

WORLD TRADE ORGANIZATION

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**Working Party on the
Accession of Kazakhstan**

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ACCESSION OF THE REPUBLIC OF KAZAKHSTAN TO THE WORLD TRADE ORGANIZATION

Factual Summary of Points Raised

The attached Factual Summary of Points Raised on the Accession of the Republic of Kazakhstan has been prepared by the Secretariat, based on documentation examined in the Working Party so far. The Factual Summary will be reviewed at the next meeting of the Working Party.

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I. INTRODUCTION

1. On 29 January 1996, the Government of the Republic of Kazakhstan requested accession to the World Trade Organization (WTO). At its meeting on 6 February 1996 the General Council established a Working Party to examine the application of the Government of the Republic of Kazakhstan to accede to the WTO Agreement under Article XII and to submit to the General Council Recommendations which could include a draft Protocol of Accession. Membership of the Working Party was open to all WTO Members. The terms of reference and the membership of the Working Party were reproduced in document WT/ACC/KAZ/2/Rev.17).

2. The Working Party met on 19-20 March and 9 October 1997 under the Chairmanship of H.E. Mr. B. Ekblom (Finland) and on 9 October 1998, 12-13 July 2001, 13 December 2002, under the Chairmanship of H.E. Mr. P. Huhtaniemi (Finland), and on [...] under the Chairmanship of H.E. Mr. V. Hinamen (Finland).

DOCUMENTATION PROVIDED

3. The Working Party had before it, to serve as a basis for its discussions, a Memorandum on the Foreign Trade Regime of the Republic of Kazakhstan (WT/ACC/KAZ/3 and Addenda), a Survey of the foreign trade regime of the Republic of Kazakhstan (WT/ACC/KAZ/40, 30 April 2003), the replies to questions submitted by members of the foreign trade regime of the Republic of Kazakhstan, and other information provided by the Kazakhstan authorities listed in document WT/ACC/KAZ/38[/Rev...], including legislative texts and other documentation listed in [Annex I].

[to be completed]

INTRODUCTORY STATEMENTS

[to be completed]

II. ECONOMIC POLICIES

- Monetary and Fiscal Policy

4. In response to questions from members of the Working Party, the representative of Kazakhstan stated the Government and the National Bank of Kazakhstan (NBK) intended to maintain a free-floating exchange rate of the national currency (Tenge (KZT)), based on the current levels of demand and supply, and to protect the competitive power of Kazakhstani goods on foreign markets. The National Bank would not influence the exchange rate, exercising only the minimum presence on

the domestic currency market to prevent, when necessary, speculative surges in the level of the exchange rate of the national currency (KZT). The monetary policy was aimed primarily to keep the annual inflation rate limited to 4-6 per cent between 2003 and 2004, with a subsequent decline to 3-5 per cent by 2005.

5. Concerning requests for information on the tax system of Kazakhstan, the representative of Kazakhstan noted that current forms of taxation were established by the 2001 Tax Code of the Republic of Kazakhstan (WT/ACC/KAZ36 refers (entered into force on 1 January 2002)). The main concept of the Code was to create a fair, stable, and predictable tax system, as well as a well-balanced tax burden for all categories of taxpayers. The taxation regime adopted by the Republic of Kazakhstan corresponded to international taxation principles. He further added that the Tax Code of 2001 was the only document which incorporated all regulations on the Kazakhstani tax system. The Code contained explicit definitions of rights and obligations of all parties to tax relations, regulated fulfilment of tax commitments, established tax control rules, determined the list of taxes and other compulsory payments to the budget, as well as all terms and instruments required for proper operation of the tax system. He noted that taxes, fees, and other compulsory payments comprised: corporate income tax, personal income tax, value added tax, excise tax, social tax, land tax, vehicles tax, property tax, and taxes for subsurface users. In addition, the Tax Code contained provisions regulating collection of 12 charges and 14 forms of payments, including customs payments.

[to be completed]

- **Foreign Exchange and Payments**

6. The representative of Kazakhstan stated that Kazakhstan had accepted the obligations of the IMF Agreement Article VIII and had established full current account convertibility in 1996. Under the Law "On Currency Regulation", of 24 December 1996 (WT/ACC/KAZ/6/Add.2 refers (amended by the Laws No. 154-1 of 11 July 1997; No. 277-1 of 9 July 1998; No. 431-1 of 16 July 1999; No. 154-II of 30 January 2001, No.411-II of 8 May 2003)), exchange transactions were subdivided into current operations and operations related to the movement of capital.

7. In response to questions from members of the Working Party he noted that current operations related to the movement of capital covered by the above mentioned laws included the following: transfers for the settlement of accounts relating to export and import of goods, works, and services allowing for the deferral of payment or advance payment for a period of not more than 180 days; granting and receipt of loans for a period of not more than 180 days; transfer and receipt of dividends, interest, and other revenues on contributions (deposits), investments, loans, and other operations;

transfers not relating to trade, including grants, inheritance, wages, pensions, alimony, etc.; and any currency operations other than those classified by the Law "On Currency Regulation" as operations connected with the movement of capital.

8. Operations connected with the movement of capital comprised of the following: investments; transfers for settlement of accounts relating to operations resulting in a complete transfer of exclusive rights to intellectual property; transfers as a form of payment for economic rights to real estate, with the exception of property of the same status; transfers for the settlement of accounts relating to the export and import of goods, works, and services allowing for the deferral of payment or advance payment for a period of more than 180 days; granting and receipt of loans for a period of more than 180 days; allocation of contributions (deposits) in foreign banks, authorised to perform banking operations by the legislation of their countries of registration; international transfers for operations, relating to accumulated pension assets; international transfers under accumulation insurance and re-insurance agreements; and transfer of currency valuables to beneficial ownership.

9. With respect to questions concerning restrictions applicable to international transfers and payments for current transactions related to goods and services, the representative of Kazakhstan replied that international bank payments and transfers, effected in the course of current operations between residents and non-residents, shall be performed by authorized banks without any restrictions under procedures set by the National Bank of the Republic of Kazakhstan. International bank payments and transfers, effected in the course of operations connected with the movement of capital in the currency of the Republic of Kazakhstan and foreign currencies, shall be performed based on procedures set by the National Bank of the Republic of Kazakhstan.

10. Purchase, sale, and exchange of foreign currency in Kazakhstan shall be carried out by residents and non-residents only through authorized banks and authorized non-banking financial institutions.

11. Residents may have accounts in foreign currency in authorized banks in Kazakhstan. Foreign currency received by residents as payments for goods and services or in the form of loans shall be subject to obligatory inclusion into their accounts unless otherwise provided by the currency legislation of the Republic of Kazakhstan.

12. Under the Rules on Currency Operations in Republic of Kazakhstan, adopted by the Resolution of the Board of the National Bank No. 115 of 20 April 2001 (WT/ACC/KAZ/4 refers), payments and money transfers for operations between residents and non-residents may be conducted in any currency the parties have agreed upon. Payments and money transfers for operations between

residents and non-residents may be conducted only through their bank accounts, except for cases provided for in the normative acts of the National Bank. Prior to carrying out currency operations, a resident and/or a non-resident shall submit documents, required under the currency legislation of Kazakhstan, to the authorized bank. The authorized bank may not effect payments and money transfers of a resident and/or a non-resident if the latter failed to submit the required documents.

13. He further noted that Article 3 of the Law "On Currency Regulations", 1996 authorized the President of Kazakhstan to adopt decisions to restrict or suspend any currency transactions for the purpose of implementing international obligations and in emergency situations. In addition, the same law authorized the National Bank to impose restrictions on the currency of payment used in export operations, on surrender requirements applied to export receipts in foreign currency, and on the form of payment under specific import and export contracts in order to ensure economic safety of Kazakhstan.

14. Furthermore, the representative of Kazakhstan stated that:

- Currency valuables, covered by the provisions of Article 1.1 of the Law of Kazakhstan "On Currency Regulation" of 24 December 1996, could be imported in Kazakhstan by residents and non-residents without any restrictions under procedures set out in the legislation of Kazakhstan;
- No restrictions applied to export of the national currency from Kazakhstan by residents and non-residents. Coins of precious metals issued by the National Bank and recognized as a legal circulating medium, could be imported to or exported from Kazakhstan without any restrictions;
- Resident natural persons had the right to export from Kazakhstan foreign currency in cash in the amount of US\$10,000 unsupported by documents proving its legal origin. If the amount of foreign currency in cash exceeded US\$10,000, it could not be exported unless it had previously been imported to Kazakhstan and was accompanied by a customs declaration on import.
- Non-resident natural persons had the right to export from Kazakhstan foreign currency in cash equivalent to US\$3,000 unsupported by documents proving its legal origin. If the amount of foreign currency in cash exceeded the equivalent of US\$3,000, it could not be exported unless it had previously been imported and was accompanied by a customs declaration filled out upon entry to Kazakhstan;

- If the amount of foreign currency in cash exported by resident and non-resident natural persons from the Republic of Kazakhstan did not exceed the equivalent of US\$3,000, there was no need to declare it to the customs body of Kazakhstan;
- If the amount of foreign currency in cash exported by resident and non-resident natural persons from Kazakhstan exceeded the equivalent of US\$3,000, it had to be declared in writing to the customs body of Kazakhstan;
- Resident and non-resident natural persons may export payment documents (bills, and checks, including traveller's checks) with their face value in a foreign currency without any restrictions and without a written declaration; and
- Exports of securities with a face value in a foreign currency were regulated by the laws of the Republic of Kazakhstan on securities.

15. The representative of Kazakhstan further noted that, under the Law No. 2200 "Concerning Licensing" of 17 April 1995 (WT/ACC/KAZ/4 refers), licensing requirements extended to the following types of operations with currency valuables:

- retailing and provision of services for foreign currency in cash;
- opening of accounts by residents (including accounts in the currency of the Republic of Kazakhstan) in foreign banks and other financial institutions, authorized to engage in corresponding activities by the legislation of the country of registration, except for accounts open by: banks, resident natural persons in foreign banks located in OECD member-countries and having the required rating of one of the rating agencies, as well as persons, temporarily residing outside Kazakhstan, for purposes of employment, education, medical treatment, or recreation;
- investments of residents placed abroad, excluding: dealing bank operations; investments into securities of non-residents, meeting requirements set out in the currency and banking legislation of Kazakhstan; investments into authorized capitals of legal entities of OECD member-countries and/or member-countries of international agreements on stimulation and protection of investments, signed and ratified by the Republic of Kazakhstan, under which the investing resident will have the right to 50 per cent or more of voting shares (50 per cent or more of votes) of an investment object;
- transfers of residents to non-residents as a form of payment under operations of transfer of economic rights to real estate, with the exception of property of the same status;

- transfers of residents to non-residents for the settlement of accounts relating to imports of goods, works, and services allowing for advance payments for a period of more than 180 days, as well as for extension of the period for receipt of earnings in a foreign currency as a payment for the export of goods (works, services) by residents for a period of more than 180 days after the date of export of goods (works, services);
- receipt by residents of payments from non-residents for export of goods, included in the Schedule developed by the Government of the Republic of Kazakhstan, in case where the period between the date on which the goods were exported and the date on which export receipts were collected, exceeds 365 days;
- granting by residents (other than banks) of loans to non-residents for a period of more than 180 days;
- crediting foreign currency, received by a resident as a loan granted by a non-resident, to an account of a third-party, unless there was a provision to the contrary in the currency legislation of the Republic of Kazakhstan; and
- transfer of currency valuables to beneficial ownership, effected by a resident to a non-resident.

16. Some members of the Working Party asked how enterprises acquired rights to deal in foreign exchange, whether foreign enterprises were eligible to become licensed banks or exchange points, and whether enterprises other than banks could be approved. The representative of Kazakhstan replied that under a general licence, banks and non-banking financial institutions may engage in foreign exchange. The licenses of the National Bank of Kazakhstan for dealing with foreign exchange were issued to legal entities solely involved in foreign exchange. Any enterprise (Kazakhstan legal entity) could be the founder of an exchange bureau. However, such enterprise had to establish a subsidiary solely involved in foreign exchange. Moreover, a non-Kazakhstan legal or physical person was not eligible to become a licensed exchange point. He further noted, however, that a Kazakhstan legal person may be partially or fully foreign-owned and may, as such, become a licensed exchange point. Thus, any bank registered in Kazakhstan as a Kazakhstan legal entity (also if it was 100 per cent foreign-owned) was eligible to become an authorized bank (licensed bank). Branch and representative offices of foreign banks, however, were not allowed to deal in foreign exchange until they were registered as Kazakhstan legal persons.

17. Moreover, under the Rules of Registration of Currency Operations Connected with the Movement of Capital and Opening of Foreign Bank Accounts, adopted by the Resolution of the Board of the National Bank of Kazakhstan No. 225 of 4 July 2003, registration with the National Bank shall be required for the following operations:

- currency operations, connected with the movement of capital, resulting in receipts of property (funds) in Kazakhstan and/or emerging obligations for repayment of funds of a non-resident exceeding the equivalent of US\$100,000;
- borrowing from non-residents for a term of more than 180 days, including financial leasing;
- crediting by non-residents of import and export operations;
- investments of non-residents into Kazakhstan in the form of direct and portfolio investments, including primary distribution of securities of residents on international capital markets, inclusive of the issue of depositary receipts for securities of residents;
- transfers of non-residents as payment for a complete transfer of exclusive rights to intellectual property works, effected by residents; and
- transfers of non-residents as payment for economic rights to real estate, with the exception of property of the same status.

18. He also noted that registration of currency operations connected with the movement of capital was not restrictive, and was conducted for statistical purposes for the balance of payments. The National Bank of Kazakhstan intended to pursue its policies aimed at the liberalization of the currency regime and facilitation of operations connected with movement of capital, and schedules the completion of the process for 2007.

[to be completed]

- **Investment Regime**

19. In response to requests for information, the representative of Kazakhstan stated that reform of the legal and regulatory investment regime was needed in order (i) to move from a centralized to a market economy, and (ii) to attract needed investment to increase production, modernize infrastructure and restructure the industrial base. Kazakhstan had constructed a sound legal environment conducive to investment. Important legislation to implement international norms and standards had been enacted including Law No. 373 "On Investments" of 8 January 2003 (WT/ACC/KAZ/42 refers), the Tax Code of 12 June 2001, the Customs Code of 5 April 2003, the Insurance Law of 18 December 2000, Law No. 232-1 "On Unfair Competition" of 9 June 1998 (with amendments introduced by the Law No. 123-II of Kazakhstan, of 15 December 2000), Law No. 272 "On Natural Monopolies" of 9 July 1998 (WT/ACC/KAZ/18 refers), Edict No. 2350 "Concerning Petroleum" of 28 June 1995 (WT/ACC/KAZ/4 refers), currency and banking laws and regulations, intellectual property legislation, and the Law "Concerning the Subsurface and its Utilisation" of

27 January 1996, the Civil Code of Kazakhstan (General Section) of 27 December 1994 and the Civil Code of Kazakhstan (Special Section) of 1 July 1999 (WT/ACC/KAZ/4 refers).

20. The representative of Kazakhstan added that the provisions of the Investment Law 2003 were consistent with relevant WTO obligations, including those under the TRIMs and Subsidies arrangements. He further stated that the Investment Law contained an explicit definition of investments and investment activities, established a national treatment regime for domestic and foreign investors yet noted that, as stated in the Article 3 of the Law, legislative acts of Kazakhstan could specify areas where investment activities of foreign investors or enterprises with foreign participation were restricted or prohibited, for national security reasons.

21. Some members of the Working Party asked if there was any domestic legal protection for foreign investors in cases of expropriation. The representative of Kazakhstan replied that Article 26(3) and (4) of the Constitution of Kazakhstan and Article 8 of the Investment Law 2003 both provided domestic legal protection to foreign investors in the event of expropriation. Enforced seizure of property of investors (nationalization, requisition) for national needs could be performed only in exceptional cases, stipulated in the legislative acts of Kazakhstan. In cases where the property of an investor was nationalized, his losses, incurred by the enactment of the legislative acts of Kazakhstan on nationalization, had to be compensated in full. In cases where the property of an investor was subject to requisition, he must be paid its market value.

22. The representative of Kazakhstan added that the sound investment climate in Kazakhstan could be proved by the fact that during the period of 1993 and the first half of 2003, the country succeeded to attract US\$23.4 billion in foreign direct investments (FDI). The breakdown of the investment structure by countries showed that major part of investments came from the USA, Great Britain, Italy, the Netherlands, the Russian Federation, the Switzerland and China. As noted by the representative of Kazakhstan, on 28 May 2003 the international rating agency, Standard&Poor's, raised the sovereign rating of the Republic of Kazakhstan for long-term bonds in foreign currency from "BB" to "BB+", while the rating for long-term bonds in national currency was raised from "BB+" to "BBB-". Moreover, Kazakhstan became the first CIS country granted the rating level of Baa3 by Moody's and BB+ by Fitch IBCA.

23. Members of the Working Party noted that Law No. 2717 "Concerning Land", of 22 December 1995 (WT/ACC/KAZ/4 refers), permitted private land ownership in Kazakhstan and provided that legal entities of Kazakhstan, whose shares may be wholly foreign-owned, had the right to own land. However, many types of land plots (including land used for agriculture, defence, natural reserves, and commonly used land in populated areas) were excluded from the coverage of the Law.

The representative of Kazakhstan clarified that the legislation of Kazakhstan on land was based on the Constitution of Kazakhstan and consisted of the Land Code of Kazakhstan of 20 June 2003 as well as other normative acts. Relations arising from the use and protection of subsurface; water; air; forests and other vegetation; fauna; objects of environment of a particular ecological, scientific, or cultural value; and land reserves under special protection of the State were regulated by a special legislation of Kazakhstan. Using their rights, participants of land relations should not inflict damage on the natural resources *per se* and environment as a whole, nor infringe rights and interests of other parties.

24. Economic relations related to ownership, use, disposal of land, as well as transactions with land were regulated by the civil legislation of Kazakhstan, unless there were provisions to the contrary in the laws of Kazakhstan on land, forest, or water resources, subsurface use, flora and fauna, and areas under special protection of the state and environmental protection. Rights of natural persons and legal entities given by law may not be restricted or limited in anyway by acts of public bodies.

25. The representative of Kazakhstan further stated that foreign individuals, legal entities, and stateless persons had the same rights and responsibilities arising from land relations as individuals and legal entities of Kazakhstan, unless subject to other provisions of the Land Code or other national legislative acts. According to Article 23 of the Land Code, land plots with built on industrial and non-industrial, including housing, buildings (structures, facilities) and their compounds, the land intended for servicing buildings (structures, facilities), except for land intended for the maintenance of commercial agricultural production and forestry, may be in the private ownership of foreign citizens, stateless persons and foreign legal entities (non-governmental). Paragraph 2 of the Article 34 of the Code stipulated that foreign land users may not have permanent land use rights. Under Articles 37 and 97 of the Land Code, foreign individuals and stateless persons may not have agricultural lands of Kazakhstan in private ownership, their rights to these lands being limited to a temporary land use on terms of leasing for ten years.

26. Rights of other countries to the use of land in Kazakhstan were regulated by international agreements ratified by Kazakhstan. If international agreements, ratified by Kazakhstan, set different rules from those included in this Code, rules of international agreements may prevail. International agreements ratified by the Republic of Kazakhstan would apply to land relations directly except for cases when it was necessary to adopt a law for such an agreement to become applicable.

27. The representative of Kazakhstan added that under Article 26 of the Land Code land plots occupied with the following may not be in private ownership:

- defence and national security, defence industry, those in the state ownership; engineering and technical facilities, communications built for the protection and defence of the National Frontier of Kazakhstan; customs facilities;
- specially-protected natural territories;
- forestry, except for land plots listed in paragraph 4 of Article 128 of this Code;
- water economy, except for land plots listed in paragraph 2 of Article 133 of this Code;
- main railway networks and automobile roads of common use; and
- territories of common use in populated areas, except for land plots occupied with buildings and facilities in private ownership, and needed for servicing them.

28. Some members of the Working Party asked whether there were any restrictions or conditions applicable to foreign-owned legal entities of Kazakhstan investing in land or leasing subsurface rights that did not apply to domestic entities of Kazakhstan. The representative of Kazakhstan responded that there were no restrictions or conditions applicable to foreign-owned legal entities of Kazakhstan investing in land or leasing subsurface rights (whether partially or 100 per cent foreign-owned) that did not apply equally to domestically-owned Kazakhstan legal entities. Under Article 11 of the Law "On Subsurface and Subsurface Use", the rights to subsurface use may be owned by both Kazakhstani and foreign natural persons and legal entities.

29. He further added that Article 11-1 of the Law stipulated the following general restrictions on the use of subsurface resources:

- The Government may restrict or prohibit operations connected with subsurface use within any specific area for reasons of national security and environmental protection;
- The Government may impose a partial or full ban on the use of subsurface resources within inhabited localities, suburban areas, industrial sites, as well as areas occupied by communications and transport facilities if it constituted a potential danger for the human life and health, facilities, or environment; and
- Subsurface use within areas under special protection of the State shall be regulated by the legislation of Kazakhstan on areas under special protection.

[to be completed]

- **State Ownership and Privatization**

30. The representative of Kazakhstan stated that foreign investors were accorded national treatment when state-owned enterprises were privatised. He referred to Article 2 of the Law "On Privatization" of 23 December 1995 and Article 3 of the Civil Code of 27 December 1994 (WT/ACC/KAZ/4 refers). Moreover, no legislative acts of Kazakhstan stipulated discriminatory treatment concerning foreign participation in privatization.

31. Some members of the Working Party asked whether procedures for privatization were made accessible to the public and further and in which publications the relevant procedures could be found. The representative of Kazakhstan stated that the rules and procedures governing privatization were described in laws and regulations which were available from the Ministry of Justice or the State Privatization Committee. Forthcoming cash auctions were advertised in national mass media 30 days prior to auction date, specifying the list of companies, terms, and the procedures of auctions. In addition, massive public education campaigns to educate the public about cash auctions were conducted during December 1995 and January 1996. He further noted that information regarding the procedures and terms of privatization for each company subject to the case-by-case privatization program was published in major newspapers and information regarding privatization procedures, auctions and the security market in Kazakhstan was also accessible through the internet (www.minfin.kz).

32. Some members of the Working Party asked whether foreign participants could also purchase shares on the secondary market, from groups that had previously received shares in the privatization of these enterprises. The representative of Kazakhstan replied that foreign participants could purchase shares, on the secondary market, from groups that have previously received shares in the privatization of these enterprises provided that such enterprises were listed on the secondary market. One exception was that agricultural producers, who had privileges (received shares in exchange of liabilities) during the first and second stage of privatization, could not sell their shares to either foreign or domestic investors until their liabilities were paid off to the joint stock company (JSC).

33. Some members of the Working Party asked whether foreign investors were eligible to participate in the investment funds that owned shares in privatized companies. The representative of Kazakhstan referred to Presidential Resolution No. 1290 of 23 June 1993 that established the legal framework for Investment Privatization Funds (IPFs) and stated that there were no conditions or restrictions prohibiting foreign investors from purchasing shares in IPFs once they were converted to JSCs of open type.

34. In response to requests for more information concerning the progress made in the privatization process, the representative of Kazakhstan presented a Memorandum on Privatization which was circulated in document WT/ACC/KAZ/30 dated 12 October 2000. The representative of Kazakhstan further stated that Kazakhstan would, upon request by WTO Members, provide information on recent developments in its privatization program as well as information regarding economic and trade reforms affecting the foreign trade regime of Kazakhstan.

[to be completed]

- **Sectoral Priorities**

- **Mining**

35. Some Members of the Working Party noted that in the mining sector, the relevant legislation on licensing of users of natural resources stipulated three types of licence - an exploration licence, a mining licence, and a combined exploration/mining licence often referred to as a "complex licence". They asked whether the legislation had been interpreted so as to prohibit the issue of the "complex licence" and institute a two-stage exploration-then-mining approach. The representative of Kazakhstan replied that since 2000 after the enactment of the Law of Kazakhstan No. 467-1 of 11 August 1999 "On Changes and Amendments to Legislative Acts of the Republic of Kazakhstan on Subsurface Use and Oil Operations in the Republic of Kazakhstan", the right to subsurface use may be granted solely on a contractual basis, while all licenses issued prior to enactment of the above Law were valid until the date of expiry, including extension periods, in accordance with the legislation of Kazakhstan in place at the time licenses were issued.

36. The representative of Kazakhstan further stated that subsurface use in Kazakhstan was regulated by the Statutory Order of the President of Kazakhstan No. 2828 of 27 January 1996 "On Subsurface and Subsurface Use" (amended by Laws No. 381-1 of 11 May 1999, and No. 467-1 of 11 August 1999), and Statutory Order of the President of Kazakhstan No. 2350 of 28 June 1995 "Concerning Petroleum" (amended by the Law of the Republic of Kazakhstan No. 467 of 11 August 1999), and other normative acts of Kazakhstan. Both above-mentioned Presidential orders determined authorities of executive bodies; established procedures for granting the right of subsurface use and awarding the contracts, general rules for operations related to subsurface use; defined rights and obligations of subsurface users, terms and conditions of legislative provisions on protection of subsurface resources and environment, as well as on safety of population and staff.

37. The Ministry of Energy and Mineral Resources was the body, authorized to award commercial exploration, mining, and combined exploration/mining contracts. Contracts for commercial exploration and/or mining of commonly occurring minerals were awarded by local executive bodies.

38. Contractual rights to subsurface use may be granted both to natural persons and legal entities. Foreign natural persons, legal entities, and stateless persons possessed the same rights and responsibilities arising from subsurface use as natural persons and legal entities of Kazakhstan. If the right to subsurface use was granted to more than one natural person and/or legal entities, who were expected to become joint owners of the right to subsurface use in the future, the contract had to be awarded by the authorized body and these natural persons and/or legal entities. Rights and obligations of subsurface users arising from contractual terms and conditions were defined in an agreement concluded between subsurface users and attached to the contract as its integral part.

39. The representative of Kazakhstan further noted that the right to subsurface use may be exercised after awarding of the Contract. Under the current legislation, the right to subsurface use may be granted and contract awarded based on:

- the results of tenders for the best investment projects; and
- the results of direct negotiations.

Tenders were organized by the authorized body. Members of the Evaluation Committee were appointed by the authorized body and approved by the Government. Tenders could be either open or closed. Under open tender, all interested parties could participate in the bidding process. The terms for conducting an open-tender shall be published in mass media. Under closed tender, only limited number of parties could participate in the bidding process.

40. The authorized body was required to receipt and register submitted tender applications. Applications must be accepted for consideration only if and when an applicant paid the fee for participation. An applicant must be officially notified that the application was accepted for consideration within one month following the date of its receipt. After receipt of the application, the authorized body must send to an applicant a package of geological data on a specific area, for which it intends to grant the right to subsurface use. The package must be prepared by a government body responsible for the use and protection of subsurface resources, and shall contain complete information required by applicants to prepare tender proposals. The content of the package, sent to various applicants, must be identical.

41. An applicant had to prepare and submit a tender proposal within the timeframe set in the terms and conditions of participation. Tender proposals, received and accepted by the authorised body, may not be returned to applicants. Based on the evaluation of proposals, the Evaluation Committee selected a winner and prepared a protocol to this effect. The protocol contained the decision of the Evaluation Committee on a winner with the attached tender proposal. The Protocol had to be signed by all members of the Evaluation Committee and its Chairman.

A winner was selected by the Evaluation Committee based on the following main criteria:

- a timeframe for the beginning and intensity of exploration and/or mining activities, commercial viability and profitability of the proposed mining project;
- projected amount of initial and subsequent payments to the budget;
- a volume of investments, terms and conditions of project financing and capital investments into the development of industrial and social infrastructure of contractual territories; and
- guarantees of full implementation of legislative and normative acts on the protection of subsurface resources and environment, as well as on work safety.

42. The Evaluation Committee prepared a short-list of tender proposals to select a final winner. In order to make a final decision, the Evaluation Committee may require additional information on submitted tender proposals. Short-listed candidates had the right to improve their proposals at the following stage of the bidding process. A winner of closed tender was officially notified by the authorized body. Results of open tender were published in official publications.

43. Some members of the Working Party asked on what grounds the authorised body could legally refuse an application for participation in the tender process and whether the authorised body was required to set out in writing its reasons for refusing an application. The representative of Kazakhstan referred to Article 13 of the Rules for awarding the right to subsurface use in Kazakhstan, adopted by the Resolution of the Government No. 108 of 21 January 2000, the authorized body may refuse receipt of tender proposal in the following cases:

- tender proposal was submitted in the way which violates the Rules for awarding the right to subsurface use;
- tender proposal contained false or unreliable information; and
- tender proposal lacked documents demonstrating technical, financial, and organizational capacity of an applicant required for exploration/mining activities specified in the invitation for tender.

44. The representative of Kazakhstan added that the authorized body was not required to set out in writing its reasons for refusing an application for participation in tender. However, the legislation of Kazakhstan stipulated that an applicant who was refused the right to participate in tender process had the right for judicial appeal. The judicial authority had the power to overturn the decision of the authorized body.

[to be completed]

- **Pricing Policies**

45. The representative of Kazakhstan stated that with the process of price liberalization initiated in Kazakhstan by the Decree No. 569 "On Measures for Price Liberalization" of 3 January 1992, the government initiated its market economy oriented reforms accompanied with transition to free market prices on industrial and engineering products, consumer goods, works and services. As a result, state regulation was restricted to natural monopolies and services provided by public entities and state-owned enterprises (i.e. services classified as natural monopolies). Given the conditions of a competitive market, under the Law of Kazakhstan No. 144 of 19 January 2001 "On Competition and Restriction of Monopolistic Activities", an authorized body may introduce price controls where entities with a dominant (monopolistic) position in a specific commodity market violated the anti-monopoly legislation (i.e. when their actions were aimed to restrict or prevent competition and as such prejudiced rights of other market agents to free competition). State regulation of activities of natural monopolies was implemented through the mechanisms of establishing (i) tariff rates (prices, fee rates); (ii) tariff estimates; (iii) temporary decreasing coefficients; and (iv) special order for cost formation.

46. The representative of Kazakhstan further noted that the operation of natural monopolies in the market of services and goods (works) were regulated by the Law No. 272-II of 9 July 1998 "On Natural Monopolies". The basic objectives of the Law included: (i) determination of a legal framework for state control and regulation of activities of natural monopolies; and (ii) balancing consumers' interests *vis-à-vis* interests of natural monopolies. The following activities were classified as natural monopolies:

- transportation of oil and oil products through the main pipe-lines;
- storage, transportation of gas and gas condensate through the main and distribution pipe-lines, operation of gas-distribution units and connected gas distribution pipe-lines;
- transmission and distribution of electricity and heat, including:

- production of heat by heating boilers using combined production methods;
- services in technical dispatching of release and consumption of electric energy;
- services of a main railroad network, including:
 - services of access roads, in cases where there are no other competing access roads, and where construction of one is technically impossible or economically impractical;
- air navigation services, services of seaports and airports;
- telecommunication services using local networks;
- services of waterworks and sewerage networks; and
- public postal services.

Provisions of the Law did not extend to individual entrepreneurs and legal persons, engaged in activities classified as natural monopolies, but relating to construction and operation of objects, used for their own needs. For a market entity, engaged in activities classified as of natural monopoly, the state control and regulation covered only those activities.

47. Some members of the Working Party noted that oil pipeline tariff rates were higher for transportation of exported oil. Those members noted that GATT Article XI provided that "other measures" could not be used to prohibit or restrict the exportation or sale for export of any product destined for the territory of another member. They stated that Kazakhstan was expected to eliminate this discriminatory pricing applicable to oil destined for export prior to WTO accession. In response, the representative of Kazakhstan noted that in accordance with the methodology currently used for establishing tariffs on oil transportation by the main pipelines, the unified tariff rates applied both for domestic import/export (transit) operations. As of 1 April 2000, all branches of the CJSC KazTransOil used a single tariff of US\$15 for 1 ton/1,000 km (plus VAT), fixed later at KZT 2,415. In order to slow down the growth of domestic prices on oil products, the decreasing coefficient of 0.46 was applied for services provided to residents of Kazakhstan for transportation of crude oil to refineries within the country.

48. Some members of the Working Party stated that Kazakhstan should notify the Working Party of all price controls on products and services still in effect, at the central and sub-central levels, by HS number, including the authority to apply the measures, the reasons for the existing controls, and the conditions under which Kazakhstan expected to use such controls in the future. In response, the representative of Kazakhstan stated that price controls also extended to public utility services and state services. Public utility services were subject to price controls because delivery of those services

depended heavily on natural monopolies. Public utility services were important for growth of trade in services and investment in Kazakhstan. Most investors were either consumers of public utility services or investors in the infrastructure of natural monopolies delivering those services. Thus, the Agency of Kazakhstan for Regulation of Natural Monopolies, Protection of Competition and Support of Small Businesses (further, Anti-Monopoly Committee) approved and applied tariff rates for natural monopolies, also controlled the price of public utility services including heat distribution, sewage systems, telecommunication services (domestic and international communication services, telegraph communication services, cable radio installation, receiving/transmitting TV and radio programs via satellite, data transmission through communication channels), water distribution, electricity, and gas. The main objective of Kazakhstan's pricing policy in public utility services was the establishment of economically justifiable prices for all consumers reflecting, where applicable, *inter alia*, the cost of production, the cost of transportation, and the profitability of entities providing those services. Production costs were regulated only for activities classified as natural monopolies and for entities enjoying dominant (monopolistic) position in a specific commodity market in cases stipulated by the Laws "On Electric Energy" and "On Competition and Restriction of Monopolistic Activities". The cost of transportation was determined through tariff rates established to regulate natural monopolies (e.g. power transmission and distribution networks, telecommunication networks, gas pipelines, heat pipelines, sewage network, and water distribution networks).

49. In response to questions concerning price control of electricity, natural gas or other forms of energy, the representative of Kazakhstan stated that price and tariff controls were applied only to services (goods, works) of natural monopolies. Other (alternative) forms of energy supply to consumers, except electrical, heat and gas (gas condensate) was not included in the list of natural monopolies. Production of electric energy, natural gas and other forms of energy belonged to the domain of competitive market where prices were determined by market agents independently, except for activities classified as natural monopolies as listed in paragraph [46] of this document. Furthermore, the enterprises of Kazakhstan were given the opportunity to conclude direct contracts on power supply from domestic and foreign power producing enterprises.

50. He further noted that in case a natural monopoly needed to change its tariff rates, such entity had to submit an application to the Authorized Body reflecting proposals for new rates with indication of projected costs and desired profit. The Authorized Body reviewed the documents taking into account operations of similar enterprises within Kazakhstan and conducted a financial and, where necessary, technical expertise of proposed tariffs. Tariffs (prices, charges) on services of a natural monopoly, approved by the Authorized Body, could not be below the value of costs required to provide services (produce goods, perform works), and allowed the adequate level of profits necessary

to ensure its efficient operation. Tariffs (prices, charges) could be changed no more than once every two quarters. New tariffs (prices, charges) were implemented starting from the first of the quarter. Any natural monopoly could dispute the decision of the Authorized Body regarding new tariff rates in the court of law.

51. The representative of Kazakhstan further noted that state services were provided solely by public bodies and state-owned enterprises. Fees and duties charged by such entities were established by legislation. The table on pages 3-5 of document WT/ACC/KAZ/6/Add.2 summarized state services and entities responsible for rendering such services. State fees and duties were specified by the Law "On State Duties" of 31 December 1996. He also stated that with the exceptions of fees on intellectual property subject matter, fees applied equally to foreign and national legal entities and natural persons. Public transport charges were controlled by local administrative bodies. The State Post Office was considered a natural monopoly and hence its tariff rates were approved by the Authorized Body. Nevertheless, rates established for private competing companies in this sector were not regulated by the Authorized Body, and although, under the Law of Kazakhstan No. 2200 "On Licensing", licenses were required to be engaged in postal services, this requirement did not create any barriers preventing potential participants to enter this sector. He further noted that there was no significant competition for postal services within Kazakhstan and that currently there were around ten domestic and foreign companies engaged in parcel and courier services.

52. In response to questions referring to future elimination of price controls, the representative of Kazakhstan stated that the government planned to eliminate price controls for public transportation services, certain telecommunication services and services of rail transport as soon as the competitive environment was developed in these sectors, the restructuring of natural monopolies was implemented; and, consequently, certain natural monopolies were transferred to competitive market sphere. The government however intended to maintain tariff regulations for public utility services. The list of entities (services) included in the national and local state registers of natural monopolies, information on changes in tariffs on their services were regularly published in mass media. In response, some members of the Working Party requested additional information on the 700 market subjects noted in the State Register, in particular which goods or services were covered, and whether price controls were applied to all such "market subjects".

53. The representative of Kazakhstan further stated that currently, given the conditions of market economy, regulation of natural monopolies consideration was being given to not fixing prices at a level that would merely ensure the recovery of a justified level of costs, but would also permit the taking of a profit that would permit natural monopolies to develop in an efficient manner. To this

end, the government had adopted the Program on Improvement of Tariff Policies of Natural Monopolies, which was based on new approaches to tariff formation and introduced forward-looking methods, such as calculation of the income rate for a regulated asset base (RAB) and setting of medium-term tariff caps.

54. A new methodology allowing to set RAB was based on: (i) the degree to which assets are used; and (ii) incentives to owners to attract additional investments. Thus, the income level would reflect value of assets involved, and, eventually, invigorate attraction of investments into capital assets of natural monopolies. As an additional investment-conducive incentive for natural monopolies, the government was planning to implement a policy of setting medium-term caps on tariff rates (for a term of three years). This measure was expected to invigorate long-term investment projects aimed modernization and introduction of new resource saving and low-cost technologies; reduction of existing risks, and creation of incentives for reduction of production costs.

55. The representative of Kazakhstan confirmed that from the date of accession, the price controls in place and any applied in the future would be applied in a WTO-consistent fashion.

[to be completed]

- **Competition Policy**

56. The representative of Kazakhstan stated that basic goal of the competition policy in his country was to create a favourable climate for efficient functioning of goods and services markets by: (i) restraining and preventing monopolistic and anti-competitive practices among economic operators, (ii) facilitating competition, (iii) protecting legitimate interests of consumers, (iv) controlling over economic concentration and (v) preventing arbitrary intervention of public bodies in economic activities of market entities.

57. The representative of Kazakhstan noted that following adoption of Law No. 272 "On Natural Monopolies" and Law No. 232-1 "On Unfair Competition" in 1998 (WT/ACC/KAZ/36/Add.2 refers), the rules of conduct in the market of natural monopolies were codified and regulatory mechanisms aimed to suppress coordinated actions and protect market competition introduced. State regulation of the activities of natural monopolies and control over their compliance with the anti-monopoly legislation was enforced under the Law of the Republic of Kazakhstan "On natural monopolies" and subordinate legislative acts. He further noted that the anti-monopoly legislation of Kazakhstan had been expanded to include Law No. 144 "On Competition and Restriction of Monopolistic Activities" of 19 January 2001. It contained new definitions of dominant (monopoly) position and market

subjects. It also adjusted and intensified state control over establishment, reorganization and liquidation of market subjects and their associations, and increased responsibility for violations of monopoly legislation and consumers' interests. Legislation establishing procedures for adoption, appeal and fulfilment of instructions and decisions of the anti-monopoly agency had been introduced, and the range of possible penalties expanded. Further, the representative of Kazakhstan emphasized that in cases where provisions of an international agreement to which Kazakhstan was party differed from the Law, the provisions of international agreements would prevail over the national legislation.

58. In response to further questions he noted that agreements or coordinated activities between competing and non-competing market agents, as well as agreements concluded between public bodies, or between a public body and a market agent were invalidated and prohibited in cases where they resulted in the restriction of competition or infringed the rights of legal entities and natural persons. Price regulation of prices of companies enjoying a monopoly position in specific markets were only imposed by the authorized body when legislative provisions were infringed or the actions were regarded as abuse of market power and aimed at the restriction of competition.

59. The representative of Kazakhstan further added that any enterprise considered to be a natural monopoly, irrespective of their form of property, was subject to inclusion in the State register of natural monopoly subjects. The Register was formed on the basis of State register of legal persons of Kazakhstan, made by the Ministry of Justice of Kazakhstan pursuant to the Civil Code and Decree No. 2198 "On State Registration of Legal Persons" of 17 April 1995. The criteria for inclusion in the Register was the carrying out of an activity in the sphere of a natural monopoly as well as a market dominant position. The State register consisted of republic wide and local sections. The republic wide was created and maintained by the central authorized body and including the natural monopoly subjects, operating in markets extending beyond the border of one oblast, major city, or the capital. Local sections of the Register were formed and kept by territorial authorized bodies and covered natural monopoly subjects, engaged in activities classified as natural monopoly in local markets confined to one oblast, city, rayon, settlement, other localities.

60. Some members of the Working Party requested the representative of Kazakhstan to identify and describe the sectors that remained subject to monopolies or monopolistic behaviour and to specify whether these sectors were generally dominated by private monopolies or by state-owned enterprises. The representative of Kazakhstan replied that in addition to natural monopolies, the authority of the Agency of the Republic of Kazakhstan on Regulation of National Monopolies and Protection of Competition also extended to companies having a dominant position in a specific commodity market. Under the acting law of the Republic of Kazakhstan, a company was deemed to have a dominant

position in a specific commodity market if it had more than 35 per cent market share. However, the definition of a dominant position also extended to market agents, whose share in a specific commodity market was below the annual cap set by the anti-monopoly agency, based on the following criteria: (i) stability of the share of this market agent in a specific commodity market; (ii) relative shares of competing agents operating in the same market; and (iii) opportunities existing for participation of new entrants. In addition, more than one market agents were considered to have a dominant position if: (i) the aggregate share of not more than two market agents accounted for 50 per cent or more in a specific commodity market; or (ii) the aggregate share of not more than three market agents accounted for 70 per cent or more in a specific commodity market. The number of companies having a dominant position could fluctuate depending on changes in the share of entities in a specific commodity market of the country. The authorized body monitored activities of those companies and conducted periodic market analysis. The representative of Kazakhstan further noted that all state holding companies had been dissolved following their reorganization in 1995 and most companies within the structure of these holding companies were being privatized under the mass privatization program.

61. Some members of the Working Party, stated that enterprises that had monopoly positions in international trade and/or domestic distribution in Kazakhstan should be notified under Article XVII of the GATT 1994 and the 1994 Understanding. Those members asked whether Kazakhstan intended to notify any of its "natural" monopolies. The representative of Kazakhstan replied that natural monopolies in Kazakhstan acted as transport carriers with equal open access to all suppliers and operators regardless of form and type of ownership. No exclusive rights or special privileges were granted to these natural monopolies and therefore such natural monopolies did not fall under the definition of Article XVII of GATT 1994 or Article VIII of GATS.

62. Some members of the Working Party asked whether the label "natural monopoly" indicated any restraints on market entry by other firms and whether foreign-funded enterprises were able to invest in sectors dominated by "natural" monopolies. The representative of Kazakhstan stated that the label "natural monopoly" did not indicate any restraints on market entry by other firms. Foreign-funded enterprises were able to invest in sectors dominated by "natural" monopolies.

63. Identification of the enterprises that were natural monopolies in the oil and oil products pipelines and gas pipelines industries was also requested by some members of the Working Party. The representative of Kazakhstan stated that the natural monopolies in the oil and oil products pipeline and gas pipeline industries, listed by the National Anti-Monopoly Committee were as the following:

- CJSC KazTransOil;
- CJSC Intergas Central Asia; and
- OJSC Takhat.

64. Some members requested more information concerning the procedures followed for allowing natural monopolies access to the oil pipelines, the criteria these enterprises considered in allocating access to the pipelines and any forms of guidance provided by the Government of Kazakhstan with respect to the allocation of access to the pipelines. The representative of Kazakhstan stated that currently there was only one pipeline, Atyrau (Kazakhstan)- Samara (Russia) used for export of crude oil. The amount of available quota for export of crude oil from Kazakhstan was determined in an annual intergovernmental agreement between Russia and Kazakhstan. Once in a quarter, oil exporters could apply for quota to the Ministry of Energy, which allocated the available quotas among the Kazakhstani exporters proportionally to the volume of production. So, if company planned to increase its production, it had to apply for additional quotas. Once quotas were granted, oil exporter had to sign a contract for oil exportation with the "Kazakhnefteprovod", a company operating the export pipeline. No preferences were granted to domestic or CIS companies in awarding the oil export quotas and the unified tariff rates were applied for exporting oil of all exporters. He further noted that other oil pipelines and gas pipelines were not used at full capacity although there was an open access to their services without using the quota system. Users of such pipelines signed contracts directly with the company operating the pipeline.

65. Some members asked why telecommunications services (domestic and international communication services, telegraph communication services, cable radio installation, receiving/transmitting television and radio programs via satellite, data transmission through communication channels) were considered "natural monopoly", and whether Kazakhstan was prepared to make commitments in its GATS Schedule in the basic telecommunications sector and value-added networks. The representative of Kazakhstan stated that only local telephone services and lease of communication channels were currently considered natural monopolies mainly because there was no sufficient competition in the delivery of such services. There were, however, no regulatory barriers to enter this sector. He further stated that Kazakhstan's commitments in the basic telecommunications sector and value-added networks were provided in its revised offer on services.

66. In reference to questions concerning licensing, the representative of Kazakhstan stated that according to Law No. 2200 "Concerning Licensing", activities provided by natural monopolies (except companies operating water system) required licensing. The process to obtain a licence was the same for companies with or without foreign ownership and the required documents to obtain a

licence included an application, proof of payment of licence fee, copy of certificate of registration (if a legal entity is applying for licence), and documents demonstrating appropriate qualification (qualification requirements).

67. More information was requested by members of the Working Party concerning natural monopolies, particularly concerning the criteria on which a judgment that an industry or service-sector is a natural monopoly, was based. Information was also requested concerning the existence of "local natural monopolies". The representative of Kazakhstan stated that pursuant to Law No. 272 "On Natural Monopolies", the subjects of natural monopoly were the managing subjects, carrying out the types of activities as listed in the paragraph 46 of this document. Furthermore he recalled that, a list of natural monopolies regulated by the national Anti-Monopoly Committee, had been provided and circulated in document WT/ACC/KAZ/14 (page 2-3) dated 20 February 1998.

68. He further noted that natural monopolies provided transport services through providing equal access to all users. In addition, these natural monopolies were not engaged in the trade of goods. For example, oil pipeline companies only transport crude oil based on contracts with oil producers and trading companies, and were not themselves engaged in the trade of crude oil.

[to be completed]

III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES

- Powers of Executive, Legislative and Judicial Branches of Government

69. The representative of Kazakhstan stated that the Republic of Kazakhstan was a Presidential State with power divided among the legislative, executive, and judicial branches. The President was Head of State and executive powers in the Republic of Kazakhstan were exercised by the President and the Government of the Republic of Kazakhstan. The President was elected to seven year terms of office on the basis of universal, equal and direct suffrage by secret ballot. The members of the Government, including the Prime Minister, Ministers and heads of State committees were appointed and could be dismissed, individually or collectively, by the President. The President also appointed three of the seven members of the Constitutional Council; seven of the thirty nine members of the upper house of Parliament; executive heads of local government units in the Oblasts and major cities; all diplomatic representatives of the State; the highest commanding officers of the armed forces; the Chairperson and two members of the State Budget Committee; and the State Secretary of the Republic of Kazakhstan.

70. He further explained that upon approval of both houses of the Parliament, the President would appoint the Head and Chairman of the National Bank, and, with the consent of the Senate, the Prosecutor General and the Chairperson of the National Security Committee. The President formed the Security Council and the Supreme Court Council.

71. The President was authorized to prioritize draft laws for consideration by Parliament and, once adopted, to either sign them into effect or to veto them. In order to override a Presidential veto, both houses of Parliament must generate a vote of at least two thirds of total members. A draft law with a top-priority status must be considered by the Parliament of the Republic of Kazakhstan within one month after its submission. The President of the Republic of Kazakhstan shall approve laws submitted by the Senate within 15 days with subsequent promulgation or return the law in full or separate Articles thereof to the Parliament of the Republic of Kazakhstan for further consideration to be completed within a term of one month. After the law or separate Articles thereof were reconsidered, or upon receipt of the confirmation of the Parliament of the Republic of Kazakhstan on its earlier decision, the President of the Republic of Kazakhstan must sign the law within seven days. In cases where the Parliament failed to incorporate President's comments in the Law, the Law would be viewed as not adopted or adopted in the form proposed by the President of the Republic of Kazakhstan. The Laws of the Republic of Kazakhstan should come into force within ten calendar days after the date of their first official publication, unless the laws or acts on implementation of these laws specify different terms for enactment. The Parliament could delegate its legislative powers to the President for a period of up to one year. The President could dissolve Parliament in the following cases: where insurmountable differences arose between the houses of Parliament or between Parliament and another branch of State power giving rise to a political crisis; where Parliament passed a vote of no-confidence in the Government or twice refused to give its consent to the appointment of the Prime Minister. The President could call a national referendum as well as adopt decrees and resolutions implementing legislation.

72. The Government was organized and supervised by the Prime Minister. The Government was accountable to the President, and in cases, which were stipulated in sub-paragraph 6 Article 53 and sub-paragraph 6 Article 57 of the Constitution of the Republic of Kazakhstan, the Government was accountable to the Parliament of the Republic of Kazakhstan. The Government was authorized to develop, implement and enforce the main directions of socio-economic policy in the State including policies in the area of foreign relations, foreign economic relations, revenue generation, state property management, defence and public order. The Government, within its competence, must enact resolutions binding in the entire territory of the Republic of Kazakhstan, submit draft laws to the Majilis, lower house of the Parliament, and enforce adopted laws. Subsidiary legislation in the form

of resolutions and directives could be issued by the Government. The subsidiary legislation acts of the Government, as well as the acts of the executive heads of units of local government could be annulled by the President. The mandate of the Government expired with that of the President unless otherwise terminated by the President.

73. The Parliament was a bi-cameral legislative body, consisting of a lower house, called the Majilis, and an upper house, called the Senate. The Majilis consisted of 77 deputies, elected to five year terms on the basis of universal, equal and direct suffrage by secret ballot. The deputies of the Senate were elected to six year terms with half subject to re-election every three years. Excluding the seven deputies appointed by the President, two deputies from each Oblast, major city and the capital, were elected at a joint session of deputies of all representative bodies.

74. At joint sessions, Parliament could adopt Constitutional Laws, Laws, resolutions and decrees on issues that, regulated the most important public relations, and amend the Constitution, upon the initiative of the President. Parliament approved of and could issue changes to, the State budget and put forward an initiative calling for a national referendum. At separate sessions, the Majilis and then the Senate could ratify or denounce international treaties and decide issues of State loans and other forms of economic assistance. The Senate, *inter alia*, had exclusive jurisdiction, at the initiative of the President, to elect and discharge the Chairperson and all Justices of the Supreme Court and the Chairpersons of the Collegiums of Justice. The Majilis, *inter alia*, had exclusive jurisdiction to accept draft Laws for consideration and to announce Presidential elections and to bring charges against the President of the Republic of Kazakhstan for high treason.

75. Judicial power in Kazakhstan was enforced by proceedings ensuing from civil, criminal, and other legislation, and exercised within the framework of a unitary court system divided among three tiers. The Supreme Court of the Republic of Kazakhstan was the supreme body on civil, criminal and other cases, exercising supervisory powers in relation of subordinate courts of general jurisdiction, including supervision of their activities within limits set by the legislation and provision of explanations and clarifications on issues relating to court practices.

76. He further added that the Supreme Court acted as a *nisi prius* for cases stipulated by the legislation; as a court of appeal for cases examined in the first instance by oblast courts; considers cases for supervisory purposes, and cases relating to new evidence, previously processed by lower level courts and the Supreme Court; studies and compiles practices relating to application of laws and other normative legislative acts of the Republic of Kazakhstan; enacts normative decrees containing clarification on issues of court practices; develops proposals on improvement of laws and other normative legislative acts; manages and analyzes forensic statistical data. The Supreme Court

included the Chairman, chairmen of chambers, and judges, and consisted of the Supervisory Collegiums, Collegiums for Civil and Criminal Cases, and Plenary Court Session. Below the Supreme Court were Oblast Courts, the Astana City Court, the Almaty City Court and the Military Court of Troops. Oblast Courts, Astana and Almaty City Courts considered cases within their competence as *nisi prius* courts, courts of appeal, courts of cassation; cases of supervisory nature and cases involving new evidence; supervise rayon (city) courts; maintain and analyze forensic data; study and structure results of court practices, and perform other functions stipulated by the legislation. Like the Supreme Court, Oblast courts were specialized into the Supervisory Collegiums, Collegiums for Civil and Criminal Cases, and Plenary Court Session. Rayon courts acted as *nisi prius* courts for consideration of all cases, excluding cases within competence of other courts under the law. Unlike the Supreme Court and Oblast courts, rayon courts were not subdivided into Collegiums. Finally, the Military Courts were courts of original and specialized jurisdiction. While Kazakhstan did not have a Constitutional Court, *per se*, cases before the courts which give rise to questions challenging the constitutionality of laws or subsidiary legislation were reviewed by the Constitutional Council. The Constitutional Council could declare the law or subsidiary legislation

77. The Government was responsible for developing Kazakhstan's economic policy including policy on foreign trade. Overall policy in the area of foreign relations was overseen by the Ministry of Foreign Affairs. The Government's general economic policy, including its foreign economic policy, was developed and coordinated through the Ministry of the Economy and Budget Planning. The Ministry of Industry and Trade was the principal Governmental body responsible for generating State policy on international trade, including proposals on customs rates and duties which are subsequently implemented by the State Customs Committee; and attraction and allocation of foreign investments. The Ministry of Industry and Trade also assumed responsibility for issuing import and export licenses. State finance policy, including currency control and currency aspects of foreign economic relations, was determined by the Ministry of Finance. Administration of currency control was carried out by the National Bank through the issuance of licenses to conduct currency transactions.

78. Members of the Working Party asked whether the WTO Agreement had priority over Kazakhstan's national legislation and further sought a description of how, in legal terms, the WTO rules and commitments would be ratified. The representative of Kazakhstan stated that Article 4.3 of the Constitution of Kazakhstan stipulated that international agreements had priority over national legislation and that such international agreements were applied directly except for cases when it was necessary to adopt a law for international agreement to become applicable. Pursuant to Article 22 of the Presidential Decree "On the Procedure for Conclusion, Execution and Denunciation of

International Agreements of the Republic of Kazakhstan" of 12 December 1995, the Government and other concerned State bodies were obligated to ensure that Kazakhstan fulfilled all obligations it assumed under international agreements. He further stated that the obligations, which Kazakhstan would assume upon accession to the WTO, and which contradicted to the provisions of other international agreements, would take effect in Kazakhstan only after incorporation of appropriate amendments to such international agreements or after the expiry of their duration or their denunciation pursuant to the Presidential Decree "On the Procedure for Conclusion, Execution and Denunciation of International Agreements of the Republic of Kazakhstan", and the Vienna Convention "On International Treaty Law" of 23 May 1969.

[to be completed]

- **Authority of Sub-Central Governments**

79. In response to questions the representative of Kazakhstan noted that authority was divided between central and regional governments in Kazakhstan. Local governmental power was divided between representative bodies called Maslikhats and executive bodies called Akimats. Each Oblast (including major cities and the capital) has an Akim (appointed by the President at the recommendation of the Prime-Minister) and a Maslikhat. Each major city had an Akim appointed by an Oblast Akim. The deputies of Maslikhats were elected to four-year terms on the basis of universal and equal suffrage by secret ballot.

80. Governmental powers affecting foreign trade were devolved from national to local authorities in accordance with the following six principles: (a) relative autonomy to regulate region-specific economic relations; (b) delineation of specific jurisdictional activities in accordance with the Constitution and the Law on Local Representative and Executive Bodies; (c) reciprocal obligations among the different tiers of government to conform business operations to requirements of social, environmental and moral standards; (d) State support of specific sectors and regions and the promotion of inter-relations among local authorities, management bodies and business bodies; (e) allocation of budget resources and regional property within commercially sensitive margins; and (f) inter-governmental relations which promoted a unified approach to issues affecting, *inter alia*, foreign trade.

81. Some members of the Working Party requested confirmation that sub-central administrative authorities had no jurisdiction or authority to establish regulations or taxes on good and services in Kazakhstan independent of central authorities. In addition, some members requested a confirmation that in a situation where WTO provisions were not being applied or were being applied in a non-

uniform manner, central authorities would eliminate or nullify measures taken by sub-central authorities in Kazakhstan that are inconsistent with WTO provisions. In response, the representative of Kazakhstan stated that local bodies did not have the powers for establishing of instructions and taxes on goods and services in Kazakhstan. Only the higher legislative body was competent to impose of taxes and only the central executive bodies had the authority to establish instructions. He also stated that decisions of Akims (the representative of the Executive at the sub-national level) or of Maslikhats (local representative bodies) which may derogate from Kazakhstan's commitments pursuant to international agreements may be annulled by the President, the Government, a Senior Akim, as well as through court procedures. In addition, the General Prosecutor's Office exercised constant supervision over the exact and uniform application of laws and sub laws.

[to be completed]

IV. POLICIES AFFECTING TRADE IN GOODS

A. IMPORT REGULATIONS

- Registration

82. Noting the representative of Kazakhstan's confirmation that there were no State monopolies on foreign trade and that there were no restrictions on the right of foreign and domestic individuals and enterprises to import and export goods and services except as provided for in WTO agreements, some members of the Working Party asked what the requirements were for a firm or individual to trade in Kazakhstan. The representative of Kazakhstan replied that according to the Presidential Decree No. 2021 of 11 January 1995 "On Liberalization of Foreign Economic Activities", all enterprises of Kazakhstan were given the right to carry out foreign economic activities.

83. He further stated that the state registration process of legal persons includes the following activities: (i) checking the consistency of charter and other documents submitted for registration purpose with the relevant legislation of Kazakhstan; (ii) issuance of the registration certificate and assignment of the registration number; and (iii) inclusion of data in the integrated State Register. The registration procedure of legal persons in Kazakhstan was regulated by the Presidential Statutory Order No. 2198 of 17 April 1995 "On State Registration of Legal Entities", and other legislative acts. Article 2 of the Statutory Order defined tasks and objectives of the state registration process. According to Article 3 of the Statutory Order, all legal persons established in Kazakhstan were required to be registered, irrespective of the purposes of their establishment, the types of performed

activities, and the parties concerned. Branches and representations of legal entities located in Kazakhstan had to be registered for record purposes only.

84. More information was requested concerning the registration fees, the duration of the registration process, and the criteria used for registration of companies in Kazakhstan. The representative of Kazakhstan stated fees could be levied on the registration of legal entities, natural persons engaged in entrepreneurial activities, and on the right to be engaged in certain types of activities. He further noted that pursuant to Government Resolution No. 1660 of 19 December 2001 "On establishing fees for state registration of legal entities", the registration fee for: (i) state-financed institutions, public companies and cooperatives of condominium owners was one monthly evaluation index; (ii) legal persons, their branches and representative offices was twenty monthly evaluation indexes; (iii) children and youth public associations, their branches and representative offices was two monthly evaluation indexes; (iv) legal entities in the form of small businesses, their branches and representative offices was five monthly evaluation indexes, effective on the date of payment. The re-registration fee for legal entities, their branches and representative offices was equal to 50 per cent of their corresponding registration fees. The fee for issuing a duplicate of state registration (or re-registration) of legal entities, their branches and representative offices was equal to 25 per cent of their corresponding registration fees. The fee for state registration of discontinuation of legal entities, their branches and representative offices, was monthly evaluation index, effective on the date of payment. All fees and procedures applied equally throughout Kazakhstan at both the central and local levels.

85. Furthermore, according to Article 9 of the Presidential Decree No. 2198 "On State Registration" of 17 April 1995, the state registration and re-registration process of legal entities and their affiliates and representative offices for record purposes was required to take no more than 15 days from the day of submission of the completed application. According to Article 5 of the Presidential Decree, registration and re-registration process of small businesses were required to take no more than three days, while the terms for registration and re-registration of public associations could not exceed ten working days, from the day of submission of the completed application. Natural persons were entitled to undertake business activities without establishing a legal entity. Under the Law of the Republic of Kazakhstan "On State Support to Small Businesses", natural persons of the above category were recognized as small businesses. Natural persons engaged in business activities without establishing a legal entity must be registered as individual entrepreneurs with the local tax authority. The representative of Kazakhstan further stated that the criteria for registration, set out in the above-mentioned Presidential Decree No. 2198 "On State Registration", were of normative nature, and applicable to all businesses in Kazakhstan.

[to be completed]

- **Other duties and charges levied on imports but not on domestic production**

86. The representative of Kazakhstan stated that there were no other duties and fees on imported goods other than import customs duties currently in place, approved by the Resolution of the Government of the Republic of Kazakhstan No. 1389 of 14 November 1997, and fees for provided services.

[to be completed]

- **Tariff rate quotas, tariff exemptions**

87. The representative of Kazakhstan stated that Kazakhstan had applied, since 15 June 1997, as its tariff nomenclature the CIS Harmonised System nomenclature, which was based on "The Agreement on the Uniform Tariff Nomenclature of Foreign Economic Activities of the CIS Countries" of 3 November 1995. The CIS Harmonized System nomenclature was consistent with the Convention and General Rules of Interpretation (HS 96.) developed by the World Customs Organization. He further noted that the current tariff nomenclature was submitted to the Secretariat in September 1997. Furthermore, as of January 2005, Kazakhstan was expected to move from the 9-digit to the 10-digit uniform tariff nomenclature of the Euro-Asian Economic Community.

88. In order to apply tariff and non-tariff regulation measures for goods transported across the customs border of Kazakhstan and establish rules for the customs classification of goods in accordance with the HS CIS, the Customs Control Agency issued the decree No. 210 of 15 May 2003 on the Rules of adoption of preliminary decisions and on their standard forms.

89. The representative of Kazakhstan noted that the import tariff rates were established by the amended Resolution of the Government of the Republic of Kazakhstan No.1389 of 14 November 1996 "On Rates of Customs Duties Levied on Imported Goods". Kazakhstan's tariff policy was first of all aimed at satisfying the needs of consumers, and was therefore one of the most liberal in the CIS region and non-restrictive to foreign trade activities. Commitments made by Kazakhstan within the framework of international agreements as well as regional integration processes among the CIS and EurAsEC member countries were also incorporated into the country's tariff policy.

90. The import tariff consisted of 10,500 tariff lines. The significant majority of tariff items (9,382 items or 87 per cent) were subject to *ad valorem* tariffs; 1,217 items (11 per cent) were subject

to compound (or mixed) rates; and 164 items (2 per cent were subject) to specific rates. The *ad valorem* rates ranged from 0 to 30 per cent, except for two categories of goods related to ethyl alcohol (HS 2207 10 000 and 2207 20 000) and beer.

91. The import tariff rates for products imported from developing countries, eligible for special treatment under the general system of preferences (GSP) of Kazakhstan, were levied at the reduced MFN rates, while zero tariff rate applied to goods imported from the least developed countries. The rates of customs duties applicable to the products of unknown origin amounted to double MFN rates.

92. Under bilateral agreements concluded between Kazakhstan and the CIS countries (except for Turkmenistan), the products imported to Kazakhstan were exempt from customs duties, except for instances specifically excluded from the free trade regime. These exceptions applied to certain products commonly agreed upon by the CIS countries and were stipulated in the Protocol to the Agreement. Exceptions from the free trade regime applied toward certain products from Azerbaijan, Armenia, Georgia, Moldova, Uzbekistan, and Ukraine. For example, the list of imported products in Kazakhstan from the above-mentioned CIS countries, which were not covered by the preferential treatment regime, included salmon and sturgeon, caviar; fruit juices; mineral water and water with gas; alcohol and tobacco; certain types of clothes from natural leisure, clothes for children, footwear; bijouterie, cars, etc.

93. Some members of the Working Party asked whether companies would have to pay duties on goods temporarily imported to Kazakhstan. The representative of Kazakhstan replied that under the customs regime of temporary importation, certain categories of goods listed in the Resolution of the Government of the Republic of Kazakhstan No. 668 of 8 July 2003 "On Adoption of the List of Temporarily Imported Goods Exempt from All Customs Duties and Taxes and Temporarily Exported Goods Exempt from All Customs Duties", imported temporarily into Kazakhstan were exempt from all customs duties and taxes. Also, leasing objects listed in the Resolution of the Government of the Republic of Kazakhstan No. 1092 of 21 August 2001 "On Adoption of the List of Leasing Objects Subject to the Customs Regime of Temporary Importation of Goods and Vehicles", were exempt from all customs duties and taxes provided that all provisions of the acting legislation of the Republic of Kazakhstan on financial leasing were met.

94. The representative of Kazakhstan noted that goods not included in the above lists were subject to partial exemption from customs duties and taxes. Under partial exemption from customs duties and taxes, an importer was required to pay 3 per cent of the duty chargeable, had the goods been entered for free circulation, for each full or partial calendar month that the goods remained in Kazakhstan.

95. Goods not eligible for the regime of temporary importation were:

- industrial waste;
- spare parts and components for temporarily imported vehicles, consumables and samples, raw materials and semis, unless imported temporarily for promotion or demonstration purposes in single units;
- foods and beverages (including alcoholic beverages and tobacco goods), unless imported temporarily for promotion or demonstration purposes in single units; and
- goods prohibited for import into the Republic of Kazakhstan.

The term of temporary importation was determined by an applicant based on its tasks and objectives, and could not exceed three years after goods entered the territory of the Republic of Kazakhstan. The term of temporary importation could be extended beyond three years at the request of an applicant, if an acceptable justification was provided. To apply for extension of the term of temporary importation, an application was required to be lodged with the customs body not later than one month prior to the expiry of the initial term. No requirements on customs fees or resubmission of the customs declaration were applied to the extension of the term of temporary importation.

96. Some members of the Working Party asked whether Kazakhstan's laws covering tariff exemptions were implemented in regulations. The representative of Kazakhstan replied that normative acts were issued to further implement the concerned statutory provisions that were related to all customs duty exemptions set out in the Customs Code. He further confirmed that tariff rate quotas could be introduced in the future particularly in relation to obligations arising from the Customs Union agreement.

[to be completed]

- **Fees and charges for services rendered**

97. Numerous members of the Working Party asked how Kazakhstan planned to bring its licensing fee, its *ad valorem* customs processing fee (0.2 per cent of customs value), and any other fees in line with requirements of GATT Article VIII (that fees and charges should be related to the cost of services rendered). The representative of Kazakhstan replied that in order to bring the customs legislation of the country into conformity with WTO norms and rules, a new Customs Code was enacted on 1 May 2003. Article 293 of the Customs Code 2003 stipulated that customs fees could be levied for rendering the following types of services: (i) customs clearance; (ii) customs escort of goods; and (iii) services provided by warehouses owned by customs authority. Fees were based on -

the cost of services rendered in conformity with the Article VIII of GATT. Revenues generated by fees for customs services were remitted to the general revenues of the State budget.

98. The representative of Kazakhstan stated that the Government Resolution No. 669 of 7 July 2003 "On Adoption of Customs Charges, Fees and Payments Levied by Customs Bodies" established the fee for customs clearance of goods and vehicles that had been moved across the customs border by natural persons and legal entities, at €50 for the main form of the customs declaration, and €20 for every additional page of the customs declaration.

99. Some members of the Working Party requested further information on the basis on which charges for accompanying goods in transit were calculated. The representative of Kazakhstan stated that charges for customs escort of goods in transit were based on the cost of services rendered by customs officers. Under the Government Resolution No. 669, the following fees were applied for customs escort of goods: two monthly calculation indices for 50 km; four monthly calculation indices for 50-100 km; seven monthly calculation indices for 100 to 200 km; 14 monthly calculation indices for 200-400 km; 21 monthly calculation indices for 400-600 km; 29 monthly calculation indices for 600-800 km; 36 monthly calculation indices for 800-1000 km; 54 monthly calculation indices for 1,000-1,500 km; 72 monthly calculation indices for 1,500-2,000 km; 89 monthly calculation indices for a distance of more than 2,000 km. The fees included the salaries of customs officers who accompany the goods, as well as their travelling expenses, and per diem allowance.

[to be completed]

- **Application of internal taxes to imports**

100. The representative of Kazakhstan stated that only Value Added Tax (VAT) and Excise were tax applied to imports. He also stated that the sub-central authorities of Kazakhstan did not have the right to introduce any taxes on imports. New taxes could only be introduced via adoption of new legislation or amendments to the existing Tax Code by the central authorities. He also noted that procedures set up for the collection of excise taxes were similar to the procedures established for the collection of VAT.

[to be completed]

- **Value Added Tax**

101. Some members of the Working Party asked whether imports from other CIS countries were subject to VAT and excise taxes, or if they were still exempted. The representative of Kazakhstan

replied that under the Code of the Republic of Kazakhstan "On Taxes and Other Mandatory Payments to the Budget" No. 209-II of 12 June 2001, VAT was levied on both domestically produced and imported goods. The "country of destination" principle used for imposition of indirect taxes was applied to all countries, excluding natural gas, oil and gas condensate, imported from the Russian Federation. The imposition of VAT was regulated by Section III of the Tax Code 2001.

102. The representative of Kazakhstan further noted that the VAT rate was equal to 16 per cent and applied to the volume of taxable turnover. Export turnover, except for export of ferrous and non-ferrous scrap, were taxed at a zero rate. A taxable import value included the customs value of imported goods, determined in accordance with the customs legislation, as well as amounts of taxes and other mandatory payments to the budget effected for imports of goods to the country, except for VAT.

103. The following goods were exempt from VAT: 1) imported national currency, and foreign currencies (except for cases where currencies are imported for numismatic purposes), and securities; 2) goods, imported by natural persons within norms for duty-free import, set by the Government of the Republic of Kazakhstan; 3) goods, except for excisable goods, imported as a humanitarian aid in accordance with procedures, set by the Government of the Republic of Kazakhstan; 4) goods, except for excisable goods, imported as charity on the initiative of the State, national governments, international organizations, including for purposes of technical assistance; 5) goods imported for use by foreign diplomatic representative offices and offices of the same status, as well as for personal use by foreign diplomats and general staff of representative offices, including family members, residing with them; exempted from excises under international agreements to which Kazakhstan was party; 6) imported goods, subject to declaration in accordance with the customs legislation of Kazakhstan, under customs treatments providing for tax exemptions; 7) imports of drugs, including medical substances; medical (veterinary) products, including prosthetic appliances, devices for the deaf-blind, medical and veterinary equipment; materials and components required for production of drugs and diabetic products, medical (veterinary) products, including prosthetic appliances, and medical (veterinary) equipment. The list of products listed in this Sub-Paragraph had to be approved by the Government; 8) imports of mail stamps (except for imports for collection purposes); 9) imports of raw materials for production of paper currency performed by the National Bank of the Republic of Kazakhstan and by its subordinate bodies; 10) goods, imported under grants, provided by the State, national governments, and international organizations.

[to be completed]

- **Excise Taxes**

104. Some members of the Working Party requested information on the precise steps being taken by Kazakhstan to ensure its excise legislation and practice were consistent with the national treatment obligations of GATT Article III. The representative of Kazakhstan stated that excise rates for imported goods and goods produced domestically were the same with the exception of five categories of goods: alcohol, tobacco, automobiles, gasoline and diesel fuel and further stated that steps have been undertaken on elimination of discrimination in the context of excises imposed on goods of domestic production and imported from abroad. He further noted that at present, Kazakhstan is undertaking measures for a stage-by-stage unification of excise rates for domestic and imported goods. Unification of excise rates levied on domestic goods and goods imported to the Republic of Kazakhstan will inevitably result in the reduction of legal production volumes and increase in the share of the "shadow" turnover. This, in turn, will require development of improved mechanisms for administering excises levied on alcoholic products. At present, the Ministry of Finance of the Republic of Kazakhstan works on the implementation of account labels. The completion of the implementation procedures is projected for 1 January 2006. Excises levied on domestic goods and goods imported to the Republic of Kazakhstan shall be harmonized by 1 January 2006.

105. He later noted that Government Resolution No. 1108 "On Amendments to the Resolution of the Government of the Republic of Kazakhstan of 28 January 2000 No. 137" of 11 October 2002, had revised the excise duty rate on vodka produced in Kazakhstan from KZT 40 to 100 per litre. Moreover, under the Resolution of the Government of the Republic of Kazakhstan No. 1257 of 26 November 2002, the excise rate levied on beer and tobacco goods with (without) filter, produced in the Republic of Kazakhstan, had been raised from KZT 6 to 7 per 1 litre, and from KZT 145 to 180 per 1,000 units (KZT 95 to 100 per 1,000 units), respectively. Information on current excise taxes were provided to the Working Party in document WT/ACC/KAZ/40.

106. The representative of Kazakhstan added that excisable goods imported by natural persons within limits set by the Government of the Republic of Kazakhstan were exempt from excises. In addition, imports of the following goods were exempt from excises:

- Excisable goods required for operation of vehicles, involved in international transportation, *en route* and in the intermediate locations, as well as excisable goods, purchased abroad for repairs of damages caused by a road accident (breakdown);
- Goods damaged prior to being transported across the customs border of the Republic of Kazakhstan and rendered non-usable as products and materials;

- Goods imported for use by foreign diplomatic representative offices and offices of the same status, as well as for personal use by foreign diplomats and general staff of representative offices, including family members, residing with them; exempted from excises under international agreements to which the Republic of Kazakhstan is party;
- Goods, transported across the customs border of the Republic of Kazakhstan, exempted under customs treatment set by the customs legislation of the Republic of Kazakhstan, excluding for the "Issue of goods for free use"; and
- Alcohol containing products used in medicine (excluding balms) in containers of no more than 0.1 litre and registered in accordance with the requirements set out in the legislative acts of Kazakhstan.

[to be completed]

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

107. The representative of Kazakhstan stated that quantitative import restrictions could be established in the interest of, *inter alia*, national security, ethics and health. Some members requested clarification of the specific restrictions which could be imposed on the basis of ethics. The representative of Kazakhstan stated that import prohibitions could be imposed against products such as printed or painted materials directed toward undermining state and public system, promoting war, terrorism, racism as well as pornography.

108. Some members of the Working Party asked the representative of Kazakhstan to identify the quantitative restrictions on imports that were currently applied by Kazakhstan, listing the products affected and the respective relevant GATT/WTO rationale for each measure. The representative of Kazakhstan replied that by the Government Resolution No. 1243 "On introduction of restrictions of import and export of individual goods" of 5 December 1998, the quota was set up in the size of 3,000 tons for import of grinding and forged spheres (HS Item code—7325 91 000, 7325 99, 7325 99 990, 7326 11 000, 7326 19, 7326 19 100, 7326 19 900).

109. Some members of the Working Party asked whether Kazakhstan still limited alcohol imports to 20 per cent of domestic consumption. They stated that such a practice was a violation of Article XI of the GATT, and that the practice should be eliminated as soon as possible. The representative of Kazakhstan replied that under the Resolution of the Government No. 1031 of 27 June 1997 "On Licensing of Import of Ethyl Alcohol and Alcoholic Products (Excluding Beer) in the Republic of Kazakhstan", the share of imported ethyl alcohol and alcoholic products (excluding beer) should not exceed 20 per cent of the annual volume of their production in the customs territory of Kazakhstan.

This measure was introduced to regulate the increased imports flow, ensure collection of all tax receipts to the budget, and protect the rights of domestic producers and consumers. Government of Kazakhstan intended to remove this restriction by the time of accession to the WTO.

110. Some members of the Working Party requested information on the possibility of the introduction of import quotas in cases connected with "an emergency measure according to Article XIX of the GATT". The representative of Kazakhstan replied that as of the date of accession to the WTO, Kazakhstan would not introduce import quotas except for cases related to emergency measures stipulated in the Article XIX of the GATT. He further stated that Law No. 337-1 "On Measures for the Protection of Domestic Markets in the Process of Imports of Goods" took effect as of 28 December 1998. The content of the Law was drafted in full conformity with the norms and requirements set out in the corresponding WTO Agreements.

111. In response to questions, the representative of Kazakhstan stated that the system of import licensing operating in Kazakhstan was not linked to any quotas. Except where otherwise permitted under WTO rules, Kazakhstan did not envisage using any systems other than certification and licensing in the future. In response, members of the Working Party urged Kazakhstan to ensure that relevant legislation guaranteed that WTO-incompatible restrictions could not be introduced in the future.

[to be completed]

- **Import licensing procedures**

112. In reference to requests for an updated list of information concerning Kazakhstan's imports subject to import licensing, the representative of Kazakhstan presented up-to-date information in Appendix 2 of WT/ACC/KAZ/37/Add.1 of 20 September 2002 and stated that list of goods, subject to import licensing, was 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 licensing system of Kazakhstan regulated import of a limited number of goods to ensure protection of human life and health, environmental protection, protection of *ordre public*, as well as for reasons of national security.

113. The representative of Kazakhstan clarified that import licensing extended to chemical products for plant protection; veterinary drugs and equipment; narcotic, psychotropic products, and precursors; poisons; civil and in-service firearms and cartridges, explosives, detonation, and pyrotechnical devices; industrial waste; x-ray units, devices and equipment using radioactive

substances and isotopes; raw opium; wine; ethyl alcohol; complex alcoholic half-finished products, excluding perfume based products, used in beverages; white spirit; other light distillates, average distillates for specific processing and chemical transformations (see Appendix 2 of WT/ACC/KAZ/37/Add.1).

114. More information was also requested on the licensing regime for spirits, including WTO justifications, procedures, criteria, requirements and fees. The representative of Kazakhstan replied that, as stipulated in the Government Resolution No. 1031, ethyl alcohol and vodka were subject to import licensing. The following documents were necessary to obtain a licence: (a) an application, (b) a document confirming the payment of licence fee, (c) a copy of certificate of state registration, (d) a copy of a contract (agreement) on sales-purchase with participants of international trade deal, (e) a licence of production of alcohol products in case of importing ethyl alcohol; and (f) a certificate of origin.

115. Concerning licensing requirements, the representative of Kazakhstan stated that qualification requirements varied from one type of licence to another and that the state bodies, responsible for issuing licenses, elaborated qualification requirements for each type of licence. He noted, however, that to produce alcoholic products, an applicant for a licence had to submit an application, proof of payment of licence fee, copy of certificate of registration (if a legal entity was applying for licence) and documents demonstrating appropriate qualification to apply. The qualification requirements to produce alcoholic products included the following:

- equipment and observance of production regulations including bottling of alcohol products according to current rules;
- water, steam, freezing, electricity and sewage capacities ensuring proper regulation of production;
- scaling and measuring facilities;
- wine storage and spirit storage facilities;
- separate spirit reception unit in pouring department;
- storage capacities ensuring storing of products, raw materials, packaging and auxiliary materials according to requirement of normative documents;
- technological condition for production, bottling and storing of alcohol products;
- stationary communications on all stages of production;
- meteorological provision for all production including laboratory facilities;
- control-testing equipment for accounting of production;
- production laboratory for chemical and technological control over production;

- journal of chemical, technological and microbiological control of production;
- qualified staff of technological service and laboratory specialists;
- control system internal regime;
- trade mark of the entity registered in established order;
- apparatus-technological scheme of production with explanation of equipment, equipment arrangement plans; and
- observance of conditions ensuring quality of products according to current documents.

116. He further noted that in addition to the qualification requirements, the following were also required:

- copy of reference from taxation body on registering as a taxpayer;
- conclusion of sanitary, ecological and anti-fire supervision bodies; and
- an act of reviewing of qualification level of production for correspondence to required requirements under production of alcohol products. Such act shall be prepared by specialists of GosStandard.

117. He further noted that the standard fee for a licence was six monthly evaluation indexed equivalent to US\$40 (as of October 2003). This fee was the same for obtaining any type of licensed products. Licenses were granted on a national treatment and MFN basis. The fee for a licence on implementation of certain defined activities was regulated by Resolution of the Government of the Republic of Kazakhstan No. 100 of 24 January 2002 "On approval of fees for licenses of defined activities".

118. Concerning activity licensing, some members of the Working Party asked for an updated list of activities subject to licensing. The representative of Kazakhstan replied that 31 modifications were made to Law No. 2200 "Concerning licensing" of 17 April 1995. Activities previously subject to obligatory licensing, were withdrawn by Law No. 277-1 of 9 July 1998, Law No. 283-1 of 10 June 1998, and Law No. 471 of 8 October 1999.

119. Noting that a decision to issue the licence was required by various offices and ministries of the Government of Kazakhstan and that these licenses should therefore be considered as non-automatic, some members of the Working Party requested justification for this restriction including information on the specific criteria required by the deciding offices and ministries. The representative of Kazakhstan replied that the licensing was non-automatic. Import licenses for the above-mentioned goods were issued by the Ministry of Industry and Trade of the Republic of Kazakhstan upon preliminary coordination with concerned ministries and agencies, except for import licensing for ethyl

alcohol and alcoholic products (excluding beer), performed by the Ministry of Finance of the Republic of Kazakhstan. Licenses were valid for a term of no more than 12 months, but may be renewed at the request of an applicant to allow fulfilment of contractual obligations for a term of no more than one calendar year. Refusal to issue a licence, termination of validity, revocation and suspension were regulated by Law No. 2200 "Concerning Licensing" of 17 April 1995. He finally stated that these measures were in conformity with Article XXI of GATT 1994 and Agreement on Import Licensing Procedures.

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- **Customs valuation**

120. Some members of the Working Party asked for additional details concerning the Customs Code in relation to the requirements of GATT 1994 Article VII and the Customs Valuation Agreement, in particular Annex 1 of that Agreement. Some members were concerned that the present situation appeared to rely on arbitrary valuation methods and use of minimum prices. The representative of Kazakhstan noted that the Government of Kazakhstan had adopted a new Customs Code on 5 April 2003 (WT/ACC/KAZ/39/Rev.1 refers). He further stated that the customs valuation of goods imported to the customs territory of the Republic of Kazakhstan was based on the principles of customs valuation set out in Article VII of GATT and the Agreement on Implementation of Article VII of GATT. Under Article 308 of the Customs Code, customs valuation of imported goods were based on:

- cost of a contract on imported goods;
- cost of a contract on identical goods;
- cost of a contract on homogenous goods;
- deduction of costs;
- addition of costs; and
- reserve.

As a general rule, customs valuation was based on the transaction value of the imported goods. Where application of this method is impossible, other methods shall be used in the order shown above until determination of the customs value becomes possible. Article 309 of the Customs Code stipulated that customs valuation of goods must include related costs (commission and brokerage), unless already included, in the cost of transaction.

121. To trigger further improvement of customs valuation procedures applied to imported goods and implementation of an independent examination system, the Government of Kazakhstan adopted

the Rules for Independent Examination of Consistency of Customs Value, Quality, and Quantity of Imported Goods (the Resolution of the Government of the Republic of Kazakhstan No.782 of 16 July 2002). These Rules determine procedures for independent examination of consistency of the customs value, quality, and quantity of goods imported to Kazakhstan. Issues relating to customs valuation of goods were also regulated by the Decree of the Customs Committee of the Republic of Kazakhstan No. 209 of 15 May 2003 "On Adoption of Rules on Completion of Declarations of Customs Value and Customs Value Adjustment Forms".

122. More information was sought about the existing procedures for judicial review of customs measures. In response, the representative of Kazakhstan noted that the Code "On Administrative Violations" was adopted by the Law of Kazakhstan of January 2001 No. 155-III and was published in official editions. It established the legal and administrative measures with a view of achieving the legitimate objectives determined by Article 2.2 of the Agreement on TBT (national security, prevention of fraudulent practices, protection of health and people's security and the protection of environment) without having the effect of creating unnecessary obstacles to international trade. It further identified the bodies authorized to consider the cases of administrative violations and to impose sanctions and has provisions regulating administrative measures for violations of legislation on standardization, certification, unity of measurements; veterinary and quarantine control; plant quarantine; and veterinary.

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- **Rules of origin**

123. The representative of Kazakhstan stated that his country used a uniform system for determination of the country of origin of all goods for tariff and non-tariff measures, applied to imported and exported goods. The existing system was developed by the World Customs Organization and covered by the Kyoto Convention.

124. The country of origin is the country where a good was produced in full or underwent significant processing, in accordance with criteria set out in the Customs Code. Goods produced in one country include natural products, e.g. live animals, mineral resources, fruits, etc., while goods processed to a significant degree comprise goods produced jointly by two or more countries. In the latter case, the degree of processing is determined by numerous criteria, e.g. changes in tariff codes, value added, and listed operations involved in processing procedure. Several countries, customs unions, regions, or parts of countries may be viewed as the country of origin, provided that this is justifiable for purposes of determination of the country of origin.

125. He further noted that imports of goods to the customs territory of Kazakhstan required a certificate of origin only for instances where: (i) preferences are granted in respect of the customs tariff on goods, transported across the territory of Kazakhstan; (ii) the customs body has sufficient grounds to believe that goods originate in a country, imports of which shall be subject to non-tariff measures; (iii) such requirement is stipulated by international agreements to which Kazakhstan is party, as well as by the legislation of Kazakhstan on sanitary and epidemiological safety, environmental protection, protection of human health, consumer rights, *ordre public* and national security. A certificate of origin shall not be required for any other cases.

126. The representative of Kazakhstan further noted that a certificate of origin should state that the good in question originates in a given country, and contain: (i) a written declaration of the applicant certifying that the good conforms with the corresponding criteria of origin; (ii) a written certification, issued by the competent body of the country of export, to the effect that the information contained in the certification of origin is correct and reliable. The customs body has the right to prohibit transportation of the good across the customs body of Kazakhstan only where it has sufficient grounds to believe that the good originates in a country, whose goods may not be allowed for transportation under international agreements to which Kazakhstan is party, or under the national legislation. The grounds for the above action should be made available to the applicant in writing. Failure to provide a correctly drafted certificate (hygiene certificate) or information on the origin of a good should not be viewed as a sufficient reason for denial of transportation of the good across the customs border of Kazakhstan.

127. Some members of the Working Party noted that the provisions on rules of origin of the Customs Code 2003 did not fully meet the provisions of the WTO Agreement and Annex II of the WTO Agreement, in particular Article 2(h) and Annex II, paragraph 3 (d). Under these provisions, any request for an assessment of the origin of the import would be accepted even before trade in the goods concerned began, and any such assessment would be binding for three years. The representative of Kazakhstan replied that preliminary decision by customs authority on the origin of goods were made upon the request of an applicant. As stipulated in Article 49 of the Customs Code 2003, preliminary decision made by customs authority was valid for the period of three years. In case there was no need for additional information or expertise, customs authority must reply to the applicant within ten working days. If there was still need for further information, the applicant had to provide required documents by the date shown in the written notice from customs authority. In case of the rejection of the application, the customs authority must provide the applicant with a written explanation of the reasons for rejection within seven days. Thus, the provisions of the Customs Code of Kazakhstan concerning rules of origin were in conformity with the WTO agreement.

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- **Other customs formalities**

128. Concerning Kazakhstan's requirement for traders to have an import or export "Transaction Passport" which contained a copy of certain information contained on customs documentation normally required for clearance, some members of the Working Party expressed their concern that this instrument duplicated documentation already available to customs authorities and constituted a burden to trade. The representative of Kazakhstan stated that the purpose of a transaction passport was to assure compliance with the foreign currency legislation of Kazakhstan. The transaction passport/certificate contained information on foreign economic operations and allowed to monitor movements of goods and money involved in export and import operations. Currency controls ensured that currency earnings flowed into the country in full and in a timely fashion as well as ensured a proper use of foreign currency and KZT for the purpose of import.

129. Under the Law of Kazakhstan No. 54-1 of 24 December 1996 "On Currency Regulation" and the Resolution of the Board of the National Bank of the Republic of Kazakhstan No. 343 of 5 September 2001 "On Approval of the Instruction on Organization of Import and Export Currency Control in the Republic of Kazakhstan" a transaction passport/certificate were issued based on the submitted sales contract for a sum exceeding US\$5,000. The issue of transaction passports/certificates represented an automatic process and was performed unconditionally within one day upon submission of the contract. The process of obtaining a transaction passport/certificate was not related to the registration of companies with the bodies of justice. The former was issued by customs authority for each foreign trade operation exceeding a sum of US\$5,000, while the latter represented a one-time measure related to the registration of a legal entity with the justice authorities.

130. The representative of Kazakhstan further stated that a transaction passport/certificate was not used to balance trade in any way and as such did not represent an obstacle to foreign economic activities or "an additional burden on trade". Each transaction passport/certificate had its unique number and included brief information on the contract. Electronic monitoring based on the database of transaction passports/certificates allowed to reveal "fictitious" foreign economic operations, involving transfers of the "shadow" capital to offshore zones.

131. Concerns were also expressed by some members of the Working Party regarding the required provision of an electronic copy of the import and export declaration as part of the mandatory customs documentation, the granting of an exclusive licence to provide these electronic copies declarations to the "Accept Corporation", the cost to the importer of the electronic copy and the requirement that importers present a paper copy of the import declaration which undermines the rationale for requiring

an electronic copy in the first place. They further requested more information on what steps the Government and the State Customs Committee have taken to ensure the confidentiality of the customs value information that importers were required to present to the "Accept Corporation" in order to obtain an electronic copy of their declarations, as required by Article X of the GATT 1994, Article 10 of the WTO Valuation Agreement, and Article 124 of the "Law on Customs Business". The representative of Kazakhstan stated that the introduction of a Unified Automated Information System ("UAIS") was necessary to fulfil the obligation of the Customs Agency to provide full and reliable information and statistics and to comply with international standards (electronic copies are used in the United States, European Union and other members. In order to establish UAIS, the government granted an exclusive licence to the "Accept Corporation" to create electronic copies of customs documents. In 1999, the Government discontinued an exclusive licence granted to the "Accept Corporation". Currently, services related to provision of electronic copies of customs documents were based on competitive principles. The project on implementation of the Unified Automated Information System ("UAIS") was being implemented independently by the Customs Control Agency of Kazakhstan. In 2004, Kazakhstan planned to start implementation of the "Electronic Customs" project which will serve as a framework for transition to the use of electronic customs documents. Measures on protection of confidential information of the participants of external trade activities were envisaged for the UAIS. The introduction of new technologies required gradual cancellation of the previous one and that is the reason of use of paper customs declaration.

132. Some members of the Working Party asked questions on the results of the review of the temporary customs warehouse storage regime. The representative of Kazakhstan replied that temporary storage regime was regulated by Chapter 13 of the Customs Code of the Republic of Kazakhstan (Articles 87-111). Temporary storage of goods was not limited or restricted to the use of temporary storage warehouses, but may also involve storage in vehicles, warehouses owned by a receiver of goods, as well as special quarters allocated and equipped either for indoor or outdoor storage. Furthermore, licensing requirements and fees charged for temporary storage did not extend to storage of goods in vehicles, warehouses owned by a receiver of goods, as well as in special quarters allocated and equipped either for indoor or outdoor storage. Pre-arrival declaration procedures, periodic declaration procedures, and procedures related to the customs clearance of urgent consignments stipulated that goods and vehicles cleared under high-priority and simplified procedures be released directly without placement in a temporary storage location (temporary storage warehouses). No physical placement of goods and vehicles in a temporary storage warehouse was required where they are cleared by Customs within one business day.

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[to be completed]

- **Preshipment inspection**

134. The representative of Kazakhstan stated that on 31 January 1997 the Program of Pre-shipment Inspection (PPI) was eliminated. However, in order to further improve the customs valuation procedures applied to imported goods and implementation of an independent examination system in Kazakhstan, the government by its Resolution No. 782 of 16 July 2002 set up the Rules for Independent Examination of Consistency of Customs Value, Quality, and Quantity of Imported Goods. The independent examination of customs value, in contrast to the pre-shipment inspection, implied a price audit (control over the compliance of declared information to their real cost) of imported goods upon their arrival in Kazakhstan. Independent price audit of imported goods was introduced to increase the flow of customs and tax revenues to the state budget, minimise wrongful acts on the part of customs officials and to prevent capital flight. The rules determined procedures of an independent examination of whether customs value of goods imported to the country corresponded to their quality and quantity.

[to be completed]

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

135. The representative of Kazakhstan noted that the use of anti-dumping, safeguard, and countervailing measures was regulated by the Laws "On Anti-Dumping Measures" No. 421-1 of 13 July 1999, "On Measures for the Protection of Domestic Markets in the Process of Imports of Goods" No. 337-1 of 28 December 1998, "On Subsidies and Countervailing Measures" of No. 441-1

of 16 July 1999. The above laws defined rules and procedures for use of anti-dumping, safeguard, and countervailing measures for purposes of protection of the domestic market against adverse effects of the increased share of imports or supplies of dumped or subsidized goods. Under these laws, anti-dumping, safeguard, and countervailing duties may only be introduced when there was evidence that serious damages had incurred or were highly possible for domestic producers, resulting from the increased share of imports, dumping, or subsidized imports. These measures could be implemented for a limited term, sufficient for remedial actions relating to incurred damages and adaptation of domestic producers to the competitive environment. Thus, the legislation of Kazakhstan was in conformity with the relevant WTO norms and requirements. Some members of the Working Party noted that the Laws "On Anti-Dumping" appeared to conform to the provisions of the Agreement on Implementation of Article VI of the GATT 1994 but that further clarification of certain provisions was still necessary.

136. In respect to questions concerning judicial review of an anti-dumping matter, the representative of Kazakhstan stated that it was performed by courts which were neutral and independent from the executive power, like the judicial review of any administrative or other decision of an executive body of Kazakhstan. Accordingly, the executive body involved in anti-dumping investigation could not interfere with any legal proceedings pending before a court.

137. He further explained that the Law "On Anti-Dumping" stipulated that all issues concerning the investigation of anti-dumping case were within the competence of the executive power. Specifically, review or cancellation of anti-dumping measures should be carried out by the Government upon submission of the case by an Authorized Body. Under Article 53 of the Law, in case the complainant disagreed with the decision of the executive body on anti-dumping investigation, he/she had the right to appeal to the court. The current Code of Civil Procedure set forth the general procedures for filing *inter alia* a complaint in court to review administrative actions. In the case of an anti-dumping action filed by a foreigner or non-resident, Articles 15 and 118 of the Code of Civil Procedure provided that such a claim could be brought to the court having jurisdiction and located as close as possible to the decision-making body. Oblast courts and the Almaty city court were considered to be courts of first instance. All details of court procedures were regulated by the Law on the Procedure for Consideration and Settlement of Economic Disputes and the Code of Civil Procedure. Where the complainant was a legal entity, the claim would be considered by the Board of Economic Disputes within the court of first instance. Where the complainant was a physical person, then (in addition to the aforementioned procedures) such individual could also be guided by the Law on the Procedure for Appealing in a Court Against Actions of the Bodies of State Administration.

[to be completed]

B. EXPORT REGULATIONS

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

138. The representative of Kazakhstan stated that export customs duties were introduced for a limited number of goods and applied based on the principle of the most favourable treatment, except for goods, exported to the countries of the Customs Union. Any changes in rates of export customs duties were officially published.

139. The representative of Kazakhstan further noted that in order to balance domestic demand on wool, the Resolution of the Government of Kazakhstan No. 841 of 5 June 2000 introduced export customs duties on goods exported to countries, other than member-countries of the Customs Union, including: cattle hides or hides of animals of the family *Equidae*, sheepskins or lambskins, other raw hides and skins, un-carded and uncombed wool, restored wool. In order to normalize the market of ferrous and non-ferrous scrap and waste, ensure supply of raw materials to domestic enterprises, the Resolutions of the Government No. 1713 of 14 November 2000 and No. 841 of 5 June 2000 introduced export customs duties on ferrous scrap and waste, iron-and-steel products, copper scrap and waste, secondary unprepared aluminium, parts of railway and tram locomotives.

140. Some members of the Working Party requested that Kazakhstan provide a WTO justification for the non-imposition of export duties on wool exported from Kazakhstan to the European Union. The representative of Kazakhstan replied that, according the Government Resolution No. 841, goods exported to member-states of the Customs Union, including wool, were exempt from export duties. The representative of Kazakhstan further clarified that under the Agreement between the Government of the Republic of Kazakhstan and the European Coal and Steel Community on Trade in Certain Steel Products (Article 2. p.3), quantitative restrictions, customs duties, charges or any similar measures on the export of ferrous scrap and waste under the EC Combined Nomenclature heading 7204 were prohibited among the parties. Based on the above-mentioned Agreement, the Government Resolution No. 841 stipulated that customs duties were exempt from the export of ferrous scrap and waste to the European Union member-states. However, this provision did not apply to the export of wool from Kazakhstan to the European Union.

141. Rates of customs duties levied on exported goods were established by the Government based on the proposal of the Ministry of Industry and Trade, submitted upon coordination with all interested ministries and agencies, and had to enter in force in 30 days after their official publication.

[to be completed]

- **Export restrictions**

142. Some members of the Working Party requested information on any mechanisms in place that could operate to restrict the free exportation of goods from Kazakhstan. These members stated that Article XI of the GATT 1994 provided that "other measures", including minimum export prices, could not be used to prohibit or restrict the exportation of any product destined for the territory of another member. They also noted that although minimum export prices had previously been eliminated, it appeared that the authorities were still operating a system with a similar effect. In response, the representative of Kazakhstan stated that Government Resolution No. 994 of 19 July 1997 had eliminated contract registration at the commodity exchange.

143. The representative of Kazakhstan further noted that for the purposes of preservation of forests, reduction of instances of illicit lumbering, export of lumber, sawed timber, and wood materials, listed under groups 4401, 4404, 4406-4409, and 4418, was prohibited by the Resolution of the Government No. 785 of 16 July 2002. In pursuance of the Agreement concluded with the European Union on trade in products of steel, a number of quantitative restrictions were introduced on specific types of steel products exported from Kazakhstan to the European Union countries.

[to be completed]

- **Export licensing**

144. The representative of Kazakhstan stated that export licenses were automatic and not linked to quotas. The licensing system of Kazakhstan regulated import and export of a limited number of goods. To ensure protection of human life and health, environmental protection, protection of law and order, as well as for reasons of national security, the Government Resolution No. 1037 of 30 June 1997 introduced licensing on the export of the following goods: wild animals; wild growing plants; veterinary drugs and equipment; ivory, horns, hoofs, antlers of Siberian stags, corals; vegetable and animal raw materials of recognized medical value; narcotic, psychotropic products, and precursors; poisons; yellow phosphorus; civil and in-service firearms and cartridges; explosives, detonation, and pyrotechnical devices; semi-precious stones and products thereof. The representative

of Kazakhstan added that certain types of textile and steel products were also subject to licensing in pursuance of the international obligations of Kazakhstan.

145. Export licenses were issued by the Ministry of Industry and Trade upon preliminary coordination with corresponding ministries and agencies. Licenses were valid for a term of no more than 12 months, but may be renewed at the request of an applicant to allow fulfilment of contractual obligations for a term of no more than one calendar year. The standard fee for export licence was six monthly evaluation indexed equivalent to US\$40 (as of October 2003). The fee for licence on execution of defined activities was regulated by Resolution No. 100 of 24 January 2002 "On approval of fees for licensing activities".

146. In response to questions concerning the rationale for the introduction of export duties and export licensing on scrap in November 2000, the representative of Kazakhstan stated that Kazakhstan had adopted Resolution No. 1713 "On measures for regulating of secondary non-ferrous and ferrous metals" of 14 November 2000 to simplify the waste market of nonferrous and ferrous metals, raw materials supply of domestic enterprises, producing copper products. The representative of Kazakhstan later added that export licensing on scrap was cancelled by the Government Resolution No. 924 of 19 August 2002 "On Introduction of Amendments to the Resolution of the Government of the Republic of Kazakhstan No 1037 of 30 June 1997".

147. While noting that export licensing of pharmaceutical and medical products was for "medical safety", some members of the Working Party asked what the purpose was for monitoring medical safety of its exports. The representative of Kazakhstan replied that the purpose of monitoring safety of pharmaceutical and medical products was to prevent the export of low quality pharmaceutical and medical products and prevent unfavourable economic consequences for Kazakhstan in the form of penalties and damages.

148. Noting that Kazakhstan required export licenses for the reason of "economic safety" for several groups of products, and recalling Article XI of the GATT 1994, providing that export licensing may not be used to prohibit or restrict the exportation or sale for export of any product destined for the territory of another member, some members requested more information concerning the "economic security" reasons for restricting export. The representative of Kazakhstan replied that "economic security" reasons were used with the purpose to monitor the export of natural resources, but not to reduce internal prices of inputs or to favour the raw material needs of domestic firms.

149. To fulfil the country's international obligations on non-proliferation of nuclear materials, technologies, armaments, and weapons of mass destruction, the Government adopted a schedule of

goods subject to export control. Under the Resolutions of the Government No. 1282 of 18 August 2000 and No. 1999 of 14 December 1999, goods included in the schedule were subject to licensing requirements.

[to be completed]

- **Export subsidies**

150. The representative of Kazakhstan stated that the Development Bank of Kazakhstan granted soft loans for export of non-ferrous products and gold.

[to be completed]

C. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS

- **Industrial policy, including subsidies**

151. Some members of the Working Party requested more information on any subsidies and on the objective criteria and guidelines that governed the availability of regional subsidies and their use by regional bodies. The representative of Kazakhstan replied that pursuant to the Law of the No. 373-II of 8 January 2003 "On Investments", government supported private investment projects in top priority sectors of the national economy. Under contracts concluded between the authorized body and investors, government granted tax privileges, soft loans, exemption from customs duties for imported products, rescheduling of debts of industrial enterprises as well as railroad transportation preferences for a term calculated based on the amount of investments into fixed assets of Kazakhstani legal entities.

152. In selecting investment projects for preferential treatment, the following set of criteria was used: (i) whether investment project belonged to the list of top priority sectors; (ii) whether the investor made investments into fixed assets of a legal entity of Kazakhstan to enable either establishment of a new enterprise or expansion and modernization of existing enterprise using advanced technologies; and (iii) whether the investor submitted a complete set of required documents, proving that his company had sufficient financial, technical, and administrative capacity to implement the investment project.

153. He further noted that tax privileges allowed investors to apply additional deductions from its aggregate annual income and exemptions from the property tax on new fixed assets put into service as part of the investment project, and the land tax on lands acquired and used to implement the investment project. The exemptions from customs duties were granted for imported products which

were not produced domestically and when domestic enterprises could not supply sufficient quantity of goods required for implementation of the investment project.

154. In response to questions, the representative of Kazakhstan clarified that the list of priority sectors of the Kazakhstani economy included: (i) the chemical industry, (ii) metallurgical industry, (iii) machinery construction, (iii) textile industry, (iv) production of furniture, (v) paper industry, (vi) construction and (vii) pharmaceutical industry. In 2002, tax benefits and preferences were granted to the chemical, textile, metallurgical industries, machinery construction, etc.

155. In addition, the Development Bank of Kazakhstan granted soft loans for implementation of investment projects in priority sectors of economy, including machinery construction, metallurgy, textile industry, production of leather, leather goods, and footwear, production of electric and electronic equipment, as well as a number of soft loans guaranteed by the State.

156. Members of the Working Party requested more information on the legal basis of the existing subsidies and specific proposals for their elimination. Members stressed the importance of such information to help discussions to move forward. In response, the representative of Kazakhstan stated that Kazakhstan is a land-locked country, and its remoteness from major commodity markets, lack of direct access to major commercial seaports, and the vastness of its territory, all resulted in a very high share of transportation costs in the products value. In this connection, the decree of the Chairman of the Agency of Kazakhstan for Regulation of Natural Monopolies, Protection of Competition and Support of Small Business of 30 September 1999 No. 24-OD "On Establishing the Rules on Introduction and Cancellation of Discount Coefficients to the Tariffs on Transportation by Railroad, Subject to State Regulation" envisaged granting natural monopolists discounts on tariffs. These rules were developed in accordance with Law No. 156-XIII "Concerning Transport in the Republic of Kazakhstan" of 21 September 1994 (WT/ACC/KAZ/4 refers), Law No. 272 "On Natural Monopolies", and the Law "On Development of Competition and Limitation of Monopoly Activities" (WT/ACC/KAZ/4 refers) for the purpose of establishing the unified system of introduction and cancellation of discount coefficients for tariffs on transportation by railroad, subject to state regulation.

157. The representative of Kazakhstan clarified that the main criteria of expediency of the establishment of discount coefficients were the maintenance of tax payments to the budget, attraction of transport flows, increasing transport flows, possibility of using unutilised or under-utilised sections, ecological danger of by-product of industrial production. The discount coefficients were applied under the condition that the client did not have debt accounts receivable or if they were settled in accordance with the adopted schedule, and under the condition of increasing (or maintaining) the

volume of transport flows in comparison with the previous period. In 2001-2002, discount coefficients were granted for iron ore products, rolled products, coal, sulphuric acid, copper ore, and fuel oil. The discount coefficients represented temporary measure and were established for limited periods of time. The criteria of expediency for cancellation of discount coefficients were economic inefficiency of further application of the discount coefficients for the state and/or the transport company or disparity with the main criteria.

158. The representative of Kazakhstan further stated according to the decree No. 24-OD, the procedure of granting discount coefficients were not contingent on export performance of companies and applied to transportation of goods for both domestic consumption and export. Therefore, granting discount coefficients could not be considered as prohibited export subsidies within the meaning of Article 3 of the WTO Agreement on Subsidies and Countervailing Measures and Article XVI of the GATT 1994.

159. He further presented renewed information of domestic subsidies in document WT/ACC/KAZ/37/Add.3 of 25 April 2003.

Subsidy	Amount (in thousands US\$)
I. Tax exemptions and privileges provided under the Law "On State Support of Direct Investments"	9,433.8 (total)
Textile industry and production of garments	1,134.2
Production of leather, leather goods, and footwear	8.9
Woodworking and manufacturing of wood products	100.5
Cellulose and paper industry; publishing	1,092.3
Chemical industry	2,499.5
Production of rubber and plastic goods	427.0
Production of other non-metallic mineral goods	941.5
Metallurgy and production of finished hardware	66.0
Machinery and equipment production	3,001.5
Production of electric, electronic, and optical devices	4.4
Production of transportation means and equipment	0.0
Other	158.0
II. Total value of soft loans granted by the Development Bank of the Republic of Kazakhstan under the Law "On Development Bank"	16,436.0 (total)
Textile industry and production of leather, leather products, and footwear	4,740.0
Metallurgy	4,417.0
Production of electric and electronic devices	3,762.0
Production of machinery and equipment	3,517.0
III. Subsidies for railroad transportation of industrial goods under the Decree "On Adoption of Rules for Establishing and Cancellation of Decreasing Coefficients to Tariffs on Cargo Transportation by State Regulated Railroad Transport"	14,886.7 (total)
Coal	13,700.0
Ore	291.3
Slag	895.4

Subsidy	Amount (in thousands US\$)
IV. Rescheduled Debts under the Law "on Taxes and Other Compulsory Payments to the Budget"	22,200.0 (total)
Total	62,956.5

160. Some members of the Working Party requested confirmation that the so-called regional subsidies were budget transfers to regional governments for the sole purpose of carrying out governmental activities. The representative of Kazakhstan confirmed that in accordance with Law No. 3571 "On Budgetary System" of 1 April 1999, so-called regional subsidies were official transfers which lower level budgets received from higher level budgets within the limits of the approved amounts for the purpose of carrying out governmental activities, e.g., creating local infrastructure, running schools, making social income support payments unrelated to production of goods, etc.

[to be completed]

- Technical barriers to trade, sanitary and phytosanitary measures

161. In response to questions, the representative of Kazakhstan provided information on the conformity of legislation of Kazakhstan with the Articles of WTO Agreement on Technical Barriers on Trade (TBT) in document WT/ACC/KAZ/37, as well as document WT/ACC/KAZ/40 (Survey of the Foreign Trade Regime of the Republic of Kazakhstan). The legislation regulating relations arising in the context of standardization, metrology, and certification is based on the Laws of the Republic of Kazakhstan No. 433-1 of 16 July 1999 "On Standardization" (WT/ACC/KAZ/23 refers), No. 434-1 of 16 July 1999 "On Certification" (amended by the Laws of the Republic of Kazakhstan No. 141-II of 15 January 2001; No. 230-II of 11 July 2001; No. 272-II of 15 December 2001; No. 3788 of 10 June 2003) (WT/ACC/KAZ/23 refers) and normative acts containing specific norms in this area.

162. In response to questions concerning measures taken to meet the transparency and publication requirements of the TBT Agreement, the representative of Kazakhstan stated that the Centre for collaboration with WTO on issues of accreditation, standardization, metrology and certification started its work in 2002. Databases were being created according to international, regional and foreign standards. Interstate and state standards and part of international ones were transferred to electronic forms. Moreover, the representative of Kazakhstan stated that a draft program of standards development was being printed in the specialized Gosstandard publication: monthly "Informational Catalog (register) of Standards" (ICS), to enable interested persons to submit comments on draft standards. The comments were taken into account in the process of finalizing draft standards and the standards were only adopted after comments were received, listed and attached thereto, and agreement was reached between the interested organizations. He further noted that Law "On Standardization"

established a procedure to process and analyse comments. Moreover, drafts of state standards were published in the official publication of Gosstandard and electronic versions were placed on the website of Gosstandard www.memst.kz. Subordinate enterprises issued periodic publications, including the magazines "Gosstandard News", "Metrology", and "Monthly Informational Index of Standards", which contained draft standards, news, Articles and normative documents regulating standardization, metrology, and certification.

163. The representative of Kazakhstan further stated that there were no criteria to be eligible to receive draft standards and conformity assessments. Any interested organization could request and receive draft standards and conformity assessment procedures. Moreover, according to the requirements of the state system of standardization of Kazakhstan (ST RK 1.2-93 "SSS RK. An order on approval of state standards" item 2.3.3.) an order on approval of state standards and conformity assessment procedures were distributed to the following parties:

- the customer of the developed standard (e.g. ministries, producers associations);
- the enterprises introducing the standard;
- consumers associations;
- the bodies of State supervision, ministries and organizations if the draft of the standard establishes requirements related to their competence;
- the bodies having approved current interconnected normative documents that shall be revised or amended due to development of the draft standard; and
- other organizations and entities upon their requests.

164. In response to questions, the representative of Kazakhstan stated that compulsory certification applied to, products and services potentially dangerous for people's health and environment (motor transport, agricultural technique, weapons, sports, electro-technical, radio-technical electronic items, communication means, household chemistry, consumer goods in contact with persons' skin, food and water, construction materials and constructions, light industry products, medical products, raw fuel, toys, special technical guarding means etc.). An alteration was also made to Law No. 434-1 "On Certification", granting the right to producers to confirm the conformity of the products by declaration of conformity.

165. He further noted that the Committee on Standardization, Metrology and Certification of the Ministry of Industry and Trade was the only authorized body on standardization, metrology, and certification empowered to issue standards officially. He further added that under the Law "On Standardization" international and national standards of foreign countries were included into the categories of normative documents, effective in Kazakhstan. Thus, physical and legal persons were

granted the right to use directly international, regional and national standards and other normative documents on standardization of foreign countries as state standards or through registration for concrete user.

166. In response to questions concerning a clear distinction between technical regulations and standards required by the TBT Agreement, the representative of Kazakhstan stated that under the Law "On Standardization", a "technical regulation" was a normative document establishing obligatory requirements either directly or by reference to a standard or rule, or by reiteration of its content. It could also include or exclusively contain the requirements related to terminology, designations, package, marking to such extent, in which they were applied to the products, process (work), service or method of production. A "standard" was a document developed under agreement of all interested parties and approved by the authorized body on standardization, metrology, and certification. It established general rules, principles or characteristics as well as rules, principles or characteristics for repeated use regulating various forms of activities and its results. He further noted that in the standardization system of Kazakhstan, a "standard" included both mandatory and recommended requirements. He also noted that the modifications to the Law "On Standardization" established the technical regulations and requirements to products, processes and services that were applicable on physical and legal persons of Kazakhstan. Any interested party could obtain necessary information at the Enquiry Point.

167. The representative of Kazakhstan clarified that Article 11 of the Law "On Certification" provided for two types of certification: obligatory certification and voluntary certification. The latter was performed on the initiative of an applicant (producer, vendor) or consumer of a good, in order to determine its conformity with existing standards, while the former is absolutely required for safety reasons, to ensure protection of human life and health, as well as property and environment.

168. In response to questions posed concerning the procedure for mandatory certification, the representative of Kazakhstan stated that a manufacturer's self declaration could be filed for products, for which relevant tests could be easily performed by the producer and which could be adequately tested by any of the accredited bodies of the Gosstandard. Records of the testing procedures performed and documents that guaranteed safety of the product were also needed. Upon review of all necessary documents, a certificate could be issued by an accredited certification body. He further noted that there was no predetermined list of products that could not be tested by the accredited bodies of the Gosstandard, and that decisions as to whether a product could be tested, were made on a case-by-case basis. He noted that the testing laboratories were constantly being modernized, thus expanding the profile of their testing capabilities.

169. Some members of the Working Party asked why it was necessary to receive separate permissions from the chief veterinarian to transport imports within the Kazakhstan market even after obtaining a valid certificate of conformity, and why new certificates of conformity were needed for pharmaceutical imports that also already had obtained certificates of conformity. The representative of Kazakhstan replied that these requirements were legally justified under Article 2 of the Agreement on Technical Barriers to Trade, namely the intention to protect the health and safety of people or animals. These procedures were obligatory for importers as well as domestic producers of goods in transporting goods that are subject to the state veterinary control or included in the official list of products that require mandatory certification.

170. More information on what government bodies were responsible for which products and what certification was required was requested by some members of the Working Party. The representative of Kazakhstan replied that Gosstandard (the Committee on Standardization, Metrology, and Certification) was the only authorized body on standardization, metrology, and certification. Product certification procedures were performed by certification bodies accredited by Gosstandard. The list of accredited certification bodies and laboratories along with the list of products they certify or test was provided in Attachment A of document WT/ACC/KAZ/14 of 20 February 1998. Gosstandard published the list of accredited certification bodies and laboratories.

171. In reference to marking and labelling requirements, the representative of Kazakhstan stated that there were marking and labelling requirements for all merchandise that was subject to compulsory certification. The marking and labelling requirements were set out in the product standards.

172. Some members of the Working Party noted the existence of standards agreements with China and Turkey and asked whether the provisions of these agreements would be applied on a most-favoured-nation basis. In response, the representative of Kazakhstan stated that there was a Protocol of Cooperation with the Turkish Institute of Standards of 6 March 1996 and an Agreement with China on cooperation to provide quality and mutual inspection of import-export goods dated 5 July 1996. Kazakhstan was ready to negotiate and enter into agreement with any WTO Member regarding standards and affirmed that, once a Member of WTO, Kazakhstan would be ready to provide WTO Members on a mutual basis with MFN treatment in connection with technical barriers to trade.

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173. Some members of the Working Party noted that the legislative basis for complying with the Agreement on Sanitary and Phytosanitary Measures ("SPS") was not yet in place. They particularly

noted the lack of compliance with the transparency requirements of the SPS Agreement, such as the publication of proposed measures, provision of information for economic operators and the opportunity for them to comment. In response, the representative of Kazakhstan replied that work on bringing the legislative base in line with the SPS Agreement is being currently carried out. Thus, the Republic of Kazakhstan has adopted a number of new Laws, including Law No. 339 II "On Veterinary" of 10 July 2002 and Law No. 331-II "On Plant Protection" of 3 July 2002. Amendments and alterations to the Law "On Plant Quarantine", in which the norms and rules of the SPS Agreement were taken into account, entered into force in February of 2002. Following these developments, work will be initiated to harmonize and adapt subordinate legislative acts with the WTO requirements. Provisions on publication of measures, information for economic operators, and comment opportunities will be included in the subordinate legislative acts. Furthermore, he stated that with the view of harmonization of sanitary and phytosanitary measures, the Government of Kazakhstan has elaborated the "Program on Agriculture Standardization", for the period 2001-2006, aiming further reformation and improvement of the state standardization systems, creation of necessary conditions for the transition to the application of international standards and systems of quality control, and implementation of foreign recognized systems of valuation of goods, processes and services.

174. The representative of Kazakhstan added that the state sanitary and epidemiological control system had a database regularly updated with data submitted by regional branches. This information was accessible for all interested parties. Also, a monthly bulletin entitled "Environment and Human Health" was published. Overall, the sanitary measures of the Republic of Kazakhstan do not run counter to international standards, regulations, and recommendations, contained in provisions of the SFS Agreement and the GATT 1994.

175. In response to questions, the representative of Kazakhstan stated that the legislation of Kazakhstan contained no restrictions on foreign participation in the development of standards (e.g. participation in technical committees meetings, providing comments) including sanitary and phytosanitary standards.

176. The representative of Kazakhstan stated that, in accordance with the Government Resolution No. 1627 of 30 October 2000, the Ministry of Agriculture established the Information Marketing System to enhance transparency through regular exchange of analytic marketing information between agricultural producers, public bodies, and other participants of the agricultural market; effective regulation of the sectoral development and development of a national agricultural business system, as well as interaction with international organizations. Thus, the web-site www.minargri.kz was established. The Ministry of Agriculture started publication of the analytical bulletin "Agroinform"

which contained all legal acts, approved by the Ministry of Agriculture, including veterinary, quarantine and plant protection legislation. All interested parties and participants of the agricultural market could send their questions and comments to the Ministry of Agriculture using the following web-address: strategy@minagri.kz.

177. Some members of the Working Party stressed that Kazakhstan would have to implement and enforce the WTO Agreement on SPS from the date of accession. In response, the representative of Kazakhstan stated that the implementation of the provisions of the SPS Agreement demanded a transition to international standards for risk assessment. To achieve this, a sufficient period of time was necessary as the program required significant public and private financial investments. He further noted, that not less than a seven-year transitional period would be necessary for a step-by-step implementation of the Program of agriculture standardization, modernization of test centres, and training of staff in scientific methods of risk assessment. In response, some members of the Working Party stated that such a transition period was not appropriate.

[to be completed]

- **Trade-related investment measures**

178. Some members of the Working Party noted the existence of local-content and import substitution aspects to the Law "Concerning the Subsurface and its Utilisation" of 27 January 1996 and the Law "On Oil" of 28 June 1995, and requested information as to how Kazakhstan would bring these TRIMs inconsistent measures into conformity with WTO obligations. They further noted that Kazakhstan could not apply the transition provisions provided by Article 4 of the TRIMs Agreement because Kazakhstan was not an original Member of the WTO and therefore requested that the representative of Kazakhstan fully describe its measures to the Working Party and justify its position that a transition period should be allowed. The representative of Kazakhstan replied that the legislation of Kazakhstan required the use of domestically produced products and services provided that they meet the standards and other requirements, as a result of the bidding process. Both national and foreign companies were equally entitled to participate in the bidding process.

179. The representative of Kazakhstan further stated that the structure of industrial production was dominated by extraction and processing of hydrocarbon and mineral products, which provided the bulk of receipts to the Republican budget. The oil sector was the most attractive for foreign investors and forecasts showed that the volume of foreign investments to oil production would keep increasing. Hence, in order to ensure rational restructuring of the subsurface use, the government introduced the above mentioned provisions in its legislation with the view to achieve sustainable economic

development through diversification of the national economy and reduction of the economy's heavy dependence on mineral resources, creation of an environment conducive to development of processing industries and production of high value added goods, which would be competitive in both domestic and foreign markets.

180. The representative of Kazakhstan added that the Government launched an industrial innovation program for the period of 2003-2015, which was aimed at boosting the real sector of the economy through implementing innovative industrial projects, ensuring a strong linkage between Research and Development and industrial sector, and building high-tech production facilities, all of which required a sufficient period of time to bring the national legislation into conformity with the provisions of the TRIMs Agreement.

[to be completed]

- **State-trading entities**

181. The representative of Kazakhstan stated that there were no enterprises in Kazakhstan, either state-owned or privately-owned, in the meaning of Article XVII of GATT 1994. No exclusive or special trade and distribution rights or privileges were given to enterprises, including marketing agencies, so they could through purchase or sale influence foreign trade operations. Both public and private commercial enterprises functioned in a competitive market environment. Several members of the Working Party stated that they considered that many enterprises in Kazakhstan might be considered to enjoy *de facto* (if not *de jure*) exclusive or special privileges and requested that the representative of Kazakhstan provide a draft notification pursuant to Article XVII of the GATT 1994.

[to be completed]

- **Free zones, special economic areas**

182. In response to questions, the representative of Kazakhstan stated that at present, the Republic of Kazakhstan hosts only two special economic zones, namely "Astana – New City" and the "Aktau Seaport", established by the Decrees of the President of Kazakhstan No.645 of 29 June 2001 for a five-year- term from 2002- 2007 and No.853 of 26 April 2002 for a four-year-term from 2003-2007 correspondingly. Issues on establishment, legal regulation, and operation of special economic zones were covered by the Statutory Order of the President of the Republic of Kazakhstan No. 2823 of 26 January 1996 "On Special Economic Zones in the Republic of Kazakhstan", Customs and Tax Codes of the Republic of Kazakhstan and other legislative acts of the Republic of Kazakhstan.

183. Some members of the Working Party asked whether the Government of Kazakhstan intended to use its discretion to terminate, by decree, special economic zones, as a means to impose informally export performances or import substitution as conditions for continued activity within the special economic zones. The representative of Kazakhstan replied that the government of Kazakhstan did not intend to use this practice.

184. The special economic zone ("SEZ") "Astana – New City" was established to facilitate the development of the left bank area of the river Ishym in the new capital of Kazakhstan through attraction of investments and use of advanced technologies in construction, as well as through building modern infrastructure. The Law of the Republic of Kazakhstan of 5 July 2001 "On Changes and Amendments to Legislative Acts of the Republic of Kazakhstan on the Special Economic Zone" "Astana – New City" through Introduction of Changes and Amendments to Customs and Tax Codes of Kazakhstan provided for tax and customs benefits for construction of infrastructural assets, administrative and residential sectors in the territory of the established SEZ. Tax preferences were granted for: (i) VAT levied on the turnover of goods, (works, services) sold in the territory of the SEZ if consumed in full in the process of construction; (ii) land tax levied on land lots located in the territory of the SEZ used as construction sites; and (iii) property tax, levied on objects constructed within the operations of the SEZ. Customs duty exemption was granted for imports of machinery and equipment required for construction works and services in accordance with the project cost estimates.

185. He further noted that the legislation of Kazakhstan on free economic zones contained no restrictions on participation of foreign parties, except for the restriction related to the place of registration of the recipients of benefits which was a common requirement in many free economic zones all over the world. In particular, as for the SEZ "Astana – New City", customs and VAT exemptions were granted to legal entities of Kazakhstan, non-residents operating through an entity with a long-term presence and registered in the city of Astana, natural persons engaged in entrepreneurship without establishment of a legal entity, and residing on a long-term basis in the city of Astana.

186. The representative of Kazakhstan stated that the Decree "On Special Economic Zones in the Republic of Kazakhstan" and other legislative acts did not provide special preferences due to export performance of companies in special economic zones. Attracting investment, modern technology, and know-how to these zones were considered as the primary means to ensure that the accomplishment of objectives set by creating special economic zones. To this end, the Tax Code of the Republic of Kazakhstan stipulated exemptions from the payment of land tax and property tax

levied on fixed assets, and a reduced rate of the corporate income tax (50 per cent) applicable to entities engaged in the following activities in special economic zones:

- design, development, and implementation of pilot production and production of software, databases, and hardware;
- IT development based on artificial immune and neuron systems; and
- Research and Development for the development and implementation of IT projects

187. The special economic zone "Aktau Seaport" was created to facilitate socio-economic development of the region through building high-tech industry, attracting new investments, creating new jobs and introducing modern administration and economic management methods. The legislation on the establishment of the SEZ "Aktau Seaport" granted only duty free regime for goods imported for the needs of the SEZ, and did not envisage any tax preferences.

[to be completed]

- **Government procurement**

188. The representative of Kazakhstan noted that the acting legislation of Kazakhstan on government procurement consisted of the Law of Kazakhstan "On State Procurement" No. 321-II 3PK of 16 May 2002 and legislative acts defining procedures of state procurement of goods, works and services. The acting legislation of Kazakhstan corresponded to the requirements of international law, specifically, the Model Law of the United Nations Commission on International Trade Law (UNCINTRAL). The legislative acts regulating the issues of state procurement were the Rules for Organization and Holding of State Procurement of Goods, Works, and Services, approved by the Resolution of the Government of Kazakhstan No. 1158 of 31 October 2002; the Resolution of the Government of Kazakhstan No. 1163 of 3 November 2000 "On Special Procedures for State Procurement", the Standard bidding documentation, approved by the Order of the Chairman of Agency of Kazakhstan on State Procurement No. 8 of 31 October 2002, registered in the Ministry of Justice of Kazakhstan No. 2041 of 14 November 2002.

189. The representative of Kazakhstan added that under the Law on State Procurement of 16 May 2002, government procurement was defined as procurement of goods, works, and services effected by public bodies and agencies, public enterprises, and joint stock companies with the controlling share owned by the state, as well as by their affiliated legal entities, using available funds. A certain portion of goods, works, and services procured by public bodies and agencies, public

enterprises, and joint stock companies with the controlling share owned by the state, as well as by their affiliated legal entities, was used for their own production purposes.

190. The representative of Kazakhstan further stated that the Agency for State Procurement was the body responsible for development and implementation of state policies in the sphere of government procurement in accordance with the relevant national legislation. The main mechanisms of government procurement were implemented through public bidding, limited bidding (public and limited bidding may consist of two stages), procurement from one source, selection of a supplier based on requests of price offers, and market procurement. According to Article 3 of the Law of Kazakhstan "On Government Procurement", the main principles used in the process of procurement were: (i) the principle of equal opportunities for participation of potential suppliers of goods and services, unless there were provisions to the contrary in the legislation, (ii) the principle of fair competition among potential suppliers; and (iii) the principle of openness and transparency of government procurement procedures.

191. In response to questions, the representative of Kazakhstan stated that it was the intention of Kazakhstan to bring its legislation governing state procurement of goods and services into conformity with WTO-provisions and that Kazakhstan was considering whether to accede to the WTO Agreement on Government Procurement after accession to the WTO.

[to be completed]

- **Transit**

192. In response to questions from members of the Working Party, the representative of Kazakhstan stated that goods in transit across the territory of his country were exempt from customs charges and fees, VAT, and excise taxes. Kazakhstan allowed free transit to reflect provisions of GATT 1994 Article V, as well as of the international treaties to which it was a party. The only charge applied to transit of goods was levied for transportation services, and as such was limited to cover solely administrative costs or costs of services provided.

193. In response to questions, the representative of Kazakhstan noted that under the Customs Code of Kazakhstan, certain types of imported goods listed in the Resolution of the Government could only transit the customs territory of Kazakhstan provided that there was a guarantee of payment of all chargeable customs duties and taxes. Under the Government Resolution No. 524 of 4 June 2003, the above mentioned types of imported goods included alcohol and brands of alcoholic products, cigars and tobacco. As stipulated in the Article 339 of the Customs Code, payment of customs duties and taxes may be guaranteed in one of the following forms: (i) bonds, (ii) bank guarantee letter,

(iii) deposit on the deposit account of the customs body; and (iv) insurance contract. Procedures applied by customs bodies to enforce payment of customs duties and taxes were defined in the Order of the Customs Control Agency of Kazakhstan No. 199 of 13 May 2003 "On Adoption of Procedures of Customs Bodies to Enforce Payment of Customs Duties and Taxes". In response, some members of the Working Party requested that Kazakhstan review these requirements as they acted as they had excessively burdensome impact upon traders.

[to be completed]

- **Government-mandated counter-trade and barter**

194. The representative of Kazakhstan stated that the approval of the Government of Kazakhstan was not required to engage in counter-trade and barter transactions. Moreover, where barter trade was permitted, such products were subject to the same tariff and non-tariff measures as like products imported through normal channels. Kazakhstan applied the same WTO customs valuation-based system for such transactions as was applied to goods imported through normal channels; that is, if a transaction value of the imported merchandise could not be determined, then the goods were valued on the basis of one of the other valuation methods provided under the WTO value code, applied in sequential order. Barter and counter-trade, however, were not mandatory and were only company-to-company.

[to be completed]

- **Agricultural policies**

195. Information concerning domestic support and export subsidies in the agricultural sector was circulated in documents WT/ACC/SPEC/KAZ/6/Rev.1 and WT/ACC/SPEC/KAZ/7 and its addenda. In reply to questions from some members of the Working Party, the representative of Kazakhstan stated that no import licenses were required for agricultural purposes and, currently, there were no tariff rate quotas for any products.

196. The representative of Kazakhstan stated that with the view to provide financial support to agricultural producers, the state has allocated KZT 20 billion from the state budget in 2001, and KZT 21.9 billion in 2002, seeking to increase the volume of subsidies to KZT 49.2 billion in 2005 within the framework of the national program on agro-industrial sector development.

197. Some members of the Working Party stated that they held concerns about the use of a "base period" that was not the most recent three-year period. Kazakhstan's use of the period 1996-1998

seemed to be inappropriate, characterized as it was by a large-scale debt forgiveness program that operated to artificially inflate AMS levels. Those members requested that Kazakhstan provide domestic support and export subsidy information for the period 2000-2002. The representative stated that an assessment of the situation in agricultural sector in 1991-2002 showed that difficult conditions had not only dominated throughout the so-called "base period" of 1996-1998, but also continued to be present until these days. Deferred debts therefore must not be viewed as characteristic only for this specific period. Deferred debts continued to be an outstanding issue for a long time due to the fact that many debtors were insolvent. The government maintained the firm position that it would be ineffective to forgive outstanding debts. On the contrary, debts had to be collected in the shortest time possible so that agricultural producers were not tempted to accumulate new debts. In this connection, the base period used by Kazakhstan was representative and there was no WTO document which called for a regular review of the submitted information. Moreover, at the request of WTO members, the government of Kazakhstan once reviewed the base period and changed it from 1994-1996 to 1996-1998. The representative of Kazakhstan further stated that the frequent review of the base period entailed substantial amount of additional work, caused unnecessary delays in the negotiation process and did not reflect the interests of all parties concerned.

198. In response to questions, the representative of Kazakhstan stated that preferential credits through the State Eximbank, state guarantees for foreign loans, and preferential loans through the Fund in support of agricultural small and medium-size businesses were used to subsidize the agricultural sector. These tools were used to strengthen reforms in the agricultural sector and implement a single medium-term investment policy. A set of criteria used for competitive selection of investment projects included: (i) the compliance of investment projects with restructuring goals in the agriculture sector; (ii) creation of competitive markets for agricultural commodities; (iii) use of modern machinery and technologies, and (iv) economic viability of projects. Furthermore, preferential loans and credits to lease agricultural machinery were provided in accordance with the ADB Program Loan for the agricultural sector. Likewise, the Agriculture Support Fund (ASF), set up in December 1994, assumed the debts of agricultural producers in the amount of over US\$500 Million on the basis of individual agreements that stipulated the procedure, timing and conditions of repayment.

199. Some members of the Working party requested additional information on the support system for high-grade seeds, pedigree cattle and a farming development program. In response, the representative of Kazakhstan stated that subsidies had been granted through the ASF, and that its main goal was to increase the efficiency of agricultural production by compensating the costs incurred by seed breeding stations and livestock breeding stations as a result of price falls on seeds and breeding

stock sold to agricultural producers. The subsidies were also used to stimulate farmers to purchase pedigree cattle, use new equipment, technology, high quality seeds, mineral fertilizers and to protect plants under the farming development program.

200. Some members of the Working Party requested information demonstrating how domestic support measures for which exemption from the reduction commitments was claimed, met Annex 2 criteria for such exemptions. They further asked Kazakhstan to confirm that no direct payments were made to farmers or processors. More information concerning state procurement under "public stockholding for food security purposes" was also requested including how it met the paragraph 3 criteria of Annex 2 of the Agreement of Agriculture.

201. The representative of Kazakhstan referred to the revised Tables DS:1 and stated that funds listed in Table DS:1 under "general services" were allocated for implementation of measures of general nature as well as for maintenance of services provided by the Ministry of Agriculture. These measures did not involve direct payments and did not grant price support to producers. They met the requirements of Paragraph 1 and 2 of Annex 2 of the Agreement on Agriculture. Furthermore, the representative of Kazakhstan stated that the public stockholding of grain was created to ensure food security in Kazakhstan and followed procedures set by the decision of the government for the corresponding year. The mechanisms of the government procurement of grain were determined by the Government decision adopted based on an appropriate level of transparency in terms of financial costs. Government procurement of grain in the "base period", i.e. in 1996, was realized at market prices on the commodity exchange. Grain from the state food security reserve was sold in the domestic market at market prices through open tenders or the commodity exchange. The export price for grain set by the "Food Contract Corporation" also reflected the situation in the world market as well as concluded contracts on grain supply. Therefore, the sale procedures of grain from the state reserve were in compliance with the WTO Agreement on Agriculture (paragraph 3, Article 2), which requires that "sales from food security stocks shall be made at no less than the current domestic market price for the product and quality in question".

202. Some members further reiterated their belief that Kazakhstan did not have recourse to Article 6.2 provisions of the WTO Agreement on Agriculture. The representative of Kazakhstan replied that the aftermath of implementation of structural reforms had been devastating for the agriculture sector of Kazakhstan. The current policy was therefore aimed at attracting long-term investments in the agricultural sector. This was being achieved with the participation of the international banks, in particular the Asian Development Bank (ADB) and the International Bank for Reconstruction and Development (IBRD). The representative of Kazakhstan stated that all the above

investment projects completely conformed to the provisions of Article 6.2 of the WTO Agreement on Agriculture. He further stated that given the interest shown by international credit organizations in direct long-term investments into the agricultural sector, Kazakhstan was willing to create favourable investment conditions. This attitude gave ample reasons for inclusion of this policy as a measure exempt from the reduction commitment. Moreover, the Kazakhstan policy of leasing agricultural machinery and the development thereof, ensuring availability of agricultural machinery, was one of the top priority objectives for which a long-term plan had been established. Therefore, any reduction of these public expenditures was absolutely unacceptable to Kazakhstan.

203. The representative of Kazakhstan confirmed that Kazakhstan did not maintain any market price support measures or interference programs. He referred to Article 18 of Law No. 1543-XII "On Protection and Support of Private Entrepreneurship" of 4 July 1992. Direct state regulation of prices of goods was, however, permitted only in cases where entrepreneurs abused their monopolistic position in the market. This was regulated following guidelines of the anti-monopoly legislation.

204. On the reiteration of some members of the Working Party that Kazakhstan should make a commitment not to apply export subsidies on the date of accession, the representative of Kazakhstan stated that Kazakhstan needed to use export subsidies due to its geographical location (land-locked), the vastness of its territory, its remoteness from major agricultural markets and high transportation costs which drastically decreased the competitive power of Kazakhstan agricultural products. Furthermore, the production of main export products exceeded by far the level of domestic demand, while export sales of agricultural products constituted one the main sources of income for the population of rural areas. The representative further noted that WTO Members (including the United States, the European Union) extensively exercised their right to subsidize export products.

205. Some members of the Working Party noted that the neighbouring Kyrgyz Republic had agreed to treatment as a developed country for its agriculture commitments, and had agreed to use 5 per cent *de minimis*. They therefore requested that Kazakhstan make the same commitment. The representative of Kazakhstan replied that given objective criteria, such as its GDP per capita and its low level of economic development, particularly in the agricultural regions, Kazakhstan would like to be granted benefits at the time of its accession to the WTO allowed for a "developing country".

[to be completed]

- **Trade in civil aircraft**

206. In response to questions, the representative of Kazakhstan stated that Kazakhstan did not intend to join the WTO Agreement on Trade in Aircraft prior to its accession date to the WTO.

[to be completed]

- **Textiles regime**

[to be completed]

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

- **General**

207. The representative of Kazakhstan stated that policies of Kazakhstan in the sphere of protection of intellectual property rights were targeted at the fulfilment of the following three objectives: (i) bringing the legislation regulating administration of intellectual property rights in line with international standards, (ii) developing mechanisms ensuring enforcement of provisions of the laws on protection of intellectual property rights; and (iii) training experts for every specific sector of protection of intellectual property rights. The fundamentals of the state policy aimed to ensure legitimate use and protection of intellectual property subject matter in Kazakhstan were set forth in the Concept of Protection of Intellectual Property Rights, approved by the Resolution of the Government of Kazakhstan No. 1249 of 26 September 2001.

[to be completed]

- **Industrial property protection**

[to be completed]

- **Responsible agencies for policy formulation and implementation**

208. The representative of Kazakhstan stated that the Committee on Intellectual Property Rights of the Ministry of Justice of Kazakhstan, established by Government Resolution No. 411 "On Issues Relating to the Committee on Intellectual Property Rights of the Ministry of Justice of the Republic of Kazakhstan" of 29 March 2001, was the authorized body in the sphere of protection of intellectual property rights. It performed specific executive, monitoring, and supervisory functions, as well as general administration in the sphere of protection of intellectual property rights. The Committee took over the functions and authority of the now abolished Committee on Copyright of the Ministry of

Justice of Kazakhstan and the Republican State Enterprise on Patents and Trademarks "Kazpatent" of the Ministry of Justice of Kazakhstan. Furthermore, Kazakhstan established the Republican State Enterprise "National Institute on Intellectual Property of the Committee on Intellectual Property Rights of the Ministry of Justice of the Republic of Kazakhstan" by the Government Resolution of 11 July 2002 (officially enforced since 19 September 2003). Its main functions comprised scientific activities relating to intellectual property issues.

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- **Participation in international intellectual property agreements**

209. The representative of Kazakhstan confirmed that Kazakhstan was a party to a number of basic treaties, agreements, and conventions, including: the Convention on the Establishment of the World Intellectual Property Organization (WIPO); the Paris Convention for the Protection of Industrial Property; the Madrid Agreement on International registration of Trademarks; the Patent Cooperation Treaty (PCT); the Berne Convention for the Protection of Literary and Artistic Works; the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks; the Strasbourg Agreement Concerning the International Patent Classification; the Budapest Treaty on the International Recognition of the Deposit of Micro organisms for the Purposes of Patent Procedure; the Universal Copyright Convention; the Locarno Agreement Establishing an International Classification for Industrial Designs; the Trademark Law Treaty; the Eurasian Patent Convention; and the Convention for the Protection of Interests of Phonogram Producers against Illicit Reproduction of Phonograms. Kazakhstan was furthermore engaged in bilateral agreements on cooperation in the sphere of intellectual property with Azerbaijan, Uzbekistan, the Kyrgyz Republic, Georgia, the United States and the Russian Federation. The 1999-2009 Program for Cooperation between the Republic of Kazakhstan and Ukraine also covered issues connected with bilateral cooperation in the sphere of intellectual property.

210. In response to questions concerning obligations pursuant to the cooperation agreement with the Russian Federation and to the Eurasian Patent Convention, the representative of Kazakhstan stated that the agreement introduces national treatment for applicants from the Russian Federation in connection with issuing safeguard documents and the payment of fees. He further stated that in acceding to the Convention, Kazakhstan did not undertake any obligations, which extend beyond the framework of the Paris Convention. Furthermore, there were no specific obligations contained in the bilateral agreements that Kazakhstan had signed with other CIS countries, which it did not wish to extend to other countries.

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- **Application of national and MFN treatment to foreign nationals**

211. The representative of Kazakhstan stated that Article 12.4 of the Constitution of Kazakhstan, Article 3.7 of the Civil Code of Kazakhstan, Article 4.1 of Kazakhstan's Law "On Foreign Investments" (WT/ACC/KAZ/4 refers), as well as Article 38 of the "Patent Law" (WT/ACC/KAZ/23 refers), Article 48 of Law No. 456-1 "On Trademarks, Service Marks and Appellation of Places of Origin of Goods" (WT/ACC/KAZ/23 refers) and Article 5 of the Law "Concerning the Copyright and Allied Rights" (WT/ACC/KAZ/4 refers) of 10 June 1996 granted physical and legal persons national and most-favoured nation treatment.

212. Some members of the Working party noted that nationals of the Russian Federation and the Kyrgyz Republic did not need to engage the services of a patent or trademark agent (trustee) in order to submit applications to the Committee on Intellectual Property Rights (previously, National Patent Office). Additionally, the patent fees could be paid in Russian Rubles or Kyrgyz Som, pursuant to the schedule applicable to Kazakhstan nationals. In response to questions enquiring how the government intended to bring its legislation in conformity with WTO most-favoured nation requirements, the representative of Kazakhstan stated that these provisions were in conformity with Article 4A.2 of the "Paris Convention" and Article 4.d of the WTO TRIPS Agreement.

213. Concerns were also expressed regarding the difference in fees charged for certain industrial property rights, to nationals and non-nationals of Kazakhstan, and how this difference could be justified if Kazakhstan's Constitution, Civil Code and Law on Foreign Investments required that physical and legal persons be given national treatment. The representative of Kazakhstan responded that these legal texts guaranteed national treatment unless an exception was stipulated by another law. Government Resolution No. 889 of 20 October 1992 and No. 266 dated 6 April 1993 made exceptions to national treatment in establishing the fee schedule with regard to Kazakhstan and foreign nationals. The representative of Kazakhstan further stated that the government planned on eliminating the existing discrepancies in payment over a transitional period determined in connection with Kazakhstan's WTO accession negotiations. He noted, however, that certain preferences could be obtained by applicants from countries where the annual GDP per capita was less than US\$3,000, according to United Nations classifications, in order to account for the differences in the so-called "purchasing power/capacity" between developed and developing countries.

[to be completed]

- **Copyright and related rights**

214. The representative of Kazakhstan stated that the definitions of the copyright subject matter contained in the Law "On Copyright and Related Rights" had been scientifically extended to incorporate all forms of copyright covered by the TRIPS Agreement and the Berne Convention.

215. Questions were posed as to the protection of works that were still protected in their country of origin and that have not had a full term of protection in Kazakhstan. The representative of Kazakhstan stated that since the accession and ratification of the Berne Convention, the terms of the Convention were directly applicable within Kazakhstan in accordance with Article 4 of the Constitution. Accordingly, the terms of protection extended to authors by virtue of Article 28 of the Law "On Copyright and Related Rights" applied to works, which at the moment of enforcement of the Convention within Kazakhstan, have not yet fallen into the public domain in the country of their origin. Those works, which had already fallen into the public domain by virtue of the principle of the expiry of terms, were deemed to be national property in accordance with Article 29 of the Law "On Copyright and Related Rights ". As such, these works could be used free of charge. Furthermore, Kazakhstan has developed a draft law "On Changes and Amendments to Legislative Acts of the Republic of Kazakhstan on Intellectual Property" introducing a number of modifications to the Law "On Copyright and Related Rights", including the introduction of retroactive protection procedures. At present, the draft law has been submitted to the Parliament of Kazakhstan for consideration.

216. In response to questions as to how computer programs and databases were protected, the representative of Kazakhstan stated that computer programs (including operational systems for electronic calculating machines) were protected by Article 7.1 of the Law "On Copyright and Related Rights" and databases (a collection of information, including Articles, calculations, facts, etc. which due to selection and/or organization of the materials represent results of a creative work and are systematized in such a manner that the information may be retrieved and processed with the help of a computer) were protected by Article 7 of the said Law.

217. One member of the Working Party urged the government of Kazakhstan to increase the penalties for copyright piracy and impose penalties that were sufficient to act as an effective deterrent to potential pirates and counterfeiters. The representative of Kazakhstan responded that the penalties were sufficiently strict and referred to Article 49 of the Law "On Copyright and Related Rights", Article 184 of the Criminal Code and Article 8 of the Law "On Unfair Competition".

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- **Trademarks, including service marks**

218. The representative of Kazakhstan stated that on 26 July 1999 the Parliament of Kazakhstan adopted a new Law "On Trademarks, Service Marks and Appellation of Places of Origin of Goods", in which all requirements of the Articles 5(3) and 15-24 of the TRIPS Agreement were taken into account.

219. Some members of the Working Party enquired as to how well known marks were protected in Kazakhstan. The representative of Kazakhstan replied that legal protection of trademarks was provided on the basis of the registration and issuance of a trademark certificate in accordance with the procedures set forth in the Law "On Trademarks, Service Marks and Appellation of Places of Origin of Goods" of 26 July 1999. Article 7(1) of that Law specifically prohibited the registration of marks as trademarks that were similar or identical to those which were protected by virtue of international conventions to which Kazakhstan was a party. Furthermore, he noted that the terms of the Paris Convention, specifically Article *6bis* and *10bis*, were directly applicable in accordance with Article 4 of the Constitution. As such, the owners of well-known marks were afforded protection regardless of whether those rights were registered as such in Kazakhstan. To invoke this protection, the owner could file a plea with the Committee on Intellectual Property Rights (previously, the National Patent Office) to prevent the registration of the offending mark. The owner could also file a plea with courts of Kazakhstan to recognize the mark as well-known and prevent its continued unauthorized use. The criteria for determining what was 'well known' not yet completely defined by WIPO, the trademark owner beard the burden of establishing that the mark was "well known". For a trademark to be recognized as well-known in Kazakhstan, its owner was required to prove the existence of production and sales of goods with this trademark, the cost/value of the trademark, the extent to which the trademark was recognizable by wide circles of consumers and the presence of intensive advertising of the trademark and its distribution.

220. The representative of Kazakhstan further stated that Kazakhstan protected well-known trademarks without restrictions by classes of products and services in accordance with the TRIPS Agreements. In response to questions referring to exceptions from protecting a mark, the representative of Kazakhstan referred to Article 6 and 7 of the Law "On Trademarks, Service Marks and Appellation of Places of Origin of Goods".

221. Members of the Working Party also enquired if Kazakhstan law recognised any valid reasons for non-use by the trademark owner. The representative of Kazakhstan responded that the owner of a trademark, challenged for the non-use thereof, may submit evidence demonstrating that non-use was due to circumstances beyond the control of the owner. The Board of Appeal of the Committee on

Intellectual Property Rights (previously, the Patent Office), in rendering its discretionary determination of non-use, will take the evidence into consideration.

222. The representative of Kazakhstan further stated that for licensing and assignment of rights to a trademark the written agreement must contain provisions stipulating that the quality of the goods associated with the licensee's use of the trademark would not be inferior to those of the licensor's as well as provisions providing to the licensor the right to supervise compliance with the terms of the agreement. This agreement must also be registered with the Committee on Intellectual Property Rights (previously, National Patent Office).

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- **Geographical indications, including appellations of origin**

223. A number of members of the Working Party enquired about the nature of the rights acquired with registration. The representative of Kazakhstan stated that according to the Law "On Trademarks, Service Marks and Appellation of Places of Origin of Goods" geographical indications may be registered as designating a good whose specific qualities were mainly or exclusively associated with its place of origin (where place of origin is understood to be the good's source of natural occurrence, manufacture or both). Only the geographical indication's association with a particular good may be registered. As such, the certificate of registration conferred the right to use the name of the place of origin of a good in association with that good. Geographical indications, moreover, may only be registered if they did not mislead consumers regarding the place of origin or encroach upon the rights of third parties. Finally, geographical indications, which were obviously fictitious, may be applied to goods but will remain unprotected as such.

224. Regarding questions posed as to who may apply for registration, the representative of Kazakhstan stated that an applicant (regardless of nationality) for registration of a geographical indication, should submit to the Committee on Intellectual Property Rights (previously, National Patent Office) a written application containing the following information:

- a single name indicating the place of origin of a good;
- the name of the applicant(s) and the applicant(s)'s place of residence;
- the designation which is applied to the goods;
- the type of good for which the registration of the place of origin was sought including its place of manufacture (or natural occurrence or both) and a description of the specific properties of the good;

- if the applicant (whether foreign or domestic) was seeking a geographical indication in association with goods originating within the territory of the Republic of Kazakhstan, then a conclusion of the local administrative body certifying that the applicant resided in the territory specified in the application and produced goods, whose specific qualities were associated with environmental or climate characteristics of the place of origin, and characteristics of the place of manufacture;
- if the applicant (whether foreign or domestic) was seeking a geographical indication in association with goods originating outside the territory of the Republic of Kazakhstan, then a document certifying the right of the foreign applicant to the geographical indication in association with a good from the country where the good originates; and
- a document confirming the authority of a patent trustee to act on behalf of the applicant (while domestic applicants may submit their applications directly to the Committee on Intellectual Property Rights (previously, National Patent Office), foreign applicants must submit their applications through a patent trustee).

225. In respect to wines and spirits, the representative of Kazakhstan stated that the requirements of Articles 22 and 23 of TRIPS Agreements, concerning the protection of the geographical indications, including geographical indications for wines and strong beverages, were included in the Law "On Trademarks, Service Marks and Appellation of Places of Origin of Goods". Some members of the Working Party asked whether geographical indications were protected against unfair competition. In response, the representative of Kazakhstan referred to Article 9 of the Law "On Development of Competition and Restriction of Monopoly Activities" of 11 July 1991.

226. The representative of Kazakhstan further stated that the criteria to refuse or to recognize a trademark also extended to a trademark that contained or consisted of geographical indication. Moreover, geographic names or marks, which were able to mislead a consumer, could not be registered.

[to be completed]

- **Industrial designs**

227. The representative of Kazakhstan stated that the rights to industrial designs were regulated by the Patent Law of the Republic of Kazakhstan and certified by provisional patents and patents, provided that industrial designs met the patentability requirements, including novelty, inventive steps, and industrial applicability (this provision implements Article 25(1) of the TRIPS Agreement).

Provisional industrial design patents were valid for five years, industrial design patents – for ten years, following the submission of an application, and may be extended at the request of the patent owner for a period not exceeding five years. The owner of the industrial design patent had an exclusive right to use the industrial design. Any other party, other than the patent owner, had the right to use the protected industrial design only upon authorization of the patent owners and under the licensing agreement subject to registration with the Committee.

228. The representative of Kazakhstan added that one of the categories of industrial designs were textile designs protected in accordance with the Patent Law.

[to be completed]

- **Patents**

229. The representative of Kazakhstan stated that the Patent Law of the Republic of Kazakhstan of 16 July 1999 contained all the requirements of Articles 25-34 of the TRIPS Agreement. In particular, the Law contained provisions, regulating conditions and procedures for judicial granting of compulsory licenses to use inventions, as well as other forms of utilization without a permission of a patent holder pursuant to the requirements of Article 31 of the TRIPS Agreement. It also specified the extended list of manners to protect patent holders' rights and extended the subject matter comprising inventions, industrial designs, and utility models. The provisions of the Law extended to industrial property subject matter, comprising inventions, industrial designs and utility models. The subject matter of an invention may be a device, a process, a substance, a micro-organism strain or a culture of plant or animal cells, and also the use of a known device, process, substance or strain for a new purpose. An invention was granted legal protection if it was new, involved an inventive step and was industrially applicable (this provision implements Article 27(1) of the TRIPS Agreement). In pursuance of Article 27(2) and (3) of the TRIPS Agreement, the Patent Law stipulated that the following could not be recognized as patentable inventions: discoveries, scientific theories, mathematical methods; methods of economic organization and management; symbols, schedules, and rules; rules and methods of mental activities; algorithms *per se* and computer programs; projects and plans of buildings and structures, and land development; proposals concerning solely the outward appearance of manufactured goods; and proposals, the prevention of the commercial exploitation of which was necessary to protect *ordre public* or morality.

230. Some members of the Working Party asked for more information regarding the difference between preliminary and full patents. The representative of Kazakhstan stated that the degree of protection provided by a preliminary patent was functionally equivalent to that provided by a full

patent. The principal difference was in the procedure for issuance and period of validity. Preliminary patents for industrial designs may be issued after formal expertise of the application and were valid for a period of five years. Full patents for industrial designs were issued after conducting an expertise in essence of the patent application, provided that the full patent application was received within four years of the date the Committee on Intellectual Property Rights (previously, National Patent Office) originally received the application for the preliminary patent. The expertise in essence included verification of the patentability conditions of the industrial design (novelty, originality and industrial application). The patent was then valid for a period of ten years. If the preliminary patent holder, however, did not timely submit an application for conducting a full expertise (four years from the date of initial application for a preliminary patent), the preliminary patent was cancelled from the moment of the preliminary patent's date of expiration (five years from the date of application). He further noted that it was possible to prolong the validity of an industrial design patent for up to five years upon receipt of a petition by the patent holder.

231. The representative of Kazakhstan further stated that an application for a provisional patent had to be examined after a term of two months following the date of receipt within which time the applicant had the right to amend or correct the elements of the application on his own initiative, provided that the amendments or corrections did not modify the subject matter of the claimed industrial property subject matter. In case where the preliminary examination resulted in a decision to issue a provisional patent and following payment of set fees, the details were published in the Gazette of the patent office. The substantive examination of the subject matter was carried out by the patent office at the request of the applicant or the owner of the provisional party, filed within three years after the receipt of the application or within five years in case of renewal of the term of the provisional patent. Where the substantive examination revealed that the subject matter complied with the conditions of patentability, the patent office granted a patent for a term of 20 years starting on the date when the application was filed (this provision implements requirements of Article 33 of the TRIPS Agreement).

232. The representative of Kazakhstan added that rights to utility models were certified by utility model patents, if utility models met the patentability requirements, including novelty and industrial applicability. Utility model patents were granted for a period of five years, subject to subsequent renewal at the request of the patent owner for a period not exceeding three years. Exclusive rights to use protected utility models and covered infringements were identical with the rights and infringements determined for protected inventions and industrial designs.

233. Under the Patent Law, the owner of a provisional patent or a patent had an exclusive right to use the industrial property subject matter at his own discretion (this provision implements Article 28 of the TRIPS Agreement). Under the Law, the following actions were deemed as infringing exclusive rights of the patent owner manufacturing, utilization, sale, stocking, and any other form of distribution for commercial purposes of goods produced by means of the unauthorized use of the protection invention. Any party, other than the patent owner, had the right to use the protected invention only upon authorization of the patent owner and under the licensing agreement subject to registration with the Committee on Intellectual Property Rights, while any interested party had the right to file with the court of law an application for an obligatory licence to use the invention, if supported by evidence of an uninterrupted period of four years of non-use, immediately preceding the date of the filing of an application, after the first publication of particulars of the issued title of protection.

234. Following questions raised as to protection against a petition for a compulsory licence for non-use of a patent, the representative of Kazakhstan stated that the owner of the patent may, in accordance with the Patent Law, submit evidence demonstrating that non-use was due to respectful reasons. Unless a patent holder could present an evidence showing a good reason for the non-use of an invention, the court issued a compulsory licence to an interested party specifying the term of use, as well as terms and conditions of payments. If the court decided to issue the obligatory licence, it had to be non-exclusive, while the amount of payment could not be lower than the market value of the licence.

[to be completed]

- **Plant variety protection**

235. The representative of Kazakhstan stated that on 13 July 1999 the Law "On Protection of Selective Breeding Achievements" was adopted. It provided for protection to new plant varieties and breeds of animals. This Law was awarded positive legal opinion of the International Union on protection of new plant varieties, because to its conformity with the International Convention on Protection of New Plant Varieties (Geneva, 2 December 1961 reviewed in 1972, 1978, 1991). Having adopted this law, Kazakhstan met the requirement of Article 27 (3) (c) of the TRIPS Agreement, according to which the WTO Members must provide for the protection of plant varieties either by patents, effective independent single system, or the combination thereof.

[to be completed]

- **Layout designs of integrated circuits**

236. The representative of Kazakhstan stated that legal protection of layout designs of integrated microcircuits in Kazakhstan was covered by the Law No. 217 "On Legal Protection of Layout Design of Integrated Microcircuits" of 29 June 2001 (WT/ACC/KAZ/36/Add.1 refers), and was implemented on the basis of Articles 1013-1016 of the Civil Code of Kazakhstan (Special Part), in which the requirement of Article 35-38 of the TRIPS Agreement was reflected.

[to be completed]

- **Requirements on undisclosed information, including trade secrets and test data**

237. The representative of Kazakhstan stated that the legislation of Kazakhstan did not include a separate law for the protection of commercial secrets. However, Article 126 of the Civil Code stipulated the protection of information of real or commercial value under the civil legislation provided that it was unknown to third parties, that confidentiality was strictly preserved, and that the free access to such information was denied. Thus, corresponding provisions of the Civil Code implemented requirements of Article 39(2) of the TRIPS Agreement. He further stated that undisclosed data or other information which was required by Kazakhstan in the process of approving the marketing or sale of chemical, pharmaceuticals, or agricultural products was also protected and, as such, complied with Article 39(3) of the TRIPS Agreement. Employees of ministries and other State agencies who disclosed protected information were held administratively responsible and the Ministries and other State agencies, which employed the individual making such an unauthorized disclosure, were also held liable for the employee's unauthorized action.

238. Some members of the Working Party asked how a person in control of undisclosed information could enforce his rights. The representative of Kazakhstan stated that the laws of Kazakhstan provided civil remedies to persons in control of undisclosed information. Accordingly, a person in control of undisclosed information who wished to enforce his rights had to file a complaint with the court having jurisdiction over the person who allegedly violated those rights. Remedies, which the court could provide, included the payment of damages and the costs of enforcing the rights. Furthermore, a person who acquired undisclosed information knowingly or under circumstances in which that person should have known that it was undisclosed could be liable for acts constituting unfair competition in accordance with Article 193(3) of the Law "On Administrative Violations" and Article 168(2) of the Criminal Code (WT/ACC/KAZ/4 refers). Moreover, Article 200 of the Criminal Code prohibited collection of information that constituted a commercial or banking secret by the person who received such information in a job or work capacity, including disclosure or use of such

information for mercenary or other personal interest without the consent of the owner. Such disclosure was punishable by imprisonment for up to three years, fines, arrest, or sentencing to correctional works.

[to be completed]

- **Measures to Control Abuse of Intellectual Property Rights**

239. The representative of Kazakhstan stated that in general, intellectual property rights were protected by civil legislation in the course of common court procedures (procedures initiated in the form of a lawsuit). Also, the legislation of Kazakhstan provided for criminal, administrative, and civil liabilities for the infringement of intellectual property rights, stipulated in Articles 184 and 199 of the Criminal Code, Articles 128, 129, 145 of the Code of the Republic of Kazakhstan "On Administrative Violations", requirements of the Law "On Copyright and Related Rights", "On Trademarks, Service Marks and Appellation of Places of Origin of Goods", the Patent Law, and other legislative acts. Furthermore, on 26 September 2001 the Government of the Republic of Kazakhstan approved the Intellectual Property Protection Concept by the Resolution No. 1249. Also, within the framework of implementation procedures, the Government of Kazakhstan adopted the Program of Implementation of Intellectual Property Protection Concept by its Resolution No. 591 of 29 May 2002.

240. The representative of Kazakhstan stated that the adoption of the special part of the Civil Code in 1999, in which the whole section was dedicated to the issues of intellectual property and which contained the fundamental norms, regulating the relations in this area, was the most important stage in the formation of domestic legislative base in the area of intellectual property objects.

241. Some members of the Working Party asked what efforts were being made to educate the public to avoid activities that infringe the rights of intellectual property owners. The representative of Kazakhstan responded that the Committee on Intellectual Property Rights (previously, National Patent Office) conducted a series of regional seminars to explain the legislation of Kazakhstan relating to the area of protection of objects of intellectual property. These seminars were conducted on the premises of regional scientific and technical libraries for a wide segment of inventors, scientific and technical workers, specialists and professionals. Officials of the Committee on Intellectual Property Rights (previously, National Patent Office) also appeared on radio and television shows, and published and disseminated materials related to the area of protection of industrial property through the mass media in Kazakhstan. Furthermore, the Committee held regular regional seminars for employees of local bodies of justice as a part of advanced training programs and for purposes of communication of experience in the area of protection of intellectual property rights. Seminars were also held for

judges, customs officers, police and the CIS patent offices in cooperation with the WIPO and the European Patent Office (EPO). A set of materials was also prepared and published and further circulated and distributed for public notice. The Ministry of Justice of Kazakhstan planned to conduct a national campaign, called "Intellect", scheduled for October 2003. This was planned to be the first large-scale campaign of the Ministry of Justice of Kazakhstan with the active participation of other interested public bodies, international agencies, public associations, commercial organizations, educational institutions, mass media, and the population of Kazakhstan, aimed to promote concepts of intellectual property, enhance public intolerance toward piracy, strengthen the role of intellectual property as well as the status of authors, innovators, inventors, etc.

242. Moreover, the representative of Kazakhstan stated that registration of licence agreements for use of objects of copyright and neighbouring rights was being intensified and work on security of state policy in the sphere of protection of industrial property rights was being carried out.

243. Some members of the Working Party asked about measures to control the importation of infringing works into Kazakhstan. The representative of Kazakhstan replied that pursuant to the Customs Code of Kazakhstan, the Central Customs Body of Kazakhstan kept a register of goods, covering the objects of intellectual property and ensured its periodical publication. He further noted that pursuant to the Customs Code, the Customs Control Agency of Kazakhstan could suspend the customs processing of goods, including the objects of intellectual property if it found that these goods violated the rights to objects of intellectual property of an applicant. While suspending processing of goods, including objects of intellectual property, the legal owner within three working day upon receiving of a notification of such suspension was obliged to effect payment at the rate, sufficient for compensation of losses of the declarant in connection with suspension of goods output. The above rate was specified by the Customs Control Agency of Kazakhstan. Furthermore, under the Customs Code, the decision of the Customs Control Agency on inclusion of goods containing intellectual property subject matter into the register for a term specified by an applicant guaranteed that the rights of the possessor of rights was protected by customs bodies during a term of not more than two years after the day on which goods were included in the register.

[to be completed]

- **Civil judicial procedures and remedies**

244. In response to a request for a description of the structure of Kazakhstan's judicial system dealing with disputes concerning intellectual property rights for domestic and foreign parties at all levels, the representative of Kazakhstan firstly noted that there was no distinction between domestic

and foreign parties who were parties to the aforementioned type of dispute. Foreign investors may, however, be accorded additional dispute settlement alternatives in accordance with the Law on Foreign Investment. He further stated that under Article 33 of the Patent Law of the Republic of Kazakhstan, Article 42 of the Law "On Trademarks, Service Marks and Appellation of Places of Origin of Goods", and provisions of the Civil and Criminal Codes of the Republic of Kazakhstan, an owner of intellectual property rights had the right to settle disputes arising from the following in the court of law:

- authorship of industrial property subject matter;
- legality of the grant of a title of protection for industrial property;
- infringements of the exclusive right to use the protected industrial property subject matter and of other economic rights of the owner of the title of protection;
- identification of the patent owner;
- grant of a compulsory licence;
- conclusion and execution of licence contracts for the use of the protected industrial property subject matter;
- payment of compensation and damages incurred as a result of infringement of exclusive rights; and
- other disputes on protection of rights arising from the title of protection.

245. Moreover, the owner of the title of protection to the industrial property subject matter had the right to apply for the protection of his economic rights to local authorities or administration, which was not viewed as an action preventing his applying to the court of law, unless there were provisions to the contrary set out in the legislation of Kazakhstan.

246. Some members of the Working Party asked what training, if any, had been provided to judges to enable them to consider disputes involving intellectual property rights. The representative of Kazakhstan responded that Kazakhstan did not institute yet a special training program on intellectual property matters for judges. In November 1998, however, an international seminar was held in Tashkent to address a variety of issues related to patents, trademarks, and copyright. This seminar was also attended by judges, customs and police officials, and officials of the Committee of Intellectual Property Rights (previously, National Patent Office and Copyright Committee). The representative of Kazakhstan later added that the Program on implementation of intellectual property protection concept stipulated that seminars for judges on protection of intellectual property rights be held annually. In 2002, the Committee, with the support of the World Intellectual Property

Organization (WIPO) and the Coalition for Intellectual Property Rights (CIPR), conducted a national seminar for judges of Kazakhstan.

[to be completed]

- **Provisional measures**

247. Some members of the Working Party enquired if judges and administrative authorities had the authority to grant provisional relief in order to prevent serious harm and to preserve evidence. The representative of Kazakhstan stated that judges and administrative authorities already had the power to grant provisional relief in order to prevent serious harm and to preserve evidence. Civil legislation of the Republic of Kazakhstan, the Law of the Republic of Kazakhstan "On Copyright and Related Rights", implementing provisions of Article 50 of the TRIPS Agreement, provided judges with the power to take the following measures to meet a claim at the request of the complainant (or upon the initiative of the judge):

- to arrest the defendant's property;
- to prohibit a defendant from taking certain actions such as the sale of goods bearing a trademark belonging to the complainant;
- to prohibit other persons from transferring property to the defendant or from fulfilling other commitments with regard to the defendant; and
- to confiscate infringing copies of works or phonograms, as well as materials and equipment used for their reproduction.

[to be completed]

- **Administrative procedures and remedies**

248. Some member of the Working Party asked what activities in connection with intellectual property rights were considered an abuse of those rights. The representative of Kazakhstan stated that the following activities were considered an abuse of intellectual property rights and entailed administrative responsibility:

- illicit use of an invention, industrial design or model, disclosure without consent of an author or an applicant of the subject matter of a scientific discovery, invention, industrial design or model prior to its official publication, as well as usurpation of the authorship or coercion into joint authorship unless the above actions provided ground for institution of criminal proceedings (Article 128 of the Code of Administrative Violations of the Republic of Kazakhstan);

- sale, hire and other illegal use of objects of copyright or related rights unless the above actions give ground for institution of criminal proceedings (Article 129 of the Code of Administrative Violations of the Republic of Kazakhstan); and
- illicit use of a trademark, service mark, appellation of origin or similar designations for goods (services), as well as illicit use of a brand name unless the above actions resulted in severe damages (Article 145 of the Code of Administrative Violations of the Republic of Kazakhstan).

249. The members further asked what administrative actions were available to the owners of intellectual property rights to enforce those rights, what agencies were responsible for such actions and how foreign parties could invoke such actions. The representative of Kazakhstan responded that an applicant had the right to apply with objections to the Board of Appeal of the Committee on Intellectual Property Rights (previously, National Patent Office) (Articles 22, 23, and 29 of the Patent Law and Article 12, 23, and 31 of the Law "On Trademarks, Service Marks and Appellation of Places of Origin of Goods"). If the applicant remained unsatisfied with the decision of the Board of Appeal, the applicant had the right to further appeal that decision in the courts. He further noted that violations were considered by the courts of the Republic of Kazakhstan. Nevertheless, violations concerning the rights to other objects of industrial property than those considered in the Administrative Code were considered within the framework of the Civil Legislation.

250. More information concerning the procedures followed by the administrative Commissions in reviewing allegations of violation and the remedies the Commissions could impose were also requested. The representative of Kazakhstan stated that under the Administrative Code, a case-to-case review of violation of the Code may be initiated on the basis of direct findings by the concerned official of the fact of commitment of an administrative violation, information from law-enforcement agencies as well as from other state bodies, and self-governing (non-governmental) bodies, or notification or application received from natural persons and legal entities and also notice received through the official press. Protocols on administrative violations may be drawn up only by those bodies so authorized by the Administrative Code (Articles 128, 129, 145). Any foreign party may file a complaint on violations of copyright and related rights with the court of Kazakhstan. To start court proceeding on a case of violation of its industrial property rights, a foreign party first had to file an application with the Board of Appeal of the Committee on Intellectual Property Rights of the Ministry of Justice of Kazakhstan. Based on the review of an application, the Board of Appeal made its decision. If the party was not satisfied with the decision of the Board of Appeal, it may proceed to challenge it in the court of law.

251. He noted that any such case was then reviewed by the body, which could include Administrative Commissions. Review of the case started with the introduction of members of a Commission or other review body, or individual officials in cases where the Administrative Code permitted such review. Then, the Protocol on Administrative Violation was announced. Petitions were permitted during meetings and the persons that participated in the review of the case were given a hearing, and the evidence was examined. After consideration of the case, the administrative body terminated the proceedings or imposed an administrative sanction. The body could impose the following sanctions:

- for violations covered by Article 128 – fines: for natural persons – 15-20 monthly calculation indices, officials – 20-50 monthly calculation indices, legal entities – 300-400 monthly calculation indices;
- for violations covered by Article 128 – fines: for natural persons – 3-5 monthly calculation indices, officials – 5-10 monthly calculation indices, legal entities – up to 100 monthly calculation indices with confiscation of copies of works and phonograms; for repeated violations - fines: for natural persons – 5-10 monthly calculation indices, officials – 10-20 monthly calculation indices, legal entities – up to 200 monthly calculation indices with confiscation of copies of works and phonograms;
- for violations covered by Article 145 – fines: for natural persons – up to 5 monthly calculation indices, officials – up to 15 monthly calculation indices, legal entities – up to 100 monthly calculation indices;
- if the parties disagree with the court decision, they may proceed to challenge it in a higher court of law.

[to be completed]

- **Special border measures**

252. The representative of Kazakhstan stated that the Customs Code included Articles establishing a mechanism of customs control putting an end to imports of goods, violating the rights of proprietors of intellectual property. Furthermore, the normative base regulating relations in this sphere was represented by Articles 410 – 420 of the Customs Code of the Republic of Kazakhstan. They defined main elements of the mechanism of customs control applied to goods containing works of intellectual property, transported across the border of Kazakhstan. They also provided for adoption of a number of legislative acts targeted at control enforcement.

[to be completed]

- **Criminal procedures**

253. Some members of the Working Party asked what activities in connection with intellectual property rights were considered an abuse of those rights. The representative of Kazakhstan stated that the following activities were considered an abuse of intellectual property rights and entailed criminal responsibility:

- illicit use of copyrighted works and works covered by relating rights, illicit use of an invention, industrial design or model, disclosure without consent of an author or an applicant of the subject matter of a scientific discovery, invention, industrial design or model prior to its official publication, as well as usurpation of the authorship or coercion into joint authorship shall result in fines equal to 100-500 monthly calculation indexes, or to the amount of wages or other income received by the convict for a period of one to five months, or in public works for 180 to 240 hours, or in a prison term of up to two years, if the action was performed with the view to receive profits and resulted in severe damages. Repeated actions and actions committed by a group of persons upon preliminary agreement or by an organized group resulted in fines equal to 500-800 monthly calculation indices, or to the amount of wages or other income received by the convict for a period of five to nine months, or in detention for four to six months, or in a prison term of up to five years with or without confiscation of the property of the convict (Article 184 of the Criminal Code of Kazakhstan); and
- illicit use of a trademark, service mark, brand name, appellation of origin or other designations of goods (services) of the same nature resulted in fines equal to 200-500 monthly calculation indexes, or to the amount of wages or other income received by the convict for a period of two to five months, or in public works for 180 to 240 hours, or in detention for up to 6 months, or in a prison term of up to 2 years, if the action was performed repeatedly and resulted in severe damages. Illicit use of labels with respect to trademarks and appellations of origin not registered in Kazakhstan resulted in fines equal to 100-200 monthly calculation indexes, or to the amount of wages or other income received by the convict for up to two months, or in public works for 120 to 180 hours, or in detention for up to three months, or in a prison term of up to one year, if the action was performed repeatedly and resulted in severe damages (Article 199 of the Criminal Code of the Republic of Kazakhstan).

254. Some members of the Working Party noted that there was a criminal penalty for pirated copyright works and related rights (Article 184 of the Criminal Code) but remarked that there did not

appear to be a criminal penalty for counterfeit trademarked goods. They further stated that the administrative fine, provided by the Administrative Code, was clearly insufficient to serve as an effective deterrent. The representative of Kazakhstan responded that criminal penalties to prevent trade in counterfeit trademarked goods were provided in Article 199 of the new Criminal Code (Special Part) and included sufficient criminal penalty to serve as an effective deterrent. The representative of Kazakhstan further stated that although the fines were of relatively little amount, such amounts were significant in Kazakhstan taking into account the current level of economic development. Nevertheless, if experience proved that the established fines were not effective deterrents, fines would be raised accordingly.

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POLICIES AFFECTING TRADE IN SERVICES

255. The representative of Kazakhstan referred that the service sector was one of the most dynamic sectors of the economy, and its role was expected to grow in the future. Starting from 1990, the share of services in the GDP kept growing to reach the highest level of 60 per cent in 1998, while the average level for the last decade constituted 50 per cent. In 2001 and 2002, the balance of foreign trade in services was negative for Kazakhstan, with exports amounting to US\$1,588 million, and imports amounting to US\$3,667 million in 2002. In the sphere of trade in services, enterprises with foreign direct investments (FDI) accounted for more than 90 per cent of the turnover in construction and business services. Among services provided by foreign suppliers were geological prospecting and product certification, legal and other consulting services, electronic data processing, engineering and technical services.

256. The statistical base of service sectors was also at the initial stage of development. At present, it could not ensure adequate reflection of the dynamics of service sectors, and provide reliable information on the level of presence of foreign service suppliers in any given service sector. Taken together, all of the above set serious complications for determination of exact criteria for further liberalization and undertaking by Kazakhstan of commitments to this effect. Hence, Kazakhstan intended to apply provisional measures of state regulation of trade in services in order to ensure development of competition, based on well-balanced levels of development of the market of services and labour so as to prevent adverse economic and social effects in the national economy.

257. Noting the growing role of services in the national economy, the representative of Kazakhstan emphasized that the existing legislative framework was not adequately developed for services sector and for certain new types of services there was no relevant legislation. Government of Kazakhstan

therefore was actively developing national legislation governing the services sector, which would help to proceed with further liberalization of services. The last five years showed some progress in the development and adoption of laws regulating some service sectors, based on which Kazakhstan undertook commitments for market access in services.

258. The representative of Kazakhstan referred that in a number of service sectors, liberalization has had adverse effects on the level of employment, in particular, in the sector of construction services, where the bulk of large projects was implemented by foreign contractors using foreign workforce. One of the mechanisms for regulation of trade in services was represented by licensing. Under the Schedule of Commitments of Kazakhstan in Services, providing for licensing of certain types of activities, foreign natural persons and legal entities must obtain licenses under the same procedures as those set for natural persons and legal entities of Kazakhstan.

259. With respect to the Law of Kazakhstan "On Culture" (hereafter – the Law) the representative of Kazakhstan stated that this law defined national policies in the sphere of culture, regulated public relations arising from creation, revival, preservation, development, use, and dissemination of the national culture. The Law stipulated a special treatment for sites of the national cultural heritage, under which all forms of negotiations with sites entered in the State Register including their demolition, relocation, alteration, reproduction, and restoration shall be prohibited unless authorized by the responsible body. All forms of exploitation of sites of the national cultural heritage for purposes inconsistent with their historical, artistic, and religious value shall also be prohibited. Sites of special cultural value owned by religious organizations may be used for religious purposes. Cultural institutions shall have priority in exercising their rights to use architectural monuments. Owners and users of sites of the national cultural heritage shall be responsible for their maintenance and preservation. Rights of owners of sites of the national cultural heritage shall be exercised under control and following procedures, determined by the legislation, while the State shall have a priority right to buy sites of the national cultural heritage of Kazakhstan in cases where they should be offered for sale.

260. He added that special activity treatment could be set up in special economic zones or similar territories under separate order of economic activity determined in accordance with the relevant Kazakhstan legislature.

261. Ministries and agencies involved were required to monitor the activities of foreign service suppliers, to ensure that they fulfil the requirements stipulated in concluded contracts on foreign investments, including:

- use of modern technologies and machinery;
- attraction of Kazakhstani experts;
- implementation of environmental protection measures (land re-cultivation, construction of treatment facilities, waste utilization); and
- development of the social sphere and local infrastructure, etc.

[to be completed]

- **Transparency**

262. The representative of Kazakhstan stated that under Article 3 of the Constitution of Kazakhstan, all laws, international treaties, to which the Republic of Kazakhstan was party, must be published. Official publication of normative legislative acts affecting rights, freedoms, and responsibilities of the population, must be a pre-requisite for their application. Under Article 30 of the Law of Kazakhstan of 24 March 1998 "On Normative Legislative Acts", official publications comprised the Journal of the Parliament of Kazakhstan and the Corpus of the Decrees of the President of Kazakhstan and Resolutions of the Government of Kazakhstan.

263. He further noted that legislation and regulations may also be published officially in periodicals, granted this right based on the results of bidding, in accordance with procedures set by the Government of Kazakhstan. Legislative acts of the President of Kazakhstan, resolutions of the Government of Kazakhstan, central executive and other central public bodies of Kazakhstan must be officially published in national mass media. Decrees of the President of Kazakhstan, resolutions of the Government of Kazakhstan shall be officially published in the Corpus of the Decrees of the President of Kazakhstan and Resolutions of the Government of Kazakhstan.

264. The representative of Kazakhstan also added that normative legislative acts of Maslikhats, normative legislative resolutions of Akimats, and normative resolutions of Akims could be also officially published in local mass media.

- **Trade Agreements**

265. The representative of Kazakhstan noted that at present, trade relations of Kazakhstan with other CIS countries (excluding Turkmenistan) developed in the free trade environment, under which imported or exported goods are exempt from customs duties, except for a number of goods included in the Schedule of Exemptions. This Schedule is covered by the protocols on exemptions from the free trade environment under bilateral agreements on free trade.

266. He also added that Kazakhstan was a party to a number of agreements with Belarus, Kyrgyzstan, Russia, and Tajikistan, providing for a stage-by-stage establishment of the Customs Union.

267. The Agreement on the Unified Customs Tariff (UCT) in force since 1 January 2001 within the Customs Union of Byelorussia, Kazakhstan, Kyrgyzstan, Russia, and Tajikistan sets unified rates of import customs duties. The unified customs tariff shall be formed within five years following the date of enactment of the Agreement, which term may be extended under an agreement reached by parties.

268. The representative of Kazakhstan further stated that on 10 October 2000 the Heads of the Customs Union member-countries signed the Agreement on Establishment of the Eurasian Economic Association (EurAzEs), which provides for invigoration of the processes aimed at the establishment of the Customs Union and the Single Economic Space.

269. The EurAzEs was designed to help solve the issues relating to a full-scale implementation of the free trade environment; development of common procedures of foreign trade regulation; and creation of the common customs territory governed by the common mechanism of functioning of the common customs territory.

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CONCLUSIONS

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