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Additional Questions and Replies

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ECONOMIC POLICIES

- Monetary and Fiscal Policy

Question 1

Paragraph 4: With the possible exception of the last sentence, the text of this paragraph does not address Kazakhstan's monetary policy, but rather discusses the flexible exchange rate. This implies, rather than states, that this is Kazakhstan's only tool for control of the money supply. Is this true?

Answer:

Monetary policy of the Republic of Kazakhstan is pursued by determining the official refinancing rate, interest rates and minimum reserve requirements.

The interest rates used for main monetary policy operations are based on the National Bank's official refinancing rate. At present the refinancing rate represents 7 per cent, slightly exceeding the average inflation rate. The National Bank establishes the interest rates used for main monetary policy operations in order to influence the commercial bank's interest rates on the financial market. The official REPO rate currently represents 4.5 per cent = 150 points. The National Bank's "overnight" interest rate is 8 per cent. The minimum reserve requirement is calculated as a percentage of the total amount of liabilities less the liabilities to banks. At the moment, the minimum reserve requirement represents 6 per cent.

In exceptional cases when it is impossible to slow-down inflationary processes by indirect methods of monetary regulations, the National Bank has the right to introduce direct quantitative restrictions for certain operations. At the same time it should be noted that, since the introduction of the national currency in 1993, the National Bank did not practice establishment of maximum interest rates on transactions. Since 1995, no restrictions were used on the volume of credits. Since 1998, the National Bank did not finance the state budget deficit.

In order to implement its monetary policy, the National Bank: (i) provides loans to commercial banks; (ii) accepts deposits in national and foreign currencies; (iii) undertakes interventions on the foreign exchange market; (iv) issues short-term notes; (v) trades with government and other securities (with the right to repurchase (REPO)); and (vi) commercial bills refinancing. The National Bank is also entitled to carry out other kinds of operations in accordance with the decisions of its Board. The National Bank has the right to provide commercial banks with one-day loans, overnight loans, loans provided as a lender of last resort and special loans.

Question 2

If, as is likely, Kazakhstan has a monetary policy beyond maintenance of a flexible exchange rate, this section should be substantially elaborated to describe it, listing relevant laws, addressing the current main goals and instruments of monetary policy, and indicating how these policies have contributed, or not, to the current economic situation. Are there any laws related to revenue creation other than the Tax Code of 2001.

Answer:

According to the Law of the Republic of Kazakhstan "On the National Bank of the Republic of Kazakhstan" of 30 March 1995 No. 2155, the key objective of the monetary policy of the National Bank is to ensure and maintain stabilization of prices.

In order to accomplish its main objective, the National Bank focuses its activities on the following tasks:

- development and implementation of the national monetary policy,
- maintenance of the payment system functioning,
- foreign exchange regulation and foreign exchange control,
- maintenance of the financial system stability.

The main objective of the National Bank's monetary policy reflects the announced transition to the European Union standards and to the principles of inflation targeting, which requires refocusing the National Bank's policy from the exchange rate targeting to maintaining the stabilization of prices. In conditions of increased responsibility for target indicators of inflation rate, the National Bank will develop the inflation guidelines based on the "core inflation" index, which will reflect main inflationary tendencies.

Also, it intends to continue development of a transmission mechanism model, which should allow assessing core inflation rate changes under the influence of the key indicator – REPO rates. This model was expected to enforce strict adherence to targeted inflation rates and increase public confidence in the state's monetary policy.

The key goal of the National Bank's monetary policy for the next three years is to achieve and maintain an annual average "core inflation" rate within the range of 4-6 per cent in 2004 and 3-5 per cent in 2005-2006. A lower inflation rate is expected to gradually reduce the National Bank's interest rate to 5.5 per cent by 2006. The reduced interest rate of the National Bank will have positive economic impact taking into account that the calculation of securities is based on the official interest rate.

In order to facilitate price competitiveness of Kazakh goods on the world market, the National Bank maintains a free-floating exchange rate of the national currency (Tenge - KZT), which is based on the current levels of money demand and supply. Accordingly, the National Bank does not set any exchange rate targets and does not influence the exchange rate, limiting its role in the domestic currency market, when necessary, to prevent the exchange rate fluctuations caused by speculative surges.

In 2004, in preparation to the transition of its policy from the exchange rate stabilization to inflation targeting, the National Bank continues the implementation of measures aimed at:

- strengthening the regulatory role of its official interest rate;
- expanding mechanisms of liquidity regulation of open market operations, in particular, facilitating development of a secondary securities market;
- increasing securities portfolio of the National Bank.

The National Bank's efforts to increase its securities portfolio and develop new financial instruments are expected to enhance the regulatory role of the National Bank and flexibility of the financial market.

The key goal is expected to be focused on the liberalization of the currency regulation and currency control system, including elimination of excessive barriers to operations of residents with foreign assets. For the purposes of tracking and controlling risks related to currency operations, the Republic of Kazakhstan intended to enhance efficiency of prudential regulation and risk management tools used by banks, pension funds and insurance companies. In 2004, the new legislation is planned to be adopted, which will meet the modern requirements of the financial market and envisage more active participation of Kazakhstan on the international capital markets.

In order to strengthen the payments systems, for the next three years, the National Bank plans to prioritize the task of harmonization of its payments system with the European Union standards. The special focus is planned to be made on the creation of a single national network of payment cards services through introduction of the National Inter-bank System of Payment Cards based on the microprocessor technology.

In order to enhance the financial system stabilization efforts, the following tasks are prioritized: (i) further development of financial market segments; (ii) reinforcement of institutional sustainability of financial organizations; (iii) creation of favourable environment for further expansion of banks' lending operations to the real sector of economy; and (iv) strengthening the cumulative pension system. The National Bank plans to coordinate its activities with the Agency of Kazakhstan on Regulation and Supervision of Financial Markets and Financial Organizations.

Within the framework of Kazakhstan's monetary policy, the functions of the National Bank are regulated by the following laws:

- Law of the Republic of Kazakhstan "On the National Bank of the Republic of Kazakhstan";
- Presidential Decree "On Approval of the Statute and Structure of the National Bank of the Republic of Kazakhstan" of 31 December 2003 No.1271;
- Rules for Determination and Application of Interest Rates on Operations of the National Bank of the Republic of Kazakhstan approved by the Resolution of the Board of the National Bank of the Republic of Kazakhstan of 9 April 2004 No.49;
- Rules for Issuing, Placement, Circulation and Redemption of Short-Term Notes of the National Bank of the Republic of Kazakhstan approved by the Resolution of the Board of the National Bank of the Republic of Kazakhstan of 20 December 2001 No. 554;
- Rules for REPO and Reverse REPO Operations by the National Bank of the Republic of Kazakhstan with Government Securities of the Republic of Kazakhstan approved by the Resolution of the Board of the National Bank of the Republic of Kazakhstan of 3 July 1999 No.160;
- Crediting Rules of the National Bank of the Republic of Kazakhstan approved by the Resolution of the Board of the National Bank of the Republic of Kazakhstan of 13 December 1999 No. 424;
- Rules of the National Bank of the Republic of Kazakhstan on Bank Loans, Loan Guarantees and Record-Keeping approved by the Resolution of the Board of the National Bank of the Republic of Kazakhstan of 15 November 1999 No. 404;
- Rules for Calculation of Fees on Credits, Loans and Deposits of the National Bank of the Republic of Kazakhstan, approved by the Resolution of the Board of the National Bank of the Republic of Kazakhstan of 20 September 1999 No. 293;
- Rules for Restructuring of Debts of Banks and Other Organizations Payable to the National Bank of the Republic of Kazakhstan, approved by the Resolution of the Board of the National Bank of the Republic of Kazakhstan of 26 February 2000 No. 59;
- Rediscounting Rules of the National Bank of the Republic of Kazakhstan, approved by the Resolution of the Board of the National Bank of the Republic of Kazakhstan of 15 November 1999 No.395;
- Rediscounting Instructions of the National Bank of the Republic of Kazakhstan, approved by the Resolution of the Board of the National Bank of the Republic of Kazakhstan of 21 March 2000 No.111;
- Rules for Registration of Currency Operations Related to the Movements of Capital and Opening of Foreign Bank Accounts, approved by the Resolution of the Board of the National Bank of the Republic of Kazakhstan of 4 July 2003 No. 225; and
- Investment Strategies for Management of Gold Reserves of the National Bank of the Republic of Kazakhstan, approved by the Resolution of the Board of the National Bank of the Republic of Kazakhstan of 1 September 2003 No. 329.

The Law of the Republic of Kazakhstan "On Budgetary System" of 1 April 1999 No. 357 regulates financial relations established during the process of different level budget forming, defined the procedure of the republican budget and local budgets developing, considering, execution and execution control. This Code will be invalid on 1 January 2005 with the introduction of the Budgetary Code of the Republic of Kazakhstan of 24 April 2004 No. 548 regulating budget and inter-budget relations and stipulating basic provisions, principles and mechanisms of budget system functioning, education and budget resources use.

Question 3

Kazakhstan should also describe how it uses such policies to meet its economic goals.

Answer:

In the fourth quarter of 2003, the average monthly inflation rate represented 1.3 per cent, while in the first quarter of 2004 this index did not exceed 0.5 per cent.

Active credit policies of second-tier banks, significant increase of foreign capital inflow to Kazakhstan caused the growth of money supply in the course of the year 2003. In response, the National Bank of Kazakhstan regulated liquidity of second tier banks and implemented policies to restrict the growth of money supply. Thus, in the first quarter of 2004, the National Bank issued short-term notes and carried out REPO operations. As a result, the growth of monetary aggregates was insignificant: the monetary base (reserve money) increased by 2.8 per cent and broad money by 8.6 per cent, including currency in circulation by 2.6 per cent and deposits by 10.6 per cent. This allowed the National Bank to exercise a rigid control over inflation processes in the national economy.

Question 4

Paragraph 5 should actually describe Kazakhstan's tax regime in broad terms (not refer to another document), noting the main sources of federal revenue and the main expenditures, and indicating any recent budget deficits or surpluses.

Answer:

The Tax Code of the Republic of Kazakhstan No. 209 adopted 12 January 2001 and entered in force since 1 January 2002. The Tax Code underlines the conceptual basis of the tax system developed during the previous years; contains the key principles of the legislative stability of the tax system; and excludes norms providing special tax privileges to individual tax payers.

Basic provisions of the Tax Code are as the following:

- unified taxation conditions for all tax payers independent of types of activities including all sectors of the economy (except for subsurface users) allowing to avoid protectionism in the form of tax privileges in some sectors of the economy;
- simplified taxation procedures for small businesses, farmers and agricultural producers, in support of their development;
- provision of investment tax preferences to tax payers implementing investment projects with the purpose of creating new, expanding and renewal of existing industries.

Eight types of taxes (except for taxes and special payments imposed upon subsurface users) introduced by the Tax Code included six types of direct taxes (corporate income tax, individual income tax imposed upon natural persons, social tax, property tax, land tax and transport tax) and two types of indirect taxes (value added and excise taxes).

The key objective of Kazakhstan's tax policy is to increase state budget revenues through expansion of the tax base, creation of favourable conditions for business development and reduction of illegal black market operations. Besides, the tax policy of the Republic of Kazakhstan is aimed at further invigoration of investments and innovative projects, reduction of the tax burden on the wages fund with the purpose of increasing the consumer demand and facilitating legalization of citizens' unofficial incomes.

The Republic of Kazakhstan reduced the tax rates based on the personal wage income levels. In 2004, the Republic of Kazakhstan introduced preferential treatment for corporate income tax levied upon industries investing into the petrochemical sector, which should contribute to implementation of Kazakhstan's Industrial and Innovative Development Strategy and diversification of national economy. In 2004, the Republic of Kazakhstan also introduced special tax treatment for companies operating in special economic zones (in the so-called Information Technology Parks), and engaged primarily in scientific research and development of information technologies

Table 1 - Rates of basic taxes imposed upon juridical persons since 1 January 2004:

Corporate income tax	30% - for all tax payers; 10% - for tax payers using land as the main production medium
VAT	15%
Social tax	Regressive scale from 20% to 7%
Property tax	1%
Land tax	Basic rates are established depending on soil quality

Since 2004, the Republic of Kazakhstan introduced a new tax regime for oil operations designed to increase the Kazakh future share in oil revenue. The new tax regime for oil operations applied only for new contractual obligations and did not have retroactive force.

Taxes are imposed upon subsurface users according to the following two models:

- Licensing; and
- Production Sharing Agreement (PSA).

The first model suggested the payment of the rent tax on the export of crude oil, the tax on the excess profit, the royalties, bonuses as well as all other types of taxes and other mandatory payments established by the Tax Code.

Pursuant to the Law of the Republic of Kazakhstan "On Changes and Additions to Some Legal Acts of the Republic of Kazakhstan on Taxation Issues" of 29 November 2003, natural and juridical persons exporting crude oil (excluding subsurface users, who signed PCA) should pay the rent tax on the export of crude oil. The rent tax is calculated based on the actual value of the exported volume of crude oil and its market price depending on the quality of crude oil with the deduction of transportation costs. The market price is defined as weighted average price of prevailing sale prices in the world market during the (daily) reporting period in relation to a range of most similar brands of crude oil. The list of similar brands of crude oil is defined by the Government of Kazakhstan. The rent tax rates are established according to the sliding scale starting from 1 per cent at the market price of US\$ 19 per barrel and 33 per cent at the world price of US\$ 40 and above. The tax period for the rent tax represents one calendar month.

The second model suggests the taxation conditions as stipulated in the PSA in accordance with the provisions of the tax legislation applied on the date when the contract is signed. Under this model of taxation, the conditions of the PSA are fixed and can not be changed subsequent to legislation changes without having both parties' agreement.

The main sources of revenue for the state budget and the main expenditure lines, recent budget deficits or surpluses are presented in tables 2 and 3:

Table 2 - Proceeds of the State Budget

Proceeds	Share in total payments of the year 2003 %
Tax proceeds	92.7
Corporate income tax	26.7
Individual income tax	9.1
Social tax	15.4
Property tax	2.7
Land tax	0.5
Transport means tax	0.5
Value added tax	22.6
Excise duties	2.6
Including excise duties imposed on alcohol	0.6
Payments for use of natural and resources	7.2
Duties imposed on entrepreneur and professional activities	0.3
Taxes imposed on international trade and external transactions	4.2
Other taxes	0.0
State duty	0.8
Non-tax proceeds	4.4
Capital transactions proceeds	1.2

Table 3: State Budget Data

Title	As percentage of GDP		
	Use in cash for the year 2002	Use in cash for the year 2003	The plan for the year 2004 ¹
Proceeds	21.7	23.0	24.0
Revenues	21.4	22.6	23.6
Tax proceeds	19.9	21.3	21.8
Non-tax proceeds	1.2	1.0	1.4
Capital transactions proceeds	0.3	0.3	0.3
Official transfers received	0.0	0.0	0.0
Repayment of credit	0.4	0.4	0.4
Expenses	22.1	24.0	26.1
Costs	21.2	23.1	25.3
General state services	1.2	1.5	1.7
Defence	1.0	1.1	1.2
Public order and security	2.1	2.1	2.4
Education	3.2	3.3	3.8
Health protection	1.9	2.0	2.5
Social package and assistance	5.3	5.4	5.7
Housing and communal services	0.7	0.8	0.8
Culture, sports, tourism and information space	0.6	0.8	0.8
Fuel and energy complex and subsurface utilization	0.2	0.2	0.4
Agriculture, water industry, forestry, fishery and environmental protection	0.8	1.1	1.5
Industry and building	0.1	0.1	0.0
Transport and communication	1.5	1.9	2.1
Other	1.3	1.9	1.3
Debt servicing	1.0	0.8	0.9

¹ State budget as of 1 April 2004

Title	As percentage of GDP		
	Use in cash for the year 2002	Use in cash for the year 2003	The plan for the year 2004 ¹
Official transfers	0.3	0.3	0.2
Credits	0.9	0.9	0.8
Budget deficit (surplus)	-0.3	-1.0	-2.1

Federal budget receipts in 2003 totalled KZT 1,022,255.7 million (or 24.5 per cent higher than in 2002). Corporate income tax (26.7 per cent) and value added tax (22.6 per cent) represented two major revenue sources for the state budget. State budget expenditures in 2003 represented KZT 1,068,439.2 million. State budget deficit in 2003 was equal to KZT 46,183.5 million.

- **Foreign Exchange and Payments**

Question 5

Paragraphs 6-9: Are there any fees or restrictions associated with acquisition of foreign exchange for current account or capital account transactions? Are there any mandatory foreign exchange surrender requirements, prior deposit requirements, or *ad valorem* charges on the acquisition of foreign exchange?

Answer:

In accordance with the Rules for Currency Operations in the Republic of Kazakhstan, adopted by the Resolution of the Board of the National Bank of the Republic of Kazakhstan of 20 April 2001 No. 115 (WT/ACC/KAZ/4 refers) certain restrictions applied with regard to the acquisition of foreign exchange by resident legal entities on the domestic currency market without distinction between current and capital transactions.

Resident legal entities may purchase foreign exchange on the domestic currency market in exchange for the national currency only for the following purposes:

- money transfers and payments to non-residents;
- fulfilment of liabilities related to loans in foreign currency granted by authorized banks;
- official travel and other related expenses incurred outside Kazakhstan;
- transfers to corporate accounts in accordance with provisions stipulated in relevant norms of the National Bank of Kazakhstan;
- repayment of deposits to natural persons in foreign currency (to corporations based on collective guarantees (insurance) of deposits of natural persons);
- foreign exchange operations in cash (for legal entities licensed by the National Bank of Kazakhstan to perform foreign exchange operations in cash); and
- any other purposes stipulated in the relevant legislation of Kazakhstan.

In cases when a resident legal entity does not use the whole amount of the foreign exchange, it should be sold for the national currency within 30 calendar days starting from the date of the acquisition.

Non-resident legal entities are allowed to purchase foreign exchange on the domestic currency market of Kazakhstan. However, they can not use loans received in the national currency for the acquisition of foreign exchange.

No restrictions associated with the acquisition of foreign exchange on the domestic currency market of Kazakhstan by resident and non-resident natural persons through authorized banks in line with the national legislation. There are no fees applied to the purchase of foreign exchange. There are no mandatory foreign exchange surrender requirements, prior deposit requirements or *ad valorem* charges on the acquisition of the foreign exchange.

There are no restrictions associated with the transfer of national and/or foreign currency to bank accounts of non-resident legal entities in authorized banks provided that they are undertaken in line with the procedures set in and received as a result of the transactions allowed by the relevant national legislation. Non-resident legal entities may use national and/or foreign currency transferred to their bank accounts in authorized banks for the purposes which are consistent with the relevant national legislation.

Under the Rules for Currency Operations in the Republic of Kazakhstan adopted by the Resolution of the Board of the National Bank No. 115 of 20 April 2001, payments and money transfers for transactions between residents and non-residents may be conducted in any currency the parties agreed upon. Payments and money transfers for transactions between residents and non-residents may be conducted only through their bank accounts, except in cases stipulated in the normative acts of the National Bank. Both residents and non-residents shall submit to the authorized bank documents required by the currency legislation of Kazakhstan. In case residents and non-residents fail to provide the required documents, the authorized bank could not make payments and money transfers.

Currency valuables covered by provisions of Article 1-1 of the Law of Kazakhstan "On Currency Regulation" can be imported to Kazakhstan by residents and non-residents without any restrictions following the procedures stipulated in the legislation.

No restrictions applied to the export of the national currency from Kazakhstan by residents and non-residents. Coins of precious metals issued by the National Bank and recognized as a legal circulating medium could be imported to or exported from Kazakhstan without any restrictions.

Resident natural persons have the right to export from Kazakhstan foreign currency in cash in the amount of US\$ 10,000 unsupported by documents demonstrating its legal origin. In cases when the amount of foreign currency in cash exceeds US\$ 10,000, it can not be exported unless it has previously been imported to Kazakhstan and was indicated in a customs declaration on import.

Non-resident natural persons have the right to export from Kazakhstan foreign currency in cash equivalent to US\$ 3,000 unsupported by documents demonstrating its legal origin. In cases when the amount of foreign currency in cash exceeds the equivalent of US\$ 3,000, it can not be exported unless previously imported to Kazakhstan and is indicated in a customs declaration on import.

In cases when the amount of foreign currency in cash exported by resident or non-resident natural persons from Kazakhstan does not exceed the equivalent of US\$ 3,000, there is no need to declare it to the customs body of Kazakhstan.

In cases when the amount of foreign currency in cash exported by resident or non-resident natural persons from Kazakhstan exceeds the equivalent of US\$ 3,000, it has to be declared in writing to the customs body of Kazakhstan.

Resident and non-resident natural persons may export payment documents (bills, and checks, including traveller's checks) with their face value in a foreign currency without any restrictions and unsupported by a written declaration.

Export of securities with a face value in a foreign currency is regulated by the laws of the Republic of Kazakhstan on securities.

In accordance with the Article 3 of the Law of Kazakhstan "On Currency Regulation", the President of Kazakhstan has the right to restrict or suspend any currency transactions in emergency situations or where necessary to fulfil international obligations. Additionally, the same Law authorizes the National Bank to introduce restrictions on the currency of payment used in export transactions, on

surrender requirements applied to export receipts in foreign currency, and on the form of payment under specific import and export contracts in order to ensure economic safety of Kazakhstan.

Question 6

Paragraph 9 implies that there are capital account controls. Are these the licensing requirements in paragraph 15? If there are other requirements, please describe them.

Answer:

In order to achieve macroeconomic stability through lowering the national currency devaluation rate and the inflation rate, Kazakhstan introduced the currency regulation system based on the licensing requirement for transactions related to the capital flight. The capital account control mechanisms also include the registration requirement for currency transactions and transaction passports for foreign trade operations.

The licensing and registration requirements are described in Annex 1.

Question 7

Paragraphs 9-11: What criteria are used to "authorize" banks to deal in foreign currencies? Who authorizes banks? Are some of the requirements included in paragraph 16?

Answer:

Under the Presidential Decree "On Further Improvement of the Public Management System of the Republic of Kazakhstan" of 31 December 2003 No.1270, the Agency of the Republic of Kazakhstan for Regulation and Control of the Financial Market and Financial Organizations (hereafter – the Agency) was established to exercise regulatory and supervisory functions in relations to financial market institutions.

Operations with foreign currency, including those on behalf of clients, are performed by second tier banks and other financial institutions licensed by the Agency (based on the positive conclusion of the National Bank), except for pure foreign exchange offices and the joint-stock company "Kazpochta". At present the National Bank licenses institutions solely involved in foreign exchange and joint-stock company "Kazpochta". No banks or other financial institutions can be licensed to perform foreign currency transactions unless they were legal entities of the Republic of Kazakhstan in line with the relevant national legislation.

Question 8

Paragraph 12: This section should be more clear. It states that the President and the Central Bank "may" impose requirements on currency relations and payments, including that exporters surrender their foreign exchange earnings. Do such requirements currently exist? Are they exhaustively listed in paragraphs 15-17 below? If not, please provide additional description.

Answer:

Article 3 of the Law of Kazakhstan "On Currency Regulation", the President of Kazakhstan has the right to restrict or suspend any currency transactions in emergency situations or where necessary to fulfil international obligations. Additionally, the same Law authorizes the National Bank to introduce restrictions on the currency of payment used in export transactions, on surrender requirements applied

to export receipts in foreign currency, and on the form of payment under specific import and export contracts in order to ensure economic safety of Kazakhstan.

Question 9

Paragraph 13: Is the authority described in this paragraph currently being used by the Government? If so, indicate which restrictions are covered.

Answer:

Since the enactment of the acting currency legislation there were no instances of restrictions enforced either by the President or the National Bank of Kazakhstan.

Question 10

Paragraph 15: The description of licensing requirements for certain currency transactions includes:

- transfers of residents to non-residents for the settlement of accounts relating to imports of goods, works, and services allowing for advance payments for a period of more than 180 days, as well as for extension of the period for receipt of earnings in a foreign currency as a payment for the export of goods (works, services) by residents for a period of more than 180 days after the date of export of goods (works, services);
- receipt by residents of payments from non-residents for export of goods, included in the Schedule developed by the Government of the Republic of Kazakhstan, in case where the period between the date on which the goods were exported and the date on which export receipts were collected, exceeds 365 days;
- Is the license automatic? What fees are charged? Does the license involve a deposit by the resident? Has the IMF approved this requirement?

Answer:

The regulator can not refuse licensing applications based on the considerations related to the economic viability of the operation. Restrictions are purely procedural and have no formal relation to economic reasons of the operation and financial capability of the resident to meet risks pertinent to currency transactions. No deposit requirements are applied to licensing procedures.

To apply for a license of the National Bank a resident is required to submit the following documentation:

- a standard application form;
- a package of documents providing all relevant information on the currency transaction and/or proving that the applicant meets requirements regulating operations (activities) related to the use of currency valuables; and
- a proof of payment of the licensing fee in the amount of ten monthly calculation indices (in 2004, 1 MCI = KZT 919).

The Monthly Calculation Index (MCI) is an indicator established annually in the state budget for the purpose of calculation of pension payments, benefits, other social payments, tax payments and penalties. MCI is established at the rate of 919 tenge in the chapter 12 of the Law "On the Republican Budget for 2004" of 5 December 2003 No. 505-II. MCI can be converted to US\$ and € at a rate established by the National Bank on the date of payment to be made in accordance with the relevant

legislation. For example, on 6 June 2004 the National Bank's rate was KZT 136.32 per US\$ and KZT 166.27 per €; therefore 1 MCI = US\$ 6.74 or € 5.53.

The National Bank concludes that the documents submitted and the operation are consistent with the requirements of the relevant legislation, the license is issued within one month from the date of receipt of the last required document. Authorized banks are not allowed to undertake currency transactions of residents without a license.

Question 11

Paragraph 16: Is it possible for a firm to import or export goods (i.e., to be the importer or exporter of record) without "dealing" in foreign exchange?

Answer:

Legislation of the Republic of Kazakhstan does not restrict export-import operations without currency valuables, the so-called barter transactions.

Question 12

Paragraph 17: Concerning the registration requirements listed here:

What is their purpose? Are there fees? Is registration with the National Bank automatic?

Answer:

The registration means notification made by the resident on a specific transaction within 30 days from the date of contract enforcement, based on which the National Bank issues a registration certificate.

The registration procedure is introduced for the purpose of statistical record, analysis of the balance of payments dynamics and external debt of Kazakhstan. No fees are required for the registration of currency transactions. The National Bank can not refuse registration based on the reasons related to the economic viability of the operation. The only reason for the refusal in registration could be the inconsistency of the contract to the provisions of the Civil Code of Kazakhstan.

To register capital account transactions the resident needs to submit a standard application form, a contract for the currency transaction and the documents proving the identity of the resident. The National Bank of Kazakhstan issues a registration certificate within ten business days from the date of receipt of the application package, which then serves as a basis for the transaction by the authorized bank.

Question 13

Does the "borrowing" and "crediting" referred to in the second and third ticks include credits extended for international trade? Must non-residents register to extend credits for trade with Kazakhstan?

Answer:

Credits extended by non-residents for the international trade are required to be registered with the National Bank by the resident of Kazakhstan, which is the party to the transaction. No registration requirements apply to non-resident creditors.

Question 14

Why must non-residents register with the National Bank to collect fees from the use of intellectual property?

Answer:

The resident party was responsible for the registration with the National Bank of payments made by non-residents to residents for the complete transfer of exclusive rights to intellectual property.

Question 15

Paragraph 18: Please provide citations of documents, laws, or regulations that confirm Kazakhstan's plans to liberalize its foreign exchange and payments system and revoke the measures listed in paragraphs 15-17 by 2007.

Answer:

The currency regime liberalization plans of his country are reflected in the Currency Regime Liberalization Concept of the Republic of Kazakhstan approved by the Resolution of National Bank Board of 11 September 2002 No. 369.

The legal basis needed for implementation of the first phase of the Concept as well as of the Currency Regime Liberalization Program of Kazakhstan for 2003-2004 was formed as a result of the changes introduced into the currency legislation of Kazakhstan in 2003. With the purpose of a subsequent removal of currency regulation restrictions and simplification of procedures for currency transactions related to foreign assets acquisition by residents, including export/import transactions, the following legislative and regulatory documents were adopted:

- Rules for Registration of Capital Accounts Transactions and Opening Accounts Abroad;
- Instructions for Foreign Exchange Transactions with Cash Foreign Currency in the Republic of Kazakhstan;
- Rules for Currency Operations in the Republic of Kazakhstan of 25 July 2003 No. 256;
- Rules for Licensing of Operations related to Use of Currency Valuables of 25 July 2003 No. 257; and
- Instruction for Export-Import Currency Control in the Republic of Kazakhstan of 26 December 2003 No. 484.

At present the draft Currency Regime Liberalization Program for the period of 2005-2007 (second phase) is being developed. The following steps were proposed to be undertaken for its implementation:

- abolition of the licensing requirement for direct investments abroad effected by all non-financial organizations;
- abolition of the licensing requirement for investments in foreign countries effected by banks and insurance institutions (acquisition of stocks of non-residents by second tier banks will effected only after notification of the National Bank);
- abolition of a single licensing requirement for portfolio investments abroad effected by the rest of investors (other than banks and insurance institutions) and placed through brokers and dealers of Kazakhstan;
- abolition of the licensing requirement for opening accounts in foreign banks to finance operational disbursements of subsidiaries and representative offices of Kazakh legal entities abroad;
- abolition of the licensing requirement for loans effected by all financial institutions;

- further liberalization of requirements for opening accounts by natural persons abroad; and
 - subsequent simplification and liberalization of the currency regime.
- **Investment Regime**

Question 16

Please describe the provisions listed in paragraph 20.

Answer:

Under the Law, investments are defined as all kinds of property (except for goods destined for personal consumption), including subjects of leasing from the date of enforcement of the respective leasing agreement, and also rights thereto, invested by an investor into the charter capital of a legal entity or contributions made to the fixed assets used for entrepreneurial activities. The Law "On Investments" had invalidated the Law "On Foreign Investments" of 27 December 1994 No. 266-XIII and the Law "On State Support of Foreign Investments" of 28 February 1997 No. 75-I.

Legal protection of investments includes:

- full and unconditional protection of investors' rights;
- guarantee of indemnity for the damage done to investor by issuance of norms non-compliant with the Kazakh legislation and unlawful commissions or omissions of public officials;
- guarantee of the stability of terms and conditions of agreements concluded by investors with the respective state agencies;
- guarantee of the investors' use of income at their full discretion;
- guarantee of the investors' rights' protection in the course of nationalization and requisitions; and
- conflict resolution regulations, including the possibility of settling conflicts in international arbitration courts.

The new mechanism of providing state support for investments has a number of considerable advantages. First of all, the law in question envisages equal support and stimulation of both domestic and foreign investments. It also reduces significantly the length of time allowed for consideration of applications for investment preferences (up to 30 business days) and simplifies the procedure for granting such preferences.

In accordance with Article 3 of the Law "On Investments", for the national security related considerations, there may be certain kinds of activities and/or areas in which investment activities are limited or banned:

- Pursuant to Article 5 of the Law "On the Mass Media" of 23 July 1999 No. 451-1, foreign entities and individuals, stateless persons are not allowed to directly or indirectly own, use, dispose of and/or manage more than 20 per cent shares (equity, participation) of a legal entity owning or operating means of mass media of the Republic of Kazakhstan.
- Pursuant to Article 22 of the Law "On Banks and Banking Activities in the Republic of Kazakhstan" of 31 August 1995 No. 2444, the charter capital of the banks established and operated with foreign capital participation, may not exceed 50 per cent of the aggregate charter capital of all banks of Kazakhstan, except as permitted by the authorized state agency.
- Pursuant to Article 65 of the Law "On Architectural, Town-Building and Construction Activities in the Republic of Kazakhstan" of 16 July 2001 No. 242-II, the share of foreign participation in joint ventures' charter capital may not exceed 49 per cent.

- Pursuant to Article 5 of the Law "On Guarding Activities" of 19 October 2000 No. 85-II, foreign legal entities, legal entities with foreign participation, foreign and stateless individuals may not engage in any kind of guarding activities, set up or act as founders (participants) of private guarding organizations, act as trust managers of private guarding organizations, establish guarding units for legal entities and individual businessmen.

Question 17

Include description of any incentives for investment, any restricted or prohibited sectors for foreign investment, any minimum capital requirements, maximum foreign equity limits, either for individual investments or by sector, and general licensing or permission requirements for foreign investment.

Answer:

In order to create a favourable investment climate for diversification of economic development of Kazakhstan, attract investments for establishment of new and expansion/modernization of existing production facilities, facilitate technological advancement and innovative development, and creation of new jobs, the Government of Kazakhstan introduced investment preferences.

The representative of Kazakhstan further pointed out that the investment preferences were granted under the following conditions:

- the investment activity in question should be included in the List of priority sectors;
- investments should be made in the acquisition of fixed assets for establishment of new and expansion and/or upgrading of existing production facilities; and
- application and other required documents should prove investor's financial, technical and organizational capacity for implementation of the investment project under consideration.

The current list of priority activities for investment preferences, as approved by the Government Resolution "On Some Issues of Enforcing the Law "On Investments" of 8 May 2003 No. 436, comprises of 233 kinds of activities. The Resolution enacted the following bylaws: (i) Model investment contract granting investment preferences; (ii) Maximum investment volumes and duration of investment tax preferences, the authorized state agency required for issuing investment preferences, etc.

In accordance with the Law "On Investments", the authorized state agency may grant an investor, on contractual terms, the following investment preferences:

- investment tax preferences;
- customs duties exemption for imported goods; and
- in-kind state grants.

The duration of the investment tax preferences depends on the volume of investments made into fixed assets, the maximum term could not exceed five years. The authorized state agency in charge of the investments is the Ministry of Industry and Trade of the Republic of Kazakhstan.

Investment tax preferences includes: (i) the corporate income tax preferences; (ii) the property tax preferences; (iii) the land tax preferences.

- The corporate income tax preferences entitles the taxpayer to gradually deduct from the aggregate annual income the cost of the commissioned fixed assets in equal parts throughout the term of the preferential treatment. Pursuant to the effective legislation, the 30 per cent

corporate income tax is assessed on the taxable income of taxpayers - legal entities, as adjusted, less the losses incurred.

- The property tax preferences exempt a taxpayer from the property tax on the fixed assets newly commissioned under the respective investment project. The balance value of the taxable objects determines on the basis of book-keeping constituted their tax base. Legal entities and individuals calculate the property tax at the rate of 1% of the average annual value of the taxable objects.
- The land tax preferences exempt the taxpayer from the land tax on the plots acquired and used for implementation of the respective investment project. According to law, certain land categories are subject to taxation. The basic tax rates are determined for each land category under the established criteria. Specifically:
 - with respect to agricultural lands, the rates are set on a per hectare basis and differentiated according to the soil quality and yield class. The base rates ranged from KZT 0.48 for the yield class 1 and up to KZT 202.65 for the yield class over 100;
 - with respect of the populated lands (including the residential land with constructions and buildings located thereon), the basic rates are established on the per square meter basis and ranged from KZT 0.09 for residential lands in settlements, villages up to KZT 28.95 in Almaty for non-residential lands;
 - with respect of the lands used for industrial, transportation, communication, defence and other non-agricultural purposes (industrial lands), the basic rates on the industrial lands situated in populated areas are the same as the basic rates for the populated areas. The basic rates for the industrial lands situated beyond populated areas are established on a per hectare basis in proportion to the yield class. They range from KZT 48.25 for the lands of zero yield class to KZT 5,790 for the lands of the yield class over 100.

The date on which the investment tax preferences started to apply is set in the agreement pursuant to the Tax Code. The legal entities operating under a special tax regime and under subsurface use contracts are not granted any investment tax preferences. Nor are they granted such preferences with respect to the fixed assets received by a legal entity of Kazakhstan as in-kind state grant.

Equipment and parts thereof, imported for implementation of investment projects are exempted from customs duties in the following cases:

- if the analogous equipment and parts are not produced within the territory of the Republic of Kazakhstan;
- if the analogous equipment and parts are not produced within the Republic of Kazakhstan in quantities sufficient for the conduct of operations under the respective investment project; and
- if the analogous equipment and parts produced within the territory of the Republic of Kazakhstan do not meet the respective investment project requirements.

Customs duties exemptions may be granted for the term of one year, this period may be subsequently extended, not exceeding the term of five years after the contract registration. The decisions regarding customs duties exemptions and extensions are taken by the authorized investment body.

Following the legislatively established procedure the in kind state grants shall be granted into ownership or for use by the Government of the Republic of Kazakhstan or its authorized body, given approval of the state agencies responsible for management of the state property and land resources. Approvals for granting in kind state grants shall be obtained within 15 business days from the time of request. In kind state grants may be awarded in the form of land plots, buildings, constructions, machinery and equipment, computational devices, measuring and regulating units, transportation vehicles (except for automobiles), industrial and household tools.

In kind state grants shall be assessed at their market value following the legislatively established procedure. The maximum size of an in kind state grant may not exceed 30 per cent of the volume of investments made into fixed assets of a legal entity of the Republic of Kazakhstan. If the assessed value of the requested in kind state grant in kind exceeded the above limit, the concerned legal entity of Kazakhstan may still get the requested grant, having paid the difference between its assessed value and the permitted maximum size of such grant.

The new mechanism of providing state support for investments had a number of considerable advantages. First of all, the law in question envisages equal support and stimulation of both domestic and foreign investments. It also reduces significantly the length of time allowed for consideration of applications for investment preferences (up to 30 business days) and simplifies the procedure for granting such preferences.

The Law "On Investments" does not set the minimum capital requirements for foreign investments expanding the sphere of its application to small and medium business enterprises.

Question 18

Remove or amend the statement in paragraph 20 indicating WTO consistency, since that has not yet been determined.

Answer:

The statement that the provisions of the Law "On Investments" are consistent with relevant WTO obligations, including those under the TRIMs and Subsidies arrangements is removed.

Question 19

Paragraph 23-27: Discussion of land ownership rules could be compressed.

Answer:

The Land Code, of 20 June 2003 No. 442-II, defines the concept, composition and legal regime for each of the above mentioned land categories (Articles 97-127 of this Code).

Pursuant to Article 20 of the Land Code both state and private ownership of land are equally recognized and protected in Kazakhstan. The Republic of Kazakhstan is the state owner of the land within the territory of Kazakhstan. Individuals and non-governmental legal entities may privately own land plots on the grounds, terms and conditions established in the Code. Referred to individuals in this context are citizens of the Republic of Kazakhstan, foreigners and stateless persons, unless provided otherwise in the Code.

According to Article 22 of the Land Code, the ownership right to a land plot emerges via:

- granting;
- transfer; and
- transfer by universal succession (inheritance, reorganization of legal entities).

Ownership rights are granted or transferred taking into account the land plot's destination. Ownership right to land may emerge on the basis of regulations of the state agencies, civil-legal transactions and on other grounds envisaged by the legislation of the Republic of Kazakhstan.

Pursuant to Article 23 of the Land Code, the state-owned land plots may be transferred into private ownership of individuals and non-governmental legal entities, except if otherwise stipulated. Foreign

citizens, stateless persons and foreign legal entities may privately own land plots granted for development or developed as industrial and non-industrial facilities, including residential buildings (constructions) and their complexes; lands needed for servicing buildings (constructions), if used according to their destination.

The following categories of land plots may not be owned privately by both foreign and Kazakh legal entities and natural persons:

- the land plots used for the defence and national security needs, the state-owned defence industry,
- engineering-technical constructions, communications erected for protection and guarding of the state borders of the Republic of Kazakhstan, for the customs needs;
- specially protected natural territories;
- forest fund (except for the land plots listed in Point 4 Article 128 of the Code);
- water fund (except for the lands listed in Point 2 Article 133 of the Land Code);
- main railway networks and commonly used highways; and
- commonly used areas in settlement territories, except for the land occupied by privately-owned buildings and constructions and needed for their servicing.

- **State Ownership and Privatisation**

Question 20

WT/ACC/SPEC/KAZ/8, paragraphs 30-34: Could more information on the state of play of state privatization be included, e.g. indicating the percentage of privatized state enterprises, the areas that are not yet subject to privatization, and the share of capital in privatized enterprises?

Answer:

The state property management policy is regulated by the Law "On Joint Stock Companies" of 10 July 1998, the Law "On Limited and Additional Liabilities Partnerships" of 22 April 1998, the Presidential Decree valid as law "On State-Owned Enterprises" of 19 June 1995 No. 2335, the Presidential Decree valid as law "On Privatization" of 23 December 1995 No 2721, the Civil Code, and the Law "On Amendments to some Legislative Acts of the Republic of Kazakhstan pertaining to State Property" of 21 May 2002 (hereinafter – "the Law").

The property of state-owned enterprises related to their fixed assets is sold solely upon the decision of the authorized body, and in some cases, upon the decision of the Government of Kazakhstan. Proceeds from the sale of state property are used as the state budget revenues. State-owned enterprises are not allowed to participate in the charter capital of partnerships with limited liabilities; state bodies are not allowed to found and hold shares of those companies.

The two-staged tenders and sale of derivative securities were introduced based on the world practices. Tender is the most popular way of privatization of major strategic entities, since this method promotes competition between potential buyers/investors. Sale of derivative securities is aimed to expand the range of potential investors, raise the profile of Kazakh firms on the global capital markets. The requirements, companies had to meet in order to place derivative securities, are meant to ensure their transparency and consequently to minimize the investors' risks.

In response, the following data on the state property as of January 2003 was provided:

- there are 5,831 state-owned enterprises;
- the state owns shares (participated) in 499 joint stock companies and partnerships with limited liabilities (hereinafter – LLP); and

- there are 13 legal entities with the status of national companies, including 11 joint stock companies and two state enterprises.

National companies are established by the decision of the Government of Kazakhstan in strategically important sectors of Kazakhstan's economy (Annex 2 contains the list of national companies and joint stock companies with the share of state ownership).

According to the Government Resolution "On Measures Aimed at Provision of Information Exchanges and Maintenance of the State Property Database" of 21 March 1998 No. 246, the state property is registered in the State Registry of state enterprises and institutions, legal entities with the state share in the charter capital.

The state property is privatized in accordance with the Presidential Decree "On Privatization" and other laws of Kazakhstan. The national regime is provided for participation of foreign legal entities in the privatization program.

A large-scale privatization campaign (in 1991-2000) and improvement of the state property management system constituted an important component of the national economic reforms aimed at building a market economy in Kazakhstan.

As of 1991, the Republic of Kazakhstan had launched six privatization programs; the last one is in its implementation stage. All privatization programs had been planned for two years and three of them had been focused on large scale privatization. Starting from 1999, when the major part of the national economy was privatized, the focus was shifted to effective management of the state property accompanied by the on-going privatization. The last two programs were developed within the framework of the State Property Management and Privatization Concept approved by the Government Resolution of 21 July 2000 No. 1095. In 2003-2005, privatization process depends on the state assets management efficiency, the size of the state debt and state liabilities.

The list of privatization programs is as follows:

- State Property Decentralization and Privatization Program of the Kazakh SSR for the period of 1991-1992;
- National Program on State Property Decentralization and Privatization of the Republic of Kazakhstan for the period of 1993-1995;
- State Property Privatization and Restructuring Program of the Republic of Kazakhstan for the period of 1996-1998;
- Program on Privatization and State Property Management Efficiency Improvement for the period of 1999-2000;
- Sectoral Program on State Property Management Efficiency Improvement and Privatization for the period of 2001-2002; and
- Sectoral Program State Property Management Efficiency Improvement and Privatization for the period of 2003-2005.

Ten leading companies with the state ownership share had been chosen as "blue chips" for further sales: "Manghistaumunaigas", "Aktobemunaigas", "Kazzink", Ust-Kamenogorsk Titanium—Magnesium Works, Sokolovsk-Sarybaisk Mining-Concentrating Production Association, "Aluminium of Kazakhstan", transnational company "Kazchrom", People's Savings Bank of Kazakhstan, "Kazakhtelecom" and "Kazakhmys". At this stage, the state owned shares of "Manghistaumunaigas", "Aktobemunaigas", "Aluminium of Kazakhstan", "Kazakhmys", People's Savings Bank of Kazakhstan and Ust-Kamenogorsk Titanium—Magnesium Plant" had been fully sold.

During the period of 1991 - 2004, 3,745 joint stock companies and partnerships with limited liabilities were privatized via auctions (28010), tenders (663), exchange 9131) and direct sales (150). The share of the private sector in the national GDP constitutes 75 per cent.

Table 4 - State Property Privatization Methods Used in 2003

Name	Auction		Tender		Stock Exchange	Direct sale	Total
	English	Dutch	Commercial	Investment			
State blocks of shares (participations) in JSC and LLP	11	10	13	9	1	21	65
Property complexes	1	16	9	5	0	3	34
Other objects	514	1,278	80	39	0	96	2,007
Total:	526	1,304	102	53	1	120	2,106

Table 5 - Results of the privatization processes in 1991- 2004

Years	Privatization of property complexes, real estate property objects, incomplete construction, transportation and other objects (units)	Privatization of the state shares in JSC and LLP (units)	Case-by-case privatization (units)	Privatization proceeds (thousands of tenge)
1991-1992	4,771			165
1993	153		1	783,989
1994	2,645		1	1,459,266
1995	3,239	385	6	7,233,421
1996	3,526	889	27	31,214,565
1997	5,641	1,315	48	54,511,449
1998	2,716	513	11	66,701,804
1999	2,462	162		34,815,880
2000	1,766	93		22,048,029
2001	2,059	146		16,583,078
2002	1,756	67		19,340,183
2003	2,041	65		60,127,949
1st quarter 2004	430	16		4,362,507
Total	33,205	3,651	94	319,182,285

Table 6 - Dynamics of the State Property Privatization in Various Sectors of the Economy in 1999-2003

	1999	2000	2001	2002	2003
	(units)				
1. Privatized state blocks of shares in JSC and LLP, total	162	93	146	67	65
Including:					
Industry	26	34	39	22	16
Construction	12	4	10	3	5
Agriculture	20	9	25	8	3
Transportation and communication	40	15	13	15	4
Trade in and repair of household goods	15	4	11	3	5
Finance	2		4	1	

	1999	2000	2001	2002	2003
Health care			12	4	3
Education					8
Other objects	47	27	32	11	21
2. Privatized property complexes, immovable property objects, incomplete construction, transportation and other objects	2,462	1,766	2,059	1,756	2,041
Total	2,624	1,859	2,205	1,823	2,106
	(in per cent to the total amount of state blocks)				
Industry	16.1	36.6	26.7	32.8	24.6
Construction	7.4	4.3	6.8	4.5	7.7
Agriculture	12.3		17.2	11.9	4.6
Transportation and communication	24.7		8.9	22.4	6.2
Trade in and repair of household goods	9.3		7.5	4.5	7.7
Finance	1.2	9.7	2.7	1.5	
Health care		16.1	8.3	6.0	4.6
Education		4.3			12.3
Other objects	29.0	29.0	21.9	16.4	32.3
Total	100.0	100.0	100.0	100.0	100.0

Major part of agricultural products are produced by the private sector and such important economic activities, as public catering, trade, food and light industry, services, etc., are no longer state-owned.

The rules and procedures are set forth in publicly accessible laws and regulations of the Republic of Kazakhstan. Tender announcements indicating the time, place and type of tender, property on sale, the sale procedure, initial price, guarantee deposit amount and winner selection criteria are published by the seller in the official press in Russian and Kazakh languages not less than 30 days before the tender date.

Foreign participants can purchase shares on the secondary market from the groups that have previously received such shares in the privatization of enterprises, provided that such enterprises are listed on the secondary market. The only exception to this rule was that agricultural producers, who had privileges (i.e., received shares in exchange of liabilities) during the first and second stages of privatization, could not sell their shares to either domestic or foreign investors until their liabilities are paid off to joint stock companies.

The Presidential Decree of 23 June 1993 No. 1290, constituting a legal framework for Investment Privatization Funds (PIFs), contains no restrictions or special conditions prohibiting foreign investors from purchasing shares in, once they are converted into open joint stock companies.

The Republic of Kazakhstan is ready to provide any additional information on the on-going privatization program as well as on plans for future privatization processes upon the request of WTO Members.

Question 21

Does Kazakhstan's legislation foresee any exceptions or areas that will not be subject to privatization?

Answer:

Depending on its economic significance, the state property of Kazakhstan is divided into three categories:

- The first category comprises of the state property exempted from privatization and its preliminary stages. This list was approved by the Presidential Decree of 28 July 2000 No. 422. The Government Resolution of 24 October 2000 No. 1587 approved:

- the list of state property exempted from privatization (as of 18 December 2003);
 - the list of state property exempted from privatization, including its preliminary stages, up to 2006; and
 - the list of joint stock companies, where the state owned shares are exempted from privatization, including its preliminary stages, up to 2006 (Annex 2).
- The second category included the national companies established under the Government Resolution in the strategic sectors of the economy, such as oil and gas, mining and metallurgical, transport and communication, energy and machine building sectors. Part of the state owned shares in joint stock companies and state-owned enterprises, constituting national enterprises, are envisaged to be privatized in line with the national economic priorities.
- The third category consists of the state property not related to the first two categories:
- state owned shares in the joint stock companies;
 - state participations in the charter capital of Partnerships with Limited Liabilities;
 - real estate property, the construction of which was not completed; and
 - property complexes and other property.

The decision on privatization of the third category state property depends on the economic efficiency of its state ownership status. Privatization of the property complexes and state owned shares of companies that have a dominating (monopoly) position in the market or of those of strategic importance for the national economy are privatized by the Government resolutions via application of the most optimal privatization methods.

Concerning the plans for state property privatization of Kazakhstan, in 2004 the list of state property includes state owned shares of 75 joint stock companies and more than 1,000 immovable property objects, property complexes, machinery and equipment, transportation vehicles and other objects.

Question 22

The information referred to in paragraph 34 should be actually presented, in compressed form, inter alia, addressing the following points:

- **Does Kazakhstan have a privatization program? If so, what laws authorize it, is it still ongoing, and what have been the results in the period of its duration? Does it cover both agricultural and non-agricultural enterprises?**

Answer:

The state property is privatized in accordance with the Presidential Decree "On Privatization" and other laws of Kazakhstan. The national regime is provided for participation of foreign legal entities in the privatization program.

A large-scale privatization campaign (in 1991-2000) and improvement of the state property management system constituted an important component of the national economic reforms aimed at building a market economy in Kazakhstan.

An indispensable and most important part of economic reforms implemented during Kazakhstan's transition period have been conducted of a large-scale privatization campaign (years 1991-2000), organization and improvement of the state property management system.

As of 1991, the Republic of Kazakhstan had launched six privatization programs; the last one is in its implementation stage. All privatization programs had been planned for two years and three of them

had been focused on large scale privatization. Starting from 1999, when the major part of the national economy was privatized, the focus was shifted to effective management of the state property accompanied by the on-going privatization. The last two programs were developed within the framework of the State Property Management and Privatization Concept approved by the Government Resolution of 21 July 2000 No. 1095. In 2003-2005, privatization process depends on the state assets management efficiency, the size of the state debt and state liabilities.

The following list of privatization programs:

- State Property Decentralization and Privatization Program of the Kazakh SSR for the period of 1991-1992;
- National Program on State Property Decentralization and Privatization of the Republic of Kazakhstan for the period of 1993-1995;
- State Property Privatization and Restructuring Program of the Republic of Kazakhstan for the period of 1996-1998;
- Program on Privatization and State Property Management Efficiency Improvement for the period of 1999-2000;
- Sectoral Program on State Property Management Efficiency Improvement and Privatization for the period of 2001-2002; and
- Sectoral Program State Property Management Efficiency Improvement and Privatization for the period of 2003-2005.

Question 23

How many and what kind of firms were designated for privatization, and by what methods? How many are now in private hands? How many more are expected to be privatized prior to the conclusion of the program? When would that be? (Note: A chart should be prepared similar to that included in other accession Working Party reports outlining this information).

Answer:

Ten leading companies with the state ownership share had been chosen as "blue chips" for further sales: "Manghistaumunaigas", "Aktobemunaigas", "Kazzink", Ust-Kamenogorsk Titanium—Magnesium Works, Sokolovsk-Sarybaisk Mining-Concentrating Production Association, "Aluminium of Kazakhstan", transnational company "Kazchrom", People's Savings Bank of Kazakhstan, "Kazakhtelecom" and "Kazakhmys". At this stage, the state owned shares of "Manghistaumunaigas", "Aktobemunaigas", "Aluminium of Kazakhstan", "Kazakhmys", People's Savings Bank of Kazakhstan and Ust-Kamenogorsk Titanium—Magnesium Plant" had been fully sold.

During the period of 1991 - 2004, 3,745 joint stock companies and partnerships with limited liabilities were privatized via auctions (28010), tenders (663), exchange (9131) and direct sales (150). The share of the private sector in the national GDP constituted 75 per cent. Tables 4, 5 and 6 refer.

Question 24

Does the state retain partial ownership in firms and enterprises slated for privatization?

Answer:

Data on the state property as of January 2003:

- 5,831 state-owned enterprises;
- the state owned shares (participated) in 499 joint stock companies and partnerships with limited liabilities (hereinafter – LLP); and

- 13 legal entities with the status of national companies, including 11 joint stock companies and two state enterprises.

Question 25

The scope and particulars of firms and enterprises owned by the government of Kazakhstan and/or its sub-central authorities should be described. The description should include, but not be limited to:

- **a descriptive listing of state holdings with large enterprises identified,**
- **information on the extent of state involvement in management,**
- **information on any monopolies whether "natural" or not, or any special benefits,**
- **information on state-owned firms that will not be privatized,**
- **the extent to which current state holdings are slated for privatization, and**
- **the portion of GDP, imports, and exports is accounted for by the activities of state-owned enterprises in Kazakhstan.**

Answer:

National companies are set up under decision of the Government of Kazakhstan in strategically important sectors of Kazakhstan's economy (Annex 2 contains the list of national companies and joint stock companies with the share of state ownership).

The state property management is regulated by the Law "On Joint Stock Companies" of 10 July 1998, the Law "On Limited and Additional Liabilities Partnerships" of 22 April 1998, the Presidential Decree valid as law "On State-Owned Enterprises" of 19 June 1995 No. 2335, the Presidential Decree valid as law "On Privatization" of 23 December 1995 No. 2721, the Civil Code, and the Law "On Amendments to some Legislative Acts of the Republic of Kazakhstan pertaining to State Property" of 21 May 2002 (hereinafter – "the Law").

The property of state-owned enterprises related to their fixed assets was sold solely upon the decision of the authorized body, and in some cases, upon the decision of the Government of Kazakhstan. Proceeds from the sale of state property were used as the state budget revenues. State-owned enterprises were not allowed to participate in the charter capital of partnerships with limited liabilities; state bodies were not allowed to found and hold shares of those companies.

Additional kinds of tenders had been introduced in compliance with the world practices: two-staged tenders and sale of derivative securities were introduced based on the world practices. Tender is the most popular way of privatization of major strategic entities, since this method promotes competition between potential buyers/investors. Sale of derivative securities is aimed to expand the range of potential investors, raise the profile of Kazakh firms on the global capital markets. The requirements, companies have to meet in order to place derivative securities, are meant to ensure their transparency and consequently to minimize the investors' risks.

According to the Government Resolution "On Measures Aimed at Provision of Information Exchanges and Maintenance of the State Property Database" of 21 March 1998 No. 246, the state property was registered in the State Registry of state enterprises and institutions, legal entities with the state share in the charter capital.

Depending upon its economic significance, the state property of the Republic of Kazakhstan is divided into three categories:

- The first category comprises state property objects exempt from privatization and its preliminary stages. This list was approved by the Presidential Decree of 28 July 2000 No. 422. The Government Resolution of 24 October 2000 No. 1587 approved:
 - the list of state property exempted from privatization (as of 18 December 2003);
 - the list of state property exempted from privatization, including its preliminary stages, up to 2006; and
 - the list of joint stock companies, where the state owned shares were exempted from privatization, including its preliminary stages, up to 2006 (Annex 2).
- The second category includes the national companies established under the Government Resolution in the strategic sectors of the economy, such as oil and gas, mining and metallurgical, transport and communication, energy and machine building sectors. Part of the state owned shares in joint stock companies and state-owned enterprises, constituting national enterprises, are envisaged to be privatized in line with the national economic priorities.
- The third category consists of the state property not related to the first two categories:
 - state owned shares in the joint stock companies;
 - state participations in the charter capital of Partnerships with Limited Liabilities;
 - real estate property, the construction of which was not completed, and
 - property complexes and other property.

Privatization of the state property referred to the third category depends on the economic efficiency of its state ownership status. Privatization of the property complexes and state owned shares of companies that had a dominating (monopoly) position in the market or of those of strategic importance for the national economy are privatized by Government resolutions via application of the most optimal privatization methods.

- **Sectoral Priorities**

- **Mining**

Question 24

Paragraphs 35-44: We would appreciate an explanation for the WTO relevance of this section and some consideration of a revision that refocuses the discussion on trade issues.

Answer:

This section has been removed.

Question 26

What, if any, issues of trade in extracted goods are dealt with in the legislation laying out access to this sector?

Answer:

Issues of trade in extracted goods are regulated by the Law of the Republic of Kazakhstan "On Export Control" and by the Convention on Measures of Indirect Regulation of Export of Goods approved by the Governmental Resolution of the Republic of Kazakhstan of 2 July 2002 No. 714.

Question 27

Are the participants free to sell or to export the minerals extracted? Are there taxes, fees, or other charges paid to the government for the right to sell or export the extracted minerals?

Answer:

The participants of market are free to sell or to export the mineral extracted except specialized. Tax Code and Customs Code regulate taxes, fees and other payments to the budget imposed at the territory of the Republic of Kazakhstan with regard to the right of selling and export of mineral product. According to the Tax Code under estimation of VAT for the goods manufactured, works completed and services provided at the territory of the Republic of Kazakhstan the turnover on selling the goods for export except iron-and-steel and non-ferrous metals scrap is imposed at zero rate; in the case of excisable goods manufacturing and selling in the Republic of Kazakhstan the export of the excise goods is not subject to taxation. The requirements are not valid at the territory of the Republic of Kazakhstan with respect to use of local resources by companies that are carrying out their activities in this sector.

Question 28

What requirements are there for use of local goods by firms participating in this sector, e.g., in the laws and regulations listed in paragraph 36, paragraph 41, or elsewhere?

Answer:

The Decrees of the President of the Republic of Kazakhstan, having the force of law, "On Subsurface and Subsurface Use" of 27 January 1996 No. 2828 and "Concerning Petroleum" of 28 June 1995 No. 2350, the Governmental Resolution of the Republic of Kazakhstan "On Approval of Rules of purchasing of goods, services and works for oil operations required the use of domestically produced products and services provided that they meet the standards and other requirements, as a result of the bidding process. Both national and foreign companies were equally entitled to participate in the bidding process.

- Pricing Policies

Question 29

Questions and replies (WT/ACC/KAZ/37/Add. 3): Can we conclude that prices for energy are set by the market both domestically and for export?

Answer:

Production of electric power, natural gas (gas condensate) and other energy forms is not considered to be within the sphere of natural monopolies and belongs to competitive market, where prices are determined depending on terms of contracts between producers and consumers.

Transmission and distribution of electricity via the national company "KEGOK" is considered to be the activity within the sphere of natural monopolies and as such is a subject for state price regulation. The regional (oblast) departments of the Agency approved the tariffs applied by regional electricity network companies; electricity tariffs applied vis-à-vis consumers, and tariffs for heating services.

Prices for energy production are set by the market both domestically and for export and depend on the current level of demand and supply.

Question 30

We seek in tabulated form detailed information on all price regulations, whether applied by the central government or at sub-central level. We ask that the table include columns for:

- the tariff code for the product or the CPC code for the service
- the description of the product or service
- details of the price regulation applied including the type of regulation (e.g., price cap, profitability cap, minimum price, fixed price, fixed price/tariff under "natural monopoly" provisions), and its scope (application to sales or purchases; origin of the goods) level and duration (including, e.g., indefinite)
- the entity (or entities) responsible for applying the measure
- all relevant laws, regulations and decisions relating to the measure
- WTO justification or the date of elimination.

Answer:

The list of regulated services referred to the sphere of natural monopoly in the Republic of Kazakhstan are provided in Annex 3.

Question 31

We seek clarification of whether the regulation of prices charged by "natural monopolies" involved in services related to the supply of products to markets (e.g., oil, gas) is applicable to the prices of the products supplied (whether or not inclusive of a service charge) or only to the prices of the services involved in supplying those products. Paragraph 49 is unclear on this point.

Answer:

State regulation is restricted to natural monopolies and paid services provided by public entities and services provided by state-owned enterprises (i.e. services classified as natural monopolies).

Question 32

Paragraphs 45-46: Please expand the description of Kazakhstan's "natural" monopolies including but not limited to the following:

Is this a legal term or a philosophical one?

Answer:

Natural monopoly is a legal term. According to Article 3 of the Law, a natural monopoly is the state of services (goods, works) market, where creation of a competitive environment is not feasible and economically unviable due to technological peculiarities of the production and provision of such services.

Question 33

Is the list of entities that have this designation in paragraph 46 a closed list?

Answer:

The list of entities that had this designation in paragraph 46 is a closed list.

Question 34

What rights, or responsibilities, accrue to these "natural monopolies?"

Answer:

In line with Article 7 of the Law, natural monopolists have the following responsibilities:

- to deliver adequate quality services to consumers applying the tariffs approved by the authorized body;
- to provide services on equal conditions to all consumers users, except for special cases requiring provision of services on preferential terms, in accordance with the legislation of the Republic of Kazakhstan;
- to procure material, financial resources and services following the order established by the legislation of Kazakhstan;
- to apply the most effective production methods and technologies, and methods of provision of natural monopoly services, taking into due account principles of social and ecological safety;
- to perform mandatory annual audits and publish audit findings and annual financial statements in mass media that were available in locations, where natural monopolies are functioning.
- to keep separate books when carrying out other business activities permitted by the Law;
- to apply tariff estimates;
- to conclude agreements with consumer for each type of services regarded as those of natural monopolies in line with the standard agreement approved of by the Government of Kazakhstan;
- to provide consumers with devices to measure the quantity of utility services;
- to coordinate with the authorized body investment projects that were taken into account in setting tariff rates and re-evaluate fixed assets following the order established by the legislation of Kazakhstan;
- upon the request of the authorized body, to provide a report on application of tariff estimates based on quarterly results;
- to prevent violation of consumers rights while concluding service provision contracts; and
- to notify the authorized body and consumers about lowering tariffs ten days prior to their enactment.

According to Article 6 of the Law, "natural monopolies" shall have the right to:

- in line with the legislation, to establish technical requirements, the implementation of which were mandatory for consumers;
- to reduce tariffs for services provided for all consumers for periods, when the tariffs approved by authorized body were still in force;
- to test the accuracy of different kinds of metrological equipment in the manner established by the legislation of Kazakhstan;
- to participate in the decision-making process by the authorized body regarding the legal status and performance of natural monopolies through making relevant proposals;
- to appeal in the court actions (inaction) of the authorized body, which were in conflict with the legislation of Kazakhstan;
- to appeal to the authorized body or the court actions (inaction) of other entities that had an impact on it's legal status, revenue, property or performance;
- to request it's exclusion from the State Register of Natural Monopolies (hereinafter – Register); and
- and to exercise any other rights provided by the legislation of Kazakhstan.

Question 35

Does the state maintain their monopoly under law, or can foreign and domestic private enterprises establish in these areas and compete, e.g., in telecommunications and pipeline construction?

Answer:

Currently there is no legal definition of the term "state monopoly". Telecommunications services provided using the local communications network is considered to be in the sphere of natural monopoly. The legislation on natural monopolies does not contain any restrictions for accessing those services markets.

Question 36

Are any of these "natural" monopolies slated for privatization?

Answer:

Currently the policy of the Government is directed at promoting competition through narrowing down the sphere of natural monopolies activities.

To further deepen market relations in the electrical power industry, enhancing transparent pricing mechanisms in competitive markets and ensuring provision of non-discriminatory access to electricity networks, the Government of Kazakhstan developed the Concept of Further Development of Market Relations in the Electrical Power Industry for the period of 2004-2006 (hereinafter - Concept). The Concept was approved by the Government Resolution No. 190 of 18 February 2004. The Government also developed an Action Plan for implementation of the Concept.

The Concept is aimed at building a model of the wholesale market of electrical energy, which included along with a decentralized electricity trade market, also a centralized electricity market, electronic trade of electricity, and a market of main (or systemic) and supporting services. On the retail sale market of electricity, activities related to electrical power supply would no longer be considered as the sphere of natural monopoly and would be transferred to the competitive market environment. In this regard, the Concept also includes the plan to break down vertically integrated monopolies based on their forms of activities as well as to reorganize electricity supply networks.

The Government of the Republic of Kazakhstan has approved the Resolution of 6 February 2004 No. 145 the Program on Railway Transport Restructuring in the Republic of Kazakhstan for the period of 2004-2006. The new economic model of the sector envisaged organizational and financial separation of related infrastructure and other functions of the national company "Kazakhstan Temir Zholy". In accordance with the restructuring program, charges applied by the national company "Kazakhstan Temir Zholy" for the use of the main railway infrastructure by other carriers and users would remain to be considered as the sphere of natural monopoly and therefore represent a subject for state price regulation. The charges for services provided by carriers and companies operating in the railway transport sector for transportation of commodities for both domestic consumption and export would be established in a competitive market environment. Therefore, those carriers and companies are planned to be reorganized and their shares to be sold in line with the national legislation.

Question 37

In addition, please indicate in the discussion if Kazakhstan has the authority to apply price controls on goods and whether such controls exist, e.g., on grain, petroleum or alcohol products.

If so, please describe how they are applied to imported, exported, and domestically produced goods, e.g., at the border, at retail, wholesale, or ex factory level? If they are applied only internally, how are imports distinguished for the purpose of enforcement? Please provide information on the HS categories covered by any such controls.

Answer:

In order to develop a free competitive environment, facilitate development of entrepreneurship, protect consumers interests and to ensure effective functioning of commodity markets, the Law " On Competition and Restriction of Monopolistic Activities" was adopted, which determined legal and institutional/procedural measures of state regulation aimed at support to entrepreneurship, and at prevention, restriction and regulation of monopolistic behaviour.

In addition to natural monopolies, the authority of the Agency also extends to companies having a dominant position in a specific commodity market. Under the acting law of the Republic of Kazakhstan, a company is deemed to have a dominant position in a specific commodity market if it has more than 35 per cent market share.

The current Law covered relations that had an impact upon competition on commodity markets of Kazakhstan which included both foreign and local legal entities (their branches and representative offices), individual entrepreneurs, public bodies and also natural persons.

To control and regulate the activity of market agents, the Agency developed and maintained State Register of market agents that had dominating (monopolistic) position on commodity markets (hereinafter – Register). Market subjects, included into the Register, notified the Agency thirty days in advance about expected increases in prices of goods and services produced by monopolists, and submitted documents justifying reasons for proposed price increases. Those companies also had to follow the pricing procedures determined by the Rules on State Regulation of Prices for Goods and Services of Market Entities that had Dominating (Monopolistic) Position on a Commodity Market (Government Resolution of 14 September 2001, No. 1212).

Based on the review of submitted documents, the Agency either approved the proposed price increases or notified the entity about the Agency's decision on insufficient reasoning for proposed price changes. In cases, when an entity with a dominant (monopolistic) position in certain commodity market introduced price increases without the approval of the Agency, as well as in cases, when they breached antitrust legislation twice within the same calendar year, the Agency could impose state price regulation measure by introduction of fixed prices for goods and services produced by this entity.

Question 38

WT/ACC/SPEC/KAZ/8, paragraph 47: Please confirm that tariff rates are the same for transportation of oil for domestic use and for export.

Answer:

The Order of the Chairperson of the Agency of the Republic of Kazakhstan on Natural Monopoly Regulation and Competition Protection (hereinafter - Agency) No. 248-OD of 13 December 2002 established the Price List (tariffs) for services of CSC "KazTransOil" related to transportation of crude oil via major pipelines, according to which unified tariff rates applied both for domestic consumption and export. In order to support production capacity of domestic oil refineries and slow down the growth of domestic prices on oil products, the decreasing coefficient of 0.46 was applied for transportation of crude oil to Kazakh oil refineries. The practice shows that an introduction of the decreasing coefficient did not constitute export restriction in the meaning of Article XI of GATT. For

instance, Kazakhstan produced 47,199 tons of crude oil in 2002, of which 41,530 tons were exported; and 51,256 tons -in 2003, of which 45,187 tons were exported. According to the statistics for the first half of 2004, approximately 28,098 tons of crude oil had been produced in Kazakhstan, of which 24,912 had been sold abroad.

- **Competition Policy**

Question 39

Paragraph 65: It is very clear that there is no "natural" monopoly in telecommunications services, and the limited nature of Kazakhstan's offer in the negotiation of its services commitments supports the contention that a state monopoly is being granted and preserved.

Answer:

Only local telephone services and lease of communication channels are currently considered to be in the sphere of natural monopolies due to the fact that there is insufficient competition in the delivery of such services. There are, however, no regulatory barriers to enter this sector. Kazakhstan's commitments in the basic telecommunications sector and value-added networks are provided in its revised offer on services.

The 2003-2005 Telecommunications Development Program of the Republic of Kazakhstan adopted by the Government Resolution of 18 February 2003 No. 168 stipulates measures aimed at implementation of stage-by-stage liberalization of the telecommunications market of Kazakhstan, including elimination of exclusive rights of the KazakhTeleCom for provision of international and long-distance communication services. These measures are expected to facilitate competition, improve quality and volume of telecommunications services, and remove barriers for new entrants.

Additionally, the Republic of Kazakhstan developed draft Laws of the Republic of Kazakhstan "On Changes and Amendments to Legislative Acts of the Republic of Kazakhstan on Communications" and "On Communications", the latter was signed on 5 July 2004. The draft Law 'On Changes and Amendments to Legislative Acts of the Republic of Kazakhstan on Communications' introduced an amendment to Article 4 of the Law of the Republic of Kazakhstan "On Natural Monopolies", which determined the spheres of natural monopolies. The draft law stipulated that instead of "telecommunication services through local networks", the activities within the sphere of natural monopolies extended to:

- telecommunication services, when there was no other competing operator due to reasons of economic inexpediency or technical infeasibility; and
- leasing and provision of access to cable channels and technological facilities for connecting telecommunications networks with the public telecommunications network.

Question 40

Paragraph 67: The list of "natural monopolies regulated by the state should be included in the text of the Draft Working Party report, either here or elsewhere in the report.

Answer:

Natural monopolies, regardless of their ownership status, are listed in the Register based on the criteria that they were involved in activities related to the sphere of natural monopolies. The Register consisted of two parts: national and local. The Agency developed and maintained the national part of Register that included natural monopolies serving the market, which was not limited to one region (oblast), or a city of republican significance, or the capital. Local branches of the Agency developed

and maintained the local parts of the Register that included natural monopolies functioning within the territory of one region (oblast), district, city, village or any other local administrative-territorial units.

The list of more than 700 natural monopolies included into both the republican and local parts of the Register. The Agency website www.antimonopoly.kz contains all relevant information.

Question 41

Paragraph 68: This text is clearly wrong in light of statements concerning differential oil transport fees and the provisions of Article V of the GATT 1994.

Answer:

The Order of the Chairperson of the Agency No. 248-OD of 13 December 2002 established the Price List (tariffs) for services of CSC "KazTransOil" related to transportation of crude oil via major pipelines, according to which unified tariff rates applied both for domestic consumption and export. In order to support production capacity of domestic oil refineries and slow down the growth of domestic prices on oil products, the decreasing coefficient of 0.46 is applied for transportation of crude oil to Kazakh oil refineries.

FRAMEWORK FOR MAKING AND ENFORCING POLICIES

Question 42

Survey of Foreign Trade Regime (WT/ACC/KAZ/40), p. 13 and WT/ACC/SPEC/KAZ/8, paragraph 78. Please confirm that WTO is one of the cases where it is necessary to adopt a law domestically in order to become applicable.

Answer:

In order to make WTO Agreements applicable in Kazakhstan, the Government plans to bring its national legislation into conformity with key WTO multilateral agreements by introducing all necessary amendments into the existing laws of Kazakhstan by the date of accession. Furthermore, the Government of Kazakhstan plans to ratify the Working Party report reflecting the commitment of Kazakhstan to respect the WTO Agreements and Kazakhstan's schedules on goods and services.

Question 43

What are the administrative and judicial channels of appeal from administrative decisions made on WTO issues?

Answer:

Judicial authority in the Republic is exercised by means of civil, criminal, and other legislation within a unitary judicial system comprised of three levels.

Legislation on civil proceedings establishes the procedure for court disputes in the field of civil, family, labour, and housing, administrative, financial, economic, land relations, relations on the use of natural resources and environmental protection and other legal relations. Proceedings in such cases are conducted in courts of first instance, and also through reviewing decisions of courts of first instance. Proceedings on civil cases take place within two months from the date of receipt of the claim by the court. In respect of certain other categories of civil cases, different periods may be established by the Law.

The decisions of rayon (district), oblast (regional) and other local courts made at first instance come into legal force after expiration of the term limited for submission of an appeal or protest, if they have not been appealed or protested. Decisions of the Supreme Court taken at first instance come into legal force from the date of their adoption. Where a case is appealed or protested, the decision, if upheld, comes into legal force on the day the appellate court issues its decision.

Review of judicial decisions is carried out by way of appeal procedure, or supervision procedure, and also where new facts come to light. Court judgements which had not come into force could be appealed. Parties to a case and other concerned persons have the right to submit an appeal against the judgement of a court of first instance, other than judgements of the Supreme Court. The public prosecutor involved in a case has the right to lodge a protest. The Republic's prosecutor-general and his deputies, Oblast public prosecutors and those equal to them and their deputies, Raion public prosecutors and those equal to them and their deputies within their competence have the right to appeal a court decision, irrespective of whether they participated in the hearing. An appeal can also be made by a party who has not been involved in the case but whose rights and duties were affected by the decision. Appeals and protests are considered by: (i) the board for civil cases of Oblast and equivalent courts for judgements made by Raion and equivalent courts; (ii) the board on civil cases of the Supreme Court for judgements made by Oblast courts and courts of first instance equivalent to them.

Complaints and protests may be submitted within 15 days of rendering of the judgement in its final form with the court that rendered the decision, with a copy for each person involved in the case. A court decision rendered following review of a case may be appealed and protested in accordance with the general procedure.

During an appeal the court made a full scrutiny of the legality and validity of the decision of the court of first instance. The court of appeal can make new findings of facts within the limits of the claim and investigates new evidence which a party for valid reasons had no real opportunity to adduce at first instance. Appeals must be heard not later than one month from the date of their receipt by the court of first instance. Rulings of the appellate court come into legal force on the date when they are adopted.

Judgments of all Republic courts which have taken effect, except for decisions of the supervisory board of the Supreme Court, can be reviewed under the judicial supervision procedure where there were grounds as stipulated in the Civil Procedural Code. Review of decisions made by the supervisory board of the Supreme Court, and a second review of the case by the supervisory board of the Supreme Court, is allowed in cases prescribed by law. Decisions, rulings, decrees and orders which come into legal force can be appealed by the parties and other persons involved in the case and have the right to submit an appeal directly with the court authorized to review the case under the supervision procedure. A protest can be filed both at [the court's] own motion and also by application of the parties or other persons involved in the case and having the right to lodge an appeal. Supervisory complaints or protests can be submitted within one year from the date when the court decision, ruling or decree comes into legal force. Decrees of a court at the supervisory instance come into legal force at the moment they are adopted.

Decisions, rulings and decrees which come into legal force may be reconsidered in case new facts are discovered. The grounds for reconsideration of a decision, ruling or decree due to involvement of new facts are as follows: (i) facts of significance for the case which are not known to the applicant; (ii) as established by a verdict which had taken effect: the deliberate perjury by a witness, deliberately false report by an expert, deliberately false translation, false documents or material evidence which resulted in the rendering of an unlawful or unsubstantiated court decision; (iii) as established by a verdict which had taken effect: criminal acts of the parties, other persons involved in the case, or their representatives, or criminal acts by the judges committed during the hearing of the cases; (iv) repealing of a court decision, verdict, ruling or decree, or the decree of another body, which formed the basis of the given decision, ruling or decree.

Legislation on administrative violations is intended to protect the rights, freedoms and lawful interests of the person and the citizen, the sanitary and epidemiological welfare and health of the population, the environment, public morals, property, public order and safety, the established procedure for exercising state powers, and the rights and interests of organizations protected by law from administrative violations and also to prevent such violations. Cases of administrative violations are considered within 15 days from the date of receipt by an authorized judge or a body of the protocol of administrative violation and other case materials. Where applications are received from participants of a case on administrative violations or where additional clarification of the circumstances are necessary, the period for hearing such a case can be prolonged by the authorized judge or body, but not for more than one month.

Cases on administrative violations, perpetration of which entailed administrative arrest or administrative expulsion from the Republic, are considered on the day of receipt of the protocol of administrative violations and other case materials, and, in relation to the person subject to administrative detention, not later than 48 hours after the arrest. The court or body can reach one of the following decisions on administrative violation case: (i) imposition of fine; (ii) termination of the case; (iii) transfer of the case for hearing by a judge or a body authorized to impose for such administrative violation penalty of a different kind or amount, or also transfer of the case for hearing where a vehicle involved was registered (or a vessel, including small ones) in those cases set out by the Code of Administrative Violations; or (iv) enforcement of a decree imposing a fine. Decisions on administrative violation cases which come into force can be re-considered in accordance with statutory procedure.

Review of a court decision which worsens the position of a person held administratively liable, or of a person in relation to whom the administrative hearing is terminated, can be made within one year from the date when the decree of the court or authorized state body came into legal force. Submission of a petition or protest against a decree or ruling which has taken legal effect suspends the execution of such decree or ruling. Submission of a petition or protest against a warrant for administrative arrest issued by a judge does not suspend the execution of such warrant.

In response to a protest by the Prosecutor General or his deputies, a board of the Supreme Court is entitled to verify the lawfulness and grounds of a decision which has taken legal effect on administrative violation cases, and likewise of a ruling or decree on reviewing an appeal or a protest against a decree, and to review the decision reached.

Question 44

Paragraph 78: This section states "the obligations, which Kazakhstan would assume upon accession to the WTO, and which contradicted to the provisions of other international agreements, would take effect in Kazakhstan only after incorporation of appropriate amendments to such international agreements or after the expiry of their duration or their denunciation pursuant to the Presidential Decree "On the Procedure for Conclusion, Execution and Denunciation of International Agreements of the Republic of Kazakhstan", and the Vienna Convention "On International Treaty Law" of 23 May 1969."

Is a situation like this contemplated in the even of Kazakhstan's accession to the WTO? What conflicts with what existing agreements/treaties does Kazakhstan anticipate with WTO accession?

Answer:

After WTO accession contradictions between obligations of Kazakhstan at WTO accession and international agreements in force with participation of Kazakhstan is not envisaged.

- **Authority of Sub-Central Governments**

Question 45

Paragraphs 79-81: This is a generally good text that needs sharpening, to address the following issues:

What is the relationship of sub-central authorities to the government in the implementation of WTO provisions? Do any sub-central authorities in Kazakhstan have the legal authority to make policy in any area covered by the WTO? If so, how does Kazakhstan intend to ensure that any such policies undertaken by sub-central entities are consistent with WTO obligations?

Answer:

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

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

According to Article 4 of the Law "On Local Government in the Republic of Kazakhstan" Maslikhats and Akimats are obliged not to adopt decisions inconsistent with Kazakhstan's national policy and international commitments and obligations arising from its membership in international agreements. For example, it was prohibited for Maslikhats and Akimats to make decisions which introduced barriers for creation and functioning of uniform labour, finance and capital markets, or hindered free exchange of goods and services within the country.

Governmental powers affecting foreign trade are divided between national and local authorities in accordance with the following six principles: (i) relative autonomy in the regulation of economic relations in specific regions; (ii) delineation of authority in accordance with the Constitution and the Law "On Local Government in the Republic of Kazakhstan"; (iii) reciprocal obligations among the different tiers of government to secure compliance of business operations with requirements of social, organizational and moral standards; (iv) internal support of specific sectors and regions and the promotion of cooperation among local authorities, management bodies and business entities; (v) allocation of budget resources and regional property taking into account market considerations; and (vi) cooperation between different tiers of government to promote a unified approach to issues affecting, inter alia, foreign trade.

Local governmental authorities do not have jurisdiction or authority to establish regulations or taxes on goods and services in Kazakhstan independently of the central authorities. Where WTO provisions are not applied or are not applied throughout the entire territory of Kazakhstan, the central authorities will eliminate or nullify measures taken by local governmental authorities in Kazakhstan that are

inconsistent with WTO provisions. Only the higher legislative body is competent to impose taxes, and only the central executive bodies have the authority to make relevant decisions.

Question 46

When a situation involving a conflict between domestic law and WTO is brought to Kazakhstan's attention after accession, will Kazakhstan enforce WTO provisions without the need for further recourse to the courts?

Answer:

According to Article 4 of the Constitution international agreements ratified by the Republic have priority over its laws and are applied directly, except where it follows from an international agreement that its application needs the enactment of a law, some members of the Working Party requested that the representative of Kazakhstan confirm that obligations under the WTO are one of the cases where it is necessary to enact a domestic law in order to become applicable.

The Presidential Decree, having the force of law, "On the Procedure for Conclusion, Implementation and Denouncing of International Agreements of the Republic of Kazakhstan" of 12 December 1995 No. 2679, Article 11 provides that international agreements of the Republic of Kazakhstan are subject to ratification where their implementation demands amendments to current laws or enactment of new ones or the establishment of rules different from those set out by the laws of Kazakhstan.

POLICIES AFFECTING TRADE IN GOODS

A. IMPORT REGULATION

- **Trading rights (the right to import and export)**

Question 47

The situation depicted in the first sentence of paragraph 82 is unclear. Why should any enterprise accorded "natural monopoly" status under legislation whose normal business involves the importation or exportation of a particular product not be considered a state-trading enterprise within the meaning of GATT Article XVII and the Understanding on that Article? Could Kazakhstan please provide a list of all "natural monopoly" enterprises involved in the importation or exportation of goods?

Answer:

The Republic of Kazakhstan will analyze the enterprises which activity may be covered by the Article XVII of the GATT and send the notification on existing in Kazakhstan State Trade Enterprises to the WTO Secretariat.

Question 48

Paragraph 83: If a firm or enterprise is registered in Kazakhstan, does that make it a "resident" for the purposes of preferential trade with other CIS countries? If not, please distinguish between legal personhood in Kazakhstan through registration and being a "resident."

Answer:

In cases when a ratified international agreement, to which Kazakhstan is a party, does not contain the definition of the term "resident" for the purposes of a given agreement, a "residency" status is regulated by the following provisions of the legislation of the Republic of Kazakhstan:

- According to Article 1 of the Law "On State and Government Guaranteed Borrowing and Debt" of 2 August 1999 and Article 1-1 of the Law "On Currency Regulation", only legal entities, which were established in accordance with the legislation of Kazakhstan, as well as their branches and representative offices located within and outside Kazakhstan are considered to be resident legal entities of Kazakhstan; and
- According to the Tax Code of Kazakhstan, the legal entities, which were established in accordance with the legislation of Kazakhstan, and/or other legal entities, the management control over which was undertaken within the territory of Kazakhstan, are considered to be residents of Kazakhstan. The management control is recognized to take place in Kazakhstan, when the main control and strategic commercial decision making essential for business performance of the given legal entity is carried out within its territory.

Question 49

Paragraph 84: Please indicate the purpose of these fees and how the fees described here relate to the cost of the registration process. Where do the revenues from these fees go, e.g., into general revenues? Why is the fee to register legal persons, their branches and representative offices, so much more than to register a small business?

Answer:

Pursuant to Government Resolution No. 1660 of 19 December 2001 "On establishing fees for state registration of legal entities", the registration fee for:

- state-funded institutions, public companies and cooperatives of condominium owners is one monthly evaluation index (US\$ 6.74 or € 5.53);
- legal persons, their branches and representative offices is twenty monthly evaluation indexes (US\$ 134.83 or € 10.54);
- children and youth public associations, their branches and representative offices is two monthly evaluation indexes (US\$ 13.48 or € 11.05); and
- legal entities in the form of small businesses, their branches and representative offices is five monthly evaluation indexes, effective on the date of payment (US\$ 33.7 or € 27.63).

The re-registration fee for legal entities, their branches and representative offices is equal to 50 per cent of their corresponding registration fees. The fee for issuing a duplicate of state registration (or re-registration) of legal entities, their branches and representative offices is equal to 25 per cent of their corresponding registration fees. The fee for state registration of discontinuation of legal entities, their branches and representative offices, is monthly evaluation index, effective on the date of payment.

In 2003 the Government of Kazakhstan adopted the State Program for Small Business Support and Development in the Republic of Kazakhstan. Within the framework of this program, the Government simplified state regulation procedures related to small businesses and developed measures in support of small businesses, including less registration fees for their registration. According to the Law "On State Support to Small Business", the definition of small businesses includes legal entities and individuals, engaged in business activities without establishing a legal entity, whose annual average

staff number does not exceed 50 personnel, and annual average value of total assets is no more than 60,000 Monthly Calculated Index (approximately, US\$ 404.489 or € 110.543 as of 6 June 2004).

Question 50

Paragraphs 82-85: We need a more focused presentation on the relationship of these requirements to the right to import and to export.

Please describe the registration requirements for a person or firm that wishes to engage in international trade. Are there any additional requirements or fees not applied to trade in domestic goods?

Is it required for a firm to be invested in Kazakhstan to be registered to conduct import or export trade?

Answer:

Article 3 of the Law No.2198 of 17 April 1995 "On State Registration of Legal Entities and Registration of Branches and Representative Offices", all legal entities, established in the Republic of Kazakhstan, irrespective of the purposes of their establishment and the types of performed activities, are subject to state registration. Branches and representative offices of legal entities, located in the Republic of Kazakhstan, are subject to registration for recording purposes only.

The state registration of legal entities includes: (i) checking the Charter and other documents submitted to state registration for compliance with the legislation of the Republic of Kazakhstan; (ii) issuing a state registration certificate with assignment of a registration number; and (iii) entering the data on a legal entity into a Single State Register.

According to Article 19 of the Civil Code, individuals are entitled to be engaged in entrepreneurial activities without forming a legal entity, unless otherwise provided by this Code and other rules and regulations. According to the Law of the Republic of Kazakhstan "On State Support to Small Businesses" of 19 June 1997 No. 131, individuals not establishing legal entities must be deemed as small businesses. State registration of individual entrepreneurs is performed without prior agreement, and represent a registration as an individual entrepreneur in a local tax agency, at the place of the citizen's residence. The state registration is mandatory for individual entrepreneurs complying with one of the following conditions: (i) they hired workers on a permanent basis; (ii) aggregate annual income of their business, assessed in accordance with tax legislation, exceeded the threshold of tax-free aggregate annual income for individuals, as set by the legislation of the Republic of Kazakhstan. The above-mentioned individual entrepreneurs are banned to operate without state registration, unless otherwise provided by the Tax Code.

Question 51

The requirement for re-registration and duplicate registration raise concerns because they are *ad valorem* fees and appear to be extra burdensome for foreign businesses/entities. What are "evaluation indexes" on which these fees are based?

Answer:

The Monthly Calculation Index (MCI) is an indicator established annually in the state budget for the purpose of calculation of pension payments, benefits, other social payments, tax payments and penalties. MCI is established at the rate of 919 tenge in the chapter 12 of the Law "On the Republican Budget for 2004" of 5 December 2003 No. 505-II. MCI can be converted to US\$ and € at a rate established by the National Bank on the date of payment to be made in accordance with the relevant

legislation. For example, on 6 June 2004 the National Bank's rate is KZT 136.32 per US\$ and KZT 166.27 per €; therefore 1 MCI = US\$ 6.74 or € 5.53.

- **Customs Tariff**

Question 52

WT/ACC/SPEC/KAZ/8, paragraph 91: Please provide further clarification of the statement "The rates of customs duties applicable to the products of unknown origin amounted to double MFN rates " in terms of the necessity to prove origin.

Answer:

Import tariff rates are established by the amended Government Resolution "On Rates of Customs Duties Levied on the Imported Goods" dated 14 November 1996 No. 1389, according to which the rates of customs duties applicable to the products of unknown origin amount to double MFN rates. This measure is aimed to ensure submission by firms of evidence on the country of origin of imported goods. As a result, this measure helps Kazakhstan in complying with its obligations arising from international agreements, to which the country is a party, including free economic zones and preferential trade regimes.

Question 53

WT/ACC/SPEC/KAZ/8, paragraph 87: Does Kazakhstan plan to move to HS 2002 ?

Answer:

In accordance with the Agreement "On Common Tariff Nomenclature of Foreign Economic Activity of the EurAsEC" approved by the Government Resolution of 11 June 2003 No. 567, as of 1 January 2004, Kazakhstan had moved from the 9-digit to 10-digit tariff nomenclature, which is based on the Harmonized System for description and coding of goods of 2002 (HS 2002) developed by the World Customs Organization.

The import tariff consists of 11,082 tariff lines. The significant majority of tariff items (9,786 positions or 88.3 per cent) are subject to *ad valorem* tariffs; 1,128 items (10.2 per cent) are subject to compound (or mixed) rates; and 168 items (1.5 per cent) to specific rates. The *ad valorem* import duty rates range from zero to 30 per cent, except for two categories related to ethyl alcohol (HS 2207 10 000 and 2207 20 000) for which tariff rate is established at 100 per cent.

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

Question 54

The title of this section should be "other duties and charges". We expect that Kazakhstan will not apply ODC's to imports and that this will be bound in Kazakhstan's GATT Schedule.

Answer:

The title of this section has been changed.

The Republic of Kazakhstan does not apply any other duties and levies on imports apart from the existing import customs duties approved by the Government Resolution of 14 November 1997 No. 1389 and fees charged for services.

- **Tariff rate quotas, tariff exemptions**

Question 55

Regarding paragraph 92, we ask that lists of exempted products to be supplied for all preferential trade agreements in force.

Answer:

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

Question 56

We seek the inclusion of a statement that tariff rate quotas are not applied and are not envisaged.

Answer:

The Law of the Republic of Kazakhstan "On Regulation of Trade Activity" of 12 April 2004 No. 544 provided a general legal framework for introduction of tariff rate quotas (TRQs) in Kazakhstan. The Government of Kazakhstan planned to apply tariff rate quotas toward a limited number of sensitive agricultural products with the purpose of elimination "peak rates" in the tariff commitments of the Republic of Kazakhstan and to increase market access opportunities for foreign exporters through allocation of import quotas. The Government of the Republic of Kazakhstan was committed to apply the most transparent methods of administration of TRQs by combining "the first come, first serve" method with licensing procedure.

Question 57

What is Kazakhstan's legal authority to apply tariff rate quotas? What measures may "arise" from the Customs Union agreement? Are any such measures currently in effect?

Answer:

The Law of the Republic of Kazakhstan "On Regulation of Trade Activity" of 12 April 2004 No. 544 provided a general legal framework for introduction of tariff rate quotas (TRQs) in Kazakhstan. The Government of Kazakhstan planned to apply tariff rate quotas toward a limited number of sensitive agricultural products with the purpose of elimination "peak rates" in the tariff commitments of the Republic of Kazakhstan and to increase market access opportunities for foreign exporters through allocation of import quotas. The Government is committed to apply the most transparent methods of administration of TRQs by combining "the first come, first serve" method with licensing procedure.

- **Fees and charges for services rendered**

Question 58

Questions and replies (WT/ACC/KAZ/37/Add. 3), Question 10, p. 10: Whereas information contained in this document confirms the maintenance of the *ad valorem* character of the customs clearance fee, the WT/ACC/SPEC/KAZ/8 document, paragraphs 97 ff, no longer refer to the maintenance of the *ad valorem* character. We understand this to mean that it will be abolished and welcome this development. We would, however, seek clear confirmation that our understanding is correct.

Answer:

In order to bring the customs legislation of the country into conformity with WTO norms and rules, a new Customs Code was enacted on 1 May 2003. Article 293 of the Customs Code 2003 stipulates that customs fees can be levied for rendering the following types of services: (i) customs clearance; (ii) customs escort of goods; and (iii) services provided by warehouses owned by the customs authority. Fees are based on - the cost of services rendered in conformity with the Article VIII of GATT. Revenues generated by fees for customs services are remitted to the general revenues of the State budget.

The customs clearance of goods and vehicles includes: registration of cargo customs declaration; control over application of tariff and non-tariff regulations; control over compliance of location of goods with the customs regimes requirements; administration of customs fees; determination of customs value; classification of goods in case of necessity of customs examination and customs expert evaluation.

In accordance with the Government Resolution "On Adoption of Rates of Customs Fees, Charges and Payments Levied by Customs Bodies" of 7 July 2003 No. 669, the rates of customs fees are as the following:

- in case of customs clearance of goods and vehicles transported across the customs border by natural and juridical persons: € 50 for the original Cargo Customs Declaration (CCD) and € 20 for each additional CCD page;
- in case of customs escort of goods: 2 MCI (US\$ 13.5 or € 11.1) for the distance up to 50 km; 4 MCI (US\$ 26.9 or € 22.1) for the distance between 50 and 100 km; 7 MCI (US\$ 47.2 or 38,7 Euro) for the distance between 100 and 200 km; 14 MCI (US\$ 94.4 or € 77.4) for the distance between 200 and 400 km; 21 MCI (US\$ 141.57 or € 116) for the distance between 400 and 600 km; 29 MCI (US\$ 195.5 or € 160.3) for the distance between 600 and 800 km; 36 MCI (US\$ 242.7 or € 198.9) for the distance between 800 and 1,000 km; 54 MCI (US\$ 364 or € 298.5) for the distance between 1,000 and 1,500 km; 72 MCI (US\$ 485.4 or € 398) for the distance between 1,500 and 2,000 km; and 89 MCI (US\$ 600 or € 492) for the distance above 2,000 km.

Question 59

WT/ACC/SPEC/KAZ/8, paragraph 97-99: As concerns the charges for customs escorts of goods in transit, the calculations appear complex in nature and, to some extent, excessive, for example, as concerns the need to cover the salaries of customs officers and related elements.

Answer:

The Republic of Kazakhstan noted that the Republic of Kazakhstan plans to bring this procedure into full conformity with the Article VIII of GATT by the time of its accession.

Question 60

Paragraph 97: Is it possible to provide a list of customs fees and to confirm that these fees are the same for all imported products?

Answer:

In accordance with the Government Resolution "On Adoption of Rates of Customs Fees, Charges and Payments Levied by Customs Bodies" of 7 July 2003 No. 669, the rates of customs fees are as following:

- in case of customs clearance of goods and vehicles transported across the customs border by natural and juridical persons: € 50 for the original Cargo Customs Declaration (CCD) and € 20 for each additional CCD page;
- in case of customs escort of goods: 2 MCI (US\$ 13.5 or € 11.1) for the distance up to 50 km; 4 MCI (US\$ 26.9 or € 22.1) for the distance between 50 and 100 km; 7 MCI (US\$ 47.2 or € 38.7) for the distance between 100 and 200 km; 14 MCI (US\$ 94.4 or € 77.4) for the distance between 200 and 400 km; 21 MCI (US\$ 141.57 or € 116) for the distance between 400 and 600 km; 29 MCI (US\$ 195.5 or € 160.3) for the distance between 600 and 800 km; 36 MCI (US\$ 242.7 or € 198.9) for the distance between 800 and 1,000 km; 54 MCI (US\$ 364 or € 298.5) for the distance between 1,000 and 1,500 km; 72 MCI (US\$ 485.4 or € 398) for the distance between 1,500 and 2,000 km; and 89 MCI (US\$ 600 or € 492) for the distance above 2,000 km.

Question 61

Paragraph 98: What is the purpose for the fee "for customs clearance of goods and vehicles that had been moved across customs border by natural persons and legal entities"?

Answer:

The fee is charged to recover the cost of the customs clearance procedure for goods and vehicles, and used as one of the key revenue sources for the national budget.

Question 62

Paragraph 99: Please explain the fees based on "monthly calculation indices"? Please provide information on the current US\$ or € value of monthly calculation indices.

Answer:

The Government Resolution "On Adoption of Customs Charges, Fees and Payments Levied by Customs Bodies" of 7 July 2003 No. 669 sets the fee for customs escort of goods:

- for the distance up to 50 km - 2 MCI (US\$ 13.5 or € 11.1 as of 6 June 2004);
- for the distance between 50 and 100 km - 4 MCI (US\$ 26.9 or € 22.1 as of 6 June 2004);
- for the distance between 100 and 200 km - 7 MCI (US\$ 47.2 or € 38.7 as of 6 June 2004);
- for the distance between 200 and 400 km - 14 MCI (US\$ 94.4 or € 77.4 as of 6 June 2004);
- for the distance between 400 and 600 km - 21 MCI (US\$ 141.57 or € 116 as of 6 June 2004);
- for the distance between 600 and 800 km - 29 MCI (US\$ 195.5 or € 160.3 as of 6 June 2004);

- for the distance between 800 and 1,000 km - 36 MCI (US\$ 242.7 or € 198.9 as of 6 June 2004);
- for the distance between 1,000 and 1,500 km - 54 MCI (US\$ 364 or € 298.5 as of 6 June 2004);
- for the distance between 1,500 and 2,000 km - 72 MCI (US\$ 485.4 or € 398 as of 6 June 2004); and
- for the distance above 2,000 km - 89 MCI (US\$ 600 or € 492 as of 6 June 2004).

The Monthly Calculation Index (MCI) is established at the rate of 919 tenge in the chapter 12 of the Law "On the Republican Budget for 2004" of 5 December 2003 No. 505-II. MCI is converted to US\$ and € at a rate established by the National Bank on the date of payment to be made in accordance with the relevant legislation. For example, on 6 June 2004 the National Bank's rate was KZT 136.32 per US\$1 and KZT 166.27 per € 1; therefore 1 MCI equals US\$ 6.74 or € 5.53.

- **Application of internal taxes to imports**

Question 63

Paragraph 100: The legal basis for Kazakhstan's taxation of goods should be provided.

Answer:

The Tax Code of the Republic of Kazakhstan is used as a legal framework for application of internal taxes on imported goods.

- **Value Added Tax**

Question 64

WT/ACC/SPEC/KAZ/8, paragraph 101: We understand that a different VAT regime is applicable in Kazakhstan's legislation for certain products (natural gas, condense, oil and kerosene) imported from Russia. Kazakhstan states that these products are subject to derogation from the general "destination" principle.

It would be necessary to clarify:

- **whether these products are subject to VAT at all, and, if so,**
- **whether they are subject to an "origin"-based taxation, and, if so,**
- **whether such principle applies to these products regardless of their origin or whether this is limited to those imported from Russia.**

Answer:

The VAT rate is equal to 15 per cent and applied to the volume of taxable turnover. A taxable import value includes the customs value of imported goods, determined in accordance with the customs legislation, as well as amounts of taxes and other mandatory payments to the budget levied on imports of goods to the country, except for VAT.

Imported goods from all CIS and EurAzEc Customs Union countries are subject for VAT payable based on the country of destination principle. The "destination" principle is applied to all imported products, except for natural gas, oil and gas condensate imported from Russia.

In accordance with the Agreement between the Governments of Kazakhstan and the Russian Federation "On Principles of Levying Indirect Taxes in Mutual Trade", natural gas, oil and natural gas condensate are subject to VAT payable based on the country of origin principle.

This principle meant that the above mentioned goods are subject to VAT payable upon their export in accordance with the national legislation of their country of origin. The VAT rate applied upon their export from Russia is 18 per cent, while exported from Kazakhstan-15 per cent. In accordance with the Government Resolution "On the Procedures for Offsetting Value Added Tax Payable by Supplies of Goods Imported into the Republic of Kazakhstan in Relation to which Different Procedures for Taxation of Exported and Imported Goods are Applied as per an International Agreement" of 22 May 2002 No. 556, VAT payable by suppliers of natural gas, oil and natural gas condensate imported from Russia to Kazakhstan must be subject to offsetting. Offsetting is performed on the basis of an invoice provided by a supplier from the Russian Federation with the VAT amount singled out in the amount of tax effective within Russia as of the date of shipment of goods from the Russian Federation.

In case a VAT payer has both taxable and non-taxable turnovers, including VAT exempt turnover, the VAT payable to suppliers from the Russian Federation must be offset according to the procedures provided in Article 239 of the Tax Code.

The country of origin principle applies only to the above goods imported from Russia.

The following goods are subject to VAT exemption:

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

Question 65

Paragraph 102: Concerning application of the VAT to imports: Please clarify the taxable base for application of the VAT to imports.

Answer:

The VAT rate is equal to 15 per cent and applied to the volume of taxable turnover. A taxable import value includes the customs value of imported goods, determined in accordance with the customs legislation, as well as amounts of taxes and other mandatory payments to the budget effected for imports of goods to the country, except for VAT.

Question 66

Please clarify the application of the VAT to imports from other Customs Union countries.

Answer:

The imported goods from all CIS and EurAsEC Customs Union countries are subject for VAT payable based on the country of destination principle. The "destination" principle is applied to all imported products, except for natural gas, oil and gas condensate imported from Russia.

- **Excise Taxes**

Question 67

Survey of Foreign Trade Regime (WT/ACC/KAZ/40), p. 18-21: WT/ACC/SPEC/KAZ/8, paragraph 104 - Please provide further information on the planned stage-by-stage unification (by 2006) of excise taxes for locally produced and imported goods in order to end discrimination. Would Kazakhstan be ready to consider speeding up this process?

Answer:

In order to ensure stage-by-stage unification of the excise tax rates applied to domestic and imported goods, the Government adopted Resolutions "On Amendments to the Resolution of the Government of the Republic of Kazakhstan No137 dated 28 January 2000" of 26 November 2002 No. 1257 and "On Amendments to the Resolution of the Government of the Republic of Kazakhstan No. 137 dated 28 January 2000" of 20 February 2003 No. 182. These legal documents provided increase in excise tax rates applied to domestically produced goods as follows:

- per 1 litre of vodka- from 60 up to 100 tenge;
- per 1,000 filter tripped tobacco products- from 140 up to 180 tenge;
- per 1,000 tobacco products without filter- from 95 up to 100 tenge; and
- per 1 litre of beer- from 6 up to 7 tenge.

The Sectoral Program for State Regulation of Production and Turnover of Ethyl Spirit and Alcohol Products for 2004-2006 had been developed in order to improve the tax base and to introduce a system of control of the turnover of alcohol products using control stamps with cryptographic identification. The Government Resolution "On Amendments to the Resolution of the Government of the Republic of Kazakhstan No137 dated 28 January 2000" of 27 February 2004 No. 241 established the excise tax rates based on the percentage of the waterless (100 per cent) spirit.

Excisable goods imported by natural persons within limits set by the Government of the Republic of Kazakhstan are exempted from excises. In addition, imports of the following goods are exempted from excises:

- Excisable goods required for operation of vehicles, involved in international transportation, en route and in the intermediate locations, as well as excisable goods, purchased abroad for repairs of damages caused by a road accident (breakdown);
- Goods damaged prior to being transported across the customs border of the Republic of Kazakhstan and rendered non-usable as products and materials;
- Goods imported for use by foreign diplomatic representative offices and offices of the same status, as well as for personal use by foreign diplomats and general staff of representative offices, including family members, residing with them; exempted from excises under international agreements to which the Republic of Kazakhstan is party;
- Goods, transported across the customs border of the Republic of Kazakhstan, exempted under customs treatment set by the customs legislation of the Republic of Kazakhstan, excluding for the "Issue of goods for free use"; and
- Alcohol containing products used in medicine (excluding balms) in containers of no more than 0.1 litre and registered in accordance with the requirements set out in the legislative acts of Kazakhstan.

The measures being undertaken currently by the Kazakh government planned to full unification of excise tax rates applied to domestically produced and imported goods by the date of Kazakhstan's accession to the WTO.

Question 68

Paragraph 104: Please confirm that the phase out of the discriminatory application of excise taxes is included in law and cite the law.

Answer:

For a stage-by-stage unification of the excise tax rates applied to domestic and imported goods, the Government adopted Resolutions "On Amendments to the Resolution of the Government of the Republic of Kazakhstan No. 137 dated January 28, 2000" of 26 November 2002 No. 1257 and "On Amendments to the Resolution of the Government of the Republic of Kazakhstan No. 137 dated 28 January 2000" of 20 February 2003 No. 182. These legal documents provide increase in excise tax rates applied to domestically produced goods as follows:

- per 1 litre of vodka- from 60 up to 100 tenge;
- per 1000 filter tripped tobacco products- from 140 up to 180 tenge;
- per 1000 tobacco products without filter- from 95 up to 100 tenge; and
- per 1 litre of beer- from 6 up to 7 tenge.

The Government Resolution "On Amendments to the Resolution of the Government of the Republic of Kazakhstan No. 137 dated 28 January 2000" of 27 February 2004 No. 241 established the excise tax rates based on the percentage of the waterless (100 per cent) spirit.

Question 69

According to paragraph 104, the unification of excise rates will not be completed until 1 January 2006, which implies a transitional problem if accession is envisaged before this date.

Answer:

The measures being undertaken currently by Government of the Republic of Kazakhstan envisaged to full unification of excise tax rates applied to domestically produced and imported goods by the date of Kazakhstan's accession to the WTO.

Question 70

Paragraph 105: The table of excise rates should be included in the Draft Working Party report.

Answer:

The rates of excise taxes on goods of domestic production and imported goods are included in Annex 4.

Question 71

Revision of the excise tax in Kazakhstan should be complete at the time of accession to WTO.

Answer:

Excises levied on domestic goods and goods imported to the Republic of Kazakhstan are planned to be harmonized by 1 January 2006.

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

Question 72

Questions and replies (WT/ACC/KAZ/37/Add. 3) Question 12, p. 11: - Survey of Foreign Trade Regime (WT/ACC/KAZ/40), p. 22: WT/ACC/SPEC/KAZ/8, paragraphs 107 ff: Please provide further details on the steps taken toward the elimination of the 20 per cent restriction on imports of alcohol by the time of accession.

Answer:

In order to bring the practice of application of import quota to imported alcohol products into full conformity with the Article XI of the GATT, the Government adopted on 17 June 2004 the Resolution "On Introduction of Amendments and Additions to the Resolution of the Government of the Republic of Kazakhstan dated 27 June 1997 No. 1031". In accordance with the Resolution, the practice of application of quantitative restriction on import of alcoholic production is abolished as of 17 June 2004.

Question 73

Paragraph 108: Please explain the reason for the quota on grinding spheres and how it is administered.

Answer:

By the Government Resolution No. 1243 "On Introduction of Restrictions of Import and Export of Individual Goods" of 5 December 1998, the quota was set up in the size of 3,000 tons for import of grinding and forged spheres (HS Item code–7325 91 000, 7325 99, 7325 99 990, 7326 11 000, 7326 19, 7326 19 100, 7326 19 900). Introduction of the given temporary measure was caused by the time needed for adjustment of production capacity of domestic enterprises to the significant increase in the

volume of import of grinding and forged spheres from foreign countries. The application of import quota for grinding and forged spheres discontinued as of 1 January 2003.

Question 74

Paragraph 109: Has Kazakhstan developed legislation for the removal of the quantitative limitation on the import of alcohol? We would like to see a specific proposal from Kazakhstan to remove this restriction prior to accession.

Please provide an exhaustive list of products currently under quota for any reason, indicating the legal basis for the measure.

Answer:

Under the Resolution of the Government No. 1031 of 27 June 1997 "On Licensing of Import of Ethyl Alcohol and Alcoholic Products (Excluding Beer) in the Republic of Kazakhstan", the share of imported ethyl alcohol and alcoholic products (excluding beer) should not exceed 20 per cent of the annual volume of their production in the customs territory of Kazakhstan. This measure was introduced to regulate the increased imports flow, ensure collection of all tax receipts to the budget, and protect the rights of domestic producers and consumers.

In order to bring the practice of application of import quota to imported alcohol products into full conformity with the Article XI of the GATT, the Government adopted on 17 June 2004 the Resolution "On Introduction of Amendments and Addenda to the Resolution of the Government of the Republic of Kazakhstan dated 27 June 1997 No. 1031". In accordance with the Resolution, the practice of application of quantitative restriction on import of alcoholic production was abolished as of 17 June 2004.

Question 75

We expect that Kazakhstan will remove all quantitative restrictions prior to accession, and observe WTO provisions concerning their application in the future.

Answer:

After WTO accession Kazakhstan will not introduce import quotas, except for emergency reasons stipulated in the Article XIX of GATT and WTO Agreement on Safeguards.

Question 76

Kazakhstan should address the request for information on how it intends to bring its import licensing fees into conformity with Article VIII of the GATT 1994.

Answer:

In order to bring the customs legislation of the country into conformity with WTO norms and rules, a new Customs Code was enacted on 1 May 2003. Article 293 of the Customs Code 2003 stipulates that customs fees are levied for rendering the following types of services: (i) customs clearance; (ii) customs escort of goods; and (iii) services provided by warehouses owned by customs authority. Fees are based on the cost of services rendered in conformity with the Article VIII of GATT. Revenues generated by fees for customs services are remitted to the general revenues of the State budget.

Licensing fee is determined based on the actual cost of services rendered and does not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes. Therefore, the licensing fees applied by Kazakhstan do not contradict to Article VIII of GATT.

Question 77

Paragraph 112-113: A chart listing goods subject to import licensing, by HS number, the justification for the measure, and information on the Ministry that administered the license and the procedures should be provided in this section.

Answer:

List of goods, subject to import licensing and the Rules on export and import licensing of goods and services are approved by Government Resolution No. 1037 "On licensing export and import of goods and services in the Republic of Kazakhstan" of 30 June 1997. The licensing system of Kazakhstan regulates import of a limited number of goods to ensure protection of human life and health, environmental protection, protection of public order, as well as for reasons of national security.

Import licensing extends to chemical products for plant protection; veterinary drugs and equipment; narcotic, psychotropic products, and precursors; poisons; civil and in-service firearms and cartridges, explosives, detonation, and pyrotechnical devices; industrial waste; x-ray units, devices and equipment using radioactive substances and isotopes; raw opium; wine; ethyl alcohol; complex alcoholic half-finished products, excluding perfume based products, used in beverages; white spirit; other light distillates, average distillates for specific processing and chemical transformations.

The list of goods subject to import licensing by HS number along with the justification for each measure is provided in Annex 5.

Import licensing of ethyl spirit and alcoholic beverages is regulated by the Rules on import licensing of ethyl spirit and alcoholic beverages, which is approved by the Government Resolution "On licensing of import of ethyl spirit and alcoholic beverages in the Republic of Kazakhstan" of 27 June 1997 No. 1031. The Ministry of Finance issued import/export licenses for ethyl spirit and alcoholic beverages.

Licensing procedures for all goods, including ethyl spirit and alcohol beverages, are provided in Annex 1.

The following documents are necessary to obtain a license: (i) an application, (ii) a document confirming the payment of license fee, (iii) a copy of certificate of state registration, (iv) a copy of a contract (agreement) on sales-purchase with participants of international trade deal, (v) a license for production of alcohol products, or for storage and sale of ethyl spirit in case of importing ethyl spirit.

Question 78

What are the fees charged for these licenses?

Answer:

The uniform import license fee for all types of goods subject to import/licensing fees is established at the rate of 6 Monthly Calculation Index (US\$ 40.4 or € 33.2).

Question 79

Survey of Foreign Trade Regime (WT/ACC/KAZ/40), page 22: WT/ACC/SPEC/KAZ/8, paragraphs 113, 114: We would seek further clarification on import and activity licensing for alcoholic products.

Answer:

Import licensing of ethyl spirit and alcoholic beverages is regulated by the Rules on import licensing of ethyl spirit and alcoholic beverages, which is approved by the Government Resolution "On licensing of import of ethyl spirit and alcoholic beverages in the Republic of Kazakhstan" of 27 June 1997 No. 1031. The Ministry of Finance issues import/ export licenses for ethyl spirit and alcoholic beverages. Licensing procedures for all goods, including ethyl spirit and alcohol beverages, are provided in Annex 1.

The following documents are necessary to obtain a licence: (i) an application, (ii) a document confirming the payment of licence fee, (iii) a copy of certificate of state registration, (iv) a copy of a contract (agreement) on sales-purchase with participants of international trade deal, (v) a licence for production of alcohol products, or for storage and sale of ethyl spirit in case of importing ethyl spirit. In accordance with the Government Resolution "On approval of licensing fees for carrying out certain types of activities" of 24 January 2002 No. 100, the uniform import license fee for all types of goods subject to import/licensing fees is established at the rate of six Monthly Calculation Index (US\$ 40.4 or € 33.2. Licenses are granted on a national treatment and MFN basis.

Question 80

These sections refer to a number of non-tariff measures (NTMs) (including licensing requirements). We request in tabulated form detailed information on all NTMs. We ask that the table include columns for:

- the tariff code for the product
- the product description
- a description of the measure, including its purpose
- the entity (or entities) responsible for applying the measure
- all laws, regulations and decisions relating to the measure
- WTO justification or the date of elimination.

References to automatic import licensing in the context of the table should refer only to licensing that is automatic in accordance with all provisions of Article 2 of the Agreement on Import Licensing Procedures. All other import licensing should be referred to as non-automatic.

Answer:

List of goods, subject to import licensing and the Rules on export and import licensing of goods and services were approved by Government Resolution No. 1037 "On licensing export and import of goods and services in the Republic of Kazakhstan" of 30 June 1997. The licensing system of Kazakhstan regulated import of a limited number of goods to ensure protection of human life and health, environmental protection, protection of public order, as well as for reasons of national security.

The requested information with the list of goods subject to import licensing by HS number along with the justification for each measure is provided in Annex 5.

Except import licensing procedures applied in Kazakhstan met the requirements set for the rules on administration of automatic import licenses, except for the duration of the period required for the approval of applications for licenses. Article II of the WTO Agreement on Import Licensing Procedures stipulate that "applications for licenses when submitted in appropriate and complete form are approved immediately on receipt, to the extent administratively feasible, but within a maximum of ten working days". According to Article XVII of the Law of Kazakhstan "On Licensing", licenses were issued within a maximum of a month, for small businesses –within a maximum of ten days from the date of submission of application and all necessary documentation. Licensing procedures did not have trade-restrictive effects on imports of goods subject to licensing. The Ministry Industry and Trade was the state body responsible for administration of export and import licenses for all goods subject to licensing, who issued import licenses upon preliminary coordination with relevant state agencies and ministries.

Question 81

Paragraphs 115-116: We do not understand why it is necessary to describe requirements for a license to produce alcoholic beverages. What about importing alcoholic beverages?

Answer:

Given requirements for a license to produce alcoholic beverages description are removed.

Question 82

Paragraph 117: Kazakhstan should list its licensing fees for import activities and for importation. We understand that some of these fees are not consistent with Article VIII. Kazakhstan should develop a plan for bringing all its licensing fees into line with WTO provisions.

Answer:

Licensing fee is determined based on the actual cost of services rendered and does not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes. Therefore, the licensing fees applied by Kazakhstan do not contradict to Article VIII of GATT.

Question 83

Paragraph 118: What activities covered by these laws involve importation or exportation?

Paragraph 119: The discussion in this paragraph is not adequate. The information given does not support a determination of whether the licenses are automatic or non-automatic.

Answer:

Except import licensing procedures applied in Kazakhstan met the requirements set for the rules on administration of automatic import licenses, except for the duration of the period required for the approval of applications for licenses. Article II of the WTO Agreement on Import Licensing Procedures stipulates that "applications for licenses when submitted in appropriate and complete form are approved immediately on receipt, to the extent administratively feasible, but within a maximum of ten working days". According to Article XVII of the Law of Kazakhstan "On Licensing", licenses are issued within a maximum of a month, for small businesses –within a maximum of ten days from the date of submission of application and all necessary documentation.

Question 84

We need specific information on the discretionary criteria applied.

Answer:

The licensing system of Kazakhstan regulates import of a limited number of goods to ensure protection of human life and health, environmental protection, protection of public order, as well as for reasons of national security.

Licenses are granted on a national treatment and MFN basis.

Question 85

Paragraph 119 also states the Ministry of Industry and Trade issues import licenses "upon preliminary coordinate with concerned ministries and agencies."

Please clarify if it the responsibility of the entity seeking a license oversee the coordination with "concerned ministries" (e.g. submit an application to both the Ministry of Industry and Trade and the concerned ministry) or will the Ministries undertake the coordination?

Answer:

As the responsibility of the Ministry of Industry and Trade to coordinate the process of issuing licenses with the concerned agencies and that entities seeking licenses have to submit applications to the Ministry of Industry and Trade (in case of ethyl spirit and alcoholic beverages, to the Ministry of Finance). Ministries concerned are listed against the goods subject for import licensing is also given in Annex 5.

- **Customs valuation**

Question 86

We are reviewing available information on Kazakhstan's new regime for customs valuation. Pending completion of this review, we do not agree that the current regime is WTO consistent.

In the factual summary, Kazakhstan indicates that in addition to the new Customs Code, there are other legislative acts that have a role in customs work. These are:

- **the Rules for Independent Examination of Consistency of Customs Value, Quality, and Quantity of Imported Goods (the Resolution of the Government of the Republic of Kazakhstan No. 782 of 16 July 2002); and**
- **the Decree of the Customs Committee of the Republic of Kazakhstan No. 209 of 15 May 2003 "On Adoption of Rules on Completion of Declarations of Customs Value and Customs Value Adjustment Forms".**

Could Kazakhstan provide copies of this legislation for Working Party review?

Answer:

Copies of these Rules will be submitted later.

Question 87

WT/ACC/SPEC/KAZ/8, paragraphs 120-122: Could Kazakhstan confirm that the Customs Code and other legislative acts related to provisions concerning customs valuation for goods are completely compatible with Article VII of GATT 1994 and the Agreement of its implementation?

Answer:

The Government of Kazakhstan had adopted a new Customs Code on 5 April 2003 (WT/ACC/KAZ/39/Rev.1 refers). Under Article 308 of the Customs Code, customs valuation of imported goods were based on:

- transaction value of imported goods;
- transaction value of identical goods;
- transaction value of similar goods;
- deduction of costs method;
- composition of costs; and
- reserve method.

As a general rule, customs valuation is based on the transaction value of the imported goods, that is the price actually paid or payable for the goods when sold for export to the country of importation. Where application of this method is impossible, other methods shall be used in the order shown above until determination of the customs value became possible.

According to Article 311 of the Customs Code, "homogenous" or "similar" goods mean goods, which, although not identical, have similar characteristics and consist of similar components, which allow them to perform the same functions as the goods being valued, and to be commercially interchangeable.

According to Article 314 of the Customs Code, the customs value of goods on the basis of the reserve method may be applied if the customs value cannot be determined by a successive application of all other methods. The customs value of goods on the basis of the reserved method has to be determined by a more flexible application of methods described in the above mentioned Articles, in compliance with the principles and general provisions of the GATT/WTO related to the customs value of goods.

Question 88

Could Kazakhstan clarify the methods and terms referred to in paragraph 120, in particular "cost of a contract of homogenous goods" as well as "reserve".

Answer:

According to Article 311 of the Customs Code, "homogenous" or "similar" goods mean goods, which, although not identical, have similar characteristics and consist of similar components, which allow them to perform the same functions as the goods being valued, and to be commercially interchangeable.

When determining the similarity of goods, their quality, availability of a trademark, and reputation on the market shall be taken into account.

When using this method for determining customs value:

- goods shall not be considered similar to those being valued if they are not manufactured in the same country as the goods being valued;
- goods, which were manufactured by a person different from the manufacturer of the goods being valued, shall be taken into consideration if there are no similar goods manufactured by the manufacturer of the goods being valued;
- goods shall not be considered as similar if their development, engineering, artwork, design, sketches and drafts were provided by the buyer to the seller free of charge or at a reduced price to be used in connection with production and sale for export to the Republic of Kazakhstan; or were manufactured in the Republic of Kazakhstan and, owing to that, their cost was not included in the customs value of the goods on the basis of section 5, Sub-paragraph 4), Paragraph 2, Article 309 of this Code. The chapter of the Customs Code describing customs valuation procedures is available through document WT/ACC/KAZ/50/Add.1.

When using the reserve method to determine customs value, the following may be utilized: (i) informational reference books determined by the Government of Kazakhstan; and (ii) statistical data, generally accepted commission rates, discounts, profit, transport rates and other data. In the process, the appropriate adjustment of data shall be mandatory, taking into account commercial standards (wholesale, retail) and/or the quantity of goods being valued. When using the reserve method to determine customs value, information that the customs authorities have, may also be used.

Question 89

Does Kazakhstan apply minimum values?

Answer:

According to Article 310 of the Customs Code, while determining customs value based on the transaction value of identical goods, when more than one transaction value with identical goods is identified when using this method, then the lowest of the values must be applied to determine the customs value of the imported goods. The minimum customs value cannot be used as a basis for determining the customs value of goods based on the reserve method.

Question 90

Is the Administrative Violations Code also applicable for disputes related to customs valuation?

Answer:

The Code "On Administrative Violations" was adopted by the Law of Kazakhstan of January 2001 No. 155-III. The Code identifies the bodies authorized to address the cases of administrative violations and impose sanctions.

The Code is applied to disputes related to customs valuation as well as to cases, when there is deliberate evasion from payment of the customs duties and taxes.

- **Rules of origin**

Question 91

We seek some reflection in this section of the Factual Summary Kazakhstan's normal rules of origin, i.e., those not associated with preferential trade.

Answer:

The Republic of Kazakhstan uses a uniform system for determination of the country of origin of all goods for tariff and non-tariff measures, applied to imported and exported goods. The existing system which was developed by the World Customs Organization and covered by the Kyoto Convention.

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

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

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

Section 4 of the Customs Code of Kazakhstan describes in details the rules on determination of country of origin of goods which is available through document WT/ACC/KAZ/50/Add.1.

Question 92

We seek specific legislation implementing Article 2(h) and Annex II, paragraph 3 (d) of the Agreement.

Paragraph 127: The provisions described do not meet the requirements of the Agreement, and the assertion of WTO consistency is inappropriate, as that has not yet been determined.

Answer:

According to Article 47-49 of the Customs Code of Kazakhstan, (i) application must be considered by the customs authority and a preliminary decision must be issued within ten working days from the day the application was registered, if other information or expertise was not required; (ii) a preliminary decision made by customs authorities must be effective for three years from the date it was made; (iii) a preliminary decision must be annulled if such decision was made on the basis of incomplete or

incorrect information provided by the applicant, effective from the date of making a new preliminary decision; (iv) an amendment to a preliminary decision must come into effect after the applicant receives a notification concerning the amendment; (v) in the cases specified above, a written notification, which specifies the reasons for the annulment or change, must be sent to the applicant; (vi) preliminary decisions made by customs authorities, except for confidential information, may be published and provided to any person upon a written request. There is no provision in the Customs Code which does not allow applications to be accepted before trade in the goods concerned began or at any later stage. There is no need for a separate legislation to implement according to Article 2 (h) and Annex II, paragraph 3 (d) of the WTO Agreement on Rules of Origin.

- **Other customs formalities**

Question 93

We remain concerned that Kazakhstan's over-regulation of import trade constitutes a barrier to importation, nullifying any benefit from tariff concessions.

In particular, the transaction passport constitutes an unacceptable universal licensing system and currency control incompatible with Article XI and XV of the GATT.

There are other ways to prevent capital flight, including establishing an economic regime that welcomes investment based on actual economic factors.

As we have indicated on many occasions, Kazakhstan should remove this measure prior to accession.

Answer:

In order to monitor movements of goods and financial resources, the Law of Kazakhstan 'On Currency Regulation' and the Resolution of the National Bank Board 'On Adoption of Guidelines for Export and Import Currency Control in the Republic of Kazakhstan', of 5 September 2001, No. 343, requires the transaction passport for any export/import transaction exceeding US\$ 10,000. The transaction passport is issued by the customs authorities automatically within two days after the contract submission date. No fees required for obtaining transaction passports.

The purpose of a transaction passport is to assure compliance with the foreign currency legislation of Kazakhstan. The transaction passport/certificate contains information on foreign economic operations and allows monitoring movements of goods and money involved in export and import operations. Currency controls ensures that currency earnings flowed into the country in full and in a timely fashion as well as ensured a proper use of foreign currency and KZT for the purpose of import.

The transaction passports are by no means used to balance trade and, as such, are not viewed as a barrier to foreign economic activities. Each transaction passport/certificate has its unique number and included brief information on the contract. Electronic monitoring based on the database of transaction passports/certificates allowed to reveal "fictitious" foreign economic operations, involving transfers of the "shadow" capital to offshore zones.

Question 94

WT/ACC/SPEC/KAZ/8, paragraphs 128-133. We would still seek further information on the 'transaction passports', which still looks like a duplication of other procedures. Do economic operators have to pay any fees to obtain these passports?

Answer:

The purpose of a transaction passport is to assure compliance with the foreign currency legislation of Kazakhstan. The transaction passport/certificate contains information on foreign economic operations and allows to monitor movements of goods and money involved in export and import operations. Currency controls ensured that currency earnings flown into the country in full and in a timely fashion as well as ensured a proper use of foreign currency and KZT for the purpose of import.

The transaction passport is by no means used to balance trade and, as such, cannot be viewed as a barrier to foreign economic activities. Each transaction passport/certificate has its unique number and includes brief information on the contract. Electronic monitoring based on the database of transaction passports/certificates allows revealing "fictitious" foreign economic operations, involving transfers of the "shadow" capital to the offshore zones.

Question 95

The rules concerning customs documentation should be more flexible in order to still allow for a certain time that on the one hand, paper versions of declarations are accepted and that, on the other hand, electronic declarations do not necessarily have to be accompanied by paper versions?

Answer:

It was necessary to introduce a Uniform Computer Based Information System (UCBIS) for performance of the obligation of the Agency of Customs Control of the Republic of Kazakhstan to provide full and trustworthy information as well as statistical data and also to ensure compliance with international standards (electronic copies are used by the United States, European Union and other members of WTO). With the purpose of introduction of UCBIS the Government of the Republic of Kazakhstan had issued an exclusive license to close joint-stock company "Accept Corporation" for development of electronic copies of customs documents. Since 1999 the exclusive license of the Joint-Stock Company "Accept Corporation" for development of electronic copies of customs documents had been cancelled.

At present development of electronic copies is carried out on a competitive basis in the Republic of Kazakhstan. The project on introduction of Uniform Computer Based Information System (UCBIS) is carried out independently by the Agency of the Customs Control of the Republic of Kazakhstan. Development of the Terms of Reference on creation and introduction of "electronic customs" within the framework of which transition to electronic declaring of customs documents will be carried out is planned for 2004. UCBIS envisaged mechanisms of protection of confidential information received from participants of the foreign economic relations. Introduction of new technologies demanded gradualness at transition from the technologies used earlier. This particular reason was the basis of the requirement on provision of hardcopies of customs declarations.

- Preshipment inspection**Question 96**

Paragraph 134: We need much more information about the "independent examination" pre-clearance audit system. Who performs it, what is the fee charged, what right of appeal to the Government exists. What rules of valuation are used?

We are concerned that Kazakhstan has instated a PSI program with no reference to its WTO obligations.

Answer:

Due to termination of the Program of Pre-shipment Inspection (PPI) on 31 January 1997 Pre-shipment Inspection does not exist in the Republic of Kazakhstan.

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

Question 97

WT/ACC/SPEC/KAZ/8. Item 135 mentions the Laws "On Antidumping No. 421-1 of 13 July 1999, "On Measures for the Protection of Domestic Markets" No 337-1 of 28.12.98 and on Subsidies and Countervailing Measures" No 441-1 of 16 July 1999. Have there been any changes since or are there new drafts?

Answer:

The law generally follows the provisions and definitions of the WTO AD and ASCM Agreements. However there are some differences partly probably due to translation.

Question 97

Draft Law on Antidumping: Article 1 definitions: definition of dumping does not follow Article 2.1 ADA, it describes dumping as "one form of fighting for consumer markets which means unfair actions of a supplier undertaken in the foreign market through the sale of products at price less than its normal price with the view of eliminating competitors". It does not mention "like product, comparable price and ordinary course of trade." One could also suggest that "with the view of eliminating competitors" is an additional criterion for the definition of dumping. It would be better to stick to the definition of Article 2.1 ADA.

Normal price: The present version always mentions "normal price" – better "normal value" according to ADA.

Answer:

The above raised comments refer to an outdated version of the draft Law. The final version of the Law "On antidumping measures" No. 421-1 dated 13 July 1999, contains the definition of dumping which is consistent with the Article 2.1 of the WTO Agreement on implementation of Article VI of GATT 1994 (hereinafter – WTO Agreement on antidumping).

The current Law makes reference to the "like product" and "ordinary course of trade". Although the definition of "normal price" does not mention "comparable price", it contains the meaning of the definition of "normal value" given in the WTO Agreement on antidumping.

Nevertheless, in order to bring the Kazakh legislation in compliance with the WTO Agreement on antidumping all of necessary amendments will be added to the Law by the end of this year.

Question 98

Article 15.2 Disclosure of application on determination of dumping and injury is not quite clear and differs from Article 6.10. ADA. Does "Where the number of persons involved is more than five particularly high" mean that with more than five exporters concerned not all of them will be informed about the initiation of an investigation but only their diplomatic or other representations? Does the law not provide for "sampling" like in Article 6.10 ADA?

Answer:

Current Kazakh Law on antidumping does not provide for "sampling" as stated in Article 6.10 of the WTO Agreement on antidumping. Yet, a provision on "sampling" will be added to the Law by the end of this year in the framework of bringing the Kazakh legislation in compliance with the WTO rules and regulations.

Question 99

Article 40 provisional measures and procedures of their imposition: This Article does not mention all conditions for the application of provisional measures. Article 7.1 (iii) also states the necessity to prevent injury being caused during the investigation.

Article 42 duration of application of provisional anti-dumping measures: This Article only mentions "low duty" without the clear description of Article 7.4 ADA "examine a duty lower than the margin of dumping would be sufficient to remove injury".

Answer:

- (i) The current version of the Kazakh Law describes provisional measures in Article 30 not in Articles 40 and 42 as was mentioned by some members of the Working Party.
- (ii) Article 30 of the Kazakh Law does not mention among the conditions for the application of provisional measures the necessity "to prevent injury being caused during the investigation" as stated in the Article 7.1 (iii) of the WTO Agreement on antidumping.
- (iii) The Article 30.3 of the Kazakh Law makes a clear reference that in case, when a provisional duty is lower than the margin of dumping be sufficient to remove injury, then the application period of provisional anti-dumping measures may be nine months, which overall consistent with the Article 7.4 of ADA.

Nonetheless, as part of the work on bringing the Kazakh legislation in compliance with the WTO rules and requirements, all necessary amendments will be made to the Law "On antidumping measures" by the end of this year.

Question 100

Article 48 investigation in respect to third parties: should rather be called new comer review.

Article 48.2 follows Article 9.5 ADA stating that no antidumping duties shall be applied to a new comer during the investigation, but then says that provisional antidumping duties can be imposed. Does this mean only in such cases where a new comer applies during an ongoing investigation when a provisional measures is already in place?

Numbering of Articles: 48, 49 and 50 are identical or very similar to Articles 53, 54 and 55 and there are other Arts numbered 53, 54 and 55.

Answer:

The final approved version of the law consists of 43 articles and doesn't contain the articles 48, 49, 50, 53, 54 and 55 as was indicated in the request by some members of the Working Party

Question 101

Draft law on subsidies and countervailing measures: Article 7 the definition of subsidy: does not contain the notion of "benefit" Article 1.b ASCM.

Answer:

The reference was made to the outdated version of the draft law "On subsidies and countervailing measures." In the acting Law of the Republic of Kazakhstan "On subsidies and countervailing measures" No. 441-1 dated 16 July 1999, the sequence of the Articles had changed. The definition of subsidy, some members of the Working Party referred to in their comments, is now under Article 1.16), while Article 7 is on "Specific Subsidy".

There were several discrepancies in terminology and wording of the terms and articles of the Law. However, he also assured that in accordance with the process of bringing the Kazakh legislation in compliance with the WTO requirements all necessary amendments will be made to the above Law by the end of this year.

Question 102

The text mentions "preferential/specific", ASCM only uses expression "specific".

Answer:

The acting Law of the Republic of Kazakhstan "On subsidies and countervailing measures" does not contain the term "preferential/specific," like the WTO Agreement on subsidies and countervailing measures the Law uses the term "specific," which is in compliance with the WTO requirements.

Question 103

Article 21 threat of material injury: does not mention all requirements of Article 15.7, in particular that the threat of material injury shall be based on facts and not merely on allegations and the change in circumstances must be clearly foreseen and imminent and that, unless protective action is taken, material injury would occur.

Answer:

Article 13 "Determination of a threat of material injury" and Article 9 "Determination of a material injury" of the current Kazakh Law "On subsidies and countervailing measures" are in compliance with the requirements of Article 15.7 of the WTO Agreement on subsidies and countervailing measures.

In particular, Article 13 says that "A threat of a physical injury to domestic manufacturers from imported goods subsidized by a foreign state (union of foreign states) shall be justified by an authorized body on the basis of analysis of the following indices:

- a character of a subsidy and its impact on a trade;
- growth rates of the import of goods subsidized by a foreign state (union of foreign states) at the market of the Republic of Kazakhstan;
- availability at a supplier of the reserves of production and/or export of goods subsidized by a foreign state (union of foreign states) indicating the possibility of their deliveries to the market of the Republic of Kazakhstan. At that the possibilities of other export markets for sales of any additional export shall be taken into consideration;
- import of goods subsidized by a foreign state (union of foreign states) on prices that might influence the reduction of prices of a domestic market and follow to increase of the demand for additional deliveries;
- volume of the reserves of goods in a country of a supplier in relation to whom the investigation is conducted."

Therefore, the Law of the Republic of Kazakhstan is in compliance with the requirements of Article 15 of the WTO Agreement on subsidies and countervailing measures.

Question 104

Article 34 consultations: only mentions that consultations shall be held during the whole process of investigation. Article 13 ADA (ASCM?) states that "as soon as possible after an application is accepted, and in any event before the initiation of any investigations consultations shall be held.

Answer:

The above reference to Article 34 of the Draft Law "On subsidies and countervailing measures" is outdated, since several amendments were introduced into the mentioned draft law. The acting version of the Law does not foresee provision on "consultations." Yet, the representative of Kazakhstan stated that with the aim of bringing the national legislation in full compliance with the WTO rules and requirements, all of the relevant amendments will be added to the Law by the end of this year, including introduction of "consultations," as defined by the WTO Agreement on subsidies and countervailing measures.

Question 105

Article 35 provisional measures: does not state that provisional measures shall not be applied sooner than 60 days from the date of initiation of the investigation as mentioned in Article 17.3 ASCM.

Answer:

Article 25.2 "Implementation of temporary countervailing measures" of the Kazakh Law indicates that "temporary countervailing measures in the form of money deposits and (or) guarantees of the banks of the Republic of Kazakhstan shall be applied to supplier not earlier than in two months from the moment of initiation of the investigation," which is no earlier than 60 days from the investigation initiation as stated in the WTO Agreement on subsidies and countervailing measures.

Nevertheless, as the representative of Kazakhstan stated with the aim to bring the national legislation in full compliance with the WTO Agreement on subsidies and countervailing measures all of the relevant amendments will be made to the Law by the end of this year.

Question 106

Article 44 retroactivity: Article 44.1 is unclear, it refers to accordance with Article 5, except in cases, indicated in p.2 and 5 of this Article. Article 5 only contains one point which does not seem to provide for any exceptions. Article 44.5 does not mention all the requirements of Article 20.6 ASCM, in particular critical circumstances, massive imports in a relatively a short period of time of a product benefiting from subsidies inconsistent with the provisions of GATT 1994 and the ASCM, in order to preclude the recurrence of injury.

Answer:

Article 44 "Retroactivity" of the Kazakh Law had been excluded from the current Law "On subsidies and countervailing measures." However, in order to bring the national legislation in full compliance with the WTO Agreement on subsidies and countervailing measures, all of the necessary amendments will be made to the Law by the end of the year.

Question 107

Draft Law of the Republic of Kazakhstan "On Safeguard Measures": Article 2.5 stipulates that "As safeguard measures shall be applied only those that are stipulated by current Law. Such measures as voluntary export restriction, orderly marketing arrangement, and other similar measures applied to export or import shall not be applied as safeguard measures."(emphasis added).

Is it possible under Kazakhstan law other than the law on safeguards measures to impose voluntary export restriction, orderly marketing arrangement, and other similar measures applied to export or import? If so, how would such measures be consistent with Article 11 of the Safeguards Agreement?

Answer:

The mentioned Article of the draft law is no longer relevant, since the new Law on safeguard measures had been adopted, which does not contain similar provisions. In addition, there are no other laws or legislative acts, which can apply any voluntary export restrictions, orderly marketing arrangement, and other similar measures in regard of exports and imports.

Question 108

"Injury" is defined in Article 4 as "a significant impairment of the economic position of separate domestic producers". This definition does not appear to cover all the relevant elements required by the WTO Safeguards Agreement insofar as:

- **the word "serious" is missing to qualify injury. Since the "serious" character of the injury is an essential requirement of any safeguard action, will the word "serious" be added?**

Answer:

In the acting Kazakh Law "On safeguard measures" the word "serious" is used in order to describe the degree of "injury". In particular, Article 1 (11) of the Law defines the term "serious injury" as "a significant deterioration of a situation in the branch of production of similar or directly competitive goods due to the increased volume of their deliveries to the territory of the Republic of Kazakhstan ..."

Question 109

The word "overall" is missing to qualify "impairment". Will this word be added?

Answer:

The word "overall" is in fact missing from the definition of "impairment" (Article 1 (11) of the acting Law). Yet, he stressed that as part of legislative works on bringing the Law into full conformity with the requirements of the WTO Agreement on safeguards the relevant changes will be made to the Law by the end of the year.

Question 110

The Safeguards Agreement requires that serious injury be suffered by the entire domestic industry or a major proportion thereof. Could Kazakhstan explain how the terms "separate producers" should be interpreted in the light of the Safeguards Agreement?

Answer:

The reference some Working Party members made regarding "separate producers" referred to the outdated Draft Law. The acting Law "On safeguard measures" does not contain such term as it does not define full scale of caused injury. Article 1(11) of the acting Law states that "serious injury" must be suffered by the entire "branch of domestic production of similar or directly competitive goods..." but not by separate producers if only their total production volume constitutes the most part (more than fifty percent).

Question 111

The law of Kazakhstan does not indicate on the basis of which factors the existence of serious injury will be established. Could Kazakhstan confirm that any serious injury determination will be made on the basis of all relevant factors including those specified in Article 4.2(a) of the Safeguards Agreement?

Answer:

The Article 8 (3) and Article 16 (2) of the Kazakh Law stipulate the submission of an application for conducting investigation by an authorized body containing "the data reflecting all appropriate factors of an objective character...particularly, changes in the volumes of sales, production, productivity, capacity load, amounts of profits and losses, reduction of the number of persons employed in the production, information on change of prices for similar or directly competitive goods at the domestic market of the Republic of Kazakhstan," as defined in the WTO Agreement on safeguards.

In order to bring the acting Law "On safeguard measures" into full compliance with the relevant WTO Agreement all necessary changes, including rewording of some articles so it is in full conformity with the Agreement, will be made by the end of this year.

Question 112

Could Kazakhstan clarify what is covered by the terms "General management on the state control over trade practice of suppliers" in Article 5.1?

Answer:

The given provision in the Law reads as "Government regulation and control of the trade practice of the suppliers in case of causing a serious injury shall be performed by an authorized body" (Article 5 (1)). He also added that such unfortunate confusion could have been result of inaccuracy in translation.

Question 113

Article 18 provides that provisional measures can be taken on the basis of a preliminary affirmative determination of injury or threat thereof. Article 6 of the WTO Safeguards Agreement also requires that it be demonstrated that there are "critical circumstances where delay would cause damage which it would be difficult to repair". This mandatory requirement is not reflected in the law of Kazakhstan. Can Kazakhstan confirm that provisional safeguard measures will only be imposed if all the conditions provided by Article 6, including those regarding critical circumstances, are fulfilled?

Answer:

The Article 17(2) of the Kazakh law stipulates application of provisional safeguard measures "under critical circumstances if their postponement may cause a serious injury to the domestic industry that shall be difficult to compensate". Therefore, the given provision appears to be in compliance with the WTO Agreement on safeguards.

Question 114

Article 18.4 provides that the provisional measures will be "phased out" in the case of a negative injury determination. Do the terms "phased out" mean refunded as required by Article 6 of the WTO Safeguards Agreement?

Answer:

The Article 17(4) of the Kazakh law reads that "in case, if based on the results of investigation, an authorized body makes a decision that the increased volume of deliveries does not cause a serious injury to domestic manufacturers, provisional measures shall be cancelled and the importer shall be entitled to be refunded the amount paid in accordance with the procedure established by the legislation of the Republic of Kazakhstan."

The above-mentioned provision will be reworded, such words like "shall be entitled to be refunded" will be replaced with "be promptly refunded" as appears in the WTO Agreement on safeguards, by the end of this year.

Question 115

Article 20 specifies that the period of validity of provisional measures should not exceed seven months. In accordance with Article 6 of the WTO Safeguards Agreement, the maximum duration of application of a provisional measure is 200 days, i.e. less than seven months. Will Article 20 be amended in order to reflect the 200 day time limit?

Answer:

Article 19 of the acting Law reads that the period of provisional safeguard measures validity should not exceed 200 days. Such provision is fully in compliance with the WTO requirement.

Question 116

Article 23 provides that "information on the application of safeguard measures should be submitted by the Authorized Body to the Committee". The use of the conditional would imply that such notification might not be systematic contrary to the express requirements of Article 12 of the WTO Safeguards Agreement. It is further noted that the notification obligations of Kazakhstan are already addressed in Article 9 which uses the term "shall". Could Kazakhstan please clarify the relation between Article 9 and Article 23 and the apparent contradiction between the obligations contained therein?

Answer:

The above comment in regards to Article 23 is no longer relevant since the new Law is now in force, and it does not contain such provision. Nevertheless, in order to bring the Law "On safeguard measures" into full compliance with the requirements of the WTO Agreement on safeguards, all necessary amendments will be added to the Law by the end of this year.

Question 117

Article 28.3a) provides that the amount/size of the safeguard duty "can" be reduced provided that the duration of the measure exceeds one year. It is noted that, further to Article 7.4 of the WTO Safeguards Agreement, a Member is obliged ("shall") to liberalize (i.e. to reduce the amount) the safeguard measure if the duration of such measure exceeds one year. Please explain the meaning of the term "can" in light of the explicit obligation contained in the WTO Safeguards Agreement.

Answer:

Article 28.3a) of the mentioned Draft law now corresponds with Article 22 (2) of the acting law, stating that "the volume of safeguard measures may not be increased for all the time of their application, their volume may be reduced by the Resolution of the Government of the Republic of Kazakhstan upon petition of an authorized body provided that the duration of application of protective measure does not exceed one year," whereas Article 7 (4) of WTO Agreement clearly mentions that "in order to facilitate adjustment in a situation where the expected duration of a safeguard measure ... is over one year, the Member applying the measure shall progressively liberalize it at regular intervals during the period of application".

The relevant changes will be made to the Law by the end of this year as part of work on bringing domestic legislation in compliance with the WTO Agreement.

Question 118

We understand that Article 28.3b) implements the provisions of Article 7.4, second sentence of the WTO Safeguards Agreement (mid-term review). However, Article 28.3b) states that such "review" would only take place if the measure is applied for more than four years, while Article 7.4 of the Safeguards Agreement provides for such review if the measure exceeds three years. Please clarify.

Answer:

Article 22 (3) of the Kazakh Law provides that in case if the validity period of a safeguard measure exceeds three years, re-investigation shall be conducted not later than in one and a half years after its application and as a result the safeguard measures may be cancelled, changed or extended. Such measure complies with the WTO provision. Yet, as part of legislative work on bringing the Kazakh legislation in compliance with the WTO requirements, relevant and necessary changes will be made to the Law by the end of the year.

Question 119

Law of the Republic of Kazakhstan as of 28 December 1998, No. 337-1 ZRK: Article 1.2 provides that safeguards measures mean a "number of administrative and economic leverages". Could Kazakhstan clarify the notion of leverages in this context and the difference between "administrative" and "economic" leverages?

Answer:

Under the Article 1(3) of the acting Law safeguard measures are understood as "a set of means of administrative – economic impact applied based on the Resolution of the Government of the Republic of Kazakhstan in a form of protective duties or quotas on goods imported to the territory of the Republic of Kazakhstan for a free circulation in its domestic market in such quantities (absolutely or

relatively to domestic manufacture) and under such conditions when there is a serious injury or a threat of injury to domestic manufacturers of similar or directly competitive goods".

In order to bring the above Law in full compliance with the WTO Agreement on safeguards amendments will be made to the Law by the end of the year, including rewording of some definitions, so they appear as in the Agreement.

Question 120

In several Articles (e.g. Articles 1, 3, 16), the adjective "material" is used to qualify the injury suffered by the domestic industry. The word "material" implies a lower threshold of injury than that required by Article 2 of the WTO Safeguards Agreement, i.e. "serious injury". Given that the injury threshold is an essential feature of any safeguard action, will the word "material" be replaced by "serious"? If not, could Kazakhstan explain how injury determinations could ever be made in compliance with the WTO Safeguards Agreement on the basis of the current language?

Answer:

In the framework of bringing the acting legislation in conformity with the WTO requirements, a number of amendments had been introduced into the Kazakh Law "On safeguards." As a result, the word "material" in reference to injury was replaced by with the word "serious" (Article 1 (11), which is in full conformity with the relevant WTO Agreement.

Question 121

Article 2 specifies that the legislation concerning the measures to protect the domestic market against imported goods consists of the current law and of "other legal acts of general application". Could Kazakhstan identify the other legal acts concerned and provide a copy thereof?

Answer:

The acting Kazakh legislation concerning the safeguard measures consists of the Law of the Republic of Kazakhstan "On protective measures of domestic market when importing goods" date 20 July 1999 No. 443 and the Government Resolution of the Republic of Kazakhstan "On Approval of the Investigation Regulation Prior to Implementation of Anti-Dumping, Countervailing and Safeguard Measures" dated 9 September 2000 No. 1374.

Question 122

Article 10.4 provides for the licensing of imports upon initiation of a safeguards investigation. Please explain the purpose of the licensing procedure and provide details thereon.

Answer:

The requested information on licensing regime is provided in Annex 1 as well as in the Kazakh Law "On licensing" dated 17 April 1995, No. 2200.

Question 123

Article 16.2 lists the economic indicators on the basis of which the injury determinations will be made. One of the factors is called "facility workload". Please explain the notion covered by

these terms. Does it mean capacity utilization? If not, it is noted that capacity utilization is not listed. Please clarify.

Answer:

In compliance with Article 16 (2) of the Kazakh Law in order to determine a cause-and-effect relation between increased volumes of deliveries and a serious injury of the domestic manufacturers or a threat of its causing, an authorized body shall take into consideration one of all objective factors influencing the situation in this branch, particularly capacity load.

He further added that the Kazakh Law uses term "capacity load", while the WTO Agreement on safeguards uses "capacity utilization".

Yet, necessary amendments will be introduced to the Law by the end of the year so there are no discrepancies between the two.

Question 124

Article 17 states that "[i]f provisional safeguard duty is introduced in the amount higher than the rate of provisional safeguard measure, the difference shall not be charged to the payer for the paid period." Please clarify this provision (probably, the word "provisional" should probably read "definitive" in the sentence introduced by "if").

Answer:

Indicated inconsistency is rather due to some technical inaccuracies of translation. Article 17 (5) of the Law stipulated that in case if a safeguard measure is imposed at amount higher than a rate of a provisional safeguard measure, the difference for paid period shall not be taken from the importer.

Question 125

Article 22, second sentence, provides that the amount of the safeguard duty "may" be reduced provided that the duration of the measure exceeds one year. It is noted that, further to Article 7.4 of the WTO Safeguards Agreement, a Member is obliged ("shall") to liberalize (i.e. to reduce the amount) the safeguard measure if the duration of such measure exceeds one year. Please explain the meaning of the term "may" in light of the explicit obligation contained in the WTO Safeguards Agreement.

Answer:

The above-mentioned Article of the Draft law is now corresponding to Article 22 (2) of the acting Law. The mentioned Article states that "the volume of safeguard measures may not be increased for the whole time of their application. Their amount may be reduced by the Resolution of the Government of the Republic of Kazakhstan upon petition of an authorized body provided that the duration of application of protective measure does not exceed one year", whereas Article 7 (4) of the WTO Agreement on safeguards clearly mentions that "in order to facilitate adjustment in a situation where the expected duration of a safeguard measure ... is over one year, the Member applying the measure shall progressively liberalize it at regular intervals during the period of application".

The relevant amendment, which brings the legislation in compliance with the WTO Agreement on safeguards, will be made by the end of this year.

Question 126

We are reviewing Kazakhstan's laws for WTO consistency. Are there regulations or other legislation that would clarify the application of these laws in a WTO-consistent fashion?

Answer:

In order to implement the Laws of the Republic of Kazakhstan "On Anti-Dumping Measures", "On Measures for the Protection of Domestic Markets in the Process of Imports of Goods" and "On Subsidies and Countervailing Measures" the Government Resolution "On Rules of Conducting Investigation Prior to Implementing Safeguard, Countervailing and Anti-Dumping Duties" of 9 September 2000 No. 1374 has been issued.

The following rules set the framework for conducting an investigation on the implementation of safeguard, countervailing, and anti-dumping duties, defined relations, rights and obligations of the state bodies and interested parties concerned to protect the interests of domestic producers; envisage provision of assistance during the investigation. The above Laws of the Republic of Kazakhstan are developed taking into account Article VI of GATT 1994 and the WTO Agreement on Implementation of Article VI of GATT 1994 (WTO Agreement on anti-dumping); Article XIX of GATT 1994 and the WTO Agreement on Safeguards; Article XVI of GATT 1994 and the WTO Agreement Subsidies and Countervailing Measures.

Question 127

Please provide information on trade remedies applied under these laws since their enactment. Please describe in the text the procedure for investigation, determination, and appeal.

Answer:

Detailed procedures on application of trade remedy measures are described in the Government Resolution "On Rules of Conducting Investigation Prior to Implementing Safeguard, Countervailing and Anti-Dumping Duties" of 9 September 2000 No. 1374. Trade remedy procedures are developed based on the provisions of the respective WTO Agreements. The above Government Resolution will be sent to the Working Party members for their review.

B. EXPORT REGULATIONS

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

Question 128

We have also learned that an export tax on crude oil has recently been introduced in the Tax Code. Could further information on this point be provided in terms of the WTO compliance of this measure.

Answer:

The Republic of Kazakhstan introduced a new tax regime for oil operations designed to increase the Kazakh future share in oil revenue. The new tax regime for oil operations applied only for new contractual obligations and did not have retroactive force.

Taxes were imposed upon subsurface users according to the following two models:

- Licensing; and
- Production Sharing Agreement (PSA).

The first model suggested the payment of the rent tax on the export of crude oil, the tax on the excess profit, the royalties, bonuses as well as all other types of taxes and other mandatory payments established by the Tax Code.

According to the Law "On Changes and Additions to Some Legal Acts of the Republic of Kazakhstan on Taxation Issues" of 29 November 2003, natural and juridical persons exporting crude oil (excluding subsurface users, who signed PCA) should pay the rent tax on the export of crude oil. The rent tax was calculated based on the actual value of the exported volume of crude oil and its market price depending on the quality of crude oil with the deduction of transportation costs. The market price was defined as weighted average price of prevailing sale prices in the world market during the (daily) reporting period in relation to a range of most similar brands of crude oil. The list of similar brands of crude oil was defined by the Government of Kazakhstan. The rent tax rates were established according to the sliding scale starting from 1 per cent at the market price of US\$ 19 per barrel and 33 per cent at the world price of US\$ 40 and above. The tax period for the rent tax represented one calendar month.

The second model suggested the taxation conditions as stipulated in the PSA in accordance with the provisions of the tax legislation applied on the date when the contract was signed. Under this model of taxation, the conditions of the PSA were fixed and could not be changed subsequent to legislation changes without having both parties' agreement.

Question 129

We seek in tabulated form details of all export duties currently maintained. We ask that the table include columns for:

- **the tariff code for the product**
- **the product description**
- **the level of the export duty**
- **all relevant laws, regulations and decisions relating to the measure**
- **date of elimination.**

Answer:

In accordance with the Government Resolution of 5 June 2000 No. 841 the export customs duties were imposed on limited list of goods and such duties were used on the base of MFN, with the exception of goods exporting to the member-countries of Customs Union. Any changes of rates of the export customs duties were subject to official publication. A free trade regime without exemptions was established within the Customs Union between Belarus, Russia, Kyrgyzstan, Tajikistan and Kazakhstan. In this connection, export duties were not applied among member-countries of the Customs Union on listed below goods.

Table 7 - Rates of Customs Duties for Goods Exported from Kazakhstan outside the Customs Union

HS number	Description of Goods *	Rate of Duty (% of customs value or in €)
4101	Raw pelts of cattle or animals of horse family, with hair or without hair, splitting or non-splitting.	20, but not less than 200 € per 1000 kg

HS number	Description of Goods *	Rate of Duty (% of customs value or in €)
4102	Raw pelts of sheep or lambs, wooly or non-wooly, splitting or non-splitting, except excluded according to Note 16 for this group.	€20, but not less than €200 per 1,000 kg
4103	Other raw skins, with hair or without hair, splitting or non-splitting, except excluded by Note 16 or 1B for this group.	€20, but not less than €200 per 1,000 kg
5101- 5104 00 000 0	Un-carded and uncombed wool;	€10, but not less than €50 per 1,000 kg
7204**	Iron-and-steel waste and scrap; ferrous metal ingots for re-melting (charging ingots)	€40, but not less than €35 per 1 tonne
7302	Ferrous metal products, used for railway lines and tram-lines: rails, flange rail and rack rails, switch blades, point frogs, regulating rods and other cross connections, crossties, splice bars and base-plates, wedges, bedplates, hood joint bolts, bad plates and bracing wires, foundation slabs, cross bars and other details for connection and bonding of rails.	€40, but not less than €35 per 1 tonne
7326 90 600 0	Other ventilators, non-mechanical, guttering, hooks and like articles used in the building industry, n.e.s., of iron or steel	€40, but not less than €35 per 1 tonne
7404 00	Copper waste and scrap	€30, but not less than €350 per 1 tonne
7601 - 7616	Secondary unprocessed aluminum and aluminum products.	€15, but not less than €100 per 1 tonne
8607	Parts of locomotives and motor-wags of trams and rolling-stocks.	€40, but not less than €35 per 1 tonne

* The nomenclature of goods is determined both by code and by description of goods.

** Rates of the exported customs duties for the indicated goods were not used in respect of the European Union Countries.

Question 130

The first and second sentences of paragraph 139 imply that export duties have been introduced to displace products that would otherwise have been imported with domestic products ("balance domestic demand", "ensure supply of raw materials to domestic enterprises") or otherwise distort trade. This is unacceptable, and inconsistent with GATT Articles II and XXIII. Discriminatory export duty exemptions inconsistent with GATT Article I that are described in paragraph 140 can also be made WTO consistent through the elimination of export duties. We request that a timetable be set for the elimination of all export duties.

Answer:

Application of export duties was unacceptable, and inconsistent with GATT Article II and XXIII, and that discriminatory export duty exemptions were inconsistent with GATT Article I. They requested a timetable to be set for the elimination of all export duties. Export duties were applied on a very limited number of goods mainly for fiscal purpose and, as such, did not violate provisions of GATT. Export duty exemptions applied only toward the countries within the Customs Union. Moreover, application of export duties were not prohibited by the WTO Agreements.

Question 131

We seek a table with all the export duties by HS number and information on exemptions.

Answer:

In accordance with the Government Resolution of 5 June 2000 No. 841 the export customs duties are imposed on limited list of goods and such duties are used on the base of MFN, with the exception of goods exporting to the member-countries of Customs Union. Any changes of rates of the export customs duties are subject to official publication.

A free trade regime without exemptions was established within the Customs Union between Belarus, Russia, Kyrgyzstan, Tajikistan and Kazakhstan. In this connection, export duties are not applied among member-countries of the Customs Union on listed below goods. Table 7 refers.

Question 132

Is Kazakhstan prepared to apply MFN treatment concerning export duty exemptions on sales of non-ferrous scrap to the EU? On what basis would it not apply MFN in this case?

Answer:

Under the Agreement between the Government of the Republic of Kazakhstan and the European Coal and Steel Community on Trade in Certain Steel Products (Article 2. p.3), quantitative restrictions, customs duties, charges or any similar measures on the export of ferrous scrap and waste under the EC Combined Nomenclature heading 7204 are not applied among the parties. Based on the above-mentioned Agreement, the Government Resolution No. 841 stipulates that customs duties are exempt from the export of ferrous scrap and waste to the European Union member-states. In the case of export duties for non-ferrous metal scrap, the MFN treatment applies toward third parties, except for member-states of the EurAsEC Customs Union.

Question 133

Survey of Foreign Trade Regime (WT/ACC/KAZ/40), p. 25: Please provide updated information on all export duties (including hides and skins and wool; ferrous and non-ferrous scrap and waste), including on any plans to phase out these duties.

Answer:

In accordance with the Government Resolution of 5 June 2000 No. 841 the export customs duties are imposed on limited list of goods and such duties are used on the base of MFN, with the exception of goods exported to the member-countries of the Eurasian Economic Community. Any changes of rates of the export customs duties are subject to official publication.

In accordance with the Agreement on Eurasian Economic Community between the Republic of Belarus, the Russian Federation, the Republic of Kyrgyzstan, the Republic of Tajikistan and the Republic of Kazakhstan, a free trade regime in commodity without exemptions and restrictions was functioning among the member-countries. In this regard, export duties are not imposed on goods exported to the member-countries. The list of such goods is given below:

Export customs duties on a limited number of agricultural goods, including wool, large and small cattle skins, horse, sheep and lamb skins, leather and fleece, are introduced in order to balance the demand, provide processing industry with domestic raw materials, and increase the revenues of the state budget. Such measures therefore do not contradict with paragraph (i) of Article XX of GATT. Export customs duties on ferrous scrap and waste, iron and steel products, copper scrap and waste, unprocessed secondary aluminium, and spare parts of railway and trams are set by the Government Resolutions of 14 November 2000 No.1713, and as of 5 June 2000, No. 841, in order to balance the

needs of the domestic market for ferrous and non-ferrous scrap and waste and to provide raw materials to domestic industries.

Question 134

Paragraph 142: Please confirm that Kazakhstan has eliminated minimum export prices and give the citation of implementing legislation.

Answer:

The Government Resolution No. 994 of 19 July 1997 has eliminated contract registration at the commodity exchange, and the Government of Kazakhstan does not apply minimum export price requirement.

Question 135

We seek in tabulated form details of all minimum export prices. We ask that the table include columns for:

- **the tariff code for the product;**
- **the product description;**
- **the level of the minimum export prices;**
- **all relevant laws, regulations and decisions relating to the measure;**
- **date of elimination; and**
- **All minimum export prices that are currently maintained will need to be eliminated upon accession in order to achieve conformity with GATT Article XI.**

Answer:

The representative of Kazakhstan highlighted that the Republic of Kazakhstan does not use minimum export prices.

- **Export restrictions**

Question 136

It has come to our attention that Kazakhstan regularly imposes seasonal export restrictions for mazut and diesel. Could clarification on this point be provided? In this context, we would also appreciate further information on the different provisions of the Law on Petroleum Products which came into force in July 2003 in terms of their WTO compliance.

Answer:

The restrictions on mazut and diesel export are applied only during spring and autumn harvesting works, which is the period when demand for such products rise among the agricultural goods producers. Nevertheless, the Kazakh Government adopted the decision to impose export duties on mazut and diesel as an alternative to the restriction on export of those products. In order to implement the decision the Ministry of industry and trade is developing a draft Resolution of the Government of Kazakhstan on implementation of export duties on mazut and diesel.

Nonetheless, maintaining such measures appears to be reasonable in regard to emergency situations, foreseen by the Article XI of GATT, which says that "...export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting parties." In this regard, Kazakhstan leaves to itself the decision making on

implementation of temporarily prohibitions as a matter of emergency measure, when export duties can not serve as sufficient barrier to export of these products.

Question 137

WT/ACC/SPEC/KAZ/8, paragraphs 144-149. We would suggest to add further, clear information to this section on the justification of the export licensing requirement for the various categories of goods, including clarification of the terms "economic safety" and "economic security" mentioned in Paragraph 148.

Answer:

At present Kazakhstan does not apply export licensing in terms of "economic safety". In accordance with the Law of the Republic of Kazakhstan as of 17 April 1995 No. 2200 "On Licensing" export licensing is introduced to ensure the national security, environmental protection, protection of human life and health. This measure is in full compliance with Article 21 of GATT.

The list of goods subject to licensing are provided in Annex 5.

According to the Law of the Republic of Kazakhstan "On Licensing", the procedure of issuing licenses both for import and export is the same. The period of processing and issuing a license is not longer than one month, while for small-scale enterprises such procedure takes no more than ten days, in order to support the development of the small-and-medium scale enterprises in Kazakhstan. The standard fee for export license is 6 MCI (Monthly Calculated Index) equivalent to US\$ 404 as of June 2004.

Question 138

Paragraph 143: Does Kazakhstan enforce a ban on covered by HS categories 4401, 4404, 4406-4409, and 4418? If not, an export ban violates Article XI of the GATT.

Answer:

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

Some members of the Working Group asked the representative of Kazakhstan to confirm if Kazakhstan enforced a ban on production of goods covered by HS categories 4401, 4404, 4406-4409, and 4418, and if not, an export ban violated Article XI of the GATT. The representative of Kazakhstan replied that Kazakhstan is a forest-poor country, where only 4.6 per cent of the country's vast territory is covered by forests. The number of illegal lumbering and export of lumber, sawed timber and wood materials reached the level, when a serious threat is made to the nature of the country. Against this background, the Government adopted a Resolution "On Forest Management Related Issues" of 21 November 2003 No. 1163 and No. 785, which introduced export bans for the above forestry products.

Question 139

There are other methods of preventing illegal logging. What are Kazakhstan's plans for eliminating the ban on export of wood products and replacing it with a GATT-compatible program?

Answer:

The applied restriction is a forced measure in order to reduce serious negative environmental impact of massive reductions of national forests. In this regard, the introduction of export ban is justified in the context of point 2 (a) of the Article XI of GATT, which allows export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of food stuffs or other products essential to the exporting party.

Question 140

Does Kazakhstan have or enforce any bans or other quantitative restrictions on ferrous or nonferrous scrap metal? If so, it should be reported in the text, along with the reason for the restriction and its justification.

Answer:

In accordance with the Government Resolution of 5 December 1998 No. 1243, "On Introduction of Export and Import Restrictions for Certain Goods", the following metals are subject to export ban:

HS category	List of Goods
7602 00 110	turnings, cutting waste, debris and wastes of the milling production, sawdust and wastes of cutting; waste of foil with paint with different covering or fastening with width (excluding the base) not more than 0.2 mm.
7602 00 900	Scrap
7604 10 100	Unalloyed aluminium bars
7605	Aluminium wire
7503 00	Nickel waste and scrap

Question 141

Paragraph 144: As Kazakhstan's licensing system covers approximately the same goods for import as for export, why are import licenses non-automatic and export licenses automatic?

Kazakhstan should provide a table listing all its export licensing requirements, by HS number, their justification, fees charged, and the Ministry that issues the license.

Answer:

As in the case of import licensing, export licensing procedures are regulated by the Law of Kazakhstan "On Licensing". According to Article XVII of the Law, licenses are issued within a maximum of a month, for small businesses –within a maximum of ten days from the date of submission of application and all necessary documentation. Hence, export licensing as well as import licensing procedures applied in Kazakhstan were non-automatic. Export licensing rules used in Kazakhstan is provided in Annex 1.

Question 142

What is the WTO justification for licensing of precious stones?

Answer:

Currently the export licensing of precious stones is not provided. The cancellation of this measure was provided for by the Resolution of the Government of the Republic of Kazakhstan "On Amendments of Resolution of the Government of the Republic of Kazakhstan of 30 June 1997 No. 1037" of 29 December 1998 No. 1347 .

Question 143

These sections indicate that a number of export restrictions are maintained (including licensing requirements). We seek in tabulated form details of all export restrictions. We ask that the table include columns for:

- the tariff code for the product;
- the product description;
- a description of the measure, including its purpose;
- the entity (or entities) responsible for applying the measure;
- all laws, regulations and decisions relating to the measure; and
- WTO justification or the date of elimination.

In the context of the proposed table, please indicate whether the licensing is automatic or non-automatic.

Answer:

The representative of Kazakhstan has noted that the requested tables can be found in Annex 3 (the list of regulated services referred to the sphere of natural monopoly in the Republic of Kazakhstan).

Question 144

We request that details of Kazakhstan's policies and requirements on the export of grains be transcribed to the requested table of export restrictions (including with details of dates of/for elimination), not excluding in relation to the following matters:

- any quantitative or other restrictions on the export of grains in general, or to particular countries, that it maintains or has recently maintained, or that are planned;
- any export quotas that it maintains or has recently maintained, or that are planned;
- any requirements relating to the price of exported grains; and
- any permissions/approvals applicable to the export of grains.

Answer:

There are no quantitative or any other restrictions on grain export (as for any other agricultural products). In accordance with the acting legislation of the Republic of Kazakhstan there are no policies or requirements to impose/maintain certain prices on grain for exportation, as well as there are no sanctions/permissions applicable to the export of grain.

The export customs duties for grain had been cancelled in 1996. Export customs duties on a limited number of agricultural goods, including cattle hides or hides of animals of the family Equidae, sheepskins or lambskins, fleece, leather, wool, were introduced in accordance with the Government Resolution of 5 June 2000 No. 841 in order to achieve demand balance, secure supply of raw materials to domestic processing industry enterprises and increase state budget revenue.

In accordance with the Convention on international trade in species of wild flora and fauna that are under the threat of extinction, some flora and fauna species listed in Annexes I, II and III of the Agreement, export of such objects is done based on the permission issued by CITES in Kazakhstan.

- **Export subsidies**

Question 145

Questions and replies (WT/ACC/KAZ/37/Add. 3), Question 28; Survey of Foreign Trade Regime (WT/ACC/KAZ/40), p. 27; WT/ACC/SPEC/KAZ/8, paragraph 156-158: Please clarify further who may benefit from the subsidies for transport costs in the form of discount coefficients – both domestic industry and foreign investors?

Answer:

The decreasing coefficient on tariffs for railway transportation is provided both for the domestic and foreign producers on equal terms.

Question 146

Generally, we encourage Kazakhstan to make a proper subsidy notification for all subsidies granted according to Article 25 ASCM.

Answer:

A standard notification on all subsidies granted in compliance with the provisions of Article are listed through Annexes 6 and 7.

Question 147

Paragraph 150: Please provide more information on the benefits provided for export of nonferrous metals and gold.

Answer:

The Development Bank of Kazakhstan did not provide and, under the present legislation, may not provide export subsidies to its clients. Credit terms for export operations, stipulated by the Law of the Republic of Kazakhstan "Concerning the Development Bank of Kazakhstan" of 25 April 2001 No. 178-II, are standard and do not provide for any benefits. Under Article 16 of the Law, "charter capital of the Development Bank may not be used for crediting purposes". According to the Articles 9 and 13 of the Law, the Development Bank may attract loans solely for an interest rate, with a condition to return on a fixed date, using own assets as a collateral. Therefore, the Development Bank funds its credit operations through borrowing on the domestic and external markets, where the Bank may borrow only under free market rules.

While according to the Article 3, WTO Agreement on Subsidies and Countervailing Measures, provision of export credits at rates lower than those established for the funds used, done by institutions operating under the authority of the Government, is deemed as banned export subsidies, according to the Article 12 of the Law, "the amount of interest rate for loans issued shall be assessed based on average cost of borrowing and operating expenses of the Development Bank". Therefore, the Development Bank is explicitly banned from subsidizing of loan interest rates, in other words, from issuing loans at rates lower than the cost of funds attracted. In this regard, the crediting practices used by the Development Bank shall not be deemed as banned export subsidies.

Question 148

Survey of Foreign Trade Regime (WT/ACC/KAZ/40), p. 26; WT/ACC/SPEC/KAZ/8, paragraph 150.

We would seek further information on all export subsidies currently granted in Kazakhstan. Document WT/ACC/SPEC/KAZ/8 only refers to soft loans for export of non-ferrous products and gold mentioned, on which we would need further detailed information. Please also clarify whether these are indeed the only existing export subsidies and that other measures such as mentioned in the Survey of Foreign Trade Regime are indeed no longer in force.

Answer:

The Development Bank of Kazakhstan issued lax export credits on non-ferrous and golden products, several workgroup members requested detailed information about this type of export subsidies. The Development Bank of Kazakhstan did not provide and, under the present legislation, may not provide export subsidies to its clients. Crediting conditions for export operations, stipulated by the Law of the Republic of Kazakhstan "About the Development Bank of Kazakhstan" as of 25 April 2001 No. 178-II, are standard and do not provide for any benefits. According to the Article 16 of the Law, "charter capital of the Development Bank may not be used for crediting purposes". According to the Articles 9 and 13 of the Law, the Development Bank may attract loans solely for an interest rate, with a condition to return on a fixed date, using own assets as a collateral. Therefore, the Development Bank funds its credit operations through borrowing on the domestic and external markets, where the Bank may borrow only under free market rules.

According to the Article 3, WTO Agreement on Subsidies and Compensation Measures, provision of export credits at rates lower than those established for the funds used, done by institutions operating under the authority of the Government, is deemed as banned export subsidies, explained that, According to the Article 12 of the Law, "the amount of interest rate for loans issued shall be assessed based on average cost of borrowing and operating expenses of the Development Bank". Therefore, the Development Bank is explicitly banned from subsidizing of loan interest rates, in other words, from issuing loans at rates lower than the cost of funds attracted. In this regard, the crediting practices used by the Development Bank shall not be deemed as banned export subsidies.

Question 149

We note that the section on export subsidies has still to be completed. However, we would like to request that Kazakhstan give details of any prohibited export subsidies currently provided. Please specify the products and sectors affected, level of subsidy, and any plans to phase out each of the subsidies.

Answer:

The Development Bank of Kazakhstan did not provide and, under the present legislation, may not provide export subsidies to its clients. Credit terms for export operations, stipulated by the Law of the Republic of Kazakhstan "Concerning the Development Bank of Kazakhstan" of 25 April 2001 No. 178-II, are standard and do not provide for any benefits. Under Article 16 of the Law, "charter capital of the Development Bank may not be used for crediting purposes". According to the Articles 9 and 13 of the Law, the Development Bank may attract loans solely for an interest rate, with a condition to return on a fixed date, using own assets as a collateral. Therefore, the Development Bank funds its credit operations through borrowing on the domestic and external markets, where the Bank may borrow only under free market rules.

While according to the Article 3, WTO Agreement on Subsidies and Countervailing Measures, provision of export credits at rates lower than those established for the funds used, done by institutions operating under the authority of the Government, is deemed as banned export subsidies, according to the Article 12 of the Law, "the amount of interest rate for loans issued shall be assessed based on average cost of borrowing and operating expenses of the Development Bank". Therefore, the Development Bank is explicitly banned from subsidizing of loan interest rates, in other words, from issuing loans at rates lower than the cost of funds attracted. In this regard, the crediting practices used by the Development Bank shall not be deemed as banned export subsidies.

Question 150

Does Kazakhstan have any export performance requirements, e.g., in free trade zones, or any import duty drawback schemes?

Answer:

The Republic of Kazakhstan does not grant any preferences conditional to export performance requirement and does not apply import duty drawbacks.

C. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS

- **Industrial policy, including subsidies**

Question 151

Paragraph 159: Kazakhstan's Factual Summary lists the tax exemptions granted under the Law on State Support to Direct Investment.

It is our understanding from previous submissions that, pursuant to Article 7 of this law, enterprises that invest in amounts less than US\$ 10 million in priority sectors of the economy receive standard tax benefits for a limited period of time depending on the sector of the economy and the amount of such investments.

Article 5 of this legislation states that one of its goals is the "development of export-oriented and import-replacing production" (WT/ACC/KAZ/10, Attachment A). To the extent that these incentives are contingent upon export or import substitution, they could constitute a prohibited export subsidy under Article 3.1 of the WTO Subsidies Agreement.

Could you please provide more information regarding the specific income tax exemption granted under Kazakhstan's Law on State Support to Direct Investment?

Please explain how, and in what sectors, the goal of the "development of export-oriented production" is achieved.

Could you please explain whether incentives provided through this program are contingent on the use of domestic over imported products? If so, please explain how Kazakhstan plans to eliminate or bring this program into compliance with WTO provisions.

Answer:

The Law "On Investments" of 8 January 2003 No. 373 (WT/ACC/KAZ/42 refers) has invalidated the Law "On Foreign Investments" of 27 December 1994 No. 266-XIII and the Law "On State Support of Foreign Investments" of 28 February 1997 No. 75-I. The Law "On Investments" does not contain a

requirement regarding the volume of investments to be made in order to be eligible for investment preferences.

The Law "On Investments" does not contain any provision that makes investment incentives contingent upon export or import substitution, therefore, investment incentives can not constitute prohibited export subsidies under Article 3.1 of the WTO Agreement on Subsidies and Countervailing Measures. According to Article 11 of the Law "On Investments", the Government of Kazakhstan introduced investment preferences with the objective to create a favourable investment climate for diversification of economic development of Kazakhstan, attract investments for establishment of new and expansion/modernization of existing production facilities, technological advancement and innovative development, and creation of new jobs.

Investment tax preferences include: a) the corporate income tax preferences; b) the property tax preferences; c) the land tax preferences. The corporate income tax preferences entitle the taxpayer to gradually deduct from the aggregate annual income the cost of the commissioned fixed assets in equal parts throughout the term of the preferential treatment. Pursuant to the effective legislation, the 30 per cent corporate income tax is assessed on the taxable income of taxpayers - legal entities, as adjusted, less the losses incurred. The duration of the investment tax preferences depends on the volume of investments made into fixed assets, the maximum term can not exceed five years.

Question 152

Paragraph 158: The Factual Summary states, with regard to Kazakhstan's transportation subsidy program, that "according to the decree No. 24-OD, the procedure of granting discount coefficients [is] not contingent on export performance of companies and [applies] to transportation of goods for both domestic consumption and export."

Could you please explain whether any other industries receive this type of subsidy?

Answer:

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

The list of goods transported in 2002 using discount coefficients for 2002 and for 2003 are listed in Annex 6 and 7. In 2003, decreasing coefficients did also apply to distribution of electric power by OJSC "KEGOC" (Annex 8).

Question 153

Could you please provide the Working Party a copy of Decree No. 24-OD "On Establishing the Rules on Introduction and Cancellation of Discount Coefficients to the Tariffs on Transportation by Railroad, Subject to State Regulation."

Answer:

The text of the Order of the Chairman of the Anti-Monopoly Agency "On Adoption of Rules for Introduction and Discontinuation of Decreasing Coefficients for Tariffs on Regulated Rail Freight" of 30 September 1999, No. 24-OD is available through document WT/ACC/KAZ/50/Add.1.

Question 154

According to earlier submissions from Kazakhstan, it appears that the government provides support to the steel company, Ispat-Karmet, in the form of freight rate discounts on the transportation of exports (WT/ACC/KAZ/37, response to question 18).

To the extent that these rate discounts are contingent upon export, they could constitute a prohibited export subsidy under Article 3.1 of the WTO Subsidies Agreement.

Answer:

The practice of granting discounts for railway cargo transportation for individual companies was discontinued since the enactment of the Rules on Introduction of Discount Coefficients for Railway Transportation Tariffs as of 30 September 1999.

Question 155

Could you please explain what is meant by the term "0.8 decreasing rate?"

Answer:

"0.8 decreasing coefficient" meant a 20 per cent railway tariff discount.

Question 156

Please also explain whether any other companies receive this type of subsidy.

If this program is in fact contingent upon export performance, please explain how Kazakhstan plans to eliminate or bring this program into compliance with WTO provisions.

Answer:

The main criteria of expediency of the establishment of discount coefficients were the maintenance of tax payments to the budget, attraction of transport flows, increasing transport flows, possibility of using unutilised or under-utilised sections, ecological danger of by-product of industrial production. The discount coefficients were applied under the condition that the client did not have debt accounts receivable or if they were settled in accordance with the adopted schedule, and under the condition of increasing (or maintaining) the volume of transport flows in comparison with the previous period. The discount coefficients represented temporary measure and were established for limited periods of time. The criteria of expediency for cancellation of discount coefficients were economic inefficiency of further application of the discount coefficients for the state and/or the transport company or disparity with the main criteria.

Therefore, the practice granting discount coefficients could not be considered as prohibited export subsidies within the meaning of Article 3 of the WTO Agreement on Subsidies and Countervailing Measures and Article XVI of the GATT 1994.

Question 157

Earlier submissions from Kazakhstan (e.g., WT/ACC/KAZ/6/Add.2 in the response to Question 84) state that preferential loans are provided to certain industries for export promotion or import substitution purposes.

To the extent that these loans are contingent upon export or import substitution (i.e., benefits contingent upon the use of domestic, rather than imported goods), they could constitute a prohibited subsidy under Article 3.1 of the WTO Subsidies Agreement.

Please explain what institution (public or private) provides these loans and which industries make use of these loans.

Please provide information regarding the terms and conditions attached to the loans and explain how these terms and conditions differ from those attached to commercial branch (i.e., non-preferential) loans.

Please also explain whether the loans provided under this program are contingent upon the use of domestic over imported products. If so, please explain how Kazakhstan plans to eliminate or bring this program into compliance with WTO provisions.

Answer:

In accordance with the Presidential Decree of 16 July 1994 No. 1815, the main functions of the Export-Import Bank of Kazakhstan (Eximbank) included: (i) mobilization and administration of foreign loans under state guarantee; and (ii) financing companies of Kazakhstan with the aim to stimulate import of technology, equipment and other essential products for implementation of structural reforms in the real sector of Kazakhstan's economy. Eximbank was a public bank, which performed the functions of a development bank, i.e., provided soft loans for financing investment projects implemented in various sectors in line with the economic priorities of the Government of Kazakhstan.

Eximbank was financing the investment projects for the duration of three to five years; under the interest rate – 6 per cent and with the grace period of two to three years. The uniform terms and conditions were applied by the Eximbank independently on the types of beneficiary enterprises and on export or domestic market orientation of their products. The key criteria used for determination of the investment project was based on whether the beneficiary company invested into restructuring of existing and building of new high added value added industries, but not on whether the company's products were export oriented or served for import substitution. .

Question 158

According to earlier submissions (e.g., the response to Question 10 of WT/ACC/KAZ/37/Add.1) Kazakhstan provides tax exemptions to exporters of yellow phosphorus, ground phosphate rock and phosphate fertilizer. It is unclear whether these tax exemptions are in conformity with Article 3 of the WTO Subsidies Agreement.

Please provide more information regarding the nature of these tax breaks and preferences.

Could you also explain whether these tax preferences are contingent upon the export of the above mentioned products? If so, please explain how Kazakhstan plans to eliminate or bring this program into compliance with WTO provisions.

Answer:

"Kazphosphat", Ltd. receives corporate income tax, property and land taxes preferences under the terms granted for investment projects implemented in priority sectors of the economy in accordance with the Law of Kazakhstan "On Investments". The criteria used for granting tax preferences includes: (a) the investment activity of the company is included into the Governments list of priority sectors; (b) investments are made with the purpose of building a new or modernization of existing

production facilities; and (c) application and all other submitted documents prove financial, technical and management capacity of the company for implementation of the given investment project. Kazakhstan assures that the criteria used for granting tax preferences does not violate provisions of Article III of the ASCM.

- **Technical barriers to trade**

Question 159

Paragraph 166: Please confirm that Kazakhstan's standardization system recognizes that all mandatory technical regulations, whether termed "standards" or not, must meet WTO criteria to be applied consistently with WTO provisions. Please confirm that non-mandatory requirements are "standards".

What has Kazakhstan done to eliminate mandatory national "standards" in place at the time the new laws were enacted that do not meet WTO criteria as a technical regulation? How many such hold-over mandatory requirements remain unreviewed? Please indicate, in the text of the factual summary, Kazakhstan's plans for addressing these holdover requirements?

Answer:

In the present state standardization system of the Republic of Kazakhstan "standard" includes both compulsory and recommended requirements. Thereby, under the Law of RK "On Standardization", the following requirements of the state standards are mandatory: requirements for safety of products, processes (work), services, environment protection, life, health and property of citizens, requirements for ensuring technical and informational compatibility, products interchangeability, unity in methods of their control and unity in marking. The other standards' requirements are recommended, including the ones ensuring product quality consumer characteristics.

The main principles of state standardization are based on the requirements stipulated in WTO Agreement on TBT and reflect consent, openness, voluntarism, setting forth equal standardization requirements for local and foreign manufacturers and suppliers. Normative standardization documents shall not be technical barriers on production and trade with other countries. The requirements set in standardization normative documents must be based on the achievements in science, engineering and technology, and shall not contradict the laws of the republic, requirements of international, regional, and national standards of other countries, rules and recommendations on standardization. In development of standardization normative documents, international technical regulations, standards or their complete drafts must be used except for the cases when they fail to meet requirements for safety of life and health of people, environment protection and technical regulations existing in the Republic of Kazakhstan.

If no international standards are applicable at the phase of a standardization normative document development or the state standard under development fails to meet international requirements, notices shall be published in mass media (web-site) or specialized publications of the authorized body (the Gosstandart) about the development of such standards and about the differences in the technical content of standards, an annotation for discussion, making comments and proposals by interested parties.

The State standard of the Republic of Kazakhstan (ST RK 1.2-2002) regulated the detailed order of state standards development, alteration, and cancellation. Under this standard the period of standards consideration and comments preparation by organizations located in the republic, shall not exceed one month since the date of their receipt, and for countries that are trade partners to Kazakhstan, 60 days since placing the standards on the web-site of the Gosstandart.

Normative standardization documents shall not be technical barriers on production and trade with other countries

In order to bring the national system of technical regulation into conformity with the international practice, at present Kazakhstan is developing draft law "On Technical Regulation" aimed at further harmonization of the existed legislation with the requirements of WTO Agreement on TBT.

The draft law concluded the following approaches based on the WTO Agreement on TBT:

- mandatory requirements will be included into technical regulations, whereas the (state, interstate, and company) standards requirements would be made as recommended of voluntary nature.
- technical regulations will be developed and applied for the purpose to: (i) ensure that products and processes were harmless for the life and health of people and environment, including life and health of animals and plants; (ii) ensure national security; (iii) prevent actions misleading consumers; (iv) remove technical barriers in trade as required in Article 2.2 of WTO Agreement on TBT;
- technical regulation will be applied on the principle of equal requirements to local and imported products and conformity procedures;
- the technical regulations' requirements to products (services) and processes (work) will be set and applied uniformly regardless of the country and (or) place of origin of the products (services) as required in Article 2.1 of WTO Agreement on TBT;
- state standards will be applied equally, on optional basis, and regardless of the place of origin of products as required by the Code of Good Practice concerning preparation, approving, and application of standards;
- norms and standards of international organizations will be used as basis for development of technical regulations and standards as required in provisions 2.4 and 5.4 of the Code of Good Practice concerning WTO Agreement on TBT's standards preparation, approving, and application; and
- legal support will provided by the single Enquiry Point open for all interested parties and providing information about the technical regulations, standards, and conformity procedures in effect and under development as well as about membership and participation of Kazakhstan in international and regional standardization bodies and conformity evaluation systems, and other information stipulated in Article 10 of the WTO Agreement on TBT.

It is planned to adopt the document "On Technical Regulation" by the end of 2004 and to completely move to the technical regulation system that meets international practice requirements. During the next few years, it is planned to divide existing standards into mandatory technical regulations and voluntary standards, and to proceed with harmonization of national technical regulations and standards with international technical regulations and standards.

- Sanitary and phytosanitary measures

Question 160

Please describe the provisions and operation of any agreements or institutions that exist within the Customs Union or other preferential agreements with Russia, Belarus, Kyrgyz Republic and Tajikistan concerning sanitary and phytosanitary measures.

Answer:

The Republic of Kazakhstan is a party to a number of agreements on sanitary and phytosanitary measures in the framework of the EurAsian Economic Community (EurAsEC), among which

members were the Russian Federation, the Republic of Kazakhstan, Belarus, the Republic of Kyrgyzstan, and Tajikistan; as well as under the Commonwealth of Independent States (CIS), to which the Russian Federation, the Republic of Kazakhstan, Belarus, the Republic of Kyrgyzstan, and Tajikistan are members too.

- Agreement on technical, medicine, pharmaceutical, sanitary, veterinary, and phytosanitary norms, rules and requirements concerning the goods imported from countries-members of the Commonwealth of Independent States of 28 September 2001: the countries-participants agreed to apply the following uniform medicine, pharmaceutical, sanitary, veterinary, and phytosanitary norms, rules and requirements concerning the goods imported from the CIS countries.
- Agreement on cooperation in sanitary protection of the territories of the CIS countries of 31 May 2001: The countries-participants agreed to mutually accept permits issued by the national state sanitary-epidemiological services confirming hygienic testing of exported goods from one country-participant to the Agreement to the territory of another country-participant.
- Agreement on cooperation in veterinary of 12 March 1993: Among the participants to the Agreement are the CIS countries and Baltic countries. That Agreement provides for development, signing and application of uniform Rules for State Veterinary Control of International and Interstate Transportation of Animals; as well as permission for import of goods that were under veterinary control and originated from a country-participant to the Agreement with veterinary certificates attached issued by veterinary services of countries-participants to the Agreement. For that no special veterinary permission is required for the transit within territories of the countries-members to the Agreement.
- Uniform Veterinary-Sanitary Requirements for Import of Wild Animals, Meat, Meat Products, and Other Animal Products in CIS was approved by the Intergovernmental Council of CIS Countries on Cooperation in Veterinary on 6 April 2000. The veterinary services of CIS countries applied uniform rules for import of wild animals, meat, meat products, and other animal products, including 36 items in total.
- Uniform Veterinary Requirement for Import of Animals, Animal Raw Materials, and Other Goods Subject to State Veterinary Control into the territory of the Eurasian Economic Community countries was approved by the Resolution of the Interstate Council of the Eurasian Economic Community of 27 February 2004 No 161. The veterinary services of EurAsEC countries (Russian Federation, Kazakhstan, Belarus, the Republic of Kyrgyzstan and Tajikistan) shall apply provisions of those uniform veterinary requirements.
- Agreement on Cooperation in Plants Quarantine of 13 November 1992 was approved in the field of plants quarantine the CIS countries the. The Provisions of the Agreement stipulates application of uniform quarantine rules for import, export, and transit of the goods under quarantine being transported between countries-participants to the Agreement; each export or transit delivery of the goods under quarantine between the countries-participants to the Agreement shall be enclosed a phytosanitary certificate. Countries-participants of 8th conference on plants quarantine of the CIS and Baltic countries held on 27-28 October 1999 made a resolution stipulating that quarantine services shall request Import Quarantine Permits only for seeds and planting material originating the CIS countries.

Question 161

We do not believe that a seven year transition will be necessary for Kazakhstan to fully implement the SPS Agreement, and in the absence of much more precise information to justify any sort of transition to full implementation, we will seek full compliance upon accession.

Answer:

Kazakhstan will submit a phase-by-phase Plan of Measures for the next three to four years to harmonize the existing system of sanitary-epidemiological welfare of the population, veterinary, and plants quarantine with the Agreement on SPM. According to that Plan, Kazakhstan will change the length of the transitional period sought by it.

Question 162

Questions and replies (WT/ACC/KAZ/37/Add. 3), Question 44: WT/ACC/SPEC/KAZ/8, paragraph 177: The suggested transitional period of seven years is definitely too long. Generally, in order to assess whether any transitional period could be accorded, Kazakhstan will have to justify the need very carefully with a detailed Action Plan, specifying each step to be taken, and the timeframe within which it will be accomplished.

Answer:

Kazakhstan will submit a detailed stage by stage Action Plan for the next three years needed to harmonize the existing system of sanitary-epidemiological welfare of the population, veterinary, and plants quarantine with the requirements of the SPS Agreement. Transitional period is needed in order to smoothly harmonize the existing Kazakh sanitary and phytosanitary rules and regulations with the international standards as well as to upgrade the outdated laboratory equipment carry out training of the necessary personnel.

By the end of 2004, the Government plans to introduce a number of amendments to the Law "On Sanitary-Epidemiological Welfare of the Population". In particular, such key principles of the SPS agreement as transparency, non-discrimination, risk evaluation, scientific proof, equivalency, etc. will be duly reflected in the anticipated amendments to the relevant legislation.

- **Trade-related investment measures**

Question 163

Questions and replies (WT/ACC/KAZ/37/Add. 3), Questions 46, 51; WT/ACC/SPEC/KAZ/8, paragraph 180: In the information provided by Kazakhstan, the previously suggested ten year transitional period for TRIMs as concerns the energy sector is no longer explicitly mentioned; reference is only made to a "sufficient period of time". Has Kazakhstan reviewed its position? Generally, in order to assess whether any transitional period could be accorded, Kazakhstan will have to justify the need very carefully with a detailed Action Plan, specifying each step to be taken, and the timeframe within which it will be accomplished. Please also provide further information on the planned steps to improve the inconsistent provisions of the implementing regulations mentioned.

Answer:

The Government launched an industrial innovation program for the period of 2003-2015, which was aimed at boosting the real sector of the economy through implementing innovative industrial projects, ensuring a strong linkage between Research and Development and industrial sector, and building high-tech production facilities, all of which required a sufficient transition period to bring the national legislation into conformity with the provisions of the TRIMs Agreement. Diversification of the economy and reduction of its vulnerability to volatile prices of mineral resources on international markets constituted also the rationale behind the investment preferences granted by the government of Kazakhstan to both foreign and domestic companies investing into non-oil sectors. Therefore, preferences given to local producers and service suppliers under equal conditions constituted an

integral part of the comprehensive reform program launched by the government of Kazakhstan with the purpose of ensuring sustainable economic growth in the country.

The Government of Kazakhstan will develop a detailed action plan for the period requested for joining the TRIMs agreement.

Question 164

Paragraph 178: According to the Factual Summary, Kazakhstan's Law "Concerning the Subsurface and its Utilisation" of 27 January 1996 and the Law "On Oil" of 28 June 1995 require the use of domestically produced products and services.

To the extent that these benefits are contingent upon export or import substitution (i.e., benefits contingent upon the use of domestic, rather than imported goods), they could constitute prohibited subsidies under Article 3.1 of the WTO Subsidies Agreement.

Could you please explain whether firms receive incentives contingent upon using domestically produced equipment, supplies, and services in their operations? If so, please explain how Kazakhstan plans to eliminate or bring this program into compliance with WTO provisions.

Answer:

The legislation of Kazakhstan requires the use of domestically produced products and services provided that they meet the standards and other requirements as a result of the bidding process. Both national and foreign companies were equally entitled to participate in the bidding process.

The structure of industrial production is dominated by extraction and processing of hydrocarbon and mineral products, which provided the bulk of receipts to the Republican budget. The oil sector is the most attractive for both foreign and local investors, and forecasts show that the volume of foreign investments to oil production keep increasing, while other sectors remain underdeveloped. Hence, in order to ensure rational restructuring of the subsurface use, the government introduced the above mentioned provisions in its legislation with the view to achieve sustainable economic development through diversification of the national economy and reduction of the economy's heavy dependence on mineral resources, creation of an environment conducive to development of processing industries and production of high value added goods. Preferences are given to local producers of goods and local suppliers of services having everything equal, e.g., provided that they meet fully all requirements set in the bidding process by investors. Due to this, there is no discriminatory element against imported goods and services.

The Government of the Republic of Kazakhstan is developing a detailed action plan for the period requested for joining the TRIMs agreement

Question 165

We seek full details of all local content requirements applied in relation to the mining and energy sector, including:

- **their legal basis;**
- **the nature of the local content provisions;**
- **the entities responsible for administering them;**
- **their current scope of application; and**
- **plans to eliminate them in order to achieve conformity with the TRIMs Agreement upon accession.**

Answer:

The legislation of Kazakhstan required the use of domestically produced products and services provided that they meet the standards and other requirements as a result of the bidding process. Both national and foreign companies were equally entitled to participate in the bidding process.

Hence, in order to ensure rational restructuring of the subsurface use, the government introduced the above mentioned provisions in its legislation with the view to achieve sustainable economic development through diversification of the national economy and reduction of the economy's heavy dependence on mineral resources, creation of an environment conducive to development of processing industries and production of high value added goods. Preferences are given to local producers of goods and local suppliers of services having everything equal, e.g., provided that they meet fully all requirements set in the bidding process by investors. Due to this, there is no discriminatory element against imported goods and services.

Question 166

Has the Law on Production Sharing Agreements been enacted? If not, where is it at in the legislative process? If it has been enacted, please provide a description of any provisions that are inconsistent with the TRIMs Agreement including, e.g., any local content requirements.

Answer:

The Draft Law of the Republic of Kazakhstan "On Production Sharing Agreements" has entered into force.

- **State-trading entities**

Question 167

We look forward to Kazakhstan's draft notification pursuant to GATT Article XVII and the Understanding on that Article, and the transcription as appropriate of relevant information in respect of importation to the requested table of non-tariff measures and relevant information in respect of exportation to the requested table of export restrictions.

Answer:

The Republic of Kazakhstan will analyze the enterprises whose activity can be covered by Article XVII of GATT and will submit the notification on state trade enterprises existing in Kazakhstan to the WTO Secretariat.

- **Free zones, special economic areas**

Question 168

WT/ACC/KAZ/34/Rev.3: This document mentions changes in the Law on Special Economic Zones. Are these already available in English?

Answer:

The requested Law of the Republic of Kazakhstan "On Special Economic Zones in the Republic of Kazakhstan" dated 26 January 1996 No. 2823 with the amendments made by the laws of the Republic of Kazakhstan dated 5 July 2001 and 4 December 2003 is available from the Secretariat through document WT/ACC/KAZ/50/Add.1.

Question 169

WT/ACC/SPEC/KAZ/8, paragraphs 182-187: Eventually, we will seek commitment from Kazakhstan that it will fully respect Article 3 ASCM and also refrain in the future from imposing any export requirements for either subsidy programmes or advantages linked to establishing in a SEZ?

Answer:

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

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

The Decree "On Special Economic Zones in the Republic of Kazakhstan" and other legislative acts did not provide special preferences due to export performance of companies in special economic zones. Attracting investment, modern technology, and know-how to these zones are considered as the primary means to ensure that the accomplishment of objectives set by creating special economic zones. To this end, the Tax Code of the Republic of Kazakhstan stipulates exemptions from the payment of land tax and property tax levied on fixed assets, and a reduced rate of the corporate income tax (50 per cent) applicable to entities engaged in the following activities in special economic zones:

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

The special economic zone "Aktau Seaport" was created to facilitate socio-economic development of the region through building high-tech industry, attracting new investments, creating new jobs and introducing modern administration and economic management methods. The legislation on the establishment of the SEZ "Aktau Seaport" grants only duty free regime for goods imported for the needs of the SEZ. The Tax Code stipulates the special tax regime, that provides the tax reduction of corporate income tax up to 100 per cent and land and property tax exemption, for enterprises that operated within the special economic zone " Aktau Seaport".

The legislation of Kazakhstan on special economic zones did contain a provision that granted special contingent on export orientation and/or import substitution of enterprises. A new special economic zone "Park of Information Technologies" (PIT) is built in order to diversify the economy through production of information technologies and utilization of scientific and technical innovation capacity of the country. The Government grants VAT and land-tax exemption, and reduction of corporate income tax up to 50 per cent for companies providing the following types of services within the SEZ:

- projection, development and implementation of software and hardware production projects;
- development of new information technologies using artificial immune and neuron systems;
- conducting R&D and experimental high-tech development projects.

Pursuant to Chapter 30 of the Customs Code of Kazakhstan, "free customs zone" mean the customs regime, under which foreign and Kazakh goods are placed and used within the relevant territorial borders of a special economic zone exempt from customs duties and taxes, except for excise on imported goods, and without non-tariff regulatory measures being applied to them, except for requirements regarding safety of goods.

Question 170

WT/ACC/KAZ/34/Rev.3: This document mentions changes in the Law on Special Economic Zones. Are these already available in English?

Answer:

The requested Law of the Republic of Kazakhstan "On Special Economic Zones in the Republic of Kazakhstan" dated 26 January 1996 No. 2823 with the amendments made by the laws of the Republic of Kazakhstan dated 5 July 2001 and 4 December 2003, is available from the Secretariat through document WT/ACC/KAZ/50/Add.1.

Question 171

Is the listing of benefits offered exhaustive? Please confirm that goods exported from the zones abroad are not subject to restoration of the exempted taxes or any export duties.

When goods produced in the zones are sold into the rest of Kazakhstan, however, what sort of tariff/tax treatment do they experience?

Answer:

The Republic of Kazakhstan has the special economic zones: "Astana – new city", "Seaport Aktau" and "Park of Informational technologies", established by the Decrees of the President of Kazakhstan No. 645 of 29 June 2001 for a five-year-term from 2002-2007 and No. 853 of 26 April 2002 for a four-year-term from 2003-2007 and No. 1166 dated 18 August 2003 for the ten - years period correspondingly. Issues on establishment, legal regulation, and operation of special economic zones is covered by the Decree of the President of the Republic of Kazakhstan No. 2823 of 26 January 1996 "On Special Economic Zones in the Republic of Kazakhstan", Customs and Tax Codes of the Republic of Kazakhstan and other legislative acts of the Republic of Kazakhstan.

The Law of the Republic of Kazakhstan, "On special economic zones in the Republic of Kazakhstan", and other legislative acts do not provide special preferences due to export performance of companies in special economic zones. Attracting investment, modern technology, and know-how to these zones are considered as the primary means to ensure that the accomplishment of objectives set by creating

special economic zones. To this end, the Tax Code of the Republic of Kazakhstan stipulates exemptions from the payment of land tax and property tax levied on fixed assets, and a reduced rate of the corporate income tax (50 per cent) applicable to entities engaged in the following activities in special economic zones:

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

Pursuant to Chapter 30 of the Customs Code of the Republic of Kazakhstan, "free customs zone" shall mean the customs regime under which foreign and Kazakh goods are placed and used within the relevant territorial borders of a special economic zone exempt from customs duties and taxes, except for excise on imported goods, and without non-tariff regulatory measures being applied to them, except for requirements regarding safety of goods.

In this regard charging of customs duties and taxes, and the application of non-tariff regulatory measures are as follows:

- When foreign goods are placed under the free customs zone customs regime, customs duties and taxes shall not be charged, except for excise on imported goods, and non-tariff regulatory measures shall not be applied, except for requirements regarding safety of goods. When exporting these goods from the territory of special economic zones to the rest of the customs territory of the Republic of Kazakhstan, customs duties and taxes shall be charged, and non-tariff regulatory measures shall be applied, in compliance with the terms of the declared customs regime.
 - When Kazakh goods are imported onto the territory of special economic zones from the rest of the customs territory of the Republic of Kazakhstan, in compliance with the terms and requirements of the free customs zone customs regime, as well as when they are exported from the territory of a special economic zone to the rest of the customs territory of the Republic of Kazakhstan, customs duties and taxes shall not be charged, and non-tariff regulatory measures shall not be applied. These goods shall be exported outside the customs territory of the Republic of Kazakhstan in compliance with the terms of the selected customs regime.
 - Goods that are placed under the free customs zone customs regime on the territory of the special economic zone, shall be considered as being outside the customs territory of the Republic of Kazakhstan for the purpose of levying of customs payments and taxes.
 - A certificate of origin shall confirm goods as having originated from the territory of special economic zones. When such a certificate is not available, the goods shall be regarded:
 - i. when exported outside the Republic of Kazakhstan - as Kazakh goods, for the purposes of charging export customs duties and the application of non-tariff regulatory measures; and
 - ii. when imported onto the rest of the customs territory of the Republic of Kazakhstan - as foreign goods for the purposes of charging import customs duties and taxes, and the application of non-tariff regulatory measures.
- **Government procurement**

Question 172

Questions and replies (WT/ACC/KAZ/37/Add.3), Question 52; WT/ACC/SPEC/KAZ/8, paragraph 191: We strongly encourage Kazakhstan to undertake to join the GPA.

Answer:

Taking into consideration the voluntary nature of the Agreement, the Republic of Kazakhstan intends to start negotiations on joining the Agreement on Government Procurement after its accession to WTO.

Question 173

We urge positive consideration of joining the Government Procurement Agreement in the context of WTO Accession.

Answer:

The Republic of Kazakhstan does not plan to join to the WTO Agreement on Government Procurement taking into consideration the voluntary nature of the Agreement. Kazakhstan intends to consider the opportunity of accession to the Agreement on Government Procurement after its joining to the WTO.

- Transit

Question 174

Kazakhstan should provide information (including the legal citation) on how traders that establish a bond for goods in transit may redeem it.

Answer:

In accordance with Article 345 of the Customs Code, a deposit is refunded provided that commitments required by the deposit are fulfilled.

The customs authority upon the written request of the payer must refund the deposit within a period of time not to exceed ten working days from the day when the request was received. A request for the refund of a deposit is submitted to the customs authority after the commitment was fulfilled, but not later than five years following the date of fulfilment. A deposit must be refunded by the customs authority to the account of which the deposit amount was paid or, in case of dissolution of the customs authority, by its legal assignee. The deposit must be refunded to the payer's bank account in the currency of payment. The deposit must be refunded to a payer with deduction of debts with regard to customs duties, taxes and penalties in compliance with the procedures set forth in Article 351 of the Customs Code. The refund of a deposit must not entail a refund of interest, the amounts must not be indexed, and bank fees must be recovered at the expense of deposit funds. Upon the payer's request, the deposit may be accounted for future customs payments and taxes or for guarantee of payment of customs payments and taxes under another commitment to the customs authorities.

Property security are refunded when a security is:

- in the disposal of the depositor from the date of fulfilment of the commitments;
- in the disposal of the customs authority not later than five days from the date of fulfilment of the commitments; and
- Refund under the bank guarantee shall be done not later than five days from the date of fulfilment of the commitment. Security on insurance shall cease not later than five working days from the date of fulfilment of the commitments.

Question 175

WT/ACC/SPEC/KAZ/8, paragraphs 192-193: Please provide more detailed information on the transit fees.

Answer:

Goods in transit across the territory of the country are exempt from customs charges and fees, VAT, and excise taxes. Kazakhstan allowed free transit to reflect provisions of GATT 1994 Article V, as well as of the international treaties to which it was a party. The only charge applied to transit of goods was levied for transportation services, and as such was limited to cover solely administrative costs or costs of services provided.

Fees and duties for goods transportation by the railway transport are collected in accordance with the "Rate policy of the Republic of Kazakhstan for the goods transportation in international communication for 2004". In accordance with the Decree the Government of the Republic of Kazakhstan No. 62 dated 19 January 2002 "On some issues regulating the movements of vehicles on the territory of Kazakhstan" and with the Government of the Republic of Kazakhstan Decree No. 1306 dated 24 December 2003 rate of transit duty for the foreign vehicles that transport cargoes in the international communication is fixed at the rate of ten Monthly Calculation Indexes.

Fees for cargo transit shipment in the seaports of Kazakhstan are collected in accordance with the Decree of the Chairman of the Agency of Kazakhstan for Regulation of Natural Monopolies, Protection of Competition and Support of Small Business of 24 December 2003 No. 320-OD. Decreasing coefficients did not apply to tariffs of transit cargoes and payments were collected without any special preferences. For air transit cargo transportation through the territory of the Republic of Kazakhstan, fees and duties were not charged.

Under the Customs Code of Kazakhstan, certain types of imported goods listed in the Resolution of the Government can only transit the customs territory of Kazakhstan provided that there is a guarantee of payment of all chargeable customs duties and taxes. Under the Government Resolution No. 524 of 4 June 2003, the above mentioned types of imported goods include alcohol and brands of alcoholic products, cigars and tobacco. As stipulated in the Article 339 of the Customs Code, payment of customs duties and taxes may be guaranteed in one of the following forms: (i) bonds, (ii) bank guarantee letter, (iii) deposit on the deposit account of the customs body; and (iv) insurance contract. Procedures applied by customs bodies to enforce payment of customs duties and taxes were defined in the Order of the Customs Control Agency of Kazakhstan No. 199 of 13 May 2003 "On Adoption of Procedures of Customs Bodies to Enforce Payment of Customs Duties and Taxes".

Question 176

From information provided in paragraph 126 (origin), it appears that some products are not allowed to transit via the Kazakh customs territory because of their origin and national dispositions. Which types of product are concerned and of what origin? What are the reasons for this?

Answer:

According to Article 42 of the Customs Code of Kazakhstan, a customs authority can deny the release of goods in the event that the goods originate in a country whose goods are prohibited for importation into Kazakhstan, in compliance with the national legislation or international agreements to which Kazakhstan is a signatory. Such denial by a customs authority must be presented in the written form.

In accordance with the Government Resolution of 10 July 2003 "On ban imposed for goods and vehicles imported to the territory of the Republic of Kazakhstan and exported from its territory that are prohibited to be located under special customs regimes, and the bans and limitations for conducting operations with goods under special custom regimes" adopted further to Articles 8, 125, 142, 153, 165, 175, 182, 240 of the Customs Code, the following goods are prohibited to be imported to the customs territory of Kazakhstan: (i) arms of all types of military sample and ammunition to it, weapons of mass destruction; (ii) drugs, psychotropic and precursors, and the means for their use; and (iii) printed and illustrative materials popularizing war, terrorism, violence, racism and the pornographic materials.

The list of goods which are subject to export prohibitions included: (i) arms of all types of military sample and ammunition to it, weapons of mass destruction; (ii) drugs, psychotropic and precursors, and the means for their use; (iii) works of art, antiquities and other items of art, historic, scientific and cultural value; (iv) species of flora and fauna, recorded into the Red Book and saiga horns; and (v) annulled securities.

Question 177

Kazakhstan should provide information (including the legal citation) on how traders that establish a bond for goods in transit may redeem it.

Answer:

In accordance with the clause 8 of the Article 345 of the Tax Code the deposit returning is fulfilled in cases when the redeem is:

- at depositor disposal from the date of duty discharge; or
 - at the custom authority disposal and not later than after five working days from the date of duty discharge.
- **Agricultural policies**

Question 178

Paragraph 198: Kazakhstan's Factual Summary describes preferential credits provided to the agricultural industry by the State Eximbank. It is our understanding from previous Kazakh submissions that similar preferential internal loans are provided through the State Eximbank to several industries including power engineering, metallurgy, machine-building, light and construction materials (see, response to Question 84 of WT/ACC/KAZ/6/Add.2). One of the stated criteria of this program is to "meet the main objectives of priority sectors of the economy."

Could you please explain why the State Eximbank is involved in internal lending?

Answer:

In concord with the Presidential Decree of 16 July 1994 No. 1815 principal functions of Eximbank includes:

- attracting as a borrower and supporting as an agent of the Republic of Kazakhstan foreign loans received and guaranteed by the Republic of Kazakhstan; and
- crediting Kazakh companies with the aim to stimulate import of technology, equipment and products necessary for the implementation of structural reforms and development of import substitution productions.

Given complex economic situation and the needs of the country in credit resources and investments major sources of internal crediting in 1995-1996 used to be foreign loans and credits attracted under the guarantee of the Government of the Republic of Kazakhstan. External borrowings had been done for the purpose of internal crediting by way of distributing them between priority economy sectors. In connection with this there appeared a necessity to concentrate management of these credit resources by some relevant financial institution, whose function would be to attract as a borrower and support as an agent of the Republic of Kazakhstan foreign loans received and guaranteed by the Republic of Kazakhstan, specifically – by the Eximbank of Kazakhstan.

Thus, Eximbank being a public bank set up for the purpose of implementation of structural-investment policy of the Republic of Kazakhstan performed the functions of a development bank, i.e., provided internal soft loans under investment project for different economy sectors in line with the priorities determined by the Government of the Republic of Kazakhstan.

Question 179

Please also explain whether the priority sectors that are targeted by this program are export-oriented.

Answer:

The current list of priority activities is approved by the Governmental Resolution "On Some Issues of Enforcing the Law "On Investments" of 8 May 2003 No. 436, comprises 233 kinds of such activities.

In accordance with the Law "On Investments" the authorized state agency may grant an investor, on contractual terms, the following investment preferences:

- investment tax preferences;
- exemption from customs duties; and
- state grants in-kind.

Question 180

We also ask that you specify and explain the terms and conditions of any lending for export by the Eximbank of Kazakhstan.

Answer:

Eximbank was an agent for foreign loans and credits, attracted under the guarantee of the Government of the Republic of Kazakhstan. The terms and conditions, under which they had been granted, were the following: term - three to five years; mean interest rate – 6 per cent; grace period - two to three years.

Question 181

Do the terms and conditions vary by industry or sector and are they specific to the market in which the Kazakh exports are sold?

Answer:

Preferential credits through the State Eximbank, state guarantees for foreign loans, and preferential loans through the Fund in support of agricultural small and medium-size businesses are used to subsidize the agricultural sector. These tools are used to strengthen reforms in the agricultural sector and implement a single medium-term investment policy. A set of criteria used for competitive

selection of investment projects includes: (i) the compliance of investment projects with restructuring goals in the agriculture sector; (ii) creation of competitive markets for agricultural commodities; (iii) use of modern machinery and technologies, and (iv) economic viability of projects. The selection of investment projects for financing by Eximbank is not contingent upon export performance of companies. The terms and conditions applied by Eximbank are the same across sectors and industries, and are not specific to the markets in which the exports of agricultural products were sold.

Crediting terms and conditions did not differ depending upon industry or sector and no specialization existed depending upon export focus or market sales.

TRADE-RELATED INTELLECTUAL PROPERTY REGIME

- General

- Industrial property protection

Question 182

We have specific requests for further information/legislation, e.g., the new Trademark Law, and additional TRIPS related questions.

Once we receive the new information/draft legislation, and response to additional questions, we can make a complete and final TRIPS compliance assessment.

Answer:

On 9 July 2004 the Law of the Republic of Kazakhstan "On Changes and Amendments to Legislative Acts of the Republic of Kazakhstan on Intellectual Property" introduced a number of modifications to the Law "On Copyright and Related Rights", including the introduction of retroactive protection procedures. The draft law is available from the Secretariat through document WT/ACC/KAZ/50/Add.1.

Question 183

In the interim, we urge Kazakhstan to amend its Copyright Law to bring it into compliance with TRIPS and its longstanding bilateral obligations and to follow through on the initiative to ratify The WIPO Copyright Treaty, which has been submitted to the parliament.

Answer:

In April 2004 Kazakhstan passed new laws on accession to WIPO's agreements on copyright, performances, and phonograms.

Question 184

Kazakhstan should also swiftly complete its efforts to enact amendments to the Criminal Code and the Customs Code to bring its enforcement measures into compliance with TRIPS.

Answer:

Kazakhstan is preparing amendments and addenda to the current criminal and administrative legislation concerning enforcement of measures for infringement of intellectual property rights and illegal use of copyright.

Question 185

Generally, updated information on the effective implementation of all TRIPS-related legislation would be appreciated.

Answer:

In April 2004 the Republic of Kazakhstan joined the WIPO Agreements on Copyright, Performances and Phonograms.

On 9 July 2004 the Law of the Republic of Kazakhstan "On Changes and Amendments to Legislative Acts of the Republic of Kazakhstan on Intellectual Property" introducing a number of modifications to the Law "On Copyright and Related Rights", including the introduction of retroactive protection procedures, was approved.

Question 186

In WT/ACC/KAZ/41 of May 2003, Kazakhstan mentions a Draft Law that provides for several changes in Kazakhstan's laws protecting intellectual property. Has this Draft Law been enacted? If not, when do you expect it will be passed into law? Could Kazakhstan provide us a copy of the law?

Answer:

On 9 July 2004 the Law of the Republic of Kazakhstan "On Changes and Amendments to Legislative Acts of the Republic of Kazakhstan on Intellectual Property" introducing a number of modifications to the Law "On Copyright and Related Rights", including the introduction of retroactive protection procedures, has been approved. The Draft of this Law is available from the Secretariat through document WT/ACC/KAZ/50/Add.1.

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

Question 187

In response to Question 86 in document WT/ACC/KAZ/37/Add.3 regarding the compatibility of Kazakhstan's law with Paris Convention Article 3, Kazakhstan explained that the Constitution provided the same rights to foreign and stateless individuals as to Kazakhstan citizens. Later in the same response, however, Kazakhstan noted that under the Patent Law of 1999, there might be exceptions to this provision. Please explain these exceptions and how they are consistent with Paris Convention Article 3 as well as with TRIPS Article 3 on National Treatment.

Answer:

In accordance with Article 12(4) of the Constitution foreigners and stateless persons enjoy the rights and freedoms of, and are subject to the obligations stipulated for, the citizens of the Republic of Kazakhstan. According to Article 4 of the Law "On Normative Legal Acts" of 24 March 1998, the Constitution of the Republic of Kazakhstan has the supreme legal power in the Republic.

- **Substantive Standards of Protection, Including Procedures for the Acquisition and Maintenance of Intellectual Property Rights**
- **Copyright and related rights**

Question 188

Kazakhstan is not TRIPS compliant in the area of copyrights. Kazakhstan's Law on Copyright and Neighbouring Rights (10 June 1996) does not contain a provision that clearly provides for the protection of pre-existing works and sound recordings as required under Article 18 of the Berne Convention.

Answer:

On 9 July 2004 the Law of the Republic of Kazakhstan "On Changes and Amendments to Legislative Acts of the Republic of Kazakhstan on Intellectual Property" introducing a number of modifications to the Law "On Copyright and Related Rights", including the introduction of retroactive protection procedures, is approved. The Draft of this Law is available from the Secretariat through document WT/ACC/KAZ/50/Add.1.

Question 189

TRIPS Article 9 requires WTO Members to comply with Berne Articles 1-21. In addition, penalties for copyright piracy may not be adequate to compensate the copyright holder for injuries suffered as the result of infringement as required under TRIPS Article 45.

Answer:

Preparations to enact amendments and addenda to the existing administrative and criminal legislation are being made so as to reinforce the penalties for violations of intellectual property rights.

Question 190

Kazakhstan stated that it has developed a draft law "On Changes and Amendments to Legislative Acts of The Republic of Kazakhstan on Intellectual Property." (Item 215, WT/ACC/SPEC/KAZ/8) Please provide a copy of the draft legislation. What is the anticipated timetable for adoption of these amendments? In particular, what provisions in the draft law address the protection of pre-existing works and sound recordings as required under the Berne and TRIPS Agreements? What is the proposed term of protection?

Answer:

On 9 July 2004 the Law of the Republic of Kazakhstan "On Changes and Amendments to Legislative Acts of the Republic of Kazakhstan on Intellectual Property" introducing a number of modifications to the Law "On Copyright and Related Rights", including the introduction of retroactive protection procedures, is approved. The Draft of this Law is available through document WT/ACC/KAZ/50/Add.1.

- Trademarks, including service marks
- Geographical Indications, including appellations of origin

Question 191

Are trademarks and geographical indications in Kazakhstan solely protected under the "Law of the Republic of Kazakhstan on Trademarks, Service Marks and Appellations of Origin," (hereinafter, The Law) No. 456-I LRK, of 26 July 1999? Are there any supplemental or implementing regulations in addition to the 1999 law? In its submission of answers to the Working Party on the Accession of the Kazakhstan, document (WT/ACC/KAZ/37/Add.3), the Government of Kazakhstan made reference in Question 72 to "The Rules for Drafting and Filing of Applications for Registration of Trademarks of 8 October 1996 (hereinafter, the Rules)."

Please provide copies of all laws and regulations, including The Rules, relating to the protection and enforcement of trademarks and geographical indications for review.

Answer:

In order to ensure legal protection of trademarks, the Rules for Filing and Submission of Application for Registration of a Trademark dated 8 October 1996 and the Rules for Processing of Application for Registration of a Trademark dated 8 October 1996 (available from the Secretariat through document WT/ACC/KAZ/50/Add.1) were developed.

Question 192

The Synoptic Table on Legislation on the Republic Kazakhstan found in WTO Document WT/ACC/KAZ/41 indicates that a new Draft Law has been developed to harmonize the national legislation with the requirements set out in the international treaties and agreements (specifically TRIPS), regulating mechanisms of protection of intellectual property rights. The Draft Law provides for a number of changes and amendments to the Laws of the Republic of Kazakhstan "On Trademarks, Service Marks, and Appellations of Origin." The WTO document indicates that this new law will be submitted to the Parliament of Kazakhstan in June of this year. A copy of the draft law would be helpful to determine if the trademark and geographical indications regime of Kazakhstan is consistent with WTO norms. Please provide a copy of the draft law for review.

Answer:

The Draft of the Law of the Republic of Kazakhstan "On Changes and Amendments to Legislative Acts of the Republic of Kazakhstan on Intellectual Property" approved on 9 July 2004 is available from the Secretariat through document WT/ACC/KAZ/50/Add.1.

Question 193

Article 21 of the Law states that a "trademark assignment contract or license contract shall be done in writing and registered in Kazpatent, and in the absence of such writing and registration, the contract shall be deemed null and void." The comments that the United States has received from trademark owners raise questions about the value of requiring license recordals. Recordation of licenses is not a requirement in the United States. Among the concerns expressed by trademark owners are the following: recordation involves significant expense, when multiplied over many countries; failure to record can result in loss of rights – even to obvious counterfeiters; and that failure to record can actually be used by counterfeiters

and others as a means to prevent the true owner from asserting rights. For these reasons, we would like to know why mandatory license recordal, particularly as it affects the rights of legitimate trademark owners, is considered to be desirable.

Answer:

According to amendments provided by the Law "On Changes and Amendments to Legislative Acts of the Republic of Kazakhstan on Intellectual Property" licensing and assignment agreements must be registered with the Committee for Intellectual Property Rights. It is necessary to register such agreements with the Committee. Compulsory registration of agreements enables the Committee to regulate contractual relations between the parties. Official registration of agreements with the Committee implies that the rights of a person, to whom the exclusive rights for industrial property are assigned, must not be infringed in any way, if the other party wanted to further make any changes in the agreement made, and that such changes must only be made by court's decision.

Question 194

Moreover, in a previous question submitted asking Kazakhstan to confirm that a trademark maybe assigned with or without the goodwill of a company, an answer to the question was not provided. The question is posed again to Kazakhstan. Please note that Paris Convention Article 6^{quater} requires transfer of a trademark along with the goodwill.

Answer:

Assigning the rights for a trademark entails cession of the trademark itself, used with certain products or services production, and the business reputation gained by the trademark during its use in any sphere.

Question 195

In what way does the law of Kazakhstan preserve the rights of trademark owners, consistent with Articles 16(1) and 24(5) of the TRIPS Agreement? It is unclear whether trademarks in Kazakhstan would be protected from confusingly similar and later in time geographical indications.

Answer:

The Law "On Trademarks, Service Marks and Appellations of Origin" prohibited registration of such designations as trademarks, which are identical to or confusingly similar to designations that are applied for registration with earlier priority in the name of other person and for related goods and services. That Law also stipulates that persons shall respond under the laws of the Republic of Kazakhstan for illegal use of a protected trademark for the related goods, thus violating the above Law.

Question 196

It is unclear from the response given to Question 75 in WTO document WT/ACC/KAZ/37/Add.3 whether foreign geographical indications are protected in Kazakhstan. Specifically, what procedures are in place for the interested parties or owners of third-country geographical indications to prevent the use of foreign geographical indications?

Answer:

In accordance Article 48 of the Law "On Trademarks, Service Marks and Appellations of Origin," foreign persons and legal entities enjoy the rights and observe the obligations stipulated in that Law on an equal basis with persons and legal entities of the Republic of Kazakhstan. Thus, a geographical indication registered in the Republic of Kazakhstan and protected by Kazakhstan's laws or by international treaties and agreements, to which Kazakhstan is a party, is protected on the same terms as the one registered by a national of Kazakhstan.

- **Industrial designs**

Question 197

Kazakhstan's Patent Law of 1999, Article 8(1) requires an industrial design to be "industrially applicable." This appears to be inconsistent with TRIPS Article 25(1), which only requires an industrial design to be novel or original and, if provided for in the national legislation, to require an inventive step. Please clarify.

Answer:

The rights for industrial designs are regulated by the Patent Law of the Republic of Kazakhstan and are certified by preliminary patents and patents if the applied industrial design meets the patentability requirements: novelty, originality, and industrial application (in accordance with Article 25(1) of the WTO TRIPS Agreement).

Since industrial designs as well as utility models are objects of industrial property, the national laws provide for the requirement of "industrial application" as one of the conditions of industrial design patentability.

Question 198

Please explain what types of designs fall within the exception to patentability for "solutions that relate to . . . industrial, hydraulic and other stationary structures."

Answer:

Industrial, waterworks, and other stationary buildings are not recognized as industrial designs because they do not meet the criteria of "industrial application" and are subject to copyright.

Question 199

Please explain how Kazakhstan's law is consistent with TRIPS Article 25(2).

Answer:

Article 8 of the Patent Law, which provides that "artistic-design solution determining the exterior of a product falls into the category of an industrial design," also applies to textile goods since they are a type of industrial design (meeting the requirement of Article 25(2) of the WTO TRIPS Agreement).

- **Patents**

Question 200

In response to Question 86 in document WT/ACC/KAZ/37/Add.3 regarding the exclusion from patentability for "proposals that are contrary to the public interest, humanitarian principles or morality," Kazakhstan explained that this "implements" TRIPS Article 27(2). As noted in Question 86, however, the language used is broader than the permissible exceptions provided in TRIPS Article 27(2). Please explain how the exclusion is consistent with TRIPS Article 27(2).

Answer:

The provisions of the Patent Law requiring exclusion from category of inventions products and proposals that are contrary to the public interest and humanitarian principles and morality, do not provide for any discriminatory terms and meet the requirements of Article 27(2) of the WTO TRIPS Agreement.

Question 201

Kazakhstan's Patent Law of 1999 also exempts from patentability "methods of economic organization and management" and "computer programs." TRIPS Article 27(1) prohibits discrimination in the granting of patents on the basis of technology. Please explain how the above-identified exclusions are consistent with TRIPS Article 27(1).

Answer:

Computer programs and algorithms as such are subject to copyright legal protection under the Civil Code and the Law "On Copyright and Related Rights."

Question 202

Is the list of patentable subject matter in Article 6(2) of the Patent Law of 1999 intended to be exhaustive, or are plants, animals and surgical, therapeutic and diagnostic methods patentable in Kazakhstan?

Answer:

The list provided by the Patent Law is exhaustive. Surgical, therapeutic and diagnostic methods can be protected as copyright objects under the Patent Law.

Question 203

Please explain in detail how the compulsory licensing provisions in Articles 11(3) and 11(4) of the Patent Law of 1999 comply with each of the requirements of TRIPS Article 31(a)-(l) regarding compulsory licenses.

Answer:

In accordance with Article 12 of the Patent Law the following are not considered to be a violation of the exclusive right of a patent holder: application of means containing a protected patent holder exclusive right to objects of industrial property, contained in the structure of or used for operation of (sea, river, air, land, and space) vehicles of other countries, provided that the said vehicles were in the territory of the Republic of Kazakhstan temporarily or by accident and the objects were used for the needs of the vehicle; making a research or an experiment on an object containing a protected subject

matter of industrial property; application of such means in emergency situations (natural and other disasters, major accidents) with immediate notification of the patent holder and subsequent payment of the correspondent compensation to the patent holder; application of such means for personal needs without a commercial purpose; as for medicines, a one-time preparation of medicine pursuant to a doctor's prescription. The aforementioned provisions meet the requirements of Article 31 (a)-(k) of the WTO TRIPS Agreement. As for the requirements of Article 31(1) of the WTO TRIPS Agreement, the representative of Kazakhstan noted that there are no definitions of "the first patent" and "the second patent" in Kazakhstan.

Question 204

Please explain the exception to exclusive rights provided in Article 12(6) of the Patent Law of 1999.

Answer:

Application of means containing protected subject matters of industrial property are not considered to violate the exclusive right of the patent holder, provided that such means have been utilized, for instance, by an Assignment Agreement.

Question 205

How does the Patent Law of 1999 comply with TRIPS Article 34 requiring a reversal of the burden of proof in civil proceedings concerning the infringement of a process patent?

Answer:

In accordance with the Civil Code every party is responsible for proving its own claims and statements. Other persons involved in the process can provide evidence too.

Question 206

Can the requirement that a patented invention be used, as provided in Article 11(3) of the Patent Law of 1999, be satisfied by importation of the invention into Kazakhstan? If not, please explain how this practice is consistent with TRIPS Article 27(1), which prohibits discrimination on the basis of whether the invention is produced locally or imported.

Answer:

In accordance with Article 11(2) of the Patent Law the following falls under the definition of "a use of an industrial property object": the manufacture, use, import, offer for sale, sale, or other way of marketing of a protected industrial property or storage for that purpose, as well as application of the protected method. Thus, import of an invention implies its use too, thereby meeting the requirement of Article 27(1) of the WTO TRIPS Agreement.

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

Question 207

In its response to Question 90 in document WT/ACC/KAZ/37/Add.3 on the protection of undisclosed information, Kazakhstan identified Articles 34 and 15 of the Patent Law of 1999 as satisfying its requirements under TRIPS Article 39(3). Article 15, however, does not mention undisclosed information, and Article 34 applies only to the disclosure of information related to "intellectual property subject matter," which is defined in Article 1(5) as the "results of

intellectual creative activity." This definition does not appear to extend to the protection of "test or other data, the origination of which involves considerable effort." Please explain how Kazakhstan's law is consistent with TRIPS Article 39(3).

Answer:

In accordance with Article 34 of the Patent Law, disclosure of the industrial property without the authorization of the author or the applicant before publication of information about the industrial property entails responsibility under the laws.

Article 15(1) of that Law stipulates that a person or a legal entity that infringes the rights of a patent holder by disclosure without the authorization of the patent owner of commercial secret information concerning the sort or breed for which the application was filed, shall respond in accordance with the law (Article 15(3) of the Law "On Protection of Selection Achievements").

Confidential data or other information which is required by Kazakhstan in the process of approving the marketing or sale of chemical, pharmaceutical, or agricultural products is also protected and, as such, this complies with Article 39(3) of the WTO TRIPS Agreement. Employees of ministries and other State agencies who disclose protected information are held administratively responsible, and the Ministries and other State agencies which employed the individual making such an unauthorized disclosure, are also held liable for the employee's unauthorized action.

Question 208

How does Kazakhstan's law implement the requirements of TRIPS Articles 39(1) and 39(2)?

Answer:

Article 126 of the Civil Code of the Republic of Kazakhstan provides for the protection of information of real or commercial value under the civil legislation, provided that it is unknown to third parties, that confidentiality is strictly preserved, and that the free access to such information is denied on a legal basis. Thus, corresponding provisions of the Civil Code implement requirements of Article 39(2) of the WTO TRIPS Agreement.

- **Enforcement**
 - **Civil judicial procedures and remedies**

Question 209

The following questions pertain to Question 85 of WT/ACC/KAZ/37/Add.3: Please describe the manner in which the law of the Republic of Kazakhstan complies with TRIPS Article 43 (1) requiring that judicial authorities shall have the authority, where a party has presented reasonably available evidence sufficient to support its claim and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing party, to order that this evidence be produced by the opposing party, subject in appropriate cases to conditions which ensure the protection of confidential information.

Answer:

According to Article 66(4) of the Civil Code, in cases when both parties and other persons involved in the process had problems with submission of evidence, the court could assist them in obtaining the necessary evidence upon their request. If necessary, the court can provide the requesting party with an official letter of request for obtaining such evidence. Moreover, Article 74(1) of the Civil Code

stipulates that in cases when a person is afraid that he or she will not be able to obtain necessary evidence later, they can request securing of evidence.

Question 210

Please explain the manner in which the law of the Republic of Kazakhstan complies with TRIPS Article 45(1) requiring that the judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of the person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

Answer:

In accordance with the civil, administrative, and criminal legislation of Kazakhstan, the court has the authority to recover from the violator damages incurred by the right holder.

Question 211

Please explain the manner in which the law of the Republic of Kazakhstan complies with TRIPS Article 45(2) requiring the judicial authorities shall have the authority to order the infringer to pay the right holder expenses, which may include appropriate attorney's fees.

Answer:

In accordance with Article 111 of the Civil Code, the court can order the unsuccessful party to compensate the successful party for his attorneys' costs in the amount actually incurred by the successful party. In money claims that sum can not exceed 10 per cent of the cost of the claim sustained. In a case where the legal support is free for the party, the court can order the unsuccessful party to pay the mentioned costs to the legal aid agency which appointed the lawyer or to the lawyer.

Question 212

Please explain whether the law of the Republic of Kazakhstan provides for the recovery of profits and/or pre-established damages under TRIPS Article 45(2).

Answer:

Articles 9 and 917 of the Civil Code, which stipulates that a person whose rights have been violated can demand complete recovery of losses, unless otherwise provided by law or contract. The violator should provide complete recovery of the damage caused by his or her act or omission to the property or non-property rights and goods of citizens or legal entities.

Question 213

Please explain whether the law of the Republic of Kazakhstan provides judicial authorities with the authority to order goods found to be infringing and materials and implements the predominant use of which has been in the creation of the infringing goods to be disposed of outside the channels of commerce in a manner to avoid harm to the right holder under TRIPS Article 46.

Answer:

Article 49 of the Law "On Copyright and Related Rights," in accordance with which a judge can order seizure and withdrawal of all copies of works and phonograms that are suspected of being counterfeit,

as well as all materials and equipment designated for their production and reproduction. Counterfeit copies of works or phonograms can be transferred to the copyright or related right holder upon his request, or shall be destroyed by the resolution of the court. The materials and the equipment used for their reproduction shall be destroyed or made the property of the state by the resolution of the court. In accordance with the Law "On Trademarks, Service Marks, and Appellations of Origin" (Article 44), a person illegally using a trademark or appellation of origin or using a confusingly similar designation, shall destroy the images of the trademark or of the appellation of origin and shall remove it from the product, its packaging, blank forms and other documents. If this requirement is impossible to comply with, the relevant goods shall be destroyed in the procedure provided by the legislation of the Republic of Kazakhstan. The Patent Law stipulates that a patent holder also has the right to demand cessation of the violation of the title of protection and to seize the products to be put in circulation or being stored which are recognized as violating the title of protection, and the means designated specifically for violation of the title of protection (Article 15).

Question 214

Please explain the manner in which the law of the Republic of Kazakhstan complies with TRIPS Article 48 requiring that judicial authorities shall have the authority to order a party at whose request measures were taken and who has abused enforcement procedures to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse.

Answer:

Articles 9 and 917 of the Civil Code, which stipulates that a person whose rights have been violated can demand complete recovery of losses, unless otherwise provided by law or contract. The violator should provide complete recovery of the damage caused by his or her act or omission to the property or non-property rights and goods of citizens or legal entities.

- **Provisional measures**

Question 215

Request for Additional Information. TRIPS Article 50(2) provides that members are obligated to provide judicial authorities the authority to grant provisional measures ex parte. Under Article 61 members shall provide for criminal procedures and penalties to be applied at least in cases of wilful copyright piracy on a commercial scale. Please indicate how the Republic of Kazakhstan provides for such ex parte relief in civil cases and criminal procedures and penalties.

Answer:

Civil legislation of the Republic of Kazakhstan and the Law "On Copyright and Related Rights," implementing provisions of Article 50 of the WTO TRIPS Agreement, provides judges with the power to take the following measures at the request of the claimant or upon their own initiative:

- to arrest the defendant's property;
- to prohibit a defendant from taking certain actions including sale of goods bearing a trademark belonging to the complainant;
- to prohibit other persons from transferring property to the defendant or from fulfilling other commitments with regard to the defendant;
- to suspend sales of property in case of a suit to free the property from seizure;
- to suspend a contested act issued by a governmental body, organization or official person;
- and

- to suspend recovery made in accordance with an executive document, if the debtor contested this document.

Question 216

Please explain the manner in which the law of the Republic of Kazakhstan complies with TRIPS Article 50 relating to provisional measures and providing judicial authorities the authority to adopt provisional measures ex parte.

Answer:

Civil legislation of the Republic of Kazakhstan and the Law "On Copyright and Related Rights," implementing provisions of Article 50 of the WTO TRIPS Agreement, provide judges with the power to take the following measures at the request of the claimant or upon their own initiative:

- to arrest the defendant's property;
 - to prohibit a defendant from taking certain actions including sale of goods bearing a trademark belonging to the complainant;
 - to prohibit other persons from transferring property to the defendant or from fulfilling other commitments with regard to the defendant;
 - to suspend sales of property in case of a suit to free the property from seizure;
 - to suspend a contested act issued by a governmental body, organization or official person; and
 - to suspend recovery made in accordance with an executive document, if the debtor contests this document.
- **Special border measures**

Question 217

With regard to border measures, Articles 51-59 provide for obligations of members relating to effective border enforcement. Can a copy of the draft Code Customs be provided?

Answer:

The Customs Code was submitted by Kazakhstan in document WT/ACC/KAZ/39/Rev.1.

Question 218

The response relating to border measures and the ability of rights holders to inspect detained merchandise under TRIPS Article 57 and obtain information does not clearly indicate that the right holder may inspect detained goods or provided information regarding the importer. Please clarify. If current law does not provide for these actions, are amendments to the law contemplated?

Answer:

In accordance with Article 418 of the Customs Code the customs body provides the applicant or its representative with the right to take samples of the goods that are suspended on the suspicion of being counterfeit, under the customs supervision, and to make an investigation. Moreover, besides informing the applicant about the signs of counterfeit goods to be suspended, the customs body is to provide the name and address of the declarer (Article 416 of the Customs Code).

Question 219

The following question pertains to Question 91 in WT/ACC/KAZ/37/Add.3.

Please clarify whether under the current or draft Customs Code, enforcement action will be taken relating to the exportation of infringing goods or the in transit movement of such goods.

Answer:

Article 416 of the Customs Code provides the customs bodies with the authority to suspend release of the goods containing intellectual property. If in the process of customs clearing of the goods containing intellectual property registered in the Customs Registry, customs bodies discover any signs that the goods are counterfeit, then the release of such goods may be suspended.

- **Criminal procedures**

Question 220

Please explain the provisions under the law of the Republic of Kazakhstan relating to criminal procedures and penalties for wilful trademark counterfeiting.

Answer:

Under Article 199 of the Criminal Code illegal use of a trademark, service mark, firm name, appellation of origin or other designations of goods (services) for the related goods or services can result in the following if the action was performed repeatedly and resulted in severe damages: fines equal to 200-500 monthly calculation indices, or to the amount of wages or other income received by the convicted party for a period of two to five months; public works for 180 to 240 hours; detention for up to six months; or a prison term of up to two years.

Illegal use of special marking with respect to trademarks and appellations of origin not registered in Kazakhstan can result in the following if the action was performed repeatedly and resulted in severe damages: fines equal to 100-200 monthly calculation indices, or to the amount of wages or other income received by the convicted party for up to two months; public works for 120 to 180 hours; detention for up to three months; or a prison term of up to one year.

Question 221

Kazakhstan has been urged to increase the penalties for copyright piracy and impose penalties that are "sufficient" to act as an effective deterrent to potential pirates and counterfeiters. Kazakhstan responded that current penalties are "sufficiently strict." (Item 217, WT/ACC/SPEC/KAZ/8) Does Kazakhstan's response mean that its current remedies are serving as an "effective deterrent" against widespread copyright piracy? If so, please provide evidence of the deterrent effect.

Answer:

According to Article 49 of the Law "On Copyright and Related Rights," Article 184 of the Criminal Code and Article 129 of the Administrative Offences Code persons infringed copyrights are legally liable.

At the same time Kazakhstan is preparing amendments and addenda to the existing administrative and criminal legislation were in place to reinforce the penalties for violations of intellectual property rights.

POLICIES AFFECTING TRADE IN SERVICES

Question 222

WT/ACC/SPEC/KAZ/8, paragraph 256: Please clarify the content of the provisional measures of state regulation of trade in services.

Answer:

Noting the growing role of services in the national economy, the representative of Kazakhstan emphasized that the existing legislative framework was not adequately developed for services sector. Government of Kazakhstan therefore was actively developing national legislation regulating the services sector, which would help to proceed with further liberalization of services. During the last five years, Kazakhstan achieved certain progress in development of laws regulating services, based on which Kazakhstan undertook commitments for market access on services.

Kazakhstan intends to apply provisional measures of state regulation of trade in services in order to ensure development of competition, based on well-balanced levels of development of the market of services and labour so as to prevent adverse economic and social effects in the national economy. Introduction of the provisional measures of state regulation of trade in services will be carried out in according with the provisions of Articles III, VI, X, XII, XIV and XIV *bis* of GATS and will be limited to those controls and restrictions necessary to achieve their objectives. Procedures for license and authorizations will be operate in the most efficient manner on the basis of transparent criteria for qualification requirement, technical standards, and licensing requirements and will be not constitute unnecessary barriers to trade in services.

Question 223

On individual services sectors, we would seek further information as follows:

- **Distribution services; and**
- **Would Kazakhstan inform us about the existing legislation applicable to retailing, wholesale and commission agents' services?**

Answer:

On 12 April 2004 the Law of the Republic of Kazakhstan "On regulation of Trading Activity in the Republic of Kazakhstan" No. 544, which regulates public attitudes in the sphere of trading activity, establishes principles and organizational bases of its state regulation, is accepted. At present, with a view of realization of this law the development of the drafts normative legislative acts on approving of the rules of realization wholesale, retail and the commission trade is started.

Question 224

What measures is the government taking to ensure non-discrimination of foreign service suppliers?

Answer:

The Government of the Republic of Kazakhstan takes steps on maintenance non discrimination of foreign suppliers of services by inclusion in normative legislative acts of the Republic of Kazakhstan of the provisions regulating the right to foreign legal and natural persons to participate in enterprise activity in the territory of Kazakhstan on equal conditions with domestic suppliers of services.

The further development of legislative base, regulating the services sphere, will be directed on creation of transparent regulatory environment and will promote universal standards of performance and foster professional identity and mobility to the fullest extent compatible with local needs and circumstances and recognize and properly incorporate the legitimate roles and responsibilities of interested parties – public, profession, government, employers – in aspects of standard-setting and administration.

Question 225

Franchising. Would Kazakhstan inform us about the existing legislation applicable to franchising?

Answer:

Interrelations in the sphere of granting franchising in the Republic of Kazakhstan are regulated by the Law of the Republic of Kazakhstan "On the Complex Enterprise License "Franchising" of 24 June 2002 No. 330. This law regulates the attitudes which connected with realization of the complex enterprise license (franchising), defines the contents of the contract of the complex enterprise license and is directed on development and the state support of franchising activity in the Republic of Kazakhstan.

The Law sets the main principles regulating franchise activity in Kazakhstan and provides for protection of information transferred by franchisors to franchisees. Franchise fees and royalties are not dealt with by the Law.

The Law requires all franchise agreements be in writing. No state registration of a franchise agreement is required. However, other Kazakh legislation requires registration with the Committee for Intellectual Property Rights of the licenses for the intellectual property being transferred in connection with a franchise agreement (trademarks, service marks, etc.).

According to the Law, under the franchise agreement, one party (the franchisor) undertakes to grant to the other party (the franchisee) a set of exclusive rights (the franchise), including, in particular, the right to use the trade name of the franchisor, protected commercial information and other objects of the exclusive rights (the trademark, service mark, patent, and the like) in the franchisee's entrepreneurial activity.

The franchise agreement stipulates the use of the franchise, as well as the use of the business reputation and commercial experience of the franchisor, with or without the indication of the territory where such use is permitted, in relation to a defined sphere of activity (sales of goods received from the franchisor or produced by the franchisee, the pursuit of other commercial activities, etc.).

The Law sets forth six specific categories of franchising:

- franchise-workplace (where a franchisor establishes a workplace and transfers it, together with the franchise, to the franchisee who is an individual entrepreneur);
- franchise-enterprise (where a franchisor establishes an enterprise and transfers it, together with the franchise, to the franchisee);
- conversion franchising (where the parties conclude the agreement on the basis of reorganization of structural subdivisions of the enterprise into independent enterprises);
- plural franchising (where the franchisor establishes several enterprises);
- manufacturing franchising (where the franchisor grants to the franchisee the rights to manufacture or manufacture and sell goods (services) marked by his trademark using the materials, technology and equipment of the franchisor or in coordination with the franchisor); and

- trade franchising (where the franchisor grants to the franchisee the right to sell goods (services) marked by his trademark using the marketing methods of the franchisor or in coordination with the franchisor).

The Law introduces the concept of "license brokers". A license broker is a person or legal entity that represents a party during the negotiation and performance of the franchise agreement. A license broker can act on his own behalf and at his own risk, as well as on behalf of the franchisor, the franchisee or other parties involved in the franchising. Despite the name of this activity, a license is not required to be a license broker.

The Law provides special protection of the information that the parties share, both before they enter into a franchise agreement as well as during and after the term of their agreement. These protections go beyond the protections otherwise provided by Kazakh legislation and are likely to be welcomed by prospective franchisors.

Question 226

Would Kazakhstan inform us about the legislation applicable to the following activities and the measures the government is taking to ensure non-discrimination of foreign service suppliers?

Answer:

- Advertising

In the field of advertising activity work on shaping of legislative base is in a stage of perfection. At present, questions of accommodation of advertising and advertising activity are regulated by the following acts:

- Constitutional Law of the Republic of Kazakhstan "On Elections in the Republic of Kazakhstan";
- Tax Code of the Republic of Kazakhstan;
- Decree of the President of the Republic of Kazakhstan, having the force of law "On Medicinal Remedies";
- Law of the Republic of Kazakhstan "On Advertising";
- Law of the Republic of Kazakhstan "On Prophylaxis and Restriction of the Tobacco Smoking";
- Law of the Republic of Kazakhstan "On the Microcredit Organizations";
- Law of the Republic of Kazakhstan "On Mass Media";
- Law of the Republic of Kazakhstan "On Highways";
- Law of the Republic of Kazakhstan "On Physical Training and Sports";
- Law of the Republic of Kazakhstan "On State Regulation of Production and Turnover of Ethyl Alcohol and Alcoholic Products";
- Law of the Republic of Kazakhstan "On Certification";
- Law of the Republic of Kazakhstan "On Narcotics, Psychotropic Substances, Drugs and Measures of Counteraction to their Illegal Circulation and Abusing of them";
- Law of the Republic of Kazakhstan "On Banks and Bank Activity in the Republic of Kazakhstan";
- The Criminal Code of the Republic of Kazakhstan of 16 July 1997 and the Administrative Violations Code of the Republic of Kazakhstan stipulate the responsibility for crimes and the violations connected with infringement of the accommodation of advertising;
- The Law of the Republic of Kazakhstan "On advertising" stipulated that state regulation in the field of advertising is carried out by corresponding state bodies within the limits of their competence, established by the legislation of the Republic Kazakhstan (item 1 of Article 17). Such state bodies are authorized bodies on the questions of highways, public

health services, and also local agencies. But regulation of questions of advertising should be carried out by them within the limits of their competence and cannot cover all spectrum of questions of branch and meet to all new and changing requirements of time. The specified departments can adjust separate questions of accommodation, and also delivery of sanctions to advertising (Article 11 "External (visual) advertising ", (Article 13 "Features of advertising of separate kinds of production ");

- Law "On advertising" stipulated that the basic purposes of state regulation in the field of advertising are: protection of national interests; prevention and suppression of an inadequate advertising, and also the advertising encroaching on public values and the standard norms of morals; protection from unfair competition;
- Technical testing and analysis;
- Engineering-related scientific and technical consulting;
- Translation and interpretation;
- Market research;
- Management consulting;
- Services related to management consulting;
- Maintenance and repair of equipment (excluding transport equipment); and
- Real estate services.

The given sectors of services are regulated by the following laws:

- Patent Law of the Republic of Kazakhstan;
- Law of the Republic of Kazakhstan "On Copyright and Related Rights";
- Law of the Republic of Kazakhstan "On Science";
- Law of the Republic of Kazakhstan "On State Secrets";
- Law of the Republic of Kazakhstan "On Governmental Procurements"; and
- Law of the Republic of Kazakhstan "On Innovative Activity".

Currently, the Republic of Kazakhstan runs a number of reforms of its science and technology and seeks instruments allowing a well-balanced administration of scientific developments.

Given the ongoing transition toward an optimally balanced structure of administration of scientific developments and a gradual shift to profit-oriented objectives, if the Republic of Kazakhstan undertook all commitments required for the accession to the WTO, it would have created a potential threat to the scientific potential of the Republic of Kazakhstan.

Commitments undertaken by the Republic of Kazakhstan on market access in R&D services may be fulfilled solely adjusted by restrictions set out in the acting national legislation on research and development. Thus, Article 26 of the Law of the Republic of Kazakhstan stipulates that funds shall be allocated from the Republican budget for the development of fundamental and high-priority applied research, preservation and enhancement of the scientific potential.

The share of R&D services in the total volume of Kazakh foreign trade remains negligible, though the Republic of Kazakhstan has a considerable potential in this sphere.

The government measures is taking to ensure non-discrimination of foreign service suppliers in the sphere of professional services will be based on promotion the fullest development of the profession commensurate with its potential social contribution and on acknowledgement and appropriately balance interdependent interests.

- Rental and leasing without operators

Leasing attitudes in the Republic of Kazakhstan are regulated by the Law of the Republic of Kazakhstan No. 78-II of 5 July 2000 "On Financial Leasing", and also the norms determining leasing attitudes, included in Civil and Tax codes of the Republic of Kazakhstan.

The basic purposes of the national legislation on leasing are regulation of the relations arising during financial leasing, and mobilization of investments based on leasing activities. The Tax Code stipulated the following preferential terms for development of financial leasing:

- the requirement of obligatory observance of all conditions, including 80-percent term of financial leasing in relation to term of useful service of an assets is excluded, instead of what the minimal validity of the contract of financial leasing in three years is established;
- are exempted from corporate income tax of the sum of the interests, received on financial leasing of the real estate, given for the term of more than three years with the subsequent transfer to the renter;
- at transmission of property in financial leasing the sum of received interests by tenant is exempted from the VAT;
- import of the real estate, transmitted under contracts of financial leasing, which list is established by the resolution of the Government of the Republic of Kazakhstan, is exempted from the VAT. The further realization by the tenant the specified assets also are a subject of exemption from the VAT;
- at transmission of property in returnable leasing, the size of the taxable circulating capital is defined on the basis of the cost of transmitted property, instead of from the size of leasing payments as it is stipulated at other kinds of financial leasing; and
- the payments which connected with the transfer of the real estate on the international financial leasing, except for interests are exempted from income tax at a source of payment. Interests also can be exempted in according with the provisions of the Conventions on Avoidance of the Double Taxation.

- Security and investigation

Legal attitude in the field of investigation and security services in the national legislation in force is regulated by the following basic normative legal acts:

- Decree of the President of the Republic of Kazakhstan, having the force of law, "On Bodies of Internal Affairs of the Republic of Kazakhstan" of 21 December 1995;
- Law of the Republic of Kazakhstan "On Internal Armies of the Ministry of Internal Affairs of the Republic of Kazakhstan" of 23 June 1992;
- Law of the Republic of Kazakhstan "On Operatively Search Activity" of 15 September 1994;
- Law of the Republic of Kazakhstan "On Licensing";
- Law of the Republic of Kazakhstan "On Security of Traffic in the Republic of Kazakhstan" of 15 July 1996;
- Law of the Republic of Kazakhstan "On National Security of the Republic of Kazakhstan" of 26 June 1998;
- Law of the Republic of Kazakhstan "On Struggle Against Corruption" of 2 July 1998;
- Law of the Republic of Kazakhstan "On Narcotics, Psychotropic Substances, Drugs and Measures of Counteraction to their Illegal Circulation and Abusing of them";
- Law of the Republic of Kazakhstan "On the State Control on Turnover of Separate Kinds of the Weapon" of 30 December 1998;
- Law of the Republic of Kazakhstan "On the Order and Conditions of Holding in Custody of Suspected and Accused of Crimes Fulfilment" of 30 March 1999;
- Law of the Republic of Kazakhstan "On Struggle Against Terrorism" of 13 July 1999;

- Law of the Republic of Kazakhstan "On the State Protection of the Persons Participating in Criminal Trial" of 5 July 2000;
- Law of the Republic of Kazakhstan "On Security Activity" of 19 October 2000;
- Criminal Code of the Republic of Kazakhstan;
- Criminal - Remedial Code of the Republic of Kazakhstan of 13 December 1997;
- Criminally Executive Code of the Republic of Kazakhstan of 13 December 1997;
- Administrative Violations Code of the Republic of Kazakhstan;
- Decree of the President of the Republic of Kazakhstan, having the force of law, "On the Order of the Organizations of Carrying out of Peace Assemblies, Meetings, Processions, Pickets and Demonstrations in the Republic of Kazakhstan" of 17 March 1995;
- Decree of the President of the Republic of Kazakhstan, having the force of law, "On a Legal Status of Foreign Citizens in the Republic of Kazakhstan" of 19 June 1995;
- Decree of the President of the Republic of Kazakhstan, having the force of law, "On Order of Consideration of References of Citizens in the Republic of Kazakhstan" of 19 June 1995;
- Decree of the President of the Republic of Kazakhstan, having the force of law, "On Office of Public Prosecutor of the Republic of Kazakhstan" of 21 December 1995; and
- Decree of the Government of the Republic of Kazakhstan "On Order of Service by Persons of Ordinary and Commanding Structure of Bodies of Internal Affairs of the Republic of Kazakhstan" of 27 December 1996.

At present, the sector of investigation and security services of the Republic of Kazakhstan is closed for foreign natural persons and legal entities, legal entities with foreign participation and persons without citizenship.

- Investigation Services (CPC 87301)

This sub-sector is closed for the foreign natural persons and legal entities, the legal entities with foreign participation and persons without citizenship. Under the acting legislation of the Republic of Kazakhstan (Article 84 of the Constitution of the Republic of Kazakhstan; Chapter 8 of the Criminal Code of the Republic of Kazakhstan; Laws of the Republic of Kazakhstan "On National Security Agencies of the Republic of Kazakhstan" and "On Revenue Service of the Republic of Kazakhstan"; Decree of the President of the Republic of Kazakhstan "On Bodies of Internal Affairs of the Republic of Kazakhstan"), investigation powers are granted by the State and may be operated only by specialized public bodies.

- Guard Services (CPC 87305)

Under Article 5 of the Law "On Security Services", the Republic of Kazakhstan is closed for the operation of foreign security agencies. Moreover, foreign legal entities, legal entities with foreign participation, foreign natural persons, and persons without citizenship may not:

- provide any security services;
- establish or acts as founders of private security agencies;
- operate private security agencies under procedures of trust management; and
- establish security units of individual businessmen and legal entities.

- Security consulting services (CPC 87302)

According to Article 14 of the Law of the Republic of Kazakhstan "On Security Services", consulting services and development of recommendations on the acceptable methods of protection from unlawful acts are covered by the licensing requirements and are also closed for foreign participation.

- Alarm monitoring services (CPC 87303)

The Resolution of the Government of the Republic of Kazakhstan No.407 of 5 April 2002 "On Measures for the Implementation of the Law of the Republic of Kazakhstan 'On Security Services'" stipulates that special technical devices allowed for the use in the Republic of Kazakhstan be listed in the Annual Bulletin of the Ministry of Internal Affairs of the Republic of Kazakhstan. The list of special technical devices, adopted by the above Resolution of the Government of the Republic of Kazakhstan, has been developed to prevent low quality equipment or equipment hazardous for human health from being imported into the Republic of Kazakhstan. The list includes alarm systems, access control systems, video control and video surveillance systems, where they are not classified as dual-purpose equipment; weapon detectors, detectors of explosive substances and devices; detectors of radioactive, chemical and other poisonous substances; transmitting systems, including radio channel systems.

To prevent import to the Republic of Kazakhstan of special technical devices not included in the Annual Bulletin of the Ministry of Internal Affairs, the Ministry of Internal Affairs has drafted an Order "On Procedures for the Entry of the Special Technical Security Devices into the Republic of Kazakhstan" jointly with the Agency of Customs Control of the Republic of Kazakhstan.

Under the Decree of the Prime-Minister of the Republic of Kazakhstan No.82-p of 21 June 2002 "On Specific Aspects of Security Services", design, installation, setup and maintenance of the security systems in high-security premises, areas under special protection, or life support facilities protected by the State may be performed only by specialized security units of the bodies of internal affairs or under their control by the entities operating under the licenses issued in accordance with the acting requirements for the relevant type of activities and having the necessary admission level for servicing sites of the above category. This provision does not extend to the sites of the Committee of the National Security, the Ministry of Defence, the Guards of the President of the Republic of Kazakhstan and the Republican Guards.

However, please note that the services may be rendered in the form of consultations and methodological assistance, material and technical aid. Also, where stipulated by the relevant international treaties, representatives of law enforcement bodies of WTO Members may attend investigation and other procedures.

Question 227

Would Kazakhstan inform us about the existing legislation applicable to tour operators, travel agencies, hotels and restaurants? What measures is the government taking to ensure non-discrimination of foreign service suppliers?

Would Kazakhstan inform us about their existing plans to promote the tourism sector, and what measures the government is taking to ensure non-discrimination of foreign service suppliers?

Would Kazakhstan inform us about the existing legislation applicable to tour managers (professionals accompanying groups of tourists in their travel through the country) and tourist guides?

Answer:

Services of travel agencies, hotels and restaurants, excursion bureaus, services of guides (the persons engaged on a professional basis in support of tourist groups on trips on the country) and tour operators services are regulated by the Law of the Republic of Kazakhstan "On Tourist Activity in the Republic of Kazakhstan" of 13 June 2001, the Law of the Republic of Kazakhstan "On Obligatory Insurance of

the Civil-Law Responsibility of Tour Operator and Travel Agent" of 31 December 2003, the Decree of the Government of the Republic of Kazakhstan "On Approving of Rules of Licensing of Tourist Activity" of 14 September 2001 No. 1213, the Decree of the Government of the Republic of Kazakhstan "On Changes and Amendments to the Decree of the Government of the Republic of Kazakhstan No. 1787 of 29 November 2000" of August 2002 No. 888.

- **Trade Agreements**

Question 228

WT/ACC/SPEC/KAZ/8, paragraphs 265-269. Please provide updated information on recent developments, including concerning the Common Economic Space (CES).

Under the bilateral agreements on free trade which Kazakhstan concluded with the CIS countries (excluding Turkmenistan) the goods originating from these countries and imported from them to Kazakhstan are exempt from customs duties, except for a number of goods included in the Schedule of Exemptions. The list of goods originating from CIS countries covered all nomenclature goods, excluding ethyl alcohol (groups 2207 10 000, 2207 20 000, 2208 90 910), vodka (2208 60), cigars, cigarettes (2402), white sugar (1701 99 100). This Schedule is covered by the protocol on exemptions from the free trade environment under bilateral agreements on free trade.

Kazakhstan is a party to a number of agreements with Belarus, Kyrgyzstan, Russia and Tajikistan. To enhance the efforts to build Customs Union, on 10 October 2000 the heads of the Customs Union member states signed the Agreement on Establishment of the Eurasian Economic Community (EAEC), which came into force on 30 May 2001. In accordance with Article 6 of the above Agreement, the stage-by-stage transition to the EAEC common customs tariffs expected to last for five years, starting from the date of signing the above Agreement. This term may be extended by consent of the parties thereto.

The objectives of CES is to develop a common agriculture, transport policies, to introduce common rules and methods of natural monopolies' tariff formation, common competition policy and to create a common system of regulation of activities of natural monopolies (railways, major telecommunication channels, transportation of electric energy, oil and gas).

Pursuant to Article 2 of the Agreement on forming the CES, signed by presidents of the Ukraine, Russia, Belarus and Kazakhstan on 19 September 2003, the first stage of the CES creation focuses on the "formation of a free economic zone without withdrawals and restrictions, based on mutual non-application of anti-dumping, compensation and special protection measures, pursuit of common policy of tariff and non-tariff regulation, common competition rules, use of subsidies and other forms of state support".

Given that these countries are major trading partners for each other, they can use the Uruguay round special safeguard that cannot be applied toward products originating in major trading partners that cannot be applied to products originating in major trading partners can be reconciled with the declaration. Formation of SEC is a stage-by-stage process which expected to take into consideration the different levels of socio- economic reforms taking place in these countries. Therefore, during the first stage, the SEC member-states are developing common trade remedy policies and regulations in line with the relevant agreements of the WTO, which should eventually lead to non-application of anti-dumping, countervailing and import protection measures in the trade between Ukraine, Russia, Kazakhstan and Belarus.

Question 229

Could Kazakhstan please identify the provision of the Agreement on the Formation of a Common Economic Space signed by the Presidents of Ukraine, Russia, Belarus and Kazakhstan in September 2003 where it is declared that the first stage of forming the common economic zone is: "the formation of a free trade zone without exemption or restriction that implies the non-application of antidumping, compensation or special protective measures in mutual trade on the basis of a common policy of tariff and non-tariff regulation, common rules of competition, the application of subsidies and other forms of government support"? Given that these countries are major trading partners for each other, how can claims to the Uruguay Round special agricultural safeguard that could not be applied to products originating in major trading partners be reconciled with such a declaration?

Answer:

Currently special agricultural safeguard is not covered by the provisions of future agreements of the Common Economic Space (CES). The issue of application or non-application of special agricultural safeguard with regard to member-states of the CES will be discussed during negotiations held on CES agreements on the application of safeguard, anti-dumping and countervailing measures in mutual trade and in trade with third countries. In this respect the results of the negotiations on Kazakhstan's joining the WTO will be no less important.

Question 230

Could Kazakhstan please submit to the Secretariat an English translation of the document on the setting up of joint customs rates signed by the Prime Ministers of Belarus, Kazakhstan, the Kyrgyz Republic, Russia and Tajikistan in February 2004 for examination in the Working Party?

Answer:

The requested document is expected to be signed after Heads of the EurAsEC members sign "The Treaty on the Status of the EurAsEC Law Foundations" in June 2004. The Draft of "The Bases of Customs Legislation of the EurAsEC members" is currently pending with the EurAsEC Inter-Governmental Assembly.

ANNEX 1

Export and Import Licensing Rules

Licensing procedures		Compliance with the WTO Agreement on import licensing procedures (hereinafter –Agreement)
Export and import of goods excluding import of ethyl spirit and alcoholic beverages	Import of ethyl spirit and alcoholic beverages	
The acting Rule was approved by the Resolution of the Government of the Republic of Kazakhstan (hereinafter-the No. 1037 dated 30 June 1997 and came into force 30 days after its publication.	The acting Rule was approved by the Resolution of the Government of the Republic of Kazakhstan No. 1031 dated 27 June 1997 and came into force 30 days after its publication.	The Rules are transparent and widely available and was published prior to coming into force, which is in compliance with the provisions of the Article 1.4 of the Agreement.
The present Rule covers all juridical and natural persons of the Republic of Kazakhstan including foreign citizens independently of organization's legal status and registration place (hereinafter – the applicant).		The Rule is non-discriminatory and fair, which is in compliance with the Article 1.3 of the Agreement.
Licenses are issued by the Ministry of industry and trade according to the procedures established by the legislation of the Republic of Kazakhstan (hereinafter – the Licensor).	Licenses are issued by the Ministry of Finance according to the procedures established by the legislation of the Republic of Kazakhstan (hereinafter – the Licensor).	Export and import licenses are issued by the state body upon preliminary agreement with the authorized ministries and agencies, usually no more than three agencies, excluding licenses for import of ethyl spirit and alcoholic beverages which are issued by the Ministry of Finance. Such provision is in compliance with the Article 1.6 of the Agreement.
Licenses are issued on equal basis and terms to all persons complying with the requirements established for such type of a license. It is prohibited to provide a preferential licensing right to the state enterprises except for such activities referred by the legal acts as natural monopolies. Foreign juridical and natural persons and persons without citizenship receive licenses on the same terms and according to the same procedures as juridical persons and natural persons of Kazakhstan if it is not otherwise stipulated by the legal acts of the Republic of Kazakhstan. It is prohibited to issue licenses in order to limit competition or to provide preferences to some groups of entrepreneurs depending on their property, agency interests or location. Issue of licenses should not assist monopoly strengthening or limit freedom of entrepreneurship.		Licensing procedure of goods export and import is not considered as trade limitation and is applied on equal terms to everyone, thus it is in compliance with the basic principles of the GATT.
Introduction of licensing procedures or their termination can be done for the matters of the state security, implementation of state monopoly, provision of law and order, protection of environment, property, life and health of citizen.		Basic objectives of goods export and import licensing in the Republic of Kazakhstan comply with the provisions of the Article XXI of GATT.
The following documents were necessary to obtain a licence: (a) an application, (b) a document confirming the payment of licence fee, (c) a copy of certificate of state registration, (d) a copy of a contract (agreement) on sales-purchase with participants of international trade deal, (e) a licence for production of alcohol products, or for storage and sale of ethyl spirit in case of importing ethyl spirit.		It is necessary to present relevant documents when getting a license for export and import of goods for the licensing regime's proper functioning. This provision corresponds to the provision of the Article 1.5 of the Agreement.
A license is given to the applicant for a period of one calendar year to conduct export and import operations - by individual transactions. The license holder has the right to reject a license notifying the issuing body. Licenses are issued for one type of good (work, service) independent of range of goods included in the contract.		Period of license validity is reasonable, which is in compliance with Article 3.5 of the Agreement.
Licenses are issued no later than within a month, for entities of small business - no later than within ten days since the date of submission of an application along with all necessary documents.		Generally, review of the license application and approval of it by the relevant agencies of the RK does not take more than one month.

Licensing procedures		Compliance with the WTO Agreement on import licensing procedures (hereinafter –Agreement)
Export and import of goods excluding import of ethyl spirit and alcoholic beverages	Import of ethyl spirit and alcoholic beverages	
<p>A license is not issued if:</p> <ol style="list-style-type: none"> 1) conduction of certain types of activities by the indicated category of entities is prohibited by the legal acts; 2) the required documents are not submitted. If the applicant eliminates the indicated drawbacks the application is considered on the general basis; 3) a license tax for the right to conduct certain types of activities is not paid; 4) the applicant does not meet established qualification requirements; 5) there is a court decree prohibiting conduction of certain types of activities. 		Procedure of rejection of license issuing does not contradict provisions of the Articles 1.7 and 1.8 of the Agreement.
<p>If a license is not issued precisely on the established terms or if rejection appears as unjustified the applicant has the right to appeal to the court in one month period. If the court discloses the facts of unjustified rejection or untimely issue of a license it pronounces the judgment binding the licensing body to issue a license in ten days period since the date when the court judgment comes into force.</p>		If the application is not approved the applicant has the right to appeal to the court which complies with the provision of the Article 3.5 of the Agreement.

ANNEX 2

List of National Companies and Joint Stock Companies With State Shares

No.	Business Name	State share (%)	Line of Activity, Notes
1	2	3	4
Oil and Gas			
1	JSC National Company "KazMunaiGaz" (Astana)	100	oil and gas
2	JSC Main Dispatching Unit for Oil and Gas Industry (Astana)	100	oil and gas
3	OJSC Pavlodar Petrochemical Plant (Pavlodar)	49	oil refinery, etc.
4	OJSC Kondensat (Aksai)	25	
Mining			
5	OJSC Joint Venture 'Vasilkovskoe Zoloto' (Akmola Oblast)	40	mining
6	OJSC Sokolovsk-Sarbai Conglomerate Mill (Rudny, Kostanai Oblast)	39.5	mining
7	OJSC Akbaka Concentration Plant (Zhambyl Oblast)	33.3	mining, etc.
8	JSC Transnational Company 'Kazchromium' (Almaty)	31.37	metallurgical industry
9	JSC KazZinc (Ust-Kamenogorsk)	27.64	metallurgical industry
10	OJSC Maikainzoloto (Pavlodar Oblast)	25	mining, etc.
Manufacturing			
11	OJSC National Company "Kazakhstan Engineering" (Astana)	100	mechanical engineering
12	OJSC Kazhermetautomatica (Karagandy)	90	mechanical engineering
13	OJSC Temirbeton (Almaty)	55.71	construction materials
14	OJSC Yrasty-AEVRZ (Almaty)	50	rail car maintenance
15	OJSC Kazakhstantractor (Pavlodar)	33.92	mechanical engineering
16	OJSC Joint Venture 'Belkampi' (Almaty)	22.84	mechanical engineering
Energy			
17	OJSC Kazakhstan Electricity Grid Operating Company (KEGOC) (Almaty)	100	transportation of electric energy, National Company
18	CJSC National Nuclear Power Company "Kazatomprom" (Almaty)	100	nuclear energy, National Company
19	OJSC Shardara Water Power Plant (South Kazakhstan)	100	electric energy
20	CJSC Kazakhenergoexpertise (Almaty)	100	power equipment testing
21	CJSC Operator of the Market of Electric Energy and Generated Output of the Republic of Kazakhstan (Almaty)	100	electric energy market tendering
22	CJSC Ekibastuz Power Center (Ekibastuz)	100	electric energy
23	OJSC Taldykorgan Joint-Stock Company for Transportation by Electric Networks (TATEC) (Almaty Oblast)	100	transportation of electric energy, etc.
24	OJSC Kyzylorda Distributing Power Company (Kyzylorda)	100	transportation of electric energy, etc.
25	OJSC West Kazakhstan Distributing Power Company 'Uralskenargo' (Uralsk)	100	transportation of electric energy, etc.
26	OJSC Mangystau Distributing Power Company (Aqtau)	93.8	transportation of electric energy, etc.
27	OJSC Zhezkazgan Distributing Power Company (Zhezkazgan)	90	transportation of electric energy
28	OJSC Bukhtarma Water Power Plant (East Kazakhstan)	90	electric energy
29	OJSC Chokin Institute of Power Research of the Republic of Kazakhstan (Almaty)	49.34	power research
30	OJSC Eurasian Power Corporation (Aksu, Pavlodar Oblast)	24.33	electric energy
31	OJSC Astanaenergосervice (Astana)	15.34	energy services

No.	Business Name	State share (%)	Line of Activity, Notes
1	2	3	4
Transport and Communications			
32	JSC National Company 'Kazakhstan Temir Zholy' (Astana)	100	rail transportation
33	CJSC Air Astana (Astana)	51	air transportation
34	OJSC Atyrau Aue Zholy (Atyrau)	29.7	air transportation
35	OJSC Aircompany 'Zhezkazgan Air' (Zhezkazgan)	90	air transportation, etc.
36	JSC International Airport 'Aqtobe' (Aqtobe)	100	airport services
37	CJSC International Airport 'Astana' (Astana)	100	national company
38	CJSC National Shipping Company "Kazmortransflot" (Astana)	50	maritime traffic
39	OJSC Kazakhtelecom (Astana)	50	communications, national company
40	OJSC Kazmail (Almaty)	100	communications, national company
41	JSC Republican Center of Space Communications and Electromagnetic Compatibility of Radioelectronic Facilities (Astana)	100	space technologies and communications
42	CJSC Catelco (Almaty)	37	satellite communications
43	CJSC National Information Technologies (Astana)	100	development and implementation of computer technologies
Agriculture			
44	JSC Food Contract Corporation (Astana)	100	procurement and storage of national grain reserves, National Company
45	CJSC Kazagrex (Almaty)	100	grain quality testing
46	CJSC Corporation of Animal Products (Astana)	100	processing of agricultural products
47	OJSC Asyl Tulik (Aqmola Oblast)	76.77	breeding
48	OJSC Breeding Station "Astana-Kus" (Aqmola Oblast)	70	poultry breeding
49	OAQ Sultan (Petrovavl)	58.66	grain storage, etc.
Education and Science			
50	CJSC Karagandy Institute of Metallurgy (Temirtau)	97	scientific research in mining
51	OJSC Road Research Institute of the Republic of Kazakhstan (Almaty)	90.01	highway design
52	JSC S.Seifullin Agrarian University of the Republic of Kazakhstan (Astana)	80	education
53	CJSC Zhezkazgan Baikonurov University (Zhezkazgan)	80	education
54	CJSC Institute of Complex Subsurface Development (Karagandy)	80	
55	OJSC Academy of Civil Aviation (Almaty)	80	education
56	CJSC F.F.Mukhamedgaliev Institute of Experimental Biology (Almaty)	54	biological research
57	OJSC T.Ryskulov University of Economics of the Republic of Kazakhstan (Almaty)	35	education
58	JSC Academy of Sports and Tourism of the Republic of Kazakhstan (Almaty)	35	education
59	TOO Institute of Organic Synthesis and Coal Chemistry (Karagandy)	35	scientific research in organic chemistry
60	JSC Head Academy of Architecture and Construction of the Republic of Kazakhstan (Almaty)	35	education
61	OJSC M.Tynyspaev Kazakh Academy of Transport and Communications (Almaty)	35	education
62	OJSC Abylai-khan University of Foreign Affairs and World Languages (Almaty)	35	education
63	OJSC Humanitarian University of Law of the Republic of Kazakhstan (Astana)	35	education
64	JSC Almaty Institute of Energy and Communications (Almaty)	33.6	education
65	OJSC Almaty Technological University (Almaty)	20.01	education

No.	Business Name	State share (%)	Line of Activity, Notes
1	2	3	4
Finance			
66	CJSC Fund for the Development of Small Businesses (Almaty)	100	lending to small businesses
67	CJSC Kazakhstani Center for the Promotion of Investments (Almaty)	100	assessment of investment projects
68	JSC National Fund of Innovations (Almaty)	100	investments
69	JSC Investment Company: Investment Fund of Kazakhstan (Almaty)	100	investments
70	JSC National Insurance Corporation for the Insurance of Export Loans and Investments (Almaty)	100	investments
71	JSC Kazagromarketing (Astana)	100	agricultural marketing
72	JSC Agrarian Credit Corporation (Astana)	100	agricultural lending
73	CJSC Fund for the Financial Support to Agriculture (Astana)	100	agricultural lending
74	JSC KazAgroFinance (Astana)	100	agricultural lending
75	CJSC Rehabilitation Fund (Astana)	100	repayment of relief loans
76	CJSC Debt Management Center	100	financial debt management
77	JSC Housing Savings Banks of Kazakhstan (Almaty)	100	banking
78	CJSC Capital Development Corporation (Astana)	100	attraction of investments
79	CJSC National Accumulation Insurance Fund (GNPF) (Astana)	100	pension fund, etc.
80	JSC Grain Liabilities Guaranty Fund (Astana)	90	guarantee of liabilities of grain receiving companies
81	JSC Development Bank of Kazakhstan (Astana)	80	banking
Mass Media			
82	OJSC Kazakh Gazetteri (Almaty)	100	mass media
83	JSC Republican Newspaper "Egemen Kazakhstan" (Astana)	100	mass media
84	JSC Republican Newspaper "Kazakhstanskaya Pravda" (Astana)	100	mass media
85	OJSC Zhas Orken (Almaty)	100	mass media
86	JSC Republican Television and Radio Corporation 'Kazakhstan' (Almaty)	100	radio- and telebroadcasting
87	CJSC Television and Radio Complex of the President of the Republic of Kazakhstan (Astana)	100	radio- and telebroadcasting
88	OJSC Kazteleradio (Almaty)	78	transmission of tele- and radio signals, etc.
89	JSC Khabar Agency (Almaty)	50+1 share	radio- and telebroadcasting
90	OJSC National Company 'Kazakh Information Agency' (Astana)	100	National Company
Publishing			
91	OJSC Semei Polygraphy	34	polygraphy
92	OJSC Kazbaspasoz (Almaty)	100	polygraphy
93	CJSC Publishing House of Magazine 'Health Service in Kazakhstan' (Almaty)	100	publishing
94	CJSC Kazakh Encyclopedia (Almaty)	100	publishing
95	CJSC Mektep Press	80	publishing
96	OJSC Alatau Press (Almaty)	34	polygraphy
97	OJSC Karagandy Polygraphy (Karagandy)	49	polygraphy

No.	Business Name	State share (%)	Line of Activity, Notes
1	2	3	4
Miscellaneous			
98	OJSC National Assessment and Certification Center (Astana)	100	assessment, certification
99	OJSC National Accreditation Center (Astana)	100	pre-accreditation document preparation
100	CJSC Republican Information and Show Center for Small Businesses (Astana)	100	information services for small businesses
101	OJSC Kazakhvzryvprom (Almaty)	100	blasting operations
102	JSC Center of Engineering and Transfer of Technologies (Astana)	100	
103	OJSC National Center 'Kurylysconsulting' (Astana)	100	real estate assessment
104	CJSC Institute of Legislature of the Republic of Kazakhstan (Astana)	100	legal services
105	OJSC Zan (Almaty)	67	legal services
106	CJSC Logistics Office of the Ministry of Education (Astana)	100	support of the public body
107	CJSC Diplomatic Corps Managment Department (Almaty)	100	support of diplomatic corps
108	JSC Marketing Research Center (Almaty)	100	consultation services
109	OJSC Medical Transport Service (Almaty)	34	medical services, sanitation
110	CJSC Front Office for Construction Site Surveillance of the Administration of the President (Astana)	100	construction site surveillance
111	CJSC Alatau Hotel (Astana)	54	hotel services
112	OJSC Health Resort 'Almaty' (Almaty)	100	medical services, sanitation
113	CJSC Industrial Park (Almaty)	100	innovation projects
114	CJSC Republican Center of Folk Medicine (Almaty)	100	medical services
115	OJSC Industrial Part of the Association "Progress" (Stepnogorsk)	100	
117	CJSC Contract Agency of the Republic of Kazakhstan (Astana)	100	
116	OJSC Kazpromgeofizica (Almaty)	96.54	geology
118	Mangystau Industrial Company (Aqtau)	100	

ANNEX 3

List of Services Provided by Natural Monopolies

No.	Types of activities referred to the sphere of natural monopoly in accordance with the Law of the Republic of Kazakhstan (hereinafter RK) "On Natural Monopolies"	Regulated types of services	Number of natural monopoly entities providing such types of services included in the State Register		Total	Regulation mechanism	The list of basic normative legal acts regulating the activities of natural monopoly entities and issues of tariff setting
			Republican sections	Local sections			
1	Transportation of oil and (or) oil products by main pipelines CPC (713, 7131, 7139, 71310)	Transportation of oil and (or) oil products by main pipelines	2		2	Approval of a tariff (prices, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The Law of the RK "On Natural Monopolies" dated 9 July 1998; the Law of the RK "On competition and limitation of monopoly activities" dated 19 January 2001; the Law of the RK "On power industry" dated 16 July 1999 No. 438-1
2	Transportation of gas and (or) gas condensate by main pipelines CPC (713, 7131, 7139, 71310)	Transportation of gas and (or) gas condensate by main pipelines	1	5	6	Approval of a tariff (prices, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The Resolution of the Government of the RK "On approval of the Program of Natural Monopoly Entity Tariff Policy Improvement for the period of 2002 – 2004" dated 15 October 2002 No. 1126
3	Transportation of gas and (or) gas condensate by distributing pipelines CPC (713, 7131, 7139)	Transportation of gas and gas condensate by distributing pipelines	1	33	34	Approval of a tariff (prices, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The Resolution of the Government of the RK "On approval of the Regulation for public hearings conduct when considering the applications for approval or change of the tariffs (prices, fee rates) of natural monopolies" dated 21 April 2003 No. 376
4	Operating of gas distributing settings and connected gas distributing pipelines CPC 713	Operating of gas distributing settings and connected gas distributing pipelines		8	8	Approval of a tariff (prices, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The Resolution of the Government of the RK "On additional measures for the state regulation of natural monopoly's service charges and tariffs" dated 9 April 1999 No. 400; The Concept on Further Market Relations Development in the Power Industry of the RK approved by the Resolution of the Government of the RK of 18 February 2004 No. 190; The Republic of Kazakhstan's Telecommunication Sector Development Program for the years 2003 – 2005", approved by the Resolution of the Government of RK of 18 February 2003 No. 168; The Program of Railway Transport Restructuring for the years 2004-2006

No.	Types of activities referred to the sphere of natural monopoly in accordance with the Law of the Republic of Kazakhstan (hereinafter RK) "On Natural Monopolies"	Regulated types of services	Number of natural monopoly entities providing such types of services included in the State Register		Total	Regulation mechanism	The list of basic normative legal acts regulating the activities of natural monopoly entities and issues of tariff setting
			Republican sections	Local sections			
							approved by the Resolution of the Government of the RK of 6 February 2004 No. 145
5	Delivery and (or) distribution of electric power by regional or interregional electric networks CPC 87700	Delivery of electric power; Distribution of electric power; Services on providing reliability and stability in supply of electric power for electric power consumers	9 9 1	91 88	98 94 1	Approval of a tariff (prices, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The Agency Order "On Approval of the Regulation on Expenses Formulation Used to Determine the Tariffs (Prices, fee rates) for the Services (Goods, Works) of Natural Monopolies" of 30 July 2003 No. 185-OД
6	Services on technical production control of delivery into the network and consumption of electric power CPC 87700	Services on technical production control of delivery into the network and consumption of electric power	1		1	Approval of a tariff (prices, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The Agency Order No. 82-OД dated 19 March 2003 "On adoption of Instructions on the approval of tariffs (prices, fee rates) and tariff estimates on services (goods, works) of natural monopolies";
7	Delivery and (or) distribution of heat energy CPC 88	Delivery and/or distribution of heat energy	7 7	162 162	167 167	Approval of a tariff (prices, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The Agency Order No. 30-OД dated 3 February 2003 "On adoption of Instructions on the approval and introduction of tariffs (prices, fee rates) for services (goods, works) of natural monopolies for a medium term period"
8	Production of heat energy by heating boiler-houses, stations with mixed type of production CPC 88	Production of heat energy by heating boiler-houses, stations with mixed type of production	4	135	139	Approval of a tariff (prices, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The Order of the Agency No. 49-OД dated 24 February 2003 "On adoption of the Instruction on approval of natural monopoly's reorganization or liquidation at the authorized body"

No.	Types of activities referred to the sphere of natural monopoly in accordance with the Law of the Republic of Kazakhstan (hereinafter RK) "On Natural Monopolies"	Regulated types of services	Number of natural monopoly entities providing such types of services included in the State Register		Total	Regulation mechanism	The list of basic normative legal acts regulating the activities of natural monopoly entities and issues of tariff setting
			Republican sections	Local sections			
9	Services of main railway network CPC 71111, 71112 CPC 7112 CPC 71124	Transportation of cargo by republican and international communications, excluding transit transportation; Transportation of passengers by railways in republican and international communications, excluding transportation of passengers by trains formed of the carriages produced by "Patents Talgo SA" Spanish company Transportation of luggage and cargo by railways; Transportation of mail by railways	1		1	Approval of a tariff (prices, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The Agency Order No. 121-OJ dated 4 May 2003 "On adoption of the Instruction for approval by the authorized body the conduct of other types of activities technically related to the main activities and/or relevant to the natural monopoly's sphere in regard to the Kazakhstani legislation on mail"
			1		1		
			1		1		
			1		1		
10	Approaching ways services	Approaching ways services	2	92	90	Approval of a tariff (prices, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The Agency Order No. 16-OJ dated 27 January 2003 "On adoption of the Instruction on approval and concordance of natural monopolies' investment projects"
11	Aeronavigation services CPC 7453	Aeronavigation servicing in airspace of RK; Aeronavigation servicing in the aerodrome area	1		1	Approval of a tariff (prices, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The Agency Order No. 125-OJ dated 5 May 2003 "On the Instruction on approval of alienation and other property transactions of natural monopolies with the authorized body"
			1		1		

No.	Types of activities referred to the sphere of natural monopoly in accordance with the Law of the Republic of Kazakhstan (hereinafter RK) "On Natural Monopolies"	Regulated types of services	Number of natural monopoly entities providing such types of services included in the State Register		Total	Regulation mechanism	The list of basic normative legal acts regulating the activities of natural monopoly entities and issues of tariff setting
			Republican sections	Local sections			
12	Port services CPC 745	Ship services; Lighthouse services; Channel passing services; Mooring services; Anchor services; Tie-down services; Environment protection measures; Quarantine services; Shipment and dumping works.	1		1	Approval of a tariff (prices, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The Agency Order No. 57-ОД dated 26 February 2003 "On approval of the Regulation for addition and exclusion of natural monopolies from the State Register of natural monopoly entities"
			1		1		
			1		1		
			1		1		
			1		1		
			1		1		
			1		1		
			1		1		
13	Airport services CPC 731	Services on providing take off and landing of an aircraft; Services on providing aviation safety	2	18	20	Approval of a tariff (prices, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The Agency Order No. 80-ОД dated 19 March 2003 "On adoption of the Regulation on tariff establishment (prices, fee rates) according to a simplified procedure"
			2	18	20		
14	Telecommunication services with the use of local networks CPC (752, 75211, 75212)	Connection of subscriber terminal to the telecommunication network ; Providing local telephone communication according to a subscriber payment system; Providing local telephone communication according to time payment system; Providing inter-town telephone communication; Leasing of digital telephone channels of inter-town and zonal networks; Telegram sending in RK; Providing television broadcasting channel; Providing network resources to communication statement	3	12	15	Approval of a tariff (price, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The Agency Order No. 46-ОД dated 20 February 2003 "On approving the Regulation on reducing tariffs (prices, collection rates) for services (goods, works) provided for all consumers of natural monopoly entities during validity of tariffs (prices, collection rates)"; The Order of the Agency No. 216-ОД dated 28 October 2002 "On approving the Regulation on applying antimonopoly regulation measures in case of violation of antimonopoly legislation"
15	Water management system	Delivery of water by main	3		3	Approval of a tariff (price, fee	The order of the Agency No. 149-ОД dated

No.	Types of activities referred to the sphere of natural monopoly in accordance with the Law of the Republic of Kazakhstan (hereinafter RK) "On Natural Monopolies"	Regulated types of services	Number of natural monopoly entities providing such types of services included in the State Register		Total	Regulation mechanism	The list of basic normative legal acts regulating the activities of natural monopoly entities and issues of tariff setting
			Republican sections	Local sections			
	services CPC (9401, 94010)	networks; Delivery of water by distribution networks; Water scoop and water purification	4	315	319	rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	6 June 2003 "On approving the Regulation on procurement of material, financial resources and services, the costs of which are taken into account when setting tariffs (prices, collection rates) on the services provided by natural monopoly entities
			7	315	322		
16	Sewerage system services CPC (940, 401, 94010)	Drainage of sewage water; Purification of sewage water	3	159	162	Approval of a tariff (price, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The Order of the Agency No. 04-OJ dated 13 January 2003 "On terms of approving tariffs (prices, collection rates) for the services (goods, works) of natural monopoly entities"
			3	159	162		
17	Public mail services CPC 751	Sending of a letter; Sending of a card; Sending a postal wrapper	1		1	Approval of a tariff (price, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The Order of the Agency No. 118-OJ dated 7 June 2002 "On approving the Regulation on preparing, compiling and agreeing a normative legal act and legal act drafts of the Agency of the Republic of Kazakhstan on regulation of natural monopolies and protection of competition"; The Order of the Agency No. 44-OJ dated 20 February 2003 "On additional requirements to the mandatory annual natural monopoly entity audit agreement"; The Order of the Agency of 26 December 2003 No. 341-OJ "On approving the Regulation on agreeing a temporary compensating tariff (price, collection rate)"; The Order of the Agency "On approving the Regulation on natural monopoly entity investment program implementation efficiency monitoring" of 26 December 2003 No. 340-OJ; The Regulation on public utilities services providing and the Regulation on electric power consumption, The Regulation on heating power consumption approved by the resolution of the Government of the republic of Kazakhstan of 7 December 2000 No. 1822; The Regulation on establishing and cancellation of reducing coefficients to the tariffs on electric power delivery (transit) services approved by the Order of the Chairman of the Agency of 29 December 1999 No. 23-OJ registered in
			1		1		
			1		1		
			1		1		

No.	Types of activities referred to the sphere of natural monopoly in accordance with the Law of the Republic of Kazakhstan (hereinafter RK) "On Natural Monopolies"	Regulated types of services	Number of natural monopoly entities providing such types of services included in the State Register		Total	Regulation mechanism	The list of basic normative legal acts regulating the activities of natural monopoly entities and issues of tariff setting
			Republican sections	Local sections			
							the Ministry of Justice of the Republic of Kazakhstan of 6 January 2000 No. 1025

ANNEX 4

Excise Tax Rates Applied to Domestically Produced and Imported Goods **(approved by the Resolution of the Government of the Republic of Kazakhstan No. 137 dated 28 January 2000)**

Code of foreign trade invoice	Title	Tax base (object of imposing)	Excise rates for:	
			Manufactured goods and gambling business	Imported goods
	All types of spirits (except alcohol sold as alcoholic beverages, medical and pharmaceutical medication if producers have the license for production of indicated goods and received by state medical institutions within the limits of established quotas)	physical volume	300 tenge/1 litre	€ 3 */1litre
	Alcohol sold for production of alcoholic beverages if producers have the license for production of indicated goods	physical volume	30 tenge/1 litre	€ 0.3 /1 litre
2208**	Alcoholic beverages (except some low alcohol beverages with ethyl spirit content up to 12%, balms, alcohol registered in accordance to the legislation of the Republic of Kazakhstan as medication, cognac, brandy, wine beverages, wine, champagne, sparkling wine, aerated wine, processed wine and beer)	physical volume	125 tenge/1 litre of waterless (100%) alcohol	€ 1.7 /1 litre
	Other low alcohol beverages with ethyl spirit content up to 12%	physical volume	125 tenge/1 litre of waterless (100%) alcohol	€ 0.4 /litre
	Balms registered as medication in accordance with the legislation of the Republic of Kazakhstan	physical volume	10 tenge/1 litre	€ 0.4 /1 litre
	Cognac, brandy	physical volume	20 tenge/ 1 litre	€ 1.7 /1 litre
	Balms registered as medication in accordance with the legislation of the Republic of Kazakhstan	physical volume	10 tenge/1 litre	€ 0.4 /1 litre
	Wine drinks	physical volume	30 tenge/1 litre	€ 0.4 /1 litre
	Cognac, brandy	physical volume	20 tenge/1 litre	€ 1.7 /1 litre
	Wine drinks	physical volume	30 tenge/1 litre	€ 0.4 /1 litre
From 2204, 2205, 2206 00	Wine (except champagne, sparkling wine, aerated (pearl)	physical volume	10 tenge/1 litre	€ 0.4 /1 litre
	Champagne, sparkling wine, aerated (pearl)	physical volume	20 tenge/1 litre	€ 0.4 /1 litre
2203 00**	Beer	physical volume	7 tenge/1 litre	€ 0.2 /1 litre
2402**	Tobacco goods with filter	physical volume	180 tenge/1,000 units	€ 2 /1,000 units
	Tobacco goods without filter and other products containing tobacco		100 tenge/ 1,000 units	€ 2 /1,000 units
from 0301, 0302, 0303, 0304, 0305, 1604 **	Sturgeon and salmon caviar	For produced– cost, for imported – custom value	100%	100%

Code of foreign trade invoice	Title	Tax base (object of imposing)	Excise rates for:	
			Manufactured goods and gambling business	Imported goods
271000270-271000360**	Gasoline(except aviation spirit):	physical volume		€ 31 /1 tonne
	Wholesale trade of gasoline (except aviation spirit) by producers	physical volume	4,500 tenge/1ton	
	Retail trade of gasoline (except aviation spirit) by producers, use for own industrial needs	physical volume	5,000 tenge/1ton	
	Retail trade of gasoline and diesel oil by juridical and natural persons (except aviation spirit)) use for own industrial needs	physical volume	500 tenge/1ton	
271000610, 271000650, 271000690**	Diesel oil	physical volume		-
	Wholesale trade of diesel oil (except aviation spirit) by producers	physical volume	540 tenge/1 ton	
	Retail trade of diesel oil (except aviation spirit) by producers, use for own industrial needs	physical volume	600 tenge/1 ton	
	Retail trade of diesel oil (except aviation spirit) by juridical and natural persons, use for own industrial needs	physical volume	60 tenge/1 ton	
8703	Cars	Custom value or volume of the engine	-	10%, but not less than 0,5 euro/cubic sm. (only for cars with the volume of the engine more than 3,000 cubic sm.)
	Gambling business (except lottery)	Game table	130-740	-
		game-playing machine with money prize	5-25 MCI	-
		Totalizator cash register	80-200 MCI	-
		cash register	20-100 MCI	-
	Lottery organization and conducting	Declared - 10 % gain deducting the amount not including excise tax of prize fund	10%	-

* Euro is calculated in tenge according to the exchange rate of the National Bank of the Republic of Kazakhstan on the date established by the custom legislation for paying the customs duties.

** Nomenclature of goods is defined as foreign trade invoice code as well as a title of goods

ANNEX 5

List of Goods Subject To Import And Export Licensing **(approved by the Resolution of the Government of the Republic of Kazakhstan on 30 June 1997, No. 1037)**

HS Number	Goods	Ministries responsible for administration of license	Ministries subject to coordination upon issuing licenses	Type of licence	Justification
010119900, 010290900, 010391900, 010392900, 010410800, 010420900, 01060090 (only wild animals) 070951, 070952000, 071080610, 071080690	Wild animals, wild growing plants (besides those falling under the Convention on trade of endangered wild life and fauna)	Ministry of Industry and Trade of the RK	The License issuing on the basis of permission of the Government of the RK	Export	This measure applies for the purposes of environment protection of the RK.
871000000, 8802 (except 880211100, 880212100, 880220100, 880230100, 880240100), 8803(except 880310100, 880320100, 880330100, 880390910), 880400000, (only for military purposes) 8805(except 880520100), 890600100, 930100000, 930200, 9305 (only to fighting guns), 9306 (except 930610000, 930629400, 930630910-930630980, 930690900, 901310000(only for military purposes) 901320000(only for military purposes) 901380 (only for military purposes), 9014 (only for military purposes), 8525 (only for military purposes), 8526 (only for military purposes)	Army equipment and military devices, specially completed articles for it's production, works and services in the field of military-technical cooperation.	Ministry of Industry and Trade of the RK	The License issuing on the basis of permission of the Government of the RK	Export/ Import	This measure is used for the reason of the national security interests protection in regards to trade of guns, ammunition, military materials, which directly or indirectly used for the purpose of supplying the military forces.

HS Number	Goods	Ministries responsible for administration of license	Ministries subject to coordination upon issuing licenses	Type of licence	Justification
2844 (except oxide- protoxide of natural uranium, unity of uranium by enrichment till 20% under uranium isotope 235 and sources of radiation ionising, which not contain divisible element), 2845, 380110000 only pure nuclear graphite), 8401, 711041000	Nuclear materials, technology, equipment and settlements, special non nuclear materials, sources of active radiation, including radioactive waste products.	Ministry of Industry and Trade of the RK	The License issuing on the basis of permission of the Government of the RK	Export/ Import	This measure applies for the purposes of protection of the state security interests in regards to splitting materials or materials they are produced from, and also for the purposes of life and health protection of the Kazakh population.
9022	X-ray equipment, devices and equipments with use of radioactive substances and isotops.	Ministry of Industry and Trade of the RK	Ministry of Health of the RK.	Export/ Import	This measure applies for the purposes of life and health protection of the Kazakh population.
040700900, 0507, 050800000, 0604, 051000, 071230000, 080221000, 08022200, 0810, 0812, 121220000, 1301, 1302 (except 130219300), 9601	Elephant bone, antlers, hoofs, maral's antlers, coralls and analogous materials (besides those falling under the Convention on trade of endangered wild life and fauna)	Ministry of Industry and Trade of the RK	Ministry of Agriculture, Ministry of Environment protection of the RK	Export	This measure applies for the purposes of environment protection of the RK.
020610100, 020622100, 020629100, 020630100, 020641100, 020680100, 020690100 (only from wild animals), 0507 (only medicine raw materials), 051000, 1211, 121220000, 1302 (except 130219300), 3001, 3002 (except ready done medicine materials)	Medicine raw materials of vegetable and animal origin	Ministry of Industry and Trade of the RK	Ministry of Agriculture, Ministry of Environment protection of the RK	Export	This measure applies for the purposes of environment protection of the RK.
According to list confirmed by the Government of the RK	Poison	Ministry of Industry and Trade of the RK	Ministry of Health of the RK, Ministry of the Environment protection of the RK	Export/ Import	This measure applies for the purposes of life and health protection of the Kazakh population.
280470001	Yellow Phosphorus («white»)	Ministry of Industry and Trade of the RK	Ministry of Environment protection of the RK	Export	This measure applies for monitoring of exports of such products since they are extremely dangerous to human life and health.

HS Number	Goods	Ministries responsible for administration of license	Ministries subject to coordination upon issuing licenses	Type of licence	Justification
According to list confirmed by the Government of the RK	Some types of raw materials, articles, equipment, technology and scientific-technical information, which can be used in creation of army equipment and devices.	Ministry of Industry and Trade of the RK	Ministry of Education of the RK – Academy of Science, Committee of National Security	Export	This measure is used for the reason of the national security interests protection in regards to trade of guns, ammunition, military materials, which directly or indirectly used for the purpose of supplying the military forces.
According to list confirmed by the Government of the RK	Materials, equipment and technology, which have peaceful meaning, but can be used in creation of missile, nuclear and other types of weapon of mass destruction	Ministry of Industry and Trade of the Rk	Ministry of Education, Academy of Science, Committee on National Security	Export	This measure applies for the purposes of the national security interests protection as of possible use of these products in military time or in other extraordinary circumstances in the international relations.
8471 (only figuretyped technics) 847330 (only for figuretyped technics) 854390900 (only for figuretyped technics)	Code means (including code technics, components for code technics and programme packets for code), normative- technical documentation to code means (including constructive and exluatational)	Ministry of Industry and Trade of the RK	Committee on National Security	Export/ Import	This measure applies for the purposes of the international and national safety.
360100000 (except for the gunpowder) 360200000, 360300,3604	Gunpowder, explosive substances, means of explosion and pyrotechnics	Ministry of Industry and Trade of the RK	Ministry of Internal Affairs	Export/ Import	This measure is used for the reason of the national security interests protection in regards to trade of guns, ammunition, military materials, which directly or indirectly used for the purpose of supplying the military forces.
According to list confirmed by the Government of the RK	Official and civil gun	Ministry of Industry and Trade of the RK	Ministry of Internal Affairs	Export/ Import	This measure is used for the reason of the national security interests protection in regards to trade of guns, ammunition, military materials, which directly or indirectly used for the purpose of supplying the military forces.

HS Number	Goods	Ministries responsible for administration of license	Ministries subject to coordination upon issuing licenses	Type of licence	Justification
According to list confirmed by the Government of the RK	Means of protection from fighting poison gas, its parts and accessories.	Ministry of Industry and Trade of the RK	Ministry of Defence of the RK	Export/Import	This measure is used for the reason of the national security interests protection in regards to trade of guns, ammunition, military materials, which directly or indirectly used for the purpose of supplying the military forces.
	Normative- technical documentation to products of military purpose (including constructive and exlupatational)	Ministry of Industry and Trade of the RK	Ministry of Defence of the RK, Committee on Natioanl Security	Export/Import	This measure applies for the purposes of protection of the national security interests in regards to trade of guns, ammunition, military materials, which directly or indirectly conducted for the purposes of provision of the military forces.
261100000, 2613-2615, 280450, 280490000, 280521000, 280530100, 280540100, 2825 (except five-oxide, for vanadium production), 282619000, 284170000284190900, 2846, 740500000 750220000, 760120100, 8101, 8103, and mineral 810411000, 8105, 810600, 8108 resources (except titanium sponge), 8109, 8112, 811300	Rare Metalls, rareground raw materials, alloy, combinations and articles	Ministry of Industry and Trade of the RK	Committee on atomic energetic of the Ministry of Atomic Energy and Mineral Resources of the RK	Export	This measure is used for the reason of the national security interests protection in regards to trade of guns, ammunition, military materials, which directly or indirectly used for the purpose of supplying the military forces.
830170000, 847130000, 847141900, 847149900, 847150900, 847330100, 851750, 851780900, 8525, 852610900, 852691, 8527, 854389900, 901910900, 9006, 902219000, 902229000 (only special technical devices, devices of information defence and other techniques of double application)	Special technical devices intended for special operative- investigation activity, sources of information defence, other techniques of double application (including its components, application programme packets), normative- technical documentation to special technique means (including constructive and exlupatational)	Ministry of Industry and Trade of the RK	Committee on National Security	Export	This measure applies for the purposes of the international and national safety.

HS Number	Goods	Ministries responsible for administration of license	Ministries subject to coordination upon issuing licenses	Type of licence	Justification
2612,2805,2841,2844 (only oxide-protioxide of natural uranium, unity of uranium by enrichment till 20% under uranium isotope 235 and sources of radiation ionising. Not contain devisible elements), 380110000 (except pure –nuclear graphite), 711011000, 711220000, 711290000, 711510000, 740500000, 750220000, 760120, 760200900, 760820, 9022	Nuclear materials, techonologies, equipment and settlements, special non nuclear materials, sources of radioactive radiation, apparatus, based on application of X-ray, alpha-, beta- or gamma-radiation.	Ministry of Industry and Trade of the RK	Committee on atomic energy of the Ministry of Eneergy and mineral resources of the RK.	Export/Import	This measure applies for the purposes of protection of the state security interests in regards to splitting materials or materials they are produced from, and also for the purposes of life and health protection of the Kazakh population.
3808 (onle prepatations for plant protection)	Chenical sources of plants protection	Ministry of Industry and Trade of the RK	Ministry of Agriculture, Ministry of Environment protection of the RK	Import	This measure applies for the purposes of environment protection of the RK
261800000-2620, 3915	Industrial waste materials	Ministry of Industry and Trade of the RK	Ministry of Environment protection of the RK	Import	This measure applies for the purposes of environment protection of the RK
121190800	Opium raw materials (medicinal herbs)	Ministry of Industry and Trade of the RK	Ministry of Health of the RK	Import	This measure is used for monitoring the import inflows since these products are rare found plants.
210690200	Components of alcohol, half-finished products, except of products made on the base fragrant substances, used in beverages production.	Committee of state control for production and turnover of excise products of the Ministry of Finance of the RK		Import	This measure applies for the purposes of life and health protection of the RK.
2203 00	Beer made from malt				
2204, 2205, 2206	Wine				
2207	Ethyl alcohol				
2208	Ethyl alcohol nondenaturative with alcohol concentration less than 80%, alcohol nastoyka, liqueur and other alcohol drinks				

HS Number	Goods	Ministries responsible for administration of license	Ministries subject to coordination upon issuing licenses	Type of licence	Justification
830170000, 847130000, 847141900, 847149900, 847150900, 847330100, 851750, 851780900, 851810, 851840, 851850900, 852032, 852033, 852090900, 8521, 8525, 8526, 8527 854389900, 900219000, 900580000, 9013, 901910900, 9006, 902219000, 902229000, (only special technical devices, devices of information defence and other techniques of double application)	Special technical devices intended for special operative-investigation activity, sources of information defence, other techniques of double application (including its components, application programme packets), normative-technical documentation to special technique means (including constructive and exlupatational)	Ministry of Industry and Trade of the RK	Committee on National Security	Import	This measure applied for the purposes of international and national safety.
271000210, 271000250, 271000390, 271000410, 271000450	White-spirit, other weak distillyats, other medium distillyats for specific processes of processing for chemical conversion in processes	Ministry of Industry and Trade of the RK	Ministry of Energy and Mineral resources of the RK	Import	Licensing of these products was introduced to import quota which applied toward these products till 31.12.2002. The Republic of Kazakhstan therefore is considering discontinue application of import licensing toward them.

List of Goods, which Export Conducted Under Licence in Accordance with International Obligations of the Republic of Kazakhstan
(approved by the Resolution of the Government of the Re of Kazakhstan on 30 June 1997 No. 1037)

HS Number	Goods	Ministries responsible for administration of licence	State bodies of the RK, which coordinates the decision about issuing of license	Justification
7208 10 000, 7211 14 100, 7208 25 000, 7208 38 900, 7208 39 900, 7211 19 200, 7208 26 000, 7208 27 000, 7219 11 000, 7219 12 100, 7219 12 900, 7219 13 100, 7219 13 900, 7219 14 100, 7219 14 900, 7208 36 000, 7208 37 900, 7225 20 200, 7225 30 000	Sheet of rolled metal 1 Rolls	Ministry of Industry and Trade of the RK	-	This measure is used to fulfil the RK's obligations, under the Agreement between the Government of the RK and the European Coal and Steel Union on trade of certain steel products dated 15 December 1999.
7208 37 100, 7208 38 100, 7208 39 100	SA 1a Rolls, intendent for secondary rolling process			
7208 40 100, 7208 51 100, 7208 51 300, 7208 51 500, 7208 51 910, 7208 51 990, 7208 52 100, 7208 52 910, 7208 52 990, 7208 53 100, 7211 13 000	SA 2 thinsheet steel			
7208 40 900, 7208 53 900, 7208 54 100, 7208 54 900, 7208 90 100, 7209 15 000, 7209 16 100, 7209 16 900, 7209 17 100, 7209 17 900, 7209 18 100, 7209 18 910, 7209 18 990, 7209 25 000, 7209 26 100, 7209 26 900, 7209 27 100, 7209 27 900, 7209 28 100, 7209 28 900, 7209 90 100, 7210 11 100, 7210 12 110, 7210 12 190, 7210 20 100, 7210 30 100, 7210 41 100, 7210 49 100, 7210 50 100, 7210 61 100, 7210 69 100, 7210 70 310, 7210 70 390, 7210 90 310, 7210 90 330, 7210 90 380, 7211 14 900, 7211 19 900, 7211 23 100, 7219 32 900,	SA 3 Other sheet rolled metal			

HS Number	Goods	Ministries responsible for administration of licence	State bodies of the RK, which coordinates the decision about issuing of license	Justification
7219 33 100, 7219 33 900, 7219 34 100, 7219 35 100, 7219 35 900, 7225 40 800				
7219 34 900, 7219 23 000, 7219 24 000, 7219 31 000, 7219 32 100, 7212 60 910, 7219 21 100, 7219 21 900, 7219 22 100, 7219 22 900, 7212 50 310, 7212 50 510, 7212 60 110, 7212 20 110, 7212 30 110, 7212 40 100, 7212 40 910, 7211 23 510, 7211 29 200, 7211 90 110, 7212 10 100, 7212 10 910, 7211 23 990, 7211 29 500, 7211 29 900, 7211 90 900	Plane rolled metal made from carbonaceous steel in rolls no more than 500 mm. wide	Ministry of Industry and Trade of the Rk	-	This measure is used to fulfil the RK's obligations, under the Agreement between the Government of the RK and the European Coal and Steel Union on trade of certain steel products dated 15 December 1999.
7211 23 910, 7225 19 100, 7225 19 900, 7226 19 100, 7226 19 300, 7226 19 900,	Plane rolled metal made from electrotechnical steel with non oriented core			
7226 11 900	Plane rolled metal made from siliceous electrotechnical steel with oriented core			
520411000, 520419 000, 5205, 5206, 5604 90 000	Thread and yarn	Ministry of Industry and Trade of the RK	-	This measure is used to fulfill the RK's obligations, under the Agreement between the Government of the RK and the European Economic Community on trade of textile products (ratified in Brussels on 15 October 1993)
5208-5212,5512-5515,580390300, 581100000,590500700, 630800000	Cloth, fabric	Ministry of Industry and Trade of the RK	-	This measure is used to fulfill the RK's obligations, under the Agreement between the Government of the RK and the European Economic Community on trade of textile products (ratified in Brussels on 15 October 1993)

HS Number	Goods	Ministries responsible for administration of licence	State bodies of the RK, which coordinates the decision about issuing of license	Justification
610110-610130900, 610210-610230900, 610510000-610520, 610590100, 610610000-610620000, 610690100, 6110 (except 611090) 6203 (except 620341300, 620342110, 620342510, 620342590, 620343110, 620343310, 620343390, 620349110, 620349310, 620349390, 620349900) 620461100,620510000- 620530000, 620620000- 620640000,621132900, 621133 900,621142 900, 621143900	Male clothes, female, children's, outer-clothes	Ministry of Industry and Trade of the RK	-	This measure is used to fulfill the RK's obligations, under the Agreement between the Government of the RK and the European Economic Community on trade of textile products (ratified in Brussels on 15 October 1993)
6109 (except 610990900)	Male clothes, female, children's , underclothes	Ministry of Industry and Trade of the RK	-	This measure is used to fulfill the RK's obligations, under the Agreement between the Government of the RK and the European Economic Community on trade of textile products (ratified in Brussels on 15 October 1993)
7208 10 000, 7208 25 000, 7208 26 000, 7208 27 000, 7208 36 000, 7208 37 900, 7208 38 900, 7208 39 900, 7211 14 100, 7211 19 200, 7219 11 000, 7219 12 100, 7219 12 900, 7219 13 100, 7219 13 900, 7219 14 100, 7219 14 900, 7225 20 200, 7225 30 000	SA Sheet rolled metal SA 1 Rolls	Ministry of Industry and Trade of the RK	-	This measure is used to fulfill the RK's obligations, under the Agreement between the Government of the RK and the European Coal and Steel Union on trade of certain steel products dated 15 December 1999.

HS Number	Goods	Ministries responsible for administration of licence	State bodies of the RK, which coordinates the decision about issuing of license	Justification
7208 37 100, 7208 38 100, 7208 39 100	SA 1a Rolls, intended for secondary rolling process	Ministry of Industry and Trade of the RK	-	This measure is used to fulfil the RK's obligations, under the Agreement between the Government of the RK and the European Coal and Steel Union on trade of certain steel products dated 15 December 1999.
7208 40 100, 7208 51 100 7208 51 300, 7208 51 500 7208 51 910, 7208 51 990 7208 52 100, 7208 52 910 7208 52 990, 7208 53 100 7211 13 000	SA 2 Thinsheet steel			
7208 40 900, 7208 53 900 7208 54 100, 7208 54 900 7208 90 100, 7209 15 000 7209 16 100, 7209 16 900 7209 17 100, 7209 17 900 7209 18 100, 7209 18 910 7209 18 990, 7209 25 000 7209 26 100, 7209 26 900 7209 27 100, 7209 27 900 7209 28 100, 7209 28 900 7209 90 100, 7210 11 100 7210 12 110, 7210 12 190 7210 20 100, 7210 30 100 7210 41 100, 7210 49 100 7210 50 100, 7210 61 100 7210 69 100, 7210 70 310 7210 70 390, 7210 90 310 7210 90 330, 7210 90 380 7211 19 900, 7211 23 100 7211 23 510, 7211 29 200 7211 90 110, 7212 10 100 7212 10 910, 7211 14 900 7212 20 110, 7212 30 110 7212 40 100, 7212 40 910 7212 50 310, 7212 50 510 7212 60 110, 7212 60 910 7219 21 100, 7219 21 900 7219 22 100, 7219 22 900 7219 23 000, 7219 24 000 7219 31 000, 7219 32 100 7219 32 900, 7219 33 100 7219 33 900, 7219 34 100 7219 34 900, 7219 35 100 7219 35 900, 7225 40 800	SA 3 Other sheet roll			

ANNEX 6

Establishing of Decreasing Coefficients of Railway Tariffs on Transportation of Different Types of Goods for the Year 2002

Type of cargo	Sulphuric acid	Iron ore products	Coal	Coal and black oil	Complex ore	Secondary material resources	Metal roll
The title of subsidy program or special target subsidy:	Establishing of decreasing coefficients of railway tariffs on transportation of sulphurous acid by rail	Establishing of decreasing coefficients of railway tariffs on transportation of iron ore products by rail	Establishing of decreasing coefficients of railway tariffs on transportation of coal by rail	Establishing of decreasing coefficients of railway tariffs on transportation of coal and black oil by rail	Establishing of decreasing coefficients of railway tariffs on transportation of complex ore by rail	Establishing of decreasing coefficients of railway tariffs on transportation secondary material resources by rail	Establishing of decreasing coefficients of railway tariffs on transportation of metal roll by rail
Subsidy (subsidy per unit):	decreasing coefficients on railway tariffs						
Amount of Subsidy, thousand tons	401.37	4,066.1	29,353.95	coal - 15000, black oil - 396 320	13.04	730.69	593.86
Amount of Subsidy, mln. tenge	119.79	310.57	2,038.87		2.24	133.42	520.04
The title of subsidy program or special target subsidy:	In order to increase transportation volumes, support local producers, stimulate increase of production volumes the tariffs on export transportation of sulphuric acid in tanks of producers in all communications are reduced by 25%.	In order to increase transportation volumes, support local producers, stimulate increase of production volumes the tariffs on export transportation of iron ore products in tanks of producers in all communications are reduced by 25%.	In order to increase coal transportation volume, to prevent possible increase of prices of heating and electric power consumption and subsequent rise of prices of sector products	In order to implement the Agreement between the Government of RK and the Kyrgyz Republic on use of fuel-energy and water resources of Naryn-Syrdarya reservoirs in 2003 the tariffs on transportation of coal and black oil provided as compensation for electric power from the Kyrgyz Republic during vegetation period according to the Resolution of the Government of RK No.799 dated 17 July 2002	In order to increase volumes of complex ore transportation	In order to increase volumes of secondary material resources transportation	In order to increase metal-roll transportation by rail and volumes of metal roll trans shipment in Aktau port
Legal basis	The Regulation of establishing and cancellation of decreasing coefficients of tariffs on transportation by rail to be regulated by the state (approved by the order of the Agency No.24-O/I dated 30 December 1999 registered No.1024 in the Ministry of Justice on 6 January the Laws of RK "On Natural Monopolies", "On Transport of RK", "On Railway Transport".						
Payment terms	Advance payment, no indebtedness for transportation services, increase of transportation volumes in comparison with the previous year	Advance payment, no indebtedness for transportation services, increase of transportation volumes in comparison with the previous year	Advance payment, no indebtedness for transportation services, increase of transportation volumes in comparison with the previous year	In the form of compensation of the electric power from the Kyrgyz Republic delivered in the vegetation period	Advance payment, no indebtedness for transportation services and fulfilment of transportation volumes not less than the level of 2001	Advance payment, no indebtedness for transportation services and fulfilment of transportation volumes not less than the level of 2001	Advance payment, no indebtedness for transportation services and fulfilment of transportation volumes not less than the level of 2001

Type of cargo	Sulphuric acid	Iron ore products	Coal	Coal and black oil	Complex ore	Secondary material resources	Metal roll
Validity of subsidy	Since 22 February 2002 till 1 January 2003	Since 15 August 2002 till 31 December 2002	Since 8 May 2002 till 1 October 2002	Since 22 July 2003 till 1 January 2003	Since 29 March 2002 till 1 January 2003	Since 29 March 2002 till 1 January 2003	Since 14 February 2002 till 1 January 2003
Statistical data allowing to evaluate subsidy effect on trade	-	-	-	-	-	-	-

ANNEX 7

Establishing of Decreasing Coefficients of Railway Tariffs on Transportation of Different Types of Goods for the Year 2003

Cargo	Sulphuric acid	Iron ore products	Coal	Coal and black oil	Crude oil
The title of subsidy program or special target subsidy:	Establishing of decreasing coefficients to railway tariffs for transportation of sulphurous acid by rail	Establishing of decreasing coefficients to railway tariffs for transportation of iron ore products by rail	Establishing of decreasing coefficients to railway tariffs for transportation of coal by rail	Establishing of decreasing coefficients to railway tariffs for transportation of coal and black oil by rail	Establishing of decreasing coefficients to railway tariffs for transportation of crude oil by rail
Subsidy (subsidy per unit):	decreasing coefficients of railway tariffs	decreasing coefficients of railway tariffs	decreasing coefficients of railway tariffs	decreasing coefficients of railway tariffs	decreasing coefficients of railway tariffs
Amount of Subsidy, thousand tons	568.61	10,257.17	20,840.14	coal - 252,7	36.3
Amount of Subsidy, mln tenge	164.26	399.13	900.28		5,7.68
Objectives and asks of subsidy	In order to increase transportation volumes, support local producers, stimulate increase of production volumes the tariffs on export transportation of sulphuric acid in tanks of producers in all communications are reduced by 25%.	In order to increase transportation volumes, support local producers, stimulate increase of production volumes the tariffs on export transportation of iron ore products in tanks of producers in all communications are reduced by 15%.	In order to increase coal transportation volume, to prevent possible increase of prices of heating and electric power consumption and subsequent rise of prices of sector products	In order to implement the Agreement between the Government of RK and the Kyrgyz Republic on use of fuel-energy and water resources of Naryn-Syrdarya reservoirs in 2003 the tariffs on transportation of coal and black oil provided as compensation for electric power from the Kyrgyz Republic during vegetation period according to the Resolution of the Government of RK No.799 dated 17 July 2002	The Regulation on establishing and cancellation of decreasing coefficients of tariffs on railway transportation regulated by the state No.24-O/I (approved by the Order of the Agency dated 30 December 1999, registered No. 102 in the Ministry of justice on 6 January 2000
Legal basis	The Regulation on establishing and cancellation of decreasing coefficients of tariffs on railway transportation to be regulated by the state №24-O/I (approved by the Order of the Agency dated December 30, 1999, registered No.102 in the Ministry of Justice on January 6, 2000				
Payment terms	Advance payment, no indebtedness for transportation services, increase of transportation volumes in comparison with the previous year	Advance payment, no indebtedness for transportation services, increase of transportation volumes in comparison with the previous year	Advance payment, no indebtedness for transportation services, increase of transportation volumes in comparison with the previous year	In the form of compensation of the electric power from the Kyrgyz Republic delivered in the vegetation period	Advance payment, no indebtedness for transportation services and fulfilment of transportation volumes not less than the level of 2001
Validity of subsidy	since 21 January 2003 till 31 December 2003	since 24 January 2003 till 31 December 2003	since April 1 till 1 October 2003	since 17 August 2003 till 31 December 2003	Since 29 March 2002 till 1 January 2003
Statistical data allowing to evaluate subsidy effect on trade	-	-	-	-	-

ANNEX 8

Electric Power Delivery by KEGOC

Services	"AES Ekibastus" LLP	"Ekibastuzskaya station" OJSC	"Kazenergoresurs" LLP
The title of subsidy program or special target subsidy:	Electric power delivery by "KEGOC" OJSC, "AES Ekibastuz" LLP networks	Electric power delivery by "KEGOC" OJSC, "Ekibastuzskaya station" OJSC	Electric power delivery by "KEGOC" OJSC, "Kazenergoresurs" LLP
Subsidy (subsidy per unit):	90% discount	According to the Orders: 84%, 88%, 84%.	According to the Orders: 80%,65%, 65%
Amount of Subsidy, mln. Kwatt/hour	575.4	3,482.2	932.8
Amount of Subsidy, mln tenge	229.1	1,753.9	438.6
Objectives of subsidy	In order to regulate arbitrage investigation with AES corporation and to execute the Memorandum of understanding between the government of the Republic of Kazakhstan and AES Corporation "On Regulation of Dispute with AES Corporation"	Increase of electric power consumption in comparison to the period of the previous year	Increase of electric power consumption in comparison to the period of the previous year
Legal basis	Joint order of the Agency of the Republic of Kazakhstan on Natural Monopoly Regulation, Competition Protection And Assisting Small Business (dated 15 March 2000, No. 27-ОД) and the Ministry of Energy and Mineral Resources (dated 15 March 2000, No.101)	The order of the Agency of the Republic of Kazakhstan on Natural Monopoly Regulation, Competition Protection And Assisting Small Business No. 263 –ОД dated 29 December 2002, the order of the Agency No.166-ОД dated 30 June 2003, the order of the Agency No.186 dated 27 July 2003 .	The order of the Agency of the Republic of Kazakhstan on Natural Monopoly Regulation, Competition Protection And Assisting Small Business No. 89-ОД dated 26 March 2003, the Order of the Agency No.166-ОД dated 13 August 2003, the Order of the Agency No.235-ОД dated September 16, 2003
Payment terms	100% current payment	100% current payment	100% current payment
Validity of subsidy	Since April 7, 2000 till April 7, 2015	According to the Orders: since January 1, 2003 till June 30, 2003, since July 1, 2003 till July 31, 2003, since July 31 till December 31, 2003	According to the Orders: since 1 April 2003 till 30 September 2003, since 13 August 2003 till 30 September 2003, since 16 September 2003 till 31 December 2003.
Statistic data allowing to evaluate effect of subsidy on trade	-	-	-