KAZAKHSTAN

TRADE SUMMARY

The U.S. goods trade deficit with Kazakhstan was $855 million in 2011, down $287 million from 2010. U.S. goods exports in 2011 were $826 million, up 13.0 percent from the previous year. Corresponding U.S. imports from Kazakhstan were $1.7 billion, down 10.2 percent. Kazakhstan is currently the 84th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Kazakhstan was $9.6 billion in 2010 (latest data available), up from $7.7 billion in 2009.

WTO ACCESSION

Kazakhstan's announcement in June 2009 of its intent to enter the Belarus-Russia-Kazakhstan Customs Union (CU) slowed the WTO accession process that year, but work resumed in mid-2010. WTO Members examined Kazakhstan's updated information on agricultural domestic supports and export subsidies, and Kazakhstan intensified its efforts to complete its bilateral market access negotiations, signing a number of goods and services bilateral agreements in 2010 and 2011. 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. Kazakhstan still needs to conclude WTO bilateral market access agreements with a few WTO Members, and has signaled it intends to turn to multilateral issues and complete work on its accession package during 2012.

The accession package consists of a Working Party report and Protocol of Accession recording how Kazakhstan will implement WTO provisions; schedules of goods and services market access commitments, consolidated from the bilateral negotiations; and commitments on domestic agricultural support and export subsidies.

Kazakhstan's Working Party, which has not met since July 2008, will meet in mid-April 2012, and will focus on reviewing an updated and revised draft Working Party report that should reflect the new elements of Kazakhstan's trade regime resulting from CU agreements and legal acts. Kazakhstan must also submit new and revised legislation and CU legal acts intended to implement WTO agreements in many key areas affected by Kazakhstan's participation in the CU, *e.g.*, customs practices, sanitary and phytosanitary measures, technical barriers to trade, and import licensing.

IMPORT POLICIES

Belarus, Russia, and Kazakhstan officially established a CU on July 1, 2010, and adopted a harmonized customs code, which is implemented through national customs laws. Kazakhstan implemented a common external tariff (CET) with Belarus and Russia beginning on January 1, 2010. As a result of its membership in the CU, Kazakhstan increased the tariff rate on some 5,400 tariff lines, and its average import tariff in 2010 increased from 6.7 percent to 9.2 percent.

Like the other CU Parties, Kazakhstan has zero tariffs on over 900 individual tariff lines, including light aircraft with fewer than 50 passenger seats, high-speed railway locomotives, spare parts for certain types of vehicles, agricultural equipment, food products such as tropical fruits, children's food, coffee, cacao beans, and certain types of metals.

According to CU regulations, Kazakhstan is allowed to apply tariffs that differ from the CET on 88 tariff lines (down from 409 prior to July 2011), although all tariff lines must be harmonized by 2015. The 88 tariff lines cover pharmaceuticals, medical equipment, aluminum foil, rail wagons, and prefabricated buildings. In addition, a CU Party can increase tariffs for up to six months on selected goods without the consent of the other CU Parties.

Kazakhstan continues to maintain tariff-rate quotas (TRQs) on imports of poultry, beef, and pork, as part of its obligations within the CU. U.S. exporters are concerned about the possible trade limiting effects of these TRQs, as well as the way TRQs are calculated and distributed. In December 2011, the CU announced that in-quota quantities for beef and pork would increase for Kazakhstan by 37 percent and 27 percent, respectively.

Kazakhstan increased the number of goods subject to import or export licensing after joining the CU. Precious metals and stones, encrypted technologies, documents from national archives, and items of cultural value are among the products now subject to export licensing. Kazakhstan will remove the requirement on import licensing for alcoholic beverages when one of the CU's members joins the WTO.

As of November 2011, Kazakhstan has a ban on the export of light distillates, kerosene, and gasoline.

Kazakhstan signed a Free Trade Zone treaty with Commonwealth of Independent States countries in October 2011. This Free Trade Zone was not in effect as of February 2012.

The Law on Investments provides customs duty exemptions for imported equipment and spare parts, but only if Kazakhstani produced stocks are unavailable or not up to international standards. In addition, imported equipment and spare parts designated for priority investment projects under the government's industrialization program are exempted from customs duties.

Although Kazakhstani officials have attempted to reform customs agencies, industry asserts that customs administration and procedural implementation remains a significant barrier to trade. In 2010, Kazakhstan ratified the 1990 Istanbul Convention on temporary admission, which will help bring its procedures for temporary admission of goods into conformity with international standards.

Other reforms allow foreign citizens to import and declare goods at a port of entry without utilizing domestic customs brokers. Previously, foreign citizens that wished to import goods into Kazakhstan were required to have a Kazakhstani partner. Notwithstanding this reform, foreign citizens may still be required to have domestic customs brokers in order to file electronic customs declarations, unless they have software compatible with the new CU computer system. New laws also modified provisions regarding *ex officio* rights for customs officers and standardized practices for the valuation of goods, making the valuation process more consistent. These amendments were approved on December 9, 2009, and entered into force on January 1, 2010.

Establishment of the CU also introduced new customs control procedures for importers from non-CU countries. The cost of importing has gone up due to an increase in import duties and fees for registration, as well as new licensing requirements for numerous goods.

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 and move to an electronic procurement system.

The government's strong support for increased local content is another trend in procurement that impacts U.S. suppliers. In 2009 and 2010, Kazakhstan amended its Law on Government Procurement to increase the percentage of local content required in government procurement, which is applied to both domestic and foreign suppliers. The proportion of local goods and services is calculated according to a formula approved by the Foreign Investors Council.

According to new government procurement requirements, tenders that include a significant percentage of locally produced goods and services will receive preferential treatment. To qualify for preferential treatment, a supplier must receive a certificate from the Ministry of Industry and New Technologies that confirms the extent of its local content.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

To facilitate its WTO accession and attract foreign investment, Kazakhstan is modernizing its legal regime for protecting intellectual property rights (IPR). In 2009-2010, Kazakhstan adopted several amendments to its IPR law, including the legal recognition of vendors who have the rights to print and digital media. This amendment allows licensed vendors to seek damages from unauthorized dealers selling pirated merchandise. Kazakhstan also amended its patent law to clearly define types of patent infringements and establish accountability for patent infringers, as well as to define the relationship between an employer and an employee with respect to an employee's invention.

Kazakhstan has taken steps towards implementing international IPR standards. For example, the government introduced amendments to its trademark legislation with a view to complying with the WTO TRIPS Agreement. Kazakhstan has also ratified 16 of the 24 treaties endorsed by the World Intellectual Property Organization (WIPO). In 2010, Kazakhstan joined the Madrid Agreement on the Repression of False or Deceptive Indications of Source on Goods and the Agreement Concerning the International Registration of Trademarks. It also ratified the Nairobi Treaty on the Protection of the Olympic Symbol. In 2011, Kazakhstan ratified WIPO Patent Law Treaty. In June 2011, Kazakhstan ratified the Agreement of Common Economic Space on unified principles of regulation in the area of IPR protection. As follow-up steps within the framework of this agreement, Kazakhstan intends to join the Singapore Treaty on the Law of Trademarks and the Rome Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations.

Kazakhstan continues to improve its IPR legislation. Kazakhstan's Senate is considering new amendments to IPR laws that would strengthen provisions against copyright piracy over the Internet and would simplify procedures for trademarks registration.

Pursuant to statutes enacted in November 2005 that authorize stronger penalties, authorities have conducted numerous raids against distributors of pirated products. The government's efforts have helped to expand the Kazakhstani market for licensed, non-infringing products.

Customs controls need to be applied more effectively against imported IPR-infringing goods. Further progress is also needed with regard to civil enforcement in Kazakhstan. 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.

SERVICES BARRIERS

Kazakhstani law restricts foreign ownership in telecommunications companies to 49 percent and in mass media companies, including news agencies, to 20 percent. In connection with its WTO accession negotiations, Kazakhstan has agreed that after a two and a half year transition period, it will remove the foreign ownership limit for telecommunications operators serving long distance and international phone calls, except for the country's main carrier KazakhTeleCom JSC. However, the 20 percent limit for foreign participation in mass media companies will remain in force after Kazakhstan joins the WTO.

Foreign banks and insurance companies are allowed to operate only through joint ventures with Kazakhstani companies. Professional services, including auditing, architectural, urban planning, engineering, integrated engineering, and veterinary services, may be provided only by a legal entity resident in Kazakhstan.

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.

INVESTMENT BARRIERS

Kazakhstan's 2003 Law on Investments provides the legal basis for foreign investment in Kazakhstan. Some U.S. investors have expressed concern about certain aspects of the law, including its investment contract stability provision, the lack of clear provisions for access to international arbitration, and the narrow definition of an investment dispute.

Approximately 70 percent of foreign direct investment in Kazakhstan is in the oil and gas sector. The government remains eager to generate foreign investment in this sector, but local content requirements have created a more challenging environment for subsoil operations. The methodology used to calculate local content is not well defined, 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 oil and gas sector. Companies have thus found it difficult to comply with the government's local content requirement, and have reported that local administrators have taken an increasingly inflexible approach to these regulations.

On June 25, 2010, the government established the National Agency for Local Content Development to increase local content alternatives, monitor subsoil procurement procedures, and assist local companies to provide competitive goods and services. The June 2010 Law on Subsoil and Subsoil Use established strict local content requirements and harsh penalties for companies that fail to meet them, including the potential cancellation of contracts. Additionally, the Subsoil Law 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 law fully incorporates an October 2007 amendment to the previous subsoil law that allowed the government to amend or terminate existing subsoil contracts deemed to be of "strategic significance," or where the economic interests in Kazakhstan are deemed to create a "national security risk."

In accordance with the October 2007 amendment, the government issued a decree in August 2009 that deemed 100 oil and gas fields as having "strategic significance," and that also authorized 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 or could threaten Kazakhstan's national security. The Decree provides no guidance on how the government will determine whether there is a substantial change in economic interests or whether there is a threat to national security.

No contract has been annulled on the grounds of a substantial change in economic interests or a threat to national security. However, the Ministry of Oil and Gas (MOG) can and does annul contracts when subsoil users fail to meet their contractual obligations (*e.g.*, no well drilled during exploration stage, violation of local content requirements). In 2010, the MOG annulled 28 subsoil contracts for failure to meet contractual obligations. In 2011, the MOG sent subsoil users a total of 169 notifications on violation of contractual obligations, which do not necessarily result in cancellation of contracts.

In 2010, the government reintroduced a duty on the export of crude oil that triggered a $1 billion dispute with the consortium of international oil companies operating the Karachaganak condensate field. The Prime Minister stated in September 2011 that the export duty will not apply to Production Sharing Agreements, which have tax stability clauses.

Kazakhstan's lower house of Parliament adopted a draft Law on Natural Gas and Gas Supply on November 2, 2011. The bill is awaiting approval in the Senate. The Parliament has not published the draft law, but claims that it is designed to ensure energy and environmental security, to increase the proportion of electricity produced by gas-fired plants, and to create conditions for effective use of such gas. Kazakhstan reportedly will regulate transportation, distribution, and pricing by creating a single operator to purchase natural gas. Oil and gas market participants are concerned that the draft legislation would inhibit the development of a domestic gas market in Kazakhstan. They view the bill as part of an overall trend toward greater state control and involvement in the management and marketing of the country's natural resources.

In February 2011, the government of Kazakhstan made changes to a government resolution relating to measures aimed at implementing the Employment of Populace Law. Expatriates should not make up more than 50 percent of the total number of senior managers, or 30 percent of mid-level employees. These quotas may impact foreign investment in, for example, large industrial or highly technical sectors for which Kazakhstan cannot supply skilled workers in sufficient numbers.

Requirements for use of local workforce personnel on government procurement prospects are governed by three laws: the Employment Law, the Subsoil Use Law, and the Expatriate Workforce Quota and Work Permit Rules. For all subsoil projects, one percent of the project budget should be earmarked for training programs and workforce development, including overseas assignments with the lead operator. Qualified Kazakhstani specialists will be listed in a database on the Ministry's website, which an international oil company is expected to use if it needs a certain specialist. The February 2011 Amendments to the Expatriate Workforce Quota and Work Permit Rules carried serious and negative implications for many foreign subsoil users that rely on foreign personnel. From January 1, 2012, only 30 percent of company executives and 10 percent of engineering and technical personnel may be foreign nationals. In October 2011, the government of Kazakhstan passed a decree exempting Kazakhstan's three largest hydrocarbon projects (Tengiz, Karachaganak, and Kashagan) from these workforce quota and work permit requirements. Other businesses will find it difficult to meet the onerous demands required to obtain an expatriate work permit.

OTHER BARRIERS

There are structural barriers to investment and trade in Kazakhstan, including a weak system of business law, a lack of an effective system for resolving breach of contract, and an unwieldy government bureaucracy. In addition, there is a burdensome tax monitoring system for all companies operating in Kazakhstan. Many companies report the need to maintain excessively large staffs to deal with the cumbersome tax system and frequent inspections. The actions of tax and various regulatory authorities, as well as actions to enforce environmental regulations, can be unpredictable.

Widespread corruption at all 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.

Kazakhstan's largest national companies, such as Kazakhstan TemirZholy (national railway), KazMunaiGas (national oil and gas company), KEGOC (electricity transmission company), and their subsidiaries, are subject to the local content requirements, but are exempted from the Law on Government Procurement.