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Accession of Kazakhstan**

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## ACCESSION OF KAZAKSTAN

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

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

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## II. ECONOMIC POLICIES

### Question 1:

**We would be grateful for information on the State share in the remaining natural monopolies and their share of GDP.**

### Answer:

The following table provides the list of all natural monopolies maintained by the National Anti-Monopoly Committee. In addition, the oblast offices of the Anti-Monopoly Committee maintain separate lists of natural monopolies operating within the local market. The local natural monopolies consists of public utilities, water supply, railway transportation, electric power production and distribution, gas supply, communication services (tariffs for local telephone services and lease of communication channels), and management of Airnavigation. Natural monopolies are included on the oblast list of natural monopolies if their geographic market is limited to the oblast or local market.

Kazakhstan plans to eliminate in the near future gas processing and power generation from the list of natural monopolies at both the national and local levels. The creation of competition for airport services is not currently possible due to technological and economic reasons. Therefore, airport services were recently added to the list of natural monopolies.

The share of GDP by natural monopolies is approximately 3 per cent.

	Name of Natural Monopoly Entity	State Shares (%)
A.	Transportation of Oil and Gas by Pipelines	
1.	JSC Kazaknefteprovod	100
2.	JSC Batystransgas	90
3.	State enterprise Kostanaitransgas	90
4.	JSC Alaugas	92
B.	Gas processing (production of liquefied gas)	
5.	JSC Atyrau oil refinery	53.1
6.	JSC Pavlodar oil refinery	87.9
7.	JSC Shymkentneftorgsynthes	0
8.	State enterprise Kazak Gas Processing Plant	100
9.	JSC Tengizchevroil	25
C.	Railway transport enterprises (cargo and passenger transportation)	
10.	Republic State enterprise Kazakhstan Temir Zholy	100
D.	Communication enterprises	
11.	National JSC Kazaktelecom (tariffs for local telephone services and lease of communication channels)	50
E.	Power Transmission	
12.	JSC Kazakstani electric network management company	100
13.	JSC Remote electricity transmission	100
14.	JSC Almaty Power Consolidated Company	0

	Name of Natural Monopoly Entity	State Shares (%)
F.	Power Generation	
15.	JSC Almaty Power Consolidated Company	0
16.	Ltd Co Energoprojekt Zhambyl GRES	0
17.	JSC Karaganda GRES-2	0
18.	JSC Euro-Asian energy corporation	0
19.	JSC AES-ST Ekibastuz	0
20.	JSC Ekibastuz GRES 2	100
G.	Water system	
21.	State enterprise using channel Irtysh-Karaganda	100
22.	JSC Kazaknefteprovod	100
23.	State enterprise Belovodskiy water pipe-line	100
H.	Air-navigation entities, administration of air traffic	
24.	State enterprise Kazairnavigation	100
I.	Airport services (takeoff and landing, ensuring air safety, parking, servicing of passengers, maintaining and servicing aircraft in transit, and provision of aviation fuel-lubricant materials)	
25.	JSC Akmola Airport	100
26.	JSC Aktau International Airport	100
27.	JSC Aktobe International Airport	0
28.	JSC Almaty Airport	100
29.	JSC Atyrau Airport	100
30.	JSC ATMA - Atyrau Airport and transportation	50
31.	JSC Torgavia	100
32.	JSC Balkhash city Airport	100
33.	JSC Krylia Taraza Air-company (Taraz Wings)	100
34.	JSC Zheskazgan Air Company	100
35.	JSC Sary-Arka Airport	100
36.	JSC Kokshetau Air-Company	100
37.	JSC Kostanai Airport	100
38.	JSC Syr Sunkary	100
39.	JSC Irtysh-Avia Air-Company	100
40.	JSC Petropavlovsk airport	100
41.	JSC Semeiavia	100
42.	JSC Zhetysu Air-Company	100
43.	JSC Akzhol International Airport	100
44.	JSC Vostokavia	100
45.	JSC Shymkent Airport	100

**Question 2:**

**Could Kazakhstan please provide an update on the passage of the draft law on state support for direct investment which we understand will make provision for the conclusion of contracts between the State Committee on Investment on the one hand, and investors on the other - foreign or Kazak. These contracts will provide for additional preferences for the investor. Could Kazakhstan please elaborate in particular on:**

- (a) its interaction with existing laws, i.e. the laws on oil and on subsurface; the Tax Code; and Law on Land Ownership Rights;**
- (b) the development of criteria for awarding such contracts, especially those relating to export-oriented production.**

**Answer:**

Please find in Attachment A a copy of the Law on State Support to Direct Investment of 28 February 1997 and a list of the priority sectors which have been approved by the President of Kazakhstan in accordance with Article 6 of this law. Please note that investments in the hydrocarbon and hard rock mineral sectors are not among the priority sectors. Accordingly, there has been no "interaction between the Laws on Oil and The Subsurface and Its Utilisation". While Articles 2 and 7(1)(1) provide for the opportunity that the State Committee may agree to provide "State in-kind grants of property and property rights" in connection with their contracts with investors, no adjustments have been made to the Law on Land Ownership Rights. Finally, amendments to the Tax Code were adopted concurrently with the adoption of the Law on State Support to Direct Investment. A copy of those amendments is provided in Attachment A for your review and reference.

The criteria for awarding of contracts are defined in Presidential Decree No. 3445 of 5 April 1997 which is provided in Attachment A.

**Question 3:**

**Could Kazakhstan please provide an update on the draft law on Land Ownership Rights, particularly with respect to timing and provision for foreign ownership.**

**Answer:**

The Presidential decree having the Force of Law No. 2717 On Land was enacted 22 December 1995. According to this law, foreign physical and legal persons may not own land directly in the Republic of Kazakhstan. In order to own land, a foreign physical or legal person must first form a Kazak legal person. The principal policy reason behind this requirement is to ensure that owners of Kazak land are subject to the jurisdiction of the Republic of Kazakhstan. Foreign ownership of land is not allowed where land is used for the purpose of personal farming, horticulture or dacha construction. The main reason is that this type of land is limited.

There are plans to amend this law by the end of 1997. Kazakhstan, however, has not yet decided whether or not to lift the above mentioned restrictions in 1997.

#### **IV. POLICIES AFFECTING TRADE IN GOODS**

##### **1. Import regulations**

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

##### **Question 4:**

**With reference to KAZ/6/Add.2:**

**Questions 34-35: What is the cost for registration? Approximately how long does the registration process take?**

**Question 51: Sub-central authorities may levy the following fees: registration of legal persons, fee for registration of natural persons engaging in entrepreneurial activities, fee on the right to be engaged in certain types of activity (not defined). Are these fees set at the same cost throughout Kazakhstan? If so, please elaborate. What other regional differences are there in the registration process?**

##### **Answer:**

According to Government Resolution No. 1405 of 19 November 1996, the registration fee:

- (i) for registration of establishments financed by means of State budget is one monthly evaluation index;
- (ii) for registration of legal persons in other forms, their branches and representative offices is 20 monthly evaluation index;

According to Article 9 of President's Decree, Having the Force of Law "On State Registration" of 17 April 1995, the registration process shall take no more than 15 days from the day of submission of the application and all required documents. The above mentioned period is interrupted for the duration that may be required to eliminate by the applicant any defects in the application and attached documents. In addition, this period does not include the additional time required to obtain the statistics card (one to three days). In practice, legal persons are able to register within ten business days. There are no regional differences in the registration process.

The fee for registration of natural persons engaged in entrepreneurial activities is four times the monthly evaluation index. Exempt from payment of registration fee for engaging in entrepreneurial activities are natural persons: (i) working in farms; (ii) conducting one time work on the basis of labour contract and other civil law contracts; (iii) engaging in sale of their property, as well as produced, processed, purchased products, including imported industrial and food goods apart from wholesale and retail trade network in special allotted places or through second-hand shops; (iv) natural persons whose profit from marketing of work and services (conducting of work and services) does not exceed 20 evaluation index per year. Disabled persons; Great Patriotic War participants and persons equated to them; Heroes of Soviet Union and Heroes of Socialistic Labour; persons awarded by rank "Halyk Kaharmany", by order of Glory of three degrees and order "Otan"; pensioners; mothers having many children awarded by rank "Altyn-alka" and "Mother-heroes" shall pay 50 per cent of the registration fee.

The fee for the right to be engaged in certain types of activities means the fee for obtaining licenses to perform activities subject to licensing according to the Law on Licensing (see Table A7.5 of Annex 7 of WT/ACC/KAZ/3 for the list of activities subject to licensing). The fee for obtaining licenses in Kazakhstan is currently 20 monthly evaluation index, according to Government Resolution No. 1127 of 16 August 1995, which must be paid annually.

All fees, mentioned above, apply equally throughout the Republic of Kazakhstan at both the central and local levels.

**Question 5:**

**We understand that, as regards setting up a "representative office", the procedure regarding temporary imports had changed substantially: companies will have to pay duties for temporary imports as well. Please confirm whether this is the case or not.**

**We would urge the Kazak Government to minimise the frequency of changes to regulation in this area (and others) to make any changes necessary with a maximum amount of transparency and prior notification.**

**Answer:**

Under the regime of temporary importation, certain categories of goods (please see annexes of Government Resolution No. 342 of 25 March 1996 provided to the WTO in August 1996: WT/ACC/KAZ/4) that are imported temporarily into the Republic of Kazakhstan and exported in the same state within a one-year period are exempt from payment of customs duties and taxes. It is not the case that companies will have to pay duties or taxes for temporary imports for these categories of goods where the exportation is made within the defined period. Customs may extend the one-year period for one additional year. In the case of such an extension, however, the importer will be required to pay partial duty on the goods. That duty amount is calculated as three per cent of the duty chargeable, had the goods been entered for free circulation, for each full or partial calendar month that the goods remain in Kazakhstan beyond one year.

With some exceptions, all other goods may be imported for a period of up to two years under a partial exemption from duty and taxes. The amount of duty payable is also calculated as three per cent of the duty chargeable, had the goods been entered for free circulation, for each full or partial calendar month that the goods remain in Kazakhstan.

Goods not eligible for the regime of temporary importation are: consumable materials and samples, food, beverages (including alcohol) and tobacco, unless imported for advertising or demonstration purposes in single units, goods subject to quota, and industrial wastes.

The current regime of temporary importation was established by the Decree of the President of the Republic of Kazakhstan "On Customs Business in the Republic of Kazakhstan", dated 20 July 1995 (the "Customs Code"). Government Resolution No. 342, 25 dated March 1996, ("On Some Issues of Applying the Regime of Temporary Importation (Exportation) of Goods") established the categories of goods eligible for complete exemption from customs duties and taxes when exported within one year of importation. The regime has not substantially changed since that time. On 3 April 1997, the State Customs Committee issued further rules concerning customs control and processing of goods under the temporary import regime.



**(b) Characteristics of the national tariff and nomenclature****Question 6:**

**Will Kazakhstan be able to move to the HS 1996 nomenclature in April?**

**Answer:**

Starting on 15 June 1997, Kazakhstan adopted HS 96 as its tariff nomenclature..

**Question 7:**

**Is the customs tariff outlined in WT/ACC/KAZ/3, page 77 still valid? If not, what are the changes?**

**Answer:**

Table A1.35 of WT/ACC/KAZ/3 (page 77) provides the Trade-Weighted Average Import Tariff Rates based on 1995 import data and previous customs tariff rates. The following table provides the same based on 1996 import data and current customs tariff rates.

Trade-Weighted Average Import Tariff Rates

Chapter 1	5.00%	Chapter 33	12.64%	Chapter 65	19.04%
Chapter 2	27.72%	Chapter 34	3.35%	Chapter 66	20.00%
Chapter 3	10.12%	Chapter 35	5.00%	Chapter 67	20.00%
Chapter 4	15.50%	Chapter 36	30.00%	Chapter 68	15.00%
Chapter 5	15.00%	Chapter 37	9.30%	Chapter 69	24.74%
Chapter 6	3.41%	Chapter 38	1.11%	Chapter 70	13.96%
Chapter 7	15.00%	Chapter 39	12.36%	Chapter 71	39.04%
Chapter 8	11.87%	Chapter 40	8.18%	Chapter 72	12.50%
Chapter 9	9.28%	Chapter 41	23.95%	Chapter 73	19.96%
Chapter 10	5.40%	Chapter 42	15.58%	Chapter 74	5.00%
Chapter 11	10.04%	Chapter 43	9.73%	Chapter 75	0.00%
Chapter 12	0.00%	Chapter 44	19.90%	Chapter 76	0.00%
Chapter 13	5.00%	Chapter 45	5.00%	Chapter 78	5.00%
Chapter 14	15.00%	Chapter 46	25.00%	Chapter 79	5.00%
Chapter 15	11.28%	Chapter 47	25.00%	Chapter 80	5.00%
Chapter 16	19.03%	Chapter 48	8.92%	Chapter 81	15.00%
Chapter 17	14.19%	Chapter 49	2.96%	Chapter 82	9.35%
Chapter 18	20.45%	Chapter 50	5.00%	Chapter 83	20.00%
Chapter 19	23.90%	Chapter 51	20.00%	Chapter 84	0.13%
Chapter 20	17.01%	Chapter 52	19.32%	Chapter 85	3.70%

Chapter 21	12.14%	Chapter 53	7.87%	Chapter 86	0.13%
Chapter 22	83.06%	Chapter 54	8.98%	Chapter 87	5.20%
Chapter 23	16.06%	Chapter 55	5.00%	Chapter 88	0.00%
Chapter 24	19.91%	Chapter 56	7.59%	Chapter 89	13.19%
Chapter 25	21.00%	Chapter 57	30.00%	Chapter 90	3.04%
Chapter 26	0.71%	Chapter 58	25.00%	Chapter 91	22.64%
Chapter 27	2.03%	Chapter 59	12.32%	Chapter 92	14.62%
Chapter 28	4.70%	Chapter 60	8.97%	Chapter 93	30.00%
Chapter 29	0.00%	Chapter 61	26.33%	Chapter 94	30.54%
Chapter 30	0.00%	Chapter 62	24.45%	Chapter 95	16.41%
Chapter 31	0.00%	Chapter 63	15.45%	Chapter 96	17.17%
Chapter 32	4.26%	Chapter 64	148.30%	Chapter 97	0.00%

**Question 8:**

**We note that the reason given for the exceptionally high import duty rate for Chapter 22 (185 per cent) is revenue generation. We also note that excise duties for these products also discriminate against exporters. We would urge Kazakhstan to use its tariff structure as a rational tool of trade policy and note as a revenue-raising mechanism. High tariffs mitigate against the benefits to be gained from a liberal trade policy. What percentage of budget revenue for 1997 is forecast to derive from customs and excise duties?**

**Answer:**

The percentage of budget revenue for 1997 forecast to be derived from customs duties and excise taxes are 2.6 per cent and 1.0 per cent respectively.

Note, however, that the trade-weighted average import rate for Chapter 22 dropped from 185 per cent to 83.06 per cent based on 1996 import data and current import duty rates.

**Question 9:**

**Can Kazakhstan confirm that products subject to excise duties are also subject to customs duties?**

**Answer:**

Products subject to excise duties are also subject to customs duties. However, there are exemptions from payment of excise taxes and duties (see Section IV.1.c and IV.1.d of WT/ACC/KAZ/3 and question 26 of WT/ACC/KAZ/6/Add.1). In addition, Government Resolution No. 1712 of 31 December 1996 provides the following exemptions from customs duties and levies for customs processing:

- goods imported by natural persons under the value of US\$2,000 and not exceeding a total weight of 70kg are exempt from customs duties and levies for customs processing;

- one transport vehicle for personal use by natural persons per year provided such vehicle is not transferred or alienated into the possession of another person except for transfer to a family member within one year from the date of customs clearance.

**Question 10:**

**According to Kazak Law, products imported under the value of US\$2,000 are exempt from customs duties and other procedures. Is this exemption available to foreign as well as Kazak natural persons?**

**Answer:**

Products imported under the value of US\$2,000, provided that the total weight of the goods does not exceed 70kg, are exempt from customs duties and levies for customs processing. This exemption is equally available to foreign as well as Kazak natural persons.

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

**Question 11:**

**We request an update on legislative developments on the ad valorem customs processing fee.**

**Answer:**

During accession to the WTO, Kazakhstan will bring its customs processing fee into conformity with Article VIII of the GATT 1994. The Government is currently developing a proposal as to how that will be done.

**Question 12:**

**WT/ACC/KAZ/6/Add.2, Question 40: Please elaborate on what is meant by the "same customs region".**

**Answer:**

Currently, there are 30 customs regions (or zones) throughout Kazakhstan defined according to geographic boundaries. Each region is under the responsibility of a customs house.

Custom regions are defined and redefined through orders issued by the Customs Committee. Boundaries of customs regions may change depending on the number of customs houses created or abolished. In addition, a special economic zone may itself be defined as a single region.

**Question 13:**

**On what basis are the charges for accompanying goods (100 ECU within the same customs zone; and 200 ECU for accompanying goods to the destination point) calculated?**

**Answer:**

The stated charges for accompanying goods is based on the cost incurred by the Customs to accompany goods. The cost includes the following: salary of two customs officers who accompany the goods; their car expenses (e.g. gasoline, repair); and their per diem (meals and lodging).

**Question 14:**

**What progress has Kazakhstan made on reviewing the fee structure for customs clearance with a view to ensuring it reflects the cost of services rendered? (WT/ACC/KAZ/6/Add.2, question 44). What progress has the Kyrgyz Republic made in calculating the actual cost of the services rendered in connection with importation?**

**Answer:**

Please see the reply to question 11 above.

**(e) Quantitative import restrictions, including prohibitions, quotas and licensing systems****Question 15:**

**Kazakhstan has indicated that "quantitative import restrictions may be established in the interest of national security, ethics, health etc". What specific restrictions could be imposed in the interests of, for example, ethics?**

**Answer:**

Import prohibitions may be imposed in the interests of ethics (e.g. printed or painted materials directed toward undermining state and public system, promoting war, terrorism, racism as well as pornography).

**Question 16:**

**(WT/ACC/KAZ/6/Add.2, question 52), Kazakhstan states that the system of import licensing is not linked to any quotas, and that Kazakhstan does not envisage using any systems other than certification and licensing in the future (except where otherwise permitted under WTO rules). We would urge Kazakhstan to amend its legislation where necessary to guarantee that WTO-incompatible restrictions will not be introduced in the future.**

**We understand that a licence is now needed to import (and produce?) alcohol, with a view to harmonisation with the system in place in the Russian Federation. We will need clear information on the extent of harmonisation with the Russian system; the requirements made to exporters; the cost of licenses; and the system for payment of customs, VAT and excise duties.**

**Answer:**

According to Government Resolution No. 217 of 14 February 1997 all types of spirits, fortified drinks, juice and balsam, vodka, liqueurs and vodka products, cognac were added to the list of goods subject to import licensing. These licenses are issued by the Ministry of Economy and Trade. Also this Resolution envisages the introduction of amendments and additions to the Presidential Decree, having force of Law "On licensing" to introduce requirements for license for sale of ethyl alcohol and wholesale trade of alcohol products. Currently only alcohol production, as type of activity, is subject to licensing. Starting from 1 March 1997, transit of types of spirits and alcohol products shall be carried out with permission of customs bodies and provided that deposits on excise taxes, VAT, and customs duties are made.

There are no special requirements to exporters of alcohol products. The cost of license is the same for every licensed types of activity - 20 monthly evaluation index. The system for payment of

customs and VAT is the same as for other goods. As for excise duties, the amount spent on labelling alcohol products is subtracted from total amount of due excise taxes. Certain alcohol products originating and imported from CIS countries are subject to excise taxes (please see reply to question 25 of this document).

The existing system was put in place with the purpose of harmonisation with the Russian system.

**Question 17:**

**Could you confirm whether tariff rate quotas are likely to be introduced in the future, particularly in relation to obligations arising from the Customs Union agreement?**

**Answer:**

Tariff rate quotas may be introduced in the future particularly in relation to obligations arising from the Customs Union agreement.

**Question 18:**

**We further understand that all export and import licensing is scheduled to be harmonised under the Customs Union. We will need information on the timetable for harmonisation and details of products to be covered**

**Answer:**

The process of harmonisation with Customs Union of all export and import licenses has been initiated. It is expected to be completed by mid-1998.

**(f) Import licensing procedures**

**Question 19:**

**What progress has been made in amending the administrative charges for issuing an import licence to bring them into line with the cost of services rendered?**

**Answer:**

Prior to accession to the WTO, Kazakhstan will review this administrative charge to ensure that it reflects the cost of services rendered. Kazakhstan is currently developing a proposal as to how that will be done. Upon accession, the import license fee will reflect the cost of services rendered.

**(h) Customs valuation**

**Question 20:**

**What legislative programme does Kazakhstan propose for bringing the valuation-provisions of the Customs Code into conformity with the WTO Valuation Agreement? (WT/ACC/KAZ/6/Add.2, questions 58 and 59) particularly Article 133 which does not fully delineate the prohibitions contained in Article 7.2(b), (c), (d) and (f) of the WTO Agreement. Is the Customs Code still on track to be amended in 1997?**

**Answer:**

Currently, amendments to the Customs Code are being prepared to conform to the WTO agreements. It is expected that draft amendments will be finalised by the end of September 1997.

**(k) Application of internal taxes on imports****Question 21:****VAT**

**Application of the MFN principle to internal taxation remains an issue of major concern. What progress has been made in discussions of the transition in the Inter-State Council and Integration Committee to bring the VAT system into conformity with accepted word practice? (especially with reference to Question 31 of WT/ACC/KAZ/6/Add.2: "VAT credits on imports from CIS are no longer permitted" - as of 31 December 1996)**

**Answer:**

There has not been any resolutions regarding this matter by the Inter-State Council and Integration Committee.

Kazakhstan has signed bilateral agreements with the Kyrgyz Republic, Ukraine, Moldova, and Azerbaijan on applying VAT at the destination (consumption) rather than source (production). Similar agreements are currently being negotiated with Uzbekistan and other CIS countries. Please note, however, that these agreements, except the agreement with the Kyrgyz Republic concerning VAT, have not yet been ratified and will come into force after ratification.

**Question 22:**

**WT/ACC/KAZ/6/Add.1, question 23: Is the VAT exemption available on a national treatment basis?**

**Answer:**

With reference to Question 23 of WT/ACC/KAZ/6/Add.1, the VAT exemption is available on a national treatment basis.

**Question 23:**

**WT/ACC/KAZ/6/Add.1, question 28: Which CIS countries have a VAT rate lower than Kazakhstan's?**

**Answer:**

Uzbekistan is the only CIS country which has a VAT rate lower than Kazakhstan. The VAT rate in Uzbekistan is 18 per cent for all goods except for milk, milk products, flour, bread, and meat where the VAT rate is 10 per cent. There are also exceptions to the 20 per cent VAT rate in Russia: 10 per cent for sugar and other products.

Nevertheless, according to the amendments to the Tax Code of 31 December 1996, all goods imported from CIS countries are subject to VAT when imported to Kazakhstan starting 1 January 1997.

## **Excise duties**

### **Question 24:**

**What legislative programme does Kazakhstan propose for eliminating the discriminatory excise tax regime? The rates must be harmonised by accession to the WTO.**

#### **Answer:**

During accession to the WTO, Kazakhstan will work toward bringing its excise tax system in line with the national treatment principle of WTO. Appropriate legislation will be enacted to address this issue during accession to the WTO.

Please note that the excise tax rate for the import of liqueurs and vodka product is 3.0 ECU/L as specified in Question 47 of WT/ACC/KAZ/6/Add.2. The entry of 0.6 ECU/L, as specified in Question 33 of WT/ACC/KAZ/6 is incorrect.

Automobiles with manual driving intended for disabled persons are excluded from the list of excisable goods.

Depending on the age of automobiles and the size of engine, the excise duties range from 10-40 per cent instead of 10-50 per cent according to Government Resolution No. 907 of 30 May 1997.

### **Question 25:**

**When calculating the difference between excise rates paid in other CIS countries and those payable in Kazakhstan, what (Kazak) rate of excise duty is used as basis for calculation on the products listed under WT/ACC/KAZ/6/Add.2, question 47 for (a) products from Russia, Belarus and the Kyrgyz Republic and (b) product from other CIS countries?**

#### **Answer:**

The following excisable goods, originating in CIS countries and imported to Kazakhstan from CIS countries, are subject to excise tax rates at importation:

- 220300: beer made from malt;
- 2204 (except 220430): wine of fresh grapes, including fortified wines (except other grape must);
- 2205: vermouth and other wine of fresh grapes flavoured with plants or aromatic substance;
- 2206: other fermented beverages (for example, cider, Perry, mead); tures of fermented beverages and non-alcoholic beverages not elsewhere specified or included;
- 2207: undenatured ethyl alcohol of an alcoholic strength by volume of 80 per cent volume or higher; ethyl alcohol and other spirits denatured, of any strength;
- 2208: undenatured ethyl alcohol of an alcoholic strength by volume less than 80 per cent volume spirits, liqueurs and other spirituous beverages compound alcoholic preparations of a kind used for manufacture of beverages;
- 2402: cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.

Other excisable goods, originating in CIS countries (except Ukraine, Moldova, the Kyrgyz Republic, and Azerbaijan) and imported to Kazakhstan from CIS countries, are exempt from excise taxes. The difference between excise rates paid in other CIS countries and those payable in Kazakhstan is not calculated regardless whether or not the rates in Kazakhstan are higher or lower than other CIS countries.

Kazakhstan has signed bilateral agreements with Ukraine, Moldova, the Kyrgyz Republic, and Azerbaijan on applying excise taxes at the destination (consumption) rather than source (production). Similar agreements are currently being negotiated with Uzbekistan and other CIS countries. Please note, however, that these agreements have not yet been ratified and will come into force after ratification.

**Question 26:**

**For example, how is the difference in excise duty payable on imports of vodka from the Russian Federation, where the Russian duty is levied according to percentage alcohol per litre, whereas in Kazakhstan there is a flat rate per litre?**

**Answer:**

Imported Vodka to Kazakhstan from the Russian Federation is charged excise taxes in Russia and is also charged Kazakhstan's import excise rates upon importation to Kazakhstan. Currently, it is a situation of double taxation.

**Question 27:**

**What excise duties are payable on imports of ethyl from the Russian Federation? (WT/ACC/KAZ/6, question 34. No excise duties on any domestically-produced alcohol intended for use in production of alcoholic beverages.)**

**Answer:**

The import excise tax rate of 3.5 ECU/L is payable at the moment of importation on imports of ethyl alcohol from the Russian Federation unless the conditions of Resolution No. 907 of 30 May 1997 are met. This resolution exempts from excise taxes imported and domestically produced alcohol intended for use in production of liqueurs, vodka, fortified juice, wine, balsam, provided that it is purchased by a licensed producer.

**Question 28:**

**We understand that no other internal taxes apply to imports. (WT/ACC/KAZ/6/Add.2, question 62) Could this please be confirmed?**

**Answer:**

Kazakhstan confirms that only VAT and excise taxes apply to imports.

**Question 29:**

**In order to calculate the VAT and excise duties payable on products imported from other CIS, is it assumed that customs documents include details of VAT and excise duties paid in the exporting country?**

**Answer:**

According to the amendments to the Tax Code of 31 December 1996, all goods imported from CIS countries are subject to VAT when imported to Kazakhstan starting 1 January 1997.



Kazakhstan has signed bilateral agreements with the Kyrgyz Republic, Ukraine, Moldova, and Azerbaijan on applying VAT and excise taxes at the destination (consumption) rather than source (production). Similar agreements are currently being negotiated with Uzbekistan and other CIS countries. Please note, however, that these agreements, except the agreement with the Kyrgyz Republic concerning VAT, have not yet been ratified and will come into force after ratification.

Like non-CIS countries, goods imported from these countries will be charged VAT upon importation to the territory of Kazakhstan and goods exported from Kazakhstan to these countries will be subject to VAT at zero level. The same applies for excise duties.

With respect to VAT, the customs documents (e.g. customs declaration) does not include details of VAT paid in the exporting country. However, the invoice must be submitted as a proof of payment of VAT in the exporting country.

With respect to excise taxes, no difference is calculated. Therefore, there is no need to indicate the excise taxes paid at the exporting country.

**Question 30:**

**In what currency are (a) exporters from non-CIS countries and (b) exporters from CIS countries to pay customs, VAT and excise duties?**

**Answer:**

Payments of customs, VAT, and excise duties may be paid in the currency of the Republic of Kazakhstan or the foreign currency specified in the declaration, provided the rate of such foreign currency is quoted by the National Bank of Kazakhstan and the customs has an account in that foreign currency. Exporters from CIS and Non-CIS countries are subject to the same rules.

**Question 31:**

**Is the difference in excise rates also payable on goods originating in the other three countries belonging to the Customs Union?**

**Answer:**

See reply to question 25 above.

**Question 32:**

**Where excise duties are ad valorem rather than specific, what are the methods for calculating excise taxes for (a) foreign goods (b) goods imported from the CIS and (c) domestic goods?**

**Answer:**

**(a) Domestically produced goods:**

Ad valorem: the sale price is subject to excise tax, without including VAT. Example, sturgeon and salmon, their roe, and delicacies made therefrom are sold at the price T 100 (without VAT). The producer of these goods shall pay excise tax at the rate 100 per cent. That is T 100.

- specific rates (ECU per unit): the rate of ECU shall be defined at the rate of the National Bank of Kazakhstan at the day of shipping of excisable production. Example, vodka is sold in the volume of 100 litres. The producer shall pay excise tax at the rate of 0.7 ECU per litre. That is 70 ECU.

**(b) Imported goods**

The same method applies for goods imported from CIS and non-CIS countries.

Ad valorem: the customs value is subject to excise tax, without including VAT. Example, sturgeon and salmon, their roe, and delicacies made therefrom are sold at the price T 100 (without VAT). The importer of these goods shall pay excise tax at the rate of 100 per cent. That is T 100.

- specific rates (ECU per unit): the rate of ECU shall be defined at the rate of the National Bank of Kazakhstan at the day of shipping of excisable production. Example, vodka is sold in the volume of 100 litres. The importer shall pay excise tax at the rate of 3.0 ECU per litre. That is 300 ECU.

**Seasonal duties (WT/ACC/KAZ/6, questions 35-38)**

**Question 33:**

**We note that Kazakhstan has not yet enacted regulations for the application of seasonal duties. We would welcome an update on progress of such enactment, and copies of relevant drafts when available.**

**Answer:**

Seasonal duties are provided for under Article 113 of the Customs Code. Amendments to the Customs Code are now being prepared by the State Customs Committee, with a view to resolving inconsistencies between the law and WTO requirements, among other purposes. The amendments are expected to be finalised by the end of September 1997.

**(l) Rules of origin**

**Question 34:**

**We are encouraged that Kazakhstan, like the European Communities, has a system based on the Kyoto convention. We urge Kazakhstan to bring its regulations relating to rules of origin into conformity with the WTO Agreements as soon as feasible. What legislative programme does Kazakhstan propose?**

**Answer:**

As noted in the response to Question 34, the State Customs Committee is currently preparing amendments to the Customs Code. Among the amendments under review is a proposal to conform the current advance ruling procedure to the requirements of the WTO Agreement on Rules of Origin. Kazakhstan intends to implement the results of the WCO Harmonisation Programme once completed.

**(m)(n)(o) Anti-Dumping, Countervailing Duties, Safeguards**

**Question 35:**

**We understand that new legislation on these matters will be discussed in Kazakhstan's Parliament in the course of 1997. Could Kazakhstan please provide the relevant draft when ready.**

**Answer:**

Currently, the draft Law on Countervailing Measures and the draft Law on Safeguard Measures are being finalised for submission to the Government. Please find in Attachment A a copy of the Draft Law on Anti-Dumping Measures. As soon as the other two drafts are finalised, they will be submitted to the Working Party for review.

**Question 36:**

**Furthermore, could Kazakhstan please state whether the current provisions on these matters (laid down in the Customs Code of 1995) could form the basis for the adoption of protective measures pending accession negotiations.**

**Answer:**

Such duties will not be applied before enactment of appropriate legislation.

**Question 37:**

**Could we please have an update on the redrafting of the law 'On Safeguard Measures'. We would like to remind Kazakhstan that the new law must conform to GATT Article XIX, and the WTO Agreement on Safeguards.**

**Answer:**

Please see response to question 35.

**2. Export Regulation**

**(d) Export licensing procedures**

**Question 38:**

**WT/ACC/KAZ/6/Add.2, question 74: Kazakhstan has provided an informative list of tariff categories requiring licensing. Are these licences automatic? Are they granted on national treatment and MFN basis? What is the cost of a licence - and how is it calculated?**

**Answer:**

Yes, export licenses are automatic and not linked to quotas. Licenses are granted on a national treatment and MFN basis with one exception. Exporters of certain goods are not allowed to obtain export licenses from the regional licensing offices of the Ministry of Economy and Trade. The cost of a license is 20 monthly evaluation index. It does not reflect the cost of services rendered. This fee is the same for obtaining any type of license including activity licenses.

### **3. Internal Policy Affecting Foreign Trade in Goods**

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

##### **Question 39:**

**Could Kazakhstan please state whether it maintains any local-content based subsidy (within the meaning of Article 3.1(b) and whether it plans to invoke Article 29 of the SCM Agreement on respect of these subsidies too.**

##### **Answer:**

Yes. Kazakhstan maintains local-content based subsidy. Subsidies contingent on the use of locally produced inputs was approximately US\$25 million in 1996 and constituted approximately 0.1 per cent of GDP. Kazakhstan does not plan to eliminate export subsidies upon accession to the WTO and plans to invoke Article 29 of the SCM Agreement with respect to these subsidies.

In addition, the Law on State Support to Direct Investment of 28 February 1997 provides income tax exemptions, property tax exemptions, customs duties exemptions, and other benefits and guarantees. One of the main goals of state support of direct investments through providing these benefits and guarantees is to develop export-oriented and import-substitution industries.

##### **Question 40:**

**WT/ACC/KAZ/6/Add.2, question 83: Could Kazakhstan please outline the objective criteria and guidelines provided to regional authorities for administering regional subsidies?**

##### **Answer:**

Government Resolution No. 619 of 22 April 1997 addresses the targeted use and the mechanism for allocation of subventions transferred to the budgets of oblasts. The amount of transfers, allocated in the form of subventions out of the Republican budget to oblast budgets shall be determined in the Law on Republican Budget for corresponding financial year. On a monthly basis, the Ministry of Finance transfers the amount of subventions to each region with explanations on the purpose of use of subventions. Subventions are mainly used for social needs.

The Ministry of Finance shall conduct supervision and analysis over the targeted and effective use of subventions transferred to the budgets of oblasts. In case funds are allocated for non-targeted use, the Ministry of Finance has the right not to disburse the funds, revoke or forbid the disbursement in the amount of revealed violation.

### **Agriculture**

##### **Question 41:**

**Could Kazakhstan clarify in more detail the support system for high grade seeds, pedigree cattle, high quality wood and astrakhan and lamb meat?**

##### **Answer:**

These subsidies are granted through the Agriculture Support Fund (ASF), established in December 1994. The main goal of providing subsidies to agricultural production through this ASF

is to increase efficiency of agricultural activities by means of stimulating entities to use new equipment, technology, purchasing of pedigree cattle, usage of high grade seeds, mineral fertiliser and means to protect plants.

According to the Order of Payment of Means of the ASF, approved by the Republic Inter-Ministerial Board of ASF on 25 March 1996, producers of high grade seeds shall provide information regarding the sale of high grade seeds (amount sold local farmers per ton, cost of production per ton, selling price per ton to local farmers - which is lower than the real price for a fixed amount per ton as approved by the Order) to the oblast representative of the Ministry of Agriculture. The oblast representative forwards this information on a monthly basis to the Main Department of Farming Policy Development at the Ministry of Agriculture. This Main Department collects all information from various oblasts and submits it in aggregate form to the central ASF office in Almaty. The ASF, according to the information provided by the Ministry of Agriculture, disburses appropriate funds to oblast offices of ASF which, in turn, provide appropriate funds to the producers of high grade seeds. Producers actually obtain the difference in amount between real price and selling price to local farmers.

The same support system applies to pedigree cattle, high quality wood and astrakhan, and lamb meat. The Main Department of Breeding Policy Development at the Ministry of Agriculture is responsible for implementing such support. The value of subsidy for high quality wood and astrakhan, and lamb meat is measured per unit (1kg). As for pedigree cattle, it is measured per ton.

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

**Question 42:**

**What practical steps will be taken to ensure the principles and elements of the WTO TBT Agreement relating to transparency, prior consultation of planned standards and regulations, non-discrimination and national treatment, proportionality, and the use and acceptance of international standards? Will Kazakhstan respect the notion of standstill also in this area, that is: not introduce any technical regulations or standards which would be incompatible with the provisions of the TBT Agreement?**

**Answer:**

Kazakhstan has already initiated review of its legislation connected with standards to ensure conformity with the Agreement on Technical Barriers to Trade. It has been determined that the current legal regime does not fully conform to the WTO TBT Agreement. Kazakhstan will be amending by the end of 1997 its legislation connected with standards to ensure full conformity with transparency and procedural aspects of TBT including all aforementioned provisions.

In adopting and revising standards, Kazakhstan carries out harmonisation with international standards such as ISO and IEC. We are not, however, aware of any specific standards recommended by the TBT Agreement with which to ensure compatibility.

**Question 43:**

**Within the meaning of the WTO TBT Agreement regulations are mandatory and standards voluntary. In its reply to WT/ACC/KAZ/6, question 72 Kazakhstan replies that standards are a type of regulations. What is the timetable for moving from mandatory regulations to voluntary standards in Kazakhstan and which products/product areas will be given a priority in this work?**

**Answer:**

In Kazakhstan, there are (i) *standards* which contain mandatory and recommended (voluntary) requirements for a unified group of products and (ii) *technical conditions* which are developed by enterprises and organizations for a specific product and establish requirements that must correspond to the mandatory requirements of standards.

Mandatory requirements of standards include requirements to ensure:

- safety for life and health of population;
- protection of environment;
- compatibility and interchangeability capacities; and
- rules of packaging, marking and methods of control of correspondence to mandatory requirements.

The requirements assuring consumers' characteristics related to quality of products are recommended ones.

It is unclear what is meant by moving from mandatory regulations to voluntary standards. Kazakhstan appreciates a further clarification regarding such suggestion.

**Question 44:**

**What does "requirements related to the groups of unified products and methods of testing" mean? (WT/ACC/KAZ/6, question 72)**

**Answer:**

Standards specify requirements related to the groups of unified (similar) products and methods of testing. Similar products are products which have similar specific features characterising these products. The methods of testing apply for testing certain characteristics of groups of similar products.

**Question 45:**

**What does the following statement mean: "mandatory requirements may be stipulated to protect the interests of the entity requesting the introduction of a specific standard". (WT/ACC/KAZ/6, question 74)**

**Answer:**

Kazakhstan plans to amend the Law on Standardisation and Certification by the end of 1997. The current proposal is to eliminate the last sentence in Article 8.3 referring to the mandatory requirements to protect the interests of the entity.

**Question 46:**

**"The Kazak Certification System...allows the possibility to use manufacturers' declaration if it is not possible to carry out testing of given product in Kazakhstan". Could Kazakhstan please explain under precisely what circumstances manufacturers declaration is possible to use and list the areas where it is not possible to carry out testing of a given product in Kazakhstan. (WT/ACC/KAZ/6, question 76)**

**Answer:**

The Kazak Certification System allows the possibility to use manufacturers' declaration if it is not possible to carry out testing of a given product in Kazakhstan due to the unavailability of testing facilities. There is no predetermined list and such decisions are made on a case-by-case basis. Note, however, that existing testing facilities are constantly being modernised and expanding the profile of their testing capabilities.

**(c) Sanitary and phytosanitary measures**

**Question 47:**

**We understand that Kazakhstan anticipates difficulties in applying the SPS Agreement in full on accession. What is being done to alleviate these difficulties?**

Kazakhstan has already initiated review of its legislation connected with sanitary and phytosanitary issues to ensure conformity with SPS Agreement. It has been determined that the current legal regime does not fully conform to the WTO SPS Agreement.

Kazakhstan will address these deficiencies through either amending existing legislation or enacting new ones. No decisions in this regard have been finalised.

**Answer:**

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

**Question 48:**

**WT/ACC/KAZ/6/Add.2, question 95: What legislative programme does Kazakhstan propose for eliminating the local purchase preference requirements in the Law on Oil and the Law On Subsurface Utilisation?**

**Answer:**

The Law on Oil and the Law on Subsurface Utilisation will both be amended by the end of 1998 for eliminating the local purchase preference requirements.

**Question 49:**

**Is any profits tax exemption awarded on the basis of export performance or local content?**

**Answer:**

The Law on State Support to Direct Investment of 28 February 1997 provides income tax exemptions. One of the main goals of state support of direct investments through providing benefits (e.g. tax incentives) and guarantees is to develop export-oriented and import-substitution industries.

**(f)(g) Free zones and free economic zones****Question 50:**

**In the response to WT/ACC/KAZ/6/Add.2, question 98 it is stated that customs duties and taxes are levied when goods are exported from the territory of free zones and free warehouses beyond the boundaries of Kazakhstan, customs duties and taxes shall be levied. Could you please elaborate on the duties and taxes levied in this case?**

**Answer:**

Kazakhstan currently does not impose export duties. Therefore, no export duties are levied on any goods exported from free zones and free warehouses.

Excise taxes do not apply for export to non-CIS countries

**Goods Exported to Non-CIS Countries from Free Zones and Free Warehouse**

	Export Duties	VAT
1. goods originating in the zone (produced or reprocessed)	exempt	zero rate
2. foreign goods originally imported to the free zone/warehouse	exempt	zero rate
3. Kazakstani goods originally imported to the free zone/warehouse	exempt	zero rate
5. goods in-transit in the zone regardless of origin	do not apply	do not apply

**Goods Exported to CIS Countries from Free Zones and Free Warehouse**

	Export Duties	VAT	Excise Rates
1. goods originating in the zone (produced or reprocessed)	exempt	exempt	do not apply
2. goods regardless of their origin exported to the Kyrgyz Republic	exempt	exempt	apply
3. Kazakstani goods originally imported to the free zone/warehouse	exempt	20%	apply
4. foreign goods originally imported to the free zone/warehouse	exempt	20%	apply
5. goods in-transit in the zone regardless or origin	exempt	exempt	exempt



**(k) Trade agreements leading to country-specific quotas allocation**

**Question 51:**

**WT/ACC/KAZ/6/Add.2, question 107 and WT/ACC/KAZ/6/Add.1, Questions 68 and 69): Do we understand correctly that countertrade and barter arrangements are generally company to company rather than government to government?**

**Answer:**

Barter and countertrade are not mandatory. Barter arrangements are only company to company.

**Question 52:**

**Are countertrade and barter arrangements subject to customs formalities, tariffs and taxes in the same way as other exports/imports?**

**Answer:**

Countertrade and barter arrangements are subject to customs formalities, tariffs and taxes in the same way as other exports/imports.

**(l) Government procurement**

**Question 53:**

**We welcome the initiative of Kazakhstan to join the GPA (WT/ACC/KAZ/6). However, we could learn from the answers received that the present Regulation allows for domestic preferences, by giving preferential margins to domestic goods or service providers. Such a provision would create a trade barrier in contradiction with the Kazak statement on future accession to the GPA. This issue needs to be clarified in the new law. Kazakhstan must ensure that this law does not breach GATT Article III, as her current arrangements do.**

**When does Kazakhstan plan to join the GPA?**

**Answer:**

Kazakhstan plans to join the GPA after accession to the WTO.

**Question 54:**

**Is Kazakhstan aware that preferential margins are not compatible with the provisions on national treatment in the GPA?**

**Answer:**

The Law on State Procurement was adopted by the Parliament on 30 June 1997. Kazakhstan is aware that preferential margins are not compatible with the provisions on national treatment in the GPA. The new law does not provide preferential margins as such. Article 16(5)(3) does, however, allow procuring entities to take into account the, "impact of the economic situation of the Republic of Kazakhstan or separate region of the Republic of Kazakhstan including: state of balance and currency reserves of the Republic of Kazakhstan; share of use of raw materials as well as production and labour

resources of the Republic of Kazakhstan; opportunities for economic growth, including investments in the economy of the Republic of Kazakhstan; small business support; creation of new working places; training of management, scientific and production personnel of the Republic of Kazakhstan". In determining the "most profitable bid" for purposes of awarding a tender.

**Question 55:**

**Could it be possible to obtain a copy of the draft law to be submitted to the Parliament?**

**Answer:**

A copy of the Law on State Procurement, adopted by the Parliament on 30 June 1997, is provided in Attachment A.

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

**1. General**

**(c) Membership in international intellectual property conventions and regional or bilateral agreements**

**Question 56:**

**Please list and describe those obligations concerning intellectual property that Kazakhstan has assumed pursuant to its accession to the Eurasian Patent Convention and to the Agreement with the Russian Federation on Co-operation in the sphere of industrial property protection.**

**Answer:**

In acceding to the Eurasian Patent Convention, the Republic of Kazakhstan did not undertake any obligations relating to intellectual property which extend beyond the framework of the Paris Convention. The Agreement between the Republic of Kazakhstan and the Russian Federation on co-operation in the spheres of industrial property protection introduces national treatment for applicants from the Russian Federation in connection with issuing safeguard documents and the payment of fees.

**Question 57:**

**Are there specific obligation contained in bilateral agreements signed with countries of the former USSR in the sphere of protection of intellectual property that Kazakhstan does not wish to extend to other countries?**

**Answer:**

No. There are no specific obligations contained in the bilateral agreements which Kazakhstan has signed with other CIS countries which it does not wish to extend to other countries.

**Question 58:**

**Does Kazakhstan intend to join the Protocol relating to the Madrid Agreement concerning the international Registration of Marks (Madrid 1989), the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (Geneva 1977, amended 1979), and the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purpose of Patent Procedures (1977, modified in 1980)? If yes, when does Kazakhstan intend to do that?**

**Answer:**

The issue of joining the aforementioned conventions is presently under consideration by the Patent Office of the Republic of Kazakhstan. A precise time-framework for accession to these Conventions has not yet been determined.

**(e) Fees and taxes**

**Question 59:**

**In annex 10 of the Memorandum on the Foreign Trade Regime of the Republic of Kazakhstan (12 July 1996) it appears that there are different methods for the calculation of fees for certain industrial property rights, for Kazak citizens and non-Kazak citizens? Are the fees for Kazak citizens equivalent to the fees for non-Kazak citizens?**

**Answer:**

No. The payments for non-citizens differ from those for citizens.

**Question 60:**

**If not, does Kazakhstan believe that this different treatment is compatible with the national treatment provided for in article 2 of the Paris Convention for the Protection of Industrial Property, which is incorporated by reference in article 2.1 of the TRIPs Agreement?**

**Answer:**

The Republic of Kazakhstan plans to phase-out the existing discrepancies in payments over a transitional period to be determined in connection with Kazakhstan's WTO accession negotiations. Certain preferences may be obtained, however, for applicants from those countries where the Annual GDP per capita is less than US\$3,000 (according to United Nations classifications)

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

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

**Question 61:**

The Government of Kazakhstan explains that the protection of well-known marks follows Article 6bis of the Paris Convention. Article 16.2 and 3 of the TRIPs Agreement extends this protection to service marks and "to goods or services which are not similar to those in respect of which a trademark is registered, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services [...]". It seems that no such protection exists in Kazakhstan. If this understanding is correct, does Kazakhstan intend to introduce such a protection when acceding to WTO? Please explain.

**Answer:**

The Republic of Kazakhstan protects well known trademarks without restriction by classes of products and services (International Classification of Goods and Services) in accordance with the TRIPS Agreement. The criteria, however, for determining what is "well known" are not yet completely defined by WIPO and, therefore, demonstrating the authenticity of the trademark should fall upon the trademark owner.

**Question 62:**

**Could the Government of Kazakhstan clarify whether, in its answer to the question on exceptions from protecting a mark, the quoted Articles are the relevant ones?**

**Answer:**

Articles 14 and 15 of the Law "Concerning Trademarks, Service marks and the Appellations of Origin of Goods" are the relevant articles. The full-text of each Article is set forth below:

Article 14. The absolute foundations for the rejection to register a trade mark

1. It shall not be permissible to register trade marks which consist exclusively of symbols:
  - which represent the state symbols, flags, emblems, abbreviated or full names of international and intergovernmental organizations, official controlling, guarantee and any other seals, stamps, decorations and any other marks of distinction or which use similar to those to a degree of confusion. Such designations may be used as a non-protected element if there is agreement of the appropriate bodies or of the owner;
  - those which do not possess any distinction capacity;
  - those which became universally used as symbols of goods of a certain type;
  - those which are generally accepted symbols and terms;
  - those which indicate the type, quality, quantity, properties, designation, value of goods as well as the place and the time of their manufacture and sale.
2. Designations which are indicated in clauses from 3 to 6 of paragraph 1 of this Article may be used as non-protective elements of trade mark unless they occupy the dominant position in it.

3. It shall not be permissible to register as trade marks or as their elements of the designation as follows:

- the ones which are false or misleading in respect of a commodity and its manufactures;
- which contradict by their content to public interests, principles of humanity and morals.

Article 15. Other reasons for refusal to register a designation as a trade mark

1. The following designation which are identical or similar to a degree of confusion may not be registered as trade marks:

- with trade marks which were earlier registered or applied for the registration in the Republic of Kazakhstan in the name of different person in respect of similar goods and services;
- with trade marks of any other persons which are protected without registration because of international treaties of the Republic of Kazakhstan;
- with names of places of the origin of goods which are protected in the Republic of Kazakhstan except for the cases when they may be included as a non-protected element of a trade mark which is registered in the name of a person who has the right to use this name of the place of the origin of the good.

2. The designation which reproduce the following shall not be registered as trade marks:

- industrial samples which are protected in the Republic of Kazakhstan;
- universally known at the territory of the Republic of Kazakhstan trade names which belong to any other persons who have obtained the right to those names before the date of the priority of the applications for the trade mark in respect of similar goods;
- names of well-known prices of literature, science and art; pieces of arts and the parts whereof which are protected in accordance with the copyright;
- surnames, names, pseudonyms and the derivatives whereof, the portraits and facsimile violating personal non-property rights of those persons, or legal successors as well as those designations when they are an asset of the history and culture of Republic of Kazakhstan without the permission of the relevant competent body;
- olympic symbols.

**Question 63:**

**Is there any practice by the Patent Office on what would constitute regard as "non-use due to circumstances beyond the control of the holder of trademark"?**

**Answer:**

At present, the Republic of Kazakhstan does not have a practice of "non-use due to circumstances beyond the control of the holder of the trademark".

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

**Question 64:**

**Are geographical indications protected against unfair competition within the meaning of Article 10*bis* of the Paris Convention?**

**Answer:**

Yes. Article 9 of the Law on Competition, Development and Limitation of Monopolistic Activity provides that the following activities shall constitute unfair competition:

- the promulgation of false or incorrect information (the presentation of accurate information in a false light) which are capable of inflicting damage to assets and business reputation of another business entity;
- misleading the consumer in respect of the nature, methods and place of the manufacture, properties, fitness to use or quality of goods;
- incorrect comparison of goods in the course of advertising activity;
- unauthorised use of someone's trademarks, servicemarks, tradenames or trademarks and also copying of the form, package, appearances of goods which belong to an other business entity;
- the receipt, the use and divulging of confidential research and development, production or trade information, including commercial secrets without consent of its owner.

**Question 65:**

**Does Kazak legislation foresee the refusal or invalidation of the registration of a trademark which contains or consists of geographical indication? What are the criteria?**

**Answer:**

In the, "Law on Trademarks, Service marks, and the Appellations of Origins of Goods" the definition is used, "the name of the place of origin of a product" in respect of which certain criteria for "refusing to register or recognise them as valid" are used. According to Article 16(1) of the Law, a geographical indication may be recognised as a name of the place of origin. Accordingly, the criteria to refuse or to recognise the name of a place of origin as valid shall extend over it.

**Question 66:**

**Does Kazak legislation grant protection against a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory? Please explain.**

**Answer:**

In accordance with the "Rules of Consideration of an Application to Register a Trademark", (a normative act of the Patent Office registered with the Ministry of Justice), "geographic names or marks including geographical names, which are able to mislead a consumer regarding the place of the applicant's location. as well as to the registration of them to the possession of one owner which may limit the rights of a third party, shall not be registered".

**Question 67:**

**Could the Government of Kazakhstan explain in more detail the protection of geographical indications for wines and spirits?**

**Answer:**

There are no special criteria for trademarks on alcoholic products. Such products are regarded as trademarks including geographical indexes/marks.

**(d) Industrial designs**

**Question 68:**

**Is it possible to apply directly for a patent for industrial designs or is it necessary that an applicant has to apply for a preliminary patent first?**

**Answer:**

In accordance with Articles 4(1) 22 and 24 of the Law on Patents, protection for industrial designs requires that the applicant apply for a preliminary patent first since this requirement is stipulated for by the procedure for formal expertise of the materials of the application (this means that patentability of industrial property objects are not checked).

**Question 69:**

**Could the Government of Kazakhstan clarify the legal implications of the following statement: "if the applicant, however, does not timely submit an application for extension, legal protection of the industrial design shall be cancelled from the moment of the preliminary patent's date of expiration".**

**Answer:**

In the event that a holder of a preliminary patent does not timely submit an application for conducting a full expertise (i.e. during four years from the date of submitting the initial application for a preliminary patent), the preliminary patent shall be cancelled from the moment of the preliminary patent's original date of expiration (a period of five years from the date of the original application to the Patent Office).

**(e) Patents**

**Question 70:**

**Could the Government of Kazakhstan explain whether an applicant has a choice either to apply for a preliminary patent or for a patent?**

**Answer:**

In accordance with Articles 4(1) and 22 and of the Law on Patents, protection for patents requires that the applicant apply for a preliminary patent first since the Patent Law envisages a system whereby objects of industrial property are protected automatically from the moment of initial registration.

**Question 71:**

**Does Kazak law already implement the criteria for granting compulsory licenses as set out in Article 31 of the TRIPs Agreement? If so, please explain how, if not, when does the Kazakhstan Government intend to introduce such criteria?**

**Answer:**

The criteria for granting compulsory licenses are those set out in Articles 14(4) of the Patent Law which involves "interests of national security", Articles 11(3) and 11(4) which provides for

compulsory licenses where it can be established that non-use of a patent has occurred for a period of five years from the moment of application. The text of Articles 11(3) and 11(4) read as follows:

Article 11(3): A patent holder shall be obligated to use the invention, the useful model or industrial sample. The use shall be understood to mean the introduction into business circulation of the product which was created with the use of the invention, useful model or industrial sample and also the use of the method which is protected by a preliminary patent or patent on an invention.

In case of non-using or insufficient using by the patent holder of the invention or industrial sample over a period of five years from the date of publishing the information concerning the issue of the preliminary patent, the useful model - within 3 years from the date of publication of the information concerning the issue of the patent, the person which desires and is ready to use the protected item in the case of the refusal of the patent holder from concluding the licensing agreement may apply to the court with a petition to grant him a compulsory license. If a patent holder does not prove that non-using or insufficient use has been caused by respectful reasons, the court shall grant the indicates license with the prescription of the limits of use, amounts, dates and procedure for payments. The amount of the payments must be established not lower than the market price of the license.

Article 11(4): Where a patent holder may not or fails to use an invention, useful model, industrial sample without violating in that respect any rights of any other patent holder, he shall have the right to require from the latter the conclusion of a licensing agreement.

#### **4. Enforcement**

##### **Question 72:**

**Does Kazak criminal law provide for the seizure, forfeiture and destruction in cases of trademark counterfeiting? Please explain.**

**Answer:**

At present, the legislation of the Republic of Kazakhstan does not yet provide for the seizure, forfeiture and destruction in cases of trademark counterfeiting.

##### **Question 73:**

**It is stated that Kazak law foresees the "confiscation of counterfeit copies of works or phonograms". (WT/ACC/KAZ/6, question 132) Could the Kazak Government explain whether its legislation also allows the forfeiture and destruction of such works? If not, are there intentions to introduce such measures?**

**Answer:**

Yes. Both the Administrative Code (Article 170-3) and the Law on Copyrights and Related Rights (Article 49) provide for the forfeiture and destruction of counterfeit copies of works or phonograms.



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

### **Question 74:**

#### **Monopolies:**

**The reply to question 84 (WT/ACC/KAZ/6/Add.1) says that are currently "no legislative acts which provide advantages to any entities...in obtaining licences"; could the Kazak authorities confirm that this means that there are currently no State monopolies in the services sector?**

#### **Answer:**

The statement in the reply to question 84 of WT/ACC/KAZ/6/Add.1 means the State currently does not provide advantages to one entity over another in obtaining licenses.

There are no State monopolies in the service sectors which are conferred by law.

There are few State and private companies in the service sector which have dominant positions (greater than 35 per cent market share). This is mainly due to lack of market entrants rather than regulatory barriers.

Please note that most natural monopolies (e.g. pipelines for gas and oil, railroads) are still owned by the State.

### **Question 75:**

#### **Telecommunications:**

**From the answer to question 148 (WT/ACC/KAZ/6) it appears that there is not a predetermined number of licences available for the provision of telecommunications services, but it is stated that there are tenders for radio frequency and cellular communication. Could the Kazak authorities confirm that there is no predetermined limit on the number of telecommunications licences available and explain how the tendering system mentioned operates? Further to the answer provided to question 94 (WT/ACC/KAZ/6/Add.1), could Kazakhstan explain how the interconnection regime operates and indicate whether a model interconnection agreement exists?**

#### **Answer:**

At the present time, there is no predetermined number of licences for the provision of telecom services except radio-frequency due to lack of capacity. Currently, tenders are required for obtaining radio frequency license. Licenses for other telecom services are obtained from the Ministry of Transport and Telecommunications according to the Licensing Law (see reply to question 92 of WT/ACC/KAZ/6/Add.1)

Tenders are used in the following cases:

- more applications than available licenses for this one kind of activity in one region;
- a new communication service, connected with the usage of most economical field of radio-frequency spectra, is offered.

The Tender Commission consists of representatives of the Licensor (Ministry of Transport and Communications) and the State Commission for Radio-Frequency of the Republic of Kazakhstan.

In addition, independent consultants may be represented in the tender commission including legal persons and representatives of State Committee of Anti-Monopoly and Pricing Policy, State Committee of Management of the State Property, National Agency of Mass Media, Local Supervision Bodies, and other specialists depending on the kind of activity and location.

The Tender Commission organises and conducts the tender. The Tender Commission prepares:

- tender documentation which include all documents connected with tender procedures and requirements for the application form;
- documentation describing relationship between operator and operators of existing network including terms of payments and network connection;
- draft license which includes requirements for the network capacity, services, level of tariffs and other terms.

Participants may be any entity who has its own bank account bank or a guarantee for the implementation of the technical project or proposal. Application should have the following information:

- Status of entity, general characteristics, type of activity, proposed juridical form: issuing shares;
- technical feasibility;
- financial feasibility, finance management, and list of financial sources;
- activity and previous experience in the field of communication; and
- business plan with general and detailed description of technical equipment and market estimation.

After preparation of the tender documentation, the Tender Commission makes announcement in mass media about the tender along with deadline for submitting applications.

During the period of preparation of proposals, questions regarding tender may be provided in written form to the Tender Commission. Answers to these questions by the Tender Commission are provided in written form.

All submitted applications are registered by the Tender Commission. After the expiration of the period for accepting applications, the Tender Commission makes an announcement in mass media listing all participants in the tender.

During a fixed period of time, the Tender Commission considers the application and chooses the best proposal and offer. The basis of a final decision is documented in a protocol of the session of the Commission within three days after the session.

Kaztelecom is a JSC (50 per cent State share; 40 per cent foreign investor; 10 per cent privileged shares) operating the general use network. Interconnection to the network is negotiated between Kaztelecom and the applicant seeking to be connected to the network in accordance with Order No. 149 of 1 July 1996 issued by Ministry of Transport and Communications.

The application for interconnection should contain a copy of license, issued by the Ministry of Transport and Communication, and technical standards and specifications. There is a model interconnection agreement. There are no requirements for publishing interconnection agreements. An operator who has a license should not be refused interconnection to the network. All technical terms regarding interconnection should be provided by Kaztelecom upon written request within 30 days.

**Question 76:**

**Professional Services:**

The answer to question 141 (WT/ACC/KAZ/6) refers to a procedure for the design and construction of specific projects rather than for the establishment of a commercial presence in the fields of engineering, architectural and urban planning services. Can the Kazak authorities confirm that, in relation to establishment of foreign service suppliers in this sector, only the non-discriminatory licensing procedures apply, as for other services sectors.

**Answer:**

The licensing procedure for obtaining a license in the fields of engineering, architectural and urban planning services is the same for domestic and foreign service suppliers in this sector.

**Question 77:**

**Financial Services:**

It has been mentioned in the information supplied so far that a number of restrictions in the banking sector are to be removed by 1 January 1999. Is Kazakhstan prepared to make such commitments in its services schedule?

**Answer:**

The reply to this question will be reflected in the offer on market access on services which will be submitted to the Working Party by the end of July 1997.

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

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

**(b) Customs union agreements**

**Question 78:**

Article 1.2 of the Agreement on Kazakhstan's accession to the Customs Union Agreement requires uniformization, within four months of the date of signature, of the respective legislation on external trade, customs, taxation, and currency and finance as these relate to foreign economic activity, with focus being placed on:

- economic conditions that could foster free enterprise and provide equal opportunities and possibilities for business operating in the signatory states;
- pricing policy;
- currency regulation and monetary control;
- export controls;
- elimination of unfair competition and discriminatory practices ; and
- protection of intellectual property.

**To what extent has Kazakhstan begun to harmonise its legislation in respect of the above commitments with that of the other parties to the Customs Union?**

**Answer:**

According to the plan of measures on harmonisation of legislation between Customs Union countries, such work will be conducted during 1997-1998.

**Question 79:**

**We understand that all four parties to the Customs Union Agreement have signed a Protocol to the effect that they intend to accede to the WTO as separate countries, with entirely separate market access negotiations, though in consultation with each other. We would note, however, that notwithstanding this Protocol, the transition towards harmonisation of foreign trade policy raises serious questions about the ability of the Parties to negotiate accession to the WTO entirely separately.**

- (i) It seems likely that the coverage of either parties tariffs commitments in the WTO might need to be extended to some parties not participating in the negotiation. So if one party were to accede before the other there would be pressure for the second party to the Customs Union to accept those same tariff commitments.**
- (ii) There is no guarantee that legislative programmes and tariff commitments undertaken by any singly party would indeed be maintained after accession, as the Customs Union requires eventually full harmonisation of foreign trade policy.**
- (iii) Clarification will also be needed of suggestion that the Customs Union may be developed into a broader agreement covering other areas such as services. If there are plans for such a development, an indication from Kazakhstan (and its partners) of the scope and timetable will be necessary.**

**We would welcome comment from Kazakhstan on the above considerations.**

**Answer:**

According to mutual agreement between Customs Union countries, each member country of the Customs Union will accede to the WTO separately in consultation with other Customs Union countries regarding tariff and non-tariff policy, customs and tax legislation, and other issues. Each party will take individual obligations during accession to the WTO. After accession, Customs Union countries will define a transitional period to unify their legislation.

**Question 80:**

**What is the nature of the customs control at the borders between Kazakhstan and the Russian Federation on the one hand; and Kazakhstan and Kyrgyz Republic on the other. Are all consignments stopped and checked, whatever their country of origin?**

**Answer:**

Currently, the customs control at the borders between Kazakhstan and the Russian Federation on one hand and Kazakhstan and the Kyrgyz Republic on the other hand is not different from customs control with other countries. All consignments are stopped and checked regardless of their country of origin.

**(c) Free trade agreements****Question 81:**

**Please inform the Working Party of progress in obtaining information on details of the percentage trade overall and in each major sector that is excluded from the free trade regime for each free trade agreement, and provide any information available to date.**

**Please provide the Working Party with copies of the Protocols attached to the Free Trade Agreements either in force, or, if available, expected to enter into force in the near future.**

**Answer:**

Please find in Attachment A copies of the two protocols attached to the two free trade agreements which are currently in force (the Kyrgyz Republic and Moldova). In addition, a draft protocol with Tajikistan is provided in Attachment A. The free trade agreement with Tajikistan has not been ratified.

There are no exemptions from free trade between customs union countries (Belarus, Kazakstan, and Russia). There are no exemption from free trade with the Kyrgyz Republic.

The following table provides the total value of exports and imports in 1995 and 1996 covered by the Customs Union with Russia, Belarus, and the free trade agreements with the Kyrgyz Republic and Moldova.

	1995				1996			
	Export, Th. US\$	% of total export	Import, Th. US\$	% of total import	Export, Th. US\$	% of total export	Import, Th. US\$	% of total import
Russia	2,102,631.2	42.3	1,854,404	49	2,770,645.9	44.5	2,342,309	55.0
Belarus	57,472.8	1.16	79,767.4	2.1	46,982.2	0.75	120,817	2.8
Kyrgyzstan	73,274.4	1.53	30,838	0.82	112,632.8	1.8	91,044.3	2.1
Moldova	2,467.3	0.05	5,553.5	0.14	3,160.8	0.05	8,234.6	0.2

The following table provides export in each major sector excluded from the free trade regime with Moldova that are agreed upon in protocols to these agreements.

HS	Description	1995	1996
		Export, thousand US\$	Export, thousand US\$
1001	Wheat (all types)	158.3	-
1002	Rye	36.1	-
1003	Barley	40.7	-
1004	Oats	9.5	-
1006	Rice-grain, rice-groats	13.6	12.6
4102	Raw skins of ships or lambs	1.7	1.8
271000790	Products of crude oil (including gas condensate) processing	-	29.9
Total:		259.9	44.3

The percentages of export excluded from free trade regime with Moldova in terms of Kazakhstan's total value of Moldova trade are 10.5 per cent in 1995 and 1.4 per cent in 1996.

The following table provides import in each major sector excluded from the free trade regime with Moldova that are agreed upon in protocols to these agreements.

		1995	1996
HS	Description	Import, thousand US\$	Import, thousand US\$
2208	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 per cent vol.; spirits, liqueurs and other spirituous beverages	67.0	929.0
2936	Provitamins and vitamins, natural or reproduced by synthesis (including natural concentrates)	-	29.6

The percentages of import excluded from free trade regime with Moldova in terms of Kazakhstan's total value of Moldova trade are 1.2 per cent in 1995 and 11.6 per cent in 1996.

ATTACHMENT A

LAW OF THE REPUBLIC OF KAZAKSTAN CONCERNING STATE SUPPORT  
TO DIRECT INVESTMENTS IN THE REPUBLIC OF KAZAKSTAN

CHAPTER 1 - GENERAL PROVISIONS

Article 1. Relationship to Be Governed by this Law

This Law shall govern the relationship arising in the process of state support to direct investments in the Republic of Kazakhstan.

Article 2. Basic Terms

In this Law the following terms are used:

Investments means all types of property invested into objects of entrepreneurship activity in the territory of the Republic of Kazakhstan including:

- movable and immovable property and property rights, retention and other rights;
- shares and other forms of participation in commercial organizations;
- bonds and other promissory notes;
- aspirations of cash, goods, services and any other fulfilment under treaties related to investments;
- the right to intellectual property including authorship rights, patents, trade marks, industrial designs, technological processes, brand names and know-how;
- any right to implementation of activity based on a licence or otherwise granted to state authorities;
- profit gained and reinvested in the territory of the Republic of Kazakhstan.

The form of investment and changing of such form do not affect its characteristics as investments.

Direct investments means all types of investments except for investments bound by sovereign guarantees of the Republic of Kazakhstan and being the subject of official technical assistance or grants provided to the Republic of Kazakhstan.

Investment activity means entrepreneurship activity associated with the process of implementation of investment.

Investor means an individual or a legal entity or a group of individuals carrying out investment activity.

The Committee means the State Committee of the Republic of Kazakhstan on Investments.

Contract means an agreement executed between the Committee and an investor determining the essence of the process of enforcement of an investment project and its State support.

Approved investor means an investor executed a contract with the Committee.

Priority sectors of economy means sectors and regions which in accordance with the procedure established by Article 6 of this Law, are determined as the key sectors for intensive attraction of

investments and development for the purpose of economic growth and rise in efficiency of the economy of the Republic of Kazakhstan.

Natural grants means property and property rights of the Republic of Kazakhstan granted to investors gratis in non-monetary form.

#### Article 3. Legislation of the Republic of Kazakhstan on State Support to Direct Investments

1. Legislation of the Republic of Kazakhstan on State support to direct investments is based upon the Constitution of the Republic of Kazakhstan, comprises norms of this Law, other legislative acts of the Republic of Kazakhstan, normative legal acts of the President and the Government of the Republic of Kazakhstan and of other State authorities of the Republic of Kazakhstan adopted within the competence thereof.

2. If an international treaty ratified by the Republic of Kazakhstan provides for the rights different from those stipulated by the legislation of the Republic of Kazakhstan on state support to direct investments, the rules of international treaty shall prevail.

### CHAPTER 2 - STATE POLICY OF SUPPORT TO DIRECT INVESTMENTS

#### Article 4. Content of State Policy of Support to Direct Investments

State policy of support to direct Investments comprise:

- legislative guarantees to secure investment activity;
- establishment of the system of privileges and preferences;
- existence of a single body authorized to represent the Republic of Kazakhstan before investors.

#### Article 5. Goals and Objectives of the State Policy of Support to Direct Investments

1. The goal of the State policy of support to direct investments is to speed up development of production of goods and services in the priority sectors of the economy by creation of favourable investment climate and attraction of direct investments.

2. In the process of achieving such goal the Republic of Kazakhstan accomplishes the following tasks:

- (i) introduction of new technologies, advanced technique and know-how;
- (ii) satiation of domestic market with high-quality goods and services;
- (iii) development of export-oriented and import-replacing production;
- (iv) rational and complex use of raw material basis of the Republic of Kazakhstan;
- (v) putting in place of up-to-date management and marketing methods;
- (vi) creation of new jobs;
- (vii) provision of intensification of production;



- (viii) improvement of environment.

#### Article 6. Priority Sectors of the Economy

The State policy of support to direct investments is exercised in the priority sectors of economy, the list of which shall be approved by the President of the Republic of Kazakhstan based on a proposal of the Government, as a rule for the term of three years.

### CHAPTER 3. MEASURES TO STIMULATE REALIZATION OF INVESTMENT PROJECTS

#### Article 7. System of Privileges and Preferences

For the efficient realization of an investment project the Committee may grant the following privileges and preferences:

- (i) State natural grants;
- (ii) reduction of the rate of income tax, land tax and property tax down to 100 per cent of the basic rate for the term of up to 5 years upon execution of the contract, and for the subsequent period of up to five years reduction of the rate of income tax, land tax and property tax for not more than 50 per cent of the basic rate;
- (iii) full or partial exemption from customs duties for import of equipment, raw materials and materials necessary for realisation of the investment project.

#### Article 8. Guarantees to Be Provided by the Republic of Kazakhstan for Protection of Interest of Approved Investors

The Republic of Kazakhstan guarantees:

- (i) not to restrict the right of an approved investor to dispose its share in the charter fund or shares of an economic partnership, or the right to free transmission of the capital, profits or revenues, gained as a result of sale of its share in the charter fund or shares of an economic partnership, provided however, that taxes and other mandatory payments are paid;
- (ii) not to create State monopolies controlling sale of raw materials and goods manufactured by an approved investor in the territory of the Republic of Kazakhstan in compliance with the investment project;
- (iii) not to apply measures of control and regulation of prices in the process of sale of raw materials and goods manufactured by an approved investor in the territory of the Republic of Kazakhstan in compliance with the investment project, unless otherwise provided by legislative acts of the Republic of Kazakhstan;
- (iv) not to impede opening bank accounts by the approved investors in the national currency of the Republic of Kazakhstan and foreign currencies and converting the national currency of the Republic of Kazakhstan to hard currency, and converting hard currency to the national currency of the Republic of Kazakhstan as may be required for implementation of investment activity and not to impose any other restrictions of currency regulation in respect to approved investors;

- (v) if necessary to set up import customs duties for goods which are analogues to goods manufactured by the approved investor in the territory of the Republic of Kazakhstan in compliance with the investment project, unless it contradicts to international obligations of the Republic of Kazakhstan.

Article 9. Protection from Amendments and Addenda of Legislation of the Republic of Kazakhstan

If any amendment or addenda is made to legislation of the Republic of Kazakhstan upon execution of the contract, which entail impossibility to further observe the initial terms of a contract, or result in significant changes of the economic terms thereof, the approved investor and the Committee shall introduce amendments and addenda to the contract which may be necessary to restore economic interests of the parties as of the date of execution of the contract.

Article 10. Publicity in the Activity Associated with Realization of Investment Projects

1. The list of investment projects for which the contracts with the Committee are executed, shall be subject to publishing in mass media.
2. All normative legal acts as well as judicial decisions pertaining to realisation of investment projects by the approved investors must be open for the interested parties.

CHAPTER 4 - TERMS OF PROVISION OF PRIVILEGES AND PREFERENCES

Article 11. Terms and Provision of Privileges and Preferences

1. Privileges and preferences listed in Article 7 of this Law shall be provided for on realization of an investment project subject to confirmation that:
  - (i) privileges and preferences are necessary for fulfilment of the proposed investment project;
  - (ii) the investor possesses financial, technical and personnel abilities for performance of the project;
  - (iii) The investor bears responsibilities, fulfilment of which is amenable to control and will secure full and timely realisation of the investment project.
2. Privileges and preferences shall be granted by the Committee through execution of contracts with the investor.

Article 12. Procedure of Execution of a Contract

1. Application of an investor for granting privileges and preferences for realization of an investment project in priority sectors of economy, shall be accepted by the Committee in accordance with the procedure approved thereby.
2. Within not more than thirty days upon receipt of such application the Committee shall examine it to see if it complies with the legislation of the Republic of Kazakhstan on the state support to direct investments. Based on the results of such examination the Committee shall notify the investor on the adopted decision.

3. In case of positive decision the Committee jointly with the investor shall develop a contract within not more than sixty days. In the process of elaboration of such contract the Committee shall carry out an examination jointly with the correspondent State authorities and if necessary with independent experts. In special cases the Committee is empowered to extend the term of contract preparation. The contracts which are most significant for the Republic of Kazakhstan shall be executed upon consent of the Government of the Republic of Kazakhstan.

4. Upon execution the contract shall be registered with the Committee within fifteen days in accordance with the procedure and terms established by the Committee.

5. Compensation of expenditures incurred by the Committee while organizing and performing the examination of the investment application and contract, shall be implemented at the cost of the investor in accordance with the procedure established by the Committee.

#### Article 13. Terms of Termination of a Contract

1. The Committee may terminate the contract in the following cases:

- (i) misrepresentation or concealment of significant facts is discovered pertinent to any data provided by the approved investor to the Committee;
- (ii) the approved investor fails to fulfil its obligations and to observe the terms stipulated in the contract;
- (iii) in case of infringement of legislation of the Republic of Kazakhstan.

2. If the contract is terminated on the basis of reasons specified in Clause 1 of this Article, the approved investor shall be liable for reimbursement of losses and shall return all short-paid amount of taxes and other fees entailed from privileges and preferences granted under the contract, and be subject to correspondent penalties and fines stipulated by legislation of the Republic of Kazakhstan and provisions of the contract.

### CHAPTER 5. STATE BODY AUTHORIZED TO IMPLEMENT THE STATE POLICY OF SUPPORT TO DIRECT INVESTMENTS

#### Article 14. The Authorized State Body

1. The Committee shall be the only State body authorized to implement the State policy of support to direct investments in the Republic of Kazakhstan.

2. The Chairman of the Committee shall be appointed by the President of the Republic of Kazakhstan and shall hold the title of the First Deputy Prime Minister of the Republic of Kazakhstan.

The Chairman of the Committee shall regularly report to the President of the Republic of Kazakhstan and Prime Minister of the Republic of Kazakhstan on the activity of the Committee as well as on the status of investment projects.

3. The activity of the Committee and its representative offices shall be financed from the Republican budget and out of funds received from investors in accordance with Clause 5 of Article 12 of this Law.

4. The number, structure and terms of remuneration for employees of the Committee, including its representative office, as well as the procedure and terms of employment of advisers, consultants and experts, shall be approved by the Chairman of the Committee.

#### Article 15. Primary Functions of the Committee

The primary functions of the Committee shall be the following:

- (i) arrangement of activities aimed at attraction of direct investments into the Republic of Kazakhstan;
- (ii) coordination of activities of the State authorities of the Republic of Kazakhstan aimed at realization of investment projects carried out by the approved investors;
- (iii) provision of obtaining all approvals and permissions, licences, signatures and other documentation ensuring the rights and authorities necessary for realization of each investment project;
- (iv) provision of assistance to the approved investors in search for qualified personnel, goods and services in the Republic of Kazakhstan;
- (v) performance of control over realization of investment projects including supervision over fulfilment of the obligations of the approved investors.

#### Article 16. Authorities of the Committee

For fulfilling its functions the Committee is entitled to:

- (i) request and receive all necessary information from investors, central and local executive authorities;
- (ii) attract specialists of the correspondent State authorities, advisors, consultants and experts which may be individuals or legal entities of the Republic of Kazakhstan and other countries, for execution of examination and elaboration of contracts;
- (iii) coordinate activities of central and local executive authorities and diplomatic missions of the Republic of Kazakhstan abroad for the purpose of stimulating foreign participation in investment projects carried out in the Republic of Kazakhstan;
- (iv) publish resolutions on the issues pertaining to preparation and realization of contracts which shall be binding upon Ministries, State Committees and other central and local executive authorities. Resolutions of the Ministries, State Committees and other central and local executive authorities on the issues pertaining to investment activity shall be subject to obligatory coordination with the Committee.

### CHAPTER 6 - FINAL PROVISIONS

#### Article 17. Applicable Law and Settlement of Disputes

1. The law of the Republic of Kazakhstan shall be applicable unless otherwise provided by provisions of the contract or other agreements with the investors.

2. All disputes associated with execution, performance, termination of the contract, supervision over fulfilment of the contract, provision of incentives and other disputes directly related to the contract, shall be settled as much as possible by negotiations including negotiations with participation of foreign experts or in accordance with earlier discussed procedures of disputes resolutions, including the procedures provided for in the contract.

Article 18. Final Provisions

1. This Law shall apply to legal relations arising upon its enforcement.

2. The legislation of the Republic of Kazakhstan existing on the date of enforcement of this Law shall apply to the extent it does not contradict thereto [to this Law] and must be brought into compliance therewith [with this Law] within two months upon enforcement thereof [of this Law].

President  
of the Republic of Kazakhstan  
N. Nazarbaev  
Almaty, 28 February 1997

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LIST OF THE MOST IMPORTANT OBJECTS FOR ATTRACTION  
OF DIRECT DOMESTIC AND FOREIGN INVESTMENTS  
FOR THE PERIOD UP TO THE YEAR 2000

1. Production infrastructure

- railway roads and objects facilitating work of railway roads transport;
- automobile roads;
- airports and terminal complexes;
- units of aeronavigation;
- sea and river ports;
- bridges and overpasses;
- electric and thermoelectric power stations;
- transformation substations and electricity transmission lines (except main lines).

2. Processing industry

- manufacturing of high quality clothes, yarn, fabrics, shoes, fur and leather products;
- manufacturing of high quality furniture and accessories;
- manufacturing of new kinds of pasteboard and paper;
- industrial processing of agricultural production;
- processing of fishery and fish- breeding production;
- laying-in and storage of agricultural production;
- production of baby food;
- production of confectionery, soft drinks and wines;
- manufacturing of new highly technological kinds of machinery, equipment and tools.
- manufacturing of all kinds of cars (automobile, lorries, passengers carriers, specialized), as well as other kinds of transport equipment;
- manufacturing of industrial electronics and electrotechnical products;
- manufacturing of electrotechnical goods and electronics for consumption;
- production of mineral fertilizers and plants protection means;
- production of household chemicals and perfume and cosmetic goods;
- production of medicines;
- production of medicines for veterinary;
- production of goods of final processing of black and colour metals of aluminium profile with appliances of high effective technologies;
- manufacturing of progressive and new kinds of construction materials, constructions products; and
- waste processing.

3. Akmola City objects

Objects related to relocation of highest and central bodies to Akmola City.

4. Housing, units of social sphere and tourism

- commercial housing;
- units of health care and education;
- units of sport, recreation, culture, and tourism.

5. Agriculture

- growing of good crop capacity grain plants on the basis of advanced technologies;
- production of good crop capacity seed sorts of plant-growing products;
- creation and breeding up of productive live stock and poultry, as well as breeding herd;
- production of highly effective, ecologically safe feed for live stock.

LAW OF THE REPUBLIC OF KAZAKSTAN

On introduction of amendments and additions into the Decree of the President of the Republic of Kazakhstan having force of law 'On taxes and other compulsory payments to the budget' and on recognition of certain legislative acts as losing their force.

Article 1. To introduce the following amendments and additions into the Decree of the President of the Republic of Kazakhstan having force of law of 24 April 1995 on "Taxes and other compulsory payments to the budget":

1. Item 4 of Article 2 shall be stated in the following wording:

"4. Exemption from any law or decrease of tax rate envisaged by the present Decree may be carried out in the order of introduction amendments and additions into the present Decree and also on the base of the contract concluded with the State Committee of the Republic of Kazakhstan on Investments in accordance with the present Decree and the Law of the Republic of Kazakhstan on "State support of direct investments". It is prohibited to provide tax privileges by other acts including privileges having individual character except the privileges provided by the State Committee of the Republic of Kazakhstan on Investments in accordance with the law of the Republic of Kazakhstan on "State support of direct investments".

2. Article 34 shall be added with Item 8 of the following context:

"8. State Committee of the Republic of Kazakhstan on Investments may establish the following privileges to the taxpayers in accordance with the contract:

- rate of income tax may be reduced up to 100 per cent of the common rate for a 5-year period starting from the moment of conclusion of the contract;
- reduced rate of income tax within the limits not exceeding 50 per cent of common rate may be used for subsequent period up to 5 years.

Specific periods and size of privileges related to income tax shall be established to each taxpayer in the contract and depending on priority, period and term of recover of the project. In annulment of the contract in accordance with which the indicated privilege has been provided income tax must be calculated and paid up to the budget for the whole period of activity of taxpayer with application of corresponding penalty sanctions envisaged by tax legislation of the Republic of Kazakhstan.

3. Item 3 of Article 123 shall added with sub-item (x) with the following context:

"(10) the following may be established for taxpayers in accordance with the contract with State Committee of the Republic of Kazakhstan on Investments:

- reduced rate of land tax up to 100 per cent of common rate for a 5-year period starting from the moment of conclusion of the contract;
- reduced rate of land tax within the limits not exceeding 50 per cent of common rate for subsequent period up to 5 years.

Specific periods and size of privileges related to land tax shall be established to each taxpayer in the contract and depending on priority, period and term of recover of the project.



In annulment of the contract in accordance with which the indicated privilege has been provided land tax must be calculated and paid up to the budget for the whole period of activity of taxpayer with application of corresponding penalty sanctions envisaged by tax legislation of the Republic of Kazakhstan.

4. Item 1 of Article 134 shall be added with sub-item (vi) of the following context:

(6) The following may be established for taxpayers in accordance with the contract with State Committee of the Republic of Kazakhstan on Investments:

- reduced rate of property tax up to 100 per cent of common rate for a 5-year period starting from the moment of conclusion of the contract;
- reduced rate of property tax within the limits not exceeding 50 per cent of common rate for subsequent period up to 5 years.

Specific periods and size of privileges related to property tax shall be established to each taxpayer in the contract and depending on priority, period and term of recover of the project.

In annulment of the contract in accordance with which the indicated privilege has been provided property tax must be calculated and paid up to the budget for the whole period of activity of taxpayer with application of corresponding penalty sanctions envisaged by tax legislation of the Republic of Kazakhstan.

Article 2. To recognize as invalid the following:

1. Law of Kazakhstan SSR of 10 June 1991 on "Investment activity in Kazakhstan SSR".
2. Resolution of the Supreme Soviet of Kazakhstan SSR of 10 June 1991 on the order of introduction of the law on "Investment activity in Kazakhstan SSR" into force.

## LAW THE REPUBLIC OF KAZAKSTAN ON STATE PROCUREMENT

The current Law regulates legal relations, arising in process of state procurement of goods, works and services out of the republic and local budget of the Republic of Kazakhstan as well as out of the non-budget funds of the Republic of Kazakhstan, with the purpose of effective disbursement, determined by the Legislation of the Republic of Kazakhstan.

### CHAPTER 1 - GENERAL PROVISIONS

#### Article 1. Definitions used in this Law

The definitions, used in the current Law are as follows:

"Auction to reduce prices" form of a tender, stipulating bidding procedure at the open meeting of the Tender Commission, among potential suppliers, proposing prices on goods, works and services, which are lower than the prices, proposed in the tender applications.

"State Procurement" (hereinafter "procurement") - acquisition of goods to the State's possession in the person of customers, as well as obtaining the works and services, necessary for the State, to be paid for out of the republican and local budgets and non-budget funds of the Republic of Kazakhstan on the basis of procurement agreements;

"Procurement Agreement" - a civil and legal agreement on supply (sale and purchase, delivery, contraction, electricity supply, chargeable provision of services, contract ) between the customer and supplier, in accordance with the acting Legislation of the Republic of Kazakhstan.

"Customer" - central and local bodies, their under-departmental entities, implementing procurement for their own needs out of the republican and local budgets and non- budget funds.

"Tender" - method of conduction of state procurement, setting up competition between potential suppliers, aimed at revealing the most profitable conditions of the state procurement agreement;

"Bid security" - a contribution of a potential supplier, who has been allowed to participate in the tender on State procurement;

"Organizer of bids (tenders, auction)" - a customer or the Authorized State Body, regulating procurement process.

"Supplier - a physical person or legal entity, acting as a counterpart of a customer in a concluded procurement agreement.

"Potential supplier" - physical person or entity, participating in the State procurement process with the purpose to enter into agreement on State procurement;

"State procurement process" - a complex of conducted measures, aimed at acquisition of goods into the State's possession, obtaining of works and services necessary for the State needs, including formation of a nomenclature and volumes of purchases, selection of a supplier, execution and performance of a procurement agreement;

"The Authorized State Body" - central State body, implementing the regulation of the State procurement process within the limit of its competence;

"Procurement process participants" - customers, suppliers, tender organizers, potential suppliers, suppliers;

#### Article 2. State procurement process

State procurement process shall mean actions of the Government, Customer and the Authorized Body on the execution of the republican and local budget, as well as out of budget funds, which include:

- forming the nomenclature and volume of the procured goods, (works and services) on the basis of indicators of the approved republican and local budgets and the approved estimate out of budget funds;
- allocation of orders for procurement of goods, works (services) performance for the corresponding financial year and entering into State procurement agreements;
- supervision over execution of the State procurement agreements.

#### Article 3. Principals of the State Procurement Legislation

Legal regulation of the relationships, related to the procurement shall be based on the principals as follows:

- optimal disbursement of the State budget funds as well as non-budget funds ;
- provision of all the potential suppliers, including with equal opportunities to participate in providing the State with goods, works, services, except the cases, stipulated by the Legislation on Procurement;
- fair competition among the potential supplies of goods, works and services.
- (glasnost) free access to the open information related to the State procurement process, disbursement of the State budget resources and non-budget funds on executed procurement agreements.

#### Article 4. Legislation of the Republic of Kazakhstan in the Area of State Procurement

1. State procurement legislation of the Republic of Kazakhstan shall be based on the Constitution of the Republic of Kazakhstan and comprise this Law, other legislative and normative legal acts of the Republic of Kazakhstan, regulating procurement issues.

#### Article 5. Legislation of the Republic of Kazakhstan in the State Procurement and International Legislation Norms

If by an International Agreement, ratified by the Republic of Kazakhstan, other rules are established, rather than those, which are stipulated by the legislation of the Republic of Kazakhstan on State procurement, than the rules of the international agreement shall be applicable.

#### Article 6. Authorized State Body on Governing the State Procurement Process

1. Governing the State procurement process shall be carried out by the authorized State body.

2. The Authorized Body on Governing the Procurement Process shall:
  - (i) carry out coordination and supervision over procurement process, implemented by customers;
  - (ii) carry out drafting normative legislative acts, regulating procurement issues, and within its competence, develop and approve methodological materials on conduction the State procurement;
  - (iii) act as an organizer of a bidding process on procurement of goods, works and services, the lists of those shall be established by the Government of the Republic of Kazakhstan;
  - (iv) act as a organizer of a tender for customers, the list of which shall be established by the Government of the Republic of Kazakhstan;
  - (v) render methodological and organizational assistance to the customers in respect of the procurement process issues.

Article 7. Free Access to the Open Information in the Activity, Related to the State Procurement

- (i) all the normative and legal acts related to the State procurement shall be published in the official press;
  - (ii) information on conducted State procurement shall be regularly published in official press, except the information, referring to the State secret;
3. Customer or organizer of a tender shall observe confidentiality till completion of a tender in respect of the information, submitted by the bidders.

CHAPTER 2 - ORGANIZATION OF THE STATE PROCUREMENT PROCESS

Article 8. Procurement Process Implementation

1. Procurement process shall be implemented by one of the following methods:
  - (i) tender;
  - (ii) sole source procurement.
2. The types of a tender shall be as follows :
  - open tender;
  - close tender;
3. An open tender and a close may be conducted in the form of two-stage procedure.
4. While implementing the procurement process through the tender, participation of not less than three potential suppliers shall be necessary.

If less than three potential suppliers participate in the tender, a tender shall be declared as not valid.

If such a tender is recognized to be not valid, the organizer shall:

- conduct another open tender not earlier than three months later;
- use sole-source procurement method;
- amend the content of the tender documentation.

5. The organizer of a tender shall select a procurement method and a type of a tender pursuant to this Law.

In order to conduct a tender, the Tender Commission shall be established.

6. An order to perform procurement in accordance with this Article as well as provisions (instructions) on tender commission establishment. The forms of the tender documentation shall be determined by the Government of the Republic of Kazakhstan.

7. Under-departmental entities of the central and local bodies are entitled to act as a customer only in the cases, if the procurement volume of "like" goods, works and services in cost equivalent does not exceed the calculation index (indicator) multiplied to 1,000, to be determined by the Legislation of the Republic of Kazakhstan for the first quarter of the corresponding financial year.

#### Article 9. General Requirements to the Customer's Information on the Performed Procurement

1. Customer's information shall include information as follows:

- (i) name and location of an organizer of a tender;
- (ii) volume, nomenclature, quality of the proposed procurement and scope of works, service, place of goods, delivery, performance of works and services;
- (iii) required timing for goods delivery, work performance or schedule of services;
- (iv) place and methods of the tender documents to be delivered;
- (v) place and timing of a tender, as well as a place and deadline for submission of bids;
- (vi) qualification requirements to be applied to potential suppliers;
- (vii) other necessary information.

2. A customer shall immediately notify potential suppliers about any changes in documentation, the deadline for submission of tender documentation shall be defined from the date of notification about the latest changes.

#### Article 10. Qualification Requirements to a Potential Supplier

1. To participate in the procurement process, a potential supplier in order to meet the qualification requirements shall:

- (i) possess professional competence, experience, reputation, equipment and other material possibilities, as well as financial, material and labour resources, necessary for fulfilment of obligations under the State procurement agreement;
  - (ii) have civil legal capacity to enter into a State procurement agreement;
  - (iii) be solvent, not be subject to liquidation, have no property under arrest, be not involved in any economic and financial activity to be suspended in accordance with current legislation pursuant to the procedure stipulated by the legislation of the Republic of Kazakhstan;
  - (iv) fulfil the obligations in respect of the tax payments and other mandatory payments to the budget and to non-budget funds on the moment of submission of an application to participate in a tender as well as on the moment the procurement agreement to be entered;
2. A potential supplier shall provide an organizer of a tender with copies of certificates, licences, statements and other documentation, confirming, that a potential supplier meets the qualification requirements.
3. A customer shall have no right to establish criteria in respect of the qualification requirements towards the supplier, except as stipulated in Clause 1 of this Article, the supplier shall be entitled to provide the customer with information not relevant to the qualification requirements thereto.
4. While formulating qualification requirements, the Tender Organizer may limit the number of suppliers with the Kazak potential suppliers due to the reasons of national security and domestic producers support.
5. The Tender Organizer shall be entitled to eliminate a potential supplier from the procurement process at any stage in case of provision of non-complete or inaccurate information on qualification requirements. Completeness of the submitted information shall be established at the moment of acceptance of documentation, confirming qualification of a potential supplier.

#### Article 11. Content of Tender Documentation

1. The Tender Organizer shall provide the potential suppliers with the tender documentation, comprising information on preparation of bids as follows:
- (i) list of documents to confirm qualification of a potential supplier;
  - (ii) technical and qualitative characteristics of goods, works and services to be procured, including technical specifications, plans, drawings; quantity of goods; and any accompanying relevant services, subject to performance; place where the works are to be performed or services are to be rendered; and the required terms of delivery, performance of works or provision of services;
  - (iii) criteria which shall be taken into consideration by the customer while determining the winning tender bid;
  - (iv) corresponding indication and description of the methods on evaluation and comparison of alternative tender bids if alternative characteristics of goods (works, services) are permitted, contractual terms or other requirements specified in tender documentation;

- (v) methodology on the basis of which the price of a tender bid shall be calculated including an indication of whether the price shall include other elements in addition to value of goods, works, services themselves, or not, for example, any applicable expenditures associated with transportation and insurance, customs duties and tax payments;
  - (vi) content or form of a potential supplier bid security;
  - (vii) corresponding reference to a right of a potential supplier to amend or revoke the tender application before expiration of the deadline for submission of the tender applications;
  - (viii) method, venue and ultimate deadline to submit tender applications;
  - (ix) methods to seek clarifications in respect of the tender documentation as well as a request for a meeting with potential suppliers to be conducted at this stage;
  - (x) place and date and time of opening the envelopes with tender applications;
  - (xi) procedures to be used for opening and revision of tender applications;
  - (xii) information on tender organizer officials, authorized to represent the tender organizer while in preparation of conducting a tender.
2. A supplier who has expressed an interest to participate in the procurement process shall submit bidding documentation in a sealed envelope within the term pursuant to the clause 1 of this Article.
3. A Tender Organizer shall be entitled not to consider any bidding documentation, submitted with violation of the term or requirements, established by a Tender organizer in terms of the content of the tender documentation to be submitted.

#### Article 12. Clarifications on Bidding Documentation Provisions

1. A potential supplier shall be entitled to request clarification of the bidding documentation provision but not later than 10 days before expiration of the deadline of the tender application. A Tender Organizer shall reply to such request of a potential supplier within three days before expiration of the deadline for submission of the tender applications, without indication from whom the request has been received, a tender organizer shall provide with such explanations all the potential suppliers, to whom the bidding documents have been submitted .
2. Any time before the expiration of the deadline for submission of bids, a Tender Organizer shall be entitled, on his own initiative or as a reply to any request for clarifications from the side of any potential supplier, to amend bidding documentation, incorporating additions (supplements). All the potential suppliers to whom the bidding documentation has been accepted, shall be notified about any supplements immediately and the supplements shall be in force from the date of notification about the last of such supplements.

#### Article 13. Period of Validity, Changes and Revocation of Bids

1. Tender applications shall be in force during the term, specified in the bidding documentation.
2. Before expiration of validity of the tender applications, a tender organizer may request potential suppliers to extend the term for the additional specified period of time. A potential supplier may reject

such a request, not losing the right to bid provision to be returned, bid validity will expire on the date of expiration of non-extended validity.

3. Unless otherwise is stipulated in the bidding documentation, a supplier may amend or revoke a bid before expiration of the deadline for submission of bids, not losing a right to bid security to be returned. Such amendment or notification on a revocation shall be valid, if it is received by a tender organizer before expiration of the deadline for submission of bids.

#### Article 14. Bid Security

1. A tender organizer may require from the potential suppliers, submitting bids, bid security to be made.

In this case:

- (i) such requirement shall be applicable to all the potential suppliers;
- (ii) a tender organizer shall state the forms, volume and other main terms and conditions of the required bid security.

2. Bid security shall not be returned to a potential supplier, submitted a bid as well as the corresponding bid security, in the case if a potential supplier:

- (i) revoked or amended a bid after expiration of the deadline for submission of bids, if otherwise is stipulated in the bidding documentation;
- (ii) has not entered into a procurement agreement after being determined as a winner of a tender;

A tender organizer shall return bid security to a potential supplier in case of:

- (i) expiration of validity of bid security;
- (ii) procurement agreement entering into force;
- (iii) termination of the procurement procedures without determining a winner of the tender;
- (iv) revocation of a bid prior to expiration of the deadline for submission of bids, if such revocation is stipulated in the bidding documentation;
- (v) determining another potential supplier as a winner of the tender.

#### Article 15. Opening of Envelopes with Bids

1. A Tender Commission shall open the envelopes in the presence of all the potential suppliers, who have submitted the bids or in the presence of their authorized representatives at the date, specified in the bidding documentation.

2. While opening envelopes with bids, a Tender Commission shall declare the names and locations of potential suppliers as well as the proposed prices.



Article 16. Consideration, Evaluation and Comparison of Bids

While considering, evaluating and comparing bids:

- (i) a Tender Commission may seek clarifications from the potential suppliers in regard to their bids, in order to facilitate evaluation and comparison of bids;
- (ii) no requests, proposals or permissions to be allowed in order to bring a bid, not meeting the formal requirements, into compliance with these requirements;
- (iii) under all equal conditions offered by the suppliers, a Tender Commission in order to determine a winner of a tender, shall have the right to request, propose or allow all the potential suppliers to change the content of bids, including amendments of price; conduction of a tender among potential suppliers in the form of an auction aimed at price reduction shall be allowed.
- (iv) a Tender Commission shall correct any grammar and calculating mistakes, found in the process of consideration of bids, and a potential supplier shall be immediately notified about such corrections.

2. A Tender Commission may consider a bid as meeting the formal requirements if there are some insignificant deviations which do not substantially change the characteristics, conditions and other requirements presented in the bidding documentation, or if there are any grammar or calculating mistakes which may be corrected without changing the content of a bid. Any such deviations shall be expressed quantitatively, and if possible, they shall be taken into account while evaluating and comparing the bids.

3. A Tender Commission shall reject a bid, if:

- (i) a potential supplier, submitted a bid does not meet the qualification requirements;
- (ii) a bid does not meet the formal requirements, except the cases, stipulated by Part 2 of this Article;

4. The Tender Commission shall evaluate, compare bids, which have been accepted to participate in a tender, and shall determine a winning bid on the basis of the lowest price or taking into account other criteria, stated in the bidding documentation, except the price factor.

5. While determining a winning bid, the Tender Commission shall take into account the criteria as follows:

- (i) bidding price;
- (ii) expenses for maintenance, technical service and repair connected with goods; timing of goods delivery, completion of works or rendering services, functional characteristics of goods, including quality certificates, terms of payment and terms of goods, works and services guarantees;
- (iii) impact, which may be done to the economic situation in the Republic of Kazakhstan or separate region of the Republic of Kazakhstan, including:
  - state of balance and currency reserves of the Republic of Kazakhstan;

- share of use of raw materials resources as well as production and labour resources of the Republic of Kazakhstan, proposed by a supplier;
- opportunities for economic growth, including investments in the economy of the Republic of Kazakhstan;
- small business support;
- creation of new working places;
- training of management, scientific and production personnel of the Republic of Kazakhstan;

(iv) impact, which may be done to a defense or security of the State;

6. A Tender Commission shall sum up the tender results within 10 days after opening the envelopes;

7. The tender results shall be reflected in the minutes in accordance with Article 19 of this Law, to be signed by a Tender Commission and a winner of a tender. A time-period within which a procurement agreement to be signed shall be specified in the minutes.

8. Information related to consideration, evaluation and comparison of bids shall not be disclosed to potential suppliers, or any other official, not participated officially in consideration, evaluation and comparison of bids if otherwise is stipulated in the bidding documentation.

#### Article 17. Entering into Enforcement of Agreement

1. A customer shall forward a draft Procurement Agreement to a supplier, selected as a winner of a tender, according to the rules of the Civil Legislation of the Republic of Kazakhstan.

2. If a supplier, whose proposal has been accepted by a customer, does not sign a procurement agreement within the terms established in Part 7 of Article 16 of this Law, then the customer shall have the right to sign an agreement with other participants, having more preferable proposal pursuant to Article 16 of this Law.

3. The Parties shall have no right to incorporate into a procurement agreement any amendments to the terms, pursuant to those of the winning tender has been determined.

#### Article 18. State Procurement Financing

State procurement financing shall be carried out by a customer according to the financial plan on the targeted use of republican and local budget funds as well the non-budget funds for the relevant financial year.

#### Article 18. Minutes on Tender Results

1. While implementing State procurement for the amount exceeding the amount of the calculating indicator (index) multiplied by 1,000, to be established for the first quarter of the corresponding financial year, a tender organizer shall enter into minutes on tender results information as follows:

- (i) short description of the goods, works and services;

- (ii) names and location of potential suppliers, submitted bids and as well as a name and location of a supplier, whom the procurement agreement was executed with and the total value of such an agreement;
- (iii) information on qualification of potential suppliers, submitted bids or information that such data is not available;
- (iv) price and/or short description of other main conditions to be set up in each bid;
- (v) short description of evaluation criteria and criteria for bids comparing;
- (vi) indication of justifications in case of rejection of all the bids;
- (vii) indication of justifications in case of rejection of all the bids;
- (viii) general information on requests for clarification, as well as replies and amendments to the bidding documentation.

2. Information, stipulated by the subparagraphs 1-4 and 6-8 of Part 1 of the present Article shall be provided on the request of any potential supplier, participated in a tender, if as a result a procurement agreement has not been signed. Such information shall not be provided if its disclosure may be of any damage to the defence of the country, legal order and national security of the Republic of Kazakhstan, as well as legal commercial interests of the parties, or if it constrains fair competition.

3. While implementing any procurement for the amount less than the amount of the calculating indicator (index) multiplied by 1,000, being established for the first quarter of the corresponding financial year, a tender organizer shall prepare minutes in accordance with subparagraphs 1, 2 and 4 of Part 1 of this Article

#### Article 20. Open Tender

1. An open tender shall be the main method to implement procurement except the cases, when the other method for implementing procurement is stipulated by this Law.

2. Announcement about an open tender and information regarding the results of the open tender shall be published in the official press.

3. An advertisement on the open tender shall be published not later than one month before acceptance of the tender application is over.

#### Article 21. Close Tender

1. A Close Tender shall be conducted when:

- (i) goods, services and works due to their complicated or specialized character are available only at the limited number of potential suppliers and such suppliers are known of beforehand;
- (ii) time, costs, required for consideration, evaluation of a big number of tender applications, are not commensurable with the cost of the procured goods, services and works.

2. Notification on invitation of potential suppliers to participate in the tender with the limited number of participants shall be forwarded not later than one month before acceptance of applications to be over.

#### Article 22. A Tender with Use of Two-Stage Procedures

1. Two-stage tender is the combination of the stages as follows:

Request of proposals on technical, qualitative or other characteristics of goods, works and services without indication of the price of a bid; analysis of the submitted proposals, and if necessary negotiations with potential suppliers.

- submission of bids with price proposals by suppliers, whose proposals were recognized to be in conformity with the technical, qualitative and other characteristics of goods, works and services.
2. Two-stage tenders shall be conducted in the cases when:
    - (i) it is difficult to formulate detailed specifications of goods, works and services and determine technical and other characteristics; and a customer needs to request proposals from potential suppliers or conduct negotiations;
    - (ii) it is necessary to conduct surveys, experiments, or investigations and designs.
    - (iii) a winner of a tender has not been defined during a one stage open tender or a close tender.

#### Article 23. Tender with Price Proposals Request

1. Tender with price proposals request shall be conducted in respect of available goods, works and services, when the detailed specification is not important for a customer, but the price is the main factor.
2. Tender with price proposals request shall be applied only in the case if the volume of procurement of "like" goods, works and services in cost equivalent does not exceed the calculating indicator (index) multiplied by 1,000, being established by the Legislation of the Republic of Kazakhstan for the first quarter of the corresponding financial year.
3. Division of the procurement volume of "like" goods, works and services to the parts, the volume of which is less, than it is stipulated in Part 2 of this Article shall not be allowed.

#### Article 24. Sole-Source Procurement

1. Sole-source procurement shall mean procurement without a tender and shall be applicable in the cases when:
  - (i) goods, works and services are available only at a specific potential supplier and the specific supplier possesses exclusive rights in regard to the goods, works and services;
  - (ii) due to emergency, if there is an urgent need in such goods, works and services, so that conduction of a tender and negotiations with other suppliers is not reasonable;

- (iii) a customer, having procured goods, equipment, technology or services from a supplier, determines that additional procurement shall be made from this supplier because of standardization or necessity to ensure compatibility with the existing goods, equipment, technologies or services.
- 2. At application of Part 1 of this Article, a customer shall have the right to require all justifications of the proposed price for goods, works and services.
- 3. While implementing sole-source procurement, a customer shall record the following information into a protocol:
  - (i) justification of use of a sole-source procurement method;
  - (ii) short description of goods, works and services, procured from one source;
  - (iii) name and location of a supplier, entered into a procurement agreement and the value of such agreement.

Article 25. Special Terms of Procurement to Meet the Needs of Defence, Legal Order and National Security

Procurements, in order to meet the needs of defence, legal order and national security shall be carried out pursuant to the provisions of the current Law except the cases when for procurement process, establishment of special order is necessary to provide observance of a secret regime as well as guarantees of national security and defence capacity of the Republic of Kazakhstan. Special order for implementation of such procurement shall be determined by the Government of the Republic of Kazakhstan.

Article 26. Appeal against Actions and Decisions of a Tender Organizer

- 1. In case of violation of the legislation on procurement during implementation of the procurement process, any potential supplier shall have the right to appeal any actions and decisions of a tender organizer.
- 2. The following may not be subject to appeal:
  - (i) selection of a procurement method and type of a tender;
  - (ii) selection of criteria to determine a winner of a tender;
  - (iii) restrictions on a circle of potential suppliers on the basis of Part 4, of Article 8 of this Law.
  - (iv) decision of an organizer of a Tender to reject all the bids pursuant to this Law.
- 3. Claims on illegal actions and decisions of a Tender Organizer shall be lodged in accordance with the order, established by the Legislation of the Republic of Kazakhstan.

### CHAPTER III - FINAL PROVISIONS

#### Article 27. Control Over Performing the State Procurement Agreements

Control over executing of the State procurement agreements shall be carried out by the Authorized Body in accordance with the acting legislation.

#### Article 28. Settlement of Disputes

All disputes, that may arise between a customer and supplier during the process of conclusion and implementation of an agreement on procurement shall be settled according to the current legislation of the Republic of Kazakhstan.

#### Article 29. Responsibility for Violating the Procurement Legislation

Participants of the procurement process shall bear responsibility, established by the current legislative acts of the Republic of Kazakhstan

#### Article 30. Introduction of the Current Law into Effect

This Law shall be effective from 1 January 1998.

President of the Republic of Kazakhstan

N. NAZARBAEV

THE LAW OF THE REPUBLIC OF KAZAKSTAN ON ANTI-DUMPING (DRAFT)

With the view of further integration of the Republic of Kazakhstan into the world community, provision of its economic security by means of protection of Kazakhstan producers from unfair methods of competition, the current Law shall be adopted.

CHAPTER 1 - GENERAL PROVISIONS

Article 1. Terms and Definitions

The notions used in legislation on anti-dumping shall mean the following:

"Like product" - a product which is identical, i.e. alike in all respects to the product under consideration or, in the absence of such a product, another product which, although not like in all respects, has characteristics and components closely resembling those of the product under consideration;

"Anti-dumping investigation" - investigation, in respect of supplier of the goods, introduced into the commerce of Kazakhstan at a price less than its normal value, if such sale causes or threatens to cause injury to domestic producers, producing like products.

"Anti-dumping measures" - special measures, applied by the Authorized Body in a form of provisional measures and anti-dumping duties for elimination of the injury alleged by introduction of the goods into commerce of Kazakhstan at a price less than its normal value.

"Anti-dumping duties" - duties, applied in case of importation of the goods to the customs territory of the Republic of Kazakhstan at a price significantly less than its competition price in the country of export and/or production at the moment of exportation, if such exportation causes or threatens to cause injury to the domestic producers of like or directly competing goods.

"Related producers or buyers" shall mean producers or buyers (participating in the transaction) who are related to the exporters or importers or are themselves importers of the allegedly dumped product, if:

- one of them directly or indirectly controls the other;
- both of them are directly controlled by a third person;
- together they directly or indirectly controlled by a third person;
- they are the owners of the enterprise;
- they are connected with trade relationships;
- one of them is the possessor of the deposit (share) or more than 20 per cent of the voting shares in the equity of the other;
- they or their officials are close relatives;
- one of the participants (individual) or an official of the participant is at the same time the official of the other participant.

"Injury" - material injury to the domestic producers of Kazakhstan, or threat of material injury or material retardation of the establishment and expansion of production of like products in the Republic of Kazakhstan because of importation of the dumped product;

"Provisional anti-dumping measures" - preliminary anti-dumping measures, applied by the Authorized Body in respect of dumped product supplier in the form of pledge liability or cash deposit after the initiation of the anti-dumping investigation.

"Dumping (dumped import)" - unfair actions of a supplier when a product is imported to the customs territory of the Republic of Kazakhstan with the purpose of further sale at a price less than its normal value.

"Interested parties (persons)" - an exporter or foreign producer or the importer of a product subject to investigation, or a trade or business association, a majority of the members of which are producers, exporters or importers of such product. The government of the exporting country, a producer of the like product in Kazakhstan or a trade and business association, a majority of the members of which produce the like product in Kazakhstan;

"Domestic producers" - Kazakhstani producers of the like products whose collective output of these products is considered to be sufficient for the anti-dumping investigation to be conducted.

"Supplier" - foreign producer, exporter or importer of the dumped product.

"Regional producers" - aggregate producers of the like product in the regional market, under the condition that:

- the producers within such markets sell all or almost of their production of the product in question in that market; and
- the Kazakhstani producers from other regions don't provide the product in question to that region.

"Customs clearance" - a procedure of allocation of the products under the certain customs regime and the completion of the regime in the accordance with the requirements and provisions of the Customs legislation.

"the Authorized Body" - State Body of the Republic of Kazakhstan in charge of conducting the anti-dumping investigation upon application by the interested parties or on its own initiative.

"Export" price - price actually paid or payable for the goods for which an investigation is initiated.

"Normal value" - value of products payable or paid in the ordinary course of trade in the exporting or producing country during the sale of the goods which are like to those under consideration.

"Hearings" - one of the anti-dumping investigation procedures, conducted by the Authorized Body, in order to provide interested parties an opportunity to consider disputable issues;

"Official bodies of a country" - embassy, consulate, trade representative, the Authorized Body of the country involved into investigation.



## Article 2. Sphere of Application of the Law

The current Law shall govern relations arising as a result of injury or threat of injury to domestic producers or the Republic of Kazakhstan's economic interests by exportation of products and their further sale at a price less than their normal value, to the customs territory of the Republic of Kazakhstan.

This Law shall regulate legal relations of the Authorized Body with interested persons or between different interested parties.

## Article 3. Goals and Principles of Anti-Dumping Legislation

1. The goals of anti-dumping legislation of the Republic of Kazakhstan shall be protection of domestic producers against unfair competition from foreign suppliers of the like product and elimination of harmful consequence for the Republic of Kazakhstan economy.

2. Anti-dumping measures shall be applied only under circumstances when trade practices of foreign suppliers leads to unfair competition.

3. Anti-dumping measures provided for by the provisions of the current Law shall be applied provided that the anti-dumping investigation has been conducted in accordance with the anti-dumping legislation.

## Article 4. Legislation of the Republic of Kazakhstan on Anti-Dumping

1. Legislation of the Republic of Kazakhstan on anti-dumping shall consist of the legislation of the Republic of Kazakhstan and international legislation. The current Law, other legal acts and the normative acts of the President and Government of the Republic of Kazakhstan adopted in accordance with this Law are recognized as the legislation of the Republic of Kazakhstan, and also the normative legal acts of the Authorized Body. The current Law shall define main notions and principles of legislation on anti-dumping, procedure on determining the fact of dumping and injury as well as the terms of introduction and elimination of anti-dumping measures.

The international treaties and agreements, ratified by the Republic of Kazakhstan are recognized as the international legislation.

2. If an international treaty or agreement ratified by Kazakhstan establishes other rules than the rules contained in the legislation of the Republic of Kazakhstan on anti-dumping, the rules of the international treaty or agreement shall be applied.

## CHAPTER 2. STATE ANTI-DUMPING SUPERVISION

### Article 5. State Supervision Bodies

1. The general management of the State supervision over the trade practice of the dumped product suppliers is to be exercised by the Government of the Republic of Kazakhstan in accordance with the anti-dumping legislation.

2. Direct activity on supervision and anti-dumping investigation is to be enforced by the Authorized Body, determined by the Government of the Republic of Kazakhstan.

#### Article 6. The Authorized Body

1. The Authorized Body operates within the frame of its authority, granted by this Law and on the basis of the Resolutions, adopted by the President of the Republic of Kazakhstan.
2. In cases, stipulated by this Law and other legislative acts of the Republic of Kazakhstan, the President and Government normative legal acts, the Authorized Body issues in the frame of its competence the normative legal acts on procedures of anti-dumping investigation..
3. The anti-dumping duties shall be introduced by the decision of the Republic of Kazakhstan Government upon the proposal of the Authorized Body.
4. While implementing its functions, the Authorized Body cooperates with the official bodies of other countries and international institutions.

### CHAPTER 3 - ANTI-DUMPING INVESTIGATION

#### Article 7. The Subject of Anti-Dumping Investigation

The subject of an anti-dumping investigation shall be the import of a product at a price less than its normal value causing injury to domestic producers of like or directly competing products.

#### Article 8. Application on Determination of the Existence of Dumping and Injury

1. Application in written form on determination of the existence of dumping and injury shall be submitted by domestic producers or on behalf of the domestic producers in written form to the Authorized Body.
2. The application shall contain information on the following:
  - (a) identity of the applicant and a description (volume and prices) of the domestic production of the like product by the applicant and by all known to the applicant domestic producers of the like product;
  - (b) description of the product, the names of the countries of origin or export in question, the identity of each known exporter or foreign producer and importer of the product in question;
  - (c) information on prices at which the product in question is sold in the markets of countries of origin or export, information on export prices and domestic prices of this product.
  - (d) information on the evolution of the volume of the dumped products, the impact of these imports on prices of the like product in the domestic market and the harmful consequence of these imports.
3. The application is considered to be accepted if the Authorized Body recognizes the evidence provided to be sufficient and notifies the applicant in written form.

When the Authorized Body considers that the information is insufficient, it shall notify the applicant(s) within 10 days and afford the applicant(s) the possibility to revise or supplement the application.

When the applicant revises or complements its application, the time for assessment shall apply as of the date of submission of the revised or complemented application.

#### Article 9. Obligatory Requirements for the Initiation of the Anti-Dumping Investigation

For initiation of an anti-dumping investigation the Authorized Body shall provide the following conditions:

- (a) objectiveness of the examination and maximum of domestic producers opinions taken into account through revelation of the applicant's share in aggregated domestic production of the product under consideration. With this purpose the Authorized Body has the right to obtain the opinions of other producers of domestic products;
- (b) the application is considered to be provided on behalf the domestic producers if their collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic producers expressing either support for or opposition to the application. The share of product produced by an applicant should not account for less than 25 per cent of total production of the like product produced by the domestic producers.

#### Article 10. Initiation of an Anti-Dumping Investigation on the Initiative of the Authorized Body

In case of the Authorized Body having sufficient evidence of dumping and injury caused by importation of the dumped product, the Authorized Body has the right to initiate an anti-dumping investigation on its on initiative, in accordance with the procedure established by the Republic of Kazakhstan Government.

#### Article 11. Grounds for Refusal to Initiate an Anti-Dumping Investigation

The Authorized Body shall refuse to initiate an investigation on the basis of the application, if:

- (a) the amount of the dumping is *de minimis* and that the margin of dumping is less than 2 per cent, expressed as a percentage of the export price;
- (b) the volume of dumped exports and injury is insignificant, imports of the products from that exporting country under consideration into Kazakhstan represents less than 3 per cent of imports of the like product into Kazakhstan, unless countries under investigation collectively account for more than 7 per cent of imports of the like product in Kazakhstan.

#### Article 12. Withdrawal of Application on Determination of Existence of Dumping and Injury

Any application may be withdrawn prior to initiation or in the process of an investigation. In case, the application has been withdrawn prior to initiation, it shall be considered not to have been made. An application may be withdrawn at any time after an investigation has been initiated, in which case the Authorized Body shall decide whether to continue the investigation or terminate it without measures undertaken.

Article 13. Decision on Initiation of an Anti-Dumping Investigation

Any decision to initiate or refuse to initiate an anti-dumping investigation shall be adopted by the Authorized Body within 60 days of the date when the application was accepted.

The decision to initiate or refuse to initiate an anti-dumping investigation is made on the basis of all provided data after examination as set forth in Articles 9, 10 and 11 of this Law.

The Authorized Body shall notify all interested parties of its decision; in case of refusal, it shall notify the reasons for not initiating the investigation.

Article 14. Public Notice of Initiation of an Anti-Dumping Investigation

1. When the Authorized Body has decided to initiate an anti-dumping investigation the Authorized Body:

- shall notify the initiation of an investigation to all interested parties;
- shall give public notice in not less than two editions of the Republican mass media.

2. A public notice of the initiation of an investigation shall contain adequate information on the following:

- (a) the name of the exporting country or countries and the product involved;
- (b) the date of initiation of the anti-dumping investigation;
- (c) the basis on which dumping is alleged in the applications;
- (d) a summary of the factors on which the allegation of injury is based;
- (e) the time-limits within which interested parties shall, in writing, apply for access to the non-confidential file, apply for authorization to make their views known and request a hearing.

Article 15. Disclosure of Application on Determination of Dumping and Injury

1. The Authorized Body shall, as soon as the investigation is initiated, provide the full text of the written application received to interested parties involved upon their request, but confidential information is not subject to disclosure.

2. Where the number of exporters involved is particularly high, the Authorized Body shall provide the text to the official bodies of the exporting and/or producing country(ies).

**CHAPTER 4 - AN ORDER FOR DETERMINATION OF DUMPING**

Article 16. Dumped Product

A product, imported from another country to Kazakhstan at a price lower than its normal value shall be considered as dumped, if the export price for this product is lower than the price, established in the ordinary course of trade transactions for a like product, being destined for consumption in the exporting and/or producing country.

#### Article 17. Normal Value Determination

1. Sales between mutually related buyers shall not be considered to be performed in the framework of ordinary trade transactions and shall not be taken into account in determining the normal value, except in cases, where proofs have been presented, that the fact of dependence has not influenced the price of the product.

2. In the case where the product is imported to Kazakhstan not from the country of origin, but from an intermediate country, the Authorized Body shall determine normal value, as a rule, on the basis of a price paid or payable in the intermediate country (export country).

Normal value shall be determined according to the price in the country of origin in the following cases:

- if products are only trans-shipped through the country of export;
- like good are not produced in the country of export;
- in cases where a comparable price for such products in the country of export is not available.

3. In case of impossibility to determine the normal value of a product, based on prices in the domestic market of the exporting market (due to the reasons that sale of like goods is not available or such sales do not allow to make appropriate comparison because of a specific market situation or small volume of sales in the domestic market of the exporting country), the Authorized Body shall determine the dumping margin by means of :

- (a) comparing with the price of like goods, when exported to a third country, on the condition, that sales of this product are made in sufficient quantity;
- (b) comparing with a constructed value, covering production and sales costs, as well as profit determined in accordance with Article 18 of this Law.

4. Sales of a like product may be considered to be made in sufficient quantity to determine normal value, if the sales destined for in the domestic market of the exporting country and exports to third countries and with that volume of imports to Kazakhstan is 5 per cent and more of the sales volume of this product to Kazakhstan. The Authorized Body may apply a lower percentage of sale if it is convinced that such a lower sale is appropriate for comparison.

#### Article 18. Calculation of Production Costs and Profit

1. The Authorized Body shall make calculations of production costs on the basis of accounting records of a supplier, in respect of whom an anti-dumping investigation is conducted, under the condition that such records are in conformity with recognized accounting principles of the exporting and/or producing country and accurately reflect the costs, related to production and sale of the product.

2. The Authorized Body shall consider all available evidence of correct allocation of costs, including those submitted by a supplier in the process of anti-dumping investigation, under the condition, that such distribution has been used by the supplier on a regular basis, in particular, for the purpose of establishing the appropriate term and norm of depreciation, capital expenditures and other costs for development of production.

3. The Authorized Body shall adjust costs, taking into account non-recurrent items of expenses for development of production, or for the period of start-up of production. Adjustments for production start-up shall cover the production costs at the end of the production start-up period, or if that period is not within the period of the anti-dumping investigation, the most recent expenses, which may be taken into consideration by the Authorized Body during the anti-dumping investigation.

4. The amount of costs as well as profit shall be based on the actual data on production and sales of like goods in the process of ordinary trade transactions, presented by a supplier in respect of whom an anti-dumping investigation is conducted. If such amounts cannot be determined on this basis, they shall be determined on the basis of:

- (a) actual amounts paid or received by the supplier in question in connection with production and sale of like product in the domestic market of the country of origin and/or export.
- (b) the weighted average actual amounts, paid or received by other suppliers in respect of whom an anti-dumping investigation is being conducted in respect of the production and sale of like product in the domestic market of the country of origin and/or export.

5. If it is not possible to use either of these methods, the Authorized Body shall have the right to use another reasonable method, but only under the condition that the amount for profit established by such method shall not exceed the profit, obtained by other suppliers while selling like products of the same general category in the domestic market of the country of origin and/or export.

#### Article 19. Calculation of Export Price

1. In cases, when an export price is not available, or when the export price is unreliable in the opinion of the Authorized Body, the export price shall be constructed on the basis of the price at which the imported products are first resold to a buyer, not dependent on the supplier or the seller.

2. Under circumstances, stipulated by paragraph 1, while calculating the export price, the Authorized Body shall be entitled to omit all the transactions between the related parties.

#### Article 20. Comparison of Export Price and Normal Value

1. The Authorized Body shall make a fair comparison between the export price and the normal value. Such comparison shall be made at one and the same stage of a trade transaction, usually at the ex factory level, and in respect of sales carried out, if possible, at one and the same time. In each case, all the necessary allowances shall be made, taking into account the differences, which affect comparability of prices, including the difference in terms of imports, taxation, stage of trade transaction, quantity, physical characteristics and also any other differences in respect of which the interested parties provide evidence of their impact upon the price comparability.

2. In cases when the export price is calculated on the basis of a price at which the imported product is resold to an independent buyer for the first time in accordance with Article 19 of this Law, corrections for the expenses, including duties and taxes paid in the period between importation and resale and also for the amount of profit made as the result of the importation and distribution of the product shall be included. If in such cases comparability of prices is affected, the Authorized Body shall establish the normal value at the stage of trade transactions equivalent to the stage at which the export price was calculated or shall make necessary allowances foreseen by this Article.

3. The Authorized Body has the right to require the information necessary for such comparison from the interested parties. In each concrete case it establishes the necessary procedure for provision of the evidence by each interested party.

#### Article 21. Determination of the Margin of Dumping

1. The presence of a margin of dumping shall be determined on the basis of a comparison of a weighted average normal value with a weighted average price of all comparable export transactions, or by comparison of normal value with export prices in each concrete transaction.

2. Normal value determined on the basis of a weighted average may be compared with the prices of concrete export transactions if the Authorized Body finds that the structure of export price is significantly different for different customers, regions or time periods. In such circumstances the Authorized Body shall give an explanation to the interested parties, why such differences cannot be taken appropriately into account while comparing either weighted average quantities or the concrete transaction prices. A brief explanation shall also be given in the notification on application of provisional measures or anti-dumping duties.

#### Article 22. The Procedure for Determination of Margins of Dumping

1. The Authorized Body shall determine an individual margin of dumping for each supplier of the product involved in an anti-dumping investigation.

2. In cases when the number of the suppliers, importers or types of products involved in an anti-dumping investigation makes it practically impossible to determine the individual amount of dumping for each of them, the Authorized Body may limit the research by the utilization of a statistically valid selection on the basis of information available to the Authorized Body at the moment of making the selection, or by the highest percentage of exports from the country involved in the anti-dumping investigation.

3. In cases where the Authorized Body restricts the investigation as it is stipulated in this Article, the suppliers not involved in the preliminary selection may also provide data. The Authorized Body determines the individual amount of dumping for each supplier, not involved in the preliminary selection, if he provides the necessary information within the time-frame when it is to be taken into consideration, except cases where the large number of the suppliers in case of individual consideration would prolong the anti-dumping investigation period and would interrupt the timely completion of the case.

#### Article 23. Sales at a Price Lower than the Level of Costs and Sales

1. The Authorized Body does not consider the sales of the product which is under an anti-dumping investigation in the domestic market of the exporting country or sales to a third country at prices lower than the level of the production and sales costs per unit of the product as sales made in the ordinary course of trade, because of the under-pricing and does not take into account these sales while determining the normal value in cases these sales took place :

- (a) within an extended period of time (up to one year, but not less than six months);
- (b) in substantial quantity;
- (c) at prices which do not provide for the recovery of all costs within a reasonable period of time.

2. Sales at prices lower than the level of costs per unit are considered as made in substantial quantity if the Authorized Body determines that:

- (a) the weighted average sale price in transactions being taken into account in the process of determination of normal value are lower than the weighted average costs per production unit; or
- (b) the volume of sales at prices lower than the production costs per production unit is 20 or more per cent of the volume of sales in transactions being taken into account for the determination of normal value.

3. If prices, lower than the production and sales costs at the moment of sale, and higher than weighted average costs in the period of investigation, the Authorized Body considers such prices as providing for the recovery of all costs within a reasonable period of time.

#### Article 24. Currency Conversion

If comparison of export price and normal value requires a conversion of currencies, the Authorized Body should make such conversion using an objectively justified exchange rate. Normally the date of contract, purchase order, confirmation of the order or invoice is considered as the date of sale, depending on the document determining the terms of the sale.

If export imports are directly linked with the sale of foreign currency by a supplier in forward markets, the Authorized Body shall use the rate of exchange applied for the forward sale of currency.

The Authorized Body does not take into account short-term fluctuations of the exchange rates and the exporters are allowed not less than 60 days for correction of export prices taking into account sustained changes of the exchange rates during the anti-dumping investigation.

### CHAPTER 5 - DETERMINATION OF INJURY

#### Article 25. Principles of Injury Determination

Determination of injury is based on evidence and includes the examination of the volume of dumped imports and its impact on prices of like products in the domestic market and the consequence of such imports for the domestic producers of these products.

#### Article 26. Cumulated Evaluation of Injury

When imports of a product from more than one country is subject to simultaneously-held anti-dumping investigations, the Authorized Body may evaluate the cumulated impact of such imports, if it is determined that:

the margin of dumping determined for imports from each country is higher than *de minimis* and the volume of imports from each country is not negligible as stipulated in Article 11 of this Law and cumulated evaluation of the impact of imports is appropriate both for competition between imported products and between imported products and like products domestically produced.



Article 27. Research of Volume and Price of Dumped Product Imports

1. While examining the volume of dumped product imports the Authorized Body determines whether a significant increase of dumped product imports took place in absolute terms, or relative to production or consumption in Kazakhstan.
2. While examining the impact of the dumped product on prices, the Authorized Body determines whether there was significant under-pricing of such product imports in comparison with the price of a like Kazakstani product or to what degree imports of the dumped product effect the decline of prices or impede the increase which should have taken place otherwise.

Article 28. Evaluation of Impact of Dumped Product Imports on Domestic Producers

1. The examination of the impact of dumped product imports on domestic producers includes evaluation of all economic factors and indexes affecting the position of this production by the Authorized Body, including:

- actual and potential decline in sales, profit, production, market share, productivity, effectiveness of the investments or utilization of facilities;
- factors affecting the prices in the domestic market;
- margin of dumping;
- actual and potential impact on cash flows, inventories, employment, wages, growth rate, opportunity to attract capital or investments.

2. In order to provide comparativeness of the production conditions of the dumped product and like product in Kazakhstan, and also to exclude the impact of other factors, not stipulated by dumped product import, the Authorized Body shall run the research of domestic production of like product examining the production-technological process, sales of like product by domestic producers and profit. When there are no such data, the impact of dumped product imports shall be evaluated by examination of the production of the narrowest group or range of products, including like products, for which necessary information can be provided.

Article 29. Evidence of Injury

1. The Authorized Body must demonstrate on the basis of actual data that imports of the dumped product causes injury to domestic producers as a result of dumping. The causal link between imports of the dumped product and injury to domestic producers shall be demonstrated by actual data provided by interested persons.
2. In addition to imports of the dumped product, the Authorized Body shall examine other known factors which at the same time cause injury to domestic producers, but such injury shall not be considered as a result of dumped imports. These factors, include, specifically, volume and prices of imports, which were not sold at dumped prices, reduction of demand or changes in consumption structure, restrictive trade practices and competition between foreign and domestic producers, achievements in technology and also the export performance and effectiveness of domestic industry.

Article 30. Injury to Regional Producers

When, there is a concentration of dumped product imports in separate regional markets and these imports cause injury to the domestic producers the Authorized Body has the right to conduct an anti-dumping investigation in accordance with the provisions of this Law, in respect of that region.

Article 31. Threat of Material Injury

1. The Authorized Body shall base its determination of a threat of material injury to domestic producers caused by dumped product imports on the basis of analysis of the following factors:

- (a) a significant growth of dumped product imports in the domestic market, pointing to the possibility of a significant increase in imports;
- (b) the supplier has sufficient export capacity indicating the possibility of a significant increase in imports of dumped product to Kazakhstan, taking into consideration the possibility for other export markets to absorb any volume of additional imports;
- (c) imports at prices which will have a significant declining or depressing influence on the prices in the domestic market, which may increase the demand for additional imports;
- (d) inventories of goods, in respect of which an anti-dumping investigation is held.

CHAPTER 6 - THE PROCEDURE OF THE ANTI-DUMPING INVESTIGATION

Article 32. Duration of Investigation

The Authorized Body shall conclude investigations on dumping or injury within one year, except in special circumstances, when, on decision of the Authorized Body, it can be prolonged for an additional 6 months.

Article 33. Information on an Anti-Dumping Investigation

1. Upon initiation of the investigation, the Authorized Body shall send questionnaires to all interested parties.

The interested parties shall be given 30 days for reply. This time-limit can be prolonged by the Authorized Body, but not more than for an additional 30 days. The questionnaire shall be deemed to have been received one week from the day on which it was sent to the respondent or transmitted to an official representative of the interested party.

In case during the investigation additional information is needed, the Authorized Body can request it from the interested parties, mentioning the time-frame for provision of such information.

2. Each interested party shall be given ample opportunity to present in writing all evidence which it considers relevant. Written evidence shall nonetheless not be accepted after a period of 10 days following the hearings, stipulated by Article 38 of this Law.

Article 35. Confidentiality of Information on an Anti-Dumping Investigation

1. Any information which is provided as confidential, shall be treated as such by the Authorized Body. Such information shall not be disclosed without written permission of the party submitting it.
2. The party providing confidential information shall furnish a non-confidential explanatory note thereof. This explanatory note shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence or give an explanation why provision of such non-confidential explanatory note is impossible.
3. If the Authorized Body finds that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize its disclosure, the authorities may disregard such information unless it can be demonstrated to their satisfaction from the appropriate sources that the information is correct.
4. The person responsible for disclosure of confidential information shall be treated in accordance with current Republic of Kazakhstan legislation.

Article 35. On-the-Spot Verification of Information on an Anti-Dumping Investigation

1. In order to verify information provided or to obtain further details, the Authorized Body may carry out investigations in other countries as required, provided it obtains the agreement of the firms concerned and provided it notifies the representatives of the government of the country in question and unless the latter object to the investigation. An anti-dumping investigation on the territory of country-members of WTO shall be performed in accordance with procedures provided for by WTO.
2. The Authorized Body shall select an investigation period which, in the case of dumping, shall normally cover a period from six months to one year immediately preceding the date of initiation of the investigation. Information regarding injury shall normally be gathered during a period of up to four years.

Article 36. Reliance on Available Information on an Anti-Dumping Investigation

In cases in which any interested party does not provide, necessary information within the period of time prescribed by the Authorized Body or otherwise significantly impedes the investigation, Authorized Body may reach determinations, on the basis of the information available.

Article 37. Filing

1. The Authorized Body shall maintain a file relating to each investigation in writing and in accordance with the established procedure. All documents relating to the investigation shall be filed and a period of keeping shall be determined by the Authorized Body.
2. The file shall be available to the interested parties review on their demand throughout the course of the investigation or reconsideration.

Article 38. Hearings

1. Interested parties shall be entitled to request the Authorized Body for a preliminary hearing of the case in order to review the materials of the case and arguments of adverse parties.

2. Hearings shall be chaired by an official of the Authorized Body. This official shall ensure that confidentiality is preserved to the extent necessary. Such presentations shall take the form of hearings at which the officials of the Authorized Body, authorized representatives of the interested parties and witnesses for an interested parties, provided that the interested party notifies in advance the names of the witnesses to the Authorized Body, shall be present. Each party shall be entitled to one hearing to be held.
3. All interested parties shall be entitled to provide additional evidence to the Authorized Body, within 10 days after the Authorized Body has held a hearing.
4. The Authorized Body may hold additional hearings, requests for additional hearings shall be duly justified.
5. The Authorized Body runs the protocol of the hearings. Interested parties have the right to provide additional information orally. Oral information, submitted in accordance with the provisions of this Article, shall be taken into account by the Authorized Body only in so far as it is subsequently reproduced in writing.

#### Article 39. Preliminary Affirmative Determination

On the basis of facts, received during the investigation, the Authorized Body shall make a preliminary affirmative determination on the presence of dumping and injury to the domestic producers

#### Article 40. Provisional Measures and Procedures of their Imposition

1. The provisional measures in the form of a cash deposit or a pledge liability shall be imposed by the Authorized Body only after a preliminary affirmative determination and not sooner than 60 days from the date of initiation of the investigation.
2. The Authorized Body shall inform all interested parties and official representatives of their countries of its intention to impose provisional measures 30 days before adopting those measures and shall grant 10 days to all involved parties to comment in writing on the reasons for the imposition of provisional measures.
3. Provisional measures shall be imposed by the Customs Authorities only on products entered for consumption into the customs territory of Kazakhstan after the date of publication of the decision imposing provisional measures in accordance with the order, determined in Item 1 of Article 14 of this Law.

#### Article 41. Public Notice of Imposition of Provisional Measures

The decision of the Authorized Body to impose provisional measures shall be published at least in two mass media editions of the Republican circulation and such a notice shall contain:

- (a) the names of the suppliers, or the supplying countries involved;
- (b) a description of the product which is sufficient for customs purposes;
- (c) determined dumping amount and a full explanation of the reasons for the methodology used in the calculations;
- (d) criteria of the injury determination;

- (e) the main reasons leading to the provisional measures imposition;
- (f) any other information which is appropriate for the understanding of the factual and legal situation.

The Public notice shall not contain confidential information.

#### Article 42. Duration of Application of Provisional Measures

Provisional measures shall be applied for a period not exceeding six months; in case of low duty, that does not cover the elimination of injury the period of application of provisional measures can be extended for a period of nine months.

#### Article 43. Customs Clearance

An anti-dumping proceeding shall not hinder the procedures of customs clearance.

### CHAPTER 7. CONCLUSION OF THE ANTI-DUMPING INVESTIGATION

#### Article 44. Conclusion of the Anti-Dumping Investigation

1. Not later than one month before a final decision is made, the Authorized Body shall inform all interested parties of the relevant main facts, on basis of which the final decision will be made.

Interested parties shall be granted 15 days to provide their comments to the Authorized Body.

2. Investigations by the Authorized Body on dumping, injury and connections therewith can result in:

- termination of investigation without measures undertaken;
- price undertakings;
- imposition of anti-dumping duties.

#### Article 45. Reasons for Termination of the Anti-Dumping Investigation without Measures Undertaken

1. An investigation shall be terminated promptly without measures undertaken as soon as the Authorized Body is satisfied that:

- (a) there is not sufficient evidence of either dumping or of injury to justify proceeding with the case.
- (b) the margin of dumping is *de minimis*, or that the volume of dumped imports, actual or potential, or the injury, is negligible in accordance with this Law.

#### Article 46. Price Undertaking

1. Proceeding may be suspended or terminated without the imposition of provisional measures or anti-dumping duties upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or to cease exports to Kazakhstan at dumped prices so to eliminate the injurious effect of the dumping.

2. The Authorized Body has no right to require that price increases under such undertakings shall be higher than the determined margin of dumping. Price increases may be less than the dumping margin if the Authorized Body determines that such increase will be sufficient to eliminate the injury to the domestic producers.

3. Price undertakings may be suggested by the Authorized Body, but no exporter shall be forced to enter into such an undertaking.

#### Article 47. Conditions for Acceptance of Price Undertaking

1. Price undertakings shall be adopted by the Authorized Body only after it has made, in accordance with Article 39 of this Law, preliminary affirmative determination of dumping and injury caused by such dumping.

2. Undertakings cannot be accepted if the Authorized Body considers their acceptance impractical as the number of actual or potential exporters is too great, or for other reasons. The Authorized Body shall inform the exporter of these reasons.

#### Article 48. Control over Price Undertakings

1. The Authorized Body may require any exporter from whom undertakings have been accepted to provide periodically information relevant to the fulfilment of such undertakings, and to permit verification of pertinent data.

2. In case of violation of undertakings by the supplier, the Authorized Body may take immediate application of provisional measures without notification.

#### Article 49. Mechanism of Undertakings

1. The Authorized Body has the right to terminate investigation in cases where an exporter fairly implements his undertakings.

2. The Authorized Body may proceed with an investigation upon the acceptance of a price undertaking in order to determine the dumping and injury on its own initiative or on demand of an involved exporter.

3. A price undertaking shall be removed by the Authorized Body in case no dumping or injury has been found, with exception of cases when such lack of dumping or injury is a result of the price undertaking.

4. Price undertakings shall be effective until the elimination of injury of dumping.

#### Article 50. Public Notice of the Acceptance of a Price Undertaking

1. As soon as a price undertaking is adopted, notification shall be sent to all interested parties, providing the provisions of Article 34.

2. A price undertaking shall become effective seven days after it was sent to the respondent or transmitted to the representatives of the interested parties.

Article 51. Assessment of anti-dumping duties

1. The amount of the anti-dumping duty shall be sufficient for the elimination of the harmful consequence of dumping. The amount of anti-dumping duty shall not exceed the margin of dumping.
2. In case the amount paid in respect of provisional measures imposition is higher than the margin of dumping, the supplier has a right for refund. The Authorized Body shall make a decision on refund of the amount paid in excess of the margin of dumping upon request from the supplier, duly supported by evidence. A decision on refund of any such duty paid in excess of the actual margin of dumping shall normally be made within 12 months, and in exceptional cases 18 months. After the decision is made the amount paid in excess shall be refunded within 90 days

Article 52. Introduction of Anti-Dumping Duties

1. Decision on introduction of anti-dumping duties and rate thereof shall be adopted by the Republic of Kazakhstan Government upon the proposal of the Authorized Body and shall be applicable at the date of its publication at least in two mass media editions of Republican circulation. The notice shall contain the relevant information described in Article 41 of this Law, as well as the reasons for the acceptance or rejection of arguments or claims made by the suppliers.
2. In the Resolution of the Republic of Kazakhstan Government on imposition of anti-dumping duties the supplier or suppliers of the dumped product shall be named.

If several suppliers from the same country are involved, and it is impracticable to name all these suppliers, the Authorized Body may decide to name the supplying country concerned.

If several suppliers from more than one country are involved, the Authorized Body may name either all the suppliers involved, if this is impracticable, all the supplying countries involved.

3. On the basis of the Resolution of the Republic of Kazakhstan Government on imposition of anti-dumping duties, the Customs Authorities of the Republic of Kazakhstan shall collect them on all imports in respect of which an investigation has been held, except as to the suppliers from which price undertakings have been accepted.

Article 53. Investigation in Respect of Third Parties

1. Investigation in respect of exporter not related to producer or other exporter of the product concerned, who started exportation after the completion of the investigation shall be initiated within 30 days upon receipt of an application and completed no later than 12 months after the receipt of the application.
2. During the investigation, anti-dumping duties shall not be applied, but provisional measures can be authorized by the Authorized Body.

Article 53. Time-Frames Determined in the Law

1. No duties shall be levied retroactively on products entered for consumption prior to the date of initiation of the investigation
2. Anti-dumping duties and provisional measures shall be applied to the products entered for consumption after publication and effectiveness of relevant decisions, with exception of cases stipulated in items (iii) and (iv) of this Article.

3. Anti-dumping duties can be imposed from the date of introduction of the provisional measures only in cases that measures have been applied to the concerned product and the Authorized Body have made preliminary affirmative determination of an injury or a threat of injury to the domestic producers.

4. An anti-dumping duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures, when the Authorized Body determines for the dumped product in question that:

- (a) there is a history of dumping which caused injury;
- (b) the injury, caused by massive dumped imports of a product in a relatively short time is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied.

In case, there is an evidence on facts, mentioned in items (a) and (b) of Item 4 of this Article, the Authorized Body shall terminate the investigation and make affirmative final determination on introduction of anti-dumping duties.

#### Article 55. Sunset Review

Anti-dumping duties shall be effective not more than five years from its imposition or last reconsideration. Reconsideration of anti-dumping duty shall be provided by the Authorized Body on its own initiative or upon a duly substantiated request made by or on behalf of the domestic producers, within 45 days from the notice of its impending termination. If the Authorized Body determines that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury, the Authorized Body shall appeal before the Republic of Kazakhstan Government to prolong the application of the anti-dumping duty.

### CHAPTER 8. FINAL PROVISIONS

#### Article 56. Conditions and Procedures for the Cancellation of Provisional Measures

1. If the definitive anti-dumping duty is higher than the provisional duty payable, the difference shall not be collected. If the definitive duty is lower than the provisional duty payable, the difference shall be reimbursed or the duty recalculated, as the case may be.

2. Upon the determination of a threat of injury an anti-dumping duty may be imposed by the Authorized Body only from the date of the determination of threat of injury or material retardation and any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released.

3. Where a final determination on dumping and injury is negative, all provisional measures shall be terminated within 10 days, any amounts collected shall be reimbursed within 30 days in accordance with the established procedure.

#### Article 57. Termination or Review of Measures

The Authorized Body may any time on its own initiative or upon request from interested party, if there are evidence that product recognized earlier has been dumped is imported at the price equal or close to its normal value which reduces the injury and dumping, examine whether the continued imposition of the duty is necessary or can be revised.



If as a result of the review it appears that the anti-dumping duty is no longer warranted, it shall be terminated or the amount revised.

Article 58. Appellation Procedure

Decisions made by the Authorized Body in accordance with this Law can be appealed by interested parties, under the procedure stipulated by the Republic of Kazakhstan legislation.

Article 59. Coming into Force

Current Law shall come into force after the moment of its signing.

President of the Republic of Kazakhstan  
Almaty \_\_\_\_\_ 1997.

N. Nazarbaev.

PROTOCOL ON WITHDRAWALS FROM FREE TRADE REGIME TO THE AGREEMENT  
ON FREE TRADE BETWEEN THE GOVERNMENT OF KAZAKSTAN  
AND THE GOVERNMENT OF THE KYRGYZ REPUBLIC,

As of 22 June 1995

Authorized representatives of the Republic of Kazakhstan and the Kyrgyz Republic have concluded this Protocol upon the following:

Article 1

Withdrawals stipulated by Article 1 of the Agreement between the Government of the Kazakhstan and Government of the Kyrgyz Republic on Free Trade as of 22 June, 1995 shall apply to:

1. Goods fallen under the effect of the legislation of the Republic of Kazakhstan on goods exportation and importation procedure, which functions at the moment of customs clearance of the goods, in particular to:

- goods exportation of which is carried out on the basis of registration of contracts;
- goods exportation and importation of which are carried out according to licences on the basis of the Government's permission of the Republic of Kazakhstan;
- strategically important resources;
- goods importation of which is carried out according to licences.

2. Goods fallen under the effect of the Kyrgyz legislation on export tariff, and legislation on licensing and quoting of exportation of goods (works, services) which is in force at the moment of goods customs clearance when the goods are exported from the Kyrgyz Republic to the Republic of Kazakhstan.

Article 2

1. Withdrawals from the Free-Trade Regime in compliance with Article 1 hereof apply to goods fallen under the effect of the Kazakhstan's legislation on export tariff. The parties shall also grant MFN treatment if it concerns:

- taxes and levies charged in exportation including the methods for charging such taxes and levies;
- provisions relating to customs clearance of transit, transportation, warehousing, transshipping and other similar services;
- methods for payment and transfer of payments;
- granting export licences and certificates;
- rules concerning selling, purchasing, transporting, distributing and using goods in the domestic market.

2. The provisions of paragraph 1 of this Article shall not be applied to:
- privileges granted by either party to third countries with the purpose of creating a customs union or free-trade zone, or as a result of creating such a union or zone;
  - privileges granted to developing countries in compliance with the legislation of the parties;
  - privileges granted to neighbouring countries with a view to facilitate boundary trade;
  - privileges granted by the parties to each other in compliance with special agreements.

Article 3

1. This Protocol shall be an integral part of the Agreement between the Government of the Kyrgyz Republic and Government of the Republic of Kazakhstan on Free Trade as of 22 June 1995 and come into force simultaneously with the mentioned Agreement.

2. This protocol shall be valid for the period until a new protocol is signed which is stipulated by Article 1 of the Agreement on Free Trade between the Government of the Republic of Kazakhstan and the Government of Kyrgyz Republic, as of 22 June 1995.

Done in Bishkek city on 22 June 1995 in two originals. Each is in Kyrgyz, Kazak, and Russian.

For the Government  
of the Republic of Kazakhstan

For the Government  
of the Kyrgyz Republic

PROTOCOL ON WITHDRAWALS FROM FREE TRADE REGIME TO THE AGREEMENT  
ON FREE TRADE BETWEEN THE GOVERNMENT OF KAZAKSTAN AND  
THE GOVERNMENT OF THE MOLDOVA REPUBLIC,

as of 26 May 1995

Authorized representatives of the Republic of Kazakhstan and the Moldova Republic have concluded this Protocol upon the following:

Article 1

Withdrawals stipulated by Article 1 of the Agreement between the Government of the Kazakhstan and Government of the Moldova Republic on Free Trade as of 22 June 1995 shall apply to:

1. Goods fallen under the effect of the legislation of the Republic of Kazakhstan on goods exportation and importation procedure, which functions at the moment of customs clearance of the goods, in particular to:
  - goods exportation of which is carried out on the basis of registration of contracts;
  - goods exportation of which are carried out according to licences on the basis of the Government's permission of the Republic of Kazakhstan;
  - strategically important resources;
2. Goods fallen under the effect of the Moldova legislation on export tariff, and legislation on licensing and quoting of exportation of goods (works, services) which is in force at the moment of goods customs clearance when the goods are exported from the Republic of Moldova to the Republic of Kazakhstan.

Article 2

1. Withdrawals from the Free Trade Regime in compliance with Article 1 hereof apply to goods fallen under the effect of the Kazakhstan's legislation on export tariff. The Parties shall also grant the MFN treatment if it concerns:

- taxes and levies charged in exportation including the methods for charging such taxes and levies;
  - provisions relating to customs clearance of transit, transportation, warehousing, transshipping and other similar services;
  - methods for payment and transfer of payments;
  - issuing export licences;
  - rules concerning selling, purchasing, transporting, distributing and using goods in the domestic market.
2. The provisions of paragraph 1 of this Article shall not be applied to:

- privileges granted by either Party to third countries with the purpose of creating a customs union or free trade zone, or as a result of creating such a union or zone;
- privileges granted to developing countries in compliance with the legislation of the parties;
- privileges granted to neighbouring countries with a view to facilitate boundary trade
- privileges granted by the Parties to each other in compliance with special agreements.

### Article 3

The Parties agreed to carry out the re-export of products to third countries the withdrawals from the Free Trade Regime to which are applied according to Article 1 of this Protocol only upon written agreement and in accordance to the terms are stipulated by Authorized Bodies of Government's of the country of origin. The re-export of products, which are mentioned in attachments shall be carry out on permission of the authorized bodies of the Republic of Kazakhstan and Republic of Moldova .

### Article 4

1. This Protocol shall be an integral part of the Agreement between the Government of the Kyrgyz Republic and Government of the Republic of Kazakhstan on Free Trade as of 22 June 1995 and come into force simultaneously with the mentioned Agreement.

2. This protocol shall be valid for the period until a new protocol is signed which is stipulated by Article 1 of the Agreement on Free Trade between the Government of the Republic of Kazakhstan and the Government of Moldova Republic, as of 22 June 1995.

Done in Minsk on 26 May 1995 in two originals. Each is in Moldova, Kazak, and Russian.

For the Government  
of the Republic of Kazakhstan

For the Government  
of the Moldova Republic

PROTOCOL ON WITHDRAWALS FROM THE FREE-TRADE REGIME TO THE  
AGREEMENT ON FREE TRADE BETWEEN THE GOVERNMENT OF KAZAKSTAN,  
AND THE GOVERNMENT OF THE TADJIK REPUBLIC

as of 22 November 1995

Authorized representatives of the Republic of Kazakhstan and the Tadjik Republic have concluded this Protocol upon the following:

Article 1

Withdrawals stipulated by Article 1 of the Agreement between the Government of the Kazakhstan and Government of the Tadjik Republic on Free Trade as of 22 November 1995 shall apply to:

1. Goods fallen under the effect of the legislation of the Republic of Kazakhstan on export tariff, on goods exportation and importation procedure, which functions at the moment of customs clearance of the goods, in particular to:

The questions for the export customs levies for grain the parties will consider in future.

2. Goods fallen under the effect of the Tadjik legislation on export tariff, and legislation on licensing and quoting of exportation of goods (works, services) which is in force at the moment of goods customs clearance when the goods are exported from the Tadjik Republic to the Republic of Kazakhstan.

Article 2

1. Withdrawals from the Free-Trade Regime in compliance with Article 1 hereof apply to goods fallen under the effect of the Kazakhstan's legislation on export tariff. The Parties shall also grant MFN treatment if it concerns:

- taxes and levies charged in exportation including the methods for charging such taxes and levies;
- provisions relating to customs clearance of transit, transportation, warehousing, transshipping and other similar services;
- methods for payment and transfer of payments;
- granting export licenses and certificates;
- rules concerning selling, purchasing, transporting, distributing and using goods in the domestic market.

2. The provisions of paragraph 1 of this Article shall not be applied to:

- privileges granted by either party to third countries with the purpose of creating a customs union or free-trade zone, or as a result of creating such a union or zone;
- privileges granted to developing countries in compliance with the legislation of the parties;

- privileges granted to neighbouring countries with a view to facilitate boundary trade
- privileges granted by the parties to each other in compliance with special agreements.

Article 3

1. This protocol shall be an integral part of the Agreement between the Government of the Tadjik Republic and Government of the Republic of Kazakhstan on Free Trade as of 22 November 1995 and come into force simultaneously with the mentioned Agreement.

2. This protocol shall be valid for the period until a new protocol is signed which is stipulated by Article 1 of the Agreement on Free Trade between the Government of the Republic of Kazakhstan and the Government of Tadjik Republic, as of 22 November 1995.

Done in Almaty city on 22 November 1995 in two originals. Each is in Tadjik, Kazak, and Russian.

For the Government  
of the Republic of Kazakhstan

For the Government  
of the Tadjik Republic

RESOLUTION OF THE GOVERNMENT OF THE REPUBLIC OF KAZAKSTAN

of 14 February 1997 No. 217

On "Measures on Making Order in Production, Import and Trade of Ethyl Spirit  
and Alcohol Products in the Republic of Kazakhstan"

The Government of the Republic of Kazakhstan RESOLVES:

1. The Ministry of Economy and the Ministry of Justice of the Republic of Kazakhstan shall in a one month period prepare and submit to the Government the draft of the law on "introduction amendments and additions to the Decree of the President of the Republic of Kazakhstan having force of law 'On licensing'" envisaging the introduction of licensing of wholesale and retail trade of ethyl spirit and alcohol products.
2. To add to the List of the Commodities import of which is carried out by licences approved by the Resolution of the Government of 12 March 1996, No. 298 on "Order of export and import of goods (works, services) in the Republic of Kazakhstan with the line of the following context:

All kinds of spirits, fortified drinks, fortified juices and balsams, vodka, liqueur-vodka items, cognacs.	2207, 2208, 2905	Ministry of Economy
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3. Gosstandard of the Republic of Kazakhstan shall include compulsory declaration of the volumes of production of ethyl spirits and alcohol products into the order and terms of licensing of production of alcohol products.
4. The Ministry of Economy, the Ministry of Finance, the State Tax Committee, the Ministry of Industry and Trade, the Ministry of Internal Affairs and the State Anti-Monopoly Committee shall prepare and submit to the Government for approval the order of interaction of the bodies ensuring control over production and turnover of alcohol products and stoppage of violation in this field up to 1 March 1997.
5. The State Customs Committee of the Republic of Kazakhstan on agreeing upon with the Ministry of Finance and Ministry of Economy shall develop and introduce from 1 March the order of issuance of permissions for transit of all kinds of spirits and alcohol products ensured putting of excise, customs payments and taxes on deposit.
6. The Ministry of the Economy, the Ministry of Justice and the Ministry of Industry and Trade with attraction of producers of spirits and alcohol products shall in a one month period prepare and submit the Government of the Republic of Kazakhstan proposals concerning expediency of approval of the law of the Republic of Kazakhstan on "State regulation of production and turnover of spirits and alcohol products".
7. The Ministry of Justice of the Republic of Kazakhstan shall prepare and submit to the Government in established order up to 1 April 1997 the draft of the law of the Republic of Kazakhstan envisaging the increase of administrative and criminal responsibility for violation of order of production and turnover of ethyl spirit and alcohol products.



8. The Ministry of Economy of the Republic of Kazakhstan together with concerned ministries and institutions shall carry out in April an analysis of the production and turnover of ethyl spirit and alcohol products of the results of 1996 and the first quarter of 1997 and basing on the results of this analysis to submit their proposal to the Government of the Republic of Kazakhstan.

9. Vice-Premier Pavlov shall be responsible for control over implementation of the present resolution.

Prime-Minister  
Kazhegeldin

RESOLUTION OF THE GOVERNMENT OF THE REPUBLIC OF THE GOVERNMENT  
OF THE REPUBLIC OF KAZAKSTAN

No. 907 of 30 May 1997

On "Excise Rates for Imported Excisable Goods and the Norms of Importation of Excisable  
Goods which Are not Subject to Excise Duty through the Customs Border  
of the Republic of Kazakhstan by Natural Persons"

In the purposes of the implementation of an intergovernmental Agreement of CIS country-members on Unified Commodity nomenclature of foreign economic activity of CIS and to bring the codes and description of the goods into line with its new wording the Government of the Republic of Kazakhstan RESOLVES:

1. To establish rates of excise duties for excisable goods imported into the territory of the Republic of Kazakhstan according to Annex 1.
2. These rates shall be applied also in the cases of sale of excisable imported goods if excise duties for these goods have not been paid in the territory of the Republic of Kazakhstan.
3. To approve from 1 June 1997 the norms of importation of excisable goods which are not subject to excise duties payment through the custom border of the Republic of Kazakhstan according to Annex 2.
4. To recognize as losing their force from 1 June 1997 the following documents:
  - Resolution of the Government of the Republic of Kazakhstan No. 1748 of 31 December 1996 on "Excise rates for imported excisable goods and the norms of importation of excisable goods which are not subject to excise duty through the customs border of the Republic of Kazakhstan by natural persons";
  - The last paragraph of the Resolution of the Government of the Republic of Kazakhstan No. 41 of 10 January 1997 on "Introduction of additions into some decisions of the Government";
  - Resolution of the Government of the Republic of Kazakhstan No. 553 of 14 April 1997 on "Introduction of amendments into the Resolution of the Government of the Republic of Kazakhstan No. 1748 of 31 December 1996".

This Resolution shall be published.

Prime-Minister of the Republic of Kazakhstan

A. Kazhegeldin

Annex 1TO THE RESOLUTION OF THE GOVERNMENT OF THE REPUBLIC OF KAZAKSTAN

of 30 May 1997 No. 907

EXCISE TAXES FOR THE EXCISABLE GOODS IMPORTED TO THE CUSTOMS  
TERRITORY OF THE REPUBLIC OF KAZAKSTAN

Tariff item number	Description of products	Excise rate in % to custom value or in ECU per unit
ex. 0301, 0302, 0303, 0304, 0305, 1604**	Sturgeon, Salmon, Caviar of Sturgeon, Salmon, delicacy of Sturgeon, Salmon and Caviar	100
2203 00	Beer	0.2 ECU/litre
ex. 2204 (except 2204 30)	Wine, champagne type wine	0.8 ECU/litre
2205, 2206 00**	Other wine of fresh grapes flavoured with plants or aromatic substance	0.8 ECU/litre
ex. 2207, 2208**	All kind of spirits (except imported for the manufacture of liquor-vodka items, strong beverages, strong juices, wine, balzam, if the importer/producer has a licence of the Republic of Kazakstan for the right to produce such items)	3.5 ECU/litre
	Strong beverages, strong juices and balzam, vodka, liquor-vodka items, brandy	3.0 ECU/litre
2402**	Tobacco or tobacco substitutes	2.0 ECU/1,000 pieces
ex. 2709 00**	Crude oil	7.0 ECU/ton
ex. 2710 00 260**	Gasoline (excluding aviation)	31.0 ECU/ton
ex. 2710 00 610, 2710 00 650, 2710 00 690**	Diesel fuel	6.0 ECU/ton
4203	Clothes from natural fur	50
ex. 4301, 4302, 4303, 6506 92 000**	Tanned or dressed fur skins (except fur skins of mole, rabbit, dogs, deer, sheepskin) items of natural fur including coat, short coat, suit, jacket, hat and collar, fur tipped, boa, scarf, fur coat, (except fur skins of mole, rabbit, dogs, deer, sheepskin)	50
ex. 7013 21, 7013 31, 7013 91, 9405 10 500**	Lead crystal items, crystal lighting device	50
ex. 7113 21, 7102 39 000, 7114, 7116**	Jewellers' items of gold, silver, platinum	40
ex. 8703 21	Motor cars, with spark-ignition internal combustion reciprocating piston engine: of a cylinder capacity not exceeding 1,000 cc.	10%, but not less than 0.1 ECU/cm. <sup>3</sup> of engine capacity

Tariff item number	Description of products	Excise rate in % to custom value or in ECU per unit
ex. 8703 21 900	Motor cars, with spark-ignition internal combustion reciprocating piston engine: of a cylinder capacity exceeding 1,000 cc., used****	20%, but not less than 0.15 ECU/cm. of engine capacity
ex. 8703 21 900	Motor cars, with spark-ignition internal combustion reciprocating piston engine: of a cylinder capacity exceeding 1,000 cc., used*****	30%, but not less than 0.375 ECU/cm. <sup>3</sup> of engine capacity
ex. 8703 22 190	Motor cars, with spark-ignition internal combustion reciprocating piston engine: of a cylinder capacity exceeding 1,000 cc. but not exceeding 1,500 cc.. *****	10%, but not less than 0.115 ECU/cm. <sup>3</sup> of engine capacity
ex. 8703 22 900	Motor cars, with spark-ignition internal combustion reciprocating piston engine: of a cylinder capacity exceeding 1,000 cc. but not exceeding 1,500 cc.****	20%, but not less than 0.3 ECU/cm. <sup>3</sup> of engine capacity
ex. 8703 22 900	Motor cars, with spark-ignition internal combustion reciprocating piston engine: of a cylinder capacity exceeding 1,000 cc. but not exceeding 1,500 cc., used*****	30%, but not less than 0.425 ECU/cm. <sup>3</sup> of engine capacity
ex. 8703 23 190	Motor cars, with spark-ignition internal combustion reciprocating piston engine: of a cylinder capacity exceeding 1,500 cc. but not exceeding 1,800 cc.***	15%, but not less than 0.2 ECU/cm. <sup>3</sup> of engine capacity
ex. 8703 23 900	Motor cars, with spark-ignition internal combustion reciprocating piston engine: of a cylinder capacity exceeding 1,500 cc. but not exceeding 1,800 cc.****	20%, but not less than 0.3 ECU/cm. <sup>3</sup> of engine capacity
ex. 8703 23 900	Motor cars, with spark-ignition internal combustion reciprocating piston engine: of a cylinder capacity exceeding 1,500 cc. but not exceeding 1,800 cc. used*****	30%, but not less than 0.425 ECU/cm. <sup>3</sup> of engine capacity
ex. 8703 23 190	Motor cars, with spark-ignition internal combustion reciprocating piston engine: of a cylinder capacity exceeding 1,800 cc. but not exceeding 3,000 cc.***	20%, but not less than 0.35 ECU/cm. <sup>3</sup> of engine capacity
ex. 8703 23 900	Motor cars, with spark-ignition internal combustion reciprocating piston engine: of a cylinder capacity exceeding 1,500 cc. but not exceeding 1,800 cc.****	30%, but not less than 0.53 ECU/cm. <sup>3</sup> of engine capacity
ex. 8703 23 900	Motor cars, with spark-ignition internal combustion reciprocating piston engine: of a cylinder capacity exceeding 1,800 cc. but not exceeding 3,000 cc.*****	40%, but not less than 1.3 ECU/cm. <sup>3</sup> of engine capacity

Tariff item number	Description of products	Excise rate in % to custom value or in ECU per unit
ex. 8703 24 100	Motor cars, with spark-ignition internal combustion reciprocating piston engine: of a cylinder capacity exceeding 3,000 cc., used****	25% but not less than 0.7 ECU/cm. <sup>3</sup> of engine capacity
ex. 8703 24 900	Motor cars, with spark-ignition internal combustion reciprocating piston engine: of a cylinder capacity exceeding 3,000 cc., used*****	30%, but not less than 1.05 ECU/cm. <sup>3</sup> of engine capacity
ex. 8703 24 900	Motor cars, with spark-ignition internal combustion reciprocating piston engine: of a cylinder capacity exceeding 3,000 cc., used*****	40%, but not less than 2.0 ECU/cm. <sup>3</sup> of engine capacity
ex. 8703 31 100	Motor cars, with compression-ignition internal combustion (diesel or semi-diesel): of a cylinder capacity but not exceeding 1,500 cc.,***	10%, but not less than 0.115 ECU/cm. <sup>3</sup> of engine capacity
ex. 8703 31 900	Motor cars, with compression-ignition internal combustion (diesel or semi-diesel): of a cylinder capacity but not exceeding 1,500 cc., used****	20%, but not less than 0.17 ECU/cm. <sup>3</sup> of engine capacity
ex. 8703 31 900	Motor cars, with compression-ignition internal combustion (diesel or semi-diesel): of a cylinder capacity but not exceeding 1,500 cc., used*****	30%, but not less than 0.675 ECU/cm. <sup>3</sup> of engine capacity
ex. 8703 32 190	Motor cars, with compression-ignition internal combustion (diesel or semi-diesel): of a cylinder capacity exceeding 1,800 cc. but not exceeding 2,500 cc.;***	15%, but not less than 0.2 ECU/cm. <sup>3</sup> of engine capacity
ex. 8703 32 900	Motor cars, with compression-ignition internal combustion (diesel or semi-diesel): of a cylinder capacity exceeding 1,800 cc. but not exceeding 2,500 cc.; used****	20%, but not less than 0.3 ECU/cm. <sup>3</sup> of engine capacity
ex. 8703 32 900	Motor cars, with compression-ignition internal combustion (diesel or semi-diesel): of a cylinder capacity exceeding 1,800 cc. but not exceeding 2,500 cc.; used*****	25%, but not less than 0.675 ECU/cm. <sup>3</sup> of engine capacity
ex. 8703 33 190	Motor cars, with compression-ignition internal combustion (diesel or semi-diesel): of a cylinder capacity exceeding 2,500 cc.***	25%, but not less than 0.7 ECU/cm. <sup>3</sup> of engine capacity
ex. 8703 33 900	Motor cars, with compression-ignition internal combustion (diesel or semi-diesel): of a cylinder capacity exceeding 2,500 cc., used*****	35%, but not less than 1.05 ECU/cm. <sup>3</sup> of engine capacity

Tariff item number	Description of products	Excise rate in % to custom value or in ECU per unit
ex. 8703 33 900	Motor cars, with compression-ignition internal combustion (diesel or semi-diesel): of a cylinder capacity exceeding 2,500 cc., used <sup>*****</sup>	40%, but not less than 2.0 ECU/cm. <sup>3</sup> of engine capacity
ex. 8704 21	Motor vehicles for the transport of goods, with compression-ignition internal combustion with carrying capacity not exceeding 1.25 ton	15
ex. 8704 21 390, 8704 21 990	Motor vehicles for the transport of goods, with compression-ignition internal combustion (diesel or semi-diesel) with carrying capacity not exceeding 1.25 ton; used <sup>*****</sup>	30
ex. 8704 31	Motor vehicles for the transport of goods, with spark-ignition internal combustion (diesel or semi-diesel) with carrying capacity not exceeding 1.25 ton	15
ex. 8704 31	Motor vehicles for the transport of goods, with spark-ignition internal combustion (diesel or semi-diesel) with carrying capacity not exceeding 1.25 ton, used <sup>*****</sup>	30
ex. 9303, 9304, 9305 <sup>**</sup>	Firearms and gas arms (except purchased for the needs for the State bodies)	40

\* ECU is recalculated in Tenge on the base of the rate of the National Bank of the Republic of Kazakhstan on the day determined by the Customs Legislation for the custom duties payment.

\*\* Commodity's Nomenclature determined by the Code of HS as well as by the description of the product.

\*\*\* Motor cars less than 5-years old, regardless of distance covered.

\*\*\*\* Motor cars more than 5-years old, but less than 10 years old, regardless of distance covered.

\*\*\*\*\* Motor cars more than 10 years old, regardless distance covered.

#### Notes:

Excise duties are applicable to the excisable goods (codes 220300, 2204 (except 220430), 2205, 2206 00, 2207, 2208, 2402) where the country of origin is the country-member of CIS and which are imported from these countries, regardless of the date of conclusion of contract and the fact of payments according to which the mentioned goods are imported to the customs territory of the Republic of Kazakhstan.

Annex 2TO THE RESOLUTION OF THE GOVERNMENT OF THE REPUBLIC OF KAZAKSTAN

30 of May 1997 No. 907

THE NUMBER OF UNITS OF EXCISED GOODS ALLOWED TO BEING TAKEN  
BY ONE NATURAL PERSON THOUGH THE CUSTOMS BOUNDARY  
OF THE REPUBLIC OF KAZAKSTAN

Code of CN FEA	Description of product	The number of units allowed to being taken by one person
ex. 0301, 0302, 0303, 0304, 0305, 1604**	Sturgeon, Salmon, Caviar of Sturgeon, Salmon, delicacy of Sturgeon, Salmon and Caviar	1 kg.
2203 00	Beer	5 litres
ex. 2204 (except 2204 30)	Wine, Champagne-type wine	2 litres
2205, 2206 00**	Other wine of fresh grapes flavoured with plants or aromatic substance	2 litres
Ex. 2207, 2208**	All kind of spirits (except imported for the manufacture of liquor-vodka items, strong beverages, strong juices, wine, balzam, if the importer/producer has a license of the Republic of Kazakstan for the right to produce such items)	2 litres
	Strong beverages, strong juices and balzam, vodka, liquor-vodka items, brandy	2 litres
2402**	Tobacco or tobacco substitutes	1,000 pieces
ex. 2710 00 260**	Gasoline (excluding aviation)	100 litres
Ex. 2710 00 610, 2710 00 650, 2710 00 690**	Diesel fuel	150 litres
4203	Clothes from the natural fur	2 units
ex. 4301, 4302, 4303, 6506 92 000**	Tanned or dressed fur skins (except fur skins of mole, rabbit, dogs, deer, sheepskin) items of natural fur including coat, short coat, suit, jacket, hat and collar, fur tipped, boa, scarf, fur coat, (except furskins of mole, rabbit, dogs, deer, sheepskin)	3 units
ex. 7013 21, 7013 31, 7013 91, 9405 10 500**	Lead crystal items, crystal lighting device	1 sets
ex. 7113 21, 7102 39 000, 7114, 7116**	Jewellers' items of gold, silver, platinum	2 units

\*\* This norm is set up on the overall volume of imported goods, without subdivision by the codes of commodity nomenclature of foreign economic activity. List of imported goods not subject to excise tax within the limits of the norm (allowed quantity) of importation shall be determined by the choice of taxpayer.

Commodity nomenclature shall be determined by the code of CN FEA as well as description of product.

On Approval of the Order of Provision of Official Transfers (Subventions) to Oblast Budgets

RESOLUTION

Of the Government of the Republic of Kazakhstan

of 22 April 1997 No. 619

In pursuance of item 3 of the Resolution of the Government of the Republic of Kazakhstan of 31 December 1996 No. 1737 on "Implementation of the Law of the Republic of Kazakhstan on 'Republic budget for 1997'" the Government of the Republic of Kazakhstan RESOLVES:

1. To approve the attached Order of provision of official transfers (subventions) to oblast budgets.
2. To set up the indicated Order which shall be extended over the oblasts having special economic zones in their territories.

Prime-Minister of the Republic of Kazakhstan

A. Kazhegeldin

Approved by the Resolution of the Government of the Republic of Kazakhstan  
of 22 April 1997 No. 619.



ORDER

Of Provision of Official Transfers  
(Subventions) to Oblast Budgets

1. The present Order determines nomination of internal official transfers (subventions) (hereinafter referred as transfers) provided from the republic budget to local executive bodies and also mechanism of their provision.
  2. In the purposes of insurance of minimal guaranteed level of social services in the regions lacking of such services due to objective reasons, and also financing of special targeted State programmes from the republic budget a financing mechanism in the form of transfers providing balance of oblast (city of republic importance) budgets shall be applied.
  3. Volume of transfers provided in the form of subventions from republic budget to lower budgets shall be determined by the law on republic budget for corresponding financial years and their nomination shall be determined by present Order.
  4. The Ministry of Finance of the Republic of Kazakhstan under preparation of description of revenues and expenditures of the republic budget shall distribute transfers by months taking into account the inflation level and dates of implementation of targeted programmes.
  5. The Treasury under the Ministry of Finance of the Republic of Kazakhstan shall according to approved description of revenues and expenditures of the republic budget shall carry out to transfer transfers to local budgets by instruction of the Ministry of Finance determining their nomination.
  6. Transfers shall be provided to oblasts budgets depending on conditions of the following indicators:
    - implementation of the plan of State taxes and levies collection from the beginning of the year;
    - implementation of the plan of taxes and levies collection fixed to local budgets from the beginning of the year;
    - change of the sum of arrears related to all taxes and levies compared to previous months and others.
- The specific list of the indicators for each oblast and mechanism of their application under provision of transfers shall be determined by the Ministry of Finance on agreeing upon with the Ministry of Economy and Trade of the Republic of Kazakhstan taking into account level of social-economic development and specificity of the region.
7. The transfers shall be subject to sequestering in the established order.
  8. The Ministry of Finance of the Republic of Kazakhstan shall carry out every quarter analysis of targeted usage of provided sums of transfers and under revealing of the facts of non-targeted usage it has the right not to provide transfers, to recall them and prohibit their spending in the amount of revealed violations.

9. The Ministry of Finance of the Republic of Kazakhstan shall submit information about volumes of transfers provided to oblast budgets to the Government every month.
10. Control over targeted and efficient usage of the budget sums provided in the form of transfers to oblast budgets shall be carried out by the Committee of Financial Control of the Ministry of Finance of the Republic of Kazakhstan.