KAZAKHSTAN

TRADE SUMMARY

The U.S. goods trade deficit with Kazakhstan was $1.1 billion in 2010, up $195 million from 2009. U.S. goods exports in 2010 were $737 million, up 22.1 percent from the previous year. Corresponding U.S. imports from Kazakhstan were $1.9 billion, up 21.3 percent. Kazakhstan is currently the 82nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Kazakhstan was $7.8 billion in 2009 (latest data available).

WTO Accession

Kazakhstan has been negotiating the terms for its membership in the WTO since January 29, 1996 and hopes to complete work on its accession package this year, or early in 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; and commitments on maximum levels of trade-distorting agricultural support.

While progress on negotiations all but halted in June 2009, after Kazakhstan announced its intent to enter the Belarus-Russia-Kazakhstan Customs Union (CU), measurable progress has been made since negotiations resumed in April 2010. On November 22, the United States and Kazakhstan signed a WTO accession bilateral agreement on goods, and are continuing to negotiate market access for services and on certain sanitary and phytosanitary (SPS) and IPR issues affecting market access. Kazakhstan also has signed bilateral agreements on market access for goods and services with twenty-four WTO Members and is close to completion with the remaining few Members seeking such an agreement.

Kazakhstan's Working Party, which has not met since July 2008, will resume work in mid-2011, focusing on finalizing a draft Working Party report which needs to be updated and revised to 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 the new CU trade regime, *e.g.*, customs practices, SPS measures, technical barriers to trade (TBT), and licensing. Kazakhstan also has updated its data tables on agricultural domestic supports and export subsidies, and has initiated negotiations with interested members on the establishment of its commitments in these areas.

IMPORT POLICIES

Belarus, Russia, and Kazakhstan officially established a CU on July 1, 2010, and adopted a harmonized customs code. Kazakhstan implemented a common external tariff (CET) with Belarus and Russia beginning on January 1, 2010. As a result of its membership in the Customs Union, Kazakhstan increased the tariff rate on some 5,400 tariff lines, and its average import tariff in 2010 increased from 6.7 percent to 10.2 percent.

Like other members of the Customs Union, 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 type 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, there is some flexibility in applying the CET regime. Kazakhstan is allowed to apply tariffs that differ from the CET on 409 tariff lines, although all tariff lines must be harmonized by 2015. These tariffs cover pharmaceuticals, medical equipment, processed aluminum products, nuclear reactors and spare parts for them, raw materials for the petrochemical industry, paper products, rail wagons, combines, tractors, and other products. In addition, in some specific cases, Customs Union member states can increase tariffs on selected goods without the consent of the other customs union members.

As required by Customs Union Decision, Kazakhstan implemented tariff-rate quotas (TRQs) on January 1 on poultry, beef, and pork. U.S. exporters are concerned about the possible trade limiting effects of these TRQs, as well as the way TRQs are calculated and distributed. Kazakhstan will maintain its tariff-rate quotas at 2010 levels.

Kazakhstan increased the number of goods subject to import/export licensing after joining the Customs Union. Precious metals and stones, documents from national archives, and items of cultural value are among the products now subject to licensing.

In October 2010, Kazakhstan introduced a ban on the export of buckwheat, soya beans, oil seeds, animal fat, cooking oil (including soya oil), sunflower oil, rapeseed oil, mustard-seed oil, and other types of oilseed derivatives. This ban will remain in effect through April 15, 2011. Kazakhstan also extended a ban on the export of fuel: the export ban on kerosene, jet fuel, and gasoline will remain in effect until April 15, 2011, and the export ban on benzene was extended through January 1, 2011.

The Law on Investments, enacted in January 2003, 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 will also be exempted from customs duties.

U.S. exporters to Kazakhstan have consistently identified the requirement to obtain a "transaction passport" (providing information on, *inter alia*, the importer, contract details, the local bank of the importer/exporter, and the foreign partner) to clear goods through customs as a significant barrier to trade. 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. Kazakhstan amended the Law on Currency Control in August 2009, thereby changing the ceiling on transactions from $10,000 to $50,000. Despite some internal Kazakhstani opposition to the transaction passport system, the National Bank of Kazakhstan insists that it is necessary to control capital movement and prevent capital flight.

Although Kazakhstani officials have attempted to reform customs agencies, 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 control 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, foreigners who wished to import goods into Kazakhstan were required by law to have a Kazakhstani partner. That said, foreign citizens may require domestic customs brokers in order to file electronic customs declarations, unless they have software compatible with new Customs Union computer system. New laws also modified provisions regarding *ex-officio* rights for customs officers. and standardized practices for the valuation of goods. These amendments were approved on December 9, 2009, and entered into force on January 1, 2010.

Establishment of the Customs Union also introduced new customs control procedures for importers from non-Customs Union countries. The cost of importing has gone up, due to a rise in import duties and payments for warehouses services. The time it takes to clear customs when importing from third countries has also increased due to new requirements for storage, inspections and customs declarations. The new rules of the CU have complicated Kazakhstan's custom clearance procedures and created additional barriers to trade.

GOVERNMENT PROCUREMENT

The lack of transparency and efficiency in government tenders remains a major challenge for local and foreign companies. The government recognizes this, and is streamlining its procurement process and gradually moving toward an e-procurement system. Since January 1, 2010 standard government procurement of goods and services has been conducted online. According to a representative of the Ministry of Finance, the next step is to conduct tenders and auctions for all types of equipment and services electronically. Integration within the framework of the Customs Union Common Economic Zone (CEZ) may accelerate this process. If this agreement is signed, Customs Union Parties will be required to conduct government procurement electronically after July 1, 2012.

The government's strong support for increased local content is another trend in procurement that impacts U.S. suppliers. In 2009-2010, Kazakhstan amended regulations and laws, including the Law on Government Procurement, to increase the percentage of local content in government procurements. The local content requirement is applied to domestic and foreign operators in Kazakhstan, including government agencies, state-owned enterprises, national holding companies, and subsoil users. The exact proportion of local goods and services is calculated according to a specific formula approved by the Foreign Investors Council. This formula is used to prepare reports on local content for the Prime Minister’s Office and the Presidential Administration. Russia and Belarus will be able to enjoy national treatment for government procurement as of January 1, 2014.

According to new government tender requirements, proposals that include a significant percentage of locally produced goods and services will receive preferential treatment. Bidders who wish to qualify for preferential treatment must receive a certificate from the Ministry of Industry and New Technologies and indicate the bidder's local content percentage. Bidders with a higher local content rate get a higher discount, which lowers their bid price. Conversely, tender commissions which ignore local content requirement regulations and do not give discounts to certified bidders will be charged administrative fees and may face administrative prosecution. The Kazakhstani government is elaborating its official concept for the development of local Kazakhstani content. Kazakhstani shares for goods and services are expected to increase over time.

According to new procurement rules for subsoil users, procurement plans must be announced in advance, tender documents must be published in the Kazakh and Russian languages, and tenders must be conducted in Kazakhstan. If the tender is conducted outside Kazakhstan, the costs of the procurement will not be reimbursed to the operator, and the government will have cause to cancel the subsoil license altogether. In addition, the organizer of the tender must discount the price of all Kazakhstani bids by 20 percent. At a minimum, 1 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. In theory, if an international oil company needs a certain specialist, it can consult the website, identify a job category, select a specialist, and interview the candidate.

Kazakhstan’s largest national companies, owned and managed by National Welfare Fund Samruk-Kazyna, such as Kazakhstan TemirZholy (national railway), KazMunaiGas (national oil and gas company), KEGOC (electricity transmission company), and their subsidiaries, are subject to these local content requirements, but are thus far exempted from the Law on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

To facilitate its WTO accession and attract foreign investment, Kazakhstan is modernizing its legal regime for protecting IPR. In 2009, 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 IPR violations, accountability for violators, and 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. In 2010, for example, the government introduced amendments to its trademark legislation with a view to complying with TRIPS obligations. Kazakhstan has also ratified 15 of the 24 treaties endorsed by the World Intellectual Property Organization (WIPO). Kazakhstani authorities have stated that Kazakhstan intends to sign several agreements in 2011, including the Agreement on the Repression of False or Deceptive Indications of Source on Goods, and the Agreement Concerning the International Registration of Trademarks. Kazakhstan has also said it intends to ratify the Nairobi Treaty on the Protection of the Olympic Symbol, the Singapore Treaty on the Law of Trademarks, and the Rome Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations.

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 contraband. Further progress also is needed in the realm of 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 climate.

SERVICES BARRIERS

In accordance with Kazakhstan's law "On National Security," foreign ownership in telecommunications services may not exceed 49 percent and foreign ownership of mass media companies, including news agencies, is limited to 20 percent. Foreign banks and insurance companies are allowed to operate only *via* joint ventures with Kazakhstani companies. Other 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 U.S. satellite industry has complained that the government of Kazakhstan has given preferential treatment to Kazakhstan's national satellite (Kazsat 1, now defunct) in the past and may adopt licensing procedures for very small aperture (VSAT) antennas that would be overly burdensome and expensive. Kazakhstan plans to launch a new national satellite in 2011 or 2012. The U.S. satellite industry also argues that Kazakhstan should not restrict the transport of video programming *via* foreign satellites, or limit the entities with which it can contract directly for these services.

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 what constitutes investment dispute.

Approximately 70 percent of foreign direct investment in Kazakhstan is in the oil and gas sector. The government remains eager to do business with international companies in this sector, but increasingly has required local content in purchases of goods and services for subsoil operations. The methodology 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. Consequently, it has been difficult for companies to comply with government local content requirements. Moreover, companies 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 in oil and gas activity, monitor subsoil procurement procedures, and assist local producers to produce competitive goods and services. The June 2010 Law on Subsoil and Subsoil Use establishes strict local content requirements and harsh penalties for companies that do not meet them, including the potential cancellation of contracts. The law also includes a preemption clause that guarantees Kazakhstan the right of first refusal when a party seeks to sell any part of its stake in a mineral resource extraction project. The law fully incorporates an October 2007 amendment to the current subsoil law which allows the government to amend or terminate existing subsoil contracts deemed to be of "strategic significance," where the economic interests of Kazakhstan are deemed to create a "national security risk."

On August 1, 2009, the government issued Decree No.1213, which listed subsoil fields deemed to have "strategic significance." The list includes over 100 oil and gas fields, including Tengiz, Kashagan, and Karachaganak, and 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 or could threaten Kazakhstan's national security. The Decree provides no further 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.

In 2010, the government reintroduced a controversial duty on the export of crude oil that triggered a $1 billion dispute with the consortium of international oil companies operating the giant Karachaganak condensate field. The duty will negatively impact Kazakhstan's oil exporters.

A draft Law on Natural Gas and Gas Supply would regulate gas transportation, distribution, and pricing, and create a single operator to purchase natural gas. International oil company executives and legal analysts 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.

OTHER BARRIERS

There are structural barriers to investment and trade in Kazakhstan, including a weak system of business law, a lack of an effective judicial 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. The government, on occasion, has 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.