KAZAKHSTAN

TRADE SUMMARY

The U.S. goods trade deficit with Kazakhstan was $618 million in 2008, an increase of $119 million from $499 million in 2007. U.S. goods exports in 2008 were $986 million, up 30.9 percent from the previous year. Corresponding U.S. imports from Kazakhstan were $1.6 billion, up 28.1 percent. Kazakhstan is currently the 76th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Kazakhstan was $4.9 billion in 2007 (latest data available), up from $4.6 billion in 2006.

IMPORT POLICIES

Kazakhstan is a member of the Eurasian Economic Community (EAEC), along with Russia, Kyrgyzstan, Belarus, Tajikistan, and Uzbekistan. Armenia, Moldova, and Ukraine currently have observer status. Five of the EAEC members (all but Uzbekistan) have formed a free trade area. In 2006, Kazakhstan, Russia, and Belarus announced the formation of a trilateral customs union. The customs union remains under development and aims to bring about coordinated customs procedures and a high degree of uniformity in its members' external tariffs. Significant progress was made in 2008 on formulating the underlying legal basis for the customs union. The progress includes the Russian Duma's ratification of a free trade agreement, and agreements on the establishment of both regulatory and dispute resolution agencies in October 2008. That same month, the Kazakhstani Parliament ratified agreements on common measures for nontariff regulation regarding third countries, and on common customs and tariff regulation. While work to establish the customs union continues independently of its WTO accession negotiations, Kazakhstani officials stated previously that the customs union would only come into force after Kazakhstan becomes a member of the WTO.

The Law on Investments, enacted in January 2003, provides customs duty exemptions for imported equipment and spare parts, but only if Kazakhstan-produced stocks are unavailable or not up to international standards.

U.S. exporters to Kazakhstan have consistently identified the requirement to obtain a "transaction passport" (providing information on, *inter alia*, the importer, contract details, local bank of importer/exporter, and a foreign partner) to clear goods through customs as a significant barrier to trade. The transaction passports are designed to stem capital outflows and money laundering by requiring importers to show documents that verify the pricing of import/export transactions. In July 2006, the National Bank of Kazakhstan (NBK) enacted new regulations that simplified – but retained – the transaction passport requirement. Principal changes included eliminating the trade distorting maximum financing term of 180 days for imported goods and transferring the authority to issue transaction passports from customs to the NBK and commercial banks. According to Kazakhstani regulations, the transaction passports contain concise information on trade partners and include a unique transaction code; specific payment information such as currency, means, and deadlines for payment; and complete contact information for contracting parties. The NBK is currently preparing amendments to the Law on Currency Control that would raise the ceiling on transactions requiring passports from $10,000 to $50, 000.

Kazakhstan's 2007 average MFN applied agricultural tariff rate was 12.5 percent and the average MFN applied industrial tariff rate was 7.1 percent.

In April 2007, the government of Kazakhstan significantly increased the import tariff rates for beef, pork, lamb and mutton, horsemeat, bovine tongues and livers, poultry meat, eggs, and rice. These tariff increases are contrary to the spirit of WTO accession (trade liberalization) and will be subject to negotiation under the United States' bilateral market access agreement with Kazakhstan. In August 2008 the Ministry of Agriculture banned the import of poultry from Arkansas as a result of the detection of low-pathogenic (H7N3) avian influenza. The ban was lifted in early October, 2008. In September 2008, the Ministry of Agriculture banned the import of poultry from Idaho due to the detection of low-pathogenic (H7N3) avian influenza. Partly because of rising global food costs, Kazakhstan introduced a quota on refined sugar imports in March 2008, which has been extended until July 1, 2009. Since 2007, Kazakhstan has had no import tariffs on cooking oil.

Although Kazakhstani officials are diligently addressing the problematic structure of Kazakhstan's customs control agencies, while customs administration and procedural implementation remain a principal barrier to trade. Since August 2008, the Kazakhstani Customs Control Committee has been participating in a parliamentary working group, convened at the direct request of the Prime Minister, to develop a new Customs Code. This new draft of the Custom Code is due to be submitted to the Prime Minister by June 2009.

Kazakhstan is also working on amendments to the existing Customs Code, which are currently being considered by the Parliament. This work aims to bring Kazakhstan's legislation into compliance with WTO standards, and remove several identified barriers to trade. First among these is an amendment currently being considered by Parliament to consolidate and streamline the functions of five separate entities that currently participate in border and customs control activities (*i.e.,* Ministries of Transport and Communication, Health, and Agriculture; Customs; and Border Guard Service of the KNB.) An important objective is the consolidation of paperwork, thereby shortening the period of time for some imported goods to receive required licenses from 60 days to 10 days, and the creation of a single Operational Management Center designed to monitor internal cargo shipments. The second amendment currently being considered by multiple governmental agencies is designed specifically to meet standards required for WTO accession and includes declaration rights for foreign citizens (bypassing the current legal requirement for the participation of domestic brokers), *ex officio* rights for customs agents, and standardized guidelines for the valuation of goods. The development of a new Customs Code has slowed work on amending the existing Customs Code.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

In 2007, Kazakhstan adopted a number of laws in furtherance of its efforts to develop a national system of standardization and certification, such as laws on Safety of Chemical Products, Safety of Food Products, Safety of Toys, and Safety of Equipment and Machinery, as well as a series of amendments to the Law on Technical Regulation.

In 2008, this package of laws was augmented by the Law on Accreditation, which regulates the accreditation of entities that conduct conformity assessment.

The Kazakhstani Law on Technical Regulation distinguishes the state's responsibilities from those of the private sector. The government is responsible for setting product safety standards, but delegates quality control responsibilities to authorized private institutions. A wide range of goods are subject to mandatory certification requirements, which apply to both domestically produced and imported goods. A related regulation lists the specific categories of products subject to certification, including machines, cars, agricultural and telecommunications equipment, construction materials, fuel, clothes, toys, food, and drugs.

The Law on Technical Regulation requires that contracts for the delivery of imported goods include a special clause which confirms the goods comply with Kazakhstani standards.

Delivery contracts must also be accompanied by documents that describe the products and lists the country of origin, the producer, the expiration date, any storage requirements, and instructions for the use of the product in both the Kazakh and Russian languages. In addition, the law states that foreign certificates, testing protocols and compliance indicators must be in accordance with international treaties.

The National Accreditation Center of Kazakhstan intends to become a full member of the International Laboratory Accreditation Cooperation in 2010 and the International Accreditation Forum in 2012. It is currently developing legislation for accomplishing this goal. This step would automatically make the Kazakhstani National Accreditation Center a signatory to a number of international treaties on metrology and standards.

GOVERNMENT PROCUREMENT

Some potential U.S. suppliers have raised concerns about the transparency and efficiency of Kazakhstan's government tender process.

In July 2007, Kazakhstan enacted the Law on Government Procurement, which was designed to increase the transparency of the procurement process and provide relevant state agencies with greater operational flexibility. Concurrent amendments to the Administrative Code stipulated administrative penalties for violations of the Law on Government Procurement. In November 2008, Parliament approved amendments to the Law on Government Procurement, which became effective in December 2008. The amendments are primarily designed to further reduce corruption and introduce an e-procurement system. As mandated by President Nazarbayev, the changes to the Law on Government Procurement should also enhance the participation of domestic suppliers in government procurement, and whenever possible, give preference to them. However, Kazakhstan's largest national companies, governed under the umbrella of the Samruk-Kazyna national holding company, including Kazakhstan TemirZholy (national railway), KazMunayGas (national oil and gas company), KEGOC (electricity transmission company), and several other companies with their subsidiaries, will not be subject to the Law on Government Procurement.

The Rules on Oil and Gas Procurement give significant preferences to local suppliers and establish what many foreign and domestic firms consider unwarranted state interference in even small tenders.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The Kazakhstan government's effort to diversify the economy away from the energy sector and spur the growth of a domestic high technology industry, combined with the WTO accession process, has led to a strong emphasis on IPR protection. Kazakhstan is currently considering a number of changes to its IPR legislation that will strengthen IPR protection and provide tools for improved IPR enforcement.

Although domestically produced pirated films and music are available in Almaty and Astana, thanks largely to decreasing costs of making copies, the vast majority of pirated goods in these regions appear to be imported, predominantly from Russia and China. Armed with statutes enacted in November 2005 that authorize stiffer penalties for infringers, the authorities have conducted numerous raids against distributors of pirated products. The government's efforts have greatly helped to expand the Kazakhstani market for licensed, non-infringing products. Still, much remains to be done, particularly in ensuring that customs controls are applied more effectively against imported infringing goods. Legislation to strengthen intellectual property protection and enforcement is under development, including a proposal to grant customs officials *ex officio* power to seize infringing goods at the border.

Further progress is also needed in the realm of civil enforcement, which is serving as an increasingly prevalent method of IPR enforcement. Although civil courts have been used effectively to stem IPR infringement, judges often lack expertise in the area of IPR, which is a significant obstacle to further improvement in Kazakhstan's IPR climate.

SERVICES BARRIERS

Foreign ownership of individual mass media companies, including news agencies, is limited to 20 percent. Foreign banks and insurance companies are limited to operating in Kazakhstan through joint ventures with Kazakhstani companies. For certain professional services, including auditing, architectural, urban planning, engineering, integrated engineering, and veterinary services, commercial presence is allowed only in the form of a juridical person. For telecommunications services, foreign ownership may not exceed 49 percent.

INVESTMENT BARRIERS

Kazakhstan's 2003 Law on Investments provides the legal basis for foreign investment in Kazakhstan. In general, U.S. investors have concerns about the Law's narrow definition of investment disputes, its lack of clear provisions for access to international arbitration, and certain aspects of investment contract stability guarantees.

The vast majority of foreign investment in Kazakhstan is directed to the oil and gas sector. The government remains eager to do business with international companies, but increasingly has emphasized the importance of "local content" in purchases of goods and services for petroleum operations. For example, a new draft Law on Subsoil and Subsoil Use, expected to be adopted in 2009, contains explicit requirements regarding the local purchase of goods and services and the hiring of Kazakhstani nationals for all investments in offshore oil and gas exploration and production. The draft Law also requires that KazMunayGas, the national oil company, have a minimum 51 percent share in all new exploration and production contracts and it establishes a procedure by which the national oil company may obtain field rights outside of a tender process. Taken together, these clauses appear to establish KazMunayGas as a necessary partner for international oil companies investing in Kazakhstan.

The proposed legislation would also require separate contracts for exploration and production operations, put shorter time limits on exploration contracts, enhance the government's authority to terminate contracts not in compliance with the law, and require tax stability clauses in individual contracts to be approved by Parliament. In addition, under the terms of the legislation, no future contracts would be structured as production sharing agreements (PSAs), which allow companies to recoup capital expenditures before making royalty payments to the government.

Although exploration and production contracts would be separated, a company awarded exploration rights would nevertheless be given priority rights to negotiate a production contract with the government following an oil or gas discovery. However, if the terms of the production contract were not agreed to within a set time period, production rights would be opened to other bidders through a public tender.

The draft Law also includes a preemption clause that guarantees the State the right of first refusal when a party seeks to sell any part of its stake in a mineral resource extraction project. The State claims this preeminent right even in cases where the controlling agreement assigns preemptive rights elsewhere (*e.g.*, to other investors in a consortium). The proposed draft also fully incorporates an October 2007 amendment to the current subsoil law which allows the government to force amendments to existing subsoil contracts of "strategic significance" –- or even terminate such contracts –- where the economic interests of Kazakhstan are so threatened as to create a "national security risk." In addition, the proposed draft provides the government with enhanced authority to terminate any subsoil contracts for non-compliance with any law.

Kazakhstan's law allows citizens of Kazakhstan and foreigners to own land under commercial and noncommercial buildings, including dwellings and associated land. Such land may also be leased for up to 49 years. The land code, enacted in June 2003, for the first time allows private ownership by Kazakhstan's citizens of agricultural land, in addition to industrial, commercial, and residential land. An amendment enacted in July 2007 extends the right to own agricultural land to Kazakhstani owned businesses as well. Foreigners may still only lease agricultural land for up to 10 years.

Foreign investors continue to have difficulty obtaining work permits for employees who are not Kazakhstani nationals. 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 report that hiring regulations are confusing and interpreted inconsistently by local officials and the Ministry of Labor and Social Protection.

In December 2007, Kazakhstan adopted new regulations on foreign labor. While the Ministry of Labor and Social Protection claims the new regulations simplify the issuance of work permits to foreigners, they impose additional requirements to support the domestic labor market that many investors find onerous.

In light of these difficulties for investors, the government has been increasing slightly the number of work permits available. In 2006, the number of permits was limited to 0.55 percent of the economically active population (estimated at about 8 million people). The percentage figure was increased to 0.8 percent in 2007 (approximately 640,000 permits). For 2008, it was increased to 1.6 percent; and for managers and professionals it increased from 0.3 to 0.6 percent. For skilled workers, the quota rose from 0.37 percent to 0.93 percent.

OTHER BARRIERS

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

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 in Kazakhstan 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. The government has, on occasion, initiated criminal cases against local employees of foreign firms. Kazakhstani authorities often require, as part of a foreign firm's contract with the government, that the firm contribute to social programs for local communities.

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.