KAZAKHSTAN

TRADE SUMMARY

The United States registered a trade deficit of $300 million with Kazakhstan in 2000, an increase of $251 million from 1999. Kazakhstan was the United States' 104th largest export market in 2000. In 2000, U.S. exports to Kazakhstan were $124 million, a 30 percent decrease from 1999. U.S. imports from Kazakhstan were $425 million in 2000, an increase of $197 million (86 percent) from 1999. The stock of U.S. foreign direct investment in 2000 was $2.9 billion, a 19.8 percent increase from 1999.

OVERVIEW

Kazakhstan is continuing its transition to a market economy. Key reforms underway include completing Kazakhstan's privatization program, nurturing the nascent securities market, consolidating gains in pension reform and the banking sector, improving the investment climate and continuing to modify the trade regime as part of Kazakhstan’s efforts to join the World Trade Organization (WTO). The U.S.-Kazakhstan bilateral trade agreement, which came into force in 1993, grants reciprocal most-favored-nation (now known as "normal trade relations") treatment. A bilateral investment treaty (BIT) came into force in January 1994. Most investment in Kazakhstan to date has been in the oil and gas and minerals sectors.

IMPORT POLICIES

TARIFFS AND TAXES

Kazakhstan is a member of the Eurasian Economic Community (EAEC), along with Russia, Kyrgyzstan, Belarus and Tajikistan. Prior to October 2000, the EAEC was known as the Customs Union. Trade among the five EAEC countries is duty-free, but the countries have not yet established a common external tariff. The EAEC is developing coordinated customs procedures that would reduce the cost of the transshipment through the EAEC member states of U.S. goods destined for Kazakhstan.

The average weighted import tariff in Kazakhstan is approximately 10%. This is largely due to the fact that trade with Russia, Kazakhstan's major trade partner, is duty-free, pursuant to the EAEC agreement.

Merchandise from non-CIS (Commonwealth of Independent States) countries is subject to a value-added tax (VAT) of 20% at the time of importation (VAT destination principle). In addition, certain goods that are imported temporarily are exempt from payment of customs duties and taxes. These include transport vehicles, professional and office equipment, goods imported for demonstration purposes, shipping containers, and advertising materials. Such goods may remain in Kazakhstan for one year, duty-free. With some exceptions, all other goods may be imported temporarily for a period of two years under a partial duty exemption. The amount of duty payable is equivalent to three percent of the duty chargeable for each calendar month. Goods not eligible for full or partial duty exemption are food products, industrial waste, and consumable materials. U.S. firms report that, in some cases, violations of these provisions by importers have led to confiscation of the imported goods.

Article 22 of the 1994 Foreign Investment Law exempted from customs duties property imported by a foreign investor for the purpose of contributing it to the charter capital of a "foreign-shared enterprise" (defined as a Kazakhstani legal entity, such as a limited liability company, in which the foreign investor has an ownership interest). After the 1997 amendments to the Foreign Investment Law, only equipment and spare parts for this equipment imported for the charter capital are exempt from customs duties.

CUSTOMS PROCEDURES

In 1999, substantial revisions were made to the Kazakhstani Customs Code in order to bring Kazakhstani legislation into compliance with the

WTO. Further changes will bring the customs regime closer to conformity with international standards, as defined in the revised Kyoto Convention. While the new legislation is in effect, implementing regulations are still being prepared by customs.

Kazakhstan's customs valuation rules, which rely on invoices for valuation, largely conform to the WTO Customs Valuation Agreement. Despite this codification of WTO-compliant valuation rules, however, a Ministry of State Revenues order (Order 402, of September 28, 1999, as amended) sets conditional prices for certain imported goods. Order 402 is contradictory to the WTO valuation methodology and is also in apparent conflict with the valuation principles of the Kazakhstani Customs Code. Kazakhstan has just begun rewriting its customs valuation rules. The outcome of this exercise will have a potentially significant impact on trade and represents an opportunity for Kazakhstan to bring its valuation practices fully into WTO compliance.

Under the terms of a 1998 Ministry of State Revenues Order, Kazakhstani Customs are to introduce a Pre-Shipment Inspection (PSI) regime. Implementation of the order has been long delayed, although it may occur soon. The manner in which a PSI system is implemented and the scope of its mandate could significantly complicate customs procedures and increase costs to businesses and consumers.

In 1999, the Government of Kazakhstan repudiated an exclusive contract to a private vendor for the processing and filing of electronic declarations. This action has substantially reduced the cost of filing the customs declaration, which had previously been identified as an added cost of doing business in Kazakhstan. Increasing customs automation, which was an unfulfilled goal of the contract, remains a problem.

U.S. companies have consistently identified a requirement that they obtain 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 prove the legitimacy and verify pricing on import/export transactions. The practice will retard the growth of trade, since the scope of transactions contemplated in the relevant regulations is very narrow. For example, the regulations allow a maximum financing term for imports of 120 days, after which time the transaction passport must be closed out. This unnecessarily limits the range of business activity and creates a potential bias towards short term financing in the economy.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Government observance of old Soviet standards and testing, labeling, and certification requirements is uneven. In 1996, the U.S. National Institute of Standards and Technology signed a Memorandum of Understanding with the Government of Kazakhstan to bring Kazakhstan's metrology methods into conformity with international rules and practices.

Kazakhstan’s President Nazarbayev signed two laws, “On Standardization” and “On Certification,” on July 16, 1999, with a view to bringing these areas into compliance with international standards and practices. However, Paragraph 2 of Article 12 of the Law on Certification requires that all imported products subject to mandatory certification be accompanied by documents identifying the producers, the date of production, the expiration date, storage requirements and the mode of use in both the Kazakh (state) and Russian languages. The Government of Kazakhstan, however, has accepted placement of Kazakh language stickers on products as compliance with the law, instead of requiring entirely new labels. The government also has issued a fairly wide-ranging regulation exempting pharmaceutical products and several other categories of goods from the Kazakh labeling requirement.

GOVERNMENT PROCUREMENT

Kazakhstan is not yet a member of the WTO Agreement on Government Procurement. Kazakhstan, with the support of the World Bank, is reforming and harmonizing its system of state procurement. The State Procurement Agency was established by Presidential decree on December 14, 1998 and the Regulation on the State Procurement Agency was approved on March 26, 1999. This legal structure strengthened the monitoring functions of the State Procurement Agency, improved control systems and provided independence in selection of methods for high value procurement. The current law, however, still contains provisions whereby domestic producers and small businesses receive preferential treatment during the government procurement process.

U.S.-funded assistance projects are helping Kazakhstan establish a database to assist procurement. American businesses continue to report problems, however, in obtaining adequate notice of tender offers. U.S. business representatives still complain that tender offers are not always publicized and that there is no standardized format for publicized tender offers. Tenders appear in different publications, have varying requirements for the submission of bids, and sometimes do not provide adequate time limits to allow U.S. businesses to prepare and submit bids.

Any company involved in mining or oil and gas production, including the wholly government-owned company Kazakhoil, must comply with local content requirements that were enacted in September 1999 but have not yet been fully implemented. Draft regulations to implement these requirements acknowledge that U.S. firms are exempted from the domestic content requirement by the provisions of the 1994 Bilateral Investment Treaty.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The 1992 Bilateral Trade Agreement between the United States and Kazakhstan incorporates provisions on the protection of intellectual property rights (IPR). Kazakhstan has fulfilled a number of its IP obligations under the bilateral trade agreement but several bilateral commitments remain unfulfilled. As part of its effort to accede to the WTO, Kazakhstan has undertaken efforts to bring its intellectual property legislation into compliance with the WTO's Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement).

Kazakhstan is a member of the Berne Convention for the Protection of Literary and Artistic Works, but has not yet made the necessary changes to its Copyright Law to implement the Berne Convention, particularly with respect to the Berne Article 18 obligation to provide retroactive protection to foreign works still within their term of protection in their country of origin. Kazakhstan acceded to the Geneva Phonograms Convention in June 2000. But again, Kazakhstan still does not provide retroactive protection to sound recordings, as required by the Berne Convention and incorporated into the TRIPS Agreement.

Apart from accession to the Geneva Phonograms Convention, no new IPR-related laws were passed in 2000. Two intellectual property bills have yet to be passed by parliament: the Law on Commercial Secrets and the Law on Integrated Circuits. Kazakhstan has signed but has not yet ratified the 1997 WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

Kazakhstan enacted several key intellectual property rights laws in 1999. Kazakhstan enacted a new Trademark Law on July 26, 1999; a Law on Selective Achievements on July 13, 1999; and a new Patent Law on July 16, 1999. The current Law on Copyrights, which dates from June 10, 1996, protects software as literary works and databases as compilations. In 1999, Kazakhstan also amended its Customs Code to provide for the seizure at the border of objects that violate intellectual property rights. Customs rules and regulations are currently being developed to implement these articles of the Customs Code.

Lax enforcement of intellectual property remains a significant problem. Moreover, the lack of automation in customs processing impedes efficient operations. Gaps in knowledge and training on the part of those responsible for enforcing intellectual property rights pose another obstacle to enforcement. Public understanding of the principles of authors' rights is low, as is public support for enforcement of intellectual property rights.

INVESTMENT BARRIERS

Domestic enterprises generally lack capital to service loans and to meet their obligations in a joint venture. In addition, in accordance with the Law on Land, the following types of land plots cannot be held through private ownership: agricultural land, defense industry land, specially protected territories, forests and springs, communal use lands, and uninhabited areas. Foreign firms can obtain leasing rights to land only through a domestic partner and only for a maximum of 99 years. Moreover, this maximum will be reduced to 49 years if the President of Kazakhstan, as is expected, signs into law a new Law on Land that the Kazakhstani Parliament passed in December 2000.

Kazakhstani authorities often require, as part of a foreign firm’s contract with the government, that foreign investors contribute to social programs for local communities.

Foreign insurance companies are limited to operating in Kazakhstan through joint ventures with Kazakhstani companies. The total registered capital of banks with foreign participation cannot be more than 25% of the total registered capital of all banks in Kazakhstan.

The difficulty in obtaining work permits for foreign investors’ employees in Kazakhstan is becoming a barrier to investment. The government introduced a regulation in 1999 limiting the number of foreign workers in Kazakhstan to 7,000. When the quota was reached in fall 2000, many foreign companies were unable to obtain work permits for foreign specialists and managers. While the number of work permits was later increased to 10,500, and exceptions were made for investors’ lead representations, any such arbitrary cap runs the risk of disrupting the operations of foreign investors in Kazakhstan.

OTHER BARRIERS

There are other structural barriers to investment in Kazakhstan, including a weak system of business law, a shortage of domestic capital to pay for U.S. goods, a lack of an effective judicial process for breach-of-contract resolution, and an unwieldy and corrupt government bureaucracy. Many companies report significant logistical difficulties serving the Kazakhstani market. In addition, there are specific hindrances to U.S. companies that have established business activities in Kazakhstan, licensing requirements for numerous simple business activities and a burdensome tax monitoring system.