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

Addendum

Additional questions submitted by Members and the replies thereto provided by the authorities of Kazakstan are reproduced hereunder. The attachments mentioned in this document are available in the Secretariat (Accessions Division, Room 1126) for consultation.

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## II. ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE

### 2. Economic Policies

#### (a) Main directions and goals

##### - Pricing Policy

#### Question 1.

With regard to Kazakhstan's pricing policy, the Memorandum states that currently only public services and State services remain subject to price control.

Please provide a list of these services which constitute public and State services. In continuation of price liberalization, is it a goal of the Government of Kazakhstan to remove price controls in these sectors as well?

#### 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 Kazakhstan, are heat distribution, sewage systems, telecommunication services (domestic and international communication services, telegraph communication services, cable radio installation, receiving/transmitting television and radio programmes via satellite, and data transmission through communication channels), water, electricity, and gas distribution. The main objective of Kazakhstan'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 Kazakhstan. 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 Kazakhstan is designed to balance the interests of the consumers (this includes most investors in Kazakhstan) 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
1. State auto-inspection	The State Automobile Inspection Department under the Ministry of Internal Affairs

State Services Subject to Price Control	Entity Responsible for Rendering Services
2. 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
3. State veterinary services: - issuance of licence for veterinary activities - approval of import/export licence of veterinary medicines - registration of veterinary medicine	The Ministry of Agriculture
4. Statistical information services	The Statistics Committee
5. Registration of mass media means	The National Agency on Press and Mass Media
6. Fire inspection	The Fire Inspection Department under the Ministry of Internal Affairs
7. Evaluation of construction projects	Any licensed entity
8. 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
9. Registration of copyrighted materials	The State Agency on Copyrights and Related Rights
10. Registration of legal entities	The Ministry of Justice
11. Customs processing and other customs services as described in Table 4.1 of WT/ACC/KAZ/3	The Customs Committee
12. Receipt of certificate of origin for export purpose	The Trade and Industry Chamber
13. Registration of export contract	The Commodity Exchanges
14. Obtaining licences to perform certain economic activities	Authorized State bodies according to Table A7.5 of WT/ACC/KAZ/3
15. Evaluation of application for import/export licences 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 of WT/ACC/KAZ/3
16. Evaluation of licence application to perform certain economic activities	Sanitary, ecological, and mining supervision bodies in accordance with Government Resolution No. 1894 of 29 December 1995
17. Consultancy fees charged by certain ministries regarding laws administered by such ministries	Respective ministries

State Services Subject to Price Control	Entity Responsible for Rendering Services
18. 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 and 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 exception 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 administrations.

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. Licences 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 a 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.

E. Government Plans Regarding Price Control.

The Government plans to eliminate price control for public transport services, State postal services, certain telecommunication services, water (public utilities), and heat as soon as competition develops in these sectors. Tariff regulations of natural monopolies, used for delivering public services, will continue. In addition, fees will continue to be charged for State services and this is not contradictory to international practices. However, all fees for State services will be reviewed to reflect the cost of services rendered.

**Question 2.**

**Which government entity determines and implements price controls?**

**Answer:**

The Government establishes the level of prices for State services through legislation. The Anti-Monopoly Committee controls the fees for the following State services: sanitary-epidemiological services, veterinary services, registration of mass media means, and fire protection. Price control over other State services is implemented by entities authorized to render such services as listed under question 1 of this document. Any violations (e.g. higher fees than specified under legislation) by these authorized entities may be appealed to court.

The Anti-Monopoly Committee approves and implements the tariff rates for natural monopolies and the prices of water and heat.

Prices for public transport services are determined and implemented by local administrations.

**Question 3.**

**The Memorandum indicates that profitability control still exists for natural monopolies. Please identify the sectors that are subject to profitability control and describe how the profitability control system operates.**

When the Memorandum on the Foreign Trade Regime was submitted to the WTO Secretariat in July 1996, profitability control methodology was used to regulate natural monopolies only. Today, profitability control is not used at all in Kazakhstan. However, a new method which takes into account cost, investment, and profit of natural monopolies is being used.

Only the following natural monopolies are subject to this new method:

- transmission and distribution of electricity;
- distribution of heat;
- oil and oil products pipelines;
- gas pipelines;
- railroads;
- water sewage systems;
- telecommunication networks.

The tariff rates for natural monopolies are regulated according to the following scheme:

1. In case a natural monopoly needs to change its tariff rates, such entity must submit an application to the Anti-Monopoly Committee (AMC) with attached documents reflecting proposals for new rates



with indication of projected costs (raw materials, fuel, energy, labour, purchase of components and finished products) and desired profit.

2. The AMC reviews above documents especially reasonability of projected costs taking into account the operations of similar enterprises within Kazakstan and outside of Kazakstan.

There are no restrictions concerning the level of profitability if it is well grounded by the natural monopoly. Usage of profits is permitted for the following:

- all types of investments connected with modernization and expansion of productive infrastructure of the natural monopoly;
- payments and taxes to the budget;
- payment of dividends.

The tariff rates are determined by the AMC on the basis of documents provided by the natural monopoly. A natural monopoly company may dispute the decision of the AMC regarding new tariff rates via administrative appeal to the AMC or using the court.

For natural monopolies in the energy sector, proposals for changes in tariff rates are considered by the Energy Regulatory Commission (ERC) established in Kazakstan. Please note that the AMC is a member of the ERC.

Natural monopoly may not use different tariff rates for the same services. An exception is only granted for the pipeline transport of crude oil. Tariff rates are higher for transport of exported crude oil. Nevertheless, the same tariff rates applies to foreign and national companies exporting crude oil from Kazakstan.

In establishing tariff rates, the AMC balances the interests of the consumers (this includes most investors in Kazakstan) and the investors in natural monopolies. In April 1997, the AMC will introduce a procedure of public hearings which will allow the customers of natural monopolies to dispute new tariff rates at the stage of their approval.

#### **Question 4.**

**In particular please describe how the controls are applied to imports and how they are applied to domestic goods.**

Profitability control does not apply to imports.

- **Trade policy**

#### **Question 5.**

**Kazakstan lists as one of its priorities the establishment of a system of mandatory insurance of agricultural production. Please provide specific details on this proposed insurance system. Does this system entail the use of subsidies to guarantee a minimum level of producer income? If so, will these subsidies be decoupled from production levels? Will they be used as a transitional measure which will be phased out over time?**

Government Resolution No. 1513 of 10 December 1996 called for the establishment of the State-owned agricultural insurance enterprise Kazagropolis. The main activities of Kazagropolis shall be to provide insurance protection to agricultural producers, regardless of type of ownership, against

natural disasters, emergency situations caused by epizootics and epidemics, infection of agricultural plants with diseases and pests. In addition, Resolution No. 1513 called for:

- the appropriation of US\$1.33 Million for the charter fund of Kazagropolis;
- the creation of an Interdepartmental Council. The role of this council will be to coordinate and organize matters related to mandatory insurance and develop regulations regarding the procedures and terms of obligatory insurance of agricultural production.

According to Resolution No. 1513, mandatory insurance of agricultural production shall be carried out by Kazagropolis and other insurance organizations which have appropriate licences. In addition, the Insurance Supervision Body shall examine the possibility of reinsuring risks of agricultural production in the international reinsurance market.

Kazagropolis is not yet registered. The Interdepartmental Council was formed, and is currently drafting regulations regarding procedures and terms of mandatory insurance.

#### **Private sector development/privatization**

- **Small-scale privatization**

##### **Question 6.**

**Kazakstan states that, as of June 1996, over 74 per cent of the small-scale enterprises had been privatized as part of the second stage of privatization. Does the third stage of privatization (1996-1998) include the privatization of the remaining small-scale enterprises?**

The total number of enterprises and objects qualifying for small-scale privatization is estimated to be approximately 20,000. As of the end of 1996, approximately 84 per cent of these enterprises have been privatized. It is expected that small scale privatization be completed during the third stage of privatization (1996-1998).

- **Mass privatization**

##### **Question 7.**

**Will mass privatization be completed, as planned, by the end of 1996? Of the 1712 companies participating in the mass privatization programme, how many have been sold? What is the time frame for the disposition of the enterprises offered, but not yet sold, through the mass privatization programme?**

As of 31 January 1996, coupon auctions were completed for all 1,712 companies participating in the mass privatization programme. Due to liquidation, the number has decreased from 1,712 to 1,668 companies in 1996. As of 31 January 1997, 467 companies have been totally sold through cash auctions. The remaining State share in the 1,201 remaining companies will be scheduled/re-scheduled for cash auctions in 1997 until all State shares in these companies are sold. It is expected that the remaining 1,201 companies will be completely privatized by the end of 1997.

- **Case by case privatization**

##### **Question 8.**

**What is the current status of privatization for the enterprises subject to case by case and agro-industrial complex privatization? Were all case by case and agro-enterprises disposed of**

**during the second stage of the privatization? Will the remainder be disposed of in the third stage of privatization? What is the time table for the disposition of the remaining enterprises?**

A. Case-by-Case

Around 160 large companies are scheduled for case-by-case privatization. As of 1 January 1997, 33 enterprises have been sold to foreign and domestic investors, 46 enterprises are currently under contract management (24 companies under the management of foreign companies). The remaining enterprises are expected to be privatized during the third stage of privatization (1996-1998).

B. Agro-Industrial Complex

Only 487 enterprises in the agro-industrial sector have been fully sold. Around 190 enterprises in this sector are currently under contract management. The State shares (approximately 29 per cent) in the remaining enterprises are scheduled for sale via cash auctions to foreign and domestic investors. It is expected that all remaining enterprises be sold during the third stage of privatization (1996-1998).

**Question 9.**

**Are foreign investors eligible to participate in the 150 investment funds that now own shares in privatized companies? What conditions or restrictions apply to foreign investors seeking to participate in the investment fund?**

Presidential Resolution No. 1290 of 23 June 1993 (Resolution No. 1290) established the legal framework for Privatization Investment Funds (PIFs):

- the main function of PIFs is to collect privatization coupons from Kazakstani citizens and exchange them for shares in enterprises privatized under the mass privatization programme;
- the founders of PIFs may be natural persons or Kazakstani legal entities;
- PIFs must be initially created as JSCs of closed type (shares may be traded only between founders and a circle of persons specified at the moment of registration);
- conversion of PIFs to JSCs of open type (shares may be traded freely) is permitted after the completion of mass privatization coupon auctions.

The coupon auctions under the mass privatization programme were completed in January 1996. More than 150 PIFs purchased shares, using privatization coupons deposited by citizens, in at least 1,700 companies. So far, no PIFs have converted to JSCs of open type. No registration/emission of shares has taken place yet.

Currently, there are no conditions or restrictions prohibiting foreign investors from purchasing shares in PIFs once they are converted to JSCs of open type.

- **Agro-industrial complex privatization**

**Question 10.**

**The memorandum notes that the shares of privatized enterprise in the agro- industrial complex sector, which currently retained by the State, will be auctioned to foreign and local participants. May foreign participants also purchase shares, on the secondary market, from groups that have previously received shares in the privatization of these enterprises? What conditions or restrictions apply to foreign investors seeking to acquire shares in enterprises in the agro-industrial sector?**

Foreign participants may purchase shares, on the secondary market, from groups that have previously received shares in the privatization of these enterprises provided that such enterprises are listed on the secondary market. One exception is that agricultural producers, who had privileges (received shares in exchange of liabilities) during the first and second stage of privatization, may not sell their shares to either foreign or domestic investors until their liabilities are paid off to the joint stock company.

There are no conditions or restrictions other than aforementioned. The same rules apply to foreign and domestic investors seeking to acquire shares in enterprises in the agro-industrial sector through either auctions or secondary market.

- **Third stage privatization**

**Question 11.**

**Kazakstan states that privatization during the third stage will be open to foreign investors without limitations. Are current procedure for privatization made accessible to the public? In which publications can the relevant procedures can be found?**

Under the third stage of privatization, the following three types of privatization exist:

- small-scale cash auctions to complete the sale of all small-scale enterprises;
- cash auctions to sell the remaining State shares in agro-industrial sector and companies that have undergone mass privatization coupon auctions; and
- case-by-case privatization usually conducted through tender.

The rules and procedures governing all three programmes are described in laws and regulations which are available from the Ministry of Justice or the State Privatization Committee.

Forthcoming cash auctions are advertised in national mass media 30 days prior to auction date. The ad specifies the list of companies, terms, and procedures of auctions. In addition, massive public education campaign to educate the public about cash auctions was conducted during December 1995 and January 1996 using mass media means including television.

The information regarding the procedures and terms of privatization for each company subject to case-by-case privatization programme are published in major newspapers (e.g. Kazakstanskaya Pravda, Legal Newspapers, Zan Journal).

Information regarding privatization procedures and auctions and the security market in Kazakstan may also be accessible through the internet.

**Question 12.**

**Will foreign investors be permitted to participate in the privatization of all enterprises offered in the third stage, including the enterprises originally subject to case-by-case privatization and enterprises originally subject to agro-industrial complex privatization?**

Yes. Foreign investors are permitted to participate in the privatization of all enterprises offered in the third stage, including the enterprises originally subject to case-by-case privatization and enterprises originally subject to agro-industrial complex privatization.

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 13.**

**Presidential decree having the Force of the Law No. 2717 On Land, dated 26 December 1995, permits private land ownership in Kazakhstan. The law provides that Kazakstani legal entities, whose shares may be wholly-owned by foreigners, now have the right to own land. However, many types of land plots (including land used for agriculture, defense, natural reserves, and commonly used land in populated areas) are excluded from coverage by this decree law. What percentage of the total land in the Republic of Kazakhstan is available for private ownership?**

Currently, there is no estimate of total available land for private ownership in the Republic of Kazakhstan. A land cadastre is in the process of being established and such information will be provided at a later point.

**Question 14.**

**Why does the decree law require foreigners to own land through a Kazakstani legal entity? Does the Republic of Kazakhstan intend to allow direct foreign ownership of land?**

Foreign physical and legal persons may not own land directly in the Republic of Kazakhstan. In order to own land, a foreign physical or legal person must first form a Kazakstani legal person to function as a land holding intermediary. The principal policy reason behind this requirement is to ensure that owners of Kazakstani land are subject to the jurisdiction of the Republic of Kazakhstan. The Republic of Kazakhstan has no intention of changing this requirement in the near future.

**Question 15.**

**Are there any restrictions or conditions applicable to foreign-owned Kazakhstan entities investing in land that do not apply to Resident of Kazakhstan? Are the foreign- owned entities forbidden to purchase any types of land which Kazakhstan residents are permitted to purchase?**

There are no restrictions or conditions applicable to foreign-owned Kazakhstan legal persons investing in land (whether partially or 100 per cent foreign-owned) that do not apply equally to domestically-owned Kazakhstan legal persons. Please note, however, that branch and representative offices of foreign-owned companies are not considered legal persons for purposes of Kazakstani law. As such, branch and representative offices of foreign-owned companies may not own land in the Republic of Kazakhstan.

**Question 16.**

**Does the Government of Kazakhstan intend to sell or transfer ownership of farm land or subsurface land rights in the near future?**

The Government of the Republic of Kazakhstan does not intend to sell or transfer ownership of farmland (other than land plots for personal farming) or subsurface rights.

**Question 17.**

**Does the Government of Kazakhstan impose any conditions or restrictions on foreign enterprises leasing subsurface rights that it does not impose on domestic enterprises leasing the subsurface**

**rights? Are foreign enterprises eligible to lease all subsurface rights that are available for leasing by domestic enterprises?**

Foreign physical and legal persons may not lease subsurface rights in the Republic of Kazakhstan. There are no restrictions or conditions applicable to foreign-owned Kazakhstan legal persons (whether partially or 100 per cent foreign-owned) which are leasing subsurface rights that do not apply equally to domestically-owned Kazakhstan legal persons. Please note, however, that branch and representative offices of foreign-owned companies are not considered legal persons for purposes of Kazakstani law. As such, branch and representative offices of foreign-owned companies may not lease subsurface rights in the Republic of Kazakhstan.

**(b) Monetary and fiscal policy**

**Question 18.**

**Are there any conditions or restrictions on the operations of foreign financial service providers, including banks, which seek to open branches or subsidiaries in Kazakhstan, that do not apply to operations of domestic financial service providers?**

Foreign insurance companies are allowed to establish in the form of representative or branch offices but may only be engaged in re-insurance activities. In order to be engaged in insurance activities, however, a foreign insurer must form a joint venture with a local insurance company. Foreign participation in this case may not exceed 50 per cent. Insurance companies with foreign participation (maximum 50 per cent) have the same rights and privileges as insurance companies without foreign participation.

Foreign banks may establish representative or branch offices but may not provide banking services until they are registered as a Kazakstani legal entity which could be up to 100 per cent foreign-owned. Banks with foreign participation may not register in Kazakhstan if the total registered charter fund of all banks with foreign participation exceeds 25 per cent of the overall registered charter fund of all banks in Kazakhstan.

Banks with foreign participation (partially or 100 per cent foreign-owned) have the same rights and privileges as banks without foreign participation.

**Question 19.**

**Please describe the nationwide tax upon mineral resources users. Is it conformity with GATT 1994 national treatment provisions applicable to internal taxation?**

The Tax Code of 24 April 1995 was amended on 31 December 1996. Part VI of the Tax Code (Taxation of Mineral Production Activities) was totally replaced. The new regime is provided in Attachment A to this document.

The main features of this new regime are the following:

- obligations of the mineral producer with respect to taxes and other mandatory payments are to be defined in the mineral production agreement between a mineral producer and a competent authority of the Government of Kazakhstan (The Ministry of Geology; the Ministry of Oil and Gas; the Ministry of Industry and Trade; or the Ministry of Energy and Coal depending on the type of mineral resource);

- prior to signing, any mineral production agreement shall undergo mandatory tax appraisal process to be performed;
- meeting the tax obligations under a mineral production agreement shall not be construed as providing tax relief with respect to statutory taxes on activities that fall outside the scope of the agreement;
- specific mineral production taxes and payments comprise: bonuses (bonus on subscription, commercial discovery, and extraction), royalties, and excess profits tax;
- bonuses and royalties may be deducted in computing taxable income for purposes of income tax or excess profits tax;
- depending on the type of agreement, mineral production activities shall be taxed by either:
  - charging them to all statutory taxes and payments applicable to mineral production in Kazakhstan; or
  - requiring the mineral producers to pay Kazakhstan its share pursuant to a production sharing scheme and also pay the following taxes and mandatory payments: corporate income tax, adjusted for income tax withheld at source and net income tax payable by the permanent establishment of a foreign company; VAT; bonuses and royalties; incorporation fee; licence fee; and other taxes envisioned by legislative acts of the Republic of Kazakhstan (other than those mentioned in Articles 3 and 4 of the Tax Code).

Regardless of the applied tax regime, mineral producers shall be accorded equal treatment according to Article 94-1:4 of the 31 December 1996 Amendments to the Tax Code.

The taxation of mineral production activities does not treat national and foreign mineral producers differently and is thus in conformity with the national treatment provisions of GATS and GATT 1994.

**(c) Foreign exchange, payments system and relations with the International Monetary Fund**

**- Foreign exchange**

**Question 20.**

**There appear to be two laws governing foreign currency transaction in the Republic of Kazakhstan, the Law on Currency Regulation (The Currency Law) and the Rules of Hard Currency Transaction in the Republic of Kazakhstan, which were issued by the National Bank of Kazakhstan. The Memorandum appears to have given a rather complete description of the Currency Law, but it does not appear to have described the Rules of Hard Currency Transaction. As a consequence, it is not fully clear from the description in WT/ACC/KAZ/3 as to the requirements and restrictions facing importers that wish to acquire foreign exchange or facing others who wish to acquire foreign exchange for payments abroad.**

**Please provide a general description of the relevant provisions of the rules of hard currency transaction, and any other rules, regulations, and other requirements of the NBK, applicable to residents and non-residents, involving the export of foreign currency from Kazakhstan for trade or other purposes.**

A new Law On Currency Regulations was adopted on 24 December 1996. A copy of this new law is provided in Attachment A. New rules for Hard Currency Transactions is being drafted and will soon replace the existing rules.

The new law provides the following definitions:

- residents: physical persons who have residence in the Republic of Kazakhstan and Kazakstani legal persons;
- non-residents: all legal persons and physical persons who are not residents;
- current transactions:
  - transfers for conducting settlements for goods and services without deferment of payment;
  - performance of settlements associated with crediting export-import transactions for the period not exceeding 180 days;
  - granting and receiving loans for the period of not more than 180 days;
  - transfer and receipt of dividends, interests, and other revenues on deposits, investments, loans, and other transactions;
  - transfers of a non-trade nature including grants, transfers of amounts of inheritance, wages, pensions, alimonies, and others; and
  - all other transactions which are not recognized by this law as transactions associated with movement of capital.
- transactions associated with movement of capital:
  - investments;
  - transfers to pay for property or any other rights with regard to immoveables;
  - performance of settlements associated with crediting export-import transactions for the period of more than 180 days; and
  - granting and receiving loans for a period more than 180 days.
- Authorized Banks: banks having NBK licence to conduct transactions in foreign currency.

The following provisions from the Law on Currency Regulations of 24 December 1996 concern export of currency:

1. Residents must obtain a licence from NBK in order to open accounts in foreign banks and financial institutions.
2. Purchase, sale, and exchange of foreign currency in Kazakhstan shall be carried out by residents and non-residents through authorized banks and authorized non- banking financial institutions.
3. Payments and transactions between residents and non-residents shall be carried out according to agreement of the parties in any currency.
4. Residents may have accounts in foreign currency in authorized banks in Kazakhstan. Foreign currency received by residents as payments for goods and services shall be subject to obligatory inclusion into their accounts unless it is stipulated otherwise in the licence obtained from the NBK (see 1 and 2 above).
5. Residents may have accounts in the currency of the Republic of Kazakhstan and in foreign currency at foreign banks.
6. International bank payments and transfers for current transactions shall be made by authorized banks.
7. International bank payments and transfers associated with movement of capital, using the currency of Kazakhstan and foreign currency, will be conducted by procedure established by the National Bank.



Article 3 of the new law on Currency Regulations of 24 December 1996 authorizes the President of the Republic to adopt decisions to restrict or suspend any currency transactions for the purpose of implementing international obligations and in emergency situations. In addition, the same law authorizes the NBK to establish restrictions on the currency of payment of residents export operations and the regime of obligatory sale of export currency receipts.

According to the Rules of Hard Currency Transactions (existing rules) issued by the NBK on 24 November 1994 and its amendments (24 January, 18 May, and 16 November 1995; and 29 February and 30 May 1996):

- Foreign currency brought into Kazakstan by natural persons (Kazakstani citizens, foreign citizens, and Stateless persons) can be taken out of Kazakstan on the basis of customs declaration and without any restrictions.
- Residents have the right to export foreign currency in the amount of US\$10,000 without any restrictions. If the amount exceeds US\$10,000, then residents must provide a document (certificate) from a licensed bank or from an authorized non-banking financial institution (e.g. exchange bureau) confirming the legality of the amount to be exported.
- If the amount exported by non-residents exceed the amount declared upon entry to Kazakstan, then the non-resident must provide a document (certificate) from a licensed bank or from an authorized non-banking financial institution (e.g. exchange bureau) confirming the legality of the amount to be exported.
- International bank payments and transfers for current transactions and transactions associated with movement of capital are performed by residents and non-residents without any restrictions through authorized banks. Residents and non-residents, however, must provide the authorized bank with a document (e.g. contract, agreement) explaining the purpose of transfer/payment. Such document is used by the authorized bank to keep track of transfers/payments related to current transactions and transfers associated with movement of capital. In the case of transactions associated with movement of capital, simple registration is required, in addition, at the NBK for statistical purposes and balance of payment information.

**Question 21.**

**Please describe fully any differences in the procedures applicable to residents and non-residents who desire to export foreign currency.**

Please see the answer to the above question.

**Question 22.**

**Do residents exporting foreign currency need to present a document from a licensed bank or from non-bank exchange bureaus confirming the legality of his receipt of amount exported?**

Residents exporting foreign currency in excess of USD\$10,000 need to present a document from a licensed bank or from a licensed non-bank financial institution (e.g. exchange bureau) confirming the legality of receipt of amount exported.

**Question 23.**

**The currency Law requires non-resident who intend to export an amount of foreign currency from Kazakstan, which exceeds the amount of foreign currency imported into Kazakstan, to present**

**a document from licensed bank or from non-bank exchange bureaus confirming the legality of his receipt of the amount exported.**

**Are Kazakhstan Republic residents similarly required to present such a document in order to confirm the legality of the receipt of the amount of foreign currency to be exported?**

Residents who intend to export an amount of foreign currency from Kazakhstan, which exceeds the amount of foreign currency imported into Kazakhstan, are required to present a document from a licensed bank or from a licensed non-bank financial institution (e.g. exchange bureau) confirming the legality of receipt of the amount exported.

**Question 24.**

**How do enterprises acquire the rights to deal in foreign exchange? Can enterprises other than bank to be approved?**

The NBK licence for dealing in foreign exchange is issued to banks, financial institutions, or Kazakstani legal persons solely involved in foreign exchange. Any enterprise (Kazakstani legal entity) may be the founder of an exchange bureau. However, such enterprise must establish a subsidiary solely involved in foreign exchange.

**Question 25.**

**Are foreign enterprises eligible to become licensed banks or exchange points? Do any restrictions or conditions apply to the operation of licensed banks or exchange points by foreign enterprise, that do not apply to the operation of these entities by domestic enterprises?**

A non-Kazakstani legal or physical person is not eligible to become a licensed exchange point. Please note, however, that a Kazakstani legal person may be partially or fully foreign-owned. A Kazakstani legal person that is fully foreign-owned (referred to as foreign enterprise by the Law on Foreign Investment of 1994) may become a licensed exchange point.

Any bank registered in Kazakhstan as a Kazakstani legal entity is eligible to become an authorized bank (licensed bank). A bank registered in Kazakhstan as a Kazakstani legal person may be 100 per cent foreign-owned. Branch and representative offices of foreign banks are not allowed to deal in foreign exchange. They must first register as a Kazakstani legal person.

The same restrictions or conditions which apply to the operation of Kazakstani legal persons with foreign participation (partially or fully foreign-owned) operating as licensed banks or exchange points apply to the operation of Kazakstani legal persons without foreign participation operating as licensed banks or exchange points.

Please see the answer to question No. 34 below for information on general registration requirements as a Kazakstani legal person.

**Question 26.**

**Kazakhstan indicates in WT/ACC/KAZ/3 that it does not apply any restrictions related to the international transfers and payments for current transactions related to services.**

**Please describe any restrictions applicable to international transfers and payments for current transactions related to goods.**

Restrictions applicable to international transfers and payments for current transactions related to goods are the same as those related to services. (see answer to question No. 20 above)

**(e) Competition policies**

**Question 27.**

**The Memorandum describes competition policies through which existing monopolies and monopolistic behaviour have been eliminated or scaled back during the past two years, with the result that, competition was developed in many sectors of the economy.**

**Please identify and describe the sectors that remain subject to monopolies or monopolistic behaviour. Are these sectors generally dominated by private monopolies or by State-owned enterprises? Are these monopolies conferred by law? If so, please cite the legal authority for their status.**

In addition to the natural monopolies listed under question 3 of this document, the following table lists the sectors which have companies considered by the Anti-Monopoly Committee (AMC) as having dominant position in their market. A company has a dominant position in the market, according to the Kazakstani legislation, if it has more than 35 per cent market share. There are 73 companies listed by the AMC as having dominant position in the market. The number of companies having dominant position in the market may increase or decrease depending on changes in market share of entities in Kazakstan. The Anti-Monopoly Committee simply monitor these companies and conduct periodic market analysis. Please note that these 73 companies with dominant position in the market are not conferred by law. Most of the 73 companies are producers. There are 32 companies in the transport sector.

Sector	Number & Ownership
Ferrous Metal Industry: manganese concentrate and ore; iron-ore, cast iron, pig iron of R1, R2, and RS2 grades, iron ore pellets; and dolomite.	Total: 5 companies Private: 0 State: 0 Mixed (private/State): 2 Contract Management: 3
Non-Ferrous Metal Industry: cathode copper; lead; barite concentrate; sponge titanium; and magnesium and magnesium alloys	Total: 4 companies Private: 0 State: 0 Mixed (private/State): 4 Contract Management: 0
Chemical Industry: sulphate coal; yellow phosphorus; borate ore; chromium salt and compound; polystrol; polypropylene; and vinegar acid 100%, grade 92 RK	Total: 7 companies Private: 0 State: 1 Mixed (private/State): 6 Contract Management: 0
Machine Building & Metallurgy Industry: cylinders for gas condensate; tractor piston rings; smith and press machinery; cardan shaft; structure and products of aluminum alloys; electric bridge cranes; small capacity cylinder engines; tractor plough; sowing machines; reinforced concrete pipes, lead batteries, bulldozers, connecting wires, control cable, aerial wire, cast iron industrial pipe fittings	Total: 14 companies Private: 0 State: 0 Mixed (private/State): 14 Contract Management: 0

Sector	Number & Ownership
Forestry, Wood-Processing, Cellulose-Paper Industry: gypsum	Total: 1 company Private: 1 State: 0 Mixed (private/State): 0 Contract Management: 0
Construction Materials Industry: decorative tiles of natural stones, gypsum, soft roofing, roofing cardboard, reinforced concrete rails, refractory products, heating cast-iron radiators	Total: 8 companies Private: 1 State: 0 Mixed (private/State): 7 Contract Management: 0
Microbiological Industry: Microbiological feeding albumen, including feeding yeast	Total: 1 company Private: 0 State: 0 Mixed (private/State): 1 Contract Management: 0
Pharmaceutical Industry: aminoacids (lysine), premixes, bacitracin, and tylosin	Total: 1 company Private: 0 State: 0 Mixed (private/State): 1 Contract Management: 0
Transportation: passenger and mail transportation, repair and maintenance of airplanes, treatment of agricultural areas by aeroplane, and commercial services to aircraft, construction of traffic signal facilities, operation of road signs, pedestrian fencing, marking of roads, air treatment of agricultural areas, railroad transport services, and aeronavigation/air traffic control services.	Total: 32 companies Private: 0 State: 4 Mixed (private/State): 28 Contract Management: 0

In addition, the AMC considers as having dominant position (more than 35 per cent market share) seven State holding companies which were established in 1993 and 1994 through Presidential and Government resolutions. These holding companies have dominant position in the following products: aluminum alloy structures and articles, cardan shafts, small cylinder capacity engines, tractor plough, sowing machines, bulldozers, reinforced concrete pipes, lead batteries, ore-mining and reprocessing, passenger aviation transportation, mail transportation, and treatment of agricultural areas. Some of the 73 companies, discussed above, fall under the structure of these seven State holding companies.

- - **Enterprises, whether State-owned or private, that have monopoly positions in international trade and/or domestic distribution in Kazakstan should be notified under Article XVII of the GATT 1994 and the 1994 Understanding. Kazakstan should complete the questionnaire in Annex 6 of WT/ACC/1 for each of these entities for the product they trade.**

There are no State-owned or private enterprises that have monopoly or dominant position in international trade and/or domestic distribution in Kazakstan.

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

**1. Powers of the Executive, Legislative and Juridical Branches of Government**

**(c) Powers of the Judiciary**

**Question 28.**

**Please describe how complaints concerning customs issues are handled in Kazakstan's courts.**

In accordance with the Code of Civil Procedure and the Customs Code, natural persons who wish to file a complaint concerning a customs issue have a choice of lodging a formal complaint administratively, within the Customs Office where the offending decision was rendered; or judicially, at the people's court where the Customs Office rendering the offending decision is located. In accordance with the Customs Code and Arbitration Procedures Law, juridical persons who wish to file a complaint concerning a customs issue have a choice of lodging a formal complaint administratively, within the Customs Office where the offending decision was rendered; or judicially, at the Commercial Collegium of the Court where the Customs Office rendering the offending decision is located. Please note, however, that the Republic of Kazakstan is now in the process of drafting a new Code of Administrative Violations which may change the aforementioned procedure.

**Question 29.**

**Can customs decisions be appealed after all administrative resource in the relevant Ministries has been exhausted? If so, please describe this process.**

Please see the answer to the previous question.

**Question 30.**

**Please indicate how complaints involving investment issues and intellectual property rights are addressed, e.g. which courts hear these and what is the right of appeal?**

Complaints involving investment issues or intellectual property rights are addressed either administratively or judicially as any other commercial dispute. If the investment or intellectual property right constitutes a foreign investment for purposes of the Law on Foreign Investment, moreover, the foreign investor has the opportunity to take advantage of the following dispute resolution options as set forth in Article 27(b):

- (a) to the judicial bodies of the Republic of Kazakstan which are authorized in accordance with the legislation of the Republic of Kazakstan to consider such disputes; or:
- (b) one of the following arbitration bodies:
  - to the International Centre for the Settlement of Investment Disputes (henceforth, the Centre), created in accordance with the Convention for the settlement of investment disputes between the States and citizens of any other States, opened for signing in Washington, on the 18th March 1965 (Convention ICSID), provided the State of the investor is a signatory to that Convention;
  - to the Auxiliary establishment of the Centre (operating under the Auxiliary Agency Rules), where the State of the investor is not a signatory of the ICSID Convention;
  - to arbitration bodies which are established in accordance with the arbitration regulations of the Commission of the United Nations Organization for International Trade Law (UNCITRAL);

- for arbitration consideration at the Arbitration Institute of the International Chamber of Commerce in Stockholm; or
- to the Arbitration commission of the Chamber of Commerce and Industry of the Republic of Kazakhstan.

In the event that a foreign investor does not give a written consent to the consideration of a dispute in accordance with the procedure stipulated in paragraph 2 of this Article, the dispute may be entered into judicial bodies of the Republic of Kazakhstan which in accordance with the legislation of the Republic of Kazakhstan are authorized to consider such disputes.

#### **4. Legislative Programmes or Plans to Change the Regulatory Regime**

##### **(a) Agenda for drafting new laws**

##### **Question 31.**

**We note that Kazakhstan is in the process of drafting or redrafting existing laws in a number areas that will affect its foreign trade regime.**

-- **We acknowledge and encourage Kazakhstan's use of WTO Agreements and the commitments contained therein in the drafting of changes to its legal environment and foreign trade regime, as per Resolution No. 211 of 19 February 1996.**

-- **Kazakhstan should give priority to revision and enactment of laws addressing WTO provisions, to facilitate its accession process.**

**Please give a status report on new and revised legislation addressing domestic direct taxation (e.g., VAT and excise taxes), the copyright law, and amendments to the Presidential decree on Licensing.**

Since the Memorandum on the Foreign Trade Regime was submitted, the following laws and amendments to laws were adopted by the Parliament of the Republic of Kazakhstan:

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

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

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

The new Law on Copyrights and Related Rights (the Copyright Law) was actually adopted on 10 June 1996 (prior to the submission of the Memorandum on the Foreign Trade Regime) and was discussed in section V.2(a) of WT/ACC/KAZ/3. In addition, a copy of the Copyright Law was provided to the WTO Secretariat in August 1996.

Please note that the Presidential Decree on Licensing has not been revised since the Memorandum on the Foreign Trade Regime of Kazakhstan was submitted to the WTO.

Amendments to the Tax Code of 24 April 1995 were passed on 31 December 1996. Amendments include changes to the VAT, excise, corporate income, property tax, and mineral use tax. Relevant changes are the following:

- accrual method of accounting was mandated for VAT and Corporate Income Tax;
- VAT credit on imports from CIS no longer permitted;
- excise taxes were introduced to crude oil;
- excise taxes on gasoline were increased (see table under question 47 of this document);
- property tax increased: legal persons from 0.5 per cent to 1.0 per cent and natural persons (0.1-0.3 per cent depending on the value of property); and
- many changes to the regime of minerals taxation that affect the system of royalties, bonuses, and excess profits were introduced (please see Attachment A).

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

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

1. Criminal Code
2. Criminal Procedure Code
3. On Amending the Civil Code-General Part
4. On Partnerships with Limited Liability
5. On Amending the Presidential Edict Having the Law Force (i) On Subsurface Utilization and (ii) On Oil (as a result of the amending the Law of the Republic of Kazakstan on Foreign Investments)
6. On Customs Authorities
7. On Amending the Law of the Republic of Kazakstan on Architecture and Urban Planning
8. On Labour
9. On Amending the Current Legislation Regarding the Mechanism of Borrowers' Responsibility and Protection of Investors and Depositors
10. Administrative Infractions Code
11. Civil Procedure Code
12. On Individual Entrepreneurship (without formation of a legal entity)
13. On Advertising
14. On Amending the Legislation on Formation of Economic and Tax Benefits in Making Investments, and on the Development of Small and Medium Sized Business
15. On Legal Profession
16. On Dumping and On Countervailing Measures
17. On Amending the Presidential Edict Having the Law Force on State Registration of Rights in Immovable Property and Related Transactions
18. On Minimal Consumer Budget and Minimal Monthly Wages (new version)
19. On Local Representative and Executive Bodies in the Republic of Kazakstan
20. On Local Self-Government
21. On Natural Monopolies
22. On Concessions
23. On State Procurement
24. On State Participation in Formation and Activities of Economic Partnership

25. On Leasing
26. On Amending the Legislation on Payments for the Special Use of Natural Resources
27. On Joint Stock Companies
28. On Unfair Competition
29. On Amending the Presidential Edict Having the Law Force on Customs Activities in the Republic of Kazakhstan (Customs Code)
30. On Registration of Secured Transactions with Movable Property
31. On Amending the Presidential Edict Having the Law Force on Land
32. On Payments and Settlements within the Republic of Kazakhstan
33. On Ecological Control
34. On Amending the Law on Standardization and Certification

Please note that Kazakhstan will give priority to revisions and enactment of laws addressing WTO provisions.

**Question 32.**

**We request that Kazakhstan furnish drafts of the relevant laws to the Working Party as they become available and provide periodic updates of the status of the legislation within Parliament.**

Kazakhstan will provide periodic updates of the status of the legislation within Parliament. A draft of a specific relevant law will be provided upon request by any member of the WTO Working Party.

**Question 33.**

**Does the Government of Kazakhstan plan to publish drafts of new, re-drafted or amended laws seeking public comment? If so, in which publications will the draft laws appear?**

The Government of Kazakhstan usually publishes those draft laws which have general public impact (e.g. constitution, special sections of civil code, criminal procedure code). These draft laws are usually published in the legal Newspaper and Kazakstanskaya Pravda. Given the need for Kazakhstan to speed up its legal reform, the government does not have any current plans to publish at this point all drafts laws for public comments.

**IV. POLICIES AFFECTING TRADE IN GOODS**

**1. Import Regulation**

**(a) Registration requirements for engaging in importing**

**Question 34.**

**Please describe any general registration requirements for engaging in business in Kazakhstan, with special reference to importation**

Any foreign or Kazakstani legal or natural person may engage in importation. However, only Kazakstani legal persons, individual entrepreneurs registered in Kazakhstan, and natural persons who have permanent residence in Kazakhstan may declare goods for commercial purpose. An importer also has the option to retain a licensed broker to declare goods for commercial purposes on its behalf.

Natural persons may import any type of goods for non-commercial purpose without registration requirements.



According to Article 12 of the Civil Code, a natural person is defined as a citizen of Kazakstan, citizen of other countries, or Stateless person. Any natural person may register as an individual entrepreneur with the local tax inspection. The registration is automatic and the process is the same for Kazakstani citizens and citizens of foreign countries.

The registration procedure and requirements for Kazakstani legal persons 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 (see WT/ACC/KAZ/4).

A Kazakstani legal person may be 100 per cent Kazakstani legal person or Kazakstani legal person with foreign participation (partially or fully foreign-owned).

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 are the following: registration application form, charter, confirmation of location of Business, statistic card (obtained from the Statistics Committee), proof of payment of registration duties (0.1 per cent of Charter Capital), and proof of bank deposit or independent audit results. 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 - there is a need to obtain the approval of authorized body.

Founders of Kazakstani legal persons with foreign participation (partially or 100 per cent foreign-owned) must:

- submit 3 additional documents: bank confirmation of solvency of foreign participant, proof of legal status of foreign participant, and copy of passport or other identification document (only required if the foreign participant is an individual);
- 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 Kazakstani or Russian languages. All translated documents and copies of documents must be notarized.

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

- incomplete set of required documents;
- contradictions with current legislation of the Republic of Kazakstan.

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 denial of registration. In case of refusal of registration by the Ministry of Justice, documents could be revised to comply with national legislation and resubmitted 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 35.**

**Are there any restrictions or registration requirements on individuals engaging in importation?**

There are no restrictions on individuals engaging in importation. Individuals and legal persons have the same rights and privileges and are subject to the same rules described in WT/ACC/KAZ/3.

Kazakstani individuals have the right to declare goods for commercial purpose since they are permanent resident of Kazakstan. In order to declare goods for commercial purpose, foreign individuals have the option to register as an individual entrepreneur or retain a licensed broker. Any natural person may register as an individual entrepreneur at the tax inspection office. The registration is automatic and the process is the same for Kazakstani citizens and citizens of foreign countries

Natural persons (citizens of Kazakstan, citizens of foreign countries, and stateless persons) may import any type of goods for non-commercial purpose without registration requirements..

**(b) Characteristics of the national tariff and nomenclature**

**Question 36.**

**Kazakstan's import tariff nomenclature is based on the Commodity List of Foreign Economic Activity, patterned after the Harmonized System.**

**Does Kazakstan intend to convert fully its nomenclature to the Harmonized System?**

Yes.

**Question 37.**

**Please describe the nature of the structural and coding differences, as noted in the Memorandum, between tariff nomenclature of Kazakstan and the Harmonized System.**

See response to next question.

**Question 38.**

**When will Kazakstan incorporate the HS 96 changes into its current import tariff nomenclature?**

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

**(d) Other duties and charges, specifying any changes for services rendered**

- **Customs Processing Fees and other customs services**

**Question 39.**

**Concerning Kazakstan's customs Processing Fee: Article VIII of GATT 1994 states that fees applied to imports for customs services must be limited to the approximate cost of services rendered and shall not indirectly provide protection for domestic products.**

**Does Kazakstan have a procedure to limit its 0.2 per cent ad valorem customs processing fee to an amount not in excess of the approximate cost of the customs processing service? Is there a fee on processing export? How are the revenues from this fee used, e.g., are they used only to process all imports, for general customs expenses, or is the revenue sent directly to general revenues?**

Kazakhstan does not have a procedure to limit its 0.2 per cent ad valorem customs processing fee to an amount not in excess of the approximate cost of the customs processing service.

A 0.2 per cent fee applies also for processing exports. The revenue from import and export processing fees are sent directly to the Republic's Budget (General Revenues).

**Question 40.**

**Please explain the nature of customs levies for customs accompanying goods within the zone of activities of customs administration, listed in Table 4-1. Why and how is this levy applied to trade and why is a fee of 100 ECU charged? Why does Kazakhstan use the ECU as its measures of value for customs purposes?**

Pursuant to Article 34 of the Customs Code, Customs may control the in-transit shipment of goods by requiring that a Customs officer physically accompany the transport vehicle to the customs office of destination. If the point of arrival of the goods to the Republic and the destination point are within the same customs region (the same zone of activities), Customs levies a fee of 100 ECU. If the customs office of destination lies outside the customs region in which the goods arrived (outside the zone of activities), then a customs officer from the region in which the goods arrived may accompany the goods to the destination point. In that event, Customs will levy a fee of 200 ECU for the cost of the customs officer accompanying the goods to the destination point. The fee is stated in ECU because the value of the ECU has been more stable than the Tenge and Kazakhstan's foreign trade is considerable (20 per cent) with EU countries.

-- **We seek Kazakhstan's commitment to bring its current ad valorem import processing fee into line with WTO provisions, and a proposals as to how that should be done. In this regard, Kazakhstan should address the issues raised in Articles VIII of the GATT 1994 and in the findings of the GATT 1994 Dispute Settlement panel on the United States' Customs User Fee.**

During accession to the WTO, Kazakhstan will bring its customs processing fee into line with the GATT 1994; however, the Government has not yet completed a proposal as to how that will done. Kazakhstan will consider the requirements of Article VIII of the GATT 1994, as well as the findings of the GATT 1994 Dispute Settlement panel on the United States' Customs User Fee. It is likely that Kazakhstan will establish either a fixed fee or an ad valorem fee with a ceiling.

**Question 41.**

**Concerning the Vehicle Transfer Tax: Please outline more fully the scope and nature of the vehicle tax, e.g., are transfers of both domestic and imported vehicles taxed?**

Government Resolution No. 1061 of 28 August 1996 eliminated the customs processing fee for vehicles transferred by natural persons (15 ECU per unit). Currently, only the regular 0.2 per cent processing fee applies for import of vehicles.

Please note that the Tax Code stipulates the imposition of annual internal tax on vehicles. This vehicle tax is applicable to legal and natural persons owning vehicles. This vehicle tax does not apply to imports. Article 128 of the Tax Code defines the rates for vehicle tax. A copy of the Tax Code was submitted to the WTO Secretariat in August 1996 (see WT/ACC/KAZ/4).

**Question 42.**

**Are vehicles transferred by natural persons subject to both the 0.2 per cent ad valorem customs processing levy and 15 ECU per unit fee? What is the rationale for applying a special fee for vehicle transferred by natural persons?**

Government Resolution No. 1061 of 28 August 1996 eliminated the customs processing fee for vehicles transferred by natural persons (15 ECU per unit). Currently, only the regular 0.2 per cent processing fee applies for import of vehicles.

**Question 43.**

**According to Table 4.1 of the Memorandum, the customs levies for customs processing the goods and vehicles outside designated areas and outside working hours of customs bodies are levied in double.**

**Please provide an example of a situation in which such a levy would be applicable. Are all the levies provided in Table 4.1 subject to doubling, or only the 0.2 per cent ad valorem levy and the 15 ECU per unit fee for customs processing of vehicles transferred by natural persons?**

Government Resolution No. 1061 of 28 August 1996 eliminated the customs processing fee for vehicles transferred by natural persons (15 ECU per unit). Currently, only the regular 0.2 per cent processing fee applies for import of vehicles.

Not all levies provided in Table 4.1 of WT/ACC/KAZ/3 are subject to doubling. Only the 0.2 per cent ad valorem levy is subject to doubling.

Official working hours of Customs are Monday through Friday, 0900 to 1700 hours, although certain customs houses are open on Saturday from 0900 to 1200 hours. An example of a situation in which the customs processing fee would be doubled is if Customs processed imported goods on a Sunday. Similarly, if the goods are cleared by Customs at the importer's facility rather than the customs house, the customs processing fee is levied in double.

**Question 44.**

**Please verify that the amount of each customs service levy or fee listed in Table 4.1, other than ad valorem levy and the doubled levy, does not exceed the approximate cost of services rendered.**

Kazakhstan can not verify at this point whether or not fees specified in Table 4.1 of WT/ACC/KAZ/3 exceed the approximate cost of services rendered. Currently, the Anti-Monopoly Committee is in the process of reviewing all fees charged for State services to ensure that they reflect the approximate cost of services rendered.

- **Value Added Tax (VAT)**

**Question 45.**

**The most-favoured national treatment provided by GATT 1994 Article I requires that internal taxes applied to imports from WTO member should be no higher than those applied to imports from non-WTO sources. The Memorandum states that products imported from CIS countries are not subject to the VAT at the time of importation.**

**Please describe any measures Kazakhstan has taken to address this problem and plans for bringing Kazakhstan's VAT into conformity with GATT 1994 m.f.n. requirements.**

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. 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.

Nevertheless, CIS countries are currently in the process of negotiation regarding making VAT applicable at destination rather than source.

**Question 46.**

**Does the Kazakhstan Republic rebate VAT taxes on export (a) to CIS countries; and/or (b) to other countries?**

Kazakhstan does not rebate VAT taxes on export to CIS countries but rebates VAT taxes on export to other countries.

- **Excise taxes**

**Question 47.**

**The national treatment provided by of Article III of the GATT 1994 stipulates that internal taxes on imported goods should be no higher than such taxes on domestic production. Table 4.2. of the Memorandum, however, indicates that there is a considerable disparity in the rates of excise tax for several imported and domestic goods**

**What is the regulatory body which determines and implements Kazakhstan's excise taxes?**

Article 76 of the Tax Code (Presidential Decree Having the Force of Law No. 2235) of 24 April 1995 and its amendment of 31 December 1996 define the list of goods subject to excise taxes. The rates of excise taxes are established by the Government via government resolutions. The State Tax Committee is responsible for collecting excise taxes. Currently Government Resolution No. 1747 of 31 December 1996 and No. 1748 of 31 December 1996 define the rates of excise taxes. The following table updates Table 4.2 of WT/ACC/KAZ/3.

Goods Subject to Excise Tax	Domestic Rates	Import Rates
1. All alcohol	3.0 ECU/L	3.5 ECU/L
2. Liqueurs and vodka products	0.6 ECU/L	3.0 ECU/L
3. Vodka	0.7 ECU/L	3.0 ECU/L
4. Fortified drinks, juices and balsam	0.6 ECU/L	3.0 ECU/L
5. Wine	0.2 ECU/L	0.8 ECU/L
6. Fine Wine	0.2 ECU/L	0.8 ECU/L
7. Cognac	0.3 ECU/L	3.0 ECU/L
8. Champagne	0.2 ECU/L	0.8 ECU/L
9. Beer	0.05 ECU/L	0.2 ECU/L
10. Wine-making ingredients	0.2 ECU/L	0.8 ECU/L
11. Tobacco products and other products containing tobacco	0.75 ECU per 1000 units	2.0 ECU per 1000 units
12. Sturgeon and salmon, their roe, and delicacies made therefrom	100%	100%
13. Gold, platinum or silver jewellery	40%	40%

Goods Subject to Excise Tax	Domestic Rates	Import Rates
14. Cured and non-cured furskins (except mole, rabbit, dog, deer, sheep skins)	7%	50%
15. Cured and non-cured furskins of Karakul	7%	50%
16. Wearing apparel made of Karakul	10%	50%
17. Coats, short coats, jackets, and mantles with decoration made from Karakul	10%	50%
18. Wearing apparel made of natural fur (except mole, rabbit, dog, deer, sheep)	10%	50%
19. Overcoats, short coats, jackets and mantles with decoration made from fur (except mole, rabbit, dog, deer, sheep)	10%	50%
20. Clothing made of natural leather	50%	50%
21. Objects made of crystal, including lighting appliances	50%	50%
22. Crude oil	7 ECU per ton	7 ECU per ton
23. Diesel fuel	6 ECU per ton	6 ECU per ton
24. Gasoline (other than aviation gasoline)	31 ECU per ton	31 ECU per ton
25. Passenger automobiles	N/A	10-50%
26. Lorries with a carrying capacity under 1.25 ton	N/A	15%
27. Old lorries with a carrying capacity under 1.25 ton (more than 10 year old)	N/A	30%
28. Firearms and gas weapons (other than those for the needs of State agencies)	20%	40%

**Question 48.**

**What measures has Kazakhstan taken to eliminate this discriminatory treatment, and what are its plans for bringing its internal taxation regime into conformity with WTO provisions?**

Kazakhstan has not yet taken any measures to eliminate this discriminatory treatment. During accession to the WTO, however, Kazakhstan will work toward bringing its internal taxation regime into conformity with the WTO provisions (in line with the national treatment principle of the WTO).

**Question 49.**

**Are excise taxes applied to imports from other Republics of the Former Soviet Union? If not, please indicate Kazakhstan's plans for bringing this practice into conformity with the m.f.n. provisions of Article I of the GATT 1994?**

With respect to CIS countries, excise taxes apply 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. Other CIS countries collect the excise taxes applied on goods exported to Kazakhstan from those countries.

Kazakhstan plans to bring this practice into conformity with the m.f.n. provisions of Article I of the GATT 1994. CIS countries are currently in the process of negotiation regarding making excise taxes applicable at destination rather than source.

**Question 50.**

**Does Kazakhstan, or any of its oblasts or other subcentral authorities apply taxes directly to goods and services other than VAT and excise taxes? If so, please provide information on these taxes including their scope and level, and whether they are applied to both domestic and imported goods.**

Neither Kazakhstan nor any of its oblasts or other subcentral authorities apply taxes directly to goods and services other than VAT and excise taxes.

**Question 51.**

**Please describe the legal authority of Kazakhstan's subcentral authorities to levy taxes.**

The subcentral authorities of Kazakhstan do not have the right to introduce any taxes. New taxes may only be introduced via adoption of new legislation or amendments to the existing Tax Code by the central authorities. The current Tax Code of 24 April 1995 and its amendments currently permits subcentral authorities to levy the following taxes: land tax; tax on property of natural and legal persons; vehicle tax; and the following fees: fee for registration of legal persons, fee for registration of natural persons engaging in entrepreneurial activities, fee on the right to be engaged in certain types of activities (activity licence fee), and fee on auction sales.

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

**Question 52.**

**Pursuant to Article 20 of the Customs Code, the Republic of Kazakhstan may establish quantitative import restrictions in the interest of human, animal and plant health. Please provide additional information on this policy.**

Kazakhstan has currently a system of certification (see section IV.3(b) and IV.3(c) and Annex 5 of WT/ACC/KAZ/3) and a system of import licensing (see section IV.1(f) and Annex 3 of WT/ACC/KAZ/3) to protect human, animal, and plant health. Please note also that the system of import licensing is not linked to any quotas. Kazakhstan does not envisage using any other systems in the future including import quotas except in cases connected with (i) balance of payment problems and in accordance with WTO rules and (ii) as an emergency measure according to Article XIX of GATT 1994.

**Question 53.**

**Please identify and describe any provisions of Article 20 of the Customs Code that are not in conformity with the WTO Agreement on the application of Sanitary and Phytosanitary Measures.**

Article 20 of the Customs Code stipulates that import prohibitions may be introduced for a number of reasons, *inter alia*, to protect life and health of people, and to protect the natural environment, animals and plants. No measures are in force for these purposes. Should Kazakhstan introduce import prohibitions for such purposes in the future, the measures would be taken in conformity with the provisions of the Agreement on the Application of Sanitary and Phytosanitary Measures.

(f) **Import licensing procedures**

**Question 54.**

**Does the Kazakhstan Republic use any import licensing procedures to administer any agricultural tariff rates quotas?**

Import licences are not required for agricultural products. In addition, there are no tariff rates quotas for any products.

**Question 55.**

**Are the administrative procedures and guidelines for the Kazakstani import licensing system published and available to the public? If so, in what publication can the procedures be found?**

The administrative procedures and guidelines for the Kazakstani import licensing system are published and available to the public through:

- the Ministry of Industry and Trade (MIT). The MIT has a set of instructions regarding import and export licensing system which are available to the general public for free. In addition, the MIT provides consultancy services for free to the general public regarding the procedure and requirements for obtaining import and export licences;
- occasionally, information regarding the procedures and requirements for import and export licences are published in the Foreign Economic Activity Annex of the Bulletin of Accounting which is published on a monthly basis.

**Question 56.**

**Does the amount of the licensing fee (9200 Tenge) approximate the cost of processing the import licence?**

The administrative charge of Tenge 9,200 (20 Monthly Evaluation Index) for issuing a licence is not currently based on the cost of services rendered (GATT 1994 Article VIII). The Monthly Evaluation Index changes on a quarterly basis (please see the answer to question 114 of document WT/ACC/KAZ/6). Prior to accession to the WTO, Kazakstan will review this administrative charge to ensure that it reflects the cost of services rendered.

**(h) Customs valuation**

**Question 57.**

**Kazakstan states that the customs valuation system is largely in compliance with the WTO customs Valuation agreement.**

**Has Kazakstan provided a copy of its Customs Code for Working Party review? Could we have a copy of the Customs Valuation provisions?**

Yes. Kazakstan has provided a copy of its Customs Code for Working Party review in August 1996. (see WT/ACC/KAZ/4)

The valuation provisions of Kazakstan's Customs Code are set out in Articles 122 to 133. A copy of the valuation provisions is provided in Attachment A to this document.

**Question 58.**

**Please describe fully those areas in which Kazakstan's Customs Code is not in compliance with the WTO Agreements on Customs Valuation.**

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



1. The Customs Code defines a related-party to include one that has more than a 20 per cent 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 per cent 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.
2. 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".
3. 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).
4. 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.

10. Article 16 of the GATT 1994 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.

**Question 59.**

**According to the information on customs valuation provided in Annex 4 of the Memorandum, Article 133 of the Customs Code does not fully delineate the prohibitions contained in Article 7.2 of the WTO Customs Valuation Agreement.**

**Will Kazakhstan amend the Customs Code, by prohibiting the methods specified in Article 7.2(b), (c), (d), and (f) of the WTO Agreement on Customs Valuation?**

Yes. In 1997, Kazakhstan will amend its Customs Code to bring it fully into conformity with the WTO Valuation Agreement

**Kazakhstan states that its customs administration uses transaction value as the primary basis of value, except in the cases where customs valuation is reported by Societe de Surveillance (SGS), its contracted pre-shipment inspection entity.**

-- **Pre-shipment inspection entities such as SGS DO NOT perform customs valuation. In accordance with pre-shipment inspection Agreement, these entities perform price verification. There are very specific guidelines on performing price verification and it is Kazakhstan's obligation to ensure that SGS follows this guidelines.**

**(j) Pre-shipment inspection**

**According to the Foreign Trade Memorandum, Kazakhstan contracted SGS to perform pre-shipment inspection activities for goods not being imported from CIS countries that are worth at least US\$3000.**

-- **As a WTO member, Kazakhstan will be responsible for the valuation, findings and other actions of SGS as they affect the proper valuation and treatment of exports by WTO member countries to Kazakhstan.**

-- **Kazakhstan is responsible for SGS's adherence to the rules of the Pre-shipment Inspection Agreement. We encourage Kazakhstan to monitor its compliance with these obligations.**

**Question 60.**

**What regulations or policies of Kazakhstan will ensure that the actions of SGS are properly supervised and how will responses to complaints and legal challenges to SGS findings be handled?**

On 31 January 1997, Pre-shipment Inspection was eliminated.

**Question 61.**

**Goods that are being imported from CIS countries apparently are not subject to pre-shipment inspection. Please indicate how this will be altered prior to accession in order to satisfy GATT 1994 most-favoured-nation requirements.**

Please see response to the previous question.

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

**Question 62.**

**The Memorandum states that the only internal taxes which apply to imported goods are the Value Added Tax (VAT) and the excise tax mentioned in section (d) above. Earlier, however, in the section on Fiscal Policy, Kazakhstan refers to local taxes.**

**Please list and describe all such local taxes that are applied to imports, and indicate whether these are applied equally to domestic and imported goods.**

No local taxes apply to imports.

**(l) Rules of origin**

**Question 63.**

**Please identify and describe any provisions of Kazakhstan's regulations on rules of origin that do not conform with the requirements of WTO Agreement on Rules of Origin**

The general rules for determination of origin of goods are set out in Articles 141 to 147 of Kazakhstan's Customs Code, and are largely based on the principles of Annex D.1 of the Kyoto Convention. Elaboration of the rules for non-preferential trade is found in the following administrative orders and regulations:

- Order of the Customs Committee No. 40 concerning the Approval of the Procedure for Identifying the Country of Origin of Goods (3 July 1995); and
- Resolution of the Heads of the Commonwealth of Independent States Concerning the Rules for Identifying the Country of Origin of Goods (24 September 1993), which concerns rules of origin for purposes of trade among the CIS countries.

Kazakhstan's origin regulations do not fully conform to the requirements of the WTO Agreement on Rules of Origin in certain respects, as follows:

- The WTO Agreement provides that in cases where the ad valorem percentage criterion is applied, the method for calculating this percentage shall also be indicated in the rules of origin. The Customs Code and implementing rules include a rule of ad valorem share,<sup>f</sup> but do not define the particular percentage share or the method of its calculation.
- The WTO Agreement states that where the criterion of manufacturing or processing operations is prescribed, the operation that confers origin on the good shall be precisely specified. The Customs Code references industrial or technological operations that are sufficient to confer origin, but does not further define the particular operations that will be considered sufficient.
- The WTO Agreement (i) requires members to issue advance assessments on origin questions within 150 days of a request by an importer, exporter, or any other person with a justifiable cause, (ii) requires that such assessments remain valid for a period of at least three years if the facts and conditions remain comparable, (iii) requires that those rulings be made publicly available, and (iv) permits members to revoke an assessment where a judicial, arbitral, or administrative tribunal has issued a contrary decision, provided the parties concerned are informed in advance. Articles 376 to 379 of the Customs Code provides for a ruling procedure, but limit the period of validity of the ruling to one year, do not require Customs issuance of

the ruling within 150 days of the request, and permit Customs to suspend a ruling at any time, where it finds sufficient reason.

- (m) **Anti-dumping regime**
- (n) **Countervailing duty regime**
- (o) **Safeguard regime**

**Question 64.**

**Please provide a copy of Article 115 and 116 of Kazakstan's Customs Code to the Working Party for review.**

Kazakstan has provided a copy of its Customs Code to the WTO Secretariat in August 1996 (see WT/ACC/KAZ/4). Article 115 and 116 are provided in Attachment A to this document.

**Question 65.**

**Please describe fully the procedures currently in effect for making an anti-dumping or countervailing duty determination.**

Currently, there are no procedures in effect for making an anti-dumping or countervailing duty determination. Please see response to question 67.

**Question 66.**

**The Memorandum states that anti-dumping duties must be in proportion to the degree of the estimated damage to domestic manufacturers of similar or directly competing goods.**

**Is there a procedure to limit the amount of the anti-dumping duties to the margin of dumping, as provided for in the Agreement on Antidumping?**

Currently, there is no procedure to limit the amount of the anti-dumping duties to the margin of dumping, as provided for in the Agreement on Antidumping. Please see response to question 67.

**Question 67.**

**When does the Government of Kazakstan expect to complete the new procedural rules and implementing regulations for anti-dumping and countervailing duties to fully implement the provisions of the WTO Agreements?**

Kazakstan has so far not imposed anti-dumping or countervailing duties.

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

Please note that Kazakstan is currently in the process of drafting a law on Anti-Dumping Measures and a law on Countervailing Measures. These two laws will conform to the WTO rules and will be the only laws governing anti-dumping and countervailing regime in Kazakstan. These laws are expected to be submitted to the Parliament in 1997.

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

**Question 68.**

**The Memorandum states that Article 114 of the Customs Code provides the use of special purpose custom duties as a protection remedy.**

**What specific laws, regulations and administrative procedures does Kazakhstan intend to notify to the WTO for administering its safeguard measures?**

Kazakhstan has not so far taken any safeguard measures. The Customs Code of 20 July 1995 is currently the only legislation which refers to 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 Safeguard Measures. This law will conform to the WTO rules and will be the only law governing safeguard regime in Kazakhstan. This law is expected to be submitted to the Parliament in 1997. Any necessary procedural rules and implementing regulations will be elaborated after the law is submitted to the Parliament.

**Question 69.**

**What procedures govern safeguard investigations and determinations of injury? Are these procedures published and available to the public?**

Currently, there are no procedures governing safeguard investigations and determinations of injury. Such procedures will be elaborated after the Law on Safeguard Measures is submitted to the Parliament and will be published and available to the public after the Law on Safeguard Measures is enacted.

**Question 70.**

**How are safeguard measures to be applied and reviewed?**

Safeguard measures will be applied and reviewed in conformity with the WTO Agreement on Safeguards.

-- **Kazakhstan will need to have in place all required laws, regulations and administrative procedures, which should be consistent with the provisions of WTO Agreements on Antidumping, Subsidies and Countervailing measures, and Safeguards, prior to taking any safeguard measures.**

**2. Export Regulation**

**(b) Customs tariff nomenclature, types of duties, duty rates, weighted averages of duty rates**

**Question 71.**

**Government Resolution No. 810 of 28 June 1996, eliminated export duties for all goods, except wheat other than Durum wheat.**

**Please explain why the Kazakhstan Republic retained an export duty on wheat, other than Durum wheat. Does Government of Kazakhstan intend to eliminate the export duty on wheat within the near future?**

The export duties applied to wheat other than durum wheat were eliminated on 1 August 1996.

**(c) Quantitative export restrictions, including prohibitions, quotas and licensing systems**

**Question 72.**

**Are foreign entities eligible to obtain a share of the oil export quota? Are there any conditions and restrictions applicable to foreign entities that are not applicable to domestic or CIS enterprises?**

Foreign entities are eligible to obtain a share of the oil export quota. There are no conditions and restrictions applicable to foreign entities that are not applicable to domestic or CIS enterprises.

**Question 73.**

**Please describe the process for obtaining a share of the oil export quota. Are any preferences granted to domestic or CIS entities in awarding the oil export quotas?**

Currently, there is only one pipeline (Atyrau-Kazakstan to Samara-Russia) for the export of crude oil. The amount of available quota for export of crude oil from Kazakstan is determined on an annual basis between Russia and Kazakstan through an intergovernmental agreement.

On a quarterly basis, available quotas are allocated by the Ministry of Economy to exporters of crude oil from Kazakstan proportionally to their production. If a company decides to increase its production, it should apply to the Ministry of Economy for additional quota.

No preferences are granted to domestic or CIS entities in awarding the oil export quotas.

**(d) Export licensing procedures**

**Question 74.**

**Please list all export tariff categories that have licensing requirements, by export classification line item, indicating the reason for the requirement, any criteria that must be fulfilled for export, and Kazakstan's justification of the requirement under WTO provisions.**

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

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

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

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

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

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

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

1. Narcotics and psychotropic agents, venoms. Government Resolution No. 1027 of 19 August 1996 defines the list of narcotics, highly active substances, poisonous substances, and chemical agents subject to control when exported or imported. The resolution does not specify the codes of such goods. However, goods subject to control fall under the following lists:

- list of narcotics agents according to Unified Conventions on Narcotics Agents of 1961;
- list of highly active substances and list of poisonous substances according to United Nations Convention on Fight against Illegal Turnover of Narcotics of 1961 and 1988;
- list of chemical agents contained in Tables I and II of United Nations Convention of 1988.

2. Certain types of raw materials, materials, equipment, technologies and scientific technical information, which may be used in creation of armaments and combat equipment. A precise list is currently being defined. Kazakhstan will notify WTO as soon as such list is approved by the Government.

3. Materials, equipment and technologies which have peaceful application but may be used for creation of rocket, nuclear, chemical, and other types of mass destruction weapons. A precise list is currently being defined. Kazakhstan will notify WTO as soon as such list is approved by the Government.

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

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

Export licences are not linked to any quotas. The following table summarizes the reasons behind export licensing.

Name of Goods	Reasons for Export Licence
1. Pharmaceuticals, medical equipment	Medical Safety
2. Pharmaceuticals for veterinary purposes and veterinary equipment	Medical Safety

Name of Goods	Reasons for Export Licence
3. Ivory, horns, hoofs, antlers of young Siberian stag, corals and similar materials	Ecological Safety
4. Pharmaceutical raw materials of vegetable and animal origin	Medical Safety
5. Narcotics and psychotropic agents, venoms	Illegal turnover of narcotics, venoms, and poison agents
6. Information on the subsurface by region and deposit of fuel and energy and mineral raw materials, located in the territory of the Republic of Kazakstan and within the boundaries of the continental shelf and marine economic zone. Collection materials on mineralogy and palaeontology ( 970500000 - only on mineralogy and palaeontology	Economic Safety
7. Certain types of raw materials, materials, equipment, technologies and scientific-technical information, which may be used in creation of armaments and combat equipment	National Security and in accordance with the Law on Export Control of Armaments, Military Equipment and Product of Dual Use
8. Materials, equipment and technologies which have peaceful application but may be used at creation of rocket, nuclear, chemical and other types of mass destruction weapons	National Security and in accordance with the Law on Export Control of Armaments, Military Equipment and Product of Dual Use
9. Enciphering devices (including enciphering equipment, parts for enciphering equipment and software for enciphering), instructive and technical documentation relating to enciphering devices (including both design and maintenance)	National Security and in accordance with the Law on Export Control of Armaments, Military Equipment and Product of Dual Use
10. Powder, explosive devices and pyrotechnics	National Security and in accordance with the Law on Export Control of Armaments, Military Equipment and Product of Dual Use
11. Precious natural stones and items made thereof, waste, powders and recovered precious natural stones, pearls and items made thereof, amber and items made thereof	Economic Safety
12. Precious metals, alloys, items made thereof: metals, plated precious metals and items made thereof: ores and concentrated ores of precious metals, wastes and scrap	Economic Safety
13. Semi precious stones and items made thereof	Economic Safety
14. Service and civil armaments	Human Safety



Name of Goods	Reasons for Export Licence
15. Devices for protection from combat poisonous substances, components and accessories therefor	National Security and in accordance with the Law on Export Control of Armaments, Military Equipment and Product of Dual Use
16. Instructive documentation relating to products of military designation (design and operation)	National Security and in accordance with the Law on Export Control of Armaments, Military Equipment and Product of Dual Use
17. Special technical devices intended for performance of special operative and investigation efforts, devices for protection of information, other devices of double application (including parts thereto, software), instructive and technical documentation relating to special technical devices (including both design and maintenance)	National Security and in accordance with the Law on Export Control of Armaments, Military Equipment and Product of Dual Use
18. Rare metals, rare-earth metals, raw materials for manufacture, alloys, compounds and items made thereof	Economic Safety
Names of goods	
	Reasons for Permission of the Government
19. Wild animals, wild plants	Ecological Safety
20. Armaments and military equipment, special components for their manufacture, works and services in the sphere of military technology collaboration	National Security and in accordance with the Law on Export Control of Armaments, Military Equipment and Product of Dual Use
21. Nuclear materials, technologies, equipment and installations, special non-nuclear materials, sources of radioactive radiation, including radioactive waste	International Obligations agreement on Non-Proliferation of Nuclear Armaments 1993

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

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

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

**Question 75.**

**GATT 1994 Article XI on Quantitative Restrictions does not permit prohibitions or restrictions, other than duties, taxes or other charges, on the exportation or sale for export of any products destined for the territory of another WTO Member.**

**Are all products listed in Table A9.3 (subject to contact registration pursuant to Government Resolutions 1035 and 304) subject to minimum export pricing? Please identify all products, including HS numbers, subject to minimum export pricing.**

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

**Question 76.**

**Please discuss and describe the reason for this system and its consistency with WTO provisions relating to quantitative restrictions.**

Please see answer to previous question.

- (f) **Export financing, subsidy and promotion policies**

**The Kazakstan Republic does not appear to have any policies or measures to finance exports.**

-- **Because export subsidies are the most trade distorting forms of support, we strongly encourage you to commit to binding export subsidies at zero for all products.**

**Question 77.**

**How do Kazakstan's plans to provide preferential credits focusing on export or import substitution conform with provisions of Article 3 of the Subsidies and Countervailing Measures (SCM) Agreement?**

Kazakstan's system of preferential credits focusing on export or import substitution do not conform with the provisions of Article 3 of the Subsidies and Countervailing Measures (SCM) Agreement. However, Kazakstan plans to gradually eliminate such subsidies in accordance with Article 29 of the SCM Agreement.

**Question 78.**

**Please describe in more detail the government's plans to provide preferential credits to small and medium-sized industrial enterprises.**

The principles for supporting small and medium-size businesses through preferential credits is described in Government Resolution on arranging a Competitive Selection of Quick-Paying Back Investment Projects, Held by the Government of the Republic of Kazakstan in 1996 dated 13 June 1996.

In accordance with this Resolution, tenders will be held for selecting highly efficient and quick-paying back projects oriented at import substitution and exports. According to this Resolution, an Interdepartmental Commission for evaluating and selecting investment projects under the Ministry of Economy was established. The regulations for Arranging and Holding a Competitive Selection as well as Funding Quick-Paying Back Investment Projects were approved. These Regulations stipulate conditions of arranging and holding bids; rights and responsibilities of banks and the Interdepartmental

Commission for evaluating and selecting investment projects; rights and responsibilities of bidders; basic requirements to project documentation; procedure for considering proposed projects and summing up the results of bids, and procedure and conditions of funding projects.

**(h) Import duty drawback schemes**

**Question 79.**

**Please conform that the rebate of the value of import duties inputs to processed exports does not exceed the value of the duties paid on imported inputs to physically incorporated in the export, and does not include the value of duties paid on machinery used in processing. If this is not the case, please describe the actual regime.**

We confirm that the refund of the value of duties paid on imported merchandise used as inputs in exported merchandise is limited to the value of duties paid on the inputs physically incorporated in the exported merchandise, and does not include the value of duties paid on machinery used in the processing.

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

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

**- Agricultural subsidies**

**We are still reviewing Annex 11 on Agricultural Subsidies and we will provide questions and comments on its contents prior to Kazakhstan as soon as possible, and before the first Working Party Meeting.**

**Question 80.**

**The Kazakhstan Republic's domestic agricultural support regime is briefly summarized in the Memorandum as a system of direct subsidies, credits, loan guarantees and debt rescheduling.**

**In the regard to operation of the Agricultural Support Fund (ASF), please provide further details on how these ASF subsidies are paid to farmers. Are payment levels linked to production and/or prices, or are they decoupled from price or production levels?**

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 per cent of value of used mineral fertilizer for crops of intensive type and seeds plots of grain crops;
- 40-60 per cent 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 81.**

**Please provide additional details describing the operation and administration of the programmes for credits, loan guarantees and debt rescheduling.**

Preferential credits through the State Eximbank, State guarantees for foreign loans, and preferential loans (through the Fund for Agricultural Small and Medium-Size Businesses Support extended on a competitive basis) are used to subsidize the agricultural sector. Such tools are used to strengthen reforms in the agricultural sector and implement a single medium-term investment policy. Major criteria for competitive selection are compliance of investment projects with restructuring goals in the agriculture sector, creation of competitive markets for agricultural commodities, usage of modern machinery and technologies, and economic soundness of projects.

In 1994-1996 preferential credits through Eximbank were extended to over 150 companies, State guarantees for foreign loans - to over 10 agricultural entities and processing industry companies.

Preferential loans and credits to lease agricultural machinery are given in accordance with the ADB Programme Loan for the agricultural sector. In 1996, 91 projects were selected out of more than 300 proposed investment projects. Selected projects include projects for producing flour, macaroni, meat and milk processing and bread baking.

Subsidization of the agricultural sector was also provided in the form of arrears rescheduling. The Fund for Agriculture Support set up in December 1994 assumed debts of agricultural producers in the amount of over US\$500 Million on the basis of individual agreements which stipulated the procedure, timing and conditions of repayment.

Apart from that, the debt of agricultural producers for consumed power and petroleum products was forgiven for the period 1995-1996.

**Question 82.**

**The preferential railroad transport tariff rates available to locally produced coal, agriculture and food products appear to violate GATT 1994 national treatment requirements.**

**Does Kazakhstan intend to make the preferential railroad transport tariff rates available to imported, as well as domestically-produced, coal, agriculture and food products?**

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.

- **Non-agricultural subsidies**

**Question 83.**

**Please describe the programme criteria for regional subsidies (i.e., what are the eligibility criteria for oblast?). Which oblasts receive such subsidies? Are oblast authorities provided with objective criteria and guidelines for administrating regional subsidies?**

The main eligibility criterion for an oblast to receive regional subsidies is lower level of income per capita than average national level of income per capita.

In 1996, the following oblasts received a total amount of US\$298.8 Million:

Almaty Oblast	US\$44.4 Million
East Kazakstan	US\$2.77 Million
Kzyl-Orda	US\$59.13 Million
Kokshetau	US\$20.45 Million
North Kazakstan	US\$13.67 Million
Semipalatinsk	US\$28.21 Million
South Kazakstan	US\$29.22 Million
Taldykorgan	US\$38.25 Million
Turgai	US\$16.5 Million
Zhambyl	US\$30.75 Million
West Kazakstan	US\$15.44 Million

Currently, oblast authorities are provided with objective criteria and guidelines for administering regional subsidies and no longer have discretion in distributing such subsidies.

**Question 84.**

**Please describe more fully the subsidies listed in Table 4.3 of the Memorandum, with particular reference to the Government entities providing the assistance. Please identify the sectors receiving the industrial subsidies and criteria for eligibility.**

Preferential internal loans through the State Eximbank and State guarantees for foreign loans are used to strengthen reforms and implement a single medium-term investment policy. Such loans cover all industries. The main selection criteria are meeting the main objectives of priority sectors of economy and economic soundness of projects. In 1995-1996:

- preferential internal loans through Eximbank were extended to companies operating in power engineering, metallurgy, machine-building industry, light industry and construction materials industry;
- State guarantees for foreign loans were extended to companies operating in construction industry, mining industry and metallurgy.

Preferential loans through the State Rehabilitation Bank may cover all industries. The basic objective of these loans is financial recovery of non-viable companies and preparation of companies for privatization and management contracts. Selection of companies for such loans is based on the amount of accounts payable and the availability of specific restructuring programme in the company (e.g. product re-orientation; divestiture of inefficient units--social assets etc.). In 1995-1996 such loans were extended to companies operating in machine building, chemical industry, mining industry (coal production), rubber-technical items production and metallurgy.

In addition, taking into account the financial situation of certain companies, the Government issued special resolutions deferring and forgiving debt and rescheduling arrears of these companies. In 1995-1996 such subsidies were given to companies operating in metallurgy, coal production, machine-building industry and pharmaceuticals production.

In 1996, preferential loans were also extended to develop exports and import substitution to companies operating in coal production and light industry. Preferential loans were also provided to support highly efficient and high return investment projects of small and medium-size businesses oriented to import substitution and export.

- (b) **Technical regulations and standards, including measures taken at the border with respect to imports**

**Question 85.**

**Kazakstan states that GosStandard is responsible for enforcing the Law on Standardization and Certification.**

**Are there regulations or administrative procedures which provide guidance to GosStandard, or other agencies, to publish draft standards for comment? Is there guidance on a recommended period to allow for public comment?**

In conformity with the requirements of the State standardization system of the Republic of Kazakstan (ST RK 1.2-93 SSS. Procedure of State Standards Development), draft standards shall be sent to all concerned organizations for their comments and recommendations. Draft standards are also published in mass media and in special bulletin news of GosStandard.

Comments on draft standards should be provided within one month from the date of their circulation or publication. GosStandard approves new standards and amendments to existing taking into accounts comments of concerned parties.

**Question 86.**

**In what publications are Kazakstani rules and regulations related to standardization and certification publicly available?**

Newly adopted general rules and norms related to standardization and certification are published in mass media and the bulletin news of GosStandard. The rules and norms connected with specific group of products or sphere of activity are published as short annotation in news of GosStandard. Detail on such rules and norms are sent to all concerned organizations.

Rules and regulations are also available as independent publications and distributed on demand to concerned organizations and natural persons.

**Question 87.**

**The Memorandum notes that Kazakstan Republic intends to harmonize its standard with international standards.**

**Please describe specific steps under way to harmonize Kazakstani standards with international standards and technical regulations.**

Kazakstan is a member of the International Organization for Standardization (ISO) and the International Organization for Legal Metrology (IOLM). Kazakstan receives standards and recommendations from these two organizations and takes into account their requirements during development of new standards and revision of existing ones.

One of the main principles of the State standardization system of the Republic of Kazakstan (ST RK 1.0-9333 SSS. General provisions) is to take into account the requirements of international and regional standards when developing new standards.

The Inquiry-Information fund has been established. It currently possess about five thousands international, regional, and national standards of industrially developed foreign countries. Kazakstan is continuously working toward expanding this Inquiry-Information fund.

**Question 88.**

**What guidance has been provided to GosStandard and other Kazakstani agencies requiring the use of appropriate international standards?**

Article 10 of the Law of On standardization and Certification permits Kazakstani manufacturers to apply directly international, regional and national standards, and standards of foreign countries, if they don't contradict current State standards.

Prime Minister Order No. 593-p of 31 December 1996 requested GosStandard to submit proposals on harmonization of standards taking into account international requirements.

**Regarding information on draft standards:**

**Question 89.**

**Do the publications News of GosStandard and the Information Handbook of Kazakstan Standards provide announcements for all draft standards, technical regulations and conformity assessment procedures, so that interested parties may provide comments?**

Currently, News of GosStandard provides announcements for the most important draft standards and conformity assessment procedures so that interested parties may provide comments.

Draft of all standards and conformity assessment procedures are provided directly to interested parties for comments.

**Question 90.**

**In what specific publications are final standards, technical regulations and conformity assessment procedures published?**

Approved standards (including conformity assessment procedures) are produced by GosStandard as separate publications. These documents are distributed upon request to concerned organizations and natural persons. They are also sold at special shops throughout Kazakstan.

Technical regulations are usually produced as separate publications by the developer and may only be obtained from the developer. Technical regulations are simply registered at GosStandard.

Bibliographical information regarding standards and technical regulations are published in Information Indicators Bulletin and Information handbook of Kazakstan Standards issued by GosStandard.

**Question 91.**

**Concerning Kazakstan's regime for the determination of conformity of imports with domestic standards requirements:**

**Under what conditions is a certificate of conformity required for imports? What is the fee structure and what criteria are applied?**

Government Resolution No. 411 provides the list of all product categories requiring a certificate of conformity. Such list can be found in Annex 5 of WT/ACC/KAZ/3 and applies equally to domestic and imported products. Certificate of conformity may be obtained from any domestic or foreign certification body accredited by GosStandard.

Certificates issued by certification bodies of other CIS Countries and other foreign certification bodies accredited by GosStandard must be converted to Kazakstani certificates. This conversion is automatic and the fee charged is approximately US\$5.

Prices are set free by certification bodies and reflect the cost of testing and processing.

**Question 92.**

**Does Kazakstan accept certification from internationally recognized standard authorities other than the designated national and other certification bodies it has recognized?**

Kazakstan does not accept certification from internationally recognized standard authorities other than the designated national and other certification bodies it has recognized.

According to the CIS InterState Agreement on Standards, Metrology, and Certification, Kazakstan honours certificates provided by State certification bodies of Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. In addition, there are four foreign companies accredited by GosStandard to issue certificates: Gas de France, France; MertControl, Hungary; Societe Generale de Surveillance (SGS), Switzerland; and Turkish Institute of Standards, Turkey. GosStandard has 19 regional bodies (one in each of the 19 oblasts of Kazakstan). Thirteen of these regional bodies are accredited to provide certification. Any foreign entity may apply for accreditation.

**Question 93.**

**Does Kazakstan recognize any external regional or international standards? Has it identified any equivalencies between standards in Kazakstan and these external standards? If so, which ones: ISO? MEK? ASME? API? CE? Others?**

The Law On Standardization and Certification stipulates the direct application of international standards by manufacturers, if their requirements do not contradict the current standards of Kazakstan. The normative act on the order of application of international standards has been adopted.

Kazakstan recognizes CIS InterState GOST Standards. In addition, Kazakstan is a member of ISO and IOLM. Newly developed or revised Kazakstani standards are authentically translated or take into account the requirements of ISO and IEC.

Kazakstan has not yet determined equivalencies between standards in Kazakstan and external standards such as ASME, API, CE, and others.

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

**Question 94.**

**Is Kazakstan prepared to fully implement the provisions of the provisions of the WTO Agreement on Sanitary and Phytosanitary Measures, including the procedural and transparency requirements?**

Kazakstan anticipates difficulties in applying the SPS Agreement in full upon accession and will need an adjustment period to bring domestic rules and sanitary-hygiene norms in line with international standards. However, procedural and transparency requirements aspects may be implemented upon accession.



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

**Question 95.**

**Please describe the commitments placed on foreign investors by the Law On Oil and the Law On Subsurface Utilization that require investors to make purchases of domestic goods.**

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.

Kazakstan understands that 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.

Kazakstan also understands that 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.

-- **Kazakstan should eliminate measures inconsistent with the TRIMS Agreement including local purchases preference investment requirements.**

(e) **State-trading practices**

**Question 96.**

**Kazakstan notes in Annex 6 that government authorized companies have exclusive rights to trade in nuclear-related materials and precious metals.**

**Please prepare a response to the Questionnaire on State trading describing each of these government-owned companies and any other Kazakstan entity, whether or not State owned, that has designated trading or distribution rights.**

Kazakstan does not maintain enterprises covered by the provisions of Article XVII and the understanding on the interpretation of Article XVII of GATT 1994. The Government of Kazakstan does not grant to any private or State enterprise, including marketing boards, exclusive or special rights or privileges, including statutory or constitutional powers, in the exercise of which they influence through their purchases or sales the level or direction of imports or exports. State and private trade enterprises operate in a non-discriminatory and competitive market environment. There are no State or private owned companies that has designated trading or distribution rights. Currently, there are no companies with exclusive rights trading in precious metals, nuclear- and military-related equipment.

(f) **Free zones**

**Question 97.**

**Why does the Kazakstan Republic prohibit direct foreign investment, without the use of a Kazakstan legal entity, within the free zones or free warehouses?**

The Customs Code is silent on whether or not foreign direct investment is permitted, without the use of a Kazakstani legal entity, within the free zones or free warehouses. Article 74 of the Customs Code, however, authorizes the Customs Committee to prohibit certain persons from performing operations within the free zones and free warehouses. Order No. 85-p of Customs Committee of 19 April 1996 stated that all operations with goods and vehicles within a free warehouse can only be performed by the owner of the free warehouse.

Article 78 of the Customs Code addresses ownership of free warehouses. Only Kazakstani persons may own free warehouses. Kazakstani persons include:

- Kazakstani legal persons. This includes Kazakstani legal persons with foreign participation (partially or fully foreign-owned);
- Branch and representative offices of Kazakstani legal persons;
- Individual entrepreneurs registered in the Republic of Kazakstan (a foreign citizen may register as an entrepreneur in Kazakstan);
- natural persons (Kazakstani citizens, foreign citizens, and stateless persons) having permanent residence in the Republic of Kazakstan.

A foreign investor may establish a 100 per cent foreign-owned Kazakstani legal entity through registration at the Ministry of Justice. The registration process is automatic provided that all required documents are submitted (see the answer to question 34 of this document)

The principal policy reason behind requiring the use of a Kazakstani legal entity is to ensure that owners of free warehouses are subject to the jurisdiction of the Republic of Kazakstan.

**(g) Free economic zones**

**Question 98.**

**Chapter 12 of the Kazakstan Customs Code envisages the creation of free customs zones and free warehouses which will be treated as being outside the customs territories of Kazakstan. The Memorandum states, however, that legal entities in the special economic zones are subject to the taxation, registration and licensing legislation of the Republic of Kazakstan.**

**Please provide a copy of this Chapter to the Working Party and elaborate on the foreseen conditions for firms in Kazakstan that are established in these zones. Are export requirements specified? If firms do not realize exports to the satisfaction of the establishing authority in the zones, will the zone be cancelled?**

A copy of Chapter 12 of the Customs Code and of the Decree of President No. 2823 on Special Economic Zones in the Republic of Kazakstan of 26 January 1996 are provided in Attachment A. The Customs Code and Decree No. 2893 were also provided to the WTO Secretariat in August 1996 (see WT/ACC/KAZ/4).

Chapter 12 of the Customs Code and Order No. 85-p:

According to Article 74 of the Customs Code, production and any commercial operations involving goods, except retail trade, are permitted in free warehouses. A licence to establish a free warehouse must be obtained from the Customs Committee.

The Customs Code does not impose any export requirements on owners of free warehouses.

When importing foreign and Kazakstani goods into the territory of the free zones or placing in free warehouses, customs duties and taxes shall not be levied.

When importing goods from the territory of free zones and free warehouses to the rest of the customs territory of Kazakstan and when exporting goods from the territory of free zones and free warehouses beyond the boundaries of Kazakstan, customs duties and taxes shall be levied. Please note that no export duties are currently in force in Kazakstan.

Foreign goods exported from free warehouses to the territory of Kazakstan are subject to the same duties and taxes as foreign goods imported to the territory of Kazakstan.

Special (Free) Economic Zone:

The Decree of the President on Special Economic Zones stipulates that special economic zones are established in order to accelerate the economic development and integration into the world economy of certain regions of the country. This should be achieved, *inter alia*, through the creation of highly efficient export oriented production, the attraction of investments, and the introduction of modern management methods and social norms. Current legislation does not impose export requirements on companies operating in free economic zones.

Special economic zones are established for a specific period of time by Presidential Decree and may be abolished prematurely by Presidential Decree if they do not achieve the purpose for which they were established. The Chairman of the Administrative Council of the Economic zones is appointed and dismissed by the President. The administrative authority in the special economic zones enjoys considerable degree of autonomy and is financed by taxes and fees paid by legal entities and natural persons registered in the territory of the special economic zone.

In case of changes in the legal regime of the special economic zone or premature abolishment of the special economic zone, entities conducting investment activities in the economic zone have the right to continue conducting such activities under conditions at the moment of initiation of investment and until the termination of the period of the special economic zone (but no longer than 10 years from the time of changes or abolishment of the special economic zone).

The special economic zones are treated as being outside the customs territories of Kazakstan. However, legal entities in the special economic zones are subject to the taxation, registration, and licensing legislation of the Republic of Kazakstan. Banking activities may also be carried out in special economic zones according to the banking legislation of Kazakstan.

**Question 99.**

**The Memorandum states that the Law On Special Economic Zones envisages the admission of foreign citizens into the special economic zones.**

**Will foreign enterprises be permitted to operate within the Special Economic Zones without having to create a Kazakstani legal entity? What restrictions and conditions will apply to foreign enterprises operating within the Special Economic Zones?**

According to the Foreign Investment Law of 1994, a foreign Enterprise is a Kazakstani legal person with 100 per cent foreign participation.

In order to operate within the Special Economic Zones, a foreign company must register as a Kazakstani legal person which could be partially or full foreign-owned. The registration procedure and requirements are described under question 34 of this document.

Foreign enterprises (fully foreign-owned Kazakstani legal persons) are treated equally to Kazakstani legal persons without foreign ownership. Both are subject to the same laws and regulations.

**(h) Trade-related environmental policies**

**Question 100.**

**The Memorandum states that, according to the Law on Protection of Environment and Government Resolution No. 637, new technical devices, technologies, materials and substances may not be imported to or produced in Kazakstan for the first time without positive conclusion of the State ecological expertise conducted by the Ministry of Ecology and Bio-Resources.**

**Do all new technical devices, technologies, materials and substances have to be approved by the Ministry of Ecology and Bio-Resources, or is there a defined list of categories of the above? If so, please provide such a list.**

Yes. All new technical devices, technologies, materials and substances, imported for the first time to Kazakstan, have to be approved by the Ministry of Ecology and Bio-Resources. The applicant must provide documents indicating potential environmental impact connected with the use of such devices, technologies, materials and substances.

There is no defined list.

**Question 101.**

**If approval is only required for selected technical devices, technologies, material and substances, how is this list determined?**

There is no defined list.

**Question 102.**

**On average, how long does obtaining approval take?**

The environmental impact assessment and approval may take up to 3 months from the date of receiving all materials depending on the quality of documents, potential environmental danger of products, and the need to use the services of independent experts.

**Question 103.**

**With respect to Annex 5 and Government Resolution No. 411 listing the product categories subject to compulsory certification to ensure safety, health, protection of property of citizens and the environment:**

**Does every shipment of each of these products have been certified or just the first shipment or the first shipments with spot checks?**

One certificate must be obtained for the import of a specific quantity of a specific product. The importer may import such quantity over a number of shipments. There is no need to obtain a new certificate for each shipment. A copy of the certificate is sufficient. However, if the certificate

is obtained from a non-Kazakstani accredited certification body, the copy must be converted to a Kazakstani certificate for each shipment (see Question No. 91).

**Question 104.**

**Does certification require inspection? If so, must each shipment be inspected?**

Certificates may be obtained prior to shipping products to Kazakstan. A shipment accompanied by a certificate (or a copy of a certificate - see question No. 103) issued by an accredited certification body is only subject to usual customs inspection. All products, subject to compulsory certification, imported to Kazakstan shall be controlled by the customs. One of the following documents should be provided to the customs for the importation of goods requiring compulsory certification:

- Certificate of GosStandard issued by an accredited Kazakstani certification body;
- Certificate provided by any of the State certification bodies of Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan;
- Certificate provided by foreign certification bodies accredited by GosStandard; or
- Application-Declaration form which may be filed by the importer if the imported goods do not have a certificate. The importer may clear the imported goods from customs but must initiate the certification process within ten days and does not have the right to sell these goods until the certificate is granted.

If the importer opts not to file an Application-Declaration form, then goods must be kept in customs storage warehouses at a fee until the importer obtain a certificate from any of the accredited certification bodies. Samples may be withdrawn only for testing. The same testing and inspection procedures are performed on imported products as domestic products.

Goods may remain in Customs storage warehouses for a maximum period of 3 years.

If the imported product is proven not to correspond to standards and is considered to be of potential danger, then a special commission is established to decide whether the product should be (i) reprocessed, (ii) destroyed, or (iii) shipped back to the country of origin. Decisions made by the commission may be appealed by the importer. During such period, the goods must remain under customs supervision and the importer must pay required storage fee.

However, a decision to immediately destroy the goods may be taken if its storage is proven to be dangerous because of sanitary reasons, if there is not adequate storage facilities, or if the product cannot be held in storage without further damage.

**Question 105.**

**Are domestic products subject to the same inspection requirements and procedures?**

The requirements and certification procedure for products manufactured in Kazakstan and for products imported to Kazakstan are the same. Domestic products are subject to the same inspection requirements and procedures.

**Question 106.**

**What is Kazakstan's experience in practice with the acceptance of certification from foreign certification bodies for items on this list?**

As mentioned under question 92, Kazakstan honours certificates issued by the certification bodies of other CIS countries and several foreign certification bodies accredited by GosStandard.

Kazakstan has had positive experience in practice with the acceptance of certification from foreign certification bodies.

**(j) Government-mandated countertrade and barter**

**Question 107.**

**Does the Government maintain statistics on the value and quantity of goods imported into and exported from Kazakstan through counter-trade and bartering within the CARES? If so, please furnish. If not, please describe the general categories of products traded in this manner.**

The Government does not maintain statistics on the value and quantity of goods imported into and exported from Kazakstan through counter-trade and bartering within the CIS countries. Countertrade and barter with CIS countries, however, is estimated to be 5.7 per cent relative to Kazakstan's total foreign trade.

Products in the following general categories are being traded via counter-trade and bartering: raw materials, machinery, parts, and components.

**(l) Government procurement practices**

**Question 108.**

**Currently there are two types of procurement of goods or services, those procured under Resolution No. 586 and those procured in accordance with the internal procurement regulations of State entities.**

**Please describe the provisions of Resolution No. 586 for the Working Party.**

A full text copy of Government Resolution No. 586 for your review and reference is provided in Attachment A.

**Question 109.**

**Are there plans to end this two-tier system? If so, what type of system is envisioned?**

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

**Question 110.**

**For those items appearing on the List of General-Purpose Goods, where are the public announcements published? Name of Newspaper? Magazine?**

In accordance with Article 10 of Resolution No. 586, the announcement of procurement for goods, works, or services appearing on the List of General-Purpose Goods, are communicated to potential suppliers through publication in the mass media (e.g. Kazakstanskaya Pravda) and by circulating invitations to potential bidders.

**Question 111.**

**For those items not appearing on the List of General-Purpose Goods, where are the public announcements published?**

Public announcements are usually circulated to potential bidders and published in mass media (e.g. Kazakstanskaya Pravda)

**Question 112.**

**Kazakstan states that the procedures governing tenders organized by State Customers are identical to those governing the procurement of goods or services appearing on the List with one exception: there is no stated priority given to domestic over foreign suppliers. This exception is outlined as a 20 per cent price-preference rule.**

**Are there domestic content rules that apply to any procurements? Please explain in detail any and all priorities and preferences given to domestic suppliers over foreign suppliers.**

There are currently no domestic content rules that apply to government procurements.

**Question 113.**

**Are there bid-challenge procedures in place if a company disagrees with an award by either the State Customers or the Bidding Commission of the Ministry of Economy? If so, please describe in detail the procedures for filing a bid-protest.**

There are currently no bid-challenge procedures in place. Please note, however, that the Republic of Kazakstan is currently in the process of drafting a government procurement law based upon the UNCITRAL model government procurement law.

-- **As a part of its protocol accession commitments, we expect Kazakstan to become a member of the Government Procurement Agreement, a schedule of commitments to be submitted to the GPA Committee no later than 3 months after the date of accession to the WTO.**

**(m) Regulation of trade in transit**

**Question 114.**

**The Memorandum states that Article 35 of the Customs Code provides for exceptions to the transit of goods in cases where the Government has adopted another decision as a retaliatory measure.**

**Are such decisions published for public comment? If so, in which publications are they found?**

The quoted provision is intended to allow the Government of Kazakstan to limit the transit through the territory of the Republic of goods originating in countries or their unions which have taken actions that harm the interests of Kazakstani entities. The circumstances in which the provision may be applied are not further defined by law or implementing legislation. In addition, the process of public notification regarding such decisions is not yet defined.

Please note that this provision has not been applied to date.

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

**1. General**

- (c) Membership international intellectual property conventions and regional or bilateral agreements**
- (ii) Anticipated membership in international intellectual property conventions**

**Question 115.**

**Section V.1(c)(ii) of Kazakhstan's Memorandum of Foreign Trade states that the Republic of Kazakhstan is now prepared to complete the process of accession to the Berne convention for the Protection of Literary and Artistic Works (the Berne Convention).**

**When is it expected that the Republic of Kazakhstan will deposit its instrument of ratification?**

The State Agency on Copyrights and Related Rights has submitted a formal proposal to the Government of the Republic of Kazakhstan to accede to the Berne Convention. That proposal is currently being considered by relevant State agencies. Unfortunately, a time- frame for a Government Resolution on accession has not yet been formally defined.

**Question 116.**

**Section V.1(c)(ii) of the Memorandum cites the Kazak-Russian Intergovernmental Agreement in the field of Industrial Property and a similar agreement with the Kyrgyz Republic.**

**Is there any advantage, benefit, privilege, or immunity granted by Kazakhstan to Russian or Kyrgyz nationals not granted to other foreign nationals on a most-favoured-nation basis? If so, please describe the advantages, benefit, privilege, or immunity.**

Nationals from the Russian Federation and Kyrgyz Republic enjoy the same rights which are granted to nationals of the Republic of Kazakhstan on a reciprocal basis. As such, Russian and Kyrgyz nationals do not need to engage the services of a patent or trademark agent (trustee) in order to submit applications to the Patent Office; rather, they may submit their applications directly. Patent fees, moreover, may be paid in Russian Rubles or Kyrgyz Som. Finally, the fee schedule for Kazak nationals (as set forth in Annex 10 of the Memorandum) is also applied to nationals of the Russian and Kyrgyz Republics.

- (d) Application of national and m.f.n. treatment to foreign nationals**

**Question 117.**

**Section V.1(d) of the Memorandum states that Kazakhstan's Constitution, Civil Code and Law on Foreign Investments give physical and juridical persons both national and most favoured nation treatment. Please cite the sections of each of those documents and provide a translation of the text.**

Article 12(4) of the Republic of Kazakhstan's Constitution

"Foreigners and persons without citizenship exercise their rights and freedoms in the Republic, as well as carry out the duties set up for the citizens, unless otherwise provided by the Constitution, laws and international treaties. "

Article 3(7) of the Republic of Kazakhstan's Civil Code



"Foreign individuals and legal entities as well as persons without citizenship are entitled to acquire the same rights and to perform the same duties which are provided for individuals and legal entities of the Republic of Kazakhstan by the civil legislation, unless otherwise provided by legislative acts."

Article 4(1) of the Republic of Kazakhstan's Law on Foreign Investments

"Any forms of foreign investment and activities related to it which is not prohibited by the current legislation of the Republic of Kazakhstan are made on conditions not less favourable than those which are provide for the investment of individuals and legal entities of the Republic of Kazakhstan in a similar situation, or any other foreign individuals or legal entities dependent on what conditions are the most favourable."

(e) **Fees and taxes**

**Question 118.**

**The fee schedule in Annex 10 is separated into fees charged nationals and non-nationals as stated in section V.1(e) of the Memorandum.**

**Are the Fees charged non-nationals equivalent to those charged national and, if not, what is the justification for the difference if Kazakhstan's Constitution, Civil Code and Law on Foreign Investments require that physical and juridical persons be given national treatment?**

The Constitution, Civil Code and Law on Foreign Investments all guarantee national treatment unless an exception from that guarantee is stipulated by another law. Government Resolutions No. 889 dated 20 October 1992 and No. 266 dated 6 April 1993 provide for exceptions to national treatment in the setting of the fee schedule charged to Kazak and foreign nationals.

**2. Substantive Standards of Protection, Including Procedures for the Acquisition and Maintenance of Intellectual Property Rights**

**(a) Copyright and related rights, including rights of performers, producers of phonograms and broadcasting organizations**

**Question 119.**

**Please describe how databases are protected under Kazakhstan's Law on Copyrights and Related Rights.**

According to Article 7 of the Copyright Law, databases are protected by copyright. The Copyright Law defines databases as a collection of information (articles, calculations, facts etc.) which due to selection and (or) organization of the materials represent results of a creative work and are systematized in such a manner that the information may be retrieved and processed with the help of a computer. Recent amendments to various laws, as set forth in, additions and Amendments to Certain Legal Acts of the Kazak SSR dated 16 July 1996, moreover, provides for administrative, civil and criminal responsibility for the violation of copyrights.

**Question 120.**

**In the event that the term of copyright cannot be measured by the life of an author, what is the term of protection provided under Kazakhstan's copyright law?**

Article 28 of the Copyright law determines the terms of copyrights as follows:

1. The copyright shall be valid during the entire life-span of the author and for fifty years after his death, except for the cases stipulated in this Article.
2. The right of authorship, the right of name and the right to protect reputation of authors shall be protected termlessly.
3. In the same procedure that executor of a will is appointed, an author shall have the right to indicate the person to whom he delegates the protection of the copyright, the right to name and the right to protect his reputation after his death.
4. The copyright in respect of an item promulgated anonymously or under a pen name, shall be valid within fifty years after the date of its legitimate promulgation. When during the indicated period an author of an item released anonymously or under a pen name, should disclose his identity, or his identity should leave no doubts any longer, then the provision of paragraph 1 of this Article shall apply.
5. The copyright in respect of an item created in co-authorship shall be valid during the entire life and fifty years after the death of the last author who survived the other authors.
6. The copyright in respect of an item which was first released within thirty years upon the author's death, shall be valid during fifty years after its release, counting from the first of January of the year following the year of the item's release.
7. In the event that an author was repressed and rehabilitated posthumously, then the term of protection of his rights which is stipulated in this Article, shall be valid from the first of January of the year following a rehabilitation.
8. The measurement of periods stipulated in this Article shall begin from the first of January of the year following a year in which the legal fact which is the basis for beginning of the period's course took place.

**Question 121.**

**Section V.2(a) makes no reference to restoration of copyright in works that are still protected in their country of origin and that have not had a full term of protection in Kazakhstan. Article 18 of the Berne Convention, incorporated by reference in Article 9.1 of the TRIPS Agreement requires that copyright protection be applied to such works.**

**Please describe how Kazakhstan plans to fulfil this obligation on its accession to the Berne Convention.**

The Copyright Law fully implements the provisions set forth in the Berne Convention including Article 18 thereof (and Article 9.1 of the TRIPS Agreement) regarding the principle of expiry of terms of protection. In particular, Article 5(1)(3) of the Copyright Law states that copyright protection will be extended, to items promulgated, or not promulgated but existing in objective form, beyond the boundaries of the Republic of Kazakhstan and which are recognized as belonging to the authors (or their legal successors) who are citizens of other states in accordance with the international treaties of the Republic of Kazakhstan. When Kazakhstan accedes to and ratifies the Berne Convention, the terms of that Convention will be directly applicable within the Republic in accordance with Article 4 of the Constitution. Accordingly, the terms of protection extended to authors by virtue of Article 28 of the Copyright Law will apply to works which, at the moment of the coming into force of the Convention within Kazakhstan, have not yet fallen into the public domain in the country of their origin. Those works

which have already fallen into the public domain by virtue of the principle of the expiry of terms will be deemed to be national property in accordance with Article 29 of the Copyright Law.

**Question 122.**

**Section V.2(a) states that Kazakstan's new Law on Copyrights and Related Rights provides rental rights for cinematographic works and computer programs. Subsection (iii) does not mention rental rights in connection with sound recordings.**

**Are rental rights provided producers of sound recordings and, if not, when will the law be amended to provide such rights?**

Yes. Article 38(3) of the Copyright Law provides rental rights to the producers of sound recordings as follows, "...The right to distribute copies of a [sound recording] shall rest with the [manufacturer] of the phonogram, irrespective of the right of ownership of those copies."

**Question 123.**

**Section V.2(a)(iii) discusses protection for the producers of phonograms, but does not mention providing protection for existing works.**

**Please describe how Kazakstan plans to protect sound recordings that are still protected in their country of origin and have not had a full term of protection in Kazakstan as is required by Article 14 of the TRIPS Agreement.**

Article 42 of the Copyright Law extends 50 year terms of copyright protection to performers (from the date of their first performance or stage production); phonogram manufacturers (from the date of their first publication or first recording if not published); broadcast organizations including cable (from the date of their first broadcast), and radio and television broadcasts (from the moment of their legitimate production or creation and, if not produced, then from the date the Copyright Law entered into force - 10 June 1996 - they will be protected as related rights until their term shall expire). Article 5 of the Copyright Law, moreover, extends protection to the aforementioned (regardless of their country of origin) in the same manner as protection would be extended if they were of Kazak origin. As such, all requirements set forth in Article 14 of the WTO TRIPS Agreement in connection with sound recordings are fulfilled through the protection afforded them by the Copyright Law.

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

**Question 124.**

**Section V.2(b) states that at least five consecutive years of non-use of a mark must occur before interested parties may file a petition for cancellation for non-use.**

**If the reason for non-use is beyond the control of the owner of the mark, such as some restriction on the sale of the product or service identified by the mark, would that prevent cancellation?**

Article 24(5) of the Law on Trademarks provides that the owner of a trademark challenged for non-use thereof, may submit evidence demonstrating that non-use was due to circumstances beyond the control of the owner. The Patent Office, in rendering its discretionary determination on non-use, is bound to take this evidence into account.

**Question 125.**

**Article 6bis of the Paris Convention for the Protection of Industrial property (the Paris Convention), adopted by reference by Article 2.1 of the TRIPS Agreement, requires that members protect well-known marks, even though not registered.**

**Please describe the nature of the protection for well-known marks under Kazakstan's Law and describe what the owner of such a mark must do to invoke this protection.**

Legal protection of trademarks in the Republic of Kazakstan is provided on the basis of the registration and issuance of a trademark certificate in accordance with the procedures set forth in the Law on Trademarks. Article 15(1) of the Trademark Law specifically prohibits the registration of marks as trademarks which are similar or identical to those which are protected by virtue of international conventions to which Kazakstan is a party. Since the Government of the Republic of Kazakstan has declared its participation in the Paris Convention, the terms of that Convention, specifically Article 6bis and 10bis, are directly applicable in accordance with Article 4 of the Constitution. As such, the right-holders of well-known marks are afforded protection regardless of whether those rights are registered as such in the Republic of Kazakstan.

In order to invoke this protection, the owner may petition the Patent Office of the Republic of Kazakstan to cancel the registration of the offending mark. The owner may also petition the administrative bodies or courts of the Republic of Kazakstan to recognize the mark as well-known and to prevent its continued unauthorized use. If a mark is recognized as well-known in accordance with Article 31 of the Trademark Law, a court or other administrative body may compel the violator to:

- terminate the use of the well-known mark or designation which is similar to the well-known mark to the extent that it is causing confusion with it; and upon the choice of the owner to:
  - compensate the owner for full damages including total amount of lost profits gained from illegal use of the mark;
  - remove from goods or packaging the illegally used mark or designation similar thereto; and
  - publish the decision of the administrative body or court which is authorized by Law to consider the dispute.

**Question 126.**

**Please describe any limitations or restrictions placed upon licensing of trademark, including any restrictions relating to investment.**

There are no limitations or restrictions placed upon the licensing of trademarks, as such. According to Article 26 of the Law on Trademarks, agreements for the licensing of trademarks must comply with the following conditions:

- the agreement must be in writing;
- provisions within the licensing agreement stipulating the quality of the goods associated with the licensee's use of the trademark will not be inferior to those of the licensor's;
- provisions in the licensing agreement providing to the licensor the right to supervise compliance with the terms of the agreement; and
- mandatory registration of the agreement between the licensor and licensee with the Patent Office.

(c) **Geographical indications, including appellations of origin**

**Question 127.**

**Section V.2(c) states that geographical identifications identifying a product having a quality or characteristic attributable to the area within Kazakstan where it originates can be registered with the National Patent Office.**

**Please describe the nature of the rights acquired with registration?**

According to the Trademark Law, geographical indications may be registered as designating a good whose specific qualities are mainly or exclusively associated with its place of origin (where place of origin is understood to be the good's source of natural occurrence, manufacture or both). The geographical indication can not itself constitute an object of registration which provides exclusive rights to one or more business entities; only the geographical indication's association with a particular good may be so registered. As such, the certificate of registration confers the right to use the name of the place of origin of a good in association with that good. Geographical indications, moreover, may only be registered if they do not mislead consumers regarding place of origin or encroach upon the rights of third parties. Finally, geographical indications which are obviously fictitious, may be applied to goods but will remain unprotected as such.

**Question 128.**

**Are foreigners provided protection for geographical indications of products originating within another country's territory? Please describe the requirements of such a registration.**

Yes. An applicant (regardless of nationality) for registration of a geographical indication and the granting of its right of use in association with a particular good should submit to the Patent Office a written application containing the following information:

- a single name indicating the place of origin of a good;
- the name of the applicant(s) and the applicant(s)'s place of residence;
- the designation which is applied to the goods;
- the type of good for which the registration of the place of origin is sought including its place of manufacture (or natural occurrence or both) and a description of the specific properties of the good;
- if the applicant (whether foreign or domestic) is seeking a geographical indication in association with goods originating within the territory of the Republic of Kazakstan, then a conclusion of the local administrative body certifying that the applicant resides, and the goods originate, therein;
- if the applicant (whether foreign or domestic) is seeking a geographical indication in association with goods originating outside the territory of the Republic of Kazakstan, then a document certifying the right of the foreign applicant to the geographical indication in association with a good from the country where the good originates; and
- a document confirming the authority of a patent trustee to act on behalf of the applicant (while domestic applicants may submit their applications directly to the Patent Office, foreign applicants must submit their applications through a patent trustee).

**Question 129.**

**Who may apply for registration? Please describe how a geographical indication is enforced in Kazakstan.**

See answer to previous questions.

**(d) Industrial designs**

**Question 130.**

**Are application for patents for industrial designs searched examined in a manner similar to patent applications or is the patent based upon a registration system?**

Industrial designs are initially granted protection on the basis of a preliminary patent. A preliminary patent is granted after a formal expertise of the application for a preliminary patent and is valid for a period of five years from the date of its receipt by the Patent Office. At any time during the first four years of the date that the application for a preliminary patent is submitted, an application for a patent may be submitted. After an expertise in essence is conducted, including a check on the conditions of patentability of the industrial design (novelty, originality and industrial applicability), a patent may be granted for a period of ten years (calculated from the date that the application for a patent was submitted to the Patent Office). The patent-holder may also petition the Patent Office for an extension of the patent for up to five additional years.

**Question 131.**

**Section V.2(d) of the Memorandum states that a compulsory licence can be granted by the courts if the owner of a patent or an industrial design does not use the patent during the period that is five years following the date the patent was granted.**

**If the reason for non-use is beyond the control of the owner of industrial design, such as some restriction on the sale of the product involved, would that serve as justification for the non-use and prevent the grant of the compulsory licence?**

Yes. According to Article 11(3) of the Patent Law, the owner of a patent confronted with a petition for a compulsory licence for non-use thereof, may submit evidence demonstrating that non-use was due to respectful reasons.

**Question 132.**

**Section V.2(e) of the Memorandum states that layout designs of integrated circuits are excluded from patentability under Kazakhstan's patent law. Article 27.1 of the TRIPS Agreement requires that patents be available in all fields of technology, except for those identified in paragraphs 2 and 3. Integrated circuit layout designs are not so identified.**

**What plans has Kazakhstan to amend its patent law to eliminate the exception from patentability for layout designs?**

Currently, Article 5(3) of the Patent Law does not recognize the layout designs of integrated circuits as patentable. It is anticipated, however, that protection of integrated circuit layout designs will be provided for in the Special Part of the Civil Code (Part II) and a Law on the Protection of Layout Designs. The Government, however, has not yet circulated official drafts of Part II of the Civil Code or the Law on the Protection of Layout Designs.

**Question 133.**

**Section V.2(e) of the Memorandum lists the activities that would be treated infringement of the patent. Use of the patented invention is not listed.**

**Would unauthorized use of a patent invention in Kazakhstan constitute infringement of the patent?**

Yes. Article 15 of the Patent Law clearly states that, "any person ... which uses items of industrial property [defined in Article 1 of the Patent Law to include patent inventions] in contradiction to this Law shall be a violator of the patent".

**Question 134.**

**Section V.2(d) of the Memorandum states that a compulsory licence can be granted by the courts if the owner of a patent for an invention does not use the patented invention during the period that is five years following the date the patent was granted.**

**If the reason for non-use is beyond the control of the owner of the invention, such as some restriction on the sale of the product involved, would that serve as justification for the non-use and prevent the grant of compulsory licence?**

Yes. Article 11(3) of the Patent Law provides that a patent-holder who is challenged to provide a compulsory licence on the basis of non-use, may provide evidence to the court that the, insufficient use has been caused by respectful reasons.

**(f) Plant variety protection**

**Question 135.**

**Section V.2(f) of the Memorandum states that plant variety protection is on Kazakstan's legislative agenda for 1997-98.**

**Please describe the nature of the protection envisioned and means for acquiring it. Will Kazakstan become a member of the Convention for Protection of New Varieties of Plants when that legislation is enacted?**

It is anticipated that the draft Law on Protection of Selection Achievements will certify: (i) that the patent-holder has an exclusive right to the selection achievement, (ii) the priority of the patent, and (iii) the authorship of the selection achievement. Applications for this patent will be received by the Patent Office and the application will be granted upon its proper expertise. The scope of the legal protection provided will be determined by a total of the indications included into the description of the grade of plants or breed of animals. Upon enactment of the Law, the Republic of Kazakstan intends to commence the process of accession to the UPOV Convention on the Protection of Selection Achievements.

**Question 136.**

**Is it envisioned that some form of protection will be provided for selection achievements in breeds of animals?**

Yes. A specific law on selection achievements is currently on the Government's drafting agenda. An official draft of this law, however, has not yet been prepared.

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

**Question 137.**

**When is legislation for protection of integrated circuit layout designs expected to be prepared and enacted?**

It is anticipated that protection of integrated circuit designs will be provided in the Special Part of the Civil Code (Part II) and the Law on the Protection of Layout Designs. As already noted, the Government has not yet circulated official drafts of these two proposed laws.

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

**Question 138.**

**Please give citations to the portions of Kazakhstan's Civil code that provide protection for undisclosed information and describe the nature of the protection provided such information.**

Article 126 of the Civil Code states that:

"1. The information making official or commercial secret is protected by the law in case when the information has actual or potential commercial value because it is not known to third persons, there is no free access to it on legal grounds and the information possessor takes measures to protect its confidentiality.

2. Persons who obtained such information illegally, as well as employees contrary to labour contract or counter-agents contrary to civil law contract who disclosed official or commercial secret, are bound to compensate the inflicted damage."

**Question 139.**

**How would the person in control of undisclosed information enforce his rights? What remedies are available?**

At present, the laws of the Republic of Kazakhstan provide civil remedies to persons in control of undisclosed information. Accordingly, a person in control of undisclosed information who wishes to enforce his rights must file a complaint with the court having jurisdiction over the person who has allegedly violated those rights. Remedies which the court can provide include the payment of damages and the costs of enforcing the rights.

**Question 140.**

**Are remedies available against a party that acquired undisclosed information if that party knew or should have know that it was acquired in a manner that was contrary to honest commercial practices.**

Same as above. Please note, however, that a person who acquires undisclosed information knowingly or under circumstances in which that person should have known that it was undisclosed may be liable for acts constituting unfair competition in accordance with Article 193(3) of the Administrative Code and Article 168(2) of the Criminal Code.

**Question 141.**

**Please describe in detail the protection provided undisclosed data submitted to agencies of the Republic of Kazakhstan in order to obtain marketing approval for chemical, pharmaceutical, or agricultural products.**

Undisclosed data submitted to the agencies of the Republic of Kazakhstan in order to obtain marketing approval for chemical, pharmaceutical, or agricultural products is protected by Article 126 of the Civil Code as an official secret (see answer to question 138 supra). As such, employees of ministries and other State agencies which disclose an official secret will be held administratively



responsible. The Ministries and other State agencies which employ the individual making such an unauthorized disclosure, will also be held liable for the employee's unauthorized action.

### 3. Measures to Control Abuse

#### Question 142.

**Please describe the activities in connection with intellectual property rights that would be considered abuse under Kazakstan's law.**

The following activities in connection with intellectual property rights are considered an abuse of those rights and will entail criminal responsibility:

- falsely assuming authorship or forcing others to assume co-authorship by persons who did not take part in the creative work leading to a discovery, invention or rationalization; the disclosure of the essence of a discovery, invention or rationalization proposal without the consent of an author prior to filing the application;
- undue delays in reviewing an invention or rationalization proposal, evasion from informing an inventor or a rationalization on the use of his invention or rationalization proposal, deliberately wrong calculation of economies or deliberately wrong calculation of royalty and delay in its payment, which were committed by an official;
- disclosure of information on secret discoveries, inventions and rationalization proposals, in the absence of indication of treason (Art. 129 of the Criminal Code);
- violation of copyright and allied rights expressed in illegal reproduction, circulation, dissemination or other illegal use of object of copyright or allied rights committed with the view to gain profit, which caused heavy damage to the holders of copyright or allied rights (Art. 129-1 of the Criminal Code).

The following activities in connection with intellectual property rights are considered an abuse of those rights and will entail administrative responsibility:

- the use of items of industrial property which have been certified by appropriate documentation in a manner which infringes established norms and rules (Art. 170-2 of the Administrative Code, Article 30 of the Trademark Law, and Articles 15 and 33 of the Patent Law);
- sale, hiring out and other illegal use of copies of works or phonograms, in case if:
  - copies of works or phonograms are counterfeit according to the Republic of Kazakstan's legislation;
  - on the copies of works or phonograms false information of their producers and places of production is provided, as well as other information which may mislead customers;
  - on the copies of works or phonograms copyright protection mark or allied rights protection mark put by the copyright holder or allied rights holder, is destroyed or changed (Art.170-3 of the Administrative Code);
  - refusal to provide the necessary data on income to an authorized agency as well as presentation of unauthentic data on income gained in connection with the use of objects of copyright and allied rights (Art.170-4 of the Administrative Code).

Any other infringements of provisions and requirements of current legislation on intellectual property are regarded as civil law infringements and involve civil law responsibility - basically, in the form of obligation to compensate the damage caused.

#### **4. Enforcement**

##### **(a) Civil judicial procedures and remedies**

###### **Question 143.**

**Please describe the structure of Kazakhstan's judicial system dealing with disputes for domestic parties and foreign parties at all levels.**

According to the current legislation of the Republic of Kazakhstan, disputes concerning intellectual property rights are considered on general terms in regular courts. The structure of the regular court system is set forth in Section III.1(c) of the Memorandum. There is no distinction between domestic and foreign parties who are parties to the aforementioned type of dispute. Please note, however, that foreign investors may be accorded additional dispute settlement alternatives in accordance with the Law on Foreign Investment (see discussion supra).

###### **Question 144.**

**Please describe what training, if any, has been provided to judges to enable them to consider disputes involving intellectual property rights.**

The Republic of Kazakhstan has not yet instituted a programme of special training in intellectual property matters for judges

##### **(b) Provisional measures**

###### **Question 145.**

**When is it envisioned that judges and administrative authorities will be given the authority to grant provisional relief in order to prevent serious harm and to preserve evidence?**

Judges and administrative authorities already have the power to grant provisional relief in order to prevent serious harm and to preserve evidence. Article 135 of the Civil Code of the Republic of Kazakhstan provides judges with the power to take the following measures to meet a claim at the request of the complainant (or upon the initiative of the judge):

- to arrest the defendant's property;
- to prohibit a defendant from taking certain actions such as the sale of goods bearing a trademark belonging to the complainant; and
- to prohibit other persons from transferring property to the defendant or from fulfilling other commitments with regard to the defendant.

Procurators, moreover, have powers similar to those of a judge.

##### **(c) Administrative procedures and remedies**

###### **Question 146.**

**Please describe any administrative actions available to the owners of intellectual property rights to enforce those rights and identify the agencies responsible for such actions. How would foreign parties invoke such actions?**

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(d) **Special border measures**

**Question 147.**

**Please describe the nature of the border measures that will be adopted to prevent importation of counterfeit trademarked goods and pirated copyrighted works. When will this legislation be enacted?**

The Government of the Republic of Kazakhstan has instructed the Customs Committee to prepare appropriate amendments to the Customs Code to provide for, *inter alia*, special border measures to prevent the importation of counterfeit trademarks and pirated copyright works.

(e) **Criminal procedures**

**Question 148.**

**Please describe the nature of the criminal actions that will be adopted to prevent trade in counterfeit trademarked goods and pirated copyrighted works. When will this legislation be enacted?**

On 16 July 1996, the Republic of Kazakhstan enacted amendments to, *inter alia*, its Criminal Code to address pirated copyrighted works. The relevant provisions thereof read as follows:

1) Article 129

Appropriation of authorship, compulsion to co-authorship, inclusion into co-authorship of persons who did not participate in the creative activity for a discovery, an invention or a rationalisation proposal, disclosure of essence of a discovery, an invention, a rationalisation proposal prior to the application date without authors' consent, -

shall entail correctional activity for the period from one to two years or a fine in the amount from two to six minimum wages, or the case shall be passed on to the comrades' court.

Bureaucracy and procrastination in the process of reviewing and introducing inventions and rationalisation proposals, evasion from informing an inventor or a rationalizer about usage of his invention or rationalisation proposal, intentional inaccurate economic calculation or intentional inaccurate calculation of remuneration and delay in payment thereof, committed by officials, -

shall entail correctional activity for the period from one to two years or a fine in the amount from two to six minimum wages, or dismissal.

Disclosure of any information associated with confidential discoveries, inventions and rationalization proposals without any signs of State crime, -

shall entail deprivation of freedom for a period of up to one year or correctional activities for the period of up to two years, or dismissal.

2) Article 129-1

Violation of copyrights and related rights resulted in illegal use of copyright and related rights items committed for the purpose of gaining profit which inflicted large damage to the holder of the copyright and related rights, -

shall entail deprivation of freedom for a term from one to three years with confiscation of counterfeit copies as well as materials and equipment for reproduction thereof or a fine in the amount from five hundred to one thousand five hundred minimum wages as established by the legislation of the Republic of Kazakhstan.

## **VI. TRADE-RELATED SERVICES REGIME**

### **3. Market Access and National Treatment**

#### **(b) Limitations on the total value of service transactions or assets**

#### **Question 149.**

**Kazakhstan states that the Law on Insurance dated 2 October 1995 does not allow more than 95 per cent of the risk to be re-insured outside of Kazakhstan.**

**Does this restriction apply to all insurers, or solely to foreign insurers?**

This restriction applies to all insurers (100 per cent Kazakhstani legal entities; and Kazakhstani entities with foreign participation up to 50 per cent) and all foreign and domestic re-insurers.

#### **(f) Limitations on the participation of foreign capital**

#### **Question 150.**

**Do United States' banks and insurance companies receive national treatment despite the Edict of the President Having the Force of Law On Banks and Banking Activities and the Law On Insurance described in this paragraph?**

Foreign insurance companies are allowed to establish in the form of representative or branch offices but may only be engaged in re-insurance activities. In order to be engaged in insurance activities, however, a foreign insurer must form a joint venture with a local insurance company. Foreign participation in this case may not exceed 50 per cent. Insurance companies with foreign participation (maximum 50 per cent) has the same rights and privileges as insurance companies without foreign participation.

Foreign banks may establish representative or branch offices but may not provide banking services until they are registered as a Kazakhstani legal entity which could be up to 100 per cent foreign-owned. Banks with foreign participation may not register in Kazakhstan if the total registered charter fund of all banks with foreign participation exceeds 25 per cent of the overall registered charter fund of all banks in Kazakhstan.

Banks with foreign participation (partially or 100 per cent foreign-owned) have the same rights and privileges as banks without foreign participation.

In addition, all foreign banks and insurance companies, regardless of country of origin, receive equal treatment.

#### **(i) Provisions concerning any form of aid, grant, domestic subsidy, tax incentive or promotion scheme affecting trade in services**

#### **Question 151.**

**Please describe how the proceeds from the guaranteed loans provided to the trade services sector (US\$39 million) and transport services (US\$67 million) were applied by loan recipients.**

The proceeds from the guaranteed loans provided to the trade services sector (US\$39 Million) and transport services (US\$67 Million) were applied by loan recipients as follows:

- trade services: purchase of wide range of consumer goods including pharmaceuticals;
- transport service: rehabilitation of railroad Drujba to China.

**Question 152.**

**What is the extent of State ownership and control of airline and air freight service providers?**

Freight and passenger air transportation in Kazakhstan are fulfilled by both State and private air companies. For passenger transportation, the share of State companies is 50 per cent and private companies (excluding foreign companies) is 50 per cent. For air freight transportation, the share of State companies is 35 per cent and the share of private companies (excluding foreign companies) is 65 per cent.

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

**1. Bilateral or Plurilateral Agreements Relating to Foreign Trade in Goods and Trade in Services**

-- We seek a commitment from the Kazakhstan Republic that it will adhere to the WTO Agreement on Trade in Civil Aircraft from the date of accession.

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

- Bilateral agreements providing duty free for certain products

**Question 153.**

**The Kazakhstan Republic Participates in bilateral agreements with Moldova and Kyrgyzstan that permit duty free access for certain products. GATT 1994 Article XXIV permits an exception from most favoured nation treatment for imports from countries participating in a free trade area agreement. In order to qualify as a free trade area, the agreements must cover substantially all trade and not raise barriers to the trade of the other WTO members. The Memorandum states that the Kazakhstan Republic has excluded several products from duty-free treatment under these bilateral agreements, including goods requiring export contracts registration; goods requiring import licences; and goods that are subject to export tariffs, licences and quotas.**

**According to Paragraph IV.2(e) of the Memorandum, approximately 26 per cent of the of the total value of exports is subject to contract registration. Virtually all of the Kazakhstan Republic's agricultural production appears to be excluded from duty- free treatment by the bilateral agreements as goods requiring export contracts registration. How does the Kazakhstan Republic intend to satisfy the GATT 1994 Article XXIV substantially all trade requirement, when 26 per cent of total goods exported, including virtually the entire agriculture sector, is excluded from coverage by these bilateral agreements?**

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 per cent (instead of approximately 26 per cent previously) of total value of export (based on 1995 export data) is subject to contract registration.

Of all the FTAs 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 upon 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.

In the case of Moldova:

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

0.0057 per cent and 0.0057 per cent for 1995; and  
0.0015 per cent and 0.0007 per cent for the first three quarters of 1996.

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 per cent and 5.14 per cent for 1995; and  
2.5 per cent and 0.17 per cent for the first three quarters of 1996.

As may be noticed from the above calculations, the GATT 1994 Article XXIV "substantially all trade" criterion is not violated.

**Question 154.**

**Please identify the products excluded from duty-free treatment under the bilateral agreements as goods requiring permission from the Government of Kazakhstan for export and import, e.g., goods of strategic importance. Is there a published list of these items?**

Yes. The list for import was provided in Table A3.2 and the list for export was provided in Table A9.2 of WT/ACC/KAZ/3. The items concerned - with exception of wild animals and plants - fall under Article XXI and outside of the competence of GATT 1994.

**Question 155.**

**Please identify any products that are excluded from duty-free treatment in one of the bilateral agreements which are currently in force, but are not excluded from duty-free treatment by the other bilateral agreement. Please describe any differences in coverage between the two agreements.**

Differences may not be explained, given that only one agreement (with Moldova) contains exceptions from free trade.

**Question 156.**

**Please identify the products, including HS tariff numbers, that are to be excluded from duty-free treatment for each of the bilateral agreements, yet to be implemented, with Lithuania, the Russian Federation, Ukraine, Uzbekistan and Tajikistan.**

The list of exemptions from free trade are agreed upon in protocols to these agreements. No protocols exist addressing such issues with Lithuania, Ukraine, Uzbekistan and Tajikistan. Please note that there are no goods excluded from free trade with the Russian Federation.

- **Customs Union Agreements**

**Question 157.**

**We appreciate the Republic of Kazakstan's commitment to implement its customs union agreement, with the Russian Federation and Belarus, in a way that is fully compatible with WTO requirements.**

**What is the current status of Kazakstan's implementation of the customs union with the Russian Federation and Belarus?**

The Customs Union is in the course of being implemented. The common external tariff is not yet in place. The work on the harmonization of foreign trade legislation is under way. No detailed timetable has yet been fixed for this work. As soon as such a timetable is established, it will be communicated to the WTO.

**Question 158.**

**Please identify, including HS tariff number, any products that the Kazakstan Republic intends to exclude from coverage by the customs union agreement.**

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.

**Question 159.**

**Will Kazakstan's trade average tariff rate increase as a result of implementation of the common external tariff?**

Given that the common external tariff is not yet in place, it is difficult to predict whether or not Kazakstan's trade average tariff rate will increase.

LIST OF ATTACHMENTS<sup>1</sup>

- Tax Code - Articles 3 and 4;
- Tax Code - Section VI. Taxation of Subsurface Users;
- Customs Code - Chapter 12;
- Customs Code - Articles 115 and 116;
- Customs Code - Articles 122 to 133;
- Presidential Edict No. 2823 Having the Force of Law Concerning Special Economic Zones in the Republic of Kazakhstan;
- Government Resolution No. 586 of 13 May 1996 On State Procurement of Goods; and,
- Law of the Republic of Kazakhstan Concerning Currency Regulations of 24 December 1996.

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<sup>1</sup>Available in the Secretariat (Accessions Division, Room 1126) for consultation.