

Earlier purchase of minimum 5 MWt of average daily (basic) power used to be one of the conditions for a consumer to access to the wholesale market of electricity.

After adoption of the new regulatory legal acts pertaining to the power industry, the conditions for the access of consumers to the wholesale market of electrical energy have been simplified. Now, for instance, a consumer may have the access to the wholesale power supply market purchasing minimum 1 MWt of the average daily (basic) power.

Article 9 of the Law "On Power Industry" provides that it is possible to design and build the redundant (shunting) power transmission lines and substations after a preliminary notice to and coordination with the sectoral Ministry (the Ministry of Energy and Mineral Resources of the Republic of Kazakhstan), regulating body (the Agency of the Republic of Kazakhstan on Natural Monopolies Regulation) and the system operator ("KEGOC" OJSC).

- Pipeline Transportation

Though pipeline transportation and water collecting systems operations are qualified as the natural monopoly, this qualification, however, makes no restrictions or any barriers for the access of local and foreign companies to these markets.

Moreover, it should be noted that laws of the Republic of Kazakhstan do not prohibit construction of pipeline transportation and water collecting systems objects, including redundant and parallel systems, with subsequent ownership. Paragraph 1 of Article 42 of Presidential Decree No. 2350 "On Oil" of 28 June 1995 provides that a trunk pipeline is an indivisible technological system, which can be both in governmental and private ownership. Paragraph 2 of Article 55 of the Water Code of the Republic of Kazakhstan stipulates that "construction, reconstruction, operation, conservation, liquidation of enterprises and utilities affecting the condition of water objects require the positive resolution of the central executive body of the Republic of Kazakhstan on environmental protection, authorized body on the subsurface use and protection, authorized body on sanitary-epidemiological welfare of population, and of the authorized body on industrial safety. Article 125 of the Water Code also defines more detailed conditions for location, design, construction, reconstruction and commissioning of enterprises and utilities at water objects, in water protection zones and areas.

The following are among many examples of construction and operation of main-line oil-pipelines: Atyrau-Novorossiysk (KTK-K), Petro Kazakhstan Company's Kumkol-Zhusaly, MunayTas Company's Kenkiyak-Atyrau, design and beginning of construction of Atasu-Alashankou pipeline. Commissioning of gas service pipes by Tauekel-T Ltd in Almaty oblast is an example of new construction of gas service pipes.

**Question 18**

**Paragraph 56: Please describe how a "decreasing coefficient" works to keep prices in line.**

Answer:

The Order of the Chairman of the Agency on Regulation of Natural Monopolies and Protection of Competition No. 248-OD "On Approval of Tariffs on KazTransOil JSC's Services" dated 13 December 2002 approves the prices/tariffs for oil transportation services of JSC "KazTransOil", which stipulates that the decreasing coefficient (0.46) should be applied for transportation of oil by residents of Kazakhstan to domestic oil refineries.

Application of decreasing coefficient for transportation of crude oil to oil refineries of Kazakhstan does not restrict exports of oil and has no effect on prices of crude oil supplied to domestic oil refineries and refined oil products. Prices for oil and oil products are regulated by market mechanism depending on the demand and supply. At the end of 2003, for instance, the price for crude oil was approx. US\$ 70-80 per tonne. In November of 2004 the price has gone up to US\$ 130-140 per tonne, while the same decreasing coefficient for transportation of oil continued to be applied.

**Question 19**

**Kazakhstan's definition of natural monopolies, as set out in paragraph 44 (Factual Summary; also paragraph 283), leaves the Kazakh authorities with a very large discretionary margin to qualify activities as natural monopolies, beyond the commonly applied approach. We for example do not consider either telecommunications or postal services to be natural monopolies. Could Kazakhstan please provide further clarification on this.**

Answer:

The Law of the Republic of Kazakhstan "On Natural Monopolies" defines the areas of the natural monopolies. Currently, the government is pursuing liberalization programs in key sectors of the economy by facilitation of competition and "narrowing down" the list of activities defined as natural monopolies.

- Telecommunication

The Law of the Republic of Kazakhstan "On Natural Monopolies" used to qualify the telecommunication services using local lines as natural monopoly. The recent changes made to the Law "On Natural Monopolies" significantly reduced and concretized the area of the natural monopoly in telecommunication services.

The Law "On Communication" of 5 July 2004 introduced universal telecommunication services subject to governmental regulation, the tariffs for which being set by the Government of the Republic of Kazakhstan. Governmental Resolution No. 866 of 19 August 2004 approves the list of universal telecommunication services to be compulsory available to any communication services user in any place; the prices and quality are subject to regulation. These universal services include fixed telephone communication (local, area, long-distance).

Governmental Resolution No. 1064 of 15 October 2004 approves the nomenclature of telecommunication and technologically related services, prices for which are subject to governmental regulation.

At present the natural monopoly still includes the communication operator's connection services and telephone transit traffic services. Also, the natural monopoly on leasing the technological property, utilities and communication channels (mainly by "Kazakhtelecom" JSC, the national level natural monopoly) still remains.

The Program on Development of the Telecommunication Sector for 2003-2005 (as approved by Governmental Resolution No. 168 of 18 February 2003 and aimed to liberalize the sector) created the necessary prerequisites for the development of the telecommunication services market. This program provides for a phase-by-phase reduction of the telecommunication regulation.

- Postal Services

The Agency used to regulate the following postal communication services:

- sending postcards;
- sending regular letters;
- sending registered letters;
- sending insured letters;
- sending post packages;
- sending registered postal packets;
- sending insured postal packets; and
- sending parcels.

The list of postal services qualified as natural monopoly has been reduced by two times. Now only the common postal communication services are qualified as the regulated postal services. They include the following:

- sending postcards;
- sending letters; and
- sending postal packets.

Therefore, the natural monopoly reduction policy also concerns the postal communication sector.

As soon as Kazpost JSC introduces the separate costs accounting method and, therefore, determines the profitability/un-profitability of regulated postal services, it will be possible to create the necessary prerequisites for the creation of the postal services market, and the common postal services will be excluded from the natural monopoly's area.

**Question 20**

**Paragraph 53 (Factual Summary) already contains some information with relation to prices for energy products. Could more information be provided on the pricing regime covering energy products, in particular gas. Do foreign companies in Kazakhstan benefit from the same prices as Kazakh companies? Are the prices charged for domestic consumers the same as for export?**

Answer:

Pricing policy on natural gas

In the domestic market:

- Final price on natural gas for end users comprises of actual cost of gas plus transportation costs (tariff on transportation of gas by main-gas pipelines + cost of transportation of gas by gas distribution networks) plus profit.



For export:

Export of the Kazakh gas is carried out only by two companies - "Tengizchevroil" and "Karachaganak Petroleum Operating" CJSC.

- "Tengizchevroil" Ltd sells gas at the Russian border at US\$ 30-32 per 1,000 m<sup>3</sup>. This price includes the cost (tariff) of transportation of natural gas, which equals to US\$ 0.7 per 1,000 m<sup>3</sup> per 100 km (for legal entities); and
- "Karachaganak Petroleum Operating" CJSC has its own 35 km long non-main gas pipeline; it transports and supplies gas under the contract with KazRosGas CJSC at its own tariff, which is not subject to government regulation.

The price for 1,000 m<sup>3</sup> of un-stripped gas supplied to Orenburg gas processing plant equals to US\$ 13.86 and covers the cost of gas, transportation expenses and company's profit. "KazRosGas" CJSC sells processed gas at the price of US\$ 29.39 per 1,000 m<sup>3</sup>.

#### Question 21

**In paragraph 54 (Factual Summary), please clarify whether there is currently any discrimination in the fees for railway transport for domestic purposes and export. If yes, how will this be eliminated?**

Answer:

The tariffs for railway freight transportation differ depending on distance, rolling stock (wagons) type, cargo and destination (domestic, export, importation) types.

The Methodology for calculation of tariffs for railway transportation services is being developed in order to implement the Program of railway sector liberalization. One of the main criteria of this Methodology are: transparency of calculating costs, which comprise a tariff; full recovery of the costs incurred in relation with provision of services; ensuring a threshold profit margin and differentiation of tariff rates only by significant factors.

At the same time, taking into account that differentiation by destination types contradicts with the provision of the Article 3 of GATT, we are considering the possibility of a staged phasing out of currently applied differentiation of tariffs by destination (export, import, and domestic), while still retaining differentiation of tariffs by types of cargo and distance.

#### Question 22

**From paragraph 56 (Factual Summary), we understand that *a priori*, tariff rates for the transport of oil by pipeline are the same for domestic consumption and export; however, for domestic consumption, a decreasing coefficient is applied thereafter, de facto leading to a cheaper rate. We agree with other WTO Members that this constitutes a discriminatory practice that needs to be abolished. Please also clarify the situation for gas.**

Answer:

No decreasing coefficient for transportation of natural gas is applied in Kazakhstan.

The Agency of the Republic of Kazakhstan on Natural Monopoly Regulation and Protection of Competition (hereinafter - Agency) sets tariffs on domestic transportation of natural gas by the gas pipelines system.

There is a single tariff on transportation of 1,000 m<sup>3</sup> of gas to domestic market by gas pipelines, which does not depend on transportation distance:

- for legal entities: 420 tenge per 1,000 m<sup>3</sup>; and
- for legal entities supplying natural gas to the population: 171 tenge per 1,000 m<sup>3</sup>.

The tariffs on domestic transportation of gas cover all expenses on operation and maintenance of the gas pipeline system.

The tariff on transportation of 1,000 m<sup>3</sup> of gas for export is US\$ 0.7 per 1,000 m<sup>3</sup> per 100 km.

The governmental bodies of Kazakhstan cannot regulate tariffs on international transit of natural gas through the territory of Kazakhstan. Such tariffs are to be negotiated under a Concession Agreement between the Republic of Kazakhstan and the other country from which natural gas is being exported through the territory of Kazakhstan.

In accordance with the obligations under the relevant Concession Agreements, the Republic of Kazakhstan confirms that tariffs on international transit of natural gas through the territory of Kazakhstan are not regulated by the governmental bodies and that therefore the Concessionaire and/or the Investment companies have the right to set and approve own tariffs on international transit.

Below is the data on tariffs for transportation of natural gas through the main-gas pipeline by Intergas Central Asia CJSC (year 2004):

Tariffs on Natural Gas Transportation and Storage Services By Intergas Central Asia CJSC

Item	Tariff
Transportation of natural gas for domestic consumption in Kazakhstan (tenge/1,000 m <sup>3</sup> without VAT)	
- for legal entities	420
- for legal entities supplying natural gas to the population	171
International transit (US\$/1,000 m <sup>3</sup> per 100 km)	
- Russian transit	0.9
- Turkmen transit	0.68
- Uzbek transit	0.68
- Uzbek transit	1.2
- Kyrgyz transit	14.8% of the factually transported gas at the price of US\$ 42 per 1,000 m <sup>3</sup>
Export of the Kazakh gas (US\$/per 1,000 m <sup>3</sup> per 100 km)	0.7

### Question 23

**Please provide further details about the process of granting of quotas for oil export via the Atyrau-Samara pipeline. Is there a mathematic formula, which is applied? What input do interested exporters have into the process? Is there the possibility of the review of the quota allocation decision by the Ministry of Energy and Mineral Resources?**

Answer:

Under the Law of the Republic of Kazakhstan "On Natural Monopolies" the Agency on Natural Monopoly Regulation and Protection of Competition (hereinafter - Agency) regulates the activity of a natural monopoly subject - "Kaztransoil" JSC, which operates Uzen-Atyrau-Samara oil pipeline, ensuring that the latter provides services to all consumers in accordance with the principles of equality and fairness.

In this view, as well as taking into account the growth rate of hydrocarbon resources extraction in Kazakhstan, the Ministry of energy and mineral resources of the Republic of Kazakhstan provides for the oil companies to use the trunk pipelines for transportation of oil by the Kazakh producers on the principles of equal availability to all consumers based on proportional to the volumes transportation of oil for export.

Transportation of oil via Uzen-Atyrau-Samara oil-pipeline is done according to monthly applications for transportation of oil, indicating the volumes and destinations.

Such procedure was introduced not only due to the technical limitations on the pipeline capacity, but also due to the limitations on the transit through the territory of the Russian Federation imposed by "Transneft" JSC.

At present the annual output of oil in the Western Kazakhstan region equals to 30 million tonnes (excluding the oil output by "TengizChevrOil" JV), whereas the throughput capacity of Uzen-Atyrau-Samara oil-pipeline is only around 17 million tonnes per year.

Unfortunately, due to absence of an alternative routes for companies of Mangystau and Atyrau regions to transport oil for export and to the oil refining plants besides the Atyrau-Samara pipeline, the marketing opportunities for the companies to transport their products through the territory of Kazakhstan are significantly reduced.

At the same time, the oil extracting companies may apply for increased quotas for export of oil when a consignor gives up its quota for transportation of oil via Uzen-Atyrau-Samara oil-pipeline because of insufficient volume of products or absence of a buyer, as well as when the Russian Federation grants additional transit opportunities.

It is important to note that Kazakhstan, when requesting from "Transneft" JSC annual volume quotas for transportation of oil through Uzen-Atyrau-Samara oil pipeline, takes into account forecasted maximum quota volumes necessary for transportation of oil by all Kazakh companies. Thus, up to date all requested volumes of oil transportation have been satisfied.

There has not been a single problem regarding shortage of quotas or their disproportional allocation.

#### **Question 24**

**Paragraph 51: Can the Government of Kazakhstan please provide further information on the process of approval of price increases for natural monopolies by the Agency on Natural Monopoly Regulation and Competition Protection, including details on any public consultation process, its use by Kazakh juridical and natural persons, as well as the possibility of participation in the consultation process by foreign and foreign-invested firms.**

#### Answer:

In accordance with Article 16 of the Law of the Republic of Kazakhstan "On Natural Monopolies" (hereinafter referred to as the Law) the natural monopolies shall submit an application to the authorized body when they need to obtain approval of changes of tariffs (prices, rates) for the services (goods, works) provided.

In addition, such natural monopoly subject must submit tariff estimate and draft tariff rates (prices, rates) for provided services 60 days before the supposed date of their introduction.

When the authorized body initiates the review of tariffs (prices, rates), natural monopoly subject must provide it with economically justified calculations and other information in the same amount as when submitting application for approval of new tariffs (price, rate) within one month.

The authorized body shall consider the draft tariffs (prices, rates) for provided services (goods) of natural monopolies within forty-five days provided that the latter submitted economically justified calculations in accordance with the requirements of the authorized body. The period of consideration of draft tariffs (prices, rates) starts on the day of application submission.

When considering the application of natural monopoly subject, the authorized body shall do the following:

- undertake financial and, if necessary, technical evaluation of the draft tariffs (prices, rates) involving independent experts, government bodies, consumers and their public unions, and the applicants - natural monopolies. For this purpose the Agency on Natural Monopoly Regulation and Protection of Competition (hereinafter - Agency) hires independent experts on a competitive basis. In addition, the Agency has the Boards of Experts on various sectors of the economy; and
- based on the results of the examination develop a preliminary decision on the proposed tariffs and, in case of public hearings (consultation process), bring it up for discussions.

In accordance with paragraphs 2, 3, and 4 of Article 18 of the Law, the authorized body shall send its final decision on approval of tariffs (prices, rates) for services (goods, works) provided by the natural monopoly subject no later than 15 days before their introduction.

Changes of tariffs (prices, rates) for services (goods, works) provided by a natural monopoly subject, registered in the State Register, cannot be made more than once in two quarters.

New tariffs (prices, rates) shall be introduced on the first day of a quarter. The natural monopoly subject must notify the consumers on changes in tariffs (prices, rates) no later than ten days prior to their introduction.

Public hearings (public consultation process) is the procedure for discussion of the draft tariffs (price, rate) for service (goods, works) provided by the natural monopoly subjects, which involves members of local legislative branch, representatives of government agencies, consumers and their public unions, mass media, independent experts, and natural monopolies.

Thus, various legal and natural persons including foreign companies and foreign-invested firms can take part in such public hearings.

The following are the principles of public hearings:

- publicity; and
- maintaining balance of interests of consumers and natural monopolies.

The public consultation processes aim to reinforce the system of consumer rights protection in relation to the tariff policy by ensuring the transparency of the natural monopolies' activity for consumers and the authorized body.

Under Article 14 of the Law "On Natural Monopolies" the authorized body has the right to have public hearings when considering applications for changes in tariffs (prices, rates) of natural monopolies registered in local sections of the State Register of natural monopolies.

The authorized body determines the need to have public hearings when considering applications for changes in tariffs (prices, rates) of natural monopolies registered in the local sections of the State Register of natural monopolies (hereinafter referred to as the Register) upon the written request by consumers or natural monopoly subject.

Under Article 14-1 of the Law the authorized body must have public hearings when considering applications for changes in tariffs (prices, rates) of natural monopolies registered in the republican/national section of the State Register of natural monopolies.

In case of having public hearings the authorized body must no later than ten days prior to such hearings publish information regarding the date and place where these hearings will take place.

Public hearings shall be held no later than 15 days prior to the adoption of the final decision on approval of tariffs (prices, rates) for services provided by the natural monopoly subject.

The procedure for holding public hearings when considering applications for approval or change of tariffs (prices, rates) of natural monopolies is regulated by the relevant Rules, approved by the Government Resolution No. 376 of 21 April 2003 (available from the Secretariat through document WT/ACC/KAZ/57/Add.1).

#### **Question 25**

**Paragraph 52 – Please provide more details on the results of the Program on Improvement of Tariff Policies of Natural Monopolies for the period 2002-2004. For example, have price controls for electrical power services, rail transport services and certain telecommunication services been eliminated, as planned?**

#### Answer:

The Program on Improvement of Tariff Policy of Natural Monopolies for the period of 2002-2004 was adopted by the Government Resolution No.1126 of 15 October 2002 (hereinafter referred to as the Program).

To implement the Program the Agency undertook an active work for development and improvement of the legal regulatory framework and methodology of forming tariffs for services of natural monopolies. In 2002-2004, for instance, the Agency approved over 60 legal acts and methodological guidelines.

A priority objective of the Program is to ensure stability of an average level of tariffs for services of natural monopolies for the mid-term period in order to draw investments in upgrading production and improve the quality of provided services (goods, works).

The Agency, in this regard, has developed and approved the following legal acts:

- Order of the Agency Chairman No. 30-OD "On Approval of the Instruction on Approval and Introduction of mid-term Tariffs (Prices, Rates) for Services (Goods, Works) of Natural Monopolies" of 3 February 2003;
- Order of the Agency Chairman No. 16-OD "On Approval of the Instruction on Consideration and Coordination of Natural Monopolies' Investment Plans" of 27 January 2003;
- Order of the Agency Chairman No. 17-OD "On Approval of the Instruction on Calculation of the Profit Margin (Net Profit) on the Regulated Assets Basis for Natural Monopolies Providing Water Supply and/or Sewage System Services and for Energy Sector Natural Monopolies" of 27 January 2003; and

- Order of the Acting Agency Chairman No. 304-OD "On Approval of the Instruction on Calculation of the Profit Margin (Net Profit) on the Regulated Assets Basis for Natural Monopolies Providing Oil Pipeline Transportation Services" of 5 July 2004.

By now the Agency has calculated the profit margin on the regulated assets basis for over 150 natural monopolies providing services in the energy sector, water supply and sewage systems.

To ensure a further progress in electrical energy sector and to increase the efficiency of its functioning, by its Resolution No. 190 of 18 February 2004 the Government of the Republic of Kazakhstan approved the Concept on Further Development of Market Relations in Electrical Energy Sector (hereinafter referred to as the Concept), which provides for a phase-by-phase development of the wholesale and retail electric energy market, including the measures to improve the formation of tariffs in the energy sector for the period of 2004-2006.

In accordance with the Concept, at its first phase, the regional electric companies (RECs) will give up their procurement and other functions to the suppliers of electric power.

The second phase (paragraph 3.3.2 of the Concept) envisages transition from the monopolistic retail market, regulated by the Government, to the competitive retail market, where the electric power providing organizations will be the suppliers.

Since power supply will be competitive, the electric power suppliers will set the tariffs themselves and the Agency will not regulate the retail tariffs for the electric energy supplied to the end users.

In its Resolution No. 866 of 19 August 2004 the Government of the Republic of Kazakhstan qualifies the fixed telephone (local, intra-zone, and international) communication services, which used to be regulated by the legislation on natural monopolies, as universal telecommunication services. Under paragraph 4 of Article 32 of the Law of the Republic of Kazakhstan "On Communications" the prices for such services are subject to government regulation.

## **Question 26**

**Paragraph 54: Please provide further information on the implementation of Resolution No. 145 of 6 February 2004 and specific details on the charges for services provided by carriers and companies operating in the railway transport sector for the transport of commodities, as a result of the approval of Resolution No. 145 of 6 February 2004.**

### Answer:

In accordance with the Law of the Republic of Kazakhstan "On Railway Transport" (hereinafter referred to as the Law), one of the principles of the state policy in the railway transport sector is to ensure that the railway transport services are available to all carriers and transport companies.

The ownership and operation of the railway network, including administration of the transportation traffic and railway services is assigned to the National Railway Company, the functions of which are carried out by "National Company "Kazakhstan Temir Zholy" JSC.

The Program on Restructuring the Railway Transport of the Republic of Kazakhstan approved by the Government Resolution No. 145 of 6 February 2004 (hereinafter referred to as the Program) provides for separation of the competitive sector of the railway transport from the natural monopoly services.

The National Railway Company will, therefore, ensure the equal right of all carriers to use the main-line railway. The competition among the carriers will be ensured by appearing of new carriers with their own (rented) rolling stock.

The carriers will pay for the use of the main-line railway network; the charges will be regulated by the Government and set forth by the government body regulating natural monopolies, under the procedure established by the Rules on Use of the Main-Line Railway, approved by the Government Resolution No. 424 of 16 April 2004 (hereinafter referred to as the Rules).

Paragraph 4 of the Rules stipulates that to obtain the right for the use of the main-line railway, carriers shall sign Model Agreement, approved by the Government of the Republic of Kazakhstan, between an operator and a carrier. Such agreement shall define the main terms, rights and obligations of the parties under the Rules and other legal and regulatory acts.

Another eligibility condition for access of carriers to the main-line railway is that the rolling stock must meet the rules for technical operation, traffic safety rules and environment protection regulations, otherwise the railway operator (the National Railway Company) must exclude such rolling stock from the main-line railway.

Carriers have, therefore, the right of access to the main-line railway on paid, contract basis provided that the rolling stock is registered, it meets the requirements of the technical operation rules, traffic safety rules, environment protection regulations, and the carrier has the licence for the transportation of goods and passengers.

The tariffs for the main-line railway services, which became effective on 20 July 2004, were approved by the Order of the Agency of the Republic of Kazakhstan on Natural Monopolies Regulation and Protection of Competition (hereinafter referred to as the Agency) No.242 "On Tariffs of "National Company "Kazakhstan Temir Zholy" JSC of 25 May 2004.

Currently the prices for locomotive header and railway header services ("Locomotive" JSC and "Kazheldortrans" JSC, which are not natural monopolies under the Law of the Republic of Kazakhstan "On Natural Monopolies") have been set at the rate sufficient for the implementation of their operational and investment budgets and are regulated as the prices of companies with the dominating position in its sector.

#### **Question 27**

**Paragraph 57: The representative of the Government of the Republic of Kazakhstan clarified "that there was no transit of oil through the territory of Kazakhstan". Can the government of Kazakhstan confirm that there is no oil moving from Russia, through Kazakhstan to neighbouring countries?**

#### Answer:

At the beginning 2004, the transit of oil through the territory of Kazakhstan from the territory of the Russian Federation to China is conducted via railway and pipeline networks. The oil first delivered through Omsk-Pavlodar oil-pipeline to Atasu oil loading rack and later transported to China by railway. An average monthly volume of transit equals to 30,000-40,000 tonnes of oil.

When transporting oil via Priirtyshsk-Pavlodar-Atasu oil pipeline to China, as well as when transporting oil via Kumkol-Karakoin-Atasu oil pipeline to China, the tariffs for transportation of oil are set at 2,413 tenge per tonne per 1,000 km.

Thus, the tariff rate for transportation of oil in the territory of Kazakhstan as well as for transit of oil through the territory of Kazakhstan via the oil pipeline operated by "KazTransOil" CJSC remains the same (Order of the Chairman of Agency on Natural Monopoly and Protection of Competition No. 248-OD dated 13 December 2002).

The program of railway sector restructuring for the years of 2004-2006 foresees freight transportation services and locomotive header services being provided in a competitive environment, while "Kazakhstan Temir Zholy" CJSC (hereinafter KTZ) shall focus on services qualified as natural monopoly, i.e. main railway network services.

The tariffs for the main-line railway services, which became effective on 20 July 2004, were approved by the Order of the Agency of the Republic of Kazakhstan on Natural Monopoly Regulation and Protection of Competition (hereinafter referred to as the Agency) No. 242 "On Tariffs of "National Company "Kazakhstan Temir Zholy" JSC of 25 May 2004.

Since 20 July 2004 tariffs for freight transportation services were comprised of tariff for services of the main railway network, locomotive header, cargo and commercial works, use of cargo wagons and containers. For transportation of freight using own or rented wagons, the tariff for transportation does not include a fee for cargo wagon use.

Yet, in accordance with the legislation on natural monopolies the regulated part of freight transportation is a tariff for services of the main railway network. When calculating the tariffs for services of the main railway network the Agency retained differentiation of tariffs by types of cargo, destination, and wagon type, as well as depending on the ownership of the wagon, whether it is KTZ's property or the property of a shipper).

#### **Question 28**

**Annex III. List of Services provided by Natural Monopolies: The column containing the list of legal acts regulating the activities of natural monopoly entities and the issues of tariff setting shows that there are a wide range of acts affecting the various monopolies. Some of these acts seem to incorporate the possibility of a public hearing i.e. in the setting of tariffs for gas or gas condensate by distributing pipelines – Resolution No. 376 of 21 April 2003. Other tariff Approval processes do not appear to include this public consultation process (at least explicitly). We would appreciate further information about when a public consultation process applies in the setting of tariffs for natural monopolies and when it does not.**

#### Answer:

The public hearings (public consultation process) is the procedure for discussion of the draft tariff (price, rate) for the service (goods) of the natural monopoly subject involving deputies, representatives of governmental bodies, consumers and their public unions, mass media, independent experts, and natural monopolies.

Therefore, various legal entities and natural persons including foreign companies and foreign-invested firms can take part in the public consultation process.

The following are the principles of the public hearings:

- publicity; and
- observing the balance of interests of consumers and natural monopolies.



The public consultation processes aim to reinforce the system of consumer rights protection in relation to the tariff policy by ensuring the transparency of the natural monopolies' activity for consumers and the authorized body.

Under Article 14 of the Law "On Natural Monopolies" the authorized body has the right to make public hearings (consultation processes) when considering applications for changes in tariffs (prices, rates) of natural monopolies registered in the local sections of the State Register of natural monopolies.

The authorized body determines the need to make public hearings (consultation processes) when considering applications for changes in tariffs (prices, rates) of natural monopolies registered in the local sections of the State Register of natural monopolies (hereinafter referred to as the Register) upon the request of consumers or the natural monopoly subject in writing.

#### - **Competition Policy**

##### **Question 29**

**Paragraph 60: Can the Government of the Republic of Kazakhstan please provide further details on the program for 2004-2006 aimed at reorganizing/downsizing monopolistic structures and natural monopolies. Which structures and monopolies will be subject to the program and how will the results be measured?**

##### Answer:

The description of the Program on Improvement of Tariff Policy of Natural Monopolies for the period of 2002-2004 is given in the answer to Question on Paragraph 52 of the Factual Summary.

The Program on Restructuring of the Railway Transport of the Republic of Kazakhstan for the period of 2004-2006 (hereinafter referred as the Program), which provides for the separation of the natural monopolistic (main-line railway) and competitive (transportation) sectors, was approved by the Government Resolution No.145 of 6 February 2004.

After the reform, the natural monopolistic service of the railway sector, regulated by the Agency, is granting the main-line railway to carriers for the use and administration of the transportation process. Carriers (owners of the rolling stock) and the enterprises maintaining the railway sector function in the competitive sector.

To implement the Program, Kazakhstan Temir Zholy Company (hereinafter referred as KTZ) has separated from itself two independent legal entities: "Kazzheldortrans" JSC (a national carrier) and "Locomotive" JSC (locomotive header operator). These two companies by the Order of the Agency No. 104-OD of 4 March 2004, were registered in the State Register of companies dominating in certain sector.

The Agency also coordinated development of the following joint stock companies: "Luggage Transportation", "Commuter Transportation", "Railway Station Service", "Passenger Leasing Company", "Wagon-Service", and "Almaty Wagon Repair Plant".

It also coordinated transfer of "Passenger Transportation" OJSC property to the following joint stock companies: "Passenger Leasing Company", "Railway Station Service", "Wagon-Service", and "Luggage Transportation".

Moreover, it coordinated transfer of the locomotive rolling stock of "KTZ" to the "Passengers Transportation" OJSC, as well as transfer of the laundry shops property to "Passenger Transportation" OJSC.

"Passenger Transportation" OJSC was excluded from the national section of the State Register of Natural Monopolies and was included into the national section of the State Register of Dominating Companies in the market of national and international railway passenger transportation services, except for transportation of passengers in trains formed of the rolling stock of Spanish firm "Patents Talgo S.A.", transportation of luggage, cargo, and posting by railway transport.

Since transportation of goods by railway transport cannot be regulated under the Law of the Republic of Kazakhstan "On Natural Monopolies", the Order of Agency Chairman No. 242-OD "On Tariffs of "National Company "Kazakhstan Temir Zholy" of 25 May 2004 approved the tariffs for the main-line railway services, increasing the basic rates for these services by 18 per cent on the average since 20 July this year.

It formed the computation schedules to Order No. 242-OD by separation of the main-line railway services' share in the transportation of goods according to Price List 10-01. It also defined the shares of the locomotive and car parks as well as of the goods and commercial departments in Price List 10-1 by proportionally dividing the proceeds and costs.

It differentiated the tariffs by types of destination, cargo, distance, and wagons, reasoning from the fixed general estimated cost of goods transportation.

The Agency issued this order as a temporary measure for the transition period until the final restructuring of the railway sector so as to allow the parties involved in the transportation services to adapt to the new environment of the railway transport functioning.

The Agency plans to introduce the new tariff methodology for the services of the main lines railway this year. Now the Agency is developing the methods to calculate tariffs for the services of the main-line railway. Development of such methods is also stipulated in the Program on Improvement of the Tariff Policy of Natural Monopolies for the period of 2002-2004.

The procedures for public hearings, concretizing the liabilities of natural monopolies on auditing and publishing the auditor's reports, as well as on regular implementation of financial and technical examination by the antimonopoly body were introduced. Monitoring of fulfilment of the tariff estimates, reorganization of natural monopolies, purchase of its shares, and operations with its fixed assets has also been introduced.

The authorized body coordinated the lists of operations included into the main-line railway and the local railways (railway approach lines) services, so as to qualify these services as railway transport sector natural monopoly services.

In the context of the Program, this year the Agency approved the Methodology for Evaluation of the Effect of Natural Monopoly's Activity on Consumers of its Services (Goods, Works).

## **FRAMEWORK FOR MAKING AND ENFORCING POLICIES**

### **Question 30**

**Paragraphs 70-71: These two paragraphs cover the issue of judicial and administrative appeals, but do not appear to focus on the specific WTO-related issue of how importers and exporters (a) appeal customs and other WTO-related decisions within administrative channels; (b) appeal**

**administrative rulings to a court or other "independent tribunal" as provided for in Article X of the GATT.**

**Please elaborate these paragraphs to describe and clarify the legal basis for such appeals.**

Answer:

The following documents regulate civil judicial procedures:

- The Civil Code of Practice of the Republic of Kazakhstan;
- Ratified international treaties, if they provide for other rules than the mentioned Code of Practice;
- Resolutions of the Constitutional Council (pertaining to constitutional norms); and
- Resolution of the Supreme Court of the Republic of Kazakhstan (pertaining to the court rulings on certain categories of cases).

The Civil Code of Practice defines the common judicial procedure for the proceedings on civil, family, labour, housing, administrative, financial, economic, land, environmental, etc appeals as well as for special proceedings. Resolutions of the Supreme Court are based on the judicial practice of the proceeding.

The court of primary jurisdiction shall proceed with such appeals, as well as with reopening cases.

The civil proceeding procedure is described in detail in Annex 3.

## **POLICIES AFFECTING TRADE IN GOODS**

- **Trading Rights (the right to import and export)**

### **Question 31**

**Paragraph 73: WT/ACC/SPEC/KAZ/8/Rev.1 states that Presidential Decree No. 2021 "On Liberalization of Foreign Economic Activities" of 11 January 1995, provides that any natural and legal person may import and export, and that Law No. 2198 "On State Registration of Legal Entities and Registration of Branches and Representative Offices" of 17 April 1995 requires that all legal persons be registered if they have an aggregate annual income over prescribed threshold and employ permanent staff.**

**Please confirm whether or not a firm or individual must have state registration to carry out import and export activities.**

Answer:

Subject to the Law of the Republic of Kazakhstan "On Trade Activity Regulation" both natural and legal persons can export and import, i.e. carry out foreign trade.

The said Law defines foreign trade as the trade activity comprising export of goods from Kazakhstan and/or importation of goods into Kazakhstan. At that, export means export of goods and import means importation of goods.

Article 12 of the Civil Code of the Republic of Kazakhstan (General Part) defines natural persons as citizens of the Republic of Kazakhstan, foreign citizens, and persons without a citizenship.

Article 33 of the same Code defines a legal person (legal entity) as an organization/entity, which:

- owns, operates or manages a separate property;
- supports its liabilities with this property;
- can purchase and exercise property and non-property rights and liabilities on its behalf;
- can be the claimant and responder in the court;
- must have its own balance or estimate; and
- must have a seal with its name.

Subject to Article 34 of the said Code legal persons can be divided into the following groups by the type of activity: commercial or profit-making (profit-making is the main goal of its activity) and non-profit (profit-making and allocation of profits among the stakeholder (owners) is not the main goal of its activity) companies.

Commercial legal entities can have the following organizational-legal forms:

- state owned enterprise;
- partnership;
- joint stock company; and
- producers' co-operative.

In accordance with Presidential Decree "On Partnerships" as of 2 May 1995 the partnerships, in their turn, can be created in the following forms:

- complete partnership;
- special partnership;
- limited liability partnership; and
- double liability partnerships.

Non-profit legal entities can be created in the following organizational-legal forms:

- establishment;
- public union (non-governmental organization);
- consumer cooperative;
- public fund;
- religious organization;
- joint stock company; and
- other forms stipulated by the special laws (faculty of advocates, audit house, notary house, for instance).

The legal entity's legal capacity comes into force in the moment of its creation and ceases with its liquidation.

A legal entity is considered as created since the moment of its state registration in the justice authorities.

The special Law of the Republic of Kazakhstan "On State Registration of Legal Entities and Accounting Registration of Branches and Representative Offices" as of 17 April 1995 regulates the procedure, requirements and terms of legal entity registration.

Subject to this Law the state registration of legal entities includes checking whether documents of incorporation and other documents submitted to the state registration meet the laws of Kazakhstan,

issuing the state registration certificate with the registered number, and entering the data on the legal person into the single State Register.

Reorganization and liquidation of a legal entity is subject to the state registration too.

Subject to the Civil Code of the Republic of Kazakhstan legal entities have the right to create branches and representative offices (missions) which are not legal entities themselves. They are given the property of the parent legal entity and function in accordance with the approved regulations.

A branch is a separate subdivision of a legal entity located beyond its place of residence and making all or some of its functions, including representative functions.

A representative office (mission) is a separate subdivision of a legal entity located beyond its place of residence and protecting and representing the interests of this legal entity, making deals and other legal transactions on its behalf.

Branches and representative offices are subject to accounting registration in the justice authorities.

The accounting registration is a kind of the state registration.

The accounting registration of branches and representative offices includes checking whether the documents submitted to the accounting registration meet the laws of Kazakhstan, issuing the accounting registration certificate with the registered number, and entering the data on branches and representative offices (missions) into the Branches and Representative Offices Register.

On 20 September 2004 Kazakhstan enforced the Law "On Amendments and Addenda to Legal Acts of the Republic of Kazakhstan on State Registration of Legal Entities", which simplifies the principles, forms and terms of registration.

Subject to the said Law henceforth legal entities, their branches and representative offices will obtain the following certificates from one source – the justice authorities:

- state registration certificate;
- taxpayer registration certificate; and
- statistical certificate on registration in the State Statistical Register.

According to the statistical data of the justice authorities small businesses in the form of limited liability partnerships dominate among the legal entities registered in Kazakhstan.

It should be noted that on 19 June 1997 Kazakhstan adopted the special law "On State Support of Small Business".

As it was mentioned, subject to the Law of the Republic of Kazakhstan "On Trade Regulation" natural persons also have the right to carry out foreign trade in Kazakhstan.

The trade activity of natural persons is more of entrepreneurship.

Subject to the Law of the Republic of Kazakhstan "On Individual Entrepreneurship" persons making business without establishing a legal entity must register as individual entrepreneurs in the local territorial tax body.

The state registration in the territorial tax body means getting registered and submitting periodical reports.

In this view, foreign firms and persons carrying out trade in Kazakhstan must officially register.

### Question 32

**Please confirm that firms not invested in Kazakhstan and individuals (natural persons) may register for the purpose of importing and exporting without the need to establish a physical presence in Kazakhstan.**

#### Answer:

Under the civil legislation of Kazakhstan foreign firms (legal entities) and individuals (natural persons) willing to export and import in Kazakhstan without establishing the physical presence have the right to carry out such business under civil contracts made with partners in Kazakhstan.

At the same time, foreign firms and individuals may take share in establishing a legal entity in Kazakhstan as well as create branches and representative offices of foreign firms with the purpose of foreign trade (export and import) in Kazakhstan.

### Question 33

**Paragraph 76: Please outline the legal basis for the need to register to have the right to be engaged in certain types of activities. What forms of activity require activity licenses? Are any of these explicitly related to the right to import or to export?**

#### Answer:

The state registration of legal entities and accounting registration of branches and representative offices has the following purpose:

- certify the fact of creation, reorganization and liquidation of a legal entity as well as branches and representative offices (missions);
- keep account of created, reorganized, and shut down legal entities as well as created and liquidated branches and representative offices in the Republic of Kazakhstan;
- keep the single state register of legal entities and register of branches and representative offices; and
- sale of information on legal entities, their branches and representative offices (except for the information which is confidential or a commercial secret) at the prices determined by the antimonopoly body.

Subject to the Law of the Republic of Kazakhstan "On Licensing" (chapter II) 107 activities require the licence. At present there is a draft Law of the Republic of Kazakhstan "On Amendments and Addenda to Legal Acts on Licensing" developed in submitted to the Parliament of the Republic of Kazakhstan for approval, which is supposed to exclude 21 activity from the licensed activities.

By now the main activities requiring the licence are the activities dealing in the following areas:

- especially hazardous objects and/or objects of much national importance;
- servicing people and legal entities;
- concentration of financial resources; and
- making currency operations.

This list also includes the activities dealing with production, storage, design and development, etc.

Subject to Article 12 of the Law of the Republic of Kazakhstan "On Licensing" export and import of certain goods (services) requires the licence. The Government of the Republic of Kazakhstan defines the list of goods subject to licensing.

Governmental Resolution No. 1037 of 30 June 1997, for instance, approves the list of goods (services) requiring the licence for export and import, which also includes the work and services in military-technical cooperation besides goods.

#### **Question 34**

**Paragraph 78: Could we have an update on efforts to amend the law on registration to streamline it, remove duplicative and burdensome requirements, and ensure that all fees were related to the cost of services rendered, not the value of the good.**

**We welcome Kazakhstan's intention to bring its registration fees into conformity with the requirements of Article VIII of GATT. Please confirm that this will be achieved prior to accession to the WTO.**

#### Answer:

In order to bring the practice of state duties for the registration of legal entities in line with the transparency principles and in line with the provisions of Article VIII of GATT, the Government of Kazakhstan resolved to revise the methods of computing the duties for the state registration of legal entities defined in MCI (monthly calculated indices) and on *ad valorem* principle.

To implement this resolution the Government of Kazakhstan established the Interagency Work Group. The main objective of the Work Group is to develop the new methods for computation of the state duties for the state registration of legal entities.

The Work Group's results are supposed to be used in development of the corresponding draft governmental resolution, which will provide for introduction of the new methodology for the computation of the state duties for the state registration of legal entities based on the cost of services rendered.

#### **Question 35**

**Paragraph 79: Does "establishment" in Kazakhstan mean commercial registration? If so, say so. If not, then define it.**

#### Answer:

Subject to Article 177 of the Tax Code of the Republic of Kazakhstan a non-resident's permanent establishment in the Republic of Kazakhstan is defined as the permanent place of activity, through which the non-resident makes all or part of its business, including the activity made through a delegate (authorized person); to be precise:

- any place of activity associated with production, processing, integration, packing, delivery, sale of goods regardless of the terms of activities;
- any place of management, a branch, division, representative office (mission), bureau, office, room, agency, factory, shop, laboratory, store, warehouse of the non-resident regardless of the terms of activity;

- any place of activity associated with extraction of mineral resources, including the place of hydrocarbons extraction: mine, pit, oil and/or gas well, surface mine, land or offshore rigs and/or wells regardless of the terms of activity;
- any place of activity (including control and supervision activity) in respect of pipelines, gas pipelines; exploration and/or extraction of mineral resources; installation, assembling, adjusting, starting up and/or maintenance of equipment regardless of the terms of activity; and
- any place of activity associated with operation of game-playing machines (including consoles), computer networks and communication channels, attractions (sideshows), transport and other infrastructure regardless of the terms of activity.

A construction site, installation or assembly site, and design work make a permanent establishment regardless of the terms of works.

At that, a construction site (object) is defined as the place for activity on construction and/or reconstruction of realty objects, including construction of buildings, structures and/or installation work; construction and/or reconstruction of bridges, roads, channels; laying pipes, installation of energy, technological, and other equipment and/or carrying out other similar activities.

A construction site (object) ceases to exist on the next day after the day of commissioning the object (signing the acceptance documents) and complete payment for the construction.

A non-resident also establishes a permanent establishment in the Republic of Kazakhstan if makes the following:

- insures or reinsures risks in the Republic of Kazakhstan through an authorized person;
- provides services in the Republic of Kazakhstan for over ninety consecutive calendar days in any consecutive period of twelve months ending in the current tax period through employees or personnel employed for this purpose;
- takes a share in a special partnership (association agreement) created in accordance with the laws of the Republic of Kazakhstan and operating in the territory of Kazakhstan;
- makes chargeable exhibitions in the Republic of Kazakhstan and/or exhibitions that sell goods; and
- entitles a resident or non-resident with the right to represent its interests in the Republic of Kazakhstan, act or make contracts (agreements, deals) on its behalf.

Temporary or seasonal breaks in the mentioned activities do not result in liquidation of the permanent establishment.

A non-resident making business in the Republic of Kazakhstan through an independent middleman (broker and/or other independent agent acting in accordance with the contract of agency, commission, consignment or any other similar contract) with no authority to sign contracts on behalf of this non-resident is not considered as a permanent establishment.

An independent agent is defined as a person acting in the framework of his(her) regular (main) activity and which is independent from the non-resident both legally and economically.

A subsidiary (affiliated) organization of the non-resident created under the laws of Kazakhstan is not considered as the permanent establishment of the parent organization, if there are no relations meeting provisions of subparagraph (5) of paragraph 3 of Article 177 of the Tax Code of the Republic of Kazakhstan between the parent and its affiliated (subsidiary) organization.

A non-resident providing services of provision of foreign personnel for the work in the territory of Kazakhstan to another legal entity, including a non-resident, making business in the Republic of



Kazakhstan through a permanent establishment shall not be considered as a permanent establishment in Kazakhstan for such services provided that it meets all of the following requirements:

- such personnel acts exclusively on behalf and in the interests of the legal entity it was assigned to;
- the non-resident providing the services on provision of foreign personnel is not responsible for the results of work of this personnel in Kazakhstan; and
- the non-resident's income from provision of foreign personnel shall be determined taking into account the time spent by this personnel for execution of its duties on behalf and in the interests of the legal entity it was assigned to, and this income amount shall not exceed 10 per cent of the total expenses on provision of this personnel incurred by the non-resident. To confirm the total amount of expenses on provision of foreign personnel the non-resident shall submit copies of accounting documentation to the service consumer.

Regardless of whether non-resident is registered in the tax body or not, the non-resident's activity meeting provisions of this Article makes a permanent establishment.

In addition we inform that chapters 28, 29 and 30 of the Tax Code of the Republic of Kazakhstan regulates the following:

- Taxation of income of non-resident legal entities making business without a permanent establishment in Kazakhstan;
- Taxation of income of non-resident legal entities making business through a permanent establishment in Kazakhstan; and
- Taxation of income of non-resident natural persons.

The Tax Code of the Republic of Kazakhstan defines non-residents as natural and legal persons, which are not residents of the Republic of Kazakhstan.

Annex VI lists requirements under Government Resolution No. 1037 dated 30 June 1997 and No. 1031 of 27 June 1997 (for alcohol) for licensing of firms and individuals to conduct import and export activities in certain goods, i.e., those listed in Annex V of WT/ACC/SPEC/KAZ/8/Rev.1.

### **Question 36**

**Please confirm that such a licence is not necessary for the import and export of all other goods.**

Answer:

Annex VI of the Factual Summary contains the Rules on Licensing Export and Import of all goods subject to licensing and listed in Annex V of the Factual Summary. In this view Kazakhstan confirms that Annex V lists all goods that require the licence for export and import.

It should be noted that subject to paragraph 1 of Article 12 of the Law of the Republic of Kazakhstan "On Licensing" the Government determines the list of goods that require the licence for export and import. Government Resolution No. 1037 "On Licensing of Export and Import of Goods (Services) in the Republic of Kazakhstan" dated 30 June 1997 states the requirements to the licensing of export and import of goods except for ethyl spirit and alcoholic products, and Government Resolution No. 1031 "On Licensing of Import of Ethyl Spirit and alcoholic Products in the Republic of Kazakhstan" dated 27 June 1997 states the rules on licensing the ethyl spirit and alcoholic products.

### Question 37

**Please indicate if it is necessary in any case for a registered firm or individual physically invested in Kazakhstan to be able to acquire the import activity licence.**

**For example, Annex VI of WT/ACC/SPEC/KAZ/6/Rev.1 states that in order to obtain import licenses for alcoholic beverages, an applicant must already have a licence for production of alcohol products, or for storage and sale of ethyl spirit in case of importing ethyl spirit.**

#### Answer:

Article 10.1 of Law of the Republic of Kazakhstan No. 429-1 "On State Regulation of Production and Circulation of Ethyl Spirit and Alcoholic Products" of 16 July 1999 provides the following in respect of import:

- ethyl spirit can be imported by the licence for import of ethyl spirit provided that the importer has the licence for production of the alcoholic products for which the ethyl spirit will be used; and
- alcoholic products can be imported by the licence for import of alcoholic products and with the licence for either production of alcoholic products or storage, wholesale sale of alcoholic products (except for beer).

Article 11 of the Law of the Republic of Kazakhstan "On State Regulation of Production and Circulation of Ethyl Spirit and Alcoholic Products" prohibits retail sale of ethyl spirit except for sale of ethyl spirit in drugstores that have the licence for their activity. It is allowed to sell ethyl spirit in accordance with the procedure defined by the authorized body as follows:

- selling to pharmaceutical and state medical organizations if they have the licence for their activity; and
- selling to manufacturers of alcoholic products (except for beer manufacturers); to organizations using ethyl spirit for technical purposes or to manufacturers of non-alcoholic products if they submit documents supporting the application/consumption norms and the need in the amount of ethyl spirit approved by the authorized body.

A reason behind the restriction on the purchase of ethyl spirit is that this product is highly toxic, dangerous for the human health and for the environment. That is why the use of spirit must be maximally safe and limited to the use as the raw material and for the medical purposes. This is the rationale behind the requirements to the import of spirit.

An importer is required to have the licence for production or storage and wholesale sale of alcoholic products (except for beer) because alcoholic products belong to the kind of products which has a number of qualification requirements to its storage. Obtaining the said licence confirms the conformity to such a qualification.

Subject to Article 15 of the Rules on Licensing the Production of Ethyl Spirit and Alcoholic Products, Storage and Wholesale Sale of Alcoholic Products (Except for Beer) as well as Retail Sale of Alcoholic Products (Except for Beer) approved by Government Resolution No. 1258 of 27 August 1999 an applicant must have the following in order to obtain the licence for the storage and wholesale sale of alcoholic products (except for beer):

- specialized premises: exclusively for the storage, reception and issue of alcoholic products;

- facility premises: for the storage of packages, sale of products, packing and unpacking, as well as for the stand/showcase for the goods samples;
- engineering utility premises: for storage of equipment, parking of handling machinery, fire prevention (if there is no a fire alarm system), etc.
  
- drives and entrances for cars and/or railway siding (rail access) to the specialized premises mentioned in subparagraph 1 above;
- communication systems: cold water supply, sewerage, heating, power supply, air conditioning (venting system), and fire prevention means, fire alarm system;
- technical documentation regulating the safety for the life and health of consumers (sanitary norms and rules, state standards (GOSTs), norms and rules on fire safety, environment protection);
- measurement instrumentation and its calibration schedule approved by the authority on standardization, metrology and certification;
- the storage conditions meeting the established requirements (temperature regime and other parameters, goods neighbourhood, etc) to preserve the product quality while storing; and
- overalls and other protective means to ensure that the work conditions for the employees meet the requirements of sanitary hygienic norms and rules, an safety rules.

### **Question 38**

**Are there any other such requirements to be able to import other goods under licence?**

Answer:

Subject to Government Resolution No. 1037 an applicant shall submit the following to the Licensor in order to obtain the licence for export and import of goods:

- (a) application for the licence (Annex 1, 2);
- (b) a copy of contract (agreement) of purchase or other contract of disposal made between the parties of the foreign trade deal and the original copy for verification; and
- (c) contract made between the exporter and manufacturer or importer and consumer, if the applicant is an agent.
  
- (d) State registration certificate:
  - for legal entities: the state registration certificate;
  - for natural persons: the state registration of entrepreneur (patent);
  
- (e) a document supporting the payment of the licence duty;
- (f) the activity licence issued by the authorized governmental body;
- (g) permission from the Government of the Republic of Kazakhstan or the relevant governmental body for certain goods in accordance with Annex 2-5 hereto; and
- (h) the list of submitted documents.

Documents specified in subparagraphs "c", "d", "e", "f", "g" shall be paperbound photocopies with the seal and signature of the chief executive officer (or deputy chief) affixed to it.

The applicant is responsible for the reliability of information submitted.

Subject to Government Resolution No. 1031 an applicant shall submit the following to the Licensor in order to obtain the licence for import of ethyl spirit and alcoholic products:

- (a) application for the licence in the established form; and
- (b) a copy of contract (agreement) of purchase made between the parties of the foreign trade deal and the original copy for verification.
- (c) State registration certificate:
  - for legal entities: the state registration certificate;
  - for natural persons: the state registration of entrepreneur (patent);
- (d) a document supporting the payment of the licence duty;
- (e) the licence for production of alcoholic products in case of import of ethyl spirit; and
- (f) the licence for storage and wholesale sale of alcoholic products in case of import of alcoholic products.

Documents specified in subparagraph "c", "e", "f" shall be paperbound photocopies with the seal and signature of the chief executive officer (or deputy chief) affixed to it. Importer of beer shall not submit documents specified in subparagraph "f". The applicant is responsible for the reliability of information submitted.

Annex VI of the Factual Summary states all requirements for obtaining the licence for import of goods.

### **Question 39**

**Please explain the response to Question 81 in WT/ACC/KAZ/50. It states, "Given requirements for a licence to produce alcoholic beverages description are removed."**

#### Answer:

Government Resolution No. 663 of 17 June 2004 eliminates application of quota for import of alcoholic products in the amount of 20 per cent of the annual output. It does not eliminate the licensing for the import of such goods.

Government Resolution No. 1031 "On Licensing of Import of Ethyl Spirit and Alcoholic Products in the Republic of Kazakhstan" dated 27 June 1997 states the rules on licensing the ethyl spirit and alcoholic products.

The Tax Committee of the Ministry of finances of the Republic of Kazakhstan issues the licence for the import of ethyl spirit and alcoholic products.

Article 10.1 of Law of the Republic of Kazakhstan No. 429-1 "On State Regulation of Production and Circulation of Ethyl Spirit and Alcoholic Products" of 16 July 1999 provides the following in respect of import:

- ethyl spirit can be imported by the licence for import of ethyl spirit provided that the importer has the licence for production of alcoholic products for which the ethyl spirit will be used; and
- alcoholic products can be imported by the licence for import of alcoholic products and with the licence for either production of alcoholic products or storage, wholesale sale of alcoholic products (except for beer).

#### Question 40

**Please confirm that this requirement to be licensed to import or to export is separate from the requirement to register and apply for a licence from the National Bank in order to acquire foreign exchange for trade.**

Answer:

Residents need the licence and registration certificate from the National Bank in order to be able to grant and receive commercial credits for the period of over 180 days. Therefore the licensing and registration in the National Bank has nothing to do with the licensing of export and import of goods as well as it has nothing to do with the purchase of foreign currency for foreign trade.

No licence or registration certificate from the National Bank is required for the purchase of foreign currency in the domestic market; resident legal entities and natural persons only are supposed to have a foreign trade contract.

#### Question 41

**Once a trader has acquired a licence under Government Regulation No. 1037, is it necessary to apply for additional specific import licenses for the goods themselves?**

Answer:

No additional specific import licenses for goods are required.

#### A. IMPORT REGULATION

- Customs tariff

#### Question 42

**Paragraph 82: Please provide a chart that indicates how many tariff lines are zero; 0-less than 5 per cent; 5 – less than 10 per cent; 10 – less than 15 per cent; 15 – less than 20 per cent; 20-30 per cent; and greater than 30 per cent, including the *ad valorem* equivalents of specific and compound tariff rates.**

Answer:

The structure of the import customs tariff of the Republic of Kazakhstan is represented in the table in Annex 4.

#### Question 43

**Paragraph 83: Please indicate the rate of duty charged for imports under GSP. Please list the countries eligible for this program. Please indicate if there is any country for which the non-MFN double tariff rate applies.**

Answer:

The goods imported to the customs territory of Kazakhstan and originating from the developing countries enjoying the national preferences system of the Republic of Kazakhstan are applied customs duties in the amount of 75 per cent of the customs duties granted on the MFN principle.

The goods imported to the customs territory of Kazakhstan and originating from the least developed countries enjoying the national preferences system of the Republic of Kazakhstan are exempted from the customs duties.

The system of tariff preferences of Kazakhstan is based on GSP and applies to 104 developing countries and 47 least developed countries. The list of countries is enclosed in Annex 5. The preferential treatment applies to over 1,500 lines. This list of goods mainly includes the goods that are not produced in Kazakhstan and items of handicraft, art, and antiques (citrus plants, coffee, tea, caoutchouc, cork, statuettes, woven furniture, for instance).

#### **Question 44**

**Please indicate if there is any country for which the non-MFN double tariff rate applies.**

Answer:

Subject to Government Resolution No. 1389 of 14 November 1996, Kazakhstan doubled the customs rates only in respect of imported goods of unknown origin.

#### **Question 45**

**With reference to Question 53 of WT/ACC/KAZ/50, in what nomenclature is Kazakhstan conducting its WTO tariff negotiations, e.g., HS 2002? In what nomenclature are Kazakhstan's current applied rates established? If these are different, how does Kazakhstan intend to proceed to reconcile the two schedules?**

Answer:

The tariff offers of Kazakhstan as well as the applied import customs rates of Kazakhstan are based on HS 2002.

- **Tariff rate quotas, tariff exemptions**

#### **Question 46**

**Paragraph 85: Does Kazakhstan currently apply TRQs? What "sensitive" products are planned to be subject to TRQs under the new legislation?**

Answer:

At present Kazakhstan applies no TRQs. However, the Law of the Republic of Kazakhstan "On Trade Regulation" has provisions on application of TRQs. The Government of Kazakhstan resolved that it is advisable to apply tariff quotas to the import of certain kinds of meat and cane sugar.

In respect of this the Ministry of Industry and Trade in collaboration with the Ministry of Agriculture is working on the government resolution to define the customs duties rates within quota and outside quota as well as determine the administration mechanism.

#### **Question 47**

**Does Kazakhstan plan to use import licensing to apply TRQs?**

Answer:

It is planned to administer tariff rate quotas among foreign trade participants by issuing licenses for import of goods. The applications for import of goods within the tariff quota will be administered by first come, first served method.

**Question 48**

**Paragraph 87: On what WTO basis does Kazakhstan justify prohibition of temporary importation of foods and beverages? Does Kazakhstan deny transit to shipments of such goods across its territory?**

Answer:

Subject to Article 188 of the Customs Code of the Republic of Kazakhstan temporary importation of goods and vehicles is such a customs treatment where foreign goods and vehicles are used in the customs territory of the Republic of Kazakhstan with complete or partial exemption from the import customs duties and taxes, without application of non-tariff regulation measures, except for the goods safety requirements with subsequent removal of goods and vehicles from the customs territory of the Republic of Kazakhstan.

Subject to paragraph 2 of Article 190 of the Customs Code temporary imported goods must stay unchanged, except for the changes due to natural wear-and-tear under normal conditions of transportation, storage or use (operation). It is allowed to make operations necessary to preserve such goods, including small repair, technical maintenance and other operations necessary to keep them in a good condition, provided that the goods identity is preserved so as the customs body could identify them when the goods are coming-out.

Subject to paragraph 2 of Article 189 of the Customs Code of the Republic of Kazakhstan it is prohibited to place the following under the customs treatment of temporary importation of goods and vehicles:

- spare and component parts (except for when they are designated for the temporary imported vehicles), consumables and samples, raw materials, semi-finished goods, except for the temporary importation of one piece (unit) for the advertising and/or demonstrational purpose;
- food products, beverages, including alcoholic ones, tobacco products, except for the temporary importation of one piece (unit) for the advertising and/or demonstrational purpose;
- factory waste; and
- the goods banned for import into the customs territory of the Republic of Kazakhstan.

As for subparagraph (1) of Article 189, this subparagraph takes into account that temporary imported spare and component parts, consumables and samples, raw materials, and semi-finished goods cannot stay unchanged within three years (the temporary importation term) because of the definite purpose of their importation. The listed goods are qualified as consumables, because the goods themselves have no functionality.

As for subparagraph (2) of paragraph 2 of Article 189, this subparagraph takes into account that temporary imported food products, beverages (including alcoholic), and tobacco products also cannot stay unchanged. There is no need to import them if they are not supposed to be consumed.

The same is in respect of subparagraph (3) of paragraph 2 of Article 189.

As for subparagraph 4 of paragraph 2 of Article 189, the Government of the Republic of Kazakhstan approved the list of goods banned for importation to the customs territory of Kazakhstan:

- Weapon of war of any kind and ammunition, mass destruction weapon, as well as materials and equipment, which could be used for creation of mass destruction weapon.

Note: The goods listed here may be imported in accordance with the following legal acts of the Republic of Kazakhstan or by permission from the Government of the Republic of Kazakhstan: under Law of the Republic of Kazakhstan No. 9-1 "On Export Control" of 18 June 1996. This Law states the principles and procedure for the export control of arms, military equipment, nuclear and special non-nuclear materials, military products, double purpose goods and technologies, raw materials, equipment, technologies, scientific information and services associated with their production and use in the interests of both international and national security of Kazakhstan, for the consolidation of non-distribution of the mass destruction weapon.

- Narcotics, psychotropic agents and precursors as well as tools for their consumption.

Note: The goods listed here may be imported in accordance with the following legal acts of the Republic of Kazakhstan: Law of the Republic of Kazakhstan No. 279-1 "On Narcotics, Psychotropic Agents, Precursors, and Measures for Prevention of their Illegal Circulation and Abuse" of 10 July 1998.

Subject to this Law "import and export of narcotics, psychotropic agents and precursors at the national and customs borders requires the licence and certificate issued under the laws of the Republic of Kazakhstan".

- Printed and art materials designated to undermine the political and public systems, propagandizing war, terrorism, violation, racism, as well as obscene (pornographic) materials.

Subject to paragraph 1 of Article 213 of the Customs Code of the Republic of Kazakhstan any goods may be placed under the transit customs treatment, provided that:

- such goods are not banned for importation to and export from Kazakhstan.

Government Resolution No. 681 "On Approval of Goods and Vehicles Banned for Importation to and Export from the Republic of Kazakhstan, List of Goods Banned for Placing under Certain Customs Treatments, as Well as Bans and Limitations on Operations with Goods Placed under Certain Customs Treatments" of 10 July 2003 approves the following bans:

1. Goods Banned for Importation to the Republic of Kazakhstan

- Weapon of war of any kind and ammunition, mass destruction weapon, as well as materials and equipment, which could be used for creation of mass destruction weapon;
- Narcotics, psychotropic agents and precursors as well as tools for their consumption; and
- Printed and art materials designated to undermine the political and public systems, propagandizing war, terrorism, violation, racism, as well as obscene (pornographic) materials.

2. Goods Banned for Export from the Republic of Kazakhstan

- Weapon of war of any kind and ammunition, mass destruction weapon, as well as materials and equipment, which could be used for creation of mass destruction weapon;



- Works of art, ancient items (antiquities) and other items with significant art, historic, scientific or cultural value;
  - Animals and plants registered in the Red Book and saiga horns;
  - Narcotics, psychotropic agents and precursors as well as tools for their consumption; and
  - Cancelled securities;
- 
- such goods will be transported by the transit ways and destinations, if the Government of the Republic of Kazakhstan will define such;
  - the goods will be transported in time allocated by the customs body in accordance with the usual terms of delivery based on the transport vehicle's capacity, destination and other conditions of transportation, but not exceeding the maximal period defined as one month per two thousand kilometres; and
  - the goods will be delivered in unchanged condition, except for the changes due to the natural wear-and-tear under the normal conditions of transportation and storage.
- 
- **Fees and charges for services rendered**

#### **Question 49**

##### **Paragraph 91: How will Kazakhstan bring its transit escort fees into conformity with WTO?**

###### Answer:

By now the Customs Control Committee of the Ministry of Finance of the Republic of Kazakhstan developed and submitted to the Government of the Republic of Kazakhstan the draft government resolution providing for the revision of the customs escort fees rate. The customs fees will be computed without the salary component and it will be based on the cost of services rendered, which meets the requirements of Article VIII of GATT.

#### **Question 50**

**Please confirm that the fees for customs clearance and for customs escort are the only remaining customs fees.**

**What are the fees for customs warehousing of goods? Are these *ad valorem*? Do they vary with the length of stay in the warehouse?**

###### Answer:

Subject to Government Resolution No. 669 of 8 July 2003 Kazakhstan applies the following customs fees and other levies (see WT/ACC/KAZ/50/Add.1):

- customs clearance fees (€ 50 per the main sheet of the customs declaration and € 20 per every additional sheet);
- customs escort fees<sup>1</sup> computed in MCI (monthly calculation indices) depending on the distance;

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<sup>1</sup> 2 MCI<sup>1</sup> (US\$ 13.5 or € 11.1) up to 50 km; 4 MCI (US\$ 26.9 or € 22.1) for distance from 50km to 100km; 7 MCI (US\$ 47.2 or € 38.7) for distance from 100km to 200km; 14 MCI (US\$ 94.4 or € 77.4) for 200km to 400km; 21 MCI (US\$ 141.57 or € 116) for distance from 400km to 600km; 29 MCI (US\$ 195.5 or € 160.3) for distance from 600km to 800km; 36 MCI (US\$ 242.7 or € 198.9) from 800km to 1,000km; 54 MCI (US\$ 364 or € 298.5) from 1,000km to 1,500km; 72 MCI (US\$ 485.4 or € 398) from 1,500km to 2,000km; 89 MCI (US\$ 600 or € 492) for over 2,000km.

- customs fees for storage of goods (€ 0.17 per 1 m<sup>2</sup> per day in open place; € 0.48 per 1m<sup>2</sup> per day indoor; € 0.86 per 1m<sup>2</sup> per day in a special building);
- fee for obtaining the licence for created a customs warehouse (€ 9,000 for the area up to 1,000 m<sup>2</sup> inclusive; € 14,000 for the area from 1,000 to 2,000 m<sup>2</sup>; € 19,000 for the area over 2,000 m<sup>2</sup>);
  - fee for obtaining the licence for creating a duty-free shop (€ 20,000);
  - fee for obtaining the licence for creating a free customs warehouse (€ 19,000 for the area from up to 1,000 m<sup>2</sup>; € 28,000 for the area over 1,000 m<sup>2</sup>);
  - fee for obtaining the licence for creating a temporary (limited) storage site (€ 8,000);
- fee for obtaining the customhouse broker licence (€ 5,000);
- fee for obtaining the customs carrier licence (€ 5,000);
- fee for issuing the customs specialist qualification certificate (€ 200);
- fee for preliminary resolution (€ 50).

This is the exhaustive list of fees collected by the customs bodies of the Republic of Kazakhstan.

The amount of customs duties for the storage of goods depend on the warehouse conditions for the storage of goods.

- **Application of internal taxes to imports**

- **VAT**

**Question 51**

**Paragraph 94: Russia will soon eliminate the practice of applying VAT to exports of energy products to CIS countries. Will Kazakhstan end its discriminatory practice of exempting imports from Russia of oil, natural gas, and gas condensate from VAT at that time?**

Answer:

Subject to the Agreement on Indirect Taxes Principles in Mutual Trade between the Government of Kazakhstan and the Government of Russia as of 9 October 2000 approved by Government Resolution No. 1504 of 6 October 2000, the goods exported from the customs territory of one Party and imported to the customs territory of the other Party under the customs treatment of export used to be subject to indirect taxes at zero rate in accordance with the national legislations of the Parties, except for the natural gas and oil, including condensed gas.

On 15 September 2004 Kazakhstan and Russia signed the Protocol on Making Changes to the said Agreement providing that natural gas, oil and condensed gas under the said treatment shall be subject to indirect taxes by the principle of the destination country.

On 10 December 2004 the Parliament of the Republic of Kazakhstan adopted the draft Law "On Ratification of Protocol on Making Changes in Agreement on Indirect Taxes Principles in Mutual Trade between the Government of Kazakhstan and the Government of Russia as of 9 October 2000".

Therefore, Kazakhstan and Russia will simultaneously eliminate practicing application of VAT to the export of energy products (natural gas, oil, and condensed gas) and since 1 January 2005 these goods will be charged VAT by the principle of the destination country.

## Question 52

**Paragraph 94: Could you clarify how the "offsetting system" applied for imports of natural gas, oil and gas condensate from the Russian Federation works in practice?**

Answer:

Subject to paragraph 3 of Article 235 of the Tax Code, the VAT due to the suppliers of goods imported to Kazakhstan in accordance with the special export and import taxation system under the international agreement shall be set off in accordance with the procedure established by the Government of the Republic of Kazakhstan.

Government Resolution No. 556 of 22 May 2002 (available from the Secretariat through document WT/ACC/KAZ/57/Add.1) approved the procedure for setting off the VAT due to the suppliers of goods imported to Kazakhstan in accordance with the special export and import taxation system under the international agreement.

Subject to paragraph 1 of Resolution No. 556 the VAT due to the suppliers of natural gas, oil, and condensed gas imported to Kazakhstan from Russia shall be set off to the VAT payers.

The VAT is set off in the amount of the tax rate applied in the Russian Federation on the date of shipment of the mentioned goods from Russia upon presenting the invoice with the specified VAT amount issued by the exporter from Russia.

## Question 53

**We have also received information that Russia has cancelled the application of VAT on energy exports to CIS countries, with effect from 1 January 2005. What are the ramifications for Kazakhstan's VAT regime?**

Answer:

On 15 September 2004 Kazakhstan and Russia signed the Protocol on Making Changes to the said Agreement providing that natural gas, oil and condensed gas under the said treatment shall be subject to indirect taxes by the principle of the destination country.

On 10 December 2004 the Parliament of the Republic of Kazakhstan adopted the draft Law "On Ratification of Protocol on Making Changes in Agreement on Indirect Taxes Principles in Mutual Trade between the Government of Kazakhstan and the Government of Russia as of 9 October 2000".

After the effect of this Protocol export of natural gas, oil and condensed gas from the Republic of Kazakhstan will be charged VAT at zero rate, and import of these products will be charged at 15 per cent rate, which is subject to setting off for Kazakh taxpayers in accordance with Article 235 of the Tax Code.

## Question 54

**Paragraph 95: Please confirm that the 15 per cent VAT is applied to all other goods, imported and domestic, and that there are no exemptions from the VAT other than those listed in this paragraph, e.g., for small businesses with trade turnover below a certain threshold, or domestic raw agricultural produce at its first point of sale from the farm.**

Answer:

In accordance with Article 206 of the Tax Code the following is subject to VAT:

- taxable turnover; and
- taxable import.

Two rates of VAT have been determined by the Tax code:

- 15 per cent, applied to the rates of the taxable turnover and taxable import; and
- 0 per cent, applied to: (i) goods export and (ii) international traffic.

Proceeds turnovers not exceeding 12,000 times value of MCI (approximately US\$ 84,000) are not subject to VAT taxation.

This rate is applied independently of the residence of VAT payer and is directed to the exclusion of the necessity in registration as VAT payer upon small turnovers (basically is applied by representatives of small business).

With the purpose of the state support of small business development in Kazakhstan the special tax treatment for small businesses is stipulated in the Tax Code, main point of which lies in the special (simplified) procedure of settlements with budget on separate types of taxes:

- for legal persons – subjects of small-scale business the simplification is applied to corporative income and social taxes; and
- for individual businessmen – on individual income and social taxes.

The special procedure of settlements with budget is applied in respect of the calculation mechanism, payments of said taxes, and also the order of tax accounts making on them, and taking into consideration the different stages of entrepreneurship's development the following forms are stipulated:

- on the basis of the one-time certificate (for natural persons, which activity has the occasional character, that is no more than 90 days altogether during the year);
- on the basis of licence (for individual businessmen not using the labour of wage earners and receiving the income no more than 2.0 million tenge per year (approximately US\$ 15.5 thousand). The main point of settlements form with budget is that businessmen pay 3 per cent of the amount of the declared estimated income before stating of the activity's implementation; and
- on the basis of the simplified declaration (intended for businessmen using the labour of wage earners with application of the progressive rate's scale to the revenue earned: three-level – for individual businessmen and four-level – for legal persons).

Farms apply special tax treatment on the basis of the payment of single land tax at the rate of 0.1 per cent to the assessed value of the land.

The special tax treatment for legal persons-manufacturers of agricultural products stipulates the special procedure of settlements with budget on the basis of licence. Upon the calculation of the licence value amount of tax and payment for land use, subject to the payment into the budget, is reduced for 80 per cent.

**Question 55**

**Paragraphs 96-99: We are pleased that Kazakhstan has decided to eliminate the element of discrimination in its excise taxes prior to accession.**

**Please confirm that there are no additional exemptions from the excise tax, i.e., that it is applied to all similar goods imported from all countries in a non-discriminatory manner.**

Answer:

The Republic of Kazakhstan confirms that the unification of excises rates will be fulfilled at the moment of Kazakhstan's entry into WTO.

In accordance with Government Resolution No. 137 dated 28 January 2000, the excises rates have been established for excised goods manufactured in the Republic of Kazakhstan and imported to the customs territory of the Republic of Kazakhstan regardless of the country of origin.

- **Excise tax**

**Question 56**

**Paragraph 98: We welcome Kazakhstan's intention to eliminate excise tax discrimination for certain imported goods by the time of accession. Please keep the Working Party informed of developments in this area.**

Answer:

The unification of excises rates will be fulfilled at a time to the moment of entry into WTO. Change of excises rates does not require the adoption of the individual statute, but is approved by the Government Resolution on changes in Government Resolution No. 137 dated 28 January 2000 "On Excises Rates for Excised Goods Manufactured in the Republic of Kazakhstan and Imported to the Customs Territory of the Republic of Kazakhstan, Sold in the Territory of the Republic of Kazakhstan, and Gambling". In this connection at the moment of Kazakhstan's accession to the WTO the correspondent draft resolution will be submitted to the Government.

At present the Ministry of Finance takes preparatory measures within the unification of excises rates for domestic and imported. So, in accordance with Government Resolution No. 874 "On Organization of Work on the Introduction of Control System for Manufacture and Circulation of Alcoholic Products Using Registration and Control Marks" of 27 August 2003 the projects selection competition on the introduction of Control system for manufacture and turnover of alcoholic products using registration and control marks" (hereinafter referred to as RCM) was carried out on 9 July 2004.

At present the Ministry of Finance has developed draft Government Resolution "On Marking of Certain Types of Excised Goods with Registration and Control Marks". At present such project is subject to the agreement.

Introduction of RCM will allow creating the effective control system for manufacture and turnover of alcoholic products and will provide the completeness of excises supply into the budget of the Republic of Kazakhstan upon the following simultaneous unification of excises rates.

- **Quantitative import restrictions, including prohibitions, quotas and licensing systems**

**Question 57**

**Paragraph 100: Are these the only import prohibitions? Does Kazakhstan prohibit imports of used articles, e.g., clothing, tires?**

Answer:

All prohibitions of goods importation, existing in Kazakhstan, are set forth in paragraph 100 of the Factual Summary. Kazakhstan does not apply and has never applied any prohibition on importation of second-hand clothes and tires.

**Question 58**

**Please confirm that the non-tariff measures listed in Annex VII are on exports only.**

Answer:

We confirm that in Annex 7 to the Factual Summary the full list of goods is presented, in respect of which export prohibitions are applied.

At the same time we emphasize that the Government of the Republic of Kazakhstan has made the decision on the expediency of the prohibition abolition of export of wastes and aluminium and nickel scrap. At present the correspondent draft Government Resolution has been developed which adoption is planned in the near future.

- **Import Licensing**

**Question 59**

**This section of the report is a bit thin.**

**Paragraph 103: Please clarify whether Government Resolution No. 1037 "On licensing export and import of goods and services in the Republic of Kazakhstan" of 30 June 1997 provides for activity licensing, import licensing of goods, or both.**

Answer:

Government Resolution No. 1037 dated 30 June 1997 approved the list of goods, works and services, which export and import is subject to licensing, and including works and services in the sphere of military and technical collaboration.

**Question 60**

**We seek a response to Question 84 of WT/ACC/KAZ/50. In general, what criteria are applied for granting licenses. Under what circumstances would a licence not be granted for any of the products in Annex V?**

Answer:

For registration of licence of export and import of goods the applicant gives to the Licensor the following:

- (i) application of due form for the licence receipt;
- (ii) copy of sales contract (agreement) or other agreement of alienation between the participants of international contract and the original for collation;
- (iii) agreement between the exporter and manufacturer or between the importer and goods consumer, if any mediator stands as the applicant;
- (iv) certificate of state registration:
  - for legal persons - certificate of state registration; and
  - for natural persons - certificate of state registration as entrepreneur.
- (v) document confirming the payment of licence tax;
- (vi) licence of the relevant authorized state body for the fulfilment of separate types of activity;
- (vii) permission of the Government of the Republic of Kazakhstan or the relevant authorized state body on the separate types of goods according to Annex 2-5 hereto; and
- (viii) list of presented documents.

The licence is not given, if:

- all required documents have not been presented. Upon the clearance by the applicant the application is considered on common basis; and
- the licence tax for licensing of export and import of goods has not been paid.

All rules and criteria used upon the licenses issuing for import and export of goods in accordance with Government Resolution No. 1037 and No. 1031 are set forth in Annex VI of the Factual Summary.

#### **Question 61**

**The response to Question 84 states that import licenses are granted on a "national treatment" basis. How is that possible, since by definition import licenses are not granted for the sale or distribution of domestic manufactures?**

Answer:

It is necessary to note that licenses of export and import are issued on the non-discriminatory basis.

So, according to Article 3 of the Law of the Republic of Kazakhstan "On licensing" the issue of licenses of export and import of goods is fulfilled on equal bases and equal conditions for all persons meeting the requirements determined for this type of licence. Article 8 of this Law stipulates that the foreign legal or natural persons, and also persons without citizenship receive licenses on the same conditions and on the same order as legal and natural persons of the Republic of Kazakhstan, unless otherwise is stipulated by legislative acts of the Republic of Kazakhstan.

#### **Question 62**

**Are all of Kazakhstan's import licensing procedures contained in Government Regulation 1037, as outlined in Annex VI?**

Answer:

Rules on licensing, set forth in Annex VI of the Factual Summary, apply to import and export of all goods, works and services approved by Resolutions of the Government of the Republic of Kazakhstan No. 1037 and No. 1031.

### Question 63

**Information in paragraphs 115 and 116 of WT/ACC/SPEC/KAZ/8 may be helpful in rounding out the description. It makes it clear that in order to obtain a licence to import alcoholic beverages, an enterprise must first have permission to produce or store alcoholic beverages. This is not consistent with the establishment of trading rights, i.e., the right to import or export without the need to be invested or have distribution rights.**

Answer:

Contents of items 115 and 116 will be indicated in the draft Report of Working Group.

It should be noted that Article 10.1 of Law of the Republic of Kazakhstan No. 429-1 "On State Regulation of Production and Circulation of Ethyl Spirit and Alcoholic Products" of 16 June 1999 provides the following in respect of import:

- ethyl spirit can be imported by the licence for import of ethyl spirit provided that the importer has the licence for production of the alcoholic products for which the ethyl spirit will be used; and
- alcoholic products can be imported by the licence for import of alcoholic products and with the licence for either production of alcoholic products or storage, wholesale sale of alcoholic products (except for beer).

### Question 64

**Please clarify whether there are requirements to obtain a marketing licence in order to be allowed to market products. If yes, to what kind of products do such licenses apply?**

Answer:

In accordance with Law of the Republic of Kazakhstan dated 17 April 1995 "On Licensing" the following is subject to the licensing:

- sale of weapon and ammunition, cryptographic means, special technical facilities for conducting special operations and investigation measures, military equipment, spare parts, component elements and devices to them, if they are not used in other branches, and also special materials and equipment for their production;
- sale of explosive and pyrotechnic substances and products with their use;
- sale of products containing radioactive substances in quantities exceeding the amount permitted for their use without necessity of application of special protection means;
- sale of fire-prevention equipment, equipment and fire prevention means;
- wholesale sale of facilities and preparations of disinfection, disinsection, and also types of works and services connected with their use;
- sale of X-ray equipment, devices and equipment using radioactive substances and isotopes;
- sale of topographic and geodesic and cartographic products;
- wholesale, retail sale of medicinal remedies;
- wholesale and retail sale of alcoholic products (except beer);
- sale of scrap and wastes of ferrous and non-ferrous metals to legal persons;
- sale of plants and herbs containing drugs and psychotropic substances;
- sale of poisons according to the list determined by the Government of the Republic of Kazakhstan;
- sale of pesticides (chemical weed-killers and pest killers);



- civil and official firearms and ammunition, military hand shooting firearms and its ammunition, cold weapon, civil pyrotechnical substances and products with their use, and also chemical weapons of self-defence; and
- retail sale for foreign currency cash (operations connected with use of currency).

It is necessary to note that the developed draft Law of the Republic of Kazakhstan "On Amendments and Addenda to Legislative Acts of the Republic of Kazakhstan on Licensing" stipulates the exclusion of following types of activity:

- wholesale sale of facilities and preparations of disinfection, disinsection, and also types of works and services connected with their use;
  - sale of topographic and geodesic and cartographic products; and
  - sale of fire-preventive equipment, equipment and facilities of fire-preventive protection.
- **Customs valuation**

#### Question 65

**Please confirm that all of Kazakhstan's relevant provisions on customs valuation, including the Interpretative notes, can be found in the three pieces of legislation listed in paragraph 107. If not, please indicate what other legislation is relevant:**

- **Customs Code**
- **Rules for Independent Examination of Consistency of Customs Value, Quality, and Quantity of Imported Goods (Resolution No.782 of 16 July 2002)**
- **Decree of the Customs Committee No. 209 "On Adoption of Rules on Completion of Declarations of Customs Value and Customs Value Adjustment Forms" of 15 May 2003.**

**Have the Rules and the Decree been made available to the Working Party?**

**Please cite and describe the right of appeal, transparency, and surety bond provisions in Kazakhstan's laws that implement these aspects of the WTO Customs Valuation Agreement. In particular, please describe provision for publication of administrative rulings of general application by the Customs Services in a manner that importers may become acquainted with them.**

**Please describe in more detail the use of the "fallback" or "reserve" method of valuation, and the "Government recognized reference books" to determine the value of imports for customs purposes. This would appear to be a method of applying administered valuations to imports, based on information gathered by the Customs Service.**

**Approximately how often has the "reserve" method been used to value imports since implementation of the Customs Code?**

Answer:

At present all provisions on customs valuation are set forth in the Customs Code of the Republic of Kazakhstan, Rules on Filling Forms of Customs Value Declaration and Customs Value Correction Forms.

Rules on carrying out of independent conformity assessment of customs goods value imported to the Republic of Kazakhstan, their quality and quantity (Government Resolution No. 782 dated

16 July 2002) have become invalid upon the adoption of the Government Resolution No. 1274 "On acceptance of invalid Government Resolution No. 782 of 16 July 2002" dated 19 December 2003".

Rules on forms filling of declaration of customs value and forms filling of customs value correction are available from the Secretariat through document WT/ACC/KAZ/57/Add.1.

Concerning the right of appeal, Article 318, item 7 of the Customs Code of the Republic of Kazakhstan stipulates that "after acceptance of documents to the customs registration all corrections of customs value fulfilled by the customs authority and stated by the declarant, are considered as the customs valuation of goods and may be appealed by the declarant in the determined order". Article 319, paragraph 1 (4) also adds that "The declarant has the right: upon the disagreement with the decision of the customs authority in respect of the determination of the customs value of goods to appeal this decision in order determined by legislative acts of the Republic of Kazakhstan (Presidential Decree holding the law dated 19 June 1995 No. 2340 "On order of the consideration of subjects appeal" is available from the Secretariat through document WT/ACC/KAZ/57/Add.1.

Besides, the section 15 of the Customs Code of the Republic of Kazakhstan stipulates the provisions concerning the appeal of customs authorities' resolutions, administration of complaints on decisions and simplified order of appeal of customs authorities' resolutions.

In respect of transparency Article 30 of the Customs Code of the Republic of Kazakhstan says:

"1. Informing in the sphere of customs affair is fulfilled by means of the official publication of statutory legal acts of the Republic of Kazakhstan in the sphere of the customs affair by the authorized body on customs affairs in periodical published editions in the order determined by the legislation of the Republic of Kazakhstan.

2. Informing in the sphere of customs affair is fulfilled also with use of oral explanations and announcements, information stands, indicator boards, booklets and other printed materials, and also video-, audio- and other technical facilities applied for spreading of information including for public and free examination in following places:

- 1) check-points across the customs border of the Republic of Kazakhstan;
- 2) airports, railway and car stations, water ports;
- 3) on the board of vehicles, air and marine vessels fulfilling international traffic; and
- 4) areas of customs control determined by the present Code, and in other places stipulated by customs authorities.

3. Customs authorities provide the unimpeded access for the members of foreign-economic and other activity to the information about statutory legal acts of the Republic of Kazakhstan in the sphere of the customs affair using information technologies in the order determined by the authorized body on customs affairs".

4. Concerning provisions relating to warranty policies, Article 321 of the Customs Code of the Republic of Kazakhstan explains that "the customs authority has the right to carry out the conditional goods release, if payment of customs duties and taxes has been provided in accordance with customs value of goods", i.e. hindrances to the trade are not stipulated.

Besides, in accordance with Article 339 of the Customs Code of the Republic of Kazakhstan guarantee types of customs payments and taxes are provided in the form of:

- pledge;
- bank guarantee;

- money contribution to the deposit account of customs authority; and
- insurance agreement.

Concerning the use of the reserve method, application of price reference books and information, being at the disposal of customs authorities, is permitted. Application of reference books is approved by resolutions of the Government of the Republic of Kazakhstan. At present the following are valid: Government Resolution No. 794 "On information reference books used upon the application of the reserve method of determination of goods customs value" dated 8 August 2003, Government Resolution No. 797 "On Changes to Government Resolution No. 788 of 9 June 2001" dated 11 August 2003.

Application of the reserve method may be the administrative valuation of import based on information of customs authorities.

By frequency of application the reserve method takes the 2nd place after the principal method "on the transaction's price with imported goods".

#### **Question 66**

**Could Kazakhstan please submit copies of the following legislation to the Working Party for review: Resolution No. 782 of 16 July 2002 and Decree No. 209 of 15 May 2003.**

Answer:

The resolution of the Government of the Republic of Kazakhstan dated 16 July 2002 No. 782 "On the approval of Rules on conducting of the independent conformity expertise of goods customs value imported to the Republic of Kazakhstan, their quality and quantity" has become invalid in accordance with the resolution of the Government of the Republic of Kazakhstan dated 19 December 2003 No. 1274 "On acceptance of invalid resolution of the Government of the Republic of Kazakhstan No. 782 dated 16 July 2002".

Ordinance No. 209 of Customs Control Agency dated 15 May 2003 "On the approval of Rules on forms filling of the declaration of customs value and forms filling of correction of customs value" is available from the Secretariat through document WT/ACC/KAZ/57/Add.1.

#### **Question 67**

**The explanation on the possible use of minimum values given in paragraph 111 (Factual Summary) is not sufficient. Could Kazakhstan please provide further clarification on whether or not minimum values are used.**

Answer:

In accordance with Article 310, paragraph 9 of the Customs Code of the Republic of Kazakhstan upon the application of determination method of the customs value "at the transaction's price with identical goods" for the determination of customs value the lowest from them is used. Example, the company "Sara" has imported to the Republic of Kazakhstan TV sets of "Samsung" company, at that the value of previously imported TV sets is € 100 and € 120 correspondently, upon the application of method "at the transaction's price with identical goods" the value of € 100 will be accepted as the lowest from two existing.

Besides, the single reference about minimum value is set forth in the subparagraph 7 of paragraph 4 of Article 314 of the Customs Code of the Republic of Kazakhstan in a similar manner with the subparagraph (f) of Article 7 of the Agreement on the application of Article 7 of the GATT 1994.

Thus, in the Republic of Kazakhstan upon the determination of customs value the system of fixed minimum value is not applied.

#### **Question 68**

**Article 318, paragraph 7 of Customs Code of Republic of Kazakhstan: Is an appeal without penalty foreseen in accordance to Article 11 of the WTO Customs Valuation Agreement?**

Answer:

Paragraph 7 of Article 318 of the Customs Code of the Republic of Kazakhstan does not stipulate any penalty provisions upon the fulfilment of customs value of goods by the customs authority, but stipulates that after acceptance of documents to the customs registration all corrections of customs value, made by the customs authority and stated by the declarant, are considered as the customs value of goods and may be appealed by the declarant in the determined order.

#### **Question 69**

**Article 12 WTO Customs Valuation Agreement: How are laws, regulations, judicial decisions and administrative rulings of general application published in conformity with Article X of GATT 1994?**

Answer:

Customs authorities provide the unimpeded access for members of foreign-economic and other activity to the information about laws, statutory legal acts of the Republic of Kazakhstan, court decisions and administrative acts in the sphere of customs value using information technologies, mass media and published editions, excluding information with confidential character on the basis of Article 26 of the Customs Code of the Republic of Kazakhstan.

The official web site [www.customs.kz](http://www.customs.kz) exists and functions in the Customs Control Committee of the Republic of Kazakhstan.

On the indicated site the following information is situated: structure and condition of the Committee of the customs control and customs authorities; legislation including: laws of the Republic of Kazakhstan, decrees of the President of the Republic of Kazakhstan, resolutions of the Government of the Republic of Kazakhstan, orders of the Committee of the customs control (administrative decisions), directives of the Committee of the customs control (administrative decisions), joint orders of the Committee of the customs control, explanations of the Committee of the customs control, statistics of foreign commerce, foreign relations of the Committee of the customs control, the history of the Committee of the customs control.

#### **Question 70**

**Interpretative notes to the WTO Customs Value Agreement: Only the Interpretative Notes to Article 1 and Article 15 are partially included in the Customs Code of the Republic Kazakhstan. When will the Interpretative Notes be completely included in the Customs Code of Kazakhstan?**

Answer:

At present draft Law "On alterations and additions in the Customs Code of the Republic of Kazakhstan" is on the approval in the Parliament of the Republic of Kazakhstan. After acceptance of this Law, the Commentary to the Customs Code of the Republic of Kazakhstan will be issued, where the WTO Agreements similar to the Explanatory notices to Article 1 and Article 15 will be included.

- **Rules of origin**

**Question 71**

**Do Kazakhstan's legal provisions granting a preliminary determination of origin specify that "exporter, importer, or any person with a justifiable cause" may ask for this and receive it?**

**Concerning the preferential rules of origin applied to CIS products, are the provisions of Annex II reflected in domestic law and observed?**

**Paragraph 116: The right to seek a determination of origin prior to importation is contained in Article 2 (h) and Annex II, paragraph 3 (d) of the WTO Agreement on Rules of Origin. If these provisions are not already in Kazakhstan's laws, we seek legislation to remedy that prior to Kazakhstan's accession to the WTO.**

Answer:

In the Republic of Kazakhstan the current rules are unified and applied either on preferential or non-preferential basis. The comparative table is enclosed in Annex 6.

Regarding Article 2 (h) and paragraph 3 (d) of Annex 2 of WTO Agreement on origin rules, the Customs Code of the Republic of Kazakhstan stipulates the provisions, similar by implication, in particular:

- In respect of request of exporter, importer or any person, according to Article 51 the Customs Code of the Republic of Kazakhstan indicates that "preliminary decisions made by customs authorities excluding confidential information, may be published and presented upon the written request to any person"; and
- In respect of the decision on the determination of the country of goods origin, Article 47, paragraph 2 of the Customs Code of the Republic of Kazakhstan says that "customs authorities indicated in paragraph 1 of the present Article in accordance with provisions of the present Code have the right to make the preliminary decision on the application of methodology of the determination of country of origin and customs value of goods. The acceptance order and the form of the preliminary decision on indicated questions are determined by the authorized body on customs affairs", namely in accordance with the Order of the Customs control agency of the Republic of Kazakhstan dated 15 May 2003 No. 210 (available from the Secretariat through document WT/ACC/KAZ/57/Add.1).

In this case the preliminary decision shall be considered as the final decision made by the customs authorities prior to customs registration of goods or prior to trade implementation.

- In respect of temporary limits (not later than 150 days), Article 48, paragraph 3 of the Customs Code of the Republic of Kazakhstan also stipulates that "the application is considered by the customs authority and the preliminary decision (final) is made during ten working days from the date of giving of other information or carrying out of expertise".

- In respect of the provision that such valuations shall remain in force during three years, Article 49 of the Customs Code of the Republic of Kazakhstan also stipulates the provision with similar contents specifying that "the preliminary (final) decision of customs authorities is in force during three years from the moment of its acceptance"; and
- In respect of the provision that such valuations shall be public on condition of the observance of provisions of the subparagraph (k), the Customs Code of the Republic of Kazakhstan stipulates the provision with similar contents: "preliminary decisions made by customs authorities excluding confidential information may be published and presented upon the written request to any person".

#### **Question 72**

**We take note of Kazakhstan's statement in paragraph 166 (Factual Summary) that it considers that there is no need for separate legislation to implement Article 2(h) of the Agreement on Rules of Origin. Nevertheless, the Kazakh authorities will have to ensure assessments of the origin.**

**Is a review of any administrative action on the application of the rules of origin by judicial, arbitral or administrative tribunals or procedures foreseen (Article 2(j) of Agreement on Rules of Origin)?**

Answer:

Revision of application of origin rules by legal, arbitral or administrative bodies is not stipulated.

In respect of the appeal right the section XV of the Customs Code of the Republic of Kazakhstan stipulates provisions concerning the appeal of customs authorities' resolutions, administration of complaints on decisions and simplified order of appeal of customs authorities' resolutions (available from the Secretariat through document WT/ACC/KAZ/57/Add.1).

#### **Question 73**

**Article 157 of Customs Code of Republic of Kazakhstan: Article 157 refers to the classification code of goods and processed products under the foreign economic activity commodity nomenclature. Does this nomenclature correspond to the subheadings and headings of the tariff nomenclature mentioned in Article 2a (i) of the Agreement on the Rules of Origin?**

Answer:

Yes, it conforms. The Republic of Kazakhstan joined the Convention on the Harmonized system of the description and coding of goods in accordance with the Law of the Republic of Kazakhstan dated 3 February 2004 No. 525-II "On joining of the Republic of Kazakhstan to the International Convention on the Harmonized system of the description and coding of goods".

#### **Question 74**

**In Paragraph 113 of this document it is stated that the existing system of determining the country of origin was developed by the World Customs Organization and covered provisions of the Kyoto Convention. However we are concerned by the statement found in paragraph 115 that the certificate of origin should contain a written declaration that the good conformed with the corresponding criteria of origin. Such information is usually not contained in a non-preferential certificate of origin and is also not foreseen in the Kyoto Convention.**

Answer:

Certificate of goods origin is the document unambiguously certifying the country of origin and issued by the authorized body of state-exporter.

In accordance with Article 41 of the Customs Code of the Republic of Kazakhstan the terms of the presentation of the certificate of goods origin upon the goods import are:

- tariff preferences are given to the country of these goods origin in accordance with international agreements, the member of which the Republic of Kazakhstan is;
- the customs authority has the well-founded grounds to assume that the goods derive from countries which goods import is regulated by measures of non-tariff regulation; or
- this is stipulated by international agreements members of which the Republic of Kazakhstan is.

Thus, presentation of certificates of goods origin upon the non-preferential procedure is not obligatory, excluding the cases when the customs authority has well-founded assumptions that the goods derive from countries which goods import is regulated by measures of non-tariff regulation or, if it is stipulated by international agreements, which member the Republic of Kazakhstan is. At that the mark about the criteria of goods origin is not obligatory.

**Question 75**

**We have doubts about the WTO-compliance of the provision mentioned in paragraph 114, that the origin could go to parts of a country, if there is a justifiable reason. We would like to know the context of such a determination of origin and the justifiable reasons as we see great implications for the application of other parts of the Marrakesh Agreement."**

Answer:

In case if determination of the country of goods origin, stipulated in Article 33 of the Customs Code of the Republic of Kazakhstan, does not conform to the determination stipulated in the Convention of Kyoto, the Committee of the Customs control of the Ministry of Finance will work out the correspondent draft Law of the Republic of Kazakhstan on the alterations in paragraph 2 of Article 33 concerning the exclusion of the region and the country.

- **Other customs formalities**

**Question 76**

**Kazakhstan's requirement to obtain an import "passport" in addition to registration and licensing for currency control is duplicative and an unnecessary burden on trade. It essentially replaces former requirements to register import contracts. Kazakhstan should eliminate this measure as soon as possible.**

Answer:

The bargain passport is registered by customs authorities for each international contract in sum more than US\$ 10,000. The bargain passport is not used in any measure for trade balancing and, therefore, is not the hindrance for the implementation of foreign-economic activity or "additional burden for commercial relations". Each bargain passport has its own certain number, contains the brief extract from the contract.

It is necessary to note that the registration requirement of the bargain passport in accordance with the draft Law of the Republic of Kazakhstan "On the currency regulation and currency control" will be in force even after 2007. Either the procedure of licensing, or the registration will be abolished in respect of the bargains with passports, i.e. there will be no doubling and additional burden.

- **Preshipment inspection**

**Question 77**

**Please explain in some detail what sort of service is being provided by the "independent examination system."**

**Is this service provided by customs officials, or by a private firm?**

**Is there a fee charged, and if so, how much?**

**How are goods selected for application of this system? Is there a list of "risky" goods that require "price audit" by an "independent" entity?**

**What are the avenues of appeal for traders whose declared value is questioned or overturned by this system?**

**We have concerns that this "independent examination system" is a disguised method of avoiding use of transaction value in customs valuation and applying an administered price that would take its place, certified by the "independent examination system".**

**We will want much more information about how it operates in practice, who provides the service, their relationship to the Kazakh Customs Service, and the application of WTO provisions in their work.**

Answer:

The independent expertise, fulfilled by "I.C.S. Inspection and Control Services Kazakhstan" Ltd., is not the provisional shipment goods inspection. This service is rendered by the private company which is engaged in rendering of the assistance to customs authorities for carrying out of the customs value control of imported goods (in accordance with Article 436 of the Customs Code). This is the paid service which is paid at the rate of 30 per cent from pre-exacting customs payments and taxes. At the same time, the conclusions of the independent expert have the recommendation character. The final decision in respect of the customs value is made by customs authorities. In case of the confirmation of the customs value by shipping documents which list is determined in Article 316 of the Customs Code, the results of the independent expertise are rejected. In case of arising of doubts in the reliability of declared customs value, the customs authority takes into consideration the preliminary information of the independent expert about goods value, in which accordance the funds of the payments provision of customs payments and goods are deposited, the goods is put in free circulation. Goods selection is fulfilled only in respect of imported goods put in free circulation, at that the list of "risk" goods is absent.

After the presentation of the Conclusion about results of the independent expertise by the independent expert, the customs authority makes the final decision on the value of imported goods. In case of the rejection of the independent expertise results, the previously deposited funds are returned to the declarant. In case of disagreement with the decision of the customs authority, the member of foreign-economic activity has the right to appeal such decision in the order determined by the legislation (available from the Secretariat through document WT/ACC/KAZ/57/Add.1).



**B. EXPORT REGULATIONS**

- **Customs tariffs, fees and charges for services rendered, application of internal taxes to exports**

**Question 78**

**Kazakhstan reports that it taxes exports of iron and steel scrap at the rate of 40 per cent but not less than €35 per tonne.**

**We would appreciate clarification on Kazakhstan's intentions to reduce or eliminate this export tax, given the pressure it places on countries not applying such restrictions in the current market.**

**This is particularly important in light of Kazakhstan's non MFN regime on export duties with the Customs Union.**

**We note that the non MFN treatment of nonferrous scrap in its export to the EU. This practice should stop immediately and must be eliminated totally prior to accession.**

**Finally, we do not understand why Kazakhstan exempts only exports to the countries of the customs union from export duties. If Kazakhstan has FTA relations with other CIS, why aren't export duties eliminated with these trading partners as well?**

Answer:

Export duties are determined by Kazakhstan in respect of the restricted list of products with a fiscal view. Export duties are applied on the basis of the most favoured nation regime (MFN), excluding the goods exported to countries of the Customs union. Export duties are applied upon the export to CIS countries, excluding export to countries of the Customs union with which the agreements on the free trade with specified withdrawals have been concluded.

The Republic of Kazakhstan confirms that from the moment of entry into WTO will apply export duties on the non-discriminatory basis with respect to all WTO countries, excluding export of goods to countries of European-Asiatic Economic Community.

**Question 79**

**Paragraph 133: We urge Kazakhstan to consider phasing out all export duties according to a set timetable.**

**We also note that ferrous and non-ferrous scrap is subject not only to export duties but also to VAT for export, as stated in paragraph 93. Could further information on this VAT regime be provided?**

Answer:

In accordance with Article 222 of the Customs Code the turnover of goods sale for export, excluding export of scrap of ferrous and non-ferrous metals, is imposed upon zero rate. As for the export of scrap of ferrous and non-ferrous metals, from 1 July 2001 the export of said goods has been subjected to VAT in generally established order, from 1 January 2004 – the export of said goods is exempted from VAT.

At present alteration and additions inserted to the Customs Code, are under consideration in the Parliament of the Republic of Kazakhstan, in which accordance the export of scrap of ferrous and non-ferrous metals will be subjected to VAT imposition at zero rate.

### Question 80

**Paragraph 134: Please provide more details on the new tax regime for oil operations in order to allow for an assessment of its WTO compliance.**

#### Answer:

Beginning from 2004, the new taxation procedure of oil operation has been introduced: the rental tax to the exported oil has been imposed, the specific oil rates have been established, the mechanism of computation of the excess profit tax has been improved, as well as the taxation of the activity, fulfilled within the contract on the products division, has been improved.

Suggested rental tax to the exported crude oil is used to provide the stable income into the state's budget, simplicity of tax administration, problem solving of the transfer pricing.

Hydrocarbons royalty rates are established upon sliding scale as the percent from the level of total extraction during each year of the activity.

With the purpose to withdraw excess profits of the subsurface users, the improved mechanism of computation of excess profit tax has been imposed, that greatly simplifies the computation order of this tax, and its obligation arises immediately after excess profits rise.

With the purpose to improve the mechanism of products division between the Republic and contracting organization, the threshold values of products division between the state and contracting organization have been established. They are three triggers.

Triggers determine the part of the Republic of Kazakhstan in profitable oil upon the maximum from the percent values that in perspective will allow bringing the part of Kazakhstan in the products division till 80 per cent. The new taxation procedure of oil operations concerns only contracts concluded from 2004.

According to Article 304-3 of the Customs code of the Republic of Kazakhstan the rental tax to the exported crude oil is established at the following rates:

Market price at the level of exchange price	Rate
US\$ 19 per barrel	1%
US\$ 20 per barrel	4%
US\$ 21 per barrel	7%
US\$ 22 per barrel	10%
US\$ 23 per barrel	12%
US\$ 24 per barrel	14%
US\$ 25 per barrel	16%
US\$ 26 per barrel	17%
US\$ 27 per barrel	19%
US\$ 28 per barrel	21%
US\$ 29 per barrel	22%
US\$ 30 per barrel	23%
US\$ 31 per barrel	25%
US\$ 32—33 per barrel	26%
US\$ 34—35 per barrel	28%

US\$ 36 per barrel	29%
US\$ 37 per barrel	30%
US\$ 38—39 per barrel	31%
US\$ 40 per barrel and more	33%

### Question 81

**Paragraph 135 - Can the Government of the Republic of Kazakhstan provide further information about how the world price of crude oil is determined? Does it for example take account of the various grades of crude available in the global market?**

Answer:

In accordance with Article 5.5 of Presidential Decree No. 2828 "On Subsurface and Subsurface Utilization" effective since 27 January 1996, the subsurface user possessing mineral raw materials on the right of property (economic conduct or operative management), has the right to dispose of it and in their respect to make any bargains not prohibited by the legislation.

Taking into consideration the fact that at present most of enterprises of oil and gas complex have been privatized and are under the management of foreign investors, the questions connected with distribution and sale's price of its resources, are solved independently by them. Thus, the Ministry of energy and mineral resources of the Republic of Kazakhstan does not regulate the level of sale oil prices for principal sale to any customers.

Besides, the level of sale oil prices is determined by the demand, i.e. the higher demand, the higher oil price, and is formed according to world oil quotations.

In case of underestimation of oil prices upon its sale, the subsurface user (seller) is applied force of Law on transfer prices in which accordance the tax is levied from the variation between the factual market price and underestimated price of sale at the moment of the transaction's settlement.

The basic directions of the Kazakh oil sale at present are:

- Ports of Black sea;
- Ports of Baltic sea;
- European countries by oil-pipeline "Druzhiba";
- CIS countries (Ukraine);
- China; and
- Iran.

At that the sale of Kazakh oil is fulfilled by oil-producing companies either on the oilfield, or on the Kazakhstan border, or in marine terminals. Also the type of transport influences the grade of quality preservation of extracted oil. So, upon the oil transportation by the oil-pipeline Atyrau-Samara and farther by the oil-pipelines system of AK "Transoil" to the ports of Black, Baltic seas and European countries, as well as to CIS countries, the oil quotation used upon its sale is Urals class. During the oil transportation according to the system KTK, where the Bank of oil quality has been introduced, the used quotation is the CPC Blend class. Using the rail transport the oil quality will be preserved.

### Question 82

**Can the Government of the Republic of Kazakhstan please provide information on the activities of the Mangystau Industrial Company in Aktau?**

Answer:

"Mangistau industrial company" Ltd. (MIC) is situated in Aktau city, the 9th microdistrict, building 23A. The director is I. Kh. Vassilyeva.

The certificate of the registration of legal person is 5654 – 1943 – Ltd. dated 17 July 2003, RNN 430600065323.

The founder (member) of the company is the State institution – the Committee of state property and privatization of the Ministry of Finance of the Republic of Kazakhstan. The state share in the authorized capital is 100 per cent.

OJSC "Mangistau industrial company" has been established by the resolution of the Department of state property and privatization of the Ministry of Finance of the Republic of Kazakhstan on 6 February 1998 No. 83 with charter capital 34,816 tenge.

At present the principal type of activity is the farming of premises and property.

At present the work on documents preparation for receipt of licence for the activity on the maintenance of boilers, vessels and pipelines operating under pressure, organization of measures for the implementation of the activity on building materials sale, is carried out.

- **Export restrictions**

We note that export bans and quantitative restrictions on commercial products are hard to justify under WTO provisions. We urge Kazakhstan to review its position and find WTO-consistent methods to regulate this trade.

We will seek a commitment that from the date of accession, Kazakhstan's export restrictions will be in conformity with WTO provisions, including Article XI of the GATT.

Answer:

Kazakhstan will not apply the export restrictions contradicting the provisions of GATT of 1994.

**Question 83**

**Paragraph 138: Please report on any recent development concerning Kazakhstan's plans to eliminate WTO-inconsistent export restrictions. We welcome Kazakhstan's plan to replace the export ban on mazut and diesel with export duties, which should be subject to a phase-out according to a set timetable.**

Answer:

With the purposes to create the essential resources of combustive-lubricating materials for needs of the country's economy the Government of the Republic of Kazakhstan annually makes the decisions on the seasonal prohibition of export of fuel and diesel oil from the territory of the Republic of Kazakhstan.

During carrying out of seasonal agricultural works the necessity of agricultural producers in diesel oil increases in 7-8 times. This brings to the combustive-lubricating materials prices increase and has the effect on the course of agricultural works.

The total necessity in diesel oil of agricultural producers in 2003 constituted 1,098.3 thousand tonnes, where the necessity to the carrying out of spring- and autumn- field works constituted 855.7 thousand tonnes or 77.9 per cent.

This practice is directed to the prevention or weakening of the critical shortage of foodstuffs or other goods in the republic, as it is stipulated in paragraph 2 of Article XI of GATT.

At the same time, at present the Government of the Republic of Kazakhstan considers the problem of the replacement of the prohibition practice to export of fuel and diesel oil to the practice of application of export duties at the moment of entry of the Republic of Kazakhstan into WTO.

- **Export subsidies**

**Question 84**

**Please confirm that it is Kazakhstan's contention that it has no export subsidies.**

**In WT/ACC/KAZ/50, Kazakhstan has provided further information regarding the decreasing coefficient on tariffs for railway transportation.**

**According to the information provided in Annexes 6 and 7, it appears that the tariff reductions provided to producers of sulphuric acid and iron ore products are only available for export transportation. Specifically, it states that, "in order to increase transportation volumes, support local producers, stimulate increase of production volumes the tariffs on export transportation of sulphuric acid [and iron ore products] in tanks of producers in all communications are reduced by 25 per cent."**

**To the extent that these incentives are contingent upon export, they could constitute prohibited export subsidies under Article 3.1 of the WTO Agreement on Subsidies and Countervailing Measures (Subsidies Agreement).**

Answer:

Application of reducing coefficients to tariffs in exportation for transportation of sulphuric acid and iron ore production by railway transport has not been directed to the support of domestic manufacturers.

The criterion for the establishment of the decreasing coefficient during the transportation of sulphuric acid was the ecological safety of sideline products of the industrial manufacture. The manufacture of sulphuric acid is the sideline manufacture upon the obtaining of metal zinc.

The principal criterion for the establishment of the decreasing coefficient during the transportation of iron ore production was the volume increase of export transportations of iron ore production by railway transport. Thus, the volume of exported iron ore production in 2003 increased to 10.5 per cent in comparison with 2002 (from 9.9 million tons up to 11 million tons).

**Question 85**

**Could you please explain whether the tariff reductions on transportation provided to producers sulphuric acid and iron ore products are contingent upon export? If so, please explain how the GOK plans to eliminate or bring this program into compliance with WTO provisions.**

**Please explain whether any of the other products eligible for decreasing coefficients of railway tariffs (e.g., coal, black coal, complex ore, secondary material resources, metal roll, crude oil, and energy) receive benefits contingent upon export.**

Answer:

Reforms in the sphere of railway transport carried out by Kazakhstan at present provide the guarantee of free access of all subjects of transport market to receiving of services of railway transport, development of competition in the sphere of the vehicular activity and rendering of services.

In February 2004 the Restructure program of railway transport of the Republic of Kazakhstan was approved for 2004-2006 providing the separation of competitive section of railway transport from naturally monopolistic services of mail line. Thus, the equal right of user of mail railway line is provided for all carriers.

From 20 July 2004 the tariffs for services of mail railway line approved by the Order of the Chairman of Agency on Natural Monopolies Regulation and Competition Protection in the Republic of Kazakhstan (ANMR) dated 25 May 2004 No. 242-OD, are valid. These tariffs are temporary – for the period till the acceptance of new tariff methodology.

In August 2004 the Rules on establishment and abolition of reducing coefficients to tariffs for transportation of goods by railway transport subject to the state regulation, approved by the Order of the Chairman of ANMR dated 30 December 1999 No. 24-OD, became invalid.

In this connection previously made ANMR decisions on establishment of temporary reducing coefficients to tariffs for transportation of goods (sulphuric acid and iron ore production) by the railway transport have become invalid.

The Rules on establishment and abolition of temporary reducing coefficients to tariffs (prices, dues rates) for the services of mail railway line have been approved by the Order of the Chairman of ANMR dated 8 September 2004 No. 375-OD.

Economic effectiveness of the establishment of temporary decreasing coefficient is determined by the volume increase of rendered services, received incomes of the operator of main railway line and the consumer, returns growth into the state budget.

#### **Question 86**

**In addition, could you please also explain the meaning of the term "producers in all communications"?**

Answer:

Phrase 'producers in all communications' (actually, consignors in all destinations in this context) means that the decreasing coefficient for the transportation of goods in question applies to all consignors transporting this type of goods in any destination: national, export and import destination.

#### **Question 87**

**In response to the request from the Working Party for a proper subsidy notification for all subsidies granted according to Article 25 of the Subsidies Agreement (see Question 146 of document WT/ACC/KAZ/50), Kazakhstan provided information on Establishing of Decreasing Coefficients of Railway Tariffs on Transportation of Different Types of Goods for the years**

**2002 and 2003. However, it appears that Kazakhstan may maintain other subsidies, which may be notifiable under Article 25 of the Subsidies Agreement.**

**Could you please explain whether the above stated program is the only specific subsidy, as defined by Articles 1 and 2 of the Subsidies Agreement, administered within the territory of Kazakhstan? If there are additional programs administered at the Federal or sub-federal level which meet the definition of a specific subsidy, please provide the information required under Article 25.**

Answer:

On this stage the work on the preparation of the additional information required in accordance with Article 25 of WTO Agreement on Subsidies and Compensation Measures, is carried out.

**C. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS**

- **Industrial policy, including subsidies**

**Question 88**

**The response to Question 4 of WT/ACC/KAZ/50 stated that "in 2004, the Republic of Kazakhstan introduced preferential treatment for corporate income tax levied upon industries investing into the petrochemical sector, ... [and] ... special tax treatment for companies operating in special economic zones (in the so-called Information Technology Parks), and engaged primarily in scientific research and development of information technologies."**

**Please describe in more detail the tax preferences provided and cite the law that authorizes this treatment.**

Answer:

The preferential tax regime for petrochemical enterprises is a governmental measure to support and encourage creation and development of new non-mineral sectors of Kazakhstan's economy, including the petrochemical sector.

The preferential tax regime for petrochemical industry provides that petrochemical enterprises have the right to reduce the amount of corporate income tax by 100 per cent for five years since the date of commissioning of their production units, provided that such enterprises meet the following criteria: they were created from 2004 to 2007; proceeds from sales of oil and gas products make 90 per cent of their aggregate annual income; and the amount of investments in such an enterprise exceeds 5 million Monthly Calculated Indices (MCI).

The companies operating the territory of special economic zones have the right to reduce the corporate income tax by 50 per cent and be exempted from the land tax, property tax, and VAT.

The preferential tax regime for petrochemical enterprises

(Article 119-1 of the Tax Code):

"1. To be eligible for the provisions of this Article a petrochemical enterprise must simultaneously meet the following criteria:

- (a) it was registered in the period from 1 January 2004 to 31 December 2007;

- (b) its production and processing units (with complete technological cycle) were commissioned by the state acceptance boards within the period stated in subparagraph (1) of this paragraph;
- (c) the proceeds from sales of its own products made by processing of oil and/or gas extracted in the Republic of Kazakhstan, by the types of operations defined by the Government of the Republic of Kazakhstan, shall make no less than 90 per cent of the aggregate annual income;
- (d) the minimal amount of investments in the production units (stipulated in subparagraph (2) of this paragraph) shall make no less than 5 million of Monthly Calculated Indices defined by the law on the national budget for the correspondent year.

2. This Article cannot be applied to the following organizations:

- (a) users of the subsurface resources;
- (b) organizations producing goods subject to the excise tax (spirit, alcoholic products, beer, tobacco goods, sturgeon and salmon caviar, petrol, diesel fuel); and
- (c) organizations under preferential tax regimes.

3. The organizations defined in paragraph 1 of this Article shall compute the taxes in accordance with the procedure established by this Code, taking into account the specific provisions of paragraph 4 of this article.

4. When defining the amount of corporate income tax to be paid to the budget, the amount of corporate income tax computed shall be reduced by 100 per cent in accordance with Article 125 herein.

Reduction of the tax amount stipulated herein also applies to the computation of the prepayment instalments of the corporate income tax defined in Article 126 of this Code.

5. If a petrochemical enterprise fails to meet the requirements stipulated in paragraph 1 of this article, its proceeds shall be subject to taxation in accordance with the general procedure.

6. The procedure stipulated in paragraph 4 of this Article shall be applied to petrochemical enterprises (meeting the requirements of paragraph 1 of this article) for five years since the date when the state acceptance boards commissioned the production units.

7. The taxation period, procedures and terms of submission of the tax report on taxes and other compulsory payments to the budget shall be defined in accordance with this Code."

#### The preferential tax regime in the special economic zone (SEZ)

(Article 140-1 and 140-2 of the Tax Code):

##### Article 140-1

"1. Until otherwise stipulated by this Code, to be an organization operating in the territory of the special economic zone a legal entity must simultaneously meet the following criteria:

- a) be registered in the tax bodies in the territory of a special economic zone;
- b) have no structural units beyond the territory of special economic zones;
- c) over 90 per cent of the aggregate annual income shall be made of the proceeds from the following types of operations in the territory of the special economic zone, meeting the SEZ mission: design, development, introduction and pilot-production (modelling) software, databases and hardware; and/or creation of new informational technologies based on artificial



immune and neural systems; and/or research and development in creation and implementation of IT projects.

The Government of the Republic of Kazakhstan defines list of specific operations and services in subparagraph (3) of this paragraph.

2. To qualify the proceeds as the proceeds from the operations defined in subparagraph (3) of this Article the company needs the confirmation from the executive body in the territory of the special economic zone; the confirmation shall be issued in form and in accordance with the procedure established by the authorized body on administration of this industry, upon coordination with the authorized governmental body."

#### Article 140-2

"1. The organizations operating in the territory of special economic zones shall compute the taxes in accordance with the procedure established by this Code, taking into account the specific provisions of paragraphs 2 and 4 of this Article.

2. When defining the amount of corporate income tax to be paid to the budget, the amount of corporate income tax computed shall be reduced by 50 per cent in accordance with Article 125 herein.

Reduction of the tax amount stipulated herein also applies to the computation of the prepayment instalments of the corporate income tax defined in Article 126 of this Code.

3. The corporate income tax and prepayment instalments shall be paid in accordance with the procedures and in terms defined in Article 127 of this Code.

4. The following shall be applied to the tax object situated in the territory of special economic zones and used for operations defined in subparagraph (3) of paragraph 1 of Article 140-1 of this Code:

- a) 0 (zero) coefficient to the land tax rate; and
- b) 0 (zero) rate to the annual average cost of tax objects when computing the property tax.

5. The proceeds from sales of services defined in subparagraph (3) of paragraph 1 of Article 140-1 of this Code shall be exempted from the value added tax."

#### **Question 89**

**Even though the Law "On Investments" has been repealed, are there any residual contracts outstanding where preferences are still being provided?**

#### Answer:

In accordance with the Law No. 266-III "On Foreign Investments" of 27 December 1994 (lost effect), Law No. 75-I "On State Support of Direct Investments" of 28 February 1997 (lost effect), and Law No. 373 "On Investments" of 8 January 2003, 435 contracts have been made on tax privileges and preferences (of which 255 are effective today) in the sphere of state support of investments.

Article 23 of the Law "On Investments" stipulates that the privileges granted by the contracts made with the authorized governmental body on investments before the date when this Law came into force shall be effective until the expiration of the term defined in such contracts.

**Question 90**

**Paragraph 149 of Kazakhstan's Factual Summary states that the granting of discount coefficients is not contingent upon export and therefore could not be considered a prohibited export subsidy. However, according to the information provided in Annexes 6 and 7, the tariff reductions provided to producers of sulphuric acid and iron ore products appear to be available only for export transportation. Specifically, it states that, "In order to increase transportation volumes, support local producers, stimulate increase of production volumes the tariffs on export transportation of sulphuric acid [and iron ore products] in tanks of producers in all communications are reduced by 25 per cent." To the extent that these incentives are contingent upon export, they could constitute a prohibited export subsidy under Article 3.1 of the WTO Agreement on Subsidies and Countervailing Measures (Subsidies Agreement).**

**Could you please explain whether the tariff reductions on transportation provided to producers sulphuric acid and iron ore products are contingent upon export? If so, please explain how the GOK plans to eliminate or bring this program into compliance with WTO provisions.**

Answer:

In accordance with the Program on Railway Transport Restructuring for the period 2004-2006 adopted by the Resolution No. 145 of 6 February 2004 the organizational and financial separation of related infrastructure and other functions of the national company "Kazakhstan Temir Zholy" is being currently carried out.

According to Article 4 of the Law No. 272 of 9 July 1998 "On Natural Monopolies" the services of the main railroad network are classified as natural monopolies. Thus, charges applied by the national company "Kazakhstan Temir Zholy" for the use of the main railway infrastructure by other carriers and users remain in the sphere of natural monopolies. In this regard, the tariff rates for services of the main railroad network were firstly established by Order of the Chairman of the Agency of Kazakhstan on Regulation of Natural Monopolies and Protection of Competition No. 242-OD of 25 May 2004 and came into force on 20 July 2004.

Since introducing these tariff rates, charges for services provided by carriers and companies operating in the railway transport sector are established in a competitive market environment.

Rules for Introduction and Discontinuation of Decreasing Coefficients on Tariffs on Regulated Rail Freight" (approved by Order of the Chairman of the Agency of Kazakhstan on Regulation of Natural Monopolies, Protection of Competition and Support of Small Business No. 24-OD of 30 December 1999) were abolished by Order of the Chairman of the Agency of Kazakhstan on Regulation of Natural Monopolies and Protection of Competition No. 337-OD of 5 August 2004. Therefore, all decisions of the Agency on establishing of decreasing coefficients for railway tariffs for transportation of some goods by rail (including sulphurous acid and iron ore products) early made are failed.

In accordance with Article 14-1 of the Law "On Natural Monopolies" the state regulation of natural monopolies also includes establishing of temporary decreasing coefficients. In this regard, Order of the Chairman of the Agency of Kazakhstan on Regulation of Natural Monopolies No. 375-OD of 8 September 2004 approved the Rules for Introduction and Discontinuation of Temporary Decreasing Coefficients on Tariffs (Prices, Rates) for the Services of Main Railroad Network.

A temporary decreasing coefficient can be set according to the estimation of economical effect and expediency of such a measure for the state, main railroad network operator and consumer. Established

decreasing coefficient for transportation of defined goods apply to all consignors of this kind of goods in all communications (including importers, exporters and republican).

A temporary decreasing coefficient could be set only under the following conditions:

1. the declared goods turnover exceeds (keeps the same as) the factual goods turnover in the similar period of the previous year;
2. there is an opportunity to use the idle or low-intensive parts of the main line railway;
3. the sideline products of the industrial production are environmentally hazardous. In this case a temporary decreasing coefficient may be set only provided that the criterion in subparagraph (1) is met;
4. equal tariff conditions for the access to the main line railway services; and
5. social importance of passengers transportation.

To ensure water supply to the southern regions of Kazakhstan during the vegetation period of 2004 under Resolution No. 799 of 29 July 2004 and Rules for Introduction and Discontinuation of Temporary Decreasing Coefficients on Tariffs (Prices, Rates) for Services of the Main Railroad Network No. 375-OD of 8 September 2004, Kazakhstan set temporary decreasing coefficients 0.5 for tariffs for services of the main railroad network for transportation of coal and black oil for export through Lugovoye station, the coal and black oil being exported as compensation for the electric power supplied from the Kyrgyz Republic during the vegetation period of 2004 (Order of Chairman of the Agency of Kazakhstan on Regulation of Natural Monopolies No. 434-OD of 1 November 2004). This measure will be valid until 31 December 2004.

[Kazakhstan confirms that from the date of accession Kazakhstan will apply its internal subsidy policies affecting foreign trade in industrial goods in conformity with the Agreement on Subsidies and Countervailing Measures.]

#### **Question 91**

**Paragraph 150 of the Factual Summary states that the tax exemptions granted under Law No. 75-I "On State Support to Direct Investments" of 28 February 1997 were abolished by Law No. 373-II "On Investments" of 8 January 2003.**

**Could the Government of Kazakhstan please provide the Working Party a copy of Law No. 373-II "On Investments:" of 8 January 2003? Could you please also confirm that Kazakhstan's Law on Investments complies with Members' obligations under the Subsidies Agreement?**

**Please provide the Working Party a copy of Presidential Decree No. 1815 of 16 July 1994, referred to in paragraph 152 of the Factual Summary.**

Answer:

Kazakhstan confirms that the Law "On Investments" does not contradict Article 3 of the WTO Agreement on Subsidies and Countervailing Measures.

The English texts of the requested Laws are available from the Secretariat through document WT/ACC/KAZ/57/Add.1.

### Question 92

**We welcome the information on industrial subsidies provided in various annexes to the Factual Summary. Nevertheless, we encourage Kazakhstan to make one comprehensive subsidy notification for all subsidies granted according to Article 25 of the Agreement on Subsidies and Countervailing Measures.**

Answer:

Kazakhstan has provided members with intermediate information on subsidies during the accession discussions. Kazakhstan will provide a draft notification covering all subsidy programs under the WTO Agreement on Subsidies and Countervailing Measures immediately upon accession.

### Question 93

**Paragraph 148: Can the Government of the Republic of Kazakhstan clarify if the practice of discount co-efficients for the transport of various products is still in effect? The document states that the measure was "introduced only temporarily as it had proved to be economically inefficient", but does not clearly indicate whether the measures are still in effect.**

Answer:

The legal basis for decreasing coefficients on the railway tariffs for transportation of various products, including sulfuric acid and iron ore products in 2002-2003 was the Rules for Introduction and Discontinuation of Decreasing Coefficients on Tariffs on Regulated Rail Freight" (approved by Order of the Chairman of the Agency of Kazakhstan on Regulation of Natural Monopolies, Protection of Competition and Support of Small Business No. 24-OD of 30 December 1999).

In accordance with the Program on Railway Transport Restructuring for the period 2004-2006 adopted by the Resolution No. 145 of 6 February 2004 the organizational and financial separation of related infrastructure and other functions of the national company "Kazakhstan Temir Zholy" is being currently carried out.

Monopolies" the services of the main railroad network are classified as natural monopolies. Thus, charges applied by the national company "Kazakhstan Temir Zholy" for the use of the main railway infrastructure by other carriers and users remain in the sphere of natural monopolies. In this regard, the tariff rates for services of the main railroad network were firstly established by Order of the Chairman of the Agency of Kazakhstan on Regulation of Natural Monopolies and Protection of Competition No. 242-OD of 25 May 2004 and came into force on 20 July 2004.

Since introducing these tariff rates, charges for services provided by carriers and companies operating in the railway transport sector are established in a competitive market environment.

Rules for Introduction and Discontinuation of Decreasing Coefficients on Tariffs on Regulated Rail Freight" (approved by Order of the Chairman of the Agency of Kazakhstan on Regulation of Natural Monopolies, Protection of Competition and Support of Small Business No. 24-OD of 30 September 1999) were abolished by Order of the Chairman of the Agency of Kazakhstan on Regulation of Natural Monopolies and Protection of Competition No. 337-OD of 5 August 2004. Therefore, all decisions of the Agency on establishing of decreasing coefficients for railway tariffs for transportation of some goods by rail (including sulphurous acid and iron ore products) early made are failed.

In accordance with Article 14-1 of the Law "On Natural Monopolies" the state regulation of natural monopolies also includes establishing of temporary decreasing coefficients. In this regard, Order of the Chairman of the Agency of Kazakhstan on Regulation of Natural Monopolies No. 375-OD of 8 September 2004 approved the Rules for Introduction and Discontinuation of Temporary Decreasing Coefficients on Tariffs (Prices, Rates) for the Services of Main Railroad Network.

A temporary decreasing coefficient can be set according to the estimation of economical effect and expediency of such a measure for the state, main railroad network operator and consumer. Established decreasing coefficient for transportation of defined goods apply to all consignors of this kind of goods in all communications (including importers, exporters and republican) .

A temporary decreasing coefficient could be set only under the following conditions:

1. the declared goods turnover exceeds (keeps the same as) the factual goods turnover in the similar period of the previous year;
2. there is an opportunity to use the idle or low-intensive parts of the main line railway;
3. the sideline products of the industrial production are environmentally hazardous. In this case a temporary decreasing coefficient may be set only provided that the criterion in subparagraph (1) is met;
4. equal tariff conditions for the access to the main line railway services; and
5. social importance of passengers transportation.

To ensure water supply to the southern regions of Kazakhstan during the vegetation period of 2004 under Resolution No. 799 of 29 July 2004 and Rules for Introduction and Discontinuation of Temporary Decreasing Coefficients on Tariffs (Prices, Rates) for Services of the Main Railroad Network No. 375-OD of 8 September 2004, Kazakhstan set temporary decreasing coefficients 0.5 for tariffs for services of the main railroad network for transportation of coal and black oil for export through Lugovoye station, the coal and black oil being exported as compensation for the electric power supplied from the Kyrgyz Republic during the vegetation period of 2004 (Order of Chairman of the Agency of Kazakhstan on Regulation of Natural Monopolies No. 434-OD of 1 November 2004). This measure will be valid until 31 December 2004.

[Kazakhstan confirms that from the date of accession Kazakhstan will apply its internal subsidy policies affecting foreign trade in industrial goods in conformity with the Agreement on Subsidies and Countervailing Measures.]

- **Technical barriers to trade**

**Question 94**

**We note the combined enquiry point for TBT and SPS notified in WT/ACC/KAZ/52 and the official publications that supplement its activities.**

**Please confirm that all standards and technical regulations within the meaning of the WTO definition will be provided for review and comment prior to enactment though these publications.**

Answer:

The Enquiry Point was created to provide information to the WTO Members on the existing as well as currently developing drafts of legal acts pertaining to the technical regulations and standards, including sanitary and phytosanitary measures (Article 10 of the Law "On Technical Regulation"), available.

### Question 95

**While we applaud Kazakhstan's efforts to bring its standards and technical regulation system into line with WTO requirements through the provisions of the draft law on Technical Regulations, we also note that little has actually yet been done to address the overhang of requirements that arguably may not be consistent with WTO requirements.**

**Please provide a description of how Kazakhstan intends to proceed to implement the new law. Will mandatory requirement in areas such as telecommunications also be covered by its provisions, e.g., the transparency and due process requirements for establishing a technical regulation?**

Answer:

At present, Kazakhstan is developing a Program on the Development of legal acts in the area of technical regulation (technical orders) and on the Revision of existing legislation in Kazakhstan.

The main criterion of the development of new and revision of existing legislation is the provision of safety for the life and health of people and environment. The main principles stipulated in subparagraphs (4), (5), (7) of paragraph 2 of Article 4 of the Law of the Republic of Kazakhstan "On Technical Regulation", are transparency, the equality of requirements for the national and imported products, and application of international standards as the base in the process of their development.

To implement the Law "On Technical Regulation" in the area of communications, the development of regulatory legal acts on technical regulation is planned. (e.g. "Electromagnetic compatibility").

Communications administration of the Republic of Kazakhstan makes the first steps in this direction. Currently, the budget program is developed, it is aimed to analyze the existing framework of regulatory technical documentation as well as to develop regulatory legal acts on technical regulation and other regulatory-technical documentation.

Research and work on implementation of quality management systems and environmental protection is regularly conducted. This will result in the development of recommendations and methodical guidelines on introduction of such systems in enterprises, communications services providers, in accordance with 9,000 and 14,000 series international standards taking into account local production conditions.

The communications sector will follow the main principles of reforming stipulated in the Law "On Technical Regulation". But for the creation of a transparent structure of legal and regulatory documents, harmonized voluntary standards, as well as for the assurance of higher quality of works (services), it is advisable to create a separate standardization system for the communications sector.

Kazakhstan plans to introduce changes to the Law "On Technical Regulation" pertaining to the exclusion of communications sector from this law, and based on these corrections to make correspondent changes to the Law of the Republic of Kazakhstan "On Communications".

### Question 96

**Document WT/ACC/SPEC/KAZ/8/Rev.1 said "During the next few years, it is planned to divide existing standards into mandatory technical regulations and voluntary standards, and to proceed with harmonization of national technical regulations and standards with international technical regulations and standards."**

**This implicitly establishes a transitional period after Kazakhstan's accession. We oppose such a transitional arrangement and seek Kazakhstan's strong efforts to deal with the problem prior to accession.**

**We welcome any additional information that can be provided on the new legislation and on how Kazakhstan is setting up its TBT regime, including additional information on the scope of publication for prior comment, the operations of the enquiry point in terms of outreach, and its intra-governmental and external (with interested parties) coordination plans.**

Answer:

The analysis of the legal and regulatory framework shows that initially Kazakhstan needs to develop 10 laws in the area of technical regulation (for example, "On Toys Safety", "On Potable Water", "On Industrial Safety", "On Electromagnetic Compatibility", etc), about 100 governmental resolutions, and to make amendments in 30 existing laws ("On Fire Safety", "On Grain", "On Medicine", "On Radiation Safety", "On Transport in the Republic of Kazakhstan", etc).

Besides, Kazakhstan needs to revise about 10,000 normative documents to harmonize them with international standards.

By 2004, Kazakhstan has developed 627 state standards, 14 per cent of which are harmonized with international standards. By December, 2004, the number of developed standards has exceeded 1,000, of which 25 per cent are harmonized. Please, find the list of harmonized state standards attached in Annex 7.

#### **Question 97**

**What provision has been made to accept test results from reputable bodies not located in Kazakhstan?**

Answer:

The Law "On Technical Regulation" provides for the recognition of the following documents in accordance with international agreements:

- conformity certificates issued in foreign countries, products testing certificates, compliance marks (Article 33, paragraph 1); and
- accreditation certificates or equivalent documents issued by foreign accreditation bodies (Article 36, paragraph 4).

In the absence of international agreements, the testing results issued by an authority beyond of Kazakhstan can be recognized only through accreditation of this body in the national accreditation system of the Republic of Kazakhstan in accordance with Article 6.1 of the WTO Agreement on Technical Barriers in Trade.

#### **Question 98**

**We look forward to reviewing the new legislation and regulations.**

Answer:

On 9 November 2004, President of the Republic of Kazakhstan signed the Law of the Republic of Kazakhstan "On Technical Regulation", which will take force in six months after signing.

The Law of the Republic of Kazakhstan "On Technical Regulation" of 9 November 2004 provides the establishments of compulsory requirements at the level of regulatory legal acts (technical regulations) adopted by the Government or Parliament.

Regulatory legal acts on technical regulation will contain compulsory requirements concerning only the protection of human life and health, plants, animals, and environment, as well as prevention of actions misleading consumers, whereas the standards requirements will be in a voluntary manner.

Provisions of the law aim to meet the following principles based on provisions of the WTO Agreement on TBT.

- Non-discrimination and national treatment

The main principles of technical regulation stipulate that the requirements to products of national origin and imported products as well to the procedures for their conformity assessment shall be equal (subparagraph 4 of paragraph 2 of Article 4) as well as there must be a single system and uniform rules on conformity recognition (subparagraph 9 of paragraph 2 of Article 4).

The requirements provided in the regulatory legal acts on technical regulation (technical regulations) are set and applied equally regardless of the country and/or place of origin of the products (paragraph 3 of Article 17).

- Transparency and availability

Official information on pending and adopted regulatory legal acts pertaining to technical regulations, state, national, international and regional standards and classifiers of technical-economic information and recommendations on standardizing as well as the mentioned documents shall be available to the users (paragraph 2 of Article 15).

Legal acts in the area of technical regulations, standards and information on their development, approval and publication shall also be available for users (subparagraph 7 of paragraph 2 of Article 4).

The Enquiry Point (paragraph 1 of Article 10) is created for interaction with the Secretariat of the World Trade Organization, WTO Members, and international organizations to provide parties and foreign countries involved with copies of documents and information on technical regulations, standards, and procedures upon their request.

The Law provides for publication of notifications in official media and public information system on the development of draft changes in and/or addenda to or elimination of a technical regulation within one month from the beginning of such development, changes in and/or addenda to or elimination of a technical regulation. Also the Law provides for public discussion of the draft and its further development based on received comments, submission of received comments on the draft technical regulation to the parties involved (paragraph 4 of Article 18).

The draft legal act on technical regulation shall be available for the parties involved from the moment of publication of the notification on its development (paragraph 6 of Article 19).

The term for public discussion of the draft legislation on technical regulation shall be no less than sixty calendar days (from the day of the notification publication on its development till the day of the notification publication on completion of the public discussion) (paragraph 8 of Article 19).

- Application of international and regional standards



The Law provides for application of international and regional standards as the basis for the legal acts on technical regulations (subparagraph 5 of paragraph 2 of Article 4 and paragraph 4 of Article 17), as well as for the full or partial development of standards, except for the cases when such standards are inefficient or unsuitable for the security concerns (paragraph 4 of Article 21).

International and regional standards and normative documents on standardization shall be applied in Kazakhstan equally and to the same extent as the state standards and normative documents of the Republic of Kazakhstan on standardization (paragraph 6 of Article 24).

If the requirements set by the technical regulations fail to meet the requirements of corresponding international standards or if there are no correspondent international standards, or the requirements set by such technical regulations may impact the goods export-import conditions in Kazakhstan, the governmental body developing the draft of the technical regulation shall notify on the list of products to be excluded from the mentioned technical regulation, on its purpose and the necessity of development, as well as provide the parties and foreign countries involved with detailed information on the technical regulation under development or with a copy of such upon their request, specifying the provisions that fail to meet the requirements of international standards.

The Law also provides for participation in international and regional organizations on standardization and accreditation, in mutual recognition of conformity assessment results (subparagraph 7 of Article 7).

- Elimination of technical barriers to trade

The requirements set by the technical regulations shall not create barriers for entrepreneurial activities to the extent more than for the security concerns (paragraph 5 of Article 17).

Technical regulations set the minimal necessary requirements considering the level of damaging risk to ensure the safety of products and processes (paragraph 1 of Article 18).

In case of non-compliance of the legal act on technical regulation with the international agreements ratified by the Republic of Kazakhstan, the authorized body shall start the procedure of elimination or amendment into such a technical regulation (paragraph 6 of Article 17).

The state standards shall be applied voluntarily to the equal extent regardless of the place of origin of the goods or service (paragraph 6 of Article 21).

**Question 99**

**Document WT/ACC/KAZ/54: We welcome the steps taken by Kazakhstan to significantly reduce the length of the originally requested transitional period for compliance with the provisions of the Agreement on Technical Barriers to Trade. Could Kazakhstan confirm that all measures foreseen in document WT/ACC/KAZ/54 indeed refer to the year 2004 only (as the title of the document refers to the years 2004-2006)?**

Answer:

The measures listed in document WT/ACC/KAZ/54 refer to the period of 2004-2006.

On 9 November 2004, the President of the Republic of Kazakhstan signed the Law of the Republic of Kazakhstan "On Technical Regulation", which will come into force in six months from the moment of signing.

Currently, Kazakhstan is developing the Draft Program on the development of necessary technical laws and governmental resolutions. According to this Program, there will be developed ten new laws (for example, "On Toys Safety", "On Potable Water", "On Industrial Safety", "On Electromagnetic Compatibility", etc) will be developed and changes will be made in 30 existing laws ("On Fire Safety", "On Grain", "On Medicine", "On Radiation Safety", "On Transport in the Republic of Kazakhstan", etc).

#### **Question 100**

**Paragraph 159: Our economic operators, in particular exporting pharmaceuticals to Kazakhstan, are experiencing problems regarding the functioning of the mandatory certification system. The procedure of conformity assessment, which has to be completed by Kazakhstan's accredited bodies, is applied for every consignment, even in cases of multiple imports of identical products and irrespectively of the possession of internationally recognized certificates. The procedure of conformity assessment takes on average 21 days and goods which are subject of mandatory certification have to be placed in customs warehouses for temporary storage during this period. Such goods may not pass customs clearance without first obtaining a certificate of conformity issued by Kazakhstan's certification institution. This process is time consuming and a costly measure which seriously distorts trade and is not compatible with the TBT Agreement.**

Answer:

Internationally recognized certificates are not existent.

Mutual recognition of the conformity certificates can be accepted on the basis of signing agreements (multilateral or bilateral) or in the case when such certificate was issued by a certification body accredited in the national certification system confirming the conformity of the mentioned imported product. This is the framework for the mutual recognition of the conformity certificates in all countries, which conforms to the provisions of Article 6.1 of the Agreement on TBT.

At present Kazakhstan has a multilateral agreement on the mutual recognition of conformity certificates only with the CIS countries.

So far Kazakhstan has no bilateral and multilateral agreements on recognition of the conformity certificates for the imported and exported products with other foreign countries, but if any country initiates such an agreement Kazakhstan is willing to make these agreements.

Kazakhstan has the single procedure of conformity confirmation for the national and imported products (ST RK No. 3.4-2003 "State Certification System of the Republic of Kazakhstan. The Procedure for Product Conformity Confirmation. General Requirements"), which provides for several modules of conformity confirmation, including the analysis of the production conditions for the goods sold by more than one consignment. If the certification body accredited in the national certification system of the Republic of Kazakhstan makes all the mentioned procedures for the conformity confirmation, the goods imported to Kazakhstan will have the conformity certificate recognized in the Republic of Kazakhstan. In this case there will be no need to certify each consignment of goods.

#### **Question 101**

**Could Kazakhstan provide further clarification of the mandatory certification procedure applicable to imported goods.**

Answer:

The products (goods) imported to the Republic of Kazakhstan and subject to compulsory certification shall be customs cleared in the body that makes the customs arrangement.

Besides documents necessary for the customs control, the certificate of conformity of the Republic of Kazakhstan is the basis for customs treatment of the imported product.

The certification body certifies the conformity of the imported products as follows:

- by recognizing the certificate if Kazakhstan has multilateral or bilateral agreements on mutual recognition of the conformity certification results, or if the certificate was issued by the certification body accredited in the National Certification System of the Republic of Kazakhstan; and
- by certifying the consignment of goods.

The Republic of Kazakhstan has the same rules and procedures for the certification of both imported and local goods.

**Question 102**

**Is the right granted to producers to confirm the conformity of products by declaration (according the amendments of Law No. 431-1 "On Certification") applicable for imported goods as well? If not, how can this kind of discrimination be justified in view of Article III of the GATT 1994?**

Answer:

The Law of the Republic of Kazakhstan "On Certification" allows the importer himself to confirm the conformity of products (goods), subject to compulsory certification according to the safety requirements, by declaring the conformity if the imported products are included into the "List of Products Permitted to be confirmed by the Conformity Declaration" approved by the Governmental Resolution No. 77 of 22 January 2003.

This list includes: (i) communication means (electric telephones, coin telephones, fax machines, trunk and cellular communication transmitting equipment, radio and telegraph communication transmitting equipment); (ii) medical items (first-aid kits); (iii) consumer goods contacting with human skin (rubber masks for diving, swimming caps, rubber hot-water bags, oilcloth); (iv) equipment for potentially hazardous productions (steel wire ropes); (v) construction materials (acoustic, heat insulation materials and double-glazed window panes); (vi) packing material (metal caps for glass containers); (vii) light industry products (cloths, footwear); (viii) woodworking industry products (matches, furniture).

**Question 103**

**Does Kazakhstan require additional certification for products which have been certified as safe for human use and consumption by internationally recognized bodies? Could Kazakhstan provide information concerning international conformity assessment bodies whose certificates are recognized by Kazakhstan.**

Answer:

Certificates of conformity issued in other countries can be mutually recognized under bilateral or multilateral international agreements through accreditation of the exporting countries' certification bodies in the national certification systems of the importing countries. This meets the provisions of paragraph 6.1 of the Agreement on TBT.

At present Kazakhstan only has the agreement on the mutual recognition of conformity certificates with the CIS countries.

Kazakhstan is open for the dialogue with countries willing to make an agreement on mutual recognition of certificates.

Kazakhstan has the single procedure of conformity certification for the national and foreign organizations that may want to be accredited as the certification bodies.

- **Sanitary and phytosanitary measures**

**Question 104**

**Paragraph 168: Please detail the registration process for new, potentially hazardous substances.**

Answer:

Potentially hazardous substances are such substances that can have a harmful effect on the human health or health of future generations in certain conditions and in certain concentrations. The sanitary rules and hygienic standards regulate the application and use of potentially hazardous substances.

Article 16 of the law of the Republic of Kazakhstan "On Sanitary-Epidemiological Safety of Population" provides that the new substances or substances introduced for the first time and which have never been used before as well as materials and medicines from them are subject to the state registration if they are potentially hazardous for people.

The state registration of the mentioned substances and certain kinds of products potentially hazardous for people shall be based on the following:

- expert assessment of how hazardous the substances and certain products are for people and environment;
- assessment of conformity of for the content of substances and individual components of products to the sanitary rules and hygienic standards; and
- development of special measures, including the conditions for utilization and liquidation of substances and certain kinds of products, to prevent their harmful effect on people and environment.

The state registration of substances and certain kinds of products potentially hazardous for people shall be made in accordance with the procedure established by the authorized body on sanitary and epidemiological safety of population.

Pesticides agents registered in the Register of Potentially Hazardous Substances shall not be registered in Kazakhstan. The pesticides included into the "List of Pesticides Prohibited from Application on the Territory of the Republic of Kazakhstan" approved by Governmental Resolution No. 439 dated 15 April 1996 shall not be registered too.

The "List of Pesticides (Chemical Insecticides) Allowed for Application in the Territory of the Republic of Kazakhstan for 2003-2012" shall include officially registered pesticides after registration and production tests made by research and other organizations of Kazakhstan and if supported with the tests documents approved by executives of oblast territorial administrations of the Ministry of Agriculture in accordance with "Rules on Making Registration Tests and State Registration of Pesticides (Chemical Insecticides) in the Republic of Kazakhstan" approved by Ordinance of Ministry of Agriculture No. 432 of 26 December 2002.

The registration tests of pesticides are necessary to develop and test the regulations on their application (use) ensuring the efficiency and safety for the health of people and environment. Production tests are the final phase of pesticides testing and are necessary to check and confirm the stability of biological and economical efficiency of recommended registered rates of application of the substance in production. The period of registration and production tests is 2-3 years.

Applications for registration tests of pesticides with especially toxic agents as well as prohibited pesticides shall be refused.

### Question 105

**Paragraph 170: Kazakhstan indicates that its veterinary service would inform the relevant countries of all newly introduced or lifted restrictions (bans) through their embassies in Kazakhstan. Is this the only method of communication the veterinary service has? Are newly introduced restriction open for comment first?**

#### Answer:

Kazakhstan has been cooperating with the countries in the framework of the membership in the International Epizootic Bureau (IEB) since 1993.

In accordance with Article 1.1.3.2 of the International Veterinary Code, Kazakhstan shares any information with the IEB Members necessary to exclude the spread of animal and birds diseases, as well as to efficiently prevent such diseases.

Also, in accordance with the above-mentioned Article of the Code, when the internationally available data is insufficient, the importing country may directly request either the exporting country or the IEB for additional information.

In this view, the veterinary service of Kazakhstan, first of all, notifies the IEB Central Office on the veterinary-sanitary status of its territory as to the List A diseases and veterinary measures taken.

Kazakhstan introduces restrictions based on information about especially dangerous diseases revealed in any country including the information received from IEB and other countries, not violating Article 5.7 of the SPS Agreement. Kazakhstan publishes information on the temporary restrictions on the website of the Ministry of Agriculture ([www.minagri.kz](http://www.minagri.kz)) and also notifies the restricted country through its veterinary services.

Moreover, in July 2004 by the joint Order of Ministers of Industry and Trade, Health, and Agriculture the Single Enquiry Point on TBT/SPS was created. The Enquiry Point's functions include notification of the WTO Members on currently applied SPS measures and measures in the process of development.

Notifications on temporary restrictions as on all other SPS measures will be sent in accordance with the standard of Kazakhstan "Rules and Procedures for Preparation of Notifications on Pending (Being

Adopted) Technical Regulations and Standards", which was developed by the guidelines of the WTO Secretariat (document G/SPS/7).

### Question 106

**Paragraph 171: Please provide a detailed list by HS Code and product description, which are subject to veterinary control. Kazakhstan notes that products may be denied permits with written justification. What, if any, appeal process exists if a product is denied? What is the process for applying for an import permit?**

Answer:

Article 20 of the Law "On Veterinary" provides that the cargo subject to the state veterinary control transported across the national border of Kazakhstan must undergo the state veterinary control.

Importation into the territory of Kazakhstan and transit of cargo subject to the state veterinary control from other countries is allowed if it is safe in epizootic terms and is compliant with the veterinary (veterinary-sanitary) rules established by the authorized state body in the area of veterinary. The state veterinary control shall be confirmed with a veterinary certificate or veterinary evidence.

Importation, export and transit of goods subject to the state veterinary control shall be conducted in accordance with the evaluation of epizootic situation in the corresponding area.

Prior to concluding an agreement on export, import and transit of goods subject to the state veterinary control, the person or legal entity has the right to obtain information on the epizootic situation in the country of export, import and transit, on veterinary (veterinary-sanitary) rules preventing importation and export of animal diseases pathogens from the authorized governmental body on veterinary and its territorial subdivisions. Confidential information shall not be divulged without the consent in writing of the owner of the goods subject to the state veterinary control.

Article 4 of "Rules On the Conduct of State Veterinary Control of Goods Subject to the State Veterinary Control and Crossing the National Border of the Republic of Kazakhstan" approved by Governmental Resolution No. 407 of 28 April 2003 provides that the permission for importation of goods subject to the control shall be issued upon application of the freight owner in writing to oblast (city) territorial subdivision of the authorized body. He should specify the name and characteristics of the goods, the country of origin, importation purpose, type of transport, route, the place of crossing the national border, including CIS countries and Kazakhstan, places for storage, quarantining, processing, sale period and other information in the original with compulsory translation into the national or Russian language.

Oblast (city) territorial subdivision of the authorized body shall consider (within 15 days) the principle possibility (conditions of processing, sale, and storage) of importation of the goods into the territory of its region. If the resolution is positive, the body provides the freight owner with veterinary (veterinary-sanitary) requirements to the specific type of goods and requests the authorized body in writing to issue the importation permission.

The authorized body shall either issue the importation permission or send justified refuse in writing within five working days.

A veterinary inspector of the frontier station checks the veterinary certificate, the permission from the authorized body, the freight name, weight, packaging, number of submitted documents, transportation conditions, and gives the veterinary certificate instead of the foreign veterinary certificate. Line "Special Notes" of the veterinary certificate shall have the number and date of the authorized body's

permission and the procedure for the use of the freight under control (free sales, long-term storage or processing). At the same time the veterinary inspector of the frontier station reports on passing the freight under control and its final destination to the corresponding territorial subdivision of the state veterinary control on frontier and transport.

In accordance with paragraph 2 of Article 17 of the Law "On Veterinary", persons and legal entities can appeal to the higher state veterinary control bodies and/or to the court to claim veterinary inspectors' actions or inaction (dereliction).

Please, find attached in Annex 8 the list of FEA PN nomenclature codes and descriptions of the goods subject to the veterinary control.

### **Question 107**

**Paragraph 177: We would like to reiterate that a seven-year transitional period for SPS measures is unacceptable. It appears that there is new legislation in the pipeline, and that Kazakhstan is retaining its request for a transition, now shortened. We remain unconvinced that this is in anyway necessary, but look forward to the new legislation and action plan that should help in addressing our concerns.**

**We urge Kazakhstan to keep working to avoid the need to have a transition in this area. We seek SPS legislation from Kazakhstan that provides for transparent, science-based regulations on all issues concerning sanitary and phytosanitary regulations"**

**Kazakhstan should apply the Agreement on SPS from the date of accession.**

### Answer:

On 8 April 2004, the Law of the Republic of Kazakhstan No. 543-II "On Quality and Security of Food Products" was adopted. It regulates relations in the area of quality and security provision for the food products to ensure health of population and environment during the process of food products development and turnover on the territory of the Republic of Kazakhstan (text of the Law is available from the Secretariat through document WT/ACC/KAZ/57/Add.1).

The Law provides for responsibility for production or importation of food products, materials and goods to Kazakhstan without the state registration.

The Law has general requirements to the exported and imported products, to food products, materials and goods quality and safety assurance, to packaging, marking, production control, assessment procedures and confirmation of their conformity to the requirements of standards and other documents.

The Law distributes the requirements to the food products, materials and goods quality and safety assurance stipulated in Articles 11, 12, 13, 14, 15, 16, 17, 18 and 19 among the specific governmental bodies with control and supervision functions.

In accordance with Article 9 of this Law, the authorised governmental bodies on sanitary-epidemiological safety of population, veterinary, phytosanitary supervision, and the authorized body on standardization, metrology, and certification shall make the state control and supervision of the food products quality and safety within their competency defined by the laws of the Republic of Kazakhstan.

In accordance with Article 5 of this Law the governmental bodies with control and supervision functions shall provide persons and legal entities with information on the following within their competency:

- food products, materials and goods quality and safety;
- regulatory documents setting forth requirements to the food products, materials and goods quality and safety;
- state registration of food products, materials and goods;
- confirmation of conformity of food products, materials and goods to the requirements of regulatory documents; and
- measures to prevent selling low-quality and dangerous food products, materials and goods.

On the whole, the Law provides the norms regulating the general principles on ensuring the transparency and equivalence of the sanitary measures pertaining both to the imported and exported products.

For harmonization of the existing system with the requirements of the WTO Agreement on the Application of SPS measures, Kazakhstan has developed the Plan of Action of the Republic of Kazakhstan to Bring the Existing Sanitary-Epidemiological Welfare, Veterinary and Plants Quarantine System in Conformity with the Provisions of the WTO Agreement on the Application of SPS Measures in 2004-2006.

This Plan of Action provides for some changes in the legal and standards-regulatory framework, harmonization of the existing standards with the international standards, upgrading the material and technical basis of veterinary and quarantine laboratories, as well as training specialists in SPS measures.

However, the scheduled measures cannot completely solve the technical problems, such as the need to upgrade the material and technical basis of veterinary and quarantine laboratories.

The need to harmonize the existing system with the requirements of the Agreement on SPS measures requires attraction of technical assistance to Kazakhstan in the form of equipment and training of human resources (Kazakhstan is willing to provide the list of necessary equipment).

In spite of all preventive veterinary measures taken by the schedule, the epizootic situation with certain animal diseases, especially the diseases common for animals and human, is still complicated. As of 1 November 2004, there were registered 48 cases of the rabies, 2 cases of charbon, and 10 cases of emphysematous carbuncle of cattle in Kazakhstan. The brucellosis and tuberculosis prevalence among humans and animals tends to grow.

The main reason of the existing situation with the above diseases is the absence of efficient epizootic monitoring, insufficient sensitivity of the diagnostics methods employed in veterinary laboratories. In accordance with the requirements of the International Epizootic Bureau, in international trading with animals and animal products the countries shall widely use the following molecular-genetic and immunochemical diagnostics methods for the imperative and alternative tests: polymerase chain reaction, immune-enzyme analysis, and spectrophotometric methods. At that, it should be noted that many especially dangerous animal diseases are feral nidal infections, i.e. the pathogen either circulates in the animal organism or stays in the soil or other environmental objects for a long time (up to 100 years). To break the epizootic chain of infection and efficiently reveal the pathogens in animal organisms and environmental objects, the veterinary laboratories need modern equipment and diagnostic tools. Unfortunately, at present the material and technical basis of veterinary laboratories does not allow them making mass researches on the animal infections epizootic monitoring.



In 2004, the work on the project of the World Bank "Enhancement of the Agricultural Products Competitiveness" Project has begun. One of the project components covers the quality management and agricultural product safety assurance. The project is supposed to be implemented in five years (2005-2009).

This project considers creating the National Referent Laboratories on veterinary and plants protection for the adaptation of the national quality management and agricultural products safety assurance system to the international requirements of the International Epizootic Bureau, International Convention for Plants Protection, and Codex Alimentarius Commission.

During 2005, the project design of the laboratory is planned. Construction of the laboratory building is planned for 2006. In 2007, the laboratory will be provided with the equipment for referent tests (gas chromatography, liquid chromatography, mass-spectrometry, atomic absorptiometry, etc).

Provision of the veterinary laboratories and plants protection laboratories at oblast and rayon level with modern highly sensitive equipment according to the requirements of the international standards and regulations is also planned.

Within the framework of the project, advanced training of the specialists on modern methods of laboratory diagnostics in international research centres is considered (plants protection: herbology, phytopathology; veterinary: toxicology, microbiology and virology).

Starting from 2004, identification (labelling and passport system) of agricultural animals is held in Kazakhstan. A legal framework has been created for this issue. Identification of agricultural animals in the regions of Kazakhstan has been mostly completed.

Identification of agricultural animals allowed to improve the monitoring of cattle movement, application of veterinary, preventive and diagnostic measures, and epizootic monitoring of contagious animal diseases.

At the same time, the absence of a single enquiry point does not allow to fully use the possibilities of animals identification to bring the epizootic monitoring to the new level in accordance with the requirements of the Agreement on SPS measures.

Kazakhstan needs technical assistance for creation of a single database to keep account of the livestock population, organization of its regional branches, training of veterinary inspectors in animal diseases monitoring and diagnostics.

The Ministry of Health developed the draft law "On Amendments and Addenda to the Law of the Republic of Kazakhstan "On Sanitary Epidemiological Welfare of Population" in accordance with the resolution of IMC.

The draft law considers the following as the additional objectives and principles of ensuring the sanitary epidemiological welfare of population: (i) application of sanitary measures that do not discriminate countries with identical or similar conditions, including the territorial differences, and which are not hidden limitations on international trade; (ii) uniform requirements to products made in the Republic of Kazakhstan and imported products if they keep the proper level of sanitary epidemiological welfare of population in the Republic of Kazakhstan.

The state sanitary epidemiological regulation will undergo further development (revision), examination, harmonization of documents of the state sanitary epidemiological regulation system, also taking into account the requirements of international standards, approval, publishing and distribution of copies thereof.

Harmonization of the national sanitary measures will take into account the geographic and ecological conditions and the efficiency of the state sanitary epidemiological supervision in the Republic of Kazakhstan. The sanitary regulations and standards will be based on the evaluation of the risk to the life and health of people, taking into account the risk evaluation methods developed by the national and international organizations.

Moreover, the Government plans making amendments and addenda to the laws on plants quarantine and veterinary so as to complete harmonize them with the Agreement on SPS measures.

Kazakhstan requests four year transitional period from the moment of accession to the WTO to bring the national legislation in the area of sanitary and phytosanitary measures in full compliance with the provision of WTO agreement on SPS measures.

#### **Question 108**

**Document WT/ACC/KAZ/53: We welcome the steps taken by Kazakhstan to significantly reduce the length of the originally requested transitional period for compliance with the provisions of the Agreement on Sanitary and Phytosanitary Measures and take note of Kazakhstan's intention to complete the process of achieving compliance with the SPS Agreement by the end of 2006. Does Kazakhstan consider this timeframe to be a transitional period or to precede or coincide with accession to the WTO?**

Answer:

For the harmonization of the existing system with the requirements of the WTO Agreement on the Application of SPS measures, Kazakhstan has developed the Plan of Action of the Republic of Kazakhstan to Bring the Existing Sanitary-Epidemiological Welfare, Veterinary and Plants Quarantine System in Conformity with the Provisions of the WTO Agreement on the Application of SPS Measures in 2004-2006.

This Plan of Action provides for some changes in the legal and standards-regulatory framework, harmonization of the existing standards with the international standards, upgrading the material and technical basis of veterinary and quarantine laboratories, as well as training specialists in SPS measures.

However, the scheduled measures cannot completely solve the technical problems such as the need to upgrade the material and technical basis of veterinary and quarantine laboratories.

The need to harmonize the existing system with the requirements of the Agreement on SPS measures requires involvement of technical assistance to Kazakhstan in the form of equipment and training of human resources (Kazakhstan is willing to provide the list of necessary equipment).

- **Trade-related investment measures**

#### **Question 109**

**The response to Question 28 of document WT/ACC/KAZ/50 states that the Governmental Resolution of the Republic of Kazakhstan "On Approval of Rules of purchasing of goods, services and works for oil operations" requires the use of domestically produced products and services provided that they meet the standards and other requirements, as a result of the bidding process.**

**This would appear to be inconsistent with the WTO Agreement on Trade related Investment Measures (TRIMs). We would appreciate knowing what Kazakhstan will do to bring this measure into conformity with its WTO obligations.**

**We appreciate the explanation provided in the Factual Summary (paragraph 179) regarding Kazakhstan's Law "Concerning the Subsurface and its Utilisation" of 27 January 1996 and the Law "On Oil" of 28 June 1995. However, this legislation, which requires the use of domestically produced products and services, still appears to constitute prohibited subsidies under Article 3.1 of the WTO Subsidies Agreement. Therefore, we would again ask Kazakhstan to provide information regarding their plans to eliminate or bring this program into compliance with WTO provisions.**

Answer:

The use of Kazakh goods and services in implementation of investment projects in subsurface utilization is not a privilege and is granted no tax abatements.

Earlier (in 1999), with the purpose to protect national manufacturers the legislation was changed requiring purchasing goods and services of national origin if they meet the standards and other requirements.

This provision is of no principle concern to the mineral resource industry (subsurface users), because this concerns the mechanical engineering, food and other processing industries' products as well as design institutions and service providers, including transport, communication and other companies.

The absence of governmental regulation in this sector resulted in the fact that all investors having contracts on exploration and extraction of mineral resources in Kazakhstan used to prefer complete autonomy in purchasing equipment, services and goods. They used to use services and products of their (foreign) manufacturers and affiliated companies, which significantly infringed upon the interests of Kazakhstan, impairing the utilization of the national economy's industries even when the necessary goods and services were manufactured and could be purchased in Kazakhstan. Support of the national manufacturer is one of the main work directions of the Government of the Republic of Kazakhstan.

The commitment to bring the laws of Kazakhstan in compliance with the provisions of the WTO Agreement on TRIMs shall be implemented within an agreed transitional period after the accession of Kazakhstan to the WTO.

This measure first of all solves the problem with unemployment of able-bodied citizens and the problem with placing orders with local manufacturers, which will boost the gross domestic product, i.e. improves the economic indices, increases the revenues to the budget from taxation.

During the requested transitional period Kazakhstan will take measures to bring the laws on compulsory use of national goods and services in the subsurface utilization operations in compliance with the WTO Agreements. However, at present Kazakhstan only begins forming and developing a number of economy sectors, which it virtually lacks. Being new productions, these industries need support. Besides, the new industries' goods and services cannot be competitive in the first time, especially in the absence of their internationally accepted and recognized counterparts.

#### **Question 110**

**Furthermore, please also provide information regarding the newly launched industrial innovation program for the period of 2003-2015 (see paragraph 180 of the Factual Summary).**

**This program also appears to be a prohibited export subsidy to the extent that it provides preferences to local producers and service suppliers.**

**Please provide information regarding Kazakhstan's industrial innovation program for the period of 2003-2015, including the program's legislative authority. In particular, please provide information regarding the types of preferences provided to local producers and service suppliers under this program. Please also provide information regarding the industries receiving benefits under this program.**

**Could you please explain whether firms receive incentives under this program, which are contingent upon using domestically produced equipment, supplies, and services in their operations? If so, please explain how the GOK plans to eliminate or bring this program into compliance with WTO provisions.**

Answer:

The main goal of the Strategy on Industrial Innovation Development of the Republic of Kazakhstan for the period of 2003-2015 (hereinafter referred to as the Strategy) approved by Presidential Decree No. 1096 of 17 May 2003 is to achieve the steady development of the country by economy diversification, assisting in diversion from the raw materials oriented economy, and to prepare the environment for the long-term transition to the service and technology oriented economy.

The Strategy provides for application of no prohibited export subsidies and preferences to the local manufacturers and service providers by the Government of the Republic of Kazakhstan.

Moreover, integration of Kazakhstan into the world economy is one of the main objectives of the Strategy on economic development of Kazakhstan for the period of up to 2015.

#### **Question 111**

**According to Kazakhstan's reply to Question 166 in Document WT/ACC/KAZ/50, the Draft Law "On Production Sharing Agreements" has entered into force.**

**Please provide the Working Party a copy of this legislation.**

**Could you please also explain whether this legislation provides benefits to producers contingent on the use of domestic over imported goods. If so, please explain how this legislation conforms with Members' obligations under Article 3.1 of the Subsidies Agreement.**

**We seek a commitment from Kazakhstan that from the date of accession it will not have measures in place or operating that are in conflict with the WTO Agreement on TRIMs.**

Answer:

The draft law "On Production Sharing Agreement in Offshore Oil Operations" has been submitted by the Government Resolution No. 969 of 16 September 2004 to the Parliament of Kazakhstan for approval. Currently it is being reviewed in the Parliament, and therefore, does not have any legal force yet.

#### **Question 112**

**Paragraph 180: Generally, in order to assess whether any transitional period could be accorded, Kazakhstan will have to justify the need very carefully with a detailed Action Plan,**

**specifying each step to be taken, and the timeframe within which it will be accomplished. When does Kazakhstan think this Action Plan will be available? Please also provide further information on the planned steps to improve the inconsistent provisions of the implementing regulations mentioned.**

Answer:

Kazakhstan needs a transition period for measures to bring the legislation in line with the WTO provisions. In the sector of subsurface resources use it is advisable to grant a transition for the period up to 2010, when the Governmental Program on Exploration of Kazakh Sector of the Caspian Sea will be logically completed and all subsurface resources users will have stable economical relations with Kazakh goods manufacturers.

- **State-trading entities**

### **Question 113**

**This section is woefully inadequate. We would like to see information on the large State companies and facilities that engage in trade on behalf of the government, that have monopoly positions in Kazakhstan, and/or that have close relationships to the Ministries. In this regard, the firms notified in WT/ACC/KAZ/51 should be described.**

**We will require a strong commitment in this section to ensure that Kazakhstan's state owned firms are operated within WTO provisions and on a commercial basis.**

Answer:

Besides the companies listed in document WT/ACC/KAZ/51, there are a number of companies producing industrial products, with the state share in the charter capital.

However, those companies are not involved in the export-import operations and, therefore, are not funded by the national budget for this purpose. In this view Article XVII of GATT does not apply to them.

Annex II to document WT/ACC/SPEC/KAZ/8/Rev.1 has the list of all state owned companies and companies with the state share in their capital.

- **Free zones, special economic areas**

### **Question 114**

**Kazakhstan's Free zones are authorized by legislation that contains provisions for granting special benefits contingent on export orientation and/or import substitution of enterprises. This violates both the WTO Agreement on Subsidies and Countervailing Measures and TRIMs.**

**The provisions mandating exports should be eliminated.**

**We seek a commitment from Kazakhstan that, from the date of accession, Kazakhstan would ensure enforcement of its WTO obligations in free zones existing or established within its territory, including the prohibition of TRIMs or subsidies contingent in law or in fact on local content or export performance. In addition, goods produced in the free zones under tax and tariff provisions that exempted imports and imported inputs from tariffs and certain taxes**

**would be subject to normal customs formalities when entering the rest of Kazakhstan, including the application of tariffs and taxes**

Answer:

The existing laws on SEZ have no provisions on privileges contingent in law or in fact on export of goods and services.

The Tax Code provides for taxation privileges in the territory of the SEZ in the view of the SEZ mission (encourage and boost the development of the left bank of Ishim River by drawing investments and cutting-edge technologies into construction, creation of the modern infrastructure for the capital; creation of new productions for exploration of Kazakhstan's offshore sector of the Caspian Sea; development of scientific and innovation activities), aiming to encourage development of productions in the territories of the said SEZs, which are institutionally oriented to the domestic consumption in Kazakhstan.

Among the objectives of SEZ creation Presidential Decrees on creation of corresponding zones use the term of "export oriented production".

However, the term "export oriented" does not mean the fact of export of goods and services as a condition for the privileged taxation. This description means creating production of goods and services that can be potentially exported. The latter means that the goods or services have the functions, quality and other parameters, which will make the product competitive in the world market.

Therefore, term "export oriented" is a general characteristic of production and obtaining this status is not related with the export of goods and services.

#### **Question 115**

**Paragraph 183: Could Kazakhstan provide a copy of the Law on "Changes and Amendments to Legislative Acts on the Special Economic Zones" of 5 July 2001 to the Working Party?**

Answer:

The English text of the requested Law is available from the Secretariat through document WT/ACC/KAZ/57/Add.1.

- **Government procurement**

#### **Question 116**

**We seek a commitment from Kazakhstan that it will initiate negotiations for membership in the Agreement on Government Procurement by tabling an entity offer immediately after its accession to the WTO.**

Answer:

Kazakhstan will consider accession to the WTO Agreement on Government Procurement after its accession to the WTO.

### Question 117

**Paragraph 191: We welcome the fact that Kazakhstan is considering accession to the WTO Agreement on Government Procurement following accession to the WTO. We suggest Kazakhstan that becomes an observer to the GPA upon accession to the WTO and submits an application for membership together with a coverage offer one year after.**

Answer:

Kazakhstan will consider accession to the WTO Agreement on Government Procurement after its accession to the WTO.

- **Transit**

### Question 118

**Paragraph 194: We note that transportation costs for goods in transit do not benefit from the same decreasing coefficients provided to domestic transport.**

Answer:

For international transit transportation of goods by railway the Republic of Kazakhstan applies the Tariff Policy of the Railway of Kazakhstan on International Transportation of Goods for the freight year, which is annually coordinated and approved at the annual Tariff Conferences held in the framework of the Tariff Agreement of the Railway Administrations (Carriers) of the CIS Countries made on 17 February 1993.

The rates of the Tariff Policy for the freight year are based on the International Transit Tariffs (ITT) and Uniform Transit Tariff (UTT), to which the railway of Kazakhstan is a party.

The rates declared by the CIS railways in the Tariff Policy define the maximal tariff rate for the freight year.

In accordance with the Concept on Tariff Policy Coordination for the CIS Members' Railway Transport approved by resolution of the CIS Governments Council on 18 October 1996, "...every railway administration has the right to lower the declared tariff rate by making discounts and setting a special tariff rate in accordance with its economical reasons".

In accordance with the provisions of the Tariff Agreement, being a Member to the Agreement, "Kazakhstan Temir Zholy" NC" JSC has the right to increase the basic tariff two times a year and to reduce the tariff by granting decreasing coefficients to tariffs on transportation of certain kinds of goods by certain routes.

Purporting to ensure competitive transportation of goods by railway, to implement the flexible transit tariff policy for retaining the existing turnover of goods transportation and to draw additional flows of goods, "Kazakhstan Temir Zholy" NC" JSC created a working commission on setting competitive tariff conditions for transit transportation of goods by the railway of the Republic of Kazakhstan. This commission considers proposals from all consignors and forwarders, if they have the necessary justification and estimates. Having made a resolution the working commission sends the journals to the Ministry of Transport and Communication of the Republic of Kazakhstan for coordination, after which they become effective if agreed.

No decreasing coefficients are applied to the dues and payment rates for the transit goods transshipment services in the seaports of Kazakhstan.

Kazakhstan charges no payments for the air transit goods transshipment in its territory.

Annex 9 has the specific examples of the applied decreasing coefficients to transit transportation of goods by the railway.

### **Question 119**

**Paragraph 194: Can the Government of the Republic of Kazakhstan please provide detailed information of the charges for transportation services for goods in transit?**

**We also request that the Government of the Republic of Kazakhstan provide detailed information on how access to the state-owned railway system is allocated.**

#### Answer:

For international transit transportation of goods by railway the Republic of Kazakhstan applies the Tariff Policy of the Railway of Kazakhstan on International Transportation of Goods for the freight year, which is annually coordinated and approved at the annual Tariff Conferences held in the framework of the Tariff Agreement of the Railway Administrations (Carriers) of the CIS Countries made on 17 February 1993.

The rates of the Tariff Policy for the freight year are based on the International Transit Tariffs (ITT) and Uniform Transit Tariff (UTT), to which the railway of Kazakhstan is a party.

The rates declared by the CIS railways in the Tariff Policy define the maximal tariff rate for the freight year.

In accordance with the Concept on Tariff Policy Coordination for the CIS Members' Railway Transport approved by resolution of the CIS Governments Council on 18.10.1996, "...every railway administration has the right to lower the declared tariff rate by making discounts and setting a special tariff rate in accordance with its economical reasons".

The amount of payment for the transit of goods by road equals to the administrative expenses or the cost of the services. In this case, this is the cost of escort of transit goods.

As for the international transportation by road, Kazakhstan charges ten monthly calculation indices per one vehicle over the exchange quota only; meetings of the Joint Commissions define the quota every year.

Ordinance No. 320-OD of 12 December 2003 of the Agency of the Republic of Kazakhstan on Natural Monopolies Regulation provides for the payment for the trans-shipment of the transit goods in the seaports of Kazakhstan. No decreasing coefficients are applied to the dues and payment rates for the transit goods trans-shipment services; the payment shall be made on the general terms.

Kazakhstan charges no payments for the air transit goods trans-shipment in its territory.

In accordance with paragraph 7 of Article 7 of the Civil Code of the Republic of Kazakhstan (hereinafter referred to as the CC RK) foreign persons and legal entities as well as persons without a citizenship has the right to enjoy the same rights and must fulfil the same commitments and obligations as the persons and legal entities of Kazakhstan, until otherwise stipulated by the laws.



## Question 120

**Paragraph 193 appears to be in conflict with Kazakhstan's statements in the "Tariff Exemptions" part of this report. Please clarify if food and beverages are allowed transit.**

Answer:

While translating from Russian into English some discrepancy was appeared in paragraph 87 of chapter "Tariff rate quotas, tariff exemptions" of the Factual Summary.

Goods in transit across the territory of Kazakhstan are exempt from customs charges and fees, VAT, and excise taxes. Kazakhstan allows free transit to reflect provisions of Article V of GATT 1994, as well as those of the international treaties to which it is a party.

The Customs Code provided that certain types of imported goods listed in the Resolution No. 524 of 4 June 2003 (available from the Secretariat through document WT/ACC/KAZ/57/Add.1) can only transit the customs territory of Kazakhstan provided that there is a guarantee of payment of all chargeable customs duties and taxes

Except for bans on import and export of certain goods (e.g. arms, drugs, antiques, etc.) there is no legislation prohibiting transit of goods.

- **Agricultural policies**

## Question 121

**Paragraph 205: Kazakhstan should understand that updating export subsidy and domestic support documents is an ongoing process for all current WTO members. In order for an accurate analysis by the Members, the base period in these documents should reflect the most recent years and the tables record expenditures on current programs.**

Answer:

Kazakhstan needs application of export subsidies due to its geographic location, no access to the sea, large territory, remote location from the main agricultural products markets and high rate of transportation costs, which significantly reduce the competitiveness of agricultural products made in Kazakhstan. Besides, production of the main export product (grain) is much higher than the domestic market needs, and this is one of the main sources of income for the rural population.

Since the WTO provisions allow application of export subsidies, Kazakhstan would like to have the right for application of export subsidies practiced by other WTO Members.

The WTO Agreement on Agriculture has no clear instructions on what period shall be the "base" period.

The letter of the WTO Secretariat provides that countries in accession shall submit information on the domestic support "using, as a rule, the average for the last three years".

Originally Kazakhstan suggested 1994-1996 as the base period, which was changed to 1996-1998 upon the request of the WTO Members. The suggested base period (1996-1998) is a rather representative updated period, for which a lot of materials had been collected and processed. The negotiations have been based on this period for the several recent years.

The choice of 1996-1998 base period can be explained by the fact that in that period the agrarian sector situation was rather stable as compared against the subsequent phases of thoroughgoing market reforms. The economic crisis in 1998 resulted in a sudden reduction of the support of the agrarian industrial sector. The agriculture had no conditions for reproduction. The support was provided in the amount necessary for the simple survival of agriculture. The choice of the period was based on the conditions specific for the pre-crisis situation in the agrarian sector.

#### **Question 122**

**Paragraph 209 of the Factual Summary states that Kazakhstan "needed to use export subsidies" for various reasons. We would like to reiterate our position, which is the same for all acceding countries, that Kazakhstan commit to binding all agricultural export subsidies at zero upon accession.**

#### Answer:

Kazakhstan needs application of export subsidies due to its geographic location, no access to the sea, large territory, remote location from the main agricultural products markets and high rate of transportation costs, which significantly reduce the competitiveness of agricultural products made in Kazakhstan. Besides, production of the main export product (grain) is much higher than the domestic market needs, and this is one of the main sources of income for the rural population.

As it was said on the seventh meeting of the Working Party, Kazakhstan will no longer insist on direct export subsidies to wheat provided that Kazakhstan will be given the opportunity to continue making transportation export subsidies to agricultural products.

#### **Question 123**

**The current negotiations under the Doha Development Agenda call for the complete elimination of all export subsidies for all Members, therefore adding them to the Kazakhstan accession is unacceptable.**

**In addition, it is our view that Kazakhstan does not have automatic recourse to the S and D provisions contained in Article 6.2 and 6.4.**

#### Answer:

By its real economic development and all factual agricultural data Kazakhstan is a developing country, but according to the per capita income it is very close to the poor countries (annually US\$ 456.6 per capita). That is why Kazakhstan will assert its right to use Article 6.2 of the WTO Agreement on Agriculture.

### **TRADE-RELATED INTELLECTUAL PROPERTY REGIME**

#### **General**

#### **Question 124**

**Could Kazakhstan confirm that all measures foreseen in document WT/ACC/KAZ/55 indeed refer to the year 2004 only (as the title of the document refers to the years 2004-2006)?**

Answer:

The plan of measures to bring the laws of the Republic of Kazakhstan on intellectual property rights protection in compliance with the TRIPS Agreement submitted by Kazakhstan in document WT/ACC/KAZ/48 considers realization of these measures during the period of 2004-2006.

Information provided in document WT/ACC/KAZ/55 refers to the measures to bring the national laws in line with the TRIPS Agreement taken in Kazakhstan in 2004.

**Substantive Standards of Protection, Including Procedures for the Acquisition and Maintenance of Intellectual Property Rights**

- **Copyright and related rights**

**Question 125**

**Kazakhstan is not TRIPS compliant in the area of copyrights. Kazakhstan's Law on Copyright and Neighbouring Rights (10 June 1996) does not contain a provision that clearly provides for the protection of pre-existing works and sound recordings as required under Article 18 of the Berne Convention. TRIPS Article 9 requires WTO Members to comply with Berne Articles 1-21.**

**Kazakhstan stated that it has developed a draft law "On Changes and Amendments to Legislative Acts of The Republic of Kazakhstan on Intellectual Property." (Item 215, WT/ACC/SPEC/KAZ/8) Please provide a copy of the draft legislation. What is the anticipated timetable for adoption of these amendments? In particular, what provisions in the draft law address the protection of pre-existing works and sound recordings as required under the Berne and TRIPS Agreements? What is the proposed term of protection?**

Answer:

On 9 July 2004, the Republic of Kazakhstan adopted the "Law on Amendments and Addenda to the Legal Acts of the Republic of Kazakhstan on Intellectual Property".

This draft law makes amendments and addenda to the number of legal acts regulating intellectual property rights issues. In particular, it makes amendments and addenda to the Law of the Republic of Kazakhstan "On Copyright and Related Rights" pertaining to the protection of pre-existing works.

Currently, the copyright exists for the entire life of the author and for fifty years after his death (paragraph 1 of Article 28 of the Law of the Republic of Kazakhstan "On Copyright and Related Rights").

The right for authorship, the right for the name and the right for reputation protection is protected on a permanent base.

The copyright for a work published anonymously or under a nom de plume shall be reserved for fifty years after the date of its lawful publication. If the author discloses himself/herself or his/her identity is undoubtedly identified within the mentioned period, then the provisions of paragraph 1 of Article 28 of the Law of the Republic of Kazakhstan "On Copyright and Related Rights" will be applied.

The copyright for a work made in co-authorship shall be reserved for the entire life and for 50 years after the death of the last author who outlived the other co-authors.

The copyright for a work published for the first time within the thirty years after the author's death shall be reserved for 50 years after the date of publication counting from the 1 January of the year following the year of publication.

If the author was victimized and rehabilitated posthumously, the copyright protection period stipulated in Article 28 of the Law "On Copyright and Related Rights" should be reserved starting from the 1 January of the year following the year of rehabilitation.

At the same time, it should be noted that reservation of the copyright for a work under international treaties ratified by the Republic of Kazakhstan cannot exceed the period established in the country of origin.

Besides, time periods stipulated in Article 28 of the Law of the Republic of Kazakhstan "On Copyright and Related Rights" are applied in all cases when the legal fact to be used as the start time took place no earlier than fifty years before the Law of the Republic of Kazakhstan "On Copyright and Related Rights" came into force.

As for the related rights, the performer's rights are reserved for fifty years after the first performance or staging. The rights of the performer for the name and protection of the performance from any distortion or other encroachment on the rights, capable of damaging the honour and dignity of the performer, shall be protected permanently.

The phonogram copyright is reserved for the period of 50 years after the first publication of the phonogram or after the first record, if the phonogram was not published within this period.

The copyrights of on-air and cable broadcasting companies are reserved for the period of fifty years after the first on-air or cable broadcasting by such company.

If the performer was victimized and rehabilitated posthumously, the copyright protection period shall be reserved beginning from January the first of year following the year of rehabilitation.

The copy of the Law of the Republic of Kazakhstan "On Amendments and Addenda to Legal Acts of the Republic of Kazakhstan on Intellectual Property Issues" is available from the Secretariat through document WT/ACC/KAZ/57/Add.1.

- **Trademarks, including service marks**

**Question 126**

**Pending an analysis of new legislation, we do not believe Kazakhstan's trademark and geographical indications protection regime is TRIPS compliant, particularly in the area of geographical indications.**

**We have requests for further information/legislation and additional TRIPS related questions. Once we receive the new information/draft legislation, and response to additional questions, we can make a complete and final TRIPS compliance assessment.**

**Are trademarks and geographical indications in Kazakhstan solely protected under the "Law of the Republic of Kazakhstan on Trademarks, Service Marks and Appellations of Origin," (hereinafter, The Law) No. 456-I LRK, of 26 July 1999? Are there any supplemental or implementing regulations in addition to the 1999 law? In its submission of answers to the Working Party on the Accession of the Kazakhstan, document [WT/ACC/KAZ/37/Add.3], the Government of Kazakhstan made reference in Question 72 to "The Rules for Drafting and**

**Filing of Applications for Registration of Trademarks of 8 October 1996 (hereinafter, the Rules)."**

**Please provide copies of all laws and regulations, including The Rules, relating to the protection and enforcement of trademarks and geographical indications for review.**

Answer:

The legal protection of trademarks and geographical indication in the Republic of Kazakhstan is based on the Law of the Republic of Kazakhstan "On Trademarks, Service Marks, and Geographical Indications of Places of Origin" as well as the Rules on Drawing Up and Submission of Applications for Trademark Registration as of 8 October 1996, the Rules on Processing of Applications for Trademark Registration as of 8 October 1996.

Document WT/ACC/KAZ/50/Add.1 has the Rules on Drawing Up and Submission of Trademark Registration Applications as of 8 October 1996. Please find attached the Rules on Processing of Applications for Trademark Registration as of 8 October 1996 (available from the Secretariat through document WT/ACC/KAZ/57/Add.1).

#### **Question 127**

**The Synoptic Table on Legislation on the Republic Kazakhstan found in WTO Document WT/ACC/KAZ/41 indicates that a new Draft Law has been developed to harmonize the national legislation with the requirements set out in the international treaties and agreements (specifically TRIPS), regulating mechanisms of protection of intellectual property rights. The Draft Law provides for a number of changes and amendments to the Laws of the Republic of Kazakhstan "On Trademarks, Service Marks, and Appellations of Origin." The WTO document indicates that this new law will be submitted to the Parliament of Kazakhstan in June of this year. A copy of the draft law would be helpful to determine if the trademark and geographical indications regime of Kazakhstan is consistent with WTO norms. Please provide a copy of the draft law for review.**

Answer:

The Law of the Republic of Kazakhstan "On Amendments and Addenda to the Legal Acts of the Republic of Kazakhstan on Intellectual Property Rights Issues" was adopted in 9 July 2004. Changes to the Law of the Republic of Kazakhstan "On Trademarks, Service Marks, and Geographical Indications of Places of Origin" were introduced by the abovementioned legislation. The copy of this law is available from the Secretariat through document WT/ACC/KAZ/57/Add.1.

#### **Question 128**

**Article 21 of the Law states that a "trademark assignment contract or licence contract shall be done in writing and registered in Kazpatent, and in the absence of such writing and registration, the contract shall be deemed null and void." The comments that some members have received from trademark owners raise questions about the value of requiring recording of licenses. Recordation of licenses is not a requirement in the United States. Among the concerns expressed by trademark owners are the following: recordation involves significant expense, when multiplied over many countries; failure to record can result in loss of rights – even to obvious counterfeiters; and that failure to record can actually be used by counterfeiters and others as a means to prevent the true owner from asserting rights. For these reasons, we would like to know why mandatory licence recording, particularly as it affects the rights of legitimate trademark owners, is considered to be desirable.**

Answer:

According to the Article 21 of TRIPS Agreement, Members may determine conditions on the assignment of licenses and application of trademarks. It is being understood that the compulsory licensing of trademarks shall not be permitted and that the owner of a registered trademark shall have the right to assign the trademark with or without the transfer of business to which the trademark belongs.

The existing laws of Kazakhstan stipulate that the owner of a registered trademark can assign the right for the trademark on all goods and services listed in the certificate or on part of them to the other party under an agreement or licence contract (Article 21 (1-2) of the Law of the Republic of Kazakhstan "On Trademarks, Service Marks and Indications of Places of Origin of Goods"). The agreement on the assignment of the right for the trademark or the licensing contract as well as the licensing contract and subcontract on the use of an invention, utility model, or industrial design shall be made in writing and registered in the authorized body (Article 1031 of the Civil Code of the Republic of Kazakhstan, paragraph 3 of Article 21 of the Law of the Republic of Kazakhstan "On Trademarks, Service Marks, and Indications of Places of Origin of Goods").

Incompliance with the writing or registration requirement leads to the voidance of the contract.

Rejection in registration shall be made in writing and is possible only with the reference to the violation of Kazakhstan's legal provisions (Article 12 of the Law of the Republic of Kazakhstan "On Trademarks, Service Marks, and Indications of Places of Origin of Goods").

At the same time, it should be noted that according to the civil laws of Kazakhstan any deals subject to the state or other registration based on the laws of Kazakhstan are considered to be in force only after their registration (paragraph 1 of Article 155 of the Civil Code of Kazakhstan).

Thus, the legal norms existing in Kazakhstan are in compliance with the Article 21 of TRIPS Agreement, since using this procedure the government protects the rights of the intellectual property owners.

**Question 129**

**Moreover, in a previous question submitted asking Kazakhstan to confirm that a trademark maybe assigned with or without the goodwill of a company, an answer to the question was not provided. The question is posed again to Kazakhstan. Please note that Paris Convention Article 6<sup>quater</sup> requires transfer of a trademark along with the goodwill.**

Answer:

Article 6<sup>quater</sup> of the Paris Convention provides that assignment of a trademark is valid only when the owner of this trademark assigns it with the transfer of business to which the trademark belongs. To make such an assignment valid, it is sufficient to transfer the business situated in EU entirely or in part to the assignee with the exclusive right for the production or sale of products with the assigned trademark.

The Law of Kazakhstan "On Trademarks, Service Marks, and Indications of Places of Origin of Goods" stipulates that the owner can assign the exclusive right for a registered trademark on all goods and services listed in the certificate or on some of them to other party under an agreement (Article 21). The assignment of the exclusive rights means a complete transfer of all rights for this intellectual property.

No assignment of the right to a registered trademark is allowed if this may mislead the public as to the product or its manufacturer.

Assignment of a trademark as well as the assignment based on the agreement shall be registered in the authorized body.

The owner of a registered trademark (licensor) can assign the right to use the trademark to another party (licensee) with respect to all or some of the goods and services listed in the certificate under the licence contract.

The licence contract permitting the licensee to use the trademark shall contain the provision that the quality of the goods or services will not be inferior to those of the licensor, and that the licensor has the right to control the implementation of this provision.

The licence contract expires when the right for the trademark expires.

Assigning the trademark to the other party does not entail termination of the licence contract.

Assigning the right for the trademark entails the assignment of both the trademark itself used in production goods or services and the goodwill it has obtained.

Therefore, the legal provisions of the Law of the Republic of Kazakhstan "On Trademarks, Service Marks, and Indications of Places of Origin of Goods" meet the requirements of Article 6quater of the Paris Convention.

### **Question 130**

**In what way does the law of Kazakhstan preserve the rights of trademark owners, consistent with Articles 16(1) and 24(5) of the TRIPS Agreement? It is unclear whether trademarks in Kazakhstan would be protected from confusingly similar and later in time geographical indications.**

Answer:

Article 16 of the TRIPS Agreement provides that the owner of a registered trademark shall have an exclusive right to prevent all third parties without the owner's consent from using identical or similar signs for goods or services in the course of trade, which are identical or similar to those in respect of which the trademark is registered, where such a use would result in a likelihood of confusion.

Subparagraph (1) of paragraph 3 of Article 6 of the Law of the Republic of Kazakhstan "On Trademarks, Service Marks, and Indications of Places of Origin of Goods" allows no registration of signs and their components which are false or capable of misleading the public as to the product or its manufacturer, including geographical indications capable of misleading the public as to the place of production of the good. This meets the provisions of Article 16 of the TRIPS Agreement.

- **Geographical indications, including appellations of origin**

### **Question 131**

**It is unclear from the response given to Question 75 in WTO document WT/ACC/KAZ/37/Add.3 whether foreign geographical indications are protected in Kazakhstan. Specifically, what procedures are in place for the interested parties or owners of third-country geographical indications to prevent the use of foreign geographical indications?**

Answer:

In accordance with Article 48 of the Law "On Trademarks, Service Marks and Appellations of Origin," foreign natural as well as legal entities enjoy the rights and observe the obligations stipulated in that Law on an equal basis with natural and legal entities of the Republic of Kazakhstan.

Thus, a geographical indication registered in the Republic of Kazakhstan and protected by Kazakhstan's laws or by international treaties and agreements, to which Kazakhstan is a party, is protected at the same terms as the one registered by a national of Kazakhstan.

**Question 132**

**Document WT/ACC/KAZ/50 - Question 196: please clarify, whether in order to have a geographical indication protected, it must be registered in Kazakhstan. If yes, then it should be revised as such provision conflicts with Article 22.2 of TRIPS, which sets an obligation for Members to provide legal protection regardless of registration.**

Answer:

In accordance with Article 22 (2) of the TRIPS Agreement, Members shall provide the legal means for interested parties to prevent the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good. The Law of the Republic of Kazakhstan "On Trademarks, Service Marks, and Indications of Places of Origin of Goods" stipulates in Article 37 (2) that it is prohibited to use an unregistered geographical indication identical or similar to those in respect of which a trademark is registered where such use results in the likelihood of confusion. The indication of the place of origin of a good provides the legal protection since its registration and obtaining the corresponding certificate on the territory of the Republic of Kazakhstan.

Therefore, the provisions of the Law of the Republic of Kazakhstan "On Trademarks, Service Marks, and Indications of Places of Origin of Goods" comply with the requirements of Article 22 (2) of the TRIPS Agreement.

- **Industrial designs**

**Question 133**

**Kazakhstan's Patent Law of 1999, Article 8(1) requires an industrial design to be "industrially applicable." This appears to be inconsistent with TRIPS Article 25(1), which only requires an industrial design to be new or original and, if provided for in the national legislation, to require an inventive step. Please clarify.**

Answer:

Article 25 (1) of the TRIPS Agreement provides that Members shall provide for the protection of independently created industrial designs that are new or original. Members may provide that designs are not new or original if they do not significantly differ from known designs or combinations of known design features.

In Kazakhstan, the Patent Law of the Republic of Kazakhstan regulates the rights for industrial designs, which are certified with the provisional and full patents if an applied industrial design meets



the eligibility criteria: it is new, involves an inventive step, and is capable of industrial application (in accordance with Article 25 (1) of the TRIPS Agreement).

Since the industrial designs together with inventions and utility models refer to the objects of industrial property, the laws of Kazakhstan set forth the requirement of "industrial applicability" as the main patentability criteria for an industrial design. First of all, industrially applicable objects must have a stable manufacturing form, i.e. it shall be possible to reproduce the registered physical appearance by industrial manufacturing of the registered product.

The examination for the "industrial applicability" criterion eligibility may be held before examining the eligibility for "newness" and "originality" criteria. The experts shall determine whether it is possible to industrially reproduce the declared industrial design. For these purposes, they analyze the information on the industrial applicability of the industrial design submitted with the application materials.

#### **Question 134**

**Please explain what types of designs fall within the exception to patentability for "solutions that relate to ... industrial, hydraulic and other stationary structures."**

Answer:

Industrial, hydraulic engineering and other stationary constructions cannot be recognized as industrial designs, because they do not meet the "industrial applicability" criterion. Article 7 of the Law "On Copyright and Related Rights" qualifies architectural objects as copyright objects.

#### **Question 135**

**Please explain how Kazakhstan's law is consistent with TRIPS Article 25(2).**

Answer:

In accordance with Article 25 (2) of the TRIPS Agreement providing that each Member shall ensure that requirements for securing protection for textile designs in laws on industrial designs or copyrights, the Patent Law of the Republic of Kazakhstan defines the exclusive rights and liabilities of a patent holder for industrial designs, textile goods being a kind of the latter.

In this view, Article 8 of the Patent Law of the Republic of Kazakhstan qualifies the styling determining the physical appearance of the good, including textile goods, as an industrial design.

#### **Question 136**

**Paragraphs 237-248: The text refers frequently to the term "a patent FOR an industrial design". Usually and in the language we use, the term in question is either "a patent" or "an industrial design".**

Answer:

Article 8 of the Patent Law of the Republic of Kazakhstan qualifies the styling determining the physical appearance of the good as an industrial design. The industrial design can be legally protected if it is new, involves an inventive step and is industrially applicable.

A provisional patent or an industrial design patent certifies the rights for the industrial design (Article 5 of the patent Law of the Republic of Kazakhstan).

A provisional industrial design patent may be issued after the formal expertise of the application. The expert organization makes the formal application examination in two months after the receipt of the application. They can also make the formal examination before the mentioned deadline upon the applicant's request in writing. However, in this case the applicant forgoes the right stipulated in paragraph 1 of Article 21 of the Patent Law of the Republic of Kazakhstan (within two months since the date of application the applicant has the right to make corrections and adjustments in the documents which do not change the industrial design essence).

During the conduct of formal expertise of an application for invention, submission of all the necessary documentation and compliance with all the requirements is examined, the application date, the possibility to qualify the declared application as protected invention is determined, and also the unity of invention is checked. The formal expertise does not examine the declared invention for the patentability criteria stipulated in paragraph 1 of Article 6 of the Patent Law of the Republic of Kazakhstan. The applicant takes the risk and responsibility for obtaining the provisional patent.

An industrial design patent may only be issued after the essential examination of the application upon a request of the applicant or a third party. The request can be submitted after official publication of information on the issue of the provisional patent, but within five years since the application date. If the provisional patent is prolonged under paragraph 3 of Article 5 of the Patent Law of the Republic of Kazakhstan, the expert organization makes the essential examination of the application. The essential examination includes determining the technique level by searching the information on the declared invention, checking the conformity of the declared invention to the unity of invention requirement and patentability criteria eligibility defined in Article 6 of the Patent Law of the Republic of Kazakhstan. If the applicant requests the essential examination, he/she shall also submit documents supporting the payment of the essential examination and the provisional patent prolongation.

The provisional patent and industrial design patent certify the priority, authorship (inventorship) and the exclusive right for the industrial property.

The provisional industrial design patent is valid for five years since the application date.

The industrial design patent is valid for ten years since the application date with the opportunity to prolong the validity period up to five years upon a request of the patent holder.

- **Patents**

**Question 137**

**We are not yet able to make a determination whether Kazakhstan's laws are TRIPS compliant.**

**We have requests for further information/legislation and additional TRIPS related questions. Once we receive the new information/draft legislation, and response to additional questions, we can make a complete and final TRIPS compliance assessment.**

**In WT/ACC/KAZ/41 of May 2003, Kazakhstan mentions a Draft Law that provides for several changes in Kazakhstan's laws protecting intellectual property. Has this Draft Law been enacted? If not, when do you expect it will be passed into law? Could Kazakhstan provide us a copy of the law?**

Answer:

This is the Law of the Republic of Kazakhstan "On Amendments and Addenda to Legal Acts of the Republic of Kazakhstan on Intellectual Property", which makes changes in the main legal acts regulating the intellectual property rights protection issues (Laws of the Republic of Kazakhstan "On Copyright and related Rights", "Patent Law", "On Protection of Selection Achievements", "On Trademarks, Service marks, and Indications of Places of Origin of Goods", "On Legal Protection of Integrated-Circuit Layouts"). This law was adopted on 9 July 2004 and was harmonized with international treaties and the TRIPS Agreement.

A copy of this Law is available from the Secretariat through document WT/ACC/KAZ/57/Add.1.

**Question 138**

**In response to Question 86 in document WT/ACC/KAZ/37/Add.3 regarding the compatibility of Kazakhstan's law with Paris Convention Article 3, Kazakhstan explained that the Constitution provided the same rights to foreign and stateless individuals as to Kazakhstan citizens. Later in the same response, however, Kazakhstan noted that under the Patent Law of 1999, there might be exceptions to this provision. Please explain these exceptions and how they are consistent with Paris Convention Article 3 as well as with TRIPS Article 3 on National Treatment.**

Answer:

In accordance with Article 3 of the Paris Convention, Article 3 of the TRIPS Agreement providing that each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property, paragraph 1 of Article 38 of the Patent Law of the Republic of Kazakhstan both foreign and Kazakh persons and legal entities equally enjoy the rights provided in the Patent Law of the Republic of Kazakhstan in accordance with international treaties and agreements, to which Kazakhstan is a party, or in accordance with the reciprocity principle.

Paragraph 2 of Article 38 of the Patent Law of the Republic of Kazakhstan provides that person without a citizenship resident in Kazakhstan enjoy the same rights stipulated in the Patent Law and other laws pertaining to the legal protection of industrial property as the persons and legal entities of Kazakhstan do, until otherwise agreed by the Patent Law or other legal acts.

Therefore, the Patent Law of the Republic of Kazakhstan has no provisions conflicting with the provisions of Article 3 of the Paris Convention and Article 3 of the Agreement on TRIPS.

**Question 139**

**In response to Question 86 in document WT/ACC/KAZ/37/Add.3 regarding the exclusion from patentability for "proposals that are contrary to the public interest, humanitarian principles or morality," Kazakhstan explained that this "implements" TRIPS Article 27(2). As noted in Question 86, however, the language used is broader than the permissible exceptions provided in TRIPS Article 27(2). Please explain how the exclusion is consistent with TRIPS Article 27(2).**

Answer:

Subject to Article 27(2) of the TRIPS Agreement, Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect order public or morality, including to protect human, animal or plant life or health or to

avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.

Subject to subparagraph (8) of paragraph 2 of Article 6 and subparagraph (5) of paragraph 2 of Article 8 of the Patent Law of Kazakhstan the solutions, Articles and proposals contradicting the public interests, humanity principles and morality shall not be qualified as inventions.

Applications contradicting the public interests, humanity principles and morality shall not be protected even if they may be new, involve inventive step, and be capable of industrial application. Subject to subparagraph (2) of paragraph 2 of Article 4 of the Patent Law of the Republic of Kazakhstan the authorized body on inventions, utility models, and industrial designs protection grants protection documents on inventions, utility models and industrial designs, and therefore has the right to independently resolve whether an intellectual property object meets the humanity criteria established in the society and being commonly accepted.

The antihumanism criteria may also take into account any resolutions of authorized bodies banning substances or engineering solutions employed in the invention and capable of doing harm to the human and human life.

#### **Question 140**

**Kazakhstan's Patent Law of 1999 also exempts from patentability "methods of economic organization and management" and "computer programs." TRIPS Article 27(1) prohibits discrimination in the granting of patents on the basis of technology. Please explain how the above-identified exclusions are consistent with TRIPS Article 27(1).**

Answer:

Subject to Article 27 (1) of the TRIPS Agreement, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. Patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

In accordance with the laws of the Republic of Kazakhstan computer programs are protected by the Law on Copyright as copyright objects, and by the civil laws of Kazakhstan (Article 9 of the Law of the Republic of Kazakhstan "On Copyright and Related Rights", Article 972 of the Civil Code of the Republic of Kazakhstan).

Besides, protection is available for all kinds of software (including operation systems) which may be expressed in any language and in any form, including the source and object code (paragraph 2 of Article 972 of the Civil Code of the Republic of Kazakhstan, paragraph 2 of Article 9 of the Law of the Republic of Kazakhstan "On Copyright and Related Rights").

#### **Question 141**

**Is the list of patentable subject matter in Article 6(2) of the Patent Law of 1999 intended to be exhaustive, or are plants, animals and surgical, therapeutic and diagnostic methods patentable in Kazakhstan?**

Answer:

The list in paragraph 2 of Article 6 of the Patent Law of the Republic of Kazakhstan is exhaustive.

The Law of the Republic of Kazakhstan "On Protection of Selection Achievements" as of 13 July 1999 protects plant varieties and animal species in Kazakhstan.

Subject to the Patent Law of the Republic of Kazakhstan, diagnostic, therapeutic and surgical methods may be protected as inventions under common invention criteria as defined in Article 6 of the mentioned Patent law.

#### **Question 142**

**Please explain in detail how the compulsory licensing provisions in Articles 11(3) and 11(4) of the Patent Law of 1999 comply with each of the requirements of TRIPS Article 31(a)-(l) regarding compulsory licenses.**

#### Answer:

Article 31 (a)-(k) of the TRIPS Agreement sets forth the provisions to be respected according to the legislation of a Member in case of use of the subject matter of a patent without the authorization of the right holder, including the use by the government or third parties authorized by the government.

Subject to paragraphs 3, 4 and 5 of Article 11 of the Patent Law of the Republic of Kazakhstan, any person may appeal to the court with a petition for a compulsory non-exclusive licence if, prior to such a claim, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time, and if the invention was non-working for the period of any four consecutive years after the official publication of information on issuance of the protection document for this invention. If the patent holder fails to prove that such a misuse was due to a respectful reason, the court shall grant the licence in question specifying the scope and term of use, the amount and order of payments. The amount of payments shall not be inferior to the market price of the licence defined in accordance with the existing practice.

Subject to Article 12 of the Patent law of the Republic of Kazakhstan the following shall not be construed as violation of the exclusive rights of the patent holder:

- application of means containing protected patent holder exclusive right objects of industrial property, contained in the structure of or used for operation of (sea, river, air, land, and space) vehicles of other countries, provided that the said vehicles were on the territory of the Republic of Kazakhstan temporarily or by accident and the objects were used for the needs of the vehicle. Such actions are not considered to be violations of the exclusive rights of the patent holders if the vehicles belong to the natural and legal entities of the countries, which provide the same rights to the owners of vehicles of the Republic of Kazakhstan.
- conduct of a scientific research or an experiment of an object containing a protected subject matter of industrial property;
- application of such means in emergency situations (natural and other disasters, big accidents) with immediate notification of the patent holder and subsequent payment of the correspondent compensation to the patent holder;
- application of such means for personal needs without a commercial purpose; and
- as for medicines, one-time preparation of the medicine by doctor's prescription.

Thus, the existing legal norms meet the requirements of Article 31 (a)-(k) of the TRIPS Agreement.

As for the requirements of Article 31 (1) of the WTO Agreement on TRIPS, there are no definitions of "the first patent" and "the second patent" in the existing laws of Kazakhstan. Subject to Article 5 of the Patent Law of the Republic of Kazakhstan, there are two kinds of protection documents for

industrial property: the provisional patent and the full patent, which are equal in protection, but having various validity periods.

#### **Question 143**

**Please explain the exception to exclusive rights provided in Article 12(6) of the Patent Law of 1999.**

Answer:

Subject to paragraph 1 of Article 11 of the Patent Law of the Republic of Kazakhstan the patent holder has the exclusive right for the use of the protected industrial property. In accordance with paragraph 6 of that Article the patent holder can cede the protection document to any person or legal entity. The agreement of cession must be registered in the Committee on Intellectual Property Rights at the Ministry of Justice of the Republic of Kazakhstan.

In this view application of means containing protected subject matters of industrial property are not considered as violation of the exclusive right of the patent holder, provided that such means have been utilized, for instance, by an agreement of cession.

#### **Question 144**

**How does the Patent Law of 1999 comply with TRIPS Article 34 requiring a reversal of the burden of proof in civil proceedings concerning the infringement of a process patent?**

Answer:

Subject to Article 34 of the Agreement on TRIPS any Member shall be free to provide that the burden of proof indicated in paragraph 1 shall be on the alleged infringer only if the condition referred to in subparagraph (a) is fulfilled or only if the condition referred to in subparagraph (b) is fulfilled ((a) if the product obtained by the patented process is new; (b) if there is a substantial likelihood that the identical product was made by the process and the owner of the patent has been unable through reasonable efforts to determine the process actually used).

The existing Patent law of the Republic of Kazakhstan has no provisions stipulating that the burden of proof for the purposes of civil proceedings in respect of the infringement of the rights for intellectual property, because the Patent Law of the Republic of Kazakhstan only regulates the relations in respect of the process of patenting of intellectual property subject matters. Article 65 of the Civil Procedural Code of the Republic of Kazakhstan has such a provision where every party is responsible for proving its own claims and statements.

Subject to Article 66 of the Civil Procedural Code of the Republic of Kazakhstan other persons involved in the process can provide evidences too.

#### **Question 145**

**Can the requirement that a patented invention be used, as provided in Article 11(3) of the Patent Law of 1999, be satisfied by importation of the invention into Kazakhstan? If not, please explain how this practice is consistent with TRIPS Article 27(1), which prohibits discrimination on the basis of whether the invention is produced locally or imported.**

Answer:

Paragraph 2 of Article 11 of the Patent Law of the Republic of Kazakhstan defines the use of industrial property as manufacturing, application, importation, offer to sale, sale, and other means of putting a product inclusive of the protected industrial property into the civil circulation or its storage with the purpose to do so, as well as application of the protected method.

- **Requirements on undisclosed information, including trade secrets and test data**

**Question 146**

**In its response to Question 90 in document WT/ACC/KAZ/37/Add.3 on the protection of undisclosed information, Kazakhstan identified Articles 34 and 15 of the Patent Law of 1999 as satisfying its requirements under TRIPS Article 39(3). Article 15, however, does not mention undisclosed information, and Article 34 applies only to the disclosure of information related to "intellectual property subject matter," which is defined in Article 1(5) as the "results of intellectual creative activity." This definition does not appear to extend to the protection of "test or other data, the origination of which involves considerable effort." Please explain how Kazakhstan's law is consistent with TRIPS Article 39(3).**

Answer:

Subject to Article 39 (3) of the Agreement on TRIPS Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use.

Article 126 of the Civil Code of the Republic of Kazakhstan protects the information that is confidential or secret, when the information has an actual or commercial value because it is a secret to third parties and it is not readily accessible on legal grounds and the information owner takes steps to keep it secret. It also protects information on the submission of undisclosed test or other data, the origination of which involves a considerable effort, therefore guaranteeing protection of all such data against unfair commercial use. These provisions of the civil laws of Kazakhstan meet the requirements of Article 39 (3) of the TRIPS Agreement.

Besides, the reply to question 90 (WT/ACC/KAZ/37/Add.3) quotes the provisions of Article 15 of the Law of the Republic of Kazakhstan "On Protection of Selection Achievements", qualifying a natural or legal person as infringing on the rights of the patent holder, if such a person discloses the information on the sort and variety specified in the submitted application and being the commercial secret without the authorization from the patent holder.

**Question 147**

**How does Kazakhstan's law implement the requirements of TRIPS Articles 39(1) and 39(2)?**

Answer:

Subject to Articles 39 (1) and 39 (2) of the Agreement on TRIPS Members shall protect undisclosed information and data submitted to governments or governmental agencies.

Subject to Article 126 of the Civil Code of the Republic of Kazakhstan the civil laws of Kazakhstan protect information, which has real or commercial value if kept in secret from third parties and is not accessible on the legal grounds.

Therefore, the existing provisions of the Civil Code of the Republic of Kazakhstan meet the requirements of paragraph 1 and 2 of Article 39 of the TRIPS Agreement.

#### **Question 148**

**In paragraph 251 it is mentioned that Article 226 of the Civil Code also protects confidential data or other information which was required in the process of approving the marketing or sale of chemical, pharmaceutical, or agricultural products.**

**Regarding the protection of such data, Article 39.3 of the TRIPS Agreement establishes two specific obligations: to protect undisclosed test or other data submitted by an applicant to the responsible State agency in the procedure for market authorisation of a pharmaceutical or of an agricultural chemical product a) against disclosure and b) from unfair commercial use.**

- **We would like to thank the Republic of Kazakhstan for the information given to the question regarding the obligation to protect such data against disclosure by mentioning Article 126 of the Civil Code, 34 of the Patent Law, Article 158 of the Law "On Administrative Violations" and Article 184 of the Criminal Code;**
- **Concerning the question regarding the obligation to protect such data against unfair commercial use, please explain in detail how your legislation fulfils this obligation and ensures that such data is protected against unfair commercial use by a competitor. In particular:**

**Does Kazakhstan's legislation, for example, prohibit a second applicant from relying on, or from referring to the original data of the first applicant, when applying subsequently for market authorisation for his own product? In other words, does a second applicant have to provide to the responsible authorities the same data on safety and efficiency for his own product as the first applicant?**

**If this is not the case, how is this particular obligation of the TRIPS Agreement implemented in Kazakhstan's legal framework?**

#### Answer:

The civil legislation of the Republic of Kazakhstan protects the information that is confidential or secret, when the information has an actual or commercial value because it is a secret to third parties and it is not readily accessible on legal grounds (Article 126 of the Civil Code of the Republic of Kazakhstan).

Subject to Article 34 of the Patent Law of the Republic of Kazakhstan disclosure of the subject matter of an industrial property before the official publication of information on it without the consent of the author or applicant entails responsibility under the laws of the Republic of Kazakhstan. Article 15 of the Law of the Republic of Kazakhstan "On Protection of Selection Achievements", for instance, qualifies a natural or legal person as infringing on the rights of the patent holder, if such a person discloses the information on the sort and variety specified in the submitted application and being the commercial secret without the authorization from the patent holder.

At the same time, it should be noted that the existing laws of Kazakhstan provides no term "second applicant", because the industrial property priority is determined by the date of application submission and the right holder has an exclusive right for the protected industrial property.



#### Question 149

**In paragraph 255 it is mentioned that the Draft Law "On Commercial Secrets" was withdrawn from the hearing in the Parliament. Please inform about the state of play of the legislative process, in particular:**

- **When is this subject matter expected to be resubmitted to the Parliament?**
- **Is the content of the Draft Law being revised?**
- **We would welcome to receive a draft of the new law.**

Answer:

The draft Law of the Republic of Kazakhstan "On Commercial Secret" was withdrawn from the Parliament of the Republic of Kazakhstan and no re-consideration is planned in the near future.

As for the protection of information, Article 126 of the Civil Code of the Republic of Kazakhstan protects the information that is confidential or secret, when the information has an actual or commercial value because it is a secret to third parties and it is not readily accessible on legal grounds.

#### **Enforcement**

- **Civil judicial procedures and remedies**

#### Question 150

**The following questions pertain to Question 85 of WT/ACC/KAZ/37/Add.3.**

**Please describe the manner in which the law of the Republic of Kazakhstan complies with TRIPS Article 43 (1) requiring that judicial authorities shall have the authority, where a party has presented reasonably available evidence sufficient to support its claim and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing party, to order that this evidence be produced by the opposing party, subject in appropriate cases to conditions which ensure the protection of confidential information.**

Answer:

Subject to Article 43(1) of the Agreement on TRIPS the judicial authorities shall have the authority, where a party has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing party, to order that this evidence be produced by the opposing party, subject in appropriate cases to conditions which ensure the protection of confidential information.

Subject to Article 65 of the Civil Procedural Code of the Republic of Kazakhstan every party is responsible for presenting evidence to support its own claims and statements.

Moreover, subject to paragraph 3 of Article 66 of the Civil Procedural Code of the Republic of Kazakhstan the court has the right to suggest other parties and persons involved in the process to provide additional evidence relevant to the case too.

Subject to paragraph 4 of Article 66 of the Civil Procedural Code of Kazakhstan in cases when parties and other persons involved in the process had problems with presenting evidence, the court can assist

them in obtaining the necessary evidence upon their request. If necessary, the court can provide the requesting party with an official letter of request to obtain such an evidence.

Besides, if certain information is qualified as confidential the court has the right to take measures to protect such information in accordance with Article 126 of the Civil Code of the Republic of Kazakhstan, which protects the information that is confidential or secret, when the information has an actual or commercial value because it is a secret to third parties and it is not readily accessible on legal grounds and the information owner takes steps to keep it secret.

Also, the court has the right to make a private session to consider the data qualified as confidential in case when the court had satisfied the request of a party involved to present the commercial secret or confidential data.

These provisions of the civil laws of Kazakhstan meet the requirements of Article 43 (1) of the TRIPS Agreement.

### **Question 151**

**Please explain the manner in which the law of the Republic of Kazakhstan complies with TRIPS Article 45(1) requiring that the judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of the person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.**

#### Answer:

Subject to Article 45 (1) of the Agreement on TRIPS the judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

In accordance with the civil, administrative, and criminal legislation of Kazakhstan, the court has the authority to recover from the violator damages incurred by the right holder.

Article 44 of the Law of the Republic of Kazakhstan "On Trademarks, Service Marks, and Indications of Places of Goods Origin", for instance, provides that a person illegally using a trademark or an indication of a place of goods origin or any similar designation in a manner which misleads the public shall discontinue it and compensate the losses incurred by the right holder of the trademark and the holder of the geographical indication.

In accordance with Article 49 of the Law of the Republic of Kazakhstan "On Copyright and Related Rights" the court can do the following when considering cases on violation of copyrights:

- oblige the respondent (copyright violator) to compensate the losses to the claimant, including lost profit;
- levy the profit obtained by the violator by violation of the copyright and related rights and transfer it to the claimant; and
- oblige the respondent to pay the compensation in the amount from twenty to fifty thousand minimum wages (defined by the laws of the Republic of Kazakhstan), and in the amount from five hundred to fifty thousand minimum wages for violation of the copyright for software or a database.

It should be noted that if the court determines the amount of compensation, it shall be paid instead of compensation of losses or levying the profit.

Therefore, the provisions of the existing laws of Kazakhstan meet the requirements of Article 45 (1) of the TRIPS Agreement.

### **Question 152**

**Please explain the manner in which the law of the Republic of Kazakhstan complies with TRIPS Article 45(2) requiring the judicial authorities shall have the authority to order the infringer to pay the right holder expenses, which may include appropriate attorney's fees.**

Answer:

Subject to Article 45 (2) of the Agreement on TRIPS the judicial authorities shall also have the authority to order the infringer to pay the right holder expenses, which may include appropriate attorney's fees. In appropriate cases, Members may authorize the judicial authorities to order recovery of profits and/or payment of pre-established damages even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.

Articles 9 and 917 of the Civil Code, which stipulates that a person whose rights have been violated can demand complete recovery of losses, unless otherwise provided by law or contract. The violator should provide complete recovery of the damage caused by his or her act or omission to the property or non-property rights and goods of citizens or legal entities.

In accordance with Article 111 of the Civil Code, the court can order the unsuccessful party to compensate the successful party for his attorneys' costs in the amount actually incurred by the successful party. In money claims that sum can not exceed 10 per cent of the cost of the claim sustained. In a case where the legal support is free for the party, the court can order the unsuccessful party to pay the mentioned costs to the legal aid agency which appointed the lawyer or to the lawyer.

The provisions of the existing laws of Kazakhstan meet the requirements of Article 45 (2) of the TRIPS Agreement.

### **Question 153**

**Please explain whether the law of the Republic of Kazakhstan provides for the recovery of profits and/or pre-established damages under TRIPS Article 45(2).**

Answer:

Subject to Article 45 (2) of the Agreement on TRIPS the judicial authorities shall also have the authority to order the infringer to pay the right holder expenses, which may include appropriate attorney's fees. In appropriate cases, Members may authorize the judicial authorities to order recovery of profits and/or payment of pre-established damages even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.

Article 917 of the Civil Code of the Republic of Kazakhstan provides that (property and/or non-property) damage to the property or non-property rights and goods of citizens and legal entities caused by unlawful acts or inaction shall be compensated by the wrongdoer in corpore.

Under the laws of the Republic of Kazakhstan the compensation liability may be imposed on other party, which is not the wrongdoer, as well as higher compensation amount may be set, which meets the requirements of Article 45 (2) of the Agreement on TRIPS.

#### **Question 154**

**Please explain whether the law of the Republic of Kazakhstan provides judicial authorities with the authority to order goods found to be infringing and materials and implements- the predominant use of which has been in the creation of the infringing goods to be disposed of outside the channels of commerce in a manner to avoid harm to the right holder under TRIPS Article 46.**

#### Answer:

Subject to Article 46 of the Agreement on TRIPS in order to create an effective deterrent to infringement, the judicial authorities shall have the authority to order that goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed. The judicial authorities shall also have the authority to order that materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements.

Article 44 of the Law of the Republic of Kazakhstan "On Trademarks, Service Marks, and Indications of Places of Goods Origin", for instance, provides that a person illegally using a trademark or an indication of a place of goods origin or any similar designation in a manner which misleads the public shall do the following:

1. discontinue the violation and compensate the losses incurred by the right holder of the trademark and the holder of the geographical indication; and
2. liquidate the manufactured images of the trademark or the geographical indication in question, delete them from the good, packing, blanks or other documentation unlawfully bearing the trademark or geographical indication of the origin of the good as well as any designation similar to the extent of misleading the public. If it is impossible to do so, all such goods must be liquidated in accordance with the procedures established by the laws of the Republic of Kazakhstan.

In cases on copyright violation the court has the right to resolve to expropriate the pirated copies of the work or phonogram, as well as the materials and equipment used for their production. In doing so the pirated copies of the work of phonogram can be transferred to the holder of the copyright or related rights upon his/her request or shall be liquidated by the resolution of the court (paragraph 3 of Article 49 of the Law of the Republic of Kazakhstan "On Copyright and Related Rights").

The materials and equipment used for production of infringing merchandise shall be also liquidated by the court's resolution or shall be transferred to the state revenues.

Article 129 of the Administrative Code of the Republic of Kazakhstan also provides for expropriation of the pirated copies of works and phonograms.

Therefore, the provisions of the existing laws of Kazakhstan meet the requirements of Article 46 of the TRIPS Agreement.

**Question 155**

**Please explain the manner in which the law of the Republic of Kazakhstan complies with TRIPS Article 48 requiring that judicial authorities shall have the authority to order a party at whose request measures were taken and who has abused enforcement procedures to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse.**

Answer:

Subject to Article 48 of the TRIPS Agreement the judicial authorities shall have the authority to order a party at whose request measures were taken and who has abused enforcement procedures to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.

Article 917 of the Civil Code of the Republic of Kazakhstan provides that (property and/or non-property) damage to the property or non-property rights and goods of citizens and legal entities caused by unlawful acts or inaction shall be compensated by the wrongdoer in corpore, which meets the requirements of Article 48 of the Agreement on TRIPS.

Under the laws of the Republic of Kazakhstan the compensation liability may be imposed on other party, which is not the wrongdoer, as well as higher compensation amount may be set.

The wrongdoer can be released from the compensation obligation if he/her proves that the damage was not his/her guilt, except for the cases stipulated in the Civil Code of the Republic of Kazakhstan.

**Question 156**

**Please explain the manner in which the law of the Republic of Kazakhstan complies with TRIPS Article 50 relating to provisional measures and providing judicial authorities the authority to adopt provisional measures ex parte.**

Answer:

Subject to Article 5 of the Agreement on TRIPS the judicial authorities shall have the authority to order prompt and effective provisional measures to prevent an infringement of any intellectual property right from occurring, and to preserve relevant evidence in regard to the alleged infringement. Article 158 of the Civil Code of the Republic of Kazakhstan provides that upon the request of parties involved in the process the court can take measures to executive the claim resolution. Execution of the claim resolution is allowable in any situation when omission of such measures might hinder or make impossible executing the court's resolution.

The following can be the measures to execute the court's resolution:

- sequestration of respondent's property in his/her possession or in possession of other entities (except for the bank accounts);
- prohibit the respondent from making certain actions;
- prohibit other persons from transferring property or fulfilling other obligations to the respondent;
- suspend sales of property in case of filing a claim to cancel the sequestration;
- suspend the effect of a legal act in question issued by a governmental body, organization or an official; and

- suspend a penalty imposed by an executive document contested by the debtor in the court.

If needed, the court may take other measures to secure the claim. The court may take several such measures at one time. The violators of the prohibitions imposed under subparagraph (2) and (3) of Article 158 of the Civil Code of the Republic of Kazakhstan shall be subject to the administrative responsibility. Besides, the claimant has the right to claim such persons to pay indemnity for the losses caused by the failure to execute the resolution to secure the claim.

In accordance with paragraph 2 of Article 49 of the Law of the Republic of Kazakhstan "On Copyright and Related Rights" the judge has the right to resolve to prohibit the defendant from manufacturing, reproduction, sales, and use of pirated copies of the works and phonograms in question before the investigation. The judge also can make a resolution on sequestration and expropriation of all copies of works and phonograms in question (suspected to be pirated copies) as well as materials and equipment designated for their production and reproduction.

Therefore, the provisions of the existing laws of Kazakhstan meet the requirements of Article 50 of the TRIPS Agreement.

- **Provisional measures**

**Question 157**

**TRIPS Article 50(2) provides that members are obligated to provide judicial authorities the authority to grant provisional measures ex parte. Under Article 61 members shall provide for criminal procedures and penalties to be applied at least in cases of wilful copyright piracy on a commercial scale. Please indicate how the Republic of Kazakhstan provides for such ex parte relief in civil cases and criminal procedures and penalties.**

Answer:

Subject to Article 50 (2) of the Agreement on TRIPS the judicial authorities shall have the authority to adopt provisional measures inaudita altera parte where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

Subject to Article 61 of the TRIPS Agreement Members shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale.

Civil legislation of the Republic of Kazakhstan and the Law "On Copyright and Related Rights," implementing provisions of Article 50 of the WTO TRIPS Agreement, provides judges with the power to take the following measures at the request of the claimant or upon their own initiative:

- to arrest the defendant's property;
- to prohibit a defendant from taking certain actions including sale of goods bearing a trademark belonging to the complainant;
- to prohibit other persons from transferring property to the defendant or from fulfilling other commitments with regard to the defendant;
- to suspend sales of property in case of a suit to free the property from seizure;
- to suspend a contested act issued by a governmental body, organization or official person; and
- to suspend recovery made in accordance with an executive document, if the debtor contested this document.

In accordance with Article 184 of the Criminal Code of the Republic of Kazakhstan provides for a fine in the amount of one to five hundred of monthly calculation indices, or in the amount of the wages or other income of a convict for the period from one to five months, or for public works for the period from one hundred eighty to two hundred forty hours, or for imprisonment for up to two years for the following: illegal use of objects under copyright or related rights, as well as illegal use of an invention, utility model or industrial design, unauthorized disclosure of the essence of a scientific discovery, invention, utility model or industrial design without the author's permission before the official publication of information about them, as well as assuming the authorship for one's own or forcing for co-authorship, if such deeds were made with the purpose to benefit and caused a significant damage.

The punishment for illegal acts stipulated in part one of Article 184 of the Criminal Code of the Republic of Kazakhstan shall be a fine in the amount of five to eight hundred monthly calculation indices, or in the amount of the wages or other income of a convict for the period from five to nine months, or detention from four to six months, or imprisonment for up to five years with or without deprivation of property, if the said acts were committed either more than once, or by a group of persons by a previous concert, or by an organized group.

The provisions of the existing laws of Kazakhstan meet the provisions of Article 50 (2) and 61 of the TRIPS Agreement.

#### **Question 158**

**Questions 215, 216: Please confirm whether there is no legal obligation by law to inform the alleged infringer about the decision on taken measures prior such decision is executed. According to Article 50.2 of TRIPS, we draw the attention to this aspect as in certain infringements of intellectual property rights it is essential to ensure the preservation of evidence, which can be eliminated in a few seconds if the infringer is informed prior about the supposed measures against him.**

#### Answer:

The laws of Kazakhstan have no requirement to prevent an imminent infringement in respect of intellectual property. Subject to Article 638 of the Administrative Code of the Republic of Kazakhstan a report on administrative infringement must be made immediately after eliciting a fact of such an administrative infringement, and subject to paragraph 1 of Article 640 of the Administrative Code of the Republic of Kazakhstan the report shall be submitted to the court or the authorized body within one day for the trial.

#### **- Special border measures**

#### **Question 159**

**With regard to border measures, Articles 51-59 provide for obligations of members relating to effective border enforcement. Can a copy of the draft Code Customs be provided?**

#### Answer:

Kazakhstan provided the text of the Customs Code of the Republic of Kazakhstan as of 5 April 2003 in document WT/ACC/KAZ/39 (03-0062) and Rev.1.

The existing Customs Code of Kazakhstan includes section 10, which regulates the intellectual property rights protection aspects by the customs bodies.

This section contains provisions for the protection of rights for intellectual property by customs bodies as well as specific details of customs treatment and customs control of intellectual property goods.

### **Question 160**

**The response relating to border measures and the ability of rights holders to inspect detained merchandise under TRIPS Article 57 and obtain information does not clearly indicate that the right holder may inspect detained goods or provided information regarding the importer. Please clarify. If current law does not provide for these actions, are amendments to the law contemplated?**

Answer:

Subject to Article 57 of the Agreement on TRIPS without prejudice to the protection of confidential information, Members shall provide the competent authorities the authority to give the right holder sufficient opportunity to have any goods detained by the customs authorities inspected in order to substantiate the right holder's claims. The competent authorities shall also have authority to give the importer an equivalent opportunity to have any such goods inspected. Where a positive determination has been made on the merits of a case, Members may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee and of the quantity of the goods in question.

Subject to Article 418 of the Customs Code of the Republic of Kazakhstan the customs body entitles the applicant and applicant's representatives with the right to make samples of goods under customs control in respect of which it was resolved to suspend the release because of counterfeit suspicion and to make an investigation. At that, besides informing the applicant on the elicited signs of infringement, the customs body also reports the declarant's name and address (Article 416 of the Customs Code of the Republic of Kazakhstan).

These provisions of the customs legislation of Kazakhstan meet Article 57 of the TRIPS Agreement.

### **Question 161**

**Question 91 in WT/ACC/KAZ/37/Add.3: Please clarify whether under the current or draft Customs Code, enforcement action will be taken relating to the exportation of infringing goods or the in transit movement of such goods.**

Answer:

The existing Customs Code of Kazakhstan includes section 10, which regulates the intellectual property rights protection aspects by the customs bodies.

This section contains provisions for the protection of rights for intellectual property by customs bodies (chapter 52 of the Customs Code, Articles 410-414) as well as specific details of customs treatment and customs control of intellectual property goods (chapter 53 of the Customs Code, Articles 415-420).



- **Criminal procedures**

**Question 162**

**Please explain the provisions under the law of the Republic of Kazakhstan relating to criminal procedures and penalties for wilful trademark counterfeiting.**

Answer:

Under Article 199 of the Criminal Code illegal use of a trademark, service mark, firm name, appellation of origin or other designations of goods (services) for the related goods or services can result in the following if the action was performed repeatedly and resulted in severe damages: fines equal to 200-500 monthly calculation indices, or to the amount of wages or other income received by the convicted party for a period of two to five months; public works for 180 to 240 hours; detention for up to six months; or a prison term of up to two years.

Illegal use of special marking with respect to trademarks and appellations of origin not registered in Kazakhstan can result in the following if the action was performed repeatedly and resulted in severe damages: fines equal to 100-200 monthly calculation indices, or to the amount of wages or other income received by the convicted party for up to two months; public works for 120 to 180 hours; detention for up to three months; or a prison term of up to one year.

**Question 163**

**In addition, penalties for copyright piracy may not be adequate to compensate the copyright holder for injuries suffered as the result of infringement as required under TRIPS Article 45. Copyright reform (as discussed below) to address these longstanding deficiencies has been slow.**

**Kazakhstan has been urged to increase the penalties for copyright piracy and impose penalties that are "sufficient" to act as an effective deterrent to potential pirates and counterfeiters. Kazakhstan responded that current penalties are "sufficiently strict" (Item 217, WT/ACC/SPEC/KAZ/8). Does Kazakhstan's response mean that its current remedies are serving as an "effective deterrent" against widespread copyright piracy? If so, please provide evidence of the deterrent effect.**

Answer:

The draft Law on Amendments and Addenda to the Criminal and Administrative Laws of Kazakhstan as of 2004 aims to reinforce the responsibility for infringement of intellectual property rights. The draft law entitles the Criminal Code with more sanctions to punish recurrent infringement of copyright or other rights and provides sanctions for administrative infringements.

Besides, if the proposed revision of the Criminal Code is adopted, there will be no need to prove the amount of losses incurred or lost by the right holder, because a large quantity of suspended counterfeit goods (not the amount of damage) will suffice to start a criminal investigation.

**Question 164**

**In paragraph 279 it is mentioned that preparations to make amendments and addenda to the existing administrative and criminal legislation were in place to reinforce the penalties for violations of intellectual property. We would welcome to receive a draft of these amendments.**

Answer:

The draft Law of the Republic of Kazakhstan "On Amendments and Addenda to the Legal Acts of the Republic of Kazakhstan on Intellectual Property Rights" aiming change the criminal and administrative laws of Kazakhstan as to reinforce the responsibility for infringement of intellectual property rights was developed and submitted to the Government of Kazakhstan for approval in 2004.

A copy of the text of this draft Law is available from the Secretariat through document WT/ACC/KAZ/57/Add.1.

## **POLICIES AFFECTING TRADE IN SERVICES**

### **Question 165**

**Paragraph 283: Could Kazakhstan provide updated information concerning the current situation in the telecommunication sector. According to information available to us, on 2 September 2004, the Government of Kazakhstan eliminated the exclusive rights of KazakhTeleCom for the provision of international and long-distance communication. At the same time, KazakhTelecom noted that it will take part in the tender for the acquisition of 18.6 per cent shares of the telecommunication company "Nursat". Taking into consideration that 41.25 per cent of "Nursat" shares already belong to KazakhTeleCom, after the acquisition of this additional package of shares, KazakhTeleCom would have exclusive rights for providing international and long-distance telecommunication services in Kazakhstan. This could effectively create a state-owned monopoly in telecommunication sector.**

Answer:

"Kazakhtelecom" JSC did take part in the bids tender for 18.6 per cent of shares of "Nursat" telecommunication company, which does not contradict the antimonopoly laws of the Republic of Kazakhstan. According to our information "Telecom Service" company won the tender.

### **Question 166**

**Please provide the Working Party with updated information on Kazakhstan's national security legislation. We understand that this legislation has been amended regarding security in the Communications sector.**

Answer:

On 5 July 2004 Kazakhstan adopted Law No. 568 "On Amendments and Addenda to Legal Acts of the Republic of Kazakhstan on Communication", which provides that foreigners, persons without a citizenship and foreign legal entities cannot directly and/or indirectly own, use, dispose of, and/or manage over 49 per cent in total of voting shares of a telecommunication legal entity operating as an operator of long distance or international communication possessing communication land lines (cable lines, including fibre optic and radio). This limitation does not apply to operators of mobile, satellite and local communication.

## **Transparency**

### **Question 167**

**Where does Kazakhstan provide for publication of administrative rulings of general application, e.g., customs rulings?**

Answer:

In general, the Law "On Regulatory Legal Acts" of 24 March 1998 regulates the procedures for the publication and interpretation of regulatory legal acts as well as preparing comments thereto and participation in the discussion of draft regulatory legal acts.

In accordance with Article 46 of the mentioned Law, the governmental bodies adopting regulatory legal acts shall keep account of and systemize such acts, have control copies of their adopted acts and timely make all amendments and addenda to the acts.

The governmental bodies periodically issue collections of their regulatory legal acts or delegate this to the subordinate governmental bodies and organizations.

Moreover, in accordance with Article 33 of the mentioned law the central governmental bodies make official publications in official periodicals only distributed in the entire territory of the Republic of Kazakhstan.

The following are the official periodicals: the Bulletin of the Parliament of the Republic of Kazakhstan and the Collection of Acts by President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.

Other periodicals can make official publications too, if they obtain the right for this at a tender under the procedures defined by the Government of the Republic of Kazakhstan.

The other printed media can only make subsequent official publications of regulatory legal acts in accordance with the procedure established by the Government of the Republic of Kazakhstan, provided that the texts have been proved the authenticity by comparing with the control reference bank of regulatory legal acts of the Republic of Kazakhstan.

Law-enforcement practice provides for the use of official publications of regulatory and legal acts only. Informal publishing of regulatory legal acts is only allowed after their official publication.

The Customs Control Agency publishes the following information on its official web-site "www.customs.kz": structure and functions of the Customs Control Agency and other customs bodies, the legislation of the Republic of Kazakhstan, including Laws, Presidential Decrees, Governmental Resolutions, Orders of the Customs Control Agency (administrative decisions), Instructions of the Customs Control Agency (administrative decisions), Joint Orders of the Customs Control Agency, Explanations of the Customs Control Agency, foreign trade statistics, foreign relations of the Customs Control Agency, history of the Customs Control Agency.

**Question 168**

**Where does Kazakhstan provide for publication of regulations and other legal instruments for review and comment prior to enactment?**

Answer:

In accordance with Article 14 of the Law "On Regulatory Legal Acts" the governmental bodies may involve experts in various disciplines, scientific organizations and scientists (by creating advisory boards both at the developing body and at the Government of the Republic of Kazakhstan) into the development of draft regulatory legal acts.

Besides, in accordance with Article 13 of the said Law other governmental and non-governmental organizations and entities not involved in the development of a regulatory legal act have the right to make suggestions on their development or submit the initiated drafts to the examination of the authorized bodies.

Drafts of especially important legal acts can be preliminary published in the official periodicals for the public to read it and make comments (the Tax Code and the Civil Code were developed according to this practice).

#### **Question 169**

**How does Kazakhstan intend to provide for publication for review and comment of TBT and SPS related materials, procedures, and regulations? Will such facilities be extended to other areas in the establishment of a regulatory review mechanism of general application?**

Answer:

In accordance with paragraph 2 of Article 10 of the Law "On Technical Regulation" information on the existing and pending drafts of technical regulations, standards, conformity assessment procedures, international agreements on standardization, conformity recognition, bilateral and multilateral recognition will be published in the official periodical of the authorized body and in the public information system (on the web-site of the authorized body).

#### **Trade Agreements**

#### **Question 170**

**Much more information on the scope and content of Kazakhstan's bilateral and plurilateral preferential trade agreements should be provided in this section, covering inter alia:**

- (a) FTAs with the CIS and other countries;
- (b) the customs union with Russia, Belarus, Kyrgyz Republic and Tajikistan;
- (c) the Eurasian Economic Community; and
- (d) the Common Economic Space Agreement with Russia, Ukraine, and Belarus.

**Any protocols or agreements within these agreements that cover WTO issues, e.g., safeguards, TBT and SPS, customs issues, etc., should be listed and described.**

**Please indicate and exceptions to the elimination of all duties and charges on substantially all trade with these preferential trading partners, and the areas of Kazakhstan's tariff schedule that are not aligned with the common external tariff of the customs union.**

Answer:

(a) The trade and economic relations among Kazakhstan and CIS countries (Azerbaijan, Armenia, Belarus, Georgia, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan, and the Ukraine) are based on multilateral and bilateral Agreements.

Being parties to the Eurasian Economic Community, Belarus, Kazakhstan, Kyrgyzstan, Russia, and Tajikistan provide each other with the free trade regime without exceptions and limitations.

At that Kazakhstan and Turkmenistan has no bilateral agreement on free trade, that is why the goods imported to Kazakhstan from Turkmenistan are subject to customs duties.

As for the other six CIS countries, Kazakhstan has bilateral agreements on free trade with each of them.

Under the mentioned agreements the goods originating from the CIS countries and imported to Kazakhstan from their territory are exempted from customs duties, except for certain goods, the list of which makes exception from the free trade regime.

In accordance with the Agreement on Creation of the Free Trade Zone as of 15 April 1994, the Parties are developing and coordinating the List of Exceptions from the Free Trade Regime as well as the methods of application and phase-by-phase elimination of such exceptions before the creation of the free trade zone.

Before the approval of the common List of Exceptions from the Free Trade Regime the Parties make protocols to bilateral agreements on free trade.

The goods included into the List of Goods Excluded from the Free Trade Regime in the mutual trade among Parties are subject to customs duties, taxes, and levies in accordance with the national laws of the Parties (the list of goods is enclosed).

The mentioned lists of such goods mainly comprise excise products (certain kinds of alcoholic and tobacco products).

In the framework of the Eurasian Economic Community they approved the Single List of Exceptions for the Free Trade Regime of the EurAsEC Members with the CIS countries that are not Members to the EurAsEC, and the Single Schedule on Exceptions Elimination.

In accordance with the said Schedule the Parties are developing protocols on phasing out the existing exceptions from the free trade regime on the goods included into the Single List, and the Parties have the right to set their own terms of elimination of exceptions on the goods not included into the Single List.

Taking into account that the free trade regime applies to the goods originating from the customs territory of the CIS countries with destination in the customs territory of the CIS countries, the origin of goods is confirmed with the certificate of origin in accordance with the Rules on Determination of the Country of Origin of Goods being an indispensable part of the Agreement on the Free Trade Zone.

(b) In accordance with the Agreement on Customs Union and Single Economic Area as of 26 February 1999, Belarus, Kazakhstan, Kyrgyzstan, Russia, and Tajikistan ensure full implementation of the free trade regime without exceptions and limitations, under the existing bilateral and multilateral Agreements on Free Trade.

The Agreement aims to complete the formation of the customs union and creation of the Single Economic Area.

The Agreement's provisions regulate the trade in goods and services as well as the capital flow. At that the Agreement provides for application of no tariff and quantitative limitations on mutual trade except for the measures to protect national markets, permitted by the WTO provisions and rules.

(c) The Customs Union of Belarus, Kazakhstan, Kyrgyzstan, Russia, and Tajikistan made in 1999 with the purpose to enhance efficient formation of the Single Economic Area with help of new, prospective forms and mechanisms of interaction, and through achievement of common benefits and national interests by mutual efforts, was further reorganized into the Eurasian Economic Community in 2000 (the Agreement on Creation of EurAsEC as of 10 October 2000).

(d) On 23 February 2003 Presidents of Belarus, Kazakhstan, Russia, and the Ukraine signed the Agreement on formation of the Single Economic Area (SEA).

The SEA formation aims to create the environment for the stable and efficient development of the Parties' economies, to improve the standard of life of population, to encourage the trade and investments flows among the Parties on the basis of the commonly accepted principles and norms of international laws as well as the WTO rules and principles.

At present the SEA Members are working on the development of the package of international legal documents to be put into the basis of the SEA formation and functioning. Taking into account the fact that all SEA Members are negotiating on accession to the WTO, compliance with the WTO rules and provisions is the main requirement to the development of the said international legal documents.

For coordinated application of special protective, antidumping and compensation measures to importation of goods in the mutual trade and in trade with third party countries, the EurAsEC Members made the Protocol on the Mechanism of Application of Special, Protective, Antidumping and Compensation Measures in the trade with Customs Union Members.

The Protocol defines the common procedure for application of the mentioned measures both in the mutual trade and in the trade with other countries.

The Protocol on the Single Procedure for Application of Technical, Medicine, Pharmaceutical, Sanitary, Phytosanitary, and Environmental Standards, Regulations, Rules and Requirements to the Goods imported to the Customs Union Members (28 January 1999) regulates application of measures necessary for the protection of life and health of human, animals, plants and to protect the environment.

The Protocol sets forth the single procedure for application of standards and requirements to the goods imported to the territory of the Parties, including the complex of measures and rules aimed to reveal, prevent and stop violations of the procedure for importation of certain goods, for which there are uniform standards and requirements.

At the same time, the EurAsEC Members are working on changing national legislations on standardization and certification, because of the transition to the technical regulation system and its harmonization with the WTO Agreements. In the view of this they are working on the changes in the above mentioned Protocol in the framework of the work of the Commission on Technical Regulation, Sanitary, Veterinary, and Phytosanitary Measures in Trade at the EurAsEC Integration Committee.

To ensure free circulation of goods in the territory of the EurAsEC Members by elimination of technical barriers to trade with the community parties, they developed the draft Agreement on the Fundamentals of Harmonization of Technical Regulations of the EurAsEC Members.

The draft Agreement defines the development procedure, mechanism and scope of adoption of single technical regulations in the framework of the EurAsEC. At that, during consideration of the draft Agreement the parties have analyzed the conformity of their national legislations with the WTO Agreement on Technical Barriers to Trade.

## ANNEX 1

### Changes Made in the Capital Transactions by the Draft Law "On Currency Regulation and Currency Control"

Currency transaction description 1	Current regime 2	Regime before 2007 <sup>2</sup> 3	Regime after 2007 4	Note 5
<b>Concerning the currently licensed operations</b>				
1. Residents open accounts (including accounts in the national currency of the Republic of Kazakhstan) in foreign banks and other financial organizations	To be licensed except for cases when: <ul style="list-style-type: none"> <li>- banks open accounts;</li> <li>- natural persons open accounts in banks of OECD with rating "A" ("Fitch", "Standard &amp; Poor's") or "A2" ("Moody's Investors Service") and higher; as well as persons temporary staying abroad open accounts for work, study, medical treatment; or</li> <li>- vacation/recreation purposes.</li> </ul>	To be licensed except for the following cases: <ol style="list-style-type: none"> <li>1. banks open accounts;</li> <li>2. resident financial organizations open accounts for transactions with financial instruments at the international securities market;</li> <li>3. resident legal entities open accounts to finance expenses of their branches and representative offices (see note);</li> <li>4. resident legal entities open accounts to pay money necessary to form the charter capital of a legal entity if such was required under the laws of a foreign state where the legal entity was to be formed;</li> <li>5. resident legal entities open accounts to pay money to fulfil liabilities of residents to non-residents by the loans obtained from the non-residents; or</li> <li>6. natural persons open accounts in banks in the territory of OECD countries and in banks in other foreign countries during such person's staying in those countries.</li> </ol>	Notify NBK (National Bank of Kazakhstan) on opening an account in a foreign bank within 30 days since conclusion of the agreement with a foreign bank or since the day of returning to Kazakhstan (for natural persons)	As for the exception from the licensing regime specified in par. (3) of column 3 herein, before 2007 registration will be required, which will be changed for the notification regime, and as for par. (2), (4)-(6), the notification regime will be effective since the day of enforcement of the Law
2. Residents make foreign investments	To be licensed except for the following cases: <ol style="list-style-type: none"> <li>1. dealer operations of banks;</li> <li>2. residents' investments in securities of international financial organizations;</li> <li>3. residents' investments in foreign shares and other securities when the issuer or the shares/securities have the rating specified in par. 1 above and provided that the investments were made through Kazakh brokerage houses and dealer organizations;</li> </ol>	<ol style="list-style-type: none"> <li>1. All direct investments (i.e. when residents purchase shares or contribute capital into the charter capital of a non-resident legal entity and such a resident will have 10 and more % of voting share or votes in the invested entity) will require registration.</li> <li>2. Portfolio investments (when residents purchase shares, securities, shares of non-residents, purchase shares of non-resident investment funds or contribute capital into the charter capital of a non-</li> </ol>	<ol style="list-style-type: none"> <li>1. Direct investments still require registration.</li> <li>2. Portfolio investments will require a notification.</li> </ol>	Banks and professional operators will make notifications on the investments (either their or on the behalf of clients) in the framework of their regular payment balance accountability by providing certain details of the transactions made (e.g., name of resident client and non-resident invested

<sup>2</sup> This regime will be effective since the day of enforcement of the new law "On Currency Regulation and Currency Control" until 31 December 2006

Currency transaction description	Current regime	Regime before 2007 <sup>2</sup>	Regime after 2007	Note
1	2	3	4	5
	<p>4. investments into the charter capital of legal entities of OECD countries and/or countries with which Kazakhstan has ratified treaties/agreements on mutual encouragement and protection of investments that guarantee that the resident will have 50 and more percent of voting shares (votes) in the invested entity (registration regime); or</p> <p>5. investments into non-residents' securities on the account of pension funds.</p>	<p>resident legal entity as well as transactions with derivative financial instruments) will be licensed except for the cases when the resident is a bank, insurance organization or an organization making investment management of pension funds (if it invests pension funds).</p> <p>In doing so, professional participants of the equity market (not banks or pension funds managers) will obtain the operation license for portfolio investments that entitles them with the right to make all such transactions/operations on the account of both its own and clients' funds.</p> <p>Therefore the existing requirement to obtain a one-time license (i.e. the license for each separate transaction) will only be valid in cases where resident legal entities (except for the ones specified above) and natural persons make portfolio investments bypassing Kazakh professional participants.</p>		entity)
3. Residents make money transfers to purchase (rent) real estate from a non-resident	To be licensed	Residents' payments for the purchase of real estate from non-residents will require registration	Residents' payments for the purchase of real estate from non-residents will require a notification	Rent payments will be regulated as commercial credits
4. Residents pay in advance for import of goods (services) as well as receive proceeds from the payment for export in the period over 180 days (365 days for the export of certain goods)	To be licensed as capital transactions	To be licensed as commercial credits granted by residents to non-residents for the period over 180 days	Registration will still be required	The law defines commercial credits as allowing to postpone a payment /delivery by a supplier and buyer, which conform to the payment balance term "trade credit"
5. Residents grant loans to non-residents for the period over 180 days	To be licensed except for bank loans	To be registered as financial loans	Registration will still be required	The law gives a definition of financial loans, which conforms to the meaning of the payment balance term "loans"



Currency transaction description	Current regime	Regime before 2007 <sup>2</sup>	Regime after 2007	Note
1	2	3	4	5
6. Foreign currency obtained by a resident as a credit from a non-resident is transferred to accounts of third parties	To be licensed except for: <ul style="list-style-type: none"> <li>1. state loans and government guaranteed loans;</li> <li>2. unwarranted loans from foreign banks providing for the use of documentary forms of accounts settlement;</li> <li>3. credits obtained by residents to finance export-import deals insured in foreign agencies on export loans (find the list enclosed); or</li> <li>4. credits where a non-resident third party pays for the import contract, for which the deal certificate was issued</li> </ul>	Neither of the regimes applies (licensing, registration, notification)	Neither of the regimes applies (licensing, registration, notification)	The necessary statistical data will be obtained from reports on registration of credits (financial loans) obtained
7. A resident transfers currency values to a non-resident for the asset management	To be licensed	To be regulated as portfolio investments	It will be regulated as portfolio investments	The draft laws does not put it as a separate transaction (operations)
8. Residents' investments into the charter capital of legal entities of OECD countries and/or countries with which Kazakhstan has ratified treaties/agreements on mutual encouragement and protection of investments that guarantee that the resident will have 50 and more percent of voting shares (votes) in the invested entity	Exception from the licensing requirement (see sub-par. 4 of par. 2 above). To be registered as direct investments.	To be registered as direct investments	It will still require registration	The law gives the definition of term "direct investments", which conforms to sub-par. 1 of column 2 of par.2 herein
9. Natural persons open accounts in foreign banks in the territory of OECD countries with the rating as specified in par.1 above	Exception from the licensing requirement (see par.1 above). To be registered except for the cases where resident persons temporary staying abroad open accounts for work, study, medical treatment or vacation/recreation purposes	Notification required regardless of the rating of the OECD country (see also par.1 above)	Notification (see par.1 above)	
10. Obtaining a credit from a non-resident for the period over 180 days, including financial leasing	To be registered except for agreements on external state loan and government guaranteed loans as well as transactions there-under	To be registered as financial loans	To be registered as financial loans	At present registration is required when the amount of a credit agreement (and/or resident's actual account payable) exceeds US\$ 100,000 equivalent

Currency transaction description	Current regime	Regime before 2007 <sup>2</sup>	Regime after 2007	Note
1	2	3	4	5
11. Non-residents credit export-import contracts (non-residents prepay for export or allow a postponed payment) for the period over 180 days	To be registered	To be registered as commercial credits	To be registered as commercial credits	At present registration is required when the amount of a credit agreement (and/or resident's actual account payable) exceeds US\$ 100,000 equivalent
12. Non-residents make direct and portfolio investments into Kazakhstan, including primary distribution of residents' equity in international capital markets, including issuing deposit receipts for residents' equity	To be registered except for the cases where: 1. non-residents buy securities issued in Kazakhstan; 2. non-residents buy depositary receipts; 3. non-residents buy residents' equity through Kazakh brokerage houses (except for investing into the brokerage house itself); 4. residents buy residents' equity and shares in the charter capital of resident legal entities from non-residents; or 5. reinvestment of non-residents.	Direct investments must be registered.  Portfolio investments (when non-residents buy equity of residents, shares of resident investment funds or contribute capital into the charter capital of a resident legal entity as well as make a primary distribution of residents' equity in international capital markets, including issuing depositary receipts for resident's securities) require registration.	1. Direct investments require registration 2. Portfolio investments require notification	At present registration only is required when the contract amount (articles of incorporation, sale /purchase resolution, etc), which is the basis for investment, exceeds US\$ 100,000 equivalent
13. Non-residents make money transfers to pay residents for complete transfer of the exclusive right for intellectual property	To be registered	To be registered  After the Law becomes effective, purchase of the exclusive right for intellectual property by residents from non-residents will also require registration	To be registered	At present registration only is required when the contract amount exceeds US\$ 100,000 equivalent  It is always the resident who has to register it in the NBK
14. Non-residents pay for the property rights for real estate except for the property qualified as equal to real estate	To be registered	Purchase of real estate by non-residents from residents will require registration	Purchase of real estate by non-residents from residents will require notification	Non-residents' payments for the rent shall be regulated as commercial credits (see par.1 above).  At present registration only is required when non-residents purchase real estate property for the amount exceeding US\$ 100,000 equivalent

## ANNEX 2

List of Priority Types of Activity on the Level of the Classifier of Sub-types of Activity on Which  
Investment Preferences are Granted

No.	Name of the section	Code	Name of the type and sub-type of activity
1	2	3	4
01	Agriculture	01.1	Plant growing
		01.11	Growing of cereals, technical crops and other agricultural crops, except for:  - growing of tobacco and its primary processing: gathering and drying of tobacco leaves - growing of agricultural crops not entered in other groups
		01.13	Growing of grapes for wine and table grapes
		01.2	Live stock-breeding
		01.21	Cattle breeding, except for:  - manufacture of raw cow milk
		01.24	Breeding of agricultural poultry
		01.25	Breeding of other animals
		01.4	Rendering of services in the field of plant growing
		01.41	Rendering of services in the field of plant growing, except for:  - making, treatment and maintenance of gardens, parks and green plantations at sportive units, etc. - trimming of trees and hedge-rows
		01.5	Hunting and breeding of game, in particular rendering of services in those fields
		01.50	Hunting and breeding of game, in particular rendering of services in those fields, except for: catching of sea mammals such as walrus seals
02	Forestry and rendering of services in that field	02.0	Forestry and forest harvesting operations
		02.01	Forestry and forest harvesting operations, except for:  - wood cutting and manufacture of commercial wood such as pit props, logs for piles, pales, firewood - growing of vegetable materials used for manufacture of woven articles
		02.02	Rendering of services in the field of forestry and forest harvesting operations, except for:  - rendering of services in the field of forest harvesting operations:  - transportation of logs within the forest

No.	Name of the section	Code	Name of the type and sub-type of activity
1	2	3	4
05	Fishery, fish-breeding and rendering of services in those fields	05.0	Fishery
		05.01	Fishery, except for: <ul style="list-style-type: none"> <li>- fishery in an ocean, in nearshore and inland waters</li> <li>- catching of sea and fresh-water crustacea and mollusks</li> <li>- catching of water animals: terrapins, ascidia, Tunicata, sea urchins, etc.</li> <li>- gathering of sea products: natural pearls, sponges, corals and seaweed</li> </ul>
		05.0	Fish-breeding
		05.02	Fish-breeding, except for: <ul style="list-style-type: none"> <li>- breeding of young oysters, mussels, young lobsters, spiny lobsters, shrimps, young fishes</li> <li>- growing of red algae and other eatable seaweed, breeding of oysters</li> </ul>
15	Manufacture of foodstuffs	15.1	Manufacture of meat and meat foods
		15.12	Manufacture of meat of agricultural poultry and rabbits
		15.13	Manufacture of meat foods, except for: manufacture of ready meat dishes in the public catering system
		15.2	Processing and preservation of fish and fish foods
		15.20	Processing and preservation of fish and fish foods, except for: preparation of ready fish dishes
		15.3	Processing and preservation of fruits and vegetables
		15.31	Processing and preservation of potatoes, except for: preparation of snacks of potatoes
		15.32	Manufacture of fruit and vegetable juices
		15.33	Processing and preservation of fruits and vegetables not entered in other groups
		15.4	Manufacture of vegetable and animal oils and fats
		15.41	Manufacture of non-refined oils and fats
		15.42	Manufacture of refined oils and fats
		15.43	Manufacture of margarine
		15.5	Manufacture of dairy foods
		15.51	Processing of milk and manufacture of cheese
		15.52	Manufacture of ice-cream
		15.6	Manufacture of foods of the flour-milling and cereal industry, starches and starch products
		15.61	Manufacture of foods of the flour-milling and cereal industry
		15.62	Manufacture of starch and starch products
		15.7	Manufacture of ready feedstuffs for animals
		15.71	Manufacture of ready feedstuffs for animals kept at farms
		15.72	Manufacture of ready feedstuffs for domestic animals
		15.8	Manufacture of other foodstuffs
		15.84	Manufacture of cocoa, chocolate and sugar confectionery
15.87	Manufacture of spices and seasonings		
15.88	Manufacture of baby food and dietetic foodstuffs		
15.89	Manufacture of other foodstuffs not entered in other groups (soups, meat broth, yeast, egg solids)		

No.	Name of the section	Code	Name of the type and sub-type of activity
1	2	3	4
17	Textile industry	17.1	Spinning of textile fibres
		17.11	Spinning of cotton fibres
		17.12	Carding spinning of wool fibres
		17.13	Combing spinning of wool fibres
		17.14	Spinning of flax fibres
		17.15	Manufacture of natural silk, artificial and synthetic fibres
		17.16	Manufacture of sewing threads
		17.17	Preparation and spinning of other textile fibres
		17.2	Weaving industry
		17.21	Manufacture of cotton cloths
		17.22	Manufacture of woollen cloths of fibres of carding spinning
		17.23	Manufacture of woollen cloths of fibres of combing spinning
		17.24	Manufacture of silk cloths
		17.25	Manufacture of other textile cloths
		17.4	Manufacture of ready-made textile articles, except for clothes
		17.40	Manufacture of ready-made textile articles, except for clothes
		17.5	Manufacture of other textile articles
		17.51	Manufacture of carpets and carpet articles
		17.52	Manufacture of cordage, ropes, binder and nets
		17.53	Manufacture of non-woven textile materials and articles of them
		17.54	Manufacture of other textile articles not entered in other groups
		17.6	Manufacture of knitted fabric
		17.60	Manufacture of knitted fabric
		17.7.	Manufacture of knitted articles
17.71	Manufacture of knitted hosiery articles		
17.72	Manufacture of knitted pullovers, cardigans and analogous articles		
18	Manufacture of clothes, dressing and dyeing of fur	18.1	Manufacture of clothes of leather
		18.10	Manufacture of clothes of leather
		18.2	Manufacture of clothes of textile materials
		18.21	Manufacture of special clothes
		18.22	Manufacture of outerwear
		18.23	Manufacture of underwear
		18.24	Manufacture of other clothes and accessories
		18.3	Dressing and dyeing of fur; manufacture of fur articles
18.30	Dressing and dyeing of fur; manufacture of fur articles		
19	Manufacture of leather, articles of leather and manufacture of footwear	19.1	Hardening and finishing of leather
		19.10	Hardening and finishing of leather
		19.2	Manufacture of cases, bags and other articles of leather
		19.20	Manufacture of cases, bags and other articles of leather
		19.3	Manufacture of footwear
		19.30	Manufacture of footwear
20	Processing of wood and manufacture of articles of wood	20.2	Manufacture of veneer, plywood, boards and panels
		20.20	Manufacture of veneer, plywood, boards and panels
		20.3	Manufacture of wooden building structures and joiner's articles
		20.30	Manufacture of wooden building structures and joiner's articles

No.	Name of the section	Code	Name of the type and sub-type of activity
1	2	3	4
21	Manufacture of pulp, paper, cardboard and articles of it	21.1	Manufacture of pulp, paper and cardboard
		21.11	Manufacture of pulp
		21.12	Manufacture of paper and cardboard
		21.2.	Manufacture of articles of paper and cardboard
		21.21	Manufacture of corrugated cardboard, paper and cardboard tare
		21.22	Manufacture of paper articles of household and sanitary-hygienic designation
		21.23	Manufacture of writing paper articles
		21.24	Manufacture of wallpaper
		21.25	Manufacture of other articles of paper and cardboard
22	Printing industry and rendering of services in that field	22.2.	Printing activity and rendering of services in that field
		22.22	Printing activity not entered in other groups
		22.23	Stitching-binding and finishing activity
23	Manufacture of oil products	23.2	Manufacture of oil products
		23.20	Manufacture of oil products, except for: <ul style="list-style-type: none"> <li>- manufacture of motor fuel: gasoline, kerosene, etc.</li> <li>- manufacture of fuel: light distillate fuel, middle distillate fuel and heavy distillate (diesel) fuel, oil refinery gases such as ethane, propane, butane, etc.</li> </ul>
24	Chemical industry	24.1	Manufacture of general chemical matters
		24.11	Manufacture of industrial gases
		24.12	Manufacture of colours and pigments
		24.13	Manufacture of other general inorganic (chemical) matters
		24.14	Manufacture of general organic (chemical) matters, except for: <ul style="list-style-type: none"> <li>- manufacture of wood coal,</li> <li>- manufacture of pitch and pitch coke,</li> <li>- rectification of coal-tar resin</li> </ul>
		24.15	Manufacture of fertilisers and nitrogen compounds
		24.16	Manufacture of plastics in primary forms
		24.17	Manufacture of synthetic caoutchouc
		24.2	Manufacture of agricultural chemical products
		24.20	Manufacture of agricultural chemical products
		24.3	Manufacture of paints and lacquers
		24.30	Manufacture of paints, lacquers and analogous coatings, typographic paints and mastics
		24.4	Manufacture of pharmaceutical products
		24.41	Manufacture of general pharmaceutical products
		24.42	Manufacture of pharmaceutical preparations and materials
		24.5	Manufacture of soap and washing, cleansing and polishing matters, perfume and cosmetic matters
		24.51	Manufacture of soap and washing, cleansing and polishing matters
		24.52	Manufacture of perfume and cosmetic matters
		24.6	Manufacture of other chemical products
		24.61	Manufacture of explosive materials
		24.62	Manufacture of glues and gelatine
		24.63	Manufacture of essences
		24.64	Manufacture of photographic materials
		24.65	Manufacture of ready-made unrecorded carriers of information
24.66	Manufacture of other chemical products		
24.7	Manufacture of artificial and synthetic fibres		
24.70	Manufacture of artificial and synthetic fibres		

No.	Name of the section	Code	Name of the type and sub-type of activity
1	2	3	4
25	Manufacture of rubber and plastic articles	25.1	Manufacture of rubber articles
		25.11	Manufacture of rubber tires, cases and tubes
		25.13	Manufacture of other rubber articles
		25.2	Manufacture of plastic articles
		25.21	Manufacture of plastic plates, strips, tubes and profiles
		25.22	Manufacture of plastic articles for package of goods
		25.23	Manufacture of plastic articles used in construction
		25.24	Manufacture of other plastic articles
26	Manufacture of other non-metal mineral products	26.1	Manufacture of glass and articles of glass
		26.11	Manufacture of sheet glass
		26.12	Forming and processing of sheet glass
		26.13	Manufacture of hollow glass articles
		26.14	Manufacture of glass fibre
		26.15	Manufacture and processing of other glass articles
		26.2	Manufacture of ceramic articles, except for ones used in construction
		26.21	Manufacture of household and decorative ceramic articles
		26.22	Manufacture of ceramic sanitary-technical articles
		26.23	Manufacture of ceramic electric insulators and insulating accessories
		26.24	Manufacture of other technical ceramic articles
		26.25	Manufacture of other ceramic articles
		26.26	Manufacture of refractory products
		26.3	Manufacture of ceramic tiles and plates
		26.30	Manufacture of ceramic tiles and plates
		26.4	Manufacture of bricks, tiles and other building articles of burnt clay
		26.40	Manufacture of bricks, tiles and other building articles of burnt clay
		26.5	Manufacture of cement, lime and gypsum
		26.51	Manufacture of cement
		26.52	Manufacture of lime
		26.53	Manufacture of gypsum
		26.6	Manufacture of articles of concrete, gypsum and cement
		26.61	Manufacture of building articles of concrete
		26.62	Manufacture of gypsum articles for use in construction
		26.63	Manufacture of concrete ready for use
		26.64	Manufacture of dry concrete mixtures
		26.65	Manufacture of articles of asbestos cement and fibrous cement
		26.66	Manufacture of other articles of concrete, gypsum and cement
		26.8	Manufacture of other non-metal mineral products
		26.81	Manufacture of abrasive articles
		26.82	Manufacture of other non-metal mineral products not entered in other groups

No.	Name of the section	Code	Name of the type and sub-type of activity
1	2	3	4
27	Metallurgical industry	27.2	Manufacture of tubes
		27.21	Manufacture of tube of iron
		27.22	Manufacture of steel tubes
		27.3	Other primary processing of iron and steel and manufacture of ferrous alloys
		27.31	Cold drawing
		27.32	Cold rolling of strands and narrow strips
		27.33	Cold pressing and bending
		27.34	Manufacture of wires
		27.35	Manufacture of ferrous alloys and other products being out of consideration of the ECSC (European Coal and Steel Community)
		27.4	Manufacture of non-ferrous metals
		27.42	Manufacture of aluminium, except for: - manufacture of aluminium by electrolytic refining of aluminium wastes and scrap
		27.43	Manufacture of lead, zinc and tin, except for: - manufacture of lead, zinc and tin from ore; - manufacture of lead, zinc and tin by electrolytic refining of wastes and scrap of lead, zinc and tin
		27.44	Manufacture of copper, except for: manufacture of copper from ore; manufacture of copper by electrolytic refining of copper wastes and scrap
		27.45	Manufacture of other non-ferrous metals
28	Manufacture of ready-made metal articles	28.1	Manufacture of building metal structures and articles
		28.12	Manufacture of building metal articles
		28.2	Manufacture of metal reservoirs, radiators and boilers of the central heating system
		28.21	Manufacture of metal cisterns, reservoirs and containers
		28.22	Manufacture of radiators and boilers of the central heating system
		28.3	Manufacture of steam boilers, except for boilers of the central heating system
		28.30	Manufacture of steam boilers, except for boilers of the central heating system
		28.7	Manufacture of other ready-made metal articles
		28.71	Manufacture of metal barrels and analogous containers
		28.71	Manufacture of package of light metals
		28.73	Manufacture of articles of wire
		28.74	Manufacture of fastening articles, chains and springs
		28.75	Manufacture of other ready-made metal articles



No.	Name of the section	Code	Name of the type and sub-type of activity
1	2	3	4
29	Manufacture of machinery and equipment	29.1	Manufacture of mechanical equipment
		29.11	Manufacture of engines and turbines, except for aircraft, car and motorcycle engines
		29.12	Manufacture of pumps, compressors and hydraulic systems
		29.13	Manufacture of taps and valves
		29.14	Manufacture of bearings, gear transmissions, elements of mechanical transmissions and drives
		29.2	Manufacture of other equipment of general designation
		29.21	Manufacture of furnaces and kiln burners
		29.22	Manufacture of lifting-transporting equipment, except for: technical servicing of elevators and escalators
		29.23	Manufacture of industrial refrigerating and ventilating equipment
		29.24	Manufacture of other machinery and equipment of general designation not entered in other groups
		29.3	Manufacture of machinery and equipment for agriculture and forestry
		29.31	Manufacture of agricultural tractors
		29.32	Manufacture of other machinery and equipment for agriculture and forestry
		29.4	Manufacture of machines
		29.40	Manufacture of machines
		29.5	Manufacture of other machinery and equipment of special designation
		29.51	Manufacture of machinery and equipment for metallurgy
		29.52	Manufacture of machinery and equipment for production of minerals and construction
		29.53	Manufacture of machinery and equipment for preparation of foodstuffs, including beverages, and tobacco articles
		29.54	Manufacture of equipment for production of textile, garment, fur and leather articles
		29.55	Manufacture of machinery and equipment for production of paper and cardboard
		29.56	Manufacture of other machinery and equipment of special designation not entered in other groups
		29.7	Manufacture of home appliances
29.71	Manufacture of home electric appliances		
29.72	Manufacture of home non-electric appliances		
30	Manufacture of office equipment and computing machines	30.0	Manufacture of office equipment and computing machines
		30.01	Manufacture of office equipment
		30.02	Manufacture of electronic computing machines and other equipment for processing of information

No.	Name of the section	Code	Name of the type and sub-type of activity
1	2	3	4
31	Manufacture of electric machinery and electric equipment	31.1	Manufacture of electric engines, generators and transformers
		31.10	Manufacture of electric engines, generators and transformers
		31.2	Manufacture of electric distributing and controlling equipment
		31.20	Manufacture of electric distributing and controlling equipment
		31.3	Manufacture of insulated wires and cables
		31.30	Manufacture of insulated wires and cables
		31.4	Manufacture of galvanic elements (electric batteries and primary cells)
		31.40	Manufacture of galvanic elements (electric batteries and primary cells)
		31.5	Manufacture of electric lamps and lighting equipment
		31.50	Manufacture of electric lamps and lighting equipment
		31.6	Manufacture of other electric equipment
		31.61	Manufacture of electric equipment for engines and transport vehicles
		31.62	Manufacture of other electric equipment, except for electric equipment for engines and transport vehicles
32	Manufacture of equipment for radio, television and communication	32.1	Manufacture of electric and radio elements
		32.10	Manufacture of electric and radio elements
		32.2	Manufacture of transmitting equipment
		32.20	Manufacture of transmitting equipment
		32.3	Manufacture of equipment for receiving, recording and replaying of sound and picture
		32.30	Manufacture of equipment for receiving, recording and replaying of sound and picture
33	Manufacture of articles of medical equipment, means of measurements, optical devices and equipment	33.1	Manufacture of articles of medical equipment, including surgical equipment, and orthopaedic attachments
		33.10	Manufacture of articles of medical equipment, including surgical equipment, and orthopaedic attachments
		33.2	Manufacture of controlling-metering devices, except for devices of control and adjustment of technological processes
		33.20	Manufacture of controlling-metering devices, except for devices of control and adjustment of technological processes
		33.4	Manufacture of optical devices and photographic equipment
		33.40	Manufacture of optical devices and photographic equipment
		33.5	Manufacture of watches
		33.50	Manufacture of watches
34	Manufacture of cars, trailers and semi-trailers	34.1	Manufacture of cars
		34.10	Manufacture of cars
		34.2	Manufacture of car bodies, manufacture of trailers and semi-trailers
		34.20	Manufacture of car bodies, manufacture of trailers and semi-trailers
		34.3	Manufacture of parts and accessories to cars and their engines
		34.30	Manufacture of parts and accessories to cars and their engines

No.	Name of the section	Code	Name of the type and sub-type of activity
1	2	3	4
35	Manufacture of other transport vehicles	35.1	Building and repair of vessels
		35.11	Building and repair of vessels, except for:
			- building of military ships, - cutting of vessels for metal scrap
		35.12	Building and repair of sportive-tourist vessels
		35.2	Manufacture of railway rolling stock
		35.20	Manufacture of railway rolling stock
		35.3	Manufacture of aircraft, including space ones
		35.30	Manufacture of aircraft, including space ones
		35.4	Manufacture of motorcycles and bicycles
		35.41	Manufacture of motorcycles
		35.42	Manufacture of bicycles
35.43	Manufacture of carriages for the disabled		
36	Manufacture of furniture and other products not entered in other groups	36.1	Manufacture of furniture
		36.11	Manufacture of chairs and other furniture for sitting, except for: finishing, such as upholstering of chairs, and other furniture for sitting
			Manufacture of furniture for offices and trading enterprises
		36.12	Manufacture of furniture for offices and trading enterprises
		36.13	Manufacture of kitchen furniture
		36.14	Manufacture of other furniture, except for: finishing of furniture, except for chairs and other furniture for sitting, such as spraying treatment, painting, polishing, lacquering and upholstering
			Manufacture of mattresses
		36.15	Manufacture of mattresses
		36.3	Manufacture of musical instruments
		36.30	Manufacture of musical instruments
		36.4	Manufacture of sportive goods
36.40	Manufacture of sportive goods		
36.5	Manufacture of games and toys		
36.50	Manufacture of games and toys		
37	Processing of secondary raw products	37.2	Processing of non-metal wastes and scrap
		37.20	Processing of non-metal wastes and scrap
40	Production of electrical energy, gas, steam and water	40.1	Production and distribution of electrical energy
		40.10	Production and distribution of electrical energy
		40.2	Production and distribution of gaseous fuel
		40.20	Production and distribution of gaseous fuel
		40.3	Supply of steam and hot water
		40.30	Production and supply of steam and hot water
41	Collection, purification and distribution of water	41.0	Collection, purification and distribution of water
		41.00	Collection, purification and distribution of water

No.	Name of the section	Code	Name of the type and sub-type of activity
1	2	3	4
45	Construction	45.1	Preparation of a building site
		45.11	Dismantling and demolition of buildings; land operations, except for preparation of sites for mining operations
		45.12	Exploration drilling
		45.2	Construction of buildings and erections
		45.21	General construction operations
		45.22	Arrangement of coverings of buildings and erections
		45.23	Building of roads, autodromes and sportive facilities
		45.24	Construction of water facilities
		45.25	Other building operations
		45.3	Installation of engineering equipment in buildings and erections
		45.31	Wiring operations
		45.32	Insulation operations
		45.33	Sanitary-technical operations
		45.34	Installation of other engineering equipment
		45.4	Finishing operations
		45.41	Plastering operations
		45.42	Joiner's and carpenter's operations
		45.43	Arrangement of coverings of floors and facing of walls
45.44	Painting and glazing operations		
45.45	Other finishing operations		
55	Rendering of services by hotels and restaurants	55.2	Rendering of services by other places for short-term accommodation
		55.21	Rendering of services by youth tourist camps and mountain tourist bases
		55.22	Rendering of services by camping, except for: <ul style="list-style-type: none"> <li>- in rural houses, flats</li> <li>- in other places for short-term accommodation, such as houses for visitors, residential houses at farms</li> </ul>
60	Activity of land transport	60.1	Activity of railway transport
		60.10	Activity of railway transport
		60.2	Activity of other land transport
		60.21	Activity of other land transport subject to timetable
		60.24	Activity of freight motor transport
		60.3	Transportation by pipelines
		60.30	Transportation by pipelines
61	Activity of water transport	61.1	Activity of marine transport
		61.10	Activity of marine transport
		61.2	Activity of river transport
		61.20	Activity of river transport
62	Activity of air transport	62.1	Activity of air transport subject to timetable
		62.10	Activity of air transport subject to timetable
		62.2	Activity of air transport not subject to timetable
		62.20	Activity of air transport not subject to timetable
73	Researches and developments	73.1	Researches and developments in the field of natural and technical sciences
		73.10	Researches and developments in the field of natural and technical sciences
80	Education	80.1	Primary education (first level)
		80.10	Primary education (first level)
		80.2	Secondary education (second level)
		80.21	General secondary education (second level)

No.	Name of the section	Code	Name of the type and sub-type of activity
1	2	3	4
85	Healthcare and rendering of social services	85.1	Activity in the field of healthcare
		85.11	Activity of hospital institutions
92	Activity for organisation of leisure and entertainment, culture and sport	92.1	Activity connected with cinema and video films
		92.13	Showing of cine-films
		92.3	Other entertainment activity
		92.33	Activity of parks of entertainment and leisure
		92.6	Activity in the field of sport
		92.61	Activity of sportive items
		92.62	Other activity in the field of sport

### ANNEX 3

#### Civil Proceedings

##### Procedure for Reviewing of Judgements

Court judgements may be reviewed in the following cases: appeal process, judicial review, and revision of a case due to new findings and facts.

1. Petition of appeal, protestation

Court decisions can be appealed.

Persons involved in the process have the right to appeal decisions of a court of primary jurisdiction, except for the decisions of the Supreme Court of the Republic of Kazakhstan.

The public prosecutor involved in the process has the right to protest.

The Prosecutor General of the Republic of Kazakhstan and his/her deputies, oblast and equal public prosecutors and their deputies, as well as rayon and equal public prosecutors and their deputies within their terms of reference has the right to protest a court decision regardless of participation in the particular proceeding.

If the court makes a decision in respect of the rights and liabilities of persons not involved in the process they have the right to appeal too.

The following authorities process the appeals and protests:

- Board on Civil Appeals of an oblast or equal court can process appeals of decisions made by rayon and equal courts; and
- Board on Civil Appeals of the Supreme Court of the Republic of Kazakhstan can process appeals of decisions made by oblast and equal courts of first jurisdiction.

The appeals and protests shall be filed (submitted) in the court that made the decision or judgement with copies (one per each person involved in the process) within fifteen days since the date of the final court decision/judgement. It is allowed to appeal the decision made during the reviewing of case in accordance with the general procedure.

An appeal or protest must contain the following:

- name of the court being appealed or protested;
- name of the applicant submitting the appeal or protest;
- the appealed or protested decision and name of the court that made this decision;
- the statement specifying what is wrong in the proceeding;
- justification of what is illegal or unjustified in the decision/judgement with the reference to the laws, other normative legal acts and case papers;
- the statement as to whether the applicant appeals the whole decision or a part of it, and what changes does the applicant require;
- list of documents enclosed to the appeal or protest; and
- the date of filing (submission) of the appeal or protest and the applicant's signature. The documents supporting the payment of the state fee shall be enclosed to the appeal too. If a proxy/representative files the appeal, a power of attorney or other document certifying the

representative's authority must be enclosed to the appeal if the case provides for such terms of reference.

An appeal or protest may also contain a petition to summon the witness whose testimony/evidence is disputed by the appeal or protest.

The applicant's reference to new findings or evidence not presented in the court of the first jurisdiction is only allowed when the applicant justifies that it was impossible to present them in the court of primary jurisdiction.

Processing an appeal, the court shall check the entire decision/judgement of the court of primary jurisdiction as to whether it was legal and justified. The court of appeal may elicit new facts within the appeal and investigate the new evidence, which was impossible to present in the court of primary jurisdiction due to respectful reasons.

The court of appeal shall check the case papers and additional evidence as to whether the facts and circumstances were investigated right, whether the provisions of the substantive law were applied and interpreted right, and whether the provisions of the civil procedural laws were observed in the proceeding.

The court of appeal shall process the cases within one month since the date it was transferred from the court of primary appeal.

The public prosecutor must take part in the sitting of the court of appeal and make a resolution in respect of the case.

The court of appeal has the right to do the following:

- leave the decision/judgement unchanged, disallowing the appeal or protest;
- change the decision/judgement of the court of primary jurisdiction;
- cancel the decision of the court of primary jurisdiction and make a new decision;
- cancel the decision and send the case to a new proceeding in the court of primary jurisdiction if an infringement of the substantive or procedural law was elicited; and
- cancel the entire decision or a part of it and cease the proceeding or dismiss the appeal by the reasons stipulated in the civil procedural code.

Decisions of the court of appeal only become effective on the day they are made.

## 2. Judicial review

Effective acts of all courts except for the resolutions by the Reviewing Board of the Supreme Court of the Republic of Kazakhstan may be judicially reviewed with the reference to reasons stipulated in the Civil Procedural Code (CPC RK).

Reviewing of resolutions made by the Reviewing Board of the Supreme Court of the Republic of Kazakhstan and second trials in the Reviewing Board of the Supreme Court of the Republic of Kazakhstan are only allowed in exceptional situations or by a protest by the Prosecutor General of the Republic of Kazakhstan because of eliciting data showing that the resolution made by this board would entail severe irreversible consequences for the human life and health, national economy and security of Kazakhstan.

The other persons involved in the process and having the right of appeal may appeal the effective decisions, judgements, resolutions and orders (*ad deliberandum*) of court, submitting the appeal directly to the court authorized to review the case.

The following officials have the right to protest an effective court decision:

- Prosecutor General of the Republic of Kazakhstan may register a protest in the Reviewing Board of an oblast or equal court, Civil Board and Reviewing Board of the Supreme Court of the Republic of Kazakhstan;
- Deputies of Prosecutor General of the Republic of Kazakhstan may register a protest in the Reviewing Board of an oblast or equal court, Civil Board and Reviewing Board of the Supreme Court of the Republic of Kazakhstan; and
- Oblast and equal prosecutors may register a protest in the Reviewing Board of an oblast or equal court.

They may make a protest either on their own initiative or by a petition of other parties involved in the process and having the right to appeal.

An applicant may withdraw the appeal or protest before the trial in the court of appeal by submitting the corresponding application to the reviewing court. The superior prosecutor may also withdraw a protest. The court shall notify the person involved in the process on the withdrawal of an appeal or protest. Withdrawal of an appeal or protest entails the dismissal of the reviewing.

With the grounds provided in the Code and upon the appeals of parties involved in the process the Chief Justice of the Supreme Court of the Republic of Kazakhstan, Chairman to the Board of the Supreme Court of the Republic of Kazakhstan, judges of the Reviewing Board of an oblast or equal court shall make a proposal to the corresponding reviewing court to review the appealed court decision

The reviewing board of an oblast or equal court shall process the following cases with reviewing protests and proposals:

- effective decisions, resolutions, and judgements of rayon and equal courts; and
- resolution on appeal made by the civil board of an oblast or equal court.

The civil board of the Supreme Court of the Republic of Kazakhstan shall process the following cases with reviewing protests and proposals:

- decisions, resolutions, and judgements of oblast and equal courts made during the proceedings of the first jurisdiction, which have not been appealed; and
- resolution made by the reviewing board of an oblast or equal court.

The reviewing board of the Supreme Court of the Republic of Kazakhstan shall process the following cases with reviewing protests and proposals:

- decisions, resolutions, and judgements of the civil board of the Supreme Court of the Republic of Kazakhstan made during the proceeding in the first jurisdiction;
- resolutions made by the civil board of the Supreme Court of the Republic of Kazakhstan during the proceeding by appeals or review; and
- resolutions made by the reviewing board of the Supreme Court of the Republic of Kazakhstan in exceptional cases upon proposal of the Chief Justice of the Supreme Court of the Republic of Kazakhstan or upon a protest entered by Prosecutor General of the Republic of Kazakhstan due to eliciting data showing that the resolution made by this board would entail severe



irreversible consequences for the human life and health, national economy and security of Kazakhstan.

A civil case may be obtained on demand (certiorari) from the current court for reviewing examination only if this is supported with the grounds and reasons stipulated in the CPC RK.

The following may be the certiorari causes: appeals and petitions of the parties involved in the process and having the right of appeal as well as initiative of prosecutors within their terms of reference.

A significant violation of the provisions of the substantive or procedural law may be the cause for reviewing of effective decisions, judgements, and resolutions of a court.

Effective decisions, judgements, and resolutions of a court may also be reviewed if the Supreme Court of the Republic of Kazakhstan finds unconstitutional the document upon which they were based.

An applicant can submit an appeal or protest for a review within one year since the date the court's decision, judgement or resolution in question became effective.

The court can prolong the term for making a protest if the petition for a review protest was submitted to the prosecutor within the due period but the decision was pending. This must be specified in the protest.

Oblast and equal courts shall make the preliminary consideration of the appeal for a review within 15 days since the date of submission by a sole judge decision on the instructions of the chief justice of such a court.

As for the Supreme Court of the Republic of Kazakhstan, the corresponding boards shall make preliminary consideration of appeals for review within 15 days since the date of submission on the instructions of the Court President. If the content of the review appeal and documents enclosed give rise to doubts as to the legality of appealed court decisions, the persons authorized to make the preliminary consideration of the review appeal have the right for a certiorari. In such a case the term for the preliminary consideration of the review appeal shall be one month since the date of submission to the reviewing court. Either Chairman to the Board or a Vice-Chairman may prolong the term for the preliminary consideration of a review appeal for up to one month in the view of respectful reasons.

One of the following decisions can be made based on the results of the preliminary consideration:

- to review the appealed court decision; and
- to dismiss the review of the appealed court decision.

The following officials can make a proposal on review of an appealed court decision:

- Chief Justice of the Supreme Court of the Republic of Kazakhstan may make a proposal to the Reviewing Board of an oblast or equal court, boards of the Supreme Court of the Republic of Kazakhstan;
- Vice Chairman to the Board of the Supreme Court of the Republic of Kazakhstan may make a proposal to the Reviewing Board of an oblast or equal court, Civil Board of the Supreme Court of the Republic of Kazakhstan; and
- Judges from the review board of an oblast or equal court may make a proposal to the reviewing board of their court.

The Chief Justice, Chairman to the Board of the Supreme Court of the Republic of Kazakhstan, oblast or equal court president shall send the proposal on the review of an effective decision, judgement or resolution along with the case papers, appeal and enclosed documents to the corresponding review court for consideration.

The proposal on review of an effective court decision is mandative for the reviewing court authorized for such a judicial review.

The reviewing court shall consider the case within one month since the date of receipt. The reviewing court may resolve to prolong the term of review because of motivated respectful reasons. The court shall notify the parties and persons concerned by the appealed court decision on the time and place of the review as well as copies of the appeal, proposal, or protest.

If there are no reasons for the review of the appealed court decision the court shall send a notification in writing to the applicant of the review appeal.

Besides the right for a certiorari, Chief Justice of the Supreme Court of the Republic of Kazakhstan, Prosecutor General of the Republic of Kazakhstan and its Deputies within their terms of reference have the right to suspend execution of a court decision for the reviewing purpose for the period of up to three months.

During the judicial review the court verifies the legality and validity of the court decisions made by the courts of primary jurisdiction and courts of appeal in accordance with the case papers within the statements of an appeal or protest. For the sake of the law the reviewing court has the right to verify the legality of the entire appealed court decision beyond the scope of the review appeal or protest. The court verifies the legality and validity of entire decisions made by the courts of primary jurisdiction and courts of appeal by cases on claims to protect the electoral franchise of citizens and public unions participating in elections, referendum; on claiming the legality of normative legal acts; on prosecutor's appeal of lawfulness of documents and acts of organizations and officials.

Based on the results of the review the reviewing court has the right to make one of the following decisions:

- leave the decision/judgement of the court of primary jurisdiction or court of appeal unchanged, dismissing the appeal or protest;
- cancel the decision of the court of primary jurisdiction or court of appeal in full or a part of it and send the case for a new consideration to the court of primary jurisdiction or the court of appeal;
- cancel the decision of the court of primary jurisdiction or court of appeal in full or a part of it and dismiss the claim or dismiss the proceeding;
- leave effective one of the decisions made on this case; and
- cancel the decision of the court of primary jurisdiction or court of appeal or cancel it and make a new decision without sending the case for a new consideration if there was a fact of wrong application or interpretation of the provisions of the substantive or procedural law.

Decisions of the reviewing court become effective on the day they are made.

If the judicial reviewing cancelled a court decision, judgement or resolution, the case shall be considered in accordance with the general procedure.

A secondary court decision, judgement or resolution, made in the view of cancellation of previous decisions by an appeal or judicial review, may be appealed or protested in accordance with the general procedure regardless of the reasons for the cancellation of the primary court decision.

3. Revision of a case due to new findings and facts

Effective decisions, judgements and resolutions can be revised due to new circumstances.

The following are the grounds for a revision of a case due to new circumstances:

- significant circumstances that were not and could not be known to the applicant;
- attested false testimony, faked results of an expertise, faked translation, forged/counterfeit documents or evidence entailing making either illegal or invalid decision;
- attested crimes made by the parties and other persons involved in the process, by their representatives or illegal acts made by the judges in the proceeding in question;
- cancelled decision, sentence, judgement or resolution made by the court or other organization, which used to be the reason for making the decision, judgement or resolution in question.

The court of primary jurisdiction shall revise its effective decision if new circumstances have been elicited.

The court of appeal or a reviewing court shall revise its judgements, decisions and resolutions that changed decisions of the court of primary jurisdiction if new circumstances have been elicited.

Having considered the petition for the revision of a decision, judgement or resolution due to new circumstances, the court shall either allow the petition and cancel the decision, judgement or resolution in question, or dismiss the revision petition.

No appeal or protest is provided for the judgement of the court to allow the petition for revision of a decision, judgement or resolution due to new circumstances. In case of cancellation of a decision, judgement or resolution the court shall consider the case in accordance with the rules defined in the CPC RK.

Revision of resolutions on administrative infringements, which have not become effective

An applicant shall submit the appeal of the case on an administrative infringement to the judge, organization (officer) that made the resolution in respect of this case, and they shall send the appeal and the case papers to the corresponding court or a superior organization (officer) within three days since the submission of the appeal or protest.

The applicant can also submit the appeal or register the protest directly in the court or the superior organization (officer) authorized to consider it. The civil procedural laws define the procedure for submission of an appeal directly to the court.

An appeal of or a protest to a court resolution on imposing a penalty in the form the administrative arrest shall be send to the superior court in the day of the receipt of this appeal or protest.

An appeal or a protest to a court resolution on an administrative infringement may be submitted within ten days since the day of the receipt of a copy of such a resolution in question.

Submission of an appeal within the term provided suspends execution of the resolution on imposing an administrative penalty until the consideration of the appeal, except for the cases of imposing an administrative penalty on the place of where the administrative infringement was committed.

An appeal or a protest to a court resolution on an administrative infringement shall be considered within ten days since the day of submission. An appeal or a protest to a court resolution on an

administrative infringement shall be considered within one day since the day of submission if the person concerned is under administrative arrest.

Having considered the appeal or protest to the resolution on an administrative infringement the judge of the superior court, superior organization (officer) shall make one of the following decisions:

- leave the resolution unchanged, dismissing the appeal or protest;
- change the resolution;
- cancel the resolution and dismiss the proceeding if supported by circumstances stipulated in Articles 68 (exemption from administrative penalty due to the insignificance of the infringement in question), 580 (circumstances excluding administrative proceeding), and 581 (circumstances allowing not to call to administrative responsibility) of the Code as well as due to the failure to prove the circumstances upon which the resolution in question was made;
- cancel the resolution in question and make a new resolution;
- cancel the resolution and send the case to the court with the necessary jurisdiction if it was found out that the resolution in question had been made by a judge, organization (officer) beyond its competency.

Revision of effective resolutions on cases on administrative infringements and judgements upon the results of considering appeals and protests to such resolutions in question

Upon a protest of Prosecutor General, its deputies, oblast and equal prosecutors and their deputies, as well as upon a petition of the person concerned, the injured party, defendant, and their legal representatives and proxies the following effective resolutions on administrative cases may be revised or reviewed in the court if during the consideration of the appeal or protest it was found out that the resolution was made by a judge or an organization (officer) beyond its competency: administrative resolutions made by the judge of a specialized rayon or equal administrative court, judgements made by rayon or equal court presidents; decisions made by judges of superior courts upon appeals or protests to resolutions made by judges of specialized rayon or equal administrative courts and by rayon or equal court presidents, as well as resolutions made by judges (presidents) of rayon and equal courts.

The boards of oblast and equal courts have the right to revise the mentioned effective resolutions and judgements.

The court can revise an administrative resolution aggravating the position of the person concerned only within one year since the day when the court decision or resolution in question became effective.

Submission of petitions or protests to effective resolutions and judgements suspend execution of such resolutions and judgements.

Submission of petitions or protests to an effective resolution on imposing an administrative arrest does not suspend execution of such a resolution.

Upon the protest made by Prosecutor General and its deputies the board of the Supreme Court of the Republic of Kazakhstan has the right to verify the legality and validity of an effective resolution on any administrative case as well as of any judgement (resolution) on the results of consideration of an appeal or protest to the resolution in question and to revise such a resolution.

**ANNEX 4**

Structure of Import Customs Tariff of the Republic of Kazakhstan

Import Customs Tariff Rates (%)	Number of Tariff Lines
From 0 to 5	6,558
From 5 to 10	1,389
From 10 to 15	2,376
From 15 to 20	651
From 20 to 25	20
From 25 to 30	64
Over 30	22

## ANNEX 5

List of developing countries, using the special preferential treatment  
of the Republic of Kazakhstan

1. Albania
2. Algeria
3. Angola
4. Antigua and Barbuda
5. Angola
6. Argentina
7. Aruba
8. Bahamian Island
9. Barbados
10. Bahrain
11. Belize
12. Bermudian Islands
13. Bolivia
14. Brazil
15. British Virgin Islands
16. Brunei Darussalam
17. Venezuela
18. Vietnam
19. Gabon
20. Guyana
21. Ghana
22. Guatemala
23. Honduras
24. Hong Kong
25. Grenada
26. Dominica
27. Dominican Republic
28. Egypt
29. Zimbabwe
30. India
31. Indonesia
32. Jordan
33. Iraq
34. Iran
35. Cayman Islands
36. Cameroon
37. Qatar
38. Kenya
39. Cyprus
40. China
41. Democratic People's Republic of Korea
42. Columbia
43. Congo
44. Republic of Korea
45. Costa-Rica
46. Cote d'Ivoire
47. Cuba
48. Kuwait
53. Former Yugoslav Republic of Macedonia
54. Malta
55. Malaysia
56. Morocco
57. Marshall Islands
58. Mexico
59. Micronesia
60. Mongolia
61. Montserrat
62. Namibia
63. Nauru
64. Nigeria
65. Netherlands Antilles Islands
66. Nicaragua
67. Niger
68. United Arab Emirates
69. Oman
70. Saint Elena Islands
71. Turks and Caicos Islands
72. Pakistan
73. Panama
74. Papua New Guinea
75. Paraguay
76. Peru
77. Romania
78. Salvador
79. Saudi Arabia
80. Swaziland
81. Seychelles
82. Senegal
83. Saint Vincent and the Grenadines
84. Saint Kitts and Nevis
85. Saint Lucia
86. Singapore
87. Syria
88. Slovenia
89. Surinam
90. Thailand
91. Tokelau Islands
92. Tonga
93. Trinidad and Tobago
94. Tunisia
95. Turkey
96. Uruguay
97. Fiji
98. Philippines
99. Croatia
100. Chile

49. Cook Islands  
50. Lebanon  
51. Libya  
52. Mauritius

101. Sri Lanka  
102. Ecuador  
103. Serbia and Montenegro (Yugoslavia)  
104. Jamaica

List of least developed countries, using the special preferential treatment  
of the Republic of Kazakhstan

1. Afghanistan
2. Bangladesh
3. Benin
4. Burkina Faso
5. Burundi
6. Botswana
7. Bhutan
8. Vanuatu
9. Haiti
10. Gambia
11. Guinea
12. Guinea Bissau
13. Djibouti
14. Zaire
15. Zambia
16. Yemen
17. Cape Verde
18. Cambodia
19. Kiribati
20. Comorian Islands
21. Laos
22. Lesotho
23. Liberia
24. Mauritania
25. Madagascar
26. Malawi
27. Mali
28. Maldives
29. Mozambique
30. Myanmar
31. Nepal
32. Niger
33. Rwanda
34. West Samoa
35. Sao Tome and Principe
36. Solomon Islands
37. Somali
38. Sudan
39. Sierra Leone
40. Tanzania
41. Togo
42. Tuvalu
43. Uganda
44. Central African Republic
45. Chad
46. Equatorial Guinea
47. Ethiopia



## ANNEX 6

### Comparative Analysis of Provisions of the Rules of Origin and the Customs Code of the Republic of Kazakhstan

Paragraph h of article 2 of the Agreement on Rules of Origin	Paragraph 3 (d) of Annex 2 to the Agreement on Rules of Origin	Customs Code's Provisions
<p>2 (h)</p> <p>Upon the request of an exporter, importer or any person with a justifiable cause, assessments of the origin they would accord to a good, are issued as soon as possible but no later than 150 days<sup>3</sup> after the request for such an assessment provided that all necessary documents have been submitted. Requests for such assessments shall be accepted before trade of concerned good begins and may be accepted at any later point of time. Such assessments shall remain valid for three years provided that the facts and conditions, including the rules of origin, under which they have been made, remain comparable. Provided that the parties concerned are informed in advance, such assessments will no longer be valid when a decision contrary to the assessment is made in a review as referred to in subparagraph (j). Such assessments shall be made publicly available subject to the provisions of subparagraph (k).</p>	<p>3 d</p> <p>Upon request of an exporter, importer or any person with a justifiable cause, assessments of the preferential origin they would accord to a good are issued as soon as possible but no later than 150 days after a request for such an assessment provided that all necessary elements have been submitted. Requests for such assessments shall be accepted before trade in the good concerned begins and may be accepted at any later point in time. Such assessments shall remain valid for three years provided that the facts and conditions, including the preferential rules of origin, under which they have been made remain comparable. Provided that the parties concerned are informed in advance, such assessments will no longer be valid when a decision contrary to the assessment is made in a review as referred to in subparagraph (f). Such assessments shall be made publicly available subject to the provisions of subparagraph (g).</p>	<p>Article 47. Preliminary assessment:</p> <ol style="list-style-type: none"> <li>1. Upon request of an applicant the customs authorities (except for customs stations) shall make a preliminary assessment of a particular good as to the goods classification in accordance with the Foreign Economic Activity Product Nomenclature (FEA PN).</li> <li>2. Subject to the provisions of this Code, the customs bodies specified in paragraph 1 of this article have the right to make a preliminary decision on the application of the methodology to determine the country of origin and the customs value of the good concerned. The authorized customs body shall define the form and procedure on making such a preliminary assessment.</li> <li>3. Subject to Article 299 of this Code the fee shall be charged for such preliminary assessment.</li> </ol> <p>Article 48. Application for a preliminary assessment</p> <ol style="list-style-type: none"> <li>1. The applicant shall submit an application in writing to the customs body specified in article 47 of this Code.</li> <li>2. The application shall contain information on the good necessary for the preliminary assessment. The application shall have enclosed description of the goods, pictures, drawings, commercial, technical and other documents necessary to make a preliminary assessment. If possible, the applicant shall also enclose samples or specimen of the goods to be assessed.</li> <li>3. The customs body considers the application and issues a preliminary assessment within ten working days since the</li> </ol>

<sup>3</sup> In respect of requests made during the first year from the date of entry into force of the WTO Agreement, Members shall only be required to issue these assessments as soon as possible.

Paragraph h of article 2 of the Agreement on Rules of Origin	Paragraph 3 (d) of Annex 2 to the Agreement on Rules of Origin	Customs Code's Provisions
		<p>date when the application was registered, provided that no additional data or examination was required.</p> <ol style="list-style-type: none"> <li>4. If the data submitted by the applicant is insufficient for the preliminary assessment, the customs body shall notify the applicant on the need in additional information and sets the deadline for its submission. If the applicant fails to submit the data in time, the application for preliminary assessment shall be dismissed. The general term for submission of additional data shall not exceed one month since the day when the applicant was notified in writing.</li> <li>5. If the application was dismissed, the customs body shall send reasoned refuse to the applicant within seven working days. Dismissal of an application does not prohibit the applicant from submission of another application for preliminary assessment, provided that the applicant eliminates the mistakes, which had caused dismissal of the previous application.</li> <li>6. A preliminary assessment or a dismissal of such may be appealed in the court in accordance with the procedure defined in this Code.</li> </ol> <p>Article 49. Preliminary assessment expiration term</p> <p>A preliminary assessment shall expire in three years since the date it was made by the customs authority.</p> <p>A change in the preliminary assessment does not prolong its validity period.</p> <p>Article 51. Transparency of preliminary assessments</p> <p>Preliminary assessment made by the customs authorities (except for confidential information) may be published or made available to any person upon a request in writing.</p>

**ANNEX 7**

List of State Standards Harmonized with International Standards

1.	ST RK 1.2-2002	National standardization system of the Republic of Kazakhstan. Procedure on development of the state standards.
2.	ST RK 1.28-2002	National standardization system of the Republic of Kazakhstan. Standardization of services.
3.	ST RK 3.7-2002	National certification system of the Republic of Kazakhstan. Procedure on certification of tourist-excursion services and tourist accommodation services.
4.	ST RK 3.26-2002	National certification system of the Republic of Kazakhstan. Procedure on certification of special hoisting equipment and cranes.
5.	ST RK 3.28-2002	Procedure on certification of vegetable oils and fat-and-oil products.
6.	ST RK 4.6-2002	Oil products. General provisions.
7.	ST RK 7.3-2002	National certification system of the Republic of Kazakhstan. General requirements to test laboratories (centres).
8.	ST RK 7.8-2002	Procedure on accreditation of certification bodies, testing and calibrating laboratories (centres).
9.	ST RK GOST R 12.4.026-2002	Signalling colours, safety signs, and signalling marking. General technical specifications and application procedure.
10.	ST RK 34.003-2002	Information technology. Nomenclature of quality parameters of information system databases.
11.	ST RK 34.004-2002	Information technology. Methods to determine base values of software quality.
12.	ST RK 34.010-2002	Information technology. Software certification. Procedure on examination of software documentation.
13.	ST RK 34.012-2002	Information technology. Software tools certification. Typical methods to evaluate the quality of software documentation.
14.	ST RK 34.016-2002	Information technology. Remote control technical software tools. General technical specifications.
15.	ST RK ISO/IEC 66-2002	General specifications for the bodies evaluating and certifying/registering ecological control systems.
16.	ST RK 452-2002	Mineral, natural, potable and table, therapeutic waters. General technical specifications (GTS).
17.	ST RK 1010-2002	Food products. Information for consumers. General specifications.
18.	ST RK 1042-2001	Administrative-regulatory documentation. Specifications on drawing documents.
19.	ST RK 1050-2002 (ISO 752-1981)	Zinc bars. Technical specifications.
20.	ST RK 1052-2002	Environment protection. Atmosphere. Determining parameters of lead, zinc, copper and their compounds emission.
21.	ST RK 1055-2002	Kazakh coal for carbonization. General technical specifications.
22.	ST RK 1056-2002	Kazakh coal for powdered-coal combustion. General technical specifications.
23.	ST RK 1060-2002	Lactoserum based drinks with filler. General technical specifications.
24.	ST RK 1062-2002	Butter. General technical specifications.
25.	ST RK 1063-2002	Cheese. General technical specifications.
26.	ST RK 1076-2002	Perfume and cosmetic products. Information for consumer. General specifications.
27.	ST RK 1093-2002	Kazakh coal for lime production. General technical specifications.
28.	ST RK 1094-2002	Kazakh coal for cement production. General technical specifications.
29.	ST RK 1097-2002	Water. Gas chromatography method for detection of carbon in organic compounds.
30.	ST RK 1109-2002	Ampul for mining and construction. General technical specifications.
31.	ST RK 1110-2002	Bolt shaft. General technical specifications.

32.	ST RK 1147-2002	Standoff ceramic insulators for voltage over 1,000 V for outdoor work. Types, main parameters and sizes.
33.	ST RK 1148-2002	Standoff ceramic insulators for voltage over 1,000 V for indoor work. Types, main parameters and sizes.
34.	ST RK 1157-2002	Professional higher education. Education quality management systems.
35.	ST RK 1158-2002	Professional higher education. Material-technical base for educational institutions.
36.	ST RK 1166-2002	Fire equipment. Classification. Terms and definitions.
37.	ST RK 1167-2002	Fire-prevention automated mechanisms. Classification. Terms and definitions.
38.	ST RK ISO/IEC TO 15504-1-2002	Information technology. Evaluation of software development. Part 1. General provisions and introduction.
39.	ST RK 19011-2002	Audit of quality management and/or environment protection systems.
40.	ST RK 1.32-2003	GSS RK. Technical specifications on food products. General specifications on development and design.
41.	ST RK 1.41 – 2003	Statistical and conventional digital codes used as notation conventions in development of standards and regulatory documents on standardizing.
42.	ST RK 3.11-2003	National certification system of the Republic of Kazakhstan. Structure and procedure on keeping the National System Register.
43.	ST RK 3.31-2003	Gas certification procedure.
44.	ST RK 3.35-2003	National certification system of the Republic of Kazakhstan. Qualification requirements to the certification body executive.
45.	ST RK 3.362003	National certification system of the Republic of Kazakhstan. Mineral fertilizers application equipment certification procedure.
46.	ST RK 4.5- 2003	Product development and mass production system. Foreign companies documentation products.
47.	ST RK 7.6-2003	Specifications and procedure on accreditation to obtain the right for metrology certification of measuring methods.
48.	ST RK 7.10-2003	Specifications and procedure on accreditation to obtain the right for independent expert evaluation in metrology.
49.	ST RK 7.9 - 2003	GSS RK. Standard time for operations on preparation and accreditation of organizations on certification of products, processes, work, services and test laboratories (centres).
50.	ST RK 1174-2002	Fire-prevention equipment. Main types. Allocation and maintenance.
51.	ST RK 1176-2002	State number plates with light reflective surface for certain types of vehicles and trailers. Technical specifications.
52.	ST RK 1178-2003	Protection of information system of the National Standards Fund from unauthorized access. General technical specifications.
53.	ST RK 1183-2003	Car gasoline. General technical specifications.
54.	ST RK 1184-2003	Quality of internal information. Terms and definitions.
55.	ST RK 1185-2003	Safety certificate for products, substances and materials. Composition, development and application procedure.
56.	ST RK 1186-2003	Textiles. Coating and carpet products made by mechanical manufacture method. Information for consumer. General specifications.
57.	ST RK 1187-2003	Fire alarms. Classification. General technical specifications. Test methods.
58.	ST RK 1188-2003	Thermal fire alarms. Fire safety technical specifications. Test methods.
59.	ST RK 1189-2003	Fire reporting facilities and evacuation managers. Classification. General technical specifications. Test methods.
60.	ST RK 1196-2003	Product quality parameters system. Erosion-preventive seeding-machines. Nomenclature of quantitative indices of quality.
61.	ST RK 1212-2003	Bitumen and bitumen based cementing agents. Terms and definitions.

62.	ST RK 1228 -2003	Bitumen and bitumen based cementing agents. Solubility determination method.
63.	ST RK 1211-2003	Bitumen and bitumen based cementing agents. Dynamic viscosity determination method.
64.	ST RK 1210-2003	Bitumen and bitumen based cementing agents. Kinematic viscosity determination method.
65.	ST RK 1227-2003	Bitumen and bitumen based cementing agents. Determining the softening point by ball and ring method.
66.	ST RK 1221-2003	Mineral powder for road concrete mix. Test methods.
67.	ST RK 1224-2003	Bitumen and bitumen based cementing agents. Methods to determine the heat and air aging treatment resistance.
68.	ST RK 1229-2003	Bitumen and bitumen based cementing agents. Brittle temperature determination Fraas method.
69.	ST RK 1226-2003	Bitumen and bitumen based cementing agents. Penetration depth determination method.
70.	ST RK 1219-2003	Motor roads and airfields. Surface imperfections measuring methods.
71.	ST RK 1230-2003	Oil bitumen. Paraffin content determination methods.
72.	ST RK 1218-2003	Organic astringents based materials for road and airfield construction. Test methods.
73.	ST RK 1217-2003	Construction sand. Test methods.
74.	ST RK1213 -2003	Construction macadam and gravel from dense rock and industrial wastes. Physical and mechanical test methods.
75.	ST RK 1214-2003	Construction macadam and gravel from dense rock and industrial wastes. Chemical analysis methods.
76.	ST RK 1124-2003	Traffic control technical facilities. Road marking. Technical specifications.
77.	ST RK 1220-2003	Resin for bridge framework carriages. General technical specifications. Test methods.
78.	ST RK GOST R 51760-2003	Package. General technical specifications.
79.	ST RK GOST R 50779.11-2003	Statistical methods. Statistical quality management. Terms and definitions.
80.	ST RK GOST R 51089-2003	Fire-prevention receivers and control devices. General technical specifications. Test methods.
81.	ST RK GOST R 51210-2003	Potable water. Boron content determination method.
82.	ST RK GOST R 51211-2003	Potable water. Surface-active materials detection methods.
83.	ST RK GOST R 51574-2003	White salt. Technical specifications.
84.	ST RK GOST R 51578-2003	Liquid perfume products. General technical specifications.
85.	ST RK GOST R 51579-2003	Cosmetic products. General technical specifications
86.	ST RK GOST R 51691-2003	Paintwork materials. Enamels. General technical specifications.
87.	ST RK GOST R 51692-2003	Paint oil. General technical specifications.

List of standards harmonized in accordance with the Schedule for Harmonization of National Standards with International Standards in 2004

1. ST RK Gas and oil industry. Drilling and production equipment. Wellhead and production tree.
2. ST RK Gas and oil industry. Pump rods (short pump rods, subsurface pump plungers, couplings and reducing taper elbows). Technical specifications.
3. ST RK Gas and oil industry. Pumping units. Technical specifications.
4. ST RK Rotary pumps for oil, petrochemical and gas industries.
5. ST RK Gas and oil industry. Drilling and production equipment. Equipment for through drilling.
6. ST RK Oil and gas industry. Tubular heat exchangers.
7. ST RK Steel shutoff valves, ball-valves, and stop valves with DN 100 and less diameter for oil and gas industry.
8. ST RK Gas and oil industry. Casing centralizers. Part 1. Spring casing centralizers.
9. ST RK Gas and oil industry. Well cementing equipment. Part 3. Operational tests of cementing floating equipment.
10. ST RK Gas and oil industry. Plate-type heat exchanger.
11. ST RK Oil, chemical and gas industry. Centrifugal-flow compressors.
12. ST RK Oil and gas industry. Positive displacement rotary compressors. Part 1. Industrial compressors (without oil)
13. ST RK Gas and oil industry. Flexible couplings for transmission of general-purpose mechanical energy.
14. ST RK Gas and oil industry. Piston gas packed compressors.
15. ST RK Gas and oil industry. Seamless pipes from corrosion-resistant alloys for safety clutches, pipelines and end caps. Technical specifications on supply.
16. ST RK Gas and oil industry. Drilling and production equipment. Control, technical maintenance, repair and upgrade of hoisting equipment.
17. ST RK Oil and gas industry. Drilling and production equipment. Hoisting equipment.
18. ST RK Gas and oil industry. Collection and exchange of data on equipment safety and maintenance.
19. ST RK Gas and oil industry. Formulas for and computation of parameters of casing pipes, oil-well tubing, drill pipes and pipelines pipes.
20. ST RK Gas and oil industry. Downhole equipment. Packers and bridge plugs.
21. ST RK Downhole equipment for oil and gas industry. Subsurface pump systems with chambers for mechanized production. Part 1. Pumps.
22. ST RK Oil and gas industry. Piston compressors.
23. ST RK Gas and oil industry. Pipelines for gas transportation. Pipeline valves.
24. ST RK Gas and oil industry. Well drilling equipment. Landing nipple mandrel and landing nipple.
25. ST RK Gas and oil industry. Bends made with induction heating method, fittings and flange for pipeline pumping-over systems. Part 1. Bends made with induction heating method.
26. ST RK Gas and oil industry. Downhole equipment. Downhole safety valves.
27. ST RK Oil industry. Terminology. Part 1. Raw materials and finished products.
28. ST RK Oil industry. Terminology. Part 2. Test specifications and methods.
29. ST RK Oil industry. Terminology. Part 3. Deposit exploration and production.
30. ST RK Oil industry. Terminology. Part 4. Oil processing.
31. ST RK Oil industry. Terminology. Part 5. Transportation, storage, distribution.
32. ST RK Oil industry. Terminology. Part 6. Measuring system.
33. ST RK Oil industry. Terminology. Part 7. Miscellaneous terms.
34. ST RK Oil industry. Terminology. Part 99. General provisions and index.
35. ST RK Natural gas. Dictionary.
36. ST RK Gas and oil industry. Contents and draft of technical specifications.

37. ST RK Gas and oil industry. Content definition and development of the functional specifications document.
38. ST RK Crude oil and liquid oil products. Laboratory density test. Areometer based method.
39. ST RK Measuring systems for oil products. Calibration. Temperature modifications for calibration of measuring vessels for tests.
40. ST RK Oil and gas industry. Field tests of drilling agents. Part 1. Water based drilling agents.
41. ST RK Gas and oil industry. Field tests of drilling agents. Part 2. Carbon based drilling agents.
42. ST RK Gas and oil industry. Drilling agents. Laboratory tests.
43. ST RK Oil and gas industry. Materials for drilling agents. Technical specifications and tests.
44. ST RK Oil and gas industry. Lifetime operational costs computation. Part 1. Methodology.
45. ST RK Gas and oil industry. Lifetime operational costs. Part 2. Guidelines to the methodology and computation methods.
46. ST RK Oil and gas industry. Lifetime operational costs. Part 3. Introduction guidelines.
47. ST RK Oil parameters tables. Part 2. Tables based on standard temperatures 20° C.
48. ST RK Crude oil. Water content determination. Karl Fischer potentiometric titration method.
49. ST RK Crude oil. Water content determination. Coulometric titration method.
50. ST RK Crude oil and liquid and solid oil products. Density and relative density determination. Method using a capillary densimeter with a plug and a graded bicapillary densimeter.
51. ST RK Natural gas. Sulfides content detection. Part 1. General introduction.
52. ST RK Natural gas. Water content detection. Part 2. Test methods.
53. ST RK Natural gas. Water content detection. Part 3. Coulometric measurements.
54. ST RK Natural gas. Constriction coefficient computation. Part 3. Physical characteristics based computation.
55. ST RK Natural gas. Quality designation.
56. ST RK Natural gas. Composition analysis with standard precision by gas chromatography method. Part 6. Hydrogen, helium, oxygen, nitrogen, carbonic acid gas, and hydrocarbons (C1-C8) content analysis with three capillary columns.
57. ST RK Natural gas. Extended analysis. Gas chromatography method.
58. ST RK Natural gas. Calorific power, density, relative density and Wobbe index computation for the blend.
59. ST RK Natural combustible gas. Component analysis chromatography method.
60. ST RK Natural gas. Organic sulphurous compounds used as aromatizers. Specifications and test methods.
61. ST RK Gas analysis. Detection of sulphurous compounds content in natural gas. Part 2. Method of gas chromatography analysis with application of odorant sulphurous compounds electrochemical detector.
62. ST RK Natural gas. Water content determination at high pressure.
63. ST RK Natural gas. Constriction coefficient computation. Part 1. Introduction and guidelines.
64. ST RK Natural gas. Constriction coefficient computation. Part 2. Molar percentage based computation.
65. ST RK Technical propane and butane. Gas chromatography analysis method.
66. ST RK Natural gas. Composition analysis with standard precision by gas chromatography method. Part 4. Nitrogen, carbonic acid gas and hydrocarbons (C1-C5 and C6+) content analysis for a laboratory and real time measuring system with two capillary columns.
67. ST RK Natural gas. Composition analysis with standard precision by gas chromatography method. Part 5. Nitrogen, carbonic acid gas and hydrocarbons (C1-C5 and C6+) content analysis for the laboratory application and real time application of the process with three capillary columns.
68. ST RK Natural gas. Physical properties computation methods. Condensability coefficient computation.
69. ST RK Domestic gas. Ordor intensity detection methods.

70. ST RK Crude oil. Water content determination. Distillation method.
71. ST RK Natural gas. Composition analysis with standard precision by gas chromatography method. Part 1. Special analysis guidelines.
72. ST RK Natural gas. Composition analysis with standard precision by gas chromatography method. Part 2. Measuring system specifications and statistical data analysis.
73. ST RK Natural gas. Composition analysis with standard precision by gas chromatography method. Part 3. Hydrogen, helium, oxygen, nitrogen, carbonic acid gas, and hydrocarbons (up to C8) content analysis with two packed columns.
74. ST RK Natural gas. Organic sulphurous compounds used as odorants. Specifications and test methods.
75. ST RK Natural gas. Water content analysis. Part 3. Coulometric measurements.
76. ST RK Liquid petroleum gas. Vapor density and pressure computation method.
77. ST RK Oil products. Water content analysis. Carl Fisher coulometric titration method.
78. ST RK Oil products. Sulfur content analysis. X-ray fluorescent spectrometry with wavelength variance.
79. ST RK Crude oil. Water and precipitation content analysis. Centrifugal method.
80. ST RK Oil products. Vanadium and nickel content analysis. X-ray fluorescent spectrometry with wavelength variance.
81. ST RK Oil products. Determination of lead content in gasoline. Method with application of iodine chloride.
82. ST RK Oil and liquid oil products. Temperature measurement. Manual methods.
83. ST RK Oil products. Sulfur content analysis. Energy dispersion X-ray fluorescence method.
84. ST RK Light cooled hydrocarbon liquids. Sample monitoring of natural liquefied gas. Continuous monitoring method.
85. ST RK Oil products. Aviation and distillate fuel. Specific electric conductance test.
86. ST RK Oil products. Saponification number test. Part 1. Method of titration with a chemical indicator.
87. ST RK Oil products. Saponification number test. Part 2. Potentiometric titration method.
88. ST RK Liquid hydrocarbons. Volumetric measurement with turbine flowmeters.
89. ST RK Oil and liquid oil products. Calibration of vessel by measurement of the liquid. Increment method with volumetric flowmeters.
90. ST RK Crude oil and oil residue. Residue content analysis. Extraction method.
91. ST RK Oil and liquid oil products. Calibration of horizontal cylinder reservoirs. Part 2. Method of internal measurement with electrooptic distance meters.
92. ST RK Gas and oil industry. Casing pipes and tubing maintenance and operation.
93. ST RK Gas and oil industry. Casing pipes, tubing, and pipelines cutting, calibration and manufacturing inspection. Technical specifications.
94. ST RK Gas and oil industry. Systems of gas transportation by pipelines.
95. ST RK Gas and oil industry. Evaluation and testing of threaded joints of casing pipes, tubing, and pipelines.
96. ST RK Gas and oil industry. Evaluation and testing methods for threaded joints of casing pipes and pipelines.
97. ST RK Gas and oil industry. Systems of gas transportation by pipelines. Pipelines welding.
98. ST RK Gas and oil industry. Drilling and production equipment. Computation of drilling pipes and maximal lifetime.
99. ST RK Gas and oil industry. Pipelines systems from glass-reinforced plastic (GRP). Part 4. Assembly, laying, and operation.
100. ST RK Gas and oil industry. Pipelines systems.
101. ST RK Gas and oil industry. Pipelines systems from glass-reinforced plastic (GRP). Part 1. Dictionary, symbols, application and materials.
102. ST RK Gas and oil industry. Pipelines systems from glass-reinforced plastic (GRP). Part 2. Qualification evaluation and production.



103. ST RK Gas and oil industry. Pipelines systems from glass-reinforced plastic (GRP). Part 3. System design.
104. ST RK Gas and oil industry. Installations for offshore production. Guidelines on choice of tools and methods to identify hazards and evaluate risks.
105. ST RK Crude oil. Transportation accounting. Guidelines on inspection of cargo.
106. ST RK Natural gas. Carl Fisher method of water content analysis. Part 1 Introduction.
107. ST RK Natural gas. Carl Fisher method of water content analysis. Part 2. Testing.
108. ST RK Natural combustible gas. Sampling methods.
109. ST RK Agglomerated fuel from coal of Kazakhstan. General technical specifications.
110. ST RK Solid mineral fuel. Quality based acceptance rules.
111. ST RK Solid mineral fuel. Test of specific efficient activity of natural radionuclids.
112. ST RK Electrical safety of industrial and social-domestic electrical installations. General technical specifications.
113. ST RK Electrical safety of industrial and social-domestic electrical installations. Control methods.
114. ST RK Re-equipment of vehicles. General specifications phase 1.
115. ST RK Railway transport forwarding services. General requirements.
116. ST RK Vehicles. Structure safety requirements.
117. ST RK Technical facilities for traffic control and organization. Operation rules.
118. ST RK Porcelain rod insulators for the overhead contact system of the railway lines system. General technical specifications.
119. ST RK Polymer rod insulators for the overhead contact system of the railway lines system. General technical specifications.
120. (State standard) GOST Car service center services. Car glass toning. General specifications phase 1.
121. (State standard) GOST Car service center services. Maintenance shop services. Types of services, service procedure and quality requirements. Phase 1.
122. ST RK Emission of hazardous substances and exhaust smoke opacity of main-line and shunting diesel locomotives. Norms and methods of determination.
123. ST RK Vehicles. Safety requirements to the technical condition and inspection methods.
124. ST RK Motor roads. Wheel and surface traction coefficient test methods.
125. ST RK Mineral powder for road concrete mix. Test methods.
126. ST RK Construction macadam and gravel from dense rock. Technical specifications.
127. ST RK Bitumen road emulsions. Technical specifications.
128. ST RK Polymer-bitumen astringent for road construction. Technical specifications.
129. ST RK Metal safety fence. Technical specifications.
130. ST RK Raw material for production of construction sand, macadam and gravel. Technical specifications and test methods.
131. ST RK Paintwork materials. Enamels. General technical specifications.
132. ST RK Paint oil. General technical specifications.
133. ST RK Gas and oil industry. Cement and materials to cement the well. Part 1. Technical specifications.
134. ST RK Technical regulations on geological exploration and protection of the subsurface. General specifications.
135. ST RK Annual schedule of mining operations. Requirements to the content, design, coordination and approval.
136. ST RK Soils. Laboratory tests. General provisions.
137. ST RK Soils. Laboratory methods for the grain (grain-size) analysis.
138. ST RK Annual production plan for complex consumption of mineral raw material in processing. General specifications.
139. ST RK Radiation evaluation of deposits of raw materials for production of construction materials.

140. ST RK Development of requirements to the design, organization and implementation of local monitoring of subsurface to the procedure on representation and use of this data.
141. GOST Lead-antimony alloys. Technical specifications
142. GOST Zinc. Spectral analysis method.
143. ST RK Fitment and corking. General provisions on safety, marking and acceptance rules.
144. ST RK White salt. Technical specifications
145. ST RK Iodized white salt. Iodine and sodium thiosulfate content determination methods.
146. ST RK Statistical methods. Procedures on sampling testing by alternative attributes. Part 1. AQL (acceptable quality level) based plans on sampling testing of consecutive consignments.
147. ST RK Quality management system. Evaluation of quality management system efficiency with help of expert score.
148. ST RK Statistical methods. Processes capacity indices. Main computation methods.
149. ST RK 695-98 Soils. Motor roads surface soils' density and humidity test methods.
150. ST RK 781-93 Cindery astringents for road construction. Technical specifications.
151. ST RK 973-94 Stone materials and soils treated with nonorganic astringents for road and airfield construction. Technical specifications.
152. Revised standard ST RK 17.1.4.01-95 Environment protection. Hydrosphere. Method of determining the acute toxicity of water on daphnia.
153. Revised standard ST RK 17.1.4.02-96 Environment protection. Hydrosphere. Method of determining the acute toxicity of water on ceriodaphnias.
154. Revised standard ST RK 17.1.4.03-96 Environment protection. Hydrosphere. Method of determining the acute toxicity of water on algae.
155. Revised standard ST RK 17.1.4.04-97 Environment protection. Hydrosphere. Method of determining the acute toxicity of water on infusoria.
156. Revised standard ST RK 1082-2002 Mining load-haul-dump machines. General technical specifications.
157. Revised standard ST RK 1123-2002 Mechanical vehicles and trailers.
158. Revised standard ST RK 962-93 Technical regulation on tire production. Development, coordination and approval procedure.
159. Revised standard ST RK 1086-2003 Technical diagnosis of vehicles and trailers. General technical specifications.
160. Revised standard ST RK 3.18-2000 Machine building industry products certification. General provisions.
161. Revised standard ST RK 3.26-2002 GSS RK. Special hoisting equipment certification procedure.

**ANNEX 8**

List of Goods Liable to State Veterinary Control

FEA PN Code	Item
0101	Live horses, donkeys, mules, and hinnies
0102	Livestock
0103	Live pigs
0104	Live sheep and goats
0105	Live poultry, i.e. callus domesticus (chicken), duck, turkey, and guinea fowl
0106	Other live animals
0201	Fresh or refrigerated meat of cattle
0202	Frozen meat of cattle
0203	Fresh, refrigerated or frozen pork
0204	Fresh, refrigerated or frozen mutton or goat's flesh
0205	Fresh, refrigerated or frozen flesh of horse, donkey, mule or hinny
0206	Fresh, refrigerated or frozen food by-products from cattle, pig, sheep, goat, horse, donkey, mule or hinny
0207	Fresh, refrigerated or frozen meat and food by-products from poultry (line 0105)
0208	Other fresh, refrigerated or frozen meat and meat by-products
0209	Fresh, refrigerated, corned or pickled, dried or smoked lard separated from lean meat, poultry fat (not melted into grease or not extracted by any other means)
0210	Corned or pickled, dried or smoked meat and food meat by-products; meat-meal
0301	Live fish
0302	Fresh or refrigerated fish except for filleted fish and other fish meat in line 0304
0303	Frozen fish except for filleted fish and other fish meat in line 0304
0304	Fresh, refrigerated or frozen filleted fish and other fish meat (including minced fish)
0305	Dried, salty or pickled fish; hot or cold smoked fish; fish flour, powder and granules for food
0306	Live, fresh, refrigerated, frozen, dried, corned or pickled shellfish; undivided shellfish steamed or boiled; flour, powder and granules from shellfish
0307	Mollusk (clam), other invertebrate animal different from the shellfish and mollusk; flour, powder and pills from other invertebrate animals for food
0401	Not condensed milk and cream without sugar or other edulcorators
0407	Eggs in shell: fresh, canned or boiled
0408	Eggs without shell and egg yolk: fresh, dried, steamed or boiled, moulded, refrigerated or canned by any other method
0409	Natural honey
0410	Other food products from animals, not specified in other lines
0504	Animal bowels, bladder and stomach (except for fish): whole or in pieces
0505	Skins and other parts of birds with feathers or fluff; feathers and parts of feathers ...; and fluff, ...: for storage but not for further processing; powder and waste from feathers and their parts
0506	Bones and horns: unprocessed, defatted, after primary treatment (without moulding/shaping), treated with acid or de-gelatinized; powder and waste from such products
0507	Ivory, turtle shell, whalebone...; horns, hoof, nails, claws, beaks: unprocessed or after primary treatment (without moulding/shaping); powder and waste from such products
0509	Natural sponge of animal origin
0510	Ambergris, castoreum, civet and musk; bile and dry bile; glands and other animal products used in pharmaceuticals: fresh, refrigerated and frozen
0511	animal products not specified in other lines, inedible perished (dead) animals of category 01 or 03
1501	Pig fat (including lard) and poultry fat, except for fat in line 0209 or 1503
1502	Fat of cattle, sheep or goat, except for fat in line 1503

FEA PN Code	Item
1504	Fat, oil and their fractions from fish or sea mammal: refined or not refined, but with unchanged chemical composition
1505	Wool grease and fat from it (including lanolin)
1516	Animal or vegetable fat, oil and their fractions: refined and not refined, but unprocessed
1518	Animal or vegetable fat, oil and their fractions: inedible boiled, oxidized, dehydrated, sulfonated or bodied by heating in vacuum or rare gas, except for goods in line 1516
3002	Human blood; animal blood, immune serum (antiserum) and other blood fractions...; vaccine, toxin, germ cultures (except for yeast) and similar products
3003	Medicine (except for line 3002, 3005 or 3006) made of two or more components, not packed
3004	Medicine (except for lines 3002, 3005 or 3006) made of mixed or unmixed products...; packed for retail sale
3005	cotton wool, gauze, bandage and similar products: packed for retail sale, designated for medical application in surgery, dentistry or veterinary
3006	Pharmaceutical products mentioned in notes on this group
3101	Animal or vegetable fertilizers: mixed or unmixed, chemically processed or unprocessed
3203	Vegetable or animal dye-stuffs (including extracts, except for animal coal) of known or unknown chemical composition and chemicals made from them
3802	Activated charcoal; activated natural mineral products; animal coal, including waste animal coal
4101	Skins of cattle or horse family animals (untanned) with or without wool
4102	Sheep or lamb skin...: with or without wool, except for the ones excluded in note 1 to this group
4103	Other unprocessed skins and fells (rawstock)..., with or without wool, except for the ones excluded in note 1 (b) or 1 (c) to this group
4104	Skin of cattle or horse family animals without wool, except for leather in line 4108 or 4109
4105	Sheep or lamb skin leather without wool, except for commercial leather in line 4108 or 4109
4106	Goat skin leather without wool, except for commercial leather in line 4108 or 4109
4107	Other animals skin leather without wool, except for commercial leather in line 4108 or 4109
4109	Enameled leather and laminated enameled leather; metallized leather
4110	Leather cuttings and other waste from natural or artificial leather unsuitable for production of leather items, leather dust, powder and flour
4111	Artificial leather based on natural leather or leather fiber: in plates or bands, in rolls or not in rolls
4201	Harness leather items and harness for any animal (including traces, bridles, knee-cap, horsecloth and similar goods) made from any material
4206	Items made from animal bowels (except for catgut from natural silk), bladders or sinew
4301	Fur rawstock (including heads, tails, ... suitable for production of fur items), except for rawstock and commercial skins in lines 4101, 4102 or 4103
4302	Tanned fur skins or leather, ...packed or unpacked (without other materials added) except for the ones specified in the line
5101	Uncombed and not carded wool
5102	Thin or crude uncombed and not carded wool
5104	Restored sheep wool and thin or crude restored animal wool
5105	Sheep wool and thin or crude combed or carded animal wool (including combed wool in pieces)
9018	Equipment and devices to be used in medicine, surgery, dentistry or veterinary, including planar nuclear imaging system, other electrical medical equipment and devices for research on eye
9601	Processed ivory, bone, turtle shell, antler, coral, nacre and other animal materials for carving and items from these materials (including ... by molding)

## ANNEX 9

### Decreasing Coefficients to the Existing Tariffs for Transit Railway Transportation of Goods in Kazakhstan

Forwarder	Freight type	Nomenclature Code		Destination	Decreasing Coefficient	Expiration Date by protocol
		HS	UTSFTN <sup>4</sup>			
For all forwarders	wood, timber	4403-4420		All destinations - Iran	0.7	1 January 2004 - 31 December 2004
For all forwarders	sugar beet		044009	Maimak-Lugovaya (from Kyrgyzstan to Kyrgyzstan)	US\$ 2.19/ton	1 January 2004 - 31 December 2004
For all forwarders	alumina	281820	151060	Aktau - Oasis	0.36	1 January 2004 - 31 December 2004
				Aksaraiskaya - Oasis (from Azerbaijan)	0.65	
For all forwarders	metal-roll	chapter 72-73		Nikeltau-Aktau (to third countries except for Afghanistan)	0.56	1 January 2004 - 31 December 2004
				Nikeltau-Oasis, Nikeltau-Saryagash (to third countries except for Afghanistan)	0.7	

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<sup>4</sup> Unified Tariffs/Statistics Freight Transportation Nomenclature.