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Working Party on State Trading Enterprises

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STATE TRADING

**NEW AND FULL NOTIFICATION PURSUANT TO ARTICLE XVII:4(A) OF THE
GATT 1994 AND PARAGRAPH 1 OF THE UNDERSTANDING ON
THE INTERPRETATION OF ARTICLE XVII**

KAZAKHSTAN

The following communication, dated 5 November 2020, is being circulated at the request of the delegation of Kazakhstan.

Pursuant to the provisions of Article XVII:4 (a) of the GATT 1994 and paragraph 1 of the Understanding on the Interpretation of Article XVII, Kazakhstan submits herewith its notification concerning state trading enterprises. This notification covers the Ural-Atyrau Sturgeon Fishing Plant for the years of 2018 and 2019.

**I. REPUBLICAN STATE ENTERPRISE "URAL-ATYRAU STURGEON FISHING PLANT"
(HEREINAFTER – RSE "UASFP")**

A. Identification of state trading enterprises

Mailing/actual address:
060009,
The Republic of Kazakhstan,
Atyrau region,
City of Atyrau,
Village of Zhanatalap
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B. Description of products affected (including tariff item number(s) encompassed in product description)

General group of HS	HS Code	Heading of commodity item	Name of the product produced by RSE «UASFP»
1	2	3	4
Smoked fish, including fillets, other than edible fish offal	0305 49 801 0	Sturgeons	Cold smoked sturgeon fish (beluga, sturgeon, starry sturgeon, barbel sturgeon)
Fish, frozen, excluding fish fillets and other fish meat of heading 0304: - sturgeons; - for industrial products of heading 1604	0303 89 101 0 0303 89 102 0 0303 89 103 0	Sturgeons	Frozen sturgeon fish (beluga, sturgeon, starry sturgeon, barbel sturgeon)
Sturgeon caviar	1604 31 1604 32	Sturgeon caviar	Caviar (beluga, sturgeon, starry sturgeon)

II. REASON AND PURPOSE FOR ESTABLISHING AND/OR MAINTAINING STATE TRADING ENTERPRISE

A. Reason or purpose for establishing and/or maintaining state trading enterprise

The RSE "UASFP" was established in accordance with the Government Resolution of the Republic of Kazakhstan No. 909 of 16 September 1998 for the implementation of artificial breeding of wildlife for sustainable use, conservation of biological diversity and gene pool.

For the purpose of preservation of Acipenseridae fish species (sturgeon species), national legislation introduced State monopoly on their catch from natural habitat, processing and sale. In this regard, the RSE "UASFP" was determined as a State monopoly entity in accordance with the Government Resolution of the Republic of Kazakhstan No. 1262 "On reorganization of Republican State Treasury Enterprise "Ural-Atyrau Sturgeon Fishing Plant" under supervision of the Committee of Forestry and Fauna of the Ministry of Agriculture of the Republic of Kazakhstan" (pursuant to the amendments made by the Government Resolution of the Republic of Kazakhstan No. 1413 "On Certain Issues of the Ministry of Environment and Water Resources of the Republic of Kazakhstan" of 27 December 2013).

B. Summary of legal basis for granting the relevant exclusive or special rights or privileges, including legal provisions and summary of statutory or constitutional powers

In accordance with paragraph 1 of Article 11-1 of Law of the Republic of Kazakhstan No. 593 "On Protection, Reproduction and Use of Fauna" of 9 July 2004, the activity of harvesting the sturgeon species from their natural habitat, their purchasing, processing, and export (*Law of the RK No. 73-VI of 15 June 2017 substituted the word "export" by the word "sale"*) of their caviar and other types of products is related to the State monopoly and is conducted exclusively by a State enterprise. Thus, the RSE "UASFP" is the only company in the Republic of Kazakhstan which has the right to export sturgeon species, harvested from natural habitat, their caviar and other types of their products.

III. DESCRIPTION OF THE FUNCTIONING OF THE STATE TRADING ENTERPRISE

A. Summary statement providing overview of operations of the state trading enterprise

The RSE "UASFP" engages in rehabilitation of sturgeons' population in the Republic of Kazakhstan by means of artificial reproduction with a capacity about 3.5 million juvenile fish per year (beluga, sturgeon, starry sturgeon, barbel sturgeon) in the framework of governmental contract.

The RSE "UASFP" is supervised by the Committee of Forestry and Fauna of the Ministry of Ecology, Geology and Natural Resources of the Republic of Kazakhstan in accordance with Resolution of the Government of the Republic of Kazakhstan No. 479 of 5 July 2019.

B. Specification of exclusive or special rights or privileges enjoyed by the state trading enterprise

In compliance with Law of the Republic of Kazakhstan No. 593 "On Protection, Reproduction and Use of Fauna" of July 9, 2004 the activity of harvesting the sturgeon species from their natural habitat, their purchasing, processing, and sale of their caviar and other types of products relates to the State monopoly and is conducted exclusively by the State enterprise.

In cases of incidental catch of sturgeon species, as well as the finding of ownerless fishing gear with sturgeon species, viable individuals should be released into natural habitat or transferred to State enterprises, which breed young sturgeon species within the state order, and non-viable (dead) individuals should be released into natural habitat.

Harvesting of sturgeon species from natural habitat is conducted by State enterprises of fish reproduction with the aim of artificial breeding, as well as by legal entities for scientific and research purposes in the order established by the Ministry of Agriculture (Rules of work on stocking reservoirs, fisheries reclamation of water bodies approved by the Order of the Minister of Agriculture of the Republic of Kazakhstan No. 18-05/928 of 14 October 2015).

The Ministry of Agriculture in coordination with the competition authority establishes the price for products sold by the State monopoly entity. Current prices have been established in accordance with Order of the Minister of Agriculture of the Republic of Kazakhstan No. 18-05/839 of 22 September 2015.

C. Type of entities other than the state trading enterprise that are allowed to engage in importation/exportation and conditions for participation

As pointed out above, only State enterprises can engage in the sale of sturgeon species harvested from natural habitat and products thereof. Meanwhile, State enterprises do not have monopoly on artificial breeding of sturgeon species. Paragraph 4 of Article 19 of Law of the Republic of Kazakhstan No. 593 "On Protection, Reproduction and Use of Fauna" determines that artificial breeding of sturgeon species for commercial purposes can be conducted by physical and juridical persons and other entities/sources not prohibited by legislation of the Republic of Kazakhstan.

Nevertheless, it is worth mentioning that in accordance with paragraph 3 of Article 19, animal species included in Annexes I and II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (hereinafter – CITES) can be traded only if they were bred in fish-farms or in semi-farming to be registered at the administrative authority. In other words, entities intended to engage in farming of sturgeon species shall be registered at the administrative authority.

Appendix I of the CITES includes *Acipenser sturio* and *Acipenser brevirostrum* and determines them as species that are threatened with extinction. All the other sturgeon species are listed in the Appendix II to CITES and are not necessarily now threatened with extinction but that may become so unless trade is closely controlled. Species from the Appendix II of the CITES are allowed in trade under a CITES permit and under the condition that they were produced in the framework of sustainable fishing and lawfully.

D. How import/export levels are established by the state trading enterprise

At the Third Summit of Heads of the Caspian Region States on 18 November 2010 in Baku, the President of the Republic of Kazakhstan N.A. Nazarbayev announced an initiative on introduction of five-party moratorium for the catch of sturgeon species in the Caspian Sea for 5 years.

The "Agreement on the conservation and sustainable use of aquatic biological resources of the Caspian Sea" was concluded on September 29, 2014 in Astrakhan (Russian Federation) and the Commission on the conservation, sustainable use of aquatic biological resources and management of shared stocks of the Caspian Sea was established. One of the Commission's functions is to determine the total allowable catches of shared aquatic biological resources and their allocation to national quotas annually.

According to the decisions of the Commission, the moratorium on the commercial catch of sturgeon species in Caspian Sea was extended for 2018, 2019 and 2020.

Since 2012 the Republic of Kazakhstan has established a ban on catch of sturgeon species, except for reproductive and scientific purposes (the Government Resolution of the Republic of Kazakhstan No. 303 of 7 March 2012, invalidated by the Government Resolution of the Republic of Kazakhstan No. 745 of 4 September 2015 and replaced by the Order of the Acting Chair of the Committee of Forestry and Fauna of the Ministry of Agriculture of the Republic of Kazakhstan No. 190 "On Introduction of Restrictions and Prohibitions on the Use of Fauna, their Parts and Derivatives, Establishment of Places and Terms of Use" of 24 July 2015).

The quota for catch of sturgeon species allocated for reproductive purposes and for conducting scientific and research works is established by the order of authorized body for the respective period.

Thus, for the period from 15 February 2018 to 15 February 2019 the limit for catching sturgeon species for reproductive purposes was determined in the amount of 4,63 tons by the Order of the Deputy Prime-Minister – Minister of Agriculture of the Republic of Kazakhstan No. 58 of 1 February 2018.

For the period from 15 February 2019 to 15 February 2020 the limit for catching sturgeon species for reproductive purposes was determined in the amount of 4,63 tons by the Order of the Deputy Prime-Minister – Minister of Agriculture of the Republic of Kazakhstan No. 59 of 11 February 2019. However, actual catching for the fulfillment of the governmental contract is equal to approximately 3.0-3.5 tons.

In accordance with the technology, fish hatcheries release back into natural habitat in a living form 80-85% of mature specimens of sturgeon fish involved in artificial reproduction. Nevertheless, some of the female fish, because of their physiological characteristics are not amenable to life-production of caviar without killing. Caviar of such females is extracted from the body by traditional method, i.e. by slaughtering. Carcasses of such fish shall be processed and sold by the State monopoly.

In accordance with the Law of the Republic of Kazakhstan on "Accession of the Republic of Kazakhstan to the Convention on International Trade in Endangered Species of Wild Fauna and Flora" No. 372-I of 6 April 1999, the Republic of Kazakhstan has become a Party to the CITES.

It should be noted that sturgeon species are included in Annex II of the CITES as species which are currently not threatened with extinction but may become so, if trade in such species will not be strictly regulated for the purpose of prevention of their use incompatible with their survival.

In this regard, in order to control the population of sturgeon species, the Secretariat of the CITES approves annual quotas for catch from their natural habitat, export of caviar and meat of sturgeon species.

At the Third Summit of the Heads of the Caspian States on 18 November 2010 in Baku (hereinafter referred to as the Third Summit), the President of the Republic of Kazakhstan N.A. Nazarbayev announced the initiative to introduce a five-party moratorium on the catch of sturgeon species in the Caspian Sea.

Since 2010, Kazakhstan has introduced a moratorium for catching of sturgeon species, except for reproduction and scientific fishing (Decree of the Government of the Republic of Kazakhstan of 7 March 2012 No. 303).

Based on the abovementioned, for today export is not possible.

E. How export prices are determined

Due to the moratorium on catch of sturgeon species in Caspian Sea, the RSE "UASFP" is not involved in exportation.

F. How the resale prices of imported products are determined

The RSE "UASFP" does not engage in importation.

G. Whether long-term contracts are negotiated by the state trading enterprise. Whether the state trading enterprise is used to fulfil contractual obligations entered into by the government

The RSE "UASFP" does not negotiate any long-term contracts and does not participate in the implementation of contractual obligations undertaken by the Government.

H. Brief description of market structure

In accordance with paragraph 1 of Article 11-1 Law of the Republic of Kazakhstan № 593 "On Protection, Reproduction and Use of Fauna" of 9 July 2004 the activity of harvesting the sturgeon species from their natural habitat, their purchasing, processing, and sale of their caviar and other types of products is related to State monopoly and is exclusively conducted by State enterprise. Thus, the RSE "UASFP" does not have competition on the internal market. However, it should be noted that in accordance with paragraph 2 of this Article, physical and juridical persons who purchased products from the State monopoly have the right to conduct its further processing and sale.

IV. STATISTICAL INFORMATION

TABLE I

STATE TRADING: REPUBLICAN STATE ENTERPRISE "URAL-ATYRAU STURGEON FISHING PLANT"

STATISTICAL INFORMATION, IMPORTS

Description of product (including HS code)	Total quantity imported	Quantity imported by state trading enterprise	Average import price	Average representative domestic sales price	Mark-up	National production
1	2	3	4	5	6	7
Smoked fish, including fillets, other than edible fish offal: (0305 49 801 0)						
Fish, frozen, excluding fish fillets and other fish meat of heading 0304: - sturgeons; - for industrial products of heading 1604: (0303 89 101 0) (0303 89 102 0) (0303 89 103 0)						
Sturgeon caviar: (1604 31) (1604 32)						

The RSE "UASFH" is not involved in importation

TABLE II

STATE TRADING: REPUBLICAN STATE ENTERPRISE "URAL-ATYRAU STURGEON FISHING PLANT

STATISTICAL INFORMATION, EXPORTS

Description of product (including HS code)	Total quantity exported ¹	Quantity exported by state trading enterprise ¹	Average procurement price ¹	Average representative domestic sales price ²	Average export price ¹	National production ¹
1	2	3	4	5	6	7
Smoked fish, including fillets, other than edible fish offal: (0305 49 801 0)	-	-	-	5 290.7 KZT ³	-	-
Frozen fish, excluding fish fillets and other fish meat of heading 0304: - sturgeons; - for industrial products of heading 1604: (0303 89 101 0) (0303 89 102 0) (0303 89 103 0)				1 555.8 KZT ³		
Sturgeon caviar: (1604 31) (1604 32)				Caviar of great sturgeon 164 181 KZT ³ Caviar of sturgeon 140 661,5 KZT ³ Caviar of starred sturgeon 56 695,9 KZT ³		

Notes:

¹ Statistics on total quantity exported, quantity exported by state trading enterprise, average procurement price, average export price, national production are not collected.

² Prices on products sold by the State monopoly entity are determined in accordance with Order of the Minister of Agriculture of the Republic of Kazakhstan No. 18-05/839 "On Establishment of Prices for Products Sold by the State Monopoly Entities" of 22 September 2015.

³ In accordance with official exchange rate of the National Bank of the Republic of Kazakhstan as of 1 June 2020 1 USD = 411.54 KZT.

TABLE III

STATE TRADING: REPUBLICAN STATE ENTERPRISE "URAL-ATYRAU STURGEON FISHING PLANT

STATISTICAL INFORMATION, DOMESTIC ACTIVITIES

Description of product (including HS code)	Domestic purchases by state trading enterprise ¹	National production ²	Domestic sales by state trading enterprise ³	National consumption ²
1	2	3	4	5
Smoked fish, including fillets, other than edible fish offal: (0305 49 801 0)	The RSE "UASFP" is not involved in domestic/external purchases	-	4.88 kg	-
Fish, frozen, excluding fish fillets and other fish meat of heading 0304: - sturgeons; - for industrial products of heading 1604: (0303 89 101 0) (0303 89 102 0) (0303 89 103 0)			7168,37 kg	
Sturgeon caviar: (1604 31) (1604 32)			103.81 kg	

Notes:

¹ The RSE "UASFP" conducts harvest of sturgeon species from natural habitat and engages in confiscation of poaching catch but is not involved in domestic or external purchases.

² Statistics on national production and national consumption are not collected.

³ Statistics are provided by the Committee of Forestry and Fauna of the Ministry of Agriculture.

V. REASON WHY NO FOREIGN TRADE HAS TAKEN PLACE

Order of the Acting Chair of the Committee of Forestry and Fauna of the Ministry of Agriculture of the Republic of Kazakhstan No. 190 "On Introduction of Restrictions and Prohibitions on Use of Fauna, their Parts and Derivatives, Establishment of Places and Terms of Use" of 24 July 2015 have introduced a prohibition on catch of sturgeon species by individual and legal entities, except for:

- 1) enterprises of fish reproduction (in the framework of governmental contract);
- 2) scientific organizations conducting scientific and research catch;
- 3) State monopoly in case of availability of quota for catch of sturgeon species.

The Commission on the conservation, sustainable use of marine biological resources and management of shared stocks of the Caspian Sea allocates quotas. During its meetings in 2017, 2018 and 2019, the moratorium on the commercial catch of sturgeon species in Caspian Sea was extended, therefore there is no need to allocate quotas.

National legislation authorizes the RSE "UASFP" with the exclusive right to sale sturgeon species harvested from natural habitat, however as this right is currently restricted by the decision of the Commission on the conservation, sustainable use of marine biological resources and management of shared stocks of the Caspian Sea, the RSE "UASFP" does not export sturgeon species, and products made thereof.

The RSE "UASFP" is not involved in importation.
