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**Working Party on the
Accession of Kazakhstan**

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Factual Summary of Points Raised

Revision

The attached Factual Summary of Points Raised on the Accession of the Republic of Kazakhstan to the WTO has been prepared by the Secretariat, based on documentation being examined in the Working Party. The Factual Summary will be reviewed at the next meeting of the Working Party.

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INTRODUCTION

1. The Government of the Republic of Kazakhstan applied for accession to the World Trade Organization (WTO) on 29 January 1996. At its meeting on 6 February 1996, the General Council established a Working Party to examine the application of the Government of the Republic of Kazakhstan to accede to the WTO under Article XII of the Marrakesh Agreement establishing the World Trade Organization (document WT/GC/M/9). The terms of reference and the membership of the Working Party are reproduced in document WT/ACC/KAZ/2/[Rev.17].

2. The Working Party met on 19-20 March and 9 October 1997 under the Chairmanship of H.E. Mr. B. Ekblom (Finland) and 9 October 1998, 12-13 July 2001, 13 December 2002 under the Chairmanship of H.E. Mr. P. Huhtaniemi (Finland) and 4 March 2004 and 15 September 2004 under the Chairmanship of H.E. Mr. V. Himanen (Finland).

DOCUMENTATION PROVIDED

3. The Working Party had before it, to serve as a basis for its discussions, a Memorandum on the Foreign Trade Regime of the Republic of Kazakhstan (WT/ACC/KAZ/3 and Addendum 1), a Survey of the Foreign Trade Regime of the Republic of Kazakhstan (WT/ACC/KAZ/40 of 30 April 2003), the questions submitted by members of the Working Party on the foreign trade regime of the Republic of Kazakhstan, together with the replies thereto (WT/ACC/KAZ/6 with Addenda 1 and 2, WT/ACC/KAZ/10, WT/ACC/KAZ/11, WT/ACC/KAZ/14, WT/ACC/KAZ/22, WT/ACC/KAZ/37 with Addenda 1-3 and Corrigendum 1 to Addendum 3), and other information provided by the authorities of the Republic of Kazakhstan (WT/ACC/KAZ/8, WT/ACC/KAZ/12, WT/ACC/KAZ/19, WT/ACC/KAZ/24, WT/ACC/KAZ/25, WT/ACC/KAZ/26, WT/ACC/KAZ/27, WT/ACC/KAZ/27/Rev.1, WT/ACC/KAZ/28, WT/ACC/KAZ/29, WT/ACC/KAZ/30, WT/ACC/KAZ/31, WT/ACC/KAZ/32, WT/ACC/KAZ/32/Rev.1, WT/ACC/KAZ/32/Rev.2, WT/ACC/KAZ/34, WT/ACC/KAZ/34/Rev.1, WT/ACC/KAZ/34/Rev.2, WT/ACC/KAZ/35, WT/ACC/KAZ/41, WT/ACC/KAZ/43, WT/ACC/KAZ/44, WT/ACC/KAZ/45, WT/ACC/KAZ/46, WT/ACC/KAZ/47, WT/ACC/KAZ/48), including the legislative texts and other documentation listed in Annex I.

INTRODUCTORY STATEMENTS

[to be completed]

ECONOMIC POLICIES

- Monetary and Fiscal Policy

4. The representative of Kazakhstan stated that, according to Law No. 2155 "On the National Bank of the Republic of Kazakhstan" of 30 March 1995, the main objective of the monetary policy of the National Bank of Kazakhstan (NBK) was to maintain price stability. To accomplish this, the NBK focused on: (i) formulating and implementing a national monetary policy; (ii) maintaining an efficiently functioning payments system; (iii) providing foreign exchange regulation and control; and (iv) maintaining a stable financial system. Kazakhstan had a two-tier banking system, in which the National Bank represented the upper (first) tier of the banking system while all other banks represented the lower (second) tier. The National Bank also performed the function of a lender of last resort and was entitled to carry out other operations in accordance with the decisions of its Board. The NBK maintained a free-floating exchange rate of the national currency (Tenge - KZT). When necessary, however, the National Bank intervened to prevent exchange rate fluctuations caused by speculative surges. Since 1998, the National Bank did not finance the state budget deficit. She provided the list of laws regulating the functions of the National Bank in the relevant section of document WT/ACC/KAZ/50.

5. In order to conduct its monetary policy, the NBK: provided loans to commercial banks; accepted deposits in national and foreign currencies; undertook interventions on the foreign exchange market; issued short-term notes; traded with government and other securities (with the right to repurchase REPO); and provided commercial bills refinancing. The instruments used by the NBK for the conduct of monetary policy included setting the official refinancing rate, interest rates and establishing minimum reserve requirements. At present the official refinancing rate was at 7 per cent, slightly exceeding the average inflation rate. The National Bank regularly carried out REPO (repurchase) operations in order to regulate liquidity in second-tier banks. The official REPO rate was currently 4.5 per cent \pm 1.5 per cent spread, whereas the "overnight" interest rate was 8 per cent. The minimum reserve requirement, calculated as a percentage of the total amount of liabilities less liabilities to banks, was currently set at 6 per cent. In exceptional cases, when it was impossible to slow down inflationary pressures by indirect methods of monetary regulation, the National Bank had the right to introduce direct quantitative restrictions for certain operations. Yet, since introducing the national currency in 1993, the National Bank had not applied maximum interest rates on transactions and since 1995 no restrictions on the volume of credit existed.

6. She noted that in view of the announced transition to European Union standards, the NBK shifted its policy from exchange rate targeting to inflation targeting. In this context, the National

Bank would develop inflation guidelines based on a "core inflation" index reflecting main inflationary pressures. The National Bank also continued its efforts in developing a "transmission mechanism model", which would allow assessment of core inflation changes in response to changes in REPO rates and thus increase transparency and public confidence in the National Bank's monetary policy. The goal of the National Bank's monetary policy for the next three years was to achieve and maintain an annual average "core inflation" rate within the range of 4-6 per cent for 2004 and 3-5 per cent for 2005-2006. A lower inflation rate was expected to allow a gradual reduction of the National Bank's interest rate to 5.5 per cent by 2006, a development which would have a positive economic impact through lowering the cost of debt servicing.

7. In response to questions on the currency regime, the representative of Kazakhstan stated that liberalization of currency regulation and currency control, including elimination of excessive barriers to operations with foreign assets of residents, would become a major goal. To control risk related to currency operations, Kazakhstan intended to develop efficient prudential regulation and risk management tools used by banks, pension funds and insurance companies.

8. Concerning requests for information on Kazakhstan's tax system, the representative of Kazakhstan replied that the 2001 Tax Code set out the tax system and changes thereto over recent years. The central objectives of Kazakhstan's tax policy were to increase state budget revenues through expansion of the tax base, to encourage citizens to declare their income and to stimulate consumer demand by reducing the wage tax. Accordingly, as of 1 January 2004, the government effectively reduced the rate of individual income tax. It introduced preferential tax treatment for industries investing in the petrochemical sector and it set up special tax treatment for companies operating in special economic zones (Information Technology Parks), investing in information technology research and development. The main taxes introduced by the new Code included (rates as of 1 January 2004): corporate income tax (30 per cent), social tax (20 per cent to 7 per cent, according to a regressive scale), individual income tax, property tax (1 per cent), land tax, transport tax, value added tax (15 per cent) and excise tax.

9. She noted that Kazakhstan also introduced a new tax regime for oil operations designed to increase state budget revenue from the export of crude oil. The new tax regime only applied to new contractual obligations and did not have retroactive force. Taxes were imposed on subsurface users (taxpayers involved in mineral exploration and extraction activities) according to either of two tax regimes. Model 1 - licensing - offered a regime in which the subsurface user was subject to all taxes affecting ordinary taxpayers, as well as specific taxes such as rent tax on the export of crude oil, excess profits tax, royalties and bonuses. Model 2 - Production Sharing Agreements (PSA) – offered

a regime in which the subsurface user was bound by the tax conditions stipulated in the PSA in accordance with the provisions of the tax legislation which applied on the date the contract was signed. In this model, the conditions of the PSA were fixed and could not be changed due to subsequent changes in legislation without the agreement of both parties.

10. Asked to provide information on the main sources of federal revenue, as well as the main expenditures, the representative of Kazakhstan said that federal budget receipts for 2003 represented 23 per cent of GDP (24.5 per cent higher than in 2002). Total expenditures for 2003 amounted to 24 per cent of GDP, resulting in a 1 per cent budget deficit. Tax revenue accounted for 92.7 per cent of total revenue in 2003 with corporate income tax (26.7 per cent), value added tax (22.6 per cent) and social tax (15.4 per cent) representing the main revenue sources. Main expenditures in recent years were directed towards social assistance (5.4 per cent of GDP in 2003), education (3.3 per cent) and healthcare (2.0 per cent). The budget deficit in 2004 was expected to stay below 1.9 per cent of GDP.

11. She further noted that the Budgetary Code No. 548 of 24 April 2004, which would enter into force on 1 January 2005 (replacing Law No. 357 "On Budgetary System" of 1 April 1999), would lay down the basic provisions and principles of the budgetary system and would introduce the use of medium-term budgetary planning. A medium-term fiscal policy package for 2005-2007 would allow the government to pursue budgetary policies consistent with its social and economic development plan. Priority sectors for the allocation of budgetary resources would include agriculture, social development, health, education, research and development, and the preservation of cultural/historic heritage. Gradual reduction of the budget deficit and restructuring of the national debt would continue to be important policy goals.

- Foreign Exchange and Payments

12. The representative of Kazakhstan stated that Kazakhstan had accepted the obligations of the IMF Agreement Article VIII and had established full current account convertibility in 1996. Under the Law "On Currency Regulation" of 24 December 1996 (WT/ACC/KAZ/6/Add.2 refers (amended by Laws No. 154-1 of 11 July 1997; No. 277-1 of 9 July 1998; No. 431-1 of 16 July 1999; No. 154-II of 30 January 2001)), and Law No.411-II "On Changes and Amendments to Legislative Acts of the Republic of Kazakhstan on Banking, Currency Regulation and Currency Control" of 8 May 2003, exchange transactions between residents and non-residents were subdivided into current account transactions and capital account transactions.

13. She noted that in accordance with Article 3 of the Law "On Currency Regulation", the President had the right to restrict or suspend any currency transactions for the purpose of

implementing international obligations and in emergency situations. The same law authorized the National Bank to impose restrictions on the currency of payment used in export transactions, on surrender requirements applied to export receipts in foreign currency, and on the form of payment under specific import and export contracts in order to ensure the economic safety of Kazakhstan. Since the enactment of this currency legislation, however, there were no instances of restrictions enforced either by the President or the National Bank.

14. Asked about fees or restrictions associated with the acquisition of foreign currency, the representative of Kazakhstan replied that the Rules for Currency Operations, adopted by Resolution No. 115 of the Board of the National Bank of 20 April 2001 (WT/ACC/KAZ/4 refers) regulated foreign currency acquisition and transfers of national and foreign currency in Kazakhstan. No restrictions applied to the export of national currency from Kazakhstan by residents and non-residents. Coins of precious metals issued by the National Bank and recognized as legal tender could be imported to or exported from Kazakhstan without any restrictions. Currency covered by the provisions of Article 1-1 of the Law "On Currency Regulation" could be imported in Kazakhstan by residents and non-residents without any restrictions following the procedures set out in the legislation. Resident and non-resident natural persons could buy foreign currency in Kazakhstan through authorized banks without any fees, prior deposit requirements or foreign currency surrender requirements. They could export payment documents, such as bills and checks, with their face value in a foreign currency, without any restrictions. While non-resident natural persons could export foreign currency in cash equivalent to US\$ 3,000 - without having to produce a declaration proving that the sum had previously been imported and proving the currency's legal origin - resident natural persons could export the equivalent of US\$ 10,000. In both cases, if the amount exported exceeded US\$ 3,000, it had to be declared in writing to the customs.

15. She noted that while non-resident legal entities could purchase foreign currency in Kazakhstan, except if using loans obtained in Kazakhstan, certain restrictions applied with regard to the acquisition of foreign currency by resident legal entities. Resident legal entities could purchase foreign currency for the purposes of: (i) money transfers and payments to non-residents; (ii) fulfilment of liabilities related to loans in foreign currency granted by authorized banks; (iii) official travel and other related expenses incurred outside Kazakhstan; (iv) transfers to corporate accounts in accordance with provisions stipulated in relevant norms of the National Bank; (v) repayment of deposits to natural persons in foreign currency (to corporations based on collective guarantees (insurance) of deposits of natural persons); (vi) foreign exchange operations in cash by legal entities licensed by the National Bank to perform foreign exchange operations in cash; and (vii) any other purposes stipulated in the relevant legislation. There were no surrender requirements,

except for the requirement that the amount of unused foreign exchange by the resident legal entity had to be sold in exchange for national currency within 30 calendar days starting from the date of acquisition.

16. Asked about payments and money transfers, she replied that payments and money transfers for transactions between residents and non-residents could be conducted only through their bank accounts, in any currency the parties had agreed upon, except in cases provided for in the normative acts of the National Bank. Both residents and non-residents had to submit to the authorized bank documents required by the legislation. There were no restrictions associated with the transfer of national or foreign currency to bank accounts of non-residents in authorized banks, provided that the transfer was undertaken in line with established procedures.

17. She noted that under Law No. 2200 "On Licensing" of 17 April 1995 (WT/ACC/KAZ/4 refers), currency transactions from residents to non-residents had to be licensed by the National Bank. Under the 2003-2004 Program for Liberalization of the Currency Regime (adopted by Government Resolution No. 103 of 29 January 2003), new Licensing Rules of Transactions Related to Currency Valuables were developed and approved by the National Bank Board Resolution No. 257 of 25 July 2003. A General Licence was issued to residents for retailing and provision of foreign services in cash. An Operational Licence was issued to residents wishing to open accounts abroad (except if opening an account in countries having the required sovereign credit rating), including accounts in the national currency of Kazakhstan. A Single Licence was issued to residents for capital account transactions related to export/import operations involving: (i) advance payments for imports for a period exceeding 180 days; (ii) extension of the period for receipt of export earnings beyond 180 days of the date of actual export; and (iii) receipt of export earnings after more than 365 days of the date of actual export (for goods included in a Schedule approved by the Government). The Single Licence was also required for residents wishing to: (i) invest abroad, excluding dealing bank operations and investments in international development institutions, securities of credit-worthy non-resident issuers, authorized capital of legal entities of OECD member-countries, and, under certain conditions, investments in member-states of bilateral investment promotion agreements with Kazakhstan; (ii) make pension fund investments in foreign securities; (iii) make transfers to non-residents to pay for real estate, except for property of the same status; (iv) grant loans to non-residents for a period exceeding 180 days; (v) transfer currency valuables to non-residents for beneficial ownership; (iv) receive loans from non-residents to the account of third parties, except for state-guaranteed loans and insured loans, used to finance export/import operations. She further noted that provisions for simplified licensing procedures had also been introduced. A member of the Working Party asked whether the IMF had approved such licensing requirements.

18. Asked whether the licensing procedure was automatic, the representative of Kazakhstan stated that restrictions were purely procedural and that under current licensing procedures, the regulator could not refuse an application on grounds of the economic viability of the operation or the financial capability of the resident. To apply for a licence, a resident was required to submit: (i) a standard application form; (ii) a package of documents providing all relevant information on the currency transaction and/or proof that the applicant met the requirements for currency valuables operations; and (iii) a proof of payment of the licensing fee in the amount of ten monthly calculation indices (MCI, an annually determined indicator used for calculating pension payments, benefits and other social payments, 1 MCI = KZT 919 for 2004). When the National Bank approved the submitted documents and the operation was deemed consistent with the requirements of the relevant legislation, the licence was issued within one month of the date of receipt of the last required document. She added that authorized banks were not allowed to carry out currency transactions of residents without a licence. She also confirmed that no deposit requirements were necessary to obtain a licence.

19. Some members of the Working Party asked the representative of Kazakhstan to further describe existing capital account controls. The representative of Kazakhstan explained that, in order to achieve macroeconomic stability, Kazakhstan had introduced a currency regulation system based on licensing requirements for transactions related to capital flight and on transaction passports for foreign trade operations (explained in detail in section on Other Customs Formalities). She further added that under the Rules of Registration of Capital Account Transactions and Opening of Foreign Bank Accounts adopted by Resolution of the Board of the National Bank No. 225 of 4 July 2003, residents were required to register with the National Bank for capital account transactions resulting in receipts exceeding the equivalent of US\$ 100,000. These transactions included: (i) borrowing from non-residents for more than 180 days, including financial leasing; (ii) crediting by non-residents of import and export operations; (iii) direct and portfolio investment of non-residents into Kazakhstan, including residents' initial public offerings and issue of depositary receipts for securities; (iv) transfers of non-residents to residents as payment for a complete transfer of exclusive rights to intellectual property; (v) and transfers of non-residents to residents as payment for economic rights to real estate, with the exception of property of the same status. She explained that a registration certificate was issued by the National Bank after a notification was made by the resident on a specific capital account transaction within 30 days of the date of contract enforcement. To register, the resident needed to submit a standard application form, a contract for the currency transaction and documents proving his/her identity. The National Bank could only refuse registration because of inconsistency with the provisions of the Civil Code but not on grounds of the economic viability of the transaction. The National Bank charged no fees for registration and the certificate was issued within ten business days of the date of receipt of the application package. This registration procedure had been introduced for

the purpose of keeping a statistical record and for balance of payments analysis. In response to questions, the representative of Kazakhstan clarified that these registration requirements applied only to the resident party to the transaction and not to non-residents.

20. Some members of the Working Party asked how enterprises acquired rights to deal in foreign exchange, whether foreign enterprises were eligible to become licensed banks or exchange points, and whether enterprises other than banks could be approved. The representative of Kazakhstan replied that operations with foreign currency, including those on behalf of clients, were performed by second tier banks and other financial institutions licensed by the Agency for Regulation and Control of the Financial Market and Financial Organizations, established in order to exercise regulatory and supervisory functions in relation to financial market institutions by Presidential Decree No. 1270 "On Further Improvement of the Public Management System" of 31 December 2003. On the other hand, licenses for dealing with foreign exchange were issued by the National Bank to legal entities solely involved in foreign exchange. Any Kazakh legal entity could set up an exchange bureau by establishing a subsidiary solely involved in foreign exchange. A foreign natural person or a legal entity was not eligible to become a licensed exchange point, but a partially or fully foreign-owned Kazakh legal entity could become one. Thus, any bank registered in Kazakhstan as a Kazakh legal entity (even if 100 per cent foreign-owned) was eligible to become an authorized bank (licensed bank). Branch and representative offices of foreign banks, however, were not allowed to deal in foreign exchange until they were registered as Kazakh legal entities. The representative of Kazakhstan noted that a firm could engage in barter import/export of goods, without dealing in foreign exchange.

21. Some members of the Working Party expressed concern regarding the large quantity of licensing requirements for foreign exchange operations under the current legislation and asked for specific information on Kazakhstan's plans to liberalize its foreign exchange and payments system by the year 2007. The representative of Kazakhstan stated that the liberalization plans were outlined in the Currency Regime Liberalization Concept, approved by Resolution No. 369 of the National Bank Board of 11 September 2002.

- **Investment Regime**

22. The representative of Kazakhstan stated that Kazakhstan had developed a sound legal environment which had helped the country attract some US\$ 23.4 billion in foreign direct investment for the period 1993-2003. In May 2003 Standard and Poor's had upgraded Kazakhstan's long-term foreign currency credit rating from "BB" to "BB+" and the country's domestic currency credit rating

from "BB+" to "BBB-". Kazakhstan had become the first CIS country granted a Baa3 rating by Moody's and BB+ by Fitch IBCA.

23. She further noted that important legislation to implement international norms and standards had been enacted including Law No. 373 "On Investments" of 8 January 2003 (WT/ACC/KAZ/42 refers), the Tax Code of 12 June 2001, Customs Code No. 401 of 5 April 2003, Insurance Law No. 126 of 18 December 2000, Law No. 232-1 "On Unfair Competition" of 9 June 1998 (WT/ACC/KAZ/36/Add.2 refers), Law No. 272 "On Natural Monopolies" of 9 July 1998 (WT/ACC/KAZ/18 refers), Presidential Decree No. 2350 "On Oil" of 28 June 1995 (WT/ACC/KAZ/4 refers), Presidential Decree No. 2828 "On Subsoil and Subsoil Use" of 27 January 1996, Civil Code (General Section) of 27 December 1994; Civil Code (Special Section) of 1 July 1999 (WT/ACC/KAZ/4 refers), banking laws and regulations and intellectual property rights legislation.

24. She further noted that the legal basis governing Kazakhstan's investment policy was provided by the Law "On Investments", which had replaced Law No. 266-XIII "On Foreign Investments" of 27 December 1994 and Law No. 75-I "On State Support of Foreign Investments" of 28 February 1997. The new Law defined investment as all kinds of property (except for goods destined for personal consumption), including leased objects as of the date of the lease agreement, rights invested by an investor into the charter capital of a legal entity, or contributions made to fixed assets used for entrepreneurial activities. Legal protection of investments included: full and unconditional protection of investors' rights; guarantee of indemnity for damages suffered by investors as a result of issuance of norms non-compliant with Kazakh legislation and unlawful commissions or omissions of public officials; guarantee of the stability of terms and conditions of agreements concluded by investors with the respective state agencies; guarantee of investors' use of income at their full discretion; guarantee of protection of investors' rights in case of nationalization and expropriation; and investment dispute settlement regulations, including the possibility of international arbitration.

25. She pointed out that the new mechanism for providing state support for investments had a number of considerable advantages. It created a level playing field for both domestic and foreign investments and simplified the procedure for granting preferences, reducing significantly the maximum length of time allowed for processing of applications (30 business days). The Law did not set minimum capital requirements for foreign investment, thus expanding the sphere of its application to small and medium-sized enterprises. In order to create a favourable investment climate for diversified economic development, thus facilitating technological advancement and innovative development, the government introduced investment incentives that were granted if: (i) the

investment activity was included in the List of priority sectors; (ii) there was investment in the acquisition of fixed assets for setting up new or expanding/upgrading existing production facilities; and (iii) the application contained sufficient proof of the investor's financial, technical and organizational capacity to undertake the project.

26. The current list of priority activities for investment preferences, as approved by Government Resolution No. 436 "On Some Issues of Enforcing the Law "On Investments" of 8 May 2003, included 233 kinds of activities. The authorized state agency in charge of investments was the Ministry of Industry and Trade. It could grant investment tax preferences, customs duties exemptions for imported goods and in-kind state grants.

27. She noted that there were three types of investment tax preferences:

- Corporate income tax preferences entitled the taxpayer to gradual deduction of the cost of commissioned fixed assets from aggregate annual income in equal parts throughout the term of the preferential treatment. The 30 per cent corporate income tax was assessed on the taxable income of taxpayers - legal entities, as adjusted, less losses incurred;
- Property tax preferences exempted the taxpayer from property tax on fixed assets newly commissioned under the respective investment project. The balance sheet value of the taxable objects constituted their tax base. Legal entities and individuals calculated property tax at the rate of 1 per cent of the average annual value of taxable objects; and
- Land tax preferences exempted the taxpayer from tax payable on plots of land used in the framework of the investment project. Different types of land were taxed differently and were subdivided into three categories - agricultural lands, populated lands and industrial lands. Rates were set according to area size, soil quality and yield class.

Investment tax preferences applied from the date of the agreement. The duration of investment tax preferences depended on the volume of investments made into fixed assets, the maximum term being five years. Legal entities operating under a special tax regime and under subsurface use contracts were not granted any investment tax preferences; they were also not granted such preferences with respect to fixed assets received as in-kind state grant.

28. She further noted that customs duties exemptions on equipment/components, imported for the implementation of investment projects were granted if Kazakh-produced equipment/components were not available in adequate numbers or did not meet the requirements of the investment project. Such exemptions could be granted for a one year period after the contract registration, with a possible

extension of up to five years. Decisions regarding customs duties exemptions and extensions were taken by the authorized investment body.

29. She stated that in-kind state grants could take the form of land plots, buildings, constructions, machinery and equipment, computational devices, measuring and regulating units, transportation vehicles (except for automobiles), industrial and household tools. The Government or an authorized body, with the approval of the relevant state agencies, would confer in-kind state grants for either ownership or temporary use. Approval for in-kind state grants was obtained within 15 business days from the date of request. In-kind state grants were assessed at their market value, the maximum size not exceeding 30 per cent of the volume of investments made in the fixed assets of a given legal entity.

30. The representative of Kazakhstan said that according to Article 3 of the Law "On Investments", there could be certain areas in which investment activities were limited or banned because of national security considerations. Pursuant to Article 5 of Law No. 451-1 "On the Mass Media" of 23 July 1999, foreign legal entities, foreign individuals and stateless persons were not allowed to directly or indirectly own, use, or manage more than 20 per cent of the capital of a mass media enterprise in Kazakhstan. Pursuant to Article 22 of Law No. 2444 "On Banks and Banking Activities in the Republic of Kazakhstan" of 31 August 1995, the charter capital of banks established and operating with foreign capital participation, could not exceed 50 per cent of the aggregate charter capital of all banks of Kazakhstan, except as permitted by the authorized state agency. Pursuant to Article 65 of Law No. 242-II "On Architectural, Town-Building and Construction Activities in the Republic of Kazakhstan" of 16 July 2001, the share of foreign participation in joint ventures' charter capital could not exceed 49 per cent. Pursuant to Article 5 of Law No. 85-II "On Guarding Activities" of 19 October 2000, foreign legal entities, legal entities with foreign participation, as well as foreign and stateless individuals, could not engage in any kind of guarding activities.

31. She noted that pursuant to Article 23 of the Land Code No. 442-II of 20 June 2003, foreign citizens and legal entities, as well as stateless persons, could privately own land plots, which contained industrial and non-industrial facilities, including residential buildings (structures, facilities) and their compounds, and lands intended for servicing buildings (structures, facilities). They could not, however, own lands intended for commercial agricultural production and forestry, their rights to these lands being limited to a temporary land lease of ten years. The rights of other countries to use of land in Kazakhstan were regulated by international agreements, ratified by Kazakhstan, whose provisions prevailed over domestic legislation.

32. Some members of the Working Party asked whether there were any restrictions or conditions, which did not apply to domestic entities, but were applicable to foreign-owned legal entities of Kazakhstan investing in land or leasing subsurface rights. The representative of Kazakhstan replied that there were no restrictions which did not apply equally to domestically-owned Kazakhstan legal entities as well.

- **State Ownership and Privatization**

33. The representative of Kazakhstan said that state property management policy was regulated by Presidential Decree No. 2335 "On State-Owned Enterprises" of 19 June 1995 (having the power of a law), Presidential Decree No. 2721 "On Privatization" of 23 December 1995 (having the power of a law), the Law "On Joint Stock Companies" of 10 July 1998, the Law "On Limited and Additional Liabilities Partnerships" of 22 April 1998, the Civil Code, and the Law "On Amendments to some Legislative Acts of the Republic of Kazakhstan pertaining to State Property" of 21 May 2002. State property was privatized in accordance with Presidential Decree No.2721 "On Privatization" and other laws listed above.

34. She noted that in January 2003 there were 5831 state-owned enterprises. The state owned shares in 499 joint stock companies (JSC) and partnerships with limited liabilities (LLP). There were 13 legal entities, which had the status of national companies, including 11 joint stock companies and two state enterprises. National companies were established in strategically important sectors of the economy by decision of the Government. According to Government Resolution No. 246 "On Measures Aimed at Provision of Information Exchanges and Maintenance of the State Property Database" of 21 March 1998, state property was registered in the State Registry. The list of national companies and joint stock companies with state shares is provided in Annex II.

35. The representative of Kazakhstan said that the large-scale privatization campaign (1991-2000), as well as the improvement of the state property management system, constituted an important component of the transition to a market economy in Kazakhstan. Since 1991 Kazakhstan had launched six two-year privatization programs. The last one, covering the period 2003-2005, was still underway. Three of the programs had focused on large scale privatization. Since 1999 the focus had shifted to effective state property management. The last two programs were developed within the framework of the State Property Management and Privatization Concept approved by Government Resolution No. 1095 of 21 July 2000. During the period 1991 - 2004, 3745 joint stock companies and partnerships with limited liabilities had been privatized via auctions (28,010), tenders (663), exchange (9,131) and direct sales (150). During the same period, the sale of property complexes (including immovable property objects, incomplete constructions and other) resulted in 33,205 privatizations.

Thus, in 2004 the private sector accounted for 75 per cent of GDP and the overall proceeds from the privatization process had totalled KZT 319 billion. The representative of Kazakhstan added that in 2004 the list of state property included state-owned shares of 75 joint stock companies and more than 1,000 immovable property objects, property complexes, machinery and equipment, transportation vehicles and other objects. Information on state property privatization methods used in 2003, data on results of the 1991-2004 privatization processes, as well as information on the dynamics of state property privatization in various sectors of the economy in 1999-2003 is reproduced in Tables 1, 2 and 3 below:

Table 1 - State Property Privatization Methods Used in 2003

Name	Auction		Tender		Stock Exchange	Direct sale	Total
	English	Dutch	Commercial	Investment			
State shares (participation) in JSC and LLP	11	10	13	9	1	21	65
Property complexes	1	16	9	5	0	3	34
Other objects	514	1,278	80	39	0	96	2,007
Total:	526	1,304	102	53	1	120	2,106

Table 2 - Results of the privatization process, 1991-2004

Years	Privatization of property complexes, real estate property objects, incomplete construction, transportation and other objects (units)	Privatization of state shares in JSC and LLP (units)	Case-by-case privatization (units)	Privatization proceeds (thousands of KZT)
1991-1992	4,771			165
1993	153		1	783,989
1994	2,645		1	1,459,266
1995	3,239	385	6	7,233,421
1996	3,526	889	27	31,214,565
1997	5,641	1,315	48	54,511,449
1998	2,716	513	11	66,701,804
1999	2,462	162		34,815,880
2000	1,766	93		22,048,029
2001	2,059	146		16,583,078
2002	1,756	67		19,340,183
2003	2,041	65		60,127,949
1 st quarter 2004	430	16		4,362,507
Total	33,205	3,651	94	319,182,285

Table 3 - Dynamics of State Property Privatization in Various Sectors of the Economy, 1999-2003

	1999	2000	2001	2002	2003
	(units)				
1. Privatized state shares in JSC and LLP, total	162	93	146	67	65
Including:					
Industry	26	34	39	22	16
Construction	12	4	10	3	5
Agriculture	20	9	25	8	3
Transportation and communication	40	15	13	15	4
Trade in and repair of household goods	15	4	11	3	5
Finance	2		4	1	
Health care			12	4	3
Education					8
Other objects	47	27	32	11	21
2. Privatized property complexes, immovable property objects, incomplete construction, transportation and other objects	2,462	1,766	2,059	1,756	2,041
TOTAL	2,624	1,859	2,205	1,823	2,106
	(per cent of total)				
Industry	16.1	36.6	26.7	32.8	24.6
Construction	7.4	4.3	6.8	4.5	7.7
Agriculture	12.3		17.2	11.9	4.6
Transportation and communication	24.7		8.9	22.4	6.2
Trade in and repair of household goods	9.3		7.5	4.5	7.7
Finance	1.2	9.7	2.7	1.5	
Health care		16.1	8.3	6.0	4.6
Education		4.3			12.3
Other objects	29.0	29.0	21.9	16.4	32.3
TOTAL	100.0	100.0	100.0	100.0	100.0

36. She noted that foreign investors were accorded national treatment when state-owned enterprises were privatised and there were no legislative acts which stipulated discriminatory treatment concerning foreign participation in the privatization process. The State Privatization Committee was the privatization authority in Kazakhstan. The fixed assets of state-owned enterprises were sold as a result of a decision taken by the authorized body (in certain cases also by the government). Proceeds from the sale of state property were used to generate revenue for the state budget. State-owned enterprises were not allowed to start up, buy shares or participate in the charter capital of partnerships with limited liabilities.

37. She further noted that two-staged tenders and sale of derivative securities had been introduced in Kazakhstan. Most major strategic entities were privatized through tenders, since this method promoted competition between potential buyers/investors. Sale of derivative securities was aimed at expanding the range of potential investors and raise the profile of Kazakh firms in global capital markets. Another recent method of privatization was the Blue Chip Program. Ten leading companies with state owned shares had been chosen as "blue chips" for further sales: "Manghistaumunaigas",

"Aktobemunaigas", "Kazzink", Ust-Kamenogorsk Titanium—Magnesium Works, Sokolovsk-Sarybaisk Mining-Concentrating Production Association, "Aluminum of Kazakhstan", the transnational company "Kazchrom", People's Savings Bank of Kazakhstan, "Kazakhtelecom" and "Kazakhmys". At this stage, the state owned shares of "Manghistaumunaigas", "Aktobemunaigas", "Aluminum of Kazakhstan", "Kazakhmys", People's Savings Bank of Kazakhstan and Ust-Kamenogorsk Titanium—Magnesium Plant" had been fully sold.

38. Asked whether the privatization program covered both agricultural and non-agricultural enterprises, the representative of Kazakhstan replied that private ownership was the dominant type of organization for agricultural production and that important economic activities, such as public catering, trade, food and services, were no longer state-owned.

39. She further noted that there were certain areas that would not be subject to privatization, such as state property exempted from privatization until 2006, as approved by Presidential Decree No. 422 of 28 July 2000 and Government Resolution No. 1587 of 24 October 2000. National companies established in strategic sectors of the economy (oil and gas, mining and metallurgy, transport and communications, and energy and machine-building) were also excluded from the privatization process. However, a part of the state-owned shares in these companies could be scheduled for privatization in line with national economic priorities. There were also other forms of state property - currently not subject to privatization - that could eventually be privatized following an assessment of the economic efficiency of continued state ownership. These included: state-owned shares in joint stock companies; state participations in the charter capital of Partnerships with Limited Liabilities; real estate property under construction; and property complexes and other property. State-owned shares of companies that had a monopoly position in the market, or those of strategically important companies, were privatized by government resolutions.

40. A description of the rules and procedures governing the privatization process was publicly available from the Ministry of Justice or the State Privatization Committee. Information was also accessible through the internet (www.minfin.kz). Forthcoming cash auctions were advertised in national mass media 30 days prior to auction date, specifying the list of companies, terms, and auction procedures. Large-scale public education campaigns about cash auctions were conducted during December 1995 and January 1996.

41. Asked about foreign acquisition of shares on the secondary market, the representative of Kazakhstan replied that foreign participants could purchase shares on the secondary market, from groups that have previously received shares in the privatization of these enterprises, provided that such enterprises were listed on the secondary market. However, agricultural producers, who had

privileges (received shares in exchange of liabilities) during the first and second stages of privatization, could not sell their shares to either foreign or domestic investors until their liabilities to the joint stock company were paid off.

42. Asked whether foreign investors were eligible to participate in the investment funds that owned shares in privatized companies, the representative of Kazakhstan referred to Presidential Resolution No. 1290 of 23 June 1993 that established the legal framework for Investment Privatization Funds (IPFs) and stated that there were no conditions or restrictions prohibiting foreign investors from purchasing shares in IPFs once they were converted to open-type JSCs.

- **Pricing Policies**

43. The representative of Kazakhstan stated that Presidential Decree No. 569 "On Price Liberalization Measures" of 3 January 1992 (invalidated by Presidential Decree No. 677 of 4 September 2001) launched the process of price liberalization in Kazakhstan. State regulation of prices (tariffs) was confined to services provided by natural monopolies, state-owned enterprises and companies with a dominant (monopolistic) position in given commodity markets.

44. She noted that Law No. 272-II "On Natural Monopolies" (the Law, WT/ACC/KAZ/18 refers) of 9 July 1998 codified the rules of conduct in the market of natural monopolies. "Natural monopoly" was a defined legal term and, according to Article 3 of the Law, a natural monopoly was deemed to exist in a market in which the creation of competitive conditions for satisfying demand for a particular type of services (goods, works) was not possible or economically viable, due to the special characteristics of the production process used for providing this type of services (goods, works). The Law established a legal framework for state control over the activities of natural monopolies, while balancing consumers' interests *vis-à-vis* the interests of natural monopolies. State regulation was implemented through establishing: (i) tariff rates (prices, fee rates); (ii) tariff estimates; (iii) temporary decreasing coefficients; and (iv) special order for cost formation. The coverage of the Law included both foreign and local legal entities (their branches and representative offices), individual entrepreneurs, public bodies and natural persons. Articles 6 and 7 of the Law contained a detailed description of the rights and responsibilities of natural monopolies.

45. The following activities were classified as natural monopolies: (i) transportation of oil and oil products through the main pipe-lines; (ii) storage, transportation of gas and gas condensate through the main and distribution pipe-lines, operation of gas-distribution units and connected gas distribution pipe-lines; (iii) transmission and distribution of electricity and heat, including production of heat by heating boilers using combined production methods; and services in technical dispatching of release

and consumption of electric energy; (iv) services of the main railroad network, including services of access roads, in cases where there were no other competing access roads, and where construction of one was technically impossible or economically impractical; (v) air navigation services, services of seaports and airports; (vi) telecommunication services using local networks; (vii) services of waterworks and sewerage networks; (viii) public postal services; and (ix) other activities determined by the legislation of Kazakhstan.

46. In response to a question, she confirmed that this list was exhaustive and that detailed information on price regulations was contained in Annex III. She clarified that there was no legal definition of the term "state monopoly" and that legislation on natural monopolies did not prevent foreign and domestic private enterprises from competing in sectors dominated by "natural monopolies". She added that provisions of the Law did not extend to individual entrepreneurs and legal persons, engaged in activities classified as natural monopolies, but relating to construction and operation of objects used for their own needs.

47. She further noted that the Law "On Competition and Restriction of Monopolistic Activities" expanded the scope of anti-monopoly legislation and contained new definitions of dominant (monopolistic) position. A company was deemed to have a dominant (monopolistic) position if it had more than 35 per cent share of the market. More than one market participants were considered to have a dominant position if: (i) the aggregate share of no more than three (previously two) major market participants accounted for 50 per cent or more in a specific commodity market; or (ii) the aggregate share of no more than four (previously three) major market agents accounted for 70 per cent or more in a specific commodity market. The law regulated monopolistic behaviour and authorized the introduction of price controls when entities violated the anti-monopoly legislation by restricting competitive access to a particular market. The Agency on Natural Monopoly Regulation and Competition Protection (the Agency) was Kazakhstan's authorized body in charge of control and regulation of the activities of both natural monopolies and entities with a dominant (monopolistic) market position.

48. Asked whether the government had the authority to apply price controls on goods and whether such controls existed, the representative of Kazakhstan replied that the Agency regulated tariff rates for services provided by monopolies, while both domestic and export prices for goods were determined by market forces.

49. Some members of the Working Party stated that enterprises that had monopoly positions in international trade and/or domestic distribution in Kazakhstan should be notified under Article XVII of the GATT 1994 and the 1994 Understanding. Asked whether Kazakhstan intended to notify any of

its "natural" monopolies, she replied that natural monopolies in Kazakhstan acted as transport carriers with equal non-discriminatory access for all suppliers and operators. No exclusive rights or special privileges were granted to these natural monopolies and, therefore, such natural monopolies did not fall under the definition of Article XVII of GATT 1994 or Article VIII of GATS.

50. The representative of Kazakhstan noted that natural monopolies, regardless of their ownership status, were listed in the State Register, which was maintained by the Agency (and its local branches) and kept records of both national and local entities. Asked to provide the list of natural monopolies, she referred to the Agency website www.antimonopoly.kz, which contained all relevant information.

51. She further noted that natural monopolies, listed in the Register were required to notify the Agency thirty days in advance about anticipated price increases and to submit documents providing justification for the proposed increases. No more than two tariff changes were allowed in any given quarter (previously one change every two quarters). The Agency reviewed the financial and technical aspects of the proposed tariff rate changes, while taking into account operations of similar enterprises. Tariffs approved by the Agency could not be set below the value of costs required to provide the company's services. Besides, the Agency had to allow for an adequate level of profits necessary to ensure the company's efficient operation. Relevant information was published regularly in the mass media.

52. She further noted that the adoption of a Program on Improvement of Tariff Policies of Natural Monopolies for the period 2002-2004 signalled the government's intention to ensure the sustainable functioning of natural monopolies. The program was based on new approaches to tariff formation and introduced forward-looking methods, such as a new calculation of profit rates of assets subject to state regulation and setting of medium-term tariff caps. In particular, the government planned to eliminate price controls for electrical power services, rail transport services, and certain telecommunication services.

53. At a later stage she noted that the production of electrical power, natural gas (gas condensate) and other forms of energy was not considered to be within the sphere of natural monopolies and prices for energy production were set by the market both domestically and for export. On the retail market for electricity, activities related to electrical power supply would be transferred to the competitive market environment. However, the transmission and distribution of electricity via the national company "KEGOC" was considered to be an activity within the sphere of natural monopolies and was subject to state price regulation. Resolution No.190 of 18 February 2004 approved the Concept of Further Development of Market Relations in the Electrical Power Industry for the period 2004-2006. The latter developed a model of the wholesale market for electrical energy, which included a

decentralized electricity trade market (working under centralized dispatch management), electronic trade of electricity, and a market for main (systemic) and supporting services. A plan to dismantle vertically integrated monopolies had also been developed.

54. Resolution No. 145 of 6 February 2004 approved the Program on Railway Transport Restructuring for the period 2004-2006. Charges for services provided by carriers and companies operating in the railway transport sector for transportation of commodities, for both domestic consumption and export, would be established in a competitive market environment. Charges applied by the national company "Kazakhstan Temir Zholy" for the use of the main railway infrastructure by other carriers and users would remain in the sphere of natural monopolies.

55. Some members of the Working Party requested more information on natural monopolies in the oil and gas pipelines industry and about the procedures for allowing natural monopolies access to the oil pipelines. They wanted to know what criteria were considered in allocating access to the pipelines and whether any form of guidance was provided by the government with respect to access allocation. In response, the representative of Kazakhstan replied that currently the registered natural monopolies in the sector were CJSC KazTransOil, CJSC Intergas Central Asia and OJSC Takhat. At present, Kazakhstan's oil was exported via two pipelines: Atyrau (Kazakhstan) – Samara (Russia) and the Caspian Pipeline Consortium (CPC). Oil transportation via CPC was regulated by shareholders of the Consortium.

56. The volume of oil exports via Atyrau-Samara was determined by the pipeline's traffic capacity and was based on the annual intergovernmental agreement between Russia and Kazakhstan. The Ministry of Energy and Mineral Resources allocated the available quotas among Kazakh exporters proportionally to the volume of their production. If a company planned to increase its production, it had to apply for additional quotas. Once quotas were granted, the exporter had to sign an oil transportation agreement with CJSC KazTransOil – the pipeline operator. No preferences were granted to either domestic or foreign companies in awarding export quotas. Uniform tariff rates were applied for the export of crude oil. Some members of the Working Party pointed out that oil pipeline tariff rates were higher for transportation of exported oil, noting that GATT Article XI provided that "other measures" could not be used to prohibit or restrict the exportation or sale for export of any product destined for the territory of another member. They stated that Kazakhstan was expected to eliminate this discriminatory pricing applicable to oil destined for export prior to its WTO accession. In response, the representative of Kazakhstan noted that Order of the Chairperson of the Agency No. 248-OD of 13 December 2002 established the Price List (tariffs) for services of CJSC KazTransOil, according to which unified tariff rates applied both for domestic consumption and

export. In order to support the production capacity of domestic oil refineries and to slow down the growth of domestic prices of oil products, a decreasing coefficient of 0.46 was applied for the transportation of crude oil to Kazakh refineries. Practice showed that the introduction of the decreasing coefficient did not constitute an export restriction in the meaning of Article XI of GATT. To support this statement, she noted that Kazakhstan produced 47,199 tonnes of crude oil in 2002, of which 41,530 tonnes were exported; and 51,256 tonnes in 2003, of which 45,187 tonnes were exported.

57. Some members of the Working Party stated that differential oil transport fees applied by Kazakhstan were in conflict with the provisions of Article V of GATT on freedom of transit. In response, the representative of Kazakhstan clarified that there was no transit of oil through the territory of Kazakhstan and consequently, there were no transit fees applied for using the two Kazakh pipelines for transit purposes.

58. The representative of Kazakhstan stated that price regulation also extended to utility services and public services. Utility services were subject to price controls because they were important for attracting investment and their delivery depended heavily on natural monopolies. The Agency was in charge of regulating prices for certain utility services, including heating, sewage systems, water supply, and electricity/gas distribution. Production costs were regulated only for activities classified as natural monopolies and for entities enjoying dominant (monopolistic) position in a specific commodity market in cases stipulated by the Law "On Power Industry" and Law No. 144 "On Competition and Restriction of Monopolistic Activity" of 19 January 2001. The representative of Kazakhstan added that public services were solely provided by public bodies and state-owned enterprises. A comprehensive list of public services, indicating agencies responsible for their provision, was provided in document WT/ACC/KAZ/6/Add.2. The procedure for collecting duties was regulated by the Tax Code. She also stated that, with the exception of fees on intellectual property, fees applied equally to foreign and national legal entities, as well as natural persons. Public transport charges were controlled by the local administrative bodies. The representative of Kazakhstan further added that the list of postal services, which belonged to the category of natural monopolies, was determined by the Law "On Postal Services" and tariff rates for those services were approved by the Agency. Nevertheless, rates established for private companies competing in this sector were not regulated by the Agency.

- **Competition Policy**

59. The representative of Kazakhstan stated that the key objectives of domestic competition policy included creation of a favourable environment for development of free competition in major

domestic commodity markets (via elimination of market entry barriers), protection of consumer rights, and addressing issues related to unfair competition and agreements aimed at distorting market competition. Legislation on competition policy was developed in line with the Constitution of Kazakhstan and comprised of the relevant provisions of the Civil Code, Law No. 232 "On Unfair Competition" of 9 June 1998 (WT/ACC/KAZ/36/Add.2 refers) and other related legislative acts. The Law "On Unfair Competition" listed instances of unfair competition, introduced mechanisms for its prevention and elimination, and also defined responsibilities for actions that constituted unfair competition. The law applied to domestic and foreign natural persons and legal entities, public bodies and local administration institutions.

60. She noted that in 2004, to meet the objectives of domestic competition policy, the government developed the Law "On Competition and Restriction of Monopolies", which introduced fundamental legislative provisions for the protection of competition in line with established international practices. It also developed a program for the period 2004-2006, which was aimed at reorganizing/downsizing monopolistic structures and natural monopolies. The anti-monopoly body had the authority to suppress any instances of unfair competition and collusion between competitors. The representative of Kazakhstan added that the government also planned to enforce anti-monopoly regulation in the financial market, in line with the new Law "On State Regulation and Control of the Financial Market and Financial Organizations".

61. In response to further questions the representative of Kazakhstan noted that agreements or coordinated activities between competing and non-competing market agents, as well as agreements concluded between public bodies, or between a public body and a market agent were invalidated and prohibited in cases where they resulted in the restriction of competition or infringement of rights of legal entities and natural persons. Price regulation of companies enjoying a monopoly position in specific markets was only imposed by the authorized body when legislative provisions were not respected or when there were cases of abuse of market power.

FRAMEWORK FOR MAKING AND ENFORCING POLICIES

62. The representative of Kazakhstan stated that the Republic of Kazakhstan was a Presidential State with power divided among the legislative, executive, and judicial branches. The President was the Head of State and executive powers were exercised by the President and the Government. The President was elected to seven year terms of office on the basis of universal, equal and direct suffrage by secret ballot. The President appointed and could dismiss the members of the Government, including the Prime Minister, ministers and heads of State committees.

63. The President was authorized to prioritize draft laws for consideration by the Parliament and, once adopted, to either sign them into effect or veto them. In order to override a Presidential veto, both houses of Parliament had to generate a vote of at least two thirds of total members. A draft law with a top-priority status had to be considered by the Parliament within one month after its submission. The President approved a law submitted by the Senate within 15 days, or returned the law (or separate Articles thereof) to the Parliament for further consideration to be completed within one month. Once the Parliament had reconsidered the law (or separate Articles thereof), confirming or not its earlier decision, the President signed the law within seven days. In cases where the Parliament failed to incorporate the President's comments in the Law, the Law would be viewed as not adopted or adopted in the form proposed by the President of the Republic of Kazakhstan. Laws came into force within ten calendar days after the date of their first official publication, unless the laws or acts on implementation of these laws had specified different terms for enactment. The Parliament could delegate its legislative powers to the President for a period of up to one year, while the President had the right to dissolve Parliament in certain circumstances. The President could decide to hold a national referendum, to issue decrees, and to issue decrees having the force of law.

64. The Parliament was a bi-cameral legislative body, consisting of a lower house, called the Majilis, and an upper house, called the Senate. At joint sessions, the Parliament could adopt Constitutional laws, laws, resolutions and decrees on issues that regulated the most important public relations, and amend the Constitution, upon the initiative of the President. The Parliament could adopt and amend the State budget, as well as put forward an initiative calling for a national referendum. At separate sessions, the Majilis and then the Senate could ratify or reject international treaties and decide on issues of State loans and other forms of economic assistance. The Senate, *inter alia*, had exclusive jurisdiction, at the initiative of the President, to elect and discharge the Chairperson and all Justices of the Supreme Court and the Chairpersons of the Collegiums of Justice. The Majilis, *inter alia*, had exclusive jurisdiction to accept draft Laws for consideration and to announce regular Presidential elections.

65. The Government was organized and supervised by the Prime Minister. The Government was accountable to the President, except in cases set out in Articles 53.6 and 57.6 of the Constitution, in which the Government was accountable to the Parliament. The Government submitted draft laws to the Majilis, the lower house of Parliament, and was responsible for their implementation when enacted. Subsidiary legislation in the form of resolutions and directives could be issued by the Government. The subsidiary legislation acts of the Government, as well as the acts of municipal chief executives could be annulled by the President. The mandate of the Government expired with that of the President unless otherwise terminated by the President.

66. She noted that the Government was responsible for directing national socio-economic policy. Kazakhstan's economic policy was developed and coordinated by the Ministry of Economy and Budget Planning. The Ministry of Industry and Trade was the principal Government body responsible for developing: (i) industrial and investment policy; and (ii) trade policy, including proposals on customs rates and duties (subsequently administered by the Customs Control Agency) and issuing of import/export licenses. State finance policy, including currency control and currency aspects of foreign economic relations, was determined by the Ministry of Finance. Administration of currency control was carried out by the National Bank through licensing of currency transactions.

67. The representative of Kazakhstan noted that the national authorities delegated some of their governmental powers affecting foreign trade to local authorities. The governmental authority in Kazakhstan was divided between central and regional (local) governments. Local governmental power was divided between representative bodies called Maslikhats and executive bodies called Akimats. Local governments had: (i) partial autonomy to regulate region-specific economic relations; (ii) a regional (local) administrative system; (iii) reciprocal obligations among different tiers of government to bring businesses into conformity with requirements of social, environmental and moral standards; (iv) the right to allocate State support to specific sectors and, regions and promote cooperation between local authorities, business and management bodies; (v) the right to allocate budget resources and regional property on commercially viable terms; and (vi) the obligation to co-ordinate foreign trade issues with the Government.

68. Asked to explain the relationship between local (sub-central) authorities and the central government in the implementation of WTO provisions, the representative of Kazakhstan stated that, according to Article 4 of the Law "On Local Government in the Republic of Kazakhstan", Maslikhats and Akimats did not have the right to adopt decisions inconsistent with national policy or international commitments arising from Kazakhstan's ratification of international agreements. In particular, sub-central authorities could not independently impose measures aimed at hindering the free exchange of goods and services within the country, such as imposing taxes and establishing regulations. Decisions of Akims or Maslikhats, which derogated from Kazakhstan's commitments pursuant to international agreements (including WTO commitments), could be annulled by the President, the Government, a Senior Akim, as well as through court procedures. In addition, the Prosecutor General's Office exercised constant supervision over the precise and uniform application of laws and other legislative acts.

69. Judicial power was exercised by means of civil, criminal, and other legislation, within the framework of a three-tier unitary court system. The Supreme Court was the supreme body for civil,

criminal and other cases. It exercised supervisory powers over the conduct of courts of general jurisdiction within a statutory framework, and provided clarifications on issues relating to court practice. The Supreme Court could also act as a *nisi prius* court (first instance court) whose decisions, came into legal force from the date of their adoption. Oblast (regional) and rayon (district) courts were courts of first instance and proceedings, conducted in these courts, took place within two months of receipt of the claim. This period could vary, however, depending on the category of civil case. Questions challenging the constitutionality of laws or subsidiary legislation were reviewed by the Constitutional Council.

70. Some members of the Working Party asked what were the administrative and judicial channels to appeal administrative decisions made on WTO issues. The representative of Kazakhstan explained that review of judicial decisions - of rayon (district), oblast (regional) and other local courts made at first instance - was carried out through an appeal/supervision procedure. Beside parties to a case and other parties affected by the decision, the Prosecutor-General, Oblast, Rayon and other public prosecutors of equal stature, as well as their deputies, had the right to appeal against court judgments which had not yet come into force (other than judgments of the Supreme Court), irrespective of whether or not they participated in the hearing. Appeals were heard not later than one month from the date of receipt of the appeal by the court of first instance. The court of appeal could make new findings of fact within the limits of the claim and investigate new evidence, which, for valid reasons, had not been presented at first instance. Court decisions, rulings, decrees and orders, which had already come into force, could be reviewed and appealed within a year, on grounds stipulated in the Civil Procedural Code (e.g. discovery of new facts), in line with the judicial supervision procedure. Review of decisions made by the supervisory board of the Supreme Court, and a second review of the case by the supervisory board of the Supreme Court, were allowed in certain cases prescribed by law. Rulings of the appellate court, as well as rulings of the court authorized to review the case under the supervisory procedure, came into legal force on the date when they were adopted.

71. She noted that the Code "Concerning Administrative Violations" of 22 March 1984 (as amended on 1 April 1995) aimed to prevent such violations, while protecting the rights, freedoms and lawful interests of persons, citizens and organizations. It addressed issues concerning the sanitary and epidemiological welfare and health of the population, the environment, public morals, property, public order and safety, and the established procedure for exercising state powers. The hearing with an judge or authorized body usually lasted for 15 days (which could be prolonged for up to a month). A request for review of a judge or authorized body ruling could be made within one year; the submission of such request suspended the ruling's execution. The prosecutor-general or his deputies

could ask a board of the Supreme Court to verify the lawfulness and legal grounds of a decision on administrative violations, which had already taken legal effect. The Supreme Court could also review the results of a review ruling.

72. Members of the Working Party asked whether following accession the WTO Agreement would have priority over Kazakhstan's national legislation and further sought a description of how, in legal terms, the WTO rules and commitments would be ratified. The representative of Kazakhstan stated that Article 4.3 of the Constitution stipulated that international agreements had priority over national legislation and that such international agreements were applied directly except if it was necessary to adopt a law for an international agreement to become applicable. Asked to confirm that Kazakhstan needed to adopt a law domestically in order to make WTO agreements applicable, the representative of Kazakhstan replied that, pursuant to Article 22 of Presidential Decree No. 2679 "On the Procedure for Conclusion, Execution and Denunciation of International Agreements of the Republic of Kazakhstan" of 12 December 1995, the Government and other relevant State bodies were obligated to ensure that Kazakhstan fulfilled all obligations it assumed under international agreements. To this end, the Government planned to introduce all necessary amendments to existing laws by the date of accession. She further stated that obligations, which were entailed by WTO accession but contradicted the provisions of other international agreements, would take effect in Kazakhstan only after: (i) incorporation of appropriate amendments to such international agreements; (ii) expiry of their duration; or (iii) their denunciation pursuant to the Presidential Decree "On the Procedure for Conclusion, Execution and Denunciation of International Agreements of the Republic of Kazakhstan", and the Vienna Convention "On International Treaty Law" of 23 May 1969. She stressed, however, that no contradictions were expected to arise between WTO membership obligations and international agreements signed by Kazakhstan.

POLICIES AFFECTING TRADE IN GOODS

- Trading rights (the right to import and export)

73. The representative of Kazakhstan said that according to Presidential Decree No. 2021 "On Liberalisation of Foreign Economic Activities" of 11 January 1995, any natural and legal person had the right to carry out foreign economic activities, i.e. international trade (export and import) and trade with domestic products. According to Article 3 of Law No. 2198 "On State Registration of Legal Entities and Registration of Branches and Representative Offices" of 17 April 1995 registration was obligatory for all legal persons, i.e. companies, branches, representative offices and small businesses with aggregate annual income over prescribed threshold employing permanent staff. Small businesses were registered with the local tax agency at the place of citizen's residence.

74. State registration and re-registration was performed for small businesses within 3 days, for public associations within ten days and for legal persons within 15 days from submission of a complete application and involved: (i) checking of the company's Charter and other documents submitted for compliance with the legislation; (ii) issuing of state registration certificate with assignment of a registration number, and (iii) inscribing to the Single State Register. This time period for small businesses had been introduced in 2003 when a State Program for Small Business Support and Development was adopted, which simplified state regulation procedures related to small businesses and improved the treatment of small businesses, including reducing registration fees for their registration.

75. She noted that according to Law No. 131 "On State Support to Small Businesses" of 19 June 1997, small businesses were defined as legal entities and individuals, engaged in business activities without establishing a legal entity, whose annual average staff did not exceed 50 and whose annual average total asset value did not exceed 60,000 Monthly Calculated Index (MCI), approximately US\$ 404,489 or € 110,543 (as of 6 June 2004).

76. Asked about fees for registration, the representative of Kazakhstan said that the criteria for registration were applicable to all businesses in Kazakhstan equally. Fees could be levied on the registration of legal entities, small businesses, and on the right to be engaged in certain types of activities with the aim of recovering the costs of administrative expenses for the registration process. All fees applied equally throughout Kazakhstan at both central and local levels and were forwarded to local budget revenues. Pursuant to Government Resolution No. 1660 "On establishing fees for state registration of legal entities" of 19 December 2001, the fees were levied on the basis of MCI effective on the day of payment. State-funded institutions and public companies were charged one MCI (US\$ 6.74 or € 5.53); children and youth public associations two MCI (US\$ 13.48 or € 11.05); small businesses five MCI (US\$ 33.7 or € 27.63); and legal persons (US\$ 134.83 or € 110.54).

77. She noted that the re-registration fee for legal persons was 50 per cent of the corresponding registration fees, while fee for issuing a duplicate of state registration (or re-registration) was 25 per cent of the corresponding registration fee. The fee for state registration of discontinuation of operation was one MCI effective on the date of payment.

78. Some members of the Working Party raised concerns about the requirement for re-registration and duplicate registration because they could be seen as *ad valorem* fees and appeared to place extra burdens on foreign businesses/entities. The representative of Kazakhstan replied that Kazakhstan planned to change the relevant legislation in order to bring it into conformity with the requirements of the Article VIII of GATT.

79. Some members of the Working Party asked the representative of Kazakhstan whether a firm or enterprise that was registered in Kazakhstan met the requirement of "residency" for the purposes of preferential trade with other CIS countries and to provide a clear distinction between legal personality in Kazakhstan through registration and "residence". The representative of Kazakhstan noted that in cases when a ratified international agreement did not contain a definition of the term "resident" for the purposes of a given agreement, "residency" status was regulated by the provisions of Article 1 of the Law "On State and Government Guaranteed Borrowing and Debt" of 2 August 1999, Article 1-1 of the Law "On Currency Regulation" and the Tax Code. The residency was awarded to legal entities established in Kazakhstan and/or with management control in Kazakhstan. She confirmed that resident legal entities of Kazakhstan were eligible to participate in preferential trade arrangement between Kazakhstan and other CIS countries.

A. IMPORT REGULATION

- Customs tariff

80. The representative of Kazakhstan said that the import tariff rates were established by the amended Resolution of the Government No.1389 of 14 November 1996 "On Rates of Customs Duties Levied on Imported Goods". Kazakhstan's tariff policy was aimed at: (i) protection of interests of consumers; (ii) diversification of the national economy; (iii) facilitation of development of technology-based and value added industries; (iv) creation of a favourable investment climate; and (iv) generation of revenues for the state budget. Commitments arising from Kazakhstan's participation in international agreements and regional integration initiatives, including the free trade area among the CIS countries and building a Customs Union among EurAsEC member-states were also incorporated into the national tariff policy of Kazakhstan.

81. In order to apply tariff and non-tariff measures *vis-à-vis* imported goods, undertake customs valuation and classification of goods in accordance with the tariff nomenclature, the Customs Control Agency issued the Order on No. 210 "Rules of Adoption of Preliminary Decisions and Their Standard Forms" of May 15 2003.

82. She noted that Kazakhstan had moved from the 9-digit to a 10-digit tariff nomenclature, which was based on the Harmonized System for description and coding of goods of 2002 (HS 2002) developed by the World Customs Organization on 1 January 2004. The move was stipulated by the Agreement "On Common Tariff Nomenclature of Foreign Economic Activity of the EurAsEC" adopted on 11 June 2003. Hence, the new import tariff consisted of 11,082 tariff lines. The significant majority of tariff items (9,786 positions or 88.3 per cent) were subject to *ad valorem*

tariffs; while 1,128 items (10.2 per cent) were subject to compound (or mixed) rates and 168 items (1.5 per cent) to specific rates. The *ad valorem* import duty rates ranged from 0 to 30 per cent, except for two categories related to ethyl alcohol (HS 2207 10 000 and 2207 20 000) for which tariff rate was established at 100 per cent.

83. She noted that the import tariff rates for developing countries, eligible for special treatment under the general system of preferences (GSP), were levied at the reduced MFN rate, while zero tariff rate applied to goods imported from the least developed countries. The tariff rates applicable to the products of unknown origin amounted to double MFN rates. The measure was aimed to ensure submission of evidence on the country of origin of imported goods.

- **Other duties and charges**

84. The representative of Kazakhstan stated that the Republic of Kazakhstan did not apply any other duties and levies on imports apart from the existing import customs duties approved by the Government Resolution No. 1389 dated 14 November 1997 and fees charged for services.

- **Tariff rate quotas, tariff exemptions**

85. The representative of Kazakhstan said that the Law No. 544 "On Regulation of Trade Activity" of 12 April 2004 provided a general legal framework for introduction of tariff rate quotas (TRQs) in Kazakhstan. The Government planned to apply TRQs toward a limited number of sensitive agricultural products with the purpose of elimination of "peak rates" in the tariff commitments and to increase market access opportunities for foreign exporters through allocation of import quotas. She added that the Government was committed to apply the most transparent methods of administration of TRQs by using a "the first come, first served" method.

86. She noted that tariff exemptions were regulated by the Customs Code, Governmental Resolutions No. 668 "On Adoption of the List of Temporarily Imported Goods Exempt from All Customs Duties and Taxes and Temporarily Exported Goods from All Customs Duties" of 8 July 2003 and No. 1092 "On Adoption of the List of Leasing Objects Subject to the Customs Regime of Temporary Importation of Goods and Vehicles" of 21 August 2001. She added that Kazakhstan also awarded tariff exemptions to certain goods originating in CIS countries, except Turkmenistan, as stipulated in the bilateral trade agreements.

87. She further noted that goods imported to Kazakhstan temporarily could be exempted from payment of customs duties and taxes either in whole or in part. Goods falling within the scope of Resolutions No. 668 and 1,092 were fully exempted of payment, while other products were charged a

fee of 3 per cent of the duty chargeable for each month the goods were in the territory of Kazakhstan. Kazakhstan prohibited temporary importation of industrial waste; spare parts and components for temporarily imported vehicles, consumables and samples, raw materials and semis, unless imported temporarily for promotion or demonstration purposes in single units; and foods and beverages (including alcoholic beverages and tobacco goods).

88. She further noted that the term of temporary importation was determined by an applicant based on its tasks and objectives, and could not exceed three years after goods entered the country. The term of temporary importation could be extended beyond three years at the request of an applicant, if an acceptable justification was provided. To apply for extension of the term of temporary importation, an application had to be lodged with the customs body not later than one month prior to the expiry of the initial term. No requirements on customs fees or resubmission of the customs declaration were applied to the extension of the term of temporary importation.

- **Fees and charges for services rendered**

89. The representative of Kazakhstan said that a new Customs Code was enacted on 1 May 2003, which abolished the fee of 0.2 per cent of the customs value. Article 293 of the new Customs Code stipulated that customs fees could be levied for the following types of services: (i) customs clearance; (ii) customs escort of goods; and (iii) services provided by warehouses owned by customs authority. Customs clearance of goods and vehicles included registration of customs declaration; control over application of tariff and non-tariff regulations; control over compliance of location of goods with the customs regimes requirements; administration of customs fees; determination of customs value; classification of goods in case of necessity of customs examination and customs expert evaluation.

90. She noted that the fees on customs clearance and customs escort were levied on all imported goods in accordance with the Government Resolution No. 669 "On Adoption of Rates of Customs Fees, Charges and Payments Levied by Customs Bodies" of 7 July 2003. The customs clearance fee was € 50 for the original Cargo Customs Declaration (CCD) and € 20 for each additional CCD page. Customs escort of goods was charged on the basis of distance and was based on Monthly Calculation Index (MCI). Accordingly, on 6 June 2004 the following fees were charged: up to 50 km - 2 MCI (US\$ 13.5); 50-100 km - 4 MCI (US\$ 26.9); 100-200 km - 7 MCI (US\$ 47.2); 200-400 km - 14 MCI (US\$ 94.4); 400-600 km - 21 MCI (US\$ 141.57); 600-800 km - 29 MCI (US\$ 195.5); 800-1,000 km - 36 MCI (US\$ 242.7); 1,000-1,500 km - 54 MCI (US\$ 364); 1,500-2,000 km - 72 MCI (US\$ 485.44); and above 2,000 km - 89 MCI (US\$ 600). She provided a list of customs duties, fees and payments levied by the customs bodies by submitting the Resolution No. 669 (document WT/ACC/KAZ/50/Add.1 refers). Asked about MCI, she replied that MCI was an indicator

established annually in the state budget and could be converted to US\$ or Euro at a rate established by the National Bank on the date of payment.

91. A member of the Working Party noted that calculations for charges for customs escorts of goods in transit appeared complex in nature and to some extent excessive, especially the need to cover the salaries of customs officers. The representative of Kazakhstan replied that the Government planned to bring the charges in full conformity with Article VIII of GATT.

- **Application of internal taxes to imports**

92. The representative of Kazakhstan said that the Tax Code was the legal framework for application of internal taxes on imported goods. The Tax Code stipulated that taxes applied to imported goods included the Value Added Tax (VAT) and the Excise Tax. Local governments did not have the right to introduce local taxes on imported goods, as they could only be introduced by the national government by adopting new legislative acts or amendments to the effective Tax Code.

- **Value Added Tax**

93. The representative of Kazakhstan said that Section III of the Tax Code and Code No. 209-II "On Taxes and Other Mandatory Payments to Budget" of 12 June 2001 set a VAT rate of 15 per cent which was levied equally on domestically produced and imported products. The tax was levied on domestic products on the basis of volume of taxable turnover, while for imports it was levied on the sum of their customs value and other taxes and mandatory payments. The VAT on exports was zero, except for ferrous and non-ferrous scrap.

94. She noted that Kazakhstan used the "country of destination" principle for all imports, except for natural gas, oil and gas condensate from Russian Federation where the "country of origin" principle was applied as stipulated in the Agreement "On Principles of Levying Indirect Taxes in Mutual Trade". In accordance with the "country of origin" principle, VAT was payable upon export, as stipulated in the national legislation of the country of origin of exports. Thus, the VAT rate applied upon export was 18 percent in Russia and 15 per cent in Kazakhstan. Due to the difference in taxes, imports to Kazakhstan were subject to offsetting as stipulated in Government Resolution No. 556 "On the Procedures for Offsetting Value Added Tax Payable by Supplies of Goods Imported into the Republic of Kazakhstan in Relation to which Different Procedures for Taxation of Exported and Imported Goods are Applied as per an International Agreement" of 22 May 2002. Offsetting was performed on the basis of an invoice provided by a supplier from the Russian Federation with the VAT amount singled out in the amount of tax effective within Russia as of the date of shipment of

goods from the Russian Federation. When the VAT payer had both taxable and non-taxable turnovers, including VAT exempt turnover, the VAT payable to suppliers from the Russian Federation had to be offset according to the procedures provided in Article 239 of the Tax Code.

95. She further noted that no VAT tax was levied on: (i) imported national currency, and foreign currencies (except for cases where currencies were imported for numismatic purposes), and securities; (ii) goods, imported by natural persons within norms for duty-free import, set by the Government; (iii) goods, except for excisable goods, imported as a humanitarian aid in accordance with procedures, set by the Government; (iv) goods, except for excisable goods, imported as charity on the initiative of the State, national governments, international organisations, including for purposes of technical assistance; (v) goods imported for use by foreign diplomatic representative offices and offices of the same status, as well as for personal use by foreign diplomats and general staff of representative offices, including family members, residing with them; exempted from excises under international agreements to which Kazakhstan was party; (vi) imported goods, subject to declaration in accordance with the customs legislation of Kazakhstan, under customs treatments providing for tax exemptions; (vii) imports of drugs, including medical substances; medical (veterinary) products, including prosthetic appliances, devices for the deaf-blind, medical and veterinary equipment; materials and components required for production of drugs and diabetic products, medical (veterinary) products, including prosthetic appliances, and medical (veterinary) equipment, if approved by the Government; (viii) imports of mail stamps (except for imports by collectors); (ix) imports of raw materials for production of paper currency by the National Bank of Kazakhstan and its subordinate bodies; and (x) goods, imported under grants, provided by states, government and international organisations.

- **Excise Tax**

96. The representative of Kazakhstan provided a list of products by HS code subject to excise tax and rates applied in Annex IV and said that the excise tax rates were approved by Governmental Resolution No. 137 "On Rates of Excise Taxes on Excisable Goods Produced in the Republic of Kazakhstan and Imported to the Customs Territory of the Republic of Kazakhstan and on Gambling Business" of 28 January 2000. The Resolution stipulated that excise rates were equal for domestic and imported goods, except for alcohol, tobacco, automobiles, gasoline and diesel fuel.

97. She noted that in order to ensure staged unification of the excise tax rates, the Government increased excise rates on domestically produced products by amending Resolution No. 137 with Resolutions No. 1257, 182 and 241 on 26 November 2002, 20 February 2003 and 27 February 2004, respectively. Hence, tax per 1 litre of vodka was increased from KZT 60 to 100; per 1,000 filter tripped tobacco products from KZT 140 to 180; per 1,000 tobacco products without filter from

KZT 95 to 100; per 1 litre of beer from KZT 6 to 7; and established excise tax rates that were based on the percentage of alcohol. Additionally, in order to improve the tax base and to introduce a system of control of the turnover of alcohol products using control stamps with cryptographic identification, the Government adopted a Sectoral Program for State Regulation of Production and Turnover of Ethyl Spirit and Alcohol Products for 2004-2006.

98. Asked about the target date for unification of excise taxes, she replied that the Government envisaged full unification of excise tax rates by the date of Kazakhstan's accession to the WTO.

99. She further noted that Kazakhstan did not apply excise tax on: (i) excisable goods imported by natural persons within limits set by the Government; (ii) excisable goods required for operation of vehicles, involved in international transportation, *en route* and in the intermediate locations, as well as excisable goods, purchased abroad for repair of damage caused by a road accident (breakdown); (iii) goods damaged prior to being transported across the customs border and rendered non-usable as products and materials; (iv) goods imported for use by foreign diplomatic representative offices and offices of the same status, as well as for personal use by foreign diplomats and general staff of representative offices, including family members, residing with them; exempted from excise under international agreements to which Kazakhstan was party; (v) goods, transported across the customs border, exempted under customs treatment set by the customs legislation, excluding for the "Issue of goods for free use"; and (vi) products containing alcohol used in medicine (excluding balms) in containers of no more than 0.1 litre and registered in accordance with the requirements set out in the legislative acts of Kazakhstan.

- **Quantitative import restrictions, including prohibitions, quotas and licensing systems**

100. The representative of Kazakhstan said that Kazakhstan did not apply any quantitative import restrictions, except those established by the Government Resolution of "On ban imposed for goods and vehicles imported to the territory of the Republic of Kazakhstan and exported from its territory that were prohibited to be located under special customs regimes, and the bans and limitations for conducting operations with goods under special custom regimes" of 10 July 2003 adopted in accordance with Articles 8, 125, 142, 153, 165, 175, 182, 240 of the Customs Code. The Resolution banned imports of: (i) arms of all types of military sample and ammunition to it, weapons of mass destruction; (ii) drugs, psychotropic and precursors, and the means for their use; and (iii) printed and illustrative materials popularizing war, terrorism, violence, racism and pornographic materials.

101. Nevertheless, she noted, the two remaining import trade restrictive measures - quota for import of grinding and forged spheres (Resolution No. 1243) and limitation on imports of ethyl

alcohol and alcohol products (Resolution No. 1031) had been abolished on 1 January 2003 and 17 June 2004, respectively.

102. She confirmed that Kazakhstan would not introduce any import quotas after accession to the WTO, except for emergency reasons stipulated in the Article XIX of GATT and WTO Agreement on Safeguards.

- **Import licensing**

103. The representative of Kazakhstan provided a list of goods subject to import and export licensing with justifications in Annex V and said that the list of goods subject to licensing and the rules on export and import licensing of goods and services were contained in Government Resolution No. 1037 "On licensing export and import of goods and services in the Republic of Kazakhstan" of 30 June 1997. The licensing system regulated import and export of a limited number of goods to ensure protection of human life and health, environmental protection, protection of public order, as well as for reasons of national security.

104. She noted that import licensing of ethyl spirit and alcoholic beverages was regulated additionally by the Rules on import licensing of ethyl spirit and alcoholic beverages, which was approved by the Government Resolution No. 1031 "On licensing of import of ethyl spirit and alcoholic beverages in the Republic of Kazakhstan" dated 27 June 1997.

105. She further noted that, in her view, the import licensing in Kazakhstan was automatic and had no trade-restrictive effects on imports. She provided detailed information on licensing procedures in Annex VI and said that licenses were granted on a national treatment and MFN basis. The Ministry of Industry and Trade issued licenses for a period of one calendar year with possibility of one year extension, except for ethyl spirit and alcohol beverages for which the Ministry of Finance was responsible, nevertheless, the licensing term was the same. Moreover, it was the responsibility of one of the two ministries (depending on their jurisdiction) to co-ordinate the process with concerned agencies. The application for licence had to be submitted to only one of the ministries and had to include confirmation of payment of a licence fee; a copy of a certificate of state registration (if a legal entity was applying for a licence); a copy of a purchasing/sale contract; and a licence for production of alcohol products, or for storage and sale of ethyl spirit in case of importing ethyl spirit. In accordance with Article XVII of the Law "On Licensing" a licence had to be issued within ten days for small businesses and no later than a month for legal entities. The decision and procedure related to issuing of a licence could be appealed to the court within one month.

106. Asked about fees for licences, she replied that Government in accordance with Government Resolution No. 100 "On approval of licensing fees for carrying out certain types of activities" of 24 January 2002, uniform fee were charged for imports and exports at the rate of 6 Monthly Calculation Index (US\$ 40.4 or € 33.2) which represented the actual cost of processing the licence application.

- **Customs valuation**

107. The representative of Kazakhstan said that customs valuation was determined on the basis of the new Customs Code adopted on 5 April 2003 and provided further information on Customs Valuation in document WT/ACC/KAZ/50/Add. 1. Moreover, to enhance customs valuation procedures applied to imported goods and implementation of an independent examination system, the Government had adopted Rules for Independent Examination of Consistency of Customs Value, Quality, and Quantity of Imported Goods (Resolution No.782 of 16 July 2002). The Rules determined the procedures for independent examination of consistency of the customs value, quality, and quantity of goods imported to Kazakhstan. Issues relating to customs valuation of goods were also regulated by the Decree of the Customs Committee No.209 "On Adoption of Rules on Completion of Declarations of Customs Value and Customs Value Adjustment Forms" of 15 May 2003.

108. She noted that Article 308 of the Customs Code stipulated that the customs valuation of imported goods could be determined using six methods: (i) transaction value; (ii) transaction value of identical goods; (iii) transaction value of similar goods; (iv) deduction of costs method; (v) composition of costs; and (vi) reserve method. The transaction value method had priority over other methods and established the value of goods at their selling price in the importing country. Where application of this method was impossible, other methods were used in the order shown above until determination of the customs value was possible.

109. She further noted that according to Article 311 of the Customs Code, "homogenous" or "similar" goods meant goods, which, although not identical, that had similar characteristics and consisted of similar components, which allowed them to perform the same functions as the goods being valued, and which were commercially interchangeable. The goods had to be manufactured in the same country as the goods being valued, however they could be manufactured by another manufacturer. When determining the similarity of goods, their quality, availability of a trademark, and reputation on the market was taken into account. Article 309 set out when the goods were not considered similar.

110. According to Article 314 of the Customs Code, the reserve method could be applied when the customs value could not be determined by a successive application of all other methods. When using the reserve method the customs authority could use Government recognized reference books, statistical data, generally accepted commission rates, discounts, profit, transport rates and other data. The appropriate adjustment of data was mandatory, taking into account commercial standards (wholesale, retail) and/or the quantity of goods being valued. However, Article 314 of the Customs Code, described factors that could not be relied upon.

111. Asked whether Kazakhstan applied minimum values, the representative of Kazakhstan noted, that in accordance with Article 310 of the Customs Code, while determining customs value based on the transaction value of identical goods, when more than one transaction value with identical goods was identified, then the lowest of the values was applied to determine the customs value of the imported goods.

112. Asked about the existing procedures for judicial review of customs measures, she replied that the Code No. 155-11 "On Administrative Violations" had been adopted on January 2001. The Code, besides appointing the bodies authorised to address the cases of administrative violations and imposing sanctions, was applied to disputes related to customs valuation as well as to cases involving deliberate evasion of customs duties and taxes.

- **Rules of origin**

113. The representative of Kazakhstan provided a copy of Section 4 of the Customs Code which established rules for determination of the country of origin of goods. She stated that these rules were applied for non-preferential and preferential trade. The rules established a uniform system for determination of the country of origin of goods for application of both tariff and non-tariff measures to both exported and imported products. The existing system was developed by the World Customs Organization and covered provisions of the Kyoto Convention.

114. She noted that in accordance with criteria set out in the Customs Code, the country of origin was the country where a good was produced in full or underwent significant processing involving changes in tariff code and value added. Several countries, customs unions, regions, or parts of countries could be viewed as the country of origin, provided that this was justifiable for the purposes of determination of the country of origin.

115. She further noted that imports of goods required a certificate of origin not only for the purpose of applying preferential tariffs for good in transit, non-tariff measures and complying with

international agreements to which Kazakhstan was a party, as well as by the legislation of Kazakhstan on sanitary and epidemiological safety, environmental protection, protection of human health, consumer rights, public order and national security. A certificate of origin had to entail prescribed information such as country of origin; a written declaration that the good conformed with the corresponding criteria of origin; and a written certification of the correctness of the supplied information, issued by the competent body of the country of export. Failure to provide a correctly drafted certificate or information on the origin of a good was not a sufficient reason for denial of customs clearance.

116. Articles 47-49 of the Customs Code set the rules governing an issue of certificate of origin. According to the Customs Code a decision was issued within ten working days and was valid for three years. The decision was annulled or amended by a written justification if it was taken on the basis of incomplete or incorrect information provided by the applicant. The new decision entered into force only after the applicant received notification concerning the amendment or nullification. The decision had to be published and provided in writing upon a written request to any person, except for confidential information. The Customs Code had no provision prohibiting applications before actual trade began or at any later stage. She said that, in her view, there was no need for separate legislation to implement Article 2 (h) and Annex II, paragraph 3 (d) of the WTO Agreement on Rules of Origin.

- **Other customs formalities**

117. The representative of Kazakhstan said that in accordance with the Law "On Currency Regulation" and the Resolution of the National Bank Board No. 343 "On Adoption of Guidelines for Export and Import Currency Control in the Republic of Kazakhstan" of 5 September 2001, importers and exporters had to obtain a "Transaction Passport" (TA) for any transaction exceeding US\$ 10,000. The issue of TA by Customs Authority was free of charge, automatic and took two working days. The TA contained information on foreign economic operations and allowed monitoring of movements of goods and money involved in export and import operations. Currency controls ensured that currency earnings flowed into the country in full and timely fashion, as well as ensured a proper use of foreign currency and KZT for the purpose of import.

118. Some members of the Working Party were concerned that the transaction passport constituted an unacceptable universal licensing system and currency control incompatible with the Articles XI and XV of GATT. The members asked Kazakhstan to remove the transaction passport requirement prior to its WTO accession. The representative of Kazakhstan emphasized that the TA was by no means used to balance trade and, as such, could not be viewed as a barrier to foreign economic activities.

119. She noted that in order to facilitate control at the border, the Government first introduced electronic monitoring by creating database of TA and introduction of Unified Automated Information System (UAIS). The UAIS operated on the basis of electronic copies of customs declarations provided by "Accept Corporation" which held exclusive right to make such copies. In 1999, the Government had withdrawn the exclusive right from Accept Corporation and since then the UAIS was implemented by the Customs. The Government planned to introduce an "Electronic Customs" project which would implement a transition to the use of electronic customs documents. For the time being continued use of the paper customs declaration would be required.

120. Asked about provision of confidentiality of the information, she replied that measures to protect confidential information were envisaged for the UAIS.

121. Some members of the Working Party expressed concerns regarding requirement to provide an electronic copy of the import and export declaration as part of the required customs documentation, the granting of an exclusive licence to provide electronic copies of those declarations to the "Accept Corporation", the cost to the importer of obtaining such an electronic copy and the requirement that importers still present a paper copy of the import declaration.

122. Asked about the results of the review of the temporary customs warehouse storage regime, the representative of Kazakhstan replied that the temporary storage regime was regulated by Chapter 13 of the Customs Code of the Republic of Kazakhstan (Articles 87-111). Temporary storage of goods was not limited or restricted to the use of temporary storage warehouses, but could also involve storage in vehicles, warehouses owned by a receiver of goods, as well as special quarters allocated and equipped either for indoor or outdoor storage. Furthermore, licensing requirements and fees charged for temporary storage were not changed when goods were stored in vehicles, warehouses owned by a receiver of goods, as well as in special quarters allocated and equipped either for indoor or outdoor storage. Pre-arrival declaration procedures, periodic declaration procedures, and procedures related to the customs clearance of urgent consignments stipulated that goods and vehicles cleared under high-priority and simplified procedures could be released directly without placement in a temporary storage location (temporary storage warehouses). No physical placement of goods and vehicles in a temporary storage warehouse was required where they were cleared by Customs within one business day.

- **Preshipment inspection**

123. Asked to provide more information about the "independent examination" pre-clearance audit system, the representative of Kazakhstan said that the Program of Pre-shipment Inspection (PPI) had

been terminated on 31 January 1997, and accordingly no pre-shipment inspection was applied in Kazakhstan.

124. In order to further improve the customs valuation procedures applied to imported goods and implementation of an independent examination system in Kazakhstan, Resolution No. 782 of 16 July 2002 set up Rules for Independent Examination of Consistency of Customs Value, Quality, and Quantity of Imported Goods. An independent examination of customs value, in contrast to the pre-shipment inspection, implied a price audit (control over the compliance of declared information to their real cost) of imported goods after their arrival in Kazakhstan. The independent price audit of imported goods was introduced to increase the flow of customs and tax revenues to the state budget, minimise wrongful acts on the part of customs officials and to prevent capital flight. The rules determined procedures of an independent examination of whether customs value of goods imported to the country corresponded to their quality and quantity.

- **Anti-dumping, countervailing duties, safeguard regimes**

125. The representative of Kazakhstan noted that the use of anti-dumping, safeguard, and countervailing measures was regulated by the Laws "On Anti-Dumping Measures" No. 421-1 of 13 July 1999, "On Measures for the Protection of Domestic Markets in the Process of Imports of Goods" No. 337-1 of 28 December 1998, "On Subsidies and Countervailing Measures" of No. 441-1 of 16 July 1999. The above-mentioned laws defined rules and procedures for the use of anti-dumping, safeguard, and countervailing measures for protecting the domestic market against the adverse effects of an increased share of imports or supplies of dumped or subsidized goods. Under these laws, anti-dumping, safeguard, and countervailing duties could only be introduced when there was evidence that serious damage had been incurred or was threatened to domestic producers of a like product. These measures could be implemented for a limited term, sufficient to allow domestic producers to adapt to the competitive environment. Government Resolution No. 1347 "On Rules of Conducting Investigation Prior to Implementing Safeguard, Countervailing and Anti-Dumping Duties" of 9 September 2000 set the framework for conducting an investigation concerning trade remedy measures. The authorized body for conducting the investigation was the Ministry of Industry and Trade. The Rules also contained a detailed description of procedures governing the application of trade remedy measures, developed in conformity with relevant WTO Agreements.

126. Some members of the Working Party noted that the above-mentioned laws generally appeared to comply with the provisions of the relevant WTO Agreements, however, some concerns remained. The representative of Kazakhstan noted that the government planned to develop a draft law on amendments and additions to the above-mentioned laws by the end of 2004. These amendments and

additions were expected to bring acting legislation into full compliance with the provisions of the relevant WTO Agreements.

127. Asked about review procedures for an anti-dumping case, the representative of Kazakhstan replied that the review was performed by courts which were neutral and independent from the executive power, like the judicial review of any administrative or other decision of an executive body of Kazakhstan. Accordingly, the executive body involved in anti-dumping investigation could not interfere with any legal proceedings pending before a court.

128. She further explained that the Law "On Anti-Dumping" stipulated that review or cancellation of anti-dumping measures should be carried out by the Government upon submission of the case by an Authorized Body. Under Article 53 of the Law, in case the complainant disagreed with the decision of the executive body on anti-dumping investigation, he/she had the right to appeal to the court. The current Code of Civil Procedure set forth the general procedures for filing *inter alia* a complaint in court to review administrative actions. In the case of an anti-dumping action filed by a foreigner or non-resident, Articles 15 and 118 of the Code of Civil Procedure provided that such a claim could be brought to the court having jurisdiction and located as close as possible to the decision-making body. Oblast courts and the Almaty city court were considered to be courts of first instance. All details of court procedures were regulated by the Law on the Procedure for Consideration and Settlement of Economic Disputes and the Code of Civil Procedure. Where the complainant was a legal entity, the claim would be considered by the Board of Economic Disputes within the court of first instance. Where the complainant was a physical person, in addition to the aforementioned procedures, he/she could also be guided by the Law on the Procedure for Appealing in a Court Against Actions of the Bodies of State Administration.

B. EXPORT REGULATION

- Customs tariffs, fees and charges for services rendered, application of internal taxes to exports

129. The representative of Kazakhstan said that Kazakhstan applied export customs tariffs on a MFN basis, except for exports to the members of the Customs Union. Export duties were published after they were approved by the Government on the basis of the Ministry of Industry and Trade proposals.

130. She noted that export tariffs were established by the Government Resolution No. 841 of 5 June 2000 and provided a list of products with their rates of duties in Table 4.

Table 4 - Rates of Export Duties Applied by Kazakhstan

HS number	Description of Goods *	Rate of Duty (% of customs value)
4101	Raw pelts of cattle or animals of horse family, with hair or without hair, splitting or non-splitting.	€ 20, but not less than € 200 per 1,000 kg
4102	Raw pelts of sheep or lambs, woolly or non-woolly, splitting or non-splitting, except excluded according to Note 1a for this group.	€ 20, but not less than € 200 per 1,000 kg
4103	Other raw skins, with hair or without hair, splitting or non-splitting, except excluded by Note 16 or 1b for this group.	€ 20, but not less than € 200 per 1,000 kg
5101- 5104 00 000 0	Un-carded and uncombed wool;	€ 10, but not less than € 50 per 1,000 kg
7204**	Iron-and-steel waste and scrap; ferrous metal ingots for re-melting (charging ingots)	€ 40, but not less than € 35 per 1,000 kg
7302	Ferrous metal products, used for railway lines and tram-lines: rails, flange rail and rack rails, switch blades, point frogs, regulating rods and other cross connections, crossties, splice bars and base-plates, wedges, bedplates, hood joint bolts, bad plates and bracing wires, foundation slabs, cross bars and other details for connection and bonding of rails.	€ 40, but not less than € 35 per 1,000 kg
7326 90 600 0	Other ventilators, non-mechanical, guttering, hooks and like Articles used in the building industry, n.e.s., of iron or steel	€ 40, but not less than € 35 per 1,000 kg
7404 00	Copper waste and scrap	€ 30, but not less than € 330 per 1,000 kg
7601 - 7616	Secondary unprocessed aluminum and aluminum products.	€ 15, but not less than € 100 per 1,000 kg
8607	Parts of locomotives and motor-wags of trams and rolling-stocks.	€ 40, but not less than € 35 per 1,000 kg

* The nomenclature of goods is determined both by code and by description of goods.

** Rates of the exported customs duties for the indicated goods were not used in respect of the European Union Countries.

131. Asked about export tariffs applied among members of the Customs Union, she noted that the agreement established that no export duties were applied among the members of the Customs Union (Kazakhstan, Belarus, Russia, Kyrgyzstan, Tajikistan).

132. She further noted that the Agreement between the Government of the Republic of Kazakhstan and the European Coal and Steel Community on Trade in Certain Steel Products (Article 2. p.3) abolished quantitative restrictions, customs duties, charges or any similar measures on the export of ferrous scrap and waste under the EC Combined Nomenclature heading 7204.

133. Members of the Working Party noted that export duties appeared to be introduced to displace products that have been otherwise imported by domestic products or otherwise distort trade. Some members of the Working Party considered that the application of export duties was unacceptable and inconsistent with Articles II and XXIII of the GATT, and that discriminatory export duty exemptions were inconsistent with GATT Article I. They requested a timetable to be set for the elimination of all export duties. The representative of Kazakhstan replied that export duties were applied on a very

limited number of goods mainly for fiscal purpose and, as such, did not violate provisions of the GATT. Export duty exemptions applied only toward the countries within the Customs Union and were in accordance with Article XXIV of the GATT. Moreover, application of export duties were not prohibited by the WTO agreements.

134. Asked about recently introduced export tax on crude oil by the Tax Code, she replied that Kazakhstan had introduced a new tax regime for oil operations designed to increase the Kazakh future share in oil revenue. The new tax regime for oil operations applied only for new contractual obligations and did not have retroactive force.

135. She noted that in accordance with the Law "On Changes and Additions to Some Legal Acts of the Republic of Kazakhstan on Taxation Issues" of 29 November 2003, natural and juridical persons exporting crude oil (excluding subsurface users, who had signed a Production Sharing Agreement (PSA) had to pay the rent tax on the export of crude oil every calendar month. The rent tax rates were established according to the sliding scale starting from 1 per cent at the market price of US\$19 per barrel and 33 per cent at the world price of US\$ 40 and above per barrel. Under PSA, tax was paid in accordance with the provisions of the tax legislation applied on the date when the contract had been signed. Under such arrangement, the conditions of the PSA were fixed and could not be changed subsequent to legislation without having both parties' agreement.

136. The rent tax was calculated on the basis of the actual value and market price of the exported volume of crude oil, depending on the quality of crude oil with the deduction of transportation costs. The market price was defined as the weighted average price of prevailing sale prices in the world market during the (daily) reporting period in relation to a range of most similar brands of crude oil by the Government of Kazakhstan.

- **Export restrictions**

137. The representative of Kazakhstan said that Kazakhstan maintained a number of export restrictions in accordance with Article XI.2 of the GATT and provided a list of goods subject to export restrictions with justifications in Annex VII. Export restrictions were imposed in accordance with Government Resolutions No. 438 "On Export of Diesel Oils" of 20 April 2004; No. 1243 "On Introduction of Restrictions on Import and Export of Goods" of 5 December 1998, No. 785 "On Some Issues of Forest Utilization" of 16 July 2002 and No. 1163 "On Forest Management Related Issues" of 21 November 2003. Furthermore, in pursuance of the agreement concluded with the European Union on trade in steel products, a number of quantitative restrictions were introduced on specific types of steel products exported from Kazakhstan to the European Union countries.

138. She noted that Kazakhstan planned to introduce some changes to the current legislation in order to bring export restrictions in accordance with provisions of Article XI of the GATT. The Government was considering to limit the export ban on combustive-lubricating materials to high season, while introducing export duties for the rest of the year. It also planned to eliminate substitution export ban on some aluminium and nickel products.

139. She noted that Kazakhstan did not apply any quantitative or any other restrictions on export of grain, or any other agricultural product. Moreover, Kazakhstan neither had any policies or requirements to impose or maintain export prices on grain nor sanctions/permissions applicable to grain exports. Some flora and fauna species listed in Annexes I, II and III of the Convention on international trade in species of wild flora and fauna that were under the threat of extinction were subject to export permissions issued by the CITES in Kazakhstan.

140. Some members of the Working Party noted that although minimum export prices had previously been eliminated, it appeared that the authorities were still operating a system with a similar effect. The representative of Kazakhstan replied that Government Resolution No. 994 of 19 July 1997 had eliminated contract registration at the commodity exchange, and that Kazakhstan did not apply minimum export price requirement.

141. The representative of Kazakhstan said that export licensing was regulated by the same legislation as import licensing and was different only in the products it covered. She referred to Annexes V and VI on "Import Licensing". In Annex V she also provided a list of goods subject to export licensing requirements resulting from Kazakhstan's obligations under bilateral agreements with the European Coal and Steel Union (steel) and the European Economic Community (textile). She further noted that pursuant to Kazakhstan's obligations arising from its membership in international agreements on non-proliferation of nuclear materials, technologies, armaments and weapons of mass destruction, the Government adopted Resolutions No. 1999 of 14 December 1999 and No. 1282 of 18 August 2000.

142. She further noted that export licenses were no longer required for scrap (Resolution No. 924 of 19 August 2002) and precious stones (Resolution No. 1347 of 27 December 1998).

- **Export subsidies**

143. Referring to the statement made by the representative of Kazakhstan that the Development Bank of Kazakhstan granted soft loans for export of non-ferrous products and gold, some members of the Working Party requested further information on the benefits provided for export of such products.

She replied that the Development Bank of Kazakhstan did not provide and could not provide export subsidies to its clients and that the terms of financing export operations were regulated by the Law No. 178-II "On the Development Bank of Kazakhstan" of April 25. According to the Law, the Development Bank could not use its charter capital for crediting purposes (Article 16) and could only use loans borrowed on domestic and international capital markets at commercial interest rates, using their own assets as a collateral and subject to return on a fixed date (Articles 9 and 13).

144. She noted that in accordance with Article 12 of the Law "On the Development Bank of Kazakhstan", the interest rate used for the loans were based on the average cost of borrowing and operating expenses of the Development Bank. In her view, Annex I of the "Illustrative List of Prohibited Subsidies" to the WTO Agreement on Subsidies and Compensation Measures, suggested that the loans issued by the Development Bank of Kazakhstan should not be deemed prohibited export subsidies.

145. Asked whether Kazakhstan had any export performance requirements, e.g., in free trade zones, or any import duty drawbacks, she replied that the government did not grant any preferences conditional to export performance requirement and did not apply import duty drawbacks.

C. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS

- Industrial policy, including subsidies

146. Some members of the Working Party requested more information on any subsidies and on the objective criteria and guidelines that governed the availability of regional subsidies and their use by regional bodies. The representative of Kazakhstan replied that pursuant to Law No. 373-II "On Investments" of 8 January 2003 the government supported private investment projects in priority sectors of the national economy, such as chemicals, metallurgy, machinery, textiles, furniture, paper, construction and the pharmaceutical industry. Under contracts concluded between the authorized body and investors, the government granted tax privileges, soft loans, exemption from customs duties for imported products, rescheduling of debts of industrial enterprises, as well as railroad transportation preferences for a term calculated based on the amount of the investment into Kazakh legal entities. In addition, the Development Bank of Kazakhstan granted soft loans for implementation of investment projects in priority sectors of the economy, including machinery construction, metallurgy, textiles, leather production, footwear, production of electric and electronic equipment, as well as a number of soft loans guaranteed by the State.

147. Members of the Working Party requested more information on the legal basis of the existing subsidies and specific proposals for their elimination. Members stressed the importance of such information to help discussions move forward. In response, the representative of Kazakhstan said that in 2003, decreasing coefficients also applied to electric power distribution of OJSC "KEGOC" and provided detailed information in Annex VIII. She also provided information on decreasing coefficients of railway tariffs for 2002 and 2003 in Annex IX and stated that as a land-locked country, remote from major commodity markets, the lack of direct access to major commercial seaports, and the vastness of its territory, all resulted in a very high share of transportation costs in the final value of the product. In this regard, Order of the Chairman of the Agency of Kazakhstan on Regulation of Natural Monopolies, Protection of Competition and Support of Small Business of 30 September 1999 No. 24-OD "On Adoption of the Rules for Introduction and Discontinuation of Decreasing Coefficients for Tariffs on Regulated Rail Freight" envisaged granting natural monopolists discounts on tariffs. These rules were developed in accordance with Law No. 156-XIII "Concerning Transport in the Republic of Kazakhstan" of 21 September 1994 (WT/ACC/KAZ/4 refers), Law No. 272 "On Natural Monopolies", and the Law "On Development of Competition and Limitation of Monopoly Activities" (WT/ACC/KAZ/4 refers) for the purpose of establishing the unified system of introduction and cancellation of discount coefficients for tariffs on transportation by railroad, subject to state regulation.

148. She further explained that the main criteria of expediency of the establishment of discount coefficients were the maintenance of tax payments to the budget, attraction of transport flows, increasing transport flows, possibility of using unutilised or under-utilised sections, ecological danger of by-product of industrial production. The discount coefficients were applied under the conditions that the client did not have outstanding or scheduled debts, and stable or increasing volume of transport flows in comparison with the previous period. She also clarified that a "0.8 decreasing coefficient" meant a 20 per cent railway tariff discount. Other industries had also received this type of subsidy. In 2001-2002 discount coefficients were granted for iron ore products, rolled products, coal, sulphuric acid, copper ore, and fuel oil. This measure was introduced only temporarily as it had proved to be economically inefficient. She noted that the practice of granting discounts for railway cargo transportation for individual companies had been discontinued with the enactment of the Rules on Introduction of Discount Coefficients for Railway Transportation Tariffs of 30 September 1999.

149. In response to concerns raised by members of the Working Party, the representative of Kazakhstan maintained that, according to Order No. 24-OD, the procedure for granting discount coefficients was not contingent on export performance and applied to transportation of goods for both domestic consumption and export. Therefore, granting discount coefficients could not be considered

to be prohibited export subsidies within the meaning of Article 3 of the WTO Agreement on Subsidies and Countervailing Measures and Article XVI of the GATT 1994.

150. Some members of the Working Party referred to tax exemptions granted under Law No. 75-I "On State Support to Direct Investments" of 28 February 1997. The representative of Kazakhstan clarified that the latter, as well as Law No. 266-XIII "On Foreign Investments" of 27 December 1994, were abolished by the Law No. 373-II "On Investments" of 8 January 2003. The Law did not contain requirements regarding the volume of investment to be made in order to be eligible for investment preferences. It also did not contain any provision that made investment incentives contingent upon export or import substitution, and therefore, investment incentives could not constitute prohibited export subsidies under Article 3.1 of the WTO Subsidies Agreement.

151. Some members of the Working Party requested confirmation that the so-called regional subsidies were budget transfers to regional governments for the sole purpose of carrying out governmental activities. The representative of Kazakhstan confirmed that in accordance with Law No. 3571 "On Budgetary System" of 1 April 1999, regional subsidies were official transfers which lower level budgets received from higher level budgets within the limits of the approved amounts for the purpose of carrying out governmental activities, e.g., creating local infrastructure, running schools, making social income support payments unrelated to production of goods, etc.

152. Some members of the Working Party noted that according to earlier submissions from Kazakhstan, preferential loans were provided to certain industries for export promotion or import substitution purposes. They expressed concerns that, to the extent that these loans were contingent upon export or import substitution, they could constitute a prohibited subsidy under Article 3.1 of the WTO Subsidies Agreement. The representative of Kazakhstan stated that the Export-Import Bank of Kazakhstan (Eximbank) was in charge of providing these loans. According to Presidential Decree No. 1815 of 16 July 1994 its main functions included: obtaining and administering foreign loans under state guarantee; and financing Kazakh companies with the aim of stimulating imports of technology, equipment and other products essential for real sector structural reforms. Eximbank was a public bank, which performed the functions of a development bank by providing soft loans for financing priority investment projects. Eximbank financed three to five year investment projects, under 6 per cent interest rate and with grace period of two to three years. Uniform terms and conditions applied to all enterprises and granting of loans was not contingent upon the use of domestic over imported products.

153. Based on earlier submissions from Kazakhstan, some members of the Working Party noted that Kazakhstan provided tax exemptions to exporters of yellow phosphorus, ground phosphate rock and phosphate fertilizer, and expressed their concerns about whether these tax exemptions were in conformity with Article 3 of the WTO Subsidies Agreement. In response, the representative of Kazakhstan stated that "Kazphosphat", Ltd. was active in a priority economic sector and, as such, received corporate income tax, property and land tax preferences in line with the provisions of the Law "On Investments". She assured them that the criteria used for granting tax preferences did not violate the provisions of the WTO Agreement.

- **Technical barriers to trade**

154. The representative of Kazakhstan provided information on the conformity of Kazakhstan's legislation with the Articles of the WTO Agreement on Technical Barriers on Trade (TBT) in document WT/ACC/KAZ/37, as well as document WT/ACC/KAZ/40 (Survey of the Foreign Trade Regime). Legislation concerning standardization, metrology, and certification was based on Laws No. 433-1 "On Standardization" of 16 July 1999 (WT/ACC/KAZ/23 refers), No. 434-1 "On Certification" of 16 July 1999 (amended by Laws No. 141-II of 15 January 2001; No. 230-II of 11 July 2001; No. 272-II of 15 December 2001; No. 3788 of 10 June 2003) (WT/ACC/KAZ/23 refers).

155. She noted that the main principles of state standardization were based on the requirements of the WTO Agreement on TBT and established equal standardization requirements for both local and foreign manufacturers and suppliers. Legislative requirements could not constitute technical barriers to trade with other countries. Legislative requirements were based on scientific analysis and technological developments. They were in accordance with domestic laws, as well as international and foreign countries' national standards, rules and recommendations. When developing technical standards and requirements, international technical regulations and standards had to be used except in cases when they failed to meet domestic safety requirements. If state standards under development failed to meet international requirements (or when international standards were not applicable), notices about the development of such standards, outlining differences in technical content, had to be published by Committee on Standardization, Metrology, and Certification of the Ministry of Industry and Trade (Gosstandard) for comments and proposals by interested parties. The State Standard of the Republic of Kazakhstan (ST RK 1.2-2002) regulated state standards development, alteration, and cancellation.

156. She further noted that the Gosstandard was the only state body authorized to administer work and issue official standards in the field of standardization, metrology and certification. She added that

under the Law "On Standardization", international standards and national standards of foreign states were included in the category of regulations valid in Kazakhstan. Thus, both physical and legal persons could use international, regional and national standards, and other normative documents on standardization of foreign countries, as state standards or through registration of a given user. She clarified that Article 11 of the Law "On Certification" provided for two types of certification: mandatory and voluntary. The latter was performed on the initiative of an applicant (producer, vendor) or consumer of a good, in order to determine its conformity with existing standards, while the former was required to ensure safety, protection of human life and health, as well as protection of the environment.

157. In response to questions concerning a clear distinction between technical regulations and standards required by the TBT Agreement, the representative of Kazakhstan stated that under the Law "On Standardization", a "technical regulation" was a normative document establishing mandatory requirements either directly or by reference to a standard or rule, or by reiteration of its content. It could also include or exclusively contain the requirements related to terminology, designations, package, marking to such extent, in which they were applied to the products, process (work), service or method of production. A "standard" was a document developed with agreement of all interested parties and approved by the authorized body on standardization, metrology, and certification. It established general rules, principles or characteristics as well as rules, principles or characteristics for repeated use regulating various forms of activities and its results. The representative of Kazakhstan confirmed that a "standard" included both mandatory and recommended requirements. She also noted that the modifications to the Law "On Standardization" established technical regulations and requirements for products, processes and services that were applicable to physical and legal persons of Kazakhstan. Any interested party could obtain necessary information at the Enquiry Point.

158. Some members of the Working Party requested information on the elimination of WTO-inconsistent mandatory national standards. In particular, they wanted to know whether there were any plans for addressing such "hold-over" standards.

159. In response, the representative of Kazakhstan noted that the Law No. 434-1 "On Certification" had been amended to grant the right to producers to confirm the conformity of products by declaration. Product certification procedures were performed by certification bodies accredited by the Gosstandard. The list of accredited certification bodies and laboratories was available from the Gosstandard's website. Certification rules and procedures were the same for both local and imported products, regardless of their origin, as required by Article 5.1.1 of the WTO Agreement on TBT. Mandatory certification applied to products and services potentially dangerous to people's health and

the environment (motor transport, agricultural technique, weapons, sports, electro-technical, radio-technical electronic items, communication means, household chemistry, consumer goods in contact with persons' skin, food and water, construction materials and constructions, light industry products, medical products, raw fuel, toys, special technical guarding means, etc.). A manufacturer's self declaration could be filed for products, for which relevant tests could be easily performed by the producer and which could be adequately tested by any of the accredited bodies of the Gosstandard. Records of the testing procedures performed, as well as documents that guaranteed product safety, were also needed. Upon review of all necessary documents, a certificate could be issued by an accredited certification body. There was no predetermined list of products that could not be tested by the accredited bodies and decisions as to whether or not a product could be tested were made on a case-by-case basis. Testing laboratories were constantly being modernized, thus expanding the profile of their testing capabilities.

160. Asked about measures taken to meet the transparency and publication requirements of the TBT Agreement, the representative of Kazakhstan stated that the Centre for collaboration with WTO on issues of accreditation, standardization, metrology and certification started its work in 2002. Databases were being created according to international, regional and foreign standards. Interstate and state standards, and part of international ones, were transferred to electronic forms. A draft program of standards development was being printed in the monthly "Informational Catalog (register) of Standards" (ICS), published by Gosstandard to enable interested parties to submit comments on draft standards. The comments were taken into account in the process of finalizing draft standards and the standards were only adopted after comments were received, listed and attached thereto, and agreement was reached between the interested parties. She further noted that the Law "On Standardization" established a procedure to process and analyse comments. There were no criteria to be eligible to receive draft standards and conformity assessments and any interested organization could request to receive them. Moreover, drafts of state standards were published in the official publication of the Gosstandard and electronic versions were placed on the Gosstandard's website www.memst.kz. Gosstandard had two subordinate state enterprises: the Kazakh Institute of Standardization and Certification and the Kazakh Institute of Metrology. These issued periodic publications, including the magazines "Gosstandard News", "Metrology", and "Monthly Informational Index of Standards", which contained draft standards, news, Articles and normative documents regulating standardization, metrology, and certification.

161. Some members of the Working Party asked why it was necessary to receive separate permissions from the chief veterinarian to transport imports within the Kazakhstan market even after obtaining a valid certificate of conformity, and why new certificates of conformity were needed for

pharmaceutical imports that also already had obtained certificates of conformity. The representative of Kazakhstan replied that these requirements were legally justified under Article 2 of the WTO Agreement on TBT, namely the intention to protect the health and safety of people or animals. These procedures were mandatory for importers as well as domestic producers of goods in transporting goods that were subject to the state veterinary control or included in the official list of products that require mandatory certification.

162. Some members of the Working Party noted the existence of standards agreements with China and Turkey and asked whether the provisions of these agreements would be applied on a most-favoured-nation basis. In response, the representative of Kazakhstan stated that there was a Protocol of Cooperation with the Turkish Institute of Standards of 6 March 1996 and an Agreement with China on cooperation to provide quality and mutual inspection of import-export goods dated 5 July 1996. Kazakhstan was ready to negotiate and enter into agreement with any WTO Member regarding standards and affirmed that, once a Member of the WTO, Kazakhstan would, of course, provide WTO Members with MFN treatment in connection with technical barriers to trade.

163. The representative of Kazakhstan noted that in order to bring the national system into conformity with international practice, Kazakhstan was planning to adopt a draft Law "On Technical Regulation" by the end of 2004, aimed at further harmonization of existing legislation with the requirements of the WTO Agreement on TBT. In order to implement its reform program Kazakhstan requested Working Party members to consider granting a transition period required for transforming the national technical regulation system into an effective mechanism based on the requirements of the WTO Agreement on TBT. In response, some members of the Working Party expressed doubts that the granting of such a transition period was either warranted or necessary, given that Kazakhstan had been in the process of accession to the WTO for over eight years.

- **Sanitary and phytosanitary measures**

164. The representative of Kazakhstan said that work on bringing the legislative base in line with the SPS Agreement was being carried out under the framework of the "Program on Agriculture Standardization" for the period 2001-2006. Thus, a number of new Laws had been adopted, including A Law "On Sanitary and Epidemiological Welfare" No. 361-II of 4 December 2002, "On Veterinary" No. 339-II of 10 July 2002 and "On Plant Quarantine" No. 344-I of 11 February 1999. Other important laws included Law "On Public Health", "On Public Health System" and "Environmental Protection". More detailed information on legislative provisions was provided in documents WT/ACC/KAZ/44 and 45. She further stated that the Committee for the State Sanitary and Epidemiological Surveillance of the Ministry of Health was the authorized body responsible for

administration of issues relating to sanitary and epidemiological welfare. The sanitary and epidemiological service was an integrated structure of public and subsidiary bodies with their regional border and transport branches.

165. She noted that over the years a reliable open structure of national sanitary and epidemiological standardization, based on scientific principles had been developed. According to the legislation, requirements and norms to protect human health and ensure product safety had to be based on scientific research and field studies' results; and had to incorporate provisions of international norms, guidelines and recommendations (FAO, WHO, ILO, the Codex Alimentarius Commission, etc.). The legislation equally covered domestically produced products as well as imported products designated for domestic use. Under the Law "On Sanitary and Epidemiological Welfare", national sanitary and epidemiological standardization applied only to the extent required to prevent all environmental hazards to human life and health, ensuring product safety and eliminating factors favourable to the outbreak and spread of diseases.

166. She further noted that current legislation recognized the phytosanitary measures of exporting countries as equivalent, if they achieved the appropriate level of protection. Additionally, questions of equivalence and adequate reflection of regional characteristics of exporting countries could be resolved in the framework of bilateral agreements. Kazakhstan was party to a number of agreements on sanitary and phytosanitary measures within the framework of the Eurasian Economic Community (Russian Federation, Kazakhstan, Belarus, Kyrgyzstan and Tajikistan), as well as within the framework of the Commonwealth of Independent States (CIS). The provisions and operations of these agreements were listed in the relevant section of document WT/ACC/KAZ/50.

167. She noted that under Ordinance No. 841 of 14 November 2003 "On Adoption of Rules for Sanitary and Epidemiological Inspection" a shipment of goods was certified to be in conformity with sanitary norms and rules - before or after its entry into Kazakhstan - by a sanitary and epidemiological expert opinion or by registration certificate, depending on the nature of the product or the substance used in the product. Sampling, laboratory testing and reporting procedures were established under the relevant guidelines and national testing standards. When performing the inspection, the authorities had to take into account the product safety certificate issued by the producer, as well as the safety certificate issued by the authorized bodies of the exporting country. When issued, the expert opinion became valid on the entire territory of Kazakhstan and had to be presented to the relevant bodies upon request. Sanitary and epidemiological requirements for assessment and approval procedures applied equally to domestic and imported products.

168. She further noted that, under Article 16 of the Law "On Sanitary and Epidemiological Welfare", when an imported substance, presenting potential hazard for human life or health, was introduced in the production cycle for the first time, it had to be registered with the relevant state bodies, if no record of its previous use existed. Registration also applied if the substance was used for the production of food additives and dyes, as well as products and materials whose use involved direct contact with water or food products. During the process of registration the authorities had to take into account the results of an expert scientific evaluation and also an objective conformity assessment with acting sanitary regulations and hygienic norms.

169. The representative of Kazakhstan said that all requirements applied by the veterinary service were either based on guidelines and recommendations of the International Office of Epizootics, or on national sanitary and veterinary rules and regulations, based on solid scientific evidence. Kazakhstan was a member of the Office of Epizootics since 1993 and had undertaken to harmonize its national legislative framework with the requirements of the International Animal Health Code.

170. She noted that the Department of Veterinary of the Ministry of Agriculture was the authorized body for veterinary control and legislation. Restrictions or bans on imports of animal products could be introduced or lifted by the Instruction of the Senior Government Veterinary Inspector (or his/her Deputy) based on the available official information provided by the International Office of Epizootics or the central body of the State Veterinary Service of the relevant exporting country. When restrictions by Kazakhstan were to be lifted, the representative of the Department of Veterinary could, where necessary, inspect the territory (producers) of the exporting country. Kazakhstan's veterinary service informed the relevant countries of all newly introduced or lifted restrictions (bans) through their embassies in Kazakhstan.

171. The procedures for import and export of products subject to veterinary control involved the issue of an import/export permit by the authorized body on veterinary, upon recommendation of the oblast (municipal) territorial branch, within a specified period of time. The authorized body could refuse to issue a permit but had to justify a refusal in writing, indicating the reasons therefore. At the border point, the goods and permit were inspected by a veterinary inspector. Upon arrival at destination, the head of the zone branch took samples of the goods and sent them to the veterinary centre for testing. This procedure was obligatory for imported animals, as well as for products and raw materials of animal origin. Based on the report of the testing centre the zone branch took a final decision on imported products.

172. The transit of products subject to control was regulated by international agreements on co-operation in veterinary and did not require any special permit, if accompanied by an original

veterinary certificate of the exporting country and if in conformity with requirements on packaging, integrity and consistency of marking with accompanying documents. The transit of live animals was an exception. It could be performed only with a written authorization by the Senior Government Inspector upon request of the central veterinary body of the importing country, accompanied by an indication of entry/exit points, transport routes, calls, transportation and feeding points.

173. The representative of Kazakhstan said that legislation on plant quarantine reflected provisions and principles established by the International Plant Protection Convention, the European and Mediterranean Plant Protection Organization and the WTO SPS Agreement. In line with accepted international practice, when quarantinable products were imported from countries on whose territory were registered cases of infection with disease-carrying or disease-causing organisms, imports of products from pest- or disease-free areas were allowed. In urgent circumstances the authorized body could, depending on the phytosanitary conditions of the exporting party, provisionally introduce restrictions or bans on imports of quarantinable products. In such circumstances, it would provide all pertinent information about its actions to the relevant service in the exporting country. Where repeated supply of infected quarantinable products had been registered, a total ban on imports of the relevant product could be imposed. She added that contentious issues were, nevertheless, normally open for negotiation.

174. She noted that in order to establish a transparent system, the schedule of products under quarantine subject to phytosanitary control was provided with Ordinance No. 166 dated 30 May 2002 "On Adoption of Nomenclature for Major Quarantinable Objects Subject to Phytosanitary Control under Plant Quarantine Procedures". Products included in the schedule could only be imported/exported with a relevant permit, issued by the Department on Plant Protection and Quarantine and signed by the Senior Government Inspector in conformity with procedures established under the Law "On Plant Quarantine". In specific cases, where large amounts of products were supplied or imported from countries whose phytosanitary conditions had not been adequately analyzed, the authorized body on plant quarantine could dispatch an expert to the importing country for inspection at the source. The quarantine permit was issued on the basis of a written application by consignee to the Department on Plant Protection and Quarantine. The permit specified binding phytosanitary conditions for each shipment (on the basis of a thorough examination, including sampling) and stipulated that each shipment had an accompanying phytosanitary certificate issued by the relevant bodies of the exporting country.

175. If it could be objectively demonstrated that products subject to control were infected, or were in some way inconsistent with existing rules and regulations, they could be returned to the exporting

country or could undergo disinfection (decontamination) at the destination points. Any natural person or legal entity could appeal the actions of the government officials.

176. Asked about compliance with the transparency requirements of the SPS Agreement, the representative of Kazakhstan replied that under Government Resolution No. 1627 of 30 October 2000, the Ministry of Agriculture had established an Information Marketing System to enhance transparency through regular exchange of analytical marketing information between agricultural producers, public bodies, and other participants of the agricultural market; and enhanced interaction with international organizations. The Ministry also maintained a web-site, www.minargri.kz, and all interested parties and participants of the agricultural market could send questions and comments to the Ministry at strategy@minagri.kz. The Ministry also published a monthly bulletin entitled "Environment and Human Health" and the analytical bulletin "Agroinform", which contained all legal acts, approved by the Ministry of Agriculture, including legislation on veterinary, quarantine and plant protection. Additionally, the state sanitary and epidemiological control system maintained a database that was regularly updated with data submitted by regional branches. This information was accessible to all interested parties. In response to questions, the representative of Kazakhstan stated that the legislation of Kazakhstan contained no restrictions on foreign participation in the development of sanitary and phytosanitary standards (e.g. participation in technical committees meetings, providing comments).

177. Some members of the Working Party expressed their disagreement with the seven-year transition period initially requested by Kazakhstan for joining the SPS Agreement. They noted that a clear justification would have to be provided, including a submission of a detailed Action Plan. The representative of Kazakhstan noted that Kazakhstan would submit a three year Action Plan for the time needed to harmonize its existing system with the requirements of the SPS Agreement. The transitional period was needed for harmonization of Kazakhstan's SPS rules and regulations with international standards, as well as for upgrading out-of-date laboratory equipment and re-training of personnel. In this regard, by the end of 2004, the Government planned to introduce amendments to the Law "On Sanitary and Epidemiological Welfare", in order to bring it into conformity with the key principles of the SPS Agreement.

- **Trade-related investment measures**

178. The representative of Kazakhstan confirmed that Laws "Concerning the Subsurface and its Utilisation" of 27 January 1996 and "On Oil" of 28 June 1995 awarded national treatment and established a requirement to use domestically produced products and services, under the condition of meeting standards and technical specifications of the project. Preferences were given to local producers of goods and local suppliers of services only when they fully met all the requirements set in

the bidding process by the investors. In her view, such provisions were non-discriminatory and introduced an opportunity for imported goods and services. Despite the explanation, some members of the Working Party considered these requirements were inconsistent with the Agreement on TRIMs and possibly with Article 3.1 of the WTO Subsidies Agreement. The members asked for a justification and a program of bringing the legislation in compliance with the WTO agreements.

179. She replied that Kazakhstan's industry was dominated by extraction and processing of hydrocarbon and mineral products with the oil sector being the most attractive for both foreign and local investors. The forecasts showed that the volume of foreign investments to oil production kept increasing, while other sectors remained underdeveloped. Hence, the Government introduced the above requirements in order to: (i) ensure rational restructuring of the subsurface use; (ii) achieve sustainable economic development through diversification of the national economy and reduction of the economy's heavy dependence on mineral resources; and (iii) create an environment conducive to development of processing industries and production of high value added goods.

180. She further noted that the Government had launched an industrial innovation program for the period of 2003-2015, which entailed preferences being given to the local producers and service suppliers under equal conditions. The program aimed at boosting the real sector of the economy through implementing innovative industrial projects, ensuring a strong linkage between Research and Development and industrial sector, and building high-tech production facilities, all of which required a sufficient transition period to bring the national legislation into conformity with the provisions of the TRIMs Agreement. The Government of Kazakhstan was preparing a detailed action plan for the transition period that might be need to bring its legislation in conformity with the TRIMs agreement.

- **State-trading entities**

181. A number of the Working Party members said that, in their view, many of the enterprises in Kazakhstan in practice (even if not on a legal basis) appeared to enjoy exclusive or special privileges. Therefore, they requested Kazakhstan to submit a draft notification prepared in conformity with the provisions of Article XVII of GATT, 1994.

182. The representative of Kazakhstan assured the Working Party that the Government would analyze the enterprises whose activities could be covered by Article XVII of GATT and would submit the notification on state trade enterprises existing in Kazakhstan to the WTO Secretariat. At the same time, she noted that in Kazakhstan State and private trade enterprises operated in competitive market conditions.

[to be completed]

- **Free zones, special economic areas**

183. The representative of Kazakhstan said that Kazakhstan's special economic areas (SEA) were regulated by the Decree of the President No. 2823 "On Special Economic Zones in the Republic of Kazakhstan" of 26 January 1996, Customs Code and Tax Code and other legislative acts. Changes to the legislation were introduced with the Law "On Changes and Amendments to Legislative Acts on the Special Economic Zones" of 5 July 2001.

184. She noted that in 2004 Kazakhstan had hosted three SEA, i.e. "Astana – New City", "Seaport Aktau" and "Park of Informational Technologies" (PIT). The three SEA were established by Decrees of the President No. 645 of 29 June 2001 for a five-year- term from 2002- 2007; No. 853 of 26 April 2002 for a four-year-term from 2003-2007 and No. 1166 of 18 August 2003 for the ten-year period, respectively.

185. Pursuant to Chapter 30 of the Customs Code, "free customs area", meant the customs regime, within the relevant territorial borders of a special economic area, under which foreign and Kazakh goods were placed and used. Such goods were exempt from customs duties and taxes, except for excise on imported goods. No non-tariff regulatory measures were being applied, except for requirements regarding safety of goods. When exporting goods from the territory of special economic zones to the rest of the customs territory of Kazakhstan, export taxes were charged, and non-tariff regulatory measures were applied in compliance with the terms of the customs regime. When a certificate of origin establishing origin of good from the SEA was not available, the goods were considered to be either Kazakh (upon export to third country) or foreign (upon export to Kazakhstan).

186. The representative of Kazakhstan said that attracting investment, modern technology, and know-how to the SEA were considered the primary purpose of the SEA. To accomplish that, the Government provided certain preferences, such as exemptions from the payment of land and property taxes, and reduction of the corporate income tax by up to 50 per cent in "Astana-New City" and PIT; and up to 100 per cent in "Aktau Seport". The preferences were applicable to entities engaged in: (i) design, development, and implementation of pilot production and production of software, databases, and hardware; (ii) IT development based on artificial immune and neuron systems; and (iii) Research and Development for the development and implementation of IT projects. She noted that Kazakhstan imposed no restrictions on participation of foreign parties in the SEA, except for the restriction related to the place of registration of the recipients of benefits which was a common requirement in many free economic areas all over the world. Asked about preferences contingent on

export orientation and/or import substitution of enterprises, she said that the legislation did contain a provision that granted special contingent on export orientation and/or import substitution of enterprises.

187. The SEA "Astana – New City" was established to facilitate the development of the left bank area of the river Ishym in the new capital of Kazakhstan through attraction of investments and use of advanced technologies in construction, as well as through building modern infrastructure. The "Astana – New City" provided for tax and customs benefits for construction of infrastructure and administrative and residential sectors in its territory. Beside the general preferences, tax preference was granted on VAT levied on goods and services used in the process of construction; land tax on construction land lots; and property tax on property constructed in SEA. The SEA "Aktau Seaport" was created to facilitate socio-economic development of the region through building high-tech industry, attracting new investments, creating new jobs and introducing modern administration and economic management methods. She noted that a new SEA "Park of Information Technologies" (PIT) was built in order to diversify the economy through production of information technologies and utilisation of scientific and technical innovation capacity of the country.

- **Government procurement**

188. The representative of Kazakhstan said that the legislation of Kazakhstan on government procurement consisted of Law No. 321-II 3PK "On State Procurement" of 16 May 2002 and Resolutions No. 1158 "On Rules for Organisation and Holding of State Procurement of Goods, Works, and Services" of 31 October 2002 and No. 1163 "On Special Procedures for State Procurement" of 3 November 2000; and the Order No. 8 establishing Standard Bidding Documentation of 31 October 2002. The legislation was formulated taking into account requirements of international law, specifically the Model Law of the United Nations Commission on International Trade Law (UNCITRAL). The body responsible for development and implementation of state policies in the area of government procurement was the Agency for State Procurement

189. She noted that under the Law "On State Procurement" government procurement was defined as procurement of goods, works, and services effected by public bodies and agencies, public enterprises, and joint stock companies with the controlling share owned by the state, as well as by their affiliated legal entities, using available funds. A certain portion of goods, works, and services procured by public bodies and agencies, public enterprises, and joint stock companies with the controlling share owned by the state, as well as by their affiliated legal entities, was used for their own production purposes.

190. She further noted that the main mechanisms of government procurement were implemented through public bidding, limited bidding (public and limited bidding could consist of two stages), procurement from one source, selection of a supplier based on requests of price offers, and market procurement. According to Article 3 of the Law, the procurement process had to provide equal opportunities for participation for all potential suppliers of goods and services, unless there were provisions to the contrary in the legislation; fair competition among potential suppliers; and openness and transparency of government procurement procedures.

191. In response to a request from members of the Working Party, the representative of Kazakhstan said that Kazakhstan would consider accession to the WTO Agreement on Government Procurement after its accession to the WTO.

- **Trade in civil aircraft**

192. In response to a request from members of the Working Party, the representative of the Republic of Kazakhstan said that Kazakhstan did not plan to join the WTO Agreement on civil aviation trade prior to accession to the WTO.

- **Transit**

193. The representative of Kazakhstan said that goods in transit across the territory of Kazakhstan were exempt from customs charges and fees, VAT, and excise taxes. Kazakhstan allowed free transit to reflect provisions of Article V of GATT 1994, as well as those of the international treaties to which it was a party. Nevertheless, according to Article 42 of the Customs Code, a customs authority could deny, in writing, the release of goods in the event that the goods originated in a country whose goods were prohibited for importation into Kazakhstan. Except for bans on import and export of certain goods (e.g. arms, drugs, antiques, etc.) there was no legislation prohibiting transit of goods.

194. She noted that Kazakhstan applied no charges on transit, except for charges on transportation services for road, railroad and sea transport, which were limited to cover solely administrative costs or costs of services provided. Transit charges were regulated by Governmental Decrees No. 62 "On some issues regulating the movements of vehicles on the territory of Kazakhstan" of 19 January 2002 and No. 1306 of 24 December 2003; The Rate Policy of the Republic of Kazakhstan for the Goods Transportation in International Communication for 2004; and Decree No. 320-OD of the Chairman of the Agency for Regulation of Natural Monopolies, Protection of Competition and Support of Small Business. Transit duty for foreign vehicles that transported cargoes in the international trade was fixed at the rate of 10 Monthly Calculation Indexes, while decreasing coefficients provided to

domestic transport did not apply to tariffs for transit cargoes. Payments were collected without any special preferences.

195. The Representative of Kazakhstan said that the Customs Code provided that certain types of imported goods listed in the Resolution No. 524 of 4 June 2003 could only transit the customs territory of Kazakhstan provided that there was a guarantee of payment of all chargeable customs duties and taxes. The list of such goods included alcohol and brands of alcoholic products, cigars and tobacco. As stipulated in the Article 339 of the Customs Code, payment of customs duties and taxes had to be guaranteed with either: (i) bonds, (ii) bank guarantee letters, (iii) deposits; or (iv) insurance contracts.

196. Asked about the redemption of a guarantee, she replied that in accordance with Article 345 of the Customs Code, the guarantee was refunded after all commitments required by the deposit were fulfilled. Deposit was refunded after deduction of pending customs duties, taxes and penalties (Article 351 of the Customs Code), and no interest was refunded. Bank fees were covered by the declarant. Bank guarantee, property security and insurance were refunded/terminated after five working days, while deposit was refunded after 10 working days.

197. She noted that procedures applied by customs bodies to enforce payment of customs duties and taxes were defined in the Order of the Customs Control Agency No. 199 "On Adoption of Procedures of Customs Bodies to Enforce Payment of Customs Duties and Taxes" of 13 May 2003.

- **Government-mandated counter-trade and barter**

198. The representative of Kazakhstan said that the approval of the Government was not required to engage in counter-trade and barter transactions. Moreover, where barter trade was permitted, such products were subject to the same tariff and non-tariff measures as like products imported through normal channels. Kazakhstan applied the same WTO customs valuation-based system for such transactions as was applied to goods imported through normal channels; that was, if a transaction value of the imported merchandise could not be determined, then the goods were valued on the basis of one of the other valuation methods provided under the WTO customs valuation code, applied in sequential order. Any barter and counter-trade arrangements were only company-to-company.

- **Agricultural policies**

199. The representative of Kazakhstan said that Kazakhstan required no licenses for agricultural purposes and provided information concerning domestic support and export subsidies in the

agricultural sector in documents WT/ACC/SPEC/KAZ/6/Rev.1 and WT/ACC/SPEC/KAZ/7 with its addenda.

200. She noted that with a view to providing financial support to agricultural producers, the state had allocated KZT 20 billion from the state budget in 2001, and KZT 21.9 billion in 2002, seeking to increase the volume of subsidies to KZT 49.2 billion in 2005 within the framework of the national program on agro-industrial sector development.

201. Some members of the Working Party stated that they held concerns about the use of a "base period" that was not the most recent three-year period. Kazakhstan's use of the period 1996-1998 seemed to be inappropriate, characterised as it was by a large-scale debt forgiveness program that operated to artificially inflate AMS levels. Asked to provide domestic support and export subsidy information for the period 2000-2002, the representative of Kazakhstan said that the level of support provided in 2000-2002, when the Governmental financing was at its lowest due to the financial crisis, would not be sufficient to cover actual needs of the agricultural sector. An assessment of the situation in the agricultural sector for 1991-2002, showed that the needs of the agricultural sector did not diminish over the years and that the level of support provided in 1996-1998 would still be relevant.

202. She further noted that although the accumulation of debts was no longer widely practiced among producers of agricultural goods, a serious problem of deferred debts of 1994-1997 still remained unresolved. Within the framework of the State Agro-Food Industry Development Program of 2003- 2005, the government planned to analyze debts of agricultural producers with the purpose of restructuring deferred debts of existing enterprises, write-off debts of enterprises that became bankrupt, and develop appropriate measures *vis-à-vis* abolished enterprises.

203. The representative of Kazakhstan said that the agricultural sector was subsidised with preferential credits through the State Eximbank, state guarantees for foreign loans, and preferential loans through the Fund in support of agricultural small and medium-size businesses. These tools were used to strengthen reforms in the agricultural sector and implement a single medium-term investment policy. A set of criteria used for competitive selection of investment projects included: (i) the compliance of investment projects with restructuring goals in the agriculture sector; (ii) creation of competitive markets for agricultural commodities; (iii) use of modern machinery and technologies, and (iv) economic viability of projects. She noted that there were no export requirements to get financing from Eximbank, which applied same terms and conditions across sectors and industries, regardless of markets in which the exports of agricultural products were sold. Furthermore, preferential loans and credits to lease agricultural machinery were provided in accordance with the ADB Program Loan for the agricultural sector. Likewise, the Agriculture Support Fund (ASF), set up

in December 1994, assumed the debts of agricultural producers in the amount of over US\$ 500 Million on the basis of individual agreements that stipulated the procedure, timing and conditions of repayment.

204. Asked to provide more information on the support system for high-grade seeds, pedigree cattle and a farming development program, she said that subsidies had been granted through the ASF, and that its main goal was to increase the efficiency of agricultural production by compensating the costs incurred by seed breeding stations and livestock breeding stations as a result of price falls on seeds and breeding stock sold to agricultural producers. The subsidies were also used to stimulate farmers to purchase pedigree cattle, use new equipment, technology, high quality seeds, mineral fertilizers and to protect plants under the farming development program.

205. Some members of the Working Party requested information demonstrating how domestic support measures for which exemption from the reduction commitments was claimed, met criteria set in Annex 2 of the Agreement of Agriculture for such exemptions. They further asked Kazakhstan to confirm that no direct payments were made to farmers or processors. More information concerning state procurement under "public stockholding for food security purposes" was also requested including how it met the paragraph 3 criteria of Annex 2 of the Agreement of Agriculture.

206. The representative of Kazakhstan referred to the revised Tables DS:1 and stated that funds listed in Table DS:1 under "general services" were allocated for implementation of measures of general nature as well as for maintenance of services provided by the Ministry of Agriculture. These measures did not involve direct payments and did not grant price support to producers. They met the requirements of Paragraph 1 and 2 of Annex 2 of the Agreement on Agriculture. Furthermore, the representative of Kazakhstan stated that the public stockholding of grain was created to ensure food security in Kazakhstan and followed procedures set by the decision of the government for the corresponding year. The mechanisms of the government procurement of grain were determined by the Government decision adopted based on an appropriate level of transparency in terms of financial costs. Government procurement of grain in the "base period", i.e. in 1996, was realized at market prices on the commodity exchange. Grain from the state food security reserve was sold in the domestic market at market prices through open tenders or the commodity exchange. The export price for grain set by the "Food Contract Corporation" also reflected the situation in the world market as well as concluded contracts on grain supply. Therefore, the sale procedures of grain from the state reserve were in compliance with the WTO Agreement on Agriculture (paragraph 3, Article 2), which required that "sales from food security stocks shall be made at no less than the current domestic market price for the product and quality in question".

207. Some members of the Working Party further reiterated their views that Kazakhstan should not have recourse to Article 6.2 provisions of the WTO Agreement on Agriculture. The representative of Kazakhstan replied that the aftermath of implementation of structural reforms had been devastating for the agriculture sector of Kazakhstan. The current policy was therefore aimed at attracting long-term investments in the agricultural sector. This was being achieved with the participation of the international banks, in particular the Asian Development Bank (ADB) and the International Bank for Reconstruction and Development (IBRD). The representative of Kazakhstan stated that all the above investment projects completely conformed to the provisions of Article 6.2 of the WTO Agreement on Agriculture. She further stated that given the interest shown by international credit organizations in direct long-term investments into the agricultural sector, Kazakhstan was willing to create favourable investment conditions. Moreover, the policy of leasing agricultural machinery and the development thereof, ensuring availability of agricultural machinery, was one of the top priority objectives for which a long-term plan had been established.

208. She confirmed that Kazakhstan did not maintain any market price support measures or interference programs. She referred to Article 18 of Law No. 1543-XII "On Protection and Support of Private Entrepreneurship" of 4 July 1992. Direct state regulation of prices of goods was, however, permitted only in cases where entrepreneurs abused their monopolistic position in the market. This was regulated following guidelines of the anti-monopoly legislation.

209. Underlining the statement of some members of the Working Party that Kazakhstan should make a commitment not to apply export subsidies on the date of accession, she said that Kazakhstan needed to use export subsidies due to its land-locked geographical location, the vastness of its territory, its remoteness from major agricultural markets and high transportation costs which drastically decreased the competitive power of Kazakhstan agricultural products. Furthermore, the production of main export products exceeded by far the level of domestic demand, while export sales of agricultural products constituted one the main sources of income for the population of rural areas. The representative further noted that some WTO Members extensively exercised their right to subsidize exports.

210. Some members of the Working Party noted that the neighbouring Kyrgyz Republic had agreed to treatment as a developed country for its agriculture commitments, and had agreed to use 5 per cent *de minimis*. They therefore requested that Kazakhstan make the same commitment. The representative of Kazakhstan replied that given objective economic development criteria such as GDP per capita and income level of rural population, Kazakhstan with its GDP per capita US\$ 1,997.2 in 2003 not only belonged to the group of so-called middle-income countries (classification of the World

Bank), but could be, if looking at the personal annual income of rural citizens (US\$ 456.6), considered a poor country. Moreover, because the Government started to implement the market economy reforms in agriculture only recently, the development level of the agricultural sector still remained below the pre-reform stage. The share of agricultural production in GDP fell from 16.7 per cent in 1993 to 7.3 per cent in 2003. Thus, Kazakhstan would sought for a number of preferences in the agriculture sector at the time of its accession to the WTO, which were close to benefits granted to developing countries and were provided to a number of acceding countries with economies in transition.

TRADE-RELATED INTELLECTUAL PROPERTY REGIME

General

- Industrial property protection

211. The representative of Kazakhstan said that the policies of Kazakhstan in the sphere of protection of intellectual property rights were targeted at the fulfilment of the following three objectives: (i) bringing the legislation regulating intellectual property rights in line with international standards; (ii) developing mechanisms ensuring enforcement of provisions of the laws on protection of intellectual property rights; and (iii) training experts for protection of intellectual property. This policy aimed to ensure lawful use and protection of intellectual property in Kazakhstan and was set forth in the Concept of Protection of Intellectual Property Rights, approved by the Resolution of the Government of Kazakhstan No. 1249 of 26 September 2001.

212. She provided detailed information on implementation of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in document WT/ACC/KAZ/24 and said that existing legislation governing the protection of intellectual property rights included the General Part of Civil Code of 24 December 1994, the Special Part of Civil Code of 1 July 1999, the Criminal Code, the Administrative Offences Code, and the Laws "On Copyright and Neighbouring Rights" of 10 June 1996, "On Trade Marks, Service Marks and Appellations of Places of Origin of Goods" of 26 July 1999, "On Patents" of 16 July 1999, "On Protection of Selective Achievements" of 26 July 1999, "On Customs Business", "On Legal Protection of Layout Design of Integrated Microcircuits" of 29 June 2001 and Law "On Changes and Amendments to Legislative Acts of the Republic of Kazakhstan on Intellectual Property" of 9 July 2004 (document WT/ACC/KAZ/50/Add.1 refers).

213. She also provided action plan on the harmonization of the national legislation on intellectual property rights with TRIPS for the period of 2004-2006 in document WT/ACC/KAZ/48, noting that Kazakhstan would be introducing further changes to the existing legislation; draft a Law "On Software and Program Complexes"; implement programs to improve legal practices; provide training for officials; and enlist technical assistance from international organizations and associations. Moreover, the Government was preparing amendments and addenda to the current criminal and administrative legislation concerning enforcement of measures for infringement of intellectual property rights and illegal use of a copyright.

- **Responsible agencies for policy formulation and implementation**

214. The representative of Kazakhstan stated that the Committee for Intellectual Property Rights of the Ministry of Justice had been established by Government Resolution No. 411 "On Issues Relating to the Committee for Intellectual Property Rights of the Ministry of Justice" of 29 March 2001. The Committee replaced the Committee for Copyright and the Republican State Enterprise on Patents and Trademarks "Kazpatent", and was authorized to perform specific executive, monitoring, and supervisory functions, as well as general administration in the sphere of protection of intellectual property rights.

215. She noted that production and commerce activities relating to scientific issues of intellectual property were delegated to a state enterprise "National Institute on Intellectual Property of the Committee on Intellectual Property Rights of the Ministry of Justice of the Republic of Kazakhstan".

- **Participation in international intellectual property agreements**

216. The representative of Kazakhstan confirmed that Kazakhstan was a party to a number of international treaties, agreements, and conventions, including the Convention Establishing the World Intellectual Property Organization (WIPO); the Paris Convention for the Protection of Industrial Property; the Madrid Agreement Concerning the International Registration of Marks; the Patent Cooperation Treaty (PCT); the Berne Convention for the Protection of Literary and Artistic Works; the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks; the Strasbourg Agreement Concerning the International Patent Classification; the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure; the Universal Copyright Convention; the Locarno Agreement Establishing an International Classification for Industrial Designs; the Trademark Law Treaty; the Eurasian Patent Convention; and the Convention for the Protection of Producers of

Phonograms Against Unauthorized Duplication of Their Phonograms. Furthermore, in April 2004 Kazakhstan acceded to the WIPO's Copyright Treaty and the Performances and Phonograms Treaty.

217. She noted that Kazakhstan had bilateral co-operation agreements in the area of intellectual property with the Republic of Azerbaijan, the Kyrgyz Republic, Georgia, the United States and the Russian Federation.

218. Asked about obligations pursuant to the cooperation agreement with the Russian Federation and to the Eurasian Patent Convention, she replied that the agreement introduced national treatment for applicants from the Russian Federation in connection with issuing titles of protection and payment of fees. She further stated that in acceding to the Convention, Kazakhstan did not undertake any obligations extending beyond the framework of the Paris Convention. Furthermore, there were no specific obligations contained in the bilateral agreements signed with other CIS countries which it did not wish to extend to other countries.

- **Application of national and MFN treatment to foreign nationals**

219. The representative of Kazakhstan stated that Article 12.4 of the Constitution, Article 3.7 of the Civil Code, as well as Article 5 of the Law "On Copyright and Related Rights"; Article 48 of the Law "On Trademarks, Service Marks and Appellation of Origin of Goods" (WT/ACC/KAZ/26 refers) and Article 38 of the Patent Law (WT/ACC/KAZ/26 refers) granted natural and legal persons national and most-favored nation treatment.

220. Some members of the Working Party expressed concerns regarding the difference in fees for certain industrial property rights charged to nationals and non-nationals of Kazakhstan, and asked how such differences could be justified if Kazakhstan's Constitution and Civil Code required that natural and legal persons be given national legal treatment. The representative of Kazakhstan replied that these laws guaranteed national legal treatment unless an exception was stipulated by the legislation. Resolutions No. 889 of 20 October 1992 and No. 266 of 6 April 1993 established different fees for Kazakhstan and foreign nationals, although the foreign nationals coming from the countries where annual GDP per capita was less than US\$ 3,000 (under UN classification) could obtain certain preferences in order to account for the differences in the so-called "purchasing power/capacity" between developed and developing countries. She noted that the Government planned to eliminate the existing discrepancies by the end of 2004.

221. Some members of the Working Party also noted that nationals of the Russian Federation and the Kyrgyz Republic did not need to engage the services of a patent or trademark attorney in order to

file applications with the Committee for Intellectual Property Rights. Additionally, the patent fees could be paid in Russian Rubles or Kyrgyz Som, pursuant to the schedule applicable to Kazakhstan nationals. Asked how the Government intended to bring its legislation into conformity with WTO most-favoured nation requirements, she replied that, in her view, these provisions were in conformity with Article 4A.2 of the Paris Convention and Article 4.d of the WTO TRIPS Agreement.

Substantive Standards of Protection, Including Procedures for the Acquisition and Maintenance of Intellectual Property Rights

- Copyright and related rights

222. The representative of Kazakhstan said that the Law "On Copyright and Neighbouring Rights" of 10 June 1996 and provisions of the Berne Convention, which were applied directly in accordance with Article 4 of the Constitution, extended protection of literary, artistic and scientific works to incorporate all forms of copyright covered by the TRIPS Agreement. Even though, the protection included computer programs, computer operating systems and databases defined as collection of information (Articles, calculations, facts, etc.) which due to selection and/or organization of the materials represented results of a creative work and were systematized in such a manner that the information could be retrieved and processed with the help of a computer, the Government still planned to draft a Law "On Software and Program Complexes" by the 2006 in order to fulfil requirements of Article 10 of the TRIPS Agreement. Rental rights for musical works in the form of a text of note, works fixed on phonograms, audio and visual items, data base and computer software were provided for in Article 16 of the Law "On Copyright and Neighbouring Rights".

223. Article 28 of the Law "On Copyright and Neighbouring Rights" provided a term of protection of the whole period of author's life and 50 years following the death of the author except for cases stipulated in the article. Anonymous and pseudonymous works were protected for 50 years after the date of promulgation unless the author was revealed. Special terms for cinematographic and photographic works were not envisaged.

224. Asked about protection of works that were still protected in their country of origin and that have not had full term of protection in Kazakhstan, she replied that Kazakhstan extended protection to such works as provided in Article 28 unless they had fallen into the public domain in the country of their origin. Works, whose terms of protection expired, fell into the public domain and were deemed to be national property in accordance with Article 29 of the Law "On Copyright and Related Rights" and could be used free of charge by any person. She noted that the Law "On Changes and Amendments to Legislative Acts of the Republic of Kazakhstan on Intellectual Property" of

9 July 2004 introduced retroactive protection procedures and other amendments to the Law "On Copyright and Related Rights".

225. A member of the Working Party urged the government of Kazakhstan to increase the penalties for copyright piracy and impose penalties that were sufficient to act as an effective deterrent to potential pirates and counterfeiters. The representative of Kazakhstan responded that even though the Government considered that the penalties were sufficiently strict, it was preparing amendments and addenda to the current criminal and administrative legislation concerning enforcement of measures for infringement of intellectual property rights and illegal use of copyright.

- **Trademarks, including service marks**

226. The representative of Kazakhstan stated that on 26 July 1999 the Parliament of Kazakhstan adopted a new Law "On Trade Marks, Service Marks and Appellations of Origin" (Trademarks Law) in which all requirements of the Articles 15-24 of the WTO TRIPS Agreement were taken into account. Other legal act were the Rules for Filing and Submission of Application for Registration of a Trademark and the Rules for Processing of Application for Registration of a Trademark, both dated 8 October 1996; and Decree No. 133 adopting "The Instruction on Recognition of Trademark (Service Mark) as Well-Known" dated 15 August 2002. Furthermore, she noted that the terms of the Paris Convention, specifically Article 6bis and 10bis, were directly applicable in accordance with Article 4 of the Constitution.

227. She noted that the Trademarks Law accorded trademark protection to all pictorial, verbal, letter, digital, volumetric and other designations or their combinations that allowed to distinguish goods and services of one manufacturer from similar goods and services of another manufacturer. Exceptions were designations identical or confusingly similar to those already protected and designations that had become generally accepted symbols. Well-known trademarks were protected without restrictions regarding classes of goods and services. Protection of trademarks was provided on the basis of the registration and issuance of a trademark certificate by the Committee for Intellectual Property Rights and was available to all owners of well-known trademarks whether their trademark rights were registered in Kazakhstan or not.

228. She further noted that the registration of a trademark could be contested and deemed invalid in full or in part and that the owner of a well-known trade mark could petition courts of Kazakhstan to recognize his mark as well-known and prevent its continued unauthorized use. The owner bore the burden of establishing that the trademark was "well known" and was required to provide proof based on a result of public-opinion polls. Besides results of the polls, the authorities could also consider

information about extensive use of the trademark in Kazakhstan, methods of its use, sales volume and the marketing outlets; information about the annual average number of consumers, the cost of the trademark, how extensive the advertising of this trademark was, and the extent of initial of acquired distinctiveness of the trademark; and information about the trademarks use or a similar trademark by third parties, about the number of licensees, about registration of the trademark abroad, etc.

229. The validity of a trademark was 10 years with possibility of extension for another ten years as petitioned by the owner. Any person could file for a cancellation of a trademark to the Appellate Council of the Committee for Intellectual Property Rights for reasons of non-use after five years of non-use, however the owner of the trademark had the right to submit evidence demonstrating that non-use was due to circumstances beyond his control. The Government planned to shorten the non-use term to three years.

230. Asked whether a trademark could be transferred, the representative of Kazakhstan replied that assigning the rights for a trademark entailed cession of the trademark itself when used with certain products or services, and the business reputation gained by the trademark during its use. For licensing rights and exclusive rights to a trademark, the written agreement had to contain provisions stipulating that the quality of the goods associated with the licensee's use of the trademark must not be inferior to those of the licensor's as well as provisions providing to the licensor the right to supervise compliance with the term of the agreement. Licensing and assignment agreements had to be registered with the Committee for Intellectual Property Rights, which regulated contractual relations between the parties. Asked about possible negative effects of the registration procedure for such agreements, she explained that official registration of agreements with the Committee implied that the rights of a person, to whom the exclusive rights for industrial property were assigned, must not be infringed in any way, if the other party wanted to further make any changes in the agreement made, and that such changes could only be made by court's decision.

- **Geographical indications, including appellations of origin**

231. The representative of Kazakhstan said that the Law "On Trade Marks, Service Marks and Appellations of Origin" (Trademarks Law) included provisions on geographical protection in Kazakhstan. The Law provided equal protection for national and international appellations of origin, provided that the international appellations of origin were protected by international treaties and agreements to which Kazakhstan was a party.

232. Geographical indications could be registered if they denominated a product whose specific qualities were mainly or exclusively associated with its place of origin (including natural conditions

and/or human factors). Only geographical indications associated with a particular product could be registered. The registration certificate entitled the owner to the right to use the appellation of origin for the goods listed in the certificate. Registration of geographical indications was prohibited if it could mislead consumers as to the place of origin or if such a registration could infringe upon the rights of third parties. Finally, the use of geographical indications which clearly misled consumers as to the product's place of origin was not given any protection whatsoever. Asked whether geographical indications were protected against unfair competition, she referred to Articles 5 and 6 of the Law "On Unfair Competition."

233. Applications for geographical protection could be filed with the Committee for Intellectual Property Rights by any person (regardless of citizenship) by providing: (i) a single name indicating the place of origin of a good; (ii) a name and address of the applicant(s); (iii) the designation which was applied to the good; (iv) the type of product for which the registration of the appellation of origin was sought including its place of manufacture or natural occurrence (or both) and a description of the specific properties of the good; and (v) a document confirming the authority of a patent attorney to act on behalf of the applicant. While residents could submit their applications directly to the Committee for Intellectual Property Rights, foreign applicants had to submit their applications through a patent attorney.

234. She noted that while the application for registration of an appellation of origin used in association with goods originating within the territory of Kazakhstan, also entailed conclusion of the local administrative body certifying that the applicant resided in its territory and that the quality of goods originating therein was associated with the natural conditions and human factors of that geographical place, the registration of an appellation of origin used in association with goods originating outside the territory of Kazakhstan, entailed only document certifying the right of the foreign applicant to the geographical indication in association with the product from the country where the goods originated.

235. In respect to wines and spirits, she said that the Trademarks Law provided for protection stipulated in Articles 22 and 23 of WTO TRIPS Agreements, concerning the protection of geographical indications, including geographical indications for wines and strong beverages.

236. Asked about the protection against use of geographical names which were applied for later or were confusingly similar, she replied that designations that were false, identical, confusingly similar or capable of misleading a consumer concerning the place of a good's origin, could not be awarded protection under the Trademark Law.

- **Industrial designs**

237. The representative of Kazakhstan noted that the rights for industrial designs were regulated by the Patent Law and certified by preliminary patents and patents provided that the applied industrial design met the patentability requirements, such as novelty, originality, and industrial application. Article 8 of the Patent Law which stipulated that artistic-design solution determining the exterior of a product fell into the category of an industrial design, also applied to textile goods since they were a type of industrial design.

238. She further noted that a preliminary patent for an industrial design was valid for five years, whereas a full patent was valid for ten years following the application's date of submission. Full patents could be extended upon request of the owner for a period not exceeding five years. The owner of a patent for an industrial design had the exclusive right for its use. A person other than the patent owner could use the protected industrial design only with permission of the patent owner and under the licence agreement subject to compulsory registration with the Committee for Intellectual Property Rights.

- **Patents**

239. The representative of Kazakhstan stated that the Patent Law contained all the requirements of Articles 25-34 of the WTO TRIPS Agreement. In particular, the Law contained provisions regulating conditions and procedures for judicial granting of compulsory licenses to use inventions, as well as other forms of utilization without a permission of a patent owner pursuant to the requirements of Article 31 of the WTO TRIPS Agreement. It specified the extended list of manners to protect patent owners' rights and extended the subject matter to inventions, industrial designs and utility models.

240. She noted that Article 6(2) of the Patent Law provided an exhaustive list of things that could be patented as invention, such as a device, a process, a substance, a micro-organism strain or a culture of plant or animal cells, and also the use of a known device, process, substance or strain for a new purpose. An invention was granted legal protection if it was new, involved an inventive step and was industrially applicable. The Patent Law did not recognize as inventions: (i) discoveries, (ii) scientific theories, (iii) mathematical methods; (iv) methods of economic organization and management; (v) symbols, schedules, and rules; (vi) rules and methods of mental activities; (vii) algorithms *per se* and computer programs; (viii) projects and plans of buildings and structures, and land development; (ix) proposals concerning solely the outward appearance of manufactured goods; and (x) proposals the prevention of the commercial exploitation of which was necessary to protect public order or morality. Asked whether exclusion of patentability of "proposals that were contrary to the public interest,

humanitarian principles and morality" met the requirements of Article 27(2) of TRIPS Agreement, she replied that in her view such provisions did not provide for any discriminatory terms and met the requirements of Article 27(2) of the WTO TRIPS Agreement.

241. Asked about the difference between preliminary and full patents, she replied that the degree of protection provided by a preliminary patent was functionally equivalent to that provided by a full patent. The principal difference was in the procedure for issuance and the period of validity. Preliminary patents for industrial designs could be issued after formal examination of the application and were valid for a period of five years. Full patents for industrial designs were issued after conducting substantive examination of the patent application, provided that the full patent application was filed within four years of the date of filing an application for a preliminary patent with the Committee for Intellectual Property Rights. The substantive examination included verification of the patentability conditions of the industrial design (novelty, originality and industrial application). The full patent was then valid for a period of ten years. If the preliminary patent holder, however, did not timely submit an application for conducting a full expertise (four years from the date of filing of application for a preliminary patent), the preliminary patent was cancelled from the moment of the preliminary patent's date of expiration (five years from the date of application). He further noted that it was possible to prolong the validity of an industrial design patent for up to five years upon receipt of a petition by the patent holder.

242. She further noted that an application for a preliminary patent had to be examined during a term of two months following the date of receipt, within which time the applicant had the right to amend or correct the elements of the application on his own initiative, provided that the amendments or corrections did not modify the essence of the claimed industrial property. In a case where the preliminary examination resulted in a decision to issue a provisional patent and following payment of appropriate fees, the details were published in the Bulletin of the Committee for Intellectual Property Rights. The substantive examination was carried out by the Committee for Intellectual Property Rights at the request of the applicant or the owner of the provisional patent, filed within three years after receipt of the application or within five years in case of renewal of the term of the preliminary patent. If the results of substantive examination were positive, the patent office granted a patent for a term of 20 years starting on the date when the application was filed.

243. Asked about protection against misappropriation or misuse of information of the first applicant by the second applicant when obtaining permission for sale of the same product, she replied that the legislation provided no definition of "the second applicant," because the priority for a patent

protection was determined by the date of filing of an application and the right holder had the exclusive right for the protected industrial property.

244. The representative of Kazakhstan added that rights to utility models were granted patent protection, if utility models met the patentability requirements, including novelty and industrial applicability. Utility model patents were granted for a period of five years, subject to subsequent renewal at the request of the patent owner for a period not exceeding three years. Exclusive rights to use protected utility models and cover infringements were identical with the rights and infringements determined for protected inventions and industrial designs.

245. Under the Patent Law, the owner of a preliminary patent or a patent had the exclusive right to use the industrial property subject matter at his own discretion, while the manufacture, use, sale, storage, import, and any other form of marketing of goods produced by means of the unauthorized use of the protected invention were deemed as infringing exclusive rights of the patent owner.

246. She noted that protected inventions could be used only by obtaining authorisation of the patent owner under a licensing agreement subject to compulsory registration with the Committee for Intellectual Property Rights. In the case of four years of uninterrupted non-use, any interested party had the right to file with the court of law an application requesting a compulsory licence to use non-used invention, providing they supplied evidence of such non-use. The court would issue a compulsory licence by specifying the term and scope of use, as well as terms, amount and conditions of payments, unless the owner of the patent proved that non-use was due to valid reasons. The compulsory licence would be non-exclusive, while the amount of payment could not be lower than the market value of the licence.

247. She further noted that Article 12 of the Patent Law established that the following were not considered to be a violation of the exclusive right of a patent holder: (i) application of a patent in the structure of/used for operation of transportation means, provided that they were in Kazakhstan temporarily or by accident and the patent was used for the needs of such transportation means; (ii) research or an experiment on an object containing a patent; (iii) application of a patent in emergency situations (natural and other disasters, major accidents) with immediate notification of the patent holder and subsequent payment of the correspondent compensation to the patent holder; (iv) application of a patent for personal needs without a commercial purpose; (v) a one-time preparation of medicine pursuant to a doctor's prescription. The aforementioned provisions met, in her view, the requirements of Article 31 (a)-(k) of the WTO TRIPS Agreement. As for the requirements of Article 31(1) of the WTO TRIPS Agreement, the representative of Kazakhstan noted that there were no definitions of "the first patent" and "the second patent" in Kazakhstan.

248. Asked about burden of proof, she replied that in accordance with the Civil Code each party was responsible for proving its own claims and statements. Other persons involved in the process could provide evidence too.

- **Plant variety protection**

249. The representative of Kazakhstan said that new kinds of plants and animals were protected in accordance with the Law "On Protection of Selection Achievements" of 13 July 1999. The law was awarded positive legal opinion by the International Union for the Protection of New Plant Varieties (UPOV), because of its conformity with the International Convention for the Protection of New Plant Varieties (Geneva, 2 December 1961 reviewed in 1972, 1978, 1991). She noted that in her opinion, having adopted this Law, Kazakhstan met the requirement of Article 27(3) (b) of the WTO TRIPS Agreement, according to which WTO members had to ensure protection of plant varieties either by patents, effective independent single system, or a combination thereof.

- **Layout designs of integrated circuits**

250. The representative of Kazakhstan said that legal protection of layout designs of integrated microcircuits in Kazakhstan was provided by Law No. 217 "On Legal Protection of Layout Design of Integrated Microcircuits" of 29 June 2001 (see WT/ACC/KAZ/36/Add.1), and was implemented on the basis of Articles 1013-1016 of the Civil Code of Kazakhstan (Special Part), in which the requirements of Article 35-38 of the WTO TRIPS Agreement were reflected.

- **Requirements on undisclosed information, including trade secrets and test data**

251. The representative of Kazakhstan said that Article 126 of the Civil Code ensured protection of information of real or commercial value under the civil legislation, provided that it was unknown to third parties, its confidentiality was strictly preserved, and the free access to such information was denied on a legal basis. Moreover, the law also protected confidential data or other information which was required in the process of approving the marketing or sale of chemical, pharmaceutical, or agricultural products.

252. Asked about how the Patent Law met the requirements of Article 39(3) of the WTO TRIPS Agreement, she replied that in accordance with Article 34 of the Patent Law, disclosure of the industrial property without the authorization of the author or the applicant before publication of information about the industrial property entailed responsibility under the laws.

253. She further noted that a person accessing restricted information deliberately or under negligence, could be liable for acts constituting unfair competition in accordance with Article 158 of the Law "On Administrative Violations" and Article 184 of the Criminal Code. Moreover, Article 200 of the Criminal Code prohibited collection of information that constituted a commercial or banking secret by persons who had access to such information in a job or work capacity, including disclosure or use of such information for mercenary or other personal interest without the consent of the owner. Employees of ministries and other state agencies who disclosed protected information were held administratively responsible together with ministries or state agencies employing them. Such disclosure was punishable by imprisonment of up to three years, payment of fines, arrest, or correctional labor.

254. Asked how a person in control of restricted information could enforce his rights, she said that the civil law provided a number of judicial means, such as option file a complaint with the court having jurisdiction over the alleged rights violation. The court could order reimbursement of damages and all costs incurred by the claimant.

255. Asked whether the draft Law "On Commercial Secrets" mentioned in WT/ACC/KAZ/24 was adopted, the representative of Kazakhstan replied that the said draft law was withdrawn from the hearing in the Parliament.

- **Measures to Control Abuse of Intellectual Property Rights**

256. The representative of Kazakhstan said that, in general, intellectual property rights were protected by civil legislation in the course of common court procedures (procedures initiated in the form of a lawsuit). Also, the legislation of Kazakhstan provided criminal, administrative, and civil liabilities for the infringement of intellectual property rights, stipulated in Articles 184 and 199 of the Criminal Code, Articles 128, 129, 145 of the Code "On Administrative Violations", the Law "On Copyright and Related Rights", "On Trademarks, Service Marks and Appellations of Origin", the Patent Law, and other laws. Furthermore, on 26 September 2001 the Government approved the Intellectual Property Protection Concept by the Resolution No. 1249. In order to implement the concept, the Government of Kazakhstan adopted the Program of Implementation of Intellectual Property Protection Concept by its Resolution No. 591 of 29 May 2002.

257. The representative of Kazakhstan stated that the adoption of the special part of the Civil Code in 1999, in which a whole section was dedicated to the issues of intellectual property and which contained fundamental norms regulating the relations in the area, was the most important stage in the formation of a domestic legislative base in the area of intellectual property.

258. Some members of the Working Party asked what efforts were being made to educate the public to avoid activities that infringe the rights of intellectual property owners. The representative of Kazakhstan responded that the Committee for Intellectual Property Rights regularly held regional and national workshops on protection of intellectual property rights in order to upgrade qualifications of the persons dealing with intellectual property rights protection matters, and to share experience in this field. Officials of the justice, law, and customs bodies, judges, owners of intellectual property rights, as well as users and mass media took part in workshops. She further noted that the Committee for Intellectual Property Rights conducted seminars jointly with such international organisations as the World Intellectual Property Organisation, the Coalition for Intellectual Property Rights Protection, the Phonograms Producers International Federation, USAID, etc. Additionally, officials of the Committee on Intellectual Property Rights also actively participated in radio and television shows on protection of intellectual property rights in Kazakhstan. The Ministry of Justice initiated a national campaign, called "Intellect", in October 2003 and April 2004. That was the first large-scale campaign of the Ministry of Justice with the active participation of other interested public bodies, international agencies, public associations, commercial organisations, educational institutions, mass media, and the population of Kazakhstan, aimed at promoting concepts of intellectual property, enhancing public intolerance toward piracy, strengthening the role of intellectual property as well as the status of authors, innovators, inventors, etc.

259. Moreover, the representative of Kazakhstan noted that the number of applications for registration of copyright and related rights as well as of licence agreements for use of copyright and related rights has increased, which shows that the number of authors and persons knowledgeable in copyright and related laws had increased.

260. Asked about measures to control the importation of infringing goods into Kazakhstan, the representative of Kazakhstan replied that pursuant to the Customs Code of Kazakhstan, the Central Customs Body of Kazakhstan maintained a register of goods, containing intellectual property and ensuring its periodical publication. She further noted that pursuant to the Customs Code, the Customs Control Agency of Kazakhstan could suspend the customs processing of goods, including intellectual property, if it found that these goods violated the rights of intellectual property of an applicant. While suspending processing of goods containing intellectual property, the legal owner within three working days of receipt of notification of such suspension was obliged to effect payment at the rate sufficient for compensation of losses of the declarer in connection with the suspension of the goods' release. The above rate was specified by the Customs Control Agency of Kazakhstan. Furthermore, under the Customs Code, the decision of the Customs Control Agency on inclusion of goods containing intellectual property into the register for a term specified by an applicant guaranteed that the rights of

the possessor of rights were protected by customs bodies for a term of not more than two years after the day on which goods were included in the register.

Enforcement

- Civil judicial procedures and remedies

261. The representative of Kazakhstan noted that the Civil Code, Criminal Code, Article 33 of the Patent Law, Article 42 of the Law "On Trademarks, Service Marks and Appellations of Origin" provided that there was no discrimination between domestic and foreign parties in disputes concerning intellectual property rights. Foreign and domestic owners of intellectual property rights had the right to settle disputes in the court of law arising from: (i) authorship; (ii) legality of the grant of a title of protection; (iii) infringements of the exclusive rights and of other economic rights; (iv) identification of the patent owner; (v) grant of a compulsory licence; (vi) conclusion and execution of licence contracts; (vii) compensation and damages for infringement of exclusive rights; and (viii) other disputes arising from the title of protection. Moreover, the rights holder had the right to apply for the protection of his or hers rights to local authorities or administration, which was not viewed as an action preventing application to the court.

262. She noted that in accordance with Article 66(4) of the Civil Code, the court could assist the parties to a dispute in obtaining the necessary evidence upon their request by providing the requesting party an official letter of request for obtaining such evidence. Moreover, Article 74(1) of the Civil Code stipulated that a party could request securing of evidence when doubting that necessary evidence would be obtainable later in time.

263. Asked whether judicial authorities had the authority to order the infringer to pay the right holder damages to compensate for the injury, she replied that in accordance with the civil, administrative, and criminal legislation of Kazakhstan, the court had the authority to recover from the violator damages incurred by the right holder. Moreover, in accordance with Article 111 of the Civil Code, the court could order the infringer to compensate the successful party for costs. Articles 9 and 917 of the Civil Code stipulated that a person whose rights had been violated could demand complete recovery of losses, unless otherwise provided by law or contract. The violator should provide complete recovery of the damage caused by his or her act or omission to the property or non-property rights and goods of citizens or legal entities.

264. She further noted that Article 49 of the Law "On Copyright and Related Rights," stipulated that a judge could order seizure and withdrawal of all copies of works and phonograms that were

suspected of being counterfeit, as well as all materials and equipment designated for their production and reproduction. Counterfeit copies of works or phonograms could be transferred to the copyright or related right holder upon his request, or be destroyed court order. The materials and the equipment used for their reproduction was destroyed or made the property of the state by the resolution of the court. In accordance with the Law "On Trademarks, Service Marks, and Appellations of Origin" (Article 44), a person illegally using a trademark or appellation of origin or using a confusingly similar designation, had to destroy the images of the trademark or of the appellation of origin and remove it from the product, its packaging, blank forms and other documents, unless that was impossible and the relevant goods were destroyed in the procedure provided by the legislation. The Patent Law stipulated that a patent holder had the right to demand cessation of the violation of the title of protection and to seize the products which were recognized as violating the title of protection, and the means designated specifically for violation of the right (Article 15).

265. Some members of the Working Party asked what training, if any, had been provided to judges to enable them to consider disputes involving intellectual property rights. The representative of Kazakhstan responded that judges took active part in events (workshops, conferences, roundtables) for discussion of the intellectual property rights protection issues. In 2002, for instance, the Committee for Intellectual Property Rights together with the World Intellectual Property Rights Organisation (WIPO) and Coalition for Intellectual Property Rights (CIPR) held a workshop for judges, in which judges from Oblast centres, Almaty and Astana took part.

- **Provisional measures**

266. The representative of Kazakhstan said that judges and administrative authorities had the authority to grant interim measures if any delay was likely to inflict irreparable harm to the right holder or if a provable risk existed that the evidence would be destroyed. Civil legislation and Law "On Copyright and Related Rights", implementing provisions of Article 50 of the WTO TRIPS Agreement, provided judges with the power to take the following measures at the request of the claimant or upon their own initiative:

- to arrest the defendant's property;
- to prohibit a defendant from taking certain actions including sale of goods bearing a trademark belonging to the complainant;
- to prohibit other persons from transferring property to the defendant or from fulfilling other commitments with regard to the defendant;
- to suspend sales of property in case of a suit to free the property from seizure;
- to suspend a contested act issued by a governmental body, organization or official person; and

- to suspend recovery made in accordance with an executive document, if the debtor contested this document.
- **Administrative procedures and remedies**

267. The representative of Kazakhstan stated that (i) non-criminal but illegal use of an invention, industrial design or model, disclosure without consent of an author or an applicant of a scientific discovery, invention, industrial design or model prior to its official publication, as well as usurpation of the authorship or coercion into joint authorship (Article 128 of the Code of Administrative Violations); (ii) sale, hire and other illegal use of copyright or related rights (Article 129 of the Code of Administrative Violations); and (iii) illegal use of a trademark, service mark, appellation of origin or similar designations for goods (services), as well as illegal use of a firm name unless the above actions resulted in severe damages (Article 145 of the Code of Administrative Violations) were considered an infringement of intellectual property rights and entailed administrative responsibility.

268. She noted that such infringements could lead to review by the bodies authorised by Articles 128, 129 and 145 of the Code of Administrative Violations, which could include Administrative Commissions. Review would start with the introduction of members of a Commission, other review body or individual officials, followed by the announcement of a protocol of administrative violation. Petitions were permitted during meetings and the persons that participated in the review were given a hearing, and the evidence was examined. After consideration of the case, the administrative body terminated the proceedings or imposed an administrative sanction, such as:

- (i) for violations covered by Article 128: fines for natural persons equivalent to 15-20 monthly calculation indices (MCI), for officials equivalent to 20-50 MCI, and for legal entities equivalent to 300-400 MCI;
- (ii) for violations covered by Article 129: fines for natural persons equivalent to 3-5 MCI, for officials equivalent to 5-10 MCI, legal entities up to 100 MCI with confiscation of copies of works and phonograms; for repeated violations: fines for natural persons equivalent to 5-10 MCI, officials equivalent to 10-20 MCI, legal entities in equivalent to 200 MCI with confiscation of copies of works and phonograms;
- (iii) for violations covered by Article 145: fines for natural persons up to 5 MCI, officials up to 15 MCI, legal entities up to 100 MCI.

Any interested party disagreeing with the court decision could challenge it in a higher court of law.

269. Asked about what administrative actions were available to the owners of intellectual property rights to enforce those rights, what agencies were responsible for such actions and how foreign parties could invoke such actions, she replied that the applicant (foreign or resident) had the right to raise objections to the Appellate Council of the Committee on Intellectual Property Rights (Articles 22, 23, and 29 of the Patent Law and Article 12, 23, and 31 of the Law "On Trademarks, Service Marks and Appellation of Origin "). If the applicant remained dissatisfied with the decision of the Board of Appeal, the applicant had the right to further appeal that decision in the courts. She further noted that while violations were considered by the courts, violations concerning the rights to other objects of industrial property than those considered in the Administrative Code were considered within the framework of the civil legislation.

270. Asked to provide more information concerning the procedures followed by the administrative commissions in reviewing allegations of violation and what were the remedies that the commissions could impose, she replied that in accordance with the national legislation no administrative commissions on violation of intellectual property rights could be established in Kazakhstan. Under the legislation all disputes concerning intellectual property rights could be settled only in courts.

- **Special border measures**

271. The representative of Kazakhstan said that Articles 410 – 420 of the Customs Code established a mechanism of customs control preventing import or export of goods containing objects of intellectual property rights and provided adoption of a number of legislative acts targeted at control of enforcement.

272. Asked whether the Customs Code provided for any measures for the customs bodies to suspend the export of counterfeit goods from Kazakhstan or the transit of counterfeit goods in Kazakhstan, she noted that Article 416 of the Customs Code provided the customs bodies with the authority to suspend release of the goods containing intellectual property. The release of goods had to be suspended, if in the process of customs clearing of the goods containing intellectual property registered in the Customs Registry, customs bodies discovered any signs that the goods were counterfeit.

273. She further noted that when such goods were discovered the customs body informed the right holder about the goods under investigation and provided him or his representative opportunity to inspect the goods in customs supervision (Article 418 of the Customs Code). Moreover, the customs body had to provide the name and address of the declarer (Article 416 of the Customs Code).

- **Criminal procedures**

274. The representative of Kazakhstan said that the Criminal Code provided for legal protection against infringement of intellectual property rights and entailed provisions on criminal responsibility.

275. She noted that illegal use of copyright and related rights, invention, industrial design or utility model, disclosure without consent of an author or an applicant of a scientific discovery, invention, industrial design or model prior to its official publication, as well as usurpation of the authorship or coercion into joint authorship could result in a fine or imprisonment if the action was performed with the view to receive profits and resulted in severe damages. The court could impose:

- fines equal to 100-500 monthly calculation indices (MCI), or equal to the amount of wages or other income received by the convicted party for a period of one to five months; and
- public works for 180 to 240 hours; or a prison term of up to two years.

Repeated actions and actions committed by a group of persons upon preliminary agreement or by an organised group could result in the following:

- fines equal to 500-800 MCI, or the amount of wages or other income received by the convicted party for a period of five to nine months;
- detention for four to six months; or
- a prison term of up to five years, with or without confiscation of the property of the convicted party (Article 184 of the Criminal Code).

276. She further noted that illegal use of a trademark, service mark, firm name, appellation of origin or other designations of goods (services) for the related goods or services could result in a fine or imprisonment if the action was performed repeatedly and resulted in severe damages. The court could impose:

- fines equal to 200-500 MCI, or to the amount of wages or other income received by the convicted party for a period of two to five months;
- public works for 180 to 240 hours;
- detention for up to six months; or
- a prison term of up to two years.

277. For illegal use of a trademark or appellations of origin not registered in Kazakhstan, if the action was performed repeatedly and resulted in severe damages, the court could impose:

- fines equal to 100-200 MCI, or to the amount of wages or other income received by the convicted party for up to two months;
- public works for 120 to 180 hours;
- detention for up to three months; or
- a prison term of up to one year (Article 199 of the Criminal Code).

278. Some members of the Working Party noted that there was a criminal penalty for pirated copyright and related rights (Article 184 of the Criminal Code), but remarked that there did not appear to be a criminal penalty for counterfeit trademarked goods. They further stated that the administrative fine provided by the Administrative Code appeared insufficient to serve as an effective deterrent. She responded that criminal penalties to prevent trade in counterfeit trademarked goods were provided in Article 199 of the new Criminal Code (Special Part).

279. The representative of Kazakhstan stated that preparations to make amendments and addenda to the existing administrative and criminal legislation were in place to reinforce the penalties for violations of intellectual property rights.

POLICIES AFFECTING TRADE IN SERVICES

280. The representative of Kazakhstan stated that the services sector was one of the most dynamic sectors of the economy, and its role was expected to grow in the future. Starting from 1990, the share of services in the GDP kept growing to reach the highest level of 60 per cent in 1998, while the average level for the last decade constituted 50 per cent. In 2001 and 2002, the balance of foreign trade in services was negative for Kazakhstan, with exports amounting to US\$ 1,588 million, and imports amounting to US\$ 3,667 million in 2002. In the sphere of trade in services, enterprises with foreign direct investments (FDI) accounted for more than 90 per cent of the turnover in construction and business services. Among services provided by foreign suppliers were geological prospecting and product certification, legal and other consulting services, electronic data processing, engineering and technical services.

281. Some members of the Working Party required information about the legislative base regulating commercial services and asked whether the government was taking measures to ensure non-discrimination of foreign service suppliers. The representative of Kazakhstan, noting the growing role of services in the national economy, emphasized that the existing legislative framework was not adequately developed for the services sector and that the government was, therefore, actively developing national legislation governing the services sector, which would help to proceed with further liberalization. Moreover, she noted that relevant provisions, which would ensure the right of

foreign legal and natural persons to participate in enterprise activity on equal conditions with domestic suppliers of services, were being included in domestic legislation.

282. She further noted that because the statistical base of service sectors was also at the initial stage of development, the Government intended to apply provisional measures of state regulation of trade in services in order to ensure development of competition, based on well-balanced levels of development of the market of services and labour so as to prevent adverse economic and social effects in the national economy. The provisional measures would be carried out in accordance with the provisions of Articles III, VI, X, XII, XIV and XIV *bis* of GATS and would be limited to those controls and restrictions necessary to achieve their objectives. Licensing and authorization procedures would be undertaken in the most efficient manner on the basis of transparent criteria for qualification requirements, technical standards, and licensing requirements and will not constitute unnecessary barriers to trade in services.

283. Asked about "natural monopolies" in the telecommunications sector, she replied that the telecommunications Sector Development Program for the period 2003-2005, adopted by Government Resolution No.168 of 18 February 2003, outlined a plan for a stage-by-stage liberalization of the telecommunications market, including elimination of the exclusive rights of KazakhTeleCom for provision of international and long-distance communication services. These measures were expected to facilitate competition, improve the quality and capacity of telecommunication services, and remove barriers for new entrants. In addition, the draft Law "On Changes and Amendments to Legislative Acts of the Republic of Kazakhstan on Communications" introduced an amendment to Article 4 of Law No. 272-II "On Natural Monopolies". The draft law stipulated that instead of pertaining to "telecommunication services through local networks", the activities of natural monopolies covered: (i) telecommunication services, when there was no other competing operator due to reasons of economic inexpediency or technical infeasibility; and (ii) leasing and provision of access to cable channels and technological facilities for connecting telecommunications networks with the public telecommunications network. A draft law "On Communications" was signed on 5 July 2004.

284. Some members of the Working Party noted that it was clear that there was no "natural" monopoly in the telecommunications services sector, adding that the limited nature of Kazakhstan's offer in the negotiation of its services commitments supported the contention that a state monopoly was being granted and preserved. In response, the representative of Kazakhstan stated that only local telephone services and lease of communication channels were currently considered as natural monopolies, mainly because there was no sufficient competition in the delivery of such services. There were, however, no regulatory barriers to enter this sector. Kazakhstan's commitments in the

basic telecommunications sector and value-added networks were provided in its revised offer on services.

285. With respect to the Law of Kazakhstan "On Culture" (hereafter – the Law) the representative of Kazakhstan stated that this Law defined national policies in the sphere of culture, regulated public relations arising from creation, revival, preservation, development, use, and dissemination of the national culture. The Law stipulated a special treatment for sites of national cultural heritage, under which all forms of negotiations with sites recorded in the State Register including their demolition, relocation, alteration, reproduction, and restoration shall be prohibited unless authorized by the responsible body. All forms of exploitation of sites of the national cultural heritage for purposes inconsistent with their historical, artistic, and religious value was also prohibited. Sites of special cultural value owned by religious organizations could be used for religious purposes. Cultural institutions had priority in exercising their rights to use architectural monuments. Owners and users of sites of the national cultural heritage were responsible for their maintenance and preservation. Rights of owners of sites of the national cultural heritage were exercised under control and following procedures, determined by the legislation, while the State had a priority right to buy sites of the national cultural heritage of Kazakhstan in cases where they should be offered for sale.

Transparency

- Publication of information on trade

286. The representative of Kazakhstan said that Article 3 of the Constitution stipulated that all laws and all international treaties to which Kazakhstan was a party had to be published. Moreover, Law No. 213-1 "On Normative Legislative Acts" of 24 March 1998 established that legislative acts affecting the rights, freedoms and obligations of citizens (except for the acts containing the state secrets and other secrets protected by the law) had to be published in the Journal of the Parliament and the newspapers designated for official publications, such as "Yegemen Kazakhstan," "Kazakhstanskaya Pravda," "Zan," and "Yuridicheskaya Gazeta".

287. She noted that Decrees of the President of the Republic and Resolutions of the Government were published in the Collection of Acts of the President and the Government and when their wide and immediate publication was necessary newspapers, such as "Yegemen Kazakhstan," "Kazakhstanskaya Pravda," "Zan," and "Yuridicheskaya Gazeta".

288. She further noted that legislative acts of the central executive state bodies were published in the Bulletin of Normative Legal Acts of the Central Executive State Bodies, which was issued by the

Ministry of Justice. Provided that central state bodies had their own official publications, their legislative acts were officially published in those publications.

289. Asked about obligatory publication of legal acts of Maslikhats, normative legal resolutions of Akimats and resolutions of Akims, the representative of Kazakhstan replied that, according to Article 34 of the Law "On Normative Legislative Acts," Resolutions of Maslikhats and Akims affecting the rights, freedoms and obligations of citizens had to be published in newspapers and other periodicals determined by Maslikhats and Akims for official publications.

290. [The representative of Kazakhstan confirmed that Kazakhstan would undertake after accession to the WTO to provide the obligatory and prompt publication of laws, rules, judgments and administrative orders of general nature concerning the questions of trade and the agreements on international trade policy, pursuant to Article X of GATT 1994. She also confirmed that Kazakhstan would undertake to observe policy transparency requirements in the area of trade in services, pursuant to Article II of GATS.]

- **Notifications**

291. [The representative of Kazakhstan confirmed that Kazakhstan would undertake after the accession to the WTO to submit initial notifications in accordance with the WTO Agreements which provided for the obligation of WTO members to submit such notifications. Rules which could be subsequently enacted by Kazakhstan and which would affect the laws enacted with a view to implement the provisions of WTO Agreements would correspond to said Agreements].

- **Trade Agreements**

292. The representative of Kazakhstan noted that under the bilateral free trade agreements which Kazakhstan concluded with other CIS countries (excluding Turkmenistan) goods originating from these countries and imported from them to Kazakhstan were exempt from customs duties, except for a number of goods included in the Schedule of Exemptions. The list of goods originating from CIS countries covered all nomenclature goods, excluding ethyl alcohol (groups 2207 10 000, 2207 20 000, 2208 90 910), vodka (2208 60), cigars, cigarettes (2402), white sugar (1701 99 100). The Schedule was covered by the protocols on exemptions from free trade under bilateral agreements on free trade.

293. She added that Kazakhstan was party to a number of agreements with Belarus, Kyrgyzstan, Russia and Tajikistan. To enhance efforts to build a Customs Union and a Common Economic Space (CES), the heads of the Customs Union member states signed the Agreement on Establishment of the Eurasian Economic Community (EAEC) on 10 October 2000, which came into force on

30 May 2001. The stage-by-stage transition to the EAEC common customs tariffs was expected to last five years, with a possible extension.

294. The main objectives of the CES were to develop a common agriculture, transport and competition policies, as well as to create a common system for regulation of activities of natural monopolies. Pursuant to Article 2 of the Agreement on the Formation of the CES, signed on 19 September 2003, the first stage of the CES focused on the "formation of a free economic zone without withdrawals and restrictions, based on mutual non-application of anti-dumping, compensation and special protection measures, pursuit of common policy of tariff and non-tariff regulation, common competition rules, use of subsidies and other forms of state support". The representative of Kazakhstan noted that the formation of the CES was a stage-by-stage process which was expected to take into consideration the different levels of socio- economic reforms taking place in these countries. Therefore, during the first stage, the CES member-states were developing common trade remedy policies and regulations in line with relevant agreements of the WTO, which should eventually lead to the non-application of anti-dumping, countervailing and import protection measures in trade relations between Ukraine, Russia, Kazakhstan and Belarus.

CONCLUSIONS

[to be completed]

ANNEX I

Laws, Regulations and Other Information Provided to the Working Party of Kazakhstan

Economic Policies

- Law "Concerning Currency Regulation" of 14 April 1993;
- Law "Concerning Currency Regulations" of 24 December 1996;
- Law No. 237 "On Payments and Money Transfers" of 29 June 1998;
- Edict No. 2155 "Concerning the National Bank" of 30 March 1995;
- Edict No. 2196 "On the National Bank of Kazakhstan" of 2 August 1995;
- Edict No. 2227 "Concerning Securities and Stock Exchange" of 21 April 1995;
- Regulations of the Board of the National Bank "Concerning the Settlements with Cheques" of 15 November 1994 (Meeting minutes No.22);
- Instruction No. 127 "On Settlement, Current and Budget Accounts Opened in the Bank Institutions of the Republic of Kazakhstan" of 23 June 1993 approved by the Board of the National Bank on 23 June 1993 (Protocol No 16);
- Instructions of the Board of the National Bank No. 188 "Rules for conducting currency transactions in the Republic of Kazakhstan" of 24 November 1994;
- Temporary regulation on clearing (submitted in September 1996);
- Law No. 266-XIII "Concerning Foreign Investments" of 27 December 1994;
- Law No. 373 "On Investments" of 8 January 2003;
- Edict No. 2717 "Concerning Land" of 22 December 1995;
- Resolution No.1587 "On the Schedule of Non-Privatisable State Property" of 24 October 2000 (amended as of 18 December 2003);
- Law "Concerning development of competition and restriction of monopoly activities" of 11 July 1991;
- Law No. 272-I "On Natural Monopolies" of 9 July 1998;
- Law No. 232-1 "On Unfair Competition" of 9 June 1998;
- Resolution No. 1171 "On price regulation for products of business entities, recognized as natural monopolists" of 19 October 1994;
- Edict No. 2255 "Concerning Business Partnerships" of 2 May 1995;
- Law "Concerning the protection of the natural environment" of 18 June 1991;
- Resolution No. 637 "On approval of the provisions on the State ecological expertise in Kazakhstan" of 25 October 1991;
- Draft Law "On Joint-Stock Companies" of 4 June 1997; and

- Draft Law "On Limited Liability Partnerships" of 25 March 1997.

Subsurface use

- Edict No. 2350 "Concerning Petroleum" of 28 June 1995;
- Edict "Concerning the sub-surface and its utilization" of 27 January 1996; and
- Regulations "Concerning the procedure for the realization (transfer, exchange, sale) of information about the sub-surface of Kazakhstan", approved by Resolution No. 1034 of 8 December 1992.

Framework for Making and Enforcing Policies

- Constitution of the Republic of Kazakhstan of 5 September 1995; and
- Code "Concerning Administrative Violations" of 22 March 1984 (as amended on 1 April 1995).

Taxation

- Tax Code of 12 June 2001;
- Tax Code Articles 3 and 4 (submitted in February 1997);
- Tax Code Section VI. Taxation of Subsurface Users (submitted in February 1997);
- Edict No. 2703 "Concerning the introduction of amendments to certain legislative acts and edicts" of 21 December 1995;
- Edict No. 2827 "Concerning the introduction of amendments to Edict "Concerning Taxes and Other Compulsory Payments to the Budget"" of 26 January 1996;
- "Concerning the introduction of addition to Edict "Concerning Taxes and Other Obligatory Payments to the Budget"";
- Order of the Customs Committee No. 131 "Concerning the procedure for application of value added tax and excise duties to goods which are imported into the customs territory of Kazakhstan" of 29 September 1995;
- Decree No. 1439 "Concerning the rates of excise duties on certain types of excisable goods imported to the territory of Kazakhstan" of 2 November 1995;
- Resolution No. 960 "Concerning the rates of excise duties on imported excisable goods and the quotas of transfer by physical persons through the customs boundary of Kazakhstan of excisable goods which are not subject to excise duties" of 13 July 1995;
- Decree No. 1397 "Concerning the introduction of amendments and additions to Resolution No. 960 of 13 July 1995" of 30 October 1995 ;

- Resolution No. 974 "Concerning the rates of excise duties on excisable goods manufactured in Kazakhstan and the gambling business" of 14 July 1995;
- Decree No. 1487 "Concerning the introduction of amendments and additions to Resolution No. 974 of 14 July 1995" of 8 November 1995;
- Resolution No. 341 "On introduction of changes and amendments to some decisions of the Government" of 25 March 1996; and
- Resolution No. 608 (Appendix 1) "Excise Taxes for the Excisable Goods Imported to the Customs Territory of the Republic of Kazakhstan" of 26 June 1998.

Customs Regulations

- Customs Code (Law No. 2368) as amended by 1 January 2001;
- Customs Code of 5 April 2003;
- Customs Code Chapter 12 (submitted in February 1997);
- Customs Code Articles 115, 116, 122-133 (submitted in February 1997);
- Customs Code Chapter 7: Determination of Country of Origin of Goods (submitted in July 2004);
- Customs Code Chapter 39: Determination of the Customs Value of Goods (submitted in July 2004);
- Decree No. 2369 "Concerning the Implementation of Edict Concerning the Customs Business in the Republic of Kazakhstan" of 20 July 1995;
- Edict No. 2370 "Concerning the Introduction of Amendments to certain legislative acts and edicts concerning customs issues" of 20 July 1995;
- Resolution No. 1009 "Concerning the approval of the list of countries which are users of the preference schedule of Kazakhstan" of 20 July 1995;
- Resolution No. 1125 "Concerning the rates of customs duties on imported goods" of 15 August 1995;
- Resolution No. 1479 "On rates of customs payments" of 7 November 1995;
- Decree No. 810 "Concerning the introduction of amendment to Decree No. 299 of 12 March 1996" of 28 June 1996;
- Resolution No. 891 Annex on "Rates of Customs Duties on Imported Goods" of 29 June 2001
- Resolution No. 669 "On Adoption of the Customs Charges, Fees and Payments Levied by the Customs Bodies" of 8 July 2003;
- Commodity Nomenclature and Customs Import Tariffs; and
- Draft Customs Code.

Import/Export regulations

- Law "On export control of armaments, military technology and production of double application" of 18 June 1996;
- Resolution No.298 "On the procedure for export and import of public goods (works, services) in Kazakhstan" of 12 March 1996;
- Resolution No. 342 "List of goods allowed and not allowed to the regime of temporary import and export" of 25 March 1996;
- Resolution No. 1035 "Concerning the approval of the list of exchange commodities" of 28 July 1995;
- Resolution No. 304 "On introduction of amendments and additions to Resolution No. 1035 of 28 July 1995" of 13 March 1996;
- Resolution No. 984 "On Prohibition of export and import barter operations" of 17 July 1995;
- Resolution No. 1200 "On introduction of changes to Resolution No. 984 "On Prohibition of Export and Import Barter Operations"" of 29 August 1995;
- Edict No. 2200 "Concerning Licensing" of 17 April 1995;
- Decree No. 1894 "Concerning the implementation of Decree of the President No. 2201 of 17 April 1995" of 29 December 1995;
- Edict No. 2720 "Concerning the introduction of amendments to certain edicts" of 23 December 1995;
- Decree of the President No. 2198 "On State registration of legal persons" of 17 April 1995;
- List of Goods Subject to Non-Tariff Measures (submitted in August 2004); and
- Order No. 24-OD of the Chairman of the Agency On Regulation of Natural Monopolies, Protection of Competition and Support of Small Businesses "On Adoption of the Rules for Introduction and Discontinuation of Decreasing Coefficients for Tariffs on Regulated Rail Freight" of 12 December 1999.

Trade remedies

- Law "On Antidumping" (submitted in November 1999);
- Law No. 4414 "On Subsidies and Countervailing Measures" of 16 July 1999;
- Law No. 337-1 "On Safeguard Measures to Protect the Domestic Market" of 28 December 1998;
- Draft Law on Antidumping;
- Draft Law on Subsidies and Countervailing Measures; and
- Draft Law on Safeguard Measures.

Industrial Policy

- Law No. 156-XIII "Concerning transport" of 21 September 1994.

Standards, certification, technical regulations

- Law No. 433-1 "On Standardisation" of 16 July 1999;
- Law No. 434-1 "On Certification" of 16 July 1999;
- Law "Concerning the protection of consumer rights" of 5 June 1991;
- Law "On standardization and certification" of 18 January 1993;
- Decree No. 225 "Concerning the Committee for standardization, metrology and certification" of 21 February 1996;
- Order "Of customs control over production of compulsory certification" of January 1994;
- Resolution No. 411 "On stage-by-stage introduction of compulsory certification of products (works, services) in Kazakhstan" of 20 May 1993;
- Government Regulation No. 1112 "On Approval of List of Goods (Works, Services) Subject to Mandatory Certification for Conformity to Obligatory Requirements of Standards or Other Documents for Guarantee of Safety of Life and Health of Citizens, Property of Citizens, and Environment" of 15 July 1997 (Excerpt);
- List of organs for certification of similar products and accredited testing laboratories (centres), registered at the State Register of the State Certification System of the Republic of Kazakhstan, 1 January 1998;
- The List of Products (Works, Services) that are Subject to Mandatory Certification as to the Conformity with Requirements of Standards or other Codes that ensure the Safety for Life, Health of People, Property of Citizens, and Environment;
- Draft Law on Certification; and
- Draft Law on Standardisation.

SPS measures

- Law No. 334 "On Plant Quarantine" of 11 February 1999;
- Law No. 422 -1 "On Legal Protection of Selective Breeding Achievements" of 13 July 1999;
- Law No. 339-II "On Veterinary" of 10 July 2002;
- Resolution No. 1891 "On approval of the order of destruction or further reprocessing products in the case of their recognition as not suitable for sale and consumption" of 29 December 1995; and
- Draft Law on the Legal Protection of Selective Breeding Achievements.

Special economic zones

- Law No.2823 "On special economic zones" of 26 January 1996; and
- Edict No. 2824 "Concerning the introduction of amendments to certain laws and edicts" of 26 January 1996.

Government procurement

- Resolution No. 586 "On State Procurement of Goods" of 13 May 1996.

Intellectual Property protection

- Civil Code (Table of Contents);
- Articles 184, 199 and 200 of the Criminal Code, concerning intellectual property (submitted in September 1997);
- Law "Concerning trademarks, service marks and appellations of origin of goods" of 18 January 1993;
- Law No.456-1 "On trademarks, service marks and appellation of places of origin of goods" of 26 July 1999;
- Law "Concerning the copyright and allied rights" of 10 June 1996;
- Patent Law No. 1422-XII of 24 June 1992;
- Patent Law of 16 July 1999;
- Law No. 217 of the Republic of Kazakhstan "On Legal Protection of Layout Design of Integrated Microcircuits";
- Resolution No. 508 "On the establishment of state agency for copyright and related rights" of 8 July 1992;
- Decree No. 622 "Concerning the National Patent Department Attached to the Cabinet of Ministers" of 21 July 1992;
- Decree of the President No. 806 "On National Patent Office" of 23 June 1992;
- Decree No. 949 "Concerning the approval of procedure for issuing the protection documents on inventions, industrial samples, trademarks and service marks" of 11 November 1992;
- Resolution No. 926 "On rules of public demonstration of cine-video production" of 5 July 1995;
- Resolution No. 266 "On procedure of payments and amounts of duties for foreign applicants for legal actions connected with protection of industrial property objects within the territory of Kazakhstan" of 6 April 1993;

- Resolution No. 889 "On the procedure of payment and amounts of duties for patenting of inventions, industrial samples and utility models, registration of trademarks and service marks, registration and submitting the right of using the name of the place of goods' origin" of 20 October 1992;
- Resolution of the Cabinet of Ministers No. 896 "On Approval of the Regulation on Employee's Inventions, Utility Models and Industrial Designs Created in the Republic of Kazakhstan" of 11 August 1994;
- Regulation on the National Patent Office under the Cabinet of Ministers (with amendments in accordance with Resolution No. 1369 of the Cabinet of Ministers of 5 December 1994) approved by Resolution No. 877 of the Cabinet of Ministers of 16 October 1992;
- "Rules for Filing and Submission of Application for Registration of a Trademark" No. 226 of 30 April 1997;
- Declaration of the Republic of Kazakhstan on the International Treaties in the Field of the Protection of Industrial Property of 5 February 1993;
- Draft Patent Law (submitted April 1999); and
- Draft Law "On amendments and additions to certain legal acts of the Republic of Kazakhstan concerning intellectual property issues".

Services regulations

- Law "Concerning auditing" of 18 October 1993;
- Edict No. 2329 "Concerning Medical Insurance of Citizens" of 15 June 1995;
- Edict No. 2330 "On Measures for Implementation of the Edict "On Medical Insurance of Citizens"" of 15 June 1995;
- Edict No. 2444 "Concerning Banks and Banking Activity" of 31 August 1995;
- Decree No. 2445 "Concerning the efforts for the implementation of Edict "Concerning Banks and Banking Activity"" of 31 August 1995;
- Edict No. 2475 "Concerning Insurance" of 3 October 1995;
- Edict No. 2697 "Concerning the Utilization of Airspace and Activities of Aviation" of 20 December 1995;
- Decree No. 1803 "Issues of the state insurance monitoring" of 19 December 1995; and
- Resolution No. 478 "On the approval of the regulation on Licensing of Insurance Activities on the Territory of Kazakhstan" of 19 April 1996.

Trade agreements

- Decree No. 2461 of the President of the Republic of Kazakhstan "On Ratification of the Agreement "Concerning the Customs Union" between the Government of the Republic of Belorussia, the Republic of Kazakhstan and the Russian Federation" of 15 September 1995;
- Agreement on the Customs Union between the Russian Federation, the Republic of Belorussia and the Republic of Kazakhstan of 20 January 1995;
- Agreement between the Government of the Republic of Kazakhstan and the Government of the Russian Federation on the Uniform Procedure for Regulating Foreign Economic Activities of 20 January 1995;
- Resolution of the Intergovernmental Belorussian - Kazakh - Russian Commission "Terms of Formation of the Customs Union" of 22 November 1995;
- Protocol "On Introduction of Free Trade Regime Without Exceptions and Restrictions Between the Republic of Kazakhstan and the Russian Federation" of 20 January 1995;
- Protocol between the Government of the Republic of Kazakhstan and the Government of the Kyrgyz Republic and the Government of Uzbekistan Concerning Discussion of Issues of Participation of the Republic of Kazakhstan in the Customs Union between Belorussia, Kazakhstan and Russia of July 1995;
- Protocol between the Government of the Republic of Belorussia, the Government of the Republic of Kazakhstan and the Government of the Russian Federation Concerning Completion of the First Stage of Enforcement of the Treaty on the Customs Union of 22 November 1995;
- Agreement on Free Trade between the Government of the Kyrgyz Republic and the government of the Republic of Kazakhstan of 22 June 1995; and
- Agreement between the Government of the Republic of Kazakhstan and the Government of the Republic of Moldova on Free Trade of 26 May 1995.

Miscellaneous

- Kazakhstan Economic Trends - First Quarter 1996;
- Kazakhstan Economic Trends - February 1996; and
- Kazakhstan Economic Trends - Monthly update.

ANNEX II

List of National Companies and Joint Stock Companies with State Shares

No.	Business Name	State share (%)	Line of Activity, Notes
1	2	3	4
Oil and Gas			
1	JSC National Company "KazMunaiGaz" (Astana)	100	oil and gas
2	JSC Main Dispatching Unit for Oil and Gas Industry (Astana)	100	oil and gas
3	OJSC Pavlodar Petrochemical Plant (Pavlodar)	49	oil refinery, etc.
4	OJSC Kondensat (Aksai)	25	
Mining			
5	OJSC Joint Venture 'Vasilkovskoe Zoloto' (Akmola Oblast)	40	mining
6	OJSC Sokolovsk-Sarbai Conglomerate Mill (Rudny, Kostanai Oblast)	39.5	mining
7	OJSC Akbaka Concentration Plant (Zhambyl Oblast)	33.3	mining, etc.
8	JSC Transnational Company 'Kazchromium' (Almaty)	31.37	metallurgical industry
9	JSC KazZinc (Ust-Kamenogorsk)	27.64	metallurgical industry
10	OJSC Maikainzoloto (Pavlodar Oblast)	25	mining, etc.
Manufacturing			
11	OJSC National Company "Kazakhstan Engineering" (Astana)	100	mechanical engineering
12	OJSC Kazchermetautomatica (Karagandy)	90	mechanical engineering
13	OJSC Temirbeton (Almaty)	55.71	construction materials
14	OJSC Yrasty-AEVRZ (Almaty)	50	rail car maintenance
15	OJSC Kazakhstanractor (Pavlodar)	33.92	mechanical engineering
16	OJSC Joint Venture 'Belkampit' (Almaty)	22.84	mechanical engineering
Energy			
17	OJSC Kazakhstan Electricity Grid Operating Company (KEGOC) (Almaty)	100	transportation of electric energy, National Company
18	CJSC National Nuclear Power Company "Kazatomprom" (Almaty)	100	nuclear energy, National Company
19	OJSC Shardara Water Power Plant (South Kazakhstan)	100	electric energy
20	CJSC Kazakhenergoexpertise (Almaty)	100	power equipment testing
21	CJSC Operator of the Market of Electric Energy and Generated Output of the Republic of Kazakhstan (Almaty)	100	electric energy market tendering
22	CJSC Ekibastuz Power Center (Ekibastuz)	100	electric energy
23	OJSC Taldykorgan Joint-Stock Company for Transportation by Electric Networks (TATEC) (Almaty Oblast)	100	transportation of electric energy, etc.
24	OJSC Kyzylorda Distributing Power Company (Kyzylorda)	100	transportation of electric energy, etc.
25	OJSC West Kazakhstan Distributing Power Company 'Uralskenergo' (Uralsk)	100	transportation of electric energy, etc.
26	OJSC Mangystau Distributing Power Company (Aqtau)	93.8	transportation of electric energy, etc.
27	OJSC Zhezkazgan Distributing Power Company (Zhezkazgan)	90	transportation of electric energy

No.	Business Name	State share (%)	Line of Activity, Notes
1	2	3	4
28	OJSC Bukhtarma Water Power Plant (East Kazakhstan)	90	electric energy
29	OJSC Chokin Institute of Power Research of the Republic of Kazakhstan (Almaty)	49.34	power research
30	OJSC Eurasian Power Corporation (Aksu, Pavlodar Oblast)	24.33	electric energy
31	OJSC Astanaenergосervice (Astana)	15.34	energy services
Transport and Communications			
32	JSC National Company 'Kazakhstan Temir Zholy' (Astana)	100	rail transportation
33	CJSC Air Astana (Astana)	51	air transportation
34	OJSC Atyrau Aue Zholy (Atyrau)	29.7	air transportation
35	OJSC Aircompany 'Zhezkazgan Air' (Zhezkazgan)	90	air transportation, etc.
36	JSC International Airport 'Aqtobe' (Aqtobe)	100	airport services
37	CJSC International Airport 'Astana' (Astana)	100	national company
38	CJSC National Shipping Company "Kazmortransflot" (Astana)	50	maritime traffic
39	OJSC Kazakhtelecom (Astana)	50	communications, national company
40	OJSC Kazmail (Almaty)	100	communications, national company
41	JSC Republican Center of Space Communications and Electromagnetic Compatibility of Radioelectronic Facilities (Astana)	100	space technologies and communications
42	CJSC Catelco (Almaty)	37	satellite communications
43	CJSC National Information Technologies (Astana)	100	development and implementation of computer technologies
Agriculture			
44	JSC Food Contract Corporation (Astana)	100	procurement and storage of national grain reserves, National Company
45	CJSC Kazagrex (Almaty)	100	grain quality testing
46	CJSC Corporation of Animal Products (Astana)	100	processing of agricultural products
47	OJSC Asyl Tulik (Aqmola Oblast)	76.77	breeding
48	OJSC Breeding Station "Astana-Kus" (Aqmola Oblast)	70	poultry breeding
49	OAQ Sultan (Petrovavl)	58.66	grain storage, etc.
Education and Science			
50	CJSC Karagandy Institute of Metallurgy (Temirtau)	97	scientific research in mining
51	OJSC Road Research Institute of the Republic of Kazakhstan (Almaty)	90.01	highway design
52	JSC S.Seifullin Agrarian University of the Republic of Kazakhstan (Astana)	80	education
53	CJSC Zhezkazgan Baikonurov University (Zhezkazgan)	80	education
54	CJSC Institute of Complex Subsurface Development (Karagandy)	80	
55	OJSC Academy of Civil Aviation (Almaty)	80	education
56	CJSC F.F.Mukhamedgaliev Institute of Experimental Biology (Almaty)	54	biological research

No.	Business Name	State share (%)	Line of Activity, Notes
1	2	3	4
57	OJSC T.Ryskulov University of Economics of the Republic of Kazakhstan (Almaty)	35	education
58	JSC Academy of Sports and Tourism of the Republic of Kazakhstan (Almaty)	35	education
59	TOO Institute of Organic Synthesis and Coal Chemistry (Karagandy)	35	scientific research in organic chemistry
60	JSC Head Academy of Architecture and Construction of the Republic of Kazakhstan (Almaty)	35	education
61	OJSC M.Tynyshpaev Kazakh Academy of Transport and Communications (Almaty)	35	education
62	OJSC Abylai-khan University of Foreign Affairs and World Languages (Almaty)	35	education
63	OJSC Humanitarian University of Law of the Republic of Kazakhstan (Astana)	35	education
64	JSC Almaty Institute of Energy and Communications (Almaty)	33.6	education
65	OJSC Almaty Technological University (Almaty)	20.01	education
Finance			
66	CJSC Fund for the Development of Small Businesses (Almaty)	100	lending to small businesses
67	CJSC Kazakh Center for the Promotion of Investments (Almaty)	100	assessment of investment projects
68	JSC National Fund of Innovations (Almaty)	100	investments
69	JSC Investment Company: Investment Fund of Kazakhstan (Almaty)	100	investments
70	JSC National Insurance Corporation for the Insurance of Export Loans and Investments (Almaty)	100	investments
71	JSC Kazagrommarketing (Astana)	100	agricultural marketing
72	JSC Agrarian Credit Corporation (Astana)	100	agricultural lending
73	CJSC Fund for the Financial Support to Agriculture (Astana)	100	agricultural lending
74	JSC KazAgroFinance (Astana)	100	agricultural lending
75	CJSC Rehabilitation Fund (Astana)	100	repayment of relief loans
76	CJSC Debt Management Center	100	financial debt management
77	JSC Housing Savings Banks of Kazakhstan (Almaty)	100	banking
78	CJSC Capital Development Corporation (Astana)	100	attraction of investments
79	CJSC National Accumulation Insurance Fund (GNPF) (Astana)	100	pension fund, etc.
80	JSC Grain Liabilities Guaranty Fund (Astana)	90	guarantee of liabilities of grain receiving companies
81	JSC Development Bank of Kazakhstan (Astana)	80	banking
Mass Media			
82	OJSC Kazakh Gazetteri (Almaty)	100	mass media
83	JSC Republican Newspaper "Egemen Kazakhstan" (Astana)	100	mass media
84	JSC Republican Newspaper "Kazakhstanskaya Pravda" (Astana)	100	mass media
85	OJSC Zhas Orken (Almaty)	100	mass media
86	JSC Republican Television and Radio Corporation 'Kazakhstan' (Almaty)	100	radio- and tele-broadcasting

No.	Business Name	State share (%)	Line of Activity, Notes
1	2	3	4
87	CJSC Television and Radio Complex of the President of the Republic of Kazakhstan (Astana)	100	radio- and tele-broadcasting
88	OJSC Kazteleradio (Almaty)	78	transmission of tele- and radio signals, etc.
89	JSC Khabar Agency (Almaty)	50+1 share	radio- and tele-broadcasting
90	OJSC National Company 'Kazakh Information Agency' (Astana)	100	National Company
Publishing			
91	OJSC Semei Polygraphy	34	polygraphy
92	OJSC Kazbaspasoz (Almaty)	100	polygraphy
93	CJSC Publishing House of Magazine 'Health Service in Kazakhstan' (Almaty)	100	publishing
94	CJSC Kazakh Encyclopedia (Almaty)	100	publishing
95	CJSC Mektep Press	80	publishing
96	OJSC Alatau Press (Almaty)	34	polygraphy
97	OJSC Karagandy Polygraphy (Karagandy)	49	polygraphy
Miscellaneous			
98	OJSC National Assessment and Certification Center (Astana)	100	assessment, certification
99	OJSC National Accreditation Center (Astana)	100	pre-accreditation document preparation
100	CJSC Republican Information and Show Center for Small Businesses (Astana)	100	information services for small businesses
101	OJSC Kazakhvzryvprom (Almaty)	100	blasting operations
102	JSC Center of Engineering and Transfer of Technologies (Astana)	100	
103	OJSC National Center 'Kurylysconsulting' (Astana)	100	real estate assessment
104	CJSC Institute of Legislature of the Republic of Kazakhstan (Astana)	100	legal services
105	OJSC Zan (Almaty)	67	legal services
106	CJSC Logistics Office of the Ministry of Education (Astana)	100	support of the public body
107	CJSC Diplomatic Corps Managment Department (Almaty)	100	support of diplomatic corps
108	JSC Marketing Research Center (Almaty)	100	consultation services
109	OJSC Medical Transport Service (Almaty)	34	medical services, sanitation
110	CJSC Front Office for Construction Site Surveillance of the Administration of the President (Astana)	100	construction site surveillance
111	CJSC Alatau Hotel (Astana)	54	hotel services
112	OJSC Health Resort 'Almaty' (Almaty)	100	medical services, sanitation
113	CJSC Industrial Park (Almaty)	100	innovation projects
114	CJSC Republican Center of Folk Medicine (Almaty)	100	medical services
115	OJSC Industrial Part of the Association "Progress" (Stepnogorsk)	100	
117	CJSC Contract Agency of the Republic of Kazakhstan (Astana)	100	
116	OJSC Kazpromgeofizica (Almaty)	96.54	geology
118	Mangystau Industrial Company (Aqtau)	100	

ANNEX III

List of Services Provided by Natural Monopolies

No.	Types of activities referred to the sphere of natural monopoly in accordance with the Law of the Republic of Kazakhstan (hereinafter RK) "On Natural Monopolies"	Regulated types of services	Number of natural monopoly entities providing such types of services included in the State Register		Total	Regulation mechanism	The list of legal acts regulating the activities of natural monopoly entities and issues of tariff setting
			Republican sections	Local sections			
1	Transportation of oil and/or oil products by main pipelines CPC (713, 7131, 7139, 71310)	Transportation of oil and/or oil products by main pipelines	2		2	Approval of a tariff (prices, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The Law of the RK "On Natural Monopolies" dated 9 July 1998; the Law of the RK "On competition and limitation of monopoly activities" dated 19 January 2001; the Law of the RK "On power industry" dated 16 July 1999 No. 438-1
2	Transportation of gas and/or gas condensate by main pipelines CPC (713, 7131, 7139, 71310)	Transportation of gas and/or gas condensate by main pipelines	1	5	6	Approval of a tariff (prices, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The Resolution of the Government of the RK "On approval of the Program of Natural Monopoly Entity Tariff Policy Improvement for the period of 2002 – 2004" dated 15 October 2002 No. 1126
3	Transportation of gas and/or gas condensate by distributing pipelines CPC (713, 7131, 7139)	Transportation of gas and gas condensate by distributing pipelines	1	33	34	Approval of a tariff (prices, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The Resolution of the Government of the RK "On approval of the Regulation for public hearings conduct when considering the applications for approval or change of the tariffs (prices, fee rates) of natural monopolies" dated 21 April 2003 No. 376
4	Operating of gas distributing settings and connected gas distributing pipelines CPC 713	Operating of gas distributing settings and connected gas distributing pipelines		8	8	Approval of a tariff (prices, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The Resolution of the Government of the RK "On additional measures for the state regulation of natural monopoly's service charges and tariffs" dated 9 April 1999 No. 400; The Concept on Further Market Relations Development in the Power Industry of the RK approved by the Resolution of the Government of the RK of 18 February 2004 No. 190; The Republic of Kazakhstan's Telecommunication Sector Development Program for the years 2003 – 2005", approved by the Resolution of the Government of RK of 18 February 2003 No. 168;

No.	Types of activities referred to the sphere of natural monopoly in accordance with the Law of the Republic of Kazakhstan (hereinafter RK) "On Natural Monopolies"	Regulated types of services	Number of natural monopoly entities providing such types of services included in the State Register		Total	Regulation mechanism	The list of legal acts regulating the activities of natural monopoly entities and issues of tariff setting
			Republican sections	Local sections			
							The Program of Railway Transport Restructuring for the years 2004-2006 approved by the Resolution of the Government of the RK of 6 February 2004 No. 145
5	Delivery and/or distribution of of electric power by regional or interregional electric networks CPC 87700	Delivery of electric power; Distribution of electric power; Services on providing reliability and stability in supply of electric power for electric power consumers	9	91	98	Approval of a tariff (prices, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The Agency Order "On Approval of the Regulation on Expenses Formulation Used to Determine the Tariffs (Prices, fee rates) for the Services (Goods, Works) of Natural Monopolies" of 30 July 2003 No. 185-OD
			9	88	94		
			1		1		
6	Services on technical production control of delivery into the network and consumption of electric power CPC 87700	Services on technical production control of delivery into the network and consumption of electric power	1		1	Approval of a tariff (prices, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The Agency Order No. 82-OD dated 19 March 2003 "On adoption of Instructions on the approval of tariffs (prices, fee rates) and tariff estimates on services (goods, works) of natural monopolies";
7	Delivery and/or distribution of heat energy CPC 88	Delivery and/or distribution of heat energy	7 7	162 162	167 167	Approval of a tariff (prices, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The Agency Order No. 30-OD dated 3 February 2003 "On adoption of Instructions on the approval and introduction of tariffs (prices, fee rates) for services (goods, works) of natural monopolies for a medium term period"
8	Production of heat energy by heating boiler-houses, stations with mixed type of production CPC 88	Production of heat energy by heating boiler-houses, stations with mixed type of production	4	135	139	Approval of a tariff (prices, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The Order of the Agency No. 49-OD dated 24 February 2003 "On adoption of the Instruction on approval of natural monopoly's reorganization or liquidation at the authorized body"

No.	Types of activities referred to the sphere of natural monopoly in accordance with the Law of the Republic of Kazakhstan (hereinafter RK) "On Natural Monopolies"	Regulated types of services	Number of natural monopoly entities providing such types of services included in the State Register		Total	Regulation mechanism	The list of legal acts regulating the activities of natural monopoly entities and issues of tariff setting
			Republican sections	Local sections			
9	Services of main railway network CPC 71111, 71112 CPC 7112 CPC 71124	Transportation of cargo by republican and international communications, excluding transit transportation; Transportation of passengers by railways in republican and international communications, excluding transportation of passengers by trains formed of the carriages produced by "Patents Talgo SA" Spanish company Transportation of luggage and cargo by railways; Transportation of mail by railways	1		1	Approval of a tariff (prices, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The Agency Order No. 121-OD dated 4 May2003 "On adoption of the Instruction for approval by the authorized body the conduct of other types of activities technically related to the main activities and/or relevant to the natural monopoly's sphere in regard to the Kazakh legislation on mail"
			1		1		
			1		1		
			1		1		
10	Approaching ways services	Approaching ways services	2	92	90	Approval of a tariff (prices, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The Agency Order No. 16-OD dated 27 January 2003 "On adoption of the Instruction on approval and concordance of natural monopolies' investment projects"
11	Aeronavigation services CPC 7453	Aeronavigation servicing in airspace of RK; Aeronavigation servicing in the aerodrome area	1 1		1 1	Approval of a tariff (prices, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The Agency Order No. 125-OD dated 5 May 2003 "On the Instruction on approval of alienation and other property transactions of natural monopolies with the authorized body"

No.	Types of activities referred to the sphere of natural monopoly in accordance with the Law of the Republic of Kazakhstan (hereinafter RK) "On Natural Monopolies"	Regulated types of services	Number of natural monopoly entities providing such types of services included in the State Register		Total	Regulation mechanism	The list of legal acts regulating the activities of natural monopoly entities and issues of tariff setting
			Republican sections	Local sections			
12	Port services CPC 745	Ship services; Lighthouse services; Channel passing services; Mooring services; Anchor services; Tie-down services; Environment protection measures; Quarantine services; Shipment and dumping works.	1		1	Approval of a tariff (prices, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The Agency Order No. 57-OD dated 26 February 2003 "On approval of the Regulation for addition and exclusion of natural monopolies from the State Register of natural monopoly entities"
			1		1		
			1		1		
			1		1		
			1		1		
			1		1		
			1		1		
13	Airport services CPC 731	Services on providing take off and landing of an aircraft; Services on providing aviation safety	2	18	20	Approval of a tariff (prices, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The Agency Order No. 80-OD dated 19 March 2003 "On adoption of the Regulation on tariff establishment (prices, fee rates) according to a simplified procedure"
			2	18	20		
14	Telecommunication services with the use of local networks CPC (752, 75211, 75212)	Connection of subscriber terminal to the telecommunication network ; Providing local telephone communication according to a subscriber payment system; Providing local telephone communication according to time payment system; Providing inter-town telephone communication; Leasing of digital telephone channels of inter-town and zonal networks; Telegram sending in RK; Providing television broadcasting channel; Providing network resources to communication statement	3	12	15	Approval of a tariff (price, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The Agency Order No. 46-OD dated 20 February 2003 "On approving the Regulation on reducing tariffs (prices, collection rates) for services (goods, works) provided for all consumers of natural monopoly entities during validity of tariffs (prices, collection rates)"; The Order of the Agency No. 216-OD dated 28 October 2002 "On approving the Regulation on applying antimonopoly regulation measures in case of violation of antimonopoly legislation"

No.	Types of activities referred to the sphere of natural monopoly in accordance with the Law of the Republic of Kazakhstan (hereinafter RK) "On Natural Monopolies"	Regulated types of services	Number of natural monopoly entities providing such types of services included in the State Register		Total	Regulation mechanism	The list of legal acts regulating the activities of natural monopoly entities and issues of tariff setting
			Republican sections	Local sections			
15	Water management system services CPC (9401, 94010)	Delivery of water by main networks; Delivery of water by distribution networks; Water scoop and water purification	3		3	Approval of a tariff (price, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The order of the Agency No. 149-OD dated 6 June 2003 "On approving the Regulation on procurement of material, financial resources and services, the costs of which are taken into account when setting tariffs (prices, collection rates) on the services provided by natural monopoly entities
			4	315	319		
			7	315	322		
16	Sewerage system services CPC (940, 401, 94010)	Drainage of sewage water; Purification of sewage water	3	159	162	Approval of a tariff (price, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The Order of the Agency No. 04-OD dated 13 January 2003 "On terms of approving tariffs (prices, collection rates) for the services (goods, works) of natural monopoly entities"
			3	159	162		
17	Public mail services CPC 751	Sending of a letter; Sending of a card; Sending a postal wrapper	1		1	Approval of a tariff (price, fee rates); Approval of tariff estimates; Imposition of a temporary decreasing coefficient; Special order of expenses accumulation	The Order of the Agency No. 118-OD dated 7 June 2002 "On approving the Regulation on preparing, compiling and agreeing a normative legal act and legal act drafts of the Agency of the Republic of Kazakhstan on regulation of natural monopolies and protection of competition"; The Order of the Agency No. 44-OD dated 20 February 2003 "On additional requirements to the mandatory annual natural monopoly entity audit agreement"; The Order of the Agency of 26 December 2003 No. 341-OD "On approving the Regulation on agreeing a temporary compensating tariff (price, collection rate)"; The Order of the Agency "On approving the Regulation on natural monopoly entity investment program implementation efficiency monitoring" of 26 December 2003 No. 340-OD; The Regulation on public utilities services providing and the Regulation on electric power consumption, The Regulation on heating power consumption approved by the resolution of the Government of the republic of Kazakhstan of 7 December 2000 No. 1822; The Regulation on establishing and cancellation of reducing coefficients to the
			1		1		
			1		1		

No.	Types of activities referred to the sphere of natural monopoly in accordance with the Law of the Republic of Kazakhstan (hereinafter RK) "On Natural Monopolies"	Regulated types of services	Number of natural monopoly entities providing such types of services included in the State Register		Total	Regulation mechanism	The list of legal acts regulating the activities of natural monopoly entities and issues of tariff setting
			Republican sections	Local sections			
							tariffs on electric power delivery (transit) services approved by the Order of the Chairman of the Agency of 29 December 1999 No. 23-OD registered in the Ministry of Justice of the Republic of Kazakhstan of 6 January 2000 No. 1025

ANNEX IV

Excise Tax Rates Applied to Domestically Produced and Imported Goods (approved by the Resolution of the Government of the Republic of Kazakhstan No. 137 dated 28 January 2000)

Code of foreign trade invoice	Title	Tax base (object of imposing)	Excise rates for:	
			Manufactured goods and gambling business (KZT)	Imported goods (Euro)
	All types of spirits (except alcohol sold as alcoholic beverages, medical and pharmaceutical medication if producers have the licence for production of indicated goods and received by state medical institutions within the limits of established quotas)	physical volume	300/1 litre	3 euro*/1litre
	Alcohol sold for production of alcoholic beverages if producers have the licence for production of indicated goods	physical volume	30/1 litre	0.3/1 litre
2208**	Alcoholic beverages (except some low alcohol beverages with ethyl spirit content up to 12%, balms, alcohol registered in accordance to the legislation of the Republic of Kazakhstan as medication, cognac, brandy, wine beverages, wine, champagne, sparkling wine, aerated wine, processed wine and beer)	physical volume	125/1 litre of waterless (100%) alcohol	1.7/1 litre
	Other low alcohol beverages with ethyl spirit content up to 12%	physical volume	125/1 litre of waterless (100%) alcohol	0.4/litre
	Balms registered as medication in accordance with the legislation of the Republic of Kazakhstan	physical volume	10/1 litre	0.4/1 litre
	Cognac, brandy	physical volume	20/ 1 litre	1.7/1 litre
	Balms registered as medication in accordance with the legislation of the Republic of Kazakhstan	physical volume	10/1 litre	0.4/1 litre
	Wine drinks	physical volume	30/1 litre	0.4/1 litre
	Cognac, brandy	physical volume	20/1 litre	1.7/1 litre
	Wine drinks	physical volume	30/1 litre	0.4/ 1 litre
From 2204, 2205, 2206 00	Wine (except champagne, sparkling wine, aerated (pearl)	physical volume	10/1 litre	0.4/1 litre
	Champagne, sparkling wine, aerated (pearl)	physical volume	20/1 litre	0.4/1 litre
2203 00**	Beer	physical volume	7/1 litre	0.2/1 litre
2402**	Tobacco goods with filter	physical volume	180/1,000 units	2/1,000 units
	Tobacco goods without filter and other products containing tobacco		100/1,000 units	2/1,000 units
from 0301, 0302, 0303, 0304, 0305, 1604 **	Sturgeon and salmon caviar	For produced– cost, for imported – custom value	100%	100%
271000270- 271000360**	Gasoline(except aviation spirit):	physical volume		31/1 tonne
	Wholesale trade of gasoline (except aviation spirit) by producers	physical volume	4,500/1tonne	
	Retail trade of gasoline (except aviation spirit) by producers, use for own industrial needs	physical volume	5,000/1tonne	
	Retail trade of gasoline and diesel oil by juridical and natural persons (except aviation spirit)) use for own industrial needs	physical volume	5,00/1tonne	
271000610,	Diesel oil	physical volume		-

Code of foreign trade invoice	Title	Tax base (object of imposing)	Excise rates for:	
			Manufactured goods and gambling business (KZT)	Imported goods (Euro)
271000650, 271000690**	Wholesale trade of diesel oil (except aviation spirit) by producers	physical volume	540/1 tonne	
	Retail trade of diesel oil (except aviation spirit) by producers, use for own industrial needs	physical volume	600/1 tonne	
	Retail trade of diesel oil (except aviation spirit) by juridical and natural persons, use for own industrial needs	physical volume	60/1 tonne	
8703	Cars	Custom value or volume of the engine	-	10 per cent, but not less than 0.5/cubic cm. (only for cars with the volume of the engine more than 3,000 cubic cm.)
	Gambling business (except lottery)	Game table	130-740 MCI	-
		game-playing machine with money prize	5-25 MCI	-
		Totalizing cash register	80-200 MCI	-
		cash register	20-100 MCI	-
	Lottery organization and conducting	Declared - 10 per cent gain deducting the amount not including excise tax of prize fund	10%	-

* Euro is calculated in Tenge according to the exchange rate of the National Bank of the Republic of Kazakhstan on the date established by the custom legislation for paying the customs duties.

** Nomenclature of goods is defined as foreign trade invoice code as well as a title of goods

ANNEX V

A. List Of Goods Subject to Import and Export Licensing (approved by the Resolution No. 1037 of the Government of the Republic of Kazakhstan (RK) on 30 June 1997)

HS Number	Goods	Ministries responsible for administration of licence	Ministries subject to coordination upon issuing licences	Type of licence	Justification
01011990, 01029090, 01039190, 01039290, 01041080, 01042090, 01060090 (only wild animals) 070951, 07095200, 071080610, 071080690	Wild animals, wild growing plants (besides those falling under the Convention on trade of endangered wild life and fauna)	Ministry of Industry and Trade of the RK	The Licence issuing on the basis of permission of the Government of the RK	Export	This measure applies for the purposes of environment protection of the RK.
87100000, 8802 (except 880211100, 880212100, 880220100, 880230100, 880240100), 8803(except 880310100, 880320100, 880330100, 880390910), 880400000, (only for military purposes) 8805(except 880520100), 890600100, 930100000, 930200, 9305 (only to fighting guns), 9306 (except 930610000, 930629400, 930630910-930630980, 930690900, 901310000(only for military purposes) 901320000(only for military purposes) 901380 (only for military purposes), 9014 (only for military purposes), 8525 (only for military purposes), 8526 (only for military purposes)	Army equipment and military devices, specially completed Articles for it's production, works and services in the field of military-technical cooperation.	Ministry of Industry and Trade of the RK	The Licence issuing on the basis of permission of the Government of the RK	Export/ Import	This measure is used for the reason of the national security interests protection in regards to trade of guns, ammunition, military materials, which directly or indirectly used for the purpose of supplying the military forces.

HS Number	Goods	Ministries responsible for administration of licence	Ministries subject to coordination upon issuing licences	Type of licence	Justification
2844 (except oxide- protoxide of natural uranium, unity of uranium by enrichment till 20% under uranium isotope 235 and sources of radiation ionizing, which not contain divisible element), 2845, 380110000 only pure nuclear graphite), 8401, 711041000	Nuclear materials, technology, equipment and settlements, special non nuclear materials, sources of active radiation, including radioactive waste products.	Ministry of Industry and Trade of the RK	The Licence issuing on the basis of permission of the Government of the RK	Export/ Import	This measure applies for the purposes of protection of the state security interests in regards to splitting materials or materials they are produced from, and also for the purposes of life and health protection of the Kazakh population.
9022	X-ray equipment, devices and equipments with use of radioactive substances and isotopes.	Ministry of Industry and Trade of the RK	Ministry of Health of the RK.	Export/ Import	This measure applies for the purposes of life and health protection of the Kazakh population.
040700900, 0507, 050800000, 0604, 051000, 071230000, 080221000, 08022200, 0810, 0812, 121220000, 1301, 1302 (except 130219300), 9601	Elephant bone, antlers, hoofs, maral's antlers, corals and analogous materials (besides those falling under the Convention on trade of endangered wild life and fauna)	Ministry of Industry and Trade of the RK	Ministry of Agriculture, Ministry of Environment protection of the RK	Export	This measure applies for the purposes of environment protection of the RK.
020610100, 020622100, 020629100, 020630100, 020641100, 020680100, 020690100 (only from wild animals), 0507 (only medicine raw materials), 051000,1211, 121220000,1302 (except 130219300), 3001,3002 (except ready done medicine materials)	Medicine raw materials of vegetable and animal origin	Ministry of Industry and Trade of the RK	Ministry of Agriculture, Ministry of Environment protection of the RK	Export	This measure applies for the purposes of environment protection of the RK.
According to list confirmed by the Government of the RK	Poison	Ministry of Industry and Trade of the RK	Ministry of Health of the RK, Ministry of the Environment protection of the RK	Export/ Import	This measure applies for the purposes of life and health protection of the Kazakh population.
280470001	Yellow Phosphorus ("white")	Ministry of Industry and Trade of the RK	Ministry of Environment protection of the RK	Export	This measure applies for monitoring of exports of such products since they are extremely dangerous to human life and health.

HS Number	Goods	Ministries responsible for administration of licence	Ministries subject to coordination upon issuing licences	Type of licence	Justification
According to list confirmed by the Government of the RK	Some types of raw materials, articles, equipment, technology and scientific-technical information, which can be used in creation of army equipment and devices.	Ministry of Industry and Trade of the RK	Ministry of Education of the RK – Academy of Science, Committee of National Security	Export	This measure is used for the reason of the national security interests protection in regards to trade of guns, ammunition, military materials, which directly or indirectly used for the purpose of supplying the military forces.
According to list confirmed by the Government of the RK	Materials, equipment and technology, which have peaceful meaning, but can be used in creation of missile, nuclear and other types of weapon of mass destruction	Ministry of Industry and Trade of the RK	Ministry of Education, Academy of Science, Committee on National Security	Export	This measure applies for the purposes of the national security interests protection as of possible use of these products in military time or in other extraordinary circumstances in the international relations.
8471 (only figure typed technics) 847330 (only for figure typed technics) 854390900 (only for figure typed technics)	Code means (including code technics, components for code technics and programme packets for code), normative- technical documentation to code means (including constructive and exploitational)	Ministry of Industry and Trade of the RK	Committee on National Security	Export/ Import	This measure applies for the purposes of the international and national safety.
360100000 (except for the gunpowder) 360200000, 360300,3604	Gunpowder, explosive substances, means of explosion and pyrotechnics	Ministry of Industry and Trade of the RK	Ministry of Internal Affairs	Export/ Import	This measure is used for the reason of the national security interests protection in regards to trade of guns, ammunition, military materials, which directly or indirectly used for the purpose of supplying the military forces.

HS Number	Goods	Ministries responsible for administration of licence	Ministries subject to coordination upon issuing licences	Type of licence	Justification
According to list confirmed by the Government of the RK	Official and civil gun	Ministry of Industry and Trade of the RK	Ministry of Internal Affairs	Export/Import	This measure is used for the reason of the national security interests protection in regards to trade of guns, ammunition, military materials, which directly or indirectly used for the purpose of supplying the military forces.
According to list confirmed by the Government of the RK	Means of protection from fighting poison gas, its parts and accessories.	Ministry of Industry and Trade of the RK	Ministry of Defense of the RK	Export/Import	This measure is used for the reason of the national security interests protection in regards to trade of guns, ammunition, military materials, which directly or indirectly used for the purpose of supplying the military forces.
	Normative-technical documentation to products of military purpose (including constructive and explotational)	Ministry of Industry and Trade of the RK	Ministry of Defense of the RK, Committee on National Security	Export/Import	This measure applies for the purposes of protection of the national security interests in regards to trade of guns, ammunition, military materials, which directly or indirectly conducted for the purposes of provision of the military forces.
261100000, 2613-2615, 280450, 280490000, 280521000, 280530100, 280540100, 2825 (except five-oxide, for vanadium production), 282619000, 284170000284190900, 2846, 740500000 750220000, 760120100, 8101, 8103, and mineral 810411000, 8105, 810600, 8108 resources (except titanium sponge), 8109, 8112, 811300	Rare Metals, rare ground raw materials, alloy, combinations and Articles	Ministry of Industry and Trade of the RK	Committee on atomic energetic of the Ministry of Atomic Energy and Mineral Resources of the RK	Export	This measure is used for the reason of the national security interests protection in regards to trade of guns, ammunition, military materials, which directly or indirectly used for the purpose of supplying the military forces.

HS Number	Goods	Ministries responsible for administration of licence	Ministries subject to coordination upon issuing licences	Type of licence	Justification
830170000, 847130000, 847141900, 847149900, 847150900, 847330100, 851750, 851780900, 8525, 852610900, 852691, 8527, 854389900, 901910900, 9006, 902219000, 902229000 (only special technical devices, devices of information defense and other technics of double application)	Special technical devices intended for special operative-investigation activity, sources of information defense, other technics of double application (including its components, application programme packets), normative-technical documentation to special technical means (including constructive and exploitational)	Ministry of Industry and Trade of the RK	Committee on National Security	Export	This measure applies for the purposes of the international and national safety.
2612,2805,2841,2844 (only oxide-protioxide of natural uranium, unity of uranium by enrichment till 20% under uranium isotope 235 and sources of radiation ionising. Not contain divisible elements), 380110000 (except pure –nuclear graphite), 711011000, 711220000, 711290000, 711510000, 740500000, 750220000, 760120, 760200900, 760820, 9022	Nuclear materials, technologies, equipment and settlements, special non nuclear materials, sources of radioactive radiation, apparatus, based on application of X-ray, alpha-, beta- or gamma-radiation.	Ministry of Industry and Trade of the RK	Committee on atomic energy of the Ministry of Energy and mineral resources of the RK.	Export/ Import	This measure applies for the purposes of protection of the state security interests in regards to splitting materials or materials they are produced from, and also for the purposes of life and health protection of the Kazakh population.
3808 (only preparations for plant protection)	Chemical sources of plants protection	Ministry of Industry and Trade of the RK	Ministry of Agriculture, Ministry of Environment protection of the RK	Import	This measure applies for the purposes of environment protection of the RK
261800000-2620, 3915	Industrial waste materials	Ministry of Industry and Trade of the RK	Ministry of Environment protection of the RK	Import	This measure applies for the purposes of environment protection of the RK
121190800	Opium raw materials (medicinal herbs)	Ministry of Industry and Trade of the RK	Ministry of Health of the RK	Import	This measure is used for monitoring the import inflows since these products are rare found plants.
210690200	Components of alcohol, half-finished products, except of products made on the base fragrant substances, used in beverages production.	Committee of state control for production and turnover of excise products of the Ministry of Finance of the RK		Import	This measure applies for the purposes of life and health protection of the RK.
2203 00	Beer made from malt				
2204, 2205, 2206	Wine				
2207	Ethyl alcohol				

HS Number	Goods	Ministries responsible for administration of licence	Ministries subject to coordination upon issuing licences	Type of licence	Justification
2208	Ethyl alcohol non-denaturative with alcohol concentration less than 80%, alcohol nastoyka, liqueur and other alcohol drinks				
830170000, 847130000, 847141900, 847149900, 847150900, 847330100, 851750, 851780900, 851810, 851840, 851850900, 852032, 852033, 852090900, 8521, 8525, 8526, 8527 854389900, 900219000, 900580000, 9013, 901910900, 9006, 902219000, 902229000, (only special technical devices, devices of information defense and other technics of double application)	Special technical devices intended for special operative-investigation activity, sources of information defense, other technics of double application (including its components, application programme packets), normative-technical documentation to special technical means (including constructive and explotational)	Ministry of Industry and Trade of the RK	Committee on National Security	Import	This measure applied for the purposes of international and national safety.
271000210, 271000250, 271000390, 271000410, 271000450	White-spirit, other weak distillates, other medium distillates for specific processes of processing for chemical conversion in processes	Ministry of Industry and Trade of the RK	Ministry of Energy and Mineral resources of the RK	Import	Licensing of these products was introduced to import quota which applied toward these products till 31 December 2002. The Republic of Kazakhstan therefore is considering discontinue application of import licensing toward them.

B. List of Goods, that are Exported under Licence in Accordance with International Obligations of the Republic of Kazakhstan
(approved by the Resolution No. 1037 of the Government of the Republic of Kazakhstan on 30 June 1997)

HS Number	Goods	Ministries responsible for administration of licence	State bodies of the RK, which coordinates the decision about issuing of licence	Justification
7208 10 000, 7211 14 100, 7208 25 000, 7208 38 900, 7208 39 900, 7211 19 200, 7208 26 000, 7208 27 000, 7219 11 000, 7219 12 100, 7219 12 900, 7219 13 100, 7219 13 900, 7219 14 100, 7219 14 900, 7208 36 000, 7208 37 900, 7225 20 200, 7225 30 000	Sheet of rolled metal 1 Rolls	Ministry of Industry and Trade of the RK	-	This measure is used to fulfil the RK's obligations, under the Agreement between the Government of the RK and the European Coal and Steel Union on trade of certain steel products dated 15 December 1999.
7208 37 100, 7208 38 100, 7208 39 100	SA 1a Rolls, intended for secondary rolling process			
7208 40 100, 7208 51 100, 7208 51 300, 7208 51 500, 7208 51 910, 7208 51 990, 7208 52 100, 7208 52 910, 7208 52 990, 7208 53 100, 7211 13 000	SA 2 thin sheet steel			
7208 40 900, 7208 53 900, 7208 54 100, 7208 54 900, 7208 90 100, 7209 15 000, 7209 16 100, 7209 16 900, 7209 17 100, 7209 17 900, 7209 18 100, 7209 18 910, 7209 18 990, 7209 25 000, 7209 26 100, 7209 26 900, 7209 27 100, 7209 27 900, 7209 28 100, 7209 28 900, 7209 90 100, 7210 11 100, 7210 12 110, 7210 12 190, 7210 20 100, 7210 30 100, 7210 41 100, 7210 49 100, 7210 50 100, 7210 61 100, 7210 69 100, 7210 70 310, 7210 70 390, 7210 90 310, 7210 90 330, 7210 90 380,	SA 3 Other sheet rolled metal			

HS Number	Goods	Ministries responsible for administration of licence	State bodies of the RK, which coordinates the decision about issuing of licence	Justification
7211 14 900, 7211 19 900, 7211 23 100, 7219 32 900, 7219 33 100, 7219 33 900, 7219 34 100, 7219 35 100, 7219 35 900, 7225 40 800				
7219 34 900, 7219 23 000, 7219 24 000, 7219 31 000, 7219 32 100, 7212 60 910, 7219 21 100, 7219 21 900, 7219 22 100, 7219 22 900, 7212 50 310, 7212 50 510, 7212 60 110, 7212 20 110, 7212 30 110, 7212 40 100, 7212 40 910, 7211 23 510, 7211 29 200, 7211 90 110, 7212 10 100, 7212 10 910, 7211 23 990, 7211 29 500, 7211 29 900, 7211 90 900	Plane rolled metal made from carbonaceous steel in rolls no more than 500 mm. wide	Ministry of Industry and Trade of the RK	-	This measure is used to fulfil the RK's obligations, under the Agreement between the Government of the RK and the European Coal and Steel Union on trade of certain steel products dated 15 December 1999.
7211 23 910, 7225 19 100, 7225 19 900, 7226 19 100, 7226 19 300, 7226 19 900,	Plane rolled metal made from electrotechnical steel with non oriented core			
7226 11 900	Plane rolled metal made from siliceous electrotechnical steel with oriented core			
520411000, 520419 000, 5205, 5206, 5604 90 000	Thread and yarn	Ministry of Industry and Trade of the RK	-	This measure is used to fulfil the RK's obligations, under the Agreement between the Government of the RK and the European Economic Community on trade of textile products (ratified in Brussels on 15 October 1993)
5208-5212,5512-5515,580390300, 581100000,590500700, 630800000	Cloth, fabric	Ministry of Industry and Trade of the RK	-	This measure is used to fulfil the RK's obligations, under the Agreement between the Government of the RK and the European Economic Community on trade of textile products (ratified in Brussels on 15 October 1993)
610110-610130900,610210-610230900, 610510000-610520, 610590100,610610000-610620000, 610690100, 6110 (except 611090)	Male clothes, female, children's, outer-clothes	Ministry of Industry and Trade of the RK	-	This measure is used to fulfil the RK's obligations, under the Agreement between the Government of the RK and the European Economic Community on trade of textile products (ratified in Brussels on 15 October 1993)

HS Number	Goods	Ministries responsible for administration of licence	State bodies of the RK, which coordinates the decision about issuing of licence	Justification
6203 (except 620341300, 620342110, 620342510, 620342590, 620343110, 620343310, 620343390, 620349110, 620349310, 620349390, 620349900) 620461100, 620510000-620530000, 620620000-620640000, 621132900, 621133 900, 621142 900, 621143900				
6109 (except 610990900)	Male clothes, female, children's , underclothes	Ministry of Industry and Trade of the RK	-	This measure is used to fulfil the RK's obligations, under the Agreement between the Government of the RK and the European Economic Community on trade of textile products (ratified in Brussels on 15 October 1993)
7208 10 000, 7208 25 000, 7208 26 000, 7208 27 000, 7208 36 000, 7208 37 900, 7208 38 900, 7208 39 900, 7211 14 100, 7211 19 200, 7219 11 000, 7219 12 100, 7219 12 900, 7219 13 100, 7219 13 900, 7219 14 100, 7219 14 900, 7225 20 200, 7225 30 000	SA Sheet rolled metal SA 1 Rolls	Ministry of Industry and Trade of the RK	-	This measure is used to fulfil the RK's obligations, under the Agreement between the Government of the RK and the European Coal and Steel Union on trade of certain steel products dated 15 December 1999.
7208 37 100, 7208 38 100, 7208 39 100	SA 1a Rolls, intended for secondary rolling process	Ministry of Industry and Trade of the RK	-	This measure is used to fulfil the RK's obligations, under the Agreement between the Government of the RK and the European Coal and Steel Union on trade of certain steel products dated 15 December 1999.
7208 40 100, 7208 51 100 7208 51 300, 7208 51 500 7208 51 910, 7208 51 990 7208 52 100, 7208 52 910 7208 52 990, 7208 53 100 7211 13 000	SA 2 Thin sheet steel			
7208 40 900, 7208 53 900 7208 54 100, 7208 54 900 7208 90 100, 7209 15 000 7209 16 100, 7209 16 900 7209 17 100, 7209 17 900 7209 18 100, 7209 18 910	SA 3 Other sheet roll			

HS Number	Goods	Ministries responsible for administration of licence	State bodies of the RK, which coordinates the decision about issuing of licence	Justification
7209 18 990, 7209 25 000 7209 26 100, 7209 26 900 7209 27 100, 7209 27 900 7209 28 100, 7209 28 900 7209 90 100, 7210 11 100 7210 12 110, 7210 12 190 7210 20 100, 7210 30 100 7210 41 100, 7210 49 100 7210 50 100, 7210 61 100 7210 69 100, 7210 70 310 7210 70 390, 7210 90 310 7210 90 330, 7210 90 380 7211 19 900, 7211 23 100 7211 23 510, 7211 29 200 7211 90 110, 7212 10 100 7212 10 910, 7211 14 900 7212 20 110, 7212 30 110 7212 40 100, 7212 40 910 7212 50 310, 7212 50 510 7212 60 110, 7212 60 910 7219 21 100, 7219 21 900 7219 22 100, 7219 22 900 7219 23 000, 7219 24 000 7219 31 000, 7219 32 100 7219 32 900, 7219 33 100 7219 33 900, 7219 34 100 7219 34 900, 7219 35 100 7219 35 900, 7225 40 800				

ANNEX VI

Export and Import Licensing Rules

Licensing procedures		Compliance with the WTO Agreement on import licensing procedures (hereinafter – Agreement)
Export and import of goods excluding import of ethyl spirit and alcoholic beverages	Import of ethyl spirit and alcoholic beverages	
The acting Rule was approved by the Resolution of the Government of the Republic of Kazakhstan (hereinafter-the RK) No. 1037 dated 30 June 1997 and came into force 30 days after its publication.	The acting Rule was approved by the Resolution of the Government of the RK No. 1031 dated 27 June 1997 and came into force 30 days after its publication.	The Rules are transparent and widely available and was published prior to coming into force, which is in compliance with the provisions of the Article 1.4 of the Agreement.
The present Rule covers all juridical and natural persons of the Republic of Kazakhstan including foreign citizens independently of organization's legal status and registration place (hereinafter – the applicant).		The Rule is nondiscriminatory and fair, which is in compliance with the Article 1.3 of the Agreement.
Licenses are issued by the Ministry of industry and trade according to the procedures established by the legislation of the Republic of Kazakhstan (hereinafter – the Licensor).	Licenses are issued by the Ministry of Finance according to the procedures established by the legislation of the Republic of Kazakhstan (hereinafter – the Licensor).	Export and import licenses are issued by the state body upon preliminary agreement with the authorized ministries and agencies, usually no more than three agencies, excluding licenses for import of ethyl spirit and alcoholic beverages which are issued by the Ministry of Finance. Such provision is in compliance with the Article 1.6 of the Agreement.
Licenses are issued on equal basis and terms to all persons complying with the requirements established for such type of a licence. It is prohibited to provide a preferential licensing right to the state enterprises except for such activities referred by the legal acts as natural monopolies. Foreign juridical and natural persons and persons without citizenship receive licenses on the same terms and according to the same procedures as juridical persons and natural persons of Kazakhstan if it is not otherwise stipulated by the legal acts of the RK. It is prohibited to issue licenses in order to limit competition or to provide preferences to some groups of entrepreneurs depending on their property, agency interests or location. Issue of licenses should not assist monopoly strengthening or limit freedom of entrepreneurship.		Licensing procedure of goods export and import is not considered as trade limitation and is applied on equal terms to everyone, thus it is in compliance with the basic principles of the GATT.
Introduction of licensing procedures or their termination can be done for the matters of the state security, implementation of state monopoly, provision of law and order, protection of environment, property, life and health of citizen.		Basic objectives of goods export and import licensing in the Republic of Kazakhstan comply with the provisions of the Article XXI of GATT.
The following documents were necessary to obtain a licence: (a) an application, (b) a document confirming the payment of licence fee, (c) a copy of certificate of state registration, (d) a copy of a contract (agreement) on sales-purchase with participants of international trade deal, (e) a licence for production of alcohol products, or for storage and sale of ethyl spirit in case of importing ethyl spirit.		It is necessary to present relevant documents when getting a licence for export and import of goods for the licensing regime's proper functioning. This provision corresponds to the provision of the Article 1.5 of the Agreement.
A licence is given to the applicant for a period of one calendar year to conduct export and import operations - by individual transactions. The licence holder has the right to reject a licence notifying the issuing body. Licenses are issued for one type of good (work, service) independent of range of goods included in the contract.		Period of licence validity is reasonable, which is in compliance with Article 3.5 of the Agreement.
Licenses are issued no later than within a month, for entities of small business - no later than within ten days since the date of submission of an application along with all necessary documents.		Generally, review of the licence application and approval of it by the relevant agencies of the RK does not take more than one month.

Licensing procedures		Compliance with the WTO Agreement on import licensing procedures (hereinafter –Agreement)
Export and import of goods excluding import of ethyl spirit and alcoholic beverages	Import of ethyl spirit and alcoholic beverages	
<p>A licence is not issued if:</p> <ol style="list-style-type: none"> 1. conduction of certain types of activities by the indicated category of entities is prohibited by the legal acts; 2. the required documents are not submitted. If the applicant eliminates the indicated drawbacks the application is considered on the general basis; 3. a licence tax for the right to conduct certain types of activities is not paid; 4. the applicant does not meet established qualification requirements; or 5. there is a court decree prohibiting conduction of certain types of activities. 		Procedure of rejection of licence issuing does not contradict provisions of the Articles 1.7 and 1.8 of the Agreement.
<p>If a licence is not issued precisely on the established terms or if rejection appears as unjustified the applicant has the right to appeal to the court in one month period.</p> <p>If the court discloses the facts of unjustified rejection or untimely issue of a licence it pronounces the judgment binding the licensing body to issue a licence in ten days period since the date when the court judgment comes into force.</p>		If the application is not approved the applicant has the right to appeal to the court which complies with the provision of the Article 3.5 of the Agreement.

ANNEX VII

List of Goods Subject to Non-Tariff Measures

Code of foreign trade invoice	Description of goods	Non tariff measure	A normative act which introduces non tariff measures	Justification	Notes
2710 19 410 0-2710 19 490 0 2710 19 510 0-2710 19 690 0	Diesel Black oil (mazut)	Seasonal bans for export of black and diesel are used during the period of agricultural operations in autumn and spring	The Resolution of the Government of the RK No. 438 dated 20 April 2004 "On export of diesel oil" At present export of black oil is not prohibited.	During seasonal agricultural operations demand of agricultural producers for combustive-lubricating materials increases 7-8 times and there is a situation when demand is greater than supply, which results in price increases. Thus, application of seasonal bans for export of black oil and diesel oil is a necessary measure applied in order to prevent sharp seasonal price increases for combustive-lubricating materials in the internal market and to satisfy the internal market with the oil products for on-time execution of farm works.	The applied measure has a regulated feature and can not be considered as a temporary measure aimed to prevent or smooth a critical deficit of food or other goods in the Republic as it is stipulated in paragraph 2 of the Article XI of the GATT. At present the issue of justifiability of applying export duties on a constant basis and imposing a ban on combustive-lubricating materials export only during the emergencies is being considered according to paragraph 2 of the Article XI of the GATT.
7602 00 110 0 7602 00 900 0 7604 10 100 0 7605 7503 00	Turnings, cuttings and waste of milling, filings and wastes of trimming; wastes of coloured, covered or fastened sheets and foil of not more than 0,2 mm thickness (without the base) Aluminum scrap Unalloyed Aluminum rods Aluminum wire Nickel wastes and scrap	Prohibition of export of some types of aluminium and nickel products	The Resolution of the Government of the RK No. 1243 dated 5 December 1998 "On introduction of restrictions on import and export of some goods"	This measure is taken due to increase of export from the territory of the RK, in order to protect the Kazakh market of non ferrous metals and to satisfy the needs of the local enterprises.	Pursuant to the Article XI of the GATT WTO member countries should not prohibit export of goods. Therefore, at the present stage it is viewed to be reasonable to cancel the ban on export of some aluminum and nickel products.
From 4401 10 000 0 From 4403 10-4403 20, 440391 000 0 – 4403 99 4404	Fuel wood in logs and billets Unprocessed timber, dressed or undressed, roughly squared or non squared, Barrel wood; chopped logs; wood poling and pales, pointed but not sawed along; trimmed wood but not turned, not	Ban of export of timber, lumber and some types of wood	The Resolution of the Government of the Republic of Kazakhstan No. 785 dated 16 July 2002 "Some issues of forest utilization"	Due to great demand for wood in the neighbouring countries and increase of prices for wood on the black market there were increased cases of illegal felling, deliberate burning of pine woods in order to get access to removal and storing and further export abroad. Wood especially round timber was taken as square timber or other types of wood in large volumes and this led to continued theft of wood at the local level. Above mentioned violations threatened the country's forest resources. It is crucial to mention	Ban on exports of wood in this regard is considered to be measure aimed to prevent a critical deficit of goods in the republic as stipulated by paragraph 2 of the Article XI of the GATT, since the cut down of wood had led to decrease of wood supply in the republic as well as to significant loss of protection and water saving characteristics of forestry and worsening of their sanitary conditions. The applied measure is of systematic character.

Code of foreign trade invoice	Description of goods	Non tariff measure	A normative act which introduces non tariff measures	Justification	Notes
4406 4407 10 4407 91 4407 99 4408 90 4418 40 000 0	<p>bent or sawn by other means, used for production of canes, umbrellas, handles or similar manufactures; cracked wood and similar wood</p> <p>Wooden sleepers for railways or tramways</p> <p>softwood sawed or split along, dressed or cracked, trimmed or not trimmed, polished or unpolished, connected or unconnected to a pin, of more than 6 mm thickness</p> <p>Oak wood sawed or split along, dressed or cracked, trimmed or not trimmed, polished or unpolished, connected or unconnected to a pin, of more than 6 mm (Quercus spp.)</p> <p>Other types of wood sawed or split along, dressed or cracked, trimmed or not trimmed, polished or unpolished, connected or unconnected to a pin, of more than 6 mm</p> <p>Other types of wood split along, cut into parts or cracked, dressed or undressed, polished or unpolished, connected or unconnected to a pin, of not more than 6 mm</p> <p>Concreting casing</p>			that Kazakhstan's territory is poor in forest. According to the state register of forest resources forest covered territory is accounted for 4.6%, including high forest plantations accounted for about 1.2%, which means that the country's own forest resources are limited. Therefore, the applied restrictions are necessary measures in order to reduce negative processes happening in the forest territories and to improve the situation with protection, maintenance and reproduction of forests.	

ANNEX VIII

Electric Power Delivery by KEGOC

Services	"AES Ekibastus" LLP	"Ekibastuzskaya station" OJSC	"Kazenergoresurs" LLP
The title of subsidy program or special target subsidy:	Electric power delivery by "KEGOC" OJSC, "AES Ekibastuz" LLP networks	Electric power delivery by "KEGOC" OJSC, "Ekibastuzskaya station" OJSC	Electric power delivery by "KEGOC" OJSC, "Kazenergoresurs" LLP
Subsidy (subsidy per unit):	90% discount	According to the Orders: 84%, 88%, 84%.	According to the Orders: 80%,65%, 65%
Amount of Subsidy, mln. Kwatt/hour	575.4	3,482.2	932.8
Amount of Subsidy, mln tenge	229.1	1,753.9	438.6
Objectives of subsidy	In order to regulate arbitrage investigation with AES corporation and to execute the Memorandum of understanding between the government of the Republic of Kazakhstan and AES Corporation "On Regulation of Dispute with AES Corporation"	Increase of electric power consumption in comparison to the period of the previous year	Increase of electric power consumption in comparison to the period of the previous year
Legal basis	Joint order of the Agency of the Republic of Kazakhstan on Natural Monopoly Regulation, Competition Protection And Assisting Small Business (dated 15 March 2000, No. 27-OD) and the Ministry of Energy and Mineral Resources (dated 15 March 2000, No.101)	The order of the Agency of the Republic of Kazakhstan on Natural Monopoly Regulation, Competition Protection And Assisting Small Business No. 263 –OD dated 29 December 2002, the order of the Agency No.166-OD dated 30 June 2003, the order of the Agency No.186 dated 27 July 2003 .	The order of the Agency of the Republic of Kazakhstan on Natural Monopoly Regulation, Competition Protection And Assisting Small Business No. 89-OD dated 26 March 2003, the Order of the Agency No.166-OD dated 13 August 2003, the Order of the Agency No.235-OD dated 16 September 2003
Payment terms	100% current payment	100% current payment	100% current payment
Validity of subsidy	Since April 7, 2000 till April 7, 2015	According to the Orders: since 1 January 2003 till 30 June 2003, since 1 July 2003 till 31 July 2003, since 31 July till 31 December 2003	According to the Orders: since 1 April 2003 till 30 September 2003, since 13 August 2003 till 30 September 2003, since 16 September 2003 till 31 December 2003.
Statistic data allowing to evaluate effect of subsidy on trade	-	-	-

ANNEX IX

Establishing of Decreasing Coefficients of Railway Tariffs on Transportation of Different Types of Goods for the Year 2002

Type of cargo	Sulphuric acid	Iron ore products	Coal	Coal and black oil	Complex ore	Secondary material resources	Metal roll
The title of subsidy program or special target subsidy:	Establishing of decreasing coefficients of railway tariffs on transportation of sulphurous acid by rail	Establishing of decreasing coefficients of railway tariffs on transportation of iron ore products by rail	Establishing of decreasing coefficients of railway tariffs on transportation of coal by rail	Establishing of decreasing coefficients of railway tariffs on transportation of coal and black oil by rail	Establishing of decreasing coefficients of railway tariffs on transportation of complex ore by rail	Establishing of decreasing coefficients of railway tariffs on transportation secondary material resources by rail	Establishing of decreasing coefficients of railway tariffs on transportation of metal roll by rail
Subsidy (subsidy per unit):	decreasing coefficients on railway tariffs						
Amount of Subsidy, thousand tonnes	401.37	4,066.1	29,353.95	coal - 15000, black oil - 396 320	13.04	730.69	593.86
Amount of Subsidy, mln. tenge	119.79	310.57	2,038.87		2.24	133.42	520.04
The title of subsidy program or special target subsidy:	In order to increase transportation volumes, support local producers, stimulate increase of production volumes the tariffs on export transportation of sulphuric acid in tanks of producers in all communications are reduced by 25%.	In order to increase transportation volumes, support local producers, stimulate increase of production volumes the tariffs on export transportation of iron ore products in tanks of producers in all communications are reduced by 25%.	In order to increase coal transportation volume, to prevent possible increase of prices of heating and electric power consumption and subsequent rise of prices of sector products	In order to implement the Agreement between the Government of RK and the Kyrgyz Republic on use of fuel-energy and water resources of Naryn-Syrdarya reservoirs in 2003 the tariffs on transportation of coal and black oil provided as compensation for electric power from the Kyrgyz Republic during vegetation period according to the Resolution of the Government of RK No.799 dated 17 July 2002	In order to increase volumes of complex ore transportation	In order to increase volumes of secondary material resources transportation	In order to increase metal-roll transportation by rail and volumes of metal roll trans shipment in Aktau port
Legal basis	The Regulation of establishing and cancellation of decreasing coefficients of tariffs on transportation by rail to be regulated by the state (approved by the order of the Agency No.24-OD dated 30 December 1999 registered No.1024 in the Ministry of Justice on 6 January the Laws of RK "On Natural Monopolies", "On Transport of RK", "On Railway Transport".						
Payment terms	Advance payment, no indebtedness for transportation services, increase of transportation volumes in comparison with the previous year	Advance payment, no indebtedness for transportation services, increase of transportation volumes in comparison with the previous year	Advance payment, no indebtedness for transportation services, increase of transportation volumes in comparison with the previous year	In the form of compensation of the electric power from the Kyrgyz Republic delivered in the vegetation period	Advance payment, no indebtedness for transportation services and fulfilment of transportation volumes not less than the level of 2001	Advance payment, no indebtedness for transportation services and fulfilment of transportation volumes not less than the level of 2001	Advance payment, no indebtedness for transportation services and fulfilment of transportation volumes not less than the level of 2001

Type of cargo	Sulphuric acid	Iron ore products	Coal	Coal and black oil	Complex ore	Secondary material resources	Metal roll
Validity of subsidy	Since 22 February 2002 till 1 January 2003	Since 15 August 2002 till 31 December 2002	Since 8 May 2002 till 1 October 2002	Since 22 July 2003 till 1 January 2003	Since 29 March 2002 till 1 January 2003	Since 29 March 2002 till 1 January 2003	Since 14 February 2002 till 1 January 2003
Statistical data allowing to evaluate subsidy effect on trade	-	-	-	-	-	-	-

Establishing of Decreasing Coefficients of Railway Tariffs on Transportation of Different Types of Goods for the Year 2003

Cargo	Sulphuric acid	Iron ore products	Coal	Coal and black oil	Crude oil
The title of subsidy program or special target subsidy:	Establishing of decreasing coefficients to railway tariffs for transportation of sulphurous acid by rail	Establishing of decreasing coefficients to railway tariffs for transportation of iron ore products by rail	Establishing of decreasing coefficients to railway tariffs for transportation of coal by rail	Establishing of decreasing coefficients to railway tariffs for transportation of coal and black oil by rail	Establishing of decreasing coefficients to railway tariffs for transportation of crude oil by rail
Subsidy (subsidy per unit):	decreasing coefficients of railway tariffs	decreasing coefficients of railway tariffs	decreasing coefficients of railway tariffs	decreasing coefficients of railway tariffs	decreasing coefficients of railway tariffs
Amount of Subsidy, thousand tonnes	568.61	10,257.17	20,840.14	coal - 252,7	36.3
Amount of Subsidy, mln tenge	164.26	399.13	900.28		5,7.68
Objectives and asks of subsidy	In order to increase transportation volumes, support local producers, stimulate increase of production volumes the tariffs on export transportation of sulphuric acid in tanks of producers in all communications are reduced by 25%.	In order to increase transportation volumes, support local producers, stimulate increase of production volumes the tariffs on export transportation of iron ore products in tanks of producers in all communications are reduced by 15%.	In order to increase coal transportation volume, to prevent possible increase of prices of heating and electric power consumption and subsequent rise of prices of sector products	In order to implement the Agreement between the Government of RK and the Kyrgyz Republic on use of fuel-energy and water resources of Naryn-Syrdarya reservoirs in 2003 the tariffs on transportation of coal and black oil provided as compensation for electric power from the Kyrgyz Republic during vegetation period according to the Resolution of the Government of RK No.799 dated 17 July 2002	The Regulation on establishing and cancellation of decreasing coefficients of tariffs on railway transportation regulated by the state No.24-OD (approved by the Order of the Agency dated 30 December 1999, registered No. 102 in the Ministry of justice on 6 January 2000
Legal basis	The Regulation on establishing and cancellation of decreasing coefficients of tariffs on railway transportation to be regulated by the state No. 24-OD (approved by the Order of the Agency dated December 30, 1999, registered No.102 in the Ministry of Justice on January 6, 2000				
Payment terms	Advance payment, no indebtedness for transportation services, increase of transportation volumes in comparison with the previous year	Advance payment, no indebtedness for transportation services, increase of transportation volumes in comparison with the previous year	Advance payment, no indebtedness for transportation services, increase of transportation volumes in comparison with the previous year	In the form of compensation of the electric power from the Kyrgyz Republic delivered in the vegetation period	Advance payment, no indebtedness for transportation services and fulfilment of transportation volumes not less than the level of 2001
Validity of subsidy	since 21 January 2003 till 31 December 2003	since 24 January 2003 till 31 December 2003	since April 1 till 1 October 2003	since 17 August 2003 till 31 December 2003	Since 29 March 2002 till 1 January 2003
Statistical data allowing to evaluate subsidy effect on trade	-	-	-	-	-