

# KAZAKHSTAN

## TRADE SUMMARY

The United States registered a trade deficit of \$224 million with Kazakhstan in 2003, a change from the \$270 million trade surplus in 2002. Kazakhstan was the United States' 100<sup>th</sup> largest export market and 83<sup>rd</sup> largest import market in 2003. In 2003, goods exports to Kazakhstan were \$168 million, a 72 percent decrease from 2002. U.S. imports from Kazakhstan were \$392 million in 2003, a 17 percent increase from 2002. The stock of U.S. foreign direct investment (FDI) in Kazakhstan in 2002 was \$4.5 billion, down from \$4.7 billion in 2001.

The U.S.-Kazakhstan Bilateral Trade Agreement, which came into force in 1993, provides for normal trade relations (NTR) between the United States and Kazakhstan and governs other aspects of the bilateral trade relationship. A bilateral investment treaty (BIT) between the United States and Kazakhstan came into force in January 1994.

Kazakhstan is in the process of negotiating terms of accession to the World Trade Organization (WTO). Kazakhstan submitted its application for WTO membership on January 29, 1996, and the fact-finding phase of the accession was completed in 2003. Kazakhstan is currently engaged in negotiations with WTO Working Party members and last held multilateral and bilateral accession negotiations in Geneva in July 2003. While Kazakhstan has announced that it hopes to enter the WTO in 2005, it has been slow to enact key reforms to make its trade regime compliant with WTO norms.

## 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 in the EAEC. Trade among the five EAEC countries is generally duty-free but protective measures may be applied. 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 for U.S. goods destined for Kazakhstan.

The average-weighted import tariff in Kazakhstan is approximately 10 percent. In January 2004, the value-added tax (VAT) was reduced from 16 percent to 15 percent. Imported goods are subject to VAT on the duties value of the goods 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 WTO accession. In the interim, Kazakhstan has negotiated agreements adopting this principle with individual members of the Commonwealth of Independent States (CIS), e.g. Kyrgyzstan, Moldova, and Azerbaijan.

Goods imported for short-term use in Kazakhstan under the temporary import regime can be fully or partially exempt from duties, taxes and non-tariff regulations. Goods not eligible for duty exemptions have traditionally included food products, industrial wastes and consumables.

Similar to the 1994 Foreign Investment Law, the new Law on Investments, signed in January 2003, provides customs duty exemptions for imported equipment and spare parts, but only if Kazakhstan-produced stocks are unavailable or not of international standards.

Kazakhstan's new Customs Code became effective May 1, 2003, superseding the previous 1995 code. There are positive changes in the new Customs Code, such as provision for WTO-compliant customs valuation methodologies; however, as of January 2004, importers continued to report that customs officials were failing to comply with these methodologies in practice. In addition, key provisions for practices such as voluntary disclosure are not included in the Customs Code.

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Despite passage of the new Customs Code, WTO-inconsistent practices remain in place. For example, Ministry of State Revenues Order 402, which sets conditional prices for certain imports, remains in effect. Since October 2002, Kazakhstan has maintained a "customs audit" procedure administered by a private contractor who determines customs value based on a database of world prices. Under this system, approximately 20 percent of all goods crossing Kazakhstan's borders are subject to valuation uplifts. While the government pays for inspections, the declaring party must pay penalties in the event of discrepancies in value. There are concerns that this process is used to generate extra-legal revenues beyond existing duties and taxes. The Kazakhstani courts have decided that over 85 percent of all appeals under this system violate the Customs 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 President's Office. This transfer has raised concerns 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 this regard.

U.S. companies have consistently identified Kazakhstan's requirement for 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 verify the price of import/export transactions. The regulations allow a maximum financing term for imports of 120 days, after which time the transaction passport must be closed out. This term unnecessarily limits the range of business activities possible and creates a potential bias towards short-term financing in the economy.

### **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 basis or aim. 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 continue to be uneven.

In 1999, two laws - "On Standardization" and "On Certification" - were enacted to bring these areas into compliance with international standards and practices. In 2000, the law "On Ensuring Uniformity of Measurement" was passed. In 2001, the Government adopted Resolution No. 590, which outlines a national Program for Quality for 2001-2005 that is intended to bring Kazakhstan's MAS-Q system into general conformity with WTO requirements on Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary (SPS) measures. There has been little progress towards implementation of this program.

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

The Law on Certification requires that all imported products subject to mandatory certification be accompanied by documents identifying the producer, the date of production, the expiration date, storage requirements and the code of use in both the Kazakh (state) and Russian languages. The government has accepted placement of Kazakh language stickers on products as compliant with the law, instead of requiring entirely new labels. The Government of Kazakhstan has also issued a wide-ranging regulation

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exempting pharmaceutical products and several other categories of goods from the Kazakh labeling requirement.

### GOVERNMENT PROCUREMENT

With the support of the World Bank, Kazakhstan is reforming and harmonizing its system of state procurement. Some potential U.S. investors have raised concerns about the transparency and efficiency of the government tender process.

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

The Rules on Oil and Gas Procurement, which went into effect in 2003, also give significant preferences to local suppliers, and establish what many firms, foreign and domestic, consider unwarranted state interference in even small tenders. Despite governmental promises to amend the Rules, they stand as originally written, although industry sources report that these rules are not being enforced.

In October 2002, Kazakhstan adopted "Rules for the Organization and Holding of State Procurement." These rules established a standardized format for publicizing tenders 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 to establish a database to assist in procurement. The database was launched by the State Procurement Agency in 2003, but remains a work in progress. Not all tenders are listed, and some Government offices contacted in January 2004 stated that they do not rely on the database but continue to use their own contact lists to publicize tenders. Kazakhstan is not a member of the WTO Agreement on Government Procurement.

### INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The United States-Kazakhstan Bilateral Trade Agreement includes commitments on the protection and enforcement of IPR, some of which have not yet been fulfilled. In addition, as part of its ongoing efforts to join the WTO, Kazakhstan has been taking steps to bring its IPR legislation into compliance with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement).

In February 2004, the Government of Kazakhstan outlined a plan that would address outstanding bilateral IPR obligations and further bring its IPR regime into conformity with WTO and international norms. A key element of this plan is the passage of amendments to Kazakhstan's Copyright Law, which would, among other things, provide protection to pre-existing U.S. works and sound recordings. In addition, the Government of Kazakhstan has announced plans to increase coordination among law enforcement agencies, public organizations and international organizations in order to fight piracy. In order to bring its regime in line with international standards, the Government of Kazakhstan also needs to amend its IPR legislation to include enforcement provisions such as civil ex parte search provisions and ex officio authority for customs authorities.

Criminal penalties for IPR violations were adopted in 2001, but the United States remains concerned that these provisions will not effectively deter piracy and counterfeiting due to the high burden of proof. In 1999, Kazakhstan also amended its Customs Code to provide for the seizure at the border of items that

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violate IPR. However, there is little border protection for the importing of illegal material, and illegal sound recordings continue to be imported, particularly from Russia and China.

### **SERVICES BARRIERS**

Foreign insurance companies are limited to operating in Kazakhstan through joint ventures with Kazakhstani companies. 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. 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 mass media companies is limited to 20 percent.

Under the 2002 Kazakhstani Oil and Gas Procurement Regulations (see Investment Barriers, below), oil companies must purchase services only from Kazakhstan-based companies unless the required service is unavailable in Kazakhstan.

### **INVESTMENT BARRIERS**

Kazakhstan's new Investment Law, passed in January 2003, supersedes and consolidates past legislation, but, according to industry sources, represents no marked improvement. There is concern about the Investment Law's narrow definition of investment disputes, lack of clear provisions for access to international arbitration, and low level of stability protection for contracts signed after the law went into effect. On the positive side, the Investment Law eliminates time limits for stability clauses for existing contracts, and, in some cases (notably oil and gas), gives precedence to sector-specific legislation.

For several years, there has been a growing trend to favor domestic over foreign investors in most state contracts. The 1999 amendments 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 in June 2002 (Decree 612) but were not being enforced as of December 2003. The decree creates onerous requirements for government involvement in, and approval at, each stage of private companies' procurement processes.

The law allows both citizens of Kazakhstan and foreigners to own land under commercial and non-commercial buildings, including dwellings and associated land. Such land may be leased up to 49 years. In June 2003, a new Land Code came into effect, which, for the first time, allows private ownership by Kazakhstanis of agricultural land, as well as industrial, commercial and residential land. However, foreign individuals and companies may still only lease agricultural land for up to 10 years, although the wording of the law is unclear with regard to purchase of such land by local legal entities, whether either wholly-owned or joint ventures. 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.

The difficulty in obtaining work permits for foreign investors' employees in Kazakhstan continues to be a problem. In 2001, a quota system was established that limited the number of work permits to 10,500, with exceptions for investor's lead representatives. The quota is set each year, based on a percentage of the total national workforce. 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 officials and the Ministry of Labor.

### **OTHER BARRIERS**

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

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