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Additional Questions and Replies

The following submission, dated 2 May 2006, is being circulated at the request of the Delegation of the Republic of Kazakhstan.

TABLE OF CONTENTS

II.	ECONOMIC POLICIES.....	1
-	Foreign Exchange and Payments	1
-	Investment Regime.....	7
-	State Ownership and Privatization	17
-	Pricing Policies	26
-	Competition Policy	33
III.	FRAMEWORK FOR MAKING AND ENFORCING POLICIES	37
IV.	POLICIES AFFECTING TRADE IN GOODS	41
-	Trading Rights	41
A.	IMPORT REGULATIONS.....	58
-	Customs tariff.....	58
-	Other duties and charges.....	59
-	Tariff rate quotas, tariff exemptions	60
-	Fees and charges for services rendered.....	63
-	Application of internal taxes to imports	65
-	Quantitative import restrictions, including prohibitions, quotas and licensing systems	69
-	Customs valuation.....	79
-	Rules of origin	86
-	Other customs formalities	90
-	Preshipment inspection	92
-	Anti-dumping, countervailing duties, and safeguard regimes	93
B.	EXPORT REGULATIONS	95
-	Customs tariffs, fees and charges for services rendered, application of internal taxes to exports.....	95
-	Export restrictions	99
-	Export subsidies	101
C.	INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS	103
-	Industrial policy, including subsidies	103
-	Technical barriers to trade, standards and certification.....	109
-	Sanitary and phytosanitary measures.....	121
-	Trade-related investment measures	138
-	State-trading enterprises.....	140
-	Free zones, special economic areas.....	140

-	Government procurement.....	143
V.	TRADE-RELATED INTELLECTUAL PROPERTY REGIME.....	144
-	Trademarks, including service marks.....	144
-	Geographical indications, including appellations of origin.....	144
-	Requirements on undisclosed information, including trade secrets and test data.....	145
-	ENFORCEMENT	147
VII.	TRANSPARENCY	153
VIII.	TRADE AGREEMENTS	156
	ANNEX I.....	164
	ANNEX II	168
	ANNEX III.....	171
	ANNEX IV	206
	ANNEX V	207
	ANNEX VI.....	208
	ANNEX VII	217
	ANNEX VIII.....	223
	ANNEX IX.....	232
	ANNEX X	234
	ANNEX XI.....	247

II. ECONOMIC POLICIES

- Foreign Exchange and Payments

Question 1

We appreciate that foreign exchange surrender requirements are no longer enforced.

We also note that Kazakhstan subscribes to Article VIII of the IMF's Articles of Agreement which says that "no member shall, without Fund approval, impose restrictions on the making of payments and transfers for current international transactions."

Our review of WT/ACC/KAZ/9 and WT/ACC/KAZ/57, however, suggest that Kazakhstan maintains restrictions on the availability of foreign exchange for current account transactions.

If this provides to be true, such restrictions inhibit legitimate trade payments and appear to violate GATT Article III on national treatment and Article XI on import restrictions.

We have the following questions and comments to help us explore what restrictions actually exist, and if so, how they work. In the context of WTO accession, we expect that Kazakhstan will either be able to justify these measures, or eliminate them prior to accession.

Law "On Currency Regulation" of December 1996 and subsequent amendments ensure President's right to restrict/suspend currency transactions for the purpose of implementing international obligations and in "emergency" situations.

Have these provisions been amended or superseded by 8 May 2003 law? Is President's authority in these areas still guaranteed?

Answer:

In accordance with the new Law of the Republic of Kazakhstan No. 57-III "On Currency Regulating and Currency Control" of 13 June 2005, which entered into force on 18 December 2005, President's right to make decisions on restriction or suspension of any currency transactions has been discontinued.

The new Law introduced a special permission regime. This regime will be applied only in emergency cases when there is a threat to the national economic security of the Republic of Kazakhstan and the stability of its financial system, and when the situation can not be solved by other economic policy instruments. This provision does not contradict to the relevant IMF and WTO agreements.

The decision on introduction and extension of the special permission regime, procedures and the terms for introduction of the special permission as well as the list of financial transactions that require the special permission shall be made by the President of the Republic of Kazakhstan jointly with the Government of the Republic of Kazakhstan and the National Bank of the Republic of Kazakhstan.

The special permission regime shall be introduced only for the term necessary to eliminate the threat to the national economic security and stability of the national financial system.

The special permission shall be issued by the National Bank provided that financial transactions are being conducted by residents and non-residents with the purpose to prevent a threat to human life and health, ensure national security and to fulfil international obligations of the Republic of Kazakhstan,

as well as in cases when the transactions are called to significantly improve the balance of payment of the Republic of Kazakhstan and the domestic currency market.

No special permission is required in cases when the National Bank of the Republic of Kazakhstan and/or the Ministry of Finance of the Republic of Kazakhstan participate in the transaction.

Residents and non-residents have no right to make transactions with currency subject to special regime without special permission from the National Bank of the Republic of Kazakhstan.

The Law "On Currency Regulating and Currency Control", available through document WT/ACC/KAZ/66/Add.1.

Question 2

Document WT/ACC/SPEC/KAZ/9 states that non-residents can export foreign exchange up to US\$ 3,000 while resident natural persons can export up to US\$ 10,000. How is such discrimination related to the importation of goods and services? Please explain the reason for the difference in treatment of "non-residents" and "resident natural persons."

Answer:

Pursuant to the Law "On Currency Regulating and Currency Control" of 13 June 2005, both resident and non-resident natural persons are treated equally as to the export of foreign currency in cash from the Republic of Kazakhstan.

Should resident or non-resident natural persons export foreign currency from the Republic of Kazakhstan in the amount exceeding the equivalent of US\$ 10,000, they shall submit to the customs authorities documents proving the legal origin of exported foreign currency in cash for the amount exceeding the equivalent of US\$ 10,000.

The list of documents, which could prove the legal origin of exported foreign currency in cash, is approved by the Decree of the Board of Directors of the National Bank of the Republic of Kazakhstan No. 133 of 29 October 2005. They list includes the following:

- Income tax return filled out in the form No. 200 or No. 210 (tax payer's copy); and
- Customs declaration certifying import of foreign currency in cash to the Republic of Kazakhstan.

Both import and export of foreign and/or national currency in cash to and from the territory of the Republic of Kazakhstan by both resident or non-resident natural persons, exceeding the equivalent of US\$ 3,000 shall be subject to mandatory declaration to the customs authority of the Republic of Kazakhstan.

Question 3

Law No. 2200 "On Licensing" appears to mandate a licence for "transfers of residents to non-residents made as payment for importation of goods, works, and services where advance payments exceed 180 days.

Such requirements complicate normal trade transactions. While not a violation of IMF Article VIII per se, it could be, if combined with other forex restrictions, for example, an import prepayment requirement.

Answer:

The existing division of commercial loans into current and capital transactions depending on the duration of foreign trade transaction has been established by the previous Law "On Foreign Currency Regulating" of 14 April 1993. IMF approved this division since it took into account specificity of settling accounts in foreign trade transactions.

The licensing requirement only apply to residents for capital account transactions related to export/import operations for a period exceeding 180 days. A Single Licence allows residents to return into their accounts receipts from export transactions and advance payments for import transactions exceeding 180 days in cases when the terms of export/import operation contracts have not been fulfilled. Residents shall determine the length of export/import contracts themselves, which is not regulated by the National Bank of the Republic of Kazakhstan.

There are no other currency restrictions in Kazakhstan with regard of commercial loans. Pursuant to the Law "On Currency Regulating and Currency Control" of 13 June 2005, as of 1 January 2007, the licensing requirement with regard to commercial loans will be eliminated.

Question 4

We understand Kazakhstan has plans to liberalize the capital account by 2007. What is the status of that effort?

Concerning the draft law "On Currency Regulation and Control":

The Response to Question 8 of Document WT/ACC/KAZ/57 says that in order to implement the liberalization program, a new draft Law of the Republic of Kazakhstan "On Currency Regulation and Control" was developed and submitted to parliament in September 2004.

The provisions of that law are described in Annex 2 and appear to retain significant levels of control and restriction on the use of foreign exchange, even for the current account.

What is the status of this law? May we have a copy?

Answer:

The Law of the Republic of Kazakhstan No. 57-III "On Currency Regulating and Currency Control" of 13 June 2005 envisages the implementation of the second and third phases of the currency regime liberalization in the Republic of Kazakhstan, consisting of the following:

- systematization of foreign currency regulations;
- development of adequate legal framework for implementation of foreign currency regime liberalization policy; and
- staged transition to principles of full convertibility of the national currency.

According to the Law, licensing of all foreign currency transactions will be removed as of 1 January 2007 (please see document WT/ACC/KAZ/66/Add.1).

Question 5

Concerning the transaction passport described in paragraph 25, we remain confused as to its purpose, and note that it places a particular bureaucratic burden on trade. We seek elimination of this measure from the date of accession.

Answer:

The transaction passport requirement is not used as quantitative restriction of export-import operations, which creates a barrier for foreign trade activity. Consequently, the transaction passport requirement does not contradict to Article XI of GATT 1994 on "General Cancellation of Quantitative Restrictions".

In accordance with the currency legislation of the Republic of Kazakhstan, the transaction passport is a basic document required for monitoring of currency and trade flows in the course of foreign trade operation. The transaction passport is necessary for provision of accounting and reporting on currency transactions. Key objective of this document is reflection of basic data on foreign trade contract (amount, term, information, identifying whether residents or non-residents are participants of the foreign trade operation). The transaction passport shall be filled in by resident-exporter/importer.

Identification number, assigned to the transaction passport, is key for analysis of data on movement of financial resources and commodities. Analysis of data is important for monitoring of export revenues and obtaining of import commodities, including for development of the balance of payments statistics. Accuracy and reliability of balance of payment statistics has a direct impact on the quality of economic policy decisions made in Kazakhstan.

Pursuant to the Law "On Currency Regulating and Currency Control" of 13 June 2005, as of 1 January 2007, participants of foreign trade operations will be able to set the dates/time-frame for fulfilment of contractual obligations themselves. Then, the transaction passport will be used as a tool for making analysis and prognosis of inflow and use of foreign currency in the Republic of Kazakhstan. Procedures for obtaining transaction passport will be significantly simplified. In particular, it is envisaged to reduce the number of bodies, whose approval is required for signing the transaction passport, and to eliminate a number of requirements with regard to foreign trade participants on provision of additional information.

As the experience of other countries show, elimination of the transaction passport requirement will lead to substantial increase in direct regular reporting of enterprises, which is found more burdensome. With the transaction passport requirement in place, small and medium sized enterprises engaged in foreign trade business with non-residents will not need to provide balance of payments statistical reports.

Question 6

This section needs substantial work to lay out in a simple, clear fashion, and to address the reasons Kazakhstan continues to retain extensive controls on the acquisition and use of foreign exchange, even for the current account.

We remain concerned and seek substantial elimination or revision of this system prior to accession to remove the trade restrictive effects. We seek a commitment that, at the least, enumerates the schedule for the removal of these requirements, and confirms that in the future authority to impose such controls will only be used in conformity with WTO provisions.

Answer:

Both non-resident natural persons and juridical persons have the right to purchase, sell, and engage in exchange operations with foreign currency without restrictions.

Resident juridical persons have the right to purchase foreign exchange for Kazakhstan's national currency - tenge (KZT) based for the purposes established legally, including for the purpose of

making payments and money transfers to non-residents. Therefore, the existing legal framework creates no barriers for undertaking legally established trade-related transactions.

Pursuant to the Law "On Currency Regulating and Currency Control" of 13 June 2005, as of 1 January 2007, all limitations applied to resident- juridical persons with regard to purchase of foreign currency will be eliminated.

Question 7

Paragraph 15 of the draft report indicates that non-resident legal persons can purchase foreign currency in Kazakhstan. Would Kazakhstan please clarify whether there are any limitations on the amount, or on the purpose and procedure for purchasing foreign currency. In addition, can non-resident legal persons sell foreign currency? Are there any limitations on the amount, purpose and procedure?

Answer:

With the purpose to unify the existing currency legislation of the Republic of Kazakhstan with the international standards, Kazakhstan adopted the new Law No. 57-III "On Currency Regulating and Currency Control" of 13 June 2005, which entered into force on 18 December 2005, as well as the new Rules on Currency Transactions in the Republic of Kazakhstan as approved by the Resolution No. 134 of the Board of Directors of the National Bank of the Republic of Kazakhstan of 29 October 2005. The texts of these legal acts are available through document WT/ACC/KAZ/66/Add.1.

Subject to those legal acts, non-resident juridical persons may purchase and/or sale foreign currency at the domestic market of the Republic of Kazakhstan without any restrictions/limitations as to the quantity, purchase and/or sales procedures, and purpose.

It should be noted that due to the adoption of the new Rules, the following regulations have become invalid:

- the Rules on Currency Operations, adopted by Resolution No. 115 of the Board of the National Bank of 20 April 2001;
- the Rules on Registration of Capital Account Transactions and Opening of Foreign Bank Accounts, adopted by Resolution No. 225 of the Board of the National Bank of 4 July 2003; and
- the Rules on Licensing of Transactions Related to Currency Valuables adopted by the Resolution No. 257 of the Board of the National Bank of 25 July 2003.

Question 8

Paragraph 18 of the draft report indicates that, after obtaining an Operational Licence, residents can engage in capital account transactions. Please could Kazakhstan provide an explanation of the regulations governing the sale or purchase of foreign currency related to direct investment by non-residents.

Answer:

The existing legislation provides for no restrictions of purchase by non-residents of foreign currency at the domestic currency market of the Republic of Kazakhstan through the authorized banks and exchange offices.

Subject to Article 21 of the new Law No. 57-III "On Currency Regulating and Currency Control" of 13 June 2005, which entered into force on 18 December 2005, non-residents shall register direct investments made into Kazakhstan and residents shall register direct investments to foreign countries. Such registration is of a statistical nature only and is required for the purpose to collect the statistical data for the balance of payments.

According to Article 58 of the Rules on Currency Transactions in the Republic of Kazakhstan No. 134 of 29 October 2005 investments into Kazakh enterprises in the amount exceeding US\$ 300,000 shall be registered with the National Bank of the Republic of Kazakhstan. However, the registration is not of a "permission requirement" nature.

To register (or re-register) currency agreement (hereinafter – registration), resident-participant of the currency agreement shall apply to a branch of the National Bank located close to the place of permanent residence of the physical person or permanent address of the juridical person.

Registration certificate or denial given in written form shall be issued within ten working days from the date of submission by applicant of all required documents.

Registration certificate is issued to natural and juridical persons. When a branch (or representative) of a resident juridical person applies for registration of a currency operation conducted by the branch (or representative), registration certificate shall be issued to the juridical person with indication of its branch (or representative). Further, the reports on such operations shall be submitted by the branch (or representative).

Registration certificate is valid until complete discharge of liabilities by the parties to the agreement (including liabilities, not discharged by the date of expiry of the currency agreement).

Registration certificate shall be considered invalid in the following cases:

- re-registration of currency agreement and issue of a new registration certificate;
- if currency agreement is found invalid pursuant to the national legislation;
- after receiving by the National Bank of a written confirmation on full discharge of liabilities by the parties, full writing off (forgiving) of debts and/or nullification of the agreement;
- after receiving by the National Bank of a written confirmation from a resident on closing down its account in a foreign bank;
- after receiving by the National Bank of a written confirmation from a resident on closing down of the branch and/or representative, for whom the account was opened in a foreign bank; and
- in view of impossibility of discharge of liabilities due to liquidation of a juridical person or due to death of a physical person in case if there is no legal successor.

If a non-resident makes direct investments into Kazakh enterprises and meets the registration requirements, then such a non-resident may export its investments and proceeds from those investments from Kazakhstan with no restrictions.

Subject to Article 22 of the Law, the operational licence shall be required only from resident professional equity market participants. The licence authorizes them to make investments abroad both from own as well as attracted financial resources.

The Law "On Currency Regulating and Currency Control" abolishes all kinds of licenses for currency transactions as of 1 January 2007.

Question 9

Paragraphs 18 and 25: We take note on the information by Kazakhstan that the licensing requirement for capital account transactions relating to export proceeds or import prepayment after 180 days will be abolished by end 2007. We would like to see this requirement eliminated upon accession.

Answer:

In accordance with the new Law of the Republic of Kazakhstan No. 57-III "On Currency Regulating and Currency Control" of 13 June 2005, which entered into force on 18 December 2005, the licensing regime (permitting procedure) for all foreign currency transactions will be completely eliminated as of 1 January 2007.

- **Investment Regime**

Question 10

Paragraph 37: We take note of the rather exceptional method of restricting foreign participation in banks, pension funds and insurance/reinsurance companies: as a percentage of the aggregate charter capital of all respective companies in Kazakhstan. Could Kazakhstan explain the rationale of this method and why the usual method of limiting the direct percentage of ownership in an individual company is not used in these sectors.

We consider the chosen limitation method as not only very difficult to apply, but effectively an investment barrier that is not compatible with WTO. The possibility to invest in these sectors is dependent on the extent of the domestic investment in the same sector, which always has to be the double of that of the companies with foreign participation. If there is not considerable domestic investment in the sector concerned, no foreign investment will be allowed either. Can Kazakhstan explain the rationale of this system?

Answer:

Within the framework of the national program on liberalization of the financial sector and with the purpose to reduce the barriers for foreign capital participation in the financial services market of Kazakhstan, significant amendments have been introduced to the relevant national legislation.

1. In accordance with the Law of the Republic of Kazakhstan No.107-III "On Amendments and Addenda to Legislative Acts of the Republic of Kazakhstan on Issues of Licensing and Consolidated Supervision" of 23 December 2005, the following restrictions applied with regard to banks with foreign capital participation have been eliminated:

- the total paid-up capital of banks with foreign capital participation shall not exceed 50 per cent of the aggregate paid-up capital of all banks of Kazakhstan;
- not less than one member of the Board of a bank with foreign capital participation shall be a citizen of the Republic of Kazakhstan and shall provide documents certifying at least three years of managerial work experience in the bank of Kazakhstan and their knowledge of the banking and economic legislation of Kazakhstan;
- at least 70 per cent of employees of a bank with foreign participation shall be citizens of Kazakhstan; and
- banks with foreign capital participation shall deposit into internal capital the resources in the amount and order established by the authorized body.

2. In accordance with the Law of the Republic of Kazakhstan No. 128-III "On Amendments and Addenda to Legislative Acts of the Republic of Kazakhstan on Insurance Issues" of 20 February 2006, the following restrictions applied with regard to insurance (reinsurance) companies with foreign capital participation have been eliminated:
 - the total paid-up capital of insurance companies with foreign participation providing general services shall not exceed 25 per cent of the aggregate paid-up capital of general insurance companies;
 - the total paid-up capital of insurance companies with foreign participation providing life insurance services shall not exceed 50 per cent of the aggregate paid-up capital of life insurance companies; and
 - not less than one third of members of the Board of Directors and Committee of insurance (reinsurance) companies with foreign capital participation shall be citizens of the Republic of Kazakhstan. Non-residents members of the Board of Directors and Committee of insurance (reinsurance) companies shall provide documents certifying at least three years of managerial work experience in financial companies.

3. At the same time, with regard to such socially sensitive spheres, as pension funds and pension assets investment management companies, the following provisions apply:
 - the total registered capital of pension funds with foreign capital participation shall not exceed 25 per cent of the aggregate stated registered capital of all pension funds of the Republic of Kazakhstan;
 - not less than one third of members of the Board of Directors and Committee of pension funds with foreign capital participation shall be citizens of the Republic of Kazakhstan. Non-residents members of the Board of Directors and Committee of pension funds shall provide documents certifying at least three years of managerial work experience in financial companies;
 - the total registered capital of pension assets investment management companies with foreign capital participation shall not exceed 50 per cent of aggregate stated registered capital of all pension assets investment management companies of the Republic of Kazakhstan; and
 - not less than one third of members of the Board of Directors and Committee of pension assets investment management companies with foreign capital participation shall be citizens of the Republic of Kazakhstan. Non-residents members of the Board of Directors and Committee of pension assets investment management companies shall provide documents certifying at least three years of managerial work experience in financial companies.

Application of the percentage based restriction for foreign capital participation in each individual financial company is considered as more restrictive for market access by foreign service suppliers.

The method applied in Kazakhstan for restriction of foreign capital participation in pension funds and pension assets investment management companies as a percentage of the aggregate charter capital of all respective companies of Kazakhstan allows to maintain the balance between domestic and foreign investors.

Moreover, it provides foreign investors with the opportunity to own 100 per cent control over an individual financial organization. Thus, the method applied in Kazakhstan is more conducive for attraction of foreign investments rather than application of the percentage based restriction for foreign participation in each individual financial company.

Question 11

Could Kazakhstan explain why the foreign participation in companies providing long distance and/or international telecommunication services, and owned terrestrial communication lines, is limited to 49 per cent, when there is no limitation as regards operators of mobile, satellite and local communications?

Answer:

As stipulated in the Law of the Republic of Kazakhstan "On National Security", in order to ensure protection of national security interests, the Government of Kazakhstan shall supervise activities of telecommunications organizations using fixed communication networks, with due respect to the rights of both foreign and domestic investors.

The 49 per cent foreign capital participation limitation with regard to telecommunication companies providing long-distance and international communication services using fixed communication networks has been introduced due to national security interests of Kazakhstan.

As regards operators of mobile, satellite and local communications, there are no foreign capital participation limitations.

Question 12

Paragraphs 31-34 of WT/ACC/SPEC/KAZ/9 and Question 10 of WT/ACC/KAZ/57: Is the outline of the investment "preferences" granted to firms that invest in the sectors listed in Annex 3 comprehensive?

Answer:

In accordance with the amendments and addenda made to the Law of the Republic of Kazakhstan "On Investments" on 11 May 2005, procedures of granting preferences to investors operating in priority spheres have been significantly simplified. In particular:

1. The Law of the Republic of Kazakhstan No. 11-III "On Amendments and Addenda to Legal Legislative Acts of the Republic of Kazakhstan on Taxation" of 13 December 2004 entered into force since 1 January, 2005. The Law prolonged the terms of the corporate income tax preferences, depending on the volume of investments into the fixed assets up to ten years instead of earlier set five years.

Taking into account that the Tax Code stipulates the terms of corporate income tax preferences, the relevant provision has been excluded from the Law "On Investments".

2. In accordance with the Law of the Republic of Kazakhstan No. 48 "On Amendments and Addenda to Legislative Acts of the Republic of Kazakhstan on Investment Issues" of 4 May 2005 (the Law), the conditions imposed on investors for receiving customs duty exemptions on imported equipment and spare parts have been eliminated.
3. The mechanisms of providing in-kind grants have been revised in the Law. Natural grants shall be given for temporary non-repayable use or land use with subsequent transfer of natural grants into the private ownership only in cases when all obligations under the investment contract have been fulfilled by the investor.

4. In addition, the Law introduced the regulations on monitoring procedures of implementation of investment projects and on reporting requirements for investors.
5. In accordance with the Resolution of the Government of the Republic of Kazakhstan No. 152 "On Amendments to the Resolution of the Government of the Republic of Kazakhstan No. 436 of 8 May 2003" of 18 February 2005, the list of priority activities for investment preferences has been revised.

Particularly, the telecommunication sector was included as priority sector:

Section	Name of Section	Code	Name of Type and Subtype of Activity
64	Communication	64.2	Telecommunication
		64.20	Telecommunication, including: <ul style="list-style-type: none"> – Exploitation of national satellite vehicles of communication and broadcasting; – Exploitation of on ground network of satellite vehicles control and communication monitoring system; – Provision of transponders of national satellite vehicles of communication and broadcasting; – Provision of services on Earth remote sensing; – Provision of low-orbiting spacecrafts for mobile communication and navigation; – Excluding: sound transmission, pictures, data or other information via cable, broadcasting, relay or satellite connection, telephone or telegraph communication and telex, mechanical services of telecommunication network, transmission (translation) of radio and television programs.

The following types and subtypes of activities have been additionally included:

Section	Name of Section	Code	Names of Types and Subtypes of Activities
01	Agriculture, hunting and rendering of services in those spheres	01.12	Vegetable growing, gardening and production of nursery-garden goods excluding production of flowers, seed farming of flower crops
		01.13	Growing of fruits, nuts, crops for production of beverages and spices, excluding growing of spicy crops and crops for production of beverages
		01.21	Stock rearing, including production of raw milk
		01.22	Stock breeding of sheep, goats, horses, jacks, mules and donkeys
		01.23	Pig farming
		01.4	Cattle breeding services, except for veterinary services; landscape planning
		01.42	Services related to cattle breeding, excluding veterinary services

Section	Name of Section	Code	Names of Types and Subtypes of Activities
02	Forestry and rendering of services in this sphere	02.01	Forestry and lumbering, including wood cutting and production of industrial wood, such as tunnel bars, pole woods, polling and low-grade wood, growing of plant material used for production of basketry
05	Fishery, fish farming and rendering of services in those spheres	05.0	Fish farming and rendering of services in those spheres
		05.01	Fishery, including ocean fishery and in internal waters
		05.02	Fishery, including oyster spat, edible mussels, lobsters spat, crayfish, shrimps, juvenile fish farming, growing of red-algae and other edible sea algae, oysters farming
15	Production of food substances, including beverages	15.82	Production of crackers and biscuits, production of pastry
		15.83	Sugaring
		15.85	Pasta production
		15.86	Production of tea and coffee
		15.9	Beverages production
		15.97	Grist production
		15.98	Production of mineral water and other soft drinks
17	Textile manufacture	17.3	Trimming of Fabric and textile products
		17.30	Trimming of Fabric and textile products
20	Wood working and production of woodwork	20.1	Log conversion and slicing; wood impregnation
		20.10	Log conversion and slicing; wood impregnation
22	Publishing and paleographic activity, copying recorded information mediums	22.1	Publishing
		22.11	Books production
		22.24	Production of printing plates
23	Coke production, oil products and nuclear materials	23.1	Coke production industry
		23.10	Coke production industry
25	Production of rubber and plastic goods	25.12	Restoration of rubber tires and tire casings
26	Production of other non-metallic mineral products	26.7	Cutting, processing and finishing of ornamental and building stone
		26.70	Cutting, processing and finishing of ornamental and building stone

Section	Name of Section	Code	Names of Types and Subtypes of Activities
27	Metallurgy industry	27.1	Production of cast iron, steel and ferroalloys
		27.10	Production of cast iron, steel and ferroalloys
		27.41	Production of noble (precious) metals
		27.42	Production of aluminium, including aluminium production by electrolytic refining of aluminium junk and scrap
		27.43	Production of lead tin and zinc, including production of lead, tin and zinc of metallic substance, production of lead, zinc and tin by electrolytic refining of junk and scrap of lead, zinc and tin
		27.44	Production of copper, including production of copper out of metallic substance, copper production by electrolytic refining of copper junk and scrap
		27.5	Metal foundry
		27.51	Cast iron foundry
		27.52	Steel foundry
		27.53	Light metals foundry
28	Production of final metal goods	27.54	Other non-ferrous metals foundry
		28.11	Production of construction ironworks
		28.5	Metalworking and metal coating; basic technological processes of engineering
		28.51	Metalworking and metal coating;
29	Production of machinery and equipment	28.52	Basic technological processes of engineering
		29.22	Production of lifting equipment, including maintenance of elevators and escalators
		29.41	Production of portable hand mechanic instruments
		29.42	Production of other metalworkers
		29.43	Production of other machines
		29.6	Production of weaponry and ammunition
36	Production of furniture and other goods not included into other positions	29.60	Production of weaponry and ammunition
		36.6	Production of other products not included into other positions
36.63		36.63	Production of other products not included into other positions
40	Production of electric power, gas, vapour and hot water	40.11	Production of electric power
		40.12	Transition of electric power
		40.13	Distribution and sale of electric power
		40.21	Gas production
		40.22	Distribution of gaseous fuel between pipe lines and its sale
55	Hotel services	55.1	Rendering of services by hotels
		55.10	Rendering of services by hotels
		60.23	Other land passenger transport services
		62.3	Space transport services
		62.30	Space transport services

Section	Name of Section	Code	Names of Types and Subtypes of Activities
63	Auxiliary transport services	63.1	Cargo handling and storage
		63.12	Storage and warehousing
		63.2	Other auxiliary transport services
		63.21	Other auxiliary land transport services, excluding services on storage of vehicles belonging to natural persons
		63.22	Other auxiliary land transport services
		63.23	Other auxiliary air transport services excluding regulations of air space use;
92	Entertainment, culture and sports services	92.11	Production of movies and video films, except for advertising purposes
		92.7	Services on organization of leisure time and entertainments
		92.72	Other services on organization of leisure time and entertainments, not included into other positions, concerning only beach activities

The following types and subtypes of activities have been excluded:

Section	Name of Section	Code	Names of Types and Subtypes of Activities
01	Agriculture, hunting and rendering of services in those spheres	01.5	Hunting and game bird breeding, including rendering of services in these spheres
		01.50	Hunting and game bird breeding, including rendering of services in these spheres excluding: harvesting of marine mammals such as sea-cows and seals
02	Forestry and rendering of services in this sphere	02.02	Rendering of services in the sphere of forestry and lumbering
17	Textile manufacture	17.14	Linen spinning
		17.16	Production of sewing threads
		17.24	Production of silk fabric
24	Chemical industry	24.14	Production of other basic organic (chemical) agents, including production of wood coal, production of peck and pitchy coke distillation of coal tar
26	Production of non-metal mineral products	26.24	Production of other technical ceramic goods
		26.25	Production of other technical ceramic goods
		26.81	Production of abrasive products
27	Metallurgy industry	27.35	Production of ferro-alloys and other products, not considered by ECSC (European Steel and Coal Community)
33	Production of medical equipment, measuring apparatus, optical devices and apparatus	33.4	Production of optical devices and photoinstrumentation
		33.40	Production of optical devices and photoinstrumentation
		33.5	Production of watches
		33.50	Production of watches
36	Production of furniture and other products, not included into other positions	36.40	Production of sports goods
		36.5	Production of games and toys
		36.50	Production of games and toys
40	Production of electric power, gas, vapour and water	40.10	Production and distribution of electric power
		40.20	Production and distribution of gaseous fuel

Section	Name of Section	Code	Names of Types and Subtypes of Activities
45	Construction	45.1 45.11 45.12 45.24 45.25 45.3 45.31 45.32 45.33 45.34 45.4 45.41 45.42 45.43 45.44 45.45	Site preparation Demolition and housebreaking; earthwork operations Exploration drilling Buildings and constructions covering work Construction of waterside structures Other construction works Installation of engineering equipment of constructions and buildings Electrical Installation works Insulating works Plumbing works Installation of other engineering equipment Finishing works Plaster works Finish carpentry And carpenter's works Floor covering work and wall covering Painting and glassing Other finishing works
55	Restaurants services		
73	Researches and development in the sphere of natural and technical sciences	73.1	Researches and development in the sphere of natural and technical sciences
80	Education	80.1 80.2	Primary education (first stage) Secondary education (second stage)
85	Healthcare	85.1 85.11	Healthcare provision services Hospital services
92	Activities on organization of leisure time and entertainment, culture and sport	92.3 92.33 92.62	Other entertainments The activity of theme parks and leisure time Other activities in sports sphere

Question 13

Please indicate whether access to the preferences is limited or open to both domestic and foreign investors.

Answer:

The provisions of the Law of the Republic of Kazakhstan No. 373 "On Investments" of 8 January 2003 adhere to the principles of equal treatment of local and foreign investors and non-discrimination.

Foreign and local investors hold equal rights with regard to investment preferences, guarantees from requisition and nationalization, inspections conducted by government authorities, dispute settlement procedures as well as reimbursement of damage caused by public authorities.

Question 14

Please indicate whether any are conditioned on export promotion or use of local materials.

Answer:

This is to confirm that investment preferences provided by the national legislation of Kazakhstan are solely aimed at diversification of the economy and reduction of its dependence on the export of

hydrocarbons and raw materials. Therefore, investment preferences are not conditioned on export promotion or use of local materials, except for automobile production investment project.

For the time being Kazakhstan has been implementing the free warehouse regime for the project of automobile production. The special regime provides that a company, assembling industrial goods, imports its inputs under free warehouse customs regime. If the final product contains 50% and more of Kazakh component, it shall be qualified as domestically produced. The domestically originated goods benefit from VAT and import tariff exemptions. Otherwise the final good shall be qualified as foreign and consequently is subjected to the customs tariffs, fees and taxes.

However, it should be noted that currently such requirements are applied only with respect to only one project of automobile production (JSC "AZIA AUTO") and aim for support and development of domestic automobile industry.

Question 15

Is there a specific list of sectors that exclude foreign investment?

Answer:

The provisions of Article 3 of the Law "On Investments" stipulate the following:

- investors have the right to invest in any companies and types of business, except for situations envisaged by the legal acts of the Republic of Kazakhstan; and
- due to national security concerns, legal acts of the Republic of Kazakhstan may determine types of activities and/or areas with limited foreign capital participation and where foreign investment is not allowed.

Paragraphs 36-37 of the draft Report of the Working Party on the Accession of Kazakhstan to the WTO described specific sectors with limited foreign capital participation or exclusion of foreign investments.

As stipulated in the Law of the Republic of Kazakhstan "On National Security", in order to ensure protection of national security interests, the Government of Kazakhstan shall supervise activities of telecommunications companies using fixed communication networks, with due respect to the rights of both foreign and domestic investors.

The 49 per cent foreign capital participation limitation with regard to telecommunication companies providing long-distance and international communication services using fixed communication networks has been introduced due to national security interests of Kazakhstan. As regards operators of mobile, satellite and local communications, there are no foreign capital participation limitations.

It should also be noted that within the framework of the national program on liberalization of the financial sector and with the purpose to reduce the barriers for foreign capital participation in the financial services market of Kazakhstan, significant amendments have been introduced to the relevant national legislation.

1. In accordance with the Law of the Republic of Kazakhstan No. 107-III "On Amendments and Addenda to Legislative Acts of the Republic of Kazakhstan on Issues of Licensing and Consolidated Supervision" of 23 December 2005, the following restrictions applied with regard to banks with foreign capital participation have been eliminated:

- the total paid-up capital of banks with foreign capital participation shall not exceed 50 per cent of the aggregate paid-up capital of all banks of Kazakhstan;
 - not less than one member of the Board of a bank with foreign capital participation shall be a citizen of the Republic of Kazakhstan and provide documents certifying at least three years of managerial work experience in the bank of Kazakhstan and knowledge of the banking and economic legislation of Kazakhstan;
 - at least seventy percent of employees of a bank with foreign participation shall be citizens of Kazakhstan; and
 - banks with foreign capital participation shall deposit into internal capital the resources in the amount and order established by the authorized body.
2. In accordance with the Law of the Republic of Kazakhstan No. 128-III "On Amendments and Addenda to Legislative Acts of the Republic of Kazakhstan on Insurance Issues" of 20 February 2006, the following restrictions applied with regard to insurance (reinsurance) companies with foreign capital participation have been eliminated:
- the total paid-up capital of insurance companies with foreign participation providing general services shall not exceed 25 per cent of the aggregate paid-up capital of general insurance companies;
 - the total paid-up capital of insurance companies with foreign participation providing life insurance services shall not exceed 50 per cent of the aggregate paid-up capital of life insurance companies; and
 - not less than one third of members of the Board of Directors and Committee of insurance (reinsurance) companies with foreign capital participation shall be citizens of the Republic of Kazakhstan. Non-residents members of the Board of Directors and Committee of insurance (reinsurance) companies shall provide documents certifying at least three years of managerial work experience in financial companies.
3. At the same time, with regard to such socially sensitive spheres, as pension funds and pension assets investment management companies, the following provisions apply:
- the total registered capital of pension funds with foreign capital participation shall not exceed twenty five percent of the aggregate stated registered capital of all pension funds of the Republic of Kazakhstan;
 - not less than one third of members of the Board of Directors and Committee of pension funds with foreign capital participation shall be citizens of the Republic of Kazakhstan. Non-residents members of the Board of Directors and Committee of pension funds shall provide documents certifying at least three years of managerial work experience in financial companies;
 - the total registered capital of pension assets investment management companies with foreign capital participation shall not exceed 50 per cent of aggregate stated registered capital of all pension assets investment management companies of the Republic of Kazakhstan; and
 - not less than one third of members of the Board of Directors and Committee of pension assets investment management companies with foreign capital participation shall be citizens of the Republic of Kazakhstan. Non-residents members of the Board of Directors and Committee of pension assets investment management companies shall provide documents certifying at least three years of managerial work experience in financial companies.

The method applied in Kazakhstan for restriction of foreign capital participation in pension funds and pension assets investment management companies as a percentage of the aggregate charter capital of all respective companies of Kazakhstan allows to maintain the balance between domestic and foreign

investors. Moreover, it provides foreign investors with the opportunity to own 100 per cent control over an individual financial organization.

The Draft Law "On Amendments and Addenda to the Law of the Republic of Kazakhstan "On Guarding Activities" has been developed. In accordance with the Draft Law, consulting services on protection methods against illegal infringements are envisaged to be excluded from the list of guarding activities, which could not be provided by foreign service suppliers.

The Government of Kazakhstan is also planning to amend the national legislation regulating architectural, town-planning and construction services. The revisions will aim at elimination of the 49 per cent foreign capital restriction in the registered capital of joint ventures and the one-time licence requirement for foreign juridical persons and their branches with majority ownership. Instead, the Law will allow the commercial presence of foreign architectural, town-planning and construction service suppliers in the form of a juridical person of Kazakhstan.

Article 18 of the Law of the Republic of Kazakhstan "On National Security" stipulates that economic security includes preservation and strengthening of energy resources of Kazakhstan. With this regard, Kazakhstan amended Article 71 the Law "On Subsurface and Subsurface Use" with the provision which stipulates that the Government of Kazakhstan has the priority right to purchase the right for utilization of Kazakh subsurface being sold by the current holder on the terms not worse than those proposed by other buyers.

- **State Ownership and Privatization**

Question 16

We thank Kazakhstan for the additional information provided in this section on privatization of state owned enterprises.

We still lack information on the trading activities of the major state owned enterprises not yet privatized and the extent to which any of these firms trade on behalf of the state.

This section still lacks useful description of what currently constitutes the state owned sector in Kazakhstan. For example:

What areas of Kazakhstan's economy still contain significant state-owned enterprises?

Answer:

1. The Legislative basis provided for state-owned entities in Kazakhstan

Pursuant to the Law of the Republic of Kazakhstan No. 2335 "On State Enterprise" of 19 July 1995, governing the activity of state enterprises, the key objective of state enterprises is to address social and economic problems determined by the needs of society and state:

- ensuring financial security for national defence and protection of society's interests;
- production of goods (works and services) of primary needs in the areas and sectors of public production, which are not covered or insufficiently covered by private sector of the economy;
- implementation of activities in the areas qualified as state monopoly or public functions, except for control and supervision functions;

State enterprises shall be established in the following forms of ownership:

- enterprises of national property, national state enterprises (NSE);
- enterprises of communal property, communal state enterprises (CSE).

The state bodies responsible for administration of NSE are the Ministries, agencies, departments and others state bodies authorized by the Government of the Republic of Kazakhstan, as well as the National Bank of the Republic of Kazakhstan.

The state body responsible for administration of CSE is akimat (local administrations) of the corresponding administrative-territorial unit or the executive body authorized by akimat, which is financed from the local budget.

NSE shall be established upon the decision of the Government or the National Bank of the Republic of Kazakhstan. CSE shall be established upon the decision of the local executive body in accordance with the procedure established by the Government of the Republic of Kazakhstan.

2. Spheres of the economy where state-owned entities function

As of 1 December 2005, there are 4,766 state enterprises in total in Kazakhstan, including 404 NSEs and 4,362 CSEs.

Table 1: Sphere of Activities and Number of State Enterprises Involved

No.	Sphere of Activity	NSE quantity	CSE quantity	Share, %
1	Education	187	1,347	47
2	Science and Culture		725	
3	Tourism ad Sport		14	
4	Infomedia			
5	Healthcare	40	1,272	27
6	Municipal and housing capacity		556	11
7	Transport and communication	14	33	1
8	Environment protection	17	33	1
9	Agriculture			
10	Architecture, town planning, construction		47	1
11	Special security regime entities, real estate centres	52		1
12	Land-use works	9		1
13	Other industries	71	349	10
Total		404	4,362	100

State enterprises, therefore, prevail in education, science, culture, tourism, sport and infomedia.

There are 369 joint stock companies with state participation in Kazakhstan. The Government of the Republic of Kazakhstan participates in 171 Joint Stock Companies and Limited Liability Partnerships, including 12 national companies. Ninety-two joint stock companies are with 100 per cent state ownership.

Nevertheless, Kazakh legislation does not prohibit private sector participation in the sectors, where state-owned enterprises are present, except for the spheres of state monopoly. Currently, state monopoly has been reserved only in specific services sectors.

The local executive bodies own the shares of 198 Joint Stock Companies and Limited Liability Partnerships, including 123 companies, where they own the majority shares. The majority of those companies provide municipal and housing services; culture, tourism, sport and information services; architectural, town planning and construction services, transport services, agriculture and environment services.

In accordance with the Law of the Republic of Kazakhstan "On State Enterprise", in order not to allow overpricing of products, services and works produced and supplied by state enterprises considered as state monopoly, the Agency of the Republic of Kazakhstan on Regulation of Natural Monopolies regulates and monitors their activities.

Table 2: The List of Entities of State Monopoly and Spheres where these Entities Hold Monopoly Position (approved by the Governmental Resolution of the Republic of Kazakhstan No. 304 of 4 April 2005)

No.	Spheres where Entities of State Monopoly Hold Monopoly Position	The List of Entities
1	Forestry, connected with demarcation of state forest fund, forest inventory or planning of forest management on the lands of state forest fund	Communal Enterprise "Kazakh Forest Survey Enterprise" of the Ministry of Agriculture of the Republic of Kazakhstan
2	Security of objects subject to state security	Government entities "Specialized Security Service" of the Ministry of Internal Affairs of the Republic of Kazakhstan
3	Administration of the information system developed for the process of state procurement;	NSE "Electronic Commerce Centre" of the Ministry of Finance of the Republic of Kazakhstan
4	Phytosanitary monitoring of extremely dangerous organisms	NSE "Phytosanitary" of the Ministry of Agriculture of the Republic of Kazakhstan
5	Diagnostics of extremely dangerous animal diseases, included into the list, approved by the Government of the Republic of Kazakhstan	NSE "National Veterinary Laboratory" of the Ministry of Agriculture of the Republic of Kazakhstan
6	Registration tests, survey and attestation of veterinary medicines, feedstuff and feed additives, as well as the control of veterinary medicine shipments (lots) under their reclamation	
7	Liquidation of extremely dangerous animal disease nidi included into the list approved by the Government of the Republic of Kazakhstan	
8	Disinfection of vehicles at veterinary check stations at national borders	NSE "National Antiepidemiological Crew" of the Ministry of Agriculture of the Republic of Kazakhstan
9	Storage of national stock of veterinary medicines	
10	Protection of Trademarks, service marks, names of places of goods origin, inventions, useful models, industrial designs and selective achievements	NSE "National Institute of Intellectual Property" of the Ministry of Justice of the Republic of Kazakhstan
11	Production of personal identity documents of the Republic of Kazakhstan	NSE "Informational Production Centre" of the Committee of Registration Service under the Ministry of Justice of the Republic of Kazakhstan
12	Conduct of State Hydrometeorologic Monitoring and Monitoring of Environment Situation	NSE "Kazgidromet" of the Ministry of Environment Protection of the Republic of Kazakhstan
13	Pre-licensing survey of enterprises for the right of production of ethyl alcohol and other alcohol products, adjustment of alcohol measuring devices and control calibration of registering devices	NSE "KazAlkoCentre" of Tax Committee under the Ministry of Finance of the Republic of Kazakhstan

No.	Spheres where Entities of State Monopoly Hold Monopoly Position	The List of Entities
14	Application of a technology (or methods) in conducting unified national testing, complex testing, and interim state control of educational institutions and certification of educational institutions;	NSE "National Centre of State Standards in Education and Testing" of the Ministry of Education and Science of the Republic of Kazakhstan
15	Collection, preservation, storage of blood and disposal of blood and its components	NSE "National Blood Centre" of the Ministry of Healthcare of the Republic of Kazakhstan
16	Protection of information received in the course of the state registration of pharmaceuticals	NSE "National Expertise Centre of Medicines, Items of Medical Purpose and Medical Technology" of the Ministry of Health of the Republic of Kazakhstan

To define uniform legislative framework for state control and regulation of activities in the sphere of state monopoly and to fill in the gap in the national legislation, the Draft Law of the Republic of Kazakhstan "On State Monopoly" has been drafted and submitted to the Parliament of the Republic of Kazakhstan.

Article 1 of the Draft Law defines the terms "the state monopoly" and "subject of the state monopoly" as follows:

- The state monopoly is a type of activity, where introduction of competition is inexpedient for reasons related to the protection of constitutional order, national security, public order, human rights and freedoms, and health of population; and
- A subject of the state monopoly is a state-owned enterprise entitled with the exclusive right for provision of services (goods, works) in the sphere of state monopoly.

The Draft Law also establishes the procedure for cost control of services (goods and works) supplied by state monopolies. The Draft Law also stipulates the rights and obligations of both the subjects of state monopoly and their customers.

In accordance with the Presidential Decree No. 50 "On Measures Aimed at Further Promotion of State Interests in Administration of State-Owned Sector of the Economy" of 28 January 2006, the joint stock company "Holding on Management of State-Owned Assets of Kazakhstan "Samruk"" has been established. The major purpose of the holding company is to enhance management of state-owned companies of strategic importance for development of the national economy. State-owned shares of JSC "Kazakhtelekom", JSC "Kazpochta", JSC "KEGOC" and JSC "KazMunaiGaz" have been transferred to the registered capital of "Samruk" holding company.

Question 17

Please list, and describe the commercial activities of, the major state-owned enterprises not yet privatized, particularly those engaged in international trade or in domestic trade that competes with imports or for export opportunities controlled by the government.

Answer:

Table 3: The List of State Enterprises, JSCs and LLPs, with the State-Owned Majority Shares and Involved in Export – Import Operations

State body*	Enterprise name	Type of activity	Participation in export-import operations	State share (%)	The share in production volume (%)
MTC	JSC "NC "Kazakhstan Temir Zholy"	Provision of services, connected with freight traffic activity	Holding of Freightage	100	International Rail Transportation - 100
MTC	JSC "KazMorTransFlot"	Freightage of all type of cargo, crude oil and oil products, general freights, containers, passengers	Participation in export operations on transportation of oil, sea terminal operator	50	Transshipment: 2004 - 41, 2005 - 54. Transportation: 2004 - 49, 2005 - 51.
MTC	NSE "International Sea Trade Port of Aktau"	Sea port activity connected with servicing of marine vessels, passengers and freights	Participation in export-import transit operations within their sea port activities	100	Transshipment: 2004 - 59, 2005 – 46.
MEMR	JSC "MunaiTas"	Oil transportation	Export and Import	100	9.0
MEMR	JSC "Trading House "KazMunaiGaz"	Trading in crude oil and products processed from crude oil and gas, provision of fuel for sowing and harvesting, export operations on behalf of the government with the crude oil received on account of royalty payments, transportation and escort services	Export and Import	100	13 (in total exports)
MIT	NSE "National Centre on Integrated Mineral Recourses Utilization"	Scientific-production activity	Export – 50% Domestic market– 10 %	100	30
MIT	JSC "Kazchermet - avtomatika"	Experimental-engineering activities on development, production, supply, implementation automation systems and equipment in the area of ferrous and nonferrous metallurgy and other industries	Export -30 % Domestic market - 70 %	98.83	75
MIT	NSE "Zhezkazganredmet"	Production activity in the area of science on processing of materials with osmium, rhenium and rare-earth metals and production of those metals.	Export 10 – sale export 61 – processing beyond customs territory. Import 40 – for consumption	100	100

State body*	Enterprise name	Type of activity	Participation in export-import operations	State share (%)	The share in production volume (%)
MD	NSE "KazSpetcExport"	Utilization, lease, and sale of weaponry, military equipment, defensive objects and other military property, not used in Armed Forces of the Republic of Kazakhstan; export of weaponry, military equipment, ammunitions, not used in Armed Forces of the Republic of Kazakhstan; import of weaponry, military equipment, ammunition for needs of AF of the Republic of Kazakhstan	For resale	100	
MA	JSC "Food Contract Corporation"	Purchase, formation, accounting, storage, renovation, moving and sale of state grain resources and its conversion products. Cereal crops export (wheat, barley)	Grain export – 0.1 million tons	100	
MA	JSC "KazAgroFinance"	Implementation of state credit programs and financial support of agricultural commodity producers, lease of equipment and technological equipment, issue of warranties to second-tier banks for crediting agricultural commodity producers	Import of agricultural equipment – KZT 6.6 billion	100	
MA	JSC "Mal Onimderi Korporatciyasy"	Procurement and processing of animal products, delivery for export and domestic market of animals' product and live cattle.	Animal products export – KZT 180 million	100	

*Abbreviations: MIT – Ministry of Industry and Trade
MTC – Ministry of Transport and Communications
MEMR – Ministry of Energy and Mineral Resources
MA – Ministry of Agriculture
MD – Ministry of Defence

Question 18

Please outline the operations of state-owned enterprises in the agricultural sector. Do any of these firms trade on behalf of the state? Indicate whether privatization is an option for these firms, and if so, on what terms and what are the near term prospects?

Answer:

Information on enterprises, functioning in agricultural sector on behalf of the Government (JSC "Food Contract Corporation", JSC "KazAgroFinance" and CJSC "Mal Onimderi Korporatciyasy") is provided in document WT/ACC/KAZ/51.

Privatization of these enterprises is not anticipated in future.

In addition, 70 more enterprises operate in agricultural sector. Most of them represent research and development farms, operating in such industries as agriculture, cattle breeding and crops growing.

According to the Civil Code of the Republic of Kazakhstan, the joint stock company is the juridical person issuing shares with the purpose to attract funding for its activity. The state enterprises are the enterprises, where the state conducts either economic management or operational management. Henceforth, according to the national legislation, joint stock companies with 100 per cent state ownership are not considered as state enterprises.

Question 19

What is the relative position of state-owned and state controlled firms in GDP and trade, in certain sectors and overall? E.g., what portion of industrial output, domestic or export sales in their respective sectors?

Answer:

The relative share of output produced by state-owned and state controlled enterprises in the overall volume of GDP represented 10.4 per cent in 2004, including 2.2 per cent in overall trade volume.

Relative share of state-owned or state controlled enterprises in overall volume of industrial production represented 5.8 per cent.

It is not feasible to provide accurate information on the share of state-owned and state controlled enterprises in domestic and exports sales due to absence of relevant statistical data.

Question 20

What portion of the firms that are considered "privatized" have actually now under private ownership, rather than still operating under the effective authority and control of the government? (statement)

We seek a more detailed description of Kazakhstan's state-owned sector to better understand the role it plays in the Kazakh economy and its operations. We would appreciate Kazakhstan's help in securing this information.

Answer:

According to the Law of the Republic of Kazakhstan No. 2721 "On Privatization" of 23 December 1995, privatization shall mean sale of state property to the possession of natural persons, non-public juridical persons performed by the state as the owner.

Right for ownership, recognized and protected by legal acts of the Republic of Kazakhstan (the right of an owner to own, use and dispose the possessed property at his/her own discretion), excludes any restriction or influence on execution of the given right by the proprietor, including the state.

In accordance with Article 10 of the Civil Code of the Republic of Kazakhstan of 27 December 1994, government guarantees the freedom of entrepreneurship and provides its protection and support.

According to the Civil Code, entrepreneurship is initiative activity of citizens and juridical persons regardless of forms of ownership aimed at obtaining net profit by means of satisfying demand for goods (services, works) and based on private ownership (private entrepreneurship). Entrepreneurship activity shall be conducted on behalf and at the risk and proprietary responsibility of entrepreneur.

Moreover, in accordance with paragraph 2 of Article 4 of the Law of the Republic of Kazakhstan No. 124-III "On Private Entrepreneurship" of 31 January 2006, the state shall guarantee:

- freedom of private entrepreneurship and provision of its protection and support;
- inviolability and protection of private property;
- participation of private entrepreneurs in development of regulatory framework on private sector development; and
- guarantees of equal rights for private entrepreneurship activity.

In accordance with Article 3 of the Law on development of private entrepreneurship, private business can only be limited based on reasons established by the national legislation.

Government bodies are prohibited to adopt any legal documents which establish privileged position for selected groups of entrepreneurs.

Question 21

According to Paragraph 44 of the Draft Report, the sale of derivatives is aimed at expanding the range of potential investors and raising the profile of Kazakh firms in global capital markets. We would appreciate having further details of the method of privatization through the sale of derivatives.

Answer:

The existing legislation of the Republic of Kazakhstan, namely the Law of the Republic of Kazakhstan No. 461-II "On Equity Market" of 2 July 2003, and the Law of the Republic of Kazakhstan No. 415-II "On Joint Stock Companies" of 13 May 2003, provide that joint stock companies can issue securities and other equity (including derivatives) as well as undertake their placement, circulation and payment.

According to the Law "On Capital Market", derivatives are securities, which certify the rights in relation to the supporting assets of given derivatives.

In accordance with Article 33 of the Law "On Capital Market", registration of transactions with derivatives and certification of the rights on them shall be made by nominal shareholders in accordance with this Law and internal documents of stock exchange market whenever the transactions are made on the stock market.

The conditions and procedures of transactions with options, futures, swaps and other derivatives on the stock market, made with the purpose of investment risk hedging on emission securities shall be established by internal documents of the stock exchange market.

Moreover, the Law of the Republic of Kazakhstan No. 2721 "On Privatization" of 23 December 1995 (the Law), state-owned stock shares, including derivatives, can be privatized.

In accordance with Article 12 of the Law, privatization shall be performed in the following forms:

- public sale in the form of an auction, tender, stock market trading, two-stage procedures tender, sale of derivatives; and
- direct address sale.

In accordance with Article 14-3 of the Law, sale of derivatives certifying the right for state-owned shares shall be made upon the decision of the Government of the Republic of Kazakhstan or relevant local executive body. The basic terms of sale of derivatives should be submitted by the seller to the Government of the Republic of Kazakhstan or by the Akimat (local executive body) to the relevant Maslikhat (local representative body) for approval. The decision on the sale of derivatives shall contain the following information:

- quantity of state-owned shares, for which the derivatives have been issued;
- type of the derivatives being sold;
- foreign country (foreign countries), where the sale of derivatives will take place;
- deadline for the transaction;
- terms and procedures for implementation of derivatives proprietors' rights;
- and other conditions, as required.

Question 22

According to paragraph 51, there are ten areas exempted from privatization. How many state-owned enterprises are included in these ten areas not to be privatized?

Answer:

The list of state-owned property exempted from privatization (approved by the Presidential Decree No. 422 of 28 July 2000) includes *inter alia* medical organizations providing primary health care services (blood centres, mother and child protection, radiation medicine organizations; cancer, HIV and AIDS, tuberculosis, dermatovenerologic and mental diseases care organizations), including national state-owned enterprises of the Ministry of Health of the Republic of Kazakhstan:

1. NSOE (National State-Owned Enterprise) "Kazakh Research Institute of Oncology and Radiology", Almaty City;
2. NSOE "Dermatovenerologic Research Institute", Almaty City;
3. NSOE "Research Institute of Radiation Medicine and Ecology", Semipalatinsk City;
4. NSOE "National Research Centre of Mother and Child Protection", Almaty City;
5. NSOE "National Blood Centre", Almaty City;
6. NSOE "Research Centre of Hygiene and Epidemiology", Almaty Centre;
7. NSOE "Macksut Aikimbayev Kazakh Research Centre of Quarantine and Zoogenous Infections", Almaty City.

The other enterprises included in the abovementioned list are either juridical persons in the form of state-owned enterprises or are on the balance accounts of state-owned enterprises.

The list of state-owned enterprises exempted from privatization, including its preliminary stages until 2006, as well as the joint-stock companies, where the state-owned shares are exempted from privatization, including its preliminary stages, until 2006, is enclosed in Annex I.

Furthermore, in accordance with the Resolution of the Government of the Republic of Kazakhstan No. 1587 "On the List of State Property Exempted from Privatization" of 24 October 2000, state-owned enterprises under the auspices of the Ministry of Industry and Trade of the Republic of

Kazakhstan, such as the "National Centre on Integrated Mineral Resources Utilization of the Republic of Kazakhstan" and "Zhezkazganredmet" shall be exempted from privatization and its preliminary stages.

Currently, the Government of the Republic of Kazakhstan is elaborating the draft Resolution of the Government of the Republic of Kazakhstan "On the List of State Property Exempted from Privatization, including its Preliminary Stages, until 2010".

- **Pricing Policies**

Question 23

We thank Kazakhstan for the additional information provided on its pricing policies. We are reflecting on this information, and will submit additional questions and suggestions for this section of the report later in writing.

We remain concerned that domestic differential pricing policies for transportation, and in the case of other "natural monopolies" where the state sets prices in effect distorts the flow of imports and exports in a way not envisaged by WTO.

We support the request for a commitment from Kazakhstan to unify its pipeline transport fees. Charging a higher rate for export than for similar deliveries internally is discriminatory, whether or not it may constitute a non-tariff barrier to trade.

In particular, we believe the statement in paragraph 73 is not accurate, as there is ample evidence that state owned "natural" monopolies in Kazakhstan do not grant equal access as transporters and enjoy extensive special privileges.

Answer:

Oil transportation

In 2002, the Order of the Agency of the Republic of Kazakhstan for Regulation of Natural Monopolies implemented decreasing coefficient 0.46 to the tariffs charged by "KazTransOil" for its services on transportation of crude oil via trunk pipelines to the domestic market. The average price of oil delivered to oil refineries represent US\$ 50-60 per ton, while average tariff for transportation of crude oil via trunk pipelines from main oilfields to oil-processing plants is around US\$ 7-9, to which 0.46 decreasing coefficient apply. Thus, the share of transportation cost was reduced from 16 per cent to 7.8 per cent in the price of crude oil supplied to domestic oil refineries.

During the last four years, the demand of domestic oil refineries for crude oil has been substantially increased. The price of crude oil in the domestic market has increased by 2.5 times and currently it has reached US\$ 180-190 per ton. The cost of transportation of crude oil to oil refineries with 0.46 decreasing coefficient makes up 1.8 per cent in the total price of crude oil. Without 0.46 decreasing coefficient the share of the transportation cost in the final price of crude oil will increase up to 4 per cent.

In case of elimination of decreasing coefficients, due to high world prices for crude oil, producers will not be interested in supplying oil to domestic oil refineries and, thus, leading to shortage of fuel in the domestic market.

Gas transportation

Pricing policy in the area of gas pipeline transportation is currently determined by the legislation of the Republic of Kazakhstan and the Agreement on Concessions of Domestic and International Gas Transportation System and Economic Operations (the Concession Agreement) concluded between the Republic of Kazakhstan and Traktebel S.A. Company on 14 June 1997.

In accordance with the Law of the Republic of Kazakhstan "On Natural Monopolies", gas transportation services via pipelines are qualified as natural monopoly.

The key transporter of gas by trunk pipelines is the joint stock company (JSC) "Intergaz Central Asia", which operates in the following sectors:

- domestic transportation;
- international transit; and
- transportation of gas for export.

The gas transportation services by trunk pipelines to domestic consumers provided by the JSC "Intergas Central Asia" are subject to regulation by the Agency of the Republic of Kazakhstan on Regulation of Natural Monopolies under the Law "On Natural Monopolies."

The Rules on Increase and Decrease of Tariffs (Prices, Rates and Fees) or the Maximum Levels for Services (Goods and Works) Subject to Regulation have been approved by the Order of the Agency of the Republic of Kazakhstan on Regulation of Natural Monopolies No. 91-OD of 19 March 2005. In accordance with the Rules, changes in tariff rates and their maximum levels shall cover the production cost of services rendered by natural monopolies as well as the profit margin required for effective functioning of natural monopolies.

Paragraph 7 of the Methodology of Calculation of Tariffs for Transportation of Gas by Trunk Pipelines, approved by the Order of the Agency of the Republic of Kazakhstan on Regulation of Natural Monopolies No. 500-OD of 21 December 2004, determines that tariffs for domestic transportation services established by the Agency should be based on the balance of the production cost, volumes of production and net profit and other indicators.

Currently, gas transportation by trunk pipelines to the domestic market is performed by the JSC "Intergas Central Asia" at tariff rates approved by the Order of the Agency No. 19-OD of 15 June 2001, at the rate of:

1. 420 tenge per 1,000 m³ (excluding VAT) for juridical entities; and
2. 171 tenge per 1,000 m³ for juridical entities supplying natural gas to households.

Tariffs for domestic transportation of gas are calculated depending on the volume of transported gas without taking into account transportation distances and includes all expenses necessary for operation and maintenance of the gas pipeline system.

Pipeline transportation tariffs for exports of gas as well as transit tariffs are not subject to state regulation. This is due to the Concession Agreement concluded between the Republic of Kazakhstan and Traktebel S.A. Company on 14 June 1997. According to the provisions of the Agreement, Traktebel S.A. Company was granted the rights of ownership, use, operation, management, servicing, maintenance, repair and expansion of the entire gas transport system and economic activity.

In its turn, on 23 July 1997 "Traktebel S.A." Company and the JSC "Intergas Central Asia" concluded the "Transfer Agreement". According to the Agreement, "Traktebel S.A." Company

concedes and transfers the rights obtained under the Concession Agreement in relation to gas transport system and its management, along with all rights, preferences, privileges, authorities, responsibilities and obligations to the JSC "Intergas Central Asia".

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

Gas transportation for export is performed by the JSC "Intergas Central Asia" using the tariff, established on the basis of contracts and not subject to state regulation: 1.1 US Dollars per 1000 m³ per 100 km (tariff is calculated taking into account the transportation distances, per 100 km).

It should be noted that since WTO agreements do not directly regulate pricing policy for services, including services provided by natural monopolies, pipeline transportation and transit related issues, Kazakhstan firmly believes that a commitment to unify its pipeline transport fees as WTO plus request on the part of some Working Party Members.

Question 24

Kazakhstan should confirm in a protocol commitment that it will apply its current price controls and any other price controls applied from the date of accession in a WTO-consistent fashion, and will take account of the interests of exporting WTO Members as provided for in Article III.9 of the GATT 1994. Kazakhstan should commit to publish any list of goods and services subject to state pricing or price controls in its official gazette, including any changes in existing measures.

Answer:

Pursuant to Article 4 of the Law of the Republic of Kazakhstan "On Natural Monopolies", the authorised body shall analyse the spheres of natural monopolies with the purpose to define whether the services provided by them should be subject to state regulation. The list of services (goods, works) subject to state regulation shall be approved by the Government of the Republic of Kazakhstan upon presentation of the authorised body.

The Government Resolution No. 155 of 14 March 2006 approved the list of regulated services (goods, works) supplied by entities considered as natural monopolies in accordance with Article 4 of the Law "On Natural Monopolies".

Pursuant to Article 14-1 of the Law "On Natural Monopolies", the government body responsible for regulation of natural monopolies shall inform customers with the decisions made with respect to activities of natural monopolies, except for disclosure of the information, which represent commercial secrets protected by the national legislation. In this regard, the decisions made by the Agency of the Republic of Kazakhstan on Regulation of Natural Monopolies are available on the web-site www.regulator.kz and on the magazine "Regulator".

In accordance with paragraph 4 Article 18 of the Law "On Natural Monopolies", natural monopolies shall notify customers about changes in tariff rates (prices, fee rates) or their maximum levels not later than 10 days prior to their introduction. Therefore, natural monopolies should publish in mass media the decisions adopted by the Agency regarding their tariff rates (prices, fee rates).

According to paragraph 2 of Article 34 of the Law "On Regulatory Legal Acts", laws and Government resolutions belong to main regulatory legal acts. Paragraph 1 of Article 30 of the above mentioned Law stipulates that publication of legal acts dealing with rights, freedom and duties of citizens in official mass media is a mandatory condition for their enforcement.

Publication shall be made in official media or periodical publications selected as a result of the tender process in accordance with the order set by the Government of the Republic of Kazakhstan.

Question 25

Paragraph 55: Could Kazakhstan explain the state of play as regards the adoption of the Law defining the legal framework for government control and regulation of the operation of monopolies?

Answer:

To define uniform legislative framework for state control and regulation of activities in the sphere of state monopoly and to fill in the gap in the national legislation, the draft law of the Republic of Kazakhstan "On State Monopoly" has been drafted and submitted to the Parliament of the Republic of Kazakhstan.

Article 1 of the draft Law defines the terms "the state monopoly" and "subject of the state monopoly" as follows:

- The state monopoly is a type of activity, where introduction of competition is inexpedient for reasons related to the protection of constitutional order, national security, public order, human rights and freedoms, and health of population; and
- A subject of the state monopoly is a state-owned enterprise entitled with the exclusive right for provision of services (goods, works) in the sphere of state monopoly.

In accordance with the Article 4 of the draft Law the following activities are qualified as state monopolies in the Republic of Kazakhstan:

- forest management linked with establishing the borders of the national forest funds, inventory of forest and planning of national forests administration;
- national hydro-meteorological monitoring and monitoring of the environment conditions;
- diagnosing extremely dangerous animal diseases, liquidation of nidi of extremely dangerous animal contagious diseases; registration tests, testing veterinary medicine, fodder and fodder additives, as well as control of veterinary medicine in the course of reclamations; disinfecting of vehicles at veterinary control stations at the national border; storage of the national reserve of veterinary medicine;
- services related to protection of trade marks, service marks, geographic indications, inventions and industrial samples;
- production of personal identity documents of the Republic of Kazakhstan;
- importation and/or exportation of certain goods (rhenium, osmium);
- protection of information received for the state registration of pharmaceuticals;
- collection, conservation, storage and distribution of blood components;
- application of a technology (or methods) in conducting unified national testing, complex testing, and interim state control of educational institutions and certification of educational institutions;
- administration of the information system developed for the process of state procurement;
- processing, production and sale of raw materials containing rhenium and osmium; and

- revelation, localization and liquidation of sources and of dissemination of subjects to quarantine.

The draft law also stipulates the rights and obligations of both the subjects of state monopoly and of their customers.

Question 26

Paragraphs 69 – 71: Please specify the conditions and timeframe for the intended liberalization of telecommunications and postal markets, where now these markets are subject to government price regulation.

Answer:

Telecommunications sector of Kazakhstan is regulated by the laws "On Communications", "On Natural Monopolies", "On National Security" and other statutory legal acts of the Republic of Kazakhstan.

Pursuant to the staged "Program of Development of the Telecommunications Sector of the Republic of Kazakhstan for 2003-2005" adopted by the Government Resolution No. 168 of 18 February 2003, the telecommunication market will be liberalized in three stages:

- preparatory phase;
- partial liberalization phase; and
- complete liberalization phase.

At the preparatory stage of development of the telecommunication sector in 2003-2004, the legislative basis for regulation of the sector has been established. The laws "On Communications" and "On Amendments and Addenda to Legislative Acts of the Republic of Kazakhstan on Communications", 20 regulatory legal acts of the Government of the Republic of Kazakhstan and 3 Orders of the Agency on Informatization and Communications of the Republic of Kazakhstan have been adopted.

The Law of "On Communications" of 5 July 2004 introduced the term "universal telecommunication services". Pursuant to Article 32 of the Law, the following universal telecommunications services shall be subject to government regulation:

- fixed telephone communication services (local, area, long-distance);
- services providing mass access to the Internet in towns with population over 3,000 people;
- telegraph communication services, including delivery of "regular" and "flash" telegrams.

The services related to the leasing and provision of access to cable channels and technological facilities for connecting telecommunication networks to the universal telecommunication network have been also qualified as regulated telecommunication services.

In the course of the second phase of the telecommunications sector liberalization program, which started in September 2004, long distance and international telecommunications market has been liberalized. As of 1 January 2005, the exclusive right of the "Kazakhtelecom" JSC for provision of long distance and international communication services has been discontinued, and seven long distance and international communication operators have received the licenses (including: JSC "Kazakhtelecom", JSC "TNS-Plus", JSC "Arna", JSC "Transtelecom", JSC "Nursat", JSC "KazTransCom", JSC "Astel"). These steps made positive impact on the national economy through reduced tariffs for long distance and international telecom services and improved quality of services.

From 1997- 2005, 250 licenses for local communication services have been issued by the authorized body in the field of communication and 323 licenses for rendering the data transmission services.

To avoid cross-subsidization and recover the financial losses of operators rendering universal telecommunication services in rural areas, the Government launched their subsidization from the state budget.

The "Vostoktelekom" Limited Liabilities Partnership, which holds a licence for provision of local fixed telephone communication and data transmission services, was selected for provision of universal telecommunication services in rural areas with the use of 45 MH radio frequencies. This company will build fixed telephone lines in those rural areas, where they don't exist.

Until recently, due to the "last mile" problem, operators could not access their subscribers in towns and had to use the services of the "Kazakhtelecom" JSC, which could not fully meet their requirements. Based on the international experience of development of the local telecommunications market, with the purpose to resolve the "last mile" problem of access to customers, 21 operators received permissions to use the radio-spectrum in the range between 2-5.9 gigabytes.

Currently these operators are purchasing necessary equipment to expand communication networks for provision of local telephone communication and data transmission services.

The national communication and broadcasting satellite "KAZSAT" is planned to be launched in 2006 and is called to facilitate development of the satellite communication services market.

In the third phase of the telecommunications sector liberalization process, according to the Law "On Communications", all restrictions related to interconnection between operators were removed as of 1 January 2006, and subscribers have the technical opportunity to choose operators of long-distance and international communications.

The services on operator's connection to the universal telecommunication network services and telephone transit traffic services will still be qualified as regulated services, which could be excluded from the list of natural monopolies subject to development of a competitive environment.

As to postal services, Government regulation of tariffs (prices) in this sector is limited to dispatch of regular mail only.

Question 27

Paragraph 72: We welcome information from Kazakhstan that it plans to eliminate price controls for electrical power services, rail transport services and certain telecommunication services. Could you give a state of play of this process? What is the timetable foreseen for the elimination of price controls?

Answer:

1. Electric power industry

In order to increase the efficiency of the electric power industry, in February 2004, the Concept on Further Development of Market Relations in the Electrical Power Industry (the Concept) was approved. The Concept launched a stage-by-stage development of retail and wholesale market of electricity.

Implementation of the Concept will lead to the following:

- further improvement of the wholesale market of electricity on the basis of development of the centralized trade in electric power (including spot bidding "next day") and online balanced market;
- development of competition in the retail market of electricity; and
- completion of privatization of electricity supply network companies.

With the purpose to enhance the tariff policy and create incentives for development of the centralized market, the Methodology on formation of tariffs for electric power transmission services through interregional networks (JSC "KEGOC") has been revisited by the Agency on Regulation of Natural Monopolies. According to the amendments made to the Methodology, as of 1 January 2006, the direct dependence of the tariff rates on the distance of power transmission has been removed, and the energy deficiency and network capacity coefficient has been introduced.

As for development of the retail electricity market and creation of conducive environment for further development of competition, by 1 April 2005, the phase one of the Concept has been practically implemented. In particular, part of electric power procurement with the purpose to sell them to retail consumers has been carried out through centralized electric power bidding; separation of heating networks from energy sources has been undertaken; equal conditions for supply of energy power has been created with regards to competition between national level electric stations and regional producers of electric power .

Within the framework of the process of separation of electric power transmission from electric power supply services, power supply companies have been established in the majority of regions of Kazakhstan. The major part of power supply companies have been registered as companies with a dominant (monopolistic) position, whose tariffs are regulated by the Committee on Protection of Competition under the Ministry of Industry and Trade. Market players should notify the Committee on expected increases in prices for monopolistically produced services and the reasons such increases along with the documents, proving the reasons for price increases in writing 30 days prior to the day, when the new prices are planned to be introduced.

Since the second quarter of 2005 and onwards, it is planned to further develop the competition at the retail market of electric power among power supply companies. Local executive bodies choose among two options in coordination with the authorized body. According to the first option, the retail consumers choose an energy supplying organization, while the second option provides for determination of PSOs for the region as a result of the tender carried out by the authorized body.

Since the energy supply will take place in a competitive retail market, the energy providers will themselves set tariff rates on electric power for final consumers in accordance with market principles and the procedures established by the national legislation.

2. Railway transport

With adoption of the Program on Railway Transport Restructuring for 2004-2006 and amendments to the Law "On Railway Transport" in July 2004, the process of institutional and financial separation of activities subject to state regulation as natural monopolies from other types of activities of the JSC National Company "Kazakhstan Temir Zholy" has been launched. In particular, the "Kazzheldortrans" JSC was created as the national cargo carrier and provider of train-cars rental services, and the "Locomotive" JSC was created to provide

locomotive header services. "Kazakhstan Temir Zholy" owns 100 per cent of shares of both companies.

In 2004, the amendments have been made to the national legislation on natural monopolies. As a result, the state regulation of tariffs/prices by the Agency on Regulation of Natural Monopolies have been limited to main-line railway network provision services instead of the railway networks operation services, when the tariffs applied for passenger and cargo railway transportation were subject to state regulation.

As a result of the railway sector reform, services related to the use of main-line railway network and administration of the transportation process are qualified as natural monopoly. Carriers (owners of wagons) and companies providing services to the railway sector, are currently functioning in a competitive environment, although they hold a dominating position in the railway transportation services market.

Furthermore, the Agency on Regulation of Natural Monopolies has elaborated the Concept on Development of the Tariff Policy for Natural Monopolies, approved by the Government Resolution No. 455 of 13 May 2005. The main goal of the Concept is to determine the tariff policy in the sphere of natural monopolies, which will ensure the coordinated development of various sectors of the national economy.

In this view, the Concept's main objectives are as the following:

- ensuring transparency of tariff formation mechanisms;
- establishment of the monitoring system which will be based on the balanced assessment criteria regulation;
- development of economic models, which will allow to assess the impact of the tariffs set for services of natural monopolies on various sectors of the national economy; and
- enhancement of control mechanisms and analysis tools of activities of natural monopolies.

3. Telecommunications Sector

See the answer to the previous question.

- **Competition Policy**

Question 28

Paragraph 75 of the draft report indicates that legislation on competition policy includes the "Law on Competition and Restriction of Monopolistic Activities" and the "Law on Unfair Competition". Furthermore, as indicated in paragraphs 56 and 57, the Agency on Natural Monopoly Regulation was the regulating body for natural monopolies and the Committee on the Protection of Competition under the Ministry of Industry and Trade was responsible for regulating activities of entities with a dominant (monopolistic) market position under the "Law on Competition and Restriction of Monopolistic Activities".

Could Kazakhstan please explain which agency is responsible for the regulation of unfair competition activities?

Answer:

According to Paragraph 1 of the Presidential Decree No. 1449 "On Measures on Further Improvement of the System of State Governance" of 29 September 2004, the ministries are assigned with strategic functions, such as development of national policies in their given sectors. Whereas the committees, which are supervised by ministries and represent their integral parts, are responsible for implementation of the relevant national policies and regulations.

The Ministry of Industry and Trade of the Republic of Kazakhstan is the central executive body responsible for development of the national policy and regulatory framework on the protection of competition, including regulation of unfair competition activities. The Committee on Protection of Competition under the Ministry of Industry and Trade of the Republic of Kazakhstan is responsible for implementation and enforcement of the national policy on the protection of competition, including regulation of unfair competition.

Question 29

What are the possible (minimum and maximum) sanctions on violation of the above-mentioned two Laws? Who will decide these sanctions?

Answer:

Article 147 of the Code of the Republic of Kazakhstan on Administrative Violations (hereinafter - CAV) stipulates the following types of sanctions for violation of antimonopoly legislation:

1. Restriction of competition, unfair competition, abuse of dominant position (monopolistic) position on the market, as well as other violations of antimonopoly legislation, if such activities do not contain features of criminal actions or did not lead to illegal acquisition of income - shall entail charges for natural persons in the amount of 50 Monthly Calculation Indices (hereinafter – MCIs), for individual entrepreneurs and officials – in the amount of 100 MCIs, for juridical persons in the amount of 1,000 MCIs (in 2006, 1 MCI equals to KZT 1,030 or US\$ 8.00);
2. The same activities, committed repeatedly in the course of one year after imposing an administrative penalty, provided for in part 1 of this Article, entail a fine for natural persons in the amount from 50-100 MCIs, for individual entrepreneurs and officials – in the amount from 100-400 MCIs, for juridical persons in the amount from 1,000-2,000 MCIs;
3. Activities, stipulated in part 1 of Article 147, having lead to acquisition of income, - entail charges for natural persons in the amount from 50-100 MCIs, for individual entrepreneurs and officials – in the amount from 100-400 MCIs, for juridical persons –in the amount from 1,000-2,000 MCIs with confiscation of revenues, money, capital stock, obtained as a result of the administrative violation.

According to the Article 565 of the CAV, antimonopoly agency shall examine the cases of administrative violations, which are stipulated in parts 1 and 2 of Article 147. The head of the antimonopoly body and his/her deputies as well as heads of local branches of the antimonopoly body and their deputies shall have right to examine the cases on those administrative violations and impose administrative penalties.

The cases on administrative violations, stipulated in part 3 of Article 147, shall be examined in accordance with part 1 of the Article 541 CAV, by judges of specialized regional and equal to them administrative courts.

The Criminal Code of the Republic of Kazakhstan stipulates criminal liability for monopolistic actions and restriction of competition in the order of Article 196.

1. Setting up or support of monopolistically high or monopolistically low prices, as well as restriction of competition through division of market shares, market access restrictions, removal of other players, setting up or support of uniform prices, if such acts cause a big damage to a person, organisation or a state, shall be fined in the amount from 200-500 MCIs or in the amount of a salary or other income for the period from 2- 5 months of the convicted, or shall be arrested for the period of 4-6 months, or shall be subject to correctional tasks for the period up to two years, or custodial restraint for the period up to two years, or imprisonment for the same period.
2. The same actions repeatedly committed by a group of people on prior conspiracy or by an organized group, or by a person, who used official position, shall be surcharged in the amount from 500-700 MCIs or in the amount of a salary or other income of the convicted for the period of 5-7 months or imprisonment for the period up to five years with deprivation of the right to hold specific office posts or to be involved in certain types of activities for the period up to three years or without deprivation of such rights.
3. Activities, stipulated in parts 1 or 3 of the Article 196, committed with use of physical force or with the threat to use it, and as a consequence with annihilation or damage of alien property or with threat of its annihilation or damage, in the absence of blackmailing, shall be punished by imprisonment for the term from three up to seven years with confiscation of property or without confiscation.

Question 30

Is there any judicial review procedure or system applying to the sanctions?

Answer:

1. Chapter 4 of the Law of the Republic of Kazakhstan "On Competition and Restriction of Monopolistic Activity" (hereinafter - the Law) defines the responsibility for violation of the antimonopoly legislation.

Chapter 5 of this Law also sets the procedures on adoption, appeal, and execution of instructions and resolutions made by the antimonopoly agency.

Subject to paragraph 1 of Article 26 of the Law, instructions and resolutions of the antimonopoly agency shall be implemented within the period stated therein. Failure to implement the said instructions and resolutions within the stated period entails sanctions stipulated in this Law and other legislation of the Republic of Kazakhstan. In cases when instructions or resolutions of the antimonopoly body to restore the condition that existed before the violation have not been implemented, the antimonopoly agency has the right to appeal to the court to force the organization to restore back the condition that existed before the violation.

Whenever an organization fails to fulfil an instruction or resolution cancelling whether in part or in full a legal act, which is in breach of the antimonopoly legislation, the antimonopoly agency has the right to appeal to the court to qualify such an act invalid either in part or in full.

If an organization fails to fulfil an instruction or resolution changing or terminating a contract, which is in breach of the antimonopoly legislation, or instructing conclusion of a contract with another market player, the antimonopoly agency has the right to appeal to the court to

qualify such a contract invalid either in part or in full, or to force to conclude the contract with another market player.

Whenever an organization fails to fulfil an instruction or resolution, which obliges transfer of proceeds obtained as a result of a violation of the antimonopoly legislation to the public budget, the antimonopoly agency has the right to appeal to the court to collect such proceeds and transfer to the budget.

Paragraph 2 of the Article stipulates that whenever an organization fails to pay the fine in time or in full, the antimonopoly agency has the right to appeal to the court to collect the due fine as well as the penny of 1 per cent of the due amount per every day of delay.

Subject to paragraph 3 of Article 26 of the Law, whenever an organization fails to fulfil an instruction or resolution, the antimonopoly agency can appeal to the court to enforce implementation of its instruction or resolution.

In addition, Article 27 of the Law stipulates the procedures on appealing the instructions and resolutions of the antimonopoly agency. Paragraph 1 of the Article, for instance, entitles government bodies (and their officials) with the right to appeal to the court to qualify instructions and resolutions of the antimonopoly agency invalid in part or in full, or to cancel or change resolutions on administrative discipline/punishments. Filing a suit suspends execution of an instruction or resolution in question until the court processes the claim and the court's decision takes legal force.

Paragraph 2 of the Article provides that antimonopoly agency's instructions and resolutions may be appealed within six months since the day of issue, except for the claims with no limitation of action.

2. In accordance with Article 278 of the Civil Code of the Republic of Kazakhstan No. 411-11 of 13 July 1999, a natural or juridical person shall have the right to litigate the decisions, actions (or failure to act) of a government body, local authority, public association, organization, official, civil servant in the court directly.

Prior appeal to higher bodies, organizations and officials shall not be a mandatory precondition for submission of the case to and examination by the court as well as for its resolution.

The decisions, action (or failure to act) of government bodies, local authorities, public associations, organizations, officials, civil servants being litigated include joint or individual decisions or action (or failure to act) which entailed:

- infringement of rights, freedoms and interests of natural and juridical persons, which are protected by law;
- impediments created for exercising rights and freedoms by natural persons, as well as for execution of rights and interests by juridical persons, which are protected by law; and
- natural or a juridical person is imposed with illegal obligations or illegally sued.

A natural or a juridical person shall have the right to appeal to the court within the term of three months following the day when they revealed the fact of infringement of their rights, freedoms and interests protected by law.

Applications shall be examined by the court within one month. Participation of a natural person, representative of a juridical person, management of the government body, local authorities, public associations, organizations, official or civil servant, the decisions and actions of whom are being litigated, is mandatory.

Failure of the above-mentioned persons, who were duly informed about the date and venue of the court session, to appear in the court room shall not impede the examination of the case. However, the court can qualify the appearance of the specified persons as compulsory.

III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES

Question 31

Paragraphs 86-87: As we noted last November, these two paragraphs cover the issue of judicial and administrative appeals, but still do not appear to focus on the specific WTO-related issue of how importers and exporters (a) appeal customs and other WTO-related decisions within administrative channels; (b) appeal administrative rulings to a court or other "independent tribunal" as provided for in Article X of the GATT.

Please redraft these paragraphs to address: (a) right of administrative appeal by traders and other interested parties of decisions affecting WTO-related issues, e.g., customs, application of TBT and SPS requirements, import or export licensing, TRIPS, etc.; (b) the right appeal to a court of other "independent tribunal" as provided for in Article X of the GATT; and (c) describe and clarify the legal basis for such appeals.

At a minimum, commitments will be necessary concerning uniform application of WTO throughout Kazakhstan and the disposition of the government to enforce WTO when alerted to instances where such application was not occurring or not in a uniform manner; and concerning the right of administrative and judicial appeal from government decisions on WTO issues.

Answer:

In accordance with Article 278 of the Civil Code of the Republic of Kazakhstan No. 411-11 of 13 July 1999, a natural or juridical person shall have the right to litigate the decisions, actions (or failure to act) of a government body, local authority, public association, organization, official, civil servant in the court directly.

Prior appeal to higher bodies, organizations and officials shall not be a mandatory precondition for submission of the case to and examination by the court as well as for its resolution.

The decisions, action (or failure to act) of government bodies, local authorities, public associations, organizations, officials, civil servants being litigated include joint or individual decisions or action (or failure to act) which entailed:

- infringement of rights, freedoms and interests of natural and juridical persons, which are protected by law;
- impediments created for exercising rights and freedoms by natural persons, as well as for execution of rights and interests by juridical persons, which are protected by law; and
- natural or a juridical person is imposed with illegal obligations or illegally sued.

A natural or a juridical person shall have the right to appeal to the court within the term of three months following the day when they revealed the fact of infringement of their rights, freedoms and interests protected by law.

Applications shall be examined by the court within one month. Participation of a natural person, representative of a juridical person, management of the government body, local authorities, public associations, organizations, official or civil servant, the decisions and actions of whom are being litigated, is mandatory.

Failure of the abovementioned persons, who were duly informed about the date and venue of the court session, to appear in the court room shall not impede the examination of the case. However, the court can qualify the appearance of the specified persons as compulsory.

According to Article 493 of the Customs Code of the Republic of Kazakhstan, any person as well as his/her representatives shall have a right to appeal either to customs authorities, including the higher customs authority or the authorized body on customs issues, and/or the court, the decision, action (or failure to act) of the customs authority, if such decision and/or action (or failure to act) violates the rights and interests of the person, impedes exercising the rights or illegally imposes any obligation.

Submission of the complaint to the court shall withhold execution of the decision made on the complaint.

Complaint against the decision, action (or failure to act) of the customs officer shall be submitted to the relevant customs body or to the higher customs authority. Complaint against the decision, action (or failure to act) of the customs authority shall be submitted to the higher customs authority or to the authorized body on customs issues.

Complaint against the decision, action (or failure to act) of the customs authority and customs officer can be submitted within the term of one year:

- from the day when a person revealed infringement of his rights in customs sphere, creation of impediments for exercising of such rights or imposition of any obligation not stipulated by the customs legislation of the Republic of Kazakhstan; and
- from the expiry date of the established period for decision making by the customs authority or customs officer as stipulated in the customs legislation of the Republic of Kazakhstan.

Complaint against notification of the customs authority on enforcement of debts and fines shall be submitted within the term of ten days. If due to valid reasons the person failed to submit the complaint within the established term, upon his/her written request, the deadline could be extended judicially.

The complaint shall be submitted in written form. Submission of a complaint shall not withhold execution of the appealed decisions, action (or failure to act) of the customs authority and/or customs officer, except for the following cases:

- when the higher customs authority or the authorized body on customs issues, examining complaint, has sufficient grounds to believe, that the appealed decision, action (or failure to act) of the customs body and/or customs officer do not comply with the customs legislation of the Republic of Kazakhstan; and
- appeal of notification on enforcement of debts and fines.

Complaint against the decision, action (or failure to act) of the customs authority shall be examined by higher customs authority or authorized body on customs issues. Complaint against the decision, action

(or failure to act) of the customs officer shall be examined by the relevant customs authority or by the higher customs authority. Complaint against the decision, action (or failure to act) of the head of customs authority shall be examined by the higher customs authority or authorized body on customs issues. On behalf of the customs authority, the decision on the complaint shall be made by the head of the given customs authority or his/her deputy.

Complaint must be examined and the decision shall be taken within the term not exceeding 15 days from the date of registration of a complaint, excluding complaints, requiring further study and/or verification, which shall be examined within the term of one month from the date of its registration.

In accordance with Article 503 of the Customs Code, decision, action (or failure to act) of the customs body or customs officer can be examined using simplified procedure in cases when the value of the goods and vehicles in question do not exceed one hundred Monthly Calculation Indices (MCI). Simplified procedure represents submission of a written complain to the head of the customs authority. Complaint subject to simplified procedure shall be examined immediately and the decision shall be taken within the one day. The examination of the complaint and the decision made using simplified procedure shall not prevent submission of complaint in the order and terms stipulated in the Customs Code.

In accordance with Article 552 of the Tax Code of the Republic of Kazakhstan, a complaint against the notification on the results of tax inspection conducted by tax officers shall be examined by the relevant tax authorities. Submission of a complaint by a taxpayer to the court shall withhold execution of the notification in question. A taxpayer shall have a right to appeal the notification in relation to the amount of imposed debts and fines, as well as to appeal the actions (or failure to act) of tax officers in the court.

According to Article 566 of the Tax Code of the Republic of Kazakhstan, any taxpayer shall have a right to appeal the actions (or failure to act) of tax officers to higher tax authorities or to the court within the procedure established by the Civil Code of the Republic of Kazakhstan.

In accordance with Article 42 of the Law of the Republic of Kazakhstan "On Technical Regulating", the actions (or failure to act) of public officers, executing state control and supervision, can be appealed in accordance with the legislation of the Republic of Kazakhstan.

An applicant may appeal measures undertaken by an organization conducting conformity assessment of products. In such cases, the applicant can apply to the Board of Appeals of the organization conducting conformity assessment. In cases when the applicant does not agree with the abovementioned Board's decision, he/she can appeal to the Board of Appeals of the Committee on Technical Regulating and Metrology under the Ministry of Industry and Trade of the Republic of Kazakhstan. In this regard, the national standard ST RK 3.10 "The Order of the Examination of Appeals" (the Standard) was approved.

In accordance with the Standard, the applicant shall submit an appeal within one month since the date of receipt of notification on the decision made by the accredited certification bodies. The appeal shall be made in discretionary written form, with enclosed correspondence and other relevant documents.

The boards of appeals shall include specialists with qualification and experience which could ensure unbiased and justified decisions. While considering appeals, the board shall undertake all the required measures in order to keep the confidential data constituting commercial secret undisclosed.

The boards of appeal shall consider an appeal within 15 days since the date of submission of the documents. The board's decision shall be made in the form of a protocol and sent to the applicant within ten days since the date of the meeting.

The decision made by the Board of Appeals of the Committee on Technical Regulating and Metrology under the Ministry of Industry and Trade may be appealed in the court in accordance with the legislation of the Republic of Kazakhstan.

ST RK 3.10 – "The Order of the Examination of Appeals" is available through document WT/ACC/KAZ/66/Add.1.

Question 32

Legislative work plan for 2005 (WT/ACC/KAZ/58): We welcome the progress made in adoption of laws in 2004 and would be happy to have the laws adopted since August 2004 to be submitted to the Working Party as soon as possible.

Answer:

Laws of the Republic of Kazakhstan adopted since August 2004:

- "On Technical Regulating" No. 603-II of 9 November 2004;
- "On Amendments and Addenda to the Law of the Republic of Kazakhstan "On Environment Protection" on Industrial and Consumption Waste" No. 8-III of 9 December 2004;
- "On Amendments and Addenda to Legislative Acts of the Republic of Kazakhstan on Taxation" No. 11-III of 13 December 2004;
- "On International Commercial Arbitrage" No. 23-III of 28 December 2004;
- "On Amendments and Addenda to Legislative Acts of the Republic of Kazakhstan on Licensing" No. 45-III of 15 April 2005; and
- "On Amendments and Addenda to Legislative Acts of the Republic of Kazakhstan on Separation of Authorities between the Levels of State Governance and Budget Relations" (in connection with amendments made in laws "On Plants Quarantine" and "On Veterinary") No. 13-III of 20 December 2004.

The texts of revised legislation are available through document WT/ACC/KAZ/66/Add.1.

Besides, on 8 July 2005 the Law of the Republic of Kazakhstan No. 66-III "On State Regulating of Agricultural and Industrial Complex and Rural Territories Development" has been enacted, the text is available through document WT/ACC/KAZ/66/Add.1.

Question 33

As regards the previous legislative plan (WT/ACC/KAZ/43/Rev.1), we note that the following laws foreseen for adoption for the second half of 2004 have neither been adopted in 2004 nor foreseen in the new legislative plan for adoption in 2005: Amendments to the Law on Natural Monopolies; Law on Cinema and Law on Information and Protection of the Information. Could you explain the current status of adoption of these pieces of legislation?

Answer:

The text of the Law No. 9-III "On Amendments and Addenda to Legislative Acts of the Republic of Kazakhstan on Issues Related to Activities of Natural Monopolies" of 9 December 2004, is available through document WT/ACC/KAZ/66/Add.1.

As it has been stated in document WT/ACC/KAZ/43/Rev.1, the draft Law "On Culture" (new edition) has been submitted to the Parliament of the Republic of Kazakhstan on 24 June 2004. It should be noted that the provisions of the draft Law will be used as foundation for regulation of development of

the entire national culture. Due to this, the Government of Kazakhstan took a decision to elaborate the draft law "On Cinema" after the adoption of the Law of the Republic of Kazakhstan "On Culture". Thus, the elaboration of the draft law "On Cinema" has been excluded from the legislative plan of the Government for 2004 by the Resolution of the Government No. 7 of 12 January 2005.

Regarding the draft Law "On Information and Protection of Information", the Government requires certain time to study international expertise in the field of use, dissemination and protection of information with the purpose to harmonize the provisions of the draft Law with international practices. Due to this, the Government made a decision on submission of the draft Law to the Parliament when it will be ready.

Currently the Ministry of Culture and Information is in the process of development of the draft Law "On Information and Protection of Information" based on the international practice of regulation of this sphere.

IV. POLICIES AFFECTING TRADE IN GOODS

- Trading Rights

Question 34

We thank Kazakhstan for the additional information provided in WT/ACC/KAZ/57 in the responses to Questions 31-41 and in WT/ACC/SPEC/KAZ/9. The responses, however, avoid the central question of whether the right to import or export is conditioned upon requirements that deal with distribution, rather than the basic act of supplying goods to the distribution chain.

In this regard, it is not clear what activity licensing requirements are relevant to importation or exportation. Nor is it clear whether registration (which is apparently required to import and to export) requires investment and establishment.

We have the following questions:

Paragraph 90: Kazakhstan states in this paragraph that foreign firms that do not have a physical presence in country can carry out import and export activities under civil contracts with Kazakh partners.

Please confirm that this means that foreign juridical persons and entrepreneurs can be the "importer and exporter of record."

Also, please confirm that foreign importers and exporters can legally sign contracts with both Kazakh and foreign entities with a physical presence in Kazakhstan.

Answer:

According to the Instructions on Currency Control in Export-Import Transactions in the Republic of Kazakhstan, approved by the Resolution of the National Bank Board of 5 September 2001 No. 343:

- the term "exporter" means a resident of the Republic of Kazakhstan (juridical person, its branch, individual entrepreneur), who concluded a contract (agreement, treaty) for supply (sale) of products outside the customs territory of the Republic of Kazakhstan; and
- the term "importer" means resident of the Republic of Kazakhstan (juridical person, its branch, individual entrepreneur), who concluded a contract (agreement, treaty) for acquisition and import of goods to the customs territory of the Republic of Kazakhstan.

Hence, pursuant to the legislation of Kazakhstan, importers and exporters are the residents of the Republic of Kazakhstan.

According to Article 1 of the Law of the Republic of Kazakhstan "On Currency Regulating and Currency Control" and Article 191 of the Budget Code of the Republic of Kazakhstan No. 98-II of 24 April 2004, residents of the Republic of Kazakhstan are juridical persons, established in accordance with the legislation of the Republic of Kazakhstan, located within the territory of the Republic of Kazakhstan as well as their branches and representatives located in the territory of Kazakhstan and outside its territory.

Foreign juridical persons, who were registered in Kazakhstan and established commercial presence in the form of juridical persons of Kazakhstan, are considered as residents of the Republic of Kazakhstan.

Question 35

Paragraph 90: We note that there is a substantial difference between the time required for registration of small businesses and juridical persons (three versus fifteen days). From previous submissions and responses to questions, we understand that legislation has removed some requirements for small businesses, however, we still encourage Kazakhstan to consider implementing further reform so that the turnaround time for registration applications are equal for all business entities.

Answer:

The Article 4 of the Law No. 124-III "On Private Entrepreneurship" of 31 January 2006 stipulated the priority task of the Government to create conducive environment for small business development in the Republic of Kazakhstan. The Law "On Private Entrepreneurship" invalidated the laws "On Protection and Support of Private Entrepreneurship", "On Individual Entrepreneurship" and "On State Support of Small Business".

In accordance with Article 6 of the Law "On Private Entrepreneurship", small business entities are: (i) individual entrepreneurs, who are conducting entrepreneurial activity without establishing a juridical person with annual average number of employees not exceeding 50, and (ii) juridical persons, who are conducting entrepreneurial activity with annual number of employees not exceeding 50 and average annual value of assets under 60,000 Monthly Calculation Indices as defined by the Law "On National Budget" for the corresponding fiscal year.

The average annual number of employees of a small business entity shall take into account all employees, including those ones working in branches, representatives and other separate subdivisions of the small business entity.

According to Article 18 of the Law "On Private Entrepreneurship", the preferential treatment granted to small business consists in *inter alia* establishment of a simplified procedure for state registration and liquidation of small business entities. The preferential terms shall not extend to entities, failing to meet the criteria set for defining small business entities in Article 6 of the Law.

Individual entrepreneurs and juridical persons do not qualify for small business entities within the meaning of the Law if they are involved in the following types of activities related to:

- production and/or wholesale distribution of goods subject to excise tax;
- storage of grain in grain-elevators;
- lotteries;

- gambling or show business;
- certification, metrology and quality management;
- mining, processing and sale of oil, oil products, gas, electric and heat power;
- banking (or certain types of banking operations) and insurance (except for insurance agent activity);
- auditing;
- professional activity on capital market;
- circulation of radioactive materials; and
- distribution of narcotic drugs, psychotropic substances and precursors.

The simplified registration procedures for registration of small business entities consists of the following:

1. reduced terms of registration;
2. the minimized list of documents to be submitted for registration; and
3. reduced registration fee.

1. In accordance with Article 9 of the Law of the Republic of Kazakhstan No. 2198 "On State Registration of Juridical Persons and Registration of Branches and Representative Offices" of 17 April 1995 (the Law), state registration (re-registration) of small businesses and statistical registration (re-registration) of their branches and representative offices shall be made within three working days following the date of submission of the application with all necessary documents enclosed. State registration (re-registration) of other juridical persons and statistical registration (re-registration) of their branches and representative offices shall be made within ten working days the date of submission of the application with all necessary documents enclosed.

2. Small business entities are required to submit the minimized list of documents for state registration to justice authorities, including: (i) application for state registration, (ii) charter, and (iii) document proving the payment of the state registration duty. As a rule, small business entities function on the basis of the Model Charter; they are not required to submit a Charter of their own. Small business entities are not required to submit the location-certifying document.

Juridical persons other than small business entities are required to submit: (i) application for state registration, (ii) the founding documents (charter, founding agreement or statute), (iii) a document certifying the location of the juridical person, and (iv) document proving the payment of the state registration duty. To register a juridical person found as a result of reorganization of one or several juridical persons, the applicant shall also submit the act of transfer or the separated balance, and a document certifying that the creditors of the reorganized juridical person had been notified about the reorganization.

There are also specific procedural requirements for registration of juridical persons engaged in specific types of businesses:

- To register a juridical person conducting activity in banking or insurance sector, the applicant shall additionally obtain the permission from the authorized body on regulation and supervision of the financial market and organizations. Territorially separate divisions of banks, which are neither branches nor representative offices, shall be created in accordance with the procedure laid down by the banking laws, and they shall not be subject to accounting (state) registration.
- To register a juridical person dealing with pension payments and funds, the applicant shall additionally obtain the permission for establishing such a person from the authorized body on regulation and supervision of the financial market and organizations. In cases when one

juridical person is the founder of another juridical person, the applicant, along with the founding and other documents, shall submit a statement from the tax collecting authorized body to certify that the founder has no tax debts.

- A prior consent of the antimonopoly body is required for the state (official) registration of a person with dominating (monopolistic) position in the relevant market of goods (works, services) as well as of monopolies. The founder or the person authorized by the founder shall sign the application and enclose the founding documents in accordance with the procedure established by the laws of the Republic of Kazakhstan.
- Registration of juridical persons with foreign participation shall be made in accordance with the procedure for the registration of juridical persons of Kazakhstan. In addition, the abovementioned documents, until otherwise provided by the international treaties ratified by the Republic of Kazakhstan, the following documents shall be additionally submitted:
 - (i) legalized statement from the trade register or any other legalized document certifying that the founder (a foreign juridical person) is a juridical person according to the laws of the foreign country, with certified by notarial services translation into the official (Kazakh) and Russian languages; and
 - (ii) a copy of the passport or any other document identifying the person of the founder (a foreign natural person) with certified by notarial services translation into the official (Kazakh) and Russian languages.

It is prohibited to require any other documents and information except as the ones stipulated in the Law and other legal acts. Refusal in (re)registration can be made only on the grounds of the provisions stipulated by Article 11 of the Law.

In accordance with Article 11, violation of the procedure of establishment and reorganization of the juridical person, provided for by the legislative acts of the Republic of Kazakhstan; non-conformity of founding documents with the legislative acts of the Republic of Kazakhstan as well as failure to submit an assignment deed or separation balance sheet and absence of provisions on legal succession of the reorganized juridical person shall entail refusal in state registration or re-registration of the juridical person.

Refusal in registration or re-registration of a branch (representative) can take place in cases of violation of the procedures for founding of a branch (representative) established by the legislation of the Republic of Kazakhstan, non-conformity of the documents submitted for registration or re-registration with the Laws of the Republic of Kazakhstan.

In cases of refusal in registration (re-registration), registration authority shall give to the juridical person the reasons for refusal within three days in written form, referring to non-conformity of the submitted documents with the requirements of legislative acts of the Republic of Kazakhstan. The reimbursement of charges for the state (statistical) registration or re-registration of juridical persons, their branches and representation offices shall be performed in cases provided for by the Tax Code of the Republic of Kazakhstan.

The text of the Law of the Republic of Kazakhstan No. 2198 "On State Registration of Juridical Persons and Statistical Registration of Branches and Representative Offices" of 17 April 1995 is available through document WT/ACC/KAZ/66/Add.1

3. The registration fee for small business entities is equal to KZT 2,280 (approximately US\$ 17), while for other juridical persons KZT 7,600 (approximately US\$ 57).

In conclusion, it should be noted that simplified procedures established for registration of small business entities represent an integral part of the state's social and economic policy in support of

development of small business entities. This policy is aimed at creation of additional jobs in the economy, decreasing the social disparity and reduction of poverty among vulnerable segments of population of Kazakhstan. It should also be noted that the state policy measures in support of small businesses apply on a non-discriminatory basis to all residents of Kazakhstan with both domestic and foreign ownership, and as such do not contradict to WTO norms.

Question 36

Paragraph 90: We commend Kazakhstan for taking steps to streamline the registration requirements, especially centralizing the registration system with the "justice authorities." This is a step in the right direction and removes some of the duplicative and burdensome requirements that were inherent in the prior registration system. To ensure that we have a clear understanding of the system though, we would appreciate responses to the following questions:

What are the "justice authorities?" Is it the Ministry of Justice or some regional or city level government entity?

Answer:

The status of justice authorities of the Republic of Kazakhstan is defined in the Law of the Republic of Kazakhstan No. 304-II "On Justice Authorities" of 18 March 2002 (hereinafter - the Law).

In accordance with Article 1 of the Law, justice authorities of the Republic of Kazakhstan are the executive bodies, which provide legal basis, within their competence, for functioning of the state, sustain legality in the work of government bodies, organizations, executives and individuals, providing protection of rights and legitimate interests of individuals and organizations.

In accordance with Article 5 of the Law, the integrated system of justice authorities includes:

- Justice authorities:
 - The Ministry of Justice of the Republic of Kazakhstan;
 - Committees under the Ministry of Justice of the Republic of Kazakhstan;
 - Territorial justice authorities;
 - Criminal executive system bodies;
 - Institutions (organizations) of criminal executive system and other subordinate organizations.

For the purposes of state registration of juridical persons, in accordance with the Order of the Minister of Justice of the Republic of Kazakhstan No. 667 "On Issues of State Registration of Juridical Persons" of 15 January 1999, the justice authorities include the Committee on Registration Services under the Ministry of Justice and the territorial branches of the Ministry of Justice. The oblast (regional) or city level government entities are not assigned with registration functions.

Question 37

Is a single registration valid throughout all of Kazakhstan?

Answer:

In accordance with the Law of the Republic of Kazakhstan No. 2198 "On State Registration of Juridical Persons and Statistical Registration of Branches and Representative Offices" of

17 April 1995, the uniform procedures of registration of juridical persons, their branches and representative offices apply throughout the territory of the Republic of Kazakhstan.

In accordance with Article 1 of the Law, the state registration of juridical persons consists of the following steps: (i) verification of constitutive and other documents submitted for state registration to the authorized body of Kazakhstan, (ii) issuance of certificate with the registration number, (iii) inclusion of information about juridical persons into the single State Register.

The single State Register is valid throughout the territory of Kazakhstan, i.e. juridical persons registered in the State Register are recognized in the entire territory of Kazakhstan.

Question 38

Is the registration process the same for individual entrepreneurs?

Answer:

In accordance with Article 1 of the Law of the Republic of Kazakhstan No. 124-III "On Private Entrepreneurship" of 31 January 2006, individual entrepreneurship is the activity of natural persons aimed at receiving income, using the property of natural persons and conducted on behalf of natural persons at their own risks and proprietary responsibility.

In accordance with Article 10 of the Tax Code Republic of Kazakhstan of 12 June 2001, individual entrepreneur is a resident or non-resident natural person, conducting entrepreneurial activity without establishing a juridical person. In accordance with the Civil Code of the Republic of Kazakhstan, natural persons shall have right to conduct business without establishing a juridical person, except for the cases provided by this Code or other Legislative Acts.

Article 19 of the Civil Code and Article 27 of the Law "On Private Entrepreneurship" stipulate the state registration procedures for individual entrepreneurs.

Individual entrepreneurs shall be subject to mandatory registration if they fall under one of the following criteria:

- use employees on a permanent basis; and
- their aggregated annual revenue, calculated in accordance with taxation legislation exceeds the non-taxable amount of annual income established for natural persons by the legislation of the Republic of Kazakhstan.

The state registration procedure for individual entrepreneurs differs from the state registration procedure for small business entities and other juridical persons. The difference relates to the number of registration documents, the registration term and the amount of registration fee.

For state registration, individual entrepreneurs are required to submit: (i) the application form and (ii) the document proving the payment of the state registration duty. The registration authority shall issue the registration certificate the day following the date of submission of the required documents by individual entrepreneurs. The registration certificate is issued for unlimited period provided that the specific period has not been requested by the individual entrepreneur in the application form. The registration fee for individual entrepreneurs is 4 Monthly Calculation Indices (MCIs), which is equal to approximately US\$ 32.

As in case of small business entities, the simplified procedures for state registration of individual entrepreneurs are established to implement the state's social and economic policy in support of

development of individual entrepreneurship in Kazakhstan. This policy is also aimed at creation of additional jobs in the economy, decreasing the social disparity and reduction of poverty among vulnerable segments of population of Kazakhstan. It should also be noted that the state policy measures in support of individual entrepreneurship apply on a non-discriminatory basis and are therefore in full conformity with WTO norms.

Question 39

Paragraph 91: We again commend Kazakhstan for taking steps to ensure that registration fees and activity licenses fees are based on the cost of services rendered using the new MCI indicator. The information provided in Annex 9(c) on the costs that are included in the rate calculation is helpful in gaining insight into how this new system will work. However, the methodology seems extremely complex just for the computation of a fee and seems well beyond the traditional scope of costs that would be included in determining the fee for business registration. Please provide further explanation how the registration fee is based on the cost of services rendered and the basis for including costs such as "purchase of other goods" and "national business trips."

Answer:

In order to bring registration fees for juridical persons into full conformity with Article VIII of GATT 1994, the "Methodology for Calculation of Import/Export Licensing Fees and Fees for State Registration of Juridical Persons" has been approved by the Order No. 105 of the Ministry of Economy and Budget Planning of 27 August 2005. According to this Methodology, calculation of fees for registration of juridical persons are based on the actual cost of services rendered for processing of applications and excludes travel expenses within the country. The new Methodology includes "purchase of other goods", which is comprised of the cost of stationery, stamps, registration journals, etc.

On 30 December 2005, the Government of the Republic of Kazakhstan has adopted a Resolution No. 1324 "On Amendments into the Resolution of the Government of the Republic of Kazakhstan No. 1660 "On Approval of Fees Rates for State Registration of Juridical Persons" of 19 December 2001". In accordance with the Resolution, fee rates for state registration and re-registration of juridical persons, their branches and representative offices have been introduced in fixed amounts instead of the amount of Monthly Calculation Indices (MCI) used for state registration services and *ad valorem* amount used for state re-registration services. The fixed fee rates are based on the actual costs of state registration and re-registration services.

The text of the Government Resolution is available through document WT/ACC/KAZ/66/Add.1.

The text of the Methodology is enclosed in Annex II.

Question 40

Para 91: Please provide details on the length of validity of the registration certificates for all types of business entities.

Answer:

As established by Article 12 of the Law of the Republic of Kazakhstan "On State Registration of Juridical Persons and Statistical Registration of Branches and Representative Offices", the legal authority issues the state registration certificate to the newly created juridical person and the re-registration certificate to the juridical person, who passed re-registration procedure. Certificates shall

be issued only if the founding and other documents meet the requirements set in the legislation of the Republic of Kazakhstan.

In its turn, branches and representative offices shall be given certificates on statistical registration and re-registration certificates in case of re-registration.

The Law does not define the period of validity of the registration (re-registration) certificates. Hence, the registration (re-registration) certificates are issued for unlimited period provided that the specific period has not been requested in the application form.

The certificate shall be given to juridical persons, their branches and representative offices in one copy and shall be replaced only in the following cases:

- state (statistical) re-registration;
- amendments were made to founding documents due to the change of location of a juridical person from one oblast to other oblast (or Astana and Almaty cities); and
- change of location of a juridical person within one oblast.

Question 41

Paragraph 93: We understand the Kazakhstan is in the process of shortening the list of activities subject to licensing from 107 to 87. We would appreciate an update on the draft law and request that Kazakhstan include on annex listing all of the activities subject to licensing. The annex should include the activity and the agency or agencies that a business would need to approach to be issued an activity licence.

Answer:

According to Article 3 of the Law of the Republic of Kazakhstan "On Licensing" of 17 April 1995, introduction of licensing requirements or their elimination shall be established by the present law for the purposes of national security, implementation of state monopoly functions, enhancement of the rule of law and order, protection of environment, property, life and health of citizens.

As of 1 January 2005, 134 types and 728 sub-types of activities were subject to licensing.

In accordance with the Law of the Republic of Kazakhstan No. 45-III "On Amendments and Addenda to Legislative Acts of the Republic of Kazakhstan on Licensing" of 15 April 2005, 25 types and 410 sub-types of activities subject have been removed from the list of activities subject to licensing.

In December 2005, the draft Law of the Republic of Kazakhstan "On Licensing" (new revision) has been submitted to the Parliament.

The draft Law will provide for exclusion from the list of activities subject to licensing of the following:

- (i) types of activities:
 - installation, testing, and technical maintenance of fire alarms and fire safety equipment;
 - production of fire safety machinery, equipment and fire protection facilities;
 - operation of cranes (mobile cranes);
 - technical operation of communication networks and lines; and
 - foreign labour force employment related services.

(ii) subtypes of activities:

- consulting services on guarding and legal protection against security violations;
- repair of civil pyrotechnic substances and products containing civil pyrotechnic substances;
- collection of civil pyrotechnic substances and products containing civil pyrotechnic substances;
- distance education services;
- duty free shops; and
- services related to customs free warehouse regime.

Thus, according to the draft Law "On Licensing", 21 types and 78 sub-types of activities are planned to be removed from the list of activities subject to licensing.

The text of a draft Law "On Licensing" (new version) is available through document WT/ACC/KAZ/66/Add.1.

In addition, in order to avoid duplication in the state permissions system, in accordance with the draft Law "On Amendments Addenda to Legislative Acts of the Republic of Kazakhstan on Auditing", which is currently under the review of the Parliament of the Republic of Kazakhstan, the following types of auditing services will be excluded from the list of activities subject to licensing:

- auditing of banking activity;
- auditing of (insurance) reinsurance organizations;
- auditing of savings pension funds; and
- auditing of organizations, dealing with investment management of pension assets.

The abovementioned types of auditing services therefore will be subject to licensing requirement only based on Article XI of the Law "On Licensing" of 17 April 1995.

To simplify licence issuance procedures, the list of activities subject to licensing in the draft law were divided into three main groups:

- activities linked to security of high risk or danger (utilization of atomic energy, industrial types of activities);
- those of special public importance (drugs trafficking, weapons, healthcare, guaranteeing information security, etc.); and
- private entrepreneurial activities (architectural and construction, production and sale of alcohol products, evaluation activity, etc.).

The list of the licensed types and subtypes of activities with the relevant legal act, as well as the governmental body (licensor), authorized to issue the licenses for activities, subject to licensing is enclosed in Annex III.

Question 42

According to WT/ACC/SPEC/KAZ/9 paragraph 94, a production activity licence is necessary to import ethyl alcohol. An activity licence to produce, store, and wholesale sale to import alcoholic beverages, other than beer is also necessary.

The requirement of an activity licence seems redundant since an import licence is necessary for ethyl alcohol and alcoholic beverages.

We ask that Kazakhstan remove this requirement for an activity licence.

Answer:

In accordance with Article 10 of the Law of the Republic of Kazakhstan No. 429-1 "On State Regulating of Production and Turnover of Ethyl Spirit and Alcoholic Beverages" of 16 July 1999:

- Licence for importation of ethyl alcohol could be obtained provided that there is an activity licence for production of alcoholic beverages, where ethyl alcohol is used as a component;
- Licence for importation of wine material could be obtained provided that there is an activity licence for production of alcoholic beverages, where wine material is used as a component; and
- Licence for importation of alcoholic beverages could be obtained provided that there is an activity licence activity either for production of alcoholic beverages or for storage and wholesale of alcoholic beverages (excluding beer).

Taking into account that ethyl spirit used by companies of Kazakhstan for pharmaceutical, medical and technical purposes is supplied by domestic producers, ethyl spirit is imported solely for production of alcoholic beverages.

Elimination of a requirement for activity licence for production of alcoholic beverages in order to import ethyl spirit and wine material could result in disappearance of imported products in the illegal so-called "grey" market. In its turn, this may cause negative consequences for the health of population and non-payment of taxes imposed on alcoholic beverages produced using imported ethyl spirit and wine materials. Hence, the Government of Kazakhstan intends to maintain the currently applied regulation for importation of ethyl spirit and wine materials.

As for importation of alcoholic beverages, the Government of Kazakhstan is planning to introduce amendments into the Law "On State Regulating of Production and Turnover of Ethyl Spirit and Alcoholic Beverages", according to which in order to obtain a licence for importation of alcoholic beverages:

- residents shall have an activity licence for either for production or for storage and wholesale of alcoholic beverages (excluding beer);
- non-residents shall have a contract with a juridical person of the Republic of Kazakhstan, which holds an activity licence for either for production or for storage and wholesale of alcoholic beverages (excluding beer).

In accordance with the Government Resolution No. 1031 " On Import Licensing of Ethyl Spirit and Alcoholic Beverages in the Republic of Kazakhstan" of 27 June 1997, an activity licence is not required to obtain a licence for importation of beer.

Question 43

Apparently an activity licence is necessary to trade in alcoholic beverages.

Are there other products? Pharmaceuticals? Agro-chemicals? Certain electronic equipment?

Are any of these products also subject to import licensing? Does an importer have to have an activity licence to secure import licenses?

Answer:

In accordance with paragraph 5 of the Rules on Import-Export Licensing of Goods (Services and Works) in the Republic of Kazakhstan approved by the Government Resolution No. 1037 of 30 June 1997, in order to obtain an import licence from the authorized body, the applicant *inter alia* has to submit the following documents:

- an activity licence issued by the authorized state body for certain types of activities; and
- a permission from the Government of the Republic of Kazakhstan or the authorized state body for certain goods listed in Annex 2-5 to the Government Resolution No. 1037.

Import licence for armament and military equipment, and special components for their production shall be issued by the Industry and Scientific and Technical Development Committee under the Ministry of Industry and Trade of the Republic of Kazakhstan based on the following:

- permission of the Government of the Republic of Kazakhstan;
- activity licence issued by the Industry and Scientific and Technical Development Committee under the Ministry of Industry and Trade of the Republic Kazakhstan for sale of weapons and ammunition to it, military equipment, spare parts, components and appliances to them, if they are not used in other industries;
- expertise of authorized state bodies in the field of sanitary and epidemiological control; and
- expertise of authorized state bodies in the field of environmental protection.

Import licence for nuclear materials, technologies, equipment and settlements, special non nuclear materials, sources of active radiation, including radioactive waste products shall be issued by the Industry and Scientific and Technical Development Committee under the Ministry of Industry and Trade based on the following:

- permission of the Government of the Republic of Kazakhstan; and
- activity licence issued by the Atomic Energy Committee under the Ministry of Energy and Mineral Resources of the Republic of Kazakhstan for importation of nuclear materials, technology and equipment, special non nuclear materials; double purpose goods, technologies and equipment, source of ionizing radiation, radioactive substances.

Information on the necessity to obtain an activity licence as well as the an expertise of sanitary, ecological, mining and technical inspection bodies and State Energy Inspection (Gosenrgonadzor) is given in the table below. The permission of the Government of the Republic of Kazakhstan for importation of the goods listed in the table below is not required.

HS Number	Goods	Authorized Body issuing an Import Licence	Type of activity subject to licensing	Authorized Body issuing an Activity Licence	Expertise of relevant bodies
9022	X-ray equipment, devices and equipments with use of radio-active substances and isotopes.	Industry and Scientific and Technical Development Committee under the Ministry of Industry and Trade of the Republic of Kazakhstan	Sale of X-ray equipment, devices and equipment using of radioactive substances and isotopes.	Atomic Energy Committee under the Ministry of Energy and Mineral Resources of the Republic of Kazakhstan	Expertise of state bodies in the field of sanitary and epidemiological control is required
According to list confirmed by the Government of the Republic of Kazakhstan	Poison	Industry and Scientific and Technical Development Committee under the Ministry of Industry and Trade of the Republic of Kazakhstan	Sale of poison according to list confirmed by the Government of the Republic of Kazakhstan	Industry and Scientific and Technical Development Committee under the Ministry of Industry and Trade of the Republic of Kazakhstan	Expertise of state bodies in the field of sanitary and epidemiological control, environment protection and industrial safety is required.
8471 (only figure typed techniques) 847330 (only for figure typed techniques) 854390900 (only for figure typed techniques)	Cryptographic means (including cryptographic techniques, components for cryptographic techniques and programme packets for cryptographic code)	Industry and Scientific and Technical Development Committee under the Ministry of Industry and Trade of the Republic of Kazakhstan	Sale of cryptography means of the information's protection	National Security Committee of the Republic of Kazakhstan	Expertise of state bodies in the field of sanitary and epidemiological control and environment protection is required.
360100000 (except for the gunpowder) 360200000, 360300, 3604	Gunpowder, explosives, means of exploding and pyrotechnics	Industry and Scientific and Technical Development Committee under the Ministry of Industry and Trade of the Republic of Kazakhstan	1. Trade of explosives and pyrotechnics and devices using them, (except for civil pyrotechnics and devices using them) 2. Trade of civil pyrotechnics and devices using them	Industry and Scientific and Technical Development Committee under the Ministry of Industry and Trade of the Republic of Kazakhstan Ministry of Internal Affairs of the Republic of Kazakhstan	Expertise of state bodies in the field of sanitary and epidemiological control and environment protection is required.
According to list confirmed by the Government of the Republic of Kazakhstan	Official and civil arms	Industry and Scientific and Technical Development Committee under the Ministry of Industry and Trade of the Republic of Kazakhstan	Trade of fire-arms, civil and official arms and their cartridges	Ministry of Internal Affairs of the Republic of Kazakhstan	Not required
According to list confirmed by the Government of the Republic of Kazakhstan	Means of protection from fighting toxic substances, its parts and accessories.	Industry and Scientific and Technical Development Committee under the Ministry of Industry and Trade of the Republic of Kazakhstan	Not required	-	Expertise of state bodies in the field of sanitary and epidemiological control and environment protection is required.

HS Number	Goods	Authorized Body issuing an Import Licence	Type of activity subject to licensing	Authorized Body issuing an Activity Licence	Expertise of relevant bodies
3808 (only preparations for plant protection)	Chemical means of plants protection	Industry and Scientific and Technical Development Committee under the Ministry of Industry and Trade of the Republic of Kazakhstan	Sale of pesticides	Ministry of Agriculture of the Republic of Kazakhstan	Expertise of state bodies in the field of sanitary and epidemiological welfare is required
261800000-2620, 3915	Industrial wastes	Industry and Scientific and Technical Development Committee under the Ministry of Industry and Trade of the Republic of Kazakhstan	1. Import in the Republic of Kazakhstan ozone-destructing substances and products containing such substances. 2. Trans-border transportation of hazardous industrial wastes of the 1-3 class of danger.	Ministry of Environmental Protection of the Republic of Kazakhstan	Expertise of state bodies in the field of sanitary and epidemiological control is required
2207	Ethyl alcohol	Tax Committee under the Ministry of Finance of the Republic of Kazakhstan	Production of alcoholic beverages	Tax Committee under the Ministry of Finance of the Republic of Kazakhstan	Expertise of state bodies in the field of sanitary and epidemiological control and environment protection is required.
2204, 2205, 2206	Alcoholic beverages (excluding beer)	Tax Committee under the Ministry of Finance of the Republic of Kazakhstan	Production of alcoholic beverages or Storage and wholesale sale of alcoholic beverages (except for beer)	Tax Committee under the Ministry of Finance of the Republic of Kazakhstan	Expertise of state bodies in the field of sanitary and epidemiological control and environment protection is required.
121190800	Opium raw materials (medicinal herbs)	Industry and Scientific and Technical Development Committee under the Ministry of Industry and Trade of the Republic of Kazakhstan	Import and export of drugs, psychoactive substances, precursors	Ministry of Internal Affairs of the Republic of Kazakhstan	Not required

HS Number	Goods	Authorized Body issuing an Import Licence	Type of activity subject to licensing	Authorized Body issuing an Activity Licence	Expertise of relevant bodies
830170000, 847130000, 847141900, 847149900, 847150900, 847330100, 851750, 851780900, 851810, 851840, 851850900, 852032, 852033, 852090900, 8521, 8525, 8526, 8527 854389900, 900219000, 900580000, 9013, 901910900, 9006, 902219000, 902229000, (only special technical devices, devices of information defence and other techniques of double application)	Special technical devices intended for special operative- investigation activity, means of information protection, other techniques of double purpose	Industry and Scientific and Technical Development Committee under the Ministry of Industry and Trade of the Republic of Kazakhstan	Sale of Special technical devices intended for special operative- investigation activity	National Security Committee of the Republic of Kazakhstan	Expertise of state bodies in the field of sanitary and epidemiological control and environment protection is required.

In accordance with Article 28 of the Law of the Republic of Kazakhstan No. 522-I "On Pharmaceuticals" of 13 January 2004, import of pharmaceuticals without state registration to the territory of the Republic of Kazakhstan is not permitted. Import of pharmaceuticals to the territory of the Republic of Kazakhstan can be performed by:

- local producers with the activity licence for the production of pharmaceuticals;
- juridical or natural persons with the activity licence for the wholesale sale of medicines;
- research and development organizations, laboratories for preparation and state registration of pharmaceuticals hereunder; and
- foreign producers of pharmaceuticals, their duly authorized representative offices or representatives in form of juridical or natural persons for conducting clinical research and/or tests as well as for participation at exhibitions of pharmaceutical products in the Republic of Kazakhstan.

In accordance with Article 9 of the Law of the Republic of Kazakhstan No. 2200 "On Licensing" of 17 April 1995 and the Resolution of the Government No. 1624 "On Approval of Rules for Licensing of Activities Related to Production and Sale of Pharmaceuticals" of 28 October 2000, the following activities related to pharmaceuticals require licensing:

- (i) production of pharmaceuticals:
 - industrial production; and
 - production in pharmaceutical stores.
- (ii) sale of pharmaceuticals:
 - wholesale; and
 - retail.

The Committee on Pharmacy under the Ministry of Healthcare of the Republic of Kazakhstan is the body responsible for issuing activity licenses for production of pharmaceuticals.

Local executive bodies shall issue the activity licence for wholesale pharmaceuticals.

With the purpose to prevent import of non-registered pharmaceuticals to the territory of the Republic of Kazakhstan, the Instructions on Coordination of Import and Export of Pharmaceuticals, Medical Equipment, Products for Medical Purposes and Para pharmaceuticals was adopted by the Order of the Acting Minister of Healthcare of the Republic of Kazakhstan No. 885 of 22 December 2004 .

In accordance with the Instructions, the Pharmacy Committee under the Ministry of Healthcare of the Republic of Kazakhstan shall submit to the Customs Control Committee under the Ministry of Finance a letter of approval for export and import of pharmaceuticals, Para pharmaceuticals, medical equipment and products for medical purposes.

In order to obtain a letter of approval for export and import of pharmaceuticals an applicant shall submit the following documents to the Pharmacy Committee:

- application for issuance of a letter of approval for export and import of pharmaceuticals;
- a copy of the activity licence for production or wholesale of pharmaceuticals in a special form sheet signed and sealed by an applicant;

- a copy of the licence for activities related to the circulation of narcotic substances, psychotropic substances and precursors, in case of import or export of pharmaceuticals, containing narcotic substances, psychotropic substances and precursors;
- a copy of the sales contract (agreement) or any other agreement of alienation between the participants of foreign trade transaction with specification, identification of a producing company and country of origin, medical equipment and products for medical purposes as well as the original contract for their identification;
- a copy of a state registration certificate (for juridical persons);
- an original letter of permit from the manufacturing company or its representative office in the Republic of Kazakhstan for importation of pharmaceuticals from the territory of a third country with translation to State and Russian languages and registration certificate in case of absence of a direct contract with a producer or a company which holds the registration certificate; and
- list of the submitted documents.

In accordance with Article 12 of Law of the Republic of Kazakhstan No. 279-I "On Narcotic Substances, Psychotropic Substances, Precursors and Measures against their Illegal Circulation and Abuse" of 10 July 1998, import and export of narcotic substances, psychotropic substances and precursors to/from the territory of the Republic of Kazakhstan shall be performed by juridical persons holding an activity licence.

In accordance with Article 9 of the Law of the Republic of Kazakhstan No. 2200 "On Licensing" of 17 April 1995, and the Resolution of the Government of the Republic of Kazakhstan No. 1693 "On Approval of Rules for State Control on Circulation of Narcotic Substances, Psychotropic Substances and Precursors in the Republic of Kazakhstan" of 10 November 2000, all types of activities related to circulation of narcotic substances, psychotropic substances and precursors shall be subject to licensing.

Licenses for the specified types of activities shall be issued by the Ministry of Internal Affairs of the Republic of Kazakhstan.

Import and export of narcotic substances, psychotropic substances and precursors through crossing state and customs frontiers shall be performed upon demonstration of an activity licence and certificate issued in accordance with the legislation of the Republic of Kazakhstan.

Upon exportation of narcotic substances, psychotropic substances and precursors, a notarized copy of an activity licence shall be enclosed to each parcel of cargo and directed to the government of the importing country.

Exportation and importation of narcotic substances, psychotropic substances and precursors from/to the territory of the Republic of Kazakhstan shall be performed via exchange of import and export certificates between importers and exporters of narcotic substances, psychotropic substances and precursors with a sign on the export certificate stating about arrival of a parcel of goods and completion of export and import operations.

Question 44

Paragraph 93: We welcome the information about reducing the number of activities subject to licensing pursuant to the draft law. However, we would urge Kazakhstan to continue to reduce the number of activities subject to licensing.

Answer:

According to Article 3 of the Law of the Republic of Kazakhstan "On Licensing" of 17 April 1995, introduction of licensing requirements or their elimination shall be established by the present law for the purposes of national security, implementation of state monopoly functions, enhancement of the rule of law and order, protection of environment, property, life and health of citizens.

As of 1 January 2005, 134 types and 728 sub-types of activities were subject to licensing.

In accordance with the Law of the Republic of Kazakhstan No. 45-III "On Changes and Amendments into the Legislative Acts of the Republic of Kazakhstan on Licensing" of 15 April 2005, 25 types and 410 sub-types of activities subject have been removed from the list of activities subject to licensing.

In December 2005, the draft Law of the Republic of Kazakhstan "On Licensing" (new revision) has been submitted to the Parliament.

The draft Law will provide for exclusion from the list of activities subject to licensing of the following:

(i) types of activities:

- installation, testing, and technical maintenance of fire alarms and fire safety equipment;
- production of fire safety machinery, equipment and fire protection facilities;
- operation of cranes (mobile cranes);
- technical operation of communication networks and lines; and
- foreign labour force employment related services.

(ii) subtypes of activities:

- consulting services on guarding and legal protection against security violations;
- repair of civil pyrotechnic substances and products containing civil pyrotechnic substances;
- collection of civil pyrotechnic substances and products containing civil pyrotechnic substances;
- distance education services;
- duty free shops; and
- services related to customs free warehouse regime.

Thus, according to the draft Law "On Licensing", 21 types and 78 sub-types of activities are planned to be removed from the list of activities subject to licensing.

In addition, in order to avoid duplication in the state permissions system, in accordance with the draft Law "On Amendments and Addenda to Legislative Acts of the Republic of Kazakhstan on Auditing", which is currently under the review of the Parliament of the Republic of Kazakhstan, the following types of auditing services will be excluded from the list of activities subject to licensing:

- auditing of banking activity;
- auditing of (insurance) reinsurance organizations;
- auditing of savings pension funds; and
- auditing of organizations, dealing with investment management of pension assets.

The abovementioned types of auditing services therefore will be subject to licensing requirement only based on Article XI of the Law "On Licensing" of 17 April 1995.

To simplify licence issuing procedures, the list of activities subject to licensing in the draft law were divided into three main groups:

- activities linked to security of high risk or danger (utilization of atomic energy, industrial types of activities);
- those of special public importance (drugs trafficking, weapons, healthcare, guaranteeing information security, etc.); and
- private entrepreneurial activities (architectural and construction, production and sale of alcohol products, evaluation activity, etc.).

Question 45

Paragraph 95: We welcome information from Kazakhstan that it plans to bring its registration fees into conformity with Article VIII GATT prior to WTO accession. Could you give a state of play of this process? Have legislative proposals already been prepared?

Answer:

In order to bring registration fees for juridical persons into full conformity with Article VIII of GATT 1994, the "Methodology for Calculation of Import/Export Licensing Fees and Fees for State Registration of Juridical Persons" has been approved by the Order No. 105 of the Ministry of Economy and Budget Planning of 27 August 2005. According to this Methodology, calculation of fees for registration of juridical persons are based on the actual cost of services rendered for processing of applications and excludes travel expenses within the country. The new Methodology includes "purchase of other goods", which is comprised of the cost of stationery, stamps, registration journals, etc.

On 30 December 2005, the Government of the Republic of Kazakhstan has adopted a Resolution No. 1324 "On Amendments to the Resolution of the Government of the Republic of Kazakhstan No.1660 "On Approval of Fee Rates for State Registration of Juridical Persons" of 19 December 2001". In accordance with the Resolution, fee rates for state registration and re-registration of juridical persons, their branches and representative offices have been introduced in fixed amounts instead of the amount of Monthly Calculation Indices (MCI) used for state registration services and *ad valorem* amount used for state re-registration services. The fixed fee rates are based on the actual costs of state registration and re-registration services.

The text of the Government Resolution and the Order are available through document WT/ACC/KAZ/66/Add.1.

The text of the Methodology is enclosed in Annex II.

A. IMPORT REGULATIONS

- **Customs tariff**

Question 46

WT/ACC/SPEC/KAZ/9 paragraph 99 states that the current import duties related to Ethyl Spirit are set at 100 per cent. However, the tariff has a minimum import rate of not less than

€ 2 per 1 litre. This is equivalent to nearly 279 per cent. Are there any other such duties that were not noted?

Answer:

In Kazakhstan, the majority of applied import duties particularly for non-agricultural products range from 0 per cent to 15 per cent.

Import tariffs at the rate between 20 per cent and 100 per cent applied mostly for fiscal purposes on products for Kazakhstan, such as:

- Alcoholic beverages (approximately 100 per cent);
- Carpets (30 per cent); and
- Agricultural products, including white sugar, meat products (30 per cent – 35 per cent).

It should be noted that the majority of import duties represent *ad valorem* rates. Specific import duty rates applied to 168 goods, including alcoholic beverages, fruits and vegetables, combined import duties applied with respect to 656 goods. The specific components of combined tariffs are equivalent to *ad valorem* components.

Question 47

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

Answer:

Pursuant to the Government Resolution No. 567 "On Approval of the Agreement on Common Product Nomenclature for Foreign Economic Activity of the Eurasian Economic Community" of 11 June 2003, since 1 January 2004 Kazakhstan applies the HS 2002. Kazakhstan also conducts its WTO goods market access negotiations based on the currently used product nomenclature, i.e. using HS 2002.

- **Other duties and charges**

Question 48

Paragraph 101: We seek a commitment from Kazakhstan that it will not list any other charges in its goods schedule under Article II:1 (b) of the GATT 1994, binding such charges at zero from the date of accession.

Answer:

Kazakhstan does not apply any other duties and charges on imports, except for the currently applied import customs duties approved by Government Resolution No. 1389 "On Rates of Customs Duties Levied on Imported Goods" of 14 November 1996, and fees charged for services rendered in accordance with the Government Resolution No. 669 "On Adoption of Rates of Customs Fees, Charges and Payments Levied by Customs Bodies" of 8 July 2003.

Question 49

Concerning the response to Question 44: We urge Kazakhstan to eliminate the practice of doubling duties for imports of unknown origin. Are there any countries anywhere subject to double MFN rate of duty? If no import of known origin is subject to such a penalty, i.e., the top rate of duty charged is MFN rate, there can be no justification for applying double duties if the origin is unknown.

Answer:

Further to concerns expressed by WTO member-states, the Government is planning to introduce the amendment to the Customs Code of the Republic of Kazakhstan, according to which the provision stating use of double MFN import duty rate towards goods of un-known origin will be eliminated.

Kazakhstan does not apply double MFN rate towards the products of any countries.

- **Tariff rate quotas, tariff exemptions**

Question 50

Paragraph 102 of WT/ACC/SPEC/KAZ/9 states that the intention of applying TRQs is to eliminate "peak rates" in tariff commitments. Currently, the highest tariff in the meat and cane sugar sectors is 35 per cent. Does this mean Kazakhstan intends to bind these products at a lower rate to eliminate these peaks?

Answer:

In accordance with the Government Resolution No. 1389 "On Rates of Customs Duties Levied on Imported Goods" of 14 November 1996, the currently applied import duty rate towards white sugar is 30 per cent, but not less than € 0.12 per kg.

Kazakhstan intends to regulate imports of certain sensitive agricultural goods, such as poultry by using TRQs. Introduction of TRQs is called to satisfy essential internal demand for imported goods on the one hand and to balance the economic interests of local producers of poultry.

Question 51

Questions 46-48: Please identify the government resolution that defines the customs duties rates within quota and outside quota.

Answer:

Currently, the draft Government Resolution has been elaborated for establishing tariff rate quotas on imported poultry. The import tariff rates outside and inside the tariff rate quota will be established as a result of the on-going internal (within the government agencies) review and approval process.

Question 52

Which Ministry will administer the TRQs? What is the process by which you apply for the licence?

Answer:

The Government Resolution No. 1389 "On Rates of Customs Duties Levied on Imported Goods" of 14 November 1996 stipulates that the Ministry of Industry and Trade is responsible for issuing import licenses for the purposes of administering the tariff rate quotas.

The licenses will be issued in accordance with the general procedure and "first come, first served" basis.

Question 53

Would Kazakhstan deny a trans-shipment of food and beverages if these products were prohibited from temporary importation? Are samples or products from trade shows exempt from payment of customs duties and taxes or are these items prohibited from this exemption as well?

Answer:

Pursuant to Article 188 of the Customs Code of the Republic of Kazakhstan, temporary importation of goods and means of transport means the customs regime under which foreign goods and means of transport are used in the customs territory of the Republic of Kazakhstan with full or partial exemption from import customs duties and taxes, and with their subsequent exportation from the customs territory of the Republic of Kazakhstan. Non-tariff regulatory measures shall not apply to goods and transport under temporary importation customs regime, except for the requirements concerning safety of goods.

Article 189 of the Customs Code stipulates that goods shall be placed under the temporary importation customs regime provided that the following requirements are complied with:

- identification of goods and means of transport is ensured;
- submission of a commitment to export goods and means of transport outside the Republic of Kazakhstan within the established time limit in compliance with the format established by the authorized body on customs issues; and
- payment of customs duties and taxes in compliance with Article 191 of the Customs Code.

The following good shall not be admitted for placement under the temporary importation customs regime:

- spare parts and components (in case where they are not intended for temporary imported means of transport), expended materials and samples, raw materials, semi-finished products, except for temporary importation of a sample for advertising and/or demonstration purposes;
- food stuffs, beverages including alcohol, tobacco goods, except for temporary importation of a sample for advertising and/or demonstration purposes;
- industrial wastes; and
- goods prohibited for importation to the customs territory of the Republic of Kazakhstan.

In accordance with Article 190 of the Customs Code, the temporarily imported goods shall remain in their original state, except for changes due to natural wear or loss under normal conditions of haulage (transportation), storage and use (operation). Operations required to ensure their safety shall be allowed, including minor repairs, technical maintenance and other operations required to preserve goods in the proper state, provided conditions are created to ensure identification of goods by the customs authority upon re-export.

Article 191 of the Customs Code stipulates that the temporary imported goods fully exempted from customs duties include:

- A list of goods temporarily imported with full exemption from customs duties and taxes shall be formulated by the Government of the Republic of Kazakhstan (i.e. the list of goods approved by the Government Resolution No. 668 of 8 July 2003); and
- Objects being leased, which are included in the list approved by the Government of the Republic of Kazakhstan (i.e. the Government Resolution No. 1092 of 21 August 2001), shall be fully exempted from customs duties and taxes, provided that the requirements of the legislation of the Republic of Kazakhstan on financial leasing are complied with.

Other goods not included in the lists specified by Paragraphs 1 and 2 of this Article, shall be subject to partial exemption from customs duties and taxes. Goods, which are partially exempted from customs duties and taxes, shall be subject to fees for each full or partial calendar month of their stay on the customs territory of the Republic of Kazakhstan, equivalent to 3 per cent of the amount payable if goods were released into free circulation.

The time limit for temporary import of goods shall be established by the declarant in accordance with the purpose and circumstances of such import, and shall not exceed three years from the date that goods were imported onto the customs territory of the Republic of Kazakhstan, except in cases stipulated by the Customs Code.

The text of Chapter 23 of the Customs Code is available through document WT/ACC/KAZ/66/Add.1.

In conclusion, it should be noted that transit and trans-shipment of food and beverages, which are not allowed to be placed under the temporary importation customs regime, is not prohibited in Kazakhstan except for cases when their importation is not allowed on a temporary basis due to sanitarian and phytosanitarian reasons.

The Government Resolution No. 668 "List of Goods Temporarily Imported with Full Exemption from Customs Duties and Taxes and Temporarily Exported with Full Exemption from Customs Duties" of 8 July 2003 includes goods imported to and exported from Kazakhstan for demonstration at exhibitions, trade fairs, competitions, symposiums, seminars, international gatherings and other events of similar nature (except for demonstrations conducted at production/commercial venues with the purpose of further sale of imported/exported goods), as well as the auxiliary equipment and materials used for demonstration of goods at international meetings, conferences and congresses.

Hence, samples or products from trade shows are exempt from payment of customs duties and taxes.

Question 54

Paragraph 103: Please distinguish between normal customs practice, e.g., tariff exemptions for diplomatic imports, and those granted as a benefit for investment, export performance, or use of local content in manufacturing. Please list the authority to provide each of these types of exemptions.

Answer:

In accordance with Article 330 of the Customs Code of the Republic of Kazakhstan, goods imported and exported for official use by foreign diplomatic representative offices and by representative offices equated with them, and also for personal use by the diplomatic, administrative and technical staff of these representative offices, including family members living with them who are not citizens of the

Republic of Kazakhstan, are exempted from customs duties in compliance with international treaties signed by the Republic of Kazakhstan.

The procedure of customs administration of the abovementioned goods is provided in Chapter 36 Customs Code of the Republic of Kazakhstan "Conveyance of Goods by Individual Categories of Foreign Citizens". The text of Chapter 36 of the Customs Code is available through document WT/ACC/KAZ/66/Add.1.

In accordance with Article 330 of the Customs Code of the Republic of Kazakhstan, certain goods imported for implementation of investment projects as stipulated in the investment legislation of the Republic of Kazakhstan are exempted from customs duties.

Pursuant to the Law of the Republic of Kazakhstan No. 373-II "On Investments" of 8 January 2003, exemption from import customs duties represent one of the investment preferences. The preferences are given based on the contracts concluded between the authorized body, Committee on Investments under the Ministry of Industry and Trade, and a juridical person of the Republic of Kazakhstan, implementing an investment project.

Article 17 of the Law "On Investments" stipulates that customs duties exemptions are granted to equipment and components thereof imported for implementation of investment projects. Exemptions from customs duties are granted for the period not exceeding five years from the date of registration of the contract.

Pursuant to the Rules on Submission of Documents for Exemptions from Customs Duties and Fees approved by the Government Resolution No. 675 of 9 June 2003, the Investments Committee notifies the authorized body, the Customs Control Committee under the Ministry of Finance of the Republic of Kazakhstan about its decision of granting investment preferences. The notification document shall contain the following information: the name of investor, date and number of the contract, the list of equipment and components thereof as well as the period of validity of the investment preference.

The Customs Control Committee forwards the relevant information to the customs bodies where actual customs clearance and control on imported goods take place.

The investor for the purposes of exemptions from customs duties shall submit notarially certified copy of the investment contract.

Provision of investment preferences in the form of tax preferences or customs duty exemptions are not contingent upon export performance or use of local content in manufacturing.

- **Fees and charges for services rendered**

Question 55

Paragraph 108: We note information from Kazakhstan that it plans to bring its customs fees into conformity with Article VIII GATT. Could you give a state of play of this process? We stress that we would like to see the fees to be in conformity upon accession.

Answer:

According to paragraph 2 of Article 293 of the Customs Code of the Republic of Kazakhstan, the costs incurred by the customs bodies during the customs escort shall be used as the basis for determining fees for customs escort of goods.

In line with Article VIII of GATT 1994, the new Methodology for Calculations of Fees for Customs Escort of Goods has been developed by the Customs Committee under the Ministry of Finance of Kazakhstan. The Methodology is enclosed in Annex IV. The new Methodology excludes salaries of customs officials and includes the following expenses:

- travel allowance of customs officials carrying out the customs escort;
- cost of fuel used for transportation; and
- depreciation costs of vehicles used for customs escort.

Based on the new Methodology, on 24 March 2006, the Government has adopted Resolution No. 202 "On Amendments into the Resolution No. 669 'On Adoption of Rates of Customs Fees, Charges and Payments Levied by Customs Bodies'" of 8 July 2003, which establishes the fees for customs escort services in fixed amount (Euro) based on the travel distance.

The text of the Government Resolution is available through document WT/ACC/KAZ/66/Add.1.

Thus, fees for customs escort services are calculated based on the actual cost of services rendered and brought into full conformity with Article VIII of GATT 1994.

Question 56

When will the new customs fees be implemented?

Please explain how the MCI is established and calculated MCI. What is its relation to distance? If the MCI is established annually, does it accurately reflect the cost of services rendered? Is information on this publicly available?

We seek a commitment that Kazakhstan will administer its fees applied on and in connection with importation and exportation in conformity with WTO provisions, e.g., Article VIII of the GATT.

Answer:

According to paragraph 2 of Article 293 of the Customs Code of the Republic of Kazakhstan, the costs incurred by the customs bodies during the customs escort shall be used as the basis for determining fees for customs escort of goods.

In line with Article VIII of GATT 1994, the new Methodology for Calculations of Fees for Customs Escort of Goods has been developed by the Customs Control Committee under the Ministry of Finance of Kazakhstan. The Methodology is enclosed in Annex IV. The new Methodology excludes salaries of customs officials and includes the following expenses:

- travel allowance of customs officials carrying out the customs escort;
- cost of fuel used for transportation;
- depreciation costs of vehicles used for customs escort.

Based on the new Methodology, on 24 March 2006, the Government has adopted a Resolution No. 202 "On Amendments into the Resolution of the Republic of Kazakhstan No. 669 "On Adoption of Rates of Customs Fees, Charges and Payments Levied by Customs Bodies " of 8 July 2003, which establishes the fees for customs escort services in fixed amount (Euro) based on the travel distance.

The text of the Government Resolution is available through document WT/ACC/KAZ/66/Add.1.

Thus, fees for customs escort services are calculated based on the actual cost of services rendered and brought into full conformity with Article VIII of GATT 1994.

- **Application of internal taxes to imports**

- **VAT**

Question 57

Questions 52-53 in document WT/ACC/KAZ/57: When, precisely, will Kazakhstan apply the destination principle to all imports and all exports from all countries, and cease its practice of "offsetting" VAT taxes owed on certain imports from the Russian Federation?

Answer:

On 15 September 2004, Kazakhstan and Russia signed the Protocol on Amendments to the Agreement on the Principles of Collection of Indirect Taxes in Mutual Trade. According to the Protocol, the "country of destination" principle was introduced for collection of indirect taxes in importation/exportation of all goods irrespective of the country of origin or destination.

This Protocol was ratified by the Law of the Republic of Kazakhstan No. 16-III of 22 December 2004 and entered into force as of 1 February 2005.

Therefore, as of 1 February 2005, all imports are subject to a 15 per cent VAT rate, irrespective of the country of origin, including imports of oil, gas condensate and natural gas from the Russian Federation. Pursuant to Article 222 of the Tax Code, all exported goods were subject to zero rate VAT.

Question 58

Paragraph 113: We require a more detailed examination of the exemption of agricultural sales from the VAT. This is not the same thing as profit or income tax exemptions, as it is a tax on goods that is being reduced. The exemption of domestic agricultural sales from VAT without providing "no less favourable" treatment on similar imported goods is a violation of Article III of the GATT. We seek further information to clarify this issue.

Answer:

The Tax Code sets the uniform VAT rate at 15 per cent to all taxable items, including turnover of locally produced and imported goods. The tax preferences for producers of agricultural products represent the reduction of the aggregate amount due to the state budget calculated on the basis of the group of taxes.

The Tax Code of the Republic of Kazakhstan stipulates that producers of primary agricultural products may qualify for two preferential taxation options granted depending on the form of ownership:

- Special tax regime for juridical persons-producers of primary agricultural products; and
- Special tax regime for farmers.

1. Special tax regime for juridical persons-producers of primary agricultural products

Special tax regime for juridical persons-producers of primary agricultural products provides for a special procedure on the basis of patents.

Patent includes the corporate income tax, social tax, land tax, property tax, vehicle tax, and value added tax (if the tax payer has been registered as a VAT payer).

The amount of tax and payment due to the state budget is reduced by 80 per cent.

As regards to VAT itself included into the patent, the VAT payable to budget shall be determined as the difference between VAT charged and VAT paid for inputs. Consequently, the preferential regime extends only to the reduction of VAT amount payable to the state budget by agricultural producers. Whereas, the price of agricultural goods sold increases for the amount calculated on the basis of 15 per cent VAT rate, which is paid by consumers. Hence, the sales of agricultural products are not exempted from VAT payment, in accordance with Article III of the GATT.

2. Special tax regime for farmers-small business entities

Special tax regime for farmers-small business entities consists of the single land tax. The single land tax applies to farmers producing agricultural goods or processing agricultural products of their own production, except for production, processing and sale of products subject to excise tax.

The single land tax replaces the following taxes:

- individual income tax;
- VAT;
- land tax and/or payment for the use of land plots;
- vehicle tax; and
- property tax.

The single land tax shall be calculated at 0.1 per cent to the specifically assessed value of the land plot.

It should be noted that farmers:

- do not have the status of juridical persons and operate as individual or family-based entrepreneurs;
- are considered as small business entities and have no sufficient resources and professional capacity to meet complicated tax accounting and reporting requirements; and
- usually, have turnover from their own production less than 15,000 MCIs for any 12 month period and, therefore, do not have to register as VAT payers.

All goods sold on the territory of Kazakhstan, including equally domestically produced goods and imported goods, are subject to 15 per cent VAT regardless of whether they are consumed immediately or purchased for further processing. The only exemption is for enterprises whose turnover do not exceed the level of non-payable minimal turnover.

The Tax Code stipulates that a taxpayer must register as a VAT payer when the volume of its turnover for any 12 month period exceeds the minimal threshold defined by the legislation in the amount of 15,000 MCIs. This provision is based on the world-wide applied practice on non-imposed minimal turnover.

The Tax Code does not provide VAT exemptions for consumers, including food processing enterprises purchasing primary agricultural products from such juridical persons-agricultural producers and farmers. Although, the VAT amount included into the patent is reduced by 80 per cent, it does not reduce the actual cost of agricultural products.

The taxation system of Kazakhstan provides for the payment of the entire VAT amount by the ultimate consumer, which is distributed among producers and resellers proportionally to the amount of added value.

The special tax regime is applicable only to producers of agricultural products and are not available for resellers. Also the tax regime for farmers complies with the widely accepted practice for small business entities and does not contradict Article III GATT.

- **Excise Tax**

Question 59

Paragraphs 117 and 118: Could Kazakhstan give the state of play as regards the process of eliminating discriminatory excise taxes concerning domestic and imported products as regards alcohol, tobacco, automobiles, gasoline and diesel fuel?

We would like to see the differential excise taxes to be eliminated upon accession and would like to see Kazakhstan to make the commitment indicated in paragraph 118.

Answer:

The Government of the Republic of Kazakhstan envisages unification of excise tax rates for domestic and imported goods in two stages.

In the first stage, the Government Resolution No. 1035 "On Amendments to the Resolution of the Government of the Republic of Kazakhstan No. 137 of 28 January 2000" has been adopted on 15 October 2005. The Resolution established as of 1 January 2006 increased excise tax rates for domestically produced alcohol beverages and tobacco products.

In particular, excise taxes were increased in the following way:

- from KZT 180 to KZT 230 per 1,000 pieces for tobacco products with filter;
- from KZT 100 to KZT 130 per 1,000 pieces of other tobacco products;
- from KZT 3 to KZT 40 per litre for spirit used for production of alcoholic beverages; and
- from KZT 125 to KZT 250 per litre of 100 per cent spirit in alcoholic beverages (except cognac, brandy, wine beverages, wines, champagne, sparkling wine and beer).

The text of the Government Resolution is available through document WT/ACC/KAZ/66/Add.1.

The full unification of excise taxes is planned to be completed by 1 January 2007.

In addition, the Government developed a draft Resolution, which establishes excise tax rates on domestically produced smocking, chewing, smelling and other tobacco, except for tobacco used for production of tobacco products, at the rate of KZT 825 per kg. These domestically produced tobacco products currently are not subject to excise taxes, while their imported analogues are imposed € 5 per kg.

Question 60

Question 56 of WT/ACC/KAZ/57: Please confirm that the reform of Kazakhstan's excise tax regime will be completed prior to finalization of the terms of accession, i.e., prior to Council approval of the accession. The response to this question appears to indicate that Kazakhstan doesn't intend to even initiate action to revise current discriminatory excise taxes until after "the moment of Kazakhstan's accession."

This section needs a commitment that specifies precisely what changes will be made and when to bring Kazakhstan's tax regime into WTO conformity prior to accession.

Answer:

The Government of the Republic of Kazakhstan envisages unification of excise tax rates for domestic and imported goods in two stages.

In the first stage, the Government Resolution No. 1035 "On Amendments to the Resolution of the Government of the Republic of Kazakhstan No. 137 of 28 January 2000" has been adopted on 15 October 2005. The Resolution established as of 1 January 2006 increased excise tax rates for domestically produced alcohol beverages and tobacco products.

In particular, excise taxes were increased in the following way:

- from KZT 180 to KZT 230 per 1,000 pieces for tobacco products with filter;
- from KZT 100 to KZT 130 per 1,000 pieces of other tobacco products;
- from KZT 3 to KZT 40 per litre for spirit used for production of alcoholic beverages; and
- from KZT 125 to KZT 250 per litre of 100 per cent spirit in alcoholic beverages (except cognac, brandy, wine beverages, wines, champagne, sparkling wine and beer).

The text of the Government Resolution is available through document WT/ACC/KAZ/66/Add.1.

The full unification of excise taxes is planned to be completed by 1 January 2007.

In addition, the Government developed a draft Resolution, which establishes excise tax rates on domestically produced smoking, chewing, smelling and other tobacco, except for tobacco used for production of tobacco products, at the rate of KZT 825 per kg. These domestically produced tobacco products currently are not subject to excise taxes, while their imported analogues are imposed € 5 per kg.

Question 61

Paragraph 118: We appreciate the commitment. It should be expanded to include reference to the VAT.

Answer:

Kazakhstan confirms that the value added tax is charged based on a non-discriminatory principle regardless of the country of origin.

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

Question 62

We appreciate Kazakhstan's commitment in Paragraph 120 not to apply quotas. This needs to be expanded, however, to include all forms of non-tariff restriction, as provided for in Article XI of the GATT.

Answer:

[(Kazakhstan confirms that Kazakhstan will eliminate and not introduce, re-introduce or apply quantitative restrictions on imports or other non-tariff measures, such as quotas, bans and other restrictions having equivalent effect that could [contradict provisions] of the WTO Agreements, including Article XI GATT 1994.)]

- **Import Licensing**

Question 63

Paragraph 122: We welcome information from Kazakhstan that it plans to bring its import/export licensing fees into full conformity with Article VIII GATT. What is the timetable foreseen for this?

Answer:

In order to bring import/export licensing fees into full conformity with Article VIII of GATT, the "Methodology for Calculation of Import/Export Licensing Fees and Fees for State Registration of Juridical Persons" has been approved by the Order No. 105 of the Ministry of Economy and Budget Planning of 27 August 2005. According to this Methodology, calculation of import/export licensing fees are based on the actual cost of services rendered for processing of applications and excludes travel expenses within the country. The new Methodology includes "purchase of other goods", which is comprised of the cost of stationery, stamps, registration journals, etc.

On 31 December 2005, the Government of the Republic of Kazakhstan has adopted a Resolution No. 1334 "On Amendments to the Resolution of the Government of the Republic of Kazakhstan No. 100 "On Approval of Licensing Fee Rates for the Right to Perform Certain Types of Activities" of 24 January 2002". In accordance with the Resolution, import/export licensing fees have been introduced in fixed amounts instead of the amount of Monthly Calculation Indices (MCI). The fixed fee rates are based on the actual costs of services related to issuing and re-issuing of licenses for export/import of goods (works, services), and issuing of duplicates.

The text of the Government Resolution is available through document WT/ACC/KAZ/66/Add.1.

The text of the Methodology is enclosed in Annex II.

Question 64

This section still requires work.

We note the improvement that Kazakhstan has made in the import licensing section from the Factual Summary to the Draft Working Party Report. At the same time though, much work remains to be done.

We remain very concerned about the breadth of coverage and the fact that all of the licenses are issued on a non-automatic basis as defined by the Agreement on Import Licensing Procedures. A lot of this is hidden away in Annex 9.

We also request the Kazakhstan provide HS numbers in Annex 9 for all goods subject to licensing and provide more details on the licensing of IT products with encryption software.

Please list all goods for which an activity licence is required to obtain an import licence.

Answer:

In accordance with paragraph 5 of the Rules on Import-Export Licensing of Goods (Services and Works) in the Republic of Kazakhstan approved by the Government Resolution No. 1037 of 30 June 1997, in order to obtain an import licence from the authorized body, the applicant *inter alia* has to submit the following documents:

- an activity licence issued by the authorized state body for certain types of activities; and
- a permission from the Government of the Republic of Kazakhstan or the authorized state body for certain goods listed in Annex 2-5 to the Government Resolution No. 1037.

Import licence for armament and military equipment, and special components for their production shall be issued by the Industry and Scientific and Technical Development Committee under the Ministry of Industry and Trade of the Republic of Kazakhstan based on the following:

- permission of the Government of the Republic of Kazakhstan;
- activity licence issued by the Industry and Scientific and Technical Development Committee under the Ministry of Industry and Trade of the Republic of Kazakhstan for sale of weapons and ammunition to it, military equipment, spare parts, components and appliances to them, if they are not used in other industries;
- expertise of authorized state bodies in the field of sanitary and epidemiological control; and
- expertise of authorized state bodies in the field of environmental protection.

Import licence for nuclear materials, technologies, equipment and settlements, special non nuclear materials, sources of active radiation, including radioactive waste products shall be issued by the Industry and Scientific and Technical Development Committee under the Ministry of Industry and Trade based on the following:

- permission of the Government of the Republic of Kazakhstan; and
- activity licence issued by the Atomic Energy Committee under the Ministry of Energy and Mineral Resources of the Republic of Kazakhstan for importation of nuclear materials, technology and equipment, special non nuclear materials; double purpose goods, technologies and equipment, source of ionizing radiation, radioactive substances.

Information on the necessity to obtain an activity licence as well as the an expertise of sanitary, ecological, mining and technical inspection bodies and State Energy Inspection (Gosenrgonadzor) is given in the table below. The permission of the Government of the Republic of Kazakhstan for importation of the goods listed in the table below is not required.

HS Number	Goods	Authorized Body issuing an Import Licence	Type of activity subject to licensing	Authorized Body issuing an Activity Licence	Expertise of relevant bodies
9022	X-ray equipment, devices and equipments with use of radioactive substances and isotopes.	Industry and Scientific and Technical Development Committee under the Ministry of Industry and Trade of the Republic of Kazakhstan	Sale of X-ray equipment, devices and equipment using of radioactive substances and isotopes.	Atomic Energy Committee under the Ministry of Energy and Mineral Resources of the Republic of Kazakhstan	Expertise of state bodies in the field of sanitary and epidemiological control is required
According to list confirmed by the Government of the Republic of Kazakhstan	Poison	Industry and Scientific and Technical Development Committee under the Ministry of Industry and Trade of the Republic of Kazakhstan	Sale of poison according to list confirmed by the Government of the Republic of Kazakhstan	Industry and Scientific and Technical Development Committee under the Ministry of Industry and Trade of the Republic of Kazakhstan	Expertise of state bodies in the field of sanitary and epidemiological control, environment protection and industrial safety is required.
8471 (only figure typed techniques) 847330 (only for figure typed techniques) 854390900 (only for figure typed techniques)	Cryptographic means* (including cryptographic techniques, components for cryptographic techniques and programme packets for cryptographic code)	Industry and Scientific and Technical Development Committee under the Ministry of Industry and Trade of the Republic of Kazakhstan	Sale of cryptography means of the information's protection	National Security Committee of the Republic of Kazakhstan	Expertise of state bodies in the field of sanitary and epidemiological control and environment protection is required.
360100000 (except for the gunpowder) 360200000, 360300, 3604	Gunpowder, explosives, means of exploding and pyrotechnics	Industry and Scientific and Technical Development Committee under the Ministry of Industry and Trade of the Republic of Kazakhstan	1. Trade of explosives and pyrotechnics and devices using them, (except for civil pyrotechnics and devices using them) 2. Trade of civil pyrotechnics and devices using them	Industry and Scientific and Technical Development Committee under the Ministry of Industry and Trade of the Republic of Kazakhstan Ministry of Internal Affairs of the Republic of Kazakhstan	Expertise of state bodies in the field of sanitary and epidemiological control and environment protection is required.
According to list confirmed by the Government of the Republic of Kazakhstan	Official and civil arms	Industry and Scientific and Technical Development Committee under the Ministry of Industry and Trade of the Republic of Kazakhstan	Trade of fire-arms, civil and official arms and their cartridges	Ministry of Internal Affairs of the Republic of Kazakhstan	Not required
According to list confirmed by the Government of the Republic of Kazakhstan	Means of protection from fighting toxic substances, its parts and accessories.	Industry and Scientific and Technical Development Committee under the Ministry of Industry and Trade of the Republic of Kazakhstan	Not required	-	Expertise of state bodies in the field of sanitary and epidemiological control and environment protection is required.

HS Number	Goods	Authorized Body issuing an Import Licence	Type of activity subject to licensing	Authorized Body issuing an Activity Licence	Expertise of relevant bodies
3808 (only preparations for plant protection)	Chemical means of plants protection	Industry and Scientific and Technical Development Committee under the Ministry of Industry and Trade of the Republic of Kazakhstan	Sale of pesticides	Ministry of Agriculture of the Republic of Kazakhstan	Expertise of state bodies in the field of sanitary and epidemiological welfare is required
261800000-2620, 3915	Industrial wastes	Industry and Scientific and Technical Development Committee under the Ministry of Industry and Trade of the Republic of Kazakhstan	1. Import in the Republic of Kazakhstan ozone-destructing substances and products containing such substances. 2. Trans-border transportation of hazardous industrial wastes of the 1-3 class of danger.	Ministry of Environmental Protection of the Republic of Kazakhstan	Expertise of state bodies in the field of sanitary and epidemiological control is required
2207	Ethyl alcohol	Tax Committee under the Ministry of Finance of the Republic of Kazakhstan	Production of alcoholic beverages	Tax Committee under the Ministry of Finance of the Republic of Kazakhstan	Expertise of state bodies in the field of sanitary and epidemiological control and environment protection is required.
2204, 2205, 2206	Alcoholic beverages (excluding beer)	Tax Committee under the Ministry of Finance of the Republic of Kazakhstan	Production of alcoholic beverages or Storage and wholesale sale of alcoholic beverages (except for beer)	Tax Committee under the Ministry of Finance of the Republic of Kazakhstan	Expertise of state bodies in the field of sanitary and epidemiological control and environment protection is required.
121190800	Opium raw materials (medicinal herbs)	Industry and Scientific and Technical Development Committee under the Ministry of Industry and Trade of the Republic of Kazakhstan	Import and export of drugs, psychoactive substances, precursors	Ministry of Internal Affairs of the Republic of Kazakhstan	Not required

HS Number	Goods	Authorized Body issuing an Import Licence	Type of activity subject to licensing	Authorized Body issuing an Activity Licence	Expertise of relevant bodies
830170000, 847130000, 847141900, 847149900, 847150900, 847330100, 851750, 851780900, 851810, 851840, 851850900, 852032, 852033, 852090900, 8521, 8525, 8526, 8527 854389900, 900219000, 900580000, 9013, 901910900, 9006, 902219000, 902229000, (only special technical devices, devices of information defence and other techniques of double application)	Special technical devices intended for special operative- investigation activity, means of information protection, other techniques of double purpose	Industry and Scientific and Technical Development Committee under the Ministry of Industry and Trade of the Republic of Kazakhstan	Sale of Special technical devices intended for special operative- investigation activity	National Security Committee of the Republic of Kazakhstan	Expertise of state bodies in the field of sanitary and epidemiological control and environment protection is required.

Note: Please, see the Annex V for additional clarifications on the item "Cryptographic means".

In accordance with Article 28 of the Law of the Republic of Kazakhstan No. 522-I "On Pharmaceuticals" of 13 January 2004, import of pharmaceuticals without state registration to the territory of the Republic of Kazakhstan is not permitted. Import of pharmaceuticals to the territory of the Republic of Kazakhstan can be performed by:

- local producers with the activity licence for the production of pharmaceuticals;
- juridical or natural persons with the activity licence for the wholesale sale of medicines;
- research and development organizations, laboratories for preparation and state registration of pharmaceuticals hereunder; and
- foreign producers of pharmaceuticals, their duly authorized representative offices or representatives in form of juridical or natural persons for conducting clinical research and/or tests as well as for participation at exhibitions of pharmaceutical products in the Republic of Kazakhstan.

In accordance with to Article 9 of the Law of the Republic of Kazakhstan No. 2200 "On Licensing" of 17 April 1995 and the Resolution of the Government No. 1624 "On Approval of Rules for Licensing of Activities Related to Production and Sale of Pharmaceuticals" of 28 October 2000, the following activities related to pharmaceuticals require licensing:

- (i) production of pharmaceuticals:
 - industrial production; and
 - production in pharmaceutical stores.
- (ii) sale of pharmaceuticals:
 - wholesale; and
 - retail.

The Committee on Pharmacy under the Ministry of Healthcare of the Republic of Kazakhstan is the body responsible for issuing activity licenses for production of pharmaceuticals.

Local executive bodies shall issue the activity licence for wholesale pharmaceuticals.

With the purpose to prevent import of non-registered pharmaceuticals to the territory of the Republic of Kazakhstan, the Instructions on Coordination of Import and Export of Pharmaceuticals, Medical Equipment, Products for Medical Purposes and Para pharmaceuticals was adopted by the Order of the Acting Minister of Healthcare of the Republic of Kazakhstan No. 885 of 22 December 2004.

In accordance with the Instructions, the Pharmacy Committee under the Ministry of Healthcare of the Republic of Kazakhstan shall submit to the Customs Control Committee under the Ministry of Finance a letter of approval for export and import of pharmaceuticals, Para pharmaceuticals, medical equipment and products for medical purposes.

In order to obtain a letter of approval for export and import of pharmaceuticals an applicant shall submit the following documents to the Pharmacy Committee:

- application for issuance of a letter of approval for export and import of pharmaceuticals;
- a copy of the activity licence for production or wholesale of pharmaceuticals in a special form sheet signed and sealed by an applicant;

- a copy of the licence for activities related to the circulation of narcotic substances, psychotropic substances and precursors, in case of import or export of pharmaceuticals, containing narcotic substances, psychotropic substances and precursors;
- a copy of the sales contract (agreement) or any other agreement of alienation between the participants of foreign trade transaction with specification, identification of a producing company and country of origin, medical equipment and products for medical purposes as well as the original contract for their identification;
- a copy of a state registration certificate (for juridical persons);
- an original letter of permit from the manufacturing company or its representative office in the Republic of Kazakhstan for importation of pharmaceuticals from the territory of a third country with translation to State and Russian languages and registration certificate in case of absence of a direct contract with a producer or a company which holds the registration certificate; and
- list of the submitted documents.

In accordance with Article 12 of Law of the Republic of Kazakhstan No. 279-I "On Narcotic Substances, Psychotropic Substances, Precursors and Measures against their Illegal Circulation and Abuse" of 10 July 1998, import and export of narcotic substances, psychotropic substances and precursors to/from the territory of the Republic of Kazakhstan shall be performed by juridical persons holding an activity licence.

In accordance with Article 9 of the Law of the Republic of Kazakhstan No. 2200 "On Licensing" of 17 April 1995, and the Resolution of the Government of the Republic of Kazakhstan No. 1693 "On Approval of Rules for State Control on Circulation of Narcotic Substances, Psychotropic Substances and Precursors in the Republic of Kazakhstan" of 10 November 2000, all types of activities related to circulation of narcotic substances, psychotropic substances and precursors shall be subject to licensing.

Licenses for the specified types of activities shall be issued by the Ministry of Internal Affairs of the Republic of Kazakhstan.

Import and export of narcotic substances, psychotropic substances and precursors through crossing state and customs frontiers shall be performed upon demonstration of an activity licence and certificate issued in accordance with the legislation of the Republic of Kazakhstan.

Upon exportation of narcotic substances, psychotropic substances and precursors, a notarized copy of an activity licence shall be enclosed to each parcel of cargo and directed to the government of the importing country.

Exportation and importation of narcotic substances, psychotropic substances and precursors from/to the territory of the Republic of Kazakhstan shall be performed via exchange of import and export certificates between importers and exporters of narcotic substances, psychotropic substances and precursors with a sign on the export certificate stating about arrival of a parcel of goods and completion of export and import operations.

Question 65

Please outline requirements to obtain an activity licence that differ from those to obtain an import licence.

Answer:

In accordance with Article 15 of Law of the Republic of Kazakhstan No. 2200 "On Licensing" of 17 April 1995, the licence for activities subject to licensing shall be given to an entity with a qualification level being correspondent with the raised requirements for this type of activity.

The qualification requirements to types of activity subject to licensing are approved by the Government Resolution of the Republic of Kazakhstan.

The list of types of activity subject to licensing on which the expert opinions of state bodies in the field of sanitary and epidemiological welfare, environment protection and state energy control are required, is approved by the Government Resolution of the Republic of Kazakhstan No. 1894 "On Implementation of the Law of the Republic of Kazakhstan "On Licensing" of 29 December 1995".

Conditions of production, ensuring safety of people, environment, life and health of people, as well as guarantee of quality of produced goods, performed works and rendered services shall be taken into account under licence issuing.

Correspondence of an entity (applicant and/or licensee) with qualification requirements can be established based on the independent examination, conducted by juridical or natural entities accredited in the established procedure.

In accordance with Article 16 of the Law of the Republic of Kazakhstan "On Licensing", in order to obtain an activity licence from the relevant Ministry the applicant has to submit the following documents:

- an application in the specified form;
- documents proving compliance of an applicant to the qualification requirements, established for the corresponding type of licensed activity. Such documents shall be given by the specialized state institution;
- the copy of a certificate of state registration (for juridical persons); and
- confirmation for the payment of the licence fee.

Legislative acts on certain types of activities subject to licensing can establish additional and special requirements to the list of documents.

For example, in order to a licence for the production of alcoholic beverages the applicant has additionally to submit the following documents:

- expertise of authorized state bodies in the field of sanitary and epidemiological control;
- expertise of authorized state bodies in the field of ecological safety;
- expertise of authorized state bodies in the field of fire protection; and
- documents proving the ownership right of the applicant for permanent production premises and equipment.

In accordance with the Rules on Import-Export Licensing of Goods (Services and Works) in the Republic of Kazakhstan approved by the Government Resolution No. 1037 of 30 June 1997, in order to obtain an import licence from the relevant Ministry the applicant has to submit the following documents:

- an application in the specified form;
- a copy of the purchase/sale agreement between traders, along with an original copy for verification;

- a copy of a contract between exporter/manufacturer or importer/consumer if the application was filed by a middleman;
- a certificate of state registration;
- confirmation for the payment of the licence fee;
- an activity licence issued by the authorized state body for certain types of activities;
- a permission from the Government of the Republic of Kazakhstan or the authorized state body for certain goods listed in Annex 2-5 to the Government Resolution No. 1037; and
- a list of submitted documents.

Question 66

Question 63: According to this answer, the licence holder needs to have a licence to produce alcoholic beverages. This remains inconsistent with the establishment of trading rights. Please explain how Kazakhstan plans on bringing this into compliance.

We do not believe that Kazakhstan's characterization of its licensing requirements as "automatic" is accurate, in that the "permission of the Government of the Republic of Kazakhstan or the relevant authorized state body on the separate types of goods" clearly requires review and discretion.

The response to Question 62 is evasive. Please demonstrate how the provisions of the Import Licensing Agreement, e.g., in terms of due process, transparency, timelines, etc., are contained in Government Resolution No. 1037 "On licensing export and import of goods and services in the Republic of Kazakhstan" of 30 June 1997 or some other provision of law.

Answer:

In accordance with Article 10 of the Law of the Republic of Kazakhstan No. 429-1 "On State Regulating of Production and Turnover of Ethyl Spirit and Alcoholic Beverages" of 16 July 16 1999:

- Licence for importation of ethyl alcohol could be obtained provided that there is an activity licence for production of alcoholic beverages, where ethyl alcohol is used as a component;
- Licence for importation of wine material could be obtained provided that there is an activity licence for production of alcoholic beverages, where wine material is used as a component; and
- Licence for importation of alcoholic beverages could be obtained provided that there is an activity licence activity either for production of alcoholic beverages or for storage and wholesale of alcoholic beverages (excluding beer).

Taking into account that ethyl spirit used by companies of Kazakhstan for pharmaceutical, medical and technical purposes is supplied by domestic producers, ethyl spirit is imported solely for production of alcoholic beverages.

Elimination of a requirement for activity licence for production of alcoholic beverages in order to import ethyl spirit and wine material could result in disappearance of imported products in the illegal so-called "grey" market. In its turn, this may cause negative consequences for the health of population and non-payment of taxes imposed on alcoholic beverages produced using imported ethyl spirit and wine materials. Hence, the Government of Kazakhstan intends to maintain the currently applied regulation for importation of ethyl spirit and wine materials.

As for importation of alcoholic beverages, the Government of Kazakhstan is planning to introduce amendments into the Law "On State Regulating of Production and Turnover of Ethyl Spirit and

Alcoholic Beverages", according to which in order to obtain a licence for importation of alcoholic beverages:

- residents shall have an activity licence for either for production or for storage and wholesale of alcoholic beverages (excluding beer); and
- non-residents shall have a contract with a juridical person of the Republic of Kazakhstan, which holds an activity licence for either for production or for storage and wholesale of alcoholic beverages (excluding beer).

In accordance with the Government Resolution No. 1031 " On Import Licensing of Ethyl Spirit and Alcoholic Beverages in the Republic of Kazakhstan" of 27 June 1997, an activity licence is not required to obtain a licence for importation of beer.

Question 67

Paragraph 122: Kazakhstan states that import licenses are issued within ten days for small businesses and 30 days for other legal entities. Article 2 of the WTO Agreement on Import Licensing Procedures requires that automatic licenses be issued on the same working day where practicable and no longer than ten days. The fact that the issuance of licenses for legal entities can take up to 30 days makes the Kazakh licensing system de facto non-automatic. In paragraph 124, Kazakhstan states that its import licensing system is automatic in nature.

Please explain how this can be so in light of the extended time it takes to issue a licence. We would appreciate if Kazakhstan could provide a detailed work plan on how it plans to convert to an automatic licensing system.

Answer:

The draft Law of the Republic of Kazakhstan "On Licensing" has been submitted to the Parliament of the Republic of Kazakhstan.

Draft Law is called to improve and simplify the application of licensing in Kazakhstan through introduction of "a single entry" principle and ensuring transparency of the licensing procedure.

In order to comply with the WTO Agreement on Import Licensing Procedures, the draft Law introduced the concept of "automatic licensing" as a measure aimed at monitoring the export-import trade flow through issuing automatic licenses.

The Article 48 "On Automatic Licensing of Importation of Certain Goods" of the draft Law stipulates the following:

- Automatic licensing is defined as import licensing where approval of application is granted in all cases;
- At that, any person, company or institution meeting the requirements to carry out import operations has the right to apply and obtain an import licence;
- Automatic licensing procedures shall not be administered in such a way as to have restricting effects on imports of goods subject to automatic licensing;
- Any person, firm or institution which fulfils the legal requirements for engaging in importation of goods subject to automatic licensing is eligible to apply for and to obtain import licenses;
- Applications for licenses may be submitted on any working day prior to the customs clearance of goods; and

- Applications for licenses when submitted in appropriate and complete form shall be approved immediately upon the receipt, if possible, and import licenses shall be issued within maximum of ten working days.

The list of goods subject to automatic import licensing will be determined by the Resolution of the Government of the Republic of Kazakhstan upon the adoption of the draft Law "On Licensing".

Question 68

Paragraph 123: We again commend Kazakhstan for committing to bring its fees into conformity with WTO requirements. However, we have serious concerns about the new methodology that Kazakhstan. These concerns are the same as the ones we raised regarding the calculation of registration fees.

Please provide further explanation how the licensing fee is based on the cost of services rendered and the basis for including costs such as the "purchase of other goods" and "national business trips."

Answer:

In order to bring registration fees for juridical persons into full conformity with Article VIII of GATT 1994, the "Methodology for Calculation of Import/Export Licensing Fees and Fees for State Registration of Juridical Persons" has been approved by the Order No. 105 of the Ministry of Economy and Budget Planning of 27 August 2005.

According to the new Methodology, calculation of fees for registration of juridical persons are based on the actual cost of services rendered for processing of applications and excludes travel expenses within the country. The new Methodology includes "purchase of other goods", which is comprised of the cost of stationery, stamps, registration journals, etc.

On 31 December 2005, the Government of the Republic of Kazakhstan has adopted a Resolution No. 1334 "On Amendments to the Resolution of the Government of the Republic of Kazakhstan No. 100 'On Approval of Licensing Fee Rates for the Right to Perform Certain Types of Activities' of 24 January 2002". According to the Resolution, licensing fee rates for exportation and importation of goods (works, services), issuing a duplicate of licenses and re-registration of licenses for exportation and importation of goods (works, services) have been introduced in fixed terms and based on the actual costs of services rendered by the authorized body.

The text of the Government Resolution is available through document WT/ACC/KAZ/66/Add.1.

The text of the Methodology is enclosed in Annex II.

- Customs valuation

Question 69

Paragraphs 127-137: Could Kazakhstan submit a copy of the draft law "On Changes and Amendments and Additions to the Customs Code of the Republic of Kazakhstan" as soon as available.

Answer:

The text of Law No. 62-III "On Amendments and Addenda to the Customs Code of the Republic of Kazakhstan" of 20 June 2005 is available through document WT/ACC/KAZ/66/Add.1.

Question 70

We note the general improvement in Kazakhstan's implementation of legislation concerning customs valuation.

We have a few additional questions to provide, in writing.

We seek response to the following unanswered questions from November:

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

Answer:

1. On the right of appeal

According to Article 493 of the Customs Code of the Republic of Kazakhstan, any person as well as his/her representatives shall have a right to appeal either to customs authorities, including the higher customs authority or the authorized body on customs issues, and/or the court, the decision, action (or failure to act) of the customs authority, if such decision and/or action (or failure to act) violates the rights and interests of the person, impedes exercising the rights or illegally imposes any obligation.

Submission of the complaint to the court shall withhold execution of the decision made on the complaint.

Complaint against the decision, action (or failure to act) of the customs officer shall be submitted to the relevant customs body or to the higher customs authority. Complaint against the decision, action (or failure to act) of the customs authority shall be submitted to the higher customs authority or to the authorized body on customs issues.

Complaint against the decision, action (or failure to act) of the customs authority and customs officer can be submitted within the term of one year:

- from the day when a person revealed infringement of his rights in customs sphere, creation of impediments for exercising of such rights or imposition of any obligation not stipulated by the customs legislation of the Republic of Kazakhstan; and
- from the expiry date of the established period for decision making by the customs authority or customs officer as stipulated in the customs legislation of the Republic of Kazakhstan.

Complaint against notification of the customs authority on enforcement of debts and fines shall be submitted within the term of 10 days. If due to valid reasons the person failed to submit the complaint within the established term, upon his/her written request, the deadline could be extended judicially.

The complaint shall be submitted in written form. Submission of a complaint shall not withhold execution of the appealed decisions, action (or failure to act) of the customs authority and/or customs officer, except for the following cases:

- when the higher customs authority or the authorized body on customs issues, examining complaint, has sufficient grounds to believe, that the appealed decision, action (or failure to act) of the customs body and/or customs officer do not comply with the customs legislation of the Republic of Kazakhstan; and
- appeal of notification on enforcement of debts and fines.

Complaint against the decision, action (or failure to act) of the customs authority shall be examined by higher customs authority or authorized body on customs issues. Complaint against the decision, action (or failure to act) of the customs officer shall be examined by the relevant customs authority or by the higher customs authority. Complaint against the decision, action (or failure to act) of the head of customs authority shall be examined by the higher customs authority or authorized body on customs issues. On behalf of the customs authority, the decision on the complaint shall be made by the head of the given customs authority or his/her deputy.

Complaint shall be examined and the decision shall be taken within the term not exceeding 15 days from the date of registration of a complaint, excluding complaints, requiring further study and/or verification, which shall be examined within the term of one month from the date of its registration.

In accordance with Article 503 of the Customs Code, decision, action (or failure to act) of the customs body or customs officer can be examined using simplified procedure in cases when the value of the goods and vehicles in question do not exceed one hundred monthly calculation indices (MCI). Simplified procedure represents submission of a written complain to the head of the customs authority. Complaint subject to simplified procedure shall be examined immediately and the decision shall be taken within the one day. The examination of the complaint and the decision made using simplified procedure shall not prevent submission of complaint in the order and terms stipulated in the Customs Code.

2. On transparency

Pursuant to Article 30 of the Customs Code, publication of regulatory legal documents in the customs sphere shall be made through official publication by the authorised body in periodicals in the order established by the Law of the Republic of Kazakhstan "On Regulatory Legal Acts".

Public informing in the customs sphere shall also be made using verbal guidelines and announcements, information desks, leaflets and other printed documents as well as via video, audio and other technical means in the following places:

- customs points at the border of the republic of Kazakhstan;
- airports, railway and automobile stations, maritime ports;
- on the boards of motor transports, air and maritime vessels conducting international shipments; and
- customs control zones determined by the Customs Code and other places determined by the customs authorities.

Customs authorities shall provide free access for participants of foreign trade operations and other foreign economic activities to regulatory legal documents, administrative decisions on customs related issues, including orders of the customs authorities, except for confidential information.

The information shall be published in the official web-site of the Customs Control Committee under the Ministry of Finance of the Republic of Kazakhstan www.customs.kz, and also in magazines and newspapers (such as: "Official Gazette", "Zan", "Keden", "Customs Bulletin").

Furthermore, in accordance with Article 32 of the Customs Code, customs officials are legally accountable for provision of accurate and relevant information. They shall be penalized in the order established by Article 84 of the Customs Code for provision of incomplete and misleading information or failure to provide information on customs related issues.

In accordance with Article 18 of the Customs Code of the Republic of Kazakhstan, the customs authorized body is entitled to involve participants of foreign trade operations and other foreign economic activities, public associations and all other interested parties into the process of development of legal acts regulating the customs sphere. For example, large number of participants of foreign economic activities, including business-associations, commerce and industry chambers and other business communities of Kazakhstan actively participated in development of the Customs Code of the Republic of Kazakhstan.

The draft Law of the Republic of Kazakhstan "On Amendments and Addenda to the Customs Code of the Republic of Kazakhstan" was published on the web-site of the Customs Control Committee prior to its enactment.

(Please also see Answer to Question 134).

3. On Surety bond (warranty) provisions

In accordance with Article 321 of the Customs Code of Kazakhstan "On Conditional Release of Goods with Use of Information on Prices Available to Customs Authorities", when it is impossible to use the method for determining customs value based on the transaction value of imported goods, due to absence of documents confirming the customs value, and when it is necessary to clarify the customs value declared by the declarant, the customs authority shall be entitled to conditionally release the goods, provided that the customs duties and taxes are secured in compliance with the customs valuation of goods performed by the customs authority, based on information on prices which is available to the customs authority.

The information on prices, which is available to the customs authorities, shall be generated by the authorized body on customs issues with use of statistical data that is contained in the customs cargo declaration, which was formulated on the basis of reliable, quantifiable and documentarily confirmed information.

The period of validity for the deposited amount of customs duties and taxes shall be sixty calendar days starting on the day that the goods are released, except when payment documents must be submitted as proof and, under the transaction terms, the time limit for payment exceeds the specified time period.

After the declarant submits documents verifying the declared customs value, the amounts securing payment of customs duties and taxes shall be refunded (or offset), in compliance with Chapter 43 of the Customs Code, by filling out a form for adjustment of the customs value.

Failure to provide the required documents confirming the declared customs value before the expiration of the established time limit shall result in transfer of the amount of customs payments and taxes, calculated on the basis of the conditional value of the goods, to the national budget, through completion by a customs official of the form for adjustment of the customs value, which shall be considered as a final decision with respect to the customs value of the goods.

The guarantee of payment of customs payments and taxes shall apply upon conditional release of goods subject to customs payments and taxes, with use of information on prices available to customs in compliance with Article 321 of the Code.

A guarantee of payment of customs payments and taxes may be provided in the form of:

- security;
- bank guarantees;
- deposit of the payable sum with the customs authorities; or
- insurance agreements.

A person shall be entitled to choose any type of guarantee of payment of customs payments and taxes. The procedures for the employment of guarantees of payment of customs payments and taxes by the customs authorities shall be determined by the authorized body on customs issues.

The amount of the guarantee of payment of customs payments and taxes shall not be less than the amount of customs payments and taxes payable:

- (i) when declaring the customs regime for release of goods into free circulation with regard to the following goods and means of transport:
 - conveyed under the domestic customs transit procedure;
 - admitted into temporary storage at the consignee's warehouse and on means of transport;
 - placed under the re-export customs regime;
 - imported for conveyance through the customs territory of the Republic of Kazakhstan in compliance with the transit customs regime;
 - with regard to which conditional release with use of information on prices is applied when determining the customs value;
 - with regard to which the time limit for payment of customs duties is changed; and
 - with regard to which the time limit for filing the customs declaration is extended.
- (ii) when declaring the export customs regime with regard to the following goods:
 - placed under the procedure for processing outside of customs territory; and
 - exported for conveyance through the customs territory of a foreign state in compliance with the transit customs regime.

Any goods and property, which are free from the property rights of third parties, may serve as security to guarantee the payment of customs payments and taxes, except for:

- property excluded from civil circulation;
- goods prohibited from being imported to the Republic of Kazakhstan or exported from the Republic of Kazakhstan;
- electricity, heat and other types of energy;
- perishable goods;
- property rights;
- property located outside the Republic of Kazakhstan; and
- property, the sale of which is limited.

The market value of the object of security to guarantee payment of customs payments and taxes cannot be less than the amount of the commitment for customs payments and taxes, the payment of

which is ensured by the object of security, including sales expenses. Unless otherwise decided by the customs authority, pledged goods remain with the depositor. The depositor shall not be entitled to dispose of the objects of security until the payer fulfils the commitments secured by the pledge. Security procedures shall be performed in compliance with civil legislation of the Republic of Kazakhstan. A claim against the object of a guarantee shall be performed in compliance with the legislation of the Republic of Kazakhstan.

As a guarantee of payment of customs payments and taxes, the customs authorities shall accept bank guarantees issued in compliance with the laws of the Republic of Kazakhstan taking into account the requirements set forth by normative legal acts of the National Bank of the Republic of Kazakhstan.

Deposits to deposit accounts of the customs authority as a guarantee of payment of customs payments and taxes (hereinafter - deposits) shall be made in the national currency of the Republic of Kazakhstan or in foreign currency. When the customs authority does not have a foreign currency account, the deposit shall be made in the national currency of the Republic of Kazakhstan. In the event of failure to fulfil the commitments backed by the deposit, the payable amounts of customs payments and taxes shall be transferred to the national budget from the deposit upon expiration of 15 days after notification on non-fulfilment.

As a guarantee of payment of customs payments and taxes, the customs authorities shall accept insurance agreements signed in compliance with the Civil Code of the Republic of Kazakhstan.

- Refunding a Guarantee of Payment of Customs Payments and Taxes

A deposit shall be refunded, provided that the commitments required by the deposit are fulfilled. The customs authority upon the written request of the payer shall actually refund the deposit within a period of time not to exceed ten working days from the day when the request was received.

A request for the refund of a deposit shall be submitted to the customs authority after the commitment has been fulfilled, but not later than five years following the date of fulfilment. A deposit shall be refunded by the customs authority to the account of which the deposit amount was paid or, in case of dissolution of the customs authority, by its legal assignee. The deposit shall be refunded to the payer's bank account in the currency of payment.

The deposit shall be refunded to a payer with deduction of debts with regard to customs duties, taxes and penalties in compliance with the procedures set forth in Article 351 of the Customs Code. The refund of a deposit shall not entail a refund of interest, the amounts shall not be indexed, and bank fees shall be recovered at the expense of deposit funds. Upon the payer's request, the deposit may be accounted for future customs payments and taxes or for guarantee of payment of customs payments and taxes under another commitment to the customs authorities.

Property security shall be refunded when a security is:

- in the disposal of the depositor from the date of fulfilment of the commitments; and
- in the disposal of the customs authority not later than five days from the date of fulfilment of the commitments.

Refund under the bank guarantee shall be done not later than five days from the date of fulfilment of the commitment. Security on insurance shall cease not later than five working days from the date of fulfilment of the commitments.

Pursuant to Article 392 of the Customs Code, in cases when customs authorities make a decision on the necessity of testing samples and specimens in order to submit detailed technical documentation, or

to conduct an expert examination for the purpose of verifying the accuracy of the data stated in the customs cargo declaration or in other documents submitted to customs authorities, goods shall be released prior to receipt of the results of the expert examination, provided that the declarant has secured payment of customs payments or taxes that can be charged additionally according to the results of the customs expert examination.

Goods shall not be released only when customs authorities discover signs indicating that non-tariff regulatory measures may be applied to goods, and that the declarant has failed to submit evidence, proving compliance with these measures.

Question 71

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

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

Answer:

According to the customs statistics, the customs authorities of Kazakhstan adhere to the key principles of the customs valuation procedure. The customs authorities use the reserve method only in cases when it is impossible to apply the other five methods of customs valuation, in particular, in cases when reliable accurate information supported with documents is unavailable.

The statistical data for the year 2004 shows that the distribution of customs valuation methods used by the customs authorities were as the following: the first method –the transaction value method has been used for 90.6 per cent of imported goods, the following four methods were used for 2.3 per cent of imported goods, while the last reserve method was used for 7.1 per cent of imported goods.

Currently, in accordance with the Government Resolution No. 794 "On Information Reference Books Used for Application of the Reserve Method for Customs Valuation of Goods" of 8 August 2003, the following information reference books were used in Kazakhstan:

- Information Bulletin "Price Information" (Russian Federation);
- Information Reference Book on Food Prices (Union of Food Manufacturers of the Republic of Kazakhstan);
- Information Reference Book on Prices for Electrical Household Appliances Imported to the Republic of Kazakhstan (Juridical persons Association "KATEKS"); and
- Automobile Catalogue "Superschwake".

Information reference books are applied in cases when customs value determination via other methods is impossible. As a rule, information reference books used in Kazakhstan contain prices from specific producers and are applied to specific goods.

Information reference books are used with the following purposes:

- to prevent submission of unreliable information on the prices of imported goods by participants of foreign trade activities;
- to prevent opportunities for abuse by customs officials; and
- to ensure transparency of the customs valuation procedure.

It should be also noted that the customs valuation methods shall be selected by the declarer, and customs authority is responsible to ensure the accuracy of the method applied in customs valuation.

Further to paragraph 137 of the Draft Working Party Report, the Law No. 62-III "On Amendments and Addenda to the Customs Code of the Republic of Kazakhstan" was adopted on 20 June 2005.

Regarding the method for determining customs value based on the transaction value of similar goods, the amendments made in Article 311 of the Customs Code stipulated that: (i) insignificant differences in appearance shall not serve as the basis for refusal to recognize goods as similar; (ii) the cost of similar goods imported in different quantity and at a different commercial level may be used, and their value had to be adjusted taking into consideration these differences when there were no cases of import of goods in the same quantity and at the same commercial level; (iii) some adjustments had to be introduced on the basis of reliable information verified by documentation; and (iv) the lowest value had to be applied to determine the customs value of imported goods when more than one transaction value with similar goods was identified.

Regarding the method for determining customs value based on deduction of costs, the amendments made to Article 312 of the Customs Code stipulated that: (i) the customs authority shall not require from a non-resident information determining the customs value; and (ii) the information supplied by the producer of the goods for the purposes of determining customs value may be verified with the agreement of the producer provided that sufficient advance notice was given to the government of the country in question and the latter did not object to the investigation.

In accordance with the amendments made in Article 309 of the Customs Code of the Republic of Kazakhstan, the definition of persons associated in exportation and importation of goods has been brought into conformity with the provisions of Article 15(5) of the Customs Valuation Agreement of WTO.

Further to paragraph 136 of the Draft Working Party Report, it should be noted that the Interpretative Notes to Article 1 and Article 15 of the Customs Valuation Agreement will be included into a Commentary to the Customs Code of Kazakhstan, which will be introduced by the Resolution of the Government. The relevant provision will be added to Article 307 of the Customs Code.

- **Rules of origin**

Question 72

Paragraph 139 of the draft report indicates that Kazakhstan has adopted the Harmonized System (HS) nomenclature. Which version of the HS nomenclature is currently applied? Is it HS1996 or HS2002?

Answer:

In accordance with the Government Resolution No. 567 "On Approval of the Agreement on Common Product Nomenclature of Foreign Economic Activity of the Eurasian Economic Community" of 11 June 2003, Kazakhstan applies HS 2002 as of 1 January 2004.

Question 73

Paragraph 141 of the draft report indicates that Kazakhstan does not deny customs clearance when a foreign exporter fails to provide a correctly drafted Certificate of Origin. In such a case, what measure, or measures, should be taken? Please could Kazakhstan provide information on the relevant laws or regulations?

Answer:

Subject to Article 38 of the Customs Code of the Republic of Kazakhstan, either Certificate of Origin or Declaration of Origin certifies the country of origin of an imported good.

Article 41 of the Customs Code of the Republic of Kazakhstan provides that importer of a good to the customs territory of the Republic of Kazakhstan shall produce the certificate of origin in the following cases when:

- a country of origin of the good enjoys tariff preferences under international agreements/treaties, to which the Republic of Kazakhstan is a party;
- customs body of Kazakhstan has grounds to believe that the good originates from countries, importation of goods from which shall be regulated by non-tariff measures; and
- it is required by international agreements/treaties, to which the Republic of Kazakhstan is a party.

In accordance with paragraph 1 of Article 42 of the Customs Code of the Republic of Kazakhstan, the customs authority shall deny customs clearance whenever goods originate from a country, products of which are prohibited from importation to Kazakhstan under the laws of the Republic of Kazakhstan or international agreements/treaties, to which the Republic of Kazakhstan is a party. The customs body shall notify denial in writing.

Failure to provide a correctly drafted certificate of origin or failure to submit it at all shall not be the reason to deny customs clearance except for cases stipulated in paragraph 1 of Article 42 of the Customs Code of the Republic of Kazakhstan.

The goods imported into the customs territory of Kazakhstan without correctly filled in certificate of origin shall be subject for import duty based on Most Favoured National Treatment rates.

In case of preferential treatment based on FTAs or GSP, the treatment shall be applied to the goods imported into the customs territory of Kazakhstan without correctly filed in certificate of origin only in cases when the importer provides the customs body with the confirmation of the country of origin of the goods in question within one year since the day of filing the customs declaration.

Question 74

Paragraph 143: Contrary to the appreciation of the representative of Kazakhstan in point 143, we would urge Kazakhstan to implement before accession the right to seek an assessment of origin prior to importation contained in Article 2(h) and Annex II paragraph 3(d) of the WTO Agreement on the Rules of Origin.

Answer:

Subject to Article 47 of the Customs Code, upon request of a person (applicant), customs authorities, except for the customs points and checkpoints, make a preliminary decision on the classification under the foreign economic activity commodity nomenclature with regard to specific goods.

Besides, customs authorities are entitled to make preliminary decisions on the application of methodology for the determination of the origin of goods and customs value in compliance with the provisions of the Customs Code.

In accordance with Article 48 of the Customs Code, the application on preliminary decision making shall contain data on the good, including its description, photos, pictures, drawings as well as

commercial, technical and other papers, which are necessary for the preliminary decision making process. When possible, the applicant shall also submit taste samples and samples of goods, upon which the preliminary decisions shall be made. The preliminary decision shall be issued within ten working days since the date of the registration of the application, provided that no other additional information is required for undertaking the expertise.

In case if the application on preliminary decision making is not accepted, the customs authority shall present the motivated refusal in writing within seven working days. Refusal of the application shall not impede repeated application on part of the applicant for preliminary decision making provided that the grounds, which caused the refusal, have been addressed.

Preliminary decision or it's non-acceptance by the customs authorities within the set period of time may be appealed in accordance with the procedure established by the Customs Code. The preliminary decision of the customs authorities is valid during three years since the date of its adoption.

Pursuant to Article 50 of the Customs Code, the authorized body has a right to annul or to amend the preliminary decision made by the authorized body itself or its territorial unit in cases when the preliminary decision was based on incomplete or unreliable information submitted by the applicant. Annulations shall enter into force since the date when the new preliminary decision has been made.

The preliminary decision shall be amended in the following cases:

- adoption by the World Customs Organization of decisions mandatory for application in the Republic of Kazakhstan;
- the preliminary decision made contradicts the international treaties, to which the Republic of Kazakhstan is a party;
- changes made to the national legislation of the Republic of Kazakhstan on customs in connection with the preliminary decision making; and
- revelation of infringements that have been made in the course of the preliminary decision making.

Preliminary decisions made by the customs authorities, with the exception of confidential information, may be published and presented upon the written request of any person.

Pursuant to the Article 52 of the Customs Code, the preliminary decision made by the customs authorities shall be mandatory for implementation by customs authorities. Preliminary decision shall be submitted to the customs authorities along with the customs declaration.

The preliminary decision procedures are established by the Order of the Customs Control Committee No. 210 of 15 June 2003.

In accordance with Government Resolution No. 669 "On Establishment of the Rates of Fees, Charges and Payments Levied by Customs Bodies" of 7 July 2003, the fee in the amount of € 50 is charged for preliminary decision making services.

It should be noted that provisions of article 47 of the Customs Code provides the right, but not obliges the customs authorities to make the preliminary decision on the country of origin of goods at the request of the participant of foreign trade activity before the trade actually takes place. Therefore, in order to fully comply with the provisions of Article 2(h) and paragraph 3(d) Annex II Agreement on Rules of Origin, the Government of Kazakhstan is planning to introduce amendments to the Customs Code. It is envisaged to introduce a new provision, which obliges customs authorities to make preliminary decision upon the request of the participant of foreign trade provided that all necessary

information is duly submitted. The amendment will also clearly stipulate the preliminary decision procedures will be applicable to both preferential and non-preferential trade.

Question 75

It is clear from the responses in WT/ACC/KAZ/57 that Kazakhstan's legal provisions do not fully implement the Agreement on Rules of Origin.

The current legislation merely permits, and does not mandate, granting a preliminary determination of origin if requested by an "exporter, importer, or any person with a justifiable cause" prior to importation.

We insist that Kazakhstan address this and the other aspects of the Agreement we raised in November, e.g., the right of appeal, and that these provisions be implemented prior to accession.

Answer:

Subject to Article 47 of the Customs Code, upon request of a person (applicant), customs authorities, except for the customs points and checkpoints, make a preliminary decision on the classification under the foreign economic activity commodity nomenclature with regard to specific goods.

Besides, customs authorities are entitled to make preliminary decisions on the application of methodology for the determination of the origin of goods and customs value in compliance with the provisions of the Customs Code.

In accordance with Article 48 of the Customs Code, the application on preliminary decision making shall contain data on the good, including its description, photos, pictures, drawings as well as commercial, technical and other papers, which are necessary for the preliminary decision making process. When possible, the applicant shall also submit taste samples and samples of goods, upon which the preliminary decisions shall be made. The preliminary decision shall be issued within ten working days since the date of the registration of the application, provided that no other additional information is required for undertaking the expertise.

In case if the application on preliminary decision making is not accepted, the customs authority shall present the motivated refusal in writing within seven working days. Refusal of the application shall not impede repeated application on part of the applicant for preliminary decision making provided that the grounds, which caused the refusal, have been addressed.

Preliminary decision or it's non-acceptance by the customs authorities within the set period of time may be appealed in accordance with the procedure established by the Customs Code. The preliminary decision of the customs authorities is valid during three years since the date of its adoption.

Pursuant to Article 50 of the Customs Code, the authorized body has a right to annul or to amend the preliminary decision made by the authorized body itself or its territorial unit in cases when the preliminary decision was based on incomplete or unreliable information submitted by the applicant. Annulations shall enter into force since the date when the new preliminary decision has been made.

The preliminary decision shall be amended in the following cases:

- adoption by the World Customs Organization of decisions mandatory for application in the Republic of Kazakhstan;
- the preliminary decision made contradicts the international treaties, to which the Republic of Kazakhstan is a party;

- changes made to the national legislation of the Republic of Kazakhstan on customs in connection with the preliminary decision making; and
- revelation of infringements that have been made in the course of the preliminary decision making.

Preliminary decisions made by the customs authorities, with the exception of confidential information, may be published and presented upon the written request of any person.

Pursuant to the Article 52 of the Customs Code, the preliminary decision made by the customs authorities shall be mandatory for implementation by customs authorities. Preliminary decision shall be submitted to the customs authorities along with the customs declaration.

The preliminary decision procedures are established by the Order of the Customs Control Committee No. 210 of 15 June 2003.

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It should be noted that provisions of Article 47 of the Customs Code provides the right, but not obliges the customs authorities to make the preliminary decision on the country of origin of goods at the request of the participant of foreign trade activity before the trade actually takes place. Therefore, in order to fully comply with the provisions of Article 2(h) and paragraph 3(d) Annex II Agreement on Rules of Origin, the Government of Kazakhstan is planning to introduce amendments to the Customs Code. It is envisaged to introduce a new provision, which obliges customs authorities to make preliminary decision upon the request of the participant of foreign trade provided that all necessary information is duly submitted. The amendment will also clearly stipulate the preliminary decision procedures will be applicable to both preferential and non-preferential trade.

- **Other customs formalities**

Question 76

Paragraph 145: We would urge Kazakhstan to eliminate the "transaction passport" required for transactions exceeding US\$ 10,000 by accession. This is an unnecessary burden for trade.

Answer:

The transaction passport requirement is not used as quantitative restriction of export-import operations, which creates a barrier for foreign trade activity. Consequently, the transaction passport requirement does not contradict to Article XI of GATT 1994 on "General Cancellation of Quantitative Restrictions".

In accordance with the currency legislation of the Republic of Kazakhstan, the transaction passport is a basic document required for monitoring of currency and trade flows in the course of foreign trade operation. The transaction passport is necessary for provision of accounting and reporting on currency transactions. Key objective of this document is reflection of basic data on foreign trade contract (amount, term, information, identifying whether residents or non-residents are participants of the foreign trade operation). The transaction passport shall be filled in by resident-exporter/importer.

Identification number, assigned to the transaction passport, is key for analysis of data on movement of financial resources and commodities. Analysis of data is important for monitoring of export revenues and obtaining of import commodities, including for development of the balance of payments

statistics. Accuracy and reliability of balance of payment statistics has a direct impact on the quality of economic policy decisions made in Kazakhstan.

As of 2007, when participants of foreign trade contract themselves will be able to set the date/deadline for fulfilment of contractual obligations, the transaction passport will be used as a tool for making analysis and prognosis of inflow and use of foreign currency in the Republic of Kazakhstan. Procedures for obtaining transaction passport will be significantly simplified. In particular, it is intended to reduce the number of bodies, whose approval is required for signing the transaction passport, and to eliminate a number of requirements with regard to foreign trade participants on provision of additional information.

As the experience of other countries show, elimination of the transaction passport requirement will lead to substantial increase in direct regular reporting of enterprises, which is found more burdensome. With the transaction passport requirement in place, small and medium sized enterprises engaged in foreign trade business with non-residents will not need to provide balance of payments statistical reports.

Question 77

Question 76 of document WT/ACC/KAZ/57: According to this answer, Kazakhstan plans on abolishing the current licensing regime in respect of the "bargain passport." Does this mean the "bargain passport" will become the new licence? How is this compliant with the licensing agreement?

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

Answer:

The transaction passport requirement is not used as quantitative restriction of export-import operations, which creates a barrier for foreign trade activity. Consequently, the transaction passport requirement does not contradict to Article XI of GATT 1994 on "General Cancellation of Quantitative Restrictions".

In accordance with the currency legislation of the Republic of Kazakhstan, the transaction passport is a basic document required for monitoring of currency and trade flows in the course of foreign trade operation. The transaction passport is necessary for provision of accounting and reporting on currency transactions. Key objective of this document is reflection of basic data on foreign trade contract (amount, term, information, identifying whether residents or non-residents are participants of the foreign trade operation). The transaction passport shall be filled in by resident-exporter/importer.

Identification number, assigned to the transaction passport, is key for analysis of data on movement of financial resources and commodities. Analysis of data is important for monitoring of export revenues and obtaining of import commodities, including for development of the balance of payments statistics. Accuracy and reliability of balance of payment statistics has a direct impact on the quality of economic policy decisions made in Kazakhstan.

As of 2007, when participants of foreign trade contract themselves will be able to set the date/deadline for fulfilment of contractual obligations, the transaction passport will be used as a tool for making analysis and prognosis of inflow and use of foreign currency in the Republic of Kazakhstan. Procedures for obtaining transaction passport will be significantly simplified. In particular, it is

intended to reduce the number of bodies, whose approval is required for signing the transaction passport, and to eliminate a number of requirements with regard to foreign trade participants on provision of additional information.

As the experience of other countries show, elimination of the transaction passport requirement will lead to substantial increase in direct regular reporting of enterprises, which is found more burdensome. With the transaction passport requirement in place, small and medium sized enterprises engaged in foreign trade business with non-residents will not need to provide balance of payments statistical reports.

- **Preshipment inspection**

Question 78

Please explain the meaning of paragraph 151. It is not clear if a PSI system still exists, or if it has been rescinded.

We thank Kazakhstan for the information provided in response to Question 77 of WT/ACC/KAZ/57, but it remains unclear (a) whether such a system currently exists; (b) to which products it is, or was, applied; (c) its place and methods of operation; (d) its revenue source; (e) whether or not it is mandatory, and if so, for which imports; and (f) the ability of importers to appeal and the legal status of the PSI firm in such an appeal.

The section should be revised substantially to indicate in clear terms the current status, legal basis, operational characteristics, and scope of any PSI system in operation.

Answer:

1. Preshipment Inspection

- (a) Currently, preshipment inspection does not exist in the Republic of Kazakhstan. From 1995 to 1997 preshipment inspection of goods imported to the Republic of Kazakhstan was performed by "Societe Generale de Surveillance S.A." company (SGC). Due to the fact that the preshipment inspection services conducted by this company gave no positive results, Kazakhstan discontinued a contract with the company.
- (b) The preshipment inspection procedure was applied to imports of all goods, except for those imported from the CIS countries. Besides, goods, the customs value of which did not exceed US\$ 3,000, and goods of strategic importance, of double purpose and printing materials were exempted from preshipment inspection procedures.
- (c) Preshipment inspection procedure was conducted in the exporting country. The goods subject to preshipment inspection were subject to quality and quantity control as well as verification of the value of goods and whether their customs classification corresponded to the Tariff Nomenclature on Foreign Economic Activity applied in the Republic of Kazakhstan.
- (d) Service fees were levied in the amount of 1 per cent of FOB value of imported goods and were paid from the state budget.
- (e) Preshipment inspection procedure was mandatory for all imported goods, except for those goods, the customs value of which did not exceed US\$ 3,000, and goods of strategic importance, of double purpose and printing materials.

- (f) In accordance with the legislation of the Republic of Kazakhstan, foreign economic activity participant was entitled to appeal against the decision made by the territorial customs authorities to follow the recommendation of the PSI firm to the higher customs authority or to the court system.

2. Independent expert examination

From 2001- 2005, the independent expert examination of customs value of imported goods has been conducted by the "ICS Inspection and Control Services Kazakhstan" company (ICS- Kazakhstan).

However, independent examination of customs value of imported goods did not represent a preshipment inspection procedure, since its decision was made within 30 days after sampling of goods and conducting the complete price examination of imported goods.

- (a) This system does not exist currently. The term of the contract with the ICS Kazakhstan company expired on 4 October 2005 and was not renewed.
- (b) All categories of goods imported to Kazakhstan could be sampled for the purposes of independent customs value examination, except for goods included into the List of Goods not Subject to Independent Examination, such as goods of strategic importance and medicine. The List was incorporated into the contract terms.
- (c) The independent expert examination of customs value of imported goods was conducted within Kazakhstan. Regional representatives of "ICS Kazakhstan" carried out their activities throughout all regions of Kazakhstan. The customs valuation was based on use of two methods: transaction value of identical goods and transaction value of homogeneous/similar goods.
- (d) For rendered services, "ICS Kazakhstan" Company was given remuneration of 30 per cent of the levied customs duties and taxes as a result of the independent expert examination of customs value of imported goods.
- (e) According to the contract signed between the Ministry of State Revenue and the ICS company in 2001, not more than 20 per cent of cargo customs declarations within one quarter could be subject to independent examination by the ICS company, except for goods included into the List of goods not subject to independent examination.
- (f) In accordance with the legislation of the Republic of Kazakhstan, foreign economic activity participant was entitled to appeal against the decision made by the territorial customs authorities to follow the recommendation of the ICS Kazakhstan company to the higher customs authority or to the court system.

- **Anti-dumping, countervailing duties, and safeguard regimes**

Question 79

Thank you for the update on Kazakhstan's trade remedy laws. When does Kazakhstan expect that the draft laws on amendments and additions to Kazakhstan's trade remedies laws, described in paragraph 153 of the Draft Working Party Report, will be available for review by the Working Party?

We look forward to reviewing the amended laws, and urge Kazakhstan to circulate these in draft to the Working Party as soon as it is possible.

Answer:

With the purpose to bring the national legislation into conformity with the WTO Agreement on Safeguards, the Law of the Republic of Kazakhstan No. 59-III "On Amendments and Addenda to the Law of the Republic of Kazakhstan "On safeguard measures of the domestic market in importation of products" has been adopted.

The text of the Law No. 337-I "On safeguard measures of the domestic market in importation of products" of 28 December 1998 as amended by the Law No. 59-III of 16 June 2005 is available through document WT/ACC/KAZ/66/Add.1.

Most particularly, the following amendments have been introduced by the new Law:

- the definitions of "domestic industry", "serious injury", "threat of serious injury" have been modified in accordance with the definitions stipulated in the WTO Agreement;
- the involvement of all interested parties through publication of a notification in mass media has been introduced as mandatory condition for initiating the investigation, which shall be conducted prior to application of safeguard measures;
- the provision stating the aims of the hearing procedure during the investigation has been amended to ensure that opportunities were given to all interested parties to produce their evidence and their views;
- the provision stating that the security funds shall not be transferred to the state budget, but rather deposited to an account, until the final decision is made by the Government on application of safeguard measures as a result of the investigation process has been added; and
- the provision providing for progressive liberalization of the safeguard measures after their one year of application has been added.

The detailed comparative table on conformity of the Law of Kazakhstan 337-I "On safeguard measures of the domestic market in importation of products" of 28 December 1998 with the provisions of the WTO Agreement on Safeguards is enclosed in Annex VI.

With the purpose to bring the national legislation into conformity with the WTO Agreement on Subsidies and Countervailing Measures and the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, the Law of the Republic of Kazakhstan No. 114-III "On Amendments and Addenda to Legislative Acts of the Republic of Kazakhstan on Subsidies, Countervailing and Antidumping Measures" of 9 January 2006 has been adopted. The text of the Law is available through document WT/ACC/KAZ/66/Add.1.

Most particularly, in accordance the WTO Agreement on Subsidies and Countervailing Measures, the following amendments have been introduced by the new Law:

- the definitions of "domestic producers", "like products", "specific subsidy" have been modified;
- following the termination of provisions stated in Article 8 of the WTO Agreement regarding non-specific subsidies, the corresponding provision has been eliminated in the Law of Kazakhstan;
- the provision has been added which provides for the opportunity of holding consultations with the aim of settling the matter without conducting the investigation and application of countervailing measures; and
- the provision has been added providing for extension by the authorized body upon the sufficient cause shown of the one month term given for preparation of the reply to the request.

The detailed comparative table on conformity of the Law of the Republic of Kazakhstan No. 441-1 "On Subsidies and Countervailing Measures" of 16 July 1999 with the provisions of the WTO Agreement on Subsidies and Countervailing Measures is enclosed in Annex VII.

In pursuance of the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, the following amendments have been introduced by the new Law:

- the term "normal price" has been replaced by the term "normal value" of imported goods;
- the concept of common trade operations used in the Law has been modified in accordance with the WTO Agreement;
- *de minimis* dumping margin has been reduced from 5 to 2 per cent of the export price in order to be considered as a reason for termination of the anti-dumping investigation;
- the provision has been added stating that proves received by the authorized body shall be made available to all interested parties, except for information of confidential nature; and
- the provision has been added stating that the notification shall be made through publication in official media on introduction of antidumping measures and related information to the investigation process with due account of confidential information.

The detailed comparative table on conformity of the Law of the Republic of Kazakhstan No. 421-1 "On Anti-Dumping Measures" of 13 July 1999 with the provisions of the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 is enclosed in Annex VIII.

B. EXPORT REGULATIONS

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

Question 80

Paragraphs 160-162 of the Draft Report indicate that Kazakhstan has applied export duties on domestic products as listed in Table 6 (Paragraph 160). These discriminatory export duty exemptions granted to member-States of the Customs Union may have distorting effects on trade, and could be inconsistent with WTO regulations. Would Kazakhstan therefore please consider abolishing this measure prior to its accession to the WTO.

Answer:

In accordance with the Agreement on Customs Union and Single Economic Area dated 26 February 1999, its Members (Kazakhstan, Belarus, the Russian Federation, Kyrgyzstan and Tajikistan) apply free trade regime in full, with no tariff or non-tariff restrictions on the basis of bilateral and multilateral Free Trade Agreements (FTAs). According to FTAs, the Parties do not apply customs duties and quantitative restrictions on import and export of goods originated from the customs territory of one Party and destined for the customs territory of another Party.

Furthermore, in accordance with the Agreement on Creation of the Free Trade Area of 15 April 1994, its Members (CIS member-states) shall establish free trade regime with no tariff or non-tariff measures for goods, except for certain exemptions, which will be phased out.

The Customs Code of the Republic of Kazakhstan stipulates the abovementioned provisions. In particular, Article 331, stipulates that the goods imported into the customs territory of the Republic of Kazakhstan and originating from Members of the customs union or free trade area with Kazakhstan as

well as goods exported from the customs territory of Kazakhstan to such countries and originating from Kazakhstan shall be exempted from customs duties.

The provisions stipulated in Article 331 of the Customs Code fully comply with the criteria established in Article XXIV of GATT for free trade areas and customs unions. In particular, the provisions of Article XXIV of GATT stipulate the following:

- In respect of trade with third parties, the duties and other regulations of commerce imposed by the customs union or applied by each of the constituent territories of a free trade area at their formation should not be higher or more restrictive than corresponding duties and other regulations of commerce applicable in the same constituent territories prior to the formation of customs unions and free trade areas;
- Duties and other restrictive regulations of commerce are eliminated with respect to substantially all the trade between the constituent territories of the customs union or at least with respect to substantially all the trade in products originating in such territories for both customs unions and free trade areas.

In light of the provisions of Article XXIV of GATT, it should be noted that Kazakhstan applied export duties with regard to trade with third parties prior to formation of a free trade area with CIS countries and customs union with Belarus, Kyrgyzstan, Russian Federation and Tajikistan. Elimination of both import and export duties and other restrictive regulations of commerce with regard to all the trade in products originating from the territories of parties to the customs union has also been undertaken in accordance with Article XXIV of GATT.

Furthermore, Kazakhstan applies export duties to a limited number of products for fiscal and regulatory purposes like other WTO member-states.

Question 81

Paragraphs 160 to 162: We would urge Kazakhstan to phase out its export duties and would propose Kazakhstan to prepare a timetable for their gradual elimination. (This is what was promised in our bilateral meeting in January).

Answer:

It should be noted that application of export duties is not prohibited by WTO Agreements. The latest research in this sphere demonstrates that 93 countries, including developed countries, apply export duties. It is also known that virtually WTO imposes no disciplines on export duties except for MFN principle according to Article I of GATT 1994 and general transparency requirements pursuant to Article X of GATT 1994.

Currently, export duties in the Republic of Kazakhstan have been approved by the Government Resolution No. 841 of 5 June 2000 and is applied only to a limited number of goods primarily for fiscal and regulatory purposes like other WTO member-states. In particular export duties are applied to goods used as raw materials for domestic producers, such as scrap and waste of ferrous and non-ferrous metals, wool and skin of cattle and other livestock, and oil products.

Export duties imposed on scrap and waste of ferrous and non-ferrous metals, wool and skin of livestock are of regulatory nature and were introduced to ensure provision of domestic processing industries with raw materials due to critical shortage of these goods in the domestic market, which is permitted by paragraph (i) Article XX of GATT 1994.

Furthermore, the Government of Kazakhstan is undertaking the steps to narrow down the list of goods subject to export duties. In particular, the export duty on aluminium and beryllium ligature have been reduced to 0 per cent (HS code 7601 20 100 0) by the Government Resolution No. 898 of 6 September 2005. In addition, the Government of Kazakhstan is also planning to eliminate export duties on aluminium-made products (HS Code 7604).

Following the request made by some Working Party members to eliminate seasonal export bans on mazut, diesel, gasoline and other oil products, and in order to bring its trade policy into conformity with the provisions of Article XI of GATT 1994, the Government of Kazakhstan as an alternative measure introduced export duties on petroleum products. The rates of export duties were calculated on the basis of world prices on crude oil, which are re-calculated every month and do not have impact on the volumes of exports. The export duties on petroleum products have been introduced for fiscal purposes. Those revenues will be used for allocation of direct subsidies to farmers for purchase of fuel.

Kazakhstan is of the view that export duties are legitimate instruments of trade policy from the WTO perspective. Nonetheless, Kazakhstan will aim at minimizing the use of export duties. Application of such duties will not contradict to the relevant provisions of WTO Agreements.

In addition, Kazakhstan commits to fulfil its transparency obligations under Article X GATT. With this regard, Kazakhstan will publish export duties and their changes in official media (Kazakhstnaskaya Pravda and Egemen Kazakhstan official newspapers).

Question 82

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

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

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

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

To discriminate in the elimination of duties and charges has implications for the consistency of this measure with Article XXIV of the GATT.

Answer:

It should be noted that application of export duties is not prohibited by WTO Agreements. The latest research in this sphere demonstrates that 93 countries, including developed countries, apply export duties. It is also known that virtually WTO imposes no disciplines on export duties except for MFN principle according to Article I of GATT 1994 and general transparency requirements pursuant to Article X of GATT 1994.

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Furthermore, in accordance with the Agreement on Creation of the Free Trade Area of 15 April 1994, its Members (CIS member-states) shall establish free trade regime with no tariff or non-tariff measures for goods, except for certain exemptions, which will be phased out.

The Customs Code of the Republic of Kazakhstan stipulates the above-mentioned provisions. In particular, Article 331, stipulates that the goods imported into the customs territory of the Republic of Kazakhstan and originating from Members of the customs union or free trade area with Kazakhstan as well as goods exported from the customs territory of Kazakhstan to such countries and originating from Kazakhstan shall be exempted from customs duties.

The provisions stipulated in Article 331 of the Customs Code fully comply with the criteria established in Article XXIV of GATT for free trade areas and customs unions. In particular, the provisions of Article XXIV of GATT stipulate the following:

- In respect of trade with third parties, the duties and other regulations of commerce imposed by the customs union or applied by each of the constituent territories of a free trade area at their formation should not be higher or more restrictive than corresponding duties and other

- regulations of commerce applicable in the same constituent territories prior to the formation of customs unions and free trade areas; and
- Duties and other restrictive regulations of commerce are eliminated with respect to substantially all the trade between the constituent territories of the customs union or at least with respect to substantially all the trade in products originating in such territories for both customs unions and free trade areas.

In light of the provisions of Article XXIV of GATT, it should be noted that Kazakhstan had applied export duties with regard to trade with third parties prior to formation of a free trade area with CIS countries and customs union with Belarus, Kyrgyzstan, Russian Federation and Tajikistan. Elimination of both import and export duties and other restrictive regulations of commerce with regard to all the trade in products originating from the territories of parties to the customs union has also been undertaken in accordance with Article XXIV of GATT.

- **Export restrictions**

Question 83

Paragraph 169: We welcome information from Kazakhstan that it plans to bring its export restrictions into full conformity with Article XI GATT upon accession. Could Kazakhstan give a state of play of the process? Have legislative proposals been prepared?

We would like to stress that in case export duties are to be introduced, they cannot be set at a prohibitive level. They should also be gradually phased out.

Answer:

Following the request made by some Working Party members to eliminate seasonal export bans on mazut, diesel, gasoline and other oil products, and in order to bring its trade policy into conformity with the provisions of Article XI of GATT 1994, the Government of Kazakhstan as an alternative measure introduced export duties on petroleum products. In this regard, the Resolution of the Government of Kazakhstan No. 1036 "On Imposition of Customs Duties upon Export from the Customs Territory of the Republic of Kazakhstan on Goods Produced from Crude Oil" has been adopted on 15 October 2005.

The rates of export duties were calculated on the basis of the world prices for crude oil, which are recalculated every month due to volatility of world prices for crude oil and do not have impact on the volumes of exports.

The Resolution of the Government of the Republic of Kazakhstan No. 5 "On Amendments and Addenda to the Resolution of the Republic of Kazakhstan No. 1036 of 15 October 2005" of 6 January 2006 has established export duties on certain types of petroleum products, including diesel, aviation fuel, and petrol, which entered into force as of March 2006.

The export duties on petroleum products have been introduced for fiscal purposes. The revenues accrued to the state budget will be used for allocation of direct subsidies to farmers for purchase of fuel.

In this regard, the Government has adopted a Resolution of the Republic of Kazakhstan No. 6 "On Establishment of Regulations for Payments of Subsidies for Producers of Agricultural Goods for Purchase of Diesel Fuel for Spring Sowing and Harvesting Works in 2006 and Regulations for Providing Producers of Agricultural Goods with Diesel Fuel for Spring Sowing and Harvesting Works in 2006" on 6 January 2006.

The Regulations define the procedures of allocation of subsidies to farmers, which are aimed to ensure partial recovery of the costs incurred for purchase of diesel fuel, within the limits of funds allocated in the state budget to the Ministry of Agriculture.

The Government is also planning to develop the Rules on allocation of subsidies for entities providing housing and communal services for purchase of fuel during heating seasons.

Question 84

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

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

In this regard, we are reviewing current policies concerning export allocations for gas and oil products, with a view to clarifying Kazakhstan's policies restricting exports of, e.g., diesel fuel, on a seasonal or other basis.

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

Answer:

Following the request made by some Working Party members to eliminate seasonal export bans on mazut, diesel, gasoline and other oil products, and in order to bring its trade policy into conformity with the provisions of Article XI of GATT 1994, the Government of Kazakhstan as an alternative measure introduced export duties on petroleum products. In this regard, the Resolution of the Government of Kazakhstan No. 1036 "On Imposition of Customs Duties upon Export from the Customs Territory of the Republic of Kazakhstan on Goods Produced from Crude Oil" has been adopted on 15 October 2005.

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The Regulations define the procedures of allocation of subsidies to farmers, which are aimed to ensure partial recovery of the costs incurred for purchase of diesel fuel, within the limits of funds allocated in the state budget to the Ministry of Agriculture.

The Government is also planning to develop the Rules on allocation of subsidies for entities providing housing and communal services for purchase of fuel during heating seasons.

- **Export subsidies**

Question 85

We appreciate Kazakhstan's explanation regarding export financing provided by the Development Bank of Kazakhstan.

Please confirm that export financing provided by the Development Bank conforms to the rules set out in items (j) and (k) of Annex 1 of the WTO Subsidies Agreement. Please also provide the Working Party a copy of Law No. 178-II "On the Development Bank of Kazakhstan" of 25 April 2001.

Answer:

The Development Bank of Kazakhstan (hereinafter referred to as the Bank) as the state development institution operates based on market principles. In accordance with Article XII of the Law of the Republic of Kazakhstan No. 178-II "On Development Bank of Kazakhstan" of 25 April 2001, Bank provides loans with the interest rates calculated based on the average cost of borrowing and operational costs of the Bank. Hence, the Bank is legally prevented from subsidizing the interest rates applied for its loans and crediting on preferential terms.

In this regard, the credits, including export credits provided by the Bank, do not represent subsidies within the meaning of Article 1 of WTO Agreement on Subsidies and Countervailing Measures.

In 2004, the Bank participated in financing development of the following sectors of the economy:

- 38.7 per cent of the total volume of credit portfolio is used for financing projects in production of agricultural products and related services,
- 25.1 per cent of the total volume of credit portfolio is used for financing projects in production of foodstuffs and beverages;
- 9.1 per cent of the total volume of credit portfolio is used for financing transport infrastructure projects;
- 7 per cent of the total volume of credit portfolio is used for financing projects in electricity, gas, steam and hot water supply;
- 5.8 per cent of the total volume of credit portfolio is used for financing projects in textile and tanning-footwear industry;
- 5.4 per cent of the total volume of credit portfolio is used for financing projects in metallurgical industry;
- 4.6 per cent of the total volume of credit portfolio is used for financing projects manufacturing electronic equipment; and
- 4.3 per cent of the total volume of credit portfolio is used for financing projects manufacturing automobiles and other types of equipment.

Furthermore, it should be noted that practice of export crediting is widely used by financial institutions of WTO member-states (such as Credit Agency KfW of Germany, Development Bank of the Republic of Korea, etc).

The text of the Law of the Republic of Kazakhstan No. 178-II "On Development Bank of Kazakhstan" of 25 April 2001 is available through document WT/ACC/KAZ/66/Add.1.

Question 86

Paragraph 175 of the Draft Working Party Report states that, "the system of decreasing (discount) coefficients on tariffs for railway transportation of sulphuric acid and iron ore had not been directed at supporting domestic manufacturers."

We would like to reiterate that, to the extent that discounts of these tariffs are provided to producers of sulphuric acid and iron ore on the basis of export performance (even if this is not necessarily the specific goal of the legislation), the discounts are prohibited export subsidies as provided under Article 3 of the Subsidies Agreement.

As such, these discounts would be inconsistent with the WTO Subsidies Agreement and must be eliminated prior to Kazakhstan's accession to the WTO.

Answer:

In 2005-2006, the temporary decreasing coefficients to railway tariffs were not used for transportation of iron-ore products in Kazakhstan.

In 2005, in accordance with the Order of the Chairman of the Agency on Regulation of Natural Monopolies of the Republic of Kazakhstan No. 53-OD of 16 February 2005, the temporary decreasing coefficient at the rate of 0.5 points to the railway tariff was provided for transportation of sulphuric acid by the JSC "KazZinc". The decreasing coefficient equally applied for both domestic and export destinations for the term of three months.

Sulphuric acid has been exported by the JSC "KazZinc" to the Kyrgyz Republic and the Russian Federation.

Sulphuric acid is the by-product produced as a result of production of such products as metallic zinc and refined copper. Application of the decreasing coefficient was justified by the necessity to utilise sulphuric dioxide in the course of refining the sulphide polymetal ore in order to reduce the harmful impact of the product on the environment. Due to environmental safety concerns, enterprises producing sulphuric acid shall either utilize or sell the product.

Since, the decreasing coefficient was applied equally for railway transportation for both export and domestic destinations in order to ensure environmental safety, this measure should not be considered as prohibited export subsidy.

Question 87

Based on information in paragraph 175 of the Draft Working Party Report, it appears that the legislation providing for decreasing coefficients for the export of sulphuric acid and iron ore has been eliminated and replaced by Order No. 375-OD of 8 September 2004.

Please provide the Working Party a copy of this legislation. Please also confirm that this replacement legislation conforms to the rules provided under Article 3 of the WTO Subsidies Agreement.

Answer:

The Order of the Agency on Regulation of Natural Monopolies of the Republic of Kazakhstan No. 24-OD "On Approval of Rules on Setting and Cancellation of Decreasing Coefficients to Tariffs for Transportation of Goods by Railway Transport" of 30 December 1999 was replaced by the Order of Acting Chairman of the Agency on Regulation of Natural Monopolies and Protection of Competition of the Republic of Kazakhstan No. 375-OD "On Approval of Rules of Granting Temporary Decreasing Coefficients to Tariffs (Prices, Duties Rates) for Regulated Services of the Main Railway Network" (hereinafter referred to as Rules) of 8 September 2004.

According to the Rules, resident and non-resident enterprises are entitled to apply to the relevant authority for obtaining temporary decreasing coefficients to tariffs charged for services of main railway network.

The text of the Order of Acting Chairman of the Agency on Regulation of Natural Monopolies and Protection of Competition of the Republic of Kazakhstan No. 375-OD of 8 September 2004 is available through document WT/ACC/KAZ/66/Add.1.

C. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS

- Industrial policy, including subsidies

Question 88

Please confirm that financing provided by Kazakhstan's Eximbank conforms to the rules set out in items (j) and (k) of Annex 1 of the WTO Subsidies Agreement. Please also provide the Working Party a copy of Presidential Decree No. 1815 of 16 July 1994.

Answer:

The Export-Import Bank of Kazakhstan (ExImBank) provided loans at preferential rates. Pursuant to the Decree of the President of the Republic of Kazakhstan No. 1815 of 16 June 1994, the main function of the ExImBank was to borrow funds on international capital markets under government guarantees and serve the loans as an agent within the country.

The state-owned ExImBank has also carried out the functions of a development bank. The bank provided loans on preferential terms for priority investment projects at the average interest rate of 6 per cent for a period of 3-5 years, of which the preferential period represented 2-3 years. The credit terms applied in uniform way to all enterprises involved in priority sectors of the economy.

Those loans were provided to local companies for the following purposes:

- processing of agricultural products;
- import of agricultural equipment and machinery;
- import of mineral fertilizers;
- import of equipment for production of sugar beet;
- import of equipment for production of natural stones;
- import of equipment for construction projects;
- import of equipment for production of construction materials, including window frames and plastic doors;
- construction of the plant for production of pumps;
- construction of the footwear factory; and
- construction of electric networks companies and electric power plants.

The loans were provided to domestic enterprises mostly to facilitate import of technologies, equipments and goods, which were not produced in Kazakhstan. The imports of those products were necessary either for development of new industries in non-mineral sectors of the economy or for assisting companies which were in crisis. Hence, the companies receiving the credits from the ExImBank were not in a position to export their products.

The provision of loans was not contingent, in law or in fact, upon export performance or upon the use of domestic over imported goods.

Against the above background, Kazakhstan assures that credits provided by the ExImBank conform to the rules established in paragraphs (j) and (k) Annex I of the WTO Agreement on Subsidies and Countervailing Measures.

Finally, it should be noted that in 2004 the state-owned shares of the ExImBank of Kazakhstan were sold to private ownership. Currently, the ExImBank does not operate on behalf of the Government of Kazakhstan.

The text of the Decree of the President of the Republic of Kazakhstan No. 1815 of 16 July 1994 "On Establishment of the Export-Import Bank of the Republic of Kazakhstan" is available through document WT/ACC/KAZ/66/Add.1.

Question 89

Regarding tax exemptions to exporters of yellow phosphorus, ground phosphate rock and phosphate fertilizer, we appreciate the explanation provided in paragraph 185 of the Draft Working Party Report. However, to the extent that these tax exemptions are contingent upon export, they still appear to be prohibited export subsidies, as provided under Article 3 of the Subsidies Agreement.

Answer:

The "KazPhosphate" LLP is granted the following investment preferences:

- 50 per cent reduction of corporate tax rate until 31 August 2008;
- 50 per cent reduction of property tax rate until 2007; and
- 50 per cent reduction of land tax until 2007.

In accordance with the Law of the Republic of Kazakhstan "On State Support of Direct Investments" of 28 February 1997, the contracts granting investment preferences to the "KazPhosphate" LLP were concluded in 1999-2000. The investment preferences were granted based on the strategic importance of the industry for the national economy, and were not contingent upon export performance or upon the use of domestic over imported goods. Hence, in accordance with Article 2 of the WTO Agreement on Subsidies and Countervailing Measures, these preferential tax measures could be considered as "specific subsidy".

Question 90

Please explain how Kazakhstan plans to bring this program into conformity with Article 3 of the Subsidies Agreement.

Please confirm whether Kazakhstan has provided information on the universe of Kazakhstan's subsidy policy.

Answer:

In accordance with Article 119-I of the Tax Code, one of the criteria used for granting corporate income tax preferences to petrochemical companies was that 90 per cent of crude oil used by those industries should be produced in Kazakhstan. Hence, the investment preferences granted to petrochemical industry were contingent upon the use of domestic over imported goods, and as such represented "prohibited subsidy".

This provision has been eliminated by the Law of the Republic of Kazakhstan "On Amendments and Addenda to Legislative Acts of the Republic of Kazakhstan on Taxation Issues" adopted on 22 November 2005.

The preferences are granted to companies operating in priority sectors of the national economy in the form of preferential loans, tax preferences and customs duty exemptions.

The main legislation establishing the preferential treatment includes the following:

- The Law of the Republic of Kazakhstan No. 373 "On Investments" of 8 January 2003;
- The Law of the Republic of Kazakhstan No. 2823 "On Special Economic Zones in the Republic of Kazakhstan" of 26 January 1996;
- The Tax Code of the Republic of Kazakhstan;
- The Customs Code of the Republic of Kazakhstan;
- The Resolution of the Government of the Republic of Kazakhstan No. 397 "On Creation of Small Business Development Fund of 26 April 1997;
- The Resolution of the Government of the Republic of Kazakhstan "On the Concept of Development of the Joint Stock Company "Small Business Development Fund" for 2005-2007" of 28 April 2005;
- The Resolution of the Government of the Republic of Kazakhstan No. 220 "On Amendments and Addenda to the Resolution of the Government of the Republic of Kazakhstan No. 1054" of 24 February 2004; and
- The Resolution of the Government of the Republic of Kazakhstan No. 355 "On the List of Goods Produced in the Territory of the Republic of Kazakhstan Under the Customs Regime "Free Warehouse" and Sold to the Rest of the Territory of Kazakhstan, which are Exempted from VAT" of 14 April 2005.

1. Investment preferences

The Law of the Republic of Kazakhstan No. 373 "On Investments" of 8 January 2003 stipulates investment preferences for both foreign and domestic investors operating in priority sectors of the national economy. The provisions Law do not discriminate investors depending on the nationality of ownership of investments.

Investment preferences are provided in the form of tax preferences, customs duty exemptions for imported products and in-kind grants. Decisions regarding investment preferences and on the extensions of their terms are made by the authorized investment body.

The investment preferences are granted to investors investing into priority sectors of the national economy. The Resolution of the Government of the Republic of Kazakhstan No. 436 "On Some Issues of Enforcing the Law "On Investments" of 8 May 2003 established the list of priority sectors. Currently, the following priority sectors benefit from the investment preferences: agriculture, forestry, fishery, foodstuff production, textile and apparel, production of goods made from wood, polygraphy, furniture production, chemical industry, production of rubber and plastic products, metallurgy,

machinery production, hardware production, medical equipment production, production of equipment for radio, television and communication, production of electrical energy and gas, construction, transportation.

- *Investment tax preferences*

Corporate income tax preferences are granted for the term up to ten years. Corporate income tax preferences are granted in the form of full corporate income tax exemption or gradual deduction of the cost of commissioned fixed assets from aggregate annual income in equal parts throughout the term of the preferential treatment. The terms and duration of corporate income tax preferences depended on the volume of investments made into fixed assets and on the type of investment activity.

Property tax preferences are granted for the term up to five years. Property tax preferences are granted in the form of property tax exemption on fixed assets that are newly commissioned under the respective investment project. The balance sheet value of the taxable objects constitutes their tax base. Juridical persons and natural persons calculate property tax at the rate of one per cent from the average annual value of taxable objects.

Land tax preferences are granted for the term up to five years from tax payable on plots of land used in the framework of the investment project. Different types of land were taxed differently and were subdivided into three categories – agricultural lands, populated lands and industrial lands. Rates were set according to area size, soil quality and yield class.

VAT exemptions. As of 1 January 2006, the investors are exempted from payments of VAT on turnover of goods (services, works) sold. VAT exemptions are granted to those investors, who were granted VAT exemptions on imported goods (services, works), pursuant to the terms of the investment contracts.

Juridical persons operating under a special tax regime and within the framework of subsurface use contracts are not entitled to any investment tax preferences and in-kind state grants.

- *Customs duties exemptions*

Customs duties exemptions on equipment/spare parts imported for the implementation of investment projects are granted for a period of up to five years.

- *In-kind state grants*

In-kind state grants are granted in the form of land plots, buildings, machinery and equipment, computational devices, measuring and regulating units, transportation vehicles (except for automobiles), industrial and household tools. The authorized body, with the approval of the relevant state agencies, confers in-kind state grants for either ownership or temporary use. Approval for in-kind state grants can be obtained within 15 business days from the date of request. In-kind state grants are assessed at their market value, the maximum amount not exceeding 30 per cent of the volume of investments made in the fixed assets of a given juridical person.

2. Special Economic Areas

The Law of the Republic of Kazakhstan "On Special Economic Areas" provided for tax preferences and customs duties exemptions. At this stage, four special economic areas (SEAs), including "Astana – New City", "Seaport Aktau", "Informational Technologies Park" and "Ontustyk", function in Kazakhstan. The Government of Kazakhstan welcomes participation of foreign companies in the SEAs.

The set of criteria shall be met by both foreign and national companies in order to become eligible for tax preferences and customs duty exemptions granted within SEAs.

The SEA "Astana-New City" was established to facilitate the socio-economic development of the city through building high-tech industry, attracting new investments, use of advanced construction technologies, and building the modern infrastructure.

The SEA "Aktau Seaport" was established to facilitate the development of the seaport infrastructure, development of auxiliary services that could be provided by the seaport, attracting new investments, creating new jobs and introducing modern administration and economic management methods.

The SEA "Information Technologies Park" was established to facilitate diversification the national economy through production of information technology products and effective use of the country's scientific and technical innovation capacity.

The SEA "Ontustyk" with the purpose to facilitate diversification the national economy through development of the textile industry in southern region of Kazakhstan, which is specialized in cotton production, attract foreign investors and create jobs.

Enterprises operating within the SEAs are entitled to tax preferences and customs duty exemptions.

- *Tax preferences*

Pursuant to Article 140 (1,2) of the Tax Code, companies operating in special economic areas were provided with the following preferences:

- 100 per cent corporate income tax reduction;
- zero rate for land tax and property taxes; and
- VAT exemptions.

The companies operating in SEAs are entitled to VAT exemptions provided that they:

- (i) were registered with the tax authorities within the territory of a SEA;
- (ii) had no branches or other structural units outside the territory of the SEA; and
- (iii) at least 90 per cent of their annual aggregate income comprised of the income subject to receipt (received) as a result of sale of the goods of own production (services, works) of the following types of activity, which comply with purposes of a SEA:
 - design, development, introduction and pilot-production of software, databases and hardware;
 - the development of new informational technologies (IT) based on artificial immune and neural systems;
 - IT research and development;
 - production of textile, except for apparel;
 - production of knitted wear; and
 - production of clothing from textile.

- *Customs duty exemptions*

In accordance with Chapter 30 of the Customs Code, a "free customs area" means the customs regime, within the borders of a Special Economic Area, under which foreign and Kazakh goods were placed and used. Such goods are subject to customs duties exemption. When a certificate of origin establishing the SEA origin of goods was not available, the goods were considered to be either

Kazakh (when exported from Kazakhstan) or foreign (when exported to the rest of the customs territory of Kazakhstan).

3. Free customs warehouse regime

To facilitate development of automobile assembling industry in Kazakhstan, the Resolution of the Government of the Republic of Kazakhstan No. 220 of 24 February 2004 introduced changes to the criteria of sufficient processing for automobile production. The resolution stipulates gradual increase of the value of "local" content in the price of the final product.

In particular, the Government Resolution sets the certain conditions for granting the status of origin when using imported goods by such producers. These conditions stipulate that the value of imported components and details used in assembling shall not exceed the following limits:

- in the first year of production – 90 per cent in the price of the final good;
- in the second year of production – 85 per cent in the price of the final good;
- in the third year of production – 80 per cent in the price of the final good;
- in the fourth year of production – 70 per cent in the price of the final good;
- in the fifth year of production – 60 per cent in the price of the final good; and
- in the sixth year of production – 50 per cent in the price of the final good.

This criteria of sufficient processing is applied only to the goods produced within the framework of investment projects implemented by the juridical persons investing into the fixed capital not less than KZT 1 billion.

Currently, the terms of the project on automobile assembling implemented by "AZIA-AUTO" JSC met the above criteria. The company received the following preferences until the year 2009:

- customs duties exemptions for imported spare parts into the territory of the free warehouse;
- the status of Kazakh origin of goods produced in the free warehouse, provided the company meets the criteria of sufficient processing; and
- customs duty exemptions for importation of automobiles from the free warehouse to the rest of Kazakhstan.

The free warehouse regime was established by the Customs Code and the Government Resolution No. 355 of 14 April 2005. The texts are available through document WT/ACC/KAZ/66/Add.1.

Moreover, the JSC "AZIA-AUTO" benefits from VAT exemptions for certain equipment and spare parts used as the company produces within the free warehouse customs regime.

4. Crediting Small Business Entities

The JSC "Small Business Development Fund" (hereinafter – Fund) with 100 per cent state-owned shares was established in 1997 with the following purposes:

- to provide loans to the small business entities;
- to provide guarantees to small businesses for obtaining credits from commercial banks;
- to facilitate creation of business-centres and incubators; and
- to provide consultancy and market infrastructure for small business development.

As of 1 January 2006, the loan portfolio of the Fund was provided from the following sources:

- The Program of Support of Producers established by the Government Resolution No. 555 of 22 May 2005 with the budget of US\$ 22.7 million. The Program has supported the projects in the following sectors: production of tractors, cement, fertilizers, packaging etc. The annual interest rate represented 12 per cent. During the implementation of the Program 5, 537 jobs were created;
- The Program on Crediting of Small Business, 225 projects were funded with the total amount of KZT 596.4 million (approximately US\$ 4.7 million);
- Program on Development of Small Towns with the budget of KZT 1,163.14 million (approximately US\$ 9 million) funded 235 projects. The annual interest rate – 7 per cent. The loans were provided to the entities working in the following sectors: production of industrial goods – 25 per cent, construction – 6 per cent, production of construction materials – 10 per cent, services – 28 per cent, agriculture and food – 18 per cent, transport – 13 per cent.
- Fund's own resources with the budget of KZT 11,742.92 million (approximately US\$ 91.7 million) funded 984 projects. The annual interest rate – 10 per cent;
- Financial Leasing – 66 projects in the amount of KZT 922 million; and
- Bank guarantees – KZT 4,000 million (approximately US\$ 31 million).

Question 91

When can we expect a draft formal subsidy notification?

We also seek a clear commitment to eliminate all prohibited subsidies (both export and import substitution subsidies) by the time of accession. We look forward to reviewing information from Kazakhstan on the specifics of its current program and how it intends to proceed to bring these measures into conformity with WTO.

Answer:

More detailed information on preferences granted by the state to producers of industrial goods will be provided to Working Party members in the draft subsidy notification, which is currently being worked out by the various government agencies.

- **Technical barriers to trade, standards and certification**

Question 92

Has Kazakhstan submitted its November 2004 Law "On Technical Regulation" to the Working Party for its review?

Answer:

Text of the Law of the Republic of Kazakhstan No. 603-II "On Technical Regulating" of 9 November 2004, is available through document WT/ACC/KAZ/66/Add.1.

Annotation to the Law "On Technical Regulating" (hereinafter referred to as Law):

This Law regulates relations associated with determination, establishment, application and implementation of mandatory and voluntary requirements to products, processes, services, including conformity recognition, accreditation and governmental control and supervision of observation of the meeting the set requirements, except for sanitary and phytosanitary measures. Mandatory regulation of requirements applies to products only. Mandatory requirements to processes are introduced such processes that are related to the safety of products.

Services shall not be subject to mandatory regulations. The provisions of this law apply to services only with regard to standardization and voluntary conformity assessment.

The following are the main objectives of technical regulation:

- provision of the safety of products and processes for human life and health and environment, including animals and plants;
- ensuring national security;
- prevention of actions, misleading the consumers as to the safety of products, services;
- elimination of technical barriers to trade; and
- increased competitiveness of products.

The law takes into account the main requirements of the TBT Agreement, including:

- equal treatment of national and imported products and uniform requirements to the procedures of conformity assessment;
- priority of international standards in the developing of regulatory legal acts and national standards;
- transparency in the development of regulatory legal acts and standards; and
- priority of rules of international treaties ratified by the Republic of Kazakhstan over national legislation.

The Government shall set mandatory requirements to products (processes, if necessary to processes) via normative legal acts (technical regulations), adopted by the Government.

Standards are voluntary in nature and can be used as the demonstrative/support basis for meeting requirements of technical regulations.

Technical regulations must contain an exhaustive list of mandatory requirements to products and shall have the status of direct application.

Requirements stipulated by technical regulations shall be set forth and applied in equal and the uniform manner regardless of the country and/or place of origin of a product.

For expert examination of draft technical regulations the law provides for creation of expert boards on technical regulation under the governmental bodies, which shall include representatives of governmental bodies, public unions, scientific organizations and enterprises of the Republic of Kazakhstan.

The law sets forth the requirements to the process of elaboration, adoption and application of regulations, which ensure transparency and their availability:

- notifications on elaboration of draft technical regulations, making amendments and/or addenda thereto, or their cancellation shall be published in an official printed edition and in the generally available information system within one month since the moment of the drafting, amending or cancellation;
- to conduct public hearings and further work on the draft taking into account the comments; and
- to provide interested parties upon their request the comments collected to the draft technical regulation.

The duration of public hearing of a draft technical regulation shall be at least 60 calendar days (from the day of publication of the notification on its elaboration up to the day of publication of the notification announcing the end of public hearing).

Whenever the requirements set forth by technical regulations do not meet the requirements of the relevant international standards or there are no such international standards or the requirements of the technical regulations in question might have an effect on conditions of imports or exports, the authority, which has elaborated the draft technical regulation, shall notify about the list of products to be covered by the elaborated technical regulation in question, about the purpose of and need in its creation, as well as submit detailed information on the elaborated draft technical regulation or a copy of the draft outlining the provisions that do not meet the requirements of international standards to interested parties and foreign countries upon their request.

Standards shall be elaborated by technical committees on standardization. Technical committees on standardization shall include representatives of governmental bodies and interested parties.

Regulations and standards of other countries and international organizations shall be used in full or in part as the basis in elaboration of national standards of the Republic of Kazakhstan, except for situations when such standards are inefficient or inadequate for achieving the objectives stipulated herein.

An Inquiry Point (Information Centre) shall function for interaction with the Secretariat of the World Trade Organization, WTO Members, and international organizations with the purpose of provision of interested parties and foreign countries with copies of documents and information on technical regulations, standards and conformity recognition procedures.

The Law provides for such kinds of conformity assessment as "conformity recognition" - a documentary confirmation that a product is safe for consumers; and "accreditation" - the official recognition of the right to function of a body providing conformity recognition in such area.

There are mandatory and voluntary conformity recognitions:

1. Mandatory conformity recognition is required for products with high risk of hazard. These products are subjected to the conformity of a product to requirements of the relevant technical regulations.

Mandatory product conformity recognition shall have the form of certification issued by the certification body accredited in accordance with the established procedure, or alternatively a producer shall declare the conformity of its products to the requirements set by technical regulations.

2. An applicant may make voluntary conformity recognition in the form of certification or declaring that products, which are not subject to mandatory conformity recognition, as well as services and processes do meet requirements of technical regulations or contracts.

The Government shall approve the uniform accreditation procedure for bodies and laboratories involved in conformity recognition activities.

Any organization, including foreign, seeking to work in the national system of conformity recognition as a conformity recognition organization or a test laboratory may perform such operations provided that it has been duly accredited in accordance with the procedure approved by the Government of the Republic of Kazakhstan.

Foreign conformity certificates, test protocols, accreditation certificates or equivalent documents issued by a foreign accreditation body shall be recognized by the authorized body in accordance with concluded international agreements.

The Law strikes the balance between governmental interference and protection of the public interests in use of safe product so that the products in question are subject to the state control only on the sales stage and only with regard to meeting the requirements of technical regulations. The state control of an enterprise may be undertaken only provided that there have been detected violations of the production process.

The law provides for a transition period, where until adoption of new technical regulations:

- the relevant parts of regulatory documents (regulations) and standards regarding mandatory requirements designed to achieve the objectives of safety assurance and consumer information on product safety remain valid;
- mandatory conformity recognition shall be made in accordance with safety criteria for the types of products and services included into the list of products and services subject to mandatory conformity recognition as approved by the Government of the Republic of Kazakhstan.

As soon as necessary, the new technical regulations are elaborated and adopted, the products governed by such adopted technical regulations shall be excluded from the said List. In the future, the List shall cease to exist when all types of products representing potential hazard or harm will be regulated by technical regulations.

As soon as technical regulations are adopted, the existing state and regional standards with duplicating or contradicting provisions shall become void.

In accordance with Article 5 of the Law "On Technical Regulating" a structure of state system of technical regulating consists of:

- the Government of the Republic of Kazakhstan;
- authorized body;
- government bodies within their competence;
- expert councils in the area of technical regulating under the government bodies;
- Information centre on technical barriers to trade, sanitary and phytosanitary measures;
- technical committees for standardization;
- conformity assessment bodies, laboratories;
- expert-auditors on conformity assessment, standardization and accreditation;
- state fund of the normative legal acts in the area of technical regulating and standards.

Question 93

In reference to WT/ACC/SPEC/KAZ/8/Rev.1, Paragraph 157, is there an appeal process should accredited certification bodies decide not to issue a certificate? If so, please describe.

Answer:

An applicant may appeal measures undertaken by an organization providing conformity recognition in regard of a product conformity recognition. In doing so, the applicant may apply to the Board of Appeals of the conformity recognition organization, and, if such applicant does not agree with its decision, to the Board of Appeals at the Technical Regulating and Metrology Committee, Ministry of

Industry and Trade of the Republic of Kazakhstan. In the Republic of Kazakhstan state (national) standard ST RK 3.10 "The Order of the Examination of Appeals" was approved.

In accordance with this standard the applicant submits an appeal within one month since the day of receipt of notification on the decision made by the accredited certification bodies. The appeal shall be made in writing, the form being upon the applicant's discretion, with the correspondence and other relevant documents enclosed.

Boards of appeal include specialists whose qualification and experience can ensure unbiased and justified decisions. When considering appeals, the board shall take measures to keep the confidential data constituting commercial secret undisclosed.

The Board of Appeals shall consider an appeal within 15 days submission of the documents. The board's decision shall be made in the form of a protocol and sent to the applicant within ten days since the date of the meeting.

The decision made by the Board of Appeals at the Technical Regulating and Metrology Committee may be appealed in the court according to the legislation of the Republic of Kazakhstan.

ST RK 3.10 – "The Order of the Examination of Appeals" is available through document WT/ACC/KAZ/66/Add.1.

Question 94

If no accredited body has the testing capability, will the testing results of a non-accredited body be considered/accepted?

Answer:

A certification body or a laboratory shall be accredited for specific types of products and tests. Certification bodies or laboratories are not allowed to function outside their scope of accreditation. Body on conformity recognition or an attesting laboratory does not have an authority to conduct an activity on conformity assessment not included into their accredited sphere.

In the absence of accredited laboratories, tests may be conducted by competent non-accredited test laboratories, which can guarantee objective results, only upon request of the Committee on Technical Regulating and Metrology under the Ministry of Industry and Trade of the Republic of Kazakhstan.

Moreover, the existing system of certification provides several conformity recognition schemes (modules), including schemes for situations when there are no necessary test laboratories exist in a region. In such situations, the decision shall be made on the basis of submitted documents supporting the conformity of products in question to the requirements (test protocols from other laboratories, earlier certificates for the products, certificate on quality management system, etc).

However, such scheme cannot be applied for certification of children food, toys, gasoline for cars, medicines, and hazardous industrial objects.

Conformity recognition schemes (modules) are enclosed in Annex IX.

Question 95

Question 101: Please provide an exhaustive list of all products that require a certificate of conformity. How is a certificate acquired? Is there a cost associated with the certificate?

Answer:

With the purpose of ensuring the safety of products for the human health and life, and environment, as well as for the national security concerns and competitiveness of local products that meet requirements of relevant regulations and satisfy consumer demands, Government Resolution No. 367 as of 20 April 2005, approved:

- list of products and services subject to mandatory certification, including 24 groups of products, including vehicles and their components and details, agricultural machinery, service and civil arms and ammunition, electro-technical, radio and electronic appliances, household chemicals, etc; and
- list of products allowed for conformity recognition with conformity declaration, including 8 groups of products. It includes certain types of furniture, shoes, construction materials, medical items, communication means, etc.

These lists are enclosed in Annexes X and XI.

Mandatory conformity recognition shall have the form of certification by a duly accredited certification body or in the form of declaration of conformity to technical regulations requirements.

There is a single conformity recognition procedure in Kazakhstan for all kinds of products regardless of areas of their use.

Rules on Conformity Recognition and Accreditation Work Involving Governmental Bodies, Technical Committees on Standardization and Certification Bodies were approved by Ordinance No. 136 by the Committee on Technical Regulating and Metrology under the Ministry of Industry and Trade of the Republic of Kazakhstan, as of 13 May 2005 and registered in the Ministry of Justice (available through document WT/ACC/KAZ/66/Add.1).

Besides, the national standard ST RK 3.4-2003 "State Certification System of the Republic of Kazakhstan. Procedure for Product Conformity Recognition. General Requirements". The standard provides for several conformity recognition schemes (modules) available for the applicant to choose from.

Conformity recognition schemes (modules) are enclosed in Annex IX.

Products, subject to mandatory certification (both local and imported), shall be certified by safety criteria in accordance with the following uniform rules:

1. products shall be certified upon the applicant's request submitted to any certification body accredited for such type of products;
 - the applicant chooses the product certification scheme (module) with the assistance of the certification body;
 - the certification body shall consider the application, register it, and send the applicant the resolution on the results of application processing. The resolution states the main certification conditions: the suggested certification scheme (module), the laboratory, conditions of inspection control over the certified product;
 - if the applicant agrees with the conditions of product certification, they make an agreement on product certification and the applicant transfers the certification fee to the certification body's bank account;

2. the certification body takes samples of the declared products in accordance with the requirements of guidelines on such products, which is to be verified with the document;
3. the certification body sends the samples to the accredited laboratory (centre) chosen at its discretion;
 - the laboratory (test centre) shall check the samples and send the results report to the certification body;
4. if the certification scheme (module) procedure results positively, the certification body issues the certificate for the product and makes the required number of copies;
 - the conformity certificate may have an annex with the list of specific products that were certified, and, their composition if required.
 - the certification body sets the certificate's expiration date taking into account:
 - the certification scheme (module) chosen;
 - the specific character of a product and its production;
 - expiration term of standards and normative documents for the product;
 - the period of validity of the certificate on production or quality management system, but no longer than for three years;
5. the inspection control of certified products, if such is required by the chosen certification scheme (module), shall be made by the certification body that has issued the certificate. Inspections shall be made at least once a year during the entire period of the certificate's validity.

The cost of certification depends on how much and difficult the testing of the certified product is.

Question 96

WT/ACC/KAZ/57 contains a number of questions for which Kazakhstan has provided responsive information. We will reflect on this information and provide additional comments and questions in writing.

The text WT/ACC/SPEC/KAZ/9 requires updating in the light of the passage of the 9 November 2004 Law "On Technical Regulating" to better reflect the substantial and positive reforms Kazakhstan is undertaking.

The Working Party Report should be revised to reflect the current situation and should mention this up front (i.e. paragraph 189).

Answer:

We propose amending the text of the Working Party Report as follows:

Paragraph 189. The legislation framework on technical regulating, standardization, certification, and accreditation in Kazakhstan is based on Law No. 603-II "On Technical Regulating" of 9 November 2004. This law replaced the earlier Law No. 433-1 "On Standardization" of 16 July 1999 and Law No. 434-1 "On Certification" of 16 July 1999.

The law takes into account the main requirements of the WTO Agreement on TBT, including:

- equal treatment of national and imported products and uniform requirements to the procedures of conformity assessment;

- priority of international standards in the developing of regulatory legal acts and national standards;
- transparency in the development of regulatory legal acts and standards; and
- priority of rules of international treaties ratified by the Republic of Kazakhstan over national legislation.

Paragraph 190. The Law of the Republic of Kazakhstan "On Technical Regulating" sets forth mandatory requirements to products aimed to ensure their safety to the human health and life, environment protection, national security, as well as to prevent actions misleading consumers as to the safety of products.

Mandatory requirements to processes shall be established only when such processes are related to product safety assurance.

Technical regulations adopted by the Government shall set forth mandatory requirements to products (processes, if necessary).

Technical regulations must contain an exhaustive list of mandatory requirements to products and shall have the status of direct application.

Requirements stipulated by technical regulations shall be set forth and applied in equal and the uniform manner regardless of the country and/or place of origin of a product.

For expert examination of draft technical regulations the law provides for creation of expert boards on technical regulation under the governmental bodies, which shall include representatives of governmental bodies, public unions, scientific organizations and enterprises of the Republic of Kazakhstan.

Elaboration of technical regulations shall be based on international and regional standards.

With such requirements, the national legislation on technical regulating cannot constitute any barriers to international trade.

The existing laws of the Republic of Kazakhstan will be brought into conformity with the provisions of the Law of the Republic of Kazakhstan "On Technical Regulating" with the principles and provisions of the WTO Agreement on technical barriers to trade.

With this purpose, Kazakhstan has prepared a draft Program for elaboration of five new and amending 34 existing laws of the Republic of Kazakhstan.

Expert boards on technical regulating to be created at governmental bodies shall elaborate and make expert examination of draft technical regulations. Such expert boards shall include representatives of governmental bodies, public unions, scientific organizations and enterprises of the Republic of Kazakhstan.

Currently, the expert boards have been created under the auspices of the ministries of industry and trade; transport and communications emergency, labour, finance, interior, defence, agriculture, and public protection; Informatization and Communication Agency, National Security Committee, and Land Resources Management Agency.

The body elaborating technical regulations shall publish notifications on elaboration of a draft technical regulation within one month since the moment of the drafting; conduct public hearings and

further work on the draft taking into account the comments; provide interested parties upon their request the comments collected to the draft technical regulation.

The term of public hearing of a draft technical regulation shall be at least 60 calendar days.

Whenever the requirements set forth by technical regulations do not meet the requirements of the relevant international standards or there are no such international standards or the requirements of the technical regulations in question might have an effect on conditions of imports or exports, the authority, which has elaborated the draft technical regulation, shall notify about the list of products to be covered by the elaborated technical regulation in question, about the purpose of and need in its creation, as well as submit detailed information on the elaborated draft technical regulation or a copy of the draft outlining the provisions that do not meet the requirements of international standards to interested parties and foreign countries upon their request.

Paragraph 191. In accordance with the Law of the Republic of Kazakhstan "On Technical Regulating" standards shall be applied voluntarily and equally regardless of the origin of a product or service.

Kazakhstan may apply international and regional standards, classifiers of technical and economic information, rules, guidelines and recommendations, national standards, standards of organizations, foreign classifiers of technical and economic data, rules, norms and recommendations on standardizing meeting security requirements.

International standards shall prevail.

Regulations and standards of foreign countries and international organizations shall be used in full or in part as the basis in elaboration of state (national) standards of the Republic of Kazakhstan, except for situations when such standards are inefficient or inadequate for achieving the objectives stipulated herein.

Standards shall be elaborated by technical committees on standardization. Technical committees on standardization shall include representatives of governmental bodies and interested parties.

Paragraph 192. Rules approved by an ordinance of the Committee on Technical Regulating and Metrology and registered in the Ministry of Justice shall govern the process and procedure for elaboration, coordination, recording, approval, expert examination, amending, termination and enforcement of national standards and classifiers of technical and economic information, as well as the procedure for accounting and application of international, regional, and national standards, foreign classifiers of technical and economic data, rules, norms and recommendations on standardizing and accreditation in the territory of the Republic of Kazakhstan.

An Enquiry Point (Information Centre) on Technical Barriers to Trade, Sanitary and Phytosanitary Measures has been created for interaction with the Secretariat of the World Trade Organization, WTO Members, and international organizations with the purpose of provision of interested parties and other countries with copies of documents and information on technical regulations, standards and conformity recognition procedures.

Any interested party may request Inquiry Point (Information Centre) the necessary information .

Currently, the Enquiry Point has been processing notifications for further submission to the WTO Secretariat. In addition, with the purpose of fulfilling our commitments pursuant to the Code of Good Conduct, the Enquiry Point has published the Draft Law "On Amendments and Addenda to Certain Legislative Acts on Technical Regulating Issues" on the web-sites www.memst.kz and

www.wto.memst.kz for the comments from the private sector, WTO members and other interested parties.

Paragraph 193. The Law "On Technical Regulating" provides for mandatory and voluntary conformity recognition:

Mandatory product conformity recognition shall have the form of certification issued by the certification body accredited in accordance with the established procedure, or alternatively a producer shall declare the conformity of its products to the requirements set by technical regulations.

An applicant may make voluntary conformity recognition in the form of certification or declaring that products, which are not subject to mandatory conformity recognition, as well as services and processes do meet requirements of technical regulations and contracts.

Until adoption of the relevant technical regulations, mandatory conformity recognition shall be made in accordance with safety criteria for the types of products included into the list approved by the Government of the Republic of Kazakhstan.

The list of products and services subject to mandatory certification includes 24 groups of products, including vehicles and their components and details, agricultural machinery, service and civil arms and ammunition, electro-technical, radio and electronic appliances, household chemicals, consumer commodities contacting human skin, food and water, construction materials and structures, light industry products, medicines, fuel, toys, personal protection aids, etc.

The list of products allowed for conformity recognition with conformity declaration includes 8 groups of products, including certain types of furniture, shoes, construction materials, medical items, and communication means.

As soon as necessary, technical regulations are elaborated and adopted, the products governed by such adopted technical regulations shall be excluded from the List of Products Subject to Mandatory Conformity Recognition. In future, the List shall cease to exist when all types of products representing potential hazard or harm will be regulated by technical regulations.

There is a single conformity recognition procedure in Kazakhstan for all kinds of products regardless of areas of their use. Rules on Conformity Recognition and Accreditation Work Involving Governmental Bodies, Technical Committees on Standardization and Conformity Recognition Bodies were approved with the Order No. 136 by the Committee on Technical Regulating and Metrology under the Ministry of Industry and Trade of the Republic of Kazakhstan, as of 13 May 2005 and registered in the Ministry of Justice.

Besides, the national standard ST RK 3.4-2003 "State Certification System of the Republic of Kazakhstan. Procedure for Product Conformity Recognition. General Requirements" describes the organizational and technical aspects of this process.

Paragraph 194. The work on harmonization of the existing standards with requirements of international standards with priority of application of international standards is in progress. In 2004 Kazakhstan elaborated and harmonized 197 state standards, including 82 standards in real economy sector. In 2005 Kazakhstan has harmonized 290 standards.

For the further work on transition to international standards, an analysis was undertaken of the existing normative framework (standards) on food, light, oil and gas industry, tourism, transportation and metallurgy, and proposals were made, accordingly, as to application of international standards in the mentioned sectors.

Paragraph 195. Conformity declaration shall be made by producer (vendor) of products subject to mandatory conformity recognition in case when it is required by technical regulations, as well as voluntarily in regard of any other products that are not subject to mandatory conformity recognition.

The declaration may be made in the form of:

- a conformity declaration based on the own evidence; and
- a conformity declaration based on evidence obtained with participation of conformity recognition organization.

The following documents may be used as a proof: technical documentation, results of own researches (tests) and measures and/or other documents that were used as the basis for the conformity recognition of a product in question.

When declaring the conformity bases on the own evidence and evidence obtained with the help of a conformity recognition organization, the applicant in addition may, on its discretion, use laboratory tests and measures protocols and submit a quality management system certificate.

Conformity declaration shall be registered in the conformity recognition organization accredited for this specific type of products.

A duly arranged and registered conformity declaration, equally with a conformity certificate is valid in the entire territory of the Republic of Kazakhstan

Until adoption of the relevant technical regulations, the conformity declaration may be used for products, the list of which is approved by the Government.

Paragraphs 196-200. No changes.

Paragraph 201. Law "On Technical Regulating" covers all sectors, including the telecommunication sector.

Under the program for elaboration of new and revision of the existing laws of the Republic of Kazakhstan the Law "On Telecommunication" will be revised in order to bring into conformity with the law "On Technical Regulating".

The main criterion for elaboration of new and revision of the existing laws is safety for the human life and health, and environment protection, the main principles of which are transparency, equal requirements to local and imported products, and use of international standards as the basis for their elaboration.

As for recognizing of test results, Law "On Technical Regulating" provides that foreign conformity certificates, test protocols, accreditation certificates or equal documents issued by foreign accreditation bodies shall be recognizes in accordance with international treaties/agreements.

If there are no such international treaties/agreements, test results of a body based outside of Kazakhstan shall be recognizes through accreditation of such organization in the national system of accreditation of the Republic of Kazakhstan, which complies with paragraph 6.1 of the WTO Agreement on TBT.

Paragraphs 202-203. No changes.

Paragraph 204. Kazakhstan, acceding to the WTO, aims at full conformity to the TBT Agreement. With this view the Law "On Technical Regulating" has been adopted.

This Law contains the fundamental provisions and principles of the TBT Agreement. It serves as a basis when elaborating technical regulations, standards, conformity recognitions, accreditation and state control.

Currently, in some industry sectors, the laws that stipulate provision merely describing producers and the structures of the authorities, but no requirements to the entities ensuring achievement of legitimate objectives, are still in operation.

Mandatory requirements to the entities are contained in the standards, which with the implementation of the Law "On Technical Regulating", are advisory in nature.

Therefore, these laws shall be amended for their full conformity to the Law "On Technical Regulating" and the TBT Agreement. Among them are: "On Fire Security", "On Medicines", "On Transports in the Republic of Kazakhstan" and others, 33 laws in total.

In addition, more five laws are pending elaboration (for instance, 4 new laws "On Electromagnetic Compatibility", "On Safety of Toys", "On Safety of Chemical Products", "On Safety of Machines and the Equipment" and 1 Law "On safety of Food Products" replacing acting Law "On Quality and Safety of Food Products"). This is with the purpose of the full coverage of all industry sectors under the Law "On Technical Regulating" and the TBT Agreement.

Kazakhstan understands that implementation period is not available. Thus, Kazakhstan will take appropriate steps to revise acting 34 laws and elaborate new five laws that include safety requirements and take into account relevant international laws and standards during 2006. Such steps would allow us to remove technical barriers to trade.

Finally, on the basis of proposals of the ministries and agencies resulting from analysis of the acting regulatory legal acts governing various industry sectors for the purpose of their conformity to the Law "On Technical Regulating" and the TBT Agreement, new regulatory legal acts on technical regulation will be elaborated and existing ones will be revised.

Question 97

It remains unclear to us why Kazakhstan believes it needs a transition period to comply with WTO TBT obligations.

It would appear that Kazakhstan has a structure in place to ensure future compliance, and that the main issue left is to rescind/sunset/amend existing technical regulations or conformity assessment procedures it believes are not WTO compliant.

This is Kazakhstan's responsibility in joining the WTO and we would expect this to be done by the time of accession.

It is not clear why Kazakhstan believes it needs to pass ten new laws and 100 government resolutions (in specific regulatory areas, not horizontal legislation which appears to already be in place) in order to comply with the WTO TBT obligations. Why would this be necessary?

Kazakhstan states that 30 existing laws need to be amended, but it is not clear whether these amendments are necessary for purposes of conforming to WTO obligations, or whether they are

being undertaken for purposes of upgrading its infrastructure and regulatory quality. If the latter, such amendments could take place in due course and need not hinder WTO accession.

As it does not appear that Kazakhstan needs additional legislation to implement WTO, we believe that Kazakhstan should commit to adhere to the TBT Agreement upon accession and without recourse to transition.

Answer:

This Law "On Technical Regulating" contains the fundamental provisions and principles of the TBT Agreement. It serves as a basis when elaborating technical regulations, standards, conformity recognitions, accreditation and state control.

Currently, in some industry sectors, the laws that stipulate provision merely describing producers and the structures of the authorities, but no requirements to the entities ensuring achievement of legitimate objectives, are still in operation.

Mandatory requirements to the entities are contained in the standards, which with the implementation of the Law "On Technical Regulating", are advisory in nature.

Therefore, these laws shall be amended for their full conformity to the Law "On Technical Regulating" and the TBT Agreement.

Kazakhstan understands that implementation period is not available. Thus, Kazakhstan will take appropriate steps to revise acting 34 laws and elaborate new five laws that include safety requirements and take into account relevant international laws and standards during 2006. Such steps would allow us to remove technical barriers to trade.

Finally, on the basis of proposals of the ministries and agencies resulting from analysis of the acting regulatory legal acts governing various industry sectors for the purpose of their conformity to the Law "On Technical Regulating" and the TBT Agreement, new regulatory legal acts on technical regulation will be elaborated and existing ones will be revised.

Kazakhstan will undertake its best efforts to adopt all abovementioned regulatory legal acts before the middle of 2006.

- Sanitary and phytosanitary measures

Question 98

We see this as a problematic area, where Kazakhstan has much work to do. We have some questions from November that need fuller response.

The Republic of Kazakhstan is requesting to delay application of the provisions of the SPS Agreement for a period of four years following the moment of accession to the WTO.

An extended transitional period of SPS measures is unacceptable. It appears that there is new legislation in the pipeline, and that Kazakhstan is retaining its request for a transition, now shortened.

We urge Kazakhstan to keep working to avoid the need to have a transition in this area. We seek SPS legislation from Kazakhstan that provides for transparent, science-based regulations on all issues concerning sanitary and Phytosanitary regulations

Kazakhstan should apply the WTO Agreement on SPS Measures from the date of accession.

Please describe the process for assessing the risk of imported commodities. Is this risk assessment process described and available publicly? Are interested parties able to provide comments on the risk assessments and are those comments, if accepted, addressed in the process?

Answer:

- Food safety:

Risk assessment is conducted upon request of the government authorities, including government bodies on sanitary-epidemiological control, judicial authorities, public associations, entrepreneurs, juridical and natural persons.

Within their authority, the government bodies on sanitary-epidemiological control organize risk assessment, i.e. set a task to carry out the research/study on risk assessment with clear indication of objectives and missions.

Risk assessment shall be carried out in accordance with established procedure by the bodies that are part of sanitary-epidemiological service (republican sanitary-epidemiological stations, centres for sanitary-epidemiological expertise, republican scientific-research organizations, conducting activities in the sphere of sanitary-epidemiological welfare of the population, state anti-plague institutions) (hereinafter – bodies of sanitary-epidemiological service).

The government bodies of sanitary-epidemiological control submit detailed report on conducted research and expert conclusion, which shall be supported with substantiation of results and recommendations in accordance with the targeted objective and missions.

Government bodies on bodies of sanitary-epidemiological control on the basis of the reports and conclusions issue sanitary-epidemiological conclusion.

Risk assessment shall be carried out according to the following stages:

- hazard identification: (identification of potential harmful factors, assessment of the relationship of the factors in question and deterioration of human health, sufficiency and reliability of available information as to whether contaminant levels are caused by the substances under analysis; form a list of priority chemical substances that are subject to the subsequent description);
- assessment of "dose-response" dependence: revelation of quantitative relationship between data on human health and level of expositions;
- analysis of the influence (expositions) of chemical substances on human: characteristics of contaminant sources, routs of movement of contaminants from the sources to human body; pathways and points of influence, determination of doses and concentrations; that will have impact in the future; identification of exposition levels for population in the whole and individual sub-populations, including supersensitive groups; and
- characteristics of the risk: analysis of all available data, calculation of risks posed to population and its individual sub-groups; comparison of risks with the tolerance levels, comparative analysis and ranging of various risks according to their statistical, medical, biological and social significance, identification of medical priorities and those risks that must be prevented or reduced to the acceptable level.

Interested parties can submit their comments on risk assessment via notification procedures established by the WTO Secretariat or the SPS/TBT Enquiry Point.

- Plant Health:

The phytosanitary risk analysis is determined as the "process of biological and economic scientific assessment of a pathogenic organism aimed to determine if such an organism should be an object to phytosanitary measures, and how strict the phytosanitary measures should be taken against it" in the text of International Convention for Plant Protection revised in 1997.

The risk assessment analyzes the possibility of a pathogenic organism to enter and acclimatize in a natural habitat (in Kazakhstan) exposed to danger, as well as the potential economic damage for this region. Assessment of the phytosanitary risk reduction allows to select specific phytosanitary (quarantine) measures in accordance with the biological features of the quarantined species and the ways of its infection and spread.

The phytosanitary risk analysis includes three phases: preparatory, phytosanitary risk assessment, and assessment of the phytosanitary risk reduction.

The preparatory phase includes identification of the pathogenic organism or determination of its ways of spread for which the phytosanitary risk analysis will be carried out.

During the second phase (phytosanitary risk assessment) the pathogenic organism is to be studied individually with the purpose of determination of its conformity with the criteria of quarantine species. At this stage an assessment of a phytosanitary risk of the specific pathogenic organism for the territory of Kazakhstan (probability of penetration, acclimatization, and potential economic damage) is carried out.

The third phase (assessment of the phytosanitary risk reduction) aims at assessing potential of the phytosanitary measures to reduce the risk from the specific quarantined pathogenic organism and determine the necessary phytosanitary measures. Phytosanitary measures are used with the purpose to reduce the risk of entry of a pathogenic organism through the pathways revealed in the course of the phytosanitary risk assessment.

For the phytosanitary risk assessment, the authorized body on plant quarantine invites scientists from plants protection research institutes, who jointly with specialists from the Russian Plant Quarantine Research Institute, carry out the quarantine measures development on the basis of scientific principles of phytosanitary risk assessment taking into account international standards and recommendations.

This work has been included into the action plan of the Ministry of Agriculture of Republic of Kazakhstan for 2005-2007 under the sections on pests, plant diseases and weeds.

Nevertheless, these measures do not solve entirely the problems of technical nature related to the necessity of upgrading the equipment of the quarantine laboratories. Also there is a need to create specialized laboratories which would conduct phytosanitary risk assessment of imported goods as well as to equip them in conformity with the relevant international standards.

In addition, the Draft Law "On Safety of Foodstuff" has been elaborated. The Draft Law provides for the provision on risk assessment of foodstuff which shall be conducted in each case as the complex set of risk assessment in the course of laboratory test of foodstuff.

- Animal Health:

Risk analysis has important place in trade in animals, processed and raw products originated from animal as well as other goods subject to veterinary control; and as well as in movement of and utilization of above mentioned substances which potentially may carry hazard caused by diseases, harmful toxic substances threatening the epizootic welfare and food safety.

The risk assessment is to be undertaken upon request of state authorities including central and local bodies of the state veterinary services, judicial authorities, and public associations, juridical and natural persons.

State veterinary authorities within their competence organize risk assessment and request organizations under their supervision (the State Institution "National Center for Reference, Monitoring and Veterinary Diagnosis" with its branches, the State Enterprise "Republican Veterinary Laboratory" with its branches, republican scientific research institutions, regional branches of state veterinary control on the border and transport and local bodies of state veterinary) to conduct research.

The process of risk analysis includes the following components:

- Hazard identification – identification of pathogenic organisms, contaminants and toxic elements in products.
- Risk determination – determination of likelihood as well as biological and economic consequences coming from entry and spread of pathogenic microorganisms, toxic and harmful substances;
- Risk management – determination, selection and conduct of measures to be undertaken to reduce the risk as well as monitoring and inspection as to whether those measures do achieve the required results; and
- Notification of risk – mutual and periodical exchange of information about risk between the experts which carry out the risk assessment and the officers responsible for risk management and all other interested parties.

The analysis of the veterinary and sanitary risk shall be conducted in accordance with the national veterinary legislation taking into account relevant recommendations of the Terrestrial Code of the OIE, and requirements of the SPS Agreement.

The veterinary bodies upon completion of their research and risk assessment shall submit the reports and laboratory expertise. On the basis of that research the veterinary authority takes actions against hazard accordingly.

Question 99

Does Kazakhstan have a process in place for recognizing the equivalence of other countries' food safety systems? Is this process through which public participation can take place?

Answer:

Food safety:

The procedure of equivalency recognition is conducted upon request of an exporting country through bilateral consultations and negotiations. According to the results of those meetings, Kazakhstan takes the decision on conclusion of a bilateral agreement on recognition of sanitary measures of exporting countries as equivalent.

- Animal health:

In accordance with the paragraph 18 Article 8 of the Law "On Veterinary" Kazakhstan recognizes equivalency of veterinary measures of other countries if those measures ensure appropriate level of protection established on the territory of Kazakhstan. The decision on equivalence recognition is under the competence of the state veterinary authority and its branches. If veterinary measures of the exporter guarantee the appropriate level of protection of animal and human then they are accepted by Kazakhstan on the basis of veterinary certificate which verifies conformity of imported products and raw materials of animal origin to the veterinary requirements of Kazakhstan. The veterinary safety requirements (except those that can be consumed without processing) are reflected in the regulatory legal acts in the sphere of veterinary. These documents are publicly available.

- Plant Health:

In accordance with the Law "On Plant Quarantine", Kazakhstan shall recognize as equivalent the phytosanitary systems of other countries if they ensure appropriate level of protection on the territory of importer.

The phytosanitary requirements are set forth in the regulatory legal acts in the sphere of plant quarantine. The public is entitled to put forward proposals to the consideration of the authority on plant quarantine.

Question 100

How are SPS rules/regulations established? Is there a process through which public participation can take place?

Answer:

- Food safety:

1. State sanitary epidemiological standardization includes:
 - development of common requirements for substantiation of normative legal acts and control for their development;
 - development (modification), expertise, approval, and publication of normative legal acts; and
 - formation and administration of a single data bank of regulatory legal acts in the field of sanitary epidemiological welfare of population.
2. The documents of standardization of the sanitary and epidemiological state system are sanitary rules, hygiene normatives, instructions, instructional guidelines and other documents.
3. Sanitary rules, hygiene normatives shall be subject to compulsory execution for all natural and juridical persons operating on the territory of the Republic of Kazakhstan.
4. In the course of development and approval of regulatory legal acts pertaining to the issues of sanitary epidemiological welfare of population, governmental agencies shall agree them with the authorized body on sanitary and epidemiological welfare of population.
5. Sanitary rules, hygiene normatives of normative-technical nature shall not be subject to state registration.

- Animal health:

Rules/regulations of SPS measures for animal products are established by an authorized body in the field of veterinary. Thus, in accordance with items 6, 7 and 19 of Article 8 of the Law of the Republic of Kazakhstan "On Veterinary" an authorized body in the field of veterinary has the following jurisdiction items:

- development and approval of veterinary measures, veterinary rules and normatives, veterinary accounting instruments, other normative legal acts in the order established by the legislation of the Republic of Kazakhstan;
- implementation of temporary veterinary measures in cases when scientific argumentation of exporting country is not sufficient based on the available proper information, including information obtained from International organizations; and
- arrangement of protection of the territory of the Republic of Kazakhstan from entering and spreading of infectious and exotic diseases of animals from other states.

- Plant Health:

Rules/regulations of phytosanitary measures for crop products are established by the authorized body in the field of plants quarantine in accordance with Article 7 of the Law of the Republic of Kazakhstan "On Plant Quarantine" jurisdiction of which includes:

- development, approval and agreement of normative and instructional guidelines in the established order;
- specification of the List of Items Subject to Plant Quarantine Measures, to which state measures on plants quarantine are established and implemented;
- arrangement of the protection of the territory of the Republic of Kazakhstan from entering or integral permission of quarantine objects from foreign countries or quarantine zones; and
- conduction of state control for compliance to the law and abidance by rules and implementation of measures on plants quarantine on the territory of the Republic.

It is provided by the Law of the Republic of Kazakhstan "On Private Entrepreneurship" that participation of the private sector in the expertise of regulatory legal acts, affecting the interests of private entrepreneurship, through the councils established under central and local executive bodies is one of the basic of principles of the government regulation.

The public has the right to make appropriate proposals for consideration of an authorized body on plants quarantine in accordance with aforecited draft.

WTO members will also have the right to submit proposals and comments through the Inquiry Point on TBT and SPS measures.

Question 101

Does Kazakhstan have surveillance programs on animal and plant pest/diseases? If so, what pests/diseases?

Answer:

- Plant health:

To the effect of forecasting or detecting of dangerous special blasts/plant diseases the Department of phytosanitary control arranges harmful quarantine organisms monitoring. The monitoring of harmful

quarantine organisms is held directly by the specialists of RGP "Phytosanitary", and by state inspectors of regional, city and district territorial administrations on phytosanitary control of the Ministry of Agriculture of the Republic of Kazakhstan.

Inspections are made for detection of the following blasts/plants diseases: American white butterfly, eastern fir seed moth, Californian parlatoria, Capridae beetle, Colorado potato beetle, phylloxera, coccid Komstok, caryopsis, ragweed, richweed perennial, bitterling, nightshade (coracid), field dodders.

Monitoring program is implementing within the framework of budget program 004 "Phytosanitary Control", sub-program 101 "Detection, Localization and Liquidation of Hotspots Quarantine Blasts, Plant Diseases and Weeds". Annual amount of funding provided for these measures is about KZT 43 million.

Monitoring regulation is performed by the authorized body on phytosanitary control (Department of phytosanitary control).

- Animal health:

Surveillance program of animal diseases throughout the territory of the Republic of Kazakhstan has been established, special veterinary laboratory has been carrying out the epizootic control to the effect of forecasting of arising of dangerous special animals and birds diseases, as well as for undertaking of timely measures on their prevention, localization and liquidation.

Monitoring program has been implemented within the framework of budget program 018 "Ensuring epizootic welfare" and sub-program 102 "Diagnostics of animal diseases". Monitoring results are used for the development of vaccination strategy on dangerous specific animal and bird diseases and compilation of epizootic map and anticipations.

Inspections are made for detection of the following animal diseases: rabies, goat fever, Aujeszki's disease, leucosis, leptospirosis, listeriosis, hemorrhagic septicemia, Siberian plague, (except for ascolization of raw hide), tuberculosis, foot-and-mouth disease, pox, echinococcosis, paratuberculosis, toxoplasmosis, trychphytia, rikketsial diseases, Francis disease, vesicular stomatitis (exotic disease), epidemic vomiting, rednose, parainfluenza-3, cattle-plague, blackleg, campilobacteriosis, spongiform encephalopathy, infectious laryngotracheitis, Newcastle disease, Marek's disease, Gamboro's disease, birdpox, parrot disease, respiratory mycoplasmosis, highly-pathogenic bird influenza, nodular dermatitis (exotic disease), clamidiosis (enzootic) sheep abortion, anaerobic sheep enterotocsema, bradsot, infectious epididymitis of stags, contagious pustular dermatosis (ecthyma), clamidiosis sheep abortion, infectious agalactia of sheep and goats, scrapie, maedi-visna, adenomatosis, bluetongue (exotic diseases), plague of small ruminants, infectious anemia, equinia, influenza, rhinopneumonia, infectious encephalomyelitis, African horse sickness (exotic disease), epizootic lymphangitis, camel plague, classical plague, lymphangitis, erysipelas, vesicular disease, Teshen's disease, viral transmissible gastroenteritis, African plague (exotic diseases), viral hemorrhagic myxomatosis, myxomatosis, zoophagous plague, hemorrhagic carp septicemia, opisthorchosis.

Question 102

Please describe the organizational framework of your veterinary regulatory authority, as well as relationship between federal authority and the Oblast authorities. Please describe the same for your plant health regulatory authority.

Answer:

- Phytosanitary control:

The structure of state administration system of phytosanitary control includes:

1. Authorized state phytosanitary body (Phytosanitary department of the Ministry of Agriculture of the Republic of Kazakhstan);
2. State quarantine institutions, established by the Decision of the Government of the Republic of Kazakhstan:
 - Republican, zone and border quarantine laboratories; and
 - Introductory Quarantine Nursery for Cereal Crops.
3. Republican State Enterprise "Phytosanitary";
4. branches of state inspection on phytosanitary control of oblasts, Astana and Almaty cities of the Territorial Departments of the Ministry of Agriculture of the Republic of Kazakhstan.
5. phytosanitary inspectors of rayon (city)territorial administrations of the Ministry of Agriculture of the Republic of Kazakhstan.
6. border checkpoints and posts of phytosanitary control.

As coordinating authority, Phytosanitary Department implements its actions in cooperation with other structural subdivisions of the Ministry of Agriculture of the Republic of Kazakhstan, its territorial bodies and organizations under supervision as well as regulates the issues regarding phytosanitary control.

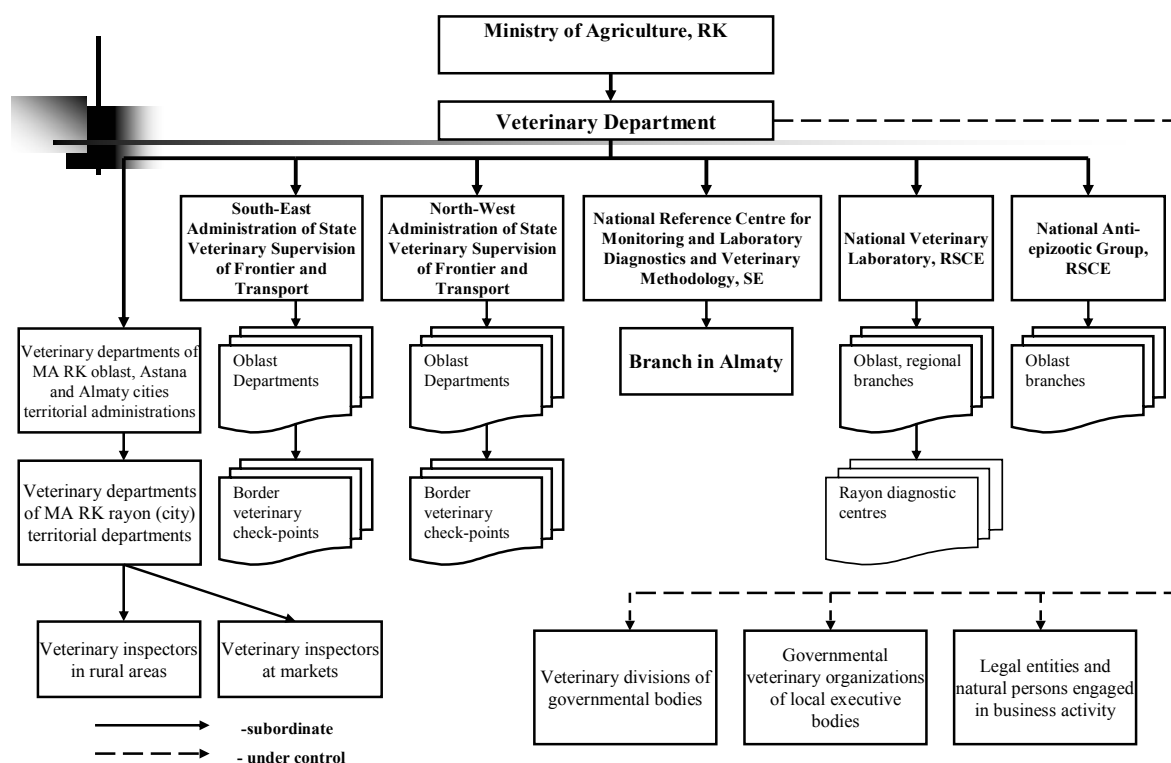
- Animal health:

The structure of veterinary control includes:

- Authorized state veterinary body (Veterinary Department the Ministry of Agriculture of the Republic of Kazakhstan);
- Zone subdivisions of state veterinary control on the border and transport with veterinary inspection posts;
- Regional, (capitals, cities of republican subordination), district territorial subdivisions of an authorized state body in the field of veterinary.

The Veterinary Department implements its actions in combination with other structural subdivisions of the Ministry of Agriculture of the Republic of Kazakhstan, its territorial departments and deals with problems of inter-industry coordination and regulating in the veterinary field.

Veterinary System of the Republic of Kazakhstan



Question 103

Question 105: Will newly introduced restrictions and legislation be open for comment before implementation? All draft, proposed, amended and final SPS and agriculturally related TBT regulations, including those for agricultural biotechnology products, should be published in one official journal. Kazakhstan requires early publication of notifications on planned implementation of a concrete measure for information purposes and to allow sufficient time for the submission of comments. However, per the WTO SPS Agreement, notifications shall take place at an early stage, when amendments can still be introduced and comments taken into account.

Answer:

All draft regulatory legal acts, amended and final versions of SPS rules and TBT regulations regarding agriculture for studying and comments before adoption are placed on the web-sites www.minagri.kz, www.memst.kz and in periodicals. Besides, noted above, all regulatory legal acts shall pass through the expertise of expert council on entrepreneurship.

As for notifications which shall be directed on the initiate stage, we inform that to this effect there has been elaborated state (national) standard "Rules and procedures of notifications preparation on elaborating (adopting) technical regulations and standards" has been adopted. It provides for submissions of notifications on sanitary and phytosanitary measures and technical regulations under elaboration on the initial stage through the WTO Secretariat in accordance with rules and procedures stated in Annex B of SPS Agreement, Article 10 of TBT Agreement, Recommended Procedures For Implementing the Transparency Obligations of The SPS Agreement (Article 7) (document

G/SPS/7/Rev.2 of 2 April 2002), Decisions and Recommendations Adopted by the Committee Since 1 January 1995 (document G/TBT/1/Rev.7 of 28 November 2000).

Question 104

Question 106: It appears that in order to receive permission to import, traders must first receive permission from the "Oblast subdivision of the authorized body". Why are import permits handled by the local authorities? Does a veterinary certificate to be issued before the "authorized body" gives permission to import? This appears to be an additional barrier to imports.

Answer:

To obtain permission to import, entrepreneur (trade company) must apply to Veterinary Department (senior veterinary inspector of the oblast) of the Oblast Territorial Division of the Ministry of Agriculture of the Republic of Kazakhstan particularly where the imported goods is expected to be placed and used. That is because that the epizootic and veterinary-sanitary condition is under control of the Senior State veterinary Inspector of corresponding oblast and it is also for convenience of entrepreneurs.

On the basis of the information received from OIE about the epizootic situation of the country-importer, Senior State veterinary inspector of the oblast in accordance with Article 16 of the Law of the republic of Kazakhstan dated 10 July 2002 No. 339-II "On Veterinary", determines possibility of import of the requested goods (freight), regulates conditions and route of the shipment and issues veterinary-sanitary requirements to import and transportation of a specific shipment.

On the grounds of the entrepreneur's application state veterinary inspector of the oblast forwards a request for import to the authorized body on veterinary (in this case - Veterinary Department of the Ministry of Agriculture of the Republic of Kazakhstan) taking into account the results of coordination on the first stage. The request for import is to be reviewed in five days and the positive decision or justified refusal is taken and the addressee is informed by telephone message.

Thus, to receive permission to import of goods from the authorized body on veterinary prior to receipt the veterinary certificate is not necessary. The issuance of the veterinary certificate which confirms the implementation of the above-mentioned veterinary-sanitary requirements of the importing country by the trader and State Veterinary Service of the country of the importing country that guarantees veterinary-sanitary safety of the goods takes place on the territory of the exporting country upon actual importation of goods.

Three forms of veterinary certificates are approved: No 1 – for animals; No 2 – for food and animal origin products; No 3 – for technical products of animal origin, and also fodder and fodder additives. In accordance with this, during importation of goods at frontier point the frontier point state veterinary inspector, instead of veterinary certificate of the exporting country, issues a veterinary document valid only on the territory of Kazakhstan, since only a certification document of recognized from in the State and Russian languages is valid on the territory of Kazakhstan. In the course of exportation from Kazakhstan, down to the state border, the goods are accompanied by the certification document of one of the above-mentioned-forms which during passing the border checkpoint is replaced by veterinary certificate valid outside Kazakhstan (excluding the goods transported to the territory of CIS countries – members of intergovernmental agreement on veterinary).

Question 105

What is the purpose of the local veterinary inspector reissuing the vet certificate to replace the foreign certificate? What means are in place to ensure foreign product is then not relabelled as Kazakhstan product?

Answer:

According to Rules of veterinary documents issued by veterinary inspectors approved by the Order of the Minister of Agriculture of the Republic of Kazakhstan No. 372 of 15 November 2002, the only (internal) veterinary certificate is valid for applying on the territory of Kazakhstan.

To prevent the spread of infectious diseases of animals and mutual protection against epizootics, and also reasoning from interests of successful development of economic and trade connections among countries on 12 March 2003 the States-Heads of veterinary services of CIS countries signed the Agreement of Cooperation in the Veterinary Field (furthering referred to as Agreement).

Article 14 of the Agreement says that upon importation of goods subject to state inspection, Parties use the same veterinary requirements and veterinary certificates.

The main reason of replacement of the foreign certificate by the internal veterinary certificate is the fact that a cargo arriving to the border or point of destination is accompanied by the certificate in the language of the exporting country.

The procedure of the replacement of foreign vet certificate is described in Article 7.5 of the Common Rules of State Veterinary Inspection of International and Interstate Transportation of animal cargoes (approved by Intergovernmental Council for Cooperation in Veterinary Sector of CIS countries dated 5 November 2003 signed in Kiev), which says that registration of veterinary certificate in exchange for foreign certificate is carried out only on the conditions that the freight is undergone full veterinary inspection and customs clearance. In the veterinary certificate issued by state veterinary inspector of border checkpoint there shall be indicated the number and date of permit of Senior State Inspector of a CIS country for importing the cargo under control and the order of its sale or special instructions about the conditions of its usage is mentioned as well since during transportation within the country the good can change its characteristics.

Besides, Instructions about Issuance of veterinary documents for goods under control of State veterinary inspection (approved by Intergovernmental Council for Cooperation in veterinary sector of CIS countries dated 22 October 1998 in Tashkent) it is mentioned that for the goods imported into the country veterinary inspectors on the border issue veterinary certificates replacing veterinary certificates of the exporting country.

Further as the imported goods are delivered to the point of destination, they are under control of state inspector of the territory for the period of their intended use (sale, processing), and that is why the replacement of the label, marking, packaging of the foreign goods by Kazakh ones is excluded.

During export from Kazakhstan, upon arrival to the border, the goods are accompanied by (internal) veterinary certificate which after passing the border point of veterinary control is replaced by the veterinary certificate of the recognized form in the English, State and Russian languages, which is valid outside the territory of Kazakhstan.

The procedure of replacement of foreign vet certificate by Kazakhstan vet certificate is free of charge and does not present an obstacle to international trade.

Question 106

Regarding harmonization, specifically what kind of technical assistance is requested?

Answer:

Kazakhstan requests technical assistance for bringing the existing system on veterinary and phytosanitary control to compliance with international requirements and also assistance for renewal of material resources of laboratories and staff training.

Besides assistance in translating international norms on product safety into the Russian language is needed.

Question 107

Concerning the Action Plan for SPS Implementation, WT/ACC/KAZ/61:

We thank Kazakhstan for its additional information on implementing the provisions of the WTO Agreement on SPS.

We are pleased to understand that an enquiry point exists. Could you indicate where it is and if it is operational?

Answer:

The SPS/TBT Single Inquiry point has been functioning since January 2005 and it is located at the following address:

104/1 Auezov street
473000, Astana
Republic of Kazakhstan

Tel.: +7 3172 320641
Fax.: +7 3172 323275

e-mail: inform@memst.kz
int_rel@memst.kz

The corresponding notification about the Inquiry Point forwarded to the WTO Secretariat in February 2004 is contained in document G/SPS/ENQ/18/Add.1 dated 3 March 2005.

Question 108

What are priority products referred to in Roman II? Are these products for export? Are they products that they are concerned about domestically?

Answer:

In accordance with the Action Plan in 2005, multifunctional reference-laboratory at Republic Sanitary-Epidemiologic station has been established. To this end, 38 units of laboratory equipment were purchased. The new laboratory equipment was purchased based not on priority of products but for analysis of the whole range of food products. With this regard, this issue is no longer critical for Kazakhstan.

Question 109

Roman numeral II 4 describes development of new standards and norms in the next few years. Does this include the adoption of internationally accepted (OIE, IPPC, Codex) standards or norms? Any standards and norms developed that are more restrictive than those internationally accepted ones must have scientific justification. Regional standards and norms, e.g., those developed by the EU, are not always WTO consistent.

Answer:

New standards shall be elaborated in accordance with requirements of international standards and provisions (OIE, IPPC, Codex). The scientific justification is the main requirement in the course of development of the new standards.

In accordance with State Program of Development and Reformation of Healthcare System for 2005-2010, the standards must comply with the WTO provisions.

Question 110

As regards Table (1) of WT/ACC/KAZ/58 - Law: "On Changes and Amendments into the Legislation of the Republic Kazakhstan on Separation of Authorities between the Levels of State Governance and Budget Relations", please specify:

What is the reason for such high requirements (above the international standards) for importers from other countries?

Answer:

With the adoption of the Law of the Republic of Kazakhstan No. 13-III "On Amendments and Addenda to Legislative Acts of the Republic of Kazakhstan on Separation of Authorities between the Levels of State Governance and Budget Relations" of 20 December 2004, the following amendments and addenda have been introduced to the Law "On Plants Quarantine" and the Law "On Veterinary" with the purpose to bring them into full conformity with the requirements of the SPS agreement:

Provisions of the SPS Agreement	Law "On Plants Quarantine"	Law "On Veterinary"
Article 4. Members shall accept the sanitary or phytosanitary measures of other Members as equivalent, even if these measures differ from their own or from those used by other Members trading in the same product, and if the exporting Member demonstrates objectively to the importing Member that his measures achieve appropriate level of sanitary or phytosanitary protection of the importing Member.		Article 8.18. Competence of the State authorized veterinary body and its territorial units shall cover acceptance of the equivalency of veterinary and sanitary measures of other countries, if such measures guarantee an appropriate level of safety on the territory of the country.

Provisions of the SPS Agreement	Law "On Plants Quarantine"	Law "On Veterinary"
Article 5.7. In cases where relevant scientific evidence is insufficient, a Member may temporarily adopt sanitary or phytosanitary measures on the basis of available pertinent information, including that from the relevant international organizations as well as from sanitary or phytosanitary measures applied by other Members.	Article 8.1-1. The state inspectors of the authorized body when conducting quarantine control shall be entitled to apply (impose) temporary quarantine measures to products subject to quarantine imported from other states, in cases when scientific evidence on the basis of the available information, including that from the relevant international organizations as well as from phytosanitary measures applied by other countries, is insufficient.	Article 8.19. Competence of the State authorized veterinary body and its territorial units shall cover identification of territories, or parts thereof, that are free from diseases, or have minor dissemination of diseases, carrying out control over traffic of goods exported from these territories, providing confirmations to the importing country, and ensuring access to its representatives with the purpose of carrying out inspections of these territories.
Article 6. Members shall, in particular, recognize the concepts of pest- or disease free areas and areas of low pest or disease prevalence.	Article 7.5. The authorized agency shall perform quarantine inspection, laboratory tests and phytosanitary certification of imported and exported products subject to quarantine based on phytosanitary characteristics of the area, place of origin and destination, as well as pest-free areas or areas of low pest prevalence	Article 8.20. Competence of the State authorized veterinary body and its territorial units shall cover introduction of temporary veterinary measures in cases, when scientific evidence of the exporting country on the basis of the available pertinent information, including the information, received from international organizations, is insufficient.

No additional measures ensuring a higher level of sanitary and phytosanitary protection than the international standards, taking into account the risk assessment, have been introduced into the above mentioned Law.

Question 111

How the analysis of risk originating from imported products is provided?

Answer:

1. Food safety

Risk assessment is conducted upon the request of government authorities, including government bodies on sanitary-epidemiological control and judicial authorities, as well as public associations, entrepreneurs, juridical and natural persons.

Within the framework of their authority, the government bodies on sanitary-epidemiological control organize risk assessment, i.e. set a task to carry out the research/study on risk assessment with clear indication of objectives and missions.

Risk assessment shall be carried out in accordance with established procedures by public institutions, which represent integral part of the bodies of sanitary-epidemiological services (including: republican sanitary-epidemiological stations, centres for sanitary-epidemiological expertise, republican scientific-research organizations, conducting activities in the sphere of sanitary-epidemiological welfare of the population, state anti-plague institutions) (hereinafter – bodies of sanitary-epidemiological services).

The bodies of sanitary-epidemiological services submit detailed report on conducted research and expert conclusion, which shall be supported with substantiation of results and recommendations in accordance with the targeted objective and missions.

Government bodies on sanitary-epidemiological control on the basis of the reports and conclusions issue sanitary-epidemiological conclusion.

Risk assessment shall be carried out according to the following stages:

- hazard identification: (identification of potential harmful factors, assessment of the relationship of the factors in question and deterioration of human health, sufficiency and reliability of available information as to whether contaminant levels are caused by the substances under analysis; form a list of priority chemical substances that are subject to the subsequent description);
- assessment of "dose-response" dependence: revelation of quantitative relationship between data on human health and level of expositions;
- analysis of the influence (expositions) of chemical substances on human health conditions: characteristics of contaminant sources, routs of movement of contaminants from the sources to human body; pathways and points of influence, determination of doses and concentrations; that will have impact in the future; identification of exposition levels for population in the whole and individual sub-populations, including supersensitive groups; and
- characteristics of the risk: analysis of all available data, calculation of risks posed to population and its individual sub-groups; comparison of risks with the tolerance levels, comparative analysis and ranging of various risks according to their statistical, medical, biological and social significance, identification of medical priorities and those risks that must be prevented or reduced to the acceptable level.

Interested parties can submit their comments on risk assessment via notification procedures established by the WTO Secretariat or the SPS/TBT Inquiry Point.

2. The phytosanitary risk analysis is determined as the "process of biological and economic scientific assessment of a pathogenic organism aimed to determine if such organism should be a subject to phytosanitary measures, and how strict the phytosanitary measures should be taken against it" in the text of the International Convention for Plant Protection revised in 1997.

The risk assessment analyzes the possibility of a pathogenic organism to penetrate and acclimatize in a natural habitat (in Kazakhstan) exposed to danger, as well as the potential economic damage for this region. Assessment of the phytosanitary risk reduction allows to select specific phytosanitary (quarantine) measures in accordance with the biological features of the quarantined species and the ways of its infection and spread.

The phytosanitary risk analysis includes three phases: preparatory, phytosanitary risk assessment, and assessment of the phytosanitary risk reduction.

The preparatory phase includes identification of the pathogenic organism or determination of its ways of spread for which the phytosanitary risk analysis will be carried out.

During the second phase (phytosanitary risk assessment) the pathogenic organism is to be studied individually with the purpose of determination of it's conformity with the criteria of quarantine species. At this stage an assessment of a phytosanitary risk of the specific pathogenic organism for the territory of Kazakhstan (probability of penetration, acclimatization, and potential economic damage) is carried out.

The third phase (assessment of the phytosanitary risk reduction) aims at assessing potential of the phytosanitary measures to reduce the risk from the specific quarantined pathogenic organism and determine the necessary phytosanitary measures. Phytosanitary measures are used with the purpose to reduce the risk of entry of a pathogenic organism through the pathways revealed in the course of the phytosanitary risk assessment.

For the phytosanitary risk assessment, the authorized body on plant quarantine invites scientists from plants protection research institutes, who develop quarantine measures based on scientific principles of phytosanitary risk assessment with due consideration of international standards and recommendations.

This work has been included into the action plan of the Ministry of Agriculture of the Republic of Kazakhstan for 2005-2007 under the sections on pests, plant diseases and weeds.

3. Risk analysis has important place in trade in animals, processed and raw products originated from animal and other goods subject to veterinary control; and as well as in movement and utilization of the above mentioned substances, which potentially may carry hazard caused by diseases, harmful toxic substances threatening the epizootic welfare and food safety.

The risk assessment shall be undertaken upon the request of state authorities, including central and local bodies of the state veterinary services, judicial authorities, and public associations, juridical and natural persons.

State veterinary authorities within their competence organize risk assessment and request organizations under their supervision (the State Institution "National Centre for Reference, Monitoring and Veterinary Diagnosis" with its branches, the State Enterprise "Republican Veterinary Laboratory" with its branches, republican scientific research institutions, regional branches of state veterinary control on the border and transport and local bodies of state veterinary) to conduct research.

The process of risk analysis includes the following components:

- Hazard identification – identification of pathogenic organisms, contaminants and toxic elements in products;
- Risk determination – determination of likelihood as well as biological and economic consequences caused by entry and spread of pathogenic micro-organisms, toxic and harmful substances;
- Risk management – determination, selection and conduct of measures to be undertaken to reduce the risk as well as monitoring and inspection as to whether those measures do achieve the required results; and
- Notification of risk – mutual and periodical exchange of information about risk between the experts which carry out the risk assessment and the officers responsible for risk management and all other interested parties.

The analysis of the veterinary and sanitary risk shall be conducted in accordance with the national veterinary legislation taking into account relevant recommendations of the Terrestrial Code of the OIE, and requirements of the SPS Agreement.

Following the results of the research and risk assessment, the veterinary bodies shall submit the reports and laboratory tests, based on which the conclusion on the use of the good is made.

Question 112

Whether import permits will be required only for products already tested against the elevated risk or for every product.

Answer:

Permits are required for importation of all goods that are subject to the state veterinary and quarantine inspection.

Pursuant to Article 20 of the Law "On Veterinary" the goods subject to the state veterinary control transported through the national boarder of the Republic of Kazakhstan shall be subject to the mandatory state veterinary inspection.

Goods that are subject to the state veterinary inspection include animals, products, raw materials of animal origin (meat and meat products, milk and dairy products, fish and fish products, eggs and egg products that are not used for food without special processing as well as apiculture products), veterinary medications, fodder and feeding additives. List of goods subject to State veterinary inspection with codes specification was enclosed in Annex XV of document WT/ACC/SPEC/KAZ/9.

Import and transit of goods subject to the state veterinary inspection from the countries that are safe in terms of epizootic situation shall be permitted into and through the territory of the Republic of Kazakhstan with consideration of the veterinary (veterinary and sanitary) regulations established by the state authorized veterinary body.

Import, export and transit of goods subject to the state veterinary inspection shall be carried out in accordance with the assessment of the epizootic situation in corresponding territories.

According to the Rules on Protection of the Territory of the Republic of Kazakhstan from Pests, adopted by the Government Resolution No. 773 of 1 August 2003, any goods subject to plant quarantine control shall be allowed for importation to the Republic of Kazakhstan only through the checkpoints at the state border of the Republic of Kazakhstan, which have phytosanitary posts equipped in accordance with the plant quarantine rules and norms. The following documents shall be provided:

- import quarantine permits of the authorized plant quarantine body; and
- phytosanitary certificates of the national quarantine services of exporting countries.

Import quarantine permits are issued on the basis of written applications of juridical and natural persons for the specific shipment of products subject to plant quarantine control.

To obtain the permits, juridical and natural persons not later than 30 days prior to importation or within five days prior to transit through the territory of Kazakhstan shall submit to the authorized body the application with the following information:

- Purpose of the importation (transit) of a good subject to plant quarantine control and its quantity with specification of the form and type of packaging of the cargo;
- Destination and purpose of use of a good (address, and for transits – route and country of destination);
- Name of the exporting countries from which the import or transit is supposed to arrive as well as name of the country of origin of the good subject to plant quarantine control;
- Approximate date of arrival of an imported good or good in transit; and

- Name of the border check point (post) through which the good subject to plant quarantine control is supposed to pass.

In the application for receipt of import quarantine permit for the import and transit of the goods subject to quarantine control, the applicant shall guarantee conducting necessary quarantine measures at his/her own costs.

The Nomenclature of Basic Products Subject to Quarantine, which is subject to Phytosanitary Control on Plant Quarantine, approved by the Order of the Minister of Agriculture of the Republic of Kazakhstan No. 166 of 30 May 2002 is available through document WT/ACC/KAZ/66/Add.1.

- Trade-related investment measures

Question 113

Please provide the Working Party with a copy of Presidential Decree No. 1096 of 17 May 2003.

Please also provide the Working Party a copy of Government Resolution No. 969 of 16 September 2004, the draft law "On Production Sharing Agreement in Offshore Oil Operations."

Any consideration of a transition plan for fully implementing the TRIMs obligations can only occur if Kazakhstan provides a detailed action plan.

The brief response given by Kazakhstan in WT/ACC/KAZ/57 and WT/ACC/SPEC/KAZ/9 is inadequate.

Short of a commitment to fully abide by the TRIMs obligations from the date of accession, Kazakhstan needs to provide a detailed action plan for consideration by the Working Party.

We seek a commitment from Kazakhstan that from the date of accession it will not have measures in place or operating that are in conflict with the WTO Agreement on TRIMS.

Answer:

1. Investment Contracts on Subsurface and Surface Use

The text of the Decree of the President of the Republic of Kazakhstan No. 1096 "On Strategy for Industrial and Innovation Development of the Republic of Kazakhstan for 2003-2015" of 17 May 2003 is available through document WT/ACC/KAZ/66/Add.1.

The text of the Resolution of the Government of the Republic of Kazakhstan No. 969 "On Draft Law of the Republic of Kazakhstan "On Production Sharing Agreements in Offshore Oil Operations" of 16 September 2004 is available through document WT/ACC/KAZ/66/Add.1.

The text of the Law of the Republic of Kazakhstan No. 68 "On Production Sharing Agreements in Offshore Oil Operations" of 8 July 2005 is available through document WT/ACC/KAZ/66/Add.1.

In accordance with laws and regulations of the Republic of Kazakhstan (Article 71 of the Law of the Republic of Kazakhstan "On Subsurface and Surface Use", the Resolution of the Government of the Republic of Kazakhstan No. 1015 of 31 July 2001, the Government guarantees stability of contracts.

According to Article 43 of the Law of the Republic of Kazakhstan "On Subsurface and Surface Use", the exploration contract could be concluded for the term of up to six years. The term of the exploration contract can be renewed twice with the duration of each term up to two years.

The mining contract could be concluded for the term up to 25 years, and in the fields with large and unique reserves of mineral products up to 45 years. The terms of the contract can be renewed provided that an investor applied for prolongation not later than 12 months prior to expiration date of the contract.

The contracts for combined exploration and extraction works could be concluded for the term, which includes both exploration and extraction contracts terms with the possibility of further prolongation.

Contracts on subsurface and surface use stipulate commitments of investors to use goods produced in Kazakhstan subject to their compliance with state and/or international standards, the volume of which is specified in percentage terms (from 15 per cent up to 80 per cent).

To the moment, 33 contracts on subsurface and surface use have been concluded, containing commitments on the part of investors to use goods produced in Kazakhstan in implementation their investment contracts.

Besides, according to the results of tenders conducted in 2005, it is planned to conclude this year 150 contracts, which contain commitments of investors to use goods produced in Kazakhstan subject to their compliance with state and/or international standards.

2. Contract on Automobile Assembling Industry Development

To facilitate development of automobile assembling industry in Kazakhstan, the Resolution of the Government of the Republic of Kazakhstan No. 220 of 24 February 2004 introduced changes to the criteria of sufficient processing for automobile production. The resolution stipulates gradual increase of the value of "local" content in the price of the final product.

In particular, the Government Resolution sets the certain conditions for granting the status of origin when using imported goods by such producers. These conditions stipulate that the value of imported components and details used in assembling shall not exceed the following limits:

- in the first year of production – 90 per cent in the price of the final good;
- in the second year of production – 85 per cent in the price of the final good;
- in the third year of production – 80 per cent in the price of the final good;
- in the fourth year of production – 70 per cent in the price of the final good;
- in the fifth year of production – 60 per cent in the price of the final good; and
- in the sixth year of production – 50 per cent in the price of the final good.

This criteria of sufficient processing is applied only to the goods produced within the framework of investment projects implemented by the juridical persons investing into the fixed capital not less than KZT 1 billion.

Currently, the terms of the project on automobile assembling implemented by "AZIA-AUTO" JSC met the above criteria. The company received the following preferences until the year 2009:

- customs duties exemptions for imported spare parts into the territory of the free warehouse;
- the status of Kazakh origin of goods produced in the free warehouse, provided the company meets the criteria of sufficient processing; and

- customs duty exemptions for importation of automobiles from the free warehouse to the rest of Kazakhstan.

It should be noted that from the date of accession to the WTO, laws and regulations of Kazakhstan will not contain "local content" provisions which do not comply with the TRIMs Agreement.

- **State-trading enterprises**

Question 114

This section remains inadequate.

In its notification on state-trading enterprises Kazakhstan provided information on four state-owned enterprises, which it considers to be state trading enterprises. Separately, Kazakhstan has acknowledged that there are about 6,000 state-owned enterprises, some of them involved in export-import operations. We believe it likely that a number qualify as state trading enterprises under the criteria set out in Article XVII of the GATT 1994, whether or not "funded by the national budget" or operating as monopolies.

We urge Kazakhstan to review and add to its notification.

We will require a strong commitment in this section to ensure that Kazakhstan's state owned firms, whether or not identified for notification as STEs, are operated within WTO provisions, including Article XVII, on a commercial basis.

Answer:

Kazakhstan provided information on three State-trading enterprises (JSC "Food Contract Corporation", JSC "Mal Onimderi Korporatsiyasy", JSC "KazAgroFinance") whose activities may potentially be covered by Article XVII of GATT 1994 in document WT/ACC/KAZ/51 of 7 September 2004.

There are no other enterprises in Kazakhstan, either state-owned or privately-owned, which have been granted, formally or in effect, exclusive or special rights or privileges, including statutory or constitutional powers in the exercise of which their purchases or sales might influence the level or direction of imports or exports.

- **Free zones, special economic areas**

Question 115

Kazakhstan's Free zones are authorized by legislation that contains provisions for granting special benefits contingent on export orientation and/or import substitution of enterprises. This violates both the WTO Agreement on Subsidies and Countervailing Measures and TRIMS.

The provisions mandating exports should be eliminated.

Answer:

In line with the TRIMs Agreement, the Government of Kazakhstan is currently working in order to introduce the amendments into the following legislation:

- The Decree of the President of the Republic of Kazakhstan No 853 of 26 April 2002 "On Establishment of Special Economic Zone "Seaport Aktau"; and
- The Decree of the President of the Republic of Kazakhstan of 18 August 2003, "Information Technologies Park".

In both documents the criteria used for granting preferential treatment by words "import-substituting" and "export-oriented" will be eliminated and will be replaced with the criteria ensuring correspondence of products and services produced in SEAs to international standards.

The Resolution of the Government of the Republic of Kazakhstan No. 1376 of 26 September 1997 "On the Regulation of Procedures on Formation and Use of Assets of the Fund for Economical and Social Development of Special Economic Area". In this document the criteria "export-oriented" will be eliminated.

The Law of the Republic of Kazakhstan No. 2823 "On Special Economic Zones in the Republic of Kazakhstan" of 26 January 1996. In this document the criteria "export-oriented" used for granting preferential treatment to goods produced within the territories of SEAs will be eliminated.

Question 116

We seek a commitment from Kazakhstan that, from the date of accession, Kazakhstan would ensure enforcement of its WTO obligations in free zones existing or established within its territory, including the prohibition of TRIMS or subsidies contingent in law or in fact on local content or export performance.

Please confirm that from the date of accession, any free zones or other special economic areas authorized in Kazakhstan's legislation will be administered in conformity with WTO provisions, and that the Kazakhstan will ensure enforcement of WTO provisions in the zones.

Answer:

In accordance with Presidential Decree No. 1605 of 6 July 2005, the SEA "Ontustyk" was established with the purpose to facilitate diversification of the national economy through development of the textile industry in southern region of Kazakhstan, which is specialized in cotton production, attract foreign investors and create jobs.

Basic activities in the territory of the SEA "Ontustyk" include the following

- production of cotton threads and all kinds of yarn;
- weaving production;
- finishing-dyeing production;
- production of final textile products;
- production of knitted goods;
- production of knitted slippers and cardigans and analogous goods;
- production of outer garment; and
- production of other garment and accessories.

The SEA occupies a limited territory of the Republic of Kazakhstan (200 ha) with a special tax and customs duty preferential treatment.

Question 117

Please also confirm that the right of firms to establish and operate in these areas will not depend on export performance, trade balancing, or local content criteria and that goods produced in these areas under provisions that exempt import from tariffs and certain taxes will be subject to normal customs formalities when entering the rest of Kazakhstan, including the application of tariff and taxes.

Answer:

The Law of the Republic of Kazakhstan "On Special Economic Areas" provided for tax preferences and customs duties exemptions. At this stage, four special economic areas(SEAs), including "Astana – New City", "Seaport Aktau", "Informational Technologies Park" and "Ontustyk", function in Kazakhstan. The Government of Kazakhstan welcomes participation of foreign companies in the SEAs. The set of criteria shall be met by both foreign and national companies in order to become eligible for tax preferences and customs duty exemptions granted within SEAs.

The SEA "Astana-New City" was established to facilitate the socio-economic development of the city through building high-tech industry, attracting new investments, use of advanced construction technologies, and building the modern infrastructure.

The SEA "Aktau Seaport" was established to facilitate the development of the seaport infrastructure, development of auxiliary services that could be provided by the seaport, attracting new investments, creating new jobs and introducing modern administration and economic management methods.

The SEA "Information Technologies Park" was established to facilitate diversification the national economy through production of information technology products and effective use of the country's scientific and technical innovation capacity.

The SEA "Ontustyk" with the purpose to facilitate diversification of the national economy through development of the textile industry in southern region of Kazakhstan, which is specialized in cotton production, attract foreign investors and create jobs.

Enterprises operating within the SEAs are entitled to tax preferences and customs duty exemptions.

- Tax preferences

Pursuant to Article 140 (1,2) of the Tax Code, companies operating in special economic areas were provided with the following preferences:

- 100 per cent corporate income tax reduction;
- zero rate for land tax and property taxes; and
- VAT exemptions.

The companies operating in SEAs are entitled to VAT exemptions provided that they:

- (i) were registered with the tax authorities within the territory of a SEA;
- (ii) had no branches or other structural units outside the territory of the SEA;
- (iii) at least 90 per cent of their annual aggregate income comprised of the income subject to receipt (received) as a result of sale of the goods of own production (services, works) of the following types of activity, which comply with purposes of a SEA:

- design, development, introduction and pilot-production of software, databases and hardware;
 - the development of new informational technologies (IT) based on artificial immune and neural systems;
 - research and development;
 - production of textile, except for apparel;
 - production of knitted wear; and
 - production of clothing from textile.
- Customs duty exemptions

In accordance with Chapter 30 of the Customs Code, a "free customs area" means the customs regime, within the borders of a Special Economic Area, under which foreign and Kazakh goods were placed and used. Such goods are subject to customs duties exemption. When a certificate of origin establishing the SEA origin of goods was not available, the goods were considered to be either Kazakh (when exported from Kazakhstan) or foreign (when exported to the rest of the customs territory of Kazakhstan).

The right of firms to establish and operate in SEAs will not depend on export performance, trade balancing or local content criteria and that goods produced in these areas under provisions that exempt import from tariffs and certain taxes will be subject to normal customs formalities when entering the rest of Kazakhstan, including the application of tariff and taxes.

- **Government procurement**

Question 118

We seek a commitment from Kazakhstan that it will initiate negotiations for membership in the Agreement on Government Procurement by tabling an entity offer immediately after its accession to the WTO.

Answer:

Kazakhstan is studying the expediency of joining to the WTO Agreement on Government Procurement after its WTO accession.

Question 119

Paragraph 244: We would like to have a commitment from Kazakhstan that it will initiate negotiations on joining GPA immediately after its accession.

Answer:

Kazakhstan is studying the expediency of joining to the WTO Agreement on Government Procurement after its WTO accession.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

- **SUBSTANTIVE STANDARDS OR PROTECTION, INCLUDING PROCEDURES FOR THE ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS**
- **Trademarks, including service marks**
- **Geographical indications, including appellations of origin**

Question 120

We have worked for some time with Kazakhstan bilaterally to address TRIPS deficiencies. We look forward to completing this work as soon as possible.

We are reviewing the new legislation provided and other information in the Action Plan in WT/ACC/KAZ/59. We are submitting additional questions based on our review so far.

An outstanding issue remains regarding the parity between trademarks and geographical indications.

We appreciate Kazakhstan's answers to the previously submitted questions on trademarks and geographical indications. However, the answer to Question 130 in Document WT/ACC/KAZ/57 needs further clarification. Kazakhstan was asked if the rights of trademark owners, consistent with Articles 16(1) and 24(5) of the TRIPS Agreement would be protected from confusingly similar and later in time geographical indications.

Kazakhstan answered that misleading geographical indications would not be protected. Although this answer addresses misleading geographical indications, the answer does not address the question regarding geographical indications that are confusingly similar with earlier established and protected trademarks.

It is important that a trademark/geographical indication regime provide priority and exclusivity for trademarks and geographical indications, as well as providing parity of treatment between trademarks and geographical indications.

Specifically, would earlier protected trademarks be protected from confusingly similar and later in time geographical indications?

Answer:

The Law of the Republic of Kazakhstan "On Trademarks, Service Marks and Appellations" (hereafter – the Law) provides for protection of geographical indications owners' rights, who registered them as Appellations under Articles 42-44.

The cases of interference of owners' rights for trademarks and Appellations are stipulated by paragraph 5 of Article 19 of the Law. In accordance with this Law, individuals from good faith using a trademark, identical or confusingly similar with registered Appellation (geographical indication) not earlier than before six months before the registration date of Appellation, shall preserve the right for its further use within the limits, established by the authorized body, but not less than seven years, following the date of registration. Under non-use of trademark or its use under the term of less than six months before the registration date of Appellation, the effect of the trademark shall be terminated anticipatorily.

This norm correspond with paragraph 3 of Article 22 of TRIPS Agreement, which states, if it is allowed by the legislation of the country, or upon the request of the interested party, it is possible to reject or hold invalid the registration of the trademark, consisting of or containing geographical indication of goods, not originating from the specified territory, if the use of geographical indication in trademark for such goods in member-country misinforms people in relation to the real place of origin.

Question 121

Does Kazakhstan require the intercession of a foreign government on behalf of its nationals in order for the foreign national to apply and protect its geographical indication?

Answer:

Subject to Article 48 of the Law on Trademarks foreign persons, foreign juridical entities and persons without a citizenship shall enjoy the rights and observe obligations stipulated in that Law on an equal basis with persons and juridical entities of the Republic of Kazakhstan, until otherwise provided by the laws of the Republic of Kazakhstan.

Subject to paragraph 3 of Article 46 of the Law on Trademarks, foreign entities shall exercise their rights as an applicant, trademark and appellation of origin owner through patent attorneys.

Upon the submission of the request for registration of appellation of origin, foreign persons in accordance with subparagraph 3 of paragraph 3 of Article 29 of the Law shall submit the document proving his right of the foreign applicant for use of the claimed appellation of origin in the origin country.

- **Requirements on undisclosed information, including trade secrets and test data**

Question 122

Regarding the response to Question 148 of WT/ACC/KAZ/57, we seek further clarification, therefore, we provide a brief explanation of TRIPS Article 39.3, and ask the question again.

TRIPS Article 39.3 requires that undisclosed data, pertaining to new pharmaceutical and agricultural chemical products submitted to government authorities as a requirement for marketing approval, be protected from unfair commercial use. One of the most important objectives of Article 39.3 is to provide an incentive to conduct the research and testing necessary for bringing the product to market. Article 39.3 does this by requiring that undisclosed data, the generation of which requires considerable effort, pertaining to pharmaceutical and agricultural chemical products containing new chemical entities submitted to government authorities as a requirement for obtaining marketing approval, be protected from unfair commercial use.

One of the more important aspects of Article 39.3 is the concept that this data must be protected from unfair commercial use. When granting marketing approval, certain data is inevitably disclosed by a government, which subjects such data to unfair commercial use.

To help protect this data against unfair commercial use, we believe that governments need to provide an effective period of time where the original person that has expended the time, effort and resources to develop the data, is given a period of data exclusivity, during which time a third party cannot utilize the innovator's data. Governments need to ensure that during this period of data exclusivity, no other competitor or generic manufacturer can rely on the originator's data to seek marketing approval.

Therefore, to fulfil the obligation of Article 39.3, governments must have laws or regulations in place to make sure that generic companies are prohibited from relying on the data of the originator, without its consent, for the marketing of subsequent versions of the drug during the period of exclusivity.

Based on this background, we need to know whether Kazakhstan's legislation prohibits a second applicant (the generic manufacturer, for example) from relying on, or from referring to the original data of the first applicant, when applying subsequently for market authorization for his own product? In other words, does a second applicant have to provide to the responsible authorities the same data on safety and efficiency for his own product as the first applicant? If this is not the case, how is this particular obligation of the TRIPS Agreement implemented in Kazakhstan's legal framework?

Answer:

Article 34 of the Patent Law provides that disclosure of the subject matter of an industrial property without the author or applicant's consent before the publication of information about such an industrial property shall entail accountability/responsibility under the laws of the Republic of Kazakhstan.

Article 126 of the Civil Code of the Republic of Kazakhstan protects the information that is confidential or secret, when the information has an actual or commercial value because it is a secret to third parties and it is not readily accessible on legal grounds and the information owner takes measures to keep it secret, including protection of test or other data, the origination of which involves a considerable effort, therefore guaranteeing protection of all such data against unfair commercial use.

Also, subject to paragraph 1 of Article 184 of the Criminal Code of the Republic of Kazakhstan, illicit use of copyrighted works and works covered by relating rights, illicit use of an invention, industrial design or model, disclosure without consent of an author or an applicant of the subject matter of a scientific discovery, invention, industrial design or model prior to its official publication, as well as usurpation of the authorship or coercion into joint authorship shall entail fines equal to 100-500 monthly calculation indexes, or to the amount of wages or other income received by the convict for a period of one to five months, or in public works for 180 to 240 hours, or in a prison term of up to two years, if the action was performed with the view to receive profits and resulted in severe damages.

Subject to Article 158 of the Administrative Infringements Code of the Republic of Kazakhstan, breach of the commitment to keep undisclosed commercial or banking confidential information, credit reports data or information retrieved from a credit history database of a credit organization without the owner's consent by a person that obtained such information due to his or her professional service or job performance shall entail fines equal to 50 monthly calculation indices, provided that such actions have no signs of a criminal deed.

Besides, we inform that the existing laws of Kazakhstan provide for no term "second applicant", because the industrial property priority is determined by the date of application submission and the right holder has the exclusive right for the protected industrial property.

The Civil Code of the Republic of Kazakhstan requires nondisclosure of data or information during approbation, sale or marketing of chemical, pharmaceutical, or agricultural products what complies with Article 39(3) of TRIPS Agreement.

The State has a legal mechanism according to which companies of universal types shall be prohibited to refer to developer's information without its prior consent. It is stated in the norm of Article 15 of the Law of the Republic of Kazakhstan "On Protection of Selective Achievements", stipulating for the

fact that natural person or juridical entity shall be treated as infringing the rights of patent holder, if he discloses the information being commercial secret, the data on sort and species being the subject matter of the application.

As to the Law of the Republic of Kazakhstan "On Medicines" it is prohibited to produce, storage, sale and use medicines without stat registration or re-registration on the Republic of Kazakhstan.

- **ENFORCEMENT**

Question 123

Referring to Question 151, please indicate whether pre-established damages are available with regard to the infringement of intellectual property rights. The response relating to Article 49 of the copyright and Related Rights law indicates that a court can order the respondent to pay compensation in the amount of from twenty to fifty thousand minimum wages and five hundred to fifty thousand minimum wages for violation of the copyright for software or a database. This suggests a range of pre-established damages, for copyright and related rights violations.

Answer:

The Legislation of the Republic of Kazakhstan provides for criminal, administrative and civil liability for infringement of intellectual property rights.

Administrative liability shall fall due in case of unauthorized distribution or any other unauthorized use of copyright or related rights items and shall entail imposition of fine with compulsory confiscation of piratical copies of production, audio tracks, as well as the subjects being the instruments of wrongdoing.

There shall be provided criminal liability in case if the rights and legitimate interests of the copyright or related rights holder are inflicted with severe damage or significant harm. Criminal liability shall come whether for acquisition or storage, move or production of piratical copies of production intended for sale. Criminal liability shall also come in case of repetition of the specified wrongdoings by a group of people by previous concert or criminal group by way of imprisonment for the term of two or five years with confiscation of property or without it.

As per the civil liability, it shall come as a result of civil procedure initiation and just upon the claim of the copyright holder or any other right possessor.

Subject to Article 49 of the Law of the Republic of Kazakhstan "On Copyright and Related Rights" (the Law), besides other reinforcement measures to protect copyright and related rights, the court may oblige the responder to pay compensation to the infringed party in the amount of 20-50,000 MCI (monthly calculation indices), and in the amount of 500-50,000 MCI for infringement on a PC or database related copyright.

The specified does not touch the amount of damage or preliminary determination of damage size in relation of intellectual rights infringement. The norm stipulated for in Article 49(1)(6) of the Law shall concern only the amount of indemnification for infringement of copyrights and related rights. In addition to the aforecited norm is only one of the measure, which can be applied by the judge on the basis of copyright and related rights holder.

Thus, the Legislation of the Republic of Kazakhstan does not stipulate for the norm, restricting copyright holder or any other intellectual rights owner in determination of the damage sizes in relation to the intellectual property rights infringements.

Question 124

Referring to Question 153, it is not clear from the response whether pre-established damages are available. Please clarify.

Answer:

Authors or right holders themselves determine the pre-defined damage. At that the amount of damage shall be determined based on the value of the licensed products and taking into account the quantity of exempted products. Such information is generally available.

Subject to Articles 9 and 917 of the Civil Code an infringed party may claim full compensation of the losses caused, until otherwise stipulated in the laws or agreements.

Only the court in the court process on an infringement of copyright may oblige the responder (infringing party) to compensate the losses of a complainant, including lost proceeds, or oblige the responder to pay the proceeds obtained from the such an infringement of copyright or related rights to the complainant (Article 49 of the Law).

Question 125

Referring to Question 154, as indicated in the response, Article 44(2) of the Trademark Law appears to provide as a remedy the deletion of the infringing mark from the goods or packaging. Where this is not possible the goods must be liquidated in accordance with the law. Article 46 of the TRIPS Agreement provides that "[i]n regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

Article 44(2) does not appear to be in compliance with the provision in Article 46 of TRIPS. Please clarify.

Answer:

Subject to Article 44 of the Law on Trademarks, a person illegally using a trademark or an appellation of origin or a denomination similar to such one to a likelihood confusion, shall dispose of (destroy) such illegally produced images of a trademark or an appellation of origin, remove it from the goods, packing, letterheads or other documentation illegally using the trademark, appellation of origin or denomination similar to a likelihood confusion.

Whenever it is impossible to meet this requirement, such goods shall be disposed of (liquidated) in accordance with the due procedure established by the laws of the Republic of Kazakhstan, which meets the requirements of Article 46 of the WTO Agreement on TRIPS.

In accordance with Article 220 of the Customs Code, "destruction of goods" shall mean the customs regime under which foreign goods are destroyed or brought into a state making them unusable, under customs control, without payment of customs duties and taxes and without non-tariff regulatory measures being applied to them.

According to Article 220 of the Customs Code, goods shall be placed under the customs regime for destruction based upon a conclusion, by the appropriate authorized state body, on the possibility to destroy goods, which specifies the method and the place of destruction.

Destruction of goods shall be performed:

- by way of thermal, chemical, mechanical or other influence (incineration, demolition, burial etc.) resulting in full destruction of the goods. The way of destroying goods must exclude possibility of their further restoration and returning to the initial state and further use; and
- by way of dismantling, taking to pieces, mechanical damage including making holes, tearing, or causing damage in other ways, provided such damages preclude the subsequent restoration and possible use of the goods.

In accordance with Article 46 of TRIPS Agreement for the creation of the effective instrument, preventing infringement of rights, judicial agencies shall have right to issue a legal order, requesting to withdraw from trade channels the goods which were proved to be infringing the rights, without any compensation, to avoid damnification to the rights holder, or, if it does not contradict the existing constitutional requirements to destruct them. Judicial agencies shall also have right to issue a legal order, requesting to withdraw from trade channels materials and instruments being mainly used for production of counterfeits without any compensation to minimize the hazards of new violations. Under consideration of such requests the necessity to measure the interrelation between seriousness of wrongdoing and judicial remedies, as well as the interests of third persons shall be taken into account. Subject to the goods with the forged trade marks simple elimination of illegally used trade mark is not sufficient except for the cases to allow the release of such goods into trading channels.

According to the Article 44 of the Law of the Republic of Kazakhstan "On Trade Marks, Service Marks and Appellations of Origin" a person illegally using a trade mark, appellation of origin or a designation, being confusingly similar to it, is obliged:

- to cease violation and indemnify losses to the owner of the trademark and the holder of appellation of origin right of use; and
- to destroy produced images of the trademark or appellation of origin, to remove illegally used trademark or appellation of origin from the goods, its packages, form sheets or other documents, as well as indications being confusingly similar to them. At the failure to fulfil the requirement corresponding products shall be subjected to destruction in the order established by the legislation of the Republic of Kazakhstan.

The court shall have right to adjudicate in a cases connected to the infringement of rights, to confiscate counterfeits, productions or audio tracks, as well as the materials and equipment used for their playback. At that piratical copies can be passed to the holder of copyrights or related rights upon his request or shall be subject to annihilation at the decision of the court (paragraph 3 of the Article 49 of the Law "On Copyright and Related Rights").

Materials and equipment, used for their playback, shall also be subjected to destruction or state revenue disposition.

Article 129 of the Code "On Administrative Violations" also stipulates for confiscation of production and audio tracks copies.

These regulations comply with Article 46 of TRIPS.

Question 126

Please indicate whether the trademark law provides for the manner in which TRIPS Article 46 relating to the disposition of materials and implements predominantly used to create infringing goods is complied with.

Answer:

According to the Article 44 of the Law "On Trademarks, Service Marks and Appellations of Origin" a person illegally using a trade mark, appellation of origin or a designation, being confusingly similar to it, is obliged:

- to cease violation and indemnify losses to the owner of the trademark and the holder of appellation of origin right of use; and
- to destroy produced images of the trademark or appellation of origin, to remove illegally used trademark or appellation of origin from the goods, its packages, form sheets or other documents, as well as indications being confusingly similar to them. At the failure to fulfil the requirement corresponding products shall be subjected to destruction in the order established by the legislation of the Republic of Kazakhstan.

Question 127

With regard to both trademark and copyright infringement, please indicate the meaning of "liquidated" as used in the response to Question 154.

Answer:

In accordance with Article 220 of the Customs Code, "destruction of goods" shall mean the customs regime under which foreign goods are destroyed or brought into a state making them unusable, under customs control, without payment of customs duties and taxes and without non-tariff regulatory measures being applied to them.

According to Article 220 of the Customs Code, goods shall be placed under the customs regime for destruction based upon a conclusion, by the appropriate authorized state body, on the possibility to destroy goods, which specifies the method and the place of destruction.

Destruction of goods shall be performed:

- by way of thermal, chemical, mechanical or other influence (incineration, demolition, burial etc.) resulting in full destruction of the goods. The way of destroying goods must exclude possibility of their further restoration and returning to the initial state and further use; and
- by way of dismantling, taking to pieces, mechanical damage including making holes, tearing, or causing damage in other ways, provided such damages preclude the subsequent restoration and possible use of the goods.

Question 128

Does the law provide with regard to counterfeit and piratical goods for the disposal of the goods outside the channels of commerce pursuant to TRIPS Article 46.

Answer:

Subject to Kazakh legislation the power of internal affairs bodies and financial police includes organization of detection operations and criminalistic activity, holding inquests and preliminary investigation of criminal cases, as well as prevention, detection, control, disclosing and investigation of crimes and infringements.

Therefore, the law machinery has the right to expropriate counterfeit products made by illegal producers infringing intellectual property rights, i.e. the products that are not in commercial circulation yet.

Question 129

Referring to Question 156, reference is made to Article 158 of the Civil Code relating to provisional measures and Article 49(2) of the Copyright and Related Rights Laws. Are provisional measures explicitly provided for with regard to the other intellectual property rights?

Answer:

In accordance with Article 50(2) of the Agreement on TRIPS a judicial body shall have right to introduce provisional measures without hearing of the other side, when appropriate, particularly in cases when there is possibility to inflict serious harm to the possessor of a right in case of any delay or there is hazard proving that evidences will be lost.

According to the Article 158 of Code of Civil Procedure of the Republic of Kazakhstan, upon application of the individuals participating in the process of parties of an intermediate or arbitration trial, the court can take measures to secure the enforcement. Enforcement measures shall be available at any phase of the case, if non-action may hinder or make impossible court enforcement action.

The following enforcement measures are stipulated by Article 159 of Code of Civil Procedure of the Republic of Kazakhstan:

- attachment of the property, belonging to a defendant and being in property his disposal or in the disposal of other persons;
- defendant prohibited from performing of certain acts;
- other persons are prohibited from transferring any property to the defendant or discharge any liabilities to the defendant; and
- suspension of property sale in case of lawsuit submission for release of property from arrest.

In special cases the court can assume other measures for security of a lawsuit, which meet the aims, specified in Article 158 of CPC RK.

The court may assume several enforcement measures. Guilty persons will bear administrative responsibility for violation of prohibitions specified in subparagraphs 2) and 3) of part one of this Article. Besides, the suitor shall have right to judicially require indemnification of damage, impaired by non-performance of definition of lawsuit security.

Question 130

Referring to Question 157, it is not clear from the response whether pursuant to TRIPS Article 50(2) provisional measures *inaudita altera parte* are available. In civil cases, may a court issue an order relating to the measures outlined in the answer to Question 156 without prior notice to the defendant?

Answer:

Subject to Article 50(2) of the WTO Agreement on TRIPS the judicial authorities shall have the authority to adopt provisional measures *inaudita altera parte* where appropriate, in particular where

any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

The legislation of Kazakhstan provides for no preliminary notification of the responder in intellectual property area.

Subject to Article 638 of the Administrative Infringements Code, whenever a fact of an administrative infringement has been disclosed, a protocol on administrative infringement shall be immediately drawn up and, in accordance with paragraph 1 of article 640 of the Code, within one day it shall be submitted to a judge or an authorized body for consideration of the administrative infringement case.

Question 131

Referring to Question 159, the document referenced is a communication regarding the Customs Code, rather than the text. Could a copy of the text of section 10 of the Customs Code be provided? Are implementing regulations for these provisions available?

Answer:

The text of Section 10 of the Customs Code is available through document WT/ACC/KAZ/66/Add.1.

The procedure for keeping the Register of goods containing objects of intellectual property and bringing it to the attention of customs authorities and applicants, approved by the Order of Chairman of the Agency of Customs Control No. 201 of 13 May 2003, is available through document WT/ACC/KAZ/66/Add.1.

Question 132

Referring to Question 161, it is not clear from the response whether enforcement action will be taken with regard to exportations or in transit movement of counterfeit or piratical goods. Please clarify.

Answer:

As per the Taxation Code, taxation bodies of the Republic of Kazakhstan make provisions on exclusion of illegal entry or exportation of goods, containing intellectual property.

According to Article 416 of the Customs Code, if, during the course of customs clearance and customs control of goods included in the Register of goods containing objects of intellectual property, the customs authority discovers any signs of the goods being counterfeit, the release of such goods shall be suspended.

According to Article 416 of the Customs Code, customs authorities shall not take measures to protect intellectual property rights with respect to goods containing objects of intellectual property which are conveyed across the customs border of the Republic of Kazakhstan in compliance with the transit customs procedure for goods.

Question 133

Referring to Question 162, please indicate the manner in which the threshold for severe damage is determined.

Answer:

The Criminal of the Republic of Kazakhstan stipulates for large amount or heavy damage (for violation of intellectual property rights) in Articles 184, 184-1.

The acts, provided for in Articles 184, 184-1 of the Criminal Code, shall be regarded as being caused severe damage or committed at the large scale, if the amount of damage or the value for rights for the use of intellectual property, or the value of copies, audio tracks or goods, containing inventions, useful models, industrial designs, selective achievements or topologies of integrated microcircuits, exceeds the monthly specified rate, established by the legislation of the Republic of Kazakhstan to the moment of crime commission in 100 times.

The acts, provided for in Articles 184, 184-1 of the Criminal Code, shall be regarded as being caused severe damage or committed at the large scale, if the amount of damage or the value for rights for the use of intellectual property, or the value of copies, audio tracks or goods, containing inventions, useful models, industrial designs, selective achievements or topologies of integrated microcircuits, exceeds the monthly specified rate, established by the legislation of the Republic of Kazakhstan to the moment of crime commission in 500 times.

VII. TRANSPARENCY

Question 134

Where does Kazakhstan provide for publication of administrative rulings of general application, e.g., customs rulings?

Answer:

In accordance with Article 4 of the Constitution of the Republic of Kazakhstan, all laws, international treaties, to which Kazakhstan is a party, shall be published officially. Official publication of legal acts, concerning rights, freedom and duties of citizens is a mandatory pre-condition for their enforcement.

The Law of the Republic of Kazakhstan No. 213 "On Regulatory Legal Acts" of 24 March 1998 differentiates two ways of official publication of regulatory legal acts:

- official publication of the texts of regulatory legal acts; and
- subsequent publication of the texts of regulatory legal acts.

In accordance with Article 30 of the Law of the Republic of Kazakhstan "On Regulatory Legal Acts", the Bulletin of the Parliament of the Republic of Kazakhstan and Collection of Acts by President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan (CAPG) shall be used as the official medial.

Official publication of legal acts shall be made also in periodicals, which obtained such right on a competitive basis in the order established by the Government of the Republic of Kazakhstan.

"Yegemen Kazakhstan" (in the State language-Kazakh), "Kazakhstanskaya Pravda" (in Russian), newspapers are considered as periodicals entitled on a competitive basis for official publication of regulatory legal acts of central executive or other central state bodies of the Republic of Kazakhstan, including the Decrees of the Supreme Court, the National Bank, the Central Election Committee.

Subsequent publication of official texts of regulatory legal acts shall be done by periodicals in the order established by the Government of the Republic of Kazakhstan and provided that texts subject to publication undergone expertise for compliance with the centralized bank of legal acts of the Republic of Kazakhstan.

- (i) Legal Acts of the Republic of Kazakhstan shall be officially published in the Bulletin of the Parliament of the Republic of Kazakhstan, as well as in the other periodicals in the order established by Article 30 of the Law of the Republic of Kazakhstan "On Regulatory Legal Acts".
- (ii) The Resolutions of the President of the Republic of Kazakhstan, Resolutions of the Government of the Republic of Kazakhstan shall be officially published in the Collection of Acts by President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan, as well as in other periodicals in the order established by Article 30 of the Law of the Republic of Kazakhstan "On Regulatory Legal Acts".
- (iii) Legal Acts of the Central Executive and other Central State Bodies shall be published in periodicals in the order established by Article 30 of the Law of the Republic of Kazakhstan "On Regulatory Legal Acts".

Official publication of regulatory legal decisions of Maslikhats, regulatory legal resolutions of Akimats and regulatory legal decisions of Akims shall be made in the order established by Article 30 of the Law of the Republic of Kazakhstan "On Legal Acts".

Control over publication of legal acts of central and local administrative bodies shall be executed by the Ministry of Justice of the Republic of Kazakhstan and its territorial bodies.

The list of registered regulatory legal acts shall be monthly published on the web-site of the Ministry of Justice: www.minjust.kz

Pursuant to Article 30 of the Customs Code, publication of regulatory legal documents in the customs sphere shall be made through official publication by the authorised body in periodicals in the order established by the Law of the Republic of Kazakhstan "On Regulatory Legal Acts".

Public informing in the customs sphere shall also be made using verbal guidelines and announcements, information desks, bucklets and other printed documents as well as via video-, audio- and other technical means in the following places:

- customs points at the border of the Republic of Kazakhstan;
- airports, railway and automobile stations, maritime ports;
- on the boards of motor transports, air and maritime vessels conducting international shipments; and
- customs control zones determined by the Customs Code and other places determined by the customs authorities.

Customs authorities shall provide free access for participants of foreign trade operations and other foreign economic activities to regulatory legal documents, administrative decisions on customs related issues, including orders of the customs authorities, except for confidential information.

The information shall be published in the official web-site of the Customs Control Committee of the Ministry of Finance of the Republic of Kazakhstan www.customs.kz, and also in magazines and newspapers (such as: "Official Gazette", "Zan", "Keden", "Customs Bulletin").

Moreover, in accordance with Article 32 of the Customs Code, customs officials are legally accountable for provision of accurate and relevant information. They shall be penalized in the order

established by Article 84 of the Customs Code for provision of incomplete and misleading information or failure to provide information on customs related issues.

Question 135

Where does Kazakhstan provide for publication of regulations and other legal instruments for review and comment prior to enactment?

Answer:

According to Article 15 of the Law of the Republic of Kazakhstan "On Regulatory Legal Acts" and the Regulation of the Government of the Republic of Kazakhstan, approved by the Resolution of the Government of the Republic of Kazakhstan No. 1300 as of 10 December 2005, draft texts of laws, regulatory legal acts of the Republic of Kazakhstan shall be submitted for their review and approval to all concerned Ministries and Agencies.

The government body responsible for development of technical regulations shall publish notification on the draft text of amendments and/or addenda made to the technical regulation and draft text of new technical regulations as well as the decision on elimination of the existing technical regulation in the official periodical and informational network of public use.

The Law of the Republic of Kazakhstan "On Technical Regulating" establishes that public discussions on the draft text of technical regulations and other legislative acts in the area of technical regulating shall be discussed within the term not less than 60 days from the date of the publication of the notification about the development of the draft legislation until the date of publication of the notification about conclusion of the public discussions.

Prior to enactment, all regulations and other legislative acts shall be placed on the web-site www.memst.kz and published in periodical media for public review and comments.

In accordance with Article 18 of the Customs Code of the Republic of Kazakhstan, the customs authorized body is entitled to involve participants of foreign trade operations and other foreign economic activities, public associations and all other interested parties into the process of development of legal acts regulating the customs sphere. For example, large number of participants of foreign economic activities, including business-associations, commerce and industry chambers and other business communities of Kazakhstan actively participated in development of the Customs Code of the Republic of Kazakhstan.

The draft Law of the Republic of Kazakhstan "On Amendments and Addenda to the Customs Code of the Republic of Kazakhstan" was published on the web-site of the Customs Control Committee prior to its enactment.

Question 136

How does Kazakhstan intend to provide for publication for review and comment of TBT and SPS related materials, procedures, and regulations? Will such facilities be extended to other areas in the establishment of a regulatory review mechanism of general application?

Answer:

In accordance with the Law of the Republic of Kazakhstan "On Technical Regulating", public notifications shall be made on development of draft technical regulations and sanitary and phytosanitary measures as well as their draft texts shall be published on the web-site of the authorized

body on technical regulating and in its official periodicals. Draft technical regulations shall be provided to all interested parties for their review and comments, which shall be taken into account in the course of further elaboration.

Furthermore, the TBT/SPS Enquiry Point (Information Centre) has been established under the supervision of the Committee on Technical Regulating and Metrology under the Ministry of Industry and Trade of the Republic of Kazakhstan. The TBT/SPS Enquiry Point is responsible for preparation and further submission of notifications to the WTO Secretariat in order to inform the WTO member-states on the draft technical regulations, which do not meet the requirements of international standards along with justification for such non-conformity, and on the draft technical regulations, which were developed in the absence of the international standards. The TBT/SPS Enquiry Point is also responsible for submission of the texts of draft technical regulations, procedures and any other documents related to TBT and SPS measures upon the request of WTO member-states..

The legal and regulatory documents on and procedures related to application of TBT and SPS measures will be published in official media and on the web-site of the authorized body on technical regulating, along with the texts of the draft technical regulations.

All draft technical regulations as well as legal and regulatory documents on and procedures related to application of TBT and SPS measures will be stored in the special fund of the authorized body on technical regulating, which will be available for acquaintance and acquisition.

Notifications on approved administrative regulations (decrees) in the given spheres shall be published in the official periodical editions and on the web-sites www.minagri.kz and www.memst.kz.

VIII. TRADE AGREEMENTS

Question 137

Much more information on the scope and content of Kazakhstan's bilateral and plurilateral preferential trade agreements should be provided in this section, covering *inter alia*:

- FTAs with the CIS and other countries;
- the customs union with Russia, Belarus, Kyrgyz Republic and Tajikistan;
- the Eurasian Economic Community; and
- the Single Economic Area Agreement with Russia, Ukraine, and Belarus.

Any protocols or agreements within these agreements that cover WTO issues, e.g., safeguards, TBT and SPS, customs issues, etc., should be listed and described.

Please indicate and exceptions to the elimination of all duties and charges on substantially all trade with these preferential trading partners, and the areas of Kazakhstan's tariff schedule that are not aligned with the common external tariff of the customs union.

Answer:

Commonwealth of Independent States:

CIS membership includes the Russian Federation, Armenia, Belarus, Georgia, Ukraine, the Republics of Kazakhstan, Tajikistan, Uzbekistan, Turkmenistan, Moldova, and the Kyrgyz and Azerbaijan Republics.

On 15 April 1994 CIS Member States signed a multilateral "Agreement on Establishing a Free Trade Area (FTA)".

In accordance with the Agreement, its Member States shall establish free trade regime with no tariff or non-tariff measures for goods, except for certain exemptions, which will be phased out.

Main documents, regulating FTA:

- Basic Agreements

- Agreement on Establishing a Free Trade Area (15 April 1994);
- Protocol on Amending the Agreements on Establishing a Free Trade Area of 15 April 1994 (2 April 1999);
- Agreement on Re-export of Goods and the Procedure of Licensing of Re-export (15 April 1994);
- Agreement on Rules of Origin (24 September 1994);
- Agreement on Uniform Goods Nomenclature of CIS Foreign Economic Activity of (3 November 1995);
- Protocol on Amendments into Uniform Goods Nomenclature of CIS Foreign Economic Activity (4 June 1999);
- Protocol on Amendments into Uniform Goods Nomenclature of CIS Foreign Economic Activity (8 October 1999);
- Protocol to the Agreement on Uniform Goods Nomenclature of CIS Foreign Economic Activity (20 June 2000);
- Agreement on Measures for Prevention and Restraint of Fictitious Trade Marks and Geographical Indications (4 June 1999); and
- Protocol on the Rules for Conducting of Consultations on Phasing-Out of Exemptions from Free Trade Regime of the Parties to the Agreement on Establishing a Free Trade Area (24 December 1999).

- Liberalization of National Markets

- Agreement on Formation of Common Scientific and Technological Area under CIS (3 November 1995);
- Agreement on Formation of Principles of Common Transport Area and Cooperation of CIS Member States in the Sphere of Transport Policy (9 October 1997);
- Agreement on Agricultural Market of CIS Member States (6 March 1998);
- Agreement on Transit Procedures through the Territories of CIS Member States (4 June 1999);
- Treaty on Conducting of Agreed Antimonopoly Policy (25 January 2000); and
- Agreement on Basic Directions of Cooperation of CIS Member States in the Sphere of Consumer Protection (25 January 2000).

- Development of Market Infrastructure

- Agreement on Establishment of Interstate Bank (22 January 1993);
- Agreement on Assistance in Creation and Development of the Industrial, Commercial, Credit and Financial, Insurance and Mixed Transnational Associations (15 April 1994);
- Agreement on Development of Exhibition Activity in the CIS (26 May 1995);
- Convention on Transnational Corporations (6 March 1998);
- Convention on Interstate Leasing (25 November 1998);

- Convention on Coordination of Activity of CIS Member States on Securities Markets (25 November 1998); and
 - Program on Small Business (8 October 1999).
- FTA Formation Regulating Processes
- Agreement on Principles of Customs Policy (13 March 1992);
 - Agreement on Cooperation and Mutual Assistance in Customs Affairs (15 April 1994);
 - Agreement on Customs Procedures for Registration and Customs Control of the goods Moving between the Parties to the Agreement on Establishing a Free Trade Area (8 October 1999); and
 - Main Principles of the Accounting (Financial) Reporting (25 May 2000).
- Creation of Favourable Conditions for FTA functioning
- Agreement on Technical Barriers in FTA (20 June 2000);
 - Agreement on the Procedures of Settling Disputes Related to Economic Activities (20 March 1992);
 - Agreement on Principles of Harmonization of the Economic Legislation of CIS Member States (9 October 1992);
 - Agreement on Cooperation in Investment Activities (24 December 1993);
 - Agreement on Establishment of Payments Union (21 October 1994);
 - Agreement on Coordinated Policy in the Field of Transport Tariffs Determination (17 January 1997);
 - Agreement on Support and Development of Small Business (17 January 1997);
 - Convention on Investor Rights Protection (28 March 1997);
 - Agreement on Procedures for Mutual Execution of Arbitration, Economical Courts Decisions on the Territory of CIS Member States (6 March 1998); and
 - Agreement on Collection Principles of Indirect Taxes under Export and Import of Goods (Works, Services) among CIS Member States (25 November 1998).

Kazakhstan has bilateral trade agreements with all CIS Member States with the exception of Turkmenistan. Under these bilateral free trade agreements, goods originating from these countries and imported to Kazakhstan were exempted from customs duties, except for a number of goods listed in the Schedule of Exemptions, which were subject to normal customs duties, taxes and charges.

Currently, the Republic of Kazakhstan applies exemptions from free trade regime towards the following CIS Member States: Georgia, Ukraine, the Azerbaijan Republic and the Republics of Uzbekistan and Moldova.

Georgia

Trade relations between the Republic of Kazakhstan and Georgia are based on:

- the Free Trade Agreement between the Government of the Republic of Kazakhstan and the Government of Georgia of 11 November 1997;
- the Protocol on Exemptions from Free Trade Regime to the Free Trade Agreement between the Government of the Republic of Kazakhstan and the Government of Georgia of 11 November 1997; and
- the Protocol on Amending the Free Trade Agreement between the Government of the Republic of Kazakhstan and the Government of Georgia of 11 November 1997.

In accordance with the Protocol on Exemptions Kazakhstan applies exemptions from Free Trade Regime when importing tobacco, sugar, alcoholic and non-alcoholic beverages from Georgia with the exception of wines and brandies.

Georgia does not apply exemptions with respect to Kazakhstan.

In November 2004, the Protocol on Amending the Free Trade Agreement between the Government of the Republic of Kazakhstan and the Government of Georgia of 11 November 1997, providing for gradual elimination of exemptions starting from 1 April 2005, was signed. This Protocol was ratified by the Law of the Republic of Kazakhstan No. 78 of 30 September 2005

Azerbaijan

Trade relations between the Republic of Kazakhstan and the Azerbaijan Republic are based on:

- the Free Trade Agreement between the Government of the Republic of Kazakhstan and the Government of the Azerbaijan Republic of 10 June 1997;
- the Protocol on Exemptions from Free Trade Regime to the Free Trade Agreement between the Government of the Republic of Kazakhstan and the Government of the Azerbaijan Republic of 10 June 1997; and
- the Protocol on Amending the Free Trade Agreement between the Government of the Republic of Kazakhstan and the Government of the Azerbaijan Republic of 10 June 1997.

In accordance with the Protocol on Exemptions Kazakhstan applies exemptions from Free Trade Regime when importing alcoholic and non-alcoholic beverages, tobacco and industrial tobacco substitutes from Azerbaijan.

In its turn Azerbaijan applies exemptions from Free Trade Regime when importing liqueur and vodka and other alcoholic products, tobacco cigarettes from Kazakhstan.

On 24 May 2005, the Protocol on Amending the Free Trade Agreement between the Government of the Republic of Kazakhstan and the Government of the Azerbaijan Republic of 10 June 1997, providing for gradual elimination of exemptions starting from 1 July 2006, was signed. This Protocol was ratified by the Law of the Republic of Kazakhstan No. 78 of 30 September 2005

Currently, this Protocol is under ratification process by the Parliament of the Republic of Kazakhstan.

Uzbekistan

Trade relations between the Republic of Kazakhstan and the Republic of Uzbekistan are based on:

- the Free Trade Agreement between the Government of the Republic of Kazakhstan and the Government of the Republic of Uzbekistan of 2 June 1997; and
- the Protocol on Exemptions from Free Trade Regime to the Free Trade Agreement between the Government of the Republic of Kazakhstan and the Government of the Republic of Uzbekistan of 2 June 1997.

In accordance with the Protocol on Exemptions Kazakhstan applies exemptions from Free Trade Regime when importing rice, alcoholic and non-alcoholic beverages, tobacco and industrial tobacco substitutes from Uzbekistan.

Moldova

Trade relations between the Republic of Kazakhstan and the Republic of Moldova are based on:

- the Free Trade Agreement between the Government of the Republic of Kazakhstan and the Government of the Republic of Moldova of 26 May 1995; and
- the Protocol on Exemptions from Free Trade Regime to the Free Trade Agreement between the Government of the Republic of Kazakhstan and the Government of the Republic of Moldova of 26 May 1995.

In accordance with the Protocol on Exemptions Kazakhstan and Moldova apply exemptions from Free Trade Regime when exporting goods that fall under the legislation of Kazakhstan and Moldova on procedure for export of goods which is in effect at the time of customs clearance of the goods.

In accordance with the Draft Protocol on Amending the Free Trade Agreement between the Government of the Republic of Kazakhstan and the Government of the Republic of Moldova of 26 May 1995, currently is being under consideration by the Government of the Republic of Moldova, the Protocol on Exemptions will become invalid.

Ukraine

Trade relations between the Republic of Kazakhstan and Ukraine are based on:

- the Free Trade Agreement between the Government of the Republic of Kazakhstan and the Government of Ukraine of 17 September 1994; and
- the Protocol on Exemptions from Free Trade Regime to the Free Trade Agreement between the Government of the Republic of Kazakhstan and the Government of Ukraine of 17 September 1994.

In accordance with the Protocol on Exemptions Kazakhstan applies exemptions from Free Trade Regime when importing beer, alcoholic products, ethyl alcohol, tobacco products and raw materials as well as other industrial tobacco.

On 21 December 2005 the Draft Protocol on Elimination of Exemptions starting from 1 January 2007 was approved by the Government of the Republic of Kazakhstan and the Government of Ukraine. It is planned this Protocol will be signed in the nearest future.

Single Economic Area with Russia, Ukraine and Belarus (SEA)

On 19 September 2003, the Presidents of the Russian Federation, Ukraine and the Republics of Belarus and Kazakhstan signed an "Agreement on the Establishment of a Single Economic Area (SEA)". The agreement aimed at promoting mutual trade and investment on the basis of fundamental principles and norms of international law, including WTO rules.

Basic principles of SEA are to ensure free trade in goods and services and free movement of capital and labour within the territory of the Parties.

The main objectives of the SEA are the following:

- creation of a free-trade area without withdrawals and restrictions, based on mutual non-application of antidumping, countervailing and safeguard measures, pursuit of common tariff policy and non-tariff regulation, common competition rules, use of subsidies and other forms of state support;

- unification of the principles of elaboration and application of technical regulations, standards, sanitary and phytosanitary norms;
- harmonization of macroeconomic policy;
- ensuring of non-discriminatory access and equal tariff rates for natural monopoly services; and
- formation of common principles for regulating of natural monopolies activity (railway transport, main telecommunication, transportation of electric power, oil and gas) and competition policy.

The SEA will be created by stages, taking into account the possibility of different implementation rates and level of integration.

To ensure implementation of basic objectives of SEA formation, Parties to the Agreement elaborated more than 90 drafts international treaties which will serve as international legal basis for Single Economic Area.

At the moment the negotiations on the package of documents to be signed at the first stage are close to the completion. 39 documents shall be included in the primary package of agreements.

SEA Agreements:

1. Directed towards completion of establishment of the free trade zone, elimination of tariff and non-tariff barriers in mutual trade:
 - Protocol on abolition of customs duties in mutual trade of states – parties to the Agreement on Establishment of SEA of 19 September 2003;
 - Protocol on abolition of import customs duties in mutual trade of countries – parties to the Agreement on Establishment of SEA of 19 September 2003; and
 - Agreement on abolition of quantitative restrictions in mutual trade of countries – parties to the Agreement on Establishment of SEA of 19 September 2003.

2. Directed towards unification of rules for application of special safeguards in mutual trade, and further non-application of special safeguards, anti-dumping and countervailing measures in mutual trade as well as coordinated application of special safeguards, anti-dumping and countervailing measures with regard to the third countries:
 - Agreement on Application of Safeguards in Mutual Trade directed towards unification of application of safeguards in mutual trade; and
 - Agreement on Abolition of Safeguards, Anti-Dumping and Countervailing Measures in Mutual Trade.

3. In the field of customs procedures:
 - Agreement on Determining the Customs Value of Goods Imported to the Customs Territory of the Countries – Parties to the SEA. Pursuant to this Agreement the value of goods imported to the customs territory of the country – party to the SEA shall be determined on the basis of general principles of goods valuation for customs purposes of the General Agreement on Tariffs and Trade of 1994 (Article VII);
 - Agreement on Common Rules for Licensing of Import and Export of Goods with unification of the list of goods import and export of which shall be subject to licensing. The Agreement is aimed to ensure non-discriminative procedure of licensing of export and import of goods in accordance with international norms;

- Agreement on Simplification of the Procedure of Customs Clearance and Customs Control at Frontiers between the Countries – Parties to the Customs Union of 17 February 2000 (28 October 2003); and
 - Agreement on Uniform Goods Nomenclature of External Economic Activities of the Countries – Parties to the Agreement on Establishment of the SEA of 19 September 2003.
4. In the field of TBT and SPS:
- Agreement on Coordinated Policy in the Field of Technical Regulation, Sanitary and Phytosanitary Measures, in accordance with which the Parties shall agree to adhere to rules and principles of the WTO Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures.

Eurasian Economic Community (EAEC)

The "Agreement on Customs Union and Single Economic Area" was signed on 26 February 1999 with the Russian Federation, the Republics of Belarus and Tajikistan, and the Kyrgyz Republic.

In accordance with the Agreement, its Members apply free trade regime in full, with no tariff or non-tariff restrictions on the basis of bilateral and multilateral Free Trade Agreements (FTAs).

According to FTAs, the Parties do not apply customs duties and quantitative restrictions on import and export of goods originated from the customs territory of one Party and destined for the customs territory of another Party.

In order to formally establish the single economic area and customs union, the "Agreement on Establishment of the Eurasian Economic Community" was signed on 10 October 2000 and was entered into force on 30 May 2001. Its membership includes Belarus, Kazakhstan, Kyrgyzstan, Russia and Tajikistan and Uzbekistan (joined in January 2006).

According to the request of the administrations of Moldova and Ukraine these states were granted the observer status in the EAEC.

The main objectives of the EAEC are fostering economic cooperation between entities of countries-members; unification of foreign trade, customs policies and trade remedies; cooperation between financial and banking systems; cooperation in social and humanitarian areas; and cooperation in the field of legal regulation.

EAEC Agreements:

1. In the field of customs and tariffs regulating, aimed at creating conditions for establishment of the Customs Union:
 - Agreement on a Single Customs Tariff of the Customs Union Member States (17 February 2000);
 - Protocol on the Mechanism of Applying Special Safeguards, Anti-Dumping and Countervailing Measures in Trade of the Customs Union Member States (17 February 2000);
 - Protocol on Amendments and Addenda in the Protocol on the Mechanism of Applying Special Safeguards, Anti-Dumping and Countervailing Measures in Trade of the Customs Union Member States of 17 February 2000 (28 October 2003);

- Protocol on Customs Control over the Re-Export of Commodities Originated from the Territory of States - Parties to the Agreement on Customs Union and Single Economic Area of 26 February 1999 and Exported to Third Countries (22 May 2001);
 - Protocol on the Procedure for Introduction and Application of Export Customs Duties by the Customs Union Member States (22 May 2001); and
 - Agreement on Uniform Goods Nomenclature of External Economic Activities of the Eurasian Economic Community (20 September 2002).
2. In the field of Non-Tariff Regulation:
- Agreement on Common Non-Tariff Regulation Measures when Establishing the Customs Union (22 October 1997); and
 - Protocol on Common Rules for Licensing of Commodities Import and Export as well as Certain Types of Related Activities of the Eurasian Economic Community Member States (25 October 2004).
3. In the field of TBT and SPS
- Protocol on uniform procedure of applying technical, medical, pharmaceutical, sanitary, veterinary, phytosanitary and ecological standards, norms, rules and requirements with regard to goods imported to the states – parties to the agreements on Customs Union (28 January 1999).

The work on implementation of provisions of the "Priority directions of cooperation in the framework of the Eurasian Economic Community for 2003-2006 and following years" has been in process within the EAEC. It provides for elaboration and approval of international legal documents in the field of external trade policy on establishment of Customs Union including Single Customs Tariff, Common Services Market, common non-tariff regulation measures, unification of trading regimes with regard to third countries, harmonization of legislations of EAEC member states in the field of technical regulation and others.