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Additional Questions and Replies

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II. ECONOMIC POLICIES

- Foreign Exchange and Payments

Question 1

We welcome Kazakhstan's decision to eliminate the controls on foreign exchange, except in emergency cases under the special permission regime. Please provide the Working Party with more information about this special permission regime. What types of conditions are likely to prompt the imposition of the special permission regime? What types of procedures will be put in place, and what types of financial transactions will be governed under the regime?

We continue to have concerns about the transaction passport and the unnecessary burden it places on international trade.

Answer:

1. The special permission regime

Pursuant to the Law of the RK No. 57 "On Currency Regulating and Currency Control" of 13 June 2005, in case of threats to economic security of Kazakhstan and stability of its financial system, and in case if the situation can not be resolved by other instruments of economic policy, the special permission regime can be introduced. This system does not contradict to the provisions of the Agreement with the IMF.

The decisions on introduction and prolongation of the special permission regime, as well as procedures to be followed for issuing the permission, and the list of transactions which can not take place without the special permission, are determined by the President of the Kazakhstan upon joint consultations with the Government and the National Bank of Kazakhstan. This ensures the legitimacy of the decision made on introduction of the special permission regime.

Presently, procedures and criteria for introduction of the special permission regime are not established due the fact that it is difficult to predetermine the potential causes for the threat to the economic security and financial stability of the country. The procedures and the criteria that are developed taking into consideration all the related circumstances will be established by the Decree of the President.

The special permission regime is introduced for a period which is necessary for elimination of the threat to economic security and financial stability of the country.

Without the special permission of the National Bank, both the residents and non-residents are not allowed to undertake currency transactions which are subject to the special permission regime.

The special permission is issued by the National Bank provided that the currency transactions are made by the residents and non-residents with the purpose to prevent the threat to life and health of citizens, state security, and to fulfil international obligations of Republic of Kazakhstan, as well as in cases when the currency transactions are called to address the problems related to the balance of payment of the Kazakhstan and the domestic currency market.

The text of Article 32 of the Law of the RK "On Currency Regulating and Currency Control", stipulating the provisions related to the special permission regime, is attached in Annex 1 to the Draft Working Party Report on the Accession of Kazakhstan to the World Trade Organization (WT/ACC/SPEC/KAZ/9/Rev.1).

2. The transaction passport

According to the Law of the RK "On Currency Regulating and Currency Control" from 1 January 2007:

- the licensing requirements for all types of currency transactions are eliminated; and
- repatriation terms of the national and foreign currency for foreign-trade transactions are determined by the provisions of the contracts with non-residents. Until 1 January 2007, the repatriation term for all foreign-trade transactions was set as 180 days and the prolongation of the repatriation term required the licence issued by the National Bank.

With the purpose to conduct statistical monitoring, information on currency transactions undertaken by residents is provided within the framework of the regime on registration and notification of currency transactions. The regime obliges the resident to notify on the currency transactions being undertaken, but shall not impede implementation of the currency transaction.

As of 1 January 2007, the new Rules on Export-Import Currency Control have been enacted in Kazakhstan.

According to the new Rules, the procedures for issuing the transaction passports have been significantly simplified. The transaction passport is issued only by the commercial bank of the exporter or importer, the terms do not create any additional requirements or barrier for foreign trade transactions.

Most particularly, the procedures for issuing the transaction passports have been simplified in the following ways (for more detailed analysis please also see the comparative table provided in Annex 1):

- The transaction passport is now issued only by the commercial bank of exporter or importer, while according to the previous procedure, in order to obtain the transaction passport, the exporter or importer had to apply first to the customs authority and then to the commercial bank;
- The transaction passport contains the information on parties to the transaction and terms of the contract (the total value of the contract, the currency of payment and the means of payment). Previously, the transaction passport in addition to the abovementioned information also contained: (i) passport or other details of the head of the company which is involved in exportation or importation of goods, (ii) the bank account details used for payment transactions, (iii) address of the relevant tax authority, and (iv) the list of exported/imported goods with attached specifications;
- The repatriation terms of the national and foreign currency for foreign-trade transactions are determined by the provisions of the foreign trade contracts with non-residents. Previously, the repatriation term for all foreign-trade transactions was 180 days and the prolongation of the repatriation term required the licence issued by the National Bank;
- In order to obtain the transaction passport, the exporter/importer is not obliged now to present other documents, which are required by the currency legislation. Previously, the transaction passport was issued only upon presentation of the documents required by the currency legislation (such as licensing and registration documents);
- The transaction passport is now issued without imposing any additional requirements to the terms stipulated in the foreign trade contract. Previously, the transaction passport was issued only provided that the terms for return of goods and payments in cases of failures to meet the contractual obligations were clearly stipulated in the contract; and

- The transaction passport does not require any approval process and any fees imposed by the commercial banks servicing the exporter or importer. The time period for issuing the transaction passport shall not exceed two working days.

In conclusion, it is important to note that the simplified procedures for issuing the transaction passport do not create additional burden for or serve as a barrier to foreign trade operations. Thus, the transaction passport is used only for keeping a statistical record and for monitoring foreign trade.

Question 2

We note the reforms being undertaken in Kazakhstan in relation to foreign exchange payments. We have some further questions in relation to the reforms described in the Working Party report.

In relation to the reforms outlined in paragraph 21 of document WT/ACC/SPEC/KAZ/9/Rev.1: We note that residents would be required from January 2007 to "transfer the export proceeds or import prepayment to a Kazakh bank within the timeframe stipulated in a foreign trade contract". Does this mean that parties to a foreign trade contract are required to make an import prepayment and required to stipulate this in their contract? What if those parties to the contract agreed for payment to be settled upon arrival of the goods in Kazakhstan without prepayment?

Answer:

Pursuant to Article 12 of the Law of the Republic of Kazakhstan No. 57 "On Currency Regulating and Currency Control" of 13 June 2005, as of 1 January 2007, within the periods stipulated in a foreign trade contract, residents shall ensure shall transfer to the bank accounts with the authorized banks of the following:

- national and foreign currency received by a resident as payment for export of goods (works, services); and
- national and foreign currency transferred by a resident to a non-resident as payments for importation of goods (works, services) in cases when a non-resident failed to fulfil or partially fulfilled its obligations.

The issue whether the parties shall make prepayments for imports of goods depends on the terms stipulated in each contract by the concerned parties. In cases when, based on the contract, the resident shall make the full payment for goods upon their importation/delivery to Kazakhstan without advance payment, the request for repatriation described above does not apply to such contracts.

Text of the Law "On Currency Regulating and Currency Control" is available through document WT/ACC/KAZ/67/Add.1.

Question 3

In relation to paragraph 22, we note Kazakhstan's point that registration of a currency agreement was "not a permission requirement". However, Kazakhstan notes that a registration certificate could be "refused". What are the consequences of "refusal" of such a certificate? The last sentence suggests that "registration" is necessary for allowing the export of investments and proceeds of such investments without restrictions.

Answer:

The purpose of registration is to maintain statistical record of currency operations.

According to the Law "On Currency Regulating and Currency Control", the following transactions shall be made under the registration regime:

- payments between residents and non-residents under commercial credits for a term exceeding 180 days;
- direct investments of non residents into the Republic of Kazakhstan (upon receipt of money by resident) and of residents abroad (upon transfer of money by resident abroad);
- purchase of stocks of residents by non-residents, including shares of investment funds-residents, transfer of funds by non-residents with the purpose to participate in the charter capital of residents, initial public offering of shares of residents at international capital markets, including issuance of depository receipts for the securities of residents of residents;
- financial loans of residents to non residents and of non-residents to residents for the term exceeding 180 days; and
- payments of legal persons-residents to non-residents, and payments of non-residents to residents related to purchase of real estate.

The registration requirement applies only to residents of the Republic of Kazakhstan.

According to Article 8 of the Law "On Currency Regulating and Currency Control", the registration regime shall include registration of the currency contract and subsequent submission by resident of information on the registered currency contract.

The currency contract could be registered by the resident at the territorial branch of the National Bank located close to constant residence of a resident natural person or office of a resident legal person.

The registration is carried out within ten working days from the date of submission by the resident of the complete package of the documents, including:

- an application form;
- a copy of the currency contract certified by the signature for natural and legal persons and seal for legal persons;
- a copy of the personal identity document for natural persons carrying out currency operation;
- a copy of the certificate about state registration of a legal person;
- a copy of the taxpayer identification document; and
- a copy of the documents confirming emergence, implementation and discharge of liabilities in accordance with the currency contract.

This list does not include permits or documents submission of which could be difficult for resident party to the foreign trade operation.

- Upon registration of the currency agreement, applicant receives the certificate of registration.

Registration could be denied due to the following reasons:

- submission of inaccurate information or failure to submit information requested in accordance with Law "On Currency Regulating and Currency Control"; or
- inconsistency of a foreign trade operation with the legislation of the Republic of Kazakhstan.

If the currency transaction is subject to registration, in order to make a payment, the resident should present the registration certificate to the bank.

Non-residents could withdraw from Kazakhstan investments and earnings made from investments without restrictions.

Question 4

In relation to the transaction passport in paragraph 26, we welcome the reforms outlined in the revised report. We understand now that the purpose of this passport is simply to record trade flows. If so, can Kazakhstan explain what "approval processes" would still be required to obtain such a passport and why they would be necessary? Any approvals could have the nature of a form of import licensing and hence would be subject to the disciplines of that agreement. Could Kazakhstan explain in detail these approval processes, how they operate and what fees are applied in relation to obtaining such a passport?

Answer:

According to the Law of the RK "On Currency Regulating and Currency Control", from 1 January 2007:

- the licensing requirements for all types of currency transactions are eliminated; and
- repatriation terms of the national and foreign currency for foreign-trade transactions are determined by the provisions of the contracts with non-residents. Until 1 January 2007, the repatriation term for all foreign-trade transactions was set as 180 days and the prolongation of the repatriation term required the licence issued by the National Bank.

With the purpose to conduct statistical monitoring, information on currency transactions undertaken by residents is provided within the framework of the regime on registration and notification of currency transactions. The regime obliges the resident to notify on the currency transactions being undertaken, but shall not impede implementation of the currency transaction.

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Most particularly, the procedures for issuing the transaction passports have been simplified in the following ways (for more detailed analysis please also see the comparative table provided in Annex 1):

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- The transaction passport contains the information on parties to the transaction and terms of the contract (the total value of the contract, the currency of payment and the means of payment). Previously, the transaction passport in addition to the abovementioned information also contained: (i) passport or other details of the head of the company which is involved in exportation or importation of goods, (ii) the bank account details used for payment transactions, (iii) address of the relevant tax authority, and (iv) the list of exported/imported goods with attached specifications;
- The repatriation terms of the national and foreign currency for foreign-trade transactions are determined by the provisions of the foreign trade contracts with non-residents. Previously, the repatriation term for all foreign-trade transactions was 180 days and the prolongation of the repatriation term required the licence issued by the National Bank;

- In order to obtain the transaction passport, the exporter/importer is not obliged now to present other documents, which are required by the currency legislation. Previously, the transaction passport was issued only upon presentation of the documents required by the currency legislation (such as licensing and registration documents);
- The transaction passport is now issued without imposing any additional requirements to the terms stipulated in the foreign trade contract. Previously, the transaction passport was issued only provided that the terms for return of goods and payments in cases of failures to meet the contractual obligations were clearly stipulated in the contract; and
- The transaction passport does not require any approval process and any fees imposed by the commercial banks servicing the exporter or importer. The time period for issuing the transaction passport shall not exceed two working days.

In conclusion, it is important to note that the simplified procedures for issuing the transaction passport do not create additional burden for or serve as a barrier to foreign trade operations. Thus, the transaction passport is used only for keeping a statistical record and for monitoring foreign trade.

- Investment Regime

Question 5

In paragraph 36 of WT/ACC/SPEC/KAZ/9/Rev.1 Kazakhstan explains that, pursuant to Law No. 568 "On Communications", there is a 49 per cent equity cap for foreign investment in long distance and/or international telecommunications services using fixed networks. How does a 49 per cent equity cap address Kazakhstan's security concerns? Many countries, including this Member, have significant security concerns yet do not impose equity restrictions as a means to address them. Why is Kazakhstan different from all these countries?

Answer:

In accordance with the Law of the RK No. 233 "On National Security" of 26 June 1998, currently foreign participation in the charter capital of companies providing long distance and/or international telecommunication services using fixed communication networks (cable, optical fibre, radio relay) is limited to 49 per cent. This limitation had been introduced to protect the national security interests of Kazakhstan; such a limitation is not applied to operators of mobile, satellite and local communications.

Currently the Government of Kazakhstan in its services market access negotiations is discussing with some WTO Member-States options for the further liberalization of the telecommunications sector. The outcomes of bilateral negotiations will be reflected in due course in the following draft versions of the Working Party Report.

At the same time, it should be noted that a substantial number of OECD Member-States as well as developing countries do maintain restrictions on foreign direct investments into the telecommunications sector, which was recently in full Government domain.

Therefore, based on analysis of other country's experience in liberalization of the telecommunications sector, as well as taking into account the existing technical capacity needed for further liberalization of the telecommunications sector, and national economic security reasons, Kazakhstan will determine its market access conditions for foreign telecommunications operators to provide long distance and international voice services.

Question 6

We note in paragraph 33 of document WT/ACC/SPEC/KAZ/9/Rev.1 that investors are exempt from payment on the turnover of goods sold. Such VAT exemptions "were granted to investors who benefited from VAT exemptions on imports, pursuant to the terms of the investment contracts". We seek clarification of the following:

Is VAT exempt from sales of the goods produced by "investors" and sold into the domestic market in Kazakhstan?

Is VAT exempt on the sales of "like" imported products (i.e. "like" or similar to those sold by investors in Kazakhstan's domestic market)?

Answer:

The List of investors benefiting from VAT exemptions on imports within the framework of contracts for subsoil use on the territory of the Republic of Kazakhstan is established by the Resolution of the Government of the Republic of Kazakhstan No. 1075 of 11 November 2006 (available through document WT/ACC/KAZ/67/Add.1).

The turnover of goods sold by investors on the territory of the Republic of Kazakhstan is subject to VAT payment.

The List of goods (works, services), turnover of which is exempted from VAT is established by Article 225 of the Tax Code (Annex 2).

The List of goods, imports of which is exempted from VAT, is established by Article 234 of the Tax Code (Annex 3).

Thus, import of goods, similar to the goods, sold by investors on the territory of the Republic of Kazakhstan, which are not included in the List stipulated by Article 234 of the Tax Code, is subject to VAT payment.

Question 7

We note investment incentives conditioned on the use of local materials (paragraph 39) or export in the automobile sector and seek clarification as to when Kazakhstan will abolish such incentives and ensure consistency with the TRIMs agreement and the Agreement on SCM.

Answer:

Currently Kazakhstan is preparing relevant amendments to the legislation of the Republic of Kazakhstan concerning the "Free warehouse" regime. According to the draft amendments, the requirement to use domestic goods over imported goods in order to receive the tax and import duty preferences will be eliminated upon the implementation of the proposed amendments. It should also be noted that regulations related to taxes and import duties will be applied in a non-discriminatory manner to all products produced at "Free warehouses". The new legislation will be provided to the Working Party as soon as possible.

The draft amendments are aimed at bringing the "Free warehouse" regime applied in Kazakhstan into compliance with the Article III of the GATT, TRIMs and SCM Agreements. Please note that Kazakhstan is compiling and analyzing information related to subsidy notifications under Article 25 of the SCM Agreement.

- **State Ownership and Privatization**

Question 8

We believe that this section of the Working Party Report needs work. We would like to explore further the role of the state in Kazakhstan's economy.

What is the difference between "state property" (listed in Annex 3(c) of WT/ACC/SPEC/KAZ/9/Rev.1) and "state-owned property" (listed in Annex 3(d))? In addition, what does it mean that these properties are exempt from privatization until 2006? Now that 2006 is almost at a close, will they be considered for privatization? Please identify those properties that will not be exempt from privatization.

Answer:

Annex 3(c) indicates the spheres of activities exempted from privatization. Annex 3(d) contains the list of enterprises operating in the spheres indicated in the Annex 3(c).

Kazakhstan is currently in the process of distribution of state property between newly established national holdings, including:

- JSC Kazakhstan Holding for State Assets Management "Samruk";
- JSC Fund of Stable Development "Kazyna";
- JSC "National Scientific and Technological Holding "Samgau";
- JCS "National Holding "KazAgro";
- JSC "National Company "Social - Entrepreneurial Corporation "Sary-Arka", JSC "National Company "Social - Entrepreneurial Corporation "Ertys"; and
- JSC "National Company "Social - Entrepreneurial Corporation "Ontustyk", JSC "National Company "Social - Entrepreneurial Corporation "Zhetisu".

The Government of the Republic of Kazakhstan considers privatization as an element of state property management. Privatization of the majority, 85 per cent, of state property entities has been completed during the period from 1991. In certain strategic industries such as oil production, electricity production, main-line railway transportation, pipe-line transportation, public postal services and telecommunications services were transferred to the newly-established national holding companies.

The Government of the Republic of Kazakhstan has enacted the Resolution No. 483 "On Certain Issues of Republican State Property" of 11 June 2007 (available through document WT/ACC/KAZ/67/Add.1) which approved the following lists:

- list of joint stock companies (limited liability partnerships) with state participation necessary for fulfilment of national tasks;
- list of republican state enterprises necessary for fulfilment of national objectives;
- list of joint stock companies established for fulfilment of the objectives envisaged in the national programs;
- list of joint stock companies (limited liability partnerships) state owned shares of which are subject to transfer to the competitive market; and
- list of republican state enterprises which are subject to transfer to the competitive market.

In addition, the Resolution of the Government of Kazakhstan No.1219 of 11 December 2007 has approved the List of organizations with state participation, shares of which are subject to sale through the stock market and the List of organizations with state participation which are subject to listing

procedures in 2008 (Government Resolution No. 1219 of 11 December 2007 is available through document WT/ACC/KAZ/67/Add.1).

In addition, the Republic of Kazakhstan has adopted the Law No. 321 "On Amendments and Addenda to Certain Legal Acts of the Republic of Kazakhstan on the Issues of State Interests in the Sphere of Economy" of 7 August 2007, which contain the following additions to the legislative acts of the RK:

1. Civil Code of the RK of 27 December 1994:

- introduced the definition of "strategic entities";
- determined the list of entities that can be defined as strategic;
- main railway networks; main oil pipelines; main gas pipelines; national electricity distribution network; main communication lines; public postal services; international airports; seaports of international importance; air navigation facilities of the air traffic control system; facilities and navigation marks regulating and guaranteeing the safety of shipping; entities of atomic power use; entities of space system; water facilities; highway transportation facilities of public use; shares (shares of participation) of juridical persons which own strategic entities, shares (shares of participation) of natural and juridical persons which can directly or indirectly define decisions or influence decisions of juridical persons that own strategic entities; and
- defined priority right of the Government of the Republic of Kazakhstan to purchase the strategic entities at market price in case of sales of strategic entities by private owners.

2. Law of the RK "On National Security of the Republic of Kazakhstan" of 28 June 1998 entitled the Government of the Republic of Kazakhstan to:

- form the list of strategic entities;
 - approve encumbrance of strategic entities with the third-party rights or alienation of strategic entities;
 - determine the procedure of priority rights use of the Government to purchase the strategic entities;
 - form the Commission on strategic entities under the Government of the Republic of Kazakhstan; and
 - approve or refuse legal transactions with strategic entities owned by natural or juridical persons on the basis of recommendations of the Commission on strategic entities under the Government of the Republic of Kazakhstan if this transaction may threaten to national interests of the Republic of Kazakhstan.
- defined main categories of strategic entities:
- strategic entities transferred into the charter capital and/or owned by the national holdings and/or national companies or affiliated persons or other juridical persons with state participation; and
 - strategic entities owned by juridical and natural persons not-affiliated with the state.

Question 9

Page 19, paragraphs 46 and 47: since 1991, Kazakhstan has launched six two-year privatization programmes, the latest covering the years 2003 to 2005. Relevant statistics are provided in Tables 4 and 5.

We would be interested in knowing whether Kazakhstan has started any new programmes from 2006 to further privatize its State enterprises, or has firm plans to launch further programmes in the years ahead? If so, please provide details.

Answer:

Kazakhstan is currently in the process of distribution of state property between newly established national holdings, including:

- JSC Kazakhstan Holding for State Assets Management "Samruk",
- JSC Fund of Stable Development "Kazyna",
- JSC "National Scientific and Technological Holding "Samgau",
- JCS "National Holding "KazAgro",
- JSC "National Company "Social - Entrepreneurial Corporation "Sary-Arka",
- JSC "National Company "Social - Entrepreneurial Corporation "Ertys",
- JSC "National Company "Social - Entrepreneurial Corporation "Ontustyk", and
- JSC "National Company "Social - Entrepreneurial Corporation "Zhetisu".

The Government considers privatization as an element of state property management. Privatization of the majority-85 per cent- of state property entities has been completed during the period from 1991. In certain strategic industries such as oil production, electricity production, main-line railway transportation, pipe-line transportation, public postal services and telecommunications services were transferred to the newly-established national holding companies.

The Government of the Republic of Kazakhstan has enacted the Resolution No. 483 "On Certain Issues of Republican State Property" of 11 June 2007 (available through document WT/ACC/KAZ/67/Add.1) which approved the following lists:

- list of joint stock companies (limited liability partnerships) with state participation necessary for fulfilment of national tasks;
- list of republican state enterprises necessary for fulfilment of national objectives;
- list of joint stock companies established for fulfilment of the objectives envisaged in the national programs;
- list of joint stock companies (limited liability partnerships) state owned shares of which are subject to transfer to the competitive market; and
- list of republican state enterprises which are subject to transfer to the competitive market.

In addition, the Resolution of the Government of Kazakhstan No.1219 of 11 December 2007 has approved the List of organizations with state participation, shares of which are subject to sale through the stock market and the List of organizations with state participation which are subject to listing procedures in 2008 (Government Resolution No. 1219 of 11 December 2007 is available through document WT/ACC/KAZ/67/Add.1).

In addition, the Republic of Kazakhstan has adopted the Law No. 321 "On Amendments and Addenda to Certain Legal Acts of the Republic of Kazakhstan on the Issues of State Interests in the Sphere of Economy" of 7 August 2007, which contain the following additions to the legislative acts of the RK:

1. Civil Code of the RK of 27 December 1994:
 - introduced the definition of "strategic entities";
 - determined the list of entities that can be defined as strategic:

- main railway networks; main oil pipelines; main gas pipelines; national electricity distribution network; main communication lines; public postal services; international airports; seaports of international importance; air navigation facilities of the air traffic control system; facilities and navigation marks regulating and guaranteeing the safety of shipping; entities of atomic power use; entities of space system; water facilities; highway transportation facilities of public use; shares (shares of participation) of juridical persons which own strategic entities, shares (shares of participation) of natural and juridical persons which can directly or indirectly define decisions or influence decisions of juridical persons that own strategic entities.
 - defined priority right of the Government of the Republic of Kazakhstan to purchase the strategic entities at market price in case of sales of strategic entities by private owners.
2. Law of the RK "On National Security of the Republic of Kazakhstan" of 26 June 1998 entitled the Government of the Republic of Kazakhstan to:
- form the list of strategic entities;
 - approve encumbrance of strategic entities with the third-party rights or alienation of strategic entities;
 - determine the procedure of priority rights use of the Government to purchase the strategic entities;
 - form the Commission on strategic entities under the Government of the Republic of Kazakhstan;
 - approve or refuse legal transactions with strategic entities owned by natural or juridical persons on the basis of recommendations of the Commission on strategic entities under the Government of the Republic of Kazakhstan if this transaction may threaten to national interests of the Republic of Kazakhstan;
- defined main categories of strategic entities:
 - strategic entities transferred into the charter capital and/or owned by the national holdings and/or national companies or affiliated persons or other juridical persons with state participation; and
 - strategic entities owned by juridical and natural persons not-affiliated with the state.

Question 10

Are "state enterprises", as that term is used in the draft Working Party Report (e.g., paragraph 43 of WT/ACC/SPEC/KAZ/9/Rev.1), those owned by the State? Does this include Joint Stock Companies (JSCs) owned by the State? Does this term include enterprises and JSCs controlled by the State, for example, through the appointment of directors, or the ability to direct the enterprise's operations or effectively exercise a veto over the enterprise's decisions?

Assuming JSCs are not captured by the term "state enterprises", and hence are not included in Table 1, it would be useful to indicate in Annex 3(e) the relevant sectors of the economy in which we find JSCs with State-owned shares.

Answer:

The Law of the Republic of Kazakhstan No. 2335 "On State Enterprises" of 19 June 1995 defines state enterprises narrowly. Pursuant to the Law, state enterprises are established with the objective to address social and economic needs of the society and the state.

The legislation of Kazakhstan directly defines those spheres of activity, where state enterprises can be established. The property of state enterprises are owned and controlled by the state. State enterprises are established in the following spheres:

- provision of support to state defence capacities and protection of interests of the society; and
- production of essential goods (works, services) in the social spheres of the economy where the private sector is insufficiently present or absent;

In contrast, joint-stock companies (JSCs), partnerships, and other entities with full or partial state ownership of shares operate based on a different legal basis. Under Article 34 of the Civil Code of the Republic of Kazakhstan, JSCs, partnerships, and other entities, except for state enterprises, are commercial entities established to generate profit. The state owns the company shares but not its property. Consequently, the property of the company, as the property of an independent juridical person, is private, not state-owned.

State acts solely on the basis of generic legislation enacted for regulating relationships of all JSCs, partnerships, etc. The rights of the state and its influence in the business decision-making process are determined by the quantity of shares owned by the state. The activities of joint stock companies with the state participation are not limited by the state. Hence, state can influence decisions undertaken by such enterprises only within and proportionally to the authority conferred by legislation as to a shareholder of a private company. For instance, state holding a minority share in a company can not block or change Board of Directors' decision.

Question 11

What does it mean for firms to have the status of "national companies", as described in paragraph 43 and Annex 3(b) of WT/ACC/SPEC/KAZ/9/Rev.1? How are "national companies" different from "state enterprises" or "state-owned enterprises"?

Answer:

In accordance with the Law of the Republic of Kazakhstan No. 415 "On Joint Stock Companies" of 13 May 2003 national company is a joint stock company, established by the Decision of the Government, with a majority state- or national holding-owned shares, which carries out its activity in strategically important fields of national economy.

In addition, in accordance with Article 34 of the Law "On Joint Stock Companies":

- Board of directors of the company with state owned shares or national management company (excluding national companies) approves medium-term plans of financial and economic activity of the company presented by its executive body;
- Plans of financial and economic activity of the company with state owned shares are presented to government bodies in the procedure and within the terms defined by the legislation of the Republic of Kazakhstan; and
- Development plans of national companies with national holding shares are approved by the Boards of directors of these national companies.

Question 12

In paragraph 57 of document WT/ACC/SPEC/KAZ/9/Rev.1, Kazakhstan notes that private enterprises are permitted to compete in sectors dominated by natural monopolies. Are private enterprises subject to the same price controls imposed on natural monopolies? Are they subject to the same notification requirements concerning price changes as are natural monopolies?

Answer:

Natural monopolies could include natural persons as well as any entities regardless of their ownership rendering services subject to state regulation as natural monopolies in the spheres determined in the Law No. 272 "On Natural Monopolies" of 9 July 1998. The List of regulated services is adopted by the Resolution of the Government of the RK No. 155 of 14 March 2006.

Entities rendering services subject to state regulation as natural monopolies shall be included into the State Register of Natural Monopoly Entities. All such entities, regardless of their ownership, are subject to uniform requirements stipulated by the legislation on natural monopolies. Tariffs charged by entities subject to state regulation as natural monopolies are approved by the authorized body. Entities subject to state regulation as natural monopolies shall notify their consumers on expected tariff changes.

The Law of the RK "On Natural Monopolies" does not prohibit private investors to compete with entities subject to state regulation as natural monopolies. For example, the Law does not prevent other private investors to build an additional main pipeline or railway. In case of increased competition, such sphere of activity will not be regulated as a natural monopoly.

Question 13

Kazakhstan's response to Question 16 in WT/ACC/KAZ/66 indicates that "state monopoly has been reserved only in specific services sectors". Does this statement mean that there exist no state monopolies engaged in the production of goods?

Answer:

At present time, in Kazakhstan there are no state monopolies engaged in production and trade of goods. Consideration of certain types of activities as state monopolies is foreseen by such laws as "On Security Activity", "On Regulation of Trade Activity", "On Veterinary", "On Trademarks, Service Marks and Appellations of Origin", "On Selective Achievements", "On Plants Protection", "On State Procurement", Patent Law and Forest Code.

Based on the abovementioned laws, at present time state monopolies are engaged in activities in specific services sectors.

Question 14

What is the difference between a national state enterprise and a communal state enterprise? Is the only difference the ownership? Is there a difference in the governance or permissible activities between the two?

Answer:

The only difference between national and communal state enterprises is the type of ownership. Depending on the type of ownership, enterprises are divided into:

- National enterprises in national ownership;
- Communal state enterprises in communal ownership.

Accordingly, communal enterprise is the state enterprise, the executive body of which is represented either by: (i) akimat (i.e., local executive body) of the territorial unit; or (ii) authorized by Akim (i.e., head of local executive body) executive body, which is financed from the local budget.

There is no difference in governance or permissible activities.

Question 15

In response to Question 16 of document WT/ACC/KAZ/66, Kazakhstan states that there are "369 joint stock companies with state participation in Kazakhstan." Can a JSC be a NSE or a CSE?

Answer:

Joint stock company with state owned share or shares of national holdings cannot be a national state enterprise or communal state enterprise by virtue of different legal forms of ownership. These notions are mutually exclusive and governed by the different laws.

Joint stock company with state owned shares or shares of national holdings are governed by the Law "On Joint Stock Companies".

National state enterprises and communal state enterprises are state enterprises and governed by the Law "On State Enterprises".

See also answer to Question 10 above.

Question 16

Please explain further how Presidential Decrees Nos. 50 and 65 "improve the corporate management" of "national enterprises" and "development institutions", as stated in paragraph 45 of WT/ACC/SPEC/KAZ/9/Rev.1.

Answer:

Decrees of the President of the RK No. 50 and No. 65 established the Joint Stock Company "Holding on Management of State-owned Assets of Kazakhstan "Samruk" (hereinafter - "Samruk") and the Joint Stock Company Sustainable Development Fund "Kazyna" (hereinafter - "Kazyna").

The objective of "Samruk" is to maximize the long-term value of the companies with state participation through improvement of corporate management.

The following work has been done by "Samruk" within 2006-2007 in the sphere of corporate management in the companies under "Samruk":

- new members of the Board of Directors were elected, including independent directors;
- new structure of long-term, medium-term and annual planning of the companies were adopted,
- Samruk's Code of corporate management and model code of corporate management on the basis of which the companies develop their own codes of corporate management;
- internal audit divisions, committees of boards of directors on auditing, appointment and rewards were established;
- corporate risk management systems were implemented;
- measures on timely conducting of external audits, automation and unification of used accounting systems were undertaken;
- the position of corporate secretary was introduced;
- human resources policies were improved; and
- key activity parameters of the companies were approved.

It is planned to obtain corporate management ratings of five national companies under "Samruk", including "KazMunaiGaz", "KEGOK", "KazakhTelecom", "KazPochta", "Kazakhstan TemirZholy", from international rating agencies, such as "Standards and Poor's".

The objective of "Kazyna" is to facilitate investment and innovation activities in all sectors of the economy of the Republic of Kazakhstan through effective corporate management of companies with state participation.

With the purpose to improve and systematize corporate management and ensure transparency, "Kazyna" adopted the following:

- "Kazyna's" Code of Corporate Management; and
- "Kazyna's" Code of Corporate Ethics.

With the view to improve corporate management transparency, independent directors were introduced into the Board of Directors of development institutes under "Kazyna". ISO 9001:2000 international quality standards and social responsibility principles are being implemented in the development institutions. Also, "Kazyna" is planning to apply for international ratings of corporate management from international agencies.

Question 17

In the response to Question 18 of document WT/ACC/KAZ/66 Kazakhstan explains that JSCs with 100 per cent state ownership are not considered state enterprises. Please explain why Kazakhstan makes this distinction. We note, for example, that Article XXVIII(n) of the GATS, following the common understanding, defines an enterprise as "owned" by the State if the State has more than a 50 per cent ownership share.

Answer:

Juridical persons with state participation in their charter capital are the Joint Stock Companies (JSCs) and the partnerships.

The term "state enterprise" does not apply to JSCs and partnerships, because in accordance with the Civil Code, they are the commercial enterprises that pursue generation of profit as the main purpose of their activity.

State owns the shares of JSCs and partnerships, but does not own their property, which is in private ownership.

Property of state enterprises is owned by the state by the right of ownership whereas state enterprises own this property by the proprietary right, i.e. by the right of economic and operational management.

The legislation of the Republic of Kazakhstan directly defines the spheres of activity, where state enterprises can be established, while JSCs and partnerships have no such limitation.

The state as a shareholder does not have any privileges with regard to other private shareholders in business-decision making process within JSC, while the state is the key decision-maker with regard to business activity of the state enterprise.

Therefore, the term "state enterprise" does not apply to JSCs.

Question 18

We commend Kazakhstan on its continued commitment to privatization and the consequent improvement in the efficient operation of its markets. We are interested in further information on the role of the State in partially privatized firms (i.e., those in which the State retains shares). For example, how does the State exercise its voting rights in such firms, whether the State retains a minority or majority of the shares? Please identify any laws governing the State's participation in the operations of those firms.

Answer:

According to the Law "On Joint Stock Companies", the state as a shareholder has no special privileges with regard to other shareholders, including the process of voting at the shareholders meetings. The legislation of Kazakhstan does not provide any special privileges for the state in cases if it does not have enough votes to block the decisions of the JSC.

Article 13 of the Law of the Republic of Kazakhstan "On Joint Stock Companies" provides the right to introduce a "gold share" by the decision of the shareholders. Currently, the state does not own any "gold share".

According to the new amendments to the Law of the Republic of Kazakhstan "On Joint Stock Companies", "gold shares" in public companies are prohibited. Public companies are joint stock companies whose shares went public at stock markets.

Question 19

In paragraph 55 of WT/ACC/SPEC/KAZ/9/Rev.1 Kazakhstan has identified ten areas to be exempted from privatization. How many State-owned or State-controlled enterprises operate in each of these areas, and to what extent are these areas open to competition by private firms (domestic and/or foreign)?

Answer:

Based on the Law of the Republic of Kazakhstan "On Privatization", the Decree of the President of the Republic of Kazakhstan No. 422 "On the list of state-owned property exempted from privatization" of 28 July 2000 stipulates ten spheres of activity exempted from privatization.

These ten spheres exempted from privatization include the following:

- land (except for privately owned land under conditions stipulated by legislation), subsurface and water resources, flora and fauna;
- natural environmental zones/parks under special protection;
- military organizations and sites essential for national security;
- main-line railroads and highways, as well as accompanying engineering structures, part of the international routes network or designed for defence purposes; navigable waterways, as well as lighthouses, navigation devices and seamarks that ensured safety and regulated navigation;
- mainline oil and gas pipelines, and interregional electricity networks of 220, 500 and 1,150 kW;
- water reservoirs and hydraulic works, water control pivots, dams and water barrages;
- first-aid medical organizations operating in rural areas, specialized medical centres (maternity welfare, radiological medicine, oncology, tuberculosis, HIV/AIDS and STD centres, blood banks, and mental asylums), organizations and centres acting as the sole provider of medical services in a given area;

- social protection services, children's homes, orphanages, nursing homes, rest homes, as well as hospitals and health resorts for the disabled, the war veterans, children, and the elderly;
- secondary education institutions; and
- historic and cultural sites protected by the state

Access of private investors to the spheres of activity listed in the Decree No. 422 is governed by the legislation in the relevant sphere.

With regard to the activity spheres, such as natural environmental zones/parks; military organizations and sites; water reservoirs and hydraulic works; navigable waterways, lighthouses, navigation devices and seamarks; social protection services, including orphanages, nursing homes and hospitals; secondary education institutions; historic and cultural sites, it should be noted that they are exempted from privatization due to the nature of state functions.

They represent public goods and key part of the state functions to provide basic public services, including defence, water safety, environment protection, sea navigation safety, social security, public health and public education services. These are basically the sectors where the market is not the most effective service provider (i.e., the so-called economic theory of "market failures").

At the same time, increasing number of private businesses are competing with the state and between themselves by building and managing private secondary schools, private hospitals, environmental and recreational parks, and so on.

With regard to land ownership, according to Article 26 of the Land Code of the Republic of Kazakhstan No. 442 of 20 June 2003:

- land used for defence and state security purposes,
- land with engineering constructions and facilities used to protect state borders;
- land occupied by natural parks protected by the state;
- land occupied by state forestry resources;
- land occupied by water resources (rivers, channels, lakes, water reservoirs, inland waters, territorial waters), ice cubes, marshes, water facilities of interstate and republican significance, zones occupies by water protection facilities and sanitarian protection facilities for intake water system;
- land occupied by mainline railway networks and highways of common use;
- land used for public purposes in settlements (cities, rural areas), except for lands occupied by private industrial and non-industrial facilities, including residential buildings (structures, facilities) and their compounds, and lands intended for servicing buildings (structures, facilities);
- land occupied by pastures and hay lands of common use;
- land occupied by roads of common use, including roads between villages and farms, and by roads used to access the lands of common use; and
- land occupied with irrigation facilities, including channels, wells, chops, watering places, used by two or more land owners and land users.

At the same time, land occupied by irrigation facilities and drainage systems of oblast or inter-rayon and rayon or inter-village/farm significance could be privately owned by citizens and legal entities of Kazakhstan as a result of privatization process.

Based on Article 26 of the Land Code, land designated for development of natural parks; construction of mainline railway networks, highways of common use, mainline pipeline networks; as well as for construction of buildings of administrative and social importance in accordance with approved by concerned local authorities architectural and city planning documents, including airports, railway and

bus stations, roads of common use, administrative buildings for state bodies, public hospitals, public schools, public parks and boulevards, and other entities for public use, could be leased by the state to land users for other purposes on a temporary basis until the finalization of the master plans for constructions of the above mentioned categories of buildings/entities.

Pursuant to Article 23 of the Land Code, foreign citizens and juridical persons could privately own land plots, which are occupied by industrial and non-industrial facilities, including residential buildings and facilities, and their compounds, and lands intended for servicing these buildings and facilities. They could not, however, own lands intended for commercial agricultural production and forestry, their rights to these lands being limited to a ten year temporary land lease.

In accordance with Article 37 of the Land Code, the foreign citizens and legal entities may rent the land by the right of temporary land use for the period not exceeding ten years.

Pursuant to Article 26 of the Land Code, it is prohibited to deny any natural person and legal entity to accord the state owned land which could be in private ownership in accordance with the Land Code.

With regard to main-line railroads and highways, JSC "Kazakhstanemirzholy" under the national holding company "Samruk" is responsible for maintenance and exploitation of the main railway network. According to the Law of the Republic of Kazakhstan No. 266 of 8 December 2001 "On Rail Transportation", mainline railway network represents the entity of rail transportation for common use and as such shall not be subject to privatization.

At the same time, those railway lines that are not part of the main railway network serve as entities of private use and are in private ownership. Construction (reconstruction) as well as further exploitation of railway lines that are not part of the main railway network can be implemented based on the concession contracts with the state.

The Actions Plan on Implementation of the Transport Strategy of the Republic of Kazakhstan till 2015, approved by the Resolution of the Government of Kazakhstan No. 377 of 10 May 2006, envisages private investments into construction and exploitation of the number of railway sections. These sections will be transferred into operation of private investors within the framework of state-private partnership (concession) agreements with the state.

With regard to mainline oil and gas pipelines, JSC "KazMunaiGas" under the national holding company "Samruk" owns the mainline oil and gas pipelines.

KazMunaiGas occupies 65 per cent of transportation volume of crude oil in the market of Kazakhstan and owns the pipe-line "Atyrau-Samara".

At the same time, the oil pipeline "Tengiz-Novorossiysk" is owned by the Caspian Pipeline Consortium with shareholders such as the Governments of Kazakhstan, Oman and Russia and multinational oil companies, including Chevron, Exxon-Mobil, Agip, British Gas, Lukoil, Rosneft, etc.

The oil pipelines "Atasu-Alashankou", "Kenkiyak-Atyrau" are owned by the joint Kazakh-Chinese Pipeline Company in proportion at 50:50 per cent.

Currently, the Government of Kazakhstan is considering construction of new oil and gas pipelines jointly with private domestic and foreign investors.

With regard to interregional electricity networks, JSC "KEGOC" under the national holding company "Samruk" owns the electric networks of interregional level with voltage of 220, 500 и 1,150 kW.

At the same time, most of regional electricity networks belong to private investors. Only interregional electricity networks with voltage of more than 220 kV are exempted from privatization and belong to the JSC "KEGOC".

The legislation of the Republic of Kazakhstan does not stipulate barriers for private investments into the abovementioned spheres of activities/services. Private companies can work along with state enterprises and national companies in these fields.

Enterprises operating in the spheres indicated in the Decree No. 422 are listed in the Annex of the Resolution of the Government No. 483 of 11 June 2007 in the List of national enterprises necessary for fulfilment of national objectives (please refer to "List of republican state enterprises necessary for fulfilment of national objectives"). Resolution No. 483 of 11 June 2007 is available through document WT/ACC/KAZ/67/Add.1.

Question 20

What is the status of the Resolution of the Government of the Republic of Kazakhstan "On the List of State Property Exempted from Privatization, including its Preliminary States, until 2010"? Please provide a translation of this resolution to the Working Party.

Answer:

In 2005, Government Resolution of the Republic of Kazakhstan No.1587 of 24 October 2000 "On the List of State Property Exempted from Privatization" was expired.

See also the answer to Question 8 above.

Question 21

We are pleased to see that Kazakhstan is eliminating its discriminatory railroad freight tariffs, as indicated in paragraph 71 of WT/ACC/SPEC/KAZ/9/Rev.1, and that it has already done so for crude oil, ferrous and non-ferrous metals and construction materials. Will Kazakhstan commit to eliminating all differential railroad tariffs by 1 January 2008?

Answer:

Kazakhstan has unified the tariffs for main railway networks for domestic and external routes for transportation of the following goods: ferrous metal wastes, ferrous and non-ferrous metals and construction materials.

Currently, Kazakhstan has been analyzing the possible impact of unification of tariff rates charged by main-line railway network for transportation of other goods by domestic, exportation and importation routes on key macroeconomic indicators. Based on this analysis Kazakhstan will develop its commitment and determine whether the transitional period for full unification of main line railway tariffs is needed.

- Pricing Policies

Question 22

Please confirm that upon accession the Government of Kazakhstan will, in regulating prices, ensure that State Owned Enterprises and natural monopolies in Kazakhstan, in respect of their supplies of goods to industrial users, will recover their costs (including a reasonable profit), in the ordinary course of their business. Please also confirm that the application of price controls

on goods and services will be in a manner consistent with WTO obligations, including Article III:9 of GATT 1994, and that price controls will not be used for purposes of affording protection to domestic industries or service providers.

Answer:

According to the Law of the RK No. 272 "On Natural Monopolies" of 9 July 1998 the Agency of the Republic of Kazakhstan on Regulation of Natural Monopolies regulates tariff rates for services rendered by natural monopolies.

Pursuant to Article 15 of this Law Kazakhstan the maximum level at which tariffs were set by the authorized body, as well as any tariff rate changes, have to cover for the production cost of services rendered by natural monopolies and the profit margin required for effective operation of natural monopolies.

Kazakhstan is currently considering to make the following commitment:

[["Kazakhstan confirms that upon accession the Government of Kazakhstan will, in regulating tariff rates for services rendered by natural monopolies, ensure that natural monopolies, in respect of their supplies of services to consumers, would recover their costs (including a reasonable profit), in the ordinary course of their business."]]

As for state owned enterprises, they operate on commercial basis and their profit is not regulated by the state.

Kazakhstan is currently considering to make the following commitment:

[["Kazakhstan confirms that from the date of accession Kazakhstan would apply the minimum prices and price control on products and services, contained in Table [...], and any that are introduced or re-introduced in the future, in a WTO consistent fashion, and take account of the interests of exporting WTO Members as provided for in Article III:9 of the GATT 1994. Kazakhstan also will publish the list of goods and services subject to State price control in the Official Gazette."]]

III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES

Question 23

Could Kazakhstan please update the Working Party on the current state of legislation needed to implement its WTO commitments? We would also appreciate your views on how the onward legislative strategy is progressing, and when we can expect to see the new legislation for review.

Answer:

During 2006-2008, with the objective to bring legislation of Kazakhstan into compliance with provisions of the WTO Agreements, Kazakhstan adopted the following legislative acts:

I. In order to align the national legislation with the WTO Agreement on Application of Sanitary and Phytosanitary Measures, Kazakhstan adopted the following:

1. Law of the Republic of Kazakhstan No. 171 of 7 July 2006, which made amendments to the Law No. 361 "On Sanitary-Epidemiological Welfare of Population" of 4 December 2002 providing the following:

- introduction of the term "risk assessment" - a research-based probability assessment for the entry and spread of agents or vectors of infectious and parasitic diseases, as well as production and importation of goods hazardous for human health due to chemical, microbiological, radiological contamination including epidemiological/preventive actions that could be applied and related potential medical, biological and economic implications, carried by the sanitary-epidemiological service;
- recognition of sanitary-epidemiological measures of other countries as equivalent provided that they ensure appropriate levels of sanitary-epidemiological safety within the territory of the country;
- identification of disease-free areas or their parts or territories with low risk of disease spread;
- improvement of regulatory legal acts for the purposes of harmonizing with international standards;
- conducting risk assessment;
- approval of unified methodology for authorized organizations to carry out risk assessment, as well as risk assessment procedures taking into account internationally accepted risk assessment methods.

2. The Law "On Food Safety" was adopted on 21 July 2007 and enacted as of 1 January 2008.

The Law establishes legal basis for ensuring food safety for the purposes of protection of human health and life, legitimate consumer interests on the territory of Kazakhstan.

The main objective of the Law is to bring the legislation of Kazakhstan in the sphere of food safety with the international practice, creation of regulatory framework for development and practical implementation of mandatory requirements to foodstuff subject to state sanitary-epidemiological, veterinary and phytosanitary control.

In addition, the Law is aimed at:

- creation of conditions for ensuring food safety for human health and life as well as protection of consumer interests;
- establishment of procedures for implementation of mandatory requirements to food safety;
- division of competences between the government bodies with respect to regulation of food safety issues; and
- removal of technical and administrative barriers.

In accordance with the WTO Agreement on SPS measures, the Law of Kazakhstan on Food Safety contains the following provisions:

- a definition of the "risk assessment" was introduced;
- scientific information, appropriate methods of processing and production, inspection methods, sampling, laboratory testing, proliferation extent of concrete diseases, presence of disease-free zones shall be taken into account when conducting risk assessment;
- in cases when risk analysis and assessment identifies the likelihood of harmful impact to human health and life, however the available scientific data is not sufficient to determine its extent, then authorized bodies have the right to take temporary measures on risk management;
- temporary measures on risk management shall be revised within minimum period of time, needed for obtaining scientific data, clarifying the risk extent; and
- turnover of GMOs and biologically active additives to food are allowed after scientific confirmation of its safety.

3. In addition, the following amendments are planned to be made to the Law of the Republic of Kazakhstan "On Veterinary":
 - When assessing the equivalence of veterinary-sanitary measures in the territory of an administrative-territorial unit, scientific data, study results (including laboratory tests), monitoring of specific diseases and zones shall be taken into account; and
 - Kazakhstan acknowledges veterinary-sanitary measures of other countries as equivalent, if:
 - a) foreign veterinary-sanitary measures comply with international standards, recommendations;
 - b) exporting country ensure appropriate level of veterinary-sanitary safety of territory of the Republic of Kazakhstan from entry and spread of infectious animal diseases.

II. In order to align the national legislation with the Agreement on Technical Barriers to Trade, Kazakhstan adopted the following legal acts:

1. The Law No. 209 "On Amendments and Addenda to Certain Legislative Acts of the Republic of Kazakhstan on Issues of Technical Regulating" of 29 December 2006 introduced amendments into the 33 laws of the Republic of Kazakhstan. The amendments made clearly stipulate division of authority between government bodies in development and approval of technical regulation. The amendments were made into the following legislation:
 - "On Transport of the Republic of Kazakhstan";
 - "On Oil";
 - "On the Use of Air Space and Aviation Activities in the Republic of Kazakhstan";
 - "On Subsurface and Surface Use";
 - "On Emergency Situations of Natural and Technogenic Origin";
 - "On Road Traffic Safety";
 - "On Fire Safety";
 - "On Environmental Protection";
 - "On Regulatory Legal Acts";
 - "On Radiation Safety of Population";
 - "On Narcotic Drugs, Psychotropic Substances, Precursors and Measures of Counteracting their Illegal Circulation and Abuse";
 - "On State Supervision of Circulation of Certain Types of Arms";
 - "On Ensuring of the Uniformity of Measurements";
 - "On Grain";
 - "On Architectural, Town Building and Construction Activities in the Republic of Kazakhstan";
 - "On Motor Roads";
 - "On the Railway Transport";
 - "On State Regulation of Civil Aviation";
 - "On Merchant Navigation";
 - "On the Atmospheric Air Protection";
 - "On Industrial Safety at Dangerous Industrial Objects";
 - "On Plants Protection";
 - "On Veterinary";
 - "On Seed Production";
 - "On the State Regulation of Production and Distribution of Certain Types of Petroleum Products";

- "On the Health Care System";
 - "On Automobile Transport";
 - "On Work Safety and Labour Protection";
 - "On Communications";
 - "On Inland Water Transport";
 - "On Medicine";
 - "On Electric Power Industry"; and
 - "On Technical Regulating".
2. The Law of the Republic of Kazakhstan No. 302 "On Safety of Chemical Products" of 21 July 2007 established a legal framework for ensuring the safety of chemical products at its development, production, application, storage, labelling, transportation, realization and utilization stages with the purpose to protect safety of human life and health, and environment within the Republic of Kazakhstan.
3. The Law of the Republic of Kazakhstan No. 305 "On Safety of Machinery and Equipment" of 21 July 2007 established a legal basis for regulation of development, application and implementation of safety requirements to machinery and equipment, processes of their life cycle with the objective to guarantee protection of human life and health, and environment.
4. The Law of the Republic of Kazakhstan No.306 "On Toys Safety" of 21 July 2007 established a legal basis for regulation of development, application, implementation and control of safety requirements in the area of toys safety with the objective to guarantee protection of human life and health, and environment.
5. With the objective to ensure the recognition of domestic bodies responsible for conformity assessment and laboratories at the international level, the following draft Laws of the Republic of Kazakhstan have been developed and are being considered by the Majilis (Lower Chamber) of the Parliament of the RK:
- "On Accreditation in the Field of Conformity Assessment";
 - "On Amendments and Addenda in Certain Legislative Acts on the Issues of Accreditation".

The above legal acts are aimed at building a legal framework for accreditation and harmonization of the legislation of Kazakhstan with the legislation of developed countries with the purpose to facilitate the prompt accession of Kazakhstan to the International Accreditation Forum and International Laboratory on Accreditation and Cooperation.

III. In addition, the following technical regulations were approved by Resolutions of the Government of the Republic of Kazakhstan:

- Resolution of the Government of the Republic of Kazakhstan No. 337 "On Approval of Technical Regulation "Requirement for Safety of Grain" of 8 April 2008;
- Resolution of the Government of the Republic of Kazakhstan No. 336 "On Approval of Technical Regulation "Requirement for Safety of Meat and Meat Products " of 8 April 2008;
- Resolution of the Government of the Republic of Kazakhstan No. 307 "On Approval of Technical Regulation "Requirement for Safety of Automobile Road Engineering" of 31 March 2008;
- Resolution of the Government of the Republic of Kazakhstan No. 294 "On Approval of Technical Regulation "Requirement for Safety of Automobile Road Exploitation" of 27 March 2008;
- Resolution of the Government of the Republic of Kazakhstan No. 277 "On Approval of Technical Regulation "Requirement for Packaging, Marking, Labeling and Correct Application to a Product" of 21 March 2008;

- Resolution of the Government of the Republic of Kazakhstan No. 263 "On Approval of Technical Regulation "Requirement for Safety of Feed and Feed Additives" of 18 March 2008;
- Resolution of the Government of the Republic of Kazakhstan No. 230 "On Approval of Technical Regulation "Requirement for Safety of Milk and Milk Products" of 11 March 2008;
- Resolution of the Government of the Republic of Kazakhstan No. 227 "On Approval of Technical Regulation "Requirement for Safety of Buildings, Facilities and Adjacent Territories" of 6 March 2008;
- Resolution of the Government of the Republic of Kazakhstan No. 217 "On Approval of Technical Regulation "Requirement for Safety of Synthetic Cleansing Means and Household Chemical Goods" of 4 March 2008;
- Resolution of the Government of the Republic of Kazakhstan No. 201 "On Approval of Technical Regulation " Requirement for Safety of Goods and Products for Children Use " of 27 February 2008;
- Resolution of the Government of the Republic of Kazakhstan No. 199 "On Approval of Technical Regulation " Juice and Juice Products" of 27 February 2008;
- Resolution of the Government of the Republic of Kazakhstan No. 159 "On Approval of Technical Regulation "Requirement for Safety of Perfume and Cosmetic Products" of 19 February 2008;
- Resolution of the Government of the Republic of Kazakhstan No. 96 "On Approval of Technical Regulation "Requirement for Safety of Building Materials, Products and Construction" of 4 February 2008;
- Resolution of the Government of the Republic of Kazakhstan No. 90 "On Approval of Technical Regulation "Conformity Recognition Procedure" of 4 February 2008;
- Resolution of the Government of the Republic of Kazakhstan No. 1398 "On Approval of Technical Regulation "Requirement for Safety of Varnish-And-Paint Materials and Diluents" of 29 December 2008;
- Resolution of the Government of the Republic of Kazakhstan No. 1372 "On Approval of Technical Regulation on Requirement to Pollution of Autotransport in the Territory of Kazakhstan" of 29 December 2008; and
- Resolution of the Government of the Republic of Kazakhstan No. 1232 "On Approval of Technical Regulation on "Requirement on Emissions at Incineration of Different Types Fuel in the Boilers of Electric Power Stations" of 14 December 2008.

IV. In order to bring the national legislation into compliance with the provisions of the WTO Agreement on Custom Evaluation Kazakhstan adopted the Law of the Republic of Kazakhstan No. 211 of 8 January 2007 "On Amendments and Addenda to the Customs Code of the Republic of Kazakhstan" introducing the following provisions:

The requirement to pay the double import duty rate for imported goods of unknown origin was eliminated.

Customs authorities were authorized to take preliminary decision on the country of origin at the request of the participant of foreign economic activity before trade in goods took place provided that all the necessary information on this good has been submitted.

Preliminary decisions applied to both preferential and non-preferential rules of origin.

Customs value of imported goods were defined according to the general principles of customs valuation of the Agreement on Implementation of Article VII of General Agreement on Tariffs and Trade.

- V. In order to bring the national legislation into compliance with the provisions of the WTO Agreement on Import Licensing Procedures, the provisions on automatic licensing were introduced by the Law of the RK No. 214 "On Licensing" of 11 January 2007. According to the Law, the list of goods subject to automatic import licensing requirement and licence issuance procedures shall be defined by the Government of the Republic of Kazakhstan.
- VI. The Law of the Republic of Kazakhstan of 11 December 2006 No. 204 "On Amendments to the Law of the Republic of Kazakhstan "On Architectural, Town-Building and Construction Activity in the Republic of Kazakhstan" contains the provision which eliminates the 49 per cent restriction on foreign participation in the charter capital of joint ventures operating in the sphere of architecture, urban development and construction services.
- VII. With the purpose to increase operating efficiency of special economic areas as well as to systematize their establishment and placement matters, new Law of the Republic of Kazakhstan No. 274 was adopted on 6 July 2007 "On Special Economic Areas in the Republic of Kazakhstan", which had invalidated the Law of the Republic of Kazakhstan No. 2823 "On Special Economic Areas in the Republic of Kazakhstan" of 26 January 1996. According to the new Law, SEAs can be established for the period up to 25 years. The Ministry of Industry and Trade of the RK is the authorized body responsible for state regulation of SEAs.

In conclusion it should be noted that the Government of Kazakhstan is committed to continue its efforts aimed at creation of transparent and predictable legislative framework that will facilitate use of internationally recognized technical regulations and standards by businesses operating in Kazakhstan, simplify and improve trade and investment climate in the country and enhance Kazakhstan's integration into the world economy.

IV. POLICIES AFFECTING TRADE IN GOODS

- Trading Rights

Question 24

This section of the Working Party report needs a significant amount of work to clarify Kazakhstan's regime on the right to import into and export from Kazakhstan.

In the 9th Working Party meeting, Kazakhstan confirmed that foreign individuals or firms without a commercial presence in Kazakhstan cannot "do customs clearance."

Please confirm our understanding that the ability to "do customs clearance" is equivalent to being "importer of record".

Answer:

Customs legislation of the Republic of Kazakhstan does not contain the term "importer of record", which, based on the US legislation, could be defined as the exporter who is entitled without establishing commercial presence in the country of importation to proceed with customs clearance procedures.

Pursuant to Article 374 of the Customs Code of the Republic of Kazakhstan, the following persons may act as declarants and proceed with customs clearance:

- Kazakh person/citizen of the Republic of Kazakhstan; stateless person, who has permanent residence in the Republic of Kazakhstan, individual entrepreneur registered in the Republic of Kazakhstan in accordance with the legislation of the Republic of Kazakhstan, as well as a legal person established in compliance with the legislation of the Republic of Kazakhstan.
- foreign natural person (when conveying goods under simplified or preferential procedures);
- foreign person who enjoys privileges with regard to customs payments in compliance with Chapter 36 of the Customs Code, i.e., diplomatic missions; and
- representative offices of foreign organizations registered on the territory of the Republic of Kazakhstan in compliance with the established procedures, when declaring the customs regimes for temporary import, transit and release into free circulation for goods imported for the needs of such representative offices.

Thus, according to the Customs Code, foreign persons cannot act as declarants. This is due to the fact that at least one part of the import transaction must be under jurisdiction of Kazakhstan to bear responsibility for declared goods, including, customs payments and taxes.

It should be noted, that from 20 September 2004, in accordance with the Law of the Republic of Kazakhstan No. 537 "On Amendments and Addenda to Legal Acts of the Republic of Kazakhstan on State Registration of Juridical Persons" of 18 March 2004, the system of state registration of juridical persons of the Republic of Kazakhstan has been significantly simplified.

In accordance with the previous regime of registration of juridical persons, their branches and representative offices, the applicant had to submit the same package of documents to three different state bodies, including justice authority, tax authority and statistics authority. Within the framework of the simplified regime, the applicant should apply and receive the necessary three certificates from justice authorities based on the principle of "one window (or one-stop shop)".

Registration procedure takes place in ten days and registered juridical person receives three documents:

- certificate on state registration as juridical person;
- certificate of tax payer; and
- statistical card on inclusion into the State Statistical Register.

As stipulated in Article 7 of the Customs Code, foreign companies without commercial presence in Kazakhstan could represent their interests at customs clearance through a customs broker (sub point 4).

In accordance with Article 395 of the Customs Code, customs broker's activity shall mean performing actions related to customs clearance, preliminary operations and execution of other intermediary functions in the sphere of customs activity, on his/her own behalf, at the expense of and based upon the instruction of the person he/she represents.

The following shall constitute the functions of the customs broker:

- declaration of goods and means of transport;
- submission to the customs authority of documents and supplementary data required for customs purposes;
- presenting declared goods and means of transport to the customs authority;
- securing payment of customs payments and taxes stipulated by the customs and tax legislation of the Republic of Kazakhstan with respect to the declared goods and means of transport; and
- performing the actions required for customs clearance and customs control purposes, as the person authorized with respect to the declared goods and means of transport.

Relations between the customs broker and the person whom he/she represents in compliance with this Code and other legislative acts of the Republic of Kazakhstan shall be based upon a written agreement. Pursuant to Article 399 of the Customs Code, the customs broker shall bear responsibility for the payment of customs payments and taxes prior to or simultaneously with the filing of the customs declaration in accordance with the contract signed between the customs broker and the foreign person represented by the customs broker.

It must be mentioned that goods declared by the customs broker remain under custody of the exporter (foreign person) until they are transferred to the purchaser or distributor in the Republic of Kazakhstan. This means that exporter controls the goods until completion of the customs clearance at the customs post, through which goods are imported into the territory of Kazakhstan.

Question 25

The trading rights section of the report remains a key issue. We encourage Kazakhstan to recognize the concept of independent rights to import - separate from any need to establish commercial presence, investment, production or residency in Kazakhstan. We do not object to the imposition of a 'registration' requirement on importation and exportation, but such requirements should not be made contingent on whether an individual or enterprises has commercial presence in the market. Furthermore the right of importation should exist for foreign firms without the need for "civil contracts" with Kazakh partners.

Answer:

Pursuant to Article 374 of the Customs Code of the Republic of Kazakhstan, the following persons may act as declarants and proceed with customs clearance:

- Kazakh person/citizen of the Republic of Kazakhstan; stateless person, who has permanent residence in the Republic of Kazakhstan, individual entrepreneur registered in the Republic of Kazakhstan in accordance with the legislation of the Republic of Kazakhstan, as well as a legal person established in compliance with the legislation of the Republic of Kazakhstan;
- foreign natural person (when conveying goods under simplified or preferential procedures);
- foreign person who enjoys privileges with regard to customs payments in compliance with Chapter 36 of the Customs Code, i.e., diplomatic missions; and
- representative offices of foreign organizations registered on the territory of the Republic of Kazakhstan in compliance with the established procedures, when declaring the customs regimes for temporary import, transit and release into free circulation for goods imported for the needs of such representative offices.

Thus, according to the Customs Code, foreign persons may not act as declarants. This is due to the fact that at least one part of the import transaction must be under jurisdiction of Kazakhstan to bear responsibility for declared goods, including, customs payments and taxes.

It should be noted, that as of 20 September 2004, in accordance with the Law of the Republic of Kazakhstan No. 537 "On Amendments and Addenda to Legal Acts of the Republic of Kazakhstan on State Registration of Juridical Persons" of 18 March 2004, the system of state registration of juridical persons of the Republic of Kazakhstan has been significantly simplified.

In accordance with the previous regime of registration of juridical persons, their branches and representative offices, the applicant had to submit the same package of documents to three different state bodies, including justice authority, tax authority and statistics authority. Within the framework of the simplified regime, the applicant should apply and receive the necessary three certificates from justice authorities based on the principle of "one window (or one-stop shop)".

Registration procedure takes place in ten days and registered juridical person receives three documents:

- certificate on state registration as juridical person;
- certificate of tax payer; and
- statistical card on inclusion into the State Statistical Register.

As stipulated in Article 7 of the Customs Code, foreign companies without commercial presence in Kazakhstan could represent their interests at customs clearance through a customs broker (sub-point 4).

In accordance with Article 395 of the Customs Code, customs broker's activity shall mean performing actions related to customs clearance, preliminary operations and execution of other intermediary functions in the sphere of customs activity, on his/her own behalf, at the expense of and based upon the instruction of the person he/she represents.

The following shall constitute the functions of the customs broker:

- declaration of goods and means of transport;
- submission to the customs authority of documents and supplementary data required for customs purposes;
- presenting declared goods and means of transport to the customs authority;
- securing payment of customs payments and taxes stipulated by the customs and tax legislation of the Republic of Kazakhstan with respect to the declared goods and means of transport; and
- performing the actions required for customs clearance and customs control purposes, as the person authorized with respect to the declared goods and means of transport.

Relations between the customs broker and the person, whom he/she represents in compliance with this Code and other legislative acts of the Republic of Kazakhstan, shall be based upon a written agreement. Pursuant to Article 399 of the Customs Code, the customs broker shall bear responsibility for the payment of customs payments and taxes prior to or simultaneously with the filing of the customs declaration in accordance with the contract signed between the customs broker and the foreign person represented by the customs broker.

It must be mentioned that goods declared by the customs broker remain under custody of the exporter (foreign person) until they are transferred to the purchaser or distributor in the Republic of Kazakhstan. This means that exporter controls the goods until completion of the customs clearance at the customs post, through which goods are imported into the territory of Kazakhstan.

The fee for using customs brokers in Kazakhstan ranges from approximately US\$30 to US\$100. Most traders, including both residents and non-residents, increasingly use customs brokers for clearing goods.

Question 26

Please describe in detail Kazakhstan's regime governing who can import into or export from Kazakhstan.

Answer:

Pursuant to Article 8 of the Customs Code of Kazakhstan, all persons shall have an equal right to import to the Republic of Kazakhstan, export from the Republic of Kazakhstan and transit through the territory of the Republic of Kazakhstan goods and means of transport, except for cases stipulated by the Customs Code and international agreements ratified by the Republic of Kazakhstan.

Pursuant to Article 7 of the Customs Code and Article 10 of the Tax Code, a person is a natural or juridical person.

Pursuant to Article 12 of the Civil Code of the Republic of Kazakhstan, natural persons are defined as citizens of the Republic of Kazakhstan, citizens of other countries and also stateless persons.

Pursuant to Article 10 of the Tax Code:

- a natural person - a citizen of the Republic of Kazakhstan, a citizen of the foreign country, stateless persons; and
- a juridical person is an organization established in accordance with the legislation of the Republic of Kazakhstan or of the foreign country (foreign juridical person).

Therefore, all persons - residents and non-residents of the Republic of Kazakhstan - can import into or export from Kazakhstan.

Question 27

What is Kazakhstan's rationale for requiring a domestic presence in order to import goods?

Answer:

Kazakhstan does not require a domestic presence in Kazakhstan in order to import goods since all persons - residents and non-residents of the Republic of Kazakhstan - can import into Kazakhstan or export from Kazakhstan.

As for the customs clearance of goods, pursuant to Article 374 of the Customs Code, foreign persons (with the exceptions stipulated earlier) cannot act as declarants since the declarant shall bear responsibility for declared goods, in particular, for customs payments and taxes (Article 377 of the Customs Code of the RK) and such responsibility of foreign person cannot be defined.

Question 28

What is the statutory authority governing who can request customs clearance?

Answer:

Pursuant to Article 372 of the Customs Code of Kazakhstan, goods shall be subject to customs declaration in the customs authority when crossing the customs border of the Republic of Kazakhstan or when changing customs regimes, except in cases of transfer of goods into state ownership under a court decision.

In accordance with Article 374 of the Customs Code, the following persons may act as declarants:

- Kazakh persons;
- foreign natural persons (when conveying goods under simplified or preferential procedures);
- foreign persons who enjoy privileges with regard to customs payments in compliance with Chapter 36 of the Customs Code (diplomatic missions); or
- representative offices of foreign organizations, registered on the territory of the Republic of Kazakhstan in compliance with the established procedures, when declaring the customs regimes for temporary import, transit and release into free circulation for goods imported for the needs of such representative offices.

Question 29

Paragraph 96 of document WT/ACC/SPEC/KAZ/9/Rev.1 suggests that foreign firms without a physical presence could "engage in import/export activities" provided that they have a contract with Kazakh entities.

Does this mean that such firms could be "importers of record" if they had a contract indicating to whom they were transferring the goods once they had cleared customs?

If not, please explain what is meant by "engag[ing] in import/export activities"?

If so, what is the rationale for requiring a contract with a Kazakh partner as a condition of the right to import?

Answer:

Pursuant to Article 8 of the Customs Code of Kazakhstan, all persons shall have an equal right to import to the Republic of Kazakhstan, export from the Republic of Kazakhstan and transit through the territory of the Republic of Kazakhstan goods and means of transport, except for cases stipulated by the Customs Code and international agreements ratified by the Republic of Kazakhstan.

To export goods to Kazakhstan, foreign persons do not necessarily need to register, establish commercial presence, investment, production or residency in Kazakhstan; or enter into contract with Kazakh entities.

As for the customs clearance of goods, in the case of purchase and sale contract between foreign and Kazakh persons, all obligations on release of goods shall rest upon Kazakh person, who is responsible for customs clearance.

If there is no contract with Kazakh partner, foreign companies without commercial presence in Kazakhstan could represent their interests at customs clearance through a customs broker (sub point 4 of Article 7 of the Customs Code of the RK). The customs broker declares goods, i.e. customs clearance is carried out by the customs broker on the basis of a contract with the foreign company (Article 395).

The fee for using customs brokers in Kazakhstan ranges from approximately US\$30 to US\$100. Most traders, including both residents and non-residents, increasingly use customs brokers for clearing goods.

Question 30

We note that importation of certain products is conditioned on obtaining an activity licence relating to those products. Please confirm that, as required by GATT Article III, activity licenses for products set out in Annex 8(a) of WT/ACC/SPEC/KAZ/9/Rev.1 are required equally for the sale of the domestically-produced like products, and that these domestic products must meet the same requirements (e.g., storage, consumer safety, sanitary) as imported products.

Answer:

Kazakhstan confirms that, as required by GATT Article III, activity licenses for the aforementioned products are required equally for the sale of the domestically-produced like products, and that these domestic products must meet the same requirements (e.g., storage, consumer safety, sanitary) as imported products.

In particular, according to paragraph 2 of Article 9 of the Law No. 429 "On State Regulating of Production and Turnover of Ethyl Spirit and Alcoholic Beverages" of 16 July 1999, the following are prohibited:

- sale of alcohol beverages without certificates (and marks) of conformity;
- storage with the purpose of sale and sale of alcohol beverages (wine material and beer) without control marks;
- sale of ethyl spirit and alcohol beverages not complying to the certain standards and/or exceeding maximum permissible concentration of toxic substances;
- sale of alcohol beverages after the expiry date;
- sale of alcohol beverages in tin containers (except for wine material, beer, and less then 12 per cent low-proof liqueur), bottles without labels and plastic containers;
- retail sale of alcohol beverages in dirty, deform bottles, bottle with signs of breakage, damaged capping, dimming, foreign substances, crust (besides collection wines); and
- sale of alcohol beverages without marking.

Question 31

With respect to the activity licenses on alcohol, please explain the requirements on "drives/entrances" and "communication systems", referenced in paragraph 102 of WT/ACC/SPEC/KAZ/9/Rev.1.

Answer:

According to Government Resolution No. 731 of 23 August 2007 "On Approval of the Regulations on Licensing and Qualification Requirements for Storage, Wholesale and/or Retail of Alcohol Beverages except for Storage, Wholesale and/or Retail of Alcohol Beverages at the Territory of their Production", the following is required to obtain a licence for storage and wholesale of alcohol beverages (except for storage and wholesale of alcohol beverages in the place of their production):

Automobile and/or railway entrance ("entrances/drives") to specialized storage premise. This requirement is to ensure public safety when loading and unloading at the storage facility.

Communication systems, including cold water supply, sewerage system, heating systems, electricity, ventilation, fire protection means, fire alarm system (fire safety). This requirement is to ensure that the storage facility is adequately equipped for ensuring public safety.

Question 32

Why is the right to import alcohol conditioned on obtaining an activity licence not only for the sale of alcohol, but more specifically, for the production, storage, or wholesale of alcoholic beverages?

Answer:

The current licensing regime related to alcohol is regulated in the following way:

- Article 36 of the Law of the RK No. 214 "On Licensing" of 11 January 2007 requires activity licensing in order to import ethyl spirit and alcohol beverages;
- Article 10.1 of the Law No. 429 " On State Regulating of Production and Turnover of Ethyl Spirit and Alcoholic Beverages" of 16 July 1999 requires the following:
 - In order to obtain an import licence for ethyl spirit, a licence for production of alcohol beverages (using ethyl spirit) is required;

- In order to obtain import licence for wine materials, a licence for production of alcohol beverages (using wine materials) is required; and
- In order to obtain import licence for alcohol beverages, a licence for production or for storage and wholesale distribution of alcohol beverages (except for beer) is required.

With the purpose to simplify the licensing procedures, the Government of Kazakhstan is planning to amend the Law of the Republic of Kazakhstan "On Licensing" and exclude importation of ethyl spirit and alcohol beverages from the list of activities subject to licensing. Therefore, not the importation of alcohol as an activity, but goods, such as ethyl spirit, wine materials and alcohol beverages, will be subject to import licensing.

At the same time it is important for the Government of Kazakhstan to maintain the currently applied regulation on importation of ethyl alcohol and wine materials. The elimination of the prerequisite to obtain activity licence for the production of alcoholic beverages could result in the emergence of a "grey" market for imported products. This could negatively affect both human health and state budget due to potential problems with collection of taxes on alcohol beverages that are produced using imported ethyl alcohol and wine materials.

As for alcohol beverages (other than beer), the activity licence is necessary because alcohol beverages (other than beer) are subject to a set of qualification requirements. An activity licence for production of alcohol is required in order to obtain an import licence for alcohol beverages due to the fact that alcohol beverages are not always imported in bottles, but also in containers. In such cases, possession of the production licence makes sure that the importer has the production facilities where they place alcohol into bottles, which meet the necessary sanitarian and other safety related requirements.

An activity licence for storage and wholesale distribution required in order to obtain import licence for alcohol beverages is called to ensure that importer meets the requirements necessary for storage and wholesale of alcohol beverages.

Question 33

On the question of activity licences (paragraph 101), we see no WTO justification for requiring an activity licence in order to be an importer. The right of importation should exist independently of any subsequent use of the import or production. We respect Kazakhstan's concerns about national security and health/safety, but these can be managed by the application of an import licence only. The requirement of an activity licence, once again, would condition the right to import upon having some form of commercial presence in the Kazakh market.

Answer:

The current licensing regime related to alcohol is regulated in the following way:

- Article 36 of the Law of the RK No. 214 "On Licensing" of 11 January 2007 requires activity licensing in order to import ethyl spirit and alcohol beverages;
- Article 10.1 of the Law No. 429 "On State Regulating of Production and Turnover of Ethyl Spirit and Alcoholic Beverages" of 16 July 1999 requires the following:
 - In order to obtain an import licence for ethyl spirit, a licence for production of alcohol beverages (using ethyl spirit) is required;
 - In order to obtain import licence for wine materials, a licence for production of alcohol beverages (using wine materials) is required; and
 - In order to obtain import licence for alcohol beverages, a licence for production or for storage and wholesale distribution of alcohol beverages (except for beer) is required.

With the purpose to simplify the licensing procedures, the Government of Kazakhstan is planning to amend the Law of the Republic of Kazakhstan "On Licensing" and exclude importation of ethyl spirit and alcohol beverages from the list of activities subject to licensing. Therefore, not the importation of alcohol as an activity, but goods, such as ethyl spirit, wine materials and alcohol beverages, will be subject to import licensing.

At the same time it is important for the Government of Kazakhstan to maintain the currently applied regulation on importation of ethyl alcohol and wine materials. The elimination of the prerequisite to obtain activity licence for the production of alcoholic beverages could result in the emergence of a "grey" market for imported products. This could negatively affect both human health and state budget due to potential problems with collection of taxes on alcohol beverages that are produced using imported ethyl alcohol and wine materials.

As for alcohol beverages (other than beer), the activity licence is necessary because alcohol beverages (other than beer) are subject to a set of qualification requirements. An activity licence for production of alcohol is required in order to obtain an import licence for alcohol beverages due to the fact that alcohol beverages are not always imported in bottles, but also in containers. In such cases, possession of the production licence makes sure that the importer has the production facilities where they place alcohol into bottles, which meet the necessary sanitarian and other safety related requirements.

An activity licence for storage and wholesale distribution required in order to obtain import licence for alcohol beverages is called to ensure that importer meets the requirements necessary for storage and wholesale of alcohol beverages.

Question 34

Paragraph 97 of WT/ACC/SPEC/KAZ/9/Rev.1, describing the process for state registration and re-registration, notes that "unless otherwise provided by international treaties, juridical persons with foreign participation had to submit...(i) a legalized certificate of the juridical personhood of the applicant pursuant to the legislation of the foreign country, accompanied by a notarized translation in Kazakh and Russian; and (ii) an identification document of the company founder, accompanied by a notarized translation in Kazakh and Russian."

Do these requirements apply to juridical persons of another country, or to juridical persons of Kazakhstan with foreign participation?

Answer:

According to Article 6 of the Law of the Republic of Kazakhstan No. 2198 of 17 April 1995 "On State Registration of Juridical Persons and Statistical Record-Keeping Registration of Branches and Representative Offices", all juridical persons established in the territory of Kazakhstan, irrespective purposes of their establishment, types of their activity and participants (members), are subject to state registration.

To register as a juridical person, the applicant shall submit the following documents to the registration authority:

- the application (made in accordance with the form established by the Ministry of Justice of the Republic of Kazakhstan);
- the founding documents (charter, founding agreement or statute, and founding agreement, in cases provided by legislation), in the state and Russian languages in three copies,
- a document certifying the location of the juridical person. Small business entities don't have to submit the location-certifying document;

- the payment receipt or other document certifying the payment of the fee levied for the official registration of a juridical person; and
- in case of registration of a juridical person established as a result of reorganization of one or several juridical persons, the applicant shall also submit the act of transfer or the separated balance, and the document certifying that the creditors of the reorganized juridical person had been notified about the reorganization.

According to Article 6 of the Law, registration of juridical persons of Kazakhstan with foreign participation shall be made in the order established for the registration of juridical persons of the Republic of Kazakhstan. In addition to the abovementioned documents, until otherwise provided by the international treaties ratified by the Republic of Kazakhstan, the following documents shall be additionally submitted:

- legalized statement from the trade register or any other legalized document certifying that the founder, i.e., foreign juridical person is established in accordance with the legislation of the foreign country, with notarized translation to the state and Russian languages; and
- a copy of the passport or any other document identifying a founder, i.e., foreign natural person is a citizen of a foreign country, with notarized translation to the state and Russian languages.

According to Article 3 of the Law "On State Registration of Juridical Persons and Statistical Record-Keeping Registration of Branches and Representative Offices", branches and representative offices of juridical persons of the Republic of Kazakhstan are subject to registration for statistical record-keeping purposes without acquisition of rights of the juridical person.

For statistical record keeping registration of branch and representative office, an applicant shall submit to the registering body the application completed in a standard form approved by the Ministry of Justice of the Republic of Kazakhstan. The application form shall be signed by the person authorized by juridical person establishing branch or representative office in Kazakhstan.

Application shall be submitted with the following:

- sealed decision of the founding juridical person on establishment of its branch or representative office;
- regulation on branch or representative office in three copies in state and Russian languages approved by the founding juridical person;
- copies of the charter and certificate on state registration of the founding juridical person;
- power of attorney of the founding juridical person (except for public and religious institutions) issued to the head of its branch or representative office;
- document confirming location/address of a branch or representative office; and
- document confirming payment of the registration fee for branches and representative offices.

According to Article 6-1 of the Law, registration of branches and representative offices of foreign juridical persons is carried out in accordance with the order established by the legislation of the Republic of Kazakhstan.

In addition to the documents, unless other is stipulated by the international agreements ratified by the Republic of Kazakhstan, the foreign founder of the branch or representative office in Kazakhstan shall submit the legalized extraction from the trade register or other legalized document certifying that a founder - foreign juridical person - is a juridical person established in accordance with the legislation of the foreign state. Documents of foreign juridical person shall be submitted with notarized translation to the state and Russian languages.

Question 35

With what countries does Kazakhstan have an international treaty such that these requirements would not apply?

Answer:

At this time, Kazakhstan is not a party to an international treaty that undermines the requirement for registration of juridical persons and registration of their branches and representative offices for statistical purposes, which is stipulated in the legislation of the Republic of Kazakhstan.

Question 36

Do these requirements apply to any juridical person, no matter how small the foreign participation?

Answer:

The current legislation of the Republic of Kazakhstan does not contain separate regulations for registration of juridical persons with foreign participation depending on the size of the foreign participation.

Question 37

What is "an identification document of the company founder"?

Answer:

A document, issued by an authorized body of the foreign state, certifying that a person is a citizen of the country may serve as identification document.

For example, according to the Rules of documenting and registering population of the Republic of Kazakhstan, approved by Government Resolution of the Republic of Kazakhstan No. 1063 of 12 June 2000, the following documents shall be recognized as the identification documents:

- passport of the citizen of the Republic of Kazakhstan;
- identification card.
- foreigner's residency permit issued for foreign citizens who are permanently residing on the territory of the Republic of Kazakhstan; and
- identity card of the person without citizenship.

Identification card could be equally used as the passport but only within the Republic of Kazakhstan.

Question 38

What is the rationale for these additional requirements?

Answer:

Indication of data on founders of the juridical persons is a mandatory requirement used for registration of juridical persons.

Data on founders of the juridical persons - citizens of the Republic of Kazakhstan and other foreign states - shall be included into the State register of juridical persons and register of branches and representative offices.

Question 39

We continue to encourage Kazakhstan to consider implementing further reform so that the turnaround time for registration applications are equal for all business entities, including juridical persons.

Answer:

Pursuant to Article 9 of the Law "On State Registration of Juridical Persons and Statistical Record-Keeping Registration of Branches and Representative Offices", the state registration (re-registration) and statistical record keeping registration (re-registration) of branches and representative offices shall be established:

- for small businesses - within three working days;
- for other juridical persons - not later than within ten working days;
- from the date of submission of a complete set of application documents.

The legislation of Kazakhstan for small businesses provides for a simplified procedure of state registration, including a reduced list of the documents required for registration, reduction of terms and the registration fee amount, and also an option to operate on the basis of a Model Charter.

Small business enterprises are juridical persons and their branches, which run business with annual average number of employees not exceeding 50 people and the total value of assets per year on average not exceeding sixty thousand monthly calculation indexes (61.8 thousand tenge or US\$461,000).

According to Article 7 of the abovementioned Law, small businesses shall conduct their business activity on the basis of the Model Charter approved by the Government of the Republic of Kazakhstan. Simplified or preferential terms of registration for small businesses are justified by the fact that there is no need for juridical expertise of the founding documents for small businesses since they are based on the Model Charter.

Other applicants should submit a list of documents, which require detailed legal expertise of the charter, founding charter, protocol of the meeting of founders and document confirming the company's location.

Table on Requirements, Terms and Fees applied for Registration of
Various Legal Forms of Juridical Persons

Legal forms	List of documents to submit for state registration	State registration terms	Registration fee amount
Limited Liability Partnership is a partnership founded by one or several individuals, registered capital of which is separated into shares in the amounts determined by the founding documents. The participants of LLP take none of the company's liabilities and share its risks only within the limits of the contributions made, except for the cases provided by the legislation.	<ul style="list-style-type: none"> - Application for registration; - Founding charter if an LLP does not operate on the basis of the Model Charter; - Receipt or a copy of remittance order on payment of the registration fee; - A document confirming the company's location (except for small businesses) 	10 working days For small businesses: 3 working days	7,600 tenge US\$57 For small businesses: 2,280 tenge US\$17
Joint Stock Company - juridical person, issuing shares with the purpose to attract funding for performance of their activity.	<ul style="list-style-type: none"> - Application for registration; - Founding Charter; - Protocol of the meeting of founders; - A document confirming the company's location; - Receipt or a copy of remittance order on payment of the registration fee. 	10 working days	7,600 tenge US\$57
Production Cooperative - a voluntary association of individuals on the basis of a membership for joint entrepreneurial activity, based on their personal working participation and unification of the participants' contributions.	<ul style="list-style-type: none"> - Application for registration; - Founding Charter if a PC does not operate on the basis of the Model Charter; - Memorandum of association (optional for founders); - A document confirming the company location (except for small businesses); - Receipt or a copy of remittance order on payment of the registration fee. 	10 working days For small businesses: 3 working days	7,600 tenge US\$57 For small businesses: 2,280 tenge US\$17

The existing registration procedure took effect in April 1995 and is adequately fine-tuned. The Government of Kazakhstan up to date did not receive any complaints or comments on the existing preferential terms applied for registration of small businesses. These preferential terms are part of the strategic programme of the Government of Kazakhstan aimed at addressing the broader strategic task of reduction of poverty and social disparity in the society and facilitating middle class through supporting small businesses and individual entrepreneurs.

Question 40

On the issue of registration fees (paragraph 98), we seek greater clarification as to why the fee would need to vary according to the size of the business. We seek a clear explanation as to how the cost of the service rendered would be greater for an individual entrepreneur (US\$34) than a small business (US\$17), and therefore how consistency with Article VIII is ensured.

Answer:

Pursuant to Article 9 of the Law "On State Registration of Juridical Persons and Statistical Record-Keeping Registration of Branches and Representative Offices", the state registration (re-registration)

and statistical record keeping registration (re-registration) of branches and representative offices shall be established:

- for small businesses - within three working days;
- for other juridical persons - within ten working days; and
- from the date of submission of a complete set of application documents.

The legislation of Kazakhstan for small businesses provides for a simplified procedure of state registration, including a reduced list of the documents required for registration, reduction of terms and the registration fee amount, and also an option to operate on the basis of a Model Charter.

Small business enterprises are juridical persons and their branches, which run business with annual average number of employees not exceeding 50 people and the total value of assets per year on average not exceeding 60,000 monthly calculation indexes (61.8 thousand tenge or US\$ 461,000).

According to Article 7 of the abovementioned Law, small businesses shall conduct their business activity on the basis of the Model Charter approved by the Government of the Republic of Kazakhstan. Simplified or preferential terms of registration for small businesses are justified by the fact that there is no need for juridical expertise of the founding documents for small businesses since they are based on the Model Charter.

Other applicants should submit a list of documents, which require detailed legal expertise - the charter, founding charter, protocol of the meeting of founders and document confirming the company's location.

Fees rates for state registration of juridical persons as well as their branches and representative offices, and small businesses as well as their branches and representative offices, are established by the Resolution of the Government of the Republic of Kazakhstan No. 1660 "On Approval of Fees Rates for State Registration of Juridical Persons" of 19 December 2001.

Registration fees are set at a fixed rate based on the actual cost of state registration and re-registration services. The methodology for calculation of fee rates for the state registration of juridical persons is approved by the Order of the Ministry of Economy and Budget Planning of the RK No. 135 of 28 October 2005.

The registration fee for state registration of juridical persons and their branches and representative offices is set at KZT 7,600; for state registration of small businesses and their branches and representative offices is KZT 2,280.

The registration fee for individual entrepreneurs is established by the Resolution of the Government of the Republic of Kazakhstan No. 1586 "On Approval of Fees Rates for State Registration of Individual Entrepreneurs", the size of which is determined as 4 Monthly Calculation Indices or KZT 4,672.

Table on Requirements, Terms and Fees applied for Registration
of Various Legal Forms of Juridical Persons

Legal forms	List of documents to submit for state registration	State registration terms	Registration fee amount
Limited Liability Partnership is a partnership founded by one or several individuals, registered capital of which is separated into shares in the amounts determined by the founding documents. The participants of LLP take none of the company's liabilities and share its risks only within the limits of the contributions made, except for the cases provided by the legislation.	<ul style="list-style-type: none"> - Application for registration; - Founding charter if an LLP does not operate on the basis of the Model Charter; - Receipt or a copy of remittance order on payment of the registration fee; - A document confirming the company's location (except for small businesses) 	10 working days For small businesses: 3 working days	7,600 tenge US\$57 For small businesses: 2,280 tenge US\$17
Joint Stock Company - juridical person, issuing shares with the purpose to attract funding for performance of their activity.	<ul style="list-style-type: none"> - Application for registration; - Founding Charter; - Protocol of the meeting of founders; - A document confirming the company's location; - Receipt or a copy of remittance order on payment of the registration fee. 	10 working days	7,600 tenge US\$57
Production Cooperative - a voluntary association of individuals on the basis of a membership for joint entrepreneurial activity, based on their personal working participation and unification of the participants' contributions.	<ul style="list-style-type: none"> - Application for registration; - Founding Charter if a PC does not operate on the basis of the Model Charter; - Memorandum of association (optional for founders); - A document confirming the company location (except for small businesses); - Receipt or a copy of remittance order on payment of the registration fee. 	10 working days For small businesses: 3 working days	7,600 tenge US\$57 For small businesses: 2,280 tenge US\$17

The existing registration procedure took effect in April 1995 and is adequately fine-tuned. The Government of Kazakhstan up to date did not receive any complaints or comments on the existing preferential terms applied for registration of small businesses.

These preferential terms are part of the strategic programme of the Government of Kazakhstan aimed at addressing the broader strategic task of reduction of poverty and social disparity in the society and facilitating middle class through supporting small businesses and individual entrepreneurs.

Regarding the question on whether a methodology used for calculation of registration fees of juridical persons and their branches and representative offices in Kazakhstan is consistent with Article VIII of GATT, it should be noted that Article VIII of GATT regulates fees and formalities connected with importation and exportation of goods. It states that all fees and charges of whatever character (other than import and export duties and other than taxes within the purview of Article III) imposed by contracting parties on or in connection with importation or exportation shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes.

The provisions of this Article shall extend to fees, charges, formalities and requirements imposed by governmental authorities in connection with importation and exportation, including those relating to:

- consular transactions, such as consular invoices and certificates;
- quantitative restrictions;
- licensing;
- exchange control;
- statistical services;
- documents, documentation and certification;
- analysis and inspection; and
- quarantine, sanitation and fumigation.

As one can see from the above provisions, Article VIII of GATT does not cover fees charged for registration of juridical persons and their branches and representative offices.

Nevertheless, Kazakhstan is ready to revise the methodology currently used for calculation of registration fees for individual entrepreneurs.

Question 41

According to paragraph 102 of WT/ACC/SPEC/KAZ/9/Rev.1, the representative of Kazakhstan "noted that imported ethyl alcohol was used solely for the production of alcoholic beverages, while ethyl alcohol for pharmaceutical, medical and technical needs was produced domestically." Is the market split in this fashion? If so, why? Are pharmaceutical, medical and technical consumers of ethyl alcohol not permitted to purchase imported products?

Answer:

According to Article 10.1 of the Law No. 429 "On State Regulating of Production and Turnover of Ethyl Spirit and Alcoholic Beverages" of 16 July 1999, the following order is established by the authorized body:

- sale of ethyl spirit without payment of excise taxes within the allocated quotas is allowed to pharmaceutical and state medical enterprises possessing the licence for the relevant activity;
- sale of ethyl spirit with payment of excise taxes is allowed to:
 - producers of alcohol beverages (except for beer); and
 - organizations that use ethyl spirit for technical purposes or in production of non-alcohol products if they comply with norms established by the relevant authorized body.

According to Resolution of the Government of the Republic of Kazakhstan No. 137 "On Rates of Excise Taxes on Goods Produced in the Republic of Kazakhstan and Imported to the Customs Territory of the Republic of Kazakhstan and on Gambling Business" of 28 January 2000, rate of excise tax on non-denaturized ethyl spirit with 80 per cent and more spirit concentration; ethyl spirit and other denaturized spirits of any concentration is equal to 400 tenge/litre on domestically produced ethyl spirit or €3/litre on imported ethyl spirit.

Producers of ethyl spirit sell ethyl spirit with or without payment of excise tax to the abovementioned categories of consumers only on the basis of permission from the authorized body responsible for regulation of production and turnover of ethyl spirit and alcohol beverages.

Question 42

In relation to the process of state registration outlined in paragraph 97, we seek a detailed explanation of the basis for refusal of an application.

Answer:

According to Article 42 of the Civil Code of the Republic of Kazakhstan of 27 April 2007, refusal in state registration on the basis of whether it is justified to establish the juridical person shall not be allowed. Refusal in state registration can be appealed to a court.

The only reasons for refusal in registration of the juridical person could be non compliance of the founding documents of the juridical person with the legislation of Kazakhstan and breach of the legal rules on establishment of the juridical person.

The rules and procedure to be followed for state registration of juridical persons is stipulated the Law of the Republic of Kazakhstan No. 2189 "On State Registration of Juridical Persons and Statistical Record-Keeping Registration of Branches and Representative Offices" of 17 April 1995.

According to Article 11 of the Law, the basis for refusal in state registration and re-registration of juridical person shall be the following:

- violation of the procedures on establishment and reorganization of the juridical person established by the legislative acts of the Republic of Kazakhstan;
- non-compliance of the founding documents with the legislative acts of the Republic of Kazakhstan;
- in case of reorganization of the juridical person, failure to submit an assignment deed or separation balance sheet or submission of these documents without provisions on legal succession of the reorganized juridical person;
- in cases when a founder is an inactive juridical person; and/or when a founder and/or head of the juridical person are the founders and/or heads of inactive juridical persons; and/or when they are acknowledged as incapable or partially capable and/or missing;
- if a founder and/or head of the juridical person is dead;
- if a founder and/or head of the juridical person are charged in accordance with Articles 192 (false-entrepreneurship), 216 (deliberate bankruptcy), 217 (false bankruptcy) of the Criminal Code of the Republic of Kazakhstan; and
- if the personal identification documents provided were lost.

In the case of refusal in state registration or re-registration of the juridical person, registration body shall provide written reply with a reference to concrete reasons for refusal within ten working days from the date of submission of the application.

Based on the above, it should be noted that the state registration body could refuse in state registration of juridical persons only on the basis of reasons clearly stipulated in the legislation of Kazakhstan.

A. IMPORT REGULATIONS

- **Ordinary customs duties**

Question 43

According to paragraph 107 of WT/ACC/SPEC/KAZ/9/Rev.1, Kazakhstan's tariff policy incorporated, *inter alia*, commitments ensuing from its participation in the formation of a Customs Union among the Eurasian Economic Community.

Is Kazakhstan envisioning a common external tariff among the other members of the Eurasian Economic Community?

Have the members of the Eurasian Economic Community begun to harmonize their external tariffs? If so, to what extent?

What effect does the formation of this customs union have on Kazakhstan's current tariff policy?

Answer:

On 6 October 2007, the heads of three member-states of the Eurasian Economic Community (EurAsEC) signed the Agreement on Creation of a Single Customs Territory and Formation of the Customs Union and the Agreement on the Commission of the Customs Union. These documents are aimed at establishing the legal framework for the future customs union and envisage the phased delegation of the national governments' functions on regulation of external trade policy to the supranational body- the Commission of the Customs Union.

Currently, within the framework of EurAsEC, the negotiations have started between three member states- the Russian Federation, Republic of Belarus, Republic of Kazakhstan - with the purpose to establish a common external import tariff.

The remaining three other member-states of the EurAsEC - Kyrgyzstan, Tajikistan and Uzbekistan - will join the single customs tariff according to their readiness.

Currently, approximately 45 per cent of Kazakhstan's applied import tariffs have been harmonized with the applied import tariffs of the Russian Federation and the Republic of Belarus.

When the decisions are made by any of the EurAsEC member-states with regard to its currently applied import or export duty rates and other external trade policy instruments, the consultations shall be conducted in due course with other parties to EurAsEC.

Question 44

Page 47, paragraph 110: on the list provided in Annex 6 of countries eligible for the GSP treatment, we notice some relatively more industrialized WTO Members are included among the beneficiaries, such as Hong Kong, China, the Republic of Korea and Singapore.

Could Kazakhstan please elaborate on the criteria used for establishing the list of countries eligible for GSP treatment? Would Kazakhstan consider offering us such preferential treatment, given that our economic development is at a similar level to those of the above-mentioned Members?

Answer:

Resolution of the Government of the Republic of Kazakhstan No. 1389 "On Rates of Customs Duties Levied on Imported Goods" of 14 November 1996 is invalid.

At present, the customs duties for goods imported to the Republic of Kazakhstan are established by the Resolution of the Government of the Republic of Kazakhstan No. 1317 "On Customs Tariff and Goods Nomenclature of Foreign Economic Activity of the RK" of 28 December 2007.

The Resolution No. 1317 contains the list of 104 developing countries and 47 least developed countries and customs territories enjoying the national system of preferences of the Republic of Kazakhstan (Annex 4).

In accordance with the footnote in the abovementioned document, custom duties applicable to imported products originating from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu shall be levied at the same rate as products originating from People's Republic of China. Therefore, goods listed in Kazakhstan's GSP system (Annex 5) imported from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu are eligible for tariff preferences and as such shall be levied at 75 per cent of the MFN rate.

- **Other duties and charges**

Question 45

We appreciate Kazakhstan's confirmation, in paragraph 113 of WT/ACC/SPEC/KAZ/9/Rev.1, that Kazakhstan does not apply "any other duties and charges on imports, except for currently applied import duties approved by Government Resolution No. 1389 of 14 November 1997, and fees charged for services rendered." Will Kazakhstan take a commitment, from the date of accession to: 1) levy no duties and charges on imports other than ordinary customs duties and fees and charges for services rendered and 2) apply any such charges to imports in accordance with WTO provisions?

Answer:

Resolution of the Government of the Republic of Kazakhstan No. 1389 "On Rates of Customs Duties for Imported Goods" of 14 November 1996 is invalid.

At present, the customs duties for goods imported to the Republic of Kazakhstan are established by the Resolution of the Government of the Republic of Kazakhstan No. 1317 "On Customs Tariff and Goods Nomenclature of Foreign Economic Activity of the RK" of 28 December 2007.

Kazakhstan confirms that it does not impose any other duties and charges on imports except for ordinary import duties and fees and charges for services rendered.

According to Article 290 of the Customs Code, the following customs payments are currently in force in the Republic of Kazakhstan: 1) customs duties; 2) customs fees; 3) fees charged for issuing import/export licence; 4) fees for preliminary decision regarding classification, methodology of identifying of the country of origin and customs value of the good.

Kazakhstan is currently considering to make the following commitment:

[["Kazakhstan will take a commitment, from the date of the WTO accession, to levy no duties and charges on imports other than ordinary customs duties, fees and charges for services rendered; 2) to apply any such charges to imports in accordance with Article II:1(b) of the GATT 1994."]]

Question 46

We are encouraged by Kazakhstan's statement which seems to indicate that it does not apply other duties and charges within the meaning of Article II:1(b) of GATT 1994. We would encourage Kazakhstan to adopt the following commitment language:

The representative of Kazakhstan recalled that Kazakhstan had bound all tariffs in its Schedule of Concessions and Commitments for Goods. She confirmed that Kazakhstan would from the date of its accession to the WTO not apply other duties and charges within the meaning of Article II:1(b) of GATT 1994 and would bind such other duties and charges at zero in relation to all products included in its Schedule of Concessions and Commitments for Goods. The Working Party took note of these commitments.

Answer:

Currently, the customs duties for goods imported to the Republic of Kazakhstan are established by the Resolution of the Government of the Republic of Kazakhstan No. 1317 "On Customs Tariff and Goods Nomenclature of Foreign Economic Activity of the RK" of 28 December 2007.

Kazakhstan confirms that it does not impose any other duties and charges on imports except for ordinary import duties and fees and charges for services rendered.

According to Article 290 of the Customs Code, the following customs payments are currently in force in the Republic of Kazakhstan: 1) customs duties; 2) customs fees; 3) fees charged for issuing import/export licence; 4) fees for preliminary decision regarding classification, methodology of identifying of the country of origin and customs value of the good.

Kazakhstan is currently considering to make the following commitment:

[["Kazakhstan will take a commitment, from the date of the WTO accession, to levy no duties and charges on imports other than ordinary customs duties, fees and charges for services rendered; 2) to apply any such charges to imports in accordance with Article II:1(b) of the GATT 1994."]]

- **Tariff rate quotas, tariff exemptions**

Question 47

In paragraph 114 of WT/ACC/SPEC/KAZ/9/Rev.1, Kazakhstan indicates the possibility of applying tariff rate quotas (TRQs) "on a limited number of sensitive agricultural products - namely meat (poultry) and cane sugar..." This statement appears at odds with the "standstill principle" used in all negotiations and with the market access offers tabled by Kazakhstan. We seek clarification of Kazakhstan's intentions regarding the use of TRQs. We hope that Kazakhstan will not take this approach, as we believe that it is a step in the wrong direction.

If Kazakhstan were to apply such TRQs, how would the measures be administered? Would Kazakhstan use import licenses? If so, please describe the procedures that will be required to obtain such a licence.

Answer:

As indicated in its goods market access offer, Kazakhstan is planning to apply tariff rate quotas in relation to the imports of poultry.

The legal framework for implementation of tariff quotas mechanism was established by the Law of the Republic of Kazakhstan No. 544 "On Trade Activity Regulation" of 12 April 2004.

The Government will be administering the tariff quotas through the most transparent "first come - first served" method in combination with the automatic licensing procedures.

It should be noted, that in order to bring the national legislation into compliance with the provisions of the WTO Agreement on import licensing procedures, the provisions on automatic licensing have been introduced by the Law of the RK No. 214 "On Licensing" of 11 January 2007.

According to the Article 41 of the abovementioned Law, the approval of application is granted within ten working days provided that all necessary documents for obtaining the automatic licensing are submitted.

The application for acquiring the licence may be submitted on any working day prior to the customs clearance of goods.

- **Fees and charges for services rendered**

Question 48

We welcome new information provided by Kazakhstan in relation to the "custom escort" fee. We would like to understand better in what circumstances a customs escort fee is relevant and is required to be charged? For example, does this fee only concern goods that are in transit through Kazakhstan to another third country, or goods kept in bonded warehouses until either re-exportation or release into the domestic market? Or does it relate to goods imported into Kazakhstan for immediate final delivery (i.e. without use of bonded warehouse facilities)? It would be useful for this to be spelt out in the Working Party report.

Answer:

Pursuant to Article 78 of the Customs Code, 'customs escort procedure' means the escort of goods under the customs control and the accompanying documents from the customs point of departure to the customs point of destination by customs officials, as well as within the area of one customs authority.

Customs escort is used by customs authorities as an exclusive measure to ensure delivery of goods and accompanying documents, conveyed through the customs territory of the Republic of Kazakhstan upon the written decision of the customs official, when the following requirements are not complied with:

- provision of the guarantee commitment of the consignee about the delivery of goods;
- ensuring payment of customs duties and taxes at any customs authority;
- conveyance of goods by a customs carrier; and
- customs escort starts not later than in 24 hours from the time of payment of fees for customs escort.

A carrier and/or a person conveying goods has the right to choose any of the specified measures.

A list of goods conveyed through the territory of the Republic of Kazakhstan with mandatory ensuring of payment of customs duties and taxes is approved by the Government of the Republic of Kazakhstan No. 524 of 4 June 2003 (available through document WT/ACC/KAZ/67/Add.1).

Pursuant to Article 431 of the Customs Code, goods imported onto the customs territory of the Republic of Kazakhstan, are subject to customs control from the moment they cross the customs border of the Republic of Kazakhstan, up until the moment they are:

- released into free circulation, except for conditional release in compliance with Article 14 of the Customs Code;
- destroyed;
- refused in favour of the state or turned over to the state; and
- actually exported outside the customs territory of the Republic of Kazakhstan.

According to Article 73 of the Customs Code, "Domestic customs transit" means the customs procedure when goods subject to customs control are conveyed through the customs territory of the Republic of Kazakhstan, and through the territory of a foreign state, in compliance with the terms set by the customs legislation of the RK.

Goods are conveyed under the domestic customs transit procedure from the customs point of departure to the customs point of destination under the responsibility of the carrier and/or person who conveys goods.

Customs escort fees are levied in accordance with Resolution No. 669 "On Approval of Rates of Customs Fees, Charges and Payments Levied by Customs Bodies" of 7 July 2003.

Custom escort fees are calculated on the basis of distance from the customs point of departure to the customs point of destination:

- €9 for a distance up to 50 km;
- €11 for a distance from 50 up to 100 km;
- €18 for a distance from 100 up to 200 km;
- €81 for a distance from 200 up to 400 km;
- €117 for a distance from 400 up to 600 km;
- €134 for a distance from 600 up to 800 km;
- €206 for a distance from 800 up to 1,000 km;
- €293 for a distance from 1,000 up to 1,500 km;
- €455 for a distance from 1,500 up to 2,000 km; and
- €599 for a distance over 2,000 km.

Custom escort fees include the following expenses:

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

The methodology for calculation of custom escort fees is developed according to the recommendations of the international organizations.

Question 49

Second, Annex IV only contains information on the calculation of the customs "escort fee". However, in document WT/ACC/SPEC/KAZ/9/Rev.1, Kazakhstan notes a customs clearance fee (paragraph 119). Can it explain the difference between a standard customs clearance fee and that of a customs "escort fee"? If these are different fees, can Kazakhstan provide an indication of the size of "customs clearance fees" and how they are calculated according to the cost of the service rendered? This would be a useful addition to the Working Party report.

Answer:

Customs clearance fees are levied in accordance with Resolution No. 669 "On Approval of Rates of Customs Fees, Charges and Payments Levied by Customs Bodies" of 7 July 2003.

The procedure of customs clearance of goods includes registration of a customs declaration; verification of the application of tariff and non-tariff regulations; verification of compliance of the location of goods with customs requirements; administration of customs fees; determination of customs value; classification of goods for the purpose of customs examination and customs expert evaluation.

Hence, customs clearance fee and customs escort fee are different types of fees charged for fulfilment of different types of procedures by customs authorities. More detailed information on the nature and size of the customs escort fee is described in reply to the previous question.

The calculation of the customs clearance fees is based on direct and indirect costs of customs bodies for the specified services.

The customs clearance fees are set at €50 for the main list of customs declaration, at €20 for every additional list of the customs declaration.

The methodology for calculation of custom clearance fees is developed according to the recommendations of the international organizations.

- **Application of internal taxes to imports**

Question 50

We note the information provided by Kazakhstan in WT/ACC/KAZ/66 in relation to two VAT schemes. We reserve our rights to a fuller examination of these programs, but make the following preliminary observations and questions

According to paragraph 124 of the Working Party report, a reduction of 80 per cent of tax is available to producers of primary agricultural products.

When the agricultural producer sells his/her product to a processor, they charge the 15 per cent VAT on their product and collect this from the processor?

Answer:

As of 1 January 2008, the uniform VAT rate in Kazakhstan is 13 per cent.

If agricultural producer is registered as a VAT payer, he/she shall pay VAT in the amount of 13 per cent for produced primary products and collect the amount of VAT from buyers (from producer or consumer, trader). In other words, agricultural producer collects VAT from buyers as part of product price. If an agricultural producer is subject to the special regime, amount of VAT payable to budget shall be reduced by 80 per cent.

In case, primary agricultural products are purchased from such agricultural producers, a buyer shall pay to the state budget the total VAT charged (13 per cent), including VAT portion not paid by the agricultural producer.

Question 51

The primary producer then calculates his or her net VAT liability (i.e. by deducting the VAT costs of any inputs used in farming)?

Answer:

Agricultural producer shall calculate his/her VAT liability and provide the report to tax bodies. In particular, Paragraph 4 Article 388 of the Tax Code stipulates: "Taxpayers, subject to special regime, are exempt from providing reports on taxes included into patent and payments for use of the land, except for VAT."

For the purpose of accountability, agricultural producer shall declare in the patent the total amount of VAT liable to the Government.

Question 52

When does the primary producer obtain the 80 per cent reduction in their tax liability? Does it pay its full "net VAT liability" to the Government and then claim reimbursement, or does it only pay to the Government its "net VAT liability" less the 80 per cent discount?

Answer:

In accordance with paragraph 3 of Article 388 of the Tax Code, when calculating patent at the beginning of the fiscal year, the amount of taxes, including VAT, subject to budget payment shall be reduced up to 80 per cent. In other words, agricultural producer shall pay VAT liability to the Government less the 80 per cent discount.

Question 53

Does the agricultural processor, who purchases the domestic farm output, also receive a similar deduction on his/her VAT when they sell their processed output to the consumer?

Answer:

According to Article 244-1 of the Tax Code, from 1 January 2007 certain producers have a right to reduce their VAT to budget up to 70 per cent. The right of 70 per cent reduction of the VAT rate is applied only to producers of the following:

- meat and meat products;
- canned fruit and vegetables;
- plant and animal oil;
- milk and cheese;
- flour and groats;
- ready-to-eat feed products for animal;
- bread; and
- children food and dietary food products.

When producer afterward sells processed products to consumers, then final consumer or distributor shall pay total VAT rate in the amount of 13 per cent. The market price of both agricultural goods produced by domestic producers and imported agricultural goods should include 13 per cent VAT rate.

Question 54

This information will be important in establishing consistency of Kazakhstan's measures with the requirement of GATT Article III:2 that taxes applied to the imported product not be "in excess of " those applied to domestic product. Consistency with GATT Article III:2 is not simply guaranteed by the application of the same VAT rate to the product - it also depends on what the actual tax burden (i.e. taking into account remissions or discounts) falling on each product.

Answer:

Taking into account the said above, domestic agricultural products and their processed products are subject to full VAT payment. Therefore, the special tax regime applied for agricultural producers does not violate Article III:2 of GATT.

Question 55

We seek further clarification of the application of excise taxes to alcohol under the resolution of 1 January 2006.

In particular, what "spirits" are taxed at KZT 40 per litre?

Answer:

Pursuant to the Resolution of the Government of the Republic of Kazakhstan No. 137 "On Rates of Excise Taxes on Excisable Goods Produced in the Republic of Kazakhstan and Imported to the Customs Territory of the Republic of Kazakhstan and on Gambling Business" of 28 January 2000, the excise tax is set at KZT 40 per litre of un-denatured ethyl spirit, of an alcoholic strength of 80 per cent volume or more; ethyl spirits and other spirits, denatured, of any strength, used in the production of alcoholic beverages (HS EurAsEC 2207).

Question 56

What spirits are taxed at the rate of KZT 250 per litre?

Answer:

Pursuant to the Resolution of the Government of the Republic of Kazakhstan No. 137 "On Rates of Excise Taxes on Excisable Goods Produced in the Republic of Kazakhstan and Imported to the Customs Territory of the Republic of Kazakhstan and on Gambling Business" of 28 January 2000, the excise tax is set at 250 KZT per litre of 100 per cent spirit for alcoholic beverages (except for other beverages of actual alcoholic strength by volume of not more than 12 per cent volume cognac, brandy, wine beverages, wine, champagne, sparkling and carbonated wine and beer) and other beverages of actual alcoholic strength by volume of not more than 12 per cent volume (HS EurAsEC 2208).

Question 57

At what rate are cognac, brandy, wine beverages, wines, champagne, sparkling wine and beer taxed at (as the Working Party report indicates that are excluded from the KZT 250 per litre rate)?

Answer:

The excise tax at KZT 100 per litre of 100 per cent spirit is set for cognac, brandy, produced in the Republic of Kazakhstan; at €4.25 (about KZT 760) is set for cognac, brandy imported to the territory of the Republic of Kazakhstan.

Taking into account that HS 2204 includes a group of wines, containing sparkling and champagne, the Law of the Republic of Kazakhstan No. 201 "On Amendments and Addenda to the legislative acts of the Republic of Kazakhstan on the issues of taxation" of 11 December 2005 has amended the Law of Republic of Kazakhstan No. 429 "On State Regulating of Production and Turnover of Ethyl Spirit and Alcoholic Beverages" 16 July 1999, stipulating an inclusion of such wine drinks as champagne, sparkling and carbonated wines, and other wine beverages into the subtype of alcohol products "wine" as of 1 January 2007.

Pursuant to the Resolution of the Government of the Republic of Kazakhstan No. 274 of 5 April 2007, wines, including champagne, sparkling and carbonated wines, and other wine beverages, produced in

the Republic of Kazakhstan, are subject to excise tax at the rate of KZT 20 per litre; imported to the territory of the Republic of Kazakhstan - at the rate of €0.4 (about KZT 70) per litre.

Beer, produced in the Republic of Kazakhstan, is subject to excise tax at the rate KZT 10 per litre; imported to the territory of the Republic of Kazakhstan - at the rate €0.2 (about KZT 35) per.

At the present Kazakhstan is in the process of preparing full unification of excise tax rates by the date of Kazakhstan's accession to the WTO.

Kazakhstan is currently considering to make the following commitment:

[["From the date of accession Kazakhstan would apply its domestic taxes, including those on products listed in Annex [...] in strict compliance with Article III of the GATT 1994, in a non-discriminatory manner to imports regardless of country of origin and to domestically-produced goods."]]

Question 58

Is Kazakhstan on track to unify its excise taxes by 1 January 2007, as promised in paragraph 129 of WT/ACC/SPEC/KAZ/9/Rev.1?

Answer:

Currently, Kazakhstan is carrying out preparatory work on introduction of unified excise tax from the date of Kazakhstan's accession to the WTO.

Kazakhstan is currently considering to make the following commitment:

[["From the date of accession Kazakhstan would apply its domestic taxes, including those on products listed in Annex [...] in strict compliance with Article III of the GATT 1994, in a non-discriminatory manner to imports regardless of country of origin and to domestically-produced goods."]]

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

Question 59

We consider this section of the revised Working Party Report to be an improvement, but considerable further work remains in ensuring that Kazakhstan adopts a WTO consistent system of import licensing which does not pose unnecessary obstacles to trade.

First, the right to import and hence obtain an import licence should not be made conditional upon being engaged in production or distribution of such imported goods in Kazakhstan. And to ensure consistency with trading rights obligations of Article III and XI of GATT1994, the right to import should be established independently of distribution, production or other activity in the importing Member. The conceptual problem lies in understanding that an "importer" is an intermediary that may not actually be the final user or recipient of product in any transaction. For example, the "importer" may be a trading house which arranges for product to be bought into Kazakhstan, not for their own use/consumption, but for the purchase by another firm/entity (e.g. a producer). Secondly, an "importer of record" may be a foreign producer/exporter that wants to be responsible for clearance of the imported goods (payment of duties, fulfilment of other formalities) into a market until the point that it reaches the buyer or first point of distribution. Hence, we request that Kazakhstan remove the linkage between the right of obtaining an import licence and production/distribution activity in Kazakhstan. This has been a standard commitment in some recent accession, including that of Viet Nam.

We understand some of the reasoning behind Kazakhstan's current restrictions on the right to import (e.g. health, safety, prevention of grey market), but these concerns can be met in ways that are less trade restrictive and consistent with WTO rules. In particular, Kazakhstan could achieve these aims by appropriately licensing the importer (which ensures monitoring of imports of alcohol or other dangerous products) and separately licensing producers/distributors or other final end users of such products. This will ensure that when an importer completes his transaction and the product is transported to the final purchaser (e.g. producer etc), that such product is only allowed to be received/purchased by an appropriately licensed individual or entity. The importer and final buyer (e.g. producer/distributor) do not need to be the same entity or individual.

Answer:

The current licensing regime related to alcohol is regulated in the following way:

- Article 36 of the Law of the Republic of Kazakhstan No. 214 "On Licensing" of 11 January 2007 requires activity licensing in order to import ethyl spirit and alcohol beverages;
- Article 10.1 of the Law of the Republic of Kazakhstan No. 429 "On State Regulating of Production and Turnover of Ethyl Spirit and Alcoholic Beverages" of 16 July 1999 requires the following:
 - In order to obtain an import licence for ethyl spirit, a licence for production of alcohol beverages (using ethyl spirit) is required;
 - In order to obtain import licence for wine materials, a licence for production of alcohol beverages (using wine materials) is required;
 - In order to obtain import licence for alcohol beverages, a licence for production or for storage and wholesale distribution of alcohol beverages (except for beer) is required.

With the purpose to simplify the licensing procedures, the Government of Kazakhstan is planning to amend the Law of the Republic of Kazakhstan "On Licensing" and exclude importation of ethyl spirit and alcohol beverages from the list of activities subject to licensing. Therefore, not the importation of alcohol itself as activity, but goods, such as ethyl spirit, wine materials and alcohol beverages, will be subject to import licensing.

At the same time it is important for the Government of Kazakhstan to maintain the currently applied regulation governing the importation of ethyl alcohol and wine materials. The elimination of the prerequisite to obtain activity licence for the production of alcoholic beverages could result in the emergence of a "grey" market for imported products. This could negatively affect both human health and state budget due to potential problems with collection of taxes on alcohol beverages produced using imported ethyl alcohol and wine materials.

As for alcohol beverages (other than beer), the activity licence is necessary because alcohol beverages, other than beer, are subject to a set of qualification requirements. An activity licence for production of alcohol is required in order to obtain an import licence for alcohol beverages due to the fact that alcohol beverages are not always imported in bottles, but also in containers. In such cases, possession of the production licence makes sure that the importer has the production facilities where they place alcohol into bottles, which meet the necessary sanitarian and other safety related requirements.

An activity licence for storage and wholesale distribution is required in order to obtain import licence for alcohol beverages because of the importer needs to meet the requirements necessary for storage and wholesale by alcohol beverages.

Question 60

We note the statement that "as ethyl spirit used by companies in Kazakhstan for pharmaceutical, medical and technical purposes is supplied by domestic producers, ethyl spirit is imported solely for production of alcoholic beverages". In essence, this suggests that Kazakhstan is limiting the end use of imported ethyl spirit to one purpose only - alcoholic production. If a domestic producer of pharmaceutical, medical or other technical purposes wishes to import ethyl alcohol, it is prohibited from doing so? How would a firm apply for importation of ethyl alcohol if it was not intending to import for the purpose of producing alcoholic beverages?

Answer:

According to Article 10.1 of the Law of the Republic of Kazakhstan No. 429 "On State Regulating of Production and Turnover of Ethyl Spirit and Alcoholic Beverages" of 16 July 1999, the following order is established by the authorized body:

1. sale of ethyl spirit without payment of excise taxes within the allocated quotas is allowed to pharmaceutical and state medical enterprises possessing the licence for the relevant activity;
2. sale of ethyl spirit with payment of excise taxes is allowed to:
 - producers of alcohol beverages (except for beer);
 - organizations that use ethyl spirit for technical purposes or in production of non-alcohol products if they comply with norms established by the relevant authorized body.

According to Resolution of the Government of the Republic of Kazakhstan No. 137 "On Rates of Excise Taxes on Goods Produced in the Republic of Kazakhstan and Imported to the Customs Territory of the Republic of Kazakhstan and on Gambling Business" of 28 January 2000, rate of excise tax on non-denaturized ethyl spirit with 80 per cent and more spirit concentration; ethyl spirit and other denaturized spirits of any concentration is equal to 400 tenge/litre on domestically produced ethyl spirit or €3/litre (about KZT 525) on imported ethyl spirit.

Producers of ethyl spirit sell ethyl spirit with or without payment of excise tax to the abovementioned categories of consumers only on the basis of permission from the authorized body responsible for regulation of production and turnover of ethyl spirit and alcohol beverages.

Question 61

We welcome the information provided in Kazakhstan's response to Question 67 on a new "Licensing" law. We would like to see the full details of goods which will be subject to "automatic licensing" and those that will be subject to any "non-automatic licensing".

Is any form of "non-automatic licensing" to be utilised in the future?

Answer:

Pursuant to Article 41 of the Law of the Republic of Kazakhstan No. 214 "On Licensing" of 11 January 2007, in case of automatic licensing of certain goods, the application shall be approved in all the cases. The application for obtaining of a licence may be submitted on any working day before customs clearance of goods. The licence shall be issued within ten working days if the application for obtaining of a licence and necessary documents are presented in the due form and order.

The list of goods subject to automatic licensing, as well as the procedure for issuing an automatic licence shall be approved by the Government of the Republic of Kazakhstan. The Government of Kazakhstan is envisaging that importation of goods subject to tariff rate quotas will be subject to automatic licensing.

Pursuant to Article 38 of the Law "On Licensing", the list of goods subject to import and export licensing requirement shall be established by the Government of the Republic of Kazakhstan. Licensing of goods shall not have more restrictive or distorting influence upon exportation or importation of goods other than meeting the requirements because of which they are subject to licensing.

According to Article 40 of the Law, import and export licensing of goods shall be performed by the Government of the Republic of Kazakhstan due to reasons related to national security, life and health safety of citizens, environmental safety of the Republic of Kazakhstan without application of quantitative restrictions.

The list of goods subject to import (and export) licensing, as well as the rules governing the licensing of goods (and services), are approved by Government Resolution No. 1037 "On Licensing Export and Import of Goods and Services in the Republic of Kazakhstan" of 30 June 1997.

The import licensing of ethyl spirit and alcohol beverages was regulated by the Rules approved by Government Resolution No. 1031 "On Licensing of Import of Ethyl Spirit and Alcoholic Beverages in the Republic of Kazakhstan" of 27 June 1997.

Question 62

Are there any grounds for refusal of issuance of an import licence in this new law?

Answer:

Pursuant to Article 45 of the Law "On Licensing", issuing a licence may be denied in the following cases:

- engagement in the type of activity which is prohibited by laws of the Republic of Kazakhstan for the stated category of enterprises;
- failure to submit the full set of required documents in accordance with the Law; in cases when the applicant submits the missing documents, the application shall be considered on the general basis;
- failure to pay the activity licence fee in cases of application for activity licence;
- failure to meet the required qualification requirements; and
- in cases when there is a legally enacted court sentence applied with regard to the applicant, which prohibits the applicant to be engaged in certain activities.

Question 63

In Annex 8(b) of WT/ACC/SPEC/KAZ/9/Rev.1, concerning products subject to import and export licensing, the justification for an import licence for "white spirits, other weak distillates, other medium distillates for specific processes for chemical conversion processes" suggests that Kazakhstan was considering discontinuing this import licensing requirement.

Has Kazakhstan eliminated this import licensing requirement? Please update this chart accordingly.

Answer:

White spirit and light distillations was subject to import licensing in conjunction with the quantitative restriction (quota) applied for imports of these products. According to the Resolution of the Government of Kazakhstan No. 457 of 6 April 2001, the duration of the applied import quota has expired on 31 December 2002.

At the same time, the Government decided to maintain the import licensing mechanism vis-à-vis the abovementioned goods due to the reasons related to the possible negative consequences/damage to human health and environment from the supply of these products to the domestic market.

At present, licensing of white spirit and distillations import is applied in accordance with the Resolution of the Government of the Kazakhstan No. 1037 "On Export and Import Licensing of Goods (Works, Services) in the Republic of Kazakhstan" of 30 June 1997.

The Annex 8(b) of WT/ACC/SPEC/KAZ/9/Rev.1 will be amended accordingly.

Kazakhstan is currently considering to make the following commitment:

[[Kazakhstan confirmed that, from the date of accession, Kazakhstan would not introduce, re-introduce or apply quantitative restrictions on imports or other non-tariff measures, such as licensing, quotas, bans and other restrictions having equivalent effect that could not be justified under the provisions of the WTO Agreement. If balance-of-payment measures were ever necessary in the future, Kazakhstan would impose them in a manner consistent with the relevant WTO provisions, including Articles XII of the GATT 1994 and the Understanding on Balance-of-Payments Provisions of the GATT 1994.]]

- **Customs valuation**

Question 64

In paragraph 143 of WT/ACC/SPEC/KAZ/9/Rev.1, Kazakhstan explains that "the application of price references had been approved by Government Resolution No. 794." The response to Question 71 of WT/ACC/KAZ/66 similarly raises the issue of the fallback method of valuation and requests that Kazakhstan more fully describe "reference prices." The use of such reference prices is contrary to the principles of valuation in the WTO Customs Valuation Agreement. How will Kazakhstan bring its customs valuation laws into compliance with the WTO?

Answer:

The Government of Kazakhstan has made a decision to exclude from the Customs Code of Kazakhstan the provision allowing customs authorities to use reference prices from the books recommended by the Government of Kazakhstan while applying reserve method of customs valuation. Currently, the relevant draft law is being developed by the Government of Kazakhstan.

Question 65

Paragraph 148 of WT/ACC/SPEC/KAZ/9/Rev.1, states that customs authorities in Kazakhstan have the right to carry out the conditional release of goods, as long as customs duties are secured in accordance with the customs value of the goods. Likewise, part 3 of the response to Question 70 of WT/ACC/KAZ/66 addresses surety provisions. Please note that the Kazakhstan Customs Code (Article 321) does not appear to guarantee that if it becomes necessary to delay the final determination of a customs value, the importer shall be able to withdraw the goods from customs if he or she provides sufficient guarantee, as required in Article 13 of the WTO

Customs Valuation Agreement. How will Kazakhstan bring its laws into compliance with the WTO?

Answer:

The Article 13 of the WTO Customs Valuation Agreement states that if, in the course of determining the customs value of imported goods, it becomes necessary to delay the final determination of such customs value, the importer of the goods shall nevertheless be able to withdraw them from customs if, where so required, the importer provides sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument, covering the ultimate payment of customs duties for which the goods may be liable.

Article 321 of the Customs Code of Kazakhstan stipulates that in cases of doubt in reliability of the presented customs value, customs body has the right to release the goods provided that the participant of the foreign economic activity ensures payment of customs fees and duties by placing a deposit.

Most particularly, the Article 321 states that when it is impossible to use the method for determining customs value based on the transaction value of imported goods, due to absence of documents confirming the customs value declared by the declarant, the customs authority shall be entitled to conditionally release the goods, provided that the customs duties and taxes are secured in compliance with the customs valuation of goods performed by the customs authority, based on information on prices which is available to the customs authority.

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

The period of time for securing payment of customs payments and taxes shall be sixty calendar days starting on the date of release of goods, except for cases when payment documents must be submitted as proving documents and, under the transaction terms, the time limit for payment exceeds the specified time period.

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

According to Article 338 of the Customs Code, the guarantee of payment of customs payments and taxes shall apply upon conditional release of goods subject to customs payments and taxes, with use of information on prices available to customs in compliance with Article 321 of the Customs Code.

Furthermore, Article 339 of the Customs Code stipulates the assurance of payment of customs fees and taxes in the following form:

- collateral;
- bank guarantee;
- deposit on the account of the customs body;
- insurance contract.

Against the above background, Kazakhstan confirms that the provisions of the Customs Code on conditional release of goods is fully consistent with the Article 13 of the WTO Agreement on Customs Valuation.

Question 66

We appreciate Kazakhstan's promise to incorporate the Interpretive Notes of the Customs Valuation Agreement into the Customs Code. What is the status of that process? What sort of legal instrument will be used? Could Kazakhstan provide the Working Party with a translation of the proposed legislation for review?

Answer:

The Law of the Republic of Kazakhstan No. 211 "On Amendments into the Customs Code of the Republic of Kazakhstan" of 8 January 2007, introduced an amendment into the Article 307 of the Customs Code on determination of the customs value of imported goods. The amendment states that the customs value of goods imported into the territory of the Republic of Kazakhstan shall be based upon the general principles of customs valuation under the General Agreement on Tariffs and Trade and the Agreement on Application of Article VII of the GATT (the amendment made to the Customs Code of Kazakhstan are available through document WT/ACC/KAZ/67/Add.1).

Question 67

Please identify where in Kazakhstan's legislation or regulations the information regarding rate of exchange, confidentiality and publication requirements set forth under Articles 9, 10 and 12 of the WTO Customs Valuation Agreement are met? Please provide copies of any other laws or regulations that implement provisions of the WTO Customs Valuation Agreement?

Answer:

Regarding rate of exchange: According to Article 303 of the Customs Code, in cases when conversion of foreign currency is required to calculate customs payments and taxes and to determine the customs value of goods, the official exchange rate of the foreign currency versus the national currency of the Republic of Kazakhstan shall be used. For payments, which are related to customs clearance of goods, the official exchange rate effective on the date of registration of the customs declaration shall be used. For payments, which are not related to customs clearance of goods, the official exchange rate effective on the date when the customs payment is made shall be used.

Regarding confidentiality requirement: According to Article 26 of the Customs Code, data, submitted to the customs authorities by other state bodies, by participants of foreign economic activity and other activity in customs sphere shall be used solely in the customs sphere in accordance with the customs legislation of the Republic of Kazakhstan.

Data which is deemed as the state secrets, commercial and other secret protected by the law, as well as confidential information, concerning participants of foreign economic activity and other activity in the customs sphere, can not be disclosed, used by customs officials in personal purposes or transferred to the third parties, except for cases stipulated in paragraph 3 of Article 26 of the Customs Code.

Paragraph 3 of Article 26 states that upon official request, Customs authorities shall submit the data to the following state authorities of the Republic of Kazakhstan:

- to law enforcement bodies - for the purpose of legal prosecution of persons that have committed offences in the sphere of customs activity;
- to courts - upon their request;
- to subjects of operational and investigative activity - with regard to materials under production in compliance with the procedures set forth in joint orders of the authorized body on customs issues and corresponding subjects of operational and investigative activity; and

- to other state bodies of the Republic of Kazakhstan - in accordance with the legislative acts of the Republic of Kazakhstan.

Customs authorities shall submit the data to customs authorities or law enforcement bodies of other states, and to international organizations, in compliance with international agreements of the Republic of Kazakhstan.

State bodies shall ensure confidentiality of information received by them, in compliance with the laws of the Republic of Kazakhstan.

Regarding publication requirement: Article 30 of the Customs Code states that providing with information in the sphere of customs activity shall be accomplished by way of official publication by customs authorities of normative legal acts of Kazakhstan in periodical press.

Providing with information in the sphere of customs activity shall also be accomplished through verbal explanations and announcements, information stands, data displays, booklets and other printed materials, as well as video, audio, and other technical means used for information distribution, including those available to the public for unpaid familiarization in the following places:

- checkpoints at the customs border of the Republic of Kazakhstan;
- airports, railway and automotive terminals, and seaports;
- on board of motor means of transport, aircraft, and marine vessels involved in international traffic; and
- customs control zones identified by this Code, and in other places determined by customs authorities.

Customs authorities shall provide free access for participants in foreign economic and other activity to information on current normative legal acts of the Republic of Kazakhstan in the sphere of customs activity through the use of information technologies, in compliance with the procedures set forth by the authorized body on customs issues.

In accordance with Article 31 of the Customs Code, consulting in the sphere of customs activity means explanation by customs authorities to participants in foreign economic and other activity of the provisions of the customs legislation of Kazakhstan. Consulting shall be provided at the place of location of customs authorities and within the business hours of customs authorities.

Written consulting shall be provided by customs authorities based upon a written inquiry received from participants in foreign economic and other activity, including with the use of information technologies. Inquiries received shall be subject to mandatory registration by customs authorities. The time limit for considering a written inquiry shall not exceed ten working days from the day of its registration, except in cases identified by Paragraph 4 of Article 31.

Paragraph 4 stipulates that with regard to inquiries requiring submission of supplementary documents and files in order to provide valid and objective consultation, as well as in cases where customs authorities have to address other state bodies and other organizations to get information that is of significant importance in terms of consideration of the inquiry received, consultation shall be provided no later than thirty calendar days from the date a written inquiry was registered.

Article 32 states that customs officials shall bear responsibility in accordance with the laws of the Republic of Kazakhstan for providing with incomplete, or deliberately false information, or illegal refusal to provide with the information in the sphere of customs activity.

All information on laws, normative legal acts and other decisions in the field of customs activity is presented on the website "www.customs.kz."

Question 68

We note Kazakhstan's description of a "reserve" method for valuation of imports in cases where the other five methods of customs valuation cannot be applied. We remain concerned that the use of Government recognised reference books would provide a means of applying administered valuations. Furthermore, the meaning of the sentence "as a rule, information reference books used in Kazakhstan contain prices from specific producers and are applied to specific goods" is unclear. We seek clarification of the following:

What are the nature of the prices included in these reference books?

Answer:

The Government of the Republic of Kazakhstan has made the decision to eliminate the norm on use of reference books determined by the Government of the Republic of Kazakhstan by the customs authorities while applying the reserve method to determine customs value. At present Kazakhstan is in the process of developing the corresponding Draft Law.

Question 69

What legal provisions/regulations govern the use of the 'reserve method'?

Answer:

The use of the reserve method is governed by the Article 314 of the Customs Code of the RK. When using the reserve method to determine customs value, the following may be utilized:

- informational reference books determined by the Government of the Republic of Kazakhstan; and
- statistical data, generally accepted commission rates, discounts, profit, transport rates and other data.

In the process, the appropriate adjustment of data shall be mandatory, taking into account commercial standards (wholesale, retail) and/or the quantity of goods being valued. When using the reserve method to determine customs value, information that the customs authorities have, may also be used.

Question 70

Do these legal provisions/instructions clearly prohibit the use of selling prices of goods produced in Kazakhstan in the calculation of customs value as per Article 7:2 of the Customs Valuation Agreement?

Answer:

Pursuant to Article 314 of the Customs Code of the RK, the following shall not be used as a basis for determining the customs value of goods based on the reserve method (please note point 4):

1. the price of the goods on the domestic market of the country of export;
2. systems, which stipulate the use of the highest value from two alternative values for customs purposes;
3. the price of goods supplied by the country of export to third countries;
4. the price of the goods on the domestic market of the Republic of Kazakhstan in relation to domestic goods;
5. an arbitrarily established or unconfirmed value of goods;

6. the value of identical or similar goods determined on the basis of expenses not stipulated by Article 313 of the Code; and
7. the minimum customs value.

Question 71

Do the legal provisions/instructions clearly capture the other provisions of Article 7.2 - *inter alia* - ruling out minimum customs values, mandatory use of the higher of two alternative values etc?

Answer:

Pursuant to Article 314 of the Customs Code of the RK, the following shall not be also used as a basis for determining the customs value of goods based on the reserve method (please note point 2):

1. the price of the goods on the domestic market of the country of export;
2. systems, which stipulate the use of the highest value from two alternative values for customs purposes;
3. the price of goods supplied by the country of export to third countries;
4. the price of the goods on the domestic market of the Republic of Kazakhstan in relation to domestic goods;
5. an arbitrarily established or unconfirmed value of goods;
6. the value of identical or similar goods determined on the basis of expenses not stipulated by Article 313 of the Code;
7. the minimum customs value.

- **Rules of origin**

Question 72

Paragraph 152 of WT/ACC/SPEC/KAZ/9/Rev.1 states that Kazakhstan has indicated that a draft law "On Amendments and Addenda in the Customs Code of the Republic of Kazakhstan" would amend paragraph 2 of Article 33 of the Customs Code ensuring that country of origin may be prescribed only to a country, group of countries, and to customs unions. What is the status of this law?

Answer:

The Law of the Republic of Kazakhstan No. 62 "On Amendments and Addenda to the Customs Code of the RK" of 20 June 2005 introduced amendments into the paragraph 2 of the Article 33 of the Customs Code ("Determining the Country of Origin of Goods"). According to the current version of paragraph 2 of Article 33, for the purposes of application of tariff and non-tariff regulatory measures, the country of origin of goods could be a group of countries and customs unions of the countries.

Question 73

Paragraph 156 of WT/ACC/SPEC/KAZ/9/Rev.1 states that Kazakhstan plans on introducing an amendment to the Customs Code to ensure full compliance with the provisions of Article 2(h) and Annex II, paragraph 3(d) of the WTO Agreement on Rules of Origin. What is the status of this proposed amendment?

Answer:

The Law of the Republic of Kazakhstan No. 211 "On Amendments into the Customs Code of the Republic of Kazakhstan" of 8 January 2007 introduced an amendment into the Article 47 ("Preliminary decision") of the Customs Code. According to the amended version of Article 47, upon request of a person (applicant), customs authorities, except for the customs points and checkpoints, shall make preliminary decision on the determination of the origin of goods when the information on the goods is available and presented in accordance with the Article 48 of the Customs Code. Preliminary decisions with regard to determination of the country of origin shall be adopted when preferential and non-preferential regimes are applied.

Furthermore, the provision imposing doubled rate of customs duties when importing goods in cases when country of origin is not determined was eliminated from Article 42 of the Customs Code.

- **Other customs formalities**

Question 74

In paragraph 158 of WT/ACC/SPEC/KAZ/9/Rev.1, Kazakhstan promises to abolish the registration and licensing procedures for currency control. Have those procedures been abolished? In addition, in paragraph 26 of WT/ACC/SPEC/KAZ/9/Rev.1, Kazakhstan promised to simplify the process for obtaining a transaction passport. Has that simplification occurred? If so, please describe the new, simplified requirements and procedures for obtaining a transaction passport.

Answer:

According to the Law of the RK No. 57 "On Currency Regulating and Currency Control" of 13 June 2005 from 1 January 2007:

- the licensing requirements for all types of currency transactions are eliminated; and
- repatriation terms of the national and foreign currency for foreign-trade transactions are determined by the provisions of the contracts with non-residents. Until 1 January 2007, the repatriation term for all foreign-trade transactions was set as 180 days and the prolongation of the repatriation term required the licence issued by the National Bank.

With the purpose to conduct statistical monitoring, information on currency transactions undertaken by residents is provided within the framework of the regime on registration and notification of currency transactions. The regime obliges the resident to notify on currency transactions being undertaken, but shall not impede implementation of the currency transaction.

As of 1 January 2007, the new Rules on Export-Import Currency Control have been enacted in Kazakhstan.

According to the new Rules, the procedures for issuing a transaction passport have been significantly simplified. The transaction passport is issued only by the commercial bank of the exporter or importer, the terms do not create any additional requirements or barrier for foreign trade transactions.

Most particularly, the procedures for issuing a transaction passport have been simplified in the following ways (for more detailed analysis please also see the comparative table provided in Annex 1):

- Transaction passport is now issued only by the commercial bank of exporter or importer, while according to the previous procedure, in order to obtain a transaction passport, the

- exporter or importer had to apply first to the customs authority and then to the commercial bank;
- Transaction passport contains the information on parties to the transaction and terms of the contract (the total value of the contract, currency of payment and means of payment). Previously, a transaction passport in addition to the abovementioned information also contained: (i) passport or other details of the head of the company which is involved in exportation or importation of goods, (ii) the bank account details used for payment transactions, (iii) address of the relevant tax authority, and (iv) the list of exported/imported goods with attached specifications;
 - The repatriation terms of the national and foreign currency for foreign-trade transactions are determined by the provisions of the foreign trade contracts with non-residents. Previously, the repatriation term for all foreign-trade transactions was 180 days and the prolongation of the repatriation term required a licence issued by the National Bank;
 - In order to obtain a transaction passport, the exporter/importer is not obliged now to present other documents, which are required by the currency legislation. Previously, a transaction passport was issued only upon presentation of the documents required by the currency legislation (such as licensing and registration documents);
 - Transaction passport is now issued without imposing any additional requirements to the terms stipulated in the foreign trade contract. Previously, a transaction passport was issued only provided that the terms for return of goods and payments in cases of failures to meet the contractual obligations were clearly stipulated in the contract; and
 - Transaction passport does not require any approval process and any fees imposed by the commercial banks servicing the exporter or importer. Time period for issuing a transaction passport shall not exceed two working days.

In conclusion, it is important to note that simplified procedures for issuing a transaction passport do not create additional burden for or serve as a barrier to foreign trade operations. Thus, a transaction passport is used only for keeping a statistical record and for foreign trade monitoring.

Question 75

Please provide additional information on the protection of confidential information under the UAIS.

Answer:

The Customs Control Committee, based on relevant national legislation on information security, uses standard software to ensure information security in its system.

According to Article 26 of the Customs Code, data, submitted to the customs authorities by other state bodies, by participants of foreign economic activity and other activity in customs sphere shall be used solely in the customs sphere in accordance with the customs legislation of the Republic of Kazakhstan.

Data which is deemed as the state secrets, commercial and other secret protected by the law, as well as confidential information, concerning participants of foreign economic activity and other activity in the customs sphere, can not be disclosed, used by customs officials in personal purposes or transferred to the third parties, except for cases stipulated in paragraph 3 of Article 26 of the Customs Code.

Paragraph 3 of Article 26 states that upon official request, Customs authorities shall submit the data to the following state authorities of the Republic of Kazakhstan:

- to law enforcement bodies - for the purpose of legal prosecution of persons that have committed offences in the sphere of customs activity;

- to courts - upon their request;
- to subjects of operational and investigative activity - with regard to materials under production in compliance with the procedures set forth in joint orders of the authorized body on customs issues and corresponding subjects of operational and investigative activity; and
- to other state bodies of the Republic of Kazakhstan - in accordance with the legislative acts of the Republic of Kazakhstan.

Customs authorities shall submit the data to customs authorities or law enforcement bodies of other states, and to international organizations, in compliance with international agreements of the Republic of Kazakhstan.

State bodies shall ensure confidentiality of information received by them, in compliance with the laws of the Republic of Kazakhstan.

According to Article 10 of the Law of the Republic of Kazakhstan No. 217 of 11 January 2007 "On Informatization", electronic resources that contain information, access to which is restricted by legislation of the Republic of Kazakhstan are classified as electronic resources with restricted access.

According to Article 42 of the Law, national operator of the informational system, which contains electronic resources with restricted access, shall ensure full protection of information and undertake measures aimed at:

- prevention of illegal access to electronic information resources;
- timely detection of illegal access to electronic information resources;
- minimization of negative effect in the case of illegal access to electronic information resources;
- prevention of any influence on the processing facilities and transmission of electronic information resources; and
- fast recovery of electronic information resources changed or deleted as a consequence of illegal access.

- Anti-dumping, countervailing duties, safeguard regimes

Question 76

We thank Kazakhstan for the amendments to its legislation on antidumping, countervailing and safeguard measures. Are there any regulations that provide further details on how these laws will be interpreted and implemented?

Answer:

With the purpose of enforcing the Laws of the Republic of Kazakhstan No. 337 "On Measures of the Domestic Market Protection when Importing Goods" of 28 December 1998, No. 321 "On Anti-dumping Measures" of 13 July 1999 and No. 441-1 "On Subsidies and Countervailing Measures" of 16 July 1999, the Resolution of the Government of the Republic of Kazakhstan No. 1374 has been adopted on 9 September 2000 which established the Rules for conducting investigation preceding imposition of safeguard, countervailing and anti-dumping measures.

The mentioned Rules determine the order of the investigation on the introduction of safeguard, countervailing and anti-dumping measures, relationship, rights and liabilities of state bodies and interested parties with the purpose of protection of domestic producers and providing assistance when settling an investigation.

In particular, the Rules establish:

- the form of application for examination on imposition of safeguard, countervailing and anti-dumping measures;
- the list of documents necessary for acceptance of application for consideration;
- terms of consideration of application;
- criteria on making a decision on imposition of measures under consideration; and
- basis for rejection in consideration of application or imposition of safeguard, countervailing and anti-dumping measures.

Rules also provide for protection of confidential information, obligatory notification of all interested parties and procedure of reconsideration of established safeguard, countervailing and anti-dumping measures.

Resolution of the Government of the Republic of Kazakhstan No. 1374 has been adopted on 9 September 2000 containing the text of the Rules is available through document WT/ACC/KAZ/67/Add.1.

Question 77

We note that the definition of a subsidy in Article 7 of Kazakhstan's Law "On subsidies and countervailing measures" does not specifically mention the concept of "benefit." Please explain where the concept of a "benefit" is addressed in Kazakhstan's countervailing duty law and confirm that the definition of a subsidy in Article 7 of Kazakhstan's Law "On subsidies and countervailing measures" conforms to the definition provided in Article 1 of the WTO Subsidies Agreement.

Answer:

The definition of a subsidy in paragraph 16 of Article 1 of the Law No. 441-1 "On Subsidies and Countervailing Measures" of 16 July 1999 contains the concept of "benefit". According to this definition, "subsidy - the financial support provided by foreign state (confederation of foreign states), if benefit will be conferred by means of:

- direct transfer of cash means or committed to make transfer;
- full or partial exemption from tax, customs or other payments;
- cancellation of debts or provision of credits aiming to provide assistance to cover such debts;
- favourable or gratuitous provision of energy, materials, parts, semi-products, services, except goods and services intended for support and development of infrastructure not related only to one provider;
- favourable acquisition of goods;
- government order to non-governmental organizations to conduct one or several support measures stated above; and
- any price support and profit, if such leads to get additional profit."

Thus, the definition of a subsidy in the Law "On Subsidies and Countervailing Measures" conforms with the definition provided under Article 1 of the WTO Agreement on Subsidies and Countervailing Measures.

Kazakhstan is currently considering to make the following commitment:

[[Kazakhstan would not apply any anti-dumping, countervailing and safeguard measures until it had notified and implemented appropriate laws in conformity with the provisions of the WTO Agreements

on the Implementation of Article VI, on Subsidies and Countervailing Measures, and on Safeguards. In the elaboration of any legislation concerning such anti-dumping, countervailing and safeguard measures Kazakhstan would ensure their full conformity with the relevant WTO provisions, including Article VI and XIX of the GATT 1994 and the Agreements on the Implementation of Article VI, the Agreement on Subsidies and Countervailing Measures and the Agreement on Safeguards. After such legislation was implemented, Kazakhstan would only apply any anti-dumping duties, countervailing duties and safeguard measures in full conformity with the relevant WTO provisions.]]

B. EXPORT REGULATIONS

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

Question 78

In paragraphs 173 and 176 of WT/ACC/SPEC/KAZ/9/Rev.1 Kazakhstan notes that it applied export duties on a MFN basis, except for exports to member States of the Customs Union between Kazakhstan, Belarus, the Russian Federation, the Kyrgyz Republic and Tajikistan.

Why does Kazakhstan exempt from export duties those exports to only the countries of the customs union, but not partners of other regional trade agreements?

Answer:

Pursuant to Article 331 of the Customs Code of the RK, goods exported from the customs territory of the Republic of Kazakhstan to countries that are parties to the free trade area agreements and customs union agreement concluded with participation of the Republic of Kazakhstan, are exempt from customs duties.

Kazakhstan is currently a party to the Free Trade Area Agreement signed states on 15 April 1994 between 12 CIS member, including Azerbaijan, Armenia, Belarus, Georgia, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan.

Based on the abovementioned multilateral agreement between CIS members, Kazakhstan has signed bilateral agreements on trade and economic cooperation with each of the CIS member states, which also envisage free trade regime between them, except for narrow list of exemptions, based on which import duties are maintained normally towards goods subject to excise tax.

Kazakhstan is also a party to the Agreement on Establishment of the Customs Union concluded with Belarus, Kyrgyzstan, Russia and Tajikistan on 26 February 1999 within the framework of the Eurasian Economic Community (EurAsEC). It should be noted that Kazakhstan has established with EurAsEC member states a full-pledged free trade regime without application of both import and export duties in bilateral trade with all goods. Uzbekistan announced its political decision to join EurAsEC on 26 October 2006 and currently is undertaking steps towards staged membership with agreements signed between EurAsEC member states.

Based on the above, Kazakhstan applies export duty exemptions to goods exported to both EurAsEC member states and all other CIS countries.

Question 79

A Member is permitted an exemption from its MFN requirement in the application of its export (and import) duties if it does so in the context of a regional trade agreement, as defined under Article XXIV. Is the Eurasian Economic Community (EurAsEC) a customs union, as defined

under Article XXIV:8(a)? To what extent have the members of the EurAsEC eliminated duties on trade between them, and harmonized their external tariffs?

Answer:

As mentioned in earlier, Kazakhstan is a party to the Agreement on Establishment of the Customs Union concluded with Belarus, Kyrgyzstan, Russia, Tajikistan and on 26 February 1999 within the framework of the Eurasian Economic Community (EurAsEC). It should be noted that Kazakhstan has established with EurAsEC member states, except for Uzbekistan, a full-pledged free trade regime without application of both import and export duties in bilateral trade with all goods.

With regard to trade with third countries, EurAsEC member states conduct coordinated efforts aimed at staged unification of their trade policy towards third countries. Most particularly, based on the Agreement on Establishment of the Customs Union, EurAsEC member states undertake coordinated decisions on tariff preferences and introduction or removal of tariff and non-tariff measures applied towards third countries.

On 6 October 2007, the heads of three member-states of the Eurasian Economic Community (EurAsEC) signed the Agreement on Creation of a Single Customs Territory and Formation of the Customs Union and the Agreement on the Commission of the Customs Union. These documents are aimed at establishing the legal framework for the future customs union and envisage the phased delegation of the national governments' functions on regulation of external trade policy to the supranational body- the Commission of the Customs Union.

Currently, within the framework of EurAsEC, the negotiations have started between three member states the Russian Federation, Republic of Belarus, Republic of Kazakhstan - with the purpose to establish a common external import tariff. Approximately 45 per cent of Kazakhstan's applied import tariffs have been harmonized with the applied import tariffs of the Russian Federation and the Republic of Belarus.

The remaining three other member-states of the EurAsEC - Kyrgyzstan, Tajikistan and Uzbekistan - will join the single customs tariff according to their readiness.

Question 80

Article 2 of the Agreement between Kazakhstan and the European Union on Trade in Certain Steel Products, described in paragraph 173 of WT/ACC/SPEC/KAZ/9/Rev.1, exempts exports of steel scrap and waste to the EU from quantitative restrictions, customs duties, charges or similar measure. This provision appears to provide preferential treatment to exports of steel scrap and waste to the EU, in violation of Article I of the GATT. How and when will Kazakhstan bring this provision into compliance with its WTO obligations?

Answer:

Preferential regime in the form of exemption from payment of export duties granted by Kazakhstan for its exports of ferrous scrap and waste to the European Union is based on Article 2 of the Agreement between Kazakhstan and the EU on Trade in Certain Steel Products. According to this Agreement, EU applies quantitative restrictions to imports of steel and steel products from Kazakhstan, the volume of which is agreed upon on a yearly basis as a result of bilateral negotiations.

Kazakhstan believes that upon its accession to the WTO, the above mentioned provisions of the bilateral agreement between Kazakhstan and EU will not be valid.

Upon its accession to the WTO, in accordance with Article 1 of GATT 1994, Kazakhstan will apply its both export and import duties on a MFN basis with regard to goods imported from and exported to all WTO member states.

The exception will be made with regard to trade with countries that are parties to regional and bilateral free trade agreements and the agreements on creation of the customs union with Kazakhstan in line with provisions of Article XXIV of GATT 1994. Preferential treatment will also apply to imports of certain goods from developing countries included into Kazakhstan's General System of Preferences.

Kazakhstan also believes that, upon its accession to the WTO, in accordance with Article XI of GATT 1994, EU member states will discontinue application of import quotas towards steel products exported from Kazakhstan.

- **Export restrictions**

Question 81

We appreciate Kazakhstan's readiness to commit to apply export restrictions in compliance with the WTO. Please describe the steps Kazakhstan is taking to bring its legislation on export restrictions into compliance with the WTO.

Answer:

Currently Kazakhstan applies export bans with regard to lumber and paper wastes.

According to the data provided as a result of the state counting of the forests reserves of Kazakhstan, coverage of the territory of Kazakhstan with the forest accounts for 4.2 per cent, including high forest coverage of around 1.2 per cent. The statistics show that Kazakhstan's own wood stocks are highly limited.

Therefore, with the purpose to maintain the ecological balance and prevent deforestation of the country through prohibition of illegal cutting of trees, the Government of Kazakhstan adopted the Resolution No. 681 of 10 July 2003, which imposed bans on exportation of lumber, saw-timber and certain wood products.

In accordance with the Resolution of the Government No. 460 of 23 April 2004, the Government banned for the ten-year period cutting of coniferous and saxaul trees in state forest reserves.

Taking into consideration forest-poor territory of Kazakhstan, in accordance with the Resolution of the Government No. 908 of 27 August 2004, exportation of reusable paper, cardboard, raw paper materials and paper wastes (HS EurAsEC 4707) is also prohibited.

In accordance with Article XI of GATT 1994, in 2005, the Government of Kazakhstan eliminated seasonal export bans applied to mazut (black oil), diesel, gasoline and other oil products. Instead, as of March 2006, these goods are subject to export duties applied based the Resolution of the Government of the Republic of Kazakhstan No. 1036 "On Imposition of Customs Duties upon Export from the Customs Territory of the Republic of Kazakhstan Crude Oil and Goods Produced from Crude Oil" of 15 October.

- **Export subsidies**

Question 82

Please confirm that Kazakhstan will eliminate all prohibited subsidies within the meaning of Article 3 of the WTO Agreement on Subsidies and Countervailing Measures, and Article XVI of the GATT 1994, at all levels of government, which are contingent upon export performance or the use of domestic over imported goods as of the date of accession.

Please also confirm that Kazakhstan will administer any subsidy programs in place or established after accession at all levels of government in conformity with the WTO Agreement on Subsidies and Countervailing Measures.

Answer:

In order to be able to undertake the abovementioned commitment upon accession to the WTO, the Government of Kazakhstan is currently analyzing its legislative/regulatory framework used as a basis for granting preferential treatment or subsidies.

Following these analysis, Kazakhstan will provide additional information on the criteria used for application of subsidies in the country.

Question 83

Paragraph 191 of WT/ACC/SPEC/KAZ/9/Rev.1 explains that Order No. 24-OD "On Adoption of Rules for Introduction and Discontinuation of Decreasing Coefficients for Tariffs on Regulated Rail Freight" of 30 December 1999 was invalidated in August 2004 and replaced by Order No. 375-OD of 8 September 2004.

Please explain whether any companies continue to receive benefits under Order No. 24-OD.

If so, please confirm that Kazakhstan will not grandfather any existing subsidy benefits that are inconsistent with the WTO Subsidies Agreement.

Please also confirm that benefits provided under Order No. 375-OD with regard to on railway tariffs are not contingent upon export or the use of domestic over import goods.

Answer:

Pursuant to the Law of the Republic of Kazakhstan "On Natural Monopolies" introduction of the provisional decreasing coefficient is one of the forms of state regulation of entities considered as natural monopolies.

The Order of the Chairman of the Agency of the Republic of Kazakhstan on Regulation of Natural Monopolies, Protection of Competition and Small Business Support of 30 December 1999 No. 24-OD "On Adoption of Rules for Introduction and Discontinuation of Decreasing Coefficients for Tariffs on Regulated Rail Freight Subject to State Regulation" became invalid according to the Order of the Chairman of the Agency of the Republic of Kazakhstan on Regulation of Natural Monopolies, Protection of Competition No. 377-OD of 5 August 2004.

The decisions made based on Order No. 24-OD on introduction of temporary decreasing coefficients to tariffs on regulated rail freight are not currently effective.

With the purpose of implementation of the Program of Restructuring of Rail Freight, the Rules on Introduction and Discontinuation of Provisional Decreasing Coefficients for Tariffs (prices, duty rates) on Services of Main-line Railway Network were approved by adoption of the Order No. 375-OD of 8 September 2004.

According to the Rules, one of the key principles used in introduction of a temporary decreasing coefficient is its approval based on calculation of economic efficiency and expediency (or justification) of this measure for the state, operator of the main-line railway network and a consumer.

As the Rules stipulate, the set of criteria used in decision-making on application of decreasing coefficients for tariffs (prices, duty rates) for regulated services of main-line railway network include the following:

- Declared turnover of goods exceeds (maintains) the factual turnover for the corresponding period of the previous year;
- Use of the insufficiently used (or unused before) parts of main-line railway network;
- Ecological danger from sideline products of industrial productions;
- Provision of equal tariff conditions for access to regulated services of main-line railway network; and
- Social importance of carriage/transportation of passengers

According to the Rules, criteria used for provision of decreasing coefficients with regard to tariffs charged for services of the main-line railway network are not contingent upon export or the use of domestic over imported goods.

C. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS

- **Industrial policy, including subsidies**

Question 84

Paragraph 194 of WT/ACC/SPEC/KAZ/9/Rev.1 states that tax preferences granted under the Law "On Foreign Investments" (subsequently replaced by the new Law "On Investments") would be in effect until the expiration of the terms of the contracts. In other words, the existing preferences were "grandfathered" in the new law. Please confirm that from the date of accession, Kazakhstan will eliminate any existing subsidy benefits that are inconsistent with the WTO Subsidies Agreement.

Answer:

The main objective of state preferences stipulated in the Law "On Investments" adopted on 8 January 2003 is establishment of a favourable investment climate for diversification of the national economy through building new industries or expanding the operating productions with the use of modern technologies, professional development of national cadre and protection of environment.

Therefore, the criteria used by the state within the Law "On Investments" for granting of investment preferences are not contingent upon export performance or import-substitution.

From 1997 - 2003, the Government of Kazakhstan concluded 343 investment contracts. The terms of these contracts have already expired, except for 15 contracts, which will expire early 2009. Therefore, the existing preferences are not "grandfathered" in the new law.

In order to be able to undertake the abovementioned commitment upon accession to the WTO, the Government of Kazakhstan is currently analyzing its legislative/regulatory framework used as a basis for granting preferential treatment or subsidies.

Following these analysis, Kazakhstan will provide additional information on the criteria used for application of subsidies in the country.

Question 85

Paragraph 200 of WT/ACC/SPEC/KAZ/9/Rev.1 describes a free warehouse regime for the automobile industry, which contains local content requirements. The free warehouse regime also provides for tax incentives, specifically VAT and import duty exemptions on the purchase of certain goods. Because the incentives under this program are contingent upon the use of domestic over imported goods, they appear to constitute a prohibited import substitution subsidy. Please explain how Kazakhstan plans to bring this program into compliance with obligations under the WTO Subsidies Agreement.

As we have noted before, to facilitate progress in this area, we encourage Kazakhstan to make a comprehensive subsidy notification as provided under Article 25 of the Subsidies Agreement.

Answer:

Currently Kazakhstan is preparing relevant amendments to the legislation of the Republic of Kazakhstan concerning the "Free warehouse" regime. According to the draft amendments, the requirement to use domestic goods over imported goods in order to receive the tax and import duty preferences will be eliminated upon the implementation of the proposed amendments. It should also be noted that regulations related to taxes and import duties will be applied in a non-discriminatory manner to all products produced at "Free warehouses". The new legislation will be provided to the Working Party as soon as possible.

The draft amendments are aimed at bringing the "Free warehouse" regime applied in Kazakhstan into compliance with the Article III of the GATT, TRIMs and SCM Agreements. Please note that Kazakhstan is compiling and analyzing information related to subsidy notifications under Article 25 of the SCM Agreement.

Question 86

Regarding the JSC "Small Business Development Fund", described in paragraph 201 of WT/ACC/SPEC/KAZ/9/Rev.1, is assistance from this fund contingent on any domestic content or export performance requirements?

Answer:

According to the Government Resolution of the Republic of Kazakhstan No. 286 "On Implementation of the Presidential Decree of the Republic of Kazakhstan No. 65 of 16 March 2006", state shares (100 per cent) of the JSC "Small Business Development Fund" (hereinafter Fund) were transferred to the JSC "Kazyna" (hereinafter "Kazyna").

According to the Decision of the shareholder ("Kazyna") No. 57 of 24 October 2007, the Fund is no longer in charge of such functions as direct project financing and financial leasing of small businesses.

According to the Government Resolution of the Republic of Kazakhstan No.1039 "On Approval of the Priority Actions Plan on Ensuring Stability of Social and Economic Development of the Republic

of Kazakhstan" of 6 November 2007, the Fund has been given the right for a conditional placement of the Fund's resources on a competitive basis in second tier banks of the Republic of Kazakhstan for provision of credits for small and medium businesses projects. The conditions for placement of the Fund's resources in commercial banks are set in the Memorandum on Credit Policy of the Fund.

With the purpose of financing of the projects of small and medium businesses, the JSC "Kazyna" provides financial resources to the Fund, which are allocated through the network of the second (lower) tier banks. Priority is given to the newly established and operational projects, which create new jobs in the regions, and contribute to development and diversification of the economy of a given region.

The Fund does not interfere into the internal policy and decision-making procedures of second tier banks with regard to selection of the projects for financing. The banks are fully responsible for the risks they take with financing projects just as in the case of conducting their own normal commercial business. The annual interest rate charged for credits to small and medium sized enterprises is set by each commercial bank individually.

The decisions on the list of partner second tier banks and the size of financial resources for allocation into each of the banks are made by State Commission on Modernization of the Economy of the Republic of Kazakhstan.

In order to receive a credit, a potential borrower should have a stable business for not less than three months, or six months or 12 months depending on the size of credit, or starting business with not less than 30 per cent capital participation of a borrower.

Currently, the maximum amount of credit which each borrower (SME) could receive from the Fund through the second-tier bank is limited to 120,000 Monthly Calculation Indexes (approximately US\$1,163 million).

Against the above background, Kazakhstan confirms that credits provided by the Fund through second-tier commercial banks of Kazakhstan to small and medium size enterprises are not contingent on any import substitution or export performance requirements.

Question 87

Are small businesses with foreign equity eligible for assistance?

Answer:

The Fund finances projects implemented by small and medium size businesses of Kazakhstan. In order for small business with foreign equity to be eligible for receiving financing from the Fund, not less than 51 per cent of the capital of small and medium size enterprise should be in the private property of residents of the Republic of Kazakhstan.

- **Technical barriers to trade, standards and certification**

Question 88

The draft Working Party Report needs be updated to replace vague references in WT/ACC/SPEC/KAZ/9/Rev.1 with clear and precise references. For example, since Law No. 603-II "On Technical Regulating" has been in force since 2004, we believe that Kazakhstan's references to "relevant" authorities, "experts," and the like should be clearly identified with the law/regulation in question.

Regarding the "expert boards" referred to in paragraph 219 of WT/ACC/SPEC/KAZ/9/Rev.1, please describe the composition of these boards. What are the criteria to become an "expert"? In addition, what is the definition of "interested party", as used in paragraph 219 of WT/ACC/SPEC/KAZ/9/Rev.1?

Answer:

Pursuant to Article 9 of the Law "On Technical Regulating", advisory panels on technical regulating were established under the state bodies for development of technical regulations through a participatory and consultative decision-making process.

State bodies approve composition and agenda of the advisory panels on technical regulations, which were set up under their supervision.

At the present time, advisory panels were established and functioning under the 14 state bodies of the Republic of Kazakhstan: Ministry of Industry and Trade; Ministry of Transport and Communications; Ministry for Emergency Situations; Ministry of Labour and Social Protection; Ministry of Finance; Ministry of Internal Affairs; Ministry of Defence; Ministry of Agriculture; Ministry of Health; Agency for Informatisation and Communication; Agency for Land Resources Management; National Security Committee of the Republic of Kazakhstan.

Composition of advisory panel on technical regulating includes representatives of the state bodies, technical committees on standardization and other concerned or interested parties.

The Law "On Technical Regulating" defines "the interested party" as natural persons, juridical persons and their associations, unions, whose functions and business are directly related to development and application of technical regulations, as well as other persons, whose participation in development of technical regulations is foreseen by the international agreements of the Republic of Kazakhstan.

In other words, representatives of businesses, public organizations, entrepreneurial associations and other associations can act as experts participating in the work of advisory panels on technical regulating.

Article 16 of the Law contains the definition of "expert-auditor", who is a specialist certified according to the order defined by the authorized body in the field of technical regulating to provide conformity assessment of goods within the body responsible for conformity certification and accreditation body.

Rules on Attestation of the Experts-auditors were approved by the Order No. 305 of 20 April 2006 of the Chairman of the Committee on Technical Regulating and Metrology of the Ministry of Industry and Trade of the Republic of Kazakhstan.

According to the Regulations, expert-auditor shall be a specialist with professional experience, theoretical knowledge and trainings in applied field of attestation. Documents conforming experience, theoretical knowledge and trainings shall be submitted to the attestation commission under the authorized body in the field of technical regulating. The Commission is entitled to issue a diploma of expert-auditor in certain field of activity for the period of three years with inclusion of the person's name into the Register of experts-auditors.

The Law "On Technical Regulating" does not contain the definition of the term "relevant authorities". In accordance with general practice, relevant authorities represent the state bodies, whose competence include the issues in discussion.

Question 89

In paragraph 217 of WT/ACC/SPEC/KAZ/9/Rev.1, the Kazakhstan representative "confirmed that upon WTO accession, Kazakhstan would provide WTO Members with MFN treatment in relation to the application of technical barriers to trade." Please confirm that all WTO Members will receive treatment no less favourable than those countries with whom Kazakhstan has bilateral agreements on standards. Are the bilateral agreements published? Where are they published?

Answer:

Currently, the Republic of Kazakhstan is a party to a number multilateral agreements on technical regulation with the members of the Commonwealth of Independent States (CIS).

In accordance with the Agreement on the Coordinated Policy on Standardization, Metrology and Certification of 13 March 1992, the work on harmonization of legislation on standardization and conformity assessment is carried out in the framework of the Intergovernmental Council for Standardization, Metrology and Certification (EASC). According to this Agreement, Kazakhstan recognizes conformity certificates issued by the CIS countries, and intergovernmental standards (GOST) can be applied in Kazakhstan along with the state standards of the Republic of Kazakhstan (SS RK).

Kazakhstan also cooperates with Russia, Belarus, Kyrgyzstan, Tajikistan and Uzbekistan with the framework of the Agreement on Harmonization of Technical Regulations of the members of the Eurasian Economic Community (EurAsEC). According to the Agreement, the efforts are being undertaken with the objective to develop technical regulations of EurAsEC.

Kazakhstan also is a party to bilateral intergovernmental agreements on cooperation in the field of standardization, metrology and certification with Azerbaijan, Armenia, Turkmenistan, Bulgaria, Israel and Qatar.

The Ministry of Industry and Trade of Kazakhstan concluded interdepartmental agreements with the Department for Standards, Metrology and Technical Supervision of the Republic of Moldova, the Federal Ministry of Economy and Labour of Germany, the Authority for Standardization, Metrology and Testing of the Slovak Republic, the Authority for Standardization, Metrology and State Testing of the Czech Republic.

These bilateral agreements provide a legal basis for exchange of information and legal acts in the field of standardization and conformity assessment between the parties. Agreements are included into the full text electronic legal manual "Legislation of the Republic of Kazakhstan" and can be obtained through the TBT/SPS Enquiry Point.

Question 90

Paragraph 219 of WT/ACC/SPEC/KAZ/9/Rev.1, states that when existing Kazakh standards don't meet international standards, or international standards don't exist, or are likely to affect imports or exports, "the relevant authority provided information justifying the need for the particular technical regulation and notified the list of products concerned."

Does notification mean publication and does notification include justification?

Answer:

According to the Law of the Republic of Kazakhstan "On Technical Regulating", if the requirements established by technical regulations do not correspond to international standards or international standards do not exist in that given field, or the requirements established by technical regulations are likely to affect the regime of importation of goods to and exportation of goods from Kazakhstan, the state body, which has developed the draft technical regulation, shall publish the notification with the list of goods which will be affected by the draft technical and information with the justification of the need for development of the technical regulation in the official publication or in the information system for general use no later than one month from the date of its development.

Moreover, upon the request of interested parties and foreign states, the state body, which has developed the draft technical regulation, shall submit the detailed information on the draft technical regulation or its copy with the reference to the norms/provisions that do not meet international standards.

Question 91

In paragraph 221 of WT/ACC/SPEC/KAZ/9/Rev.1, Kazakhstan notes that it was working toward harmonizing its existing standards with international technical standards.

What are the existing standards that are not yet harmonized with international standards?

What are Kazakhstan's plans with regard to these standards?

Is Kazakhstan reviewing its standards that are not yet harmonized with international standards to ensure that they are not unnecessary obstacles to international trade?

Answer:

Paragraph 5 of Article 4 of the Law of the Republic of Kazakhstan "On Technical Regulating" establishes priority of international standards in development of technical regulations and state standards in Kazakhstan.

With the purpose to harmonize state standards with international standards, the annual Plan of Activities on State Standardization is elaborated.

According to the Plan, in 2007, more than 300 state standards (SS RK) have been adopted and approximately 61 per cent of standards have been harmonized with international standards.

As of 1 January 2008, the total number of state standards of Kazakhstan (SS RK) include 1,919 units, including 1168 (or 60.9 per cent) standards harmonized with the international requirements.

- 60 standards are applied in the field of machinery construction (mechanical engineering), 48 of which are harmonized with the international requirements;
- 54 - in the field of healthcare, 11 of which are harmonized with the international requirements;
- 32 - in the field of energy and electric equipment, 22 of which are harmonized with the international requirements;
- 184 - in the field of road-transportation and railway machinery, 142 of which are harmonized with the international requirements;
- 96 - in the field of construction materials and construction services, 69 of which are harmonized with the international requirements;

- 69 - the field of light industry, 15 of which are harmonized with the international requirements;
- 69 - in the field of agriculture, 29 of which are harmonized with the international requirements; and
- 213 - in the food-processing industry, 119 of which are harmonized with the international requirements and so on.

Development of 422 standards is planned in 2008.

By 2009, the Government of Kazakhstan plans to achieve a 65 per cent level of harmonization of national standards with international requirements.

The Government of Kazakhstan has the intention to continue its work on harmonization of national standards with international requirements with the purpose of removing technical barriers to trade.

Kazakhstan is currently considering to make the following commitment:

[["In international trade Kazakhstan shall be guided by the requirements of international standards, except for cases provided by the WTO Agreement on Technical Barriers to Trade, when such international standards or relevant parts would be ineffective or inappropriate means for the fulfilment of the legitimate security objectives. Therefore standards of Kazakhstan shall not create any barriers to international trade."]]

Question 92

We thank Kazakhstan for its TBT Implementation Action Plan (WT/ACC/KAZ/60/Rev.2). Having had the opportunity to review it, we are impressed by the amount of work that is reflected in the Action Plan. Work remains, nonetheless, with regard to the clarity of Kazakhstan's commitment to the WTO TBT Agreement. In short, we seek a commitment that, no later than upon accession to the WTO, Kazakhstan will comply with and fully implement the TBT Agreement, including amending or rescinding any existing standard, technical regulation or conformity assessment procedure that is not compliant with the TBT Agreement.

Answer:

The Law of the Republic of Kazakhstan No. 209 "On Amendments and Addenda into Certain Legislative Acts of the Republic of Kazakhstan on Issues of Technical Regulating" of 29 December 2006 introduced amendments into 33 laws of the Republic of Kazakhstan to bring them into compliance with the Law "On Technical Regulating" of 29 December 2006. This law can be accessed at the website of the authorized body on technical regulating www.memst.kz.

Kazakhstan has adopted the Laws "On Food Safety", "On Toys Safety", "On Safety of Chemical Products" and "On Safety of Machinery and Equipment". These Laws are included into the full text electronic legal manual "Legislation of the Republic of Kazakhstan" and can be obtained through the TBT/SPS Enquiry Point.

The amendments were made to the Law "On Technical Regulating", which clearly differentiate two main objectives of technical regulating in Kazakhstan:

- ensuring safety of products through application of mandatory technical regulations; and
- enhancing competitiveness of products through application of voluntary standards.

In addition, paragraph 2 of Article 31 of the Law of the RK "On Technical Regulating", stipulating that only producers registered as juridical persons in the Republic of Kazakhstan are entitled to

declare the conformity of goods to safety requirements, was excluded as discriminatory measure towards importers.

The Law of the Republic of Kazakhstan "On Normative Legal Acts" was amended to create a legal base for introduction of technical regulations in the form of normative legal acts into existing legal system of the Republic of Kazakhstan.

Kazakhstan is currently considering to make the following commitment:

[[Kazakhstan confirms that upon its accession to the WTO, Kazakhstan would comply with all provisions of the Agreement on Technical Barriers to Trade without recourse to any transitional period.]]

Question 93

The Enquiry Point named in WT/ACC/KAZ/65 appears to differ from that on the website www.memst.kz. What is the name and present address of the Enquiry Point? What are Kazakhstan's plans for this website upon accession to the WTO?

The website identified as the "Single SPS/TBT Enquiry Point" (www.memst.kz) needs to be updated to reflect the new law No. 603-II "On Technical Regulating". No information on any of the laws or regulations that have since been brought into conformity with the Law No. 603-II can be found on this website.

Answer:

In 2004, Kazakhstan has made a notification in the document WT/ACC/KAZ/52, on establishment of an Enquiry Point for interaction with WTO members on technical barriers to trade, sanitary and phytosanitary measures under the Republican state enterprise "Kazakhstan's Institute of Standardization" ("KazInSt") of the Committee on Standardization, Metrology and Certification.

The Enquiry Point was established by the joint Order of the Minister of Industry and Trade, Minister of Agriculture and Minister of Healthcare of the Republic of Kazakhstan.

With the purpose to upgrade the legal status of the new institution, on the basis of the Enquiry Point for interaction with WTO member states, the Enquiry Point on technical barriers to trade and sanitary and phytosanitary measures was established by the Resolution of the Government of the Republic of Kazakhstan No. 718 of 11 July 2005 in the order set by the legislation of Kazakhstan.

A copy of the abovementioned Resolution of the Government of the RK is available through document WT/ACC/KAZ/67/Add.1

The information on the establishment of the TBT/SPS Enquiry Point was also notified in the document WT/ACC/KAZ/66 from 29 May 2006.

The major task of the TBT/SPS Enquiry Point is to provide information on technical regulations, standards, and conformity assessment procedures applied in Kazakhstan. Any interested party may apply to the Enquiry Point with the request for information related to the system of technical regulations in Kazakhstan.

The Enquiry Point has the capacity to work on-line with international and foreign organizations such as ISO, OIML, IEC and other bilateral partners.

The address of the TBT/SPS Enquiry Point is the following:

11, 35th Street,
Left Bank
Etalon Centre Build
010000, Astana
Republic of Kazakhstan.

The website (<http://wto.memst.kz>) is regularly updated.

The plans for development of technical regulations, notifications on the development of technical regulations, plans for development of state standards as well as information on activities, carried out in the field of technical regulations, are placed on the website.

Question 94

We would like to know the status of the "priority technical regulations" listed in "1.1" of WT/ACC/KAZ/60/Rev.2.

Please provide to the Working Party the texts of the draft laws named as well as the "Specified amendments" that "were introduced to the Parliament as a single draft law?"

Answer:

In order to align the national legislation with the Agreement on Technical Barriers to Trade, Kazakhstan adopted the following legal acts:

1. The Law No. 209 "On Amendments and Addenda to Certain Legislative Acts of the Republic of Kazakhstan on Issues of Technical Regulating" of 29 December 2006 introduced amendments into the 33 laws of the Republic of Kazakhstan. The amendments made clearly stipulate division of authority between government bodies in development and approval of technical regulation. The amendments were made into the following legislation:
 - "On Transport of the Republic of Kazakhstan";
 - "On Oil";
 - "On the Use of Air Space and Aviation Activities in the Republic of Kazakhstan";
 - "On Subsurface and Surface Use";
 - "On Emergency Situations of Natural and Technogenic Origin";
 - "On Road Traffic Safety";
 - "On Fire Safety";
 - "On Environmental Protection";
 - "On Regulatory Legal Acts";
 - "On Radiation Safety of Population";
 - "On Narcotic Drugs, Psychotropic Substances, Precursors and Measures of Counteracting their Illegal Circulation and Abuse";
 - "On State Supervision of Circulation of Certain Types of Arms";
 - "On Ensuring of the Uniformity of Measurements";
 - "On Grain";
 - "On Architectural, Town Building and Construction Activities in the Republic of Kazakhstan";
 - "On Motor Roads";
 - "On the Railway Transport";
 - "On State Regulation of Civil Aviation";

- "On Merchant Navigation";
 - "On the Atmospheric Air Protection";
 - "On Industrial Safety at Dangerous Industrial Objects";
 - "On Plants Protection";
 - "On Veterinary";
 - "On Seed Production";
 - "On the State Regulation of Production and Distribution of Certain Types of Petroleum Products";
 - "On the Health Care System";
 - "On Automobile Transport";
 - "On Work Safety and Labour Protection";
 - "On Communications";
 - "On Inland Water Transport";
 - "On Medicine";
 - "On Electric Power Industry"; and
 - "On Technical Regulating".
2. The Law of the Republic of Kazakhstan No. 301 "On Food Safety" of 21 July 2007 establishes legal basis for ensuring food safety for the purposes of protection of human health and life, legitimate consumer interests on the territory of Kazakhstan;
3. The Law of the Republic of Kazakhstan No. 302 "On Safety of Chemical Products" of 21 July 2007 established a legal framework for ensuring the safety of chemical products at its development, production, application, storage, labelling, transportation, realization and utilization stages with the purpose to protect safety of human life and health, and environment within the Republic of Kazakhstan;
4. The Law of the Republic of Kazakhstan No. 305 "On Safety of Machinery and Equipment" of 21 July 2007 established a legal basis for regulation of development, application and implementation of safety requirements to machinery and equipment, processes of their life cycle with the objective to guarantee protection of human life and health, and environment;
5. The Law of the Republic of Kazakhstan No. 306 "On Toys Safety" of 21 July 2007 established a legal basis for regulation of development, application, implementation and control of safety requirements in the area of toys safety with the objective to guarantee protection of human life and health, and environment;
6. In addition, the following technical regulations were approved by Resolutions of the Government of the Republic of Kazakhstan:
- Resolution of the Government of the Republic of Kazakhstan No. 337 "On Approval of Technical Regulation "Requirement for Safety of Grain" of 8 April 2008;
 - Resolution of the Government of the Republic of Kazakhstan No. 336 "On Approval of Technical Regulation "Requirement for Safety of Meat and Meat Products" of 8 April 2008;
 - Resolution of the Government of the Republic of Kazakhstan No. 307 "On Approval of Technical Regulation "Requirement for Safety of Automobile Road Engineering" of 31 March 2008;
 - Resolution of the Government of the Republic of Kazakhstan No. 294 "On Approval of Technical Regulation "Requirement for Safety of Automobile Road Exploitation" of 27 March 2008;
 - Resolution of the Government of the Republic of Kazakhstan No. 277 "On Approval of Technical Regulation "Requirement for Packaging, Marking, Labelling and Correct Application to a Product" of 21 March 2008;

- Resolution of the Government of the Republic of Kazakhstan No. 263 "On Approval of Technical Regulation "Requirement for Safety of Feed and Feed Additives" of 18 March 2008;
- Resolution of the Government of the Republic of Kazakhstan No. 230 "On Approval of Technical Regulation "Requirement for Safety of Milk and Milk Products" of 11 March 2008;
- Resolution of the Government of the Republic of Kazakhstan No. 227 "On Approval of Technical Regulation "Requirement for Safety of Buildings, Facilities and Adjacent Territories" of 6 March 2008;
- Resolution of the Government of the Republic of Kazakhstan No. 217 "On Approval of Technical Regulation "Requirement for Safety of Synthetic Cleansing Means and Household Chemical Goods" of 4 March 2008;
- Resolution of the Government of the Republic of Kazakhstan No. 201 "On Approval of Technical Regulation "Requirement for Safety of Goods and Products for Children Use" of 27 February 2008;
- Resolution of the Government of the Republic of Kazakhstan No. 199 "On Approval of Technical Regulation "Juice and Juice Products" of 27 February 2008;
- Resolution of the Government of the Republic of Kazakhstan No. 159 "On Approval of Technical Regulation "Requirement for Safety of Perfume and Cosmetic Products" of 19 February 2008;
- Resolution of the Government of the Republic of Kazakhstan No. 96 "On Approval of Technical Regulation "Requirement for Safety of Building Materials, Products and Construction" of 4 February 2008;
- Resolution of the Government of the Republic of Kazakhstan No. 90 "On Approval of Technical Regulation "Conformity Recognition Procedure" of 4 February 2008;
- Resolution of the Government of the Republic of Kazakhstan No. 1398 "On Approval of Technical Regulation "Requirement for Safety of Varnish-And-Paint Materials and Diluents" of 29 December 2008;
- Resolution of the Government of the Republic of Kazakhstan No. 1372 "On Approval of Technical Regulation on Requirement to Pollution of Auto-transport in the Territory of Kazakhstan" of 29 December 2008; and
- Resolution of the Government of the Republic of Kazakhstan No. 1232 "On Approval of Technical Regulation on "Requirement on Emissions at Incineration of Different Types Fuel in the Boilers of Electric Power Stations" of 14 December 2008.

The text of the Law No. 301 "On Food Safety" of 21 July 2007 is available through document WT/ACC/KAZ/67/Add.1.

The Text of the Law No. 302 "On Safety of Chemical Products" of 21 July 2007 is available through document WT/ACC/KAZ/67/Add.1.

The text of the Law No. 305 "On Safety of Machinery and Equipment" of 21 July 2007 is provided in available through document WT/ACC/KAZ/67/Add.1.

The text of the Law No. 306 "On Toys Safety" of 21 July 2007 is available through document WT/ACC/KAZ/67/Add.1.

The text of the Law No. 209 On Amendments and Addenda to Certain Legislative Acts of the Republic of Kazakhstan on Issues of Technical Regulating" of 29 December 2006 is provided in available through document WT/ACC/KAZ/67/Add.1.

Question 95

Are there any additional laws, other than those listed in WT/ACC/KAZ/60/Rev.2, under consideration by the Kazakhstan government that would affect Kazakhstan's ability to comply with the WTO TBT Agreement?

Answer:

With the objective to ensure the recognition of domestic bodies on conformity assessment and laboratories at the international level, the following draft Laws of the Republic of Kazakhstan have been developed and are being considered by the Mazhilis (Lower Chamber) of the Parliament of the RK:

- "On Accreditation in the Field of Conformity Assessment"; and
- "On Amendments and Addenda in Certain Legislative Acts on the Issues of Accreditation".

The draft Law "On Accreditation in the Field of Conformity Assessment" is aimed at full harmonization of accreditation requirements with international standards, including adoption of international terms and principles in the field of accreditation, authority of the accreditation body, requirements towards the accreditation certificate, terms for accepting the accreditation results and also requirements of the International Accreditation Forum (IAF) and International Laboratory on Accreditation and Cooperation (ILAC).

The draft Law "On Amendments and Addenda in Certain Legislative Acts on the Issues of Accreditation" envisages amendments to be made to the Law "On Technical Regulating" and "On provision of uniformity of measurements" with the purpose to bring them into compliance with the terms and accreditation provisions stipulated in the Law "On Accreditation in the Field of Conformity Assessment".

The above legal acts are aimed at building a legal framework for accreditation and harmonization of the legislation of Kazakhstan with the legislation of developed countries with the purpose to facilitate the prompt accession of Kazakhstan to the International Accreditation Forum and International Laboratory on Accreditation and Cooperation.

Question 96

What is the status of bringing the Law "On Telecommunications" into conformity with the Law "On Technical Regulating" in the area of transparency and conformity assessment?

Answer:

In accordance with the Law No. 209 "On Amendments and Addenda to Certain Legislative Acts of the Republic of Kazakhstan on Issues of Technical Regulating" of 29 December 2006, the following amendments were made in the Law of the Republic of Kazakhstan "On Communications":

- Article 7 of the Law "On Communications" stipulates the authority of the Government to approve technical regulations in the field of communications; and
- Article 16 of the Law defines that technical communication facilities used for the entire telecommunications network of the Republic of Kazakhstan, radio-electronic facilities and high-frequency facilities that serve as a source of electromagnetic radiation and technical facilities of mail service are subject to conformity assessment in accordance with the legislation of the Republic of Kazakhstan.

The requirements of the Law "On Technical Regulating" to ensure transparency and conformity assessment apply to all sectors of the national economy including telecommunications. Assessment of conformity of the certain groups of telecommunication facilities in the form of certification or declaration shall be established in the technical regulations.

Conformity certificates of foreign states, protocols of tests of communication issued by foreign conformity assessment bodies are recognized in accordance with international agreements. In cases when there are no international agreements signed by Kazakhstan, the tests results of the authorized body of a foreign state shall be recognized through the accreditation of that body in the national accreditation system of the Republic of Kazakhstan in accordance with the paragraph 6.1 of the WTO Agreement on Technical Barriers to Trade.

According to the Law "On Technical Regulations", in development of technical regulations in the field of telecommunications, the following requirements shall be fulfilled:

- publication of notification on development of draft technical regulation, its amendment or revocation in the official publication and in the information system for general use no later than one month from the initial date of drafting of development, amendment or revocation;
- public discussion of the draft and its revision on the basis of the comments received; and
- provision of the received comments on draft technical regulation upon the request of interested parties.

The time period assigned for public discussion of the document shall be no less than sixty calendar days.

Question 97

Page 79, paragraph 212: it is stated that as new technical regulations are developed and adopted, the list of products subject to mandatory conformity recognition would progressively be reduced and eventually eliminated.

What approaches will Kazakhstan take in order to shorten or remove the list of products subject to mandatory conformity recognition? Does this involve replacing the current mandatory requirements with voluntary arrangements?

Answer:

According to the Law of the Republic of Kazakhstan No. 603 "On Technical Regulation" of 9 November 2004 products subject to mandatory conformity assessment are determined by technical regulations.

As soon as technical regulations are adopted, the List of Products Subject to Mandatory Certification will be reduced and phased out.

The list of products that are subject to mandatory conformity assessment will be determined in technical regulations. Products that will not be covered by technical regulations can be subject to conformity assessment on a voluntary basis.

Question 98

Pages 80-81, paragraphs 214, 215 and 217: could Kazakhstan please provide us with the following?

The list of foreign organizations eligible for acting as conformity recognition organizations or test laboratories, and the list of international treaties/agreements on the recognition of foreign conformity certificates (reference paragraph 214).

Answer:

Kazakhstan cooperates with foreign countries in the sphere of conformity recognition on the basis of Article 6.1 of the WTO Agreement on Technical Barriers to Trade.

Currently, no foreign entity is accredited in as conformity assessment organization or laboratory in Kazakhstan.

The Law of the Republic of Kazakhstan "On Technical Regulating" allows any entity, including foreign, to act as conformity assessment organization in the national system of conformity assessment provided it has undergone the accreditation process established in Kazakhstan.

Kazakhstan is undertaking efforts to join the International Accreditation Forum (IAF) and the International Laboratory Accreditation Cooperation (ILAC), and to join the Multilateral Mutual Recognition Agreement (MLA) in the sphere of conformity recognition.

Currently, the Republic of Kazakhstan is a party to a number of multilateral agreements on technical regulation with the members of the Commonwealth of Independent States (CIS). In accordance with the Agreement on the Coordinated Policy on Standardization, Metrology and Certification of 13 March 1992, the work on harmonization of legislation on standardization and conformity assessment is carried out in the framework of the Intergovernmental Council for Standardization, Metrology and Certification (EASC).

Furthermore, Kazakhstan has signed the Agreement on Principles of Mutual Recognition of Certification Activities with the CIS Countries on 4 June 1992. Based on this Agreement, Kazakhstan recognizes conformity certificates issued by the CIS countries, and intergovernmental standards (GOST) can be applied in Kazakhstan along with the state standards of the Republic of Kazakhstan (SS RK).

Question 99

The nature and scope of cooperation provided by the mutual recognition agreements signed with CIS countries (reference paragraph 215), and by the standards agreements with Turkey and China (reference paragraph 217).

Answer:

The Protocol on Cooperation with the Turkish Institute of Standards of 6 June 1996 was in effect during the five year period and expired in 2001.

Currently, the draft Protocol on Cooperation between the Committee on Technical Regulations and Metrology of the Ministry of Industry and Trade of the Republic of Kazakhstan and the Turkish Institute of Standards has been prepared. The draft protocol stipulates priority use of international standards and use of national Turkish and Kazakh standards on the territories of both countries. The draft protocol also envisages recognition of testing protocols and conformity certificates provided that there is mutual accreditation of conformity recognition bodies and testing laboratories.

The Intergovernmental Agreement on Cooperation with the People's Republic of China on Quality Assurance and Mutual Inspection of Exported and Imported Products of 5 July 1996 stipulates

exchange of information on legislation, conformity recognition and product supervision procedures applied by both sides.

With the purpose to implement the Agreement, the Memorandum on Mutual Understanding on Cooperation in the Sphere of Control and Safety of Mutually Delivered Goods between the Ministry of Industry and Trade of the Republic of Kazakhstan and the State General Administration of the People's Republic of China on Quality Supervision, Inspection and Quarantine was signed on 17 November 2006.

The major difference between the bilateral agreements concluded by Kazakhstan with China and Turkey and Kazakhstan's participation in multilateral agreements signed with the CIS countries within the framework of the Interstate Council on Standardization, Metrology and Certification is that Kazakhstan recognizes conformity certificates issued by the CIS countries, and intergovernmental standards (GOST) can be applied in Kazakhstan along with the state standards of the Republic of Kazakhstan (SS RK).

- **Sanitary and phytosanitary measures**

Question 100

Kazakhstan has much work to do in the area of SPS. Until there is a better understanding of Kazakhstan's efforts to comply upon accession, few modifications can be made to the text of the report.

Kazakhstan is requesting to delay application of the provisions of the SPS Agreement for a period of four years following the date of accession to the WTO. We do not believe a transition to implement the SPS Agreement is necessary. We urge Kazakhstan to make the necessary changes to meet the requirements of the Agreement prior to accession.

We urge Kazakhstan to keep working to avoid the need to have a transition in this area. We seek SPS legislation from Kazakhstan that provides for transparent, science-based regulations on all issues concerning sanitary and phytosanitary regulations.

Answer:

The Republic of Kazakhstan retains its position on the implementation period which is needed for the purposes of harmonizing national legislation in the sphere of veterinary and plant quarantine with international standards.

The Ministry of Health is planning to revise and/or adopt legal acts regulating food safety in order to harmonize them with international standards including conduct of risk assessment, risk assessment methodologies and procedures.

Upon WTO accession, international recognition of Kazakhstan's laboratory tests will become essential. For this purpose, the sanitary-epidemiological laboratories need international accreditation.

For instance, the Republican Sanitary Epidemiological Station has received international accreditation under ISO 17025-2005 in 2006. Accreditation of laboratories in Almaty is on the final stage.

Since genetically modified products monitoring in Kazakhstan is not developed, it is impossible to evaluate the quantity and assortment of genetically modified organisms, micro-organisms as well as food products and feed imported to Kazakhstan.

To address this important problem, Kazakhstan needs to establish laboratories for quantitative and qualitative detection of GMOs. Besides, it is necessary to train about 40 experts on organization of the monitoring system. Funding of this event is envisaged in the Law "On Food Safety".

In addition, the Republic of Kazakhstan requests implementation period due to the following needs:

- Material and technical upgrade of veterinary-phytosanitary border check-points to facilitate speedy control procedures and reduce time for customs checks;
- Upgrade veterinary and phytosanitary laboratories with up-to-date equipment in accordance with international standards in order to ensure control of imported products using sampling as well as certification of exported products;
- Bring national legal acts in the sphere of veterinary, phytosanitary and food safety in compliance with SPS Agreement; and
- The lack of domestic scientific-methodical background for training of qualified staff is the main problem. The trainings require substantial period of time.

Kazakhstan applies existing international standards, directives and recommendations in compliance with SPS Agreement. However, to ensure compliance of Kazakh products upon exportation as well as to undertake control of samples of imported products, Kazakhstan should have both human and technical capacity conduct risk assessment which includes laboratory testings.

Question 101

Please update the Working Party on the progress of harmonizing Kazakhstan's legislation with the International Animal Health Code.

Answer:

The Republic of Kazakhstan became an OIE member in 1993 and follows provisions of Terrestrial Code and Aquatic Animal Commission of OIE in international trade. Currently, the Government of Kazakhstan has developed the Resolution "On Ratification of the International Agreement on the Creation of an Office International des Epizooties in Paris". Adoption of this Resolution will enable Kazakhstan to use OIE international standards and recommendations in drafting regulatory and legal acts in the sphere of animal health and in conducting economic cooperation with other OIE and WTO members.

With the purpose to enhance the legislation of the Republic of Kazakhstan in the sphere of sanitary and phytosanitary measures, the draft law "On Amendments and Addenda into Some Legislative Acts of the Republic of Kazakhstan on Veterinary Issues" has been developed and submitted for consideration to the Majilis of the Parliament of the Republic of Kazakhstan. The draft Law introduces legal provisions on food safety in international trade in compliance with the provisions of SPS Agreement.

In particular, the Draft Law introduces the following provisions:

- A system of inspection/attestation of domestic producers and foreign producers exporting agricultural goods into the Republic of Kazakhstan is introduced;
- The authorized bodies may adopt necessary veterinary-sanitary measures for risk management in case when the risk of adverse effect of a product for human health and life is detected whereas available scientific data is insufficient to determine its extent;
- Veterinary-sanitary measures shall be based on scientific data and objective assessment of the risks for human life and health. The risk assessment shall take into account international standards, guidelines and recommendations;

- In assessing the equivalency of veterinary and sanitary measures on a territory of a certain administrative-territorial unit, scientific data, results of research and monitoring of the spread of specific diseases and existence of zones shall be taken into account;
- To recognize veterinary and sanitary measures of foreign countries as equivalent, the measures shall meet international standards and provide appropriate safety level on the territory of the Republic of Kazakhstan from entry and spread of animal contagious diseases;
- State veterinary and sanitary control shall not be carried out more often than two times a year and shall not last longer than five days; and
- Territory of administrative-territorial units shall be divided into zones depending on spread of animal contagious diseases and applied veterinary measures.

In addition, the following regulations were adopted by the Resolutions of the Government of Kazakhstan:

- Resolution of the Government of the Republic of Kazakhstan No. 336 "On Approval of the Technical Regulation 'Requirement for Safety of Meat and Meat Products'" of 8 April 2008;
- Resolution of the Government of the Republic of Kazakhstan No. 263 "On Approval of the Technical Regulation 'Requirement for Safety of Feed and Feed Additives'" of 18 March 2008; and
- Resolution of the Government of the Republic of Kazakhstan No. 230 "On Approval of the Technical Regulation 'Requirement for Safety of Milk and Milk Products'" of 11 March 2008.

The following regulatory acts are being developed in compliance with WTO requirements:

- "On Requirements for Safety of Medicines and Biological Drugs Used in Veterinary";
- "On Approval of Rules on Veterinary-Sanitary Evaluation of Safety of Food Products".

Question 102

Please update the Working Party on the status of, and provide translations to the Working Party of, the following Laws:

- **On Food Safety; and**
- **On Amendments and Addenda into Certain Legal Acts of the Republic of Kazakhstan on Public Health.**

In light of the importance of these laws, and the technical nature of the WTO's SPS regime, we recommend that Kazakhstan provide the Working Party with a translations of these laws while still in draft so that we may review them for compliance with the WTO prior to submission to your Parliament.

Answer:

The Law "On Sanitary-Epidemiological Welfare of Population"

The following amendments were introduced into the Law "On Sanitary-Epidemiological Welfare of Population" in July 2006:

- recognition of sanitary-epidemiological measures of other countries as equivalent provided that they ensure appropriate levels of sanitary-epidemiological safety within the territory of the country;
- identification of disease-free areas or their parts or territories with low risk of disease spread;

- improvement of regulatory legal acts for the purposes of harmonizing with international standards;
- conducting risk assessment; and
- approval of unified methodology for authorized organizations to carry out risk assessment, as well as risk assessment procedures taking into account internationally accepted risk assessment methods.

The copy of Law with amendments is available through document WT/ACC/KAZ/67/Add.1.

The Law "On Food Safety" was adopted in 21 July 2007 and enacted as of 1 January 2008.

The Law establishes legal basis for ensuring food safety for the purposes of protection of human health and life, legitimate consumer interests on the territory of Kazakhstan.

The main objective of the Law is to bring the legislation of Kazakhstan in the sphere of food safety with the international practice, creation of regulatory framework for development and practical implementation of mandatory requirements to foodstuff subject to state sanitary-epidemiological, veterinary and phytosanitary control.

In addition, the Law is aimed at:

- creation of conditions for ensuring food safety for human health and life as well as protection of consumer interests;
- establishment of procedures for implementation of mandatory requirements to food safety;
- division of competences between the government bodies with respect to regulation of food safety issues; and
- removal of technical and administrative barriers.

In accordance with the WTO Agreement on SPS measures, the Law of Kazakhstan on Food Safety contains the following provisions:

- a definition of the "risk assessment" was introduced;
- scientific information, appropriate methods of processing and production, inspection methods, sampling, laboratory testing, proliferation extent of concrete diseases, presence of disease-free zones shall be taken into account when conducting risk assessment;
- in cases when risk analysis and assessment identifies the likelihood of harmful impact to human health and life, however the available scientific data is not sufficient to determine its extent, then authorized bodies have the right to take temporary measures on risk management;
- temporary measures on risk management shall be revised within minimum period of time, needed for obtaining scientific data, clarifying the risk extent; and
- turnover of GMOs and biologically active additives to food are allowed after scientific confirmation of its safety.

The copy of Law is available through document WT/ACC/KAZ/67/Add.1.

Question 103

In paragraph 236 of WT/ACC/SPEC/KAZ/9/Rev.1, Kazakhstan explains that an exporting country's veterinary certificate is replaced by a Kazakh veterinary certificate, "because the original certificate was in a foreign language." If the original veterinary certificate were provided in the original language as well as Russian or Kazakh, as is the case with import permits, would Kazakhstan still have to replace the certificate?

Answer:

Currently, the amendments and addenda into veterinary legislation have been drafted to change this system. According to the amendments, foreign veterinary certificate will directly circulate within the territory of Kazakhstan, whereas veterinary statement issued by veterinary services of Kazakhstan in Kazakh and Russian languages will accompany the foreign veterinary certificate. These changes will enter into force by the date of Kazakhstan's WTO accession.

The languages of foreign veterinary certificates will be agreed with each exporting country on case by case basis.

Question 104

We do not understand the final sentence of paragraph 236 of WT/ACC/SPEC/KAZ/9/Rev.1: "As imported goods were under the control of the State Inspector of the given territory for the period of their intended use (sale, processing), there was no risk that the foreign product would be re-labelled as a Kazakh product." Please explain what is meant by this sentence.

Answer:

We propose to replace the above sentence as following:

"With the purpose to ensure food safety and identification of the country of origin, the label and package of imported goods shall not be changed until they are delivered to the final consumer. Safety of the imported products is under the control of territorial state veterinary inspectors".

Question 105

We welcome the additional information provided by Kazakhstan in relation to its SPS regime. These responses help to clarify the extent of the challenges ahead in this aspect of Kazakhstan's accession process. Despite these challenges, we see our task being to ensure that Kazakhstan is in full compliance with the SPS Agreement upon the date of its accession to the WTO. We provide the following questions/observations with a view to improving this section of the Report.

First, we do not understand specifically what aspects of the SPS Agreement could not be met on the day of accession. Kazakhstan has suggested that a lack of laboratories and equipment justifies such a transition period. While modern facilities are a useful part of any internal SPS system, they are not central to being able to apply the obligations of the SPS Agreement. For example, one of the key obligations of the SPS Agreement is that Members shall ensure that SPS measures are based on an assessment of the risks to human, animal or plant life health. This does not require Kazakhstan to undertake its own risk assessment or scientific analysis. Instead, the adoption of existing international standards, guidelines and recommendations shall be presumed to be consistent with relevant provisions of the SPS Agreement. We encourage Kazakhstan to be explicit about what aspects of the SPS Agreement it believes it is unable to meet now to provide Members with a clearer picture of existing gaps. Kazakhstan has explained in parts of the Working Party Report that it currently does recognise equivalence, international standards and has a risk assessment process in place, it seem inconsistent with an across-the-board four year transition period.

Answer:

The Republic of Kazakhstan retains its position on the implementation period which is needed for the purposes of harmonizing national legislation in the sphere of veterinary and plant quarantine with international standards.

The Ministry of Health is planning to revise and/or adopt legal acts regulating food safety in order to harmonize them with international standards including conduct of risk assessment, risk assessment methodologies and procedures.

Upon WTO accession, international recognition of Kazakhstan's laboratory tests will become essential. For this purpose, the sanitary-epidemiological laboratories need international accreditation.

For instance, the Republican Sanitary Epidemiological Station has received international accreditation under ISO 17025-2005 in 2006. Accreditation of laboratories in Almaty is on the final stage.

Since genetically modified products monitoring in Kazakhstan is not developed, it is impossible to evaluate the quantity and assortment of genetically modified organisms, microorganisms as well as food products and feed imported to Kazakhstan.

To address this important problem, Kazakhstan needs to establish laboratories for quantitative and qualitative detection of GMOs. Besides, it is necessary to train about 40 experts on organization of the monitoring system. Funding of this event is envisaged in the Law "On Food Safety".

In addition, the Republic of Kazakhstan requests implementation period due to the following needs:

- Material and technical upgrade of veterinary-phytosanitary border check-points to facilitate speedy control procedures and reduce time for customs checks;
- Upgrade veterinary and phytosanitary laboratories with up-to-date equipment in accordance with international standards in order to ensure control of imported products using sampling as well as certification of exported products;
- Bring national legal acts in the sphere of veterinary, phytosanitary and food safety in compliance with SPS Agreement; and
- The lack of domestic scientific-methodical background for training of qualified staff is the main problem. The trainings require substantial period of time.

Kazakhstan applies existing international standards, directives and recommendations in compliance with SPS Agreement. However, to ensure compliance of Kazakh products upon exportation as well as to undertake control of samples of imported products, Kazakhstan should have both human and technical capacity conduct risk assessment which includes laboratory testings.

Question 106

The system of import approvals described in Kazakhstan's response to Question 104, raises questions about the WTO consistency of its SPS regime. As we understand this system, a veterinary certificate issued by the country of export accompanies produce to the Kazakh border and certifies that the produce contained meets the appropriate quarantine standards of Kazakhstan. (This is clarified on page 125 of document WT/ACC/KAZ/66 - where Kazakhstan notes that once Kazakhstan has recognised the "equivalence" of exporting country members, product is accepted in Kazakhstan on the basis of an agreed veterinary certificate)

Can Kazakhstan confirm that these veterinary certificates represent the outcomes of agreements with individual countries and certify that product contained does meet Kazakhstan's SPS requirements and have necessary permission to enter Kazakhstan? Otherwise, what is the significance of the exporting country's veterinary certificate? What does acceptance of product accompanied by such a certificate mean in practical and legal terms?

Answer:

Veterinary certificates are not necessarily the results of bilateral agreements on recognition of equivalence.

- In case if Kazakhstan has signed bilateral agreement on equivalence with other country, the certificate shall confirm that the product meets the veterinary requirements of the exporting country; and
- If there is no agreement on equivalence, the veterinary certificates shall stipulate that product meets veterinary requirements of Kazakhstan.

In both cases, foreign veterinary certificate is the main accompanying document certifying safety of goods and ensuring their access to Kazakhstan provided that the import permit from Chief State veterinary inspector is issued.

Question 107

We understand that Kazakhstan replaces these certificates with its own certificates once they enter the country. It has explained that this is necessary because certificates are not in the necessary language.

It has been standard practice for exporting countries to develop certificates in both the language of the exporting country and importing country. This would ensure the integrity of the cargo and prevent the need for further certificates and scope for changes in information recorded. Does Kazakhstan not provide for certificates to be negotiated in dual languages? If not, why not? It would be a simple way to ensure that produce reaches its destination in a faster manner.

Are the certificates accompanying produce from other CIS countries drafted in the language of Kazakhstan?

Kazakhstan indicated at the October 2006 Working Party meeting that it did not require a "veterinary certificate" for goods accompanying product from the CIS, but instead a "veterinary statement". We would appreciate clarification of the difference between a certificate and a "statement" and what would justify different requirements between CIS countries and other WTO Members? We understood that the provision of a "veterinary statement" did not require the application of an internal Kazakhstan veterinary certificate. Is this correct?

Answer:

Currently, the amendments and addenda into veterinary legislation have been drafted to change this system. According to the amendments, foreign veterinary certificate will directly circulate within the territory of Kazakhstan, whereas veterinary statement issued by veterinary services of Kazakhstan in Kazakh and Russian languages will accompany the foreign veterinary certificate. These changes will enter into force by the date of Kazakhstan's WTO accession. The languages of foreign veterinary certificates will be agreed with each exporting country on case by case basis.

Kazakhstan at this moment uses veterinary certificates in two languages: language of exporting country, and Kazakh (Russian) language. Veterinary statements used in trade between CIS countries are compiled in Kazakh with translation into Russian. For exportation purposes, Kazakhstan uses veterinary certificates compiled in three languages: Kazakh, Russian and English.

Regarding the difference between "the veterinary statement" and "the veterinary certificate", the following should be noted:

- Veterinary statement is the document issued by veterinary inspector for animals and animal products transported via highways, railways, water and air transports in all internal movements (excluding within raion) and in movements within territory of CIS countries. The veterinary statement (i) certifies the epizootic welfare or ill-being of cargoes, place of origin, (ii) indicates the order of its use, transportation, routs, and final destination.
- Veterinary certificate for exportation purposes from Kazakhstan - document issued by veterinary inspector of Kazakhstan on the basis of a veterinary statement when exporting animals and animal products from Kazakhstan.

Currently, veterinary statement replaces foreign veterinary certificate when foreign goods cross the state border.

It is clear from above that veterinary statement is issued: (i) to certify safety of domestically produced goods (ii) for the use in transportation within Kazakhstan and movements within CIS, and (iii) to replace foreign veterinary certificate. Therefore, veterinary certificate is not issued for domestically produced goods for distribution in the domestic market. Veterinary certificate is issued by veterinary inspectors only for domestic goods for exportation purposes. In essence, veterinary statement is a document of internal use.

Foreign veterinary certificate is replaced with veterinary statement in order to use uniform veterinary documents for all products under veterinary control. Therefore, such veterinary statements make sure that foreign and domestic goods are treated equally within the entire territory of Kazakhstan.

Question 108

We understand that in addition to the need to provide an appropriate certificate, and make available goods for potential quarantine inspection upon entry to Kazakhstan, the importer must also obtain additional permission to import the product to the region with Kazakhstan. We have a number of concerns with this additional requirement.

In particular, it seems from the response to Question 104, that such an "approval" is required in relation to each and every single consignment of goods imported into Kazakhstan. Kazakhstan notes that the Senior State veterinary inspector of the oblast is able to determine the "possibility of import of the requested goods", as well as "regulate conditions of the shipment" and "issues veterinary-sanitary requirements to import and transport a specific shipment". Can Kazakhstan confirm that this is correct? If this is correct, can Kazakhstan justify why a regular importer of meat already deemed safe for entry to Kazakhstan would need to receive individual and multiple approvals for each shipment, and not be simply allowed to import at their discretion (subject to random testing/inspection upon entry)?

Answer:

According to the currently applied mechanism, import permissions are required for each imported consignment. This is due to the fact that Kazakhstan's system of veterinary control differs from the system practiced in other countries. In some developed countries veterinary services allow imports only from inspected foreign establishments and, therefore, routine laboratory testing is not required for each consignment.

Kazakhstan is considering to simplify requirements for import permission and introduce the mechanism of regular inspections. For regular exporters, veterinary services of Kazakhstan will inspect their farms/enterprises to authorize them to export their products to Kazakhstan. Based on the

results of veterinary inspections, veterinary services would form the list of enterprises permitted to export their products to Kazakhstan. This list shall be sent to related border check-points. The laboratory testing of products from enterprises included into the list will be held using sampling method. In turn, import permits would be issued by central veterinary body for the whole volume declared in the contract, but not for each consignment. The permits would be valid until the end of the calendar year.

However, in cases if epizootic situation in the exporting country changes or a consignment owner violates veterinary requirements that may cause a risk of entry of infectious animal diseases or imported goods do not comply with the veterinary requirements, authorized body may recall the issued permit.

Regarding the Answer to Question 104 of WT/ACC/KAZ/66 the following should be clarified. According to the veterinary rules, a trader, prior to shipping foreign products, must apply for import permit to an oblast branch of the veterinary control authority in that oblast/region, where the imported product is destined to. To issue import permit:

- Central authorized body checks whether the exporting country falls under temporary import bans due to outbreak of infectious disease. In case a country is not listed by OIE and/or no information was received from the exporting country - Chief State Veterinary Inspector on behalf of Central veterinary authority approves the application; and
- Oblast branches verify compliance of transportation and storage facilities to veterinary rules. In case the rules are not met - exporter may reapply when all necessary requirements are fulfilled.

Question 109

Can Kazakhstan provide an explanation as to the conditions under which the possibility of import will or will not be approved? What are some of the criteria involved in this decision?

Answer:

The following criteria shall be used when issuing import permits:

- Central authorized body checks whether exporting country is subject to temporary ban due to infectious disease outbreak. In case if: (i) country is not under the ban; or (ii) the information on outbreak was not received from exporting country or OIE, central authorized body approves the application; and
- Territorial branches confirm safety of transportation and presence of appropriate storage, processing conditions and use of imported goods.

In case imported goods do not comply with the safety requirements, exporter may re-apply for import permit when the incompliance is removed.

Question 110

Can Kazakhstan explain the justification for requiring that once imported goods had arrived at their destination they had to undergo additional laboratory testing before a final decision could be taken on allowing the goods?

Answer:

Firstly, it should be noted that imported goods must undergo laboratory testing only one time.

The procedures of veterinary approval of imported goods are as follows:

- prior to importation, a trader must obtain an import permit (the procedure is described in the answer to the Question 108 above);
- when crossing the Kazakhstan's border, the foreign certificate accompanying the imported good is replaced by veterinary statement;
- then, imported good may be transported to the final place of destination and placed in temporary warehouse under customs control;
- a veterinary inspector takes samples and sends them to the laboratory testing; and
- when test results arrive (normally within 3-5 days) the veterinary inspector approves the consignment for further customs clearance.

Shortly, imported goods may be released into free circulation by customs authorities only after approval of veterinary inspector. The approval is made on the basis of laboratory test results.

The reasons for a need to conduct laboratory testing for each consignment is that according to the currently applied mechanism, import permissions are required for each imported consignment. This is due to the fact that Kazakhstan's system of veterinary control differs from the system practiced in other countries. In some developed countries veterinary services allow imports only from inspected foreign establishments and, therefore, routine laboratory testing is not required for each consignment.

For further details please refer to the answer to the Question 108 above.

Question 111

Can Kazakhstan outline the process of approvals that a domestic product must obtain before it can be handled internally or transport/sold to another region?

Answer:

The official veterinary permit for all kinds of transportation within the country is not required. It should be noted, that as soon as imported products pass the state border of Kazakhstan, the same veterinary requirements apply to domestic and imported products when transporting within the country.

However, requirements for transportation within country are de-facto equivalent to import permit requirements.

During the transportation within Republic of Kazakhstan territorial veterinary services carry out the following:

- Products subject to state veterinary control shall be imported from disease-free area (settlement, farm, warehouse, or compartment) and shall not be under quarantine; and
- Veterinary control is performed when owner of product applies for veterinary statement when transporting, selling in markets, shops or processing. Veterinary inspectors at the place of destination check accompanying veterinary statements as well as storage and transportation conditions.

The Comparative table with description of procedures of issuing permits for internal movement of domestic products and their transportation and distribution to another region within the country and the permitting procedure applied for imported products is provided in Annex 6.

Question 112

Our assessment is that this system of internal approvals constitutes unnecessary additional barriers to trade, and in effect, represent a form of non-automatic import licensing of the importation of such goods. If an exporting country has been recognised as meeting Kazakhstan's appropriate level of protection and the produce is accompanied by veterinary certificates (and subject to the right to check produce at the border), there appears to be little justification for requiring an importer to obtain additional approvals to purchase such product in a particular region. While it is appropriate for Members to apply legitimate measures for control and inspection of product, such measures should be no less favourable to imported products than for domestic products, and based appropriately on the level of risk involved.

Answer:

Import permit procedures were established in order to provide exporters with information on veterinary requirements in Kazakhstan.

The system of issuing permits for importation of animal and products of animal origin is regarded as the permit system according to the SPS Agreement and, as such, is not subject to Import Licensing Agreement. Provisions of Article 8 of the SPS Agreement allow the members to conduct national systems of control, inspection and approval procedures provided that they observe the provisions of Annex C to the Agreement in the operation of control.

In accordance with Article 4 of Law "On Veterinary", state policy in the sphere of veterinary control is aimed at:

- carrying out state veterinary control on production facilities, storage and distribution subject to state veterinary supervision; and
- protecting the territory of the Republic of Kazakhstan from infectious and exotic animal diseases originating from other countries.

To achieve the objectives mentioned above, the veterinary service of Republic of Kazakhstan shall ensure safety of products of animal origin imported into Kazakhstan not only during the production process, but also during transportation and storage within the territory of Kazakhstan.

In this regard, import permits are called to ensure safety and facilitate trade from the following points of views:

- Importer receives information on veterinary transportation and storage requirements, meanwhile veterinary services check safety of transportation and storage facilities;
- Ensure that capacity of reserved storage facilities fit the volume of imported products;
- Trader is informed on whether an exporting country is a subject to temporary ban due to infectious disease outbreak. The list of countries subject to temporary ban is formed according to the OIE list and the information received from the exporting country; and
- If requested, exporter receives information on veterinary requirements of Kazakhstan applied to imported products.

In conclusion it should be noted that import permit system helps veterinary authorities of Kazakhstan to ensure safety of processes that are outside competence of veterinary services of the exporting country, i.e. during transportation, storage, which may affect safety of products, even if veterinary certificates confirm that product of animal origin was produced in compliance with Kazakhstan requirements. So exporter does not bear unnecessary costs on check-points due to lack of up-to-date information.

It is also important to note that imported and domestic products are subject to the same permit requirements while they are being transported/moved within the country.

Question 113

On equivalence, Kazakhstan notes that it does provide for recognition of equivalence of other trading partners' SPS measures.

Can it indicate how many bilateral agreements it has in place which involve such recognition of equivalence? What is the practical consequence of recognising such 'equivalence' in terms of the steps/processes a product must go through to enter Kazakhstan?

Answer:

Until now, Kazakhstan has not signed any formal agreement on equivalence. However, it should be noted that CIS countries apply uniform (i) veterinary rules on animal diseases and (ii) forms of veterinary statements. In practice, when entering the territory of Kazakhstan, CIS products are accompanied with the veterinary statements issued by CIS veterinary inspectors in the same form as those issued by Kazakh inspectors. Thus, the CIS veterinary statements are not replaced when products cross the border of Kazakhstan and circulate directly within the territory of the country.

Question 114

Does Kazakhstan require a bilateral agreement with all countries? For example if an exporting country objectively demonstrated that its measures achieved appropriate levels of SPS protection in accordance with international standards or guidelines to which Kazakhstan is a party (such as Codex, OIE), would Kazakhstan accept this as ensuring equivalence?

Answer:

Kazakhstan does not require signing bilateral agreement on equivalence to permit a country to export its product to Kazakhstan. Such agreement may be signed by exporting country or Kazakhstan on the basis of voluntary initiative.

The Republic of Kazakhstan became an OIE member in 1993 and follows provisions of Terrestrial Code and Aquatic Animal Commission of OIE in international trade. Currently, the Government of Kazakhstan has developed the Resolution "On Ratification of the International Agreement on the Creation of an Office International des Epizooties in Paris". Adoption of this Resolution will enable Kazakhstan to use OIE international standards and recommendations in drafting regulatory and legal acts in the sphere of animal health and in conducting economic cooperation with other OIE and WTO members.

In accordance with Article 8 of Law "On Veterinary", recognition of veterinary-sanitary measures of other countries is under the competence of y authorized body. Such measures ensure appropriate level of protection in country of origin.

With the purpose to enhance the legislation of the Republic of Kazakhstan in the sphere of sanitary and phytosanitary measures, the draft law "On Amendments and Addenda into Some Legislative Acts of the Republic of Kazakhstan on Veterinary Issues" has been developed and submitted for consideration to the Majilis of the Parliament of the Republic of Kazakhstan. The draft Law introduces legal provisions on food safety in international trade in compliance with the provisions of SPS Agreement.

In particular, the Draft Law introduces the following provisions:

- A system of inspection/attestation of domestic producers and foreign producers exporting agricultural goods into the Republic of Kazakhstan is introduced;
- The authorized bodies may adopt necessary veterinary-sanitary measures for risk management in case when the risk of adverse effect of a product for human health and life is detected whereas available scientific data is insufficient to determine its extent;
- Veterinary-sanitary measures shall be based on scientific data and objective assessment of the risks for human life and health. The risk assessment shall take into account international standards, guidelines and recommendations;
- In assessing the equivalency of veterinary and sanitary measures on a territory of a certain administrative-territorial unit, scientific data, results of research and monitoring of the spread of specific diseases and existence of zones shall be taken into account;
- To recognize veterinary and sanitary measures of foreign countries as equivalent, the measures shall meet international standards and provide appropriate safety level on the territory of the Republic of Kazakhstan from entry and spread of animal contagious diseases;
- State veterinary and sanitary control shall not be carried out more often than two times a year and shall not last longer than five days; and
- Territory of administrative-territorial units shall be divided into zones depending on spread of animal contagious diseases and applied veterinary measures.

In addition, the following regulations were adopted by the Resolutions of the Government of Kazakhstan:

- Resolution of the Government of the Republic of Kazakhstan No. 336 "On Approval of the Technical Regulation 'Requirement for Safety of Meat and Meat Products'" of 8 April 2008;
- Resolution of the Government of the Republic of Kazakhstan No. 263 "On Approval of the Technical Regulation 'Requirement for Safety of Feed and Feed Additives'" of 18 March 2008; and
- Resolution of the Government of the Republic of Kazakhstan No. 230 "On Approval of the Technical Regulation 'Requirement for Safety of Milk and Milk Products'" of 11 March 2008.

- Trade-related investment measures

Question 115

Under the free warehouse regime devised for the automotive sector described in paragraphs 39, 200 and 255 of WT/ACC/SPEC/KAZ/9/Rev.1, as well as in response to Question 14 of WT/ACC/KAZ/66, preferences are granted based on local content. Additional benefits are granted in the form of VAT and import duty exemptions on the purchase of certain goods. Because the incentives under this program are contingent upon the use of domestic over imported goods, they appears to be inconsistent with the TRIMs Agreement (as well as the WTO Subsidies Agreement, discussed above). Please explain how Kazakhstan plans to bring this program into compliance with these Agreements.

Before the Working Party can consider granting a transition period for the elimination of WTO-inconsistent TRIMs, Kazakhstan will have to provide a detailed action plan for their elimination. Please provide such an action plan to the Working Party as soon as possible.

Answer:

Currently Kazakhstan is preparing relevant amendments to the legislation of the Republic of Kazakhstan concerning the "Free warehouse" regime. According to the draft amendments, the

requirement to use domestic goods over imported goods in order to receive the tax and import duty preferences will be eliminated upon the implementation of the proposed amendments. It should also be noted that regulations related to taxes and import duties will be applied in a non-discriminatory manner to all products produced at "Free warehouses". The new legislation will be provided to the Working Party as soon as possible.

The draft amendments are aimed at bringing the "Free warehouse" regime applied in Kazakhstan into compliance with the Article III of the GATT, TRIMs and SCM Agreements. Please note that Kazakhstan is compiling and analyzing information related to subsidy notifications under Article 25 of the SCM Agreement.

- **State-trading entities**

Question 116

As noted earlier, this report needs work in describing the state's role in the economy. For starters, in order to clarify the discussion of STEs/SOEs, consistent with the scope of Article XVII on State-trading enterprises, we recommend combining the material on State ownership from the "State ownership and Privatization" section with the material in "State-trading enterprises". A discussion on State-trading enterprises would be notably incomplete without information on State-owned enterprises. In this respect, we would recommend that paragraphs 43-45 and 52 of WT/ACC/SPEC/KAZ/9/Rev.1 be incorporated into the section on "State-trading enterprises".

Answer:

Kazakhstan does not object to combine the materials from the "State ownership and Privatization" and "State-trading enterprises" sections in the draft Working Party Report.

Question 117

In response to Question 25 of WT/ACC/KAZ/66, Kazakhstan lists a number of activities that qualify as state monopolies. One of those activities is "importation and/or exportation of certain goods (rhenium, osmium)." Are there any other products that can be imported or exported only by a state monopoly?

Answer:

The legislation of Kazakhstan provides the possibility to introduce state monopoly on importation and exportation of goods. The Government of the Republic of Kazakhstan defines the list of goods that is subject to state monopoly regulation. At current stage, there is no state monopoly on importation and exportation of goods.

Question 118

We appreciate the information provided on the State trading enterprises discussed in paragraphs 260-262 of WT/ACC/SPEC/KAZ/9/Rev.1. However, we need additional information on these enterprises, and their role in the market. Please provide additional information on the sales and purchase decisions made by these enterprises, including how these enterprises determine the quantity of goods imported and/or exported, and what laws, if any, govern the operations of these enterprises.

Answer:

1. The JSC "Food Contract Corporation" (FCC)

The JSC "Food Contract Corporation" is a subsidiary of the newly established national holding JSC "KazAgro", i.e. 100 per cent of shares of FCC is owned by "KazAgro".

Legal base:

- Civil Code of 27 December 1994;
- The Law of the Republic of Kazakhstan No. 415-II "On Joint Stock Companies" of 13 May 2003;
- The Law of the Republic of Kazakhstan "On Grain" of 19 January 2001, No. 143-II;
- The Law "On State Regulation of Agricultural and Industrial Complex and Rural Territories Development" of 8 July 2005;
- The Law of the Republic of Kazakhstan No. 303 "On Government Procurement" of 21 July 2007.

FCC carries out its purchases and sales in the following regimes:

- Procurement of grain for the state reserves

Annually the Government of the Republic of Kazakhstan allocates funds from the republican budget for the purposes of procurement/renewal of the state reserves of food grain. State reserves of food grain are formed with the purpose to ensure food security and address emergency needs.

FCC carries out such purchases on behalf of the Government of the Republic of Kazakhstan as an operator responsible for management of state grain reserves of grain. State reserves of grain are in the state (republican) ownership. Therefore, procurement for state reserves of grain is carried out by FCC in accordance with the procedures, volume and amount established by the Government of the Republic of Kazakhstan. Grain is purchased for state reserves from domestic farmers directly in volumes and within the funds allocated by the Government.

- State realization resources of grain

State realization resources of grain are formed in accordance with the Law of the Republic of Kazakhstan "On Grain". Formation and renewal of state reserves of grain are carried out by FCC on behalf of the Government of the Republic of Kazakhstan from farmers or through transfer of grain from other state resources of grain. Purchases are funded from the republican budget. Procurement is carried out at fixed prices.

Pursuant to the Resolution of the Government of the Republic of Kazakhstan No. 394 of 28 May 2001, state realization resources of grain are allocated for provision of humanitarian assistance, exportation and regulation of domestic market (i.e. interventions). Use of state realization resources of grain for the purposes of humanitarian assistance and regulation of domestic market are carried out on the basis of the Government decisions.

FCC can take decisions on use of state realization resources of grain for the purposes of exportation, sales in the domestic market and renewal of state reserves of grain, at its own discretion.

- Commercial procurement of grain

Commercial procurement of grain is carried out by FCC at its own as well as borrowed funds. The Government of the Republic of Kazakhstan does not determine the price, volume and procedures used

in procurement for commercial purposes. FCC independently sets the price and volume of the purchased grain based on its own commercial considerations.

- Sales of grain at the domestic and external

Conclusion and implementation of contracts on sale of grain from the state realization resources are implemented by FCC in accordance with the Rules of formation, storage, renewal, transportation and use of state resources of grain approved by the Resolution of the Government of the Republic of Kazakhstan of 28 May 2001 No. 394.

When (i) state realization resources of grain and (ii) state reserve of grain are not used for their intended purpose (i.e. food security and emergency needs, humanitarian assistance and regulation of domestic market), FCC may sell the grain at prices, volume and destinations at its own discretion.

Use of state realization resources of grain in order to provide export supplies of grain, sales at the domestic market and renewal of the state reserves of food grain, state resources of feed grain and state resources of seeds is carried out by FCC independently in accordance with the actual commercial price at the grain market. FCC can sell the realization resources of grain on the basis of swap contracts.

- Purchase of goods for FCC's internal administration needs

Purchase of goods for FCC's internal administration needs is carried out in accordance with the procedures established by the Law of the Republic of Kazakhstan "On Government Procurement", which comply with the Model Law of the United Nations Commission on International Trade Law (UNCITRAL). The Law provides six methods of procurement: public bidding, closed bidding, procurement from one source, and procurement with selection of a supplier based on price offers, e-commerce and procurement on a commodity exchange. Public bidding is the main method of the procurements.

Statistics

During the last three years, FCC has purchased grain:

- in 2004:
 - for state resources (Government owned) - 464.1 thousand tons of grain;
 - FCC commercial purchases - 1,271.1 thousand tons of grain.
- in 2005:
 - for state resources (Government owned) - 549.9 thousand tons of grain;
 - FCC commercial purchases - 1,123.5 thousand ton of grain.
- in 2006:
 - for state resources (Government owned) - in the amount of up to 502.7 thousand tons of grain;
 - FCC commercial purchases - 727.1 thousand tons of grain.

Today, more than 238 companies, including producers and traders of grain, operate in the grain market of Kazakhstan. The FCC and other companies export grain on the competitive basis. Kazakhstan's share in the world exports of grain represents 5.6 per cent.

During the last three years, Kazakhstan exported 11.6 million tons of grain, including 602,000 tons exported by FCC. The FCC's share in total grain exports of Kazakhstan is 5.2 per cent. Most particularly, the FCC has exported grain in 2005 - 1000 tons of 2.1 million tons of total exports from Kazakhstan, in 2006 - 139.4 thousand tons of 2.6 million tons, in 2007 - 461.9 thousand tons of 6.9 million tons.

2. The JSC "Mal Onimderi Korporatsiyasy" (the Corporation on Animal Origin Products)

The JSC "Mal Onimderi Korporatsiyasy" (MOK) was established in 2001 to support domestic producers of agricultural goods. The MOK is a subsidiary of the newly established national holding JSC "KazAgro", i.e. 100 per cent of shares of the MOK is owned by "KazAgro".

Legal base:

- Civil Code of 27 December 1994;
- The Law of the Republic of Kazakhstan No. 415-II "On Joint Stock Companies" of 13 May 2003;
- The Law "On State Regulation of Agricultural and Industrial Complex and Rural Territories Development" of 8 July 2005;
- The Law of the Republic of Kazakhstan No. 303 "On Government Procurement" of 21 July 2007;
- The Government Resolution of the Republic of Kazakhstan No. 149 of 6 March 2006 "On Approval of the Program of Priority Measures for 2006-2008 on Implementation of the Concept of Sustainable Development of Agricultural Sector of the Republic of Kazakhstan for 2006-2010".

The Government Resolution of the Republic of Kazakhstan No. 1720 of 27 December 2001 "On Certain Issues of Loaning of the JSC "Mal Onimderi Korporatsiyasy";

The Government Resolution of the Republic of Kazakhstan No. 402 of 17 July 2007 "On Certain Issues of Procurement and Price Operations of the JSC "Mal Onimderi Korporatsiyasy".

The MOK carries out its purchase and sale procedures in the following regimes:

- Procurement operations with animal-origin products

The MOK carries out on behalf of the Government procurement operations with animal-origin products at the domestic market at fixed prices with the objective to ensure market stabilization based on the decisions of the Government of the Republic of Kazakhstan.

The Government of the Republic of Kazakhstan allocates funds from the republican budget for procurement of animal-origin products. Cattle-breeding products purchased by the MOK under procurement operations are in state ownership.

The MOK purchases the products under the relevant state budget program at the prices established by the Ministry of Agriculture. Purchase of the products is carried out in accordance with the order of the Law "On Government Procurement". Products are purchased from producers of agricultural goods directly.

- Price interventions of animal-origin products

The MOK is an agent of the Government in provision of price intervention of cattle-breeding products with the purpose to support domestic producers. Price intervention represents measures undertaken upon the decision of the Government of Kazakhstan on sales of agricultural goods at the domestic

market from the state resources at fixed prices. Price interventions are carried out with the purpose to stabilize the domestic market in cases when the market prices for agricultural goods have been increased above the level of the average annual market price, which is formed during the previous calendar year adjusted for inflation and defined in the medium-term plan of social economical development.

Within price interventions, agricultural goods shall be sold at prices set by the Ministry of Agriculture to wholesale and retail sellers and agricultural processing industries through the tender procedure conducted by local executive bodies with participation of the Ministry of Agriculture.

In cases when there is no need to undertake price interventions, MOK could sell agricultural goods at the domestic market or export at its own discretion.

- Commercial procurement of animal-origin products

MOK is allowed to purchase and sell the cattle-breeding products for commercial purposes with its own or borrowed funding. Government does not determine price, volume and procedures used for commercial procurement. MOK independently sets the price and amount of the purchased grain in accordance with its own business considerations.

Purchase of goods for MOK's internal administration needs is carried out in accordance with the procedures established by the Law of the Republic of Kazakhstan "On Government Procurement" which comply with the Model Law of the United Nations Commission on International Trade Law (UNCINTRAL). The Law stipulates six methods of procurement: public bidding, closed bidding, procurement from one source, and procurement with selection of a supplier based on price offers, e-commerce and procurement on a commodity exchange. Public bidding is the main method of the procurements.

Statistics:

In 2002-2006, the share of MOK in total meat production in Kazakhstan was 0.2 per cent, in un-skimmed milk production- 0.5 per cent (or 25,433 tons in 2006). In 2006, the share of MOK in dry milk production was 38 per cent. The share of MOK in exports of cheese varies from 4.2 per cent to 31 per cent.

In 2006, Kazakhstan produced 30.7 thousand tons of wool with the share of MOK - 6.2 per cent or 1,900 tons. MOK has exported 1,038 tons of washed wool. The main markets of wool consumption are China, Uzbekistan, Kyrgyzstan and Russian Federation.

Production of meat in the Republic of Kazakhstan and by the JSC "MOK" in 2002-2006
slaughtered weight in tons

Producers	2001	2002	2003	2004	2005	2006
Total production in Kazakhstan	654,500	672,200	693,200	737,100	762,200	805,000
JSC "MOK"	220	298	884	1,985	238	1,380
Share of the JSC "MOK" in the total production in percentage terms	0.03	0.04	0.1	0.3	0.03	0.2

Production of un-skimmed milk in the Republic of Kazakhstan and by the JSC "MOK"
in 2002-2006 (tons)

Producers	2002	2003	2004	2005	2006
Total production in Kazakhstan	4,109,800	4,316,700	4,556,800	4,714,600	4,891,900
JSC "MOK"	8,811	10,577	18,856	41,698	25,433
Share of the JSC "MOK" in the total production in percentage terms	0.2	0.3	0.4	0.9	0.5

3. The JSC "KazAgroFinance"

Legal base:

- Civil Code of 27 December 1994;
- The Law of the Republic of Kazakhstan No. 415-II "On Joint Stock Companies" of 13 May 2003;
- The Law "On State Regulation of Agricultural and Industrial Complex and Rural Territories Development" of 8 July 2005;
- The Law of the Republic of Kazakhstan No. 303 "On Government Procurement" of 21 July 2007; and
- The Law of the Republic of Kazakhstan No. 66 "On Financial Leasing" of 5 July 2000.

The JSC "KazAgroFinance" is a subsidiary of the newly established national holding JSC "KazAgro", i.e. 100 per cent of shares of "KazAgroFinance" is owned by "KazAgro".

The JSC "KazAgroFinance" (KAF) was established to carry out on behalf of the Government of Kazakhstan leasing and financing of agricultural technology and equipment through the following operations:

- Procurement for subsequent leasing to farmers of technology and equipment, including equipment and machinery for transportation, storage and primary processing of agricultural goods, products of fishery and forestry, vegetable crops; mechanization of cattle-breeding and poultry farms, forage conservation, sprinkling and irrigation machines; agricultural technology including tractors, trailers, machines for cultivation, harvesting and protection of crop; reimbursement of expenses that are directly related to purchase and delivery of the above machinery and equipment. Leasing period shall be up to seven years; and
- Financing of purchase of equipment used for processing of agricultural products, reimbursement of expenses that are directly related to purchase and delivery of equipment. Financing of purchase of equipment could be carried out through leasing and/or providing credit/financing for the period of up to eight years.

The Government does not regulate the price, quantity and origin of technology and equipment purchased by KAF for subsequent leasing.

Purchase of goods for KAF's internal administration needs is carried out in accordance with the procedures established by the Law of the Republic of Kazakhstan "On Government Procurement" which comply with the Model Law of the United Nations Commission on International Trade Law (UNCITRAL). The Law provides six methods of procurement: public bidding, closed bidding, procurement from one source, and procurement with selection of a supplier based on price offers, e-commerce and procurement on a commodity exchange. Public bidding is the main method of the procurements.

Statistics:

Technology	Import of agricultural technology								
	2004			2005			2006		
	Total*, millions of tenge	KAF, millions of tenge	KAF share, %	Total*, millions of tenge	KAF, millions of tenge	KAF share, %	Total*, millions of tenge	KAF, millions of tenge	KAF share, %
Tractors	8,286.4	1,610.9	19	10,790.7	858.8	8	8,564.1	1,745.3	20
Grain combains	12,598.2	3,128.7	25	17,097.2	4,406.8	26	10,195.8	7,877.7	77
Seeding machineries	5,157.8	272.3	5	7,543.8	5,463.3	72	7,588.6	4,495.4	59
Other	1,322.5	448.1	34	1,782.0	129.5	7	3,953.6	72.1	2
Total	27,364.9	5,460.2	20	37,213.7	10,858.5	29	3,302.1	14,190	47

* data of the Statistics Agency of the Republic of Kazakhstan

Question 119

Answer of Kazakhstan for the Question 114 of document WT/ACC/KAZ/66 assumes that Article XVII GATT does not spread to state enterprises, if they do not possess special privileges. Moreover, it is impression that Kazakhstan considers Article XVII as applied relatively to the companies "affecting by means of their purchases or sales for the level or direction of import or export".

We suppose that Article XVII (in opposition of Agreement of interpretation of this Article) is applicable equally to enterprises, owned by Government and to enterprises controlled by Government at the central or regional level even without special or exclusive privileges. Liabilities of this provision are also spread to all purchases and sales, "involving either import or export", this is not limited by the companies involved into import and export of goods. Therefore, in the light of this understanding of Article XVII, more than three state trade enterprises exist in Kazakhstan.

Answer:

Kazakhstan on the basis of careful analysis of Article XVII GATT, Understanding on the Interpretation of Article XVII of the GATT (Understanding) and WTO case law, submits to the Working Party the following point of view regarding the commitments entailing for state owned (SOEs) and state-controlled enterprises (SCEs) of Kazakhstan by such WTO provisions.

Definition of state trading enterprises (STEs) under Article XVII and Understanding

It is important for Kazakhstan to understand clearly what kind of enterprises involved with state/government could be found as STEs within the meaning of Article XVII and Understanding.

Paragraph 1(a) Article XVII contains two elements:

- state enterprises wherever located; and
- any enterprise formally or in effect granted exclusive or special rights or privileges.

Article XVII does not provide a definition for state enterprises. With this regard, it is not clear for us whether merely state-owned entities (as defined by Kazakhstan's national law) or both state-owned and state-controlled enterprises constitute state enterprises within the meaning of Article XVII.

Kazakhstan's Law "On State Enterprises", defines state enterprises narrowly. Pursuant to Kazakhstan's Law "On State Enterprises" state enterprises are created to address social and economic problems determined by the needs of society and state¹.

Therefore, the state is the owner of SOEs and has full command on operations held by these enterprises. Property of state enterprises belong to the state/government by the law of ownership while a state enterprise as a juridical person enjoys its rights by the law of estate operation.

In contrast, joint-stock companies, limited liabilities partnerships etc., which stocks in full or in part owned by the state/government, operate in a different legal basis. Under Article 34 Civil Code, joint-stock companies, limited liabilities partnerships and other entities apart from state enterprises are commercial entities established to generate profit. The state/Government owns the company shares but not its property. Consequently, the property of the company, as the property of an independent juridical person, is private, not state-owned.

State/government acts solely on the basis of generic legislation enacted for regulating relationships of all JSCs, LLP, etc. Hence, state can influence decisions undertaken by such enterprises only within and proportionally to the authority conferred by legislation to a shareholder of a private company. For instance, state/government holding a minority share in a company can not block or change Board of Directors' decision.

Operations held by state trading entities

With respect to transactions covered by Article XVII obligations, the text of the Article as well as the WTO case law is sufficiently straightforward. Article XVII obligations cover only purchases or sales involving whether imports or exports.

Paragraph (a) Article XVII reads that "...such enterprise shall, in its purchases or sales involving whether imports or exports, act in a manner consistent with the general principles of non-discriminatory treatment prescribed in the Agreement for governmental measures affecting imports or exports by private traders".

The relevant dispute settlement judgments reaffirm that Article XVII commitments bind only purchases or sales involving either imports or exports. In particular, Appellate Body in Canada - Wheat Exports and Grain Imports² case ruled that:

[M]embers may establish or maintain State enterprises or grant exclusive or special privileges to private enterprises, but requires that, if they do so, such enterprises must, when they are involved in certain types of transactions ("purchases or sales involving either imports or exports"), comply with a specific requirement³.

Appellate Body in paragraph develops further its point in analysing the commitment language contained in paragraph (b) Article XVII:

[t]he clause under examination does not refer, in the abstract, to any purchases and sales. Rather, it refers to "such purchases or sales", repeating the phrase found in the first clause of

¹ - to ensure financial security for national defence and protection of society's interests;
- production of goods (works and services) of primary needs in the areas and sectors of public production, which are not covered or insufficiently covered by private sector of the economy;
- implementation of activities in the areas qualified as state monopoly or public functions, except for control and supervision functions.

² Appellate Body Report "Canada – Measures Relating to Exports of Wheat and Treatment of Imported Grain", WT/DS276/AB/R dated 30 August 2004

³ Paragraph 85 *supra*

subparagraph (b). As discussed in our analysis above, this phrase in subparagraph (b) of Article XVII:1 refers back to the activities identified in subparagraph (a), namely the purchases and sales of an STE involving imports or exports.

In other words, the second clause of subparagraph (b) refers to purchases and sales transactions where: (i) one of the parties involved in the transaction is an STE; and (ii) the transaction involves imports to or exports from the Member maintaining the STE. Thus, the requirement to afford an adequate opportunity to compete for participation (i.e., taking part with others) in "such" purchases and sales (import or export transactions involving an STE) must refer to the opportunity to become the STE's counterpart in the transaction, not to an opportunity to replace the STE as a participant in the transaction.

Hence, it is clear that in order to comply with Article XVII, state enterprises must conduct its transactions involving export and import, i.e. import or export transactions involving an STE in a non-discriminatory fashion.

Taking into account the statement above, we do not see a legal basis for obligations of Article XVII GATT to "reach all purchases or sales" of an STE. Hence, we assert that Kazakhstan will undertake a commitment on STEs as stipulated in Article XVII of GATT.

Question 120

We further request that Kazakhstan submit a revised STE notification, based on the proper understanding of Article XVII.

Answer:

The Understanding of Article XVII of GATT stipulates that the obligations on providing notifications covers only state-owned and private companies, including marketing boards, which have been empowered with exclusive or special rights or privileges, including legal or constitutional authorities, by carrying out of which they impact on the level or direction of import/export through their procurements or purchases.

Kazakhstan has provided to the WTO Secretariat the notification on three companies, which can be state trading entities (JSC "Food Contract Corporation", JSC "Mal Onimderi Korporatsiyasy", and JSC "KazAgroFinance") and are subject to notification according to the Understanding of Article XVII of GATT.

Currently, there are about 4,322 state-owned companies and 354 Joint stock companies, limited liability partnerships and companies with state participation under the state (republican and local) property. National holdings include about 39 companies. The quantity of the state-controlled companies and companies under national holdings regularly changes due to structural reforms.

Due to large volume of information, providing data on volumes and prices of purchase and sales of the mentioned companies with notification is impossible.

Question 121

On the basis of the proper understanding of Article XVII, we request that Kazakhstan identify the principal STEs in Kazakhstan - including those characterized as "state monopolies" - and explain how the sales and purchasing decisions of those firms are undertaken. Under what circumstances do those firms purchase domestic products over like imported products? What laws, if any, govern the operations of those firms?

Answer:

I. Principle state enterprises

The list of enterprises, which can fall under obligations on notification in accordance with the Understanding of the Article XVII of GATT, are provided in the document WT/ACC/KAZ/51 (Food Contract Corporation, Mal Onimderi Korporatsiyasy, KazAgroFinance).

The list of the state-owned enterprises and companies, under control of the government and national holding companies, which can fall under obligations of the Article XVII of GATT, is provided in Annex 3 of the document WT/ACC/SPEC/KAZ/9/Rev.1.

II. The sales and purchasing decisions of principle state enterprises and companies, being under control of the government and national holding companies, which can fall within obligations under Article XVII of GATT

Enterprises with state participation are divided as follows:

- state-owned enterprises: on the basis of economic and operating management right; and
- joint stock companies, limited responsibility partnerships (state direct participation or as subsidiaries of national holding companies).
- State-owned enterprises

Legislation: Chapter VI (Article 102-104) of Civil Code of 27 December 1994, the Law of the Republic of Kazakhstan "On State enterprises" of 19 June 1995 No. 2335, the Law of the Republic of Kazakhstan "On Government procurement" of 16 May 2002 No. 321.

State enterprises include those:

- based on economic management right;
- based on operating right (state institution); and
- Conditions for transactions conducted by state enterprises are regulated by the Law "On State Enterprise".

The sphere of activity of state enterprises must comply strictly with main tasks of state enterprises activities, defined in the Law "On State Enterprise", in particular, solution of social and economic tasks, determined by the needs of the society and the government (Article 2).

It is prohibited to delegate the control and supervisory responsibilities to state enterprises (Article 8).

It is mandatory for the state enterprise to implement the government order (procurement). The enterprise has no right to refuse to conclude contracts as purchaser or seller of goods (work, services), if conclusion of such agreements is provided by the order of the government. Product (work, service), not covered by the government order (procurement), is traded by enterprise independently (Article 13).

Prices of goods (works, services), produced by state enterprises must provide: (i) full coverage of the costs incurred by enterprise during production, (ii) break-even of its activity and (iii) funding of operations made at their own costs. Goods (work, services) prices, produced and traded by enterprise on account of implementation of the government order (procurement), are fixed by enterprise upon consent of the authorized body, taking into consideration the above-mentioned criteria.

Prices of goods (work, services), not included into the government order (procurement) are determined by state enterprises independently. With the view to prevent overpricing of goods (works, services), traded by enterprises (except entities of state monopoly), antimonopoly authority shall determine the procedure of establishing such prices (Article 26).

Prices of goods (work, services), produced and traded by a state institution, are fixed by the government authorities (Article 40).

- State monopolies

State monopolies are established in the form of state-owned enterprises. Determination of certain activities as state monopoly is stipulated by such laws as "On Safeguarding Activity", "On Regulation of Trading Activity", "On Veterinary", "On Trademarks, Service marks and Appellations of Origin of Goods", "On Protection of Selective Achievements", "On Plant Protection", "On Government Procurement", Patent Law and Forestry Code.

Pursuant to the abovementioned laws and the Resolution of the Government of the Republic of Kazakhstan "On Approval of the List of Subjects of State Monopoly and Spheres in Which the Subjects Have Monopoly Position", the state monopoly covers the following activities:

- Forest management, related to demarcation of the state forestry fund, forest inventory and planning of forestry management in segments of the state forestry fund;
- Protection of objects subject to state security;
- Management of information systems, developed to provide government procurement process;
- Phytosanitary monitoring of extremely hazardous organisms;
- Diagnosis of extremely hazardous animal diseases, included into the list approved by the Government of the Republic of Kazakhstan;
- Registry tests, approbation of veterinary preparations, feeds and supplementary feed testing, as well as control of veterinary preparations series (lot) for its reclamation;
- Elimination of nidi of extremely hazardous infectious animal diseases, included in the list approved by the Government of the Republic of Kazakhstan;
- Disinfection of transportation vehicles on veterinary control posts at the state borders;
- Republican reserve of veterinary preparations;
- Protection of trade marks, services marks, appellations of origin of goods, innovations, utility models, industrial designs, selective breeding achievements;
- Production of identity documents of the Republic of Kazakhstan;
- National hydro-meteorological and environmental monitoring;
- Pre-licensing examination of enterprises for the right to produce ethyl spirit and alcohol beverages, adjustment of spirit measurement instruments and control the spill over of counting instruments;
- Monitoring of education quality, conducting unified national testing, complex testing for admission to the higher education institutions, testing during the intermediate state inspection and certification of organizations providing higher education programs;
- Banking, preservation and management of blood and its components;
- Expert services during the state registration of medicinal preparation;
- Maintenance and development of network of electronic election system infrastructure; and
- Carrying out state expertise of the projects on construction.

State monopoly prices for:

- services in the context of the government order (procurement) for types of service are approved by the Agency of Regulation of Natural Monopolies;

- goods (works, services), produced and traded by companies which are not the government order (procurement) are approved by the Antimonopoly Agency.

There are 15 state companies in total functioning in 18 spheres of the state monopoly. It is important to note that, not all state companies operate in the sphere of state monopoly.

Procurement of goods, work and services is carried out by the state enterprises in accordance with the Law of the Republic of Kazakhstan "On Government Procurement" with the purpose to provide transparency of procurements and effective use of money at their disposal.

- Joint stock companies, partnerships, etc

Legislation: Civil Code of 27 December, 1994; the Law of the Republic of Kazakhstan "On Joint Stock Companies" of 13 May 2003 No. 415-II.

Under Article 34 of the Civil Code of the Republic of Kazakhstan, joint stock companies (JSCs), partnerships are commercial entities established to generate profit. The state owns the company shares but not its property. Consequently, the property of the company, as the property of an independent juridical person, is private, not state-owned.

State acts solely on the basis of generic legislation enacted for regulating relationships of all JSCs, partnerships etc. The rights of the state and its influence in the business decision-making process are determined by the quantity of shares owned by the state. The activities of joint stock companies with the state participation are not limited by the state. Hence, state can influence decisions undertaken by such enterprises only within and proportionally to the authority conferred by legislation as to a shareholder of a private company. For instance, state holding a minority share in a company can not block or change Board of Directors' decision.

The joint stock companies with direct participation of the government and national holding take a decision as a separate juridical person with respect to quantity, price, and choice of buyer or supplier. For instance, according to the Law "On Joint Stock Companies", the government can influence some decisions of the companies only within the competence of shareholders and the Board of Director, which are equal for both private companies and the state representatives.

The exceptions include cases, when the government and/or local executive bodies involves joint stock companies and/or state owned companies as an agent to carry out certain operations in the market, including procurement and sale of goods and services (interventions, food aid, export, sale for the purpose to eliminate food shortage at the market). In such cases, the Government may define the order, price and volume of purchase or sales.

Question 122

Please provide further details on "natural monopolies" in Kazakhstan, and how these differ from "state monopolies". To what extent are the operations of natural monopolies governed by laws? What role do natural monopolies play in sales/purchases involving imports/exports, and in the distribution of imports in the domestic market?

Answer:

The notion "state monopoly" differs from the notion "natural monopoly". These notions are mutually exclusive.

According to the Law of the Republic of Kazakhstan "On Natural Monopoly" the natural monopoly is the condition of services (goods, works) market, when creation of competitive conditions to meet the

demand for particular types of services (goods, works) is impossible or economically unreasonable due to technological characteristics of production and delivery of such type of services (goods, works).

The government regulates the price of services subject to the Law "On Natural Monopoly". According to the Law, production and sale of products do not fall under natural monopoly regulation. Subjects of natural monopoly purchase and sell goods according to their own commercial purposes. The government does not regulate such an activity of subjects of (individuals) of natural monopoly.

Whereas, the state monopoly is the sphere of activity, where management is carried out only by the government authorities and/or state-owned companies on the basis of regulatory legal acts of the Republic of Kazakhstan, and also in cases, when introduction of competition is not justified due to national security interests, maintaining justice, security of high officials, defence and military-industry interests.

Also see answers to questions above.

Question 123

According to Kazakhstan's initial notification on State-Trading Enterprises, WT/ACC/KAZ/51, the State Food Contract Corporation (FCC) regulates and implements export contracts for wheat, barley and rice in agreements between governments. Please provide additional information to the Working Party on how the FCC regulates trade in those commodities, examples of when such regulation occurred and percentage of trade of those commodities that come under FCC regulation.

Answer:

Food Contract Corporation carries out exports, stipulated by intergovernmental agreements, on the basis of Government Resolutions.

According to the following Government Decisions, FCC has exported food grain in 2004-2007 within Kazakhstan's food aid to Georgia and Kyrgyzstan:

- The Resolution of the Government of the Republic of Kazakhstan "On Humanitarian Assistance to Georgian People" of 12 July 2004, No. 758 - 1,000 tons of food wheat;
- The Resolution of the Government of the Republic of Kazakhstan "On Humanitarian Assistance to Kyrgyz People" of 23 April 2005, No. 385 - 1,000 tons of food wheat; and
- The Resolution of the Government of the Republic of Kazakhstan "On Official Humanitarian Assistance to People of Kyrgyzstan" of 16 April 2007, No. 303 - 1,500 tons of food wheat.

It is clear from above that the share of food grain supplies under intergovernmental agreements is insignificant both in the total volume of FCC exports, as well as in the total volume of exports of the country.

- **Free zones, special economic zones**

Question 124

In paragraph 266 of WT/ACC/SPEC/KAZ/9/Rev.1, Kazakhstan explains that when goods are exported from special economic zones into the rest of Kazakhstan, export taxes are paid. Please confirm that the import duties originally excluded are applied as well to the products imported into the rest of Kazakhstan.

Answer:

In paragraph 266 of WT/ACC/SPEC/KAZ/9/Rev.1, Kazakhstan explains that when goods are exported from special economic areas into the rest of Kazakhstan, export taxes are paid. Please note that there is a technical error and reference should be made here to import duties but not export taxes.

Kazakhstan confirms that when goods imported to the territory of special economic areas are released to the rest of the customs territory of the Republic of Kazakhstan, customs duties and taxes shall be charged, and non-tariff regulatory measures shall be applied, in compliance with the terms of the declared customs regime.

Question 125

We appreciate the representative of Kazakhstan's promises to eliminate the terms "import substituting" and "export-oriented" from the relevant Decrees and regulations. Please provide a copy of the relevant legislation to the Working Party. In addition, does Kazakhstan plan to take a commitment to ensure the enforcement of its WTO obligations in free zones and/or SEAs existing or established within its territory, including the prohibition of TRIMs or subsidies contingent in law or in fact on local content or export performance?

Answer:

In order to comply the current legislation of the Republic of Kazakhstan with the provisions of the WTO Agreement on Subsidies and Countervailing Measures the following legal acts have been developed by Kazakhstan:

- a draft Presidential Decree "On Amendments to Presidential Decrees of the Republic of Kazakhstan" which will introduce amendments to Presidential Decree No. 853 "On Creation of Special Economic Area "Seaport Aktau" of 26 April 2002 and Presidential Decree No. 1166 "On Creation of Special Economic Area "Informational Technologies Park" of 18 August 2003 eliminating the use of the terms "import-substituting" and "export-oriented" as criteria for granting preferential treatment; and
- a draft Government Resolution "On Amendments to Government Resolution No. 1376 of 26 September 1997" which will eliminate the term "export-oriented" from the Regulation of Procedures on Formation and Use of Assets of the Fund for Economical and Social Development of Special Economic Area.

Texts of these legislative acts will be submitted to the Working Party on the Accession of Kazakhstan to the WTO after their adoption.

Besides, for the purpose to increase operating efficiency of special economic areas as well as to systematize their establishment and placement matters, new Law of the Republic of Kazakhstan No. 274 was adopted on 6 July 2007 "On Special Economic Areas in the Republic of Kazakhstan" which had invalidated the Law of the Republic of Kazakhstan No. 2823 "On Special Economic Areas in the Republic of Kazakhstan" of 26 January 1996.

According to the new Law, SEAs can be established for the period up to 25 years. The Ministry of Industry and Trade of the RK shall be the authorized body exercising state regulation in the field of SEAs' development and operation.

Text of the new Law "On Special Economic Areas in the Republic of Kazakhstan" is available through document WT/ACC/KAZ/67/Add.1.

Pursuant to the Presidential Decree No. 495 of 19 December 2007, SEA "National Industrial Petrochemical Techno-Park" is to be created for the period up to 31 December 2032.

SEA "National Industrial Petrochemical Techno-Park" is to be created on the territory of Atyrau oblast for the purpose of developing and implementing "breakthrough" investment projects to create and develop international level petrochemical production on deep hydrocarbon processing and production of wide competitive petrochemical products with high added value.

The priority activities of the given SEA shall be the following:

- construction and maintenance of the international level complexes, productions and structures for deep hydrocarbon processing;
- formation of modern high-tech infrastructure to ensure effective activity of petrochemical productions;
- development and implementation of marketing, scientific-research and technological projects and carrying out technical and economic and development works to create and elaborate new innovative petrochemical, related and associated productions and technologies; and
- training and retraining of technical experts for petrochemical industry in compliance with international standards.

Also, according to the Presidential Decree No. 512 "On Creation of Special Economic Area "Burabai" of 15 January 2008, SEA "Burabai" is to be created for the period up to 1 December 2017.

SEA "Burabai" is created on the territory of Shuchinsk rayon of Akmola oblast for the purpose of creating efficient and competitive tourism infrastructure.

The following shall be the priority activity on the territory of the given SEA:

- arranging and developing cultural-informative, health-improving, ecological, business, sports and other tourism;
- providing with various tourism services, conforming to international standards, including health improvement, entertainment, catering, transportation, hotel, excursion, information services; and
- arranging productions of various souvenirs, including of national themes.

Taxation of the establishments operating on the territory of the aforementioned SEAs shall be made in accordance with the tax legislation of the Republic of Kazakhstan. Customs clearance and control on the territory of the given SEAs shall be made in order stipulated by the customs legislation of the Republic of Kazakhstan.

At the present time feasibility study of the following projects is in the process of development: SEA "Dostyk", "Horgos - East Gates", "West Gates" and "Tobyl".

The SEAs "Dostyk", "Horgos - East Gates" and "West gates" are to be established for development of transport infrastructure and transit capacity of Kazakhstan to enhance border trade and economic cooperation in the region.

Kazakhstan is currently considering to make the following commitment:

["Kazakhstan confirms that the free zones authorized by the legislation of Kazakhstan would be fully subject to the coverage of Kazakhstan's commitments taken in its Protocol of Accession to the WTO Agreement, and that Kazakhstan would ensure enforcement of its WTO obligations in those zones. In addition, goods produced in these areas under tax and tariff provisions that exempt imports import and

imported inputs from tariffs and certain taxes would be subject to normal customs formalities when entering the rest of Kazakhstan, including the application of tariffs and taxes."]]

- **Agricultural policies**

Question 126

We share the concerns of other working party members that the proposed base period of 1996-1998 is not an accurate or acceptable period for Kazakhstan's further commitments in this area.

Answer:

Kazakhstan is in the process of preparation of information on domestic support measures to agriculture during recent years for discussions with WTO members within the framework of plurilateral negotiations on agriculture. Kazakhstan will also discuss the issue of export subsidies within the context of plurilateral negotiations.

Question 127

We note this section of the Report will need to be updated and revised once Working Party members and Kazakhstan have resolved outstanding issues in relation to this area of work in the plurilateral process on agriculture.

We nevertheless would continue to urge Kazakhstan to commit to eliminate any export subsidies it may be using upon accession and to bind its agricultural export subsidies at zero. We would propose the following language for the report:

The representative of Kazakhstan confirmed that agricultural export subsidies would be bound at zero in Kazakhstan's Schedule of Concessions and Commitments for Goods. She also confirmed that export subsidies applied to agricultural products would accordingly be eliminated by the date of accession. The Working Party took note of these commitments.

We also reiterate that Kazakhstan's domestic support commitments will need to be scheduled on the standard and appropriate basis - that is on the basis of the most recent three-year period prior to accession. An important benefit of accession is in locking in reform undertaken to date in the agriculture sector, and for existing Members to have a clear sense of the extent and nature of support provided upon accession. We look forward to Kazakhstan coming forward with information on more recent levels of expenditure in agriculture and the structure of current programs.

Answer:

Kazakhstan is in the process of preparation of information on domestic support measures to agriculture during recent years for discussions with WTO members within the framework of plurilateral negotiations on agriculture. Kazakhstan will also discuss the issue of export subsidies within the context of plurilateral negotiations.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

- **SUBSTANTIVE STANDARDS OF PROTECTION, INCLUDING PROCEDURES FOR THE ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS**
- **Copyright and related rights**

Question 128

In the response to Question 125 of WT/ACC/KAZ/57, Kazakhstan stated that on 9 July 2004 it adopted amendments to the "Law on Copyright and Neighbouring Rights" of 10 June 1996. These amendments, among other things, aimed to provide explicit protection for pre-existing works. The 2004 amendments also bring Kazakhstan's copyright law closer to full compliance with the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT). We also understand that this statute was further amended in 2005 to extend the term of protection granted under copyright and neighbouring rights. Please provide the most recent version of the "Law on Copyright and Neighbouring Rights" that reflects the 2004 and 2005 amendments.

Answer:

Amended text of the Law "On Copyright and Related Rights" is available through document WT/ACC/KAZ/67/Add.1.

- **Trademarks, including service marks**

Question 129

In the answer to Question 130 in WT/ACC/KAZ/57, Kazakhstan has indicated that "In accordance with the Trademark Law, geographical indications shall enjoy the same treatment and degree of protection as trademarks" and that Article 10 of Kazakhstan's Law No. 456 "On Trademarks, Service Marks and Appellations of Places of Origin of Goods" (the Trademark law) includes the concept of priority in the trademarks/geographical indications regime. Based on this response, can Kazakhstan confirm that the grounds for opposing and cancelling a GI include that the geographical indication is likely to cause confusion with a prior trademark or well-known mark in Kazakhstan?

Answer:

According to the Trademark Law the term "appellation of origin" is analogous to the term "geographical indication" used in the TRIPS Agreement. According to point 2 of Article 25 exclusive right to use the appellation of origin may be granted to one or several legal entities or natural persons engaged in business activities, manufacturing in this geographical area goods the properties of which are related, exclusively or mostly, to this geographical area, including natural and/or human factors. Designations that according to Article 27 shall not be registered as appellations of origin are the following:

- those that represent the name of geographical area but are confusing as to the place of manufacture of that product;
- those that formally indicate the real place of manufacture of a product but give an erroneous idea that this product originates from another territory; and
- those that contain geographical indications not related to a place of manufacture and are widely used in the Republic of Kazakhstan as designations of some known goods.

According to the abovementioned, the grounds for opposing and cancelling geographical indication do not include the one according to which the geographical indication is likely to cause confusion with a prior trademark or well-known mark in Kazakhstan.

However, according to the developing by the Republic of Kazakhstan Draft Law "On amendments and additions to certain legislative acts of the Republic of Kazakhstan on intellectual property" Article 39.3 of the Trademark law shall provide that registration of an appellation of origin may be contested and invalidated if use of an appellation of origin is liable to mislead the consumer as to the true identity of the good or its manufacturer because of the trade mark with earlier priority which is renown in the Republic of Kazakhstan due to its active use.

Question 130

In addition, concerns remain on whether Kazakhstan is providing for national treatment in its trademark and geographical indication regime. Can Kazakhstan confirm that foreign right holders have the ability to directly apply for GI protection without the intercession of their governments?

Answer:

Existing legislation fully provides for national treatment in its trademarks and geographical indications regime. In accordance with Article 48 of the Trademark Law foreign natural persons, legal entities and stateless persons shall enjoy the rights and have the obligations provided for in this Law on the same grounds as natural persons and legal entities of the Republic of Kazakhstan unless otherwise provided for by legal enactments of the Republic of Kazakhstan.

Foreign right holders have the ability directly apply for geographical indications protection without the intercession of their governments.

According to point 3 of Article 46 foreign legal entities shall exercise the rights of the applicant, owner of the trademark or the appellation of origin, as well as the right of an interested person in the authorized body and its expert organizations through patent agents.

- **Geographical indications, including appellations of origin**

Question 131

According to paragraph 323 of WT/ACC/SPEC/KAZ/9/Rev.1, geographical indications (GIs) "registered in Kazakhstan by foreigners, and protected by Kazakhstan's Laws or by international treaties and agreements to which Kazakhstan was party, enjoyed the same protection as geographical indications registered by Kazakh nationals."

If a foreigner wishes to protect a GI in Kazakhstan, is a treaty or agreement between Kazakhstan and the foreigner's home country (or the country in which is located the place to which the GI refers) required in order for that GI to receive the same protection as a GI registered by a Kazakh national?

If so, please indicate the operative provision in Kazakhstan's law concerning the requirement of an agreement or treaty for protection of foreign GIs?

We note that Article 25 of the Trademark law states that GI protection is granted by means of international agreements, and suggest that this provision or the provision concerning application filing (Article 28) be clarified to indicate that foreign (and domestic filers) can

directly apply for GI protection in Kazakhstan without the need of a bilateral agreement/government intervention.

We are concerned that Kazakhstan would not be providing national treatment to the nationals of all WTO members and would also be denying MFN treatment to at least some of those members if a bilateral agreement is required in order to obtain protection for foreign GIs.

Answer:

Foreign fillers can directly apply for geographical indications protection in Kazakhstan without need of a bilateral agreement/government intervention. In accordance with Article 48 of the Trademarks Law foreign natural persons, legal entities and stateless persons shall enjoy the rights and have the obligations provided for in this Law on the same grounds as natural persons and legal entities of the Republic of Kazakhstan unless otherwise provided for by legal enactments of the Republic of Kazakhstan.

Nonetheless, to clarify the provision of Article 25 of the Trademark Law, Draft Law "On amendments and additions to certain legislative acts of the Republic of Kazakhstan on intellectual property" shall provide addition of Article 25 with point 3 according to which state registration of an appellation of origin of the foreign geographical object shall be allowed if the name of this object is protected as an appellation of origin in the country of origin of the good. Owner of the exclusive right of use of the stated appellation of origin shall only be the person whose right to use this appellation of origin is protected in the country of origin of good.

Question 132

In paragraph 326 of WT/ACC/SPEC/KAZ/9/Rev.1, Kazakhstan states that "the registration of an appellation of origin used in association with goods originating outside the territory of Kazakhstan, entailed only a document certifying the right of the foreign applicant to the geographical indication in association with the product from the country where the goods originated." What type of document would be accepted to certify the rights of the foreign applicant?

The requirement that an applicant for GI protection provide a document providing the applicant's right to the GI in the country of origin could effectively be used to deny protection to countries that have a different system of protection for GIs than Kazakhstan, such as unfair competition or trademark systems.

How will Kazakhstan ensure that this requirement will not be imposed in such a way as to raise national treatment and MFN concerns?

To avoid this problem, will Kazakhstan accept other evidence of protection in the foreign country, such as a certification mark registration or other evidence of use and control of the term?

Answer:

According to sub-point 3 of point 3 of Article 29 of the Trademarks Law the application must be accompanied by the document attesting the right of a foreign applicant to use the appellation of origin in question in the country of origin of the product. Such document can be document of any type attesting the right of a foreign applicant to use the appellation of origin in question in the country of origin of the product. This requirement seems to be logic as it comes from a definition and specific character of the appellation of origin of goods. National applicants confirm particular properties of a product determined by natural and/or human factors of the geographical area in question providing a

statement from the competent body. This requirement seems to be quite comparable to the requirements provided for foreign applicants.

Such evidence of protection in a foreign country as a certification mark registration or other document attesting use and control of the term will be accepted in Kazakhstan if those documents evidence protection of the appellation of origin in the country of origin of the product.

- **Requirements on undisclosed information, including trade secrets and test data**

Question 133

Regarding the answer to Question 148 of WT/ACC/KAZ/57, TRIPS Article 39(3) requires not just protection against disclosure of pharmaceutical or agricultural chemical test or other data, it also requires protection of such information against unfair commercial use. Kazakhstan has not explained how its law complies with this second part of TRIPS Article 39.3 requirements. Kazakhstan has pointed out that its law prohibits disclosure of such data, but protecting against disclosure is not the same as protecting against unfair commercial use, which is the second requirement of TRIPS Article 39.3. Please provide the Working Party with detailed information about how its law protects against unfair commercial use as required by TRIPS Article 39.3.

In paragraphs 348 and 349 of WT/ACC/SPEC/KAZ/9 Rev.1 and in the response to Question 122 of WT/ACC/KAZ/66, Kazakhstan notes several provisions of the law that are said to ensure that data will be protected. The relationship of Article 34 of Kazakhstan's Patent Law to TRIPS Article 39(3) is not understood. TRIPS Article 39(3) relates to data that, for instance, would be submitted to a Ministry of Health (or other regulatory body in charge of approvals of the marketing of pharmaceutical or of agricultural chemical products) to have a new drug approved for marketing, not to information submitted in a patent application. Moreover, Article 126 of the Civil Code will not necessarily regulate the conduct of someone within the Ministry of Health (or other regulatory body). Accordingly, it is not clear how Kazakhstan will protect data where, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the applicant for such an approval is required to submit undisclosed test or other data, the origination of which involves a considerable effort. Protection of such data against unfair commercial use involves more than merely not disclosing the data; Kazakhstan must protect such data against unfair commercial use. The only effective way to protect against unfair commercial use in the regulatory approval process is to give the innovator a period of exclusivity. A period of exclusivity ensures that no third party is permitted to rely upon the data for a period of time during which is appropriate under the circumstances to prevent unfair use. To comply with TRIPS Article 39, Kazakhstan must provide more than mere punishments for disclosure without authorization, but must also include provisions that relate to the drug approval process and that protect such data against unfair commercial use. Please explain how Kazakhstan will ensure compliance with TRIPS Article 39.

Answer:

At present time work is being carried out on elaboration of the Draft Law that provides for introduction of a norm giving the applicant (innovator) a "period of exclusivity" that guarantees that no third party is permitted to rely upon the data of the applicant for a period of time during which is appropriate under the circumstances to prevent unfair use.

Question 134

In the response to Question 122 of WT/ACC/KAZ/66, the following sentence is not understood:

"The Civil Code of the Republic of Kazakhstan requires nondisclosure of data or information during approbation, sale or marketing of chemical, pharmaceutical, or agricultural products what complies with Article 39(3) of TRIPS Agreement."

Was the word "submitted" intended to be included before "during"?

Answer:

Yes indeed the word "submitted" was intended to be included before "during".

Question 135

The response to Question 122 of WT/ACC/KAZ/66 does not explain how Kazakhstan prevents reliance upon another's data. The references to Article 126 of the Civil Code and Article 184 of the Criminal Code suggest that Kazakhstan will protect the data of a innovator, regardless of whether the information was submitted to Kazakhstan. If data are submitted to a first country other than Kazakhstan by Company A, and the product is approved, would Kazakhstan allow a company other than Company A to submit the data or evidence of marketing approval in the first country to Kazakhstan for approval in Kazakhstan? If the data are submitted by Company A to Kazakhstan, when would another company be allowed to rely upon the data?

Answer:

Taking into accordance the fact that requirement of Article 39.3 of the TRIPS Agreement relates to the protection of undisclosed test or other data required by members as a condition of approving the marketing of pharmaceutical or of agricultural chemical products, Kazakhstan does not protect those data of innovator which were not required by Kazakhstan and submitted by innovator of pharmaceutical or agrochemical product himself.

- **ENFORCEMENT**

Question 136

With regard to the disposition of goods determined to be infringing of a trademark in civil cases, paragraph 360 of WT/ACC/SPEC/KAZ/9/Rev.1 provides that "[t]he images had to be removed from the product, its packaging, blank forms and other documents. If doing so was impossible, the goods were destroyed in accordance with relevant legal procedures." Our understanding of Article 44 of Kazakhstan's law "On Trademarks, Service Marks, and Designations of Origin of Goods" (the Trademark Law), as Kazakhstan has described it, is that it provides for the destruction of counterfeit trademark goods only in exceptional cases and for the removal of the unlawfully used trademark in all other cases. Article 46 of the TRIPS Agreement provides that "[i]n regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce."

It remains unclear under Kazakh law whether the simple removal of a counterfeit mark in cases that are not exceptional is sufficient to permit the release of the goods into the stream of commerce. Please clarify.

Answer:

In cases that are not exceptional, simple removal of a counterfeit mark is sufficient if this mark can be freely removed from a product or its packaging. Removal of unlawfully affixed trademark from a product, its packaging, blanks or other documentation is performed by any person who unlawfully uses this trademark. In the case when unlawfully affixed trademark can be removed this person determines further fate of the product.

Question 137

Please explain whether, in accordance with the Trademark law, the counterfeit goods would be disposed of outside the channels of commerce or released into the channels of commerce.

There appears to be no provision for the disposition "in such a manner as to avoid any harm caused to the right holder" (Article 46 of TRIPS) in Article 44 of the Trademark law. Is this understanding correct?

Please explain how the provisions of Art. 44 of Kazakhstan's Trademark law are compliant with Article 46 of TRIPS.

Answer:

In accordance with Article 43 of the Trademark law a non-authorized release of a trademark or an appellation of origin into the channels of commerce shall be considered as an infringement of the exclusive right of the trademark owner or the owner of the right to use the appellation of origin.

Disposal of the counterfeit goods of outside the channels of commerce is foreseen in Article 145 of the Code of Administrative Offences (in force from 1 January 2008). According to this Article non-criminal but illegal use of a trademark, service mark, appellation of origin or similar designations for goods (services), as well as illegal use of a firm name entail a fine for natural persons at MCI 10-30, for officials at MCI 30-50, and for juridical persons at MCI 50-100 with confiscation of goods bearing illegal image of a trademark, service mark, appellation of origin or similar designations for goods (services).

Confiscation of goods bearing illegal image of a trademark, service mark, appellation of origin or similar designations for goods (services) is also foreseen for repeated violations during the year after imposed administrative sanctions under part 1 of this article.

Question 138

In response to Question 156 of WT/ACC/KAZ/57, Kazakhstan notes that the Trademark law does not provide for any interim measures regarding intellectual property rights. Please indicate whether the Trademark law will be amended to provide for such a measure. Alternatively, can interim measures in trademark counterfeiting cases be effected under other laws (e.g., the Civil Procedure Code)?

Answer:

The Trademark law will not be amended to provide for interim measures regarding intellectual property rights since such measures in trademark counterfeiting cases can be effected under Chapter 15 of the Civil Procedure Code.

According to Article 159 of the Civil Procedure Code interim measures can be the following:

- seizure of the defendant's property being at his/her disposal or at disposal of third parties (except for seizure of the financial assets on bank correspondent account and property under "repo" operations contained in the trade systems of auction organizers through advertised bidding);
- prohibition to perform certain acts by the defendant;
- prohibition for other persons to make a property over and perform certain actions in respect of the defendant;
- suspense of the sale of property in case of a suit concerning the release of property from seizure;
- suspense of the force of contested action of state authority, organization or official (except for the acts of the National Bank of the Republic of Kazakhstan or state authorities on regulation and inspection of the financial market and financial organizations, on suspension and/or withdrawal of the licence for activities on financial market, on temporary closing - down of financial organizations, including their instructions in written); and
- suspense of a penalty upon an executive claim contested judicially by the debtor.

When necessary the court is entitled to apply other interim measures corresponding to the purposes of Article 158 of the Civil Procedure Code.

Question 139

Paragraph 360 of WT/ACC/SPEC/KAZ/9/Rev.1 provides that Article 49 of the Copyright and Related Rights Law provides for "the seizure and withdrawal of all copies of suspected counterfeit works and phonograms, as well as all materials and equipment used in their production or reproduction." Reference is also made to Article 44 of the Trademark Law, which states:

"Pursuant to Article 44 of the Law on "On Trademarks, Service Marks, and Geographical Indications", a person illegally using a trademark or an appellation of origin, or using a confusingly similar designation, had to destroy the manufactured images of the trademark or geographical indication in question. If doing so was impossible, the goods were destroyed in accordance with the relevant legal procedures."

No mention is made of the disposition of materials and implements predominantly used to create the infringing good. It is unclear from the answer to Question 126 of WT/ACC/KAZ/66 whether in trademark counterfeiting cases materials and implements predominantly used to create the infringing good are subject to seizure. Please clarify.

With regard to the disposal of goods outside the channels of commerce, the response to Question 128 of WT/ACC/KAZ/66 indicates, *inter alia*, that "the law machinery has the right to expropriate counterfeit products made by illegal producers infringing intellectual property rights, i.e., the products that are not in commercial circulation yet." Please indicate whether once counterfeit or piratical goods are expropriated, such goods are prohibited from entering or re-entering the channels of commerce.

With regard to provisional measures discussed in response to Question 129 of WT/ACC/KAZ/66 and in paragraphs 362-363 of WT/ACC/SPEC/KAZ/9/Rev.1, please indicate whether courts have granted such relief in copyright, trademark or patent infringement cases. Under the Code of Civil Procedure, is a security deposit required to be filed by the party requesting provisional measures? Do provisions exist within the patent and trademark laws referencing provisional remedies? If so, please identify the provisions.

Answer:

Criminal legislation of the Republic of Kazakhstan provides norms for seizure, forfeiture and destruction of counterfeit goods and also instruments (materials and equipment) which have been used in manufacture of counterfeit goods.

Part 3 of Article 121 of the Criminal Procedure Code provides that at criminal sentencing or dismissal of criminal case the court shall decide on the issue of real evidence. As a result, instruments of crime shall be seized or delivered to respective institutions or destroyed.

In addition it should be noted that Decree of the Supreme Court No. 19 of 15 August 2002 "On judicial sentence" also obliges the court to reflect the fate of real evidence in its resolution of the indictment. Formulating decision on real evidence the court shall specifically indicate which objects are to be destroyed, which are to be delivered to legal possessors or interested persons and institutions upon their request, which are to become state property and which are to be kept in file (paragraph 43 of the mentioned Decree).

As for provisional measures, it should be noted that Article 15 of the Civil Procedure Code provides measures for action assurance which can be admitted at any stage of the process if failure to undertake assuring measures may render difficult or impossible the execution of the decision of the court including cases of infringement of copyright, trademark right or patent right.

According to Article 165, when admitting action assurance the court may request the claimant to ensure the eventual damage which might be incurred by the defendant.

References to provisional measures in laws on patents and trademarks are not provided.

Question 140

With regard to whether border enforcement action will be taken relating to exportation or in transit movement of counterfeit or piratical goods, the response to Question 132 of WT/ACC/KAZ/66 indicates that the Tax Code makes provisions on exclusion of illegal entry or exportation. Reference is also made to Article 416 of the Customs Code. It appears that the Customs Code does permit enforcement action relating to exportations but not in transit movements. Is this correct?

Answer:

Indeed, in accordance with point 2 of Article 420 customs authorities shall not take measures to protect intellectual property rights with respect to goods containing objects of intellectual property which are conveyed across the customs border of the Republic of Kazakhstan in compliance with the transit customs procedure for goods.

Question 141

Please clarify whether in addition to damages adequate to compensate for the injury to the right holder pursuant to TRIPS Article 45(1), authority also exists to order recovery of profits pursuant to TRIPS Article 45(2) in trademark infringement cases.

Answer:

According to paragraph 4 of Article 9 of the Civil Code of the RK, person whose right has been violated may demand full compensation of damages unless otherwise provided by legal enactments or contracts. Damages include expenses which the person whose right is violated has made or would

made, loss or injury of his property (actual damage) and also non-received profits which this person would receive under the usual conditions of civil commerce, if his right had not been violated (lost profit).

According to paragraph 1 of Article 111 of the Civil Procedure Code of the RK party that benefited from a judgment must receive reimbursement of expenses from the other party that include payment to its representative participating in a case in amount of actually incurred expenses. These expenses shall not exceed 10 per cent of the satisfied part of a claim.

Question 142

Under the 2005 amendments to the Criminal Code, the minimum threshold for bringing criminal cases involving copyright infringement crimes was reduced. What is the minimum threshold for bringing cases involving trademark counterfeiting? Was this also reduced under the 2005 amendments?

Answer:

The minimum threshold for bringing cases involving trademark counterfeiting is foreseen at Article 199 of the Criminal Code. According to that Article unlawful use of trademark, service mark and appellation of origin shall entail a fine for repeated violations or violations that caused a large-scale damage.

According to Article 175 of the Criminal Code as large-scale damage shall be recognized as value of property or extent of damage that five hundred times exceeds monthly calculation index (approximately US\$4,500) defined by the legislation of Kazakhstan for the moment of commitment of crime.

This minimum threshold was not reduced under the 2005 amendments.

Question 143

Our understanding is that under Article 199 of the Criminal Code, police may open a criminal case concerning trademark counterfeiting without the requirement of a right holder complaint. Is a right holder complaint required for police to open a criminal case for copyright piracy?

Answer:

In accordance with Article 32 of the Criminal Procedural Code criminal prosecution and accusation in court is foreseen in private, private public and public order depending on the character and degree of a committed crime. Prosecution of criminal cases in public order is possible without complaint of a right holder while prosecution of criminal cases in private public order is not possible without such a complaint.

Criminal sanction for infringement of author rights and related rights is foreseen at Article 184 of the Criminal Code of the Republic of Kazakhstan. In accordance with the Criminal Procedural Code criminal cases under points 2 and 3 of Article 184⁴ of the Criminal Code must be considered as cases of public accusation. Because of a socially-dangerous character criminal prosecution of such cases must be possible without complaint of a right holder.

⁴ Unlawful use of objects of author rights and related rights as well as large-scale acquisition, keeping, movement or making of piracy copies of audiovisual works and phonograms with the purpose of sale and also the same criminal acts committed repeatedly by group of persons by previous concert or organized group of persons and caused large-scale damage or by person using his official position.

At the same time, criminal cases under point 1 of Article 184⁵ of the Criminal Code must be considered as cases of private public accusation and must be open only after complaint of a right holder since in such cases crimes are committed against personal non-property rights.

Question 144

Please provide an update on penalties and jail time ordered by courts since the implementation of the 2005 revisions to the Criminal Code.

Answer:

According to statistics of Informational and Analytical Department of the Agency on Fighting Economic Crimes and Corruption in 2006, 285 legal proceedings were instituted according to Article 184 and ten legal proceedings according to Article 199 of the Criminal Code of the Republic of Kazakhstan while during the same period of 2005, 61 legal proceedings were instituted according to Article 184 and nine legal proceedings according to Article 199 of the Criminal Code of the Republic of Kazakhstan.

Therefore detectability of crimes in the sphere of protection of intellectual property rights in 2006 increased more than four times.

According to data of the Committee of legal statistics and special accounts of the General Prosecutor Committee, in 2006 the law machinery instituted 321 legal proceedings in whole (in 2005 - 71).

Question 145

Does the Criminal Code or the Criminal Procedure Code provide for the seizure, forfeiture and destruction of counterfeit and piratical goods and of any materials and implements the predominant use of which has been in the commission of the offence?

Answer:

Criminal legislation of the Republic of Kazakhstan provides norms for seizure, forfeiture and destruction of counterfeit goods and also instruments (materials and equipment) which have been used in manufacture of counterfeit goods.

Part 3 of Article 121 of the Criminal Procedure Code provides that at criminal sentencing or dismissal of criminal case the court shall decide on the issue of real evidence. As a result, instruments of crime shall be seized or delivered to respective institutions or destroyed.

In addition it should be noted that Decree of the Supreme Court No.19 of 15 August 2002 "On judicial sentence" also obliges the court to reflect the fate of real evidence in its resolution of the indictment. Formulating decision on real evidence the court shall specifically indicate which objects are to be destroyed, which are to be delivered to legal possessors or interested persons and institutions upon their request, which are to become state property and which are to be kept in file (paragraph 43 of the mentioned Decree).

Question 146

Page 125, paragraph 371: as indicated, when suspected counterfeit goods are discovered, the customs authorities inform the right holder about the goods under investigation and provide the

⁵ Appropriation of authorship or compulsion to co-authorship if this act caused large-scale damage to author or other right holder or caused considerable harm to their rights or legal interests.

right holder, or his/her representative, with the opportunity to inspect the goods under customs supervision.

Where may the right holder conduct his/her inspection of the goods?

Answer:

According to paragraph 9 of the Rules on Selection of Samples and Specimens of Goods approved by the Order of Chairman of the Agency of Customs Control of the Republic of Kazakhstan No. 205 of 14 May 2003, selection of samples and specimens of goods for inspection shall be made in the customs control zones and/or in other places defined by the customs authorities, where the goods are placed.

Therefore, the right holder may conduct his/her inspection of the goods only in the places of their temporary storage under the customs control, i.e. these can be temporary storage warehouses, warehouses owned by the goods' recipient, etc.

Question 147

Is the right holder eligible to inspect all the goods under investigation, or only samples thereof?

Answer:

Pursuant to Article 418 of the Customs Code, with permission of the customs authority, the right holder and his representatives shall be entitled to: (i) take only samples and specimens of suspended goods; and (ii) inspect them under customs control.

It must be noted that the right of the right holder to take samples and specimens of goods entitles the right holder to inspect all suspected counterfeit goods. However, proper examination can be carried out only in relation to selected samples and specimens of suspected counterfeit goods.

Question 148

Pursuant to Article 416 of the Customs Code, the customs body also has to provide the name and address of the declarer to the right holder concerned.

When should customs provide the name and address of the declarer to the right holder? Is it upon receipt of an order from the judicial authority confirming the existence of an IPR infringement, or is it at the time when a sign of infringement is identified by the right holder?

Answer:

Pursuant to Article 416 of the Customs Code, customs authority shall inform the declarer about the name and address of the right holder as well as inform the right holder about the name and address of the declarer not later than one working day from the day when a decision to suspend the release of goods containing objects of intellectual property was made by the customs authorities.

Therefore, customs authorities shall inform the right holder about the name and address of the declarer earlier than the question shall be addressed in the court or than the right holder identifies a sign of an IPR infringement.

Question 149

Is the right holder required to submit a written application to customs for acquiring details of the declarer?

Answer:

The right holder is not required to submit a written application to customs authorities to acquire details of the declarer. As soon as a decision to suspend the release of goods was made, customs authorities shall inform the right holder of the details of the declarer.

However, if the right holder is informed that the decision to suspend the release of goods was made, the right holder has the right to submit a written application to customs authorities to request details of the declarer.

Question 150

It is stated that the legal owner is obliged to make a payment compensating for the losses of the declarer, and the rate of payment is specified by the Customs Control Committee.

How is the Customs Control Committee organized?

Answer:

According to the Article 417 of the Customs Code, expenses shall be compensated to the customs authorities:

- by the declarer - when goods are proved to be counterfeit; and
- by the applicant - when goods are proved not to be counterfeit.

Expenses of customs authorities that may arise as a result of suspension of the release of goods containing objects of intellectual property may include expenses for storage of goods in customs warehouses and temporary customs warehouses the rates, which are approved by the Government Resolution of the Republic of Kazakhstan No. 669 "On Adoption of Rates of Customs Fees, Charges and Payments Levied by Customs Bodies" of 8 July 2003.

However, until now, there were no cases of necessity in compensation of expenses to the customs authorities.

Damages to the declarer shall be compensated in accordance with commitment of the applicant to compensate damages to the declarer if goods are proved not to be counterfeit. According to Article 413 of the Customs Code this commitment shall be contained in the application of the right holder on protection of his/her intellectual property rights supplied for inclusion of the good into the Register of goods containing objects of intellectual property. In addition, the application shall contain an insurance contract covering the responsibility of the applicant for damages to other persons. Amount of compensation shall be agreed between declarer and right holder or by the court.

Pursuant to Government Resolution No. 1133 "Issues of the Customs Control Committee of the Ministry of Finance of the Republic of Kazakhstan" of 29 October 2004, the Customs Control Committee shall have the following organizational structure:

- Heads of the Customs Control Committee;
- Division of Customs Control Organization;
- Division of Customs Revenue;

- Division of Smuggling Prevention;
- Division of Information Technologies;
- Division of Finance;
- Division of Analysis and Statistics;
- Division of Personnel;
- Division of Organizational Work and Control;
- Division of Customs Control Organization of Energy Resources;
- Division of Internal Security;
- Division Support Administration;
- Division of International Relations;
- Division of Post-Customs Control;
- Operational Orderly Service Section (Independent Section); and
- Section of State Secrets Protection.

Question 151

It is further stated that the decision of the Customs Control Committee to include goods containing intellectual property in the Registry guarantees the right holder would be protected by the customs for a period up to two years from the date of Registry.

Does the right holder have to pay, and, if so, what is the charge for applying to the said Registry?

Answer:

There is no payment for application to the Registry of goods containing objects of intellectual property.

Pursuant to Article 414 of the Customs Code, when taking a decision to include goods containing objects of intellectual property into the Registry, the customs authority shall establish the time limit for protection of the right holder's rights, taking into consideration the time limit specified by the right holder in the application, but not longer than two years from the day when the goods were included into the Registry.

The time limit can be extended by the authorized body on customs issues by the request of the applicant. The time limit may not be longer than the period of validity of the right to the object of intellectual property.

VI. TRANSPARENCY

- **Publication of information on trade**

Question 152

Page 130, paragraph 389: We note that drafts of especially important legal acts, such as the Tax Code and the Civil Code, could be published as preliminary versions in official periodicals for comments.

Could Kazakhstan please advise us of the length of time allowed for offering comments?

We would like to emphasize the importance of providing notice and opportunities for comments on laws, regulations, and other measures affecting trade, prior to their enactment and implementation.

As some WTO Agreements expressly provide for such prior notification and comment process, we would appreciate knowing whether Kazakhstan plans to extend this process to all WTO-related measures?

Answer:

The deadline for commenting on draft law is not stipulated in the legislation of the Republic of Kazakhstan.

Pursuant to Article 2 of the Law of the RK No. 213 "On Regulatory Legal Acts" of 24 March 1998, development, adoption, enactment, amendments, determination and suspension of operation and publication of legislative and other regulatory legal acts shall be defined by the legislative acts regulating activity of the state bodies responsible for adoption of legal acts, acts defining the legal status of and regulations on these bodies, and other regulatory legal acts.

Therefore, the state body drafting a law and regulation determines the deadline for commenting on draft law depending on the scheduled/planned date of its adoption.

Kazakhstan is currently studying other countries expertise in ensuring participatory decision-making process in drafting laws and regulations.

At the same time, Kazakhstan is currently considering to make the following commitments:

[["Kazakhstan confirmed that in sectors in which Kazakhstan had undertaken specific commitments it would ensure where practicable, that:

- (a) draft regulations of general application that it proposes to adopt were published in advance;
- (b) an opportunity to comment on such proposed regulations was provided to interested persons and other Members, and;
- (c) reasonable time between publication of the final regulation and its effective date was allowed."]]

ANNEX 1

No.	The sequence of old procedures (applied until 1 January 2007)	The sequence of new procedures (applied as of 1 January 2007)
1	The requirement to transfer the amount to the accounts at authorized commercial banks within 180 days	Not required. The terms are determined by the exporter/importer and stipulated in the contract.
2	Processing of the transaction passport and additional sheet/attachment to the transaction passport by the customs body	Not required
3	Processing of the transaction passport and additional sheet/attachment to the transaction passport by the commercial bank	Required
4	Presentation of licensing, registration document and notification certificate as a prerequisite for processing the transaction passport	Not required
5	In case of failure to meet the 180-day-repatriation deadline period, the payment and/or remittance of money shall not be made without registration certificate	Not required
6	In case of failure to meet the 180-day-repatriation deadline period, the payment and/or remittance of money shall not be made without the licence issued by the National Bank	Not required
7	The transaction passport contained the information on: (i) the total value of the contract, (ii) the currency of payment and (iii) the means of payment. In addition, the following information was required to be included into the transaction passport: (iv) passport or other details of the head of the company which is involved in exportation or importation of goods, (v) the bank account details used for payment transactions, (iv) address of the relevant tax authority, and (iiv) the list of exported/imported goods with attached specifications.	Reduced The transaction passport now only contains the information on parties to the transaction and terms of the contract: (i) the total value of the contract, (ii) the currency of payment and (iii) the means of payment.
8	The reasons for refusing issuing the transaction passport: 1) the terms for return of goods and payments in cases of failures to meet the contractual obligations were not stipulated in the contract 2) the terms for repayments to be made in cases of failures to meet the contractual obligations were not stipulated in the contract	Discontinued
9	The restrictions on the difference between the exchange rate used for transactions with foreign currency and market rates	Discontinued

ANNEX 2

List of Goods (Works, Services) Sale Turnover of which is exempted from VAT

Sales turnover of the following goods (work, services) shall be exempted from VAT:

1. state marks of postage;
2. excise marks (accounting and control marks intended for the marking of excisable goods);
3. services being performed by authorized bodies in connection with which state duty is charged;
4. services being provided by attorneys and notaries;
5. goods (work, services) being implemented by the National Bank of the Republic of Kazakhstan;
6. property sold through the privatization of state property;
- 6.1. property redeemed for the state needs in accordance with the legislation of the Republic of Kazakhstan;
7. the transfer of fixed assets free of charge to government institutions, or state enterprises in accordance with the legislation of the Republic of Kazakhstan;
8. contributions to authorized capital;
9. the return of property received as a contribution to authorized capital;
10. ritual services provided by funeral agencies, cemeteries and crematoriums;
11. sales turnover involving lottery tickets, with the exception of services related to their sale;
12. services related to providing information and technological cooperation among settlement participants, including services related to the collection, processing, and mailing of bank card statements to settlement participants;
- 12.1. services related to processing and/or repair of goods imported into the customs territory of the Republic of Kazakhstan under the customs regime "Processing of goods on the customs territory of the Republic of Kazakhstan";
- 12.2. works and services related to international transportation, namely: works, services on loading, unloading, overloading (discharge-pouring in), forwarding of goods, including mail, which are exported from the territory of the Republic of Kazakhstan and imported into the territory of the Republic of Kazakhstan, as well as transit frights; technical, air navigation, airport services; sea port services related to international passages;
- 12.3. services related to management, maintenance and exploitation of housing stock;
13. sales turnover specified in Articles 226-233 of this Code;
14. banknotes and coins in national currency;
15. goods (work, services) (except for sales turnovers of goods (work, services) of trade and agency business and turnovers on manufacture and sale of excisable goods and types of activities) of public associations of disabled persons, as well as industrial organizations, if such associations and organizations meet the following conditions:
 - disabled persons account for at least 51 per cent of the total number of employees of such industrial organizations; and
 - expenditures on labour compensation for disabled persons account for at least 51 per cent of total expenditures on labour compensation (not less than 35 per cent at specialized organizations that employ persons with disabilities involving loss of hearing, speech, and vision).
16. (removed)
17. Kazakh goods defined in accordance with the customs legislation of the Republic of Kazakhstan, which are produced under the customs regime "Free Warehouse" and sold from said territory to the rest customs territory of the Republic of Kazakhstan;

18. goods sold on the territory of special economic zones, and used when carrying out the types of activity mentioned in sub-paragraph 3) of paragraph 1 of Article 140-1 of this Code on the territories of special economic zones;
19. subparagraph removed by the Law of the RK No. 140 of 6 May 2006 (enforced from 1 January 2007);
20. services involving leasing premises of a rental house in accordance with the legislation on housing relations.

The lists of goods mentioned in sub-paragraphs 17) and 18) of the present Article shall be approved by the Government of the Republic of Kazakhstan.

Note: Article 225 was amended by the Law of the RK No. 201 of 11 December 2006 (enforced from 1 January 2007).

Source: Tax Code of the Republic of Kazakhstan (Article 225 - Sales turnover exempted from VAT).

ANNEX 3

List of goods import of which is exempted from VAT

1. Imports of the following goods shall be exempted from the value-added tax:
 1. imports of banknotes and coins of national and foreign currency (other than banknotes and coins which represent cultural and historical value), as well as securities;
 2. imports of goods by natural persons in accordance with norms of duty-free imports of goods, approved by the Government of the Republic of Kazakhstan;
 3. imports of goods, except for excisable goods, being imported as humanitarian assistance, according to the procedure established by the Government of the Republic of Kazakhstan;
 4. imports of goods, except for excisable goods, being imported for purposes of charity activities through the official channels of the states and the governments, and international organizations, including technical assistance;
 5. imports of goods brought in for official use by foreign diplomatic missions and representative offices with equivalent status, and also for the personal use of diplomatic and administrative and technical personnel of these missions, including their family members who are residing with them and are exempt in accordance with international agreements ratified by the Republic of Kazakhstan;
 6. imports of goods, subject to declaring in accordance with the customs legislation of the Republic of Kazakhstan, under customs regimes that establish tax exemptions;
 7. imports of medicines, including medicinal substances; articles intended for medical (veterinary) use, including prosthetic and orthopaedic devices, devices for the blind and hearing-impaired, and medical (veterinary) equipment; materials and components for the production of medicines and aids for diabetics, articles intended for medical (veterinary) use, including prosthetic and orthopaedic devices, and medical (veterinary) equipment. The list of goods referred to in this sub-paragraph shall be approved by the Government of the Republic of Kazakhstan;
 8. imports of postage stamps (except collectible stamps);
 9. imports of raw materials for the production of bank notes performed by the National Bank of the Republic of Kazakhstan and its organizations;
 - 9.1. importation of equipment for payment cards service, software support and spare parts hereto imported for one's own production needs;
 10. (removed by the Resolution of the Government No. 358 of 23 November 2002);
 11. imports of goods effected at the expense of grants provided through official channels by states, governments of states, and international organizations;
 12. importation of property imported by a lessor for the purpose to transfer them in financial leasing arrangement under the financial leasing agreements. The list of the property specified in this sub-paragraph and the procedure of its compiling shall be approved by the Government of the Republic of Kazakhstan. The goods which are not manufactured on the territory of the Republic of Kazakhstan or their production does not cover the needs of the Republic of Kazakhstan shall be included in said list;
 13. import of goods imported by a juridical person entity, its contractors or subcontractors carrying out activities within the framework of the concession concluded with the Government of the Republic of Kazakhstan on implementation of the infrastructure project.

The list of juridical persons, their contractors or subcontractors carrying activities within the framework of concessions concluded with the Government of the Republic of Kazakhstan on infrastructure project implementation, as well as amendments to the specified list the concessionaire shall coordinate with the authorized body and submit it to the authorized body on customs issues.

For each infrastructure project the Government of the Republic of Kazakhstan shall approve the separate list of the goods specified in this sub-item.

2. The procedure for granting an exemption from VAT for imports of goods specified in paragraph 1 of this Article shall be determined by the Government of the Republic of Kazakhstan.

Source: Tax Code of the Republic of Kazakhstan (Article 234 - Import which is exempted from VAT).

ANNEX 4**List of developing countries and customs territories eligible for special preferential treatment (GSP) in Kazakhstan**

- | | |
|---|---|
| 1. Albania | 53. Former Yugoslav Republic of Macedonia |
| 2. Algeria | 54. Malta |
| 3. Angola | 55. Malaysia |
| 4. Antigua and Barbuda | 56. Morocco |
| 5. Angola | 57. Marshall Islands |
| 6. Argentina | 58. Mexico |
| 7. Aruba | 59. Micronesia |
| 8. Bahamian Island | 60. Mongolia |
| 9. Barbados | 61. Montserrat |
| 10. Bahrain | 62. Namibia |
| 11. Belize | 63. Nauru |
| 12. Bermudian Islands | 64. Nigeria |
| 13. Bolivia | 65. Netherlands Antilles Islands |
| 14. Brazil | 66. Nicaragua |
| 15. British Virgin Islands | 67. Niger |
| 16. Brunei Darussalam | 68. United Arab Emirates |
| 17. Venezuela | 69. Oman |
| 18. Vietnam | 70. Saint Elena Islands |
| 19. Gabon | 71. Turks and Caicos Islands |
| 20. Guyana | 72. Pakistan |
| 21. Ghana | 73. Panama |
| 22. Guatemala | 74. Papua New Guinea |
| 23. Honduras | 75. Paraguay |
| 24. Hong Kong | 76. Peru |
| 25. Grenada | 77. Romania |
| 26. Dominica | 78. Salvador |
| 27. Dominican Republic | 79. Saudi Arabia |
| 28. Egypt | 80. Swaziland |
| 29. Zimbabwe | 81. Seychelles |
| 30. India | 82. Senegal |
| 31. Indonesia | 83. Saint Vincent and the Grenadines |
| 32. Jordan | 84. Saint Kitts and Nevis |
| 33. Iraq | 85. Saint Lucia |
| 34. Iran | 86. Singapore |
| 35. Cayman Islands | 87. Syria |
| 36. Cameroon | 88. Slovenia |
| 37. Qatar | 89. Surinam |
| 38. Kenya | 90. Thailand |
| 39. Cyprus | 91. Tokelau Islands |
| 40. China* | 92. Tonga |
| 41. Democratic People's Republic of Korea | 93. Trinidad and Tobago |
| 42. Columbia | 94. Tunisia |
| 43. Congo | 95. Turkey |
| 44. Republic of Korea | 96. Uruguay |
| 45. Costa-Rica | 97. Fiji |
| 46. Cote d'Ivoire | 98. Philippines |
| 47. Cuba | 99. Croatia |
| 48. Kuwait | 100. Chile |
| 49. Cook Islands | 101. Sri Lanka |

50. Lebanon
51. Libya
52. Mauritius

102. Ecuador
103. Serbia and Montenegro (Yugoslavia)
104. Jamaica

* - custom duties applicable to imported products originating from Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu shall be levied at the same rate as products originating from China

ANNEX 5

List of Goods⁶, Under Preferential Regime, Which are Originated and Imported to the Territory of The Republic of Kazakhstan from Developing and Least-Developed Countries

HS	Description of products
03 (exc. 0305)	Fish and crustaceans, mollusks and other aquatic invertebrates, except salmon and sturgeon fish
05	Foodstuffs of animal origin, not elsewhere specified or included
06	Trees and other live plants; bulbs, roots and other analogous parts of plants: cut flowers and decorative green
07 (exc. 0701, 0703)	Edible vegetables and certain roots and tubers
08	Edible fruit and nuts; peel of citrus fruit or melons
09	Coffee, tea, Paraguay tea and spices
12	Oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruit; industrial or medicinal plants; straw and fodder
13	Lac; gums; resins and other vegetable saps and extracts
14	Vegetable materials for plaiting production; vegetable products not elsewhere specified or included
15 (exc.1509, 1517-1522 00)	Animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes
16 (exc.1601 00, 1602, 1604 30)	Preparations of meat, fish or crustaceans, mollusks or other aquatic invertebrates (except osetrova and salmon caviar; delicacies of salmon and sturgeon fish)
1801 00 000 0	Cocoa beans, whole or broken, raw or roasted
1802 00 000 0	Cocoa shells, husks, skins and other cocoa waste
2103	Sauces and products for their preparations; mixed condiments and seasonings; mustard flour and prepared mustard
2104	Soups, broths and products for their preparations; homogenized prepared edible products
2401	Raw tobacco; tobacco waste
25 (exc. 2501 00, 2503 00, 2523, 2529 21 000 0, 2529 22 000 0)	Salt; sulphur; earths and stone; plastering materials, lime and cement
26	Ores, slag and ashes
3003	Medicaments (excluding goods of heading No 3002, 3005 or 3006) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale
32	Tanning or dyeing extracts; tannins and their derivatives; dyes, pigments and other colouring matter; paints and varnishes; putty and other mastics; inks
3301, 3302	Essential oils and resinoids; perfumery, cosmetic or toilet preparations
3402	Organic surface- active agents (other than soap); surface- active preparations, washing preparations (including auxiliary washing preparations) and cleaning preparations, whether or not containing soap, other than those of heading No 3401
35	Albuminoidal substances; modified starches; glues; enzymes
3923	Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics
4001	Natural rubber, balata, gutta-percha, guayule, chicle and similar natural gums, in primary forms or in plates, sheets or strip
4403 41 000 0, 4403 49	Dark red meranti, light red meranti and meranti bakau

⁶ Products are determined as by HS code as by description.

HS	Description of products
4407 21 - 4407 29	Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger- jointed, of a thickness exceeding 6 mm of tropical wood
4420	Wood marquetry and inlaid wood; caskets and cases for jewellery or cutlery, and similar articles, of wood; statuettes and other ornaments, of wood; wooden articles of furniture not falling in Chapter 94
4421	Other articles of wood
45	Cork and articles of cork
46	Manufactures of straw, of esparto or of other plaiting materials; basket ware and wicker work
50	Silk
53	Other vegetable textile fibres; paper yarn and woven fabrics of paper yarn
56	Wadding, felt and non wovens; special yarns; twine, cordage, ropes and cables and articles there of
5808	Braids in the piece; ornamental trimmings in the piece, without embroidery, other than knitted or crocheted; tassels, pompons and similar articles
6702 90 000 0	Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit, other materials
6913	Statuettes and other ornamental ceramic articles
6914	Other ceramic articles
7018 10	Glass beads, imitation pearls, imitation precious or semi- precious stones and similar glass small-wares
7117	Imitation jewellery
9401 51 000 0	Seats of cane, osier, bamboo or similar materials
9403 81 000 0	Furniture of other materials, including cane, osier, bamboo or similar materials
9403 90 900 0	Parts furniture of other materials (except tree and metal)
9601	Worked ivory, bone, tortoise- shell, horn, antlers, coral, mother-of-pearl and other animal carving material, and articles of these materials (including articles obtained by moulding)
9602 00 000 0	Worked vegetable or mineral carving material and articles of these materials n.e.s.; moulded or carved articles of wax, of paraffin, of stearin, of natural gums or natural resins or of modelling pastes, and other moulded or carved articles n.e.s.; worked
9603	Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand- operated mechanical floor sweepers, not motorized, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees)
9604 00 000 0	Hand sieves and hand riddles
9606	Buttons, press- fasteners, snap- fasteners and press- studs, button moulds and other parts of these articles; button blanks
9609	Pencils (other than pencils of heading No. 9608), crayons, pencil leads, pastels, drawing charcoals, writing or drawing chalks and tailors' chalks
9614 00	Smoking pipes (including pipe bowls) and cigar or cigarette holders, and parts thereof
9615 11 000 0	Combs, hair- slides and the like; ebonite or plastic of
9617 00	Vacuum flasks and other vacuum vessels, complete with cases; parts thereof other than glass inner
97	Works of art, collectors pieces and antiques

Source: Resolution of the Government of the Republic of Kazakhstan No. 1317 of 28 December 2007

ANNEX 6

Comparative table of import and export permit procedures and veterinary-sanitary rules of imported and domestic products transportation within the territory of the Republic of Kazakhstan

Import of products subject to veterinary control to the Republic of Kazakhstan	Export of products subject to veterinary control from the Republic of Kazakhstan	Transportation of imported products within the territory of the Republic of Kazakhstan after passing state border and domestic products from one region to other regions
<p>When issuing an import permit, the authorized body carries out the following:</p> <ol style="list-style-type: none"> 1. Central authorized body in the field of veterinary checks whether the exporting country is subject to temporary ban due to outbreak of infectious diseases according to the OIE list as well as presence of veterinary certificate approved by the central authorized body in veterinary of exporting country. In case, if country is not in the OIE list, or any other information was not received from the exporting country, central authorized body approves the application. 2. Territorial departments confirm safety of transportation and compliance of places of storage, processing and sale or use with veterinary requirements. In case of incompliance with the requirements, a trader has a right to re-apply for obtaining import permit after all the necessary requirements were met. 	<p>When issuing an export permit, the authorized body carries out the following:</p> <ol style="list-style-type: none"> 1. Territorial departments confirm the possibility to fulfil veterinary requirements of the importing country, epizootic situation of the places of origin and shipment of products, ability to provide necessary laboratory analysis and veterinary treatments and send a request to the authorized body to issue a permit. In case of incompliance with the requirements, trader has a right to re-apply after all the necessary requirements were met. 2. Authorized body when it is possible to meet veterinary requirements of the importing country coordinates veterinary certificate with the central veterinary body of the importing country, approves the request and issues and issues permit for export of the products or provides justified refusal in writing. 	<p>The official permit for transportation of all kinds of shipments within the country is not issued. It should be noted, that as soon as imported products pass state border of Kazakhstan, the same requirements apply to them as to the domestic products, in particular when transporting within the country.</p> <p>At the same time, all requirements for transportation of products within the country are de-facto equivalent to the import permit requirements.</p> <p>During the transportation within the Republic of Kazakhstan territorial veterinary services carry out the following control:</p> <ol style="list-style-type: none"> 1. Products subject to state veterinary control can be imported only from the places (settlements, farms, warehouses, organizations) which are free of infectious diseases and not under quarantine. 2. Control is implemented when the owner of the product obtains veterinary certificate for transportation, selling in market, in shops or for processing. Veterinary inspectors control availability of the veterinary certificate issued on the basis of veterinary-sanitary expertise, storage and transportation conditions.