

KAZAKHSTAN

TRADE SUMMARY

The United States registered a trade surplus of \$270 million with Kazakhstan in 2002, a reversal of \$462 million from the \$192 million trade deficit in 2001. Kazakhstan was the United States' 63rd largest export market in 2002. In 2002, U.S. goods exports to Kazakhstan were \$605 million, a 277.3 percent increase from 2001. U.S. imports from Kazakhstan were \$335 million in 2002, a decrease of 4.9 percent from 2001.

The stock of U.S. foreign direct investment (FDI) in Kazakhstan in 2001 was \$5.2 billion, up from \$3.8 billion in 2000.

In 2002, Kazakhstan was designated a market economy by the U.S. Department of Commerce in recognition for the significant reforms it has undertaken since independence in 1991. Substantial economic growth over the past three years has made it possible for domestic enterprises to begin accumulating capital. Credit has also become more easily available because of the strong economic growth and effective reforms in the banking sector. Progress has been made in nurturing the nascent securities market and consolidating gains in pension reform.

Kazakhstan has stated its commitment to WTO membership but has been slow to enact key reforms to make its trade regime more compliant with WTO requirements. The U.S.-Kazakhstan Bilateral Trade Agreement, which came into force in 1993, grants reciprocal normal trade relations treatment. A bilateral investment treaty (BIT) went into force in January 1994. Most investment in Kazakhstan to date has been in the oil, gas and minerals sectors.

IMPORT POLICIES

Kazakhstan is a member of the Eurasian Economic Community (EAEC), along with Russia, Kyrgyzstan, Belarus and Tajikistan - Moldova and Ukraine currently have observer status. Trade among the five EAEC countries is generally duty-free but protective measures may be applied between the member states. The countries have not yet established a common external tariff. The EAEC is developing coordinated customs procedures that would reduce the cost of transshipment through the

EAEC member states of U.S. goods destined for Kazakhstan.

The average weighted import tariff in Kazakhstan is approximately 10 percent. In 2001, the value-added tax (VAT) was reduced from 20 percent to 16 percent. Imported goods are subject to VAT at the time of importation (VAT destination principle), except for oil and oil products imported from Russia, where VAT is applied before export. Kazakhstan plans to adopt the destination principle for VAT application for all imports in the context of its accession to the WTO. In the interim, it has negotiated agreements to this effect with individual Commonwealth of Independent States members, e.g., Kyrgyz Republic, Moldova, and Azerbaijan.

Goods imported for short-term use in Kazakhstan under the temporary import regime can be fully or partially exempt from all duties, taxes, and non-tariff regulations. The government has the right to issue a list of goods that cannot be temporarily imported into Kazakhstan. Goods not eligible for full or partial duty exemptions are traditionally food products, industrial wastes, and consumables.

Article 22 of the 1994 Foreign Investment Law exempted from customs duties property imported by a foreign investor for the purpose of contributing it to the charter capital of a "foreign-shared enterprise" - defined as a Kazakhstani legal entity, such as a limited liability company, in which the foreign investor has an ownership interest. After the 1997 amendments to the Foreign Investment Law, only equipment and spare parts for such equipment imported for the charter capital are exempt from customs duties.

Customs Procedures

In early 2002, the Ministry of State Revenues prepared revisions to the Customs Code and a draft was introduced into Parliament during its fall 2002 session. While there are positive changes in the draft Customs Code, key provisions for modern customs practice such as provisions for voluntary disclosure and WTO-compliant customs valuation methodologies were proposed and rejected.

Ministry of State Revenues Order 402, issued in 1999, sets conditional prices for certain

KAZAKHSTAN

imported goods, and in so doing conflicts with WTO valuation methodology and apparently also with the valuation principles of the Kazakhstan's existing Customs Code. The provisions of Order 402 permitting conditional valuation have been incorporated into the draft code.

In September 2002, the Ministry of State Revenue was merged with the Ministry of Finance and customs functions were transferred to the Customs Control Agency operating under the Prime Minister's Office. This raises concerns by businesses about inconsistencies between tax and customs policies and operations.

The Customs Control Agency continues to discuss automation of customs procedures, but little progress has been made. In October 2002, Kazakhstan instituted a "customs audit" procedure administered by a private contractor. Under this system, approximately 20 percent of all goods crossing Kazakhstan's borders are subject to valuation uplifts. While the government will pay for regular inspections, the declaring party will pay penalties in the event of discrepancies. There are concerns that this system may be viewed as an opportunity to generate extra-legal revenues outside the purview of existing duties and taxes. Key provisions of the draft Customs Code legally reinforce the objectionable procedures used by the private contractor to determine the customs value based on a database of world prices.

U.S. companies have consistently identified Kazakhstan's requirement that they obtain a "transaction passport" to clear imported goods through customs as a significant barrier to trade. This regulation is designed to stem capital outflows and money laundering by requiring importers to show copies of contracts and other documentation to legitimize and verify the pricing of import/export transactions. The practice retards the growth of trade, insofar as the regulation places relatively tight restrictions on transaction parameters. For example, the regulations allow a maximum financing term for imports of 120 days, after which time the transaction passport must be closed out. This unnecessarily limits the range of business activity and creates a potential bias towards short term financing in the economy.

Beginning January 1, 2003, Kazakhstan

nomenclature will be compliant with the HS Convention as the result of an EAEC decision to implement a uniform nomenclature based on the HS system.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The present system of Metrology, Accreditation, Standards and Quality (MAS-Q) in Kazakhstan is weak and fragmented. Many businesses complain of mandatory certification requirements that have no technical base. The Committee on Standards, Metrology and Certification – Gosstandart (the national governing body operating under the Ministry of Industry and Trade) has frequent management changes that make stable, long-term progress difficult. Government observance of existing standards, testing, labeling, and certification requirements continues to be uneven.

President Nazarbayev signed two laws, "On Standardization" and "On Certification," in 1999, in order to bring these areas into compliance with international standards and practices. In 2001, the Government adopted Resolution No. 590, which outlines a Republican Program for Quality 2001-2005. The program is intended to bring Kazakhstan's MAS-Q system into general conformance with the WTO Technical Barriers to Trade and Sanitary/Phytosanitary requirements. However, there has been little progress toward meaningful implementation.

In 1996, the U.S. National Institute of Standards and Technology signed a Memorandum of Understanding with the Government of Kazakhstan to bring Kazakhstan's metrology methods into conformity with international rules and practices. The agreement expired in late 2001, with no significant progress made.

Paragraph 2 of Article 12 of the Law on Certification requires that all imported products subject to mandatory certification be accompanied by documents identifying the producers, the date of production, the expiration date, storage requirements and the mode of use in both the Kazakh (state) and Russian (officially recognized) languages. The government has accepted placement of Kazakh language stickers on products as compliance with the law, instead of requiring entirely new labels. The government also has issued a fairly

KAZAKHSTAN

wide-ranging regulation exempting pharmaceutical products and several other categories of goods from the Kazakh labeling requirement.

GOVERNMENT PROCUREMENT

Kazakhstan is not yet a member of the WTO Agreement on Government Procurement. Kazakhstan, with the support of the World Bank, is reforming and harmonizing its system of state procurement. Some potential U.S. investors have raised their concerns about the transparency and efficiency of the government tender process.

The State Procurement Agency was established by Presidential decree on December 14, 1998, and the Regulation on the State Procurement Agency was approved on March 26, 1999. This legal structure strengthened the monitoring functions of the State Procurement Agency, improved control systems, and provided independence in the selection of methods for high value procurement. The current law does contain provisions whereby domestic producers and small businesses receive preferential treatment during the government procurement process.

In October 2002, Kazakhstan adopted "Rules for the Organization and Holding of State Procurement." These rules established a standardized format for publicized tender offers and specified in which newspapers the offers should appear based on the newspaper's circulation and the tender's value.

U.S.-funded assistance projects are helping Kazakhstan establish a database to assist in procurement. In 2003, the State Procurement Agency plans to launch an official online procurement database that would contain a full file of all public tenders held in Kazakhstan, standardized requirements for bids, and lists of bidders and bid winners.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The 1992 U.S.-Kazakhstan Agreement on Trade Relations incorporates provisions on the protection of intellectual property rights (IPR). Kazakhstan has fulfilled a number of its obligations regarding intellectual property under the agreement, but several bilateral

commitments remain unfulfilled. As part of its effort to accede to the WTO, Kazakhstan continues to undertake steps to bring its intellectual property legislation into compliance with the WTO's Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement).

Kazakhstan acceded to the Geneva Phonograms Convention in June 2000 and is a member of the Berne Convention for the Protection of Literary and Artistic Works. However, Kazakhstan has not yet made the necessary changes to its Copyright Law to implement the Berne Convention, particularly with respect to the Berne Article 18 obligation (which is incorporated into the TRIPS Agreement) to provide protection to foreign works that have entered the public domain in Kazakhstan, but are still protected in their country of origin. The government announced that it intends to address concerns about a lack of retroactive protection for copyrights in planned amendments to its Copyright Law in 2003.

In 2001, Kazakhstan adopted the Law on Integrated Circuits and joined the 1971 Strasbourg Agreement on International Patent Classification, the 1957 Nice Agreement on International Classification of Goods and Services for Trademark Registration, and the 1977 Budapest Agreement on International Recognition of Microorganism Deposits for the Purposes of Patent Procedures. The Parliament has yet to pass the Law on Commercial Secrets. Kazakhstan has signed but has not yet ratified the 1997 WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

Kazakhstan enacted several key intellectual property rights laws in 1999: a new Trademark Law, a Law on Selective Achievements, and a new Patent Law. The current Law on Copyrights, which dates from 1996, protects software as literary works and databases as compilations. However, there is no known civil *ex parte* search procedure, which is necessary to provide effective enforcement against end-user pirates. In addition, there is nothing in the Criminal Code or the Criminal Procedures Code to provide police with the proper *ex officio* authority to commence criminal copyright cases. In 1999, Kazakhstan also amended its Customs Code to provide for the seizure at the border of items that violate intellectual property rights.

KAZAKHSTAN

However, there is little border protection for the importing or exporting of illegal material, and illegal sound recordings (especially CDs) are being imported, particularly from Russia and China.

Despite an increase in confiscations of pirated goods and a gradual growth of licensed dealers over the last three years, weak enforcement remains the most serious obstacle to a sound IPR regime. The government agency charged with IPR protection is underfunded and the judicial system does not effectively prosecute IPR-related cases. Public awareness of IPR issues is growing due to government and private sector efforts and the government is actively working to inform judges and police about their responsibility to enforce IPR protections.

SERVICES BARRIERS

According to the new Law on Insurance dated January 2, 2001, overall capital of all foreign insurance companies should not exceed 25 percent in the non-life insurance market and 50 percent in the life insurance market. Foreign companies can operate through joint ventures with Kazakhstani companies or as a 100 percent foreign company. Amendments to the Oil and Gas Law require that oil companies purchase services only from Kazakhstani-based companies unless the required service is unavailable in Kazakhstan.

INVESTMENT BARRIERS

Since 1997, there has been a growing trend to favor domestic over foreign investors in most state contracts. Amendments passed in 1999 to the Oil and Gas Law required mining and oil companies to favor local goods and services. The rules implementing these legal provisions were enacted on June 7, 2002 (Decree 612), but were not being enforced as of December 2002. The decree creates onerous requirements for government involvement in, and approval at, each stage of private companies' procurement processes.

In accordance with the 2001 Law on Land, the following types of land plots cannot be held through private ownership: agricultural land, defense industry land, specially protected territories, forests and springs, communal use lands, and uninhabited areas. The law allows both citizens of Kazakhstan and foreigners to

own land under commercial and non-commercial buildings and complexes, including dwelling buildings and land used for servicing these buildings. Only Kazakhstani citizens may own land plots upon which suburban or summerhouses stand and non-commercial household gardens. Both Kazakhstanis and foreign firms can obtain leasing rights to land only for a maximum of 49 years. However, when foreign firms lease agricultural land, the lease cannot exceed 10 years. Foreign companies and joint ventures cannot transfer agricultural land to a third party "for secondary use" (i.e. for sublease).

Kazakhstani authorities often require, as part of a foreign firm's contract with the government, that foreign investors contribute to social programs for local communities.

Foreign insurance companies are limited to operating in Kazakhstan through joint ventures with Kazakhstani companies. The total registered capital of banks with foreign participation is less than 25 percent of the total registered capital of all banks in Kazakhstan. Foreign ownership of individual media companies is limited to 20 percent.

The difficulty in obtaining work permits for foreign investors' employees in Kazakhstan is an ongoing problem. The government introduced a regulation in 1999 limiting the number of foreign workers in Kazakhstan to 7,000. In 2001 a quota system was established that increased the number of work permits to 10,500, and made exceptions for investors' lead representatives. Although the quota has not been exceeded, many companies report that permits for key managers and technicians are routinely rejected or granted for unreasonably short periods, or are conditioned upon demands for additional local hires. Companies also note that the regulations are confusing and interpreted differently by various local government officials and the Ministry of Labor.

OTHER BARRIERS

There are other structural barriers to investment in Kazakhstan, including a weak system of business law, a lack of an effective judicial process for breach-of-contract resolution, and an unwieldy and corrupt government bureaucracy. Many companies report significant logistical difficulties serving the Kazakhstani market. In

KAZAKHSTAN

addition, there is a burdensome tax monitoring system for all companies operating in Kazakhstan.

In 2001, Kazakhstan adopted passed transfer-pricing legislation, which gave tax and customs officials the authority to monitor export-import transactions in order to stop the understating of earnings through manipulation of export prices. Foreign investors are concerned because the government rejected use of OECD standards to determine proper market prices under its transfer pricing legislation, creating instead a methodology that fails to fully account for all cost and quality differences. The government also holds that transfer pricing can take place even in transactions between unaffiliated parties.