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Questions and Replies
to the Memorandum on the Foreign Trade Régime
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Addendum

Additional questions submitted by Members and the replies thereto provided by the authorities of Kazakstan are reproduced hereunder.

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II. ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE

II.2 Economic Policies

II.2(a) Main directions and goals

Pricing Policy

Question 1.

Kazakstan's Memorandum states that "only public services such as electricity, water supply, gas, heating, postal, public transport and state services (e.g. automobile inspection, licensing and registration fees) remain subject to price control" (page 8). We would appreciate more information about price control policies and practices in these areas.

Could Kazakstan elaborate on the nature of and rationale for price control measures applied in each of these areas, and whether they have an impact on trade and investment?

Answer:

a. Public Services

The State Committee on Pricing and Anti-Monopoly Policy (Anti-Monopoly Committee) is the state body responsible for controlling prices of public services. Public services, subject to price control in Kazakstan, are heat distribution, sewage systems, telecommunication services (domestic and international communication services, telegraph communication services, cable radio installation, receiving/transmitting TV and radio programs via satellite, data transmission through communication channels), water distribution, electricity, and gas. The main objective of Kazakstan's pricing policy in public services is the establishment of economically justifiable prices for all consumers reflecting, where applicable, inter alia, the cost of production, the cost of transportation, and the profitability of entities providing such services. The cost of production applies only to heat and water where fixed prices are used to control prices at production. The cost of transportation is determined through tariff rates established to regulate natural monopolies (e.g. power transmission and distribution networks, telecommunication networks, gas pipelines, heat pipelines, sewage network, and water distribution networks). The rationale of price control for public services (utilities) is that such services depend heavily on natural monopolies.

Public services are certainly important for trade in services and investment in Kazakstan. Most investors are, on one hand, consumers of such services and some, on the other hand, have committed investment in some of the infrastructure (natural monopolies) delivering such services. In addition, many investors deliver their services using the natural monopoly infrastructure. Therefore, the objective of the pricing policy regarding public services in Kazakstan is designed to balance the interests of the consumers (this includes most investors in Kazakstan) and the investors in the natural monopoly infrastructure.

b. State Services

State services are provided by those entities authorized by the state to render such services. Fees and duties that may be charged by such entities are established by legislation. There is no one single legislation governing price control over state services. Fees and duties for state services are either ad valorem or fixed. The following table summarizes state services and the entities responsible for rendering such services.

State Services Subject to Price Control	Entity Responsible for Rendering Services
i State auto-inspection	The State Automobile Inspection Department under the Ministry of Internal Affairs
ii. Sanitary-epidemiological services - services of research laboratories regarding bacteria, viruses, radiology, noise, and vibration - sanitary and chemical research of water, air, and soil - certification of work place evaluation of design projects for sanitary purposes	Sanitary-Epidemiological Stations under the Ministry of Health.
iii. State veterinary services - issuance of license for veterinary activities - approval of import/export license of veterinary medicines - registration of veterinary medicine	The Ministry of Agriculture
iv Statistical information services	The Statistics Committee
v. Registration of mass media products	National Agency on Press and Mass Media.
vi. Fire inspection	The Fire Inspection Department under the Ministry of Internal Affairs.
vii. Evaluation of construction projects	Any licensed entity
viii. All trade marks and patents related services including registration; searches; and investigations as set forth in Annex 10 of WT/ACC/KAZ/3.	The Patent Office under the Ministry of Industry and Trade
ix. Registration of copyrighted materials	The State Agency on Copyrights and Related Rights
x. Registration of legal entities	The Ministry of Justice.
xi. Customs processing and other customs services as described in Table 4.1 of WT/ACC/KAZ/3	The Customs Committee.
xii. Receipt of certificate of origin for export purpose	The Trade and Industry Chamber.
xiii. Registration of export contract	The Commodity Exchanges.
xiv. Obtaining licenses to perform economic activities	Authorized State bodies according to Table A7.5 of WT/ACC/KAZ/3.
xv. Evaluation of application for import/export licenses by authorized State bodies and ministries according to Table A3.1 and Table A9.1 of WT/ACC/KAZ/3	State bodies and ministries according to Table A3.1 and Table A9.1.
xvi. Evaluation of license application to perform economic activity	Sanitary, ecological, and mining supervision bodies in accordance with Government Resolution No. 1894 of 29 December 1995.

State Services Subject to Price Control	Entity Responsible for Rendering Services
xvii. Consultancy fees charged by certain ministries regarding laws administered by such ministries	Respective ministries
xviii. Safeguard services (e.g. protection of premises)	The Ministry of Internal Affairs

State duties are specified by the Law "On State Duties" of 31 December 1996. State duties are all fixed based on Monthly Evaluation Index. The following is a list of all activities subject to state duties:

- claims submitted to court appeals, issuance of copies by the court;
- notary actions and notarization of documents;
- public registry (marriage, divorce, birth, death, etc.);
- registration related to travel abroad and issuance of letter of invitation for visas;
- issuance of visas;
- processing of documents for citizenship related matters;
- registration of place of living;
- registration for hunting right; and
- registration and re-registration of civil armaments.

The reason for price control over State fees and duties charged by entities rendering State services is that only one entity is authorized by the Government to render a specific service.

Fees and duties are transparent. With the exceptions of fees for intellectual property related matters, fees apply equally to foreign and national legal and natural persons. Certain fees are currently ad valorem and do not reflect the cost of services rendered. Please note that Kazakhstan is currently in the process of evaluating those state fees and duties to ensure they reflect the cost of services rendered.

c. Public Transport

Prices for public transport (e.g. buses, trolleys) are established and controlled by local administration.

d. State Postal Services

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

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

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

Question 2.

Could Kazakhstan confirm that the Government does not intervene anywhere else with a view to directly influencing or determining prices of goods or services, including through price stabilisation schemes?

Answer:

Kazakhstan confirms that the Government does not intervene anywhere else with a view to directly influencing or determining prices of goods or services, including through price stabilisation schemes. Please note under the next question the list of natural monopolies subject to tariff regulation.

Question 3.

Could Kazakhstan provide a comprehensive list of the industry sectors that it would regard as natural monopolies?

Answer:

The following industry sectors are regarded as natural monopolies:

- transmission and distribution of electricity;
- distribution of heat;
- oil and oil products pipelines;
- gas pipelines;
- railroads;
- water sewage systems;
- air navigation (landing/take-off and usage of air routes);
- telecommunication networks; and
- State post office.

Private sector development /privatization

Question 4.

When State-owned enterprises are privatised, are foreign investors accorded national treatment?

Answer:

Yes. When state-owned enterprises are privatized, foreign investors are accorded national treatment. Article 2 of the Law "On Privatization" of 23 December 1995 states that foreign natural and legal persons have the right to be buyers in the privatization process like local natural and legal persons. In addition, Article 3 of Civil Code of 27 December 1994 states that foreign natural and legal persons have the same rights provided for by the civil legislation for citizens and legal entities of Kazakhstan unless otherwise stipulated by legislation. Currently, no legislative acts of Kazakhstan stipulate discriminatory treatment concerning foreign participation in privatization.

Question 5.

Why is foreign ownership of land not allowed where the land is used for the purpose of personal farming, horticulture or dacha construction (page 10)? Are there plans to lift these restrictions?

Answer:

Foreign ownership of land is not allowed where land is used for the purpose of personal farming, horticulture or dacha construction. The main reason is that this type of land is limited. Kazakhstan does not have any current plans to lift these restrictions.

Sectoral priorities

Question 6.

We welcome the Kazakhstan Government's intention "to continue improving the legal and regulatory regime in order to establish conditions conducive for investment in all sectors, without exception", and its goal of attracting foreign investment as well as encouraging domestic investment (page 10). Our understanding is that, in the mining sector, the relevant legislation on the licensing of users of natural resources provides for three types of license - an exploration license, a mining license, and a combined exploration/mining license often referred to as a "complex license".

Is it the case that, since May 1996, the legislation has been interpreted so as to prohibit the issue of the "complex license" and institute a two-stage exploration-then-mining approach? Is this proving unattractive to investors, and is this disadvantaging companies which failed to complete "complex license" negotiations before May 1996?

Answer:

There are no laws or legal acts which prohibit the issuance of complex license in the mining sector in Kazakhstan. Article 24 of the Law on Subsurface Utilization of 27 January 1996 permits the issuance of combined exploration/production license. Also, Article 7 of Government Resolution No. 1017 of 16 August 1996 permits the issuance of combined licenses (exploration and production).

Licenses for exploration, production, and exploration/production of the subsurface are issued on the basis of a tender, as a rule. Licenses are issued by the Government ("Cabinet of Ministers") and become effective after registration at the Ministry of Geology and the Protection of Subsurface (MinGeo).

Tenders may be of an open or a closed type and are announced by the Government or pursuant to its instructions they may be announced by MinGeo. The terms for conducting an open-type tender must be published in official publication. The terms for conducting a closed -type tender shall be communicated to all its potential participants not later than 90 days prior to its date.

License may also be issued as result of direct negotiations with the Government or by a body (Commission) authorized by the Government.

It is not the case that, since May 1996, the legislation has been interpreted so as to prohibit the issue of the "complex license" and institute a two-stage exploration-then-mining approach. More than 45 complex licenses (exploration/mining) have been issued since May 1996.

In addition, please note that, according to Article 22 of the Government Resolution No. 1017 of 16 August 1996: when a useful mineral is discovered, the licensee shall have the right to extend the license for a period which is needed for the appraisal of the commercial discovery. In the case of a commercial discovery the holder of the exploration license shall have the exclusive right to be issued the production (mining) license, provided the terms of the exploration license are implemented.

Question 7.

Which government agency is ultimately responsible for deciding whether an application for the issue of a mining license is to be granted or refused? Is that agency solely responsible for decisions taken?

Answer:

The Government is ultimately responsible for deciding whether an application for the issue of a mining license (except license for commonly occurring useful minerals - such as sand, stones) is granted or refused. The government is solely responsible for decisions taken.

Oblast executive bodies (Akims) are ultimately responsible for deciding whether an application for the issue of a mining license for commonly occurring useful minerals is granted or refused.

Question 8.

Is the responsible agency legally able to issue combined exploration/mining licenses under current legislation?

Answer:

Yes. The responsible agency (Government or Akim) is legally able to issue combined exploration/mining licenses under current legislation.

Article 24 of the Law on Subsurface Utilization of 27 January 1996 permits the issuance of combined exploration/mining licenses. In addition, Article 23 of the same law refers to the Government as the licensing body for exploration and production of all minerals, except commonly occurring useful minerals. Oblast Executive bodies (the Akims) are responsible for issuing exploration and production licenses for commonly occurring useful minerals.

Article 8 of Government Resolution No. 1017 of 16 August 1996 states that (1) the Government shall be the licensing body for issuing licenses for exploration and/or production of useful minerals except license for commonly occurring useful minerals and (2) the local executive bodies (Akims of oblasts) shall be the licensing bodies which issue licenses for the exploration and production of commonly occurring useful minerals.

The competitive bid proposal to obtain a license for exploration either on the basis of tender or direct negotiations must contain the following (according to Article 18 of Government Resolution No. 1017):

- information concerning previous business of the applicant, including the list of the states where the applicant carried out its business within the last 5 years, the bank reference on applicant's financial status;
- intents of the applicant on the terms of exploration, including the program of the operation and the costs associated therewith;
- intents of the applicant with regard to the protection of the natural environment, including the recultivation and recovery of the contractual territory land;
- indication of the sources of finance for the development (owned or borrowed); and
- the period which is required for the implementation of the investment program.

The competitive bid proposal to obtain a license for production either on the basis of tender or direct negotiations must contain the following (according to Article 19 of Government Resolution No. 1017):

- information of the exploration license and the results of its use, if any;
- expected date of beginning the production and when it attains its economic and technical potential;
- estimated costs associated with the production, and revenues from selling useful minerals;
- projected cash receipts of the Republic of Kazakhstan and capital investments into the development of protection and social infrastructure of the contract territory; and
- obligations concerning training of Kazakhstan personnel.

According to Article 20 of Government Resolution No. 1017, the competitive bid to obtain a combined license for the exploration and production must contain the provisions as established for the competitive bid proposal for the right to obtain a license for the exploration and the principal terms of production in the event of commercial discovery.

Failing to provide the required materials for the competitive bid will not qualify the bidder for obtaining a license.

Question 9.

If so, could Kazakhstan provide details of the procedures and processes that govern the issue of combined exploration/mining licenses? What laws and regulations govern these procedures and processes? If not, what is the nature of the legal obstacle to the issuance of such licenses, and will this obstacle be removed?

Answer:

The Law on Subsurface Utilization of 27 January 1996 and Government Resolution No. 1017 of 16 August 1996 govern procedures and processes for issuance of combined exploration/mining licenses. The Law on Subsurface Utilization was provided to the WTO Secretariat in August 1996.

There is no legal obstacle for the issuance of combined exploration/mining license.

Question 10.

Is there a set time for limit for the responsible agency to process an application for a combined exploration/mining license from the date of lodgment until notification of its final decision?

Answer:

The application for a license is basically a competitive bid proposal. Article 17 of Government Resolution No 1017 of 16 August 1996 states that a proposal must be considered within three months from the date of its receipt.

Question 11.

On what grounds can the responsible agency legally refuse an application for a combined exploration/mining license? Is the agency required to set out in writing its reasons for refusing an application for a combined exploration/mining license?

Answer:

Article 21 of Government Resolution No 1017 of 16 August 1996 sets the criteria for denying the right to participate in tender or direct negotiations. Article 22 of the same resolution sets the criteria for determining the winner of a tender.

The agency (Government or Akim) is not required to set out in writing its reasons for refusing an application for a combined exploration/mining license.

Article 21:

The denial of the right to participate in a tender or in direct negotiations may take place in the following cases:

- the application is submitted in violation of the requirements of Government Resolution No. 1017;
- submission by the applicant of inaccurate information;
- the application has no documentary proof that the applicant has or will have the technical, institutional, managerial, and financial capacities which are required for conducting the

operations associated with the exploration and/or production as stipulated in the application for the participation in the tender and/or the competitive bid proposal.

Article 22:

The winner of a tender shall be determined on the basis of the set of the following criteria:

- date of beginning and the intensity of the exploration;
- date of beginning the production and when it attains its economic and technical potential, and also the useful mineral maximum recovery factor;
- estimated amounts of initial and subsequent payments to the budget;
- amount of investments, conditions and term of financing the project and capital investments into the development of production and social infrastructure of the contract territory;
- compliance with the requirements relating to the protection of the subsurface and the natural environment, and to safe conducting of operations.

Question 12.

Is there an avenue of judicial appeal for any applicant who has been refused a combined exploration/mining license? Does the judicial authority have the power to overturn the refusal of a license?

Answer:

Yes to both questions.

II.2(b) Monetary and fiscal policy

Fiscal policy

Question 13.

We note that income derived principally from land is taxed at a lower rate than business income (page 14). How is "income derived principally from land" defined?

Answer:

According to Instruction No. 33 approved by the Ministry of Finance on 29 January 1996, income derived principally from land means income derived from direct utilization of land (plantation and cattle breeding). A legal entity may claim a lower tax rate (10%) if over 50% of its total income is connected with income derived principally from land.

Question 14.

We understand that raising taxation revenue and controlling public expenditures are seen as important issues for the Kazakhstan Government, and note the four elements of fiscal policy in Kazakhstan (page 15). Could Kazakhstan elaborate on the policy measures that are likely to be adopted in the future to address each of the elements of fiscal policy?

Answer:

As mentioned in WT/ACC/KAZ/3, the fiscal policy of the government will concentrate on four elements. A brief discussion of government measures to address these four elements is provided below:

i. Raising tax revenues via strengthened tax administration:

Several initiatives are being undertaken:

- small enterprises like kiosks are being taxed through the "patent" method (a form of presumptive taxation);

- the use of cash registers with "fiscal memory" is being mandated to reduce fraud;
 - a more aggressive set of procedures to collect tax arrears is being instituted;
 - a non-filer, stop-filer identification program is under way;
 - new tax forms and instructions for the VAT and corporate income tax are being developed.
- ii. Improving the structure and management of expenditures:
- a new budget systems law was passed by Parliament in December 1996. This significantly rationalizes all aspects of the budget process;
 - a modern treasury system is being introduced;
 - a modern budget classification system has been introduced.
- iii. Overhauling the social safety net:
- A Law "On obligatory Social Insurance" of 18 July 1996 was adopted, which determines the legal, organizational and economic basis of social protection of citizens, guaranteed by the state and implemented at the cost of obligatory social security insurance funds for the following types of social guarantee:
- retirement coverage;
 - temporary disability allowance (including disability due to employee injury or professional diseases);
 - maternity allowance;
 - health improving services;
 - social support in case of unemployment;
 - obligatory medical insurance;
 - birth allowance;
 - burial allowance.
- iv. Continuing the process of divestiture of enterprises' social assets:
- An aggressive process of social asset divestiture is moving forward. This is accomplished through privatization, conversion programs, and contract management. Divestiture is to be completed around the end of 1998.

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

III.3 Division of Authority between Central and Sub-Central Governments

Question 15.

Kazakstan states that Government powers affecting foreign trade are devolved from national to local authorities in accordance with six principles (page 22). What power does the central Government have to ensure that sub-national governments are in accordance with Kazakstan's commitments under treaties?

Answer:

The Constitution of the Republic of Kazakstan provides that obligations undertaken pursuant to a ratified self-executing international agreement shall have priority over its laws and sub laws. Accordingly, the decisions of Akims (the representative of the Executive at the sub-national level) or of Maslikhats (local representative bodies) which may derogate from Kazakstan's commitments pursuant to international agreements may be annulled by the President, the Government, a Senior Akim, as well as through court procedures. In addition, the General Prosecutor's Office exercises constant supervision over the exact and uniform application of laws and sub laws.

Question 16.

Could Kazakhstan provide an assurance that the application of the principles mentioned on page 22 will not impede its ability to meet the obligations it will assume under the WTO Agreement as a future WTO member?

Answer:

The Republic of Kazakhstan, as a unitary State, will adhere to all of the obligations undertaken in the context of the forthcoming negotiations.

IV POLICIES AFFECTING TRADE IN GOODS

IV.1 Import Regulation

IV.1(b) Characteristics of national tariff and nomenclature

Question 17.

Could Kazakhstan explain the nature of the structural and coding differences between the tariff nomenclature of Kazakhstan and Harmonised System (page 25)?

Answer:

Kazakhstan intends to adopt fully the Harmonized System in April 1997. Accordingly, any structural or coding differences that may now exist between HS 96 and Kazakhstan's tariff nomenclature will have been eliminated by that time.

Question 18.

When will the HS 96 changes be incorporated into Kazakhstan's tariff nomenclature? Will this occur prior to market access negotiations in the context of Kazakhstan's accession?

Answer:

Kazakhstan intends to incorporate HS 96 by April 1997 prior to market access negotiations in the context of Kazakhstan's accession.

IV.1(c) Tariff quotas and tariff exemptions

Question 19.

We note that the weighted-average tariff for Chapter 22 (beverages, spirits and vinegar) is around 185 per cent (table A1.35, page 77). What is the reason for rates of import duty which are very high compared to rates applied in other sectors?

Answer:

The purpose of high rates for Chapter 22 is revenue generation.

Question 20.

Does Kazakhstan have any intentions of achieving its social and revenue objectives in this sector through increased internal taxation accompanied by a reduction in the tariff applied to imports?

Answer:

Kazakhstan has no intention to increase internal taxation in this sector.

Question 21.

We welcome Kazakhstan's statement that there are no tariff quotas (page 25). Can Kazakhstan provide an assurance that it will not seek to introduce tariff quotas in the future?

Answer:

No. Kazakhstan may introduce tariff quotas in the future. Such quotas will be applied in conformity with Article XIII of GATT.

IV.1(d) Other duties and charges, specifying any charges for services rendered

Customs processing fees and other customs services

Question 22.

We note that customs levies for customs processing are imposed at an ad valorem rate (page 26). This is inconsistent with Article VIII of the GATT 1994. When will the structure of Kazakhstan's customs levies for customs processing be revised to reflect the approximate cost of services rendered?

Answer:

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

Value added tax (VAT)

Question 23.

We note that imported goods which are exempt from VAT include "goods purchased at budget expenses and imported by organization supported at the expenses of state budget as well as goods imported under foreign credit lines that are guaranteed by the State" (page 27). Could Kazakhstan explain the purpose of this exemption and provide a list of the organizations covered by this exemption?

Answer:

The purpose of this exemption is to reduce payments from budget for imported goods at budget expense or under foreign credit lines that are guaranteed by the State.

There is no list of organizations covered by this exemption. Organizations seeking such exemption must provide evidence to customs indicating that imported goods are purchased at budget expense or under foreign credit lines that are guaranteed by the State.

Question 24.

What percentage of Kazakhstan's total imports are covered by this exemption?

Answer:

It is estimated that no more than 3% of total imports are covered under this exemption.

Question 25.

We also note that imported goods which are exempt from VAT include "goods imported by natural persons according to the rate of free import duty stipulated by the Government" (page 27). What percentage of Kazakhstan's total imports are covered by this exemption?

Answer:

Such statistical information is not collected.

Question 26.

Could Kazakhstan provide details of this exemption? How would natural persons qualify for this exemption? Which natural persons would be eligible?

Answer:

Government Resolution No. 1748 of 31 December 1996 lists the goods and the rates under which natural persons are exempted from paying VAT and Excise Taxes.

	Code of Commodity Nomenclature	Name of Goods to which exemption applies	Rate of import (per one person)
1.	From 0301, 0302, 0303, 0304, 0305, 1604	Sturgeon and salmon, their roe, and delicacies made therefrom	3 kg. (net weight)
2.	2203.00	Beer	5 litres
3.	From 2204 (except 2204 30), 2205, 2206, 2207, 2208, 2905	Wine, Wine-making ingredients, Champagne, Cognac, All alcohol, Fortified drinks, juices and balsam, Vodka, Liqueurs and vodka products	5 litres
4.	2402	Tobacco products and other products containing tobacco	1000 units (cigarettes)
5.	From 271000330, 271000350	Gasoline (other than aviation gasoline)	100 litres
6.	From 271000610, 271000650, 271000690	Diesel fuel	150 litres
7.	From 420310000	Clothing made of natural leather	3 items (set)
8.	From 4301, 4302, 4303, 650692000	Cured and non-cured furskins (except mole, rabbit, dog, deer, sheep skins), Wearing apparel made of natural fur, including coats, short coats, jackets, and mantles (except apparel made of furskins of mole, rabbit, dog, deer, sheep skins), Overcoats, short coats, jackets and mantles with decoration made from fur (except mole, rabbit, dog, deer, sheep)	items (set)
9.	From 701321, 701331, 701391, 940510500	Objects made of crystal, including lighting appliances	3 set (services)
10.	From 7113, 710239000, 7114, 7116	Gold, platinum or silver jewellery	5 units

Any natural person is eligible for these exemptions through customs declaration. Per importation or entry, the natural person may claim no more than ten exemptions (one exemption from each of the 10 categories listed above). There is no limit on the frequency of entries or importation.

Question 27.

Imported goods which are exempt from VAT include "goods originated in and imported from CIS countries" (page 27). Why is this exemption provided? Can Kazakhstan provide a detailed explanation of how VAT arrangements for trade with CIS countries differ from arrangements for other countries?

Answer:

With respect to CIS countries (Agreement between CIS Countries on Agreed Principles of Tax Policy; 13 March 1992), VAT applies at source rather than destination. In other words, VAT applies on imports from CIS to Kazakhstan at the country of origin. Kazakhstan is currently in the process of negotiation with other CIS countries to make VAT applicable at destination rather than source.

Question 28.

Are these arrangements consistent with WTO requirements?

Answer:

In practice, these arrangements do not contradict WTO requirements. VAT applies equally on goods imported from CIS and non-CIS countries. With respect to CIS countries, VAT applies at source rather than destination. All goods imported to Kazakhstan from other CIS countries are subject to VAT in those countries. The difference here is that Kazakhstan collects the VAT applied on goods imported from non-CIS countries, and other CIS countries collect the VAT applied on goods exported to Kazakhstan from those countries. For those CIS countries which have a VAT rate lower than Kazakhstan's rate, Kazakhstan applies the difference in rate on imports from those countries.

Excise taxes

Question 29.

We refer to the information provided on the product coverage of Kazakhstan's excise taxes (pages 27-29), and note that there are different government resolutions relating to excise on imported goods and excise on goods produced in Kazakhstan. Do the provisions of these government resolutions differ only in respect of the rates of excise duty according to place of origin of the products concerned? We would be grateful for details of any other difference, including the rationale for them.

Answer:

The difference is only in respect to the rates of excise duty according to place of origin of the products concerned. There is no other difference.

Question 30.

We note that some excisable imported goods attract a considerably higher rate of excise tax than domestically-produced like products (table 4.2). When will Kazakhstan bring its excise taxes into full conformity with Article III of the GATT 1994?

Answer:

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

Question 31.

Does Kazakhstan have any plans to assemble passenger automobiles or lorries with a carrying capacity under 1.25 tons? If so, will national treatment on internal taxation and regulation be provided?

Answer:

Any foreign or domestic investor has the right and is welcome to establish a business in Kazakhstan for assembling automobiles or lorries. In this case, national treatment on internal taxation and regulation will be provided.

Question 32.

We refer to the excise tax exemptions listed on pages 27-28 of the Memorandum. Does Kazakhstan have any plans to remove excise tax exemptions that discriminate in favour of goods originating in and imported from the CIS?

Answer:

In practice, there is no discrimination with regard to excise taxes in favour of goods originating and imported from CIS. Excise Taxes applies equally on goods imported from CIS and non-CIS countries. With respect to CIS countries, Excise Taxes applies at source rather than destination. All goods imported to Kazakhstan from other CIS countries are subject to Excise Taxes in those countries. The difference here is that Kazakhstan collects the Excise Taxes applied on goods imported from non-CIS countries and other CIS countries collect the Excise Taxes applied on goods exported to Kazakhstan from those countries.

Kazakhstan is currently in the process of negotiation with other CIS countries to make Excise Taxes applicable at destination rather than source.

Question 33.

The description of this category of excise tax exemption seems to imply that all goods originating in and imported from the CIS are free from excise tax, while many domestically produced like products are subject to excise. Does table 4.2 provide a complete list of the domestically produced goods affected in this way? Are all of the goods listed in the table 4.2 affected in this way?

Answer:

The answer to both questions is Yes. Also, please see response to previous question.

Table 4.2 was updated to reflect recent changes in excise taxes. Please note the answer to question IV.15 of the EC Questions concerning WT/ACC/KAZ/3.

Question 34.

Is eligibility for a license to produce liqueurs, vodka products, fortified drinks and juice, wine or balsam in Kazakhstan based on nationality? If so, we would be grateful for details of nationality restrictions and any other restrictions?

Answer:

Eligibility is not based on nationality according to Article 1 of GosStandard Guiding Document RD 50 RK 16-1995.

Question 35.

Could Kazakhstan provide details of the legal obligations of licensed producers of liqueurs, vodka products, fortified drinks and juice, wine or balsam relating to the purchase of foreign inputs for their activities?

Answer:

There are no current legal obligations for licensed producers of liqueurs, vodka products, fortified drinks and juice, wine or balsam relating to the purchase of foreign inputs for their activities.

IV.1(e) Quantitative import restrictions, including prohibitions, quotas and licensing systems

Question 36.

Could Kazakhstan provide a list detailing the products currently subject to quantitative import restrictions, a description of the measures applied in each case, together with reasons and WTO justification (page 29).

Answer:

As explained in WT/ACC/KAZ/3, Kazakhstan does not have any import quotas. Import licenses, however, are required for certain goods. Table A3.1 and Table A3.2 of Annex 3 of WT/ACC/KAZ/3 provided the lists of goods subject to import licensing. Please note, however, that these licenses are not linked to any quotas.

Also, please note that Table A9.1 of WT/ACC/KAZ/3 needs to be amended to include the following item according to Government Resolution No 712 of June 6, 1996.

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

IV.1(h) Customs valuation

Question 37.

Kazakhstan states that customs valuation is largely based on the WTO Customs Valuation Agreement. This seems to imply that there are some deviations from WTO requirements. Can Kazakhstan describe any deviations?

Answer:

Although the valuation provisions of Kazakhstan's Customs Code largely conform to the WTO Agreement on Customs Valuation, there are some discrepancies and omissions, which are described below. In 1997, Kazakhstan will amend its Customs Code to bring it fully into conformance with the WTO Valuation Agreement.

i. The Customs Code defines a related-party to include one that has more than a 20% percent ownership share in the other party. Article 15(4)(d) of the WTO Valuation Agreement defines a related party to include one who holds a 5% or greater share in the other party. In addition, the WTO

Valuation Agreement statement that a related party includes "officer or director of one another's business" does not appear in the Customs Code.

ii. The Customs Code defines "transaction value" as the price paid or payable for imported merchandise "at the moment of their crossing of the customs boundary of the Republic of Kazakhstan." This is not consistent with the WTO Valuation Agreement, which defines transaction value as the price paid or payable for the imported merchandise "when sold for export."

iii. The Customs Code does not include certain of the WTO Valuation Agreement provisions on related-party prices. Specifically, it does not include the two tests set out in Article 1(2) of the Value Code to determine whether a related-party price may be used as a basis for appraisement (the use of "test values" and evidence of the circumstances of sale).

iv. Article 129 of the Customs Code, which defines transaction value of identical goods, limits Customs' consideration to exports of identical goods made within 90 days prior to the importation of the goods under valuation, a limitation that is not found in the WTO Valuation Agreement.

v. In the calculation of deductive value, the WTO Valuation Agreement, Article 5, requires the customs authorities to consider first those sales made at or about the time the goods under appraisement are imported and, only if no such sales are found, consider sales made within 90 days of the importation. The Customs Code does not make this distinction, but directs Customs to consider all sales made within the 90-day period in the first instance.

vi. Article 2 of the WTO Valuation Agreement provides that where the transportation-related costs and charges described by paragraph 2 of Article 8 are included in the transaction value of identical or similar goods, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the identical goods arising from differences in distances and modes of transport. The Customs Code provides for adjustment of all expenditures described in Article 128 of the Customs Code, which includes not just transportation-related charges, but assists, royalties, commissions, and other additions to price that are delineated under Article 8 of the WTO Valuation Agreement.

vii. Article 4 of the WTO Valuation Agreement provides that an importer -at his exclusive option- may elect to have the imported merchandise appraised under the computed value rather than deductive value, or vice versa. The Customs Code does not expressly limit this election to the importer.

viii. Article 132 of the Customs Code provides that a computed value shall include an amount for profit usually derived by exporters in sale of goods of the same type as those under valuation. It does not include the limitation required by Article 6 of the WTO Valuation Agreement that only profits of exporters in the same country of export are to be considered.

ix. As stated in Kazakhstan's Memorandum on Foreign Trade Regime, Article 133 of the Customs Code does not fully delineate the prohibitions contained in Article 7(2) of the WTO Customs Valuation Agreement. Specifically, Articles 7(2)(b), (c), (d) and (f) of the WTO Agreement on Customs Valuation are not included in the Customs Code.

x. Article 16 of the GATT Valuation Code requires the customs body to provide a written explanation to the importer upon written request "as to how customs value of the importer's goods was determined." Article 126 of the Kazakhstan Customs Code provides instead for a written explanation of the reasons why the importer's declared value may not be accepted.

IV.1(j) Preshipment inspection

Question 38.

Could Kazakstan outline why it has had recourse to preshipment inspection? Which aspect or aspects of Article 1.3 of the WTO Agreement on Preshipment Inspection are relevant?

Answer:

On 31 January 1997, Preshipment Inspection was eliminated.

Question 39.

Why have goods imported from CIS countries and goods valued at not more than 3,000 US dollars been exempted from preshipment inspection? How will such exemptions affect the fulfilment of the objectives of Kazakstan's preshipment inspection arrangement?

Answer:

Please see answer to question 38.

Question 40.

Could Kazakstan advise of any changes to its preshipment inspection arrangement since its memorandum was produced?

Answer:

Please see answer to question 38.

IV.1(l) Rules of origin

Question 41.

We note that Kazakstan has provided a brief outline of its rules of origin (page 31). We would be grateful if Kazakstan could provide more specific detail on its legislation, regulations and practices in the area of rules of origin.

Answer:

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

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

- i. minerals products extracted from its soil or in territorial waters or on its continental shelf;
- ii. vegetable products harvested or gathered in that country;
- iii. live animals born and raised in that country;
- iv. products obtained from live animals in that country;
- v. products of hunting and fishing in that country;
- vi. production extracted or produced in world ocean by vessels of that country, or vessels leased (chartered) by that country;

- vii. secondary raw materials and waste which are the result of production or other operations which are performed in that country;
- viii. production obtained in open cosmos on space ships of that country or space ships leased by that country;
- ix. goods manufactured or produced exclusively from production of items 1-8.

A good is considered to have undergone a substantial transformation if: (1) there is a change in the tariff classification of the good at the four-digit level as a result of that processing, (2) the good has undergone industrial or technological operations which are considered sufficient to confer origin, or (3) a certain percentage value of the good may be attributed to that country. Additional legislation concerning rules of origin are in the process of being drafted. Article 142 of the Customs Code further provides that a change in origin will not be recognized where the good merely undergoes one of the following operations:

- operations necessary for the preservation of the goods during storage or transportation;
- operations for preparation of goods for sales and transportation (such as breaking bulk, grouping of packages, sorting, and repacking), simple assembly operations, or mixing of goods without changing the essential characteristics of the goods.

Question 42.

How will Kazakhstan administer the obligations it will assume under the WTO Agreement on Rules of Origin when it accedes to the WTO?

Answer:

Kazakhstan will administer its obligations under the Agreement on Rules of Origin by taking the measures necessary to ensure that its rules and practices concerning origin of goods are fully in compliance with the agreement.

IV.1(m) (n) (o) Anti-dumping, Countervailing Duty and Safeguards Measures

Question 43.

We note that Kazakhstan is in the process of developing procedural rules and implementing regulations in the areas of anti-dumping, countervailing duty and safeguards (page 31). We would be grateful if Kazakhstan could provide details of its legislation, regulations and practices in each of these areas.

Answer:

Kazakhstan has so far not imposed anti-dumping, countervailing, or safeguard duties.

The Customs Code of 20 July 1995 is currently the only legislation which refers to anti-dumping regime (Article 115), countervailing regime (Article 116) and Safeguard regime (Article 114). No procedural rules or implementing regulations have been developed.

Please note that Kazakhstan is currently in the process of drafting a law "On Anti-Dumping Measures", a law "On Countervailing Measures" and a law "On Safeguard Measures". These three laws will conform to the WTO rules and will be the only laws governing anti-dumping, countervailing, and safeguard regime in Kazakhstan. These laws are expected to be submitted to the Parliament in 1997.

Question 44.

What time-frames are envisaged for the development of procedural rules and implementing regulations in each of these areas?

Answer:

Any necessary procedural rules and implementing regulations will be elaborated after the laws are submitted to the Parliament.

Question 45.

Could Kazakhstan supply details of how its regulations and procedures in the areas of anti-dumping, countervailing duty and safeguards will apply to imports from its free-trade area and customs union partners?

Answer:

Currently, there are no regulations and procedures in place addressing this issue. Regulations and procedures will be elaborated after the three laws on dumping, countervailing, and safeguards are submitted to the Parliament.

IV.2. Export Regulation

IV.2(d) Export licensing procedures

Question 46.

Could Kazakhstan provide an explanation of the criteria that are used to decide whether or not to issue an export license (page 32).

Answer:

The following documents are required for the issuance of license:

- application;
- fee;
- contract between buyer and seller;
- certificate of origin;
- certificate of quality;
- approval of the Ministry concerned with the goods in accordance with Table A9.1 of WT/ACC/KAZ/3; and
- permission from the government for certain goods according to Table A9.2 of WT/ACC/KAZ/3.

An application may be rejected under one of the following conditions:

- incomplete application package (one of the above listed documents missing);
- unpaid license fee; and
- a document in the application package contradicting acting legislation.

Question 47.

The Memorandum states that the Ministry of Trade has primary responsibility for the issuance of licenses; however, the Ministry primarily concerned with the goods in question must approve the issuance of the license (page 32). Is the role of the Ministry of Trade in the issuance of export licenses restricted only to acting as a conduit between the applicant and ministries other than the Ministry of Trade? That is to say, does the Ministry of Trade lack power to determine whether to grant or refuse an approval for an export license?

Answer:

The Ministry of Industry and Trade will not issue an export license without the approval of the Ministry concerned with the good in question.

Despite the approval of the Ministry concerned with the good in question, the Ministry of Industry and trade may still refuse to grant an export license on the grounds listed under the answer to the preceding question.

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

Question 48.

Could Kazakhstan explain why it imposes minimum export prices on certain basic products (page 32)?

Answer:

Government Resolution No. 1492 of 5 December 1996 eliminated minimum export prices.

Question 49.

Are minimum export prices an indirect means of regulating export quantities? If so, what body is responsible for implementing policy in this area? If not, what are minimum export prices related to?

Answer:

Please see the answer to the preceding question.

Question 50.

We note that export contracts for a range of products need to be registered (page 33 and 158-159). We would be grateful for information on why export contracts above the stipulated quantities need to be registered. Is this measure for statistical purposes or to control exports?

Answer:

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

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

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

The stipulated quantities in Table A9.3 of WT/ACC/KAZ/3 above which a contract must be registered are based on the usual minimum size of export consignment.

IV.3. Internal Policy Affecting Foreign Trade in Goods

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

Agricultural subsidies

Question 51.

We note that Kazakhstan grants agricultural subsidies (page 33-34 and Annex 11). Could Kazakhstan elaborate on how these subsidies are delivered? Are they in the form of price support or is support linked to production?

Answer:

Subsidies are granted through the Agriculture Support Fund (ASF), established in December 1994. The main goal of providing subsidies to agricultural production through this ASF is to increase efficiency of agricultural activities by means of stimulating entities to use new equipment, technologies, purchasing of pedigree cattle, usage of high grade seeds, mineral fertilizer and means to protect plants. Subsidies are not in the form of price support.

- In 1996, the ASF allocated resources to agricultural entities according to the following:
- 50% of value of used mineral fertilizer for crops of intensive type and seeds plots of grain crops;
 - 40-60% of value of used plant protection means (e.g. herbicides);
 - certain subsidies to pay for used fuel and mixed fodder, and measures to improve health of cattle;
 - certain subsidies for adopting new technologies and training on usage of new equipment; and
 - a fixed amount of subsidy for each ton of production of high grade seeds, pedigree cattle, high quality wool and astrakhan, and lamb meat.

The allocation of subsidies is provided through Oblast branches of ASF which also performs control over ear-marked usage of allocated subsidies.

Question 52.

In this period of transition to a market economy, does Kazakhstan envisage an ongoing role for these subsidies or will agricultural production and price be determined by the market?

Answer:

Currently, agricultural prices and production are determined by the market with exception of subsidies connected with the production of high grade seeds, pedigree cattle, high quality wool and astrakhan, and lamb meat (see previous answer). During transition to market economy, Kazakhstan envisages maintaining such subsidies.

Question 53.

With regard subsidies for transport of agricultural and food products, does the same subsidies apply to all local production? Do goods bound for export also qualify for a subsidy for the domestic freight component

Answer:

Preferential tariff rates for transportation of coal and agriculture and food products by rail were eliminated on 1 January 1997 according to Resolution No. 7/126 of the State Committee on Pricing and Anti-Monopoly Policy dated 25 December 1996.

Question 54.

We refer to the tables of agricultural subsidies at Annex 11. What is the function and purpose of the State Food Contractual Corporation (as per reporting period 1994 and 1995)?

Answer:

The State Food Contractual Corporation (SFCC) was established in accordance with Government Resolution No. 309 of 21 March 1995 and Government Resolution No. 549 of 25 April 1995. SFCC has the following functions:

- i. State customer for centralized grain procurement for state resources;
- ii. allocation of the orders for grain procurement for state needs among procurement organizations;
- iii. organization of procurement and control over grain shipment to the state resources;
- iv. organization of the utilization of state resources grain, realization of counting and control over its movement;
- v. determination of needs in financial means directed for procurement of volume of grain, established by the Government of the Republic of Kazakhstan, for state resources and realization of payments of credit debts, involved for financing mentioned operations; and
- vi. borrower of credits in the order established by legislation.

SFCC does not have a dominant position in the trade of grain in Kazakhstan. Its market share is approximately 9%.

Question 55.

We would be grateful for further information about state procured grain for the purpose of public stockholding for food security purposes, including how, and under what conditions, such grain is distributed, and whether the transactions are on a commercial basis.

Answer:

State procurement of grain is conducted by SFCC according to market prices at Commodity Exchanges or direct contracts with grain producers. State procured grain is mainly used for state reserves. A part of it is sold to a number of budget-financed organizations such as the Ministry of Defense and the Ministry of Internal Affairs according to prices agreed upon with the Ministry of Finance.

Disposition of grain for the purpose of stock renewal is conducted via sale on commercial basis by SFCC at Commodity Exchanges or direct contracts.

Question 56.

Why have "plant protection", fertilizers and fuel been listed under product-specific support rather than non-product specific support, given that they are not basic products?

Answer:

The ASF allocates certain subsidies (as described in Annex 11 of WT/ACC/KAZ/3) to those producers who use plant protection means, fertilizers, and fuel for the production of certain types of agricultural products (e.g. high-quality seeds, pedigree cattle). These subsidies are provided actually to the producers of basic agricultural goods. Therefore, it was decided to include such subsidies under product-specific support.

Question 57.

How has Kazakhstan determined the rate of exchange between the Tenge and the US dollar?

Answer:

The rate of exchange between the Tenge and the US dollar is determined as result of daily currency auctions held at the Kazak Interbank Currency and Stock Exchange.

Conversion rates between Tenge and USD used in Annex 11 are average annual rates.

Question 58.

Can Kazakstan explain why it has included plant protection, fertilizers and fuel as product-specific support in supporting table DS:4 when these are not basic products?

Answer:

The ASF allocates certain subsidies (as described in Annex 11 of WT/ACC/KAZ/3) to those producers who use plant protection means, fertilizers, and fuel for the production of certain types of agricultural products (e. g. high-quality seeds, pedigree cattle). These subsidies are provided actually to the producers of basic agricultural goods. Therefore, it was decided to include such subsidies under product-specific support.

Non-agricultural subsidies

Question 59.

We would appreciate more information on subsidies in the form of preferential rates for the transportation of coal and agricultural and food products by rail (pages 34 and 35). Why have these subsidies been introduced?

Answer:

Preferential tariff rates for transportation of coal and agriculture and food products by rail were eliminated on 1 January 1997 according to Resolution No. 7/126 of the State Committee on Pricing and Anti-Monopoly Policy dated 25 December 1996.

Question 60.

What are Kazakstan's plans for these subsidies?

Answer:

Please see answer to previous question.

Question 61.

Is access to preferential rail transportation rates available only on the basis of the type of products being transported (viz. Coal and agricultural and food products) and only available to domestic (not imported) products?

Answer:

Please see answer to previous question.

Question 62.

What plans does Kazakstan have for the export subsidies which are currently maintained for non-agricultural products? What are the specific products to which these subsidies apply?

Answer:

Kazakstan does not plan to eliminate export subsidies upon accession to the WTO. But Kazakstan plans to gradually eliminate such subsidies in accordance with Article 29 of the Subsidies and Countervailing Measures Agreement.

Export subsidies for non-agricultural products apply for light industry and coal.

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

Question 63.

Could Kazakhstan advise the process and requirements for foreign certification bodies to secure accreditation to issue certificates?

Answer:

Foreign and national certification bodies are subject to the same process and requirements to secure accreditation to issue certificates.

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

Accreditation of certification bodies envisages the following stages:

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

The certification body should meet the following criteria:

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

The following are recommended documents that a certification body must have:

- international, interstate and national foreign countries normative documents determining requirements to specific kinds of production, processes, services;
- international standards ISO (9000-9004), ISO 8402, EN 45000 and other documents concerning quality systems;
- interstate and national standards in the field of certification; and
- guidelines of ISO/IEC in the field of certification.

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

Question 64.

Does Kazakhstan envisage that it will be able to fully implement and administer the obligations that it will assume under the WTO Agreements on Technical Barriers to Trade and on Sanitary and Phytosanitary Measures as from the date that it accedes to the WTO?

Answer:

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

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

IV.3(d) Trade-related investment measures

Question 65.

We would be grateful for more detailed information on the exceptions to Kazakhstan's policy of not imposing local content requirements or trade balancing requirements (page 37). What products/activities face local content requirements or trade balancing requirements?

Answer:

There are no products/activities which face trade balancing requirements.

Local content requirements are only stipulated by the Law on Subsurface Utilization and the Law on Oil. Both laws require investors in the mining, gas, and oil sectors to give preferences to Kazakstani goods and equipment if they are competitive in terms of ecological and technological characteristics, price, operating parameters, and supply conditions.

Question 66.

What is the nature of the requirement imposed on each product and activity?

Answer:

The Law on Subsurface Utilization and the Law on Oil require investors in the oil, gas, and mining sectors to give preferences to Kazakstani goods and equipment. However, no implementing regulations have yet been enacted detailing the nature of such requirement or the mechanism for enforcing it.

Question 67.

Are these requirements consistent with Article III of GATT 1994 and the TRIMS Agreement?

Answer:

No.

The requirements concerning preferences for local products in the Law on Oil and the Law on Subsurface Utilization are not consistent with Article III:4 of GATT 1994 which requires that imported products "shall be accorded treatment no less favourable than that accorded to like products of national

origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution, or use".

The requirements in the Law on Oil and the Law on Subsurface Utilization are also contrary to provisions of paragraph 1:c of the Annex to the TRIMs Agreement that prohibits measures that "require the purchase or use by an enterprise of products of domestic origin or from any domestic source, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production".

IV.3(j) Government-mandated counter-trade and barter

Question 68.

How significant are counter-trade and barter arrangements with CIS countries relative to Kazakhstan's total trade?

Answer:

Counter-trade and barter arrangements with CIS countries relative to Kazakhstan's total trade is approximately 5.7%.

Question 69.

Does Kazakhstan have any plans to phase out barter and counter-trade with CIS countries?

Answer:

Kazakhstan does not have any plans to phase out in the near future barter and counter-trade with CIS countries. Please note that barter and counter-trade with CIS countries are not mandated by the government.

IV.3(l) Government procurement practices

Question 70.

We note the absence of a law on government procurement (page 39). Could Kazakhstan advise whether the government procurement law, when enacted, will differ significantly from Government Resolution No. 586?

Answer:

Kazakhstan is currently in the process of drafting a government procurement law based on UNCITRAL model government procurement law. The new law will differ significantly from Government Resolution No. 586.

Question 71.

When will the law be enacted?

Answer:

This law is expected to be submitted to the Parliament in 1997.

IV.4 Policies Affecting Foreign Agricultural Products

Question 72.

Could Kazakhstan explain why it imposes an export tariff on wheat, and whether there are any plans to change the present arrangements (page 41)?

Answer:

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

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

Question 73.

We understand that Kazakstan has not become party to some major intellectual property conventions, namely the Berne Convention for the Creation of an International Union for the Protection of Literary and Artistic Work, the Rome Convention for the Protection of Producers of Phonograms and Broadcasting Organizations, the Convention for the Protection of New Varieties of Plants (UPOV), the Convention Relating to Distribution of Programmer Carrying Signals Transmitted by Satellite, and the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure. How and within what time-frame does Kazakstan propose to implement its obligations under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)?

Answer:

The Republic of Kazakstan fully intends to implement any and all obligations it will undertake as a member of WTO and, consequently, the TRIPS Agreement. The time-frame for implementing these obligations will be agreed to in the context of the forthcoming negotiations.

Question 74.

Does Kazakstan consider the current domestic legal framework to be sufficient for the adequate and effective protection of intellectual property rights? How does Kazakstan propose to cover any deficiencies?

Answer:

Kazakstan's existing legislation governing substantive intellectual property rights, was drafted with a view towards its accession to various international conventions on intellectual property. Legislation which remains to be adopted has already been noted in Kazakstan's Memorandum on Foreign Trade Regime. As part of its efforts to accede to the WTO, Kazakstan will continue to review its legal framework governing intellectual property rights to ensure maximum compliance with any and all obligations agreed to in its forthcoming negotiations.

Question 75.

What steps will Kazakstan take in regard to obligations under the TRIPS Agreement relating to enforcement of intellectual property rights in Kazakstan?

Answer:

The Republic of Kazakstan fully intends to implement any and all obligations it will undertake as a member of WTO and, consequently, the TRIPS Agreement. The time-frame for implementing these obligations will be agreed to in the context of the forthcoming negotiations.

Question 76.

Kazakstan is, inter alia, not a party to the Berne Convention, the Rome Convention on Protection of Rights of Performers or the Convention for the Protection of Plant Varieties? We would be interested in more detailed information on how protection is afforded in these areas by present Kazakstan law.

Answer:

The Republic of Kazakhstan has recently enacted a Law Concerning Copyrights and Related Rights (adopted on 10 June 1996). All provisions in the Law Concerning Copyrights and Related Rights were drafted with a view towards their compliance with the Berne and Rome Conventions. At present, there are no provisions in the Kazak Legal system protecting plant varieties. As noted in WT/ACC/KAZ/3, however, a law protecting plant varieties has been included within the Government's legislative drafting agenda for 1997-1998.

VI. TRADE-RELATED SERVICES REGIME

Question 77.

We are pleased to see that "open competition exists in every services sector of the economy" (page 49). We look forward to seeing a comprehensive schedule of binding commitments across a wide range of services sectors to reflect this situation and assure trading partners that openness will continue. While the Memorandum contains several broad statements which are welcome, more information on GATS issues such as regulatory transparency, market access and national treatment for foreign service providers, and MFN-consistency needs to be provided on a sector-by-sector basis. Kazakhstan will need to assemble details specifically directed to these matters in order to compile a comprehensive draft schedule of commitments. When does Kazakhstan expect to be able to provide a draft schedule of commitments on services?

Answer:

July 1997.

Question 78.

Could more information be provided on the above matters?

Answer:

Currently, Kazakhstan makes no distinction between domestic and foreign services and service suppliers except in government procurement (Section IV.3.1 of WT/ACC/KAZ/3) and services in connection with oil and subsurface use provided that Kazakstani services are competitive in terms of price, efficiency, and quality. Additional restrictions exist in the banking and insurance sectors as described in section VI.3 of WT/ACC/KAZ/3. Kazakhstan makes no distinction among the services and service suppliers from various countries and provides to all a regime which is not less favourable than that applied to the services and service suppliers of any foreign country already operating at the service market of Kazakhstan.

Question 79.

The Memorandum states that "many natural monopoly sectors have been deregulated" (page 49). Could Kazakhstan inform us what is meant by natural monopolies in this case and provide a complete list of such natural monopoly sectors?

Answer:

Most natural monopolies in Kazakhstan act as transport carriers with equal open access to all suppliers, operators, and service providers regardless of form and type of ownership. No exclusive rights or special privileges are granted to these natural monopolies or any of its users. For example, any legal entity wishing to provide telephone services may use the network of KazTelecom after obtaining the appropriate license. Natural monopoly sectors in this case are power transmission and distribution, oil and oil products pipelines, communications networks, gas pipelines, and railroads.

Question 80.

The Memorandum (page 52) states that services may be supplied through any of the three existing types of legal entity: state company, partnership (of which there are five forms) and production co-operative. Could Kazakstan clarify the ownership structures which are permitted to provide services? For example, do they include individual persons and companies organized on a shareholding basis or using a mutual structure?

Answer:

Services may be supplied through any of the three existing types of legal entity : state company, partnership (of which there are five forms) and production co-operative with following ownership structure.

- i. State company. State company is a company with state's share 50% plus one stock.
- ii. Partnership. Partnership is a commercial legal entity with the Charter fund divided into shares (contributions) of its foundation parties (participants).
 - a. Full Liability Partnership (FLP). Only individual persons may be participants of a FLP. An individual person may be participant of only one FLP. In a FLP, there must be not less than 2 participants.
 - b. Limited Liability Partnership (LLP). Participants of a LLP may be individual persons and legal entities, except for the bodies of the representative, executive and judicial [branches of] power. A LLP may be created by or may consist of one person in the case of that person's acquisition of all the shares of the charter fund of a partnership. The number of participants in a LLP should not exceed 30 persons. Otherwise, it should be transformed into JSC within a year.
 - c. Commandite Partnership. Investors in a Commandite Partnership may be individual persons and legal entities, except for the bodies of the representative, executive and judicial [branches of] power. Only individual persons may be Full Liability partners in a Commandite Partnership. A individual person may be a Full Liability partner in one Commandite Partnership only.
 - d. Partnership with Additional Liability. Participants of a partnership with additional liability may be individual persons and legal entities, except for the bodies of the representative, executive and judicial [branches of] power. A partnership with additional liability may be created by or may consist of one person in the case of that person's acquisition of all the shares of the charter fund of a partnership.
 - e. Joint Stock Company (JSC). Participants of a JSC may be individual persons and legal entities, except for the bodies of the representative, executive and judicial [branches of] power. A JSC may be created by or may consist of one person in the case of that person's acquisition of all the shares.
- iii. Production co-operative. Production co-operative is a voluntary association of individual persons based on personal labour participation and association of their contributions (shares).

Question 81.

Regarding entities, could Kazakstan provide information on whether foreign services providers are allowed to establish representative offices, branches and subsidiaries in Kazakstan? Can foreign providers acquire local firms?

Answer:

Foreign services providers are allowed to establish representative offices, branches and subsidiaries in Kazakstan. Foreign service providers are permitted to acquire local firms.

Exception to the above is the insurance sector. Foreign insurance companies are allowed to establish representative offices, branch, and subsidiary but may only be engaged in re-insurance activities. Foreign insurers can not acquire more than 50% of a local firm.

In addition, foreign banks may establish in the form of representative offices but may not provide banking services until they are registered as a Kazak legal entity which could be 100% foreign-owned. Banks with foreign participation may not register in Kazakstan if the total registered charter fund of all banks with foreign participation exceed 25% of the overall registered charter fund of all banks in Kazakstan.

Question 82.

Business licensing procedures are fundamental importance to services providers. The Memorandum (page 49) refers to the Presidential Edict on Licensing, dated 17 April 1995. We welcome the fact that this includes a stipulation that the issuing of licenses shall be carried out on an equal basis for any person who meets the requirements established for that type of license. Could Kazakstan provide more detail as to the types of requirements involved in such licensing?

Answer:

An applicant for a license must submit an application, proof of payment of license fee, copy of certificate of registration (if a legal entity is applying for license), and documents demonstrating appropriate qualification (qualification requirements). Qualification requirements vary from one type of license to another. Currently, ministries responsible for issuing licenses are in the process of elaborating qualifications requirements for each type of licenses.

Question 83.

Could Kazakstan confirm that foreign or partly-foreign applicants are treated on an MFN basis?

Answer:

Foreign or partly-foreign applicants for licenses are treated on an MFN basis.

Question 84.

The Memorandum (page 49) also refers to advantages granted to state monopolies in the issuing of licenses. Could Kazakstan provide details of the state monopolies which receive advantages and the types of advantage involved?

Answer:

Article 3.1 of the Law on Licensing stipulates that issuing of license shall be carried out on equal bases and equal terms for any persons who meet the requirements established for that type of license. It shall be prohibited to grant advantages in issuing licenses to state-owned enterprises, except for those types of activities which are referred to as state monopoly in legislative acts. Currently, there are no legislative acts which provide advantages to any entities, regardless of type and form of ownership, in obtaining licenses.

Question 85.

We note that Article 8 of the Presidential Edict on Licensing ensures that national treatment be acceded in the area of business licensing, "unless it is otherwise stipulated by other legislative acts". Could Kazakstan provide details of any national treatment or market access limitations created by such acts?

Answer:

Currently, there are no other legislative acts limiting national treatment in the area of business licensing.

Question 86.

Would Kazakhstan, in due course, confirm national treatment across the services sectors by scheduling commitments for commercial presence?

Answer:

This matter is to be negotiated in due course during the negotiations on commitments in the services area.

Financial Services

Question 87.

The Memorandum (page 52) describes limitations on the "total registered charter fund of all banks with foreign participation" (not more than 25 per cent). Does Kazakhstan plan to liberalise this requirement?

Answer:

There are plans to start cancelling such restriction beginning 1 January 1999.

Question 88.

Could Kazakhstan provide information as to the transparency and criteria under which "exceptions on case by case basis" may be granted by the national bank?

Answer:

The total registered charter fund of all banks with foreign participation is 12.9% of the overall registered charter fund of all banks in Kazakhstan as of 1 December 1996. Due to the fact that such figure is way below the permitted ceiling (25%), the National Bank of Kazakhstan has not yet developed any additional regulations to define the conditions for granting exceptions on a case by case basis. Please also note that Kazakhstan plans to lift this restriction beginning 1 January 1999.

Question 89.

Annex 7 (page 122) contains a reference to a requirement for banking service providers to obtain permission of the National Bank and state registration at the Ministry of Justice. Could Kazakhstan provide details of the criteria governing such permission and registration?

Answer:

A bank must first obtain a permit from the National Bank of Kazakhstan (NBK) and then must register within one month from the receipt of NBK's permit at the Ministry of Justice as a legal entity.

A. Obtaining a Permission from the National Bank of Kazakhstan

The Law "On Banks and Banking Activities" of 31 August 1995 and its amendments of 27 January 1996 are the legal documents which govern the process of obtaining permit from the NBK. The aforementioned law and its amendments were submitted to the WTO Secretariat in August 1996.

The enclosed articles (15-24) from the Law "On Banks and Banking Activities" discuss in details the process for obtaining permission from the National Bank of Kazakhstan (NBK) and the criteria for denial of such permit. The two fundamental articles are 19 and 24.

Article 19. Application for Issue of a Permit to Open a Bank

1. Any legal entity or natural person has the right to apply to the National Bank for the issue of a permit for opening a bank.

2. An application shall be submitted in Kazakh or in Russian languages and must contain the applicant's address.
3. The following documents should be enclosed with an application for the issue of a permit to open a bank:
 - a) the constitutive documents of the bank to be founded: the founding contract, the charter, the minutes of adoption of the charter and the appointment (election) of the bank organs;
 - b) information on the founders (the list of data is defined by the National Bank; accounting balances of the founders which are legal entities for the last two accounting dates; the conclusion of an auditing firm (auditor) on the conformity of the financial state of the founders to the requirements of point 5 of article 16 of the present Decree.
 - c) if one or more of the founders is not a resident of the Republic of Kazakhstan: the name and address of the state or inspection organs authorized to confirm the financial position of the founder;
 - d) in the case of conversion of a non-banking financial institution into a bank: the founding contract, the charter, the accounting balance for the last accounting date a conclusion of an auditing firm (auditor) on the financial state of the non-banking financial institution;
 - e) a list of the members of the Supervisory Council of the newly-founded bank with indication of the chairman and his first deputy, containing information on the names of each person, their citizenship and address, and also information confirming their conformity to the minimum requirements established by point 3 of article 20 of the present Decree;
 - f) for the chairman of the Board of Management of the bank being newly founded: information indicated in point 3(e) of the present article;
 - g) for other top employees of the newly-founded bank: information indicated in point 3(e) of the present article and also information on previous jobs;
 - h) detailed organizational structure of the newly-founded bank;
 - i) regulation on the internal auditing service of the newly-founded bank;
 - j) regulation on the credit committee of the newly-founded bank;
 - k) business plan of the newly-founded bank explaining the strategy of its activity, directions and scope of activity, financial perspectives (budget, accounting balance, statement of profits and losses for the first three financial (operational) years, a marketing plan (formation of the bank's clientele), and a plan for attracting labour resources;
 - l) report on the preparatory measures taken by the founders in accordance with the business plan;
 - m) a document attested by notary or in other legal method confirming the authority of the applicant for submitting the application in the name of the founders.
4. The conclusion of an auditing firm (auditor) is considered valid under the condition that documents are presented confirming that it (he):
 - is independent of the founders of the audited banks and their officials;
 - is authorized to perform an audit check of a bank in accordance with a National Bank license or of a competent organ of the state of which it (he) is a resident;
5. The National Bank has the right to ask for additional information or documents which are essential for making the decision on issuing the permit to open a bank.
6. An application to issue a permit to open a bank may be recalled by the applicant at any moment during its consideration by the National Bank.

Article 24. Denial of a Permit to Open a Bank

1. An applicant may be denied a permit to open a bank for any of the following reasons:
 - a) non-compliance of the founding documents of the bank with the applicable legislation;
 - b) non-conformity of the name of the bank to the requirements of points 2-4 of article 15 of the present Decree;
 - c) non-conformity of the size, composition and structure of the charter fund of the bank to the requirements of article 16 of the present Decree;
 - d) instability of the financial position of the bank's founders;
 - e) violation of the restrictions established by article 17 of the present Decree;
 - f) non-conformity of candidates to the directing posts of the bank to the minimum requirements established in points 3-5 of article 20 of the present Decree;
 - g) non-conformity of the founding documents of a bank with foreign participation to the norms established by point 1 of article 22 of the present Decree;
 - h) the business plan of the bank being founded and other documents presented by the applicant do not show that:
 - upon the expiration of the first three financial (operational) years the bank's activity will be profitable;
 - the bank intends to adhere to the requirements for restricting risk and form the proper management structure;
 - the bank has an organizational structure congruent with the plans for its activity;
 - the bank has an accounting and supervisory structure congruent with the plans for its activity.
2. The National Bank must notify the applicant in writing of the reasons for denying a permit.
3. The issue of a permit to open a bank in the case of non-adherence to the conditions of articles 18 and 22 of the present Decree is forbidden.

Article 15. Name of a Bank

1. As its company name, a bank uses that name which is recorded in its charter. No bank has the right to name itself differently from the name recorded in the charter in any documents, announcements or adverts.
2. All banks apart from the National Bank are forbidden to use in their name the words "national" or "central" in full or in abbreviated form in any language.
3. All banks apart from state ones are forbidden to use in their name the word "state" in full or in abbreviated form, in any language.
4. It is forbidden to use as a name a designation identical or similar to the point of confusion with the name of banks founded earlier, including banks which are non-residents of the Republic of Kazakhstan. This ban does not apply to affiliate banks in their use of the name of parent banks.

Article 16. Charter Fund of a Bank

1. The charter fund of a bank serves as a guarantee of its obligations and as the main source of carrying out banking operations. The charter fund of a bank (with the exception of a state bank) is originally formed from the sale of shares or the contributions of the founders.

2. The founders and shareholders of a bank shall pay for the acquired shares only with money.
3. It is forbidden to use means received in credit, under mortgage and other attracted financial resources for payment for shares of a bank which operates in the form of a closed type joint-stock company. Resources paid into the charter fund in breach of these requirements, along with dividends accumulated, and also income received by a bank from their use are exacted into the revenue of the republican budget, and the shares are returned to the bank for their further sale.
4. The initial sale of a bank's shares may be done only at a price not lower than their nominal value and the same for all founders (shareholders).
5. The charter fund of a newly-founded bank announced in its founding documents must be paid-in by its shareholders up to fifty percent by the moment of its registration, and in full over the duration of one calendar year from the day of its registration.
6. An increase to the charter fund of a bank may take place by means of:
 - a) the issue of additional shares, including at the expense of capitalization of the profit of the bank and the exchange of the bank's bonds for its shares;
 - b) increasing the nominal value of the shares.

Article 17. Founders and Shareholders of a Bank

1. Founders and shareholders of a bank may be legal entities and natural persons who are both residents and non-residents of the Republic of Kazakhstan (taking into account the restrictions set forth in article 18 of the present Decree).
2. The state may be a founder and shareholder of a bank only as represented by the Government. State enterprises and organizations more than fifty percent of whose charter fund belongs to the state may not be founders and shareholders of a bank.
3. In the period of founding and activity of the bank, none of its founders (shareholders) may directly or indirectly own, have at their disposal and/or manage more than 25 percent of the bank's voting shares. This ban does not apply to the founders (shareholders) of state, interstate and parent banks.
4. A legal entity with the status of non-resident or off-shore company may not be a founder or share-holder of a bank which is a resident of the Republic of Kazakhstan. The list of zones recognized as off-shore shall be established by the National Bank.

Article 18. Special Features of the Founding of Affiliate Banks by Non-Resident Banks of the Republic of Kazakhstan

1. Banks which are non-residents of the Republic of Kazakhstan having a fixed rating from one of the main rating agencies may be parent banks in relation to an affiliate bank. The list of main rating agencies and the required minimum rating is established by the National Bank.
2. A bank which is a non-resident of the Republic of Kazakhstan has the right to make an application to the National Bank for the issue of a permit for opening of an affiliate bank, only after a representation of the given bank has worked for one year on the territory of the Republic of Kazakhstan.

Article 20. Minimal Requirements to the top officials of a Bank

1. Recognized as top officials of a bank are the chairman and the members of the Supervisory Council, the chairman of the Board of Management and his deputies, the head accountant of the bank and his deputies, the first director and the head accountant of a bank's branch and their deputies.
2. Top officials of a bank and also candidates recommended for appointment or election for such a position must conform to the minimum requirements established by points 3-5 of the present article.
3. A person is considered as ineligible for the position held or may not be appointed chairman of the Board of Management, chairman or member of the Supervisory Council, if he/she:
 - has no higher education;
 - has a conviction uncancelled or unremoved in due process of law;
 - has insufficient knowledge of banking and economic legislation;
 - in the past was a top official of a legal entity that suffered bankruptcy, or a bank whose permit to open the bank was revoked because of the non-fulfilment of requirements.
4. Other directing employees of a bank appointed (elected) to positions, apart from conforming to the requirements set forth in point 3 of the present article, must have higher or secondary special education corresponding to the profile of work.
5. The chairman of the Board of Management of the Bank and his deputies, the head accountant of the bank and his deputies, the first director and head accountant of a bank branch are appointed (elected) to their posts with consent of the National Bank and, as a rule, must have served for some length of time in the banking system: the chairman and head accountant - no less than three years, the deputy chairman of the Board of Management and the deputy-head accountant - no less than two years. The listed employees may not fulfil their duties for more than three months prior to their receiving the consent of the National Bank.
6. The requirements of the present article are compulsory for observation by banks over the entire duration of their activity.

Article 21. Additional Documentation Required for Founding a Bank with the Participation of a Bank which is a Non-Resident of the Republic of Kazakhstan

1. A bank which is a non-resident of the Republic of Kazakhstan which is the founder of a bank, apart from the documents indicated in article 19 of the present Decree, must enclose the following documents with the application for getting a permit to open a bank:
 - a) the decision of the appropriate organ of the founding bank on its participation in the bank which is a resident of the Republic of Kazakhstan;
 - b) written confirmation of the organ of bank inspection of the appropriate state that the founding bank has a valid license for carrying out banking activity;
 - c) written confirmation from the organ of bank inspection of the appropriate state that the founding bank is subject to inspection on a consolidated basis;
 - d) duly compiled annual reports of the founding bank (including a consolidated balance-sheet and a profit and loss account) for the last three financial (operational) years, confirmed by an auditing firm (auditor) meeting the requirements of point 4 of article 19 of the present Decree;
 - e) written notification by the organ of banking inspection of the appropriate state that it permits the participation of the founding bank in the charter fund of the bank which

is a resident of the Republic of Kazakhstan, or an announcement by the organ of bank inspection of the appropriate state that such permission is not required under the legislation of the state of the founding bank.

2. The norms of the present article apply also to banks which are non-residents of the Republic of Kazakhstan in the case of their acquiring a share in the charter fund of an operating bank which is a resident of the Republic of Kazakhstan.

Article 22. Additional Requirements for the Founding and Activity of Banks with Foreign Participation

1. When founding and operating banks with foreign participation on the territory of the Republic of Kazakhstan the following requirements must be adhered to:
 - a) the total registered charter fund of banks with foreign participation may not exceed twenty five percent of the aggregate registered charter fund of all banks of the Republic of Kazakhstan;
 - b) at least one member of the Supervisory Council of a bank with foreign participation must be a citizen of the Republic of Kazakhstan who shall submit documents testifying to his/her not less than three years' experience in directing a bank operating on the territory of the Republic of Kazakhstan and to his/her knowledge of banking and economic legislation of the Republic of Kazakhstan;
 - c) a bank with foreign participation must place financial resources into internal assets, in the amount and procedure established by the National Bank. Internal assets are understood as the assets of a bank with foreign participation in Tenge and foreign currency placed on the territory of the Republic of Kazakhstan, including:
 - bank notes, coins and payment documents;
 - financial resources of a bank with foreign participation in correspondent and other accounts in banks of the Republic of Kazakhstan;
 - securities of the Government and residents of the Republic of Kazakhstan;
 - credits given to the Government and residents of the Republic of Kazakhstan.
2. The National Bank has the right to set forth additional requirements to banks with foreign participation concerning the membership of their organs, the list of banking operations performed, prudential norms and the procedure for accounting.

Article 23. Procedure for Consideration of an Application for Issue of a Permit to Open a Bank

1. An application to issue a permit to open a bank must be considered by the National Bank within six months from the day of the applicant presenting the last additional information or document asked for by the National Bank, but no later than nine months from the date of filing the application.
2. The National Bank notifies the applicant in writing about the decision made. The notification is sent to the address indicated in the application to issue a permit to open a bank.
3. The National Bank keeps record of the permits issued for opening a bank.

B. Registration as a Legal Entity

- According to Article 25 of the Law "On Banks and Banking Activities":
- State registration of a bank is done at the Ministry of Justice on the grounds of a permit from the NBK to open a bank;

- the founders must apply to the Ministry of Justice for state registration of a bank within one month after the day of receiving the National Bank's permit to open the bank.

Banks may only register as a Joint Stock Company. The procedures and requirements for bank registration at the Ministry of Justice are the same as any business entity registering as a JSC. The registration procedure and requirements are defined in the Law "On State Registration of Legal Persons" of 17 April 1995, the Law "On Foreign Investment" of 17 December 1994, and amendments to both laws of 15 July 1996. These two laws were provided to the WTO Secretariat in August 1996.

Article 9 of the Law "On State Registration of Legal Persons" mandates that registration should occur within 15 days of receipt of all documents. Documents required for registration of bank are the following: registration application form, charter, confirmation of location of Bank, proof of bank deposit or independent audit results, statistics card (obtained from the Statistics Committee), proof of payment of registration duties, and permission from the national bank. Additional documents if the following applies:

- if more than one founder - there is a need to submit the foundation agreement and the protocol of foundation meeting
- if a state enterprise is a founder of the bank - there is a need to obtain the approval of owner or authorized body;

Entities with foreign participation must:

- i. submit 3 additional documents: bank confirmation of solvency of foreign participant, proof of legality of foreign participant, copy of passport or other identification document (only required if the foreign participant is an individual);
- ii. register at the Central Registration Department of the Ministry of Justice in Almaty. An entity with no foreign participation may register at the Oblast Registration Department of the Ministry of Justice in the Oblast where it operates.

All documents required for registration must be in Kazak or Russian languages. All translated documents and copies of documents must be notarized

Denial for registration may occur under one of the following two cases:

- i. incomplete set of required documents;
- ii. contradictions with current legislation of the Republic of Kazakhstan.

According to Article 11 of the Law "On State Registration of Legal Persons", the Ministry of Justice Registration Department must provide a written refusal explaining the reasons for refusal. In case of refusal of registration by the Ministry of Justice, the bank should revise its documents to comply with national legislation and resubmit for consideration again.

Article 17 of the Law "On State Registration of Legal Persons" states that disputes between the founders of legal persons and state registration body may be appealed in the court.

Question 90.

The Memorandum (page 53) states that the maximum foreign participation in insurance joint ventures is 50 per cent. Does Kazakhstan have plans to reduce this limitation?

Answer:

Currently, Kazakhstan does not have any plans to reduce or cancel this limitation.

Telecommunications Services

Question 91.

What kinds of telecommunications services are foreign companies permitted to provide in Kazakhstan?

Answer:

Foreign companies are permitted to provide all kinds of telecommunications services. However, appropriate licenses must be obtained. Licensing requirements and procedures apply equally to foreign and national legal and natural persons.

Question 92.

What are the licensing processes regarding telecommunications services?

Answer:

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

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

Question 93.

Are there limits to the level of foreign ownership of telecommunications services?

Answer:

No. There are no limits to the level of foreign ownership of telecommunications services.

Question 94.

Does the Anti-Monopoly Committee resolve disputes between telecommunications carriers concerning interconnection?

Answer:

All disputes between telecommunication carriers concerning technical interconnection are decided by the License Issuing Body at the Ministry of Transport and Telecommunications on the basis of terms specified in issued licenses. In case one party disagrees with the decision of the License Issuing Body, such party may appeal to a court in the Republic of Kazakhstan.

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

Question 95.

Could Kazakhstan provide copies of those trade agreements to which it is a party which constitute free-trade areas or customs unions?

Answer:

The text of the Customs Union Agreement and all related legislative and administrative acts are provided in Attachment A to the response to EC Questions regarding WT/ACC/KAZ/3.

The texts of all Free Trade Agreement's, which are in force (ratified by all parties), to which Kazakhstan is a Party are provided in Attachment B to the response to EC Questions regarding WT/ACC/KAZ/3.

Question 96.

Could Kazakhstan please explain the reasons for, and significance of, the provisions which restrict unauthorized export (page 53)?

Answer:

The provisions do not deal with exports in general but with re-exports. The reason is that certain goods are subject to tariff and non-tariff measures according to internal legislation of the Parties of the Free Trade Agreement. When such goods are exported from one Party of the Free Trade Agreement to another, such measures may not apply. But if the goods in question are re-exported, the country of origin must be informed about such transaction. Permission of the country of origin is required in order to determine whether or not appropriate tariff and non-tariff measures should apply.

Question 97.

We would be grateful if Kazakhstan could clarify the statement (page 54) that some agreements provide for free trade in services but do not provide preferential treatment? Which agreements cover services? Are all services sectors covered? Do these agreements provide benefits which are available on an MFN basis to countries which are not parties to the agreements?

Answer:

None of the free trade agreements in force contain any special provision regarding free trade in services. Other free trade agreements refer only, in general terms, to the aim of the parties to establish free trade in services without mentioning the service sectors to be covered, without providing any special benefits, and without giving preferential treatment to the other parties of the agreement regarding trade in services.

Question 98.

For each of the agreements mentioned in Section VII.2 (page 54), can Kazakhstan provide information on:

- (a) **whether the agreement currently provides for free trade in all products or, if not, the time frame within which free trade will be reached.**

Answer:

Article 5 of the Customs Union Agreement foresees the possibility to introduce, in critical situations, temporary exceptions from free trade. Currently, no such exceptions exist.

Of all the Free Trade Agreements listed in Section VI.2 of WT/ACC/KAZ/3, only the agreement with Moldova and the agreement with the Kyrgyz Republic have been ratified by both parties and are presently in force. The list of exemptions from free trade are agreed to in protocols to these agreements. Since March 1996, however, Kazakhstan no longer excepts any products from the free trade regime with the Kyrgyz Republic, given that the Kyrgyz Republic signed the Customs Union Agreement.

- (b) **whether there are exemptions from the free trade provisions for any products and, if so, the significance of trade in the exempted products relative to Kazakhstan's total trade with the party concerned;**

Answer:

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

HS	1995		1996 January-October	
	Export, Th. USD	Import, Th. USD	Export, Th. USD	Import, Th. USD
1001 Wheat (all types)	158.3	-	-	-
1002 Rye	36.1	-	-	-
1003 Barley	40.7	-	-	-
1004 Oats	9.5	250.9	-	-
1006 Rice-grain, rice-groats	13.6	-	12.9	-
1007 Sorghum	-	30.2	-	-
0102 Rye	-	2.7	-	-
4102 Raw skins of sheep or lambs	1.7	-	-	-
1512 Sunflower-seed, safflower or cotton-seed oil and their fractions but not chemically modified	-	1.5	-	13.1
1104-1105 Groats	25.6	-	36.4	-
Total	285.5	285.3	49.3	13.1

- no trade

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

- 11.57% and 5.14% for 1995; and
- 2.5% and 0.17% for the first three quarters of 1996.

(c) details of any exempted industry sectors for which the agreement does not provide for free trade between the parties, including whether such exemptions are temporary;

Answer:

There are no exempted industry sectors for which these agreements do not provide for free trade. However, there are exemptions for certain goods. Please see response to previous question.

(d) whether the agreements contain transitional provisions, and if so the details of these;

Answer:

The agreements do not contain transitional provisions.

(e) details of any preferential market access arrangements which provide for preferred access but do not provide for free trade.

Answer:

The Republic of Kazakhstan joined the system of preferences for developing countries. Currently, 75% of the base rate of import tariffs is applied for goods produced in developing countries. Goods produced in least developed countries are imported to Kazakhstan duty free. The lists of developing and least developed countries and the list of goods excluded from preferential treatment were provided in Section E of Annex 8 of WT/ACC/KAZ/3.

- (f) **provisions of each agreement that do not specifically relate to import tariffs, including harmonisation of legislation affecting foreign trade, quantitative restrictions, taxation, customs fees and formalities, export duties, export subsidies, import and export licensing, anti-dumping and countervailing duties, safeguard measures, pre-shipment inspection, technical barriers to trade, sanitary and phyto-sanitary measures, trade-related investment measures, trade-related intellectual property rights, government procurement, and rules of origin;**

Answer:

Only two agreements have entered into force. These are the agreements with Moldova and the Kyrgyz Republic. A copy of the texts of these two agreements were provided in Attachment B to the Responses to EC Questions regarding WT/ACC/KAZ/3.

- (g) **details of when the agreements entered into force or are expected to enter into force.**

Answer:

Only two free trade agreements are in force:

- with Moldova - 1995
- with the Kyrgyz Republic - 1996

All the other agreements were ratified only by Kazakhstan. It is difficult to say when they will be ratified by the other parties and enter into force.

Question 99.

Can Kazakhstan provide more information on its expectations and plans for the negotiation of new free-trade areas and customs unions, plans for further developing existing agreements and how Kazakhstan sees these plans as consistent with trade liberalisation on multilateral basis as a member of WTO?

Answer:

Kazakhstan does not have currently any on-going negotiations of new free trade areas and customs unions. However, there are plans for further developments of existing agreements. Kazakhstan believes that the free trade areas and customs union to which it has adhered are trade creating, and not trade-diverting, and thus meet the criteria established in Article XXIV of GATT 1994 for exceptions to the MFN principles.

Annex 1 Statistics and Publications

Trade statistics

Question 100.

We understand that there are problems in the collection of statistic on Kazakhstan's foreign trade, in particular problems relating to coverage of the foreign transactions of what seems to be a large informal trading sector. Although the situation is improving as result of OECD support, this is an area that will nonetheless require further improvement if transparency is to be increased. We would appreciate more information on the steps Kazakhstan is taking to improve the situation in relation on the collection and availability of statistical information.

Answer:

Since 1994, the foreign trade statistics of Kazakhstan have been prepared on the basis of the Customs Cargo Declaration submitted by importers to Customs. A Customs Cargo Declaration must

be filed with Customs for all goods subject to customs duties and taxes, goods subject to measures of economic policy (licensing, certification, etc.), or goods the customs value of which exceeds 100 ECU. However, natural persons are not required to file such Cargo Declarations in most circumstances. This gives rise to the problem of tracking flow of goods that are transferred by "shop-tourists".

The National Statistics Agency of Kazakhstan, in calculating balance of payments, evaluates the volume of foreign trade transactions performed by shop tourists. The method of evaluation has been developed based on the number of people that have visited the republic or travelled abroad. In addition, the Customs Committee is preparing an instruction on "Procedure for Transfer of Goods by Physical Persons through the Customs Border of Kazakhstan". Under this procedure, persons will be required to submit an "application" or a simplified declaration where the imported goods are subject to duty (goods imported by natural persons are subject to duty where the value or weight of the goods imported exceeds \$2,000 or 70 kilograms, respectively). That application will be treated as a customs declaration for purposes of customs processing and control. The instruction will require Customs transmit the information set out in the application to the Statistics Committee for purposes of compiling the foreign trade statistics.

Regarding the availability of statistical information, Kazakhstan has a number of publications. The list of such publications was provided in section 2 of Annex 1 of WT/ACC/KAZ/3.