KAZAKHSTAN

TRADE SUMMARY

The U.S. goods trade deficit with Kazakhstan was $946 million in 2009, up $329 million from 2008. U.S. goods exports in 2009 were $600 million, down 39.2 percent from the previous year. Corresponding U.S. imports from Kazakhstan were $1.5 billion, down 3.6 percent. Kazakhstan is currently the 86th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Kazakhstan was $6.7 billion in 2008 (latest data available), up from $6.4 billion in 2007.

WTO Accession

Kazakhstan has been negotiating the terms for its membership in the WTO since January 29, 1996, and by 2009 measurable progress had been made. Kazakhstan has signed bilateral agreements on market access for goods and services with twenty three WTO members, and is close to completion with three more, the United States, EU, and Chinese Taipei. Working Party deliberations are focused on a draft Working Party report, and Kazakhstan has prepared or had submitted draft legislation to implement WTO agreements in many key areas, *e.g.*, customs practices, sanitary and phytosanitary (SPS) regulation, technical barriers to trade (TBT), and licensing. Progress towards completion of the accession process, however, all but halted in June 2009 after Kazakhstan announced its intent to enter a customs union with Russia and Belarus and to establish harmonized tariff commitments in WTO with these two countries. While the United States continues to support Kazakhstan's individual accession to the WTO, these actions have greatly complicated work on the accession.

IMPORT POLICIES

In 2006, Kazakhstan, Russia, and Belarus announced plans for the formation of a trilateral customs union. Russia, Belarus, and Kazakhstan intensified consultations and negotiations in early 2009, and officially signed legal agreements for the creation of the customs union on November 27, 2009 in Minsk. Based on the agreements, a common external tariff (CET) was enacted effective January 1, 2010. As a result of its membership in the customs union, Kazakhstan increased the tariff rate on some 5,400 tariff lines.

According to the customs union agreements, Kazakhstan will retain some flexibility in applying the CET regime. For example, according to officials from the Ministry of Industry and Trade, Kazakhstan will have zero percent tariffs on over 900 individual tariff lines, including modern aircraft, certain types of engines, and raw materials needed in the food processing industry, such as tropical fruits. Kazakhstan is allowed to apply tariffs that differ from the CET for 409 tariff lines, but must bring them in line with the CET after a transition period. All tariffs must be at the CET by 2015. These tariffs cover pharmaceuticals, medical equipment, processed aluminum products, raw materials for the petrochemical industry, paper products, rail wagons, combines, tractors, and other products. In some specific cases, customs union member states can increase tariffs on selected goods without the consent of the other customs union members. As part of the new customs union, Kazakhstan announced in the fall of 2009 that it will implement tariff-rate quotas (TRQs) beginning January 1, 2010 on poultry, beef, and pork in light of Russia's TRQs on these products. U.S. exporters are concerned about the possible trade limiting effects of these TRQs, as well as the lack of information on how they will be implemented.

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.

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. 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. 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 are addressing the problematic structure of Kazakhstan's customs control agencies, customs administration and procedural implementation remains a significant barrier to trade. Kazakhstan continues to work to streamline its customs process while preparing for implementation of the customs union Customs Code. Recent reforms include customs declaration rights for foreign citizens (bypassing the current legal requirement for the participation of domestic brokers), *ex officio* authority for customs officials, and standardized practices for the valuation of goods. These amendments were approved on December 9, 2009, and came into force on January 1, 2010.

GOVERNMENT PROCUREMENT

Some potential U.S. suppliers have raised concerns about the lack of transparency and efficiency in Kazakhstan's government tender process. Corruption and lack of transparency remain major challenges for both local and foreign companies.

During the first half of 2009, Kazakhstan adopted regulations and amendments to several laws, including the Law on Government Procurement, designed to increase the proportion of local content in government procurement procedures. The exact proportion of the required purchase of local goods and services is calculated according to a specific formula which was approved by Kazakhstan's Foreign Investor Council. It will be applied to domestic and foreign operators in Kazakhstan, including government agencies, state-owned enterprises, national holding companies such as Samruk-Kazyna, and subsoil users. According to new tender requirements, proposals that include significant proportions of locally produced goods and services will receive preferential treatment. Conversely, those making tenders without them will be charged administrative fees and may face administrative prosecution. The Kazakhstani government is elaborating its official concept for the development of Kazakhstani content. A mandate of substantial increases by 2014 in the local content share of Kazakhstani-produced goods (up to 50 percent) and Kazakhstani-produced services (up to 90 percent) is expected.

Kazakhstan's largest national companies, governed under the umbrella of the Samruk-Kazyna national holding company, including Kazakhstan TemirZholy (national railway), KazMunaiGas (national oil and gas company), KEGOC (electricity transmission company), and other companies with 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

As part of its efforts to accede to the World Trade Organization, Kazakhstan is modernizing its IPR legal regime. In 2009, Kazakhstan adopted several amendments to its IPR law, including the legal recognition of vendors who own rights for the distribution of 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 re-define a patent holder, including detailed descriptions of the relationship between an employer and an employee with respect to an employee's invention.

Although domestically produced pirated films and music are available in Almaty and Astana, largely as a result of decreasing costs of making copies, the vast majority of pirated goods in these regions appear to be imported predominantly from Russia and China. Pursuant to 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 helped to expand the Kazakhstani market for licensed, non-infringing products. Customs controls could be applied more effectively against imported infringing goods. Further progress is needed in the realm of civil enforcement, which is serving as an increasingly prevalent method of IPR enforcement in Kazakhstan. 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

In accordance with Kazakhstan's law "On National Security," foreign ownership in telecommunications services may not exceed 49 percent and 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.

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 VSAT (very small aperture) antennas that would be overly burdensome and expensive. Kazakhstan plans 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 whom it can contract directly for these services.

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 in 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, which may be adopted in early 2010, contains explicit requirements regarding the local purchase of goods and services for all investments in offshore oil and gas exploration and production. The methodology to calculate local content is not well defined and Kazakhstani goods and services do not always fully comply with international standards. The draft subsoil law would also require that U.S. companies enter into a joint venture with KazMunayGas, the national oil company, which would own a minimum 51 percent share in all new exploration and production contracts.

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.

The draft 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 proposed draft also fully incorporates an October 2007 amendment to the current subsoil law which allows the government to amend existing subsoil contracts deemed to be of "strategic significance" – or even to terminate such contracts – where the economic interests of Kazakhstan are deemed to create a "national security risk."

On August 1, 2009, the government passed Decree No.1213 on "Approving the List of Subsoil Fields having Strategic Significance." The list includes over 100 oil and gas fields, including Tengiz, Kashagan, and Karachaganak. This Decree 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.

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 still may only lease agricultural land for up to 10 years.

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.

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.