KAZAKHSTAN

TRADE SUMMARY

The U.S. goods trade deficit with Kazakhstan was $499 million in 2007, an increase of $184 million from $314 million in 2006. U.S. goods exports in 2007 were $753 million, up 16.5 percent from the previous year. Corresponding U.S. imports from Kazakhstan were $1.3 billion, up 30.3 percent. Kazakhstan is currently the 75th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Kazakhstan was $4.9 billion in 2006 (latest data available), up from $4.7 billion in 2005.

Kazakhstan has been negotiating membership in the World Trade Organization (WTO) since January 29, 1996. As part of that process, Kazakhstan is still negotiating bilateral market access agreements with a number of WTO Members, including the United States, the European Union, and Australia. In 2007, Kazakhstan signed market access agreements with Malaysia, Brazil, and Israel. Currently, 19 out of 40 Members of the WTO Working Party for Kazakhstan have signed bilateral market access agreements. While progress was made in 2007 in implementing WTO-consistent legislation, more work remains in a number of areas, including reform of customs practices, sanitary and phytosanitary (SPS) regulation, technical barriers to trade (TBT), government procurement, and taxation.

The United States-Kazakhstan Bilateral Trade Agreement, which came into force in 1993, grants conditional normal trade relations treatment. A bilateral investment treaty came into force in January 1994.

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. While work on establishing the customs union continues, Kazakhstani officials have stated that the customs union would only come into force after Kazakhstan becomes a member of the WTO.

Goods imported for short term use in Kazakhstan under a temporary import regime can be fully or partially exempt from duties, taxes, and nontariff regulations. The types of goods not eligible for duty exemptions include food products, industrial waste, and consumables. 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 legitimize and 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 some business representatives, the new regulations have succeeded in simplifying the production and issuance of transaction passports.

In April 2007, the government of Kazakhstan increased significantly the tariff rates for imports of 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 2007, Kazakhstan enacted an amendment to its Customs Code, requiring that importers provide government documentation from the country of origin in order to import goods into Kazakhstan. The requirement precluded imports of U.S. goods into the country for several months, trapping at least $100 million of U.S. goods in Kazakhstani customs and causing some U.S. companies to delay or cancel their shipments to Kazakhstan. The issue was resolved, initially when the Kazakhstani government agreed to exempt U.S. goods from the new requirement on the basis that the U.S. Government does not issue export documents; in November 2007, the amendment was permanently repealed. Kazakhstan is working on other amendments to its Customs Code in order to bring its legislation further into compliance with WTO standards; the government hopes to enact these new statutes in 2008. For now, however, problematic customs administration remains a principal barrier to trade.

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, Safety of Equipment, and Machinery, as well as a series of amendments to the law On Technical Regulation. Kazakhstan enacted these laws to implement international standards and meet WTO requirements.

The Kazakhstani Law on Technical Regulation distinguishes the state's responsibilities from those of the private sector. The government is responsible for product safety, 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.

Standards for imported goods are addressed further in the Law on Technical Regulation, which specifies that contracts for the delivery of imported goods subject to mandatory certification should be required to confirm compliance with Kazakhstani mandatory certification requirements. Delivery contracts must also be accompanied by documents that describe the products and list the country of origin, the producer, the expiration date, and any storage requirements, as well as the code of use 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.

Kazakhstan intends to accede to the International Laboratory Accreditation Conference and the International Accreditation Forum and is currently developing legislation toward this goal. This step would automatically make Kazakhstan a party 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 a new law on State procurement. The new law is aimed at increasing the transparency of the procurement process and providing the relevant state agencies with greater operational flexibility. The new law was followed by amendments to the Administrative Code, stipulating administrative penalties for violating the procurement law.

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 government's effort to diversify the economy away from the energy sector and spur the growth of a domestic high technology industry, along with the WTO accession process, has led to a strong emphasis on IPR protection. The progress achieved on the legislative front, as well as in enforcement, was reflected in the May 2006 removal of Kazakhstan from the USTR's Special 301 Watch List.

Although domestically produced pirated films and music are increasingly available in Almaty and Astana thanks largely to decreasing technology costs, the vast majority of pirated materials in the regions appear to be imported predominantly from Russia and China. Armed with statutes enacted in November 2005 that authorize stiffer penalties for violators, the authorities have conducted numerous raids against distributors of pirated recordings. The government's efforts have greatly helped to expand the Kazakhstani market for licensed goods. Still, much remains to be done, particularly in making customs controls more effective against imported infringing goods. Legislation to strengthen intellectual property (IP) protection and enforcement efforts is under development, including legislation to grant customs officials' *ex officio* powers.

Further progress is also needed in the realm of civil adjudication, where an increasing number of IPR disputes are being settled. 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 the IPR climate of the country. In 2006 and 2007, the U.S. Patent and Trademark Office and the U.S. Department of Justice provided extensive training on IPR enforcement to Kazakhstani IPR experts and law enforcement officials.

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. Overall capital of all foreign insurance companies may not exceed 25 percent of the non-life insurance market and 50 percent of the life insurance market. 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 veterinary services, foreign participation in the charter capital may not exceed 49 percent.

Concerns have been raised about possible preferential treatment for Kazakhstan's domestic satellite (KazSat 1), which could result in competitive disadvantages for U.S. satellite operators serving the Kazakhstan market. Certain regulatory requirements also appear to impose additional conditions on U.S.

satellites serving the Kazakhstan market such as requiring operators to maintain a network control and billing center in Kazakhstan.

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.

Most foreign investment in Kazakhstan is directed to the oil and gas sector. One notable aspect of this sector is the State's active promotion of "local content" in purchases of goods and services for petroleum operations. For example, the July 2005 Law on Production Sharing Agreements (PSAs) contains explicit requirements regarding the local purchase of goods and services and the hiring of Kazakhstani nationals for all investment in offshore oil and gas exploration and production. The Law also requires that KazMunayGas, the national oil company, have a minimum 50 percent share in offshore projects and it creates a means by which the national oil company may obtain field rights outside of a tender process. Taken together, these clauses establish KazMunayGas as a necessary partner for international oil companies investing in the Caspian Sea, at least in the initial stages of an agreement.

Also in 2005, Kazakhstan added a controversial "preemption" amendment to its Law on Subsurface Use. The amendment 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 amendment applies the preeminent right retroactively. Although Kazakhstani government officials emphasize the importance of contract sanctity, this amendment raises serious questions about the government's respect for contracts.

In January 2007, the government of Kazakhstan again amended the Subsurface Use Law as well as the Petroleum Law, tightening local content requirements and mandating that companies meet local content benchmarks annually, rather than on average over the lifetime of a project. Subsurface user entities are now required to submit an annual procurement program and maintain a national register of goods and services consumed or supplied for subsoil use operations. These amendments also introduced a ban on the transfer of contractual subsurface use rights within two years of entering into a contract with the government, and permit the government to bar a bidder from receiving subsurface use rights on national security grounds. The new provisions appear to be designed to strengthen the state's control over the assignment of subsurface use rights.

In October 2007, the government again amended the Subsurface Use Law in ways that have raised concerns for foreign investors. These amendments allow the government to initiate negotiations to change the terms of existing contracts where subsoil operations on sites of strategic importance are deemed to harm Kazakhstan's national security or economic interests. If the subsoil operator refuses to renegotiate, the government can terminate the operator's contract. U.S. Government officials have expressed concern to Kazakhstan's officials about the possible negative effects of these changes to the Subsurface Use Law on the overall investment climate in Kazakhstan, and will continue to monitor its implementation.

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 allowed private ownership by Kazakhstan's citizens of agricultural land, in addition to industrial, commercial, and residential land. An amendment enacted in July 2007 extended 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. The quota is set each year, based on a percentage of foreign labor as a share of the total national work force. 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 hiring regulations are confusing and interpreted inconsistently by local officials and the Ministry of Labor and Social Protection.

The government has been steadily increasing the number of work permits available. In 2005, the number of permits was limited to 0.32 percent of the economically active population (estimated at about 8 million people). The figure increased to 0.55 percent in 2006 and to 0.8 percent in 2007. For 2007, the quota for managers and professionals was increased from 0.24 percent to 0.3 percent. For skilled workers, the quota rose from 0.18 percent to 0.37 percent; and for seasonal farm workers, the quota remains unchanged at 0.13 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, present 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 extending even to the judicial system.