

ACCESSION OF KAZAKSTAN

Questions and Replies
to the Memorandum on the Foreign Trade Régime
(Document WT/ACC/KAZ/3)

In a communication, dated 29 January 1996 (WT/ACC/KAZ/1), the Government of Kazakstan applied for accession under Article XII of the Marrakesh Agreement Establishing the World Trade Organization (WTO).

At its meeting on 16 April 1996, the General Council established a Working Party with the following terms of reference: "To examine the application of the Government of Kazakstan to accede to the WTO Agreement under Article XII, and to submit to the General Council recommendations which may include a draft Protocol of Accession." The membership is open to all WTO Members indicating their wish to serve on the Working Party. In document WT/ACC/KAZ/3, Members had been invited to submit questions in writing concerning the foreign trade régime of Kazakstan. Questions submitted by Members and the replies thereto provided by the authorities of Kazakstan are reproduced hereunder. The attachments mentioned in this document are available in the Secretariat (Accessions Division, Room 1126) for consultation. Additional questions and replies will be circulated as addenda to this document.

Delegations wishing to raise additional questions concerning the foreign trade régime of Kazakstan might inform the delegation of Kazakstan (with a copy to the Secretariat) of such questions in advance of the next meeting of the Working Party, so that considered replies can be made available by Kazakstan to Members at the time of the Working Party meeting.

TABLE OF CONTENTS

	Page No.	Quest. No.
I. GENERAL	1	1-6
II. ECONOMY, POLICIES AND FOREIGN TRADE	2	
2. Economic Policies	2	7-12
(a) Main directions of ongoing economic policies	2	7-9
(c) Foreign exchange and payments system	2	10
(d) Foreign and domestic investment policy	3	11
(e) Competition policy	3	12
III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES AFFECTING FOREIGN TRADE IN GOODS AND TRADE IN SERVICES	3	13-18
1. Powers of the Executive, Legislative and Judicial Branches of Government	3	13-14
4. Any Legislative Programmes or Plans to Change the Regulatory Régime	4	15-18
IV. POLICIES AFFECTING TRADE IN GOODS	6	19-111
1. Import Regulation	6	19-55
(a) Registration requirements for engaging in importing	6	19-20
(c) Tariff quotas, tariff exemptions	6	21-25
(d) Other duties and charges, specifying any charges for services rendered	7	26-38
(e) Quantitative import restrictions, including prohibitions, quotas and licensing systems	11	39-41
(f) Import licensing procedures	11	42-44
(j) Pre-shipment inspection	12	45
(k) Application of internal taxes on imports	13	46-47
(l) Rules of origin	13	48-51
(m) Anti-dumping régime	16	52-53
(n) Countervailing duty régime	16	54-55
(o) Safeguard Regime	17	56-58
2. Export Regulation	17	59-167
(b) Customs tariff nomenclature, types of duties, duty rates, weighted averages of duty rates	17	59
(d) Export licensing procedures	17	60-61
(e) Other measures, e.g. minimum export prices, voluntary export restrictions, orderly marketing arrangements	21	62-66
(h) Import duty drawback schemes	22	67
3. Internal Policies Affecting Foreign Trade in Goods	22	68-110
(a) Industrial policy, including subsidy policies	22	68-70

	Page No.	Quest. No.
(b) Technical regulations and standards, including measures taken at the border with respect to imports	22	71-80
(c) Sanitary and phytosanitary measures, including measures taken with respect to imports	27	81
(d) Trade-related investment measures	27	82-83
(f) Free zones	27	84-85
(g) Free economic zones	28	86-87
(l) Government procurement practices	28	88-109
(m) Regulation of trade in transit	32	110
4. Policies Affecting Foreign Trade in Agricultural Products	32	111
V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME	32	112-134
1. General	32	112-114
2. Substantive standards of protection, including procedures for the acquisition and maintenance of intellectual property rights	33	115-129
(a) Copyright and related rights	33	115-116
(b) Trademarks, including service marks	33	117-121
(c) Geographical indications, including appellations of origin	36	122
(d) Industrial designs	36	123-124
(e) Patents	37	125-128
(f) Plant variety protection	37	129
4. Enforcement	38	130-134
(d) Border measures	38	130-134
VI. TRADE-RELATED SERVICES REGIME	40	135-167
1. General	40	135
Professional services	41	136-142
Legal services	41	136-138
Accounting and auditing	41	139-140
Other	42	141-142
Other business services	43	143
Postal services	43	144-145
Telecommunications services	44	146-148
Financial services	44	149-164
General	44	149
Banking	45	150-158
Securities	47	159-161
Insurance	48	162-164
Air Transport services	48	165-166
Road Transport services	49	167

	Page No.	Quest. No.
VII. INSTITUTIONAL BASE FOR TRADE AND ECONOMIC RELATIONS WITH THIRD COUNTRIES	49	168-170
2. Economic Integration, Customs Union and Free Trade Agreements	49	168-170
Annex List of attachments	52	

I. General

Question 1.

To what extent does Kazakhstan consider that it will remain a "separate customs territory" within the WTO definition once the Customs Union Agreement with Russia, Belarus and the Kyrgyz Republic is ratified?

Answer:

The aim of the Members of the Customs Union is to create a single customs territory with a common customs tariff. When this stage is reached, Kazakhstan will no longer remain a separate customs territory within the WTO definition. This stage has, however, not yet been reached. It is foreseen that in the second stage of the implementation of the Customs Union Agreement the common tariff will enter fully into force, and the establishment of a single customs territory will be achieved.

Question 2.

Please provide the Working Party with the text of the Customs Union Agreement and all related legislative and administrative acts.

Answer:

The text of the Customs Union Agreement and all related legislative and administrative acts are provided in Attachment A to this document.

Question 3.

Kazakhstan is committed to introducing a common external tariff with its Customs Union partners. How, in the light of this commitment, does Kazakhstan intend to proceed with respect to that aspect of the accession negotiations pertaining to tariffs?

Answer:

As already mentioned, the common external tariff has not yet entered into force. The members of the Customs Union will proceed independently with their WTO accession, i.e. negotiate separately, but they will keep in close contact with the other members and exchange information and consult on the development of their accession negotiations.

Question 4.

Please provide detailed information on the timetable foreseen in the Customs Union for harmonising legislation affecting foreign trade.

Answer:

A preliminary general timetable has been drafted for harmonizing legislation affecting foreign trade between Customs Union members. Kazakhstan will provide such timetable as soon as it is finalized.

Question 5.

How will future amendments or new legislation be dealt with by the Customs Union?

Answer:

The member states of the Customs Union have agreed that all matters concerning their external economic and trade legislation should be decided in consultation and collaboration between the members of the Customs Union.

Question 6.

How does Kazakhstan intend to proceed in the Working Party discussions in the light of this commitment to harmonise legislation?

Answer:

In accordance with a protocol agreed between the signatories of the Customs Union Agreement on 19 December 1996, the member countries will proceed independently in the deliberations in their Accession Working Parties but in close contact and consultation with each other.

II ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE

II.2. Economic Policies

II.2(a) Main directions and goals

Question 7.

Are any goods (as opposed to services) subject to price control?

Answer:

Two goods are subject to price control, in the context of public services/utilities. These are heat and water.

Question 8.

Please clarify what is meant by "tariff rates" in the last sentence of the section on pricing policy.

Answer:

The reference here to tariff rates concerns cost of use of natural monopolies. Tariff rates are designed to regulate the cost of transport of goods and commodities and usage of natural monopoly infrastructure.

Question 9.

Please list all the natural monopolies for which there are tariff rates.

Answer:

- Natural monopolies in the following sectors are subject to tariff rates:
- transmission and distribution of electricity
 - distribution of heat
 - oil and oil products pipelines
 - gas pipelines
 - railroads
 - water sewage systems
 - air navigation (landing/take-off and usage of air routes)
 - telecommunication networks
 - state post office

II.2(c) Foreign exchange, payments system and relations with the International Monetary Fund (IMF)

Question 10.

When does Kazakstan envisage the establishment of full current account convertibility and IMF membership under Article VIII?

Answer:

Kazakstan accepted Article VIII obligations and established full current account convertibility last year.

II.2(d) Foreign and domestic investment policies

Question 11.

Is there any domestic legal protection for foreign investors in cases of expropriation ?

Answer:

Yes. The Constitution of the Republic of Kazakhstan and the Law on Foreign Investments both provide domestic legal protection to foreign investors in the event of expropriation. According to Article 26(3) and (4) of the Constitution, private property may be expropriated for public use only in "extraordinary cases stipulated by law" and against payment of "equivalent compensation". Article 7 of the Law on Foreign Investments, moreover, goes to provide that, "foreign investments may not be nationalized, expropriated or subject to measures equivalent to nationalization or expropriation except...where effectuated for a public purpose, in compliance with proper legal order, without discrimination and with payment of prompt, adequate and effective compensation".

II.2(e) Competition policies

Question 12.

Does Kazakhstan intend to notify any of its 'natural' monopolies listed in section 2 (a), under Article XVII of the GATT 1994 or Article VIII of the GATS? If not, why not?

Answer:

Natural monopolies in Kazakhstan act as transport carriers with equal open access to all suppliers and operators regardless of form and type of ownership. No exclusive rights or special privileges are granted to these natural monopolies. Therefore, such natural monopolies do not fall under the definition of Article XVII of GATT 1994 or Article VIII of GATS.

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

III.1 Powers of the Executive, Legislative and Judicial Branches of Government

Question 13.

How is coordination between the Ministry of Economy (responsible for foreign economic policy) and the Committee for Economic Cooperation with the CIS (responsible for foreign economic policy for CIS members) assured?

Answer:

On 29 October 1996, the State Committee of the Republic of Kazakhstan on Cooperation with CIS Countries was abolished.

Question 14.

What process will be needed to complete national procedures relating to WTO accession? Will implementing legislation be required?

Answer:

According to Article 4(3) and (4) of the Constitution of the Republic of Kazakhstan, all ratified international agreements are self-executing unless they are specifically negotiated to require the promulgation of a law in order to be implemented. Whether additional legislation will be required to implement the terms and conditions of the Republic of Kazakhstan's anticipated accession to the World

Trade Organization will, therefore, depend upon the results of Kazakhstan's negotiations with its principal trading partners.

III.4 Any Legislative Programs or Plans to Change the Regulatory Régime

Question 15.

Please indicate whether, and in what respects the drafting agenda for the next three years has been changed as a result of submission arising from Resolution 211 of 19 February 1996.

Answer:

The drafting agenda for the next three years has not changed significantly after the adoption of Government Resolution No. 211 of 19 February 1996, as it already contained most necessary draft laws. Added to the drafting agenda, as result of Government Resolution No. 211, are the following: Amendments to the Customs Code and new Law on Countervailing Duties.

Question 16.

Can the legislative drafting agenda be altered once it has been drawn up?

Answer:

The Government's legislative drafting agenda is adopted annually by Government Resolution. The legislative drafting agenda, however, is often amended on the proposals of ministries or State agencies. While formal amendments to the agenda require Government Resolution, deviations from the agenda will not preclude consideration by the Government of a particular draft law.

Government Resolution No. 14 of 7 January 1997 provided an updated legislative drafting agenda for 1997. Legislation relevant to Kazakhstan's foreign trade regime which are scheduled for drafting in 1997 are the following:

- i Criminal Code
- ii Criminal Procedure code
- iii On Amending the Civil Code-General Part
- iv On Partnerships with Limited Liability
- v On Amending the Presidential Edict Having the Law Force (1) on Subsurface Utilization and (2) on Oil (as a result of the amending the Law of the Republic of Kazakhstan on Foreign Investments
- vi On Customs Authorities
- vii On Amending the Law of the Republic of Kazakhstan on Architecture and Urban Planning
- viii On Labour
- ix On Amending the Current Legislation Regarding the Mechanism of Borrowers' Responsibility and Protection of Investors and Depositors
- x Administrative Infractions Code
- xi Civil Procedure Code
- xii On Individual Entrepreneurship (without formation of a legal entity)
- xiii On Advertising
- xiv On Amending the Legislation on Formation of Economic and Tax Benefits in Making Investments, and on the Development of Small and Medium Sized Business
- xv On Legal Profession
- xvi On Dumping and On Countervailing Measures
- xvii On Amending the Presidential Edict Having the Law Force on State Registration of Rights in immovable Property and Related Transactions
- xviii On Minimal Consumer Budget and Minimal Monthly Wages (new version)
- xix On Local Representative and Executive Bodies in the Republic of Kazakhstan

xx	On Local Self-government
xxi	On Natural Monopolies
xxii	On Concessions
xxiii	On State Procurement
xxiv	On State Participation in Formation and Activities of Economic Partnership
xxv	On Leasing
xxvi	On Amending the Legislation on Payments for the Special Use of Natural Resources
xxvii	On Joint Stock Companies
xxviii	On Unfair Competition
xxix	On Amending the Presidential Edict Having the Law Force on Customs Affairs in the Republic of Kazakstan ("Customs Code")
xxx	On Registration of Secured Transactions with Movable Property
xxxi	On Amending the Presidential Edict Having the Law on Force on Land
xxxii	On Payments and Settlements within the Republic of Kazakstan
xxxiii	On Ecological Control
xxxiv	On Amending the Law on Standardization and Certification

Question 17.

Which of the acts listed in this section have now been enacted or are currently before the Parliament?

Answer:

The Parliament of the Republic of Kazakstan has already adopted:

- Law "On Export Control over Armaments, Military Equipment and Double Designation Production" of 18 June 1996;
- Law "On State Duty" of 31 December 1996;
- Law "On Bankruptcy;" of 27 January 1997;
- Amendments to the Tax Code of 31 December 1996; and
- Law "On Currency Regulations" of 24 December 1996.

The following draft laws are currently being considered by the Parliament:

- Draft Law "On Ecological Expertise;" and
- Draft Law "On Notary".

Question 18.

Does Kazakstan intend to submit to WTO Working Party members for comment any of these pieces of legislation whilst they are still in a draft form?

Answer:

Upon request by any member of the WTO Working Party, Kazakstan will submit draft legislation for comments.

IV. POLICIES AFFECTING TRADE IN GOODS

IV.1 Import Regulation

IV.1(a) Registration requirements for engaging in importing

Question 19.

Can natural persons engage in importation activities? If not, why not?

Answer:

Yes. Natural persons may engage in importation activities.

Question 20.

When does Kazakstan intend to bring its tariff nomenclature into line with the HS 96 System?

Answer:

Kazakstan intends to bring its tariff nomenclature into line with the HS 96 System in April 1997.

IV.1(c) Tariff quotas and tariff exemptions

Question 21.

Please explain the reasons why there is a specific reference to HS Chapter 22 in this section?

Answer:

The reference in section 1 (c) of the Memorandum is not to HS Chapter 22, but to Chapter 22 of the Customs Code of the Republic of Kazakstan which determines the order of privileges and preferences in customs duties payments and list goods exempt from customs payments.

Question 22.

Please indicate which products generally benefit from tariff exemptions.

Answer:

A comprehensive list of goods which generally benefit from tariff exemptions was provided in section IV.1.c titled Tariff Quotas and Exemptions of WT/ACC/KAZ/3.

Question 23.

Are tariff exemptions (except those applied in the context of a Customs Union or Free Trade Agreement) applied on an MFN basis?

Answer:

Yes. Tariff exemptions are applied on an MFN basis.

Question 24.

Please clarify what is covered by the exemption "goods imported as gratuitous assistance and/or charity...".

Answer:

This exemption covers goods that are provided free of charge by a foreign state or government or an international organisation to a Kazakstani governmental or legal entity or natural person. The exemption is limited to donations by such entities for socio-economic development and reform, and would not cover imports of goods for sale or other commercial purpose. The exemption would cover,

for example, laboratory instruments, computers, transport, communication or industrial equipment, or scientific publications that are provided by a foreign state to the Government of Kazakhstan in connection with a technical assistance project sponsored by that foreign government.

Question 25.

With regard to the exemption granted to some products originating in CIS countries; Article I of the GATT 1994 requires application of the MFN principle, whilst Article XXIV allows for exception for regional integration initiatives where these are compatible with the requirements of Article XXIV and of the Understanding on that Article. Is Kazakhstan prepared to undertake that exemptions will only be given to third countries in the context of a WTO compatible Free Trade Agreement or Customs Union Agreement?

Answer:

Kazakhstan will only grant tariff exemptions to countries with which Article XXIV agreements are in force or which are covered by the Enabling Clause.

IV.1(d) Other duties and charges, specifying any charges for services rendered Customs processing fees and other customs services

Fees

Question 26.

As an ad valorem fee, the Customs Processing Fee does not appear to be consistent with Article VIII of GATT 1994, which requires that fees and charges related to importation are limited to the cost of services rendered. What steps does Kazakhstan intend to take to bring its system into line with GATT practice?

Answer:

During accession to the WTO, Kazakhstan will bring its Customs Processing Fee in line with Article VIII of GATT 1994. Fees and charges related to importation will be changed to reflect the cost of services rendered. Either a fixed fee or an ad valorem with a ceiling will be established.

Question 27.

Is the 15 ECU processing fee for vehicles in addition to the 0.2 % general fee?

Answer:

Government Resolution No. 1061 of 28 August 1996, titled "On introduction of amendments and additions to some decisions of the Government of the Republic of Kazakhstan", cancelled the 15 ECU processing fee for vehicles. The 0.2% customs processing fee applies equally to all goods.

VAT

Question 28.

Article XXIV of the GATT 1994 does not exempt Regional Integration Agreements from application of the MFN principle with regard to internal taxation. Please indicate when Kazakhstan intends to bring its system of VAT application into line with Article I of the GATT 1994, so that it is applied equally to imports from all third countries.

Answer:

With respect to CIS countries, VAT applies at source rather than destination. In other words, VAT applies on imports from CIS to Kazakhstan at the country of origin. Kazakhstan is currently in the process of negotiation with other CIS countries to make VAT applicable at destination rather than source.

Question 29.

Are VAT exemptions applied with full respect for the national treatment and MFN principles?

Answer:

Yes.

Question 30.

Please clarify what is meant by goods imported for charitable purposes, including the provision of technical assistance from State, government and international agencies.

Answer:

This exemption covers goods that are provided free of charge by a foreign state or government or an international organisation to a Kazakstani governmental or legal entity or natural person. The exemption is limited to donations by such entities for socio-economic development and reform, and would not cover imports of goods for sale or other commercial purpose. The exemption would cover, for example, laboratory instruments, computers, transport, communication or industrial equipment, or scientific publications that are provided by a foreign state to the Government of Kazakstan in connection with a technical assistance project sponsored by that foreign government.

Excise Taxes

Question 31.

Does Kazakstan accept that its current excise tax system (with its different levels and/or methods of calculation for imported and domestically produced goods) is not compatible with Article III of the GATT 1994 ?

Answer:

Kazakstan understands that its current excise tax system is not compatible with Article III of the GATT 1994 and needs to conform to WTO principles during accession.

Question 32.

What measures is Kazakstan taking to bring its excise tax system into line with the national treatment principle? What is the anticipated timetable?

Answer:

During accession to the WTO, Kazakstan will work toward bringing its excise tax system in line with the national treatment principle of WTO.

Question 33.

Does table 4.2 provide the full list of goods subject to excise duty?

Answer:

At the time of submission of WT/ACC/KAZ/3, Table 4.2 provided the full list of goods subject to excise duty. However, Government Resolution No. 1747 of 31 December 1996 and Resolution No 1748 of 31 December 1996 introduced new excise duty. An updated version of Table 4.2 is provided below:

Goods Subject to Excise Tax	Domestic Rates	Import Rates
1. All alcohol	3.0 ECU/L	3.5 ECU/L
2. Liqueurs and vodka products	0.6 ECU/L	0.6 ECU/L
3. Vodka	0.7 ECU/L	3.0 ECU/L
4. Fortified drinks, juices and balsam	0.6 ECU/L	3.0 ECU/L
5. Wine	0.2 ECU/L	0.8 ECU/L
6. Fine Wine	0.2 ECU/L	0.8 ECU/L
7. Cognac	0.3 ECU/L	3.0 ECU/L
8. Champagne	0.2 ECU/L	0.8 ECU/L
9. Beer	0.5 ECU/L	0.2 ECU/L
10. Wine-making ingredients	0.2 ECU/L	0.8 ECU/L
11. Tobacco products and other products containing tobacco	0.75 ECU per 1000 units	2.0 ECU per 1000 units
12. Sturgeon and salmon, their roe, and delicacies made therefrom	100%	100%
13. Gold, platinum or silver jewellery	40%	40%
14. Cured and non-cured furskins (except mole, rabbit, dog, deer, sheep skins)	7%	50%
15. Cured and non-cured furskins of Karakul	7%	50%
16. Wearing apparel made of Karakul	10%	50%
17. Coats, short coats, jackets, and mantles with decoration made from Karakul	10%	50%
18. Wearing apparel made of natural fur (except mole, rabbit, dog, deer, sheep)	10%	50%
19. Overcoats, short coats, jackets and mantles with decoration made from fur (except mole, rabbit, dog, deer, sheep)	10%	50%
20. Clothing made of natural leather	50%	50%
21. Objects made of crystal, including lighting appliances	50%	50%
22. Crude oil	7 ECU per ton	7 ECU per ton
23. Diesel fuel	6 ECU per ton	6 ECU per ton
24. Gasoline (other than aviation gasoline)	31 ECU per ton	31 ECU per ton
25. Passenger automobiles	N/A	10-50%
26. Lorries with a carrying capacity under 1.25 ton	N/A	15%
27. Old lorries with a carrying capacity under 1.25 ton (more than 10 year old)	N/A	30%
28. Firearms and gas weapons (other than those for the needs of State agencies)	20%	40%

Question 34.

All alcohol intended for use in the production of liqueurs, vodka products, fortified drinks and juice, wine and balsam provided that it is purchased by a licensed producer is exempt from excise tax. Is imported alcohol treated in the same way as domestic alcohol for these purposes?

Answer:

Government Resolution No. 974 of 14 July 1995 stipulated that all domestically produced alcohol intended for use in production of liqueurs, vodka products, fortified drinks and juice, wine and balsam, provided that it is purchased by a licensed producer is exempt from excise tax. Government Resolution No. 891 of 28 June 1996 stipulated the same thing as Resolution No. 974 of 14 July 1995 but for imported alcohol.

Government Resolution No. 974 of 14 July 1995 and Government Resolution No. 891 of 28 June 1996 were both recognized invalid respectively by Government Resolution No. 1747 of 31 December 1996 and Government Resolution No. 1748 of 31 December 1996.

In addition, Government Resolution No. 1747 of 31 December 1996 stated that all domestically produced wine materials are exempt from excise tax provided they are purchased by a licensed wine producer with intention of use in the production of wine.

Seasonal Duties

Question 35.

Under Kazak Law is the imposition of seasonal taxes limited to certain product sectors?

Answer:

Article 109 of the President's Decree of 20 July 1995 on Customs Activities in the Republic of Kazakhstan No. 2368 ("Customs Code") provides for the possibility of application of seasonal duties without limiting it to certain product sectors.

Question 36.

Please list all the tariff headings which are subject to seasonal duties.

Answer:

Kazakhstan has not, so far, enacted regulations for applying seasonal duties or applied seasonal duties. Therefore, the list of tariff headings which may be subject to seasonal duties has not yet been developed.

Question 37.

When are seasonal duties applied?

Answer:

Kazakhstan has not, so far, enacted regulations for applying seasonal duties or applied seasonal duties. Therefore, this issue has not yet been addressed. Application of seasonal duties will be in conformity with WTO rules.

Question 38.

Is a distinction made between imported and domestic products?

Answer:

Seasonal duties are customs duties on imported products and can not by definition be imposed on domestic products. Application of seasonal duties will be in conformity with WTO rules.

IV.1(e) Quantitative import restrictions, including prohibitions, quotas and licensing systems**Question 39.****Does Kazakhstan currently maintain any import prohibitions?**

Answer:

According to Government Resolution No. 129 of 19 February 1993, printed or painted materials directed toward undermining state and public system, promoting war, terrorism, racism as well as pornography are prohibited from importation to Kazakhstan.

Question 40.**What sort of import restricting measures could Kazakhstan envisage taking to protect the right of consumers or to protect ownership rights?**

Answer:

Kazakhstan has currently a system of certification (see section IV.3.b and IV.3.c and Annex 5 of WT/ACC/KAZ/3) and a system of import licensing (see section IV.1.f and Annex 3 of WT/ACC/KAZ/3) to protect the right of consumers. Kazakhstan does not envisage using any other systems in the future. Regarding protection of property rights such as intellectual property, Kazakhstan plans to establish border enforcement mechanisms and is currently in the process of drafting necessary regulations.

Question 41.**Can Kazakhstan confirm that it does not intend in the future to introduce import quotas?**

Answer:

Kazakhstan does not intend to introduce import quotas in the future as a matter of trade policy. However, Kazakhstan may introduce import quotas in cases connected with (i) balance of payment problems and in accordance with WTO rules and (ii) as an emergency measure according to Article XIX of GATT.

IV.1(f) Import licensing procedures**Question 42.****Kazakhstan states that "when a license is refused the applicant ... may appeal to the Ministry of Industry and Trade on an administrative basis". Could Kazakhstan please clarify if the applicant has recourse to an independent appeal body, since the Ministry of Industry and Trade is also the authority that issues the license?**

Answer:

Yes. An applicant for import license may appeal, according to article 20 of the Law on Licensing, to a court of the Republic of Kazakhstan within 30 days from the date of refusal to issue such license by the Ministry of Industry and Trade.

Question 43.**If not, what is the rationale behind this arrangement?**

Answer

Question is not applicable. See above answer.

Question 44.

There is an administrative charge for issuing a license of 9,200 Tenge. Could Kazakhstan give more precise indications on how exactly these charges are calculated to cover the services rendered (GATT art. VIII) ?

Answer:

The administrative charge of Tenge 9,200 for issuing a license is not currently based on the cost of services rendered (GATT article VIII). Prior to accession to the WTO, Kazakhstan will review this administrative charge to ensure that it reflects the cost of services rendered.

IV.1(j) Pre-shipment inspection

Question 45.

Please provide a more detailed description of Kazakhstan's Pre Shipment Inspection system, including explanations as to how this system is in conformity with the relevant WTO Agreement, in particular on Pre-shipment Inspection and Customs Valuation.

Answer:

The system of Pre-Shipment Inspection (PSI) was introduced 1 January 1996 according to Government Resolution No. 1301 of 4 October 1995. The purpose of introducing PSI is to verify quality, quantity and prices of imported goods as well as to have reliable classification and exact calculation of customs payments and fees. All products imported to Kazakhstan are subject to PSI except the following:

- all products originating from CIS countries;
- shipment under US\$ 3,000 (contract value);
- precious stones and metals;
- objects of art;
- explosives;
- ammunition, weapons, implements of war;
- live animals;
- current newspapers and periodicals;
- household and personal effects;
- parcel post and commercial samples;
- gifts by or to foreign governments, international organizations, charities, humanitarian organizations;
- gifts and supplies to diplomatic and consular missions and to organizations depending on the United Nations; and
- nuclear materials or technology.

Pre Shipment Inspection in Kazakhstan is conducted by the Société Générale de Surveillance and is implemented according to Government Resolution No. 1302 of 4 October 1995, the Agreement between the Customs Committee of Kazakhstan and the Société Générale de Surveillance, the WTO Agreement on Pre Shipment Inspection as well as internationally accepted practices in the sphere of independent inspection.

Pre Shipment Inspection in Kazakhstan operates in conformity with WTO Agreement on Pre Shipment Inspection with one exception; Pre Shipment Inspection does not apply to goods originating from CIS countries.

Customs Valuation of goods is performed on the basis of rules of customs valuation of goods according to the WTO Agreement on Customs Valuation.

Please note Pre Shipment Inspection has been temporarily suspended in Kazakstan. The Customs Committee is currently re-negotiating contract with the Société Générale de Surveillance.

IV.1(k) Application of internal taxes on imports

Question 46.

The Memorandum mentions Kazakstan's policy on National Treatment on internal taxation but not on regulatory aspects of sale, offering for sale, purchase, transportation, distribution or use. What is the content of Kazakstan's policy in this area?

Answer:

Imported goods are subject to national treatment on all regulatory aspects of sale, offering for sale, purchase, transportation, distribution and use with only one exception. The Law on Oil and the Law on Subsurface Utilization require investors to give preferences to Kazakstani goods and equipment if they are competitive in terms of ecological and technological characteristics, price, operating parameters, and supply conditions.

Question 47.

Please explain how it complies with Article III.4 of GATT ?

Answer:

With the exception of goods and equipment in the oil and gas sector, there is no discrimination between imported and domestic goods in all regulatory aspects of sale, offering of sale, purchase, transportation, distribution and use.

IV.1(l) Rules of Origin

Question 48.

Please clarify whether proof of origin is required for products originating from all countries or only from those countries exporting to Kazakstan under a preferential scheme ?

Answer:

A certificate of origin is mandatory for goods that are exported to Kazakstan under a preferential tariff scheme. However, importers of goods from all countries are required to declare to Customs the country of origin of their goods. Pursuant to Article 144 of the Customs Code, if Customs has reason to believe that information with respect to origin is not reliable, or if the documents presented to Customs do not contain any information concerning origin, Customs may require that the importer provide a certificate of origin.

In addition, Article 144 provides that a certificate of origin is required in the following circumstances: for goods that are subject to quantitative restrictions (quotas) or other foreign trade measures; where stipulated in international treaties to which Kazakstan is a party; and, where required by legislation of the Republic of Kazakstan in the area of the protection of the natural environment, public health, protection of the rights of Kazakstani consumers, public order, national security and any other vital interests of the Republic of Kazakstan. At present, such circumstances do not exist.

Question 49.

Where proof of origin is required, what constitutes that proof ?

Answer:

A certificate of origin constitutes proof of origin. Pursuant to Article 145 of the Customs Code, a certificate of origin must unequivocally witness that the goods originate from the specified

country, and it must contain (1) the written declaration of the consignor that the goods comply with the relevant criteria of origin, and (2) the written assurance of the authorized body in the country of export which issued the certificate that the information presented in the certificate is true. If Customs has doubt about the authenticity of the certificate or the information contained therein, it may request additional information from the body that issued the certificate of origin or the authorized body of the country that is indicated as the country of origin of the goods.

Particular forms of origin certificates are required for certain shipments. A "Form A" is required for goods imported under the Generalized System of Preferences. A "CT-1" is required for goods originating in CIS countries that are either subject to excise tax (with the exception of automobiles) or are classified under one of the following tariff categories:

Code of Commodity Nomenclature	Name of Goods
0901 21 000	Coffee roasted
9001 22 000	
0902 10 000	Tea
0902 30 000	
From 5705 00	Carpets
8471	Automatic data processing machines
8473 33 0000	Party and accessories of the automatic data processing machines
8521	Video recording or reproducing apparatus
From 8522 90 910	Parts and accessories of apparatus of video recording or reproducing apparatus
From 8522 90 990	
8525 30 919	Television cameras
8528	Television receivers
8516 50 000	Microwave ovens
9009	Photocopying apparatus
61	Knit wear garment and accessories
except	
611593100	
62	Textile garments and accessories
except	
621132100	
621133100	
621142100	
621143100	

Question 50.

Please provide a more detailed explanation of how the country of origin is ascertained.

Answer:

The rules for determination of origin of goods are set out in Articles 141 to 147 of Kazakhstan's Customs Code and the "Agreement of the Heads of the Commonwealth of Independent States Concerning the Rules for Identifying the Country of Origin of Goods" (September 24, 1993). In addition, the rules of origin for purposes of the Generalized System of Preferences are described in the agreement among CIS countries concerning "Rules to Determine the Origin of Goods of Developing Countries for Granting Tariff Benefits" (April 12, 1996).

These rules are largely based on the principles of Annex D.1 of the Kyoto Convention. Imported goods are deemed to originate in that country where they are wholly produced or manufactured or, where two or more countries contribute to the manufacture of the imported good, that country in which the good is last substantially transformed.

The following goods are considered to have been wholly produced or manufactured in one country:

- i. mineral products extracted from its soil or in its territorial waters or on its continental shelf;
- ii. vegetable products harvested or gathered in that country;
- iii. live animals born and raised in that country;
- iv. products obtained from live animals in that country;
- v. products of hunting and fishing in that country;
- vi. production extracted or produced in the world ocean by vessels of that country, or vessels leased (chartered) by that country;
- vii. secondary raw materials and waste which are the result of production or other operations which are performed in that country;
- viii. production obtained in open cosmos on space ships of that country or space ships leased by that country; and
- ix. goods manufactured or produced exclusively from production of items 1-8.

A good is considered to have undergone a substantial transformation if: (1) there is a change in the tariff classification of the good at the four-digit level as a result of that processing, (2) the good has undergone industrial or technological operations which are considered sufficient to confer origin, or (3) a certain percentage value of the good may be attributed to that country. Additional legislation concerning rules of origin are in the process of being drafted. Article 142 of the Customs Code further provides that a change in origin will not be recognized where the good merely undergoes one of the following operations: operations necessary for the preservation of the goods during storage or transportation, operations for preparation of goods for sales and transportation (such as breaking bulk, grouping of packages, sorting, and repacking), simple assembly operations, or mixing of goods without changing the essential characteristics of the goods.

Question 51.

Under what circumstances might a "group of countries be considered as one country for origin purposes"? For example, does the European Community count as one country for origin purposes?

Answer:

Under Article 141 of the Customs Code, a group of countries may be understood as the single country of origin of the imported good. The circumstances under which a group of countries may be so treated are not further defined by law.

At present, the only group of countries that are treated as one for origin purposes are the CIS countries. The "Resolution of the Heads of the Commonwealth of Independent States Concerning the Rules for Identifying the Country of Origin of Goods" (September 24, 1993) thus provides that if goods are processed consecutively in two or more CIS-member states, those states may be considered as a single whole for the purposes of determining origin of the goods.

IV.1(m) Anti-dumping regime

Question 52.

It is stated that redress is granted when "imports inflict or threaten to inflict damage to domestic manufacturers of similar or directly competing goods", which does not appear to be in line with current WTO standards. Could Kazakhstan state precisely the level of injury which is sufficient to authorised anti-dumping measures and the types of domestic products which may benefit from anti-dumping measures under Article 115 of the Customs Code.

Answer:

Kazakhstan is currently in the process of drafting a law "On Anti-Dumping Measures" which will be the only legislation governing dumping measures in Kazakhstan. Above raised issues will be regulated in this law and in line with WTO standards.

In addition, it is not yet defined which types of domestic products may benefit from anti-dumping measures.

Question 53.

Could Kazakhstan also provide information on any progress in the preparation of a new anti-dumping law, which is on its legislative agenda for the next three years according to paragraph III.4 of the Memorandum on the Foreign Trade Regime.

Answer:

Kazakhstan is currently drafting a law "On Anti-Dumping Measures" taking into account WTO requirements. This law is expected to be submitted to Parliament in 1997.

IV.1(n) Countervailing duty regime

Question 54.

It is stated that redress is granted when subsidised products "inflict damage", which does not appear to be in line with current WTO standards. Could Kazakhstan please state the precise level of injury which is sufficient to authorize countervailing duty measures under Article 116 of the Customs Code?

Answer:

Kazakhstan is currently in the process of drafting a law "On Countervailing Measures" which will be the only law governing countervailing duty measures in Kazakhstan. Above raised issues will be regulated in this law and in line with WTO standards.

Question 55.

Could Kazakhstan also provide information on any legislative development in the field of subsidies and Countervailing duties, which do not appear as a separate item on its legislative agenda for the next three years according to paragraph III.4 of the Memorandum on the Foreign Trade Regime.

Answer:

Kazakhstan is currently drafting the law "On Countervailing Measures" taking into account WTO requirements. This law is expected to be submitted to Parliament in 1997.

IV.1(o) Safeguard regime

Question 56.

The Memorandum on the Foreign Trade Regime states that redress is granted when imports "inflict or threaten to inflict damage", which does not appear to be in line with current WTO standards. Could Kazakhstan please state the precise level of injury which is sufficient to authorize safeguard measures under Article 114 of the Customs Code.

Answer:

Kazakhstan is currently in the process of drafting a law "On Safeguard Measures" which will be the only law governing safeguard measures in Kazakhstan. Above raised issues will be regulated in this law and in line with WTO standards.

Question 57.

Could Kazakhstan also provide information on any legislative development in the field of safeguards, which do not appear as a separate item on its legislative agenda for the next three years according to paragraph III.4 of the Memorandum on the Foreign Trade Regime.

Answer:

Kazakhstan is currently drafting the law "On Safeguard Measures" taking into account WTO requirements. This law is expected to be submitted to Parliament in 1997.

Question 58.

Furthermore, please confirm that no safeguard measures have been taken and that no investigation has been opened on the basis of Article 114 of the Customs Code.

Answer:

The Government of Kazakhstan confirms that no safeguard measures have been adopted and that no investigation has been opened on the basis of Article 114 of the Customs Code.

IV.2 Export Regulation

IV.2(b) Customs tariff nomenclature, types of duties, duty rates, weighted averages of duty rates

Question 59.

When will the export duties applied to wheat other than durum wheat be eliminated?

Answer:

The export duties applied to wheat other than durum wheat were eliminated on 1 August 1996 (the Resolution of the Government of the Republic of Kazakhstan as of 12 March 1996, No 299).

IV.2(d) Export licensing procedures

Question 60.

Please specify more precisely than is currently the case in Annex 9, which products are subject to export licensing.

Answer:

Kazakhstan would like, first, to provide the following amendments to Table A9.1 of Annex 9:

i. The following item should be added to Table A9.1 according to Government Resolution No 712 of 6 June 1996 "On introduction of Amendments and Additions to Government Resolution No 298 of 12 March 1996".

Name of Goods	Code of Commodity Nomenclature	The Ministries and Departments Whose Prior Approval is Required
Special technical devices intended for performance of special operative and investigation efforts, devices for protection of information, other devices of double application (including parts thereto, software), instructive and technical documentation relating to special technical devices (including both design and maintenance)	8301, 8517, 8518, 8520, 8521, 8525, 8526, 8527, 8528, 8531, 9013, 9022 (only special technical devices, devices for protection of information and other devices of double destiny) 8529, 8543 (only for special technical devices)	Committee for National Security.

ii. According to Government Resolution No. 1154 of 23 September 1996, goods under the two codes 2804 and 280540100 are no longer subject to export licensing. At the same time, the goods under the following two codes became subject to export licensing: 380450 and 380490.

In addition, Kazakhstan would like to add the following to section IV.2(c) "Quantitative Export Restrictions, including prohibitions, quotas and licensing systems":

- Government Resolution No. 1269 of 15 October 1996 requires that the export of electro-technical products in the form of scraps and waste of non-ferrous metals (aluminium and copper conductors, power and communication cables, starters and transformers substations elements) is only possible after obtaining the permission of the State Inspection on Control of Rational Utilization of Ferrous and Non-Ferrous Metals.

Table A9.1 precisely describes the goods subject to export licensing except for the following:

- a. Narcotics and psychotropic agents, venoms. Government Resolution No. 1027 of 19 August 1996 defines the list of narcotics, highly active substances, poisonous substances, and chemical agents subject to control when exported or imported. The resolution does not specify the codes of such goods. However, goods subject to control fall under the following lists:
 - list of narcotics agents according to Unified Conventions on Narcotics Agents of 1961 ;
 - list of highly active substances and list of poisonous substances according to United Nations Convention on Fight against Illegal Turnover of Narcotics of 1961 and 1988; and
 - list of chemical agents contained in Tables I and II of United Nations Convention of 1988.
- b. Certain types of raw materials, materials, equipment, technologies and scientific technical information, which may be used in creation of armaments and combat equipment. A precise list is currently being defined. Kazakhstan will notify WTO as soon as such list is approved by the Government.
- c. Materials, equipment and technologies which have peaceful application but may be used for creation of rocket, nuclear, chemical, and other types of mass destruction weapons. A precise list

is currently being defined. Kazakstan will notify WTO as soon as such list is approved by the Government.

d. Service and Civil Armaments. The Law on State Control for Turnover of Some Types of Weapons of 27 October 1993 defines service and civil armaments without code nomenclature. Service armaments are those armaments used by enterprises, organizations, and establishments during implementation of tasks they are authorized to perform such as protection of life and health of people, property, natural resources as well as armaments used by Parliament deputies and officials. Civil armaments are those armaments for use by citizens for the purpose of self defense, hunting and sport. Civil armaments are divided into the following three categories: (1) gas weapon of self defense, (2) sport weapons, and (3) hunting weapons.

e. Devices for protection from combat poisonous substances, components and accessories therefor. A precise list is currently being defined. Kazakstan will notify WTO as soon as such list is approved by the Government.

Question 61.

For each product subject to export licensing, please provide the WTO justification for requiring such licensing.

Answer:

The following table summarizes the reasons behind export licensing.

Name of Goods	Reasons for Export License
1. Pharmaceuticals, medical equipment	Medical Safety
2. Pharmaceuticals for veterinary purposes and veterinary equipment	Medical Safety
3. Ivory, horns, hoofs, antlers of young Siberian stag, corals and similar materials	Ecological Safety
4. Pharmaceutical raw materials of vegetable and animal origin	Medical Safety
5. Narcotics and psychotropic agents, venoms	Illegal turnover of narcotics, venoms and poison agents
6. Information on the subsurface by region and deposit of fuel and energy and mineral raw materials, located in the territory of the Republic of Kazakstan and within the boundaries of the continental shelf and marine economic zone. Collection materials on mineralogy and palaeontology (970500000 - only on mineralogy and palaeontology	Economic Safety
7. Certain types of raw materials, materials, equipment, technologies and scientific-technical information, which may be used in creation of armaments and combat equipment	National Security and in accordance with the Law on Export Control of Armaments, Military Equipment and Product of Dual Use
8. Materials, equipment and technologies which have peaceful application but may be used at creation of rocket, nuclear, chemical and other types of mass destruction weapons	National Security and in accordance with the Law on Export Control of Armaments, Military Equipment and Product of Dual Use

Name of Goods	Reasons for Export License
9. Enciphering devices (including enciphering equipment, parts for enciphering equipment and software for enciphering), instructive and technical documentation relating to enciphering devices (including both design and maintenance)	National Security and in accordance with the Law on Export Control of Armaments, Military Equipment and Product of Dual Use
10. Powder, explosive devices and pyrotechnics	National Security and in accordance with the Law on Export Control of Armaments, Military Equipment and Product of Dual Use
11. Precious natural stones and items made thereof, waste, powders and recovered precious natural stones, pearls and items made thereof, amber and items made thereof	Economic Safety
12. Precious metals, alloys, items made thereof: metals, plated precious metals and items made thereof: ores and concentrated ores of precious metals, wastes and scrap	Economic Safety
13. Semi precious stones and items made thereof	Economic Safety
14. Service and civil armaments	Human Safety
15. Devices for protection from combat poisonous substances, components and accessories therefor	National Security and in accordance with the Law on Export Control of Armaments, Military Equipment and Product of Dual Use
16. Instructive documentation relating to products of military designation (design and operation) National Security and in accordance with the Law on Export Control of Armaments, Military Equipment and Product of Dual Use	National Security and in accordance with the Law on Export Control of Armaments, Military Equipment and Product of Dual Use
17. Special technical devices intended for performance of special operative and investigation efforts, devices for protection of information, other devices of double application (including parts thereto, software), instructive and technical documentation relating to special technical devices (including both design and maintenance)	National Security and in accordance with the Law on Export Control of Armaments, Military Equipment and Product of Dual Use
18. Rare metals, rare-earth metals, raw materials for manufacture, alloys, compounds and items made thereof	Economic Safety
19. Wild animals, wild plants	Ecological Safety
20. Armaments and military equipment, special components for their manufacture, works and services in the sphere of military technology collaboration	National Security and in accordance with the Law on Export Control of Armaments, Military Equipment and Product of Dual Use
21. Nuclear materials, technologies, equipment and installations, special non-nuclear materials, sources of radioactive radiation, including radioactive waste	International Obligations "Agreement on Non-Proliferation of Nuclear Armaments", 1993

The reasons for requiring permission to export electro-technical products in the form of scraps and waste of non-ferrous metals (aluminium and copper conductors, power and communication cables, starters and transformers substations elements) are the following:

- provide safety of vitally important objects of energy communications and industrial enterprises; and
- prevent misappropriation of non-ferrous metals, scrap and wastes and depletion of equipment containing non-ferrous metal units.

IV.2(e) Other measures, e.g. minimum export prices, voluntary export restrictions, orderly marketing arrangements

Question 62.

What is the purpose of registering export contracts?

Answer:

In addition to statistical purposes, the purpose of registering export contract on a commodity exchange is to prevent the export at dumping prices of products listed in Table A9.3 of Annex 9 of WT/ACC/KAZ/3.

Please note that Table A9.3 of Annex 9 needs to be amended. Government Resolution No. 895 of 12 July 1996 removed "crude oil -- including gas condensate --" (2709) from the list of products subject to export contract registration. In addition, "Guts, bladders and stomachs of sheep" (05400000) and "cotton linters" (140420000) need to be added to Table A9.3.

As a result of the aforementioned amendments, approximately 11% (instead of approximately 26% previously) of total value of export (based on 1995 export date) is subject to contract registration.

Question 63.

Is registration of export contracts an automatic process which does not affect the ability of the exporter to proceed with exportation?

Answer:

In addition to statistical information, the export contract is reviewed for the purpose of comparing prices to average world market prices of similar goods. If prices are way below average world market prices, then the exporter is requested to provide justification for such low prices.

Question 64.

Please provide a full list of products for which there are minimum export prices, giving the level of the minimum export price.

Answer:

Government Resolution No. 1492 of 5 December 1996 eliminated the procedures for establishing minimum export prices.

Question 65.

For each product, what is reason for applying minimum export prices?

Answer:

Question is not applicable. See above.

Question 66.

Please explain how the minimum export prices were calculated.

Answer:

Question is not applicable. See above.

IV.2(h) Import duty drawback schemes

Question 67.

Are the import duty drawbacks and refunds mentioned in this paragraph granted in excess of the level of applicable duties?

Answer:

Import duty drawbacks are limited to the amount of duties and taxes paid upon importation.

IV.3 Internal Policy, Affecting Foreign Trade in Goods

IV.3(a) Industrial policy, including subsidy policies

Question 68.

Could Kazakhstan please state whether it plans to eliminate its export subsidies (and other prohibited subsidies it might have in force) upon accession to the WTO.

Kazakhstan's amount of prohibited subsidies was approximately US\$ 100 million in 1996 and constituted approximately 0.5% of GDP. Kazakhstan does not plan to eliminate export subsidies upon accession to the WTO. But Kazakhstan plans to gradually eliminate such subsidies in accordance with Article 29 of the Subsidies and Countervailing Measures Agreement.

Question 69.

Does Kazakhstan wish to invoke Article 29 of the Subsidies and Countervailing Measures Agreement in respect of any of its subsidies?

Answer:

Yes. All subsidy programmes in force in Kazakhstan are covered by Article 29 and Kazakhstan wishes to invoke the provisions of this article in respect of all such subsidy programmes.

Question 70.

Does Kazakhstan maintain any subsidy contingent on the use of locally produced inputs, within the meaning of Article 3 of the Subsidies and Countervailing Measures Agreement?

Answer:

Yes. Subsidies contingent on the use of locally produced inputs was approximately US\$ 25 million in 1996 and constituted approximately 0.1% of GDP.

IV.3(b) Technical regulations and standards, including measures taken at the border with respect to imports

Question 71.

Kazakhstan will have to accede to the TBT-Agreement from the first day of accession to the WTO. What practical steps is Kazakhstan taking or planning to take to prepare for the accession to the TBT Agreement?

Answer:

Kazakhstan has joined ISO and International Organization of Legislative Metrology (IOLM) and takes into account International standards in developing and revising its standards. Reference-Information Fund ("Inquiry Point") has been established and its functions are connected with the obligations of accession to the WTO. Kazakhstan plans to review (and amend if needed) during accession its legal regime concerning standards and the operations of existing inquiry point and consultation agency to ensure full conformity to WTO agreement on TBT.

Question 72.

Could Kazakhstan please provide an overview of regulations relating to different products/product areas.

Answer:

In Kazakhstan, the following types of regulations relating to different products/products areas are used:

- i. Standards (GOSTs, ST RK) developed by technical committees and issued by GosStandard. These documents include mandatory and recommended requirements related to the groups of unified products and methods of testing.
- ii. Technical Conditions (TU) developed by producers and registered by GosStandard. These documents relate to specific products and they can not establish lower requirements than the mandatory requirements of standards.

In addition, Annex 5 of WT/ACC/KAZ/3 provides an overview of other regulations relating to different products/product areas.

Question 73.

Could Kazakhstan please comment on the fact that the Law "On standardization and certification" has as one of its main goals to meet "consumers' interests related to quality" and that "quality" is not legitimate objective within the meaning of GATT TBT Agreement articles 2 and 5.

Answer:

Provisions of the Law On Standardization and Certification concerning quality are focused on the protection of consumers' interests concerning product quality related to assuring safety for life and health of the consumers and protection of the environment.

Article 8.3 of the same law lists the following as mandatory requirements of standards:

- safety for life and health of population
- protection of environment
- compatibility and interchangeability capacities; and
- rules of packaging, marking and methods of control of correspondence to mandatory requirements.

The requirements assuring consumers' characteristics related to quality of products are recommended ones.

Question 74.

Are the standards used in Kazakhstan voluntary or mandatory? If they are mandatory, could Kazakhstan please state the rationale behind this?

Answer:

Standards in Kazakstan have mandatory and recommended requirements. The rationale behind mandatory requirements is to ensure:

- safety for life and health of population;
- protection of environment;
- compatibility and interchangeability; and
- rules of packaging and marking, and methods of control of correspondence to mandatory requirements.

According to article 8.3 of the Law on Standardization and Certification, mandatory requirements may be stipulated to protect the interests of the entity requesting the introduction of a specific standard. However, as described in Annex 5 of the document WT/ACC/KAZ/3, there is a process for development and introduction of new standards in which all concerned parties participate.

Recommended requirements include those ensuring consumers' characteristics related to the quality of products.

Question 75.

Has Kazakstan the intention of gradually moving away from the use of GOST-standards to the use of international standards? If so, what is the timetable and the priorities for this change-over?

Answer:

Newly developed standards and revised GOST standards represent authentic translation of or take into account requirements of international standards. A number of GOST standards currently correspond completely to ISO/IEC standards. It is expected that during the next five years, half of GOST standards will be harmonized with requirements of international standards. The Law On Standardization and Certification envisages direct use of international standards by Kazakstani producers.

Question 76.

Could Kazakstan please provide more in-depth information on the procedures and requirements connected with the mandatory and the voluntary system of certification. For example : Does the Kazak certification system contain the possibility of using a manufacturers' declaration? Does Kazakstan use pre-market certification in any product areas?

Answer:

The Kazak Certification System (KCS) is regulated by a number of normative documents. The main normative document is ST RK 3.0-94 "State system of certification of the RK. General provisions". All terms and definitions used in these documents correspond to Guideline ISO/IEC 2 and standard ISO 8402.

Mandatory certification means certification of products for correspondence to mandatory requirements of standard or other normative documents providing safety for life and health of people, property of individuals and environment.

Voluntary certification means certification of products carried out by initiative of producer, seller or customer for their correspondence to standards or other normative documents and special requirements of the customer.

The main purposes of the KCS are the following:

- protection of the customers against purchase (usage) of certain products, including imported ones, which are dangerous for life and health of people, property of people and environment;

- annulment of technical barriers to trade, provision of competitiveness of products.

KCS is open for participation of state bodies, enterprises and organizations of all property forms located in Kazakhstan and foreign firms and organizations. The accreditation of certification bodies, inspection bodies, testing labs (centres) and auditors is carried out by the Accreditation Commission of GosStandard. The process of accreditation of foreign and national certification entities is the same.

To ensure confidence in the results of certification, the certification body should fulfil the following criteria:

- independence of certification body;
- organizational structure providing for implementation of certification tasks;
- availability of a fund of normative and technical documentation on the quality systems, production and testing methods according to which certification is carried out or confirmed access to such fund;
- availability of accredited testing labs (centres) that are part of the structure of the certification body or interact with it on contractual basis;
- availability of skilled and specially trained and attested personnel;
- ability to demonstrate its capacities in rendering services in its declared field of certification on adequate level according to requirements of GosStandard.

The normative-methodical base of the KCS includes:

- standards and other normative documents (RK, national, GOST and international) in accordance with which product certification and methods of product testing are carried out;
- normative documents for quality systems (international standards ISO 9000 - 9004);
- a set of State standards and guidance documents of KCS;
- a set of guidance documents determining systems of certification;
- reference, reporting and other documentation concerning certification.

KCS envisages the following procedure of conducting work concerning product certification:

- submission of application to certification body by the applicant;
- sending of decision concerning the results of consideration of the application to the applicant;
- making a contract between the applicant and certification body to conduct work on product certification;
- making a contract between certification body and participants called upon by certification body to conduct product certification work;
- selection, identification of samples (probes) of the product and their submission to testing lab (centre);
- testing of the samples of the product;
- analysis of the obtained results and taking decision concerning possibility to issue certificate of correspondence and license;
- issuance of certificate and introduction of certified product into State Register of KCS. Making licensing agreement between certification body and applicant;
- inspection control over stability of certified characteristics of product and functioning of system of quality (if it is envisaged by certification scheme);
- information about the results of certification of product.

If the applicant wishes to appeal the measures related to its application for product certification, the applicant should submit an appeal in written form to the appellation commission of the certification body no later than one month after getting notification regarding the decision made. The reasons should be described in detail. Submission of the appeal does not suspend the decision made.

If the applicant does not agree with the decision of the appellation commission, it may eventually appeal to the Appellation Commission of GosStandard. The decision made by the Appellation Commission of GosStandard is final.

The Kazak Certification System (KCS) allows the possibility to use manufacturer's declaration if it is not possible to carry out testing of a given product in Kazakstan. Pre-market certification is not used in Kazakstan.

Question 77.

Does Kazakstan accept as equivalent certificates from third country certification bodies?

Answer:

Kazakstan recognizes certificates issued by state certification bodies of other CIS countries. Certificates issued for products produced in third countries are not recognized in Kazakstan. For example, a Russian certificate issued for products produced in Japan is not recognized in Kazakstan

In addition, the following foreign firms have been accredited by GosStandard to issue certificates: Gas de France (France), Mertcontrol (Hungary), Société Générale de Surveillance (Switzerland), Turkish Institute of Standards (Turkey).

Question 78.

Has Kazakstan developed a quality assurance system?

Answer:

The requirements for quality assurance are determined in every standards for specific kind of product. Certificate of quality is to be issued by producer. As a rule, consumers' characteristics of product are indicated in the certificate of quality.

Question 79.

Could Kazakstan please provide further information on this system or on any plans to develop such a system.

Answer:

In the future, Kazakstan plans to further develop and improve its system of quality assurance for certain groups of products including perishable products, parts and components for assembling in machinery building and other industries.

Question 80.

Could Kazakstan also please provide further information on its accreditation system?

Answer:

Accreditation of a certification body is an official recognition by GosStandard that such body is authorized to carry out certification of a product for correspondence to the requirements of specific standards and other normative documents. Accreditation means delegation by GosStandard of its functions and rights for certification to a certification body.

Accreditation of certification bodies envisages the following stages:

- submission and expertise of application documents;
- appointment of a commission on inspection of applicant entity;
- inspection of applicant entity; and
- expertise of the materials of inspection of applicant entity, preparation and issuance of the accreditation documents.

Inspection over the activity of an accredited certification body is carried out by GosStandard with assistance of inspection control bodies accredited for the right to conduct control over this activity. Planned inspection control is carried out during the whole period of accreditation on average twice per year. Grounds for conducting unscheduled inspection of a certification body are the following:

- information about non-observance by a certification body of the general
- procedures of certification of products established by KCS; and
- complaints concerning the quality of products certified by a specific certification body.

Please see answer to question number 76 of this document for additional information on accreditation system.

IV.3(c) Sanitary and phytosanitary measures, including measures taken with respect to imports

Question 81.

Does Kazakhstan anticipate any difficulties in applying the SPS Agreement in full on accession?

Answer:

Kazakhstan anticipates difficulties in applying the SPS Agreement in full on accession and will need an adjustment period to bring domestic rules and sanitary-hygiene norms in line with international standards.

IV.3(d) Trade-related investment measures

Question 82.

Does Kazakhstan intend to notify the measures listed related to investment in the oil and subsurface sectors under the TRIMS Agreement.

Answer:

Yes.

Question 83.

Please confirm that Kazakhstan maintains no other TRIMS Agreement inconsistent measures.

Answer:

Kazakhstan does not maintain any other TRIMS Agreement inconsistent measures.

IV.3(f) Free zones

Question 84.

Please confirm whether or not any free zones established in the future will be fully subject to the coverage of Kazakhstan's future commitments as a WTO member.

Answer:

Free zones established in the future will be fully subject to the coverage of Kazakhstan's future commitments as a WTO member.

Question 85.

Please indicate whether or not goods produced or imported into free zones under the special tax and tariff regimes envisaged for these zones will be subject to normal customs formalities, taxes and tariffs when entering the rest of Kazakhstan.

Answer:

Goods produced or imported into free zones under the special tax and tariff regimes envisaged for these zones will be subject to normal customs formalities, taxes and tariffs when entering the rest of Kazakhstan.

IV.3(g) Free economic zones

Question 86.

Please confirm whether or not free economic zones will be fully subject to the coverage of Kazakhstan's future commitments as a WTO member.

Answer:

Free economic zones will be fully subject to the coverage of Kazakhstan's future commitments as a WTO member.

Question 87.

Please indicate whether or not goods produced or imported into free economic zones under the special tax and tariff regimes envisaged for these zones are subject to normal customs formalities, taxes and tariffs when entering the rest of Kazakhstan.

Answer:

Goods produced or imported into free economic zones under the special tax and tariff regimes envisaged for these zones are subject to normal customs formalities, taxes and tariffs when entering the rest of Kazakhstan.

IV.3(l) Government procurement practices

Question 88.

Does Kazakhstan intend to join the Government Procurement Agreement? If not, why?

Answer:

Yes. Please note that Kazakhstan is currently in the process of drafting a government procurement law based on UNCITRAL model government procurement law. This law is expected to be submitted to the Parliament in 1997.

Question 89.

Does the Kazakhstan Government collect statistics on procurement?

Answer:

No except for procurement of grain for State reserves (see Section 3.c of Annex 1 of WT/ACC/KAZ/3)

Question 90.

What is the overall value of public sector purchasing in Kazakstan?

Answer:

Such information is not available.

Question 91.

Please provide a breakdown of the public procurement market both by contracting entity and product type?

Answer:

Such information is not available.

Question 92.

Is price the only criterion for evaluating bids under Resolution No 586 or are contracts also evaluated by reference to an "economically most advantageous offer" approach?

Answer:

According to Articles 10 and 16 of Resolution 586, the criteria used to evaluate bids are set by a Bidding Commission (in procurements for Goods on the "General Purpose List" hereinafter the "List") or other State Procuring agencies (for procurements of goods not on the List) on a case by case basis. Price, however, is seldom the only criterion applied in awarding contracts.

Question 93.

If so, under what conditions are the different evaluation methods used?

Answer:

See the answer to the preceding question.

Question 94.

Is there a central agency which controls the applications of Resolution No 586 and monitors possible infringements.

Answer:

The Ministry of Economy and the Ministry of Finance both broadly control the application of Resolution 586. All Ministries, State Committees and other organizations funded by the State budget, which procure goods and services (hereinafter State Procuring Agency) submit their forecasts of anticipated procurements to the Ministries of Economy and Finance on a periodic basis. A Bidding Commission of the Ministry of Economy, moreover, procures all goods and services which appear on the "List of General Purpose Goods and Services" (the "List") regardless of the Ministry, State Committee or other organization requiring the procurement. There is no central agency, as such, which has a specific mandate to monitor possible infringements; rather, each State Procuring Agency - whether it is the Bidding Commission, Ministry, State Committee or other organization monitors the application of Resolution 586.

Question 95.

Do detailed rules exist on the requirement to publish tender and contract award notices?

Answer:

Resolution 586 contains no detailed rules governing publication of tender terms or contract award notices. The only specific language in Resolution 586 which addresses publication is found

in Articles 10 and 16 which merely require that "...announcement of intent to procure and the preparation of requirements and conditions of [participation] shall be communicated through publication in the *mass media and circulation of Invitations to Bid* to potential bidding participants" (emphasis added).

Question 96.

If so, what information must these notices contain, and where are they published?

Answer:

See answer to previous question

Question 97.

Can suppliers who dispute the award of a contract seek redress through national courts or a tribunal system?

Answer:

A supplier who disagrees with the decision of a State Procuring Agency has the right to appeal that decision as follows:

- *administratively* - within the State Procuring Agency and thereafter to the Government of the Republic of Kazakhstan;
- *judicially* - to the "Arbitration Board" of the court where the petitioner is located and thereafter at a higher level judicial authority;
- *criminally* - by complaining to the Directorate of Public Prosecution.

Question 98.

What remedies are available?

Answer:

Remedies may include annulment of the offending procurement decision, the conduct of the tender anew, and administrative or criminal fines where appropriate.

Question 99.

Can foreign suppliers participate in tenders covered by Resolution No.586?

Answer:

Yes. Resolution No. 586 does not stipulate any constraints to the participation of foreign suppliers in government procurement tenders.

Question 100.

Is there an offset policy and, if so, how often are offset arrangements negotiated on a case-by-case basis?

Answer:

Resolution No. 586 does not stipulate any offset policy.

Question 101.

Does Kazakhstan's procurement law make provision for a system of domestic and price preferences?

Answer:

Yes.

Question 102.
Are these mandatory or optional?

Answer:
The aforementioned domestic price preferences are mandatory.

Question 103.
How, precisely, do they operate?

Answer:
Resolution No. 586 stipulates that, for procurement of goods or services appearing on the List, domestic suppliers are given a priority over foreign suppliers where, other things being equal, their prices do not exceed those of the foreign supplier by more than 20%.

Question 104.
How are they managed?

Answer:
The aforementioned domestic price preferences apply only to procurement of goods and services appearing on the List and as such the application of these price preferences are managed by the Bidding Commission within the Ministry of Economy.

Question 105.
Does a policy to support local industry exist in Kazakhstan?

Answer:
There is no policy to support local industry which is reflected in Resolution No. 586 beyond the selection of goods and services which appear on the List.

Question 106.
Is the procurement of certain products reserved for local industry?

Answer:
The answer is no.

Question 107.
If so, is the list of these products available?

Answer:
See the previous answer

Question 108.
What are the procedures and the criteria to short-list candidates in the cases of limited tendering?

Answer:
There is no procedure for limited tendering set forth in Resolution No. 586.

Question 109.
**Does Kazakhstan have any trade agreements with other countries which cover public procurement?
If so, which countries?**

Answer:

Kazakstan has no agreements of such type.

IV.3(m) Regulation of trade in transit

Question 110.

Please explain in more detail what is meant by the last part of this section, which states that "Article 35 of the Customs Code provides that the transit of goods shall be carried out under permission of the Customs except for cases where the Government has adopted another decision as a retaliatory measure to discrimination or other actions by foreign governments or unions which encroached on the interest of Kazakstan."

Answer:

The quoted provision is intended to allow the Government of Kazakstan to limit the transit through the territory of the Republic of goods originating in countries or their unions which have taken actions that harm the interests of Kazakstani entities. The circumstances in which the provision may be applied are not further defined by law or implementing legislation. This provision has not been applied to date.

IV.4 Policies Affecting Foreign Trade in Agricultural Products

Question 111.

Please provide the information requested in WT/ACC/4 on domestic support and export subsidies.

Answer:

Information requested in WT/ACC/4 on domestic support and export subsidies was circulated as Annex 11 of WT/ACC/KAZ/3.

V. TRADE RELATED INTELLECTUAL PROPERTY REGIME

V.1 General

Question 112.

Has the Kazak Government the intention to adhere to any international conventions other than those mentioned in its Foreign Trade Memorandum, for example the Rome Convention? If so, what is the possible time-frame?

Answer:

The Republic of Kazakstan is intending to accede to the Rome Convention, unfortunately, it has not yet formally defined a time-frame for accession.

Question 113.

The Kazak Government states that it is prepared to complete the process of accession to the Berne Convention. What is the time-frame, please?

Answer:

The State Agency on Copyrights and Related Rights has submitted a formal proposal to the Government that the Republic of Kazakstan accede to the Bern Convention. That proposal is currently

being considered by relevant State agencies. Unfortunately, a formal time-frame for a Government Resolution on accession has not yet been defined formally.

Question 114.

With regard to fees and taxes, could the Government of Kazakhstan be more precise when using the term "monthly evaluation index" (Annex 10 of the Memorandum)?

Answer:

Article 5, Clause 13 of the Tax Code of the Republic of Kazakhstan provides that the Monthly Evaluation Index is a monthly rate defined annually in the Republican Budget (or other legislative act) for the purpose of calculating pensions, allowances, and other social payments and for applying penalties, taxes, fees and other payments. During 1996, the Monthly index varied quarterly as follows: in the first quarter - 320 Tenge, in the second - 380, in the third - 460, in the fourth - 530 Tenge. The Draft Budget for 1997 provides the following projections: first quarter - 550 Tenge, second - 565, third - 585, fourth - 620 Tenge.

V.2 Substantive standards of protection, including procedures for the acquisition and maintenance of intellectual property rights

V.2(a) Copyright and Related Rights

Question 115.

How are computer programs protected?

Answer:

According to Article 7(1) and (2) of the "Law Concerning Copyright and Related Rights" (hereinafter the "Copyright Law"), computer programs (including operational systems for electronic calculating machines) are protected by copyright. Recent amendments to various laws, as set forth in "Additions and Amendments to Certain Legal Acts of Kazak SSR" dated 16 July 1996, moreover, provides for administrative, civil and criminal responsibility for the violation of copyrights.

Question 116.

How does Kazak legislation incorporate Article 18 Berne Convention with regard to performers and producers of phonograms?

Answer:

The Copyright Law sets forth the Republic of Kazakhstan's application of the principal of the expiry of terms of protection, (referenced in Article 18 of the Berne Convention) to performers and producers of phonograms. Article 29 thereof provides that the expiry of the terms of protection, regardless of whether the copyright was or was not previously granted protection in the Republic of Kazakhstan, renders the works to which the copyright previously applied as "national property". As such, these works may be used by any person free of charge. The name and protection of the authors' reputation, however, must be observed.

V.2(b) Trademarks, Including Service Marks

Question 117.

What rights are conferred by a trademark?

Answer:

Trademarks provide their holder with the following rights:

- to a trademark certificate which certifies the fact of registration of a trademark, the priority of the trademark, and the exclusive right of the owner of the trademark in respect to goods and services indicated in the certificate (Article 17(2) of the Trademark Law);
- to introduce the trademark, in connection with goods or services as specified in the trademark certificate, into "business circulation" (Article 3 of the Law on Trademarks);
- to enjoy the exclusive use of the trademark in connection with goods or services as stipulated in the trademark certificate for a period of 10 years from the date of the receipt of the trademark application by the Patent Office (Article 18 of the Law on Trademarks);
- to assign or otherwise grant the exclusive right to a trademark in connection with goods or services as specified in the trademark certificate to any person (whether natural or juridical) provided that the assignment or other agreement is appropriately registered with the Patent Office (Article 26(1) and (2) of the Law on Trademarks);
- to apply the trademark of an intermediary involved in the sale of goods together with the trademark of the goods' manufacturer, provided there is a mutual agreement between the manufacturer and intermediary to this effect (Article 24(3) of the Law on Trademarks); and
- to demand that persons (whether natural or juridical) who violate the rights of a trademark-holder: (a) cease using the trademark, (b) pay to the trademark-holder full compensation for any profits gained by the unauthorized use of the mark and (c) remove any unauthorized mark or similar symbol from goods or their packaging, (d) to publish the decision of the body determining the unauthorized use of the mark (Article 31 of the Law on Trademarks).

Question 118.**How does Kazak law protect well-known marks?**

Answer:

Legal protection of trademarks in the Republic of Kazakstan is provided on the basis of the registration and issuance of a trademark certificate in accordance with the procedures set forth in the Law on Trademarks. Article 15(1) of the Trade Mark Law specifically prohibits the registration of marks as trademarks which are similar or identical to those which are protected by virtue of international conventions to which Kazakstan is a party. Since the Government of the Republic of Kazakstan has declared its participation in the Paris Convention, the terms of that convention, specifically Article 6 bis, are directly applicable in accordance with Article 4 of the Constitution. While Kazak law does not per se provide protection for well-known marks, well-known marks will, therefore, be protected in the Republic of Kazakstan by virtue of the terms of the Paris Convention.

Question 119.**What are the exceptions from protecting a mark, if any?**

Answer:

Certain names, words or symbols, as set forth in the following two Articles of the Law on Trademarks, may not be registered as trademarks in the Republic of Kazakstan:

Article 14. Granting the right to use an item of industrial property

1. Any person which is not a patent holder shall have the right to use an item of industrial property which is protected by a preliminary patent or patent only with the permission of a patent holder (on the basis of a licensing agreement). In accordance with the licensing agreement the patent holder (licensor) shall be obliged to grant the right to use the protected item in the volume which is stipulated by the agreement to the other person (licensee) and the latter shall assume the undertakings to make payments to the license or in accordance with the agreement and to carry out any other actions which

are stipulated in the agreement. The payments of the licensee shall be included into the cost of production and shall be equated to the material expenditures.

2. A licensing agreement shall be subject to registration with the Patent Department without which it shall be deemed invalid.

3. A patent holder may submit to the Patent Department an application to grant to any other person the right to obtain the license (an open license). The state duty for the support of a patent in force shall be reduced in that case by 50% from the date of the publication of that application.

A person who expressed the desire to acquire the indicated licence shall be obliged to conclude with the patent holder the agreement on payments. Disputes in respect of the terms and conditions of concluding the agreement shall be considered by the court. The application of a patent holder to be granted the right to open license shall not be revocable.

4. In the interests of the national security the Cabinet of Ministers of the Republic of Kazakhstan shall have the right to permit the use of an item of industrial property without the consent of the patent holder with the payment to him of commensurate compensation.

The disputes concerning the amount of compensation shall be resolved in courts.

Article 15. Violation of patent.

1. Any physical person or legal entity which uses items of industrial property which are protected by preliminary patent or patent in contradiction to this law shall be deemed to be a violator of patent.

2. By demand of a patent holder the violation of a preliminary patent or patent must be terminated and the physical person or legal entity which is guilty of violating the patent shall be obliged to compensate to the patent holder the amounts of losses inflicted, in accordance with the legislation of the Republic of Kazakhstan.

3. The claims to a violator of a preliminary patent or a patent may be also submitted by the licensee provided this is stipulated in the licensing agreement.

Question 120.

In the Memorandum it is said that an interested party may file a petition for non-use if such non-use can be established for 5 consecutive years. Does Kazak law recognize any valid reasons for non-use by the trademark owner?

Answer:

Yes. Article 24(5) of the Law on Trademarks provides that the owner of a trademark, challenged for the non-use thereof, may submit evidence demonstrating that non-use has due to circumstances beyond the control of the owner. The Patent office, in rendering its discretionary determination on non-use, will, therefore, "take the [evidence] into account".

Question 121.

Does Kazak law contain any provisions determining the conditions on licensing and assignment of trademarks? Please explain.

According to Article 26 of the Law on Trademarks, the following shall be the conditions for licensing and assignment of rights to a trademark:

- a written agreement licensing or assigning the trademark;
- provisions within the licensing agreement stipulating that the quality of the goods associated with the licensee's use of the trademark will not be inferior to those of the licensor's;
- provisions in the licensing agreement providing to the licensor the right to supervise compliance with the terms of the agreement; and
- compulsory registration of the agreement between the trademark holder and licensee (or assignee) with the Patent Office.

V.2(c) Geographical Indications

Question 122.

Please explain how Kazak law protects wines and spirits.

Answer:

The existing legislation of the Republic of Kazakhstan does not protect wines and spirits as such. To a certain extent, however, such protection may be inferred from the protection offered to products bearing geographical indications as set forth in Articles 16 and 24 of the Law on Trademarks.

V.2(d) Industrial Designs

Question 123.

In its Memorandum the Government of Kazakhstan speaks about preliminary and full patents of industrial designs. Could the Government of Kazakhstan explain what the difference between these two terms is and what the legal effects are?

Answer:

The degree of protection provided by a preliminary patent for an industrial design is functionally equivalent to that provided by a patent. The principal difference between these two terms lies in the procedure for issuance and period of validity. In accordance with Articles 1 and 24 of the Patent Law, Preliminary patents for industrial designs may be issued after formal expertise of the application and are valid for a period of five years from the date of receipt of the application form by the patent office. Patents for industrial designs are issued after conducting an expertise in essence of the patent application, provided that the patent application is received within four years of the date the Patent Office originally received the application for the preliminary patent. The expertise in essence shall include a check of the conditions of patentability of the industrial design (novelty, originality and industrial application). The patent is then valid for a period of ten years. It is possible, moreover, to prolong the validity of an industrial design patent for up to five years upon receipt of a petition by the patent holder. If the applicant, however, does not timely submit an application for extension, legal protection of the industrial design shall be cancelled from the moment of the preliminary patent's date of expiration.

Question 124.

How are textile designs protected, please explain?

Answer:

Protection to textile designs is provided under the general category of industrial designs in accordance with Article 19 of the Patent Law.

V.2(e) Patents

Question 125.

Do the conditions for granting a patent include an inventive step?

Answer:

Yes. According to Article 5 of the Patent Law an invention is subject to legal protection if it is new, contains an inventive step and can be industrially applied. The Patent Law defines an inventive step as a step not apparent to an expert in the field based upon information available in the relevant field of application.

Question 126.

Could the Government of Kazakhstan also in this context explain in more detail the term of a "preliminary patent"?

Answer:

In accordance with Articles 4 and 22 of the Patent Law, the term of validity of a preliminary patent is for (5) years from the moment the application for a preliminary patent is received by the Patent Office. Preliminary patents, moreover, may not be extended beyond the initial 5 year term; although it is possible to convert a preliminary patent into a patent provided that the holder of the preliminary patent fulfils all preconditions for patentability.

Question 127.

In the Memorandum it is said that non-use can be a reason for granting a compulsory license. Are there any other cases that can lead to a compulsory license? Please explain.

Answer:

In accordance with Article 14(4) of the Patent Law, the Government of the Republic of Kazakhstan, in the interests of national security, has the right to permit the use of industrial property without the permission of the patent holder provided that the Government pays to the patent holder appropriate compensation.

Question 128.

Does the importation of a patented product fulfil the condition of "working such a patent"?

Answer:

According to Article 11(3) and (4) of the Patent Law, patent holders are obliged to "use [the patent]". The use of the patent includes, "the introduction into business circulation of the product which was created with the use of the invention". The importation of a patented product constitutes the introduction of the patented product into business circulation and, hence, the use thereof.

V.2(f) Protection of Plant Varieties

Question 129.

In the Memorandum the Government of Kazakhstan states that a Law of Selection Achievements is foreseen for the legislative process in 1997-1998. Does a draft text already exist? If so, could the Kazak Government hand over such a text and explain the main elements?

Answer:

An official draft of a Law on Selection Achievements has not yet been approved.

V.4 Enforcement

V.4(d) Border measures

Question 130.

In the Memorandum it is stated that appropriate adjustments will be made in the context of the adoption of a new Law on Copyrights and Related Rights. Could the Government of Kazakhstan be more specific about the possible time-frame?

Answer:

The aforementioned amendments will be presented to Parliament this year. The Government has already instructed the Customs Committee to prepare its proposals on this matter.

Question 131.

Please provide a draft text and explain its main elements in more detail?

Answer:

An official version of the draft amendments to the Customs Code has not yet been prepared. The Republic of Kazakhstan will forward a copy of the official draft amendments when they have been prepared and approved. Please note, however, that the Copyright Agency has already submitted a formal letter to the Customs Committee requesting amendments to specific articles to the Customs Code Criminal procedures.

Question 132.

Could the Kazak Government be more specific about possible fines in cases of infringement of intellectual property rights?

Answer:

(a) Fines Provided for in the Administrative Code

The Administrative Code of the Republic of Kazakhstan stipulates responsibility for the following administrative violations in the sphere of intellectual property:

i. Article 170-2.

The usage of a trademark, a symbol similar thereto, or the name of a place of origin for goods in violation of the established norms and rules shall entail fines upon individuals in an amount of up to three minimum wages, and upon officials in an amount of up to five minimum wages.

The same actions committed repeatedly within the course of one year upon imposition of the administrative punishment stipulated by the first part of this article shall entail fines upon individuals in the amount of up to five minimum wages, and upon officials - in the amount of up to seven minimum wages.

ii. Article 170-3.

Selling, leasing and other illegal use of copyrighted works or phonograms for commercial purposes where the copyright or works:

- are counterfeit, in accordance with legislation of the Republic of Kazakhstan;

- contain false information concerning their manufacturer, place of production or other information which can mislead consumers;
- sign has been destroyed or changed ;

shall entail fines upon individuals in the amount from three to five minimum wages, and upon officials - in the amount from five to ten minimum wages as established by legislation of the Republic of Kazakhstan with confiscation of counterfeit copies of works of phonograms.

The same actions committed by a person who within the same year was subject to an administrative punishment for one of the violations stipulated in the first part of this article, - shall entail fines upon individuals in the amount from five to ten minimum wages, and upon officials - in the amount from ten to twenty minimum wages as established by legislation of the Republic of Kazakhstan with confiscation of counterfeit copies of works or phonograms.

Copies of works or phonograms confiscated in accordance with the first and second parts of this article shall be subject to destruction except for the cases of their transfer to the holder of the copyright or related rights at the copyright holder's request.

iii. Article 170-4.

Refusal to provide an authorized body with the required information on income as well as provision of false information on income received in relation to use of the copyright and related right items, - shall entail fines upon individuals in the amount from three to five minimum wages, and upon officials - in the amount from five to ten minimum wages as established by legislation of the Republic of Kazakhstan on the moment the offense is committed.

The same actions committed repeatedly within the same year upon imposition of the administrative punishment, - shall entail fines upon individuals in the amount from five to ten minimum wages, and upon officials - in the amount from ten to twenty minimum wages as established by legislation of the Republic of Kazakhstan.

(b) Fines Provided for in the Criminal Code

The Criminal Code of the Republic of Kazakhstan provides responsibility for the following types of crimes in the sphere of intellectual property:

i. Article 129.

Appropriation of authorship, or the compulsion of an author to acknowledge co-authorship by persons who did not participate in the creative activity that led to a discovery, an invention or a rationalisation proposal, the disclosure of the essence of a discovery, an invention, a rationalization proposal prior to the application date - shall entail correctional activity for the period from one to two years or a fine in the amount from two to six minimum wages, or the case shall be passed on to the comrades' court.

Bureaucracy and procrastination in the process of reviewing and introducing inventions and rationalization proposals, evasion from informing an inventor or a rationalization about usage of his invention or rationalization proposal, intentional inaccurate economic calculation or intentional inaccurate calculation of remuneration and delay in payment thereof, committed by officials, - shall entail correctional activity for the period from one to two years or a fine in the amount from two to six minimum wages, or dismissal.

Disclosure of any information associated with confidential discoveries, inventions and rationalization proposals without any signs of state crime, - shall entail deprivation of freedom for a period of up to one year or correctional activities for the period of up to two years, or dismissal.

ii. Article 129-1.

Violation of copyrights and related rights resulted in illegal use of copyright and related rights items committed for the purpose of gaining profit which inflicted large damage to the holder of the copyright and related rights, - shall entail deprivation of freedom for a term from one to three years with confiscation of counterfeit copies as well as materials and equipment for reproduction thereof or a fine in the amount from five hundred to one thousand five hundred minimum wages as established by the legislation of the Republic of Kazakhstan.

Question 133.

What is the possible time-frame for the new Law on Authorship and Artistic Performance which will amend the Criminal Law and the Code of Criminal Procedure?

Answer:

The Copyright Law (new law "On Authorship and Artistic Performance") was adopted on 10 June 1996. The corresponding amendments to the Criminal Code were introduced on 16 July 1996. Amendments to the Code of Criminal Procedure have not yet been drafted. Such amendments are likely to be adopted in early 1998.

Question 134.

Please provide a draft text?

Answer:

A copy of the Copyright Law was provided to the WTO Secretariat in August 1996.

On July 16, 1996 the Law of the Republic of Kazakhstan "On Introducing Amendments and Additions to Certain Legal Acts of Kazak SSR" has introduced additions to Criminal Code of the Republic of Kazakhstan in the form of the Article 129-1 "Infringement of Copy and Related Rights with the Purpose of Generating Profit" with following content:

- "Infringement of copy and related rights expressed in illegal reproduction, circulation, distribution or another illegal usage of objects of copy or related right, performed with the purpose to generate profit that inflicted serious damage to the owners of copy and related rights shall be punished by deprivation of freedom for the period of one year to three years with confiscation of counterfeit copies as well as materials and equipment for their reproduction or shall be punished by fine in the amount from 500 to 1500 minimum salaries established by legislation".

VI. TRADE-RELATED SERVICES REGIME

VI.1 General

Question 135.

Kazakhstan is requested to provide the Working Party as soon as possible with a substantial initial offer on services in the GATS framework, binding liberal market access conditions and national treatment guarantees on an MFN basis for foreign service suppliers.

Answer:

Kazakhstan will provide an initial offer on services in the GATS framework, binding liberal market access conditions and national treatment guarantees on an MFN basis for foreign service suppliers, prior to the beginning of negotiations.

Professional services

Legal Services

Question 136.

Could Kazakhstan explain whether there are any nationality requirements in the legal sector?

Answer:

There are no nationality requirements in the legal sector in Kazakhstan. In order to be a State employee, however, one must be a citizen of the Republic of Kazakhstan. Nevertheless, foreign nationals are permitted to render legal services on behalf of State bodies.

Question 137.

Are foreign nationals restricted to the practice of international law or the law of their home country, or are they permitted to practice within the Kazakh law system?

Answer:

Foreign nationals are permitted to practice within the Kazakhstani law system.

Question 138.

What requirements govern establishment in the legal services sector?

Answer:

The registration requirements and process for legal entities rendering legal services are the same as for any other business entity. Licenses, in addition, are required in order to provide certain types of legal services (e.g. advocate services, investigation services, court services).

Accounting and auditing

Question 139.

Are there any nationality requirements governing accounting or auditing?

Answer:

There are no nationality requirements governing accounting or auditing in Kazakhstan. In order to be a state employee, however, one must be a citizen of the Republic of Kazakhstan. Nevertheless, foreign nationals are permitted to render accounting and audit services on behalf of state bodies.

In addition, according to the Law on Audit Activity dated 18 October 1993, foreign auditing firms must obtain permission from the Qualification Commission under the Ministry of Finance to conduct audit activities in Kazakhstan.

Question 140.

Are there any restrictions on the type of company that can be established - e.g. does establishment have to take the form of a partnership; must a Kazakh national be in a position of authority?

Answer:

Accounting and auditing companies may take the form of partnership or any other type of legal entity (state enterprise and production co-operative) permitted under the Kazakstani legislation. There are five forms in which partnership may be established: Full Liability Partnership, Commandite Partnership, LLP (limited Liability Partnership), Partnership with Additional Liability, and JSC (Joint Stock Company). Please note that there is no rule requiring that a Kazak national be in a position of authority. In addition, an individual may practice auditing and accounting activities without registering as a legal entity.

Other

Question 141.

In engineering, architectural, integrated engineering and urban planning services it is stated that permission must be granted for establishment in the field from local bodies - what form does this permission take and what are the criteria?

Answer:

The provisions referred to concern construction permission from the Head of Oblast Administration (Akim) to construct on a specific land plot and from the local body of State Architecture Construction Inspection (SACI).

Two permits are actually required from the Akim. The first permit is issued after the preliminary project design is agreed upon by the following in the listed order:

- a private or state company licensed and accredited to approve construction design. This entity reviews the preliminary project design for correspondence to construction norms, rules and standards; technological and engineering concerns; environmental, fire, sanitary, and safety concerns.;
- Oblast Anti-Fire Department for fire concern;
- Oblast Department of Ecology and Bio-Resources for environmental concerns;
- Oblast Sanitary and Epidemiological Inspection for sanitary concerns;
- Chairman of Oblast Land Committee;
- Chief Engineer of Oblast Department of Architecture and Urban Planning;
- Chairman of Oblast Department of Architecture and Urban Planning;
- Head of District Administration;
- Deputy Akim (1st); and
- Deputy Akim (2nd).

After the signatures of all above mentioned entities and officials are obtained, the Akim issues the first permit. The Construction company may proceed and develop a final design which should be reviewed and approved by a licensed legal entity or natural person. The final design must be evaluated for the following concerns: fire, sanitary, environmental, seismological, and safety. The second Akim's permit is issued after approval of the final project design by a licensed legal entity or natural person.

Before starting construction, a permit from the local body of SACI is required. This permit is obtained upon submission to SACI of the following: (i) approval of the final project design, (ii) the two permits issued by the Akim, and (iii) other relevant documents from other local bodies (e.g. energy supervision, municipal and local Inspectorate) depending on the type and location of the facility to be constructed.

The process described above applies equally to foreign and national construction companies.

Question 142.

Are the criteria non-discriminatory between foreign and national service suppliers?

Answer:

The criteria for meeting construction norms and rules and environmental, sanitary, and safety standards apply equally to foreign and national service suppliers in these spheres.

Other Business Services

Question 143.

Under this section, the Memorandum states that licensing requirements are in place in many sectors - could Kazakhstan indicate whether any of these requirements discriminate between foreign and national service suppliers? What criteria are applied?

Answer:

According to article 8 of the Law on Licensing of 17 April 1995, foreign legal and natural persons shall be granted licenses under the same conditions and procedures as legal and natural persons of the Republic of Kazakhstan, unless it is otherwise stipulated by other legislative acts. As of today, no other legislative acts of the Republic of Kazakhstan have stipulated discriminatory treatment in issuing licenses.

In order to obtain a license, an applicant must submit the following: application; proof of payment of license fee; copy of certificate of registration (if a legal entity is applying for license); and documents demonstrating appropriate qualification (qualification requirements).

Currently, state bodies responsible for issuing licenses are in the process of defining the qualification requirements for each type of licenses. For certain types of licenses, approval of sanitary, mining, and/or ecological supervision is required.

Postal Services

Question 144.

Could Kazakhstan explain what the "ecological experience" entails as mentioned in this section.

Answer:

The reference in this section is to "ecological expertise" and not to "ecological experience". An applicant for a license to design, construct, and operate national main and international communication lines needs to submit the license application package to the state ecological supervision body to be evaluated for environmental concerns.

Question 145.

Is the Post Office considered a "natural monopoly" or are there competing companies in the sector?

Answer:

The State Post Office is considered a "natural monopoly" and tariff rates are regulated by the Anti-Monopoly Committee (AMC). Currently, there are plans to eliminate the State Post Office from the list of natural monopolies in 1997. Rates established by private competing companies in this sector are not regulated by the AMC.

Currently, there is no significant competition for postal services within Kazakhstan. However, there are no barriers to enter this sector. Licenses are required to be engaged in postal services and could be applied for at the Ministry of Transport and Telecommunications according to the Law on Licensing.

Please note that there are currently more than dozen national and foreign companies rendering parcel and courier services throughout Kazakhstan. Companies like DHL, UPS, Pony Express, TNT, AseExpress dominate in international courier services.

Telecommunications Services

Question 146.

Do all licensed operators have to use the Kazaktelecom network, or are they permitted also to build and operate their own networks?

Answer:

Licensed operators do not have to use only KazTelecom (Kazaktelecom) network. They are permitted to build and operate their own networks.

Question 147.

How do the contracts with foreign telecoms companies to modernise and develop the network operate?

Answer:

Contracts concluded between foreign telecom companies and KazTelecom to modernize and develop the network are commercial contracts.

Question 148.

On what basis are licences allocated for the different types of telecoms services - voice telephony, mobile telecoms, paging?

Answer:

In order to obtain a license to provide any type of telecom services, an applicant should submit an application according to the Law on Licensing (application, license, fee, certificate of state registration, and qualification requirements). Qualification requirements should reflect the following: activity and previous experience in the field of communication; business plan with general and detailed description of technical equipment; technical interaction and interrelation with existing structure of the network to be used by the applicant; and all legal relations connected with financing, consumers, and partners.

Tenders are conducted for the allocation of radio frequency spectra and cellular communication.

Financial services - General

Question 149.

What regime is applied in Kazakhstan in the field of financial services to the cross-border supply of services without establishment?

Answer:

There are no restrictions on the number of non-resident financial service suppliers and also on the volume of operations. Exceptions are the following:

- non-residents are not permitted to purchase more than certain share of state treasury bonds in a specific auction. Such share is defined by the Ministry of Finance prior to each auction. For instance, non-residents were not permitted to purchase more than 15% in the last auction (28 January 1997); and
- no more than 95% of insurance risk may be re-insured outside of Kazakhstan.

Banking

Question 150.

The law "On Banks and Banking Activities" significantly limits foreign participation in the banking sector: the total registered charter fund of all banks with foreign participation should not exceed 25% of the overall registered charter fund of all banks in Kazakhstan. Exceptions may be granted on a case-by-case basis to foreign banks. This leaves room for discretionary measures. Has Kazakhstan considered removing this restriction, at least progressively over a fixed period of time?

Answer:

The purpose of the 25% limit is to develop and strengthen the domestic banking sector of Kazakhstan. There are plans to start cancelling such restriction beginning 1 January 1999.

Question 151.

Could Kazakhstan also explain the conditions for the granting of exceptional licences?

Answer:

The total registered charter fund of all banks with foreign participation is 12.9% of the overall registered charter fund of all banks in Kazakhstan as of 1 December 1996. Due to the fact that such a figure is way below the permitted ceiling (25%), the National Bank of Kazakhstan has not yet developed any additional regulations to define the conditions for granting exceptions on a case by case basis.

Question 152.

Could Kazakhstan clarify whether direct branching is allowed in the banking sector, and whether foreign banks are subject to any ceilings as regards their participation in local banks?

Answer:

Direct branching is not allowed in Kazakhstan.

According to Article 18 of the Law on Bank and Banking Activities of 31 August 1995, a non-resident bank has the right to open an affiliate bank (subsidiary) in Kazakhstan.

A non-resident bank may open a representative office in Kazakhstan. But the representative office is not allowed to render any banking services.

Foreign banks are not subject to any ceilings with regard to their participation in local banks.

Question 153.

Foreign banks are required to deploy their funds in domestic assets. This restriction is likely to constitute an important barrier to foreign banks' operations in Kazakhstan. Has Kazakhstan considered easing this requirement?

Answer:

There are plans to cancel this restriction beginning 1 January 1999.

Question 154.

Kazakstan lists a total of 6 prudential ratios set by the National Bank. As already indicated in the Memorandum, some of them are more of a restrictive nature. Does Kazakstan intend to phase out such limitation in the near future?

Answer:

The main goal of prudential ratios is to provide stability in the banking system and reduce risks of operations of commercial banks. The National Bank of Kazakstan does not view these ratios as limitations to investment in the banking sector. In addition, these prudential ratios are consistent with the Basel Agreement.

Question 155.

Foreign banks are required to establish a representative office in Kazakstan one year prior to the granting of a licence. This requirement represents an unnecessary burdensome and costly barrier to access to the local market. Has Kazakstan considered eliminating this requirement?

Answer:

The purpose of requiring foreign banks to establish a representative office in Kazakstan one year prior to the granting of a licence is to allow foreign banks to be acquainted with the current normative basis in Kazakstan and determine the main directions of bank activity and necessary capital. There are plans to cancel this requirement beginning 1 January 1999.

Question 156.

Investment banks are subject to minimum capital requirements. Can Kazakstan confirm that these are applied on a non-discriminatory basis both to local and foreign investment banks?

Answer:

Minimum capital requirements are applied on a non-discriminatory basis both to local and foreign investment banks.

Question 157.

Lending has been limited to commercial lending and factoring, restricting the provision of consumer credit and mortgage services. Can a further market opening be expected, or do high inherent risks exclude any such perspective?

Answer:

WT/ACC/KAZ/3 stated the following:

"In practice, lending has been limited to commercial lending and factoring, as well as to "repo" type operations with state securities. Consumer credit and mortgage services are limited at the moment due to their high inherent risk".

There are no legal or regulatory restrictions on the provision of consumer credit or mortgage services. However, at the moment most commercial banks perceive risks in performing such operations.

Question 158.

Could Kazakstan confirm that foreign banks have unrestricted access to the professional Association of Banks and that this is a non-governmental organisation?

Answer:

Association of Banks is a public, non-governmental organization with an equal open access to foreign and domestic banks.

Securities

Question 159.

The Memorandum does not contain a detailed description of the conditions applying to foreign securities firms as regards market access and national treatment. Are they allowed to establish a commercial presence in all possible forms (subsidiary, branch, acquisition of existing firms), at least with respect to those activities which are currently permitted in Kazakhstan?

Answer:

Foreign securities firms are permitted to establish a commercial presence in all possible legal forms under the Kazakhstan legislation including different types of partnerships, joint stock companies, and subsidiaries. In addition, foreign securities firms may acquire existing domestic firms. The registration process of foreign securities firms is the same as for any other legal entity with foreign participation.

Foreign security firms and natural persons are allowed to conduct all types of permitted securities market activities provided they obtain proper license(s) from the National Securities Commission (for all activities except securities clearing activity) and the National Bank of Kazakhstan (for securities clearing activity). Domestic securities firms do not have any advantages over foreign securities firms in obtaining licenses or conducting securities market activities. Exception to what has been said is the following: non-residents are not permitted to purchase more than certain share of state treasury bonds in a specific auction. Such share is defined by the Ministry of Finance prior to each auction. For instance, non-residents were not permitted to purchase more than 15% in the last auction (28 January 1997).

Question 160.

As regards the issue of securities, the issuer must be a Kazak juridical person. Will Kazakhstan consider offering foreign juridical persons the right to issue securities?

Answer:

Kazakhstan will not consider offering foreign juridical persons the right to issue securities in Kazakhstan. However, a foreign company registered in Kazakhstan as a Kazakstani legal entity will have the right to issue securities.

Please also note that foreign securities are allowed to circulate in Kazakhstan with the permission of the National Securities Commission.

Question 161.

Asset management services are either not regulated or not permitted (e.g. trust services) under the current legislation. Could Kazakhstan indicate the state of play on legislative/regulatory work and the likeliness of a GATS binding commitment for such activities?

Answer:

Asset management services are permitted by current legislation of the Republic of Kazakhstan. However, implementing regulation for trust services is in the process of being elaborated.

Regarding a GATS binding commitment for such activities, Kazakhstan will inform the WTO in the near future prior to the beginning of negotiations.

Insurance

Question 162.

Foreign insurers are permitted access to the market through establishment of joint ventures with local companies, but their participation is limited to a maximum of 50%. Could Kazakhstan clarify whether direct branching and acquisition of existing companies is possible?

Answer:

Foreign insurers are not allowed to have direct branching in Kazakhstan for engaging in insurance activities. Direct branching, however, is allowed for engaging in re-insurance activities.

Foreign insurance companies, re-insurance companies, and re-insurance brokers are allowed to establish wholly-owned subsidiaries in the form of representative or branch offices but may only be engaged in re-insurance activities. Acquisition of existing insurance companies is possible. A foreign insurer may purchase up to 50% of a local insurance company.

Question 163.

Does Kazakhstan intend to permit foreign insurance companies to establish wholly - owned subsidiaries?

Answer:

Foreign insurance companies are allowed to establish wholly-owned subsidiaries in the form of representative or branch offices but may only be engaged in re-insurance activities. In order to be engaged in insurance activities, however, a foreign insurer must form a joint venture with a local insurance company. Foreign participation in this case may not exceed 50%.

Question 164.

Could Kazakhstan confirm that minimum charter capital is applied in a non-discriminatory manner both to domestic insurers and companies with foreign participation?

Answer:

Minimum charter capital is applied in a non-discriminatory manner both to domestic insurers and companies with foreign participation.

Air Transport Services - Supporting Services

Question 165.

Could Kazakhstan specify what sort of licensing requirements are in place in this sector and indicate what timetable is planned for permitting other companies to enter the market for air transport supporting services in competition with Kazakhstan Airways?

Answer:

Kazakhstan does not prohibit companies from entering the market for air transport supporting services. However, such companies must obtain appropriate licenses. According to the Law On Licensing, transportation of goods and passengers as well as airport activity related to services to the aircraft, goods and passengers in airports requires license. Foreign and domestic companies are subject to the same licensing requirements.

An applicant for a license must submit an application, proof of payment of license fee, copy of certificate of registration (if a legal entity is applying for license), and documents demonstrating appropriate qualification (qualification requirements). The Rules and norms are in conformity with International Civil Aviation Organization (ICAO) requirements. Kazakhstan is a member of ICAO.

Question 166.

Is the operation and pricing of these services currently overseen the Anti-Monopoly Committee?

Answer:

The operation and pricing of these services are not currently overseen the Anti-Monopoly Committee.

Road Transport Services

Question 167.

Could Kazakhstan specify the rules governing establishment in the field of road transport - are foreign service providers permitted to establish in Kazakhstan and provide domestic services?

Answer:

Foreign service providers in the field of road transport are permitted to establish in Kazakhstan and provide domestic services (e.g. repair, technical maintenance, towing, car rental). There are no restrictions to entry.

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

VII.2 Economic Integration: Customs Union and Free Trade Area Agreements

Question 168.

Which trade agreements does Kazakhstan consider will need to be notified under Article XXIV of the GATT 1994 or Article V of the GATS?

Answer:

All trade agreements of Kazakhstan were listed in Sections A and B of Annex 8 of WT/ACC/KAZ/3.

Question 169.

Please provide the Working Party with the texts of all Free Trade Agreements to which Kazakhstan is a Party.

Answer:

Attachment B to this document provides the texts of all Free Trade Agreements, which are in force (ratified by all parties), to which Kazakhstan is a Party. In addition, Attachment A provides the text of the Customs Union Agreement and all related legislative and administrative acts.

Question 170.

For each Free Trade Agreement, please provide details of the % trade overall and in each major sector which is excluded from the free trade regime.

The following table provides the % trade of the free trade regime resulting from the Customs Union between Russia, Kazakhstan, and Belarus for 1995 and the first three quarters of 1996. Article 5 of the Customs Union Agreement foresees the possibility to introduce, in critical situations, temporary exceptions from free trade. Currently, no such exceptions exist.

	1995				January-October 1996			
	Export Th. US\$	% of total export	Import Th. US\$	% of total import	Export, Th. US\$	% of total export	Import Th. US\$	% of total import
Russian Federation	2,102,631.2	42.3	1,854,404	49.0	2,426,484.5	45.8	1,960,152.4	56.1
Belarus	57,472.8	1.2	79,767.4	2.1	37,401.9	0.7	104,402.0	3.0
Total:	2,160,104.0	43.5	1,934,171	51.1	2,463,886.4	46.5	2,064,554.0	59.1

The following table provides the % trade of the two Free Trade Agreements in force with the Kyrgyz Republic and Moldova, for 1995 and the first 3 quarters of 1996.

	1995				January-October 1996			
	Export Th. US\$	% of total export	Import Th. US\$	% of total import	Export, Th. US\$	% of total export	Import Th. US\$	% of total import
Kyrgyz Republic	73,274.4	1.53	30,838.0	0.82	91,733.4	1.72	78,098.4	2.24
Moldova	2,467.3	0.05	5,553.5	0.14	1,971.0	0.04	7,913.1	0.23
Total	75,741.7	1.58	36,391.5	0.96	93,704.4	1.76	86,011.5	2.46

Since March 1996, Kazakhstan no longer has exceptions from the free trade regime with the Kyrgyz Republic, given that Kyrgyzstan signed the Customs Union Agreement.

The following table provides % trade in each major sector excluded from the free trade regime with Moldova.

HS		1995		January-October 1996	
		Export Th. US\$	Import Th. US\$	Export Th. US\$	Import Th. US\$
1001	Wheat (all types)	158.3	-	-	-
1002	Rye	36.1	-	-	-
1003	Barley	40.7	-	-	-
1004	Oats	9.5	250.9	-	-
1006	Rice-grain, rice-groats	13.6	-	12.9	-
1007	Sorghum	-	30.2	-	-
0102	Rye	-	2.7	-	-

HS		1995		January-October 1996	
		Export Th. US\$	Import Th. US\$	Export Th. US\$	Import Th. US\$
4102	Raw skins or sheep or lambs	1.7	-	-	-
1512	Sunflower-seed, safflower or cotton-seed oil and their fractions but not chemically modified	-	1.5	-	13.1
1104-1105	Groats	25.6	-	36.4	-
Total		285.5	285.3	49.3	13.1

- no trade

The percentages of export and import excluded from free trade regime with Moldova in terms of Kazakhstan's total value of foreign export and import are respectively:

- 0.0057% and 0.0057% for 1995; and
- 0.0015% and 0.0007% for the first three quarters of 1996.

Please note that all percentages are computed with respect to Kazakhstan's overall foreign trade.

ANNEX

**List of attachments available for consultation and in diskette form in the Secretariat
(Accessions Division, Room 1126)**

A. Customs Union Agreement and Related Materials

1. Decree of the President of the Republic of Kazakhstan "On Ratification of the Agreement "Concerning the Customs Union" between the Government of the Republic of Belorussia, the Republic of Kazakhstan and the Russian Federation" of 15 September 1995
2. Agreement on the Customs Union between the Russian Federation and the Republic of Belorussia of 6 January 1995
3. Agreement between the Government of the Republic of Kazakhstan and the Government of the Russian Federation on the Uniform Procedure for Regulation Foreign Economic Activities of 20 January 1995
4. Resolution of the Intergovernmental Belorussian - Kazakstani - Russian Commission "Terms of Formation of the Customs Union" of 22 November 1995
5. Protocol "On Introduction of Free Trade Regime Without Exceptions and Restrictions Between the Republic of Kazakhstan and the Russian Federation" of 20 January 1995
6. Protocol between the Government of the Republic of Kazakhstan and the Government of the Kyrgyz Republic and the Government of Uzbekistan Concerning Discussion of Issues of Participation of the Republic of Kazakhstan in the Customs Union between Belorussia, Kazakhstan and Russia of July 1995
7. Protocol between the Government of the Republic of Belorussia, the Government of the Republic of Kazakhstan and the Government of the Russian Federation Concerning Completion of the First Stage of Enforcement of the Treaty on the Customs Union of 22 November 1995

B. Free Trade Agreements (in Force)

1. Agreement on Free Trade between the Government of the Kyrgyz Republic and the government of the Republic of Kazakhstan as of 22 June 1995
2. Agreement between the Government of the Republic of Kazakhstan and the Government of the Republic of Moldova on Free Trade of 26 May 1995⁴⁹