KAZAKHSTAN

TRADE SUMMARY

U.S. goods exports in 2014 were $1.0 billion, down 12.3 percent from the previous year. Kazakhstan is currently the 82nd largest export market for U.S. goods. Corresponding U.S. imports from Kazakhstan were $1.4 billion, up 1.6 percent. The U.S. goods trade deficit with Kazakhstan was $436 million in 2014, an increase of $164 million from 2013.

The stock of U.S. foreign direct investment (FDI) in Kazakhstan was $14.0 billion in 2013 (latest data available), up from $12.5 billion in 2012.

WTO Accession

During 2014, Kazakhstan focused much of its work in bilateral and plurilateral meetings to resolve specific outstanding issues on agricultural support, market access, sanitary and phytosanitary requirements, state-owned enterprises, and Trade-Related Investment Measures (TRIMS). Members plan further bilateral and plurilateral work in early 2015 with a view to convening a final Working Party meeting in the first half of the year.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Sanitary and Phytosanitary Barriers

Systemic Issues

The United States continues to work with Kazakhstan to encourage improvements in the EAEU and Customs Union (CU) SPS regime and to ensure that implementation of the EAEU's SPS measures does not disrupt trade. (*See Import Policies section below for more information on the EAEU and CU*). However, as a result of its adoption of EAEU and CU requirements, Kazakhstan has begun to impose some measures that have the potential to restrain U.S. exports.

In addition to implementing EAEU and CU import requirements, Kazakhstan now requires any importer or domestic producer of certain types of goods to obtain a Certificate of State Registration before the product can be sold in Kazakhstan. The Ministry of Health's Committee of State Sanitary and Epidemiological Supervision, which was reformed into the Committee of Consumer's Right Protection under the Ministry of National Economy in August 2014, is responsible for issuing these certificates. Goods subject to this certification requirement include:

- mineral water, drinking water in bottles, tonic water, and alcoholic beverages;
- food products produced with agricultural biotech microorganisms;
- food supplements, complex food supplements, perfumes, plant extracts, microorganisms, and cultures;
- products for disinfection (except of those used in veterinary services); and
- items designated for contact with food products (except dishes, table amenities, and microwaves).

Agricultural Biotechnology

The Kazakhstani law "On Seeds Farming" theoretically allows the field testing of agricultural biotech crops, although the field testing approval process has not yet been codified in law. A draft law regarding the approval process has been pending in the Kazakhstani Parliament since early 2011. The draft law is expected to come up for discussion again in 2015. Some sources believe that it is likely the law will only pass after Kazakhstan's WTO accession.

CU regulations covering agricultural biotech products have recently come into force, regulating labeling of imports of agricultural biotech products. As Kazakhstan continues to integrate into the EAEU, it is expected that the policies and views of the other EAEU countries will play a greater role in shaping the regulation of biotech in Kazakhstan.

Pork

Kazakhstan requires imported pork to be shipped frozen to mitigate the risk of trichinae. The United States does not consider this mitigation measure to be necessary for U.S. pork as U.S. producers maintain stringent biosecurity protocols that serve to limit the prevalence of trichinae to extremely low levels in commercial swine. The United States will continue to work with the regulatory authorities in Kazakhstan and the EAEU to resolve this trade concern.

Ractopamine

Kazakhstan imposed a *de facto* ban on imports of all U.S. beef, pork, turkey, processed products containing beef, pork, or turkey, raw materials for casings, and casings, effective February 2013, based on detections of ractopamine residues in various beef and pork shipments to Russia, an EAEU partner and key transit country. Kazakhstan has not notified the United States regarding its ractopamine-related import restrictions.

IMPORT POLICIES

Russia-Kazakhstan-Belarus Customs Union and the Eurasian Economic Union

On January 1, 2010, the Russia-Kazakhstan-Belarus Customs Union began implementing a customs union (the Customs Union or CU) by adopting a common external tariff (CET) with the majority of the tariff rates established at the level that Russia applied at that time. (When Russia joined the WTO in 2012, the CU adopted Russia's WTO schedule of tariff bindings.) On January 1, 2015, Russia, Kazakhstan, and Belarus continued their move toward regional economic integration with the establishment of the Eurasian Economic Union (EAEU), the successor to the CU. Armenia joined the EAEU on January 2, 2015, and Kyrgyzstan has approved a "Roadmap" to join the EAEU.

A common Customs Code applies to the CU (now the EAEU) Member States, and the Member States abolished all customs posts on their internal borders, allowing for the free flow of most goods among the Member States. The Eurasian Economic Commission (EEC) is the supranational body charged with implementing external trade policy for Members States and with coordinating economic integration among Member States, having replaced the CU Commission in that role.

As a consequence of its membership in the EAEU, Kazakhstan's import tariff levels, trade in transit rules, nontariff import measures (*e.g.*, tariff-rate quotas (TRQs), import licensing, and trade remedy procedures), and customs policies (*e.g.*, customs valuation, customs fees, and country of origin determinations) are based on the CU/EAEU 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. The Treaty on the Functioning of the Customs Union in the

Framework of the Multilateral Trading System of 19 May 2011 establishes the priority of the WTO rules in the CU/EAEU legal framework.

Tariffs and Quotas

With the implementation of the common external tariff (CET) with Belarus and Russia, Kazakhstan increased the tariff rate on more than 5,000 tariff lines. As a result of Russia joining the WTO, in 2012, the CU conformed its CET to Russia's WTO schedule of tariff bindings. In 2014, Kazakhstan's tariffs on about 480 out of a total of 11,000 tariff lines decreased by one percent to two percent, reflecting Russia's tariff reductions resulting from its WTO commitments. These incremental reductions have not reduced Kazakhstan's tariff rates to pre-CU levels.

Under EAEU/CU regulations, Kazakhstan currently may apply tariffs that differ from the CET with respect to 58 tariff lines covering pharmaceuticals and 107 tariff lines covering passenger vehicles. Tariffs on passenger vehicles are currently higher than the CET rate and will be harmonized after Kazakhstan's accession to the WTO. In addition, EAEU members are permitted to increase or reduce tariffs for up to six months on selected goods in exceptional cases and with permission of the EEC. In 2010, Kazakhstan established TRQs on imports of poultry, beef, and pork to meet its obligations under the CU. In 2012, U.S. exporters raised concerns about the trade-limiting effects of these TRQs and the manner in which they were calculated and allocated. For the past four years, the TRQ allocations have not been made in a timely manner, which has further limited market access for U.S. goods such as poultry. For 2015, 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 2,500 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 did not introduce a special 26.7 percent import duty, but allows 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 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 2015. Other EAEU/CU safeguarding measures apply in Kazakhstan, such as special duties for dishware, cast iron baths, steel pipe, and other goods.

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, including certain commonplace consumer electronic products, are subject to import and export licensing procedures or a one-time notification requirement. (*See the section on the Russian Federation for more information on stakeholder concerns with the CU's import licensing regime for products with cryptographic capabilities*.)

EXPORT POLICIES

Kazakhstan maintains a ban on the export of light distillates, kerosene, and gasoline. A ban on the export of ferrous scrap was introduced in 2013 and will remain in force until at least January 1, 2015.

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.

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 Samruk-Kazyna's rules for procurement of goods and services, which stipulate criteria for the evaluation of bids and provide for price preferences of up to 1 percent for locally produced goods and services. Potential suppliers must receive a certificate from the National Chamber of Entrepreneurs confirming local content of goods and/or 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 would be eligible to participate in Samruk-Kazyna tenders, and 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 initiate negotiations to join the GPA within an agreed time period.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Kazakhstan was not listed in the 2014 Special 301 Report. To facilitate its WTO accession and attract foreign investment, Kazakhstan continues to modernize its legal regime for protecting intellectual property rights (IPR), including through the introduction of amendments to its trademark legislation to address obligations under the TRIPS Agreement. Further, Kazakhstan continues to examine ways to simplify procedures for issuing patents and to expand patent protection for utility patents, drugs, and fertilizers. Though the United States acknowledges some of the efforts Kazakhstan has taken on IP enforcement, 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. Finally, Kazakhstan still lacks effective means to protect pharmaceutical tests and other data against unfair commercial use and disclosure, which the United States continues to discuss with Kazakhstan ahead 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 regarding its WTO accession. Kazakhstan agreed that, after a two-and-a-half year transition period from the date of accession, 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 must operate 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, and expanding local content requirements in this sector have created a challenging environment for foreign operators. The 2010 Subsoil Law establishes 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. As a result, 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. The 2010 Subsoil Law also introduced a requirement on companies operating in the extractive sector to draft and seek approval for "project documents" that contain 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. Companies have reportedly struggled to meet this requirement as well.

Government agencies, led by the Ministry for Investment and Development (MID) (the new name for 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 that local content comprise 50 percent of front-end engineering and design work; ban the export of geological information (core samples, rocks, and reservoir fluids); and require the nomination of MID representatives onto the boards of directors of key subsoil use projects.

Actions to enforce such local content requirements are also increasing. In April 2012, the National Agency for Local Content Development (NADLoc, an agency established in 2010 to advance local content objectives) accused 38 mining companies of violating local content regulations and threatened to impose penalties, including unilateral termination of subsoil use contracts. Under regulations in force since June 2013, the Ministry of Energy (MOE) monitors and enforces compliance with local content rules, while MID maintains the state procurement register. In February 2013, MOE reported that fines against subsoil users that did not comply with local content requirements accounted for 0.7 percent of oil and gas company procurements in 2012, but rose significantly to 6.67 percent in 2013. In March 2014, NADLoc announced that companies that failed to pay fines will not be able to obtain approvals from MOE. MOE also accused foreign firms of erecting obstacles to prevent local companies from taking part in tenders.

The amendments to the 2010 Subsoil Law approved by the lower chamber of Parliament in November 2014 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 MID. 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 operators who require 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 relax 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.

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, although this right was limited in subsequent amendments to the Law to a smaller universe of "strategically significant" projects. The Ministry of Oil and Gas exercised this right in 2013, when it decided to buy a U.S. company's stake in the Kashagan oil field that the company had sought to sell to another foreign company. 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 the government will make such a judgment."

OTHER BARRIERS

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

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