Kazakhstan

1Bilateral trade relations

According to the China Customs, the bilateral trade volume between China and Kazakhstan in 2006 hit US＄8.36 billion, up by 22.8% year on year, among which China s exports to Kazakhstan amounted to US＄4.75 billion, up by 21.9% year on year; and China s imports from Kazakhstan reached US＄3.6 billion, up by 24.0% year on year. China had a surplus of US＄1.15 million. China s main exports to Kazakhstan were textiles and garments, furniture, leather and leather products, plastic products, machinery and electronic products. China s major imports from Kazakhstan included copper and copper products, mineral fuel, mineral oil and its distilled products, bitumen, base metals and products thereof, precious metals and rare earth metals, etc.

According to the Ministry of Commerce(hereinafter referred to as MOFCOM), by the end of 2006, the accumulated turnover of engineering contracts completed by Chinese companies in Kazakhstan had reached US＄1.73 billion, and the volume of completed labor service contracts had reached US＄69.2 million.

According to MOFCOM, China s total non financial foreign direct investment(FDI), approved by or filed with MOFCOM, reached US＄5.17 million in 2006. Kazakhstan investors invested in 28 projects in China in 2006, with a total contractual investment of US＄6.49 million and an actual utilization of US＄3.33 million.

2Introduction to trade and investment regime

In Kazakhstan, major laws governing trade and investment include the Customs Code, the Law on Currency Regulation, the Law on Foreign Investments, the Tax Code, etc.

2.1Trade regime and its development

2.1.1Import and export levy system

Kazakhstan is now engaged in bilateral WTO accession negotiation. The latest work report was issued in September, 2006. To realize the systematization of tariff rate and ensure its consistency with WTO regulations, the government of Kazakhstan approved new Kazakhstan Tax Code, which stipulates all imports should be levied import tax according to the specified import tax rate.

Kazakhstan mainly imposes ad valorem duty on imports. In 2006, Kazakhstan made adjustments on import tax rates of certain commodities. The average weighted import tariff in Kazakhstan was reduced to 7.9%.

As a member of the Euro Asian Economic Community, Kazakhstan makes exemptions of tariffs on most of imports from Russia, Belarus, Kyrgyzstan and Tajikistan.

Kazakhstan and China give the most favored nation treatment to each other. Kazakhstan also grants preferential duties to parts of Chinese imports according to the Generalized System of Preferences.

Goods imported for short term use in Kazakhstan under the temporary import regime can be fully or partially exempt from duties, taxes and non tariff regulations. Goods not eligible for duty exemptions include food products, industrial wastes and consumables.

In Kazakhstan, a value added tax is also imposed on imports, the tax basis of which is the total of the customs clearance value and the customs duties. The value added tax rate was 15% in 2006.

In addition, a customs clearance fee of 50—70 is charged on each import transaction.

2.1.2Import administration

Kazakhstan has completely lifted the restriction on trading rights. Every natural person and legal person is free to conduct foreign trade business with registration with the authorities. All items are free to be imported into Kazakhstan without being subject to quota or licensing restrictions, with the exception of narcotics and drug paraphernalia, weapons, ammunition, explosive and explosive devices, works of historic, artistic and archeological value, and goods or substance of environmental and health hazard, which are still restricted from import.

2.1.3Export administration

Kazakhstan adopts incentives to encourage exports, including export tax exemption and duty drawback. All items are eligible for export with the exception of nine categories including weapons, ammunition, drug paraphernalia and cultural relics which are subject to export licenses.

The Customs Code specifies that furs and hides and scrap metals are subject to export duties.

To enhance the management of petroleum export, the Government of Kazakhstan imposes an export duty of 1% to 33% duty on crude oil. The higher the world oil price is, the higher the applicable export duty will be. When the world oil price is above US ＄40/barrel, the highest rate of 33% is applicable. To ensure the stability of the supply and price of home made goods, Kazakhstan enacted a ban on gasoline, diesel oil, aero oil, etc. in the first half of the year 2006.

2.1.4Trade remedies

In 2001, Kazakhstan enacted the Law on Anti dumping, the Law on Subsidies and Countervailing, the Law on Safeguard Measures for Domestic Market upon Importation of Goods, which include trade remedies in its domestic legal system. To access to WTO as early as possible and protect domestic market, Kazakhstan revised the Law on Safeguard Measures for Domestic Market upon Importation of Goods in accordance with the WTO Agreement on Safeguards in June, 2006. It explicitly defines the process in which importers are levied provisional protective tariff when the customs adopts provisional safeguard measures. Meanwhile, if the investigation proves that no serious harm or damage is done on domestic manufacturers due to the increase of imports, the customs will return that sum of provisional protective tariff to importers.

2.1.5Other relevant regimes

In order to simplify and speed up customs clearance, increase the accuracy of tariff statistics and declaration to the maximum extent, Kazakhstan started to establish a system of electronic customs in 2004. Kazakhstan s customs valuation rules largely conform to the WTO Valuation Agreement. In 2005, the Kazakhstan Customs reevaluated its system of electronic customs and made positive improvements in existing problems, such as customs valuation methods, calculation of fines and examination procedures of traders.

Under the current system of electronic customs, traders can send customs declaration to the server of the Kazakhstan Customs, monitor the whole process at any moment, inquire about the details of the Customs Code, and find out the payable tariff, thus realizing non paper declaration.

2.2Investment regime and its development

In January 2003, Kazakhstan enacted the Law on Investment. Meanwhile the Law of the Republic of Kazakhstan on Foreign Investments enacted in December, 2004, Republic of Kazakhstan Supreme Council Resolution on Implementation of the Law on Foreign Investment enacted in December, 1994, the Law of State Support of Direct Investment enacted in February, 1997, were repealed.

The new Law of the Republic of Kazakhstan on Investment abolished the special preferential treatment stipulated in the Law of the Republic of Kazakhstan On Foreign Investments and the Law of State Support of Direct Investment, providing domestic and foreign investment with uniform legal frame and preferential measures. The new Law on Investment authorizes the Committee for Investments of the Kazakhstan s Ministry of Industry and Trade to stipulate special preferential policies and direct domestic and foreign investment in priority sectors. In 2004, the Kazakhstani Government employed world renowned research institutions and relevant authorities at home to have a study and analysis of 150 economic fields, Detailed studies have identified seven priority sectors: construction materials, textile, metallurgy, food production, oil and gas engineering, tourism and logistics services. According to Resolution No. 633 of the Government of the Republic of Kazakhstan issued in June, at present, priority sectors include machinery, food production, construction, tourism, textile, metallurgy, etc. Investment in priority sectors can enjoy incentives, including property tax exemptions, land tax exemptions, corporate income tax concessions in the form of an exemption or accelerated depreciation, full or partial exemptions from paying customs duties on the equipment and spare parts and state in kind grants, etc. Tax reduction and import tax exemption usually have a maximum preferential period of five years(with extensions included). The following may be conveyed as a state in kind grant: buildings, construction, machinery and equipment, computing equipment, measuring and regulating devices and units, transport vehicles(except for passenger motor transport), property rights of industrial implements, and the right of land use. The maximal amount of the state in kind grants shall not exceed 30% of the total volume of investment. Investment preferences may be provided subject to investors meeting the following requirements: investment is made in a priority sector of the Kazakhstani economy, investment is made in the fixed assets of business that are legal entities under Kazakhstan legislation for the purpose of creating new production or expanding and renovating existing production on the basis of advanced technologies; the required documents have been submitted confirming the availability of the financial, technical and organizational resources to implement the investment project. Additionally, the new Law on Investment also stipulates the upper limit of enjoying investment preferences of investment in priority sectors.

According to the Civil Code in effective since March 1, 1995, foreign investment can establish partnership, limited liability company, joint stock company or representative office, branches. In September, 2004, Kazakhstan passed the Law on Registration of Legal Entities, which provides “one stop service” for the registration of legal entities, branches and representative offices, enabling investors to go through the registration with the authorities of justice, statistics, and revenue once for all in ten working days. To improve the utility of “one stop service”, starting from January 1, 2006, Kazakhstan decreased the fees for the state registration of legal entities, branches and representative offices to approximately US＄57(previously approximately US＄150). In relation to legal entities, which are small enterprises, including their branches and representative offices, the state fee was decreased to approximately US＄17(previously approximately US＄40).

2.3Trade and investment related regime and its development

Investment related laws entering into force in 2006 in Kazakhstan included: the Law on Environmental Protection, the Law on Currency Regulation and Currency Control(Amendments) and Concerning Competition and Restriction of Monopoly Activities. In additional, Kazakhstan made amendment to the 2002 Tax Code.

2.3.1Tax

According to the Tax Code effective from January 1, 2002, entrepreneurs investing in business in Kazakhstan should be levied corporate income tax, property tax, VAT, social tax, social insurance tax of employees and dividend tax. According to the current taxation, corporate income tax is subject to 30% tax rate on the basis of its net profit, property tax rate, 1%; social tax, 7%—20%，social insurance tax of employees, 5%—20%; VAT rate, 15%. In addition, enterprises must pay 1.5% and 10% of the total salary of employees respectively for social security and pension.

According to the Amendments to the Tax Code in January, 2006, Kazakhstan perfects its tax system on small sized enterprises, whose scale is changed from no more than 15 people to 25. Thus more enterprises can be regarded as small sized taxpayers.

Moreover, the Government of Kazakhstan also made drafts of amendments to the Tax Code and the Budget Code on April 12, 2006. According to the draft, as of 2007, the VAT rate will be reduced from 15% to 14%, 2008 to 13% and 2009 to 12%. The VAT rate of enterprises processing agricultural products have another 50% decrease on the above mentioned rate. Non governmental organizations in education, science, medical treatment and culture are entitled exemption of corporate income tax and VAT under the frame that these organizations accomplish the state order tasks. As of 2007, Kazakhstan adopts fixed rate of corporate income tax, which is 10% for all legal entities. As of 2008, index of social tax is down by 30% on average. As of 2007, special tax rate is to be lowered. As for taxpayers, the rate is down from 3% to 2%. If the graduated tax is replaced by a unified tax, self employed people and legal entities will enjoy a unified rate of 3%, while they are levied at a rate of 3%—5%, and 3%—7% respectively before.

2.3.2Work permit

According to the Foreign Labor Work Permit Application, the Government of Kazakhstan is determined to increase the quota for the engagement of foreign labor to perform labour activities from 0.45% to 0.7% of the economically active population of the country, of which: category 1 and 2(managers, specialists with higher and secondary professional education) is increased from 0.21% to 0.25%, category 3(qualified workers) is up from 0.11% to 0.32%, and category 4(workers engaged in seasonal agricultural work) is still 0.13%.

2.3.3Currency regime regulation

The Law on Currency Regulation and Currency Control(Amendments) coming into effect on December 17, 2005 lays a solid foundation for free convertibility of Kazakhstan currency. According to the Currency Law, as of January 1, 2007, the National Bank of Kazakhstan fully lifts administrative permit of currency convertibility, except for retaining license system for currency operations. If there is a need to remit the foreign currency income back to the country, it is all right to be executed within the duration of business contract. Therefore, the process of currency operations is simplified, reducing the cost of those trade related enterprises to fulfill the legal procedure of currency regulation.

2.3.4Anti monopoly

On June 21, 2006, Kazakhstan s Parliament passed Concerning Competition and Restriction of Monopoly Activities and amendments to statutes on the entity of natural monopoly organizations and monitoring commodity markets. The law explicitly defines the commodity markets, calculation of advantage shares, and pricing system involved in monopoly activities. It is for the first time of this Law to clearly define the rights and obligations of monopoly organizations. Group of oligarch is defined as adjusting body, thus altering the quantity standard of group advantage.

2.3.5the Law on environmental protection

Kazakhstan brought into effect the new Law on Environmental Protection on December 31, 2005. The Law requires enterprises investing in Kazakhstan be levied environmental protection tax. If any pollution is done on environment or harm done on health of residents, the enterprise should make compensation.

3Barriers to trade

3.1Tariff and tariff administration measures

The average tariff rate in Kazakhstan was 7.9% in 2006, lower than the average tariff rate of developing countries. The structure of Kazakhstan s tariff is complicated and lacks necessary constancy. On August 14, 2006, Kazakhstan passed the No. 765 Government Act entitled On the Issue of the Tariff Rate in Kazakhstan. The Act raised the import tariff on beer yeast, breeding chickling, dry yolk, track tractor, etc. Currently, Kazakhstan still imposes comparatively high rates on certain imports, among which are processed meat(30%), canned fish and shrimps(30%), sugar(30%), etc. Besides, as there are TV assembling plants in Kazakhstan(LG, Korea), Kazakhstan sets the minimum tariff duties on imported color television sets stipulating that the tariff on imported color television with screens over 52cm should not be lower than 40 and it should not be lower than 20 on other imported color televisions. China is concerned about the negative impact the tariff structure of Kazakhstan has had on such Chinese exports as color TV and tape recorders, which enjoy a competitive advantage.

At the end of 2004, Kazakhstan adjusted the standard of load limits for vehicles carrying imported goods, which has led to a rise in the tariff of Chinese exports to Kazakhstan and a detention of a large quantity of goods at the border. Regardless of the load limit of each vehicle, Kazakhstan imposes a unified tariff on all the vehicles carrying Chinese exports. Since the new policy, which put strict limit on the load, the tariff on each vehicle has risen by at least 30%. China insists that the tariff rate is not in line with the international standards and lacks constancy, which resulted in risks and losses that could have been avoided. To maintain the healthy development of bilateral trade, China hopes that Kazakhstan will abolish this unjustified practice as soon as possible.

3.2Barriers to customs procedures

The Kazakstani Tax Code effective in 2003 clearly states that customs valuation should be on the basis of the transaction value of the imports. However, inconformity does exist in the practice of the Kazakhstan s Customs and the WTO Agreement on Customs Valuation. The Kazakhstan s Ministry of State Revenues Order 402 sets conditional prices for certain imports. If the price listed on the customs declaration form is lower than the conditional price, the conditional price will be taken as the basis of taxation. The Chinese side considers that such valuation completely acts against the stipulations of customs valuation in the Kazakhstani Tax Code and it does not conform to the WTO customs valuation. This imposes irrational burden on imports.

According to Kazakhstan s Tax Code, the Kazakhstan s Customs maintains a “customs audit” procedure on imports. If the audited result is higher than the declared value, the Kazakhstan s Customs will fine the importer. However, from October 2002, the procedure is administrated by private contractors who determine customs value based on a database of world prices. Under this system, approximately 20% of all goods crossing Kazakhstan s borders are subject to valuation uplifts. The Kazakhstani courts have decided that over 85% of all appeals under this system violate the Customs Code. However, the Kazakhstan s Customs has done nothing to the above mentioned measures. The Chinese side considers that Kazakhstan s “customs audit” does not conform to the WTO Agreement on Customs Valuation Article 7, and exerts serious impact on normal trade.

The Kazakhstan s Customs requires that when importers apply to customs via photocopies or faxes of documents, it should be certified by notary public and write to the Customs to confirm its authenticity. When cleared by the Customs, enterprises should provide “Transaction Passport” issued by the Central Bank to monitor the capital flow, otherwise, imports will not be discharged. The complicated and unreasonable requirements of documents by the Kazakhstan s Customs not only increase the cost and risk of customs clearance, but also impose substantial barrier to customs clearance of imports. The Chinese side shows great concern about it.

Furthermore, the Kazakhstani Customs Code clearly states that a certificate of origin is required of imports only under three circumstances. However, in the actual practice, the Customs requires certificates of origin of imports under other circumstances as well; otherwise, import duties will be doubled based on the specified legal rates of

Kazakhstan. The Chinese side is concerned about this arbitrary practice of the Kazakhstani Customs.

The Chinese side hopes that Kazakhstan will take effective measures to reduce the negative effect of Customs clearance procedures on the imports.

3.3Discriminatory taxes and fees on imported goods

According to Kazakhstan s 2003 Tax Code, the home made tax articles should be levied excise by home currency, while some of the imported tax articles are required to be levied by Euro. For instance, the excise of home made liquor is 300 Tenge per litre(approximately 1.78), while the excise of imported liquor is 3 per litre. Influenced by the change of Kazakhstan s exchange rate, imports bear higher domestic tax. The Chinese side hopes that Kazakhstan can unify the excise of home made products and imports.

3.4Technical barriers to trade

As of 2005, Kazakhstan started to set new systems of standardization and certification. The Kazakhstan Technology Law, the Law on Assurance of Measurement Uniformity, List of Products and Services subject to Compulsory Certification and other supportive regulations were enacted. These new laws and regulations aim to distinguish responsibilities from state authorities and private sectors. It is stipulated that the Government is responsible for product safety, while private sectors are in charge of quality control. According to these new regulations, Kazakhstan adopts compulsory certification on certain products and services, including machinery, cars, agricultural equipments, clothing, toys, food and medicine. However, the inspection and certification of imports in Kazakhstan are progressed by the Kazakhstani Committee on Standards, Metrology and Certification and affiliated certification organizations. The standards of inspection and certification are unknown to the public with complicated procedures. The Chinese side considers that the current system of inspection and certification in Kazakhstan go against the normal development of bilateral trade.

3.5Trade remedies

On October 15, 2004, the Trade Committee(now known as the Committee of Trade and Tourism) affiliated with the Kazakhstani Ministry of Industry and Trade initiated an anti dumping investigation of active dry yeast imported from China.

In January, 2005, the six month provisionary safeguard measures were applied to three kinds of imported candies by the Kazakhstani Ministry of Industry and Trade, imposing a protective tariff of 21% plus no less than 0.15 per kilogram on candies containing no cocoa powder and candies with or without filling. It imposed a protective tariff of 42% plus no less than 0.28 per kilogram on toffees containing no cocoa powder, hard candies and like candies.

3.6Government procurement

According to Kazakhstan s Law on State Procurement in 2002, procurement of all medical facilities, including dental equipments and appliances, disinfection plant, surgery apparatus and appliances, laboratory equipments and appliances, diagnostic apparatus, medical assembly line and medicine should invite public bidding. However, in practice, government procurement in Kazakhstan still lacks transparency, and extensive preferences are granted to domestic suppliers. The Chinese side hopes that Kazakhstan will give national treatment to foreign enterprises in government procurement.

In addition, Kazakhstan s Oil and Gas Law requires that domestic mining and oil enterprises give preemptive consideration to domestic suppliers when procuring products or services. Domestic mining and oil enterprises are not allowed to import foreign products or services, unless such products or services are not available in Kazakhstan. The regulation constitutes discrimination against foreign product and service providers, including Chinese enterprises.

3.7Barriers to trade in service

3.7.1Telecommunications

According to Kazakhstan s Laws on Telecommunications enacted in 2004, foreign investors can have no more than 49% ownership in joint ventures operating inter city and international telecommunication networks until 2008. Additionally, foreign investors need to gain permission from the Kazakhstani government to get involved in projects such as operating television and wireless broadcasting, planning and designing, construction of national and international trunk lines for communications, providing technical maintenance of telecommunication networks and lines as well as production and services of other projects in the telecommunication sector. The Kazakhstani government is entitled to refuse a foreign investor s application for such a license based on national security concerns. This arbitrary practice increases the difficulty of foreign investment in the telecommunications sector in Kazakhstan.

3.7.2Banking

Kazakhstan still has restrictive regulations on the access of foreign funded banks. In general, foreign banks total capital share should be no more than 25% of the total capital of all banks in Kazakhstan. Additionally, Kazakhstan requires that at least one member of the regulatory commission of any foreign bank should be Kazakhstani citizen with a minimum of 3 years of banking experience, and that at least 70% of the employees should be Kazakhstani citizens. Kazakhstan s limits on capital share of foreign banks and structure of staff greatly hinder the entry of capital of foreign banks.

3.7.3Insurance

Kazakhstan requires that the total capital share of non life insurance joint ventures in Kazakhstan should be no more than 25% of the total capital of the domestic non life insurance market, and that the total capital share of life insurance joint ventures be no more than 50% of the total capital of the domestic life insurance market. This regulation practically forbids foreign latecomers from entering the Kazakhstani insurance sector.

3.7.4Media

Kazakhstan requires that foreign investors stock share in media industry should be no more than 20%.

4Barriers to investment

4.1Barriers to investment in mining

In Kazakhstan, all the foreign funded enterprises must sign a contract on the utilization of underground resources if they are engaged in extraction of petroleum and gas as well as in the mining of other underground minerals. The government of Kazakhstan offers two types of contract. One is the Agreement on the Allocation of Profits from Maritime Petroleum Projects. The other is the Agreement on Surplus Profit Tax. The former applies to projects of maritime petroleum extraction, ruling that when a foreign investor exploits offshore oil in Kazakhstan, the minimum state share of the project s profit is 10% before the investment is recouped, and 40% after the investment is recouped. It normally takes 25 or 30 years to recoup the investment. By the Agreement on Surplus Profit Tax, all foreign investors must pay a tax for surplus profit, ranging between 15%—16%. It is China s concern that these new regulations have increased investors burden of taxes and reduced their rate of return.

According to Kazakhstan s new Mining Law revised in 2005, when a company prepares to transfer the right for exploitation and the rights to acquire or to sell the shares of Kazakhstan Petroleum, Kazakhstan s Ministry of Energy and Mineral Resources is the authoritative body to give approval. Meanwhile, the state has tremendous power at its discretion when signing the licenses. In 2005, Kazakhstan passed a new law before China Petroleum acquired Kazakhstan s PK Petroleum registered in Canada. The new law stipulates that the transfer of shares by the oil and natural gas company is also subject to the approval of the Kazakhstan government if the company is not registered in Kazakhstan but has assets in Kazakhstan. Meanwhile, the law stipulates that the state has preemptive rights to purchase the mining rights or shares of not only a mining company, but also companies which have direct or indirect decisive power over the mining company. The law forced China Petroleum and Natural Gas Group to transfer the shares acquired to petroleum enterprises in Kazakhstan and to agree to jointly operate the refinery and petroleum product business under PK Petroleum with Kazakhstan Petroleum. In November, 2006, when China s Citic Group was about to acquire the petroleum, based upon the same excuse, Kazakhstan required Citic Group s acquisition to suspend. China should point out that the regulation has constituted substantial obstacles for foreign investors to entering or withdrawing from Kazakhstan s mining sector, especially to the acquisition of Kazakhstan s domestic mining companies. The Chinese side is greatly concerned about the issue.

4.2Barriers to investment in land

Kazakhstan s 2003 Land Code provides that a Kazakhstani citizen can privately own land for farming, industrial, commercial and residential purposes, but a foreign national and enterprise can only rent land for farming purpose with a lease of up to 10 years.

4.3Labor permit

Kazakhstan requires that a foreign employee working in Kazakhstan apply for a labor permit, which still remains one of the main obstacles hampering foreign investment.

In 2001, Kazakhstan established a system limiting the number of labor permits issued to foreign personnel. The system sets quotas on labor permits on the basis of the total number of labor force of the country annually. Despite the fact that Kazakhstan increased the quota for foreign labor work permit in 2006, it could not satisfy the demands of enterprises. Many companies investing in Kazakhstan complain that the Kazakhstani government often denies the visa applications of company managers and technicians without sound justification, or provides them with only a short term stay. This regulation has had a negative effect on the production and management of foreign funded enterprises.