KAZAKHSTAN

TRADE SUMMARY

U.S. goods exports in 2013 were $1.1 billion, up 24.2 percent from the previous year. Corresponding U.S. imports from Kazakhstan were $1.4 billion, down 11.2 percent. The U.S. goods trade deficit with Kazakhstan was $295 million in 2013, down $388 million from 2012. Kazakhstan is currently the 74th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Kazakhstan was $11.4 billion in 2012 (latest data available), down from $11.8 billion in 2011.

WTO Accession

Kazakhstan intensified its work on negotiations for its accession to the WTO in 2013, advancing both technical and substantive aspects of the negotiations. The accession package under negotiation consists of: (1) schedules of goods and services market access commitments; (2) a Working Party report and Protocol of Accession recording how Kazakhstan will implement WTO provisions; and (3) commitments on domestic agricultural support and export subsidies.

The United States and Kazakhstan signed a WTO bilateral agreement on market access for goods on November 22, 2010 and a market access agreement on services on September 21, 2011.

During 2013, the Working Party on Kazakhstan's accession met four times, developing a revised draft Working Party report to reflect the changes that have taken place in Kazakhstan's trade regime and legal framework as a result of its entry into a customs union (CU) with the Russian Federation and Belarus. Major issues that remain under negotiation include: (1) localization policies in procurement for commercial purposes by state-owned and state-controlled enterprises; (2) trade-related investment measures in the oil, gas, and mining industries; (3) agricultural policies (including domestic support, export subsidies, and tariff-rate quotas (TRQs) on U.S. meat and poultry exports; (4) necessary commitments on SPS measures; and (5) adjustments to Kazakhstan's tariff commitments in light of its membership in the CU.

IMPORT POLICIES

Russia-Kazakhstan-Belarus Customs Union

On January 1, 2010, the Russia-Kazakhstan-Belarus CU adopted a common external tariff (CET) with the majority of the tariff rates set at the level that Russia applied at that time. On July 1, 2010, a common CU Customs Code entered into effect, and on July 1, 2011, the CU Parties abolished all customs posts on their internal borders, allowing for the free flow of most goods among the CU countries. Establishment of the CU also introduced new customs control procedures for importers from non-CU countries. Beginning in early 2012, the Eurasian Economic Commission (EEC) replaced the CU Commission as the supranational body charged with implementing external trade policy for CU Parties and with coordinating economic integration among CU Parties with the goal of establishing a Eurasian Economic Union by 2015.

As a consequence of its membership in the CU, Kazakhstan's import tariffs, trade in transit rules, nontariff import measures (*e.g.*, tariff-rate quotas, and import licensing.), and customs policies (*e.g.*, customs valuation, customs fees, and country of origin determinations) are based on CU legal instruments. On these and other issues involving goods, CU Agreements and CU/EEC Decisions establish the basic principles that are implemented at the national level through domestic laws, regulations, and other measures. CU Agreements and CU/EEC Decisions also cover issues such as border enforcement of intellectual property rights, trade remedy determinations, establishment and administration of special economic and industrial zones, and the development of technical regulations and sanitary and phytosanitary measures. Generally, industry reports that the cost of importing has gone up as a result of Kazakhstan's entry into the CU due to an increase in fees for registration and import duties on some products, as well as new licensing requirements for numerous goods.

Tariffs and Quotas: With the implementation of the common external tariff (CET) with Belarus and Russia, Kazakhstan increased the tariff rate on more than 5,400 tariff lines. As a result of Russia joining the WTO, in 2012, the CU adopted Russia's WTO schedule of tariff bindings. In 2013, tariffs on about 5,000 out of a total of 11,000 tariff lines decreased by 1 percent to 2 percent, reflecting Russia's tariff reductions resulting from its WTO commitments. These incremental reductions have not reduced Kazakhstan's tariff rates to the levels they were at prior to establishment of the CU.

According to CU regulations, Kazakhstan is currently allowed to apply tariffs that differ from the CET on 59 tariff lines, but those tariffs must be harmonized with the CET rate by 2015. The 59 tariff lines cover pharmaceuticals and medical equipment. In addition, a CU Party is permitted to increase or reduce tariffs for up to six months on selected goods in exceptional cases and with permission of the EEC. In 2012, Kazakhstan introduced protective tariffs on candy and cotton wool that will be applied through September 2014.

In 2010, Kazakhstan established tariff-rate quotas (TRQs) on imports of poultry, beef, and pork, as part of its obligations within the CU. In 2012, U.S. exporters raised concerns about the trade-limiting effects of these TRQs and the manner in which they are calculated and allocated. For the past three years, the TRQ allocations consistently have not been made in a timely manner, which has further limited market access for U.S. goods such as poultry. In December 2012, Kazakhstan established revised in-quota quantities for beef, pork, and poultry that fell short of the historical level of U.S. exports to the market. For 2014, Kazakhstan is expected to maintain prior TRQ levels and allocation mechanisms. Kazakhstan has begun allocating 10 percent of the TRQ to new suppliers, each of which is eligible to import no more than 2.5 thousand tons per year.

In September 2013, the EEC allowed Kazakhstan to introduce an import quota for combine harvesters from third countries. In contrast to Russia, Kazakhstan will not introduce a special 26.7 percent import duty but will allow importation of a limited number of combine harvesters from third countries at the previously established 5 percent tariff. Kazakhstan's quota will allow for the importation of 300 units in 2014, 309 units in 2015, and 204 units in 2016 (through August 21). Under the EEC decision, the program may be suspended if Kazakhstan uses more than 70 percent of its quota allotment during the first half of 2014.

Licensing: In connection with its membership in the CU, Kazakhstan increased the number of goods subject to import or export licensing. Precious metals and stones, documents from national archives, and items of cultural value are among the products now subject to export licensing. Products with cryptographic functionalities, even commonplace consumer electronic products, are subject to import and export licensing procedures or a one-time notification requirement. (For more information on industry concerns with the CU's import licensing regime for products with cryptographic capabilities, see the discussion in the section on the Russian Federation.) Kazakhstan maintains a ban on the export of light distillates, kerosene, and gasoline.

Customs: Although Kazakhstani officials have pursued some reforms of customs procedures, businesses continue to raise concerns that Kazakhstan's customs practices are significant barriers to trade.

EXPORT POLICIES

In 2010, the government of Kazakhstan reintroduced a duty on the export of crude oil. This reintroduction resulted in a $1 billion dispute with the consortium of international oil companies operating the Karachaganak condensate field. In 2011, the government determined that export duties do not apply to Production Sharing Agreements, which have tax stability clauses and thus settled the dispute.

GOVERNMENT PROCUREMENT

The lack of transparency and efficiency in government procurement remains a major challenge for local and foreign companies. The government recognizes this, and is taking steps to streamline its procurement process. Kazakhstan moved to an electronic procurement system on July 1, 2012. Resident and non-resident companies may participate in electronic tenders once they receive an electronic signature from the Ministry of Transport and Communication. The system's performance to date has varied.

In the fall of 2013, the government submitted to Parliament a bill to change existing laws on government procurement. The amendments are expected to reduce opportunities for corruption and to improve the quality of purchased goods and services. The proposed bill establishes a state-owned company to act as a unified operator for government procurement including arranging and conducting tenders and auctions on budget expenditures at both the national and regional level.

The government's continuing support for the increased use of local content adversely impacts U.S. suppliers and is a subject of intense discussions in Kazakhstan's WTO accession process. In 2009 and 2010, Kazakhstan amended its Law on Government Procurement to increase the percentage of local content required in government procurement and purchases by state-owned and state-controlled enterprises, which applies to both domestic and foreign suppliers. Potential suppliers must receive a certificate from the Ministry of Industry and New Technologies confirming the local content of goods and/or services. Starting January 1, 2014, companies from EEC countries can use EEC goods and services to meet local content requirements in Kazakhstan.

The National Welfare Fund and government-owned holding company, Samruk-Kazyna, accounts for at least 16 percent of Kazakhstan's GDP. Through share ownership, Samruk-Kazyna manages some of Kazakhstan's largest national companies, including Kazakhstan TemirZholy (national railway), KazMunaiGas (national oil and gas company), KEGOC (electrical utility), and their subsidiaries. These enterprises are subject to the Samruk-Kazyna local content requirements. Samruk-Kazyna and its subsidiaries conduct procurement of goods and services in accordance with the Rules of Procurement, approved by the Board of Directors of the Fund on May 26, 2012. The Rules stipulate criteria for the evaluation of bids and provide for price preferences of up to 20 percent for locally produced goods and services. In 2013, Samruk-Kazyna proposed new rules on procurement in order to comply with WTO standards. These rules would come into force after Kazakhstan's WTO accession and would cancel bill-back allowances and other forms of preferential treatment given to locally produced goods and services. According to the new rules, however, only qualified suppliers will be eligible to participate in Samruk-Kazyna tenders. Furthermore, a designated Samruk-Kazyna subsidiary would rank potential bidders in order to include them into a list of qualified suppliers.

Kazakhstan has offered to become an observer to the Agreement on Government Procurement (GPA) and will initiate negotiations to join the GPA within an agreed time period.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

To facilitate its WTO accession and attract foreign investment, Kazakhstan continues to modernize its legal regime for protecting intellectual property rights (IPR). Kazakhstan has taken steps towards implementing international IPR standards. For example, the government has introduced amendments to its trademark legislation to address obligations under the TRIPS Agreement.

Pursuant to statutes enacted in November 2005 that authorized stronger penalties, authorities have conducted numerous raids in the past against distributors of pirated products. The government's efforts have helped to expand the Kazakhstani market for licensed, non-infringing products. However, customs controls need to be applied more effectively against imported IPR-infringing goods. In addition, although civil courts have been used effectively to stem IPR infringement, judges often lack technical expertise in the area of IPR which is a significant obstacle to further improvement in Kazakhstan's IPR enforcement.

Kazakhstan still lacks effective means to protect pharmaceutical test and other data against unfair commercial use, as well as disclosure. However, it has reportedly begun work on drafting regulations to do so and has stated its willingness to provide such protection as of the date of its accession to the WTO.

SERVICES BARRIERS

Telecommunications

Kazakhstani law restricts foreign ownership to 49 percent in telecommunications companies that provide long distance and international telecommunication services and that operate fixed line communication networks (cable, optical fiber, and radio relay). This restriction was addressed during bilateral negotiations with Kazakhstan within the context of its WTO accession. Kazakhstan agreed that, after a two and a half year transition period, it will remove this foreign ownership restriction for telecommunications operators, except for the country's main carrier KazakhTeleCom.

The law "On Communication" and Decree 1499 together require placing and registering Network Control Centers for very small aperture antennas within the borders of Kazakhstan. The U.S. satellite industry has expressed concerns regarding restrictions on the transport of video programming through foreign satellites and restrictions barring foreign firms from providing these services to the government. As part of its WTO accession commitments, Kazakhstan has agreed not to restrict services provided by foreign satellite operators to companies that hold a license for telecommunication services.

Other

Foreign banks and insurance companies are allowed to operate only through joint ventures with Kazakhstani companies. However, Kazakhstan has agreed to eliminate the joint venture requirement and to permit direct branching following a transition period of five years after WTO accession. Kazakhstan's law also restricts foreign ownership in mass media companies, including news agencies, to 20 percent, a limitation that will still remain in force after WTO accession.

INVESTMENT BARRIERS

Local content requirements: Approximately 70 percent of foreign direct investment in Kazakhstan is in the oil and gas sector. Expanding local content requirements have created a challenging environment for subsoil operations. Kazakhstan's 2003 Law on Investments provides the legal basis for foreign investment in Kazakhstan. Some U.S. investors have expressed concern about the law's investment contract stability provision, the lack of clear provisions for access to international arbitration, and the narrow definition of an investment dispute. In February 2012, the law was amended to extend the deadline for the drafting and approval of "project documents" for companies in extractive industries. These documents include performance indicators and assessments of the economic feasibility of the project, which must take into account potential Kazakhstani suppliers of goods and services, *i.e.*, the willingness of the investing firm to localize its procurements. The requirement to draft and approve project documents was introduced in the June 2010 Law on Subsoil and Subsoil Use ("2010 Subsoil Law") but reportedly not all extractive companies have managed to meet this requirement.

The 2010 Subsoil Law also established strict local content requirements and harsh penalties for failure to meet them, including the potential cancellation of contracts. Kazakhstani goods do not always fully comply with international standards, and Kazakhstani service suppliers are not always able to provide the technically complex services necessary to support projects in the oil and gas sector. Foreign companies have found it difficult to comply with the government's local content requirements, and they report that local administrators continue to take an increasingly inflexible approach to these regulations. In 2010, the government established the National Agency for Local Content Development to increase local content alternatives to imports, monitor subsoil procurement procedures, and assist local companies to provide competitive goods and services. Government agencies, led by the Ministry of Industry and New Technologies (MINT), are currently drafting an Action Plan on the Enhancement of Local Content in Procurements for Major Subsoil Users and Strategic Mining and Petroleum Companies and are seeking comment on the plan from the Foreign Investors' Council. The Action Plan will require local content to comprise 50 percent of front-end engineering and design (FEED) work; ban the export of geological information (core samples, rocks, and reservoir fluids); and require the nomination of MINT representatives onto the boards of directors of key subsoil use projects.

Actions to enforce such local content requirements are increasing, as well. In April 2012, the National Agency for Local Content Development (NADLoc) accused 38 mining companies of violating local content regulations and threatened to impose penalties, including unilateral termination of subsoil use contracts. Under the new regulations in force since June 2013, the Ministry of Oil and Gas (MOG) monitors and enforces compliance with local content rules, while MINT maintains the state procurement register. In February 2013, MOG reported that fines against subsoil users that did not comply with their contractually obligated local content requirements doubled in 2012 to $2.3 million. Twenty-five companies that violated local content regulations in 2012 have already paid their fines. MOG also accused foreign firms of erecting obstacles preventing local companies from taking part in tenders, including unequal access, unjustified refusals to accept proposals, violations of time requirements, and unjustified delays in signing contracts.

The amendments to the 2010 Subsoil Law, which were scheduled for submission to the parliament by the end of 2013, will require new subsoil use contracts to quantify a firm's local labor content obligations in definitive numerical terms. The 2010 Subsoil Law previously required all new contracts to contain local content provisions, although the obligations could be unspecified. While the government has long pursued a policy of incorporating numerical local labor content obligations into subsoil contracts, this amendment will codify the practice.

For all subsoil projects, 1 percent of the project budget must be earmarked for training programs and workforce development, including overseas assignments with the lead operator. When seeking to appoint certain specialists, international oil companies must consult a list of qualified Kazakhstani specialists included in a database maintained by MINT. As a result of amendments to the Expatriate Workforce Quota and Work Permit Rules, from January 1, 2012, only 30 percent of company executives and 10 percent of engineering and technical personnel may be foreign nationals. These requirements impose significant burdens on foreign subsoil users who may need to bring in intra-corporate transferees with specialized expertise. Kazakhstan's three largest hydrocarbon projects – Tengiz, Karachaganak, and

Kashagan – are exempted from these requirements until 2015. As part of its WTO accession commitments, Kazakhstan has agreed to increase these limits on foreign nationals.

In October 2012, the Procurator General's Office proposed tightening control over the employment of foreign nationals by revising the current procedures for issuing expatriate workforce quotas, granting regional labor departments control over local content requirements for the workforce, and creating a register of employers violating these requirements. In November 2013, Federation of Trade Unions publicly stated that regulations governing employment will be amended within two years to narrow a discriminatory pay gap between foreign and local employees. Although the Federation of Trade Unions' statement does not necessarily reflect the position of the Kazakh government, a few international oil companies have expressed concerns about legislation that would seek to achieve this end.

Sale of Investments: The 2010 Subsoil Law also included a preemption clause that guarantees Kazakhstan the right of first refusal when a party seeks to sell any part of its stake in a subsoil project. The Ministry of Oil and Gas exercised its preemptive right as recently as July 2013, when it decided to buy ConocoPhillips' (COP) 8.4 percent stake in the Kashagan oil field that COP sought to sell to ONGC Videsh Limited. The 2010 Subsoil Law also allows the government to amend or terminate existing subsoil contracts deemed to be of "strategic significance." In April 2012, the government issued a decree that deemed 361 hydrocarbon fields and mineral deposits as having "strategic significance."

Contract Issues: The 2010 Subsoil Law also authorizes the government to amend contracts if it determines that the actions of a subsoil user could lead to a substantial change in Kazakhstan's economic interests. The Law provides no guidance on how to determine whether there is a "substantial change in economic interests." While no contract has to date been annulled on this ground, MOG can and does annul contracts when subsoil users fail to meet their contractual obligations (*e.g.*, no well drilled during exploration stage or violation of local content requirements). The MOG annulled 28 subsoil contracts in 2010 for failure to meet contractual obligations, and in 2011 sent subsoil users a total of 169 notifications on violations of contractual obligations (which can, but do not necessarily, result in cancellation of contracts). MINT annulled 119 subsoil contracts from 2010-2012 and from January-March 2013 sent 600 subsoil users notifications on violations of contractual obligations, most of whom are so called "subsoil tourists" *(i.e.*, companies which receive subsoil rights but do not make their planned investments). As of August 2012, MOG reported that the number of subsoil contracts without specific quantitative obligations in local content had decreased from 129 in 2010 to 27 in 2012.

OTHER BARRIERS

Kazakhstan has a burdensome tax monitoring system, which companies report requires them to employ significant staff resources to comply with the cumbersome rules and frequent inspections. The actions of tax and various regulatory authorities, as well as actions to enforce environmental regulations, can be unpredictable.

Corruption at many levels of government is also seen as a barrier to trade and investment in Kazakhstan. It reportedly affects nearly all aspects of doing business in Kazakhstan, including customs clearance, registration, employment of locals and foreigners, payment of taxes, and the judicial system.