

**MAJOR CHALLENGES AND DIFFICULTIES DEVELOPING
COUNTRIES FACE WHILE INTEGRATING INTO GLOBAL
TRADING SYSTEM – A CASE STUDY OF THE REPUBLIC OF
KAZAKHSTAN'S WTO ACCESSION PROCESS**

By

Malika Nigmatulina

THESIS

Submitted to

KDI School of Public Policy and Management

in partial fulfillment of the requirements

for the degree of

MASTER OF PUBLIC POLICY

2004

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ABSTRACT

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It has become quite popular among some scholars and anti-globalists to argue that free trade is not in reality free for everyone and it only makes less and least developed nations more dependent and controlled by the rich states. Yet, I personally use an assumption that “freer” rather than free trade, is in overall assessment beneficial for further development and growth of both rich and poor countries. Notably it is due to the global trade and its continued liberalization along with other major scientific and technological developments that the 20th century remains as one of the most remarkable periods in the history, when achievement of an unprecedented increase in goods and services production as well as huge economic growth became possible.

However, as societies become more affluent, the attraction of and interest in pursuing non-economic objectives becomes stronger and demand for protectionism also increases. Thus, some undermine the achievements, which were possible due to the global trading system functioning and expansion, and result in the trading system becoming a victim of its own.

Despite the fact that developing nations have to muddle through the various challenges and obstacles while making their ways to WTO accession, aspiration and

ambition to join the world trading system and to seek potential benefits for themselves have not been declining among them.

After evaluating the history of the WTO system development and its overall effect on its members, it is perceived by many economists and WTO advocates, that WTO accession for developing and transitioning countries brings with it many benefits. Among which are an improved access to markets for their exports, the overall positive effects of increased transparency, predictability, and government credibility, as well as strengthening of their multilateral rule-based framework of economic reform.

For instance, those who abstain from the WTO membership are often severely discriminated by their trade partners, especially on the grounds of being perceived as non-market economies, and thus, remain as main targets for anti-dumping and countervailing measures.

Accession into the WTO requires adopting a set of norms and institutions, which promote market liberalization, evolution of a well defined, independent judicial system, as well as stronger enforcement and compliance with the laws and regulations for conducting a fair trade. Such measures of multilateral policy reform, supported in the framework of countries multilateral obligations and commitments, result in increased transparency and credibility of the government¹.

In addition, WTO membership also provides permanent multilateral most-favored nation status, tools of legal protection in anti-dumping cases and admittance to the dispute settlement mechanism. In overall assessment, the benefits from WTO membership can be classified in three categories: (a) improvement of national institutions and policies for international trade conduct in both goods and services

¹ See Bacchetta and Drabek, p.12

which is needed before accession into WTO can be accomplished; (b) improvements in the ease and security of market access to major export markets; (c) access to a dispute settlement mechanism for trade issues.

For developing countries and economies in transition, accession to and membership in the WTO is a delicate and cumbersome experience. As many latest WTO applicants are largely developing or transitioning economies, numerous WTO issues like SPS, GATS, TRIMs, and TRIPs, place heavy burdens on these countries as they modify and establish new laws, regulations, policies and enforcement mechanisms to comply with WTO requirements. The need to bring domestic legislation into conformity with WTO rules, negotiating and putting into action concessions on market access for trade in goods and services, transparency requirements, rising new trade issues, and the need to set up and retain professional trade-related research expertise places heavy burdens on applicants and developing members that not infrequently exceed their institutional capacity for formulating policy options or negotiation strategies. Furthermore, many developing countries are subject to discrimination by such trading partners as the US and the EC, despite WTO principle of automatic award of permanent and unconditional MFN status to any new member of the organization. In reality, though, the US for instance, invokes the non-application clause of Article XIII of the Marrakesh Agreement on a country's adherence to the provisions of the Jackson-Vanik amendment to the 1974 Trade Act regarding freedom of emigration. For example, the US extended a permanent MFN status to Mongolia only in July 1999, which is more than 2 years after the date of accession (Bacchetta and Drabek, p.13). The EU Council Regulation (EC) No 384/96 *“On protection against dumped imports from countries not members of the European Community,”* deals with the application of anti-dumping regulations on the countries

considered as a "non-market economy" by the EC. Hence, in accordance with the Article 2 of the above regulation, dumping margins are computed by reference to a suitable "analogue country" (i.e. a third country with market economy) and not on the basis of individual data for each exporter. However, individual exporters can submit claims for market economy treatment. If they can prove that they operate with sufficient independence from the State, individual exporters can then be granted "market economy status" for the purposes of the investigation and see their dumping margins established by reference to their own accounting information ².

Although, such problems do not completely prevent a country from accessing into WTO, it is clear that they affect the length, intricacy and complexity of the process for each accessing country. Therefore, I would like to make an assessment of such problems in general and based on Kazakhstan's negotiation process. In my assessment I would like to find out why such obstacles exist and how they slow down a country's WTO accession process, as well as to try to suggest ways which can reduce total WTO accession cost for the countries working on joining WTO in the near future.

² *The European Community On-Line*
http://europa.eu.int/comm/trade/issues/respectrules/anti_dumping/legis/adgreg02a.htm

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Dedicated to my family

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Despite the fact that developing nations have to muddle through the various challenges and obstacles while making their ways to WTO accession, aspiration and ambition to join the world trading system and to seek potential benefits for themselves have not been declining among them.

After evaluating the history of the WTO system development and its overall effect on its members, it is perceived by many economists and WTO advocates, that WTO accession for developing and transitioning countries brings with it many benefits. Among which are an improved access to markets for their exports, the overall positive effects of increased transparency, predictability, and government credibility, as well as strengthening of their multilateral rule-based framework of economic reform.

For instance, those who abstain from the WTO membership are often severely discriminated by their trade partners, especially on the grounds of being perceived as non-market economies, and thus, remain as main targets for anti-dumping and countervailing measures.

Accession into the WTO requires adopting a set of norms and institutions, which promote market liberalization, evolution of a well defined, independent judicial system, as well as stronger enforcement and compliance with the laws and regulations for conducting a fair trade. Such measures of multilateral policy reform, supported in the framework of countries multilateral obligations and commitments, result in increased transparency and credibility of the government³.

In addition, WTO membership also provides permanent multilateral most-favored nation status, tools of legal protection in anti-dumping cases and admittance to the dispute settlement mechanism. In overall assessment, the benefits from WTO membership can be classified in three categories: (a) improvement of national institutions and policies for international trade conduct in both goods and services which is needed before accession into WTO can be accomplished; (b) improvements in the ease and security of market access to major export markets; (c) access to a dispute settlement mechanism for trade issues.

For developing countries and economies in transition, accession to and membership in the WTO is a delicate and cumbersome experience. As many latest WTO applicants are largely developing or transitioning economies, numerous WTO issues like SPS, GATS, TRIMs, and TRIPs, place heavy burdens on these countries as they modify and establish new laws, regulations, policies and enforcement mechanisms to comply with WTO requirements. The need to bring domestic legislation into conformity with WTO rules, negotiating and putting into action concessions on market access for trade in goods and services, transparency requirements, rising new trade issues, and the need to set up and retain professional trade-related research expertise places heavy burdens on applicants and developing members that not infrequently exceed their institutional capacity for formulating policy options or negotiation strategies. Furthermore, many developing countries are subject to discrimination by such trading partners as the US and the EC, despite WTO principle of automatic award of permanent and unconditional MFN status to any new member of the

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organization. In reality, though, the US for instance, invokes the non-application clause of Article XIII of the Marrakesh Agreement on a country's adherence to the provisions of the Jackson-Vanik amendment to the 1974 Trade Act regarding freedom of emigration. For example, the US extended a permanent MFN status to Mongolia only in July 1999, which is more than 2 years after the date of accession (Bacchetta and Drabek, p.13). The EU Council Regulation (EC) No 384/96 "*On protection against dumped imports from countries not members of the European Community,*" deals with the application of anti-dumping regulations on the countries considered as a "non-market economy" by the EC. Hence, in accordance with the Article 2 of the above regulation, dumping margins are computed by reference to a suitable "analogue country" (i.e. a third country with market economy) and not on the basis of individual data for each exporter. However, individual exporters can submit claims for market economy treatment. If they can prove that they operate with sufficient independence from the State, individual exporters can then be granted "market economy status" for the purposes of the investigation and see their dumping margins established by reference to their own accounting information ⁴.

Although, such problems do not completely prevent a country from accessing into WTO, it is clear that they affect the length, intricacy and complexity of the process for each accessing country. Therefore, I would like to make an assessment of such problems in general and based on Kazakhstan's negotiation process. In my assessment I would like to find out why such obstacles exist and how they slow down a country's WTO accession process, as well as to try to suggest ways which can reduce total WTO accession cost for the countries working on joining WTO in the near future.

⁴ *The European Community On-Line* http://europa.eu.int/comm/trade/issues/respectrules/anti_dumping/legis/adgreg02a.htm

BACKGROUND

The World Trade Organization (WTO), the successor organization to the General Agreement on Tariffs and Trade (GATT), which existed since 1947, came into force on January 1, 1995. The WTO system was developed through a series of trade negotiations (rounds), carried out in the framework of GATT. The first rounds of negotiations dealt mainly with tariff reductions, but later ones included other areas such as anti-dumping and non-tariff measures. The so-called Uruguay Round held in 1986-1994, led to the WTO creation, which considerably extended GATT's coverage areas with trade in services and trade related intellectual property rights. The WTO does not only control a wider range of trade agreements, but it also exercises much broader powers in terms of decision-making procedure improvement and compliance by member states. An obligation to comply with the rules and regulations and each members obligations is one of the significant achievement points, since the GATT was merely a multinational treaty, and as a result decisions taken under the GATT were taken by the “CONTRACTING PARTIES acting jointly”, not by any organization body. Thus, the problem of incompliance and reluctance of the member states to fulfill their obligations remained a huge obstacle for full fledged GATT operation. Among other WTO introductions is a mechanism of trade dispute settlements, which became an integral part of the WTO.

The fundamental principles and rules of the GATT/WTO include: non-discriminatory trade, i.e. mutual most favored nation treatment in trade and mutual granting of the national treatment to goods and services of foreign origin; trade regulation mostly by tariff methods; refusal to use quantitative or other restrictions; trade policy transparency; settlement of trade disputes by consultation and negotiations, etc

In sum, the most important WTO functions include: control over compliance with the Uruguay round agreements; multilateral trade talks and discussions between interested member countries; settlement of trade disputes; monitoring of member states' national trade policies; technical assistance to developing nations in WTO-related matters; cooperation with specialized international organizations.

THE WTO ACCESSION PROCESS

The procedure of the WTO accession has developed through the 50 year history of GATT/WTO systems and consists of several stages, successful completion of which in accordance with the *Article XII of the Marrakesh Agreement Establishing the WTO* grants the following right,

"Any state or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of other matters provided for in this Agreement and the Multilateral Trade Agreements may accede to the WTO on terms to be agreed between such state or separate customs territory and the members of the WTO."⁵

Since accession to the WTO requires members' agreement on terms and obligations, it is basically done through the process of series of negotiations, which is quite different from other international entities accession procedures. In general accession goes through four stages:

Fact-finding/ Information-gathering: First of all, the applicant provides a memorandum on its foreign trade regime describing all aspects of its trade policy, which relate to WTO agreements. Those documents than are submitted to the WTO in a Memorandum, which is examined by the Working Party dealing with the country's application. The memorandum usually includes general economic indicators and policies affecting trade in agricultural and industrial goods, import and export regulations, intellectual property rights, trade in services, customs valuation, and licensing requirements. The Working Group evaluates in detail the economic mechanism and trade-political regime of the applicant, checks their compliance with the WTO rules, and provides questions and comments for response by the applicant.

Negotiation Phase: After the Working Party has assessed the principles and policies parallel bilateral talks between the applicant and other WTO countries begin. WTO member countries' negotiators develop a formal request to the applicant country to lower tariffs and other barriers to

⁵ World Trade Organization website
www. wto.org

trade, and to provide specific sectoral market access commitments, as well as “commercially significant” concessions, which the acceding country will be ready to make to WTO members in terms of their access to its goods and services markets. The negotiations phase continues until the Working Party agrees that all necessary changes have been made to bring the applicants foreign trade regime into compliance with the WTO.

Protocol of Accession: The bilateral tariff, non-tariff, and market access commitments, once agreed to by the Working Party, are combined to form the draft protocol. The summary of the discussions in the Working Party is contained in a Report of the Working Party (Suranovic, p.99). In addition, Schedules of Concessions and Commitments on Goods and of Specific Commitments on Services are prepared. The above documents are then annexed to the Protocol of Accession, which comprises of the terms of accession agreed by the applicant and the Working Party members.

Membership: All documents elaborated by the Working Party are presented to the WTO General Council or the Ministerial Conference. If a two-thirds majority of WTO members vote in favor, the applicant is free to sign the protocol and to accede to the organization. Once a member of the WTO, countries must be subject to the Trade Policy Review Mechanism (TPRM) in order to ensure transparency and impart confidence that all members will be subject to the same requirements and monitoring.

Accession to the WTO proves to be a much more complicated process than accession to the GATT 1947. The complementary issues and sectors embarked by the Uruguay Round must be addressed by the WTO accessing countries. The negotiation talks, which arise during the whole WTO accession period, are bilateral because different countries have different trading interests. Major players, the accessing country and the Working Party members, try to each push for their goals and interests. Thus, for instance WTO accessing country presses hard to maintain its tariffs and other protective measures as high as possible, while also negotiating on receiving a longer implementation period and so on. On the other hand, the Working Party members, among which

generally are the most advanced economies in the world such as the US, the EU, Canada, Australia and others, in case with Russia's WTO negotiations there are 67 countries in its Working Group (6), push the accessing country for larger tariffs reductions, full elimination of subsidies and other non-tariff barriers to trade. The new member's commitments must apply equally to all WTO members under the normal non-discrimination rules, even though they are negotiated bilaterally. In other words, the talks determine the benefits other WTO members can expect when a new member joins.

CHALLENGES AND OBSTACLES FACED BY THE DEVELOPING COUNTRIES

Domestic constraints

As required by the WTO rules and obligations, every member must fulfill its obligations in such area of domestic regulations as customs and tax systems, transparency of the legal and legislative systems, protection of intellectual property rights, harmonization of sanitary and phytosanitary standards, and other areas. While it is often perceived that such institutional and policy changes can be done by the stroke of the Government's pen, the reality is indeed much more complicated, because fulfillment of such obligations has its real, money term costs for the country trying to get accepted into WTO. The implementation process of for instance customs reform in regard to the Agreement on Trade Related – Aspects of Intellectual Property Rights (TRIPs) (7), will require not only the adding of necessary amendments into the customs legislation, but will also entail purchase of necessary equipment, training of personnel, and establishment of a satisfactory checks and balances system. In fulfilling its obligations under the TRIPs requirements, Mexico, for example, has spent more than US\$30 million to upgrade intellectual property laws and their enforcement (Finger, p.427).

6 *Russia and World Trade Organization*

www.wto.ru

7 The areas covered by the TRIPS Agreement:

*Copyright and related rights

*Trademarks, including service marks

*Geographical indications

*Industrial designs

*Patents

*Layout-designs (topographies) of integrated circuits

*Undisclosed information, including trade secrets (www.wto.org)

The implementation cost for standard requirements under the Sanitary and Phytosanitary and Agriculture Agreements might require larger amounts of funds. For instance, Hungary has spent over US\$40 million on the upgrade of its slaughterhouses' sanitation levels alone (Finger, p.427). An estimated average cost of domestic regulations and standards restructuring in the framework of the three major WTO agreements is equal to US\$ 150 million (Finger, p.427).

Aside the high implementation costs of the technical issues, the problem of lack of trained and WTO rules and regulations savvy personnel also remains as one of the major slow downs to the country's accession into the WTO. The preparation of the memorandum and other necessary documents for the submission to the WTO, presents serious difficulties for the governments, which by and large lack enough human and/or technical resources to address a full range of issues to be incorporated into the memorandum effectively and on in timely manner. In some cases even language proficiency and familiarity with the concepts of legal and economic issues become a significant burden for the applicant. Hence, a small size of the negotiation coordination group can result in a lengthy preparation of the initial memorandum (Schmidt, 12). Plus, the frequency of the formal meetings between the country's negotiation team and the central agencies, as well as overcoming of communication barriers between the Permanent Mission in Geneva and the capital, also affect the accession period length. In Moldova and in Kyrgyz Republic the negotiation groups met once per month, while in Vietnam such meetings occur every 2 to 3 months, and in Lithuania they were organized on a daily basis (Schmidt, p.15). Indian permanent mission, on the other hand, is instructed to attend all of the WTO meetings and report everything to the capital (Schmidt, p.18).

8

⁸When the Uruguay Round began in 1987, the GATT/WTO members totaled 65 developing countries, 20 of which did not have delegations in Geneva. Of the 20, 15 were represented from embassies in other European cities, and 5 by delegations based in their national capitals. Furthermore, developing country delegations were notably smaller than those of the industrial countries. The European Union had in Geneva a delegation of 10. EU member states' delegations included an additional 57 persons. The U.S. delegation numbered 10, the Japanese, 15. Only 12 developing countries had delegations of more than 3 persons. The larger ones, Korea, Mexico, and Tanzania, had 7 each; Brazil and Indonesia, 6 each; Thailand, Hong Kong, and Egypt, 5 each. Of the 48 least developed countries, 29 are WTO members, but only 11 of these maintain delegations in Geneva. (see Finger, p.433)

Many times implementation of such WTO agreements as SPS, TBT and GPA by developing countries cannot be successfully achieved without a comprehensive trade-related technical assistance (TRTA). Overwhelming number of developing countries have to seek assistance from foreign experts often funded by bilateral aid agencies such as World Bank, UN, USAID as well as from the WTO itself. However, since the demand for the WTO technical assistance is far exceeding the resources available, the WTO secretariat can only be of assistance in a very limited way in the accession process. The WTO budget allocates very limited resources to accession of new members (Schmidt, p.26; Michalopoulos, *WTO Accession for countries in transition*, p.18). Moreover, in order to receive a technical assistance from the donor the country has to wait for a certain period until the funds are provided and disbursed. Depending on the donor such period can take up to 2 years, which reduces effectiveness of the aid. As provided by Schmidt, the technical assistance the Kyrgyz Republic received came solely from the USAID, while the US and EU experts helped with the Moldova's accession into the WTO (9). Nevertheless, most of the recipients of such assistance say that technical aid did not have a dramatic effect neither on improvement of the negotiations not on their outcomes (Schmidt, p.27) (10).

On the other hand, institutional problems have their own importance and difficulties in settling. Thereby, effective enactment of legislation and regulations, which bring the regimes of the transition economies into conformity with the WTO rules, is often a bigger domestic constraint than lack of technical assistance or trained personnel. Such items as the laws on the Central Bank, financial institutions, joint stock companies, licensing of various types of economic activities,

9 The Kyrgyz Republic was the candidate with the quickest accession time in entering the global trade body to date.

10 WTO technical cooperation

The WTO holds regular training sessions on trade policy in Geneva. In addition, it organizes about 400 technical cooperation activities annually, including seminars and workshops in various countries and courses in Geneva. Targeted are developing countries and countries in transition from former socialist or communist systems, with a special emphasis on African countries. Seminars have also been organized in Asia, Latin America, the Caribbean, Middle East and Pacific.

Funding for technical cooperation and training comes from three sources: the WTO's regular budget, voluntary contributions from WTO members, and cost-sharing either by countries involved in an event or by international organizations.

The present regular WTO budget for technical cooperation is 1.36 million Swiss francs and for training 4.29 million Swiss francs. (www.wto.org)

domestic taxation, regulations on food and alcoholic beverages, veterinary medicine and pests subject to quarantine, patent and copyright protection, and consumer protection cover so many various areas and not only technical expertise, that merely more time is required to bring them in conformity with the WTO (Michalopoulos, *WTO Accession for countries in transition*, p.7). Moreover, domestic industry and business elites, in order to protect their economic interests, often form or finance lobby groups, which try to ban or slow down the process of amending legislation significant for each lobbied industrial sector.

The importance of political consensus and stability in the country are equally crucial. Thus, for instance, in countries like Algeria, Cambodia, Nepal, Sudan and Uzbekistan the internal political instability and conflict about some issues, country's WTO accession issue in particular, have resulted in delays in the process (Michalopoulos, *WTO Accession for countries in transition*, p.17.) (11).

Nevertheless, for many "WTO member want to be" it is politically difficult to adopt a liberal trade strategy at accession. Politicians and interest groups who are used to acting selfishly will take the political cost involved in "tying their hands" seriously (Langhammer and Lucke, p.6).

Since membership in WTO brings in a new bunch of obligations to liberalize trade through reduction of tariffs and other non-tariff trade barriers, at the time when country's major trading partners, which are also WTO members, take advantage of totally legal opportunities under the

11 Algeria - Collapsing oil prices in 1986 and continuing political and economic crises during the 1990s, however, cut average incomes in half. Starting from a position of extreme vulnerability in the early 1990s—low oil prices, unsustainable foreign debt servicing, severe acts of terrorism that led to the tragic loss of life, and sociopolitical tension—the country has remarkably rebounded, especially since 1996. Despite recent progress, however, Algeria faces major challenges. The country's primary developmental objective is to restore sociopolitical stability. High unemployment and inadequate public services continue, and government reforms are critically necessary to create conditions for sustained growth and poverty reduction.

Sudan - Sudan is a country rich with potential but severely impacted by the effects of a civil war, which entered its 20th consecutive year in 2002. Sudan remains on the poorest countries in the world, with widespread poverty and a weak and uneven economic base and infrastructure. Per capita income in 2001 was \$340.

Uzbekistan is a low-income country with a Gross National Income (GNI) per capita of US\$ 460. The country is rich in natural resources, such as coal, copper, gold, natural gas, oil, silver and uranium. Agriculture accounts for some 35 percent of GDP and about 40 percent of employment, despite the country's difficult terrain. Incomes and living standards have improved little since the early 1990s and rural poverty continues to be significant. Of the estimated 27.5 percent of the population -- or about 6.7 million people - who are unable to meet their basic consumption needs, some two-thirds live in the rural areas. The country also faces serious environmental problems. (www.imf.org)

WTO to limit market access - for example by maintaining high levels of protection in agriculture, the mood for liberalization and opening of domestic market undergoes a dramatic change toward growing resistance to openness (Michalopoulos, *WTO Accession for countries in transition*, p.11). Generally, more liberal trade regime endorsed by WTO accession exposes industries and companies in small, relatively vulnerable economies to larger foreign competition, as a result increase in imports, brought by market opening, emerges faster than growth the newly WTO member's exports, which in turn are generate by improved market access abroad. Consequently, since particular commercial interests in developing countries dominate/influence the country's political economy of both domestic and international trade policy, overcoming resistance to the idea of trade liberalization and WTO accession can also be time and effort consuming.

Thus, while at a general policy/decision-making level WTO applicant countries might agree that accession to the WTO is of principle importance to their national interests and overall operation of their international trade, the accession process cannot conclude successfully, unless certain commercial interests in those countries are satisfied and secured through the means of negotiations for special sector protection at least temporary and partial.

International constraints

There is a feeling on the part of many developing nations that they are being left behind, that they are receiving a disproportionately small share of the benefits of a more liberal global trading system. Moreover, the developing countries argue that the developed-rich WTO members like the US, the EU, and others continue to maintain high protectionist measures in shielding their domestic industries while pushing for protection reductions in the developing world. Not surprisingly, the real situation has proven claims of developing countries to be true for the most part true. For instance, Craig Vangrasstek in his comment to Alan V. Deardorff's "Market Access for Developing Countries" states that the United States in its history of international trade policy formation "moved from nondiscriminatory protection (1816-1933) to discriminatory liberalization (1934-1942), to a

period of nondiscriminatory liberalization since 1942 that, beginning in the mid-1960s, has also seen a growing number of discriminatory agreements and programs” (Porter, Sauvé, Subramanian, Zampetti, p.176) (12).

Furthermore, developing countries claim that the rich countries have the problem of “unfamiliarity with and unwillingness to learn the conditions” faced by the other party (Finger, p.434). The “*Do it my way!*” attitude of the developed countries twists the arms of the developing nations, because frequently such attitude provides an “all-or-nothing” option for the developing nations in trade issues.

Another important predicament confronted by the developing countries during their accession to the WTO, is the political pressure, both domestic and international, for a faster WTO membership attainment. Despite the fact that such political interest is understandable, since WTO membership is internationally popular, due to its association with democracy, liberalization, progressive political and economic reform implementation, the diplomatic value of becoming a WTO member often clouds the importance and seriousness of the negotiations. Thus, for instance, as Finger puts it “in many countries the obligations that came with the WTO membership were not carefully considered” (Finger, p.434). For example, as described by Langhammer and Lucke, the main emphasis in tariff negotiations “should not be on the average tariff as such but on tariff escalation, exemptions, and transparency in general.” (Langhammer and Lucke, p.9)

Shortage of real support from the developed countries is another constraint in smooth and mutually beneficial WTO accession. In spite of the fact that many WTO agreements provide for technical assistance to developing countries, in particular such provisions exist in the Agreements on SPS, TBT, Implementation of Article VII (Customs Valuation) and the TRIPs, this provision are not

12 In 1960 the degree of trade openness (exports and imports divided by GDP) stood between 20 and 30 percent in France, Germany, Italy, and the United Kingdom, with considerably higher levels in smaller countries. By contrast, in the US, international trade amounted to barely 7 percent of GDP. In the next forty years exposure to trade increased significantly on both sides of the Atlantic reaching between 40 and 50 percent in the large European countries and nearly 20 percent in the United States (Porter, Sauvé, Subramanian, Zampetti, p.184).

completely binding ones, as a result the rich countries are often reluctant in providing real assistance to the developing members. Consequently, developing nations again get the impression that they have taken bounding commitments in exchange for the unbound commitments of the rich (13)

ISSUES

Agreements on Agriculture, SPS, and TBT

In comparison, agriculture accounts for 17 percent of gross domestic product (GDP) in middle-income countries, and amounts to 35 percent in the poorest countries. Agricultural exports account for more than one-third of the total exports in almost half of the developing countries. Notwithstanding the fact the developed countries continuously use subsidies to slant the benefits of agricultural trade in their favor. Each year, developed states spend in excess of US\$300 billion in support of agriculture, which is six times the amount they allocate to foreign development assistance (*Kevin Watkins and Joachim von Braun, p.2*).

Due to huge subsidy amounts production of agricultural goods drastically increases, which in its turn leads to great surpluses, which are later discarded into the world markets at distinctly lower prices, which however, are the outcomes of the reduced production costs. Meanwhile, high tariffs and other trade barriers are used to keep imports out. The model used by the International Food Policy Research Institute, which is ironically located in Washington D.C., USA, has estimated that an end to rich countries' support in agriculture would generate annual gains of US\$40 billion for

13 The following are three major examples of provisions for differential and more favourable treatment of developing countries:

In Article XXXVII of GATT 1994 the developed Members of WTO have committed themselves to accord high priority to the reduction and elimination of barriers to products currently or potentially of particular export interest to developing countries, including customs duties and other restrictions which differentiate unreasonably between such products in their primary and in their processed forms.

The 1979 Decision on Differential and More Favourable Treatment (the "Enabling Clause") permits developed Members to grant preferential tariff treatment to developing countries. It also permits developing Members to enter into regional or global arrangements among themselves for mutual reduction or elimination of tariff and, in accordance with criteria and conditions which may be prescribed by the Ministerial Conference, for the mutual reduction or elimination of non-tariff measures.

Article IV of GATS stipulates that the increasing participation of developing country Members in world trade shall be facilitated through the negotiation of specific commitments, relating to the strengthening of their domestic service capacity and its efficiency and competitiveness through access to technology on a commercial basis; the improvement of their access to distribution channels and information networks; and the liberalization of market access in sectors and modes of supply of export interest to them. (www.wto.org)

developing countries, with Sub-Saharan Africa, the world's poorest region, gaining US\$3.3 billion.

The estimated gains will result from an increase in exports (especially for Latin America) and import substitution effects (*Kevin Watkins and Joachim von Braun, p.10*) (14).

As calculated by the *International Food Policy Research Institute*, tariffs on agricultural goods in the EU and U.S. are four to five times those applied to manufactured goods, and peaks in excess of 100 percent, for such items as groundnuts in the U.S. and dairy produce in Europe are pretty common. It is also stated that while it is obvious that modern technology and equipment, as well as both financial and qualified human resource lacking poorest African countries may not be able to generate a sizeable surplus of dairy products for instance, they still have decent chances of doing so in beef, sugar, and cotton exports, which disappointingly, still remain as the most protected products in the EU, the US and some other developed countries (www.ifpri.org) (15).

Evidently, almost all of the developing countries that would like to export, for example, beef to Europe have to face tariffs of up to 150 percent, along those exporters of some fruits and nuts to the US market, which are encountered with the tariffs of 200 percent or more. There are irrefutably more hindrances to agricultural products trade only, taking into account phytosanitary and TBT regulations and requirements.

The major goal of the SPS Agreement, as envisaged by the WTO explanation, is to cover measures adopted by countries to protect human or animal life from food-borne risks, human health

14 Agricultural growth in developing countries declined to 2.2 percent per year in the past 10 years, compared to 3.4 percent in the previous decade. Although agricultural trade has increased in absolute terms over the past decade, its share in total trade has dropped to less than 10 percent. And developing countries account for about one-third of exports, roughly the same share of exports as in 1980.

15 Research by Oxfam has shown that the distribution of subsidies among farmers in both Europe and the U.S. is more unequal than the distribution of income in Brazil, one of the world's most unequal countries in terms of income. The biggest 25 percent of EU subsidy recipients receive more than 60 percent of all subsidies. In the U.S. 60 percent of farmers get no support at all, while the biggest 7 percent account for 50 percent of government payments. The large slice of subsidies directed toward sugar and dairy producers makes up part of this distorted picture.

An IFPRI model predicts that an end to rich country support in agriculture would generate annual gains of US\$40 billion for developing countries, with Sub-Saharan Africa, the world's poorest region, gaining US\$3.3 billion. The gains result from an increase in exports (especially for Latin America) and import substitution effects.

from animal or plant carried diseases, and animal and plants from pests and diseases. Therefore, the specific aims of SPS measures are to ensure food safety and to prevent the spread of diseases among animals and plants (Simonetta Zarrilli, p.5).

Besides, the SPS Agreement recognizes that, due to differences in geographical, climatic and epidemiological conditions in various countries and/or regions, it is often inappropriate to apply the same rules and standards to products with different origins. Therefore, the SPS Agreement presents a prospect for countries to apply different SPS measures depending on the origin of a certain product. However, such “flexibility” should not and cannot be used in any unjustified discrimination among foreign suppliers or in favor of one’s domestic producers (www.wto.org).

If evaluated in real time context, both the TBT (16) and SPS standards are largely established by and for the developed countries, with little account being taken of developing countries’ implementation capacities. Developing countries have stated that in some instances importing countries are looking for “sameness”, instead of equivalency, of measures. On the other hand, the interpretation of equivalency as sameness is inconsistent with the Article 4.1 of the SPS Agreement, which is to acknowledge that various measures can achieve the same level of sanitary and phytosanitary protection and therefore, countries can enjoy flexibility about the kind of measures to adopt to ensure adequate SPS protection (Laird, p. 2)(17).

16 The Technical Barriers to Trade Agreement (TBT) typically deals with:

- labeling of food, drink, and drugs
- quality requirements for fresh food
- packaging requirements for fresh food
- packaging and labeling requirements for dangerous chemicals and toxic substances
- regulations for electrical appliances
- regulations for cordless phones, radio equipment, etc.
- textiles and garments labeling
- testing vehicles and accessories
- regulations for ships and ship equipment
- safety regulations for toys
- etc... (see www.wto.org, WTO Agreement Series)

17 Even though the SPS Agreement includes a specific Article (Article 10) on special and differential treatment (S&D) for developing countries and LDCs, the provisions of this article apparently have not been converted into specific obligations (Simonetta Zarrilli, *WTO SPS Agreement: Issues for Developing Countries*, p.10).

Agreements on TRIPS, GATS, and GPA

One of the most groundbreaking and significant accomplishments of the Uruguay Round was the negotiation on the GATS, its associated annexes and national schedules of commitments. The negotiations resulted in a comprehensive set of rules for preserving and expanding market access for internationally traded services. The GATS provisions establish an across the board obligation on the transparency of laws and regulations affecting trade in services (Geza Feketekuty, p. 6-7) (18)

Nevertheless, despite good intention to increase transparency, mobility, and tradability of the services in all areas for all members of the WTO, the problems do arise for the developing countries in this regard.

The implementation of the GATS has indeed resulted in total and sharp growth in services. Yet, such growth has mainly occurred for the developed countries, which now accounts for 60-70 percent of the GDP and employment in OECD countries (Jessica Woodroffe and Clare Joy, p.8). Furthermore, as provided by Raghavan, as early as in 1987, the European negotiators agreed on the fact they did not confirm or identify “comparative advantage for developing countries in any sector of services trade for the foreseeable future”. As a result Argentina’s claim that even after five years of GATS in action, developing countries had “failed to increase their share of global trade in services” did not come as a big surprise (Raghavan, p.108).

Nonetheless, increasing the share of developing countries’ trade in services does not remain as the only puzzle. Thus, for instance, the so-called “*brain drain*” phenomenon is becoming increasingly important issue within the GATS framework. For example, some recent studies suggest that estimates indicate losses of 10 to 30 per cent and much more of the highly educated workforce

18 The GATS provisions establish an across the board obligation on the transparency of laws and regulations affecting trade in services. The transparency provision obligates member countries to publish all government measures, which affect trade in services, and to respond to requests for information on any of the above. The GATS agreement also establishes a general MFN obligation, i.e. countries are required to grant all foreign suppliers the same treatment, unless the country involved excluded a particular sector from the MFN obligation at the time the agreement went into effect. Members of a free trade area, however, are allowed to give each other preferential treatment.

from several developing countries (19). As a result, the developing countries are concerned that skilled labor emigration at such high levels poses a challenge for their own development (B. Lindsay Lowell and Allan Findlay, p.1) (20).

The most direct effect of skilled labor emigration is a reduction in the number of educated workers who are critical to productivity and a developing country's economic growth. On the other hand, as the forecasts of the cross-border labor movement suggest, it is more likely that at current demographic and economic trends/developments in advanced countries the immigrant admission numbers of skilled labor will continue to remain high. For example, in Bulgaria, about one-third of surveyed college students report intent to emigrate, while another research shows that about 12 percent of Uruguay's total professional class was lost during the 1980s, as well as that two-thirds of Jamaican nurses and 60 percent of the Philippine's medical doctors have emigrated (Lowell and Findlay, p.5) (21).

Moreover, some developing countries are anxious about possible effects of fully opening up to foreign direct investment, a principal mode of supply for many services. Thus, developing countries try to press for wider liberalization beyond professional services, and it is becoming increasingly difficult to convince them that it is in their interest to take on new commitments in other areas of the services negotiations, since Article XIX:2 of the GATS provides

“an appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to

19 *India* has long been an important player in the global supply of professionals and students. It is today's most sought-after source country for highly skilled workers and most of the flow is to the United States. India has geared up quickly to meet demand in information technology, producing some 120,000 graduates a year with plans to double production. Yet, there is an anticipatory theory that forecasts adverse long-term impacts from the export of IT workers where projected Indian shortages are greater than the forecast production of IT workers. Certainly research on specific sectors, e.g., medicine and engineering, raise concerns about adverse effects. The government perceives little problem with these trends, but the media decry the “brain drain”. Memoranda of understanding on student and academic exchange are an important way of addressing these issues (see Khadria, 2001).

20 Jamaica and the Caribbean The 1962 British Commonwealth Act shifted emigration to North America. One-quarter of today's outflow to the United States is made up of professional, technical, and kindred workers in the most productive age group. Emigration accelerated in the 1990s driven, in part, by recruitment “frenzy”. Simultaneously, the return of low-skill UK retirees increased, as did non-Jamaican immigration, three-quarters of which is highly skilled. Still, there is a shortage of skilled workers. Two-thirds of Jamaica's nurses emigrated over the past two decades and few return, in their place Cuban nurses are recruited. Feedback effects are few, i.e., remittances are uncertain and their most favourable impact is to stimulate house building. While public opinion tends towards a favourable view of the inevitability of skilled outflows, the “brain drain” fuels negative perceptions of the region's future. Policies have included readily accessible job information, tax concessions, and recruitment efforts including a short-lived IOM program to return expatriates (see Thomas-Hope, 2001).

21 On average, 60-90 per cent of the price that tourists pay for their holidays goes to the multinationals who own the airlines and run the hotels. (Consumers International (2000), Services at the WTO Trade and Economics Briefing Paper, No.3.)

foreign service suppliers, attaching to it conditions aimed at achieving the objectives referred to in Article IV”,

and conditions aimed at achieving are to increase participation of the developing countries in the world trade (22).

The TRIPs covers seven main areas of intellectual property: copyright, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits, and undisclosed information including trade secrets. As explained by Finger, TRIPs also requires WTO members to provide for protection of plant varieties, “either by patent or by an effective *sui generis* system such as the plant breeder’s rights established in the International Union for the Protection of New Varieties of Plants convention” (Finger, p.429). Specified standards of protection for each area, which governments must provide, as well as the procedures to enforce them are clearly stipulated in the agreement.

While the enforcement provisions require that each member provides “civil as well as criminal remedies for infringement of intellectual property rights”, the member is also required to offer ways by which “rights holders can obtain the cooperation of customs authorities to prevent imports of infringing goods” (23).

Despite the fact that the licensing and copyright protection in fact results in higher returns to knowledge generation and more innovations, the hard question is whether this growth is enjoyed/shared by both advanced countries and their developing colleagues or not? In reality, though, the rich countries are the net producers of patentable and certifiable knowledge and property, while the poorer ones are their net consumers.

22 GATS in action: Automobiles and Bananas

The Canadian ‘Auto Pact’ is designed to encourage companies selling vehicles locally to invest in, purchase parts from, and create employment in Canada. This has been an important part of the country’s industrial strategy, but is exactly the kind of promotion of domestic industry that GATS seeks to remove. In 1999, European and Japanese vehicle manufactures challenged the Auto Pact. The WTO dispute panel ruled that it fell foul of a number of WTO agreements including GATS.

European countries had given impoverished Caribbean banana farmers preferential access to their markets, until the US used GATS to have this discriminatory treatment ruled illegal under WTO rules. The EU had not thought to obtain an exception for the arrangement under GATS. (www.wto.org)

23 www.wto.org

According to the survey, even in Mexico, an advanced developing country and the OECD member, domestic residents submitted only 389 patent applications in 1996, compared to over 30,000 from foreign residents (Robert Hunter Wade, p. 4-5).

For some developing countries the fact that full implementation of the TRIPs puts them in less favorable initial conditions for intellectual property and technology development seems unfair, since today's advocates for the fullest TRIPs implementation - like EU, Japan, and the US, which by the World Bank estimates, would gain extra net US\$19 billion a year in royalties from full application of TRIPs (24), had enjoyed unpatented, unlicensed and unrestricted intellectual property and technology use and developed at their initial stages of development in those areas (25).

Furthermore, the developing countries have a wide array of obligations about what they allow to be patented and how they treat and enforce patents. In cases where a WTO member country does not comply with the rules and its obligations under the WTO, the probability that it will be brought to the dispute settlement panel by the advanced country-counterpart is very high. On the other hand, [Article 67](#) of the TRIPs Agreement says,

“developed country members must provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country members” (26).

However, since there is no provision for punishing developed countries if they do not comply with the above article, developing countries often receive an inadequate level of technical

24 'Intellectual property: balancing incentives with competitive access', in Global Economic Prospects 2002, The World Bank, Washington DC, 2002, p.136.

25 The TRIPs agreement provided the following transition periods:

. Industrial countries, until 1 January 1996

. Developing countries and transition economies, up to 1 January 2000

. Least developed countries, up to 1 January 2006— and may be extended on “duly motivated” request by a least developed country
Developing countries that now provide patent protection to processes and not to products, for example, in the food, chemical, and pharmaceutical sectors, can delay the application of the obligation to protect products up to 1 January 2005. Even here, governments must specify that inventions made between 1995 and 2004 will be able to gain patent protection after 1 January 2005.

26 The World Trade Organization website:

http://www.wto.org/english/docs_e/legal_e/27-trips_08_e.htm#art67

support from their advanced counterparts.

Besides, because TRIPs builds on international conventions, which were created mainly by the industrial countries and practice the enforcement methods they draw on, it is often very burdensome and costly for the developing countries to meet and fully comply with the TRIPs obligations.

The Agreement of Government Procurement

The main goal of the GPA is to ensure that government decisions regarding government purchases of goods and services do not depend upon where the good is produced or the service rendered, or upon the supplier's foreign affiliations. Thus, the foreign firms must be treated identically as the domestic ones and the government should not provide any more preferential treatment to the local producer, supplier, or manufacturer in any case, even if intended to promote or support certain domestic industry.

In reality though, protectionist and nationalistic attitudes are more popular among the general public. Hence, often populist governments have to implement the policies, which might be less economically efficient yet more public support gaining. As a result, for instance, the claim that “our money” should be spent on “our goods” to keep “jobs at home” led to exclusion of the government procurement issue from the original GATT. Indeed, it was not until the completion of the Tokyo Round that an agreement on disciplines for government procurement practices was introduced into the world trading system (Evenett, p.6).

The European Union estimates that the public procurement marketplace at all levels of government in member states equals to about US\$1,000 billion annually. The United States spend about US\$200 billion annually at the federal level and another US\$400 billion is estimated to be spent at the state and local level (Wittig, p.8). Trionfetti indicates that the size of central government purchases varies between 5 percent and 8 percent of the GDP for most industrialized countries. For the Middle East and Africa, the size of central government purchases ranges from between 9 and 13

percent of the GDP (Trionfetti, p.47) (27).

It is perfectly understandable that since government procurement accounts for a fairly large share of the GDP, that the countries involved try to secure this area spending for their domestic companies and businesses. Sensibly, the developing countries would more likely to continue to avoid becoming a party to the GPA, despite a substantial pressure from the EU, the US, and other GPA members, to accede to the WTO GPA. Furthermore, such players as the EU and the US would continue to push for the multilateralization of the GPA in the future. For instance, even today, the US legislation requires the United States Trade Representative (USTR) to monitor foreign procurement policies that deny access to markets for American goods and services. Such data is published on an annual base in the US Department of Trade's *Foreign Trade Barriers Report* (28).

Nevertheless, the fact that the GPA is a "plurilateral agreement" and is signed on a voluntary base by each member country, still the pressure for a "multilateral" GPA is sizable. Such opponents of the GPA as Egypt and Pakistan are still worried that by signing themselves to the GPA rules and requirements, their domestic industries will loose the competition to the large, well experienced foreign companies.

Assesment

According to classical trade theory, transition from a closed economy to a free trade results in many economic gains since trading countries benefit from specialization and more efficient resource allocation. Probably, the idea to receive such trade-generated benefits is the force that stimulates the world community to make repeated steps toward further trade liberalization, which also involves getting a WTO membership for some.

27 Governments also use procurement policies to favour certain groups, firms, regions, and industries. For example, such favoritism is widespread in the United States and India where the central government favors small firms who bid for contracts. More recently, South Africa has considered instituting a scheme which will favour black entrepreneurs and firms that employ stipulated numbers of black employees. This is part of a sweeping initiative to enhance the economic status of the majority black population after the fall of the apartheid regime (see Evenett, p.9).

28 USTR Annual Report on [Discrimination in Foreign Government Procurement](http://www.ustr.gov/enforcement/report.pdf) <http://www.ustr.gov/enforcement/report.pdf>

Nevertheless, due to the difficulties and multiples of obstacles faced by the poorer nations, and questionable willingness of the rich countries to address these concerns, there is often a doubt about the WTO's ability to integrate development into its main targets and plans.

Along the evolution of the GATT and later formation of the WTO, developing countries have criticized the GATT/WTO system for its perceived bias in favor of the industrialized nations (29). Thus, developing nations have criticized the new set of commitments, which range from the enforcement of intellectual property rights to customs policy reform, that were discussed during the Uruguay Round because their full implementation remains too costly for them. The problem of high implementation costs is coupled with the belief that the WTO has failed to deliver promised gains to the poor countries in such important areas as textiles and agriculture, where tariff reductions have been slower than in industrial sectors.

Hence, the poor states believe that the pattern of protectionism in favor of the rich and is biased against the poor since the trade barriers for and on the goods produced by those poor are among the highest. In addition, "participation constraint", among which small and unexperienced Geneva Permanent Mission delegations, inability to fully participate in many important WTO issue meetings, and poor domestic inter-agency work organization, hinders developing countries from ensuring that WTO agenda items and multilateral rules reflect their strategic interests and needs.

Many low-income countries are fearful of the possible implications of trade liberalization for them. The main reason to such fear is the lack of understanding and assistance on behalf of the developed nations to make sure that all of the WTO rules, regulations and obligations that come with them, make clear sense and are understood by the developing countries. Furthermore, as mentioned earlier in the paper, the problem of "unfamiliarity," of not only developed countries'

29 At the 1999 Seattle Ministerial Conference, several groups of developing countries released statements criticizing their exclusion from key decision-making processes at the WTO. Ministers from African, Latin American and Caribbean nations, for example, complained that they were not allowed to participate in "green rooms," or the informal negotiating groups where sensitive issues were discussed. At the Fourth Ministerial Conference in Doha, these concerns were less pronounced, but frustration about unequal representation remained (www.wto.org)

government officials but also the private sector and civil society, with the real situation and hot issues in the developing countries, result in lack of understanding and communication between the two. Besides, despite the fact that the Doha Declaration provides a number of commitments on the part of the WTO members to provide technical assistance in the areas of investment and competition, there is an absence of similar procedures in the areas of market access, government procurement and trade facilitation (30).

Nevertheless, since it is in the developing countries own interest to have strong and effective WTO multilateral trading system, it should also be in their interest not to simply be a part to new multilateral trade talks and give their comments on suggested proposals by the developed members, but to take an initiative that would let them create such policies which are beneficial for them too, and to pursue outcomes that can accelerate growth of international trade in general, while increasing developing countries' access to the advanced countries' markets.

To do so, developing countries need to reach a consensus among themselves first, and turn into a more active, informed WTO player, which will be able to participate in the discussions and proceedings of the WTO to make sure that "emerging interpretations and practices concerning provisions in the agreement do not result in either an increase in obligations or dilution of their rights" (Mathur, p.46). They also should not be in denial about the necessity to address new issues in areas such as investment, competition policies, trade in services, standards and GPA.

On the other hand, it is evident that every coin has two sides, so it is not solely developing countries actions, which can increase the level of cooperation and further development process in

30 DOHA MINISTERIAL DECLARATION (adopted November 14, 2001) Technical cooperation and capacity building "38. We confirm that technical cooperation and capacity building are core elements of the development dimension of the multilateral trading system, and we welcome and endorse the New Strategy for WTO Technical Cooperation for Capacity Building, Growth and Integration. We instruct the Secretariat, in coordination with other relevant agencies, to support domestic efforts for mainstreaming trade into national plans for economic development and strategies for poverty reduction. The delivery of WTO technical assistance shall be designed to assist developing and least-developed countries and low-income countries in transition to adjust to WTO rules and disciplines, implement obligations and exercise the rights of membership, including drawing on the benefits of an open, rules-based multilateral trading system. Priority shall also be accorded to small, vulnerable, and transition economies, as well as to members and observers without representation in Geneva. We reaffirm our support for the valuable work of the International Trade Centre, which should be enhanced.

the global trade framework, but also developed countries' degree and interest to contribute to it that completes the job. Thus, rich WTO members should provide greater technical and other possible means of support, so they can assist developing countries in their trade liberalization and integration processes.

If we go back to the main question posed in the paper, of the degree of difficulties developing countries face while integrating into the world trading system, the answer consists of two components. First, while it is undoubtful that the accession process into the WTO is both time and money consuming, there are many factors to such obstacles. For example, high WTO rules and regulations implementation costs, lack of professional, well trained and experienced personnel, lack of sufficient financial resources, besides those allocated for the development projects, in total all of the abovementioned negatively affect the timing and effectiveness of the WTO accession by a new member.

On the other hand, such factors as political instability and lack of political will to push for liberal reform commitments also become impediments, not less important or less significant than the technical ones, in joining the global trading system.

Nevertheless, despite some free trade opponents' argument that the WTO had failed to achieve its main goal, the most important goal of this organization has been and is being achieved. Thus, the reciprocal removal of barriers to trade in goods and services has been taking place since the formation of the GATT and has intensified with the creation of the WTO. Therefore, it is not a question of joining or not joining the WTO, but rather a question of assessing costs and benefits and trying to choose a less burdensome pace for each individual country and case.

Indeed, because the benefits of globalization and the gains of increased global integration are unevenly distributed across and within nations, the reforms required for wider benefit enjoyment will become even greater as the current and future rounds of WTO multilateral trade negotiations continue. Consequently, more education is needed for the developing countries not only about the

WTO, its rules, regulations and obligations but also in analytical capacity and skills so more trade liberalization among the developed countries as well as some developing countries will be possible.

PART II

Case Study – Economic and Political Perspectives on Kazakhstan’s WTO Accession

INTRODUCTION:

In the second Part of the thesis I would like to use the case of the Republic of Kazakhstan’s accession negotiations process as an illustrative example of WTO accession by a developing country. One of the reason I chose Kazakhstan’s WTO accession is because I believe that Kazakhstan, despite its developing country status, is facing rather distinctive experience of WTO accession negotiations and of domestic policy restructuring. The main reason to the difference is certainly the timing of the accession. First of all, even though Kazakhstan is by rational thinking is a developing country, it is recognized as a country with a “market economy” both by the USA and the EC. This fact does not allow Kazakhstan to enjoy special and preferential treatment provisions for countries in “transition from a centrally-planned to a market economy³¹.” Moreover, the special treatment provisions envisaged for developing and least-developed countries in case of “balance-of-payment” difficulties are as well not applicable to Kazakhstan, as its balance of payment has been in surplus for several years.

Secondly, with the erosion of preferences in terms of special tariff concessions granted by developed countries on imports from developing countries, the real gains developing countries receive from such provisions are much less substantial nowadays from what it used to be. The reason is that with the overall reduction of normal tariff rates the difference between the “normal” and “preferential” rates is significantly cut.

31 Pomfret, Richard, “Reintegration Of Formerly Centrally Planned Economies Into The Global Trading System,” Center For International Economic Studies, Discussion Paper 0106, February 2001, p.5

Of course, there are number of other provisions intended to assist developing countries. For example, provision of Article XVIII of GATT allows developing countries to withdraw previous commitments such as tariff bindings in order to protect infant industries, and provision of permissible subsidies for the agricultural sector envisaged under Article VI of the Agriculture Agreement³². There are several special treatment provisions in WTO agreements, which provide extended implementation periods for developing countries' various commitments³³.

Yet, the main problem concerning special and differential treatment is that they are not compulsory or not legally enforceable. Thus, for example, GATT's special section (Part IV) on Trade and Development contains provisions on the concept of non-reciprocity in trade negotiations between developed and developing countries, meaning that when developed countries grant trade concessions to developing countries they should not expect the developing countries to make matching offers in return. In reality though, the question of providing special treatment to a certain developing country is a matter of political reasoning rather than of developed country's good intention to do so. The provision of more favorable treatment to the developing countries was quite important during the Cold War era, when western industrialized countries were eager to provide assistance, both technical and financial to their poorer counterparts, so they could secure their control over countries they subsidized.

Since the end of the Cold War and as a result of speedy development and expansion of Chinese economy in particular, the developed countries are no longer willing to provide a full range of special and differential treatment provisions to the developing world, except for the least-developed countries, many of which have long been WTO members as a result of de facto GATT

³² In accordance with Paragraph 4 (a) (i) of the Article VI of Agreement on Agriculture for developed WTO member country "product-specific domestic support which would otherwise be required to be included in a Member's calculation of its Current AMS ...should not exceed 5 percent of that Member's total value of production of a basic agricultural product during the relevant year." Yet for developing countries in accordance with the Para. 4 (b) de minimis permissible subsidies of 10 percent of the total value of production are allowed.

³³ The Special treatment provisions, which foresee extended implementation periods to developing countries are those under Article 15 of the Agreement on Agriculture, Article 10 of the SPS Agreement, Article 12 of the TBT Agreement, Article 27 of the SCM Agreement, etc.

membership provision for post-colonial countries, but who failed to achieve increase in trade surpluses or greater economic growth³⁴.

Due to the fact that reliance and exercise of special and differential treatment by the developing countries nowadays is becoming less and less effective, while negotiations for the right to enjoy them are indeed becoming more and more time consuming, as well as since many special and preferential treatment provisions have already or are going to expire soon due to the expiration of the ten-year transitional period from GATT to WTO on January 1, 2005, I would argue that in case of Kazakhstan's WTO negotiations on its concessions, the country should not rely or depend on the special treatment provisions, as they do not bring much benefit, but should rather try to incorporate into the global trading system by facing the reality.

In other words, it is better for the country to put as much effort and political commitment as possible to adjust its institutional and legal basis in compliance with the WTO rules and requirements at the earliest stage possible, since further delays would require more dramatic/larger adjustments, while temporary prolongations in deadlines for the implementation of the country's obligations cannot be sustained forever.

Despite that, the perception that the WTO is largely "an instrument of the powerful, industrialized nations" is widely popular and is true to certain extent. Yet, according to *Kaushik Basu*, the Cornell University economics professor, "opposing it on all fronts, however, is wrong...(since) constant opposition to the WTO is self-defeating."³⁵ He argues that in "today's globalized world a centralized trade ombudsman is vital." *Basu* compares WTO to a law court, and its elimination to "trying to run a modern society without a law court," which despite its typical leniency towards the rich and powerful, is still better than chaos.

34 Hayashi Michiko, "Arrested Development: Vanuatu's Suspended Accession to the World Trade Organization", Case Study Prepared for the International Commercial Diplomacy Project, February 2003, http://www.commercialdiplomacy.org/case_study/vanuatu.html

35 Basu, Kaushik, "The Retreat of Global Democracy", September, 2001, p.3

Thus, I do not cross out the possibility of someone arguing that rapid liberalization and domestic market opening to foreign trade can and probably will worsen the situation for country's domestic industries by flooding domestic markets with low priced imports as a result of low tariffs and quantitative and administrative restrictions elimination. Yet, I believe that worsening of the situation for the domestic producers will only be true during the period immediately after the country's WTO accession.

While, on the long run, liberalization of domestic economy, implementation of civilized business conduct rules as well as institutional, professional and legal system development, will result in more efficient economy with competitive domestic industries and producers. On the other hand, I would like to stress that such positive outcomes are only possible if the country clearly realizes and assesses its current political and economic situation, understands all of the aspects of WTO rules and regulations, and if it has affirmative, carefully planned plan of restructuring its economy to meet international standards, which at the same time will cause a minimal domestic damage from adjustments. The political commitment of the country's leadership and business elites is also crucial for a successful WTO accession and post-accession development.

Therefore, I would like to assess Kazakhstan's current standing on such major WTO issues as intellectual property rights protection, trade in services and government procurement. I believe that these agreements appear to be more complex and need more understanding on behalf of WTO acceding country. According to my observation there is not enough available information on Kazakhstan's current standing on these matters.

Since independence, Kazakhstan has been perceived globally as a supplier of oil, gas, ferrous, non-ferrous, rare earth and noble metals and uranium products, grain being a potentially exportable agricultural product. So far Kazakhstan has been developing pursuant to a classical economic scenario due to comparative economic advantage of rich mineral resources endowment.

Nevertheless, according to the President's Long –Term Development Strategy of Kazakhstan - “*Kazakhstan-2030*,” the Government's short-term “*Development Program for 2002-2004*,” and the country's “*Innovative- Industrial Development Strategy for 2003-2015*,” Kazakhstan is committed to pursue the economic policy aimed to support sustainable development through non-extraction oriented diversification of the economy. Production of competitive and export oriented goods and services in processing industries and services is the major focus of the state's innovative-industrial development policy.

As highlighted by the country's leadership, under current globalisation trends Kazakhstan's future economic and political development is confronted with a number of challenges. Among which high dependency on mineral-resources extraction and exports, weak integration into the global economy, inefficiency and slow-tempo transition to service and technology oriented economy, weak inter-sectoral and interregional economic integration within the country, general technical and technological obsolescence of enterprises, lack of efficient connection between science and production, low expenditures for scientific research and engineering works (SREW) ³⁶.

Yet, in order to achieve set goals in reality and not only on paper, the adequate policy adjustments should take place. The second part of the thesis thereby will provide an evaluation of what has already been done in terms of institutional and policy changes, and what Kazakhstan still needs to do so it can achieve its set goals and effectively access WTO, which will be its next step towards deeper international integration.

BACKGROUND:

Geographic location:

³⁶ “The Innovative-Industrial Development Strategy of the Republic of Kazakhstan For 2003-2015” approved by the Decree of the President of the Republic of Kazakhstan dated May 17, 2003, No.1096

Kazakhstan is the largest of the Central Asia Republics, covering 2.73 million square kilometers (i.e. 1.05 mln. sq miles). It is bordered by Russia to the north, the Caspian Sea to the south-west, Turkmenistan, Uzbekistan and Kyrgyzstan to the south, and China to the east.

It possesses enormous fossil fuel reserves as well as plentiful supplies of other minerals and metals. It also is a large agricultural - livestock and grain - producer. Kazakhstan is among top world countries in the amount of proven reserves of oil and gas, and the potential for new findings. It has 10 to 22 billion barrels of proven crude reserves and 53 to 83 trillion ft³ of gas (1998 est.)³⁷. The most significant growth of hydrocarbon extraction should be expected due to resources of Kazakhstan sector of the Caspian Sea with the hydrocarbon reserves estimated at a total of 8.0 billion tones. In the future the off-shore oil extraction may amount to 150-200 million tones for 25-30 years onwards³⁸.

Among other important resources are copper, lead, zinc, and silver, tungsten and tin, chrome ore, nickel, cobalt, titanium, magnesium, and antimony, vanadium, and gold. Processing facilities at Aktau produce large quantities of uranium mined in the Manghyshlak area. Molybdenum, tungsten, phosphorus, copper, cadmium and bauxites add to the list of Kazakhstan's mineral resources³⁹.

Political and economic situation:

Since independence in 1991, Kazakhstan has been one of the earliest and most vigorous reformers among the countries of the former Soviet Union. Nevertheless, the transition costs of moving from a centrally planned to a market economy have been high. With the breakup of the Soviet Union, Kazakhstan experienced an acute drop in output in almost all sectors of the economy, which resulted in economy's contraction, with the steepest annual decline occurring in 1994. Such

³⁷ General Information On Kazakhstan, CIA World Fact Book, August 1, 2003, <http://www.cia.gov/cia/publications/factbook/geos/kz.html>

³⁸ Statistics Agency of the Republic of Kazakhstan, Basic Information On The Republic Of Kazakhstan

³⁹ "About Kazakhstan," Kazakhstan Investment Promotion Center, KazInvest, http://www.kazinvest.kz/english/kazakhstan_eng.html

drastic economic decline was a combined outcome of several factors such as sharp demand drop for Kazakhstan's traditional heavy industry products, large volume of non-payments between enterprises, shrinkage of investments, and overall decrease of the population's incomes.

Kazakhstan's economy of the early 1990s was characterized by severe drop in production, a breakdown of the monetary and credit systems, loss of stability of the ruble, which led to further problems of delays in salary and pension pays, empty counters and long waiting lines as a result of both deficit in consumer goods and their distribution by coupons. In 1992 and 1993, prices inflated 3.060 and 2.265 percent respectively⁴⁰.

Despite all of the difficulties and complications the Government started to gradually introduce reforms necessary for the transition to a market economy. National currency, *Tenge*, and new macroeconomic policies were introduced in November of 1993. Thus, trade distortions were gradually reduced, while prices were liberalized, and small and medium-scale enterprises were privatized. In the period of 1995-97, the pace of the economic reforms and privatization gained speed, resulting in a substantial shifting of assets into the private sector.

Yet, Kazakhstan's economy again turned downward in 1998 with a 2% decline in GDP due to slumping oil prices and the *August Financial Crisis* in Russia. Recovery of international oil prices in 1999, combined with well-timed Tenge devaluation and a bumper grain harvest, pulled the economy out of recession in 2000.

The government established a basic framework to attract foreign direct investment into its resource rich oil and mineral sectors. Banking reforms and an ambitious pension reform program followed, together with the unbundling of the electricity sector. The pension reform program was introduced in 1998, and by December 2002, Kazakhstan's population had contributed over US\$1.6 billion to their own personal pension accounts, 71 percent of which is managed by the private

⁴⁰ Zhunisbekova, Lyazzat, "Addressing Intellectual Property Rights Reforms in Kazakhstan," Monterey Institute of International Studies, April, 1999

sector⁴¹. Furthermore, the growth of the pension funds triggered the development of the debt securities market in the country. Pension fund capital is being invested almost exclusively in corporate and government bonds, including Government of Kazakhstan Eurobonds.

More recently, a framework for public resource management was introduced. The framework includes foundations for civil service and creation of the National Fund to save part of the inflows to the budget from oil and other extractive industry. The National Fund is based on the Norway model, and accumulates extra profits of the oil and gas sector, when the oil export price rises over USD19 per barrel⁴². The National Bank manages the fund's assets and together with the Government prepares annual plan for the effective management of the fund. In 2002 the National Bank declared tenders to select additional external managers of the Fund's fixed income securities mandate. *Union Bank Privee* and *ABN AMRO Asset Management* were selected as the managers. While, Citigroup Asset Management was picked for the management of the Fund's equalization portfolio⁴³.

Kazakhstan embarked upon an industrial policy designed to diversify the economy away from dependence on the oil sector by developing light industry. Economic policy was aimed at maintaining price levels at the given limits. Kazakhstan's monetary policy has been well managed. From mid-1999 there were no abrupt price increases in Kazakhstan's economy. Stabilization of the financial market made it possible for the National Bank to lower official re-financing rate from 18 percent to 7.5 percent by the end of 2002, and to 7 percent in July 2003⁴⁴. Competitiveness of the domestic producers increased, investment activity enhanced and business finances improved.

As a result of its strong macroeconomic performance and financial health, Kazakhstan became the first former Soviet country to repay all of its debt to the International Monetary Fund (IMF) in 2000, 7 years ahead of the schedule. In March 2002, the U.S. Department of Commerce

41 The Ministry of Labor and Social Protection of the Republic of Kazakhstan, Statistics On Labor Market and Pension Reform, http://www.enbek.kz/almaz1/rynok_rs/rynoc.php

42 The Decrees of the President of the Republic of Kazakhstan "About the National Fund of the Republic of Kazakhstan" dated August 23, 2000 No. 402

43 Annual Report of the National Bank of the Republic of Kazakhstan, p.43 http://195.239.180.20/cont/publish577190_665.pdf

44 The National Bank of the Republic of Kazakhstan, Main Macro Economic Indicators, www.nationalbank.kz

graduated Kazakhstan to market economy status under U.S. trade law. The change in status recognized substantive market economy reforms in the areas of currency convertibility, wage rate determination, openness to foreign investment, and government control over the means of production and allocation of resources. In September 2002, Kazakhstan became the first country in the former Soviet Union to receive an investment-grade credit rating from a major international credit rating agency. As of October 1, 2003, Kazakhstan's gross foreign debt was at about \$19.8 billion, \$3.03 billion of which was owed by the government.⁴⁵

In 2001 the highest economic growth rate ever was reached since 1991; it equaled to 13.5 percent with an output increase in the main sectors of the economy such as industry, construction, transport, communications and trade. The upturn in economic growth, combined with the results of earlier tax and financial sector reforms, dramatically improved government finances from the 1999 budget deficit level of 3.5 percent of GDP to a surplus of 1.9 percent of GDP in 2001. GDP growth of 9.5 percent was achieved in 2002. The 2002 average annual inflation was at 5.9 percent (vs. 8.4 percent in 2001)⁴⁶. Trade turnover in 2002 grew by 8% in comparison with 2001, exceeding US\$16,2 billion, of which exports accounted for over US\$9,7 (growth by 12%) billion, while imports for US\$6,5 (growth by 2%)⁴⁷. The state budget as of January 1, 2003 experienced a small profit of 0.03% of the GDP⁴⁸.

Kazakhstan's banking system is developing rapidly. During 2002 deposits of residents in the banking system grew up by 35.6% and reached 603.3 billion Tenge (foreign currency equivalent – about 3.9 billion USD) accounting for 16.1% GDP (in 2001 – 13.7%)⁴⁹. The National Bank has introduced deposit insurance in its campaign to strengthen the banking sector.

45 The national Bank of the Republic of Kazakhstan www.nationalbank.kz

46 Annual Report of the National Bank of the Republic of Kazakhstan, p. 3
http://195.239.180.20/cont/publish577190_665.pdf

47 Top Trading Partners with Kazakhstan: Russia, US, UK, China, Uzbekistan, Kyrgyzstan, Japan, Germany, Italy, Switzerland.

48 Statistics Agency of the Republic of Kazakhstan, Main Socio Economic Indicators, www.stat.kz

49 Annual Report of the National Bank of the Republic of Kazakhstan, p. 20
http://195.239.180.20/cont/publish577190_665.pdf

The system of mortgage lending is developed and implemented by *Kazakhstan Mortgage Company* CJSC (KMC)⁵⁰. *KMC* provides refinancing of mortgage loans for purchase, both at the primary and secondary markets, and refurbishment of housing. Kazakhstan is the first country in CIS to issue and place mortgage bonds. The Government believes that emergence of a principally new instrument at domestic stock market will give an additional impetus to its development.

There are 33 private banks, of which 16 are foreign banks such as *ABN AMRO*, *Citibank*, *SBC*, and others, operating in Kazakhstan. In 1993 there were 230 private banks, yet 110 were liquidated and others closed down themselves, as they did not have the capacities to operate⁵¹. Competition in the banking and financial sector continues to increase, particularly from foreign banks, but also from domestic private pension funds, which create strong demand for domestic bonds and therefore compete with banks in lending.

Net foreign direct investment between the years of 1993 to 2002 has equaled to US\$21.2 billion. Major volume of foreign direct investment was attracted into the oil and gas sectors, which are leading sectors of the economy. In 2002, Kazakhstan produced 47.232 million metric tons of oil and gas condensate (945,000 barrels/day), an 18 percent increase over 2001's 39.97 million tons. The year 2002 oil exports reached 39.4 million tons of oil, which is 32.4 percent more than in the preceding year. Natural gas output in 2002 equaled 13.137 billion cubic meters, which is a 13.2 percent increase from the year 2001 levels⁵².

In general, the country possesses around 2.5 percent of proven recoverable world oil reserves. Industry analysts believe that planned expansion of oil production, coupled with the development of new fields, will enable the country to produce as much as 3 million barrels per day by 2015, lifting Kazakhstan into the ranks of the world's top 10 oil-producing nations. Kazakhstan's 2002 oil exports

50 In accordance with the National Bank's license dated September 28, 2002 "The Kazakhstan Mortgage Company" CJSC operations include lending, security issuance and factoring

51 Interview of the Chairman of the National Bank of the Republic of Kazakhstan Mr. G. Marchenko to the Prime-Tass Agency <http://www.prime-tass.ru/free/interview/20030918.shtm>

52 Statistics Agency of the Republic of Kazakhstan, Annual Report, www.stat.kz

valued more than US\$5 billion, representing 43 percent of overall exports and 21 percent of the GDP. Major oil and gas fields and their recoverable oil reserves are Tengiz (7 billion barrels); Karachaganak (8 billion barrels and 1,350 billion cubic meters of natural gas); and Kashagan (7-9 billion barrels).

The USA is a leading investor in Kazakhstan's economy with a total investment of US\$ 6.6 billion. The overall investment share division is as follows: the US 24.7%, Great Britain (15.3%), Switzerland (12.8%), Italy (11.5%), Netherlands (9.9), Russia (5.3%) and Canada (4 %)53.

The government has now embarked on a tight fiscal policy and loose monetary policy mix in an attempt to increase investment in the non-oil sector. The governmental program of the Industrial-Innovative Development of the Republic of Kazakhstan, intended to develop and promote non oil and gas sectors, as well as stipulate the development of domestic scientific, information technology, and innovation based industry base, has been designed and is now at its first stage of implementation. In overall, in the last several years the government has embarked on ambitious private pension reform, carried out successful privatization program, established a strong banking sector, created an emergency reserve – the National Fund, was recognized as the country with “market economy” both by the US and the EU, repaid its state foreign debt to the IMF seven years ahead of the schedule, *Moody's Investors* upgraded Kazakhstan's foreign currency ceiling for bonds and the rating of the government's foreign currency bonds to Baa3 and for the ceiling for foreign currency bank deposits to Ba154. *Standard & Poor's Ratings Services* raised its long-term foreign currency ratings of Kazakhstan to BB+, and its local currency ratings to `BBB-/A-3`, and thus became the first CIS country to upgrade into the “investment” category credit rating both from Moody's and the S&P.

KAZAKHSTAN AND WTO

53 Kazakhstan Investment Promotion Center
http://www.kazinvest.kz/english/document_eng.asp?id=21

54 Kazakhstan Investment Promotion Center
http://www.kazinvest.kz/english/document_eng.asp?id=19

“The sphere of trade should become a major ground, which will foster industrial and innovative development. Due to that trade policy of the Government of the Republic of Kazakhstan shall be aimed at creation of conditions for development of competition, which is the main mechanism of market economy self-regulation.

Further protection of the market from imports leads to hopeless lagging of domestic manufacture goods behind their foreign analogues in terms of both price and consumer characteristics” –

The Innovative – Industrial Development Strategy of the Republic of Kazakhstan.

The accession process

The Kazakhstan’s WTO Accession Working Party was established on 6 February 1996 after Kazakhstan’s formal application for WTO membership. The General Council appointed Bjorn Eckblum, Permanent Representative of Finland to the WTO, as the Chairman of the Working Party for Kazakhstan.

In accordance with the Government’s Decree No.211 dated February 19, 1996 “an inter-agency commission” under the Ministry of Economy and Trade of the Republic of Kazakhstan was created to coordinate the WTO accession negotiation process. The Foreign Trade Regime Memorandum detailing Kazakhstan’s foreign trade regime and including statistical data, was submitted to the WTO Secretariat in June 1996.

The first bilateral negotiation talks took place on March 19, 1997 in Geneva. Topics under discussion in the Working Party include: agriculture, the customs system (and customs union arrangements), price controls, import licensing, industrial subsidies, SPS and TBT, transparency of the legal system and legislative reform, services and TRIPS.

Such WTO member countries as Australia, Canada, Cuba, the EU, Finland, the US, Japan, India, Netherlands, Spain, Switzerland, Turkey, Great Britain, Poland, Czech Republic, Greece, Germany, and France, took part at the negotiations⁵⁵. Kazakhstan’s negotiation delegation consisted

⁵⁵ Countries with WTO observer status that attended the meeting were Algeria, Belarus, Estonia, Georgia, Russian Federation, Saudi Arabia, and Ukraine. International organizations, such as the IMF, World Bank, OECD, and UNCTAD were also present .

of nine officials and was headed at that time Deputy Minister of Energy, Industry and Trade Mrs. Zhanat Ertlesova⁵⁶.

The Government of the Republic of Kazakhstan submitted a plan for future legislative reforms that will bring the country into compliance with WTO requirements. The United States asked Kazakhstan to submit a list of commodities that need to be brought into compliance with the WTO Agreement on Sanitary and Phytosanitary Measures within a certain time period. The United States also emphasized that Kazakhstan may not use Article XXIX of the WTO Agreement on Subsidies and Countervailing Duties. Article 29 allows Members that are “in the process of transformation from a centrally-planned into a market, free-enterprise economy” to phase out subsidies falling within the scope of Article III of this Agreement within a period of seven years from the date of enforcement of the WTO Agreement⁵⁷. Instead, the United States requested that Kazakhstan submit a list of subsidies that are not in compliance with the WTO Agreement and the time schedule for their gradual elimination.

Since the initial bilateral negotiations four more meetings took place, the fifth meeting of the Working Party on the accession of Kazakhstan to WTO, took place on December 10-13 2002 in Geneva. The WTO members, which participate in the negotiations – the USA, the EU, Japan, Canada, Australia, Switzerland, Poland, Bulgaria, Latvia, Georgia, Turkey, Brazil, Cuba and Mexico, praised Kazakhstan’s commitment to the market economy principles and its progress in trade liberalization. They discussed Kazakhstan’s measures and successes in bringing domestic legislation and its foreign trade regime in conformity with the WTO rules and requirements. The

⁵⁶ Zhunisbekova, Lyazzat Addressing Intellectual Property Rights Reforms in Kazakhstan, Monterey Institute of International Studies, April, 1999

⁵⁷ Janow, Merit E., The Benefits of WTO Competition Principles for Developing Countries, Paper prepared for WTO symposium on competition policy, April 22, 2001

questions related to Kazakhstan's agricultural sector and the measures of its support were also mentioned⁵⁸.

The Government of the country is committed to join WTO in a near future. As a result, it has intensified the WTO accession process by accelerating the bilateral negotiation talks with other trade partners-WTO members. For instance, at the end of April 2003, the Kazakhstani delegation headed by the Vice Minister of Industry and Trade Mr. Galym Orazbakov met with Director General of the Economic Policy Bureau of the Ministry of Foreign Affairs and Foreign Trade of Canada Mr. Brian Morrisay ⁵⁹. They touched upon the questions regarding Kazakhstan's participation in the Common Economic Space (CES) formed by Russia, Belarus, Ukraine and Kazakhstan. The questions of market access for the goods and services based on the tariff rate suggestions presented by Kazakhstan to Canada in April of this year, as well as technical barriers in trade and investments were also discussed. Moreover, during the negotiations Canada's representatives provided their suggestions on clarifying the measures and procedures of standardization and certification. Thus, they advised the Kazakhstani side to increase transparency and clarity of the relevant legislation and continue to harmonize standards and requirements in certification and standardization in the CES, as well as to establish Information Center on Standardization and Certification, based on the goods listed as mandatory for certification.

The Kazakhstani delegation also met with the US trade department officials and held negotiations on the transition period for the SPS agreement requirements implementation, TRIPs, TRIMs, subsidies and countervailing duties, as well as Kazakhstan's obligations in the agrarian sector.

⁵⁸ KazInform News Agency, www.nkkazinform.kz

⁵⁹ Negotiations on Kazakhstan's accession to the World Trade Organization, Kazakhstan's Permanent Mission In Geneva, News Archive, Press Release, 16 July 2003 <http://missions.itu.int/~kazaks/eng/archive/0307/index.htm>

Recent multilateral and bilateral talks between Kazakhstan and WTO member countries at Geneva, headed by the Minister of Industry and Trade of Kazakhstan - Mr. Adilbek Jakysbekov, once again highlighted “strong political will of the country’s leadership to continue an intensive preparation to accede to WTO.⁶⁰” Evidently, it is becoming clearer that the country has regained its interest in accessing to WTO, and has intensified the negotiation process, which has been very ineffective and slow so far⁶¹.

The reason for such “awakening” is probably due to the fact that the leadership of the country has realized that greater and further economic liberalization and reforming of any country and Kazakhstan, which due to its geographical location as well as its rich oil and gas resources has major significance to the rest of the world, in particular, is inevitable in the contemporary world. Thus, the President and the Government decided to make use of the preparatory period for WTO accession as effectively and efficiently as possible, through faster implementation of adequate legislation and implementation of international standards for all sectors of the economy.

Benefits of acceding to the WTO

If carefully assessed and evaluated Kazakhstan’s accession to the WTO will be beneficial for the country. Despite the fact that removal of the trade barriers such as high tariffs, preferential treatment of certain trading partners and subsidies in particular sector of the economy, will probably have a negative immediate result after WTO accession, the development of internal institutions and legislation, bringing the domestic production and control of goods to international standards, protecting intellectual property and copyright, as well as reducing the role of the government in the economy will have its positive effect for the country’s future development.

⁶⁰“5th meeting of the Working Party on the accession of Kazakhstan to WTO,” December 13, 2002, Press Release, The Website Of The Government of Kazakhstan,

http://www.government.kz/pls/portal30/PORTAL30.www_media.show?p_id=19490&p_currcornerid=19197&p_settingssetid=1372&p_settingssiteid=33&p_siteid=33&p_type=text&p_textid=19491

⁶¹Permanent Mission of the Republic of Kazakhstan to the UN Office and Other International Organizations at Geneva, Information On Kazakhstan’s WTO Accession Status, <http://missions.itu.int/~kazaks/>

More specifically, the membership of the WTO would give the country the following advantages:

- access to new markets for exporting goods and services;
- introduction of non-discriminatory trade regime for goods in the markets of importer countries;
- more attractive, stable and predictable conditions for investments;
- broader assortment of better quality of goods and services at lower prices for consumers;
- access to an efficient dispute settlement mechanism;
- bringing trade, investment and customs regulations into accord with international standards;
- freedom of transit through territories of WTO member countries;
- better access to world market information.

ISSUES - THE AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS)

TRIPs - Situation With The Intellectual Property Rights Protection After The Breakdown Of The USSR

In socialist countries, new knowledge was perceived as belonging to the whole of society, which had, after all, paid for the research that produced the new knowledge in the first place. As a result of Soviet legacy Kazakhstan's legal framework for the intellectual property protection and the public awareness and understanding of it is relatively low and underdeveloped in comparison with many other countries of the same or higher level of development. Due to the fact that prior to its independence the economy of the country was centrally planned and all of the enterprises and property were state owned, and were put for the state's free disposal without

asking for any consent or acquiring a license from the inventor, the Soviet government did not recognize any private property including the intellectual one⁶².

Thus, the Soviet government had established a legal framework for the protection of state intellectual property, but never intended to do the same for the private intellectual property protection. Ironically, the procedures like registering patents, trademarks and copyrights, since solely exercised by the government, were mainly used to help the state in regulating the economy rather than that of protecting individuals' inventions. The legal basis did not provide any protection for infringements involving producers of sound recordings, performers, or broadcasters. Even the special sanctions of the Criminal Code for copyright infringements were not sufficient enough to enforce the intellectual property protection in the country, as they did not foresee jail terms for the counterfeit goods producers or copyright violators, but merely imposed minor fines and/or obligatory social work.

After the fall down of the Soviet Union the intellectual property right protection in Kazakhstan was at a critical condition or merely non-existent. As the country started its process of transition from a centrally planned to a market economy, it had to face numerous new challenges, and the field of intellectual property rights protection did not become an exception. Thus, starting from 1991 Kazakhstan has made substantial changes in its intellectual property rights regime⁶³. The commitment of the country's leadership to become a full fledged WTO member and thereby further integrate into the global economy, has had its positive influence on the development of the statutory framework for bringing the country's intellectual property protection to nowadays international standards.

⁶² The Coalition For The Intellectual Property Rights, Summary of Results From the Kazakhstan Republic's "Intellect" Campaign, http://www.cipr.org/activities/intellect_10_03/index.htm

⁶³ "Announcement Of The Protection Of Industrial Property In Kazakhstan," World Intellectual Property Organization, Patents And Trademarks Office, Geneva, Switzerland, <http://www.uspto.gov/go/og/con/files/cons215.htm>

TRIPs – Current Situation with Intellectual Property Rights in Kazakhstan

Kazakhstan has introduced several laws and legislative acts, along with signing and thereby becoming a party to major international treaties and conventions on intellectual property rights protection and enforcement. All of the newly adopted laws and regulations, international conventions, special public awareness increasing campaigns, and closer cooperation with the IT companies and foreign countries make up the legal and statutory framework for a more efficient enforcement and protection of intellectual property rights.

In particular, the below-mentioned legislative acts and international treaties had been signed, adopted and put into force in the period of 1991–2003 (shown in the order of enactment):

- ❖ The Decree of the President of the Republic of Kazakhstan dated July 18, 1995 No. 2364 *“About Ratification of the Eurasian Patent Convention dated September 9, 1994.”* The abovementioned convention was established by the contracting parties to the convention – Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, Kyrgyz Republic, Moldova, Russia, Tajikistan, and Ukraine - which had expressed their determination to strengthen inter-governmental cooperation in intellectual property protection by ensuring that a patent issued in any of the Convention member countries is eligible for the same treatment in other member countries. The Eurasian Patent Convention was formed in accordance with the Article 19 of the Paris Convention for the Protection of Industrial Property (64).
- ❖ *The Law on Copyright and Neighboring Rights*, which came into force on June 10, 1996, is based on the WIPO’s model law, and guarantees protection of computer programs and sound recordings, provides copyright owners with exclusive rights of reproduction and distribution (including importation, rental and public lending), as well as protects public display and

64 Kazakhstan’s Legislation Database Online, <http://www.pavlodar.com/zakon/index.html?dok=00544&oraz=00&noraz=0>

public performance, broadcasting, and the right of translation and adaptation. It provides a Berne-compatible term of life plus fifty years and includes effective sanctions for infringement. The fine for the violation of copyright or neighboring rights is set at a maximum of up to 50.000 times official monthly minimum wage⁶⁵.

- ❖ The Law of the Republic of Kazakhstan dated July 13, 1999 No. 422-I “*About Protection of New Plant Varieties and Species.*”
- ❖ The Law of the Republic of Kazakhstan dated July 16, 1999 No. 427-1 “*The Patent Law.*” The above law is basically a domestic version of the major international conventions’ provisions on intellectual property rights protection as well as the TRIPs’ Article XXVII. Thus, the Article 6 of the Law says that patents can and shall be given for “any invention, whether products or processes, in all fields of technology, given that they are new, involve an inventive step/effort and are capable of industrial application.⁶⁶”
- ❖ The Law of the Republic of Kazakhstan dated July 26, 1999 No. 456 – 1, “*Law on Trademarks, Service Marks and Appellations of Origin*” Any sign, or any combination of graphical, alphabetic, numeric, and word order signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, is capable of constituting a trademark in accordance with the Kazakhstani law on trademarks (Part II, Article V of the Law)⁶⁷. Such signs, in particular words including personal names, letters, numerals,

⁶⁵ Zhunisbekova, Lyazzat, “Addressing Intellectual Property Rights Reforms in Kazakhstan,” Monterey Institute of International Studies, April, 1999

⁶⁶ Patent Law Of The republic Of Kazakhstan, Kazakhstan Institute Of Patent Expertise, KazPatent, http://www.kazpatent.org/english/acts/patent_law.html

⁶⁷ “Pre-hearing Brief of the International Intellectual Property Alliance in the GSP Review of the Intellectual Property Rights Practices of Kazakhstan,” International Intellectual Property Alliance, Washington D.C., USA, September 26, 2003, p.4 http://www.iipa.com/gsp/2003_Sep26_GSP_Kazakhstan.pdf

figurative elements and combinations of colors as well as any combination of such signs, shall be eligible for registration as trademarks.

❖ Nevertheless, the law specifically lists specifications of a sign, which cannot be capable of constituting trademark, and thus, cannot be eligible for registration. For example, the following elements cannot be registered as trademarks:

- allegedly false or misleading about the product or its manufacturer, including false geographical indication of the good's origin;
- since intended to designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;
- signs which indicate/contain or consist of a geographical indication identifying mineral waters, wines or spirits not originating in the place indicated by the geographical indication, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as “kind”, “type”, “style”, “imitation” or the like
- signs commercial exploitation of which can have negative influence on public order or morality.

❖ The Law of the Republic of Kazakhstan dated May 11, 2001 No. 201-2, “*About Ratification of the Agreement on Trademark Law Treaty*”⁶⁸;

❖ The Law of the Republic of Kazakhstan dated June 29, 2001 No. 217-2 “*About Legal Protection of Integrated Microscheme Topology (Layout Designs Of Integrated Circuits)*”⁶⁹”

The law is intended to provide protection to the layout-designs (topographies) of integrated

68 Kazakhstan's Intellectual Property Laws, Shabalina & Partners Law Firm, Patent Attorney, http://www.shabalinpatent.com/info.asp?lang=en&url=/NSC_LNK_law.htm

69 Annual Report On Intellectual Property Rights Protection, The Eurasian Patent Organization (EAPO), http://www.eapo.org/eng/report1999/8_5_kaz.html

circuits. Article 6 “Authorship on Topology,” specifies that the exclusive rights of authorship for topology belong to a person (or group of persons) who had created it through his/their creative effort. Those people that have provided technical, organizational or financial assistance, but have not put in their creative/innovative effort cannot be considered as the exclusive right holders for the topology.

- In accordance with the Article 7 of the Law, the following actions are considered unlawful if performed without the authorization of the right holder: importing, selling, or otherwise distributing for commercial purposes a protected layout-design, an integrated circuit in which a protected layout-design is incorporated, or an article incorporating such an integrated circuit only in so far as it continues to contain an unlawfully reproduced layout-design.
 - The period of topology rights exclusivity is set to be 10 years since the date of official registration of topology (Article 13 of the Law). In case of illegal use of the topology the illegal user of the topology must fully compensate the loses both for material and moral damage, as well as pay a fine of minimum 10.000 and maximum 50.000 official monthly average wage (Article 14 of the Law).
- ❖ The Declaration of the Republic of Kazakhstan “*About International Agreement in the Area of Industrial Property Protection*” dated February 5, 1993 as well as the Government Resolution No. 1249 dated September 26, 2001 on development and adoption of the “*Conception of Intellectual Property Rights Protection,*” both are major official commitments of the government to regulate and improve the domestic situation with the intellectual property protection.

The Government had created and adopted the conception on intellectual property rights protection as another step to further and greater integration into the global economy of the twenty first century, which due to rapid technological and intellectual property development

has turned into an intellectual economy, in which IT and intellectual innovative/creative effort play key roles. Thus, it is proposed by the Government, that Kazakhstan as an “equal participant of international cultural and science-technological exchange processes, as well as the member of the WIPO, must guarantee fullest compliance and enforcement of the intellectual property rights protection of both domestic and foreign rights holders by international standards”⁷⁰.

Therefore, the policy of the Government in the field of intellectual property is intended to:

- strengthen the country’s science-technological potential, through constant improvement and development of the intellectual property rights related legislation,
- greater cooperation with foreign countries and international organizations dealing with IT and intellectual property rights,
- increase exchange of information and experiences in dealing with intellectual property rights protection and enforcement with foreign countries,
- enforce the coordination of work of the governmental agencies entitled to protect the intellectual property rights,
- create conditions for healthy competition,
- protection of domestic markets from counterfeit products production, use and distribution,
- prepare specialists in the field of intellectual property,
- and increase public’s awareness about piracy and legal aspects of it, by raising information availability.

- ❖ The Resolution of the Government of the Republic of Kazakhstan dated July 2, 2001 No. 904 *“About the Committee on Standardization, Metrology and Certification of the Ministry*

⁷⁰ The Conception of Intellectual Property Rights Protection, Preamble, paragraph 1

*of Economy and Trade of the Republic of Kazakhstan.*⁷¹” The Committee on Standardization, Metrology, and Certification among other things, is authorized to:

- set the general metrological requirements,
- organize the fundamental research in the areas of standardization, metrology, and certification,
- set the procedures and standards of standardization, certification and metrology, as well as work on further bringing of the standards in compliance with the international ones,
- in the framework of its competency issues licenses to physical and juridical entities, and keeps record of issued licenses,
- participates in international science-technological cooperation in the fields of standardization, metrology, and certification intended to remove the technical barriers to trade,
- coordinates the process of formation and implementation of the National Standards Fund of the Republic of Kazakhstan, intergovernmental, regional, international and national standards of other countries,
- publish and distribute the national standards of the Republic of Kazakhstan, intergovernmental standards, as well as rules and recommendations of the international organizations on standardization, metrology, and certification,
- send to the international organizations dealing with the standardization, metrology and certification issues their comments remarks on those legislative acts, both national and international, which by Kazakhstan’s judgment might result in establishment of technical barriers to trade.

71 Annual Special Section 301 Report On Global Intellectual Property Rights Protection Office Of The US Trade Representative, Washington D.C., USA, <http://hongkong.usconsulate.gov/usinfo/ustr/2002/02-48.htm>

- ❖ The Law of the Republic of Kazakhstan dated November 16, 2001 No. 259-2 “*About Joining of the Republic of Kazakhstan to the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure*”⁷²;
- ❖ The Law of the Republic of Kazakhstan dated November 16, 2001 No. 258-2 “*About Joining of the Republic of Kazakhstan to the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks*”;
- ❖ The Law of the Republic of Kazakhstan dated November 16, 2001 No. 257-2 “*About Joining of the Republic of Kazakhstan to the Strasbourg Agreement Concerning the International Patent Classification*”⁷³;

In addition, the Republic of Kazakhstan is a contracting party to the following international conventions and agreements on the protection of intellectual property rights (Treaties Administered by WIPO):

- Convention Establishing the World Intellectual Property Organization (joined December 25, 1991);
- Paris Convention for the Protection of Industrial Property (joined December 25, 1991);
- Berne Convention for the Protection of Literary and Artistic Works (joined April 12, 1999);
- Madrid Agreement Concerning the International Registration of Marks (joined December 25, 1991);

⁷² Kazakhstan’s Membership In International Organizations, Appendix B – Membership In The World Community Of Nations, Kazakhstan Business Development Committee, <http://www.bisnis.doc.gov/bisnis/country/99kazapb.htm>

⁷³ Bolotov, Yury, and Wilson, Michael A. Michael Wilson & Partners, Lawyers and Business Consultants, Practical Measures For The Protection OF Means Of Production Differentiation In Kazakhstan, Kyrgyzstan, And Uzbekistan, http://www.mwp.kz/art_pmftp.html

- Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (joined April 24, 2002);
- Locarno Agreement Establishing an International Classification for Industrial Designs (November 7, 2002);
- Patent Cooperation Treaty (joined December 25, 1991);
- Strasbourg Agreement Concerning the International Patent Classification (joined January 24, 2003);
- Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (joined August 3, 2001);
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (joined April 24, 2002);
- Trademark Law Treaty (joined November 7, 2002).

Membership in other bodies/treaties: EAPO, UCC.

- Member of EAPO since September 1994.
- Member of UCC since August 1992.

Nevertheless, according to the latest statistics nearly 40 percent of the Kazakhstan's population do not clearly understand what is meant by the "intellectual property" and cannot specify the ways to protect it.

On a contrary though, estimated gains from reduction of counterfeit IT products market share in a majority of the countries results in greater and faster development of a country's domestic IT industry. Thus, for example, the reduction of "pirate" IT products manufacturing and use by

10 percent, would result in 49 percent growth of the global IT market, a 15 percent increase of a projected 34 percent for the years of 2001 – 2006

(74).

According to the information provided by the *Microsoft Company's* branch in the CIS, Kazakhstan and Central Asia, for the fiscal year 2003 ⁷⁵:

- *Microsoft's* total sales in 2003 reached \$US 32.19billion, which is 13% higher than in 2002 (US\$ 28.37 billion);
- Total sales in the CIS countries grew by 55% in comparison with the year 2003;
- Microsoft's clientele in Kazakhstan doubled over one year since it opened its office there; 6 out of 8 Central Asian *Certified Microsoft Partners* are located in Kazakhstan;
- During 2003 sales of *Windows Server* in Kazakhstan grew by 50 percent, sales of *Windows XP Home* grew by 425 percent;
- Kazakhstan accounts for 88 percent of all *Microsoft Company's* Central Asian sales, while Kyrgyz Republic - 2 percent, Turkmenistan – 4 percent, Uzbekistan – 6 percent, and Tajikistan for “0” (zero) percent, since not a single copy of any licensed *Microsoft* product had been sold there.

Yet, despite the overall improvement of the situation with intellectual property protection and drop in counterfeit products manufacturing and distribution, the *Microsoft Company* claims that 88 percent of all *Windows* software products in the Central Asian countries are not licensed i.e. pirate/counterfeit copies. As a result, according to the director of *Microsoft Company's* branch in

74 Ibraev, Kvat, *IT Companies Signed the Declaration On Intellectual Property Rights Protection*, Panorama, #43, November 4, 2003, <http://www.panorama.kz/info/index.asp?yearfolder=2003&num=43&NumArticle=22>

75 Ibraev, Kvat, *In 2003 the Sales of Microsoft in Central Asia Grew by 137.5 Percent*, Panorama, #38, October 3, 2003, <http://www.panorama.kz/info/index.asp?yearfolder=2003&num=38&NumArticle=48>

Kazakhstan Mr. Aidar Dauletov, the company is losing millions of dollars in sales every year (76).

As was stated in the conference on *“Intellectual Property Protection in Kazakhstan. The Current Situation and Future Prospects,”* which was held in Astana on November 4, 2003, the overall share of pirate/counterfeit intellectual property products in Kazakhstan is over 80 percent.⁷⁷ According to the IT experts, the IT market in Kazakhstan is just starting to develop, thus, it is important for the country to establish a solid and efficient intellectual property rights protection and enforcement system. The IT companies, which are now working in Kazakhstan have also signed a Declaration On Intellectual Property Rights Protection, which will ensure that the signatories fully comply with the rights of the intellectual property users, the domestic and international laws on intellectual property use and protection, as well as promised not to produce, distribute or use counterfeit products, and act in the framework of the licensing agreements.

In addition to the conference organized by the Kazakhstani IT companies, in the period between 6 and 23 of October of this year, a major intellectual property rights protection promotion campaign took place across Kazakhstan. The campaign called “Intellect”, according to the Minister of Justice Mr. Onalsin Zhymabekov, “is the starting point for a fight against piracy and counterfeiting.” In his opening speech Mr. Zhymabekov stated that “intellectual property is the engine of progress and civilization, it is also technical and technological base for modern industrial and economic development,” and that Kazakhstan still has a lot of problems in this field such as “counterfeiting, piracy, plagiarism”

The speakers have mentioned that due to weak intellectual property rights enforcement Kazakhstan has been placed on the US’s Watch List in accordance with the Section 301, and thus, could face economic measures against its exports. Underdevelopment of Kazakhstan’s

⁷⁶ Ibraev, Kuar, In 2003 the Sales of Microsoft in Central Asia Grew by 137.5 Percent, Panorama, #38, October 3, 2003, <http://www.panorama.kz/info/index.asp?yearfolder=2003&num=38&NumArticle=48>
⁷⁷ 92 percent of all software program market in China is illegal i.e. consists of counterfeit/“pirate” copies.

intellectual property rights enforcement and protection fields was also named as one of the major causes for the slow down in Kazakhstan's WTO accession negotiations (78).

Nevertheless, the Government of the country has shown its interest and concern with the improvement of the intellectual property rights protection and as a result, the issues dealing with the intellectual property were included in the Kazakhstan's "Industrial-Innovative Development Strategy until 2015."

However, according to the data presented at the meeting, the information available on intellectual property rights protection and enforcement is not sufficient for increasing public's alert on issues of piracy and plagiarism. Thus, the survey showed that 55 percent of the respondents had encountered situations where illegal intellectual property had been either sold or used. Despite such fact, only 12 percent of those respondents ever contacted the government officials or reported about the illegal manufacturing, distribution and use of intellectual property products (79).

As a result of this campaign the Memorandum on Cooperation on the Issues of Intellectual Property Rights Protection has been signed by the Government officials, in particular the Vice Ministers of Justice and of Interior Affairs, the Chairmen of the Customs Committee and the Financial Police, and the intellectual property rights organizations such as Kazakhstan's Businessmen Forum, Kazakhstan's Association of Intellectual Property and Neighboring Rights. Several international organizations dealing with intellectual property protection such as the Coalition for Intellectual Property Protection, the Microsoft Company, International Organization of Phonogram Recordings, the Association of Copyright Holders also participated in the meeting.

78 The Government of the Republic of Kazakhstan's Website, News, October 24, 2003
http://www.government.kz/pls/portal30/PORTAL30.www_media.show?p_id=27350&p_currcornerid=25282&p_settingssetid=1372&p_settingssiteid=33&p_siteid=33&p_type=text&p_textid=27351

79 The Kazakhstan News Agency, KazInform, October 24, 2003, www.nkkazinform.kz

The main objective of the Memorandum was to establish a Working Group, which would coordinate the work on improving and amending Kazakhstani intellectual property legislation. The suggestion to form Guild of Audio-Video Property Sellers was presented by the Business Association of the Southern Kazakhstan (80).

Finally, in the framework of the “Astana KITEL - 2003” fair, 25 domestic and 6 large foreign IT companies currently operating in Kazakhstan have agreed to work together and form first IT Association in Kazakhstan. The IT companies and the Government agreed that the main purpose of the Kazakhstani IT Association will be to serve as a watchdog for monopolistic activities and unfair competition in the IT market, to encourage emergence of new IT companies, to help create civilized and healthy market relations in the country, as well as to provide assistance and support to the companies involved in training of qualified, skilled IT professionals.

What needs to be done?

Despite the fact that the situation with the intellectual property rights protection is notably improving in Kazakhstan, the speed and actual quality of the implementation and enforcement procedures are not sufficient for the country’s smooth accession into the WTO. Thereby, in order for Kazakhstan to faster accede into WTO, at least the following measures must be taken:

The Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite

Due to the importance and growing volume of the satellite television and other satellite transmission, the global community has realized the necessity to create and enact a special international agreement, which could effectively regulate the transmitting and distribution of the

80 The Ministry of Justice Website, Press Release, www.minjust.kz, October 30, 2003

program-carrying signals done through the use of satellite. As a consequence, as early as May 1974, *the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite* or more widely recognizable as Satellites Convention (Brussels, 1974) was established.

In accordance with the Article 9 of the above Convention, it was deposited with the Secretary-General of the United Nations and remained open for the signature by any State that was a member of the United Nations, any of the Specialized Agencies brought into relationship with the United Nations, or the International Atomic Energy Agency, or was a party to the Statute of the International Court of Justice, until March 31, 1975. As a member of the United Nations the Soviet Union had joined the Convention. However, after the brake up of the Soviet Union, the Russian Federation was the only among the CIS countries to continue its membership at the Convention, as from December 25, 1991 (81).

Kazakhstan's domestic legal system does not provide any protection to the satellite program transmitters as well as does not envision any punishment for its illegal retransmission. Thus, it is advisable for Kazakhstan to become a signatory to the Convention on satellite signal transmitting, because it will create a legal framework for the regulation and protection of the program-carrying transmitted by satellite, and settle problems Kazakhstan faces due to illegal retransmissions of many foreign, especially Russian programs, by its domestic television and radio companies. Moreover, it will ensure that its own programs, recordings, etc. transmitted via satellite will not be illegally retransmitted by other countries since each of the contracting party to the Convention "undertakes to take adequate measures to prevent the distribution on or from its territory of any program-carrying signal by any distributor for whom the signal emitted to or passing through the satellite is not intended".

81 The WIPO Website, *The Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite*, The List of the Contracting Parties <http://www.wipo.org/treaties/documents/english/word/p-vie&sa.doc>

International Convention For the Protection of Performers, Producers of Phonograms and Broadcasting Organizations – Rome Convention

International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations - Rome Convention (1961) was established in order to provide protection of performers, producers and broadcasters of the phonograms by the means of granting “national treatment,” which is accorded by the domestic law of the Contracting State in which protection is claimed:

“(a) to performers who are its nationals, as regards performances taking place, broadcast, or first fixed, on its territory;

(b) to producers of phonograms who are its nationals, as regards phonograms first fixed or first published on its territory;

(c) to broadcasting organizations which have their headquarters on its territory, as regards broadcasts transmitted from transmitters situated on its territory.”

Furthermore, the Convention grants performers protection from illegal, without their consent, broadcasting and communication to the public of their performance, except where the performance used in the broadcasting or the public communication is itself already a broadcast performance or is made from a fixation. It also prohibits the fixation and reproduction of a fixation of the performer’s performance without his/her consent.

The Hague Agreement Concerning the International Deposit of Industrial Designs

Kazakhstan has to join *the Hague Agreement Concerning the International Deposit of Industrial Designs*, which insures that any “national” of any of the member states to the Agreement has the possibility of obtaining protection for his/her industrial design in all of the contracting states to the Agreement through a single deposit made with the International Bureau of WIPO. According to the Agreement the term “national” does not only cover natural or legal person having the nationality of one of the contracting States, but also extends to any natural or

legal person who “whilst not having the nationality of such State, has his domicile (or headquarters) or a real and effective industrial or commercial establishment on the territory of such State” (82).

Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration

Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration, specifically protects the “appellation of origin” or in other words, geographical name of a country, region, or locality, which serves to designate a product originating there, the quality and characteristics of which result entirely or essentially due to the geographical environment, including natural and human factors. Thus, for example, an “appellation origin” that has been granted protection in one of the countries of the Special Union (the countries-parties to the Agreement comprise the *Special Union* in the framework of the Agreement) cannot be deemed to have become generic in another country, for as long as it is protected as an “appellation of origin” in the country of origin. The Agreement’s protective coverage spreads not only on the name of the country, region, or locality whose name constitutes the appellation of origin but also includes protection against any “usurpation” or imitation, even if the true origin of the product is indicated or if the appellation is used in translated form or accompanied by terms such as "kind," "type," "make," "imitation," or the “like” (83).

The Law of the Republic of Kazakhstan dated July 13, 1999 No. 422-I “About Protection of New Plant Varieties and Species.” According to the Law the rights of plant breeders are protectable by patents. Thus, the Article 3 of the Law provides protection of the rights of the

82 The WIPO Website, The Hague Agreement <http://www.wipo.int/hague/en/dm33.htm>

83 Article 3 “Content of Protection” of the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration

breeders of new plant genera and species (i.e. plants, animal, trees, and grapes varieties), which have the characteristics of novelty, distinctness, uniformity, and stability. The period of patent validity is as follows: for plants it is 25 years, animal kind – 30 years, type of grapes, trees – 35 year. The patent can be prolonged but for no more than 10 years.

Nevertheless, the Law does not have any regulatory tool in case if any “anticompetitive practices” take place. As a result, there is no right of a distinct higher authority for “compulsory licensing,” like the one envisaged in TRIPs, in case if exclusive rights holder – the patent holder does not agree to make his/her invention available for the public’s use through the means of granting voluntary licenses on reasonable terms and conditions within a reasonable period of time.

Hence, Kazakhstan needs to amend its national legislative act on plant genera and species protection by incorporating a special article/clause on “Compulsory Licensing,” in order to bring it in conformity with the rules and requirements of WTO’s TRIPs Agreement. Moreover, since the Article 29 “International Agreements” of the abovementioned Law states that “in case if those international agreements, signed and ratified by the Republic of Kazakhstan, foresee rules and conditions different from those foreseen by the Law, than they should be applied” (84). For this reason, Kazakhstan could become a signatory to the *International Convention for the Protection of New Varieties of Plants*, which exercises similar rules and regulations as the ones put into effect by the TRIPs agreement, i.e. foreseeing the non-discrimination principle through the application of the national treatment and most-favored nation treatment (85).

WIPO Copyright Treaty – Geneva 1996

84 The superiority of the rules and regulations foreseen in the international agreements, signed and ratified by the Republic of Kazakhstan, over the national legislation is granted in accordance with the Decree of the President of the Republic of Kazakhstan, which has the power of Law, dated December 12, 1995 No. 2679 “On Signing, Implementation, and Denunciation Of International Agreements.”

85 International Union For the Protection of Plant Varieties (UPOV) Convention of 1961, revised at Geneva (1972, 1978 and 1991)

While Kazakhstani *Law on Copyright and Neighboring Rights* provides copyright protection of literary and artistic work, *the WIPO Copyright Treaty*, if signed and ratified by Kazakhstan will cover a greater scope of literary and artistic work, because the meaning of “artistic and literary works” had been revised and added with new types of works, which were not protected before. In addition, as a Contracting party to the treaty, Kazakhstan will be a party to the Union established by the Treaty, and will enjoy the national and most-favored nation treatments. In other words, Kazakhstani authors will enjoy the same treatment and protection of their work protected under the treaty in countries of the Union other than the country of origin.

Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks - Vienna Agreement (1973), amended in 1985;

Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks - Vienna Agreement (1973), amended in 1985, provides a common classification for the figurative elements of marks for the countries which are party to the Agreement and thereby to a Special Union. The Classification of Figurative Elements comprises a list of categories, divisions and sections in which the figurative elements of marks are classified together with explanatory notes. The Article 5 of the Agreement on “Committee of Experts,” establishes a special Committee from the member country representatives, which have the right to make amendments and additions to the Classification, address recommendations to the countries of the Special Union for the purpose of facilitating the use of the Classification, take all the other measures which, without entailing financial implications for the budget of the Special Union or for the Organization, contribute towards facilitating the application of the Classification of Figurative Elements by developing countries and have the right to establish subcommittees and working groups.

If Kazakhstan joins the Agreement than it will be required to take all possible measures to ensure that it follows and uses the Classification of Figurative Elements listed by the Agreement

when registering marks in its territory. As a party of the Special Union Kazakhstan will also have the right of proposal for amendments or additions to the Classification of Figurative Elements. Such propositions in Accordance with the Article 5 (5) may be made by “the competent Office of any country of the Special Union, the International Bureau, any intergovernmental organization represented in the Committee of Experts pursuant to paragraph (2)(b) and any country or organization specially invited by the Committee of Experts to submit such proposals.”

Finally, according to the Articles 65 and 66 of the TRIPs, Kazakhstan as a developing country may enjoy some extensions on the implementation period. For example, as stated by Para. 4 of Article 65 “Transitional Provisions,”

- “(4) To the extent that a developing country Member is obliged by this Agreement to extend product patent protection to areas of technology not so protectable in its territory on the general date of application of this Agreement for that Member, as defined in paragraph 2, it may delay the application of the provisions on product patents of Section 5 of Part II to such areas of technology for an additional period of five years.”

Additionally, the Article 9.1 of the TRIPs Agreement requires WTO member countries to comply with the Appendix of *the Berne Convention* (1971) which contains special provisions for developing countries. The special provisions give developing countries, *inter alia*, with some flexibility in the area of compulsory licenses for translations and reproductions subject to a number of notification procedures. Such flexibility might make the use of translations and reproductions in developing countries like Kazakhstan more affordable for educational needs, as a result of providing a possibility for acquiring licenses on more reasonable conditions.

CONCLUSION

In general, Kazakhstan has done a sizeable amount of work both in implementing the international intellectual property standards and increasing importance of intellectual property

protection in the public. Yet, in order for Kazakhstan to become WTO member and to more importantly be able to fulfill its ambitious goals in innovative-industrial development the country still has a long way to go. According to the WIPO suggestion for developing countries it is necessary for the intellectual property rights protection system-building nation to ensure that their new domestic legal texts fully correspond to the provisions of the relevant international conventions as well as the TRIPs Agreement. Nevertheless, effective enforcement does not come easy, especially enforcement of the protection of intellectual property rights, which for so long had been unprotected and violated without a bit of regret or even real assessment of the violation act itself. In Kazakhstan, the country with the Soviet-communal property past, it would be very difficult to change the public's mind about the use and protection of the intellectual property. Despite the fact, that a whole new population has grown since Kazakhstan's 1991 independence, it still is very much affected by the notion of communal property and its use without asking for special consent. Ironically, it is not an unusual thing for the intellectual property producers such as music performers to violate the existent laws on protection of the copyright material. Despite the fact that there are no officially published statistics on such actions, it is generally perceived among the public, that some music performers, in attempt to evade the applicable sales tax, produce counterfeit, or unregistered copies of their compact disks or tapes, and thereby contribute to the illegal intellectual property market expansion. In addition, the Kazakhstani television and radio channels used to transmit Hollywood and Indian programs, and Russian movies and songs, without ever paying for copyright. It is true that with the introduction of legal framework for copyright protection, and increased intellectual property rights protection issue awareness, the number of such illegal transmissions have significantly decreased. Yet, it also true that if in large cities the enforcement agencies do efficient job in enforcing and monitoring intellectual property rights protection and use, in smaller, mainly rural areas such monitoring is not done on a sufficient level, as a result of lack of financial and

technical resources. therefore, it is clear that for the country to successfully adopt and enforce intellectual property protection laws and regulations, an effective institution building in the legal system should be addressed first. On top of that, to continue the process of systemic transformation, it is crucial that Kazakhstan's Government works on increasing public awareness and responsibility regarding intellectual property rights protection.

THE GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

In 2001, services constituted about sixty percent of the world's output according to WTO statistics, and international trade in services continues to grow rapidly. Trade in services has increased particularly in developing countries, accounting for more than fifty percent of total export revenues for some nations. In recognition of the growing importance of services in the world economy, trade ministers negotiated the GATS as the first attempt to draw international trade in services into a multilateral framework of rules and market access guidelines.

Services have been the fastest growing component of cross-border trade and investment activity for the better part of the last decade and a half. Estimates show that total measurable trade in services, as defined by the various types of transactions subject to multilateral disciplines under the GATS, stood at some \$2,3 trillion at the end of 2000. This represents 7.6 percent of world output and over a third of total trade in goods and services (WTO, 2001).

Yet, not so long ago it was basically unimaginable to comprehend services as tradable. In general, services were considered as domestic matters and were defined as being produced where they were consumed. Moreover, the cross-border transfer of services was considered to be an international movement of a factor of production and not trade. This was largely due to the fact that cross-border flows of services are basically invisible. Nevertheless, rapid advancement in the

computer technology and growing share of the so-called “e-trade,” made services appear in a completely new way, by making them even more mobile and internationally transferable.

As a result of such developments the international community started to address the issue of trade in services. The outcome of such address was the multilateral negotiations on trade in services and the establishment of the General Agreement on Trade in Services (GATS), its associated annexes and national schedules of commitments, which still are considered to be one of the most innovative and important accomplishments of the Uruguay Round of Multilateral Trade Negotiations.

The GATS generally covers all aspects of international trade, except those supplied in the exercise of governmental authority and services directly related to the exercise of such rights. A framework agreement features the fundamental principles of non-discrimination, through the provisions of national treatment and most-favoured nation treatment, transparency in domestic regulation, and fair application of laws.

The GATS provides for the negotiation of commitments at three levels: the framework which lays out the general obligations for services trade, in much the same way as the GATT does for trade in goods; a number of annexes on specific sectors as well as the schedules of commitments submitted by WTO Members. Due to its structure and its voluntary, “bottom-up”, approach to liberalization, the GATS allows WTO Members to select the sectors, modes of supply (i.e. cross-border trade; movement of consumers; commercial presence and movement of suppliers) and regulatory conditions in which liberalization commitments are made. Important thing is that the GATS also foresees an opportunity for the member country to make no commitments by leaving entire sectors out of their schedules. Such flexibility, and the emphasis in GATS on the progressive, voluntary nature of liberalization, helps explaining why the GATS is arguably the most “development-friendly” of all Uruguay Round Agreements.

ELECTRICITY SECTOR OVERVIEW

Since the breakdown of the Soviet Union the newly independent states, including Kazakhstan had to undergo a painful and challenging transformation in order to integrate into the market economy driven world. The transformation took place in all of the sectors of economy as well as the everyday life.

Kazakhstan was one of the first among former USSR countries to reform its power sector in 1996. The electricity sector, historically state owned and run, had to face major reforms as the country pursued a policy of liberalization, allowing privatization of the national electricity grid companies not only by domestic but also by foreign investors. In 1996, the Government of Kazakhstan embarked on a bold program of reforms aimed at introducing private participation in the power sector and establishing a competitive power market. By 1997, the electricity generation plants were separated from the former *Kazakhstanenergo* and privatized, the high voltage transmission network operated by Kazakhstan Electricity Grid Operating Company (KEGOC), a joint stock company with 100 percent state ownership, which owns and operates over 23,000 km of high-voltage transmission lines as well as 73 substations, a National Dispatch Center (NDC) and nine Regional Dispatch Centers (RDCs), was formed on July 14, 1997⁸⁶. The regional distribution companies were established and took over the functions of regional electricity supply. In addition, three regional electricity distribution companies were privatized. In the area of power sector reforms, Kazakhstan ranks among the most advanced countries of the former Soviet Union.

Implementation of such changes faced powerful resistance among the public, which was used to services produced and provided under the state monopolies. Hence, opening of service sectors to international competition, particularly through direct investment by foreign suppliers

⁸⁶ Kadrzhanova, Azhar, "Kazakhstan's Power Sector As Of End 2001", Kazakhstan: Power Industry Information From BISNIS, May 24, 2002 <http://www.bisnis.doc.gov/bisnis/isa/020524pwrngen.htm>

(commercial presence) can be a good proof of the government's commitment to the sector's restructuring and demonopolization. As a result of reforms in the electricity sector the price on electric power in Kazakhstan is lower than in other CIS countries. The tariff rates, previously completely unrealistic, as a result of the central planning system under which the tariff rates did not reflect the cost of production and transmission, were recalculated and set at a comparable market levels.

The electricity distribution system consists of three levels of transmission networks, power generating companies, wholesalers, and end-users of electric energy. Kazakhstan has 54 fossil fuel powered plants, with a total installed capacity of 18,240 MW (megawatt), five hydroelectric power stations, and a nuclear plant at Aktau⁸⁷.

Presently, power industry structure has three main segments:

- Large power plants of national level which provide considerable generation volumes of electric power – Ekibastuz GRES-1 and GRES-2, Aksu GRES, Karaganda GRES-2, and Irtysk GES cascade, Bukhtarma GES, Ust-Kamenagorsk GES, and Shulba GES;
- National power grid which provides services on transmission and dispatching of electric power and regulation of capacity, as well as agreed international electric flows with power systems of neighboring CIS countries;
- Regional energy companies that generate and distribute electric and heat energy: power plants of regional level, distribution electric network companies (REC) and heat supply systems for cities and villages.

Transmission networks are divided into interregional, regional and local networks. Interregional networks include high voltage lines (1150, 500 and 220 kW) transmitting energy from producers to

⁸⁷ Kazakhstan's Power Generation Industry, Gateway To Kazakhstan, <http://www.kazakhstan-gateway.kz/investments/powergeneration.htm>

the largest regional networks and users. Regional level networks include 220 kV lines transmitting energy from interregional substations to smaller end-users and redistribution (wholesaler) enterprises. Local networks have lines supplying energy to individual end-users and households.

Kazakhstan's industrialized north produces about 80 percent and consumes about 70 percent of the country's electricity. After seven consecutive years of declining electricity production, in 2000 Kazakhstan generated 48.7 billion kWh of power, an 8 percent increase over 1999. In 2001, domestic production was up 7.3% to 55.2 billion kWh and consumption was up 4.2% to 56.7 billion kWh⁸⁸.

There are 22 regional distribution companies in Kazakhstan, of which four have been privatized. The first two electricity distribution networks to be run privately were *Almatyenergo* (by Almaty Power Consolidated, a Belgian company, since sold back to the Kazakh government), and *Karagandaenergo* (by National Power of the U.K and the Israeli company Ormat). In July 1999, the US' company - AES was awarded management rights for the Ust-Kamenogorsk and Semipalatinsk distribution companies that are close to three power plants that AES operates⁸⁹.

Other regional utilities are *Altaienergo* in the far east, *Astana REC* (formerly *Tselinenergo*) serving the new capital region, *Kustenayenergo*, and *Pavlovarenergoservice* (formerly *Pavlodarenergo*) which serves the industrial heartland of the country including a large aluminum plant⁹⁰.

In March 2001, the European Bank for Reconstruction and Development (EBRD) announced its intention to provide 761,000 euros (US\$815,000) to Kazakhstan for the implementation of a

88 Kazakhstan's Electricity Sector, Economic Cooperation Organization
http://www.ecosecretariat.org/Countries/Kazakhstan/tab_text_report.htm

89Facts From Kazakhstan's Electricity Industry, The Caspian World,
<http://caspianworld.com/en/go/1915085189/935301147/342827978/#3>

90 Country Commercial Guide Kazakhstan, September 2003, from Business Information Service For Newly Independent States,
<http://www.bisnis.doc.gov/bisnis/bisdoc/0307KZCCGFY04.htm>

program to privatize the remaining regional power distributing companies. In line with the plan, the privatization process started in February 2001 and is on its way now⁹¹.

Kazakhstan also has plans to privatize the electricity distribution system, but the process has moved slowly, and only a few networks are now under private management. KEGOC, which has the responsibility to manage the overall grid network, does so with the East Kazakhstan Region Electric Company, a division of AES, which handles the power grid in Eastern Kazakhstan under a 15-year agreement with the Kazakhstani government signed in November 2000.

KEGOC owns the country's transmission lines and substations and together with Kazakhstan Electricity Energy and Power Market Operator (KOREM), formed in July 2000, serves as operator of the electricity wholesale market of the Kazakhstani Single Power Grid (SPG), a system under centralized dispatch management from Almaty city through nine regional dispatch centers and 18 district-level dispatch centers ⁹². KEGOC is also involved in Government's power sector development strategies, formulation of technical policies, and long-term planning.

In accordance with the Government's restructuring program, Kazakhstan with the financial assistance of the World Bank and the EBRD has started the Electricity Grid Rehabilitation Project. The project's total financing requirements, including interest during construction and other loan charges, are estimated at US\$257 million, of which US\$140 million is provided by the World Bank, and US\$45 million by the European Bank for Reconstruction and Development. The remaining part is financed by KEGOC and is equal to about US\$72 million⁹³. The project should be fully implemented by 2005. Major areas of the project include modernization of substations, upgrade of relay protection at most KEGOC substations, modernization of dispatch control, including purchase and installation of SCADA/EMS system, a digital corporate telecommunications network,

91 The Investment Development Program of KEGOC for 2003-2006

92 Country Commercial Guide Kazakhstan, September 2003, from Business Information Service For Newly Independent States, <http://www.bisnis.doc.gov/bisnis/bisdoc/0307KZCCGFY04.htm>

93 Wallis, Richard, "Kazakhstan Power Sector Modernized With EBRD Finance - Cleaner Air Is An Additional Benefit," EBRD Press Release, December 3, 1999 <http://www.ebrd.com/new/pressrel/1999/67dec3.htm>

commercial record keeping system, and a trading system, organizational development of KEGOC including development, shipment, and installation of a Management Information System; and technical assistance including designation of the main project consultant and technical consultants for each project component⁹⁴.

Construction of the Shulbinskaya Hydroelectric Power Plant, and building a cinder storage facility and installing new equipment at Ust-Kamenogorsk Thermal Electric Power Plant are also sector rehabilitation projects undertaken not by the government but by AES, a private company, owner of the largest electricity production plants. In order to successfully carry out the projects AES is receiving a US\$30 million EBRD credit.

There are also plans to build additional thermal-electric power plants, including five new combined heat and power (CHP) cogeneration facilities:

- Uralskaya TETS -- 150 MW
- Atayubinskaya TETS -- 450 MW
- Mainakskaya GES -- 300 MW
- Yuzhno-Kazakhstanskaya TETS -- 1,280 MW
- Zapadno-Kazakhstanskaya TETS-1 -- 500 MW⁹⁵

Kazakhstan's power generation sector is projected to boost total capacity to 86 billion kWh by 2015. Projected power consumption at that time is expected to reach 81 billion kWh. Kazakhstan's economic development plan for 2004-2006 specifies the upgrade of power facilities, the launch of a North-South power transmission line and the construction of small hydropower

⁹⁴ World Bank, "Kazakhstan Electricity Transmission Rehabilitation Project," Report No. PID7451, July 1999, last update August 15, 2003.

⁹⁵ Interview of the Minister of Energy and Mineral Resources of the Republic of Kazakhstan Mr. *Vladimir Shkolnik*, Energy Fair KIOGE -2003, Astana, Kazakhstan.

plants. In 2002 Kazakhstan's power generation output totaled 58.47 billion kWh, up from 55.33 billion kWh in 2001⁹⁶.

In accordance with the Law of the Republic of Kazakhstan “On natural monopolies” approved in 1998, transmission and distribution of electric power and (since 2003) technical dispatching, generation, transmission and distribution of heat energy are under state regulation.

However, power plants after reforms, mainly, passed to the private ownership and their activities are carried out under the conditions of competitive market. Electric power market and respectively tariff policy were improved. Methods of tariff formation on natural monopoly entities’ services were approved. Thus, fundamental amendments to the tariff calculation methodology for KEGOC and other power distributing companies’ services were introduced in the year 2000, when the power dispatching service was segregated and dependence on distance of electric power transmission up to 600 km was reduced⁹⁷. Costs to cover power loss in networks of interregional level were included in the electric power transmission tariff in 2001.

It should be noted that Russia and neighboring countries of Central Asia do not have such terms for tariffs on electric power transmission through networks of interregional and regional levels. Due to the implemented reforms, today, power prices for large industry consumers are one of the lowest in the CIS countries⁹⁸.

WEAK POINTS AND WHAT CAN BE DONE

Nevertheless, despite the reforms and restructuring executed by the Government, and the fact that Kazakhstan technically generates enough electricity to meet its demand, even today Kazakhstan ought to import electricity from its neighbors. Such peculiar situation results from the fact that

⁹⁶Fossil Energy International, An Energy Overview of the Republic of Kazakhstan, Electricity Sector, <http://www.fossil.energy.gov/international/kazkover.html#Electricity>

⁹⁷Power Industry and Fuel Resources, Kazakhstan Electricity Association, <http://www.kea.kz/eng/index.php>

⁹⁸Statistics Agency of the Republic of Kazakhstan, Annual Report on Main Socio-Economic Developments

Kazakhstan's electricity distribution system was not built properly, i.e. the main power generation plants were clustered in the north near the industrial base of the country, while the southern part remained energy dependent. Furthermore, today much of Kazakhstan's power generating equipment is old, bungling, and absent of modern pollution controls. The operation capacity of the plants is less today than what it used to be because of poor maintenance. The production of electricity is affected by the inferior condition of power plants due to inadequate management, lack of spare parts and generally obsolete equipment, most of which are more than 20 years old.

Thus, according to the Statistics Agency's data, metallurgy sector remains as the only externally competitive processing industry sector⁹⁹. While other processing industry companies are being supported through direct and indirect subsidies provided in the form of "low and economically unjustified electricity, fuel and lubricants, transportation tariffs, and protectionist customs duties." Furthermore, the electricity consumption per US\$1 of the GDP is about 7 to 10 times higher, while the labor productivity is about 7 to 10 times lower in Kazakhstan than in some industrialized countries¹⁰⁰. Fixed assets of Kazakhstani enterprises are significantly depreciated. For instance, in 2001 depreciation of fixed assets averaged to 29.7 percent, sometimes reaching over 50 percent¹⁰¹. Current procedure for accumulation of financial resources for renewal of fixed assets from received profits does not encourage the owners to replace or upgrade outmoded equipment and thereby serves as an obstacle for its development.

Inability of competing on price is one of the major obstacles that hinder Kazakhstan's processing industry today. However, it is directly related to the inefficiencies in the electricity production and transmission sector, which leads to increased production costs, thereby, making Kazakhstani products more expensive than its foreign analogs. For instance, according to the statistics, the index of the production cost per one *Tenge* of sales, measured by the ratio of the

99 Statistics Agency of the Republic of Kazakhstan, Main Socio Economic Indicators, September 2003.

100 Innovative Industrial Development Strategy of the Republic of Kazakhstan for 2003-2015, p. 10

101 Statistics Agency of the Republic of Kazakhstan, Monthly Report, April 2003

production cost of sold products, services, and works, to proceeds from their sales, is among the highest in the electricity production and distribution. The index is equal to 0.86, making the electricity generation and distribution sector, having deducted taxes, transportation costs and other expenditures, one of the least profitable¹⁰².

Tariffs for KEGOC services are regulated by the Agency for Regulation of Natural Monopolies of the Republic of Kazakhstan. Meanwhile, there are not enough considerable amendments concerning regional electric network companies introduced to the tariff formation methodology. As a result, there are still cases of subsidies in order to provide low tariffs for the population and industries. Due to the shortage of financial resources, the needed repair and restoration works, and renovation of assets had not been made over years in many regional electricity distribution companies. An average percentage of assets deterioration has reached 50 percent and more. Wire and electricity thefts cause problems¹⁰³.

On top of all, Kazakhstan incurs large energy losses during transmission and distribution over its 285,000 miles of distribution lines. According to Kazakhstan's Minister of Energy and Natural Resources Mr. *Vladimir Shkolnik* "an average of 15 percent of the electricity generated in Kazakhstan is lost before it reaches consumers," owing to the widespread deterioration of Kazakhstan's power infrastructure¹⁰⁴.

ASSESSMENT

Thereby it is evident that despite considerable changes and restructurings undertaken by the Kazakhstani government in the country's electricity sector, there are still numerous unresolved and unaddressed issues which handicap further development and restructuring of the electricity sector,

¹⁰²Statistics Agency of the Republic of Kazakhstan, Annual Report on Main Socio-Economic Developments

¹⁰³Kazakhstan Electricity Association, "Plans On Implementation Of National Policy Of Further Power Sector Development," November 2003

¹⁰⁴Interview of the Minister of Energy and Mineral Resources of Kazakhstan Mr. Vladimir Shkolnik, The 11th Kazakhstan International Oil and Gas Exhibition, KIOGE –2003, October 7-10, 2003, Almaty

and the economy in general. It is clear that further liberalization and more competition, which will push companies in the electricity sector to replace obsolete equipment, upgrade their facilities, and increase efficiency in order to be compatible, need to be introduced. The sector requires large investments in order to improve the reliability and quality of electricity supply. Yet, non-payment of electricity bills, an inadequate collection system, and the lack of market-based transportation tariffs hinder large-scale investment opportunities into Kazakhstan's transmission and distribution sector.

For this reason, while joining the WTO, Kazakhstan would have to be very careful on properly assessing the situation and taking all possible advantages out of it. For instance, WTO membership would inevitably require greater liberalization of a new-member country's economy in general, and due to bilateral negotiations and development level in some sector in particular. Taking into account that at present time Kazakhstan is trading with 137 from the total of 146 WTO members, and the average weighted tariff rate in Kazakhstan is approximately 8.6 percent, which is almost equal to the average WTO rate of 6-7 percent, while items eligible for "0" (zero) to 15 percent tariff rate account for 95 percent of all commodity items, there are no really serious grounds for concerns about weakening of the internal market in general¹⁰⁵.

Yet, because of the underdevelopment and significant, over 50 percent, asset deterioration of the electricity production and distribution industry, which leads to low compatibility and efficiency, Kazakhstan should be more cautious liberalizing its power industry. The main reason for cautiousness results from the fact that rapid opening of the power industry, such as complete privatization of it, will lead to acute price increase both for the producer and the consumer. The privatized power companies, as any market force driven enterprises, in their pursuit for quickest investment returns would sharply drive electricity prices up, which in return will inevitably hurt not only an individual consumer, but the industrial consumer as well. As a result fast escalation in electricity prices will increase the production cost in all of the spheres of Kazakhstan's industry,

¹⁰⁵ The Innovative Industrial Development Strategy of the Republic of Kazakhstan for 2003-2015, p.24

being especially harsh on the processing industry, which is Kazakhstan's one of the most underdeveloped.

Thereby, Kazakhstan's services sector should be gradually liberalized, as in case with China, by agreeing to first liberalize distribution and professional services, while protecting some of its "infantry industries." The necessity of liberalization and global market integration are undeniable for Kazakhstan. Thus, the country should continue its reforms intended to insure sound competitive environment, greater transparency, efficiency, and reduce the government's involvement in the private sector. Nevertheless, it should do so at its own pace. The undisputed right of doing so is envisaged by the GATS and Kazakhstan should in sectors where it is prepared to make commitments, list its reservations to market access and national treatment. However, it should assume no commitments with respect to sectors not suggested to be inscribed in its schedule. One might call this a sector-by-sector, top down or negative list approach.

Since the power industry is one of the most attractive service sectors it is evident that no country can secure a complete protection to it. In line with the GATS rules, in sectors inscribed in its schedules, countries can list limitations on market access and national treatment by spelling out in some detail the products on which they are not making a market access or national treatment commitment, and/or the precise manner in which market access or national treatment commitments are circumscribed with respect to such products. Alternatively, a country may list the specific provisions in its laws for which it is taking a reservation with respect to either market access or national treatment. In some cases a country may state that the commitment applies only to certain products or subsectors within a sector, and that it is making no commitments in other products or sub sectors.

In other words GATS' approach to making commitments means that members are not obliged to do so on the whole universe of services sectors. The accessing country's government may not want

to make a commitment on the level of foreign competition in a given sector, because it considers the sector to be a core governmental function or indeed for any other reason. In this case, the government's only obligations are minimal, for example to be transparent in regulating the sector, and not to discriminate between foreign suppliers.

Based on the GATS provisions, which allow selective approach to each sector and service type, Kazakhstan can continue its further services area liberalization, in particular case the power industry liberalization, along its plan for further power industry restructuring and development within the next 5-10 years. By clearly assessing its strategic goals and WTO obligation for continued trade barriers reduction and liberalization, Kazakhstan can achieve growth in its own generating capacities.

There are several comparative advantages that the Government of Kazakhstan is intended to use in order to accelerate development of its domestic power industry:

- Kazakhstan has attractive opportunities to use wind energy, particularly in the Djungar Gate regions and in the Chilik corridor, where average annual wind speed is 7-9 m/sec and 5-9 m/sec respectively. The proximity of existing power lines, sound correlation between the windy season and growth in electricity demand creates the right conditions for effective use of these resources.
- Kazakhstan is characterised by its significant solar energy resources. Annually, it receives 2,200-3,000 hours of sun annually, generating 1,300-1,800 kW/m² a year. This enables the use of solar water heaters and solar batteries, particularly portable photoelectrical systems on farms in agricultural regions.
- Kazakhstan's hydraulic potential is estimated roughly at 170 TW a year, only 7-8 million kW a year of these are currently produced (8,860.9 million kW/hr in 2002). Small

hydroelectric stations, with an output of less than 10 MW, are of major significance. According to research, there are at least 435 potential small HES ranges with a total potential capacity of 1,380 MW and average annual electricity production of approximately 6 million kW/hr. Several of these envisage the use of existing irrigation canals, thus needing minimal expense of time, resources and materials for them to come into operation.

In addition,

- Russia and Kazakhstan are intent on consistently realising their bilateral agreements on nuclear energy, particularly on the joint construction of the nuclear power plant at Lake Balkhash¹⁰⁶. The construction cost for one nuclear plant in Kazakhstan is approximately US\$2 billion.
- In 2003 it is envisaged to increase electricity production by 6.5 percent, demand by 6.7 percent, and to complete projects for creating Kazakhstan-Russian ventures using Ekibastuz-2 to supply electricity to the Russian market.
- Kazakhstan plans to annually increase its electricity production volumes, and to attain 86 billion kW/h by 2015, with current demand volumes at 81 billion kW/h. In order to do so it would require rebuilding of several major energy installations. For this purposes an amount of roughly US\$180-270 has been envisaged for the reconstruction of the *Ekibastuz State Regional Electricity Station (SRES-1)*, forecasted to come into operation in 2010. Another major project - the construction of the third building of *Ekibastuz SRES-2* with a capacity of 500 MW will require additional US\$190 million.
- Work has begun on the reconstruction of the *Ekibastuz-Barnaul Power Grid*, facilitating the supply of electricity to the cities of Omsk and Uralsk (Russia).

¹⁰⁶ Several months ago the Government of Kazakhstan has postponed its plans for the nuclear power plant construction for later period, since the overall situation in power generation is improving and if the trend continues Kazakhstan will be able to produce enough electricity in its power plants. Yet, due to Kazakh Government's interest in establishing a strong domestic innovative-industrial base, the nuclear plant project remains of interest.

- In the next year KEGOC plans to allocate about 14.8 billion Tenge for the National Electricity Grid modernization project, which will include the installation of modern electrical equipment (valued at about 8.5 billion Tenge) and renewal of the telecommunications system by installing digital ATS, a system of guaranteed feed and HF channels (estimated cost around 2.5 billion Tenge);
- Reconstruction of *Ekibastuz-Barnaul 1,150 kW Overhead Power Line No. 1104* has begun, which will enable significant increase in the volume of inter-state power exchanges on Kazakhstan's National Electricity Grid from Siberia to the Urals and to the Omsk region of Russia;

Recently the Project to construct the second section of the “North-South” transit 500 kW Overhead Power Line has been approved by the Government. The significance of the project is that it will provide a reliable energy supply to the southern part of Kazakhstan, which does not have sufficient power plants and is forced to import electricity from abroad¹⁰⁷.

CONCLUSION

Despite the progress Kazakhstan has already made in liberalizing its power industry, the country has a long way to go. The WTO accession will push for further reforms in Kazakhstan's economy. Nevertheless, the country's leadership is strongly committed to joining WTO and accepting its rights and regulations. It is also strongly committed to further reforms in power generation, targeted to deepening market transformation, establishment and development of exchange trading of electricity, broadening the range of electricity-related services.

According to the Government's Innovative-Industrial Development Strategy, the country needs to understand that one of the major tasks is to reduce energy-intensity, which still remains 3-4 times higher than in advanced countries. It is clear that artificially low electricity tariffs hinder the

¹⁰⁷The Caspian World, Kazakhstan Energy Sector Overview, <http://caspianworld.com/en/go/1915085189/935301147/342827978/#4>

resolution of this problem, since nobody saves cheap resources. On the other hand, it is also evident that by supporting and providing unjustified low tariffs, as a means of support, to the processing industry the government in return gets to bare not only the burden of direct subsidies but also the weight of collecting less taxes.

Pursuit of reform in services is no easy task, and there is often a need to balance the scope of promoting greater competition with the legitimate role that exists for the government to intervene in order to offset market failures and to achieve non-economic objectives, such as the universal provision of education or health care services.

Kazakhstan thereby, should make all the possible efforts so its national schedule would reflect the reality of its situation, i.e. that full liberalization of trade barriers cannot be achieved overnight and that not every country can move at the same pace. Its sectoral agreements should reflect the fact that liberalization of trade in some sectors cannot be separated from the establishment of compatible regulatory regimes, and in some cases the modification of the current international regulatory regime.

Reforming the regulatory system in services, and thoughtfully opening up the market to wider domestic and international competition is thus, very much in Kazakhstan's domestic economic interest. These reforms cannot be accomplished overnight, since both the government and the industry need time to assess the situation as well as necessary knowledge and skills. Moreover, since economic dislocations and consequences accompany all reforms, they need to be implemented at a socially acceptable pace of adjustment.

The need for a phased implementation of reforms, however, is not an argument for a delay in mapping out a long-term game plan for reform and to expand the process of reform. The establishment of long-term reform targets and a phased plan for implementing reforms creates a more predictable environment for enterprises, encouraging risk taking. Kazakhstan's Electricity

Association believes that the overall conditions of the power industry will improve if the state foresees transparent, predictable and non-discriminatory policies, which will allow potential investors to clearly appraise their costs and prospective profits, while also serving as a stimulus for stability in order to attract investment. To establish such environment, the Government needs to insure that the tariffs are formed by the market forces, and not by artificial alteration done in order to bring the maximum tariff rates in line with the Indicative Plan of Socio-Economic Development of Kazakhstan¹⁰⁸. Assuring that the tariffs are not unjust and responsive to the market will encourage the power industry companies to invest in their businesses. This is an essential precondition taking into account that number of investment projects is limited as a result of high costs. According to the figures provided by the Kazakhstani Electricity Association, estimated calculations show that investment of about US\$2 billion in electricity generation would lead to the increase of electric power prices by 0.25-0.3 cents per 1 kWh on average by 2015¹⁰⁹. At the same time, existing understated tariffs that do not include investment component do not stimulate energy saving and lead to high electricity consumption (3.34 kWh per US\$1 of GDP in Kazakhstan whereas it is 0.44 cents in the USA and 0.17 cents in Sweden and Japan).

Despite all, the country should pursue its liberalization process, understand that investing in energy sector is a necessity and that it can lead to price growth on electric power and, respectively, on goods of first priority. Thereby, it is as well important that the sectoral market opening be done gradually, at least at the very beginning stage, so the Kazakhstani population could understand and accept this necessity, which would contribute to the social and economic development of the country.

The escalation of tariffs for services of natural monopolies, and electricity in particular, is unavoidable and is market forces driven. Thus, growing tariffs and resulted increased prices on

¹⁰⁸ The Government of the Republic of Kazakhstan prepares an Indicative Plan of Socio-Economic Development of the country for the period of three years. It is not an unusual matter that in order to comply with the set limits and tariffs, the Governmental agencies, such as the Antimonopoly Agency, intentionally keep tariffs from rising.

¹⁰⁹ Kazakhstan Electricity Association, Plans on implementation of national policy of further power sector development, section "Tariff Policy," November 2003

consumer goods, need to be addressed not by artificially held low tariffs or subsidies to the manufacturing and processing industries, since both are contrary to the WTO rules as well as the market economy principle, but rather through special social protection programs designed to increase the minimum wage, minimum pensions, and other support to the most unprotected layers of population. On top, an introduction of energy saving program and sustainable development program might be very helpful in preventing a negative effect on the country's economy. Last but not least, the industry itself should play an important role in joining the efforts of power generators, transmission organizations and consumers for achieving the state goal to provide reliable and market compatible electric supply.

KAZAKHSTAN'S TELECOMMUNICATIONS INDUSTRY AND TRIPS AFFECT ON IT

Liberalization of telecommunications markets started back in February 1997 when 70 countries, accounting for 90% of the world telecom revenues, pledged in varying degrees to open their markets to foreign competition. The WTO/GATS agreement accelerated changes in telecommunications industry, since it opened the signatories' markets to competition, increased market access, lessened foreign ownership restrictions¹¹⁰.

In 1997, the WTO members signed the Agreement on Basic Telecommunications Services as the annex to the GATS. This agreement combined binding commitments on market access from its participants with a statement of "procompetitive regulatory principles" that have rapidly become the definition of the policy revolution under way in this market. The Annex requires each Member to ensure that all service suppliers seeking to take advantage of scheduled commitments are accorded

¹¹⁰ Abrenica, Joy and Warren, Tony, "Towards The Millennium Round: East Asia And The International Trade In Telecommunications Services," World Bank, July 1999, p.4

access to and use of public basic telecommunications, both networks and services, on reasonable and non-discriminatory basis.

According to the Paragraph 5.8 of the Annex on Telecommunications:

“Consistent with their levels of development, developing country members may place reasonable conditions on access to, and use of, public telecommunications transport networks and services. These conditions are those necessary to strengthen the domestic telecommunications infrastructure and service capacity of the developing country member, and to increase its participation in international trade in telecommunications services.”

Therefore, it is not an immediate matter for Kazakhstan to worry about rapid telecommunications market liberalization. Yet, it will have to do so eventually, after the grace period, which it will most likely try to bargain in bilateral WTO talks, if the government decides to protect its telecommunications sector. It is clear that the telecommunications in Kazakhstan requires substantial investment besides that which has already been invested. To attract new capital an adequate legal and regulatory framework is needed. This is key to fostering private-sector investment and confidence in the telecom sector and the country in general.

According to the latest developments, the Kazakhstani Government is intended to liberalize its telecommunication market by 2005. It has approved the Program on Development of Telecommunications Industry for the years 2003-2005, which offers step-by-step liberalization of the telecommunications market and fostering competitive environment that would encourage new service providers to enter the market. By that time the government is planning to conduct major reconstruction and modernization projects in the telecommunications sector. The Government of Kazakhstan adopted the Programme on Demonopolization and Liberalisation of the

Telecommunications Market in Kazakhstan and is planning to generate investments of over US\$1 billion annually in its telecommunications industry by 2005¹¹¹.

The restructuring projects under the *Kazakhtecelom's* "Telecommunication Network Modernization and Development Program" are aimed at increasing the level of telecommunications quality and its accessibility. It is envisaged that by 2005 the National Information Super Highway and National Data Network will be successfully constructed. Another goal is to proceed with modernization and development of local telephone network to meet requirements of residential and business customers in communications services. Creation of the National Satellite Network will make it possible for those living in sparsely populated areas with inefficient telephone and Internet access with state-of-the-art telecommunication services. According to the latest data, in 2002 Kazakhstan's telecommunications market was estimated to be worth US\$570 million. Kazakhstan's government aims to grow the market to US\$700 million by 2005, with the majority of the additional revenues going to new operators¹¹².

Kazakhstan's telecommunications sector overview

After gaining its independence in 1991 Kazakhstan was among the first former USSR countries to restructure its telecommunications sector. In 1994 the Government had created National Joint Stock Company "*Kazakhtelecom*," which was formed on the basis of the Soviet state owned telecommunications enterprise and was under the authority of Kazakhstan's Ministry of Communications. On February 20, 1997 the *Kazakhtelecom* was reformed into an Open Joint Stock Company *Kazakhtelecom*. In May 1997, the Kazakhstan government sold a 40-percent stake in *Kazakhtelecom* to South Korea's Daewoo Corporation. By February 1998, Daewoo Corporation sold

¹¹¹ 11th Central Asian International Exhibition "Telecommunications and Computer Technologies," The News of Telecommunications Market, KITEL-2004, <http://www.kitel.kz/en/2004/desc/>

¹¹² Intelcon Research & Consultancy Ltd., World Dialogue on Regulation for network economies, "Kazakhstan to sell a portion of its 50% stake in Kazakhtelecom," May 12, 2003, http://www.regulateonline.org/intelecon/2003/May_2003/A-Kazakhstan-030512.htm

three-quarters of its holdings to Kazkommertsbank, a large Kazakhstan private bank. Later, Kazkommertsbank sold 10 percent of its *Kazakhtelecom* shares mainly to Western investors and held the remaining 30 percent, which Kazkommertsbank hoped to sell off to a "strategic partner" with experience in the development and operations of telecommunication networks¹¹³.

Under the Government's General License No.1 in the field of telecommunications *Kazakhtelecom* enjoys the exclusive rights to create, construct, install, operate and maintain the country's Public Telecommunications Network. In addition, the company exercises monopolistic rights in providing long distance and international communication services.

In 1995 Kazakhstan's telephone density for each 100 people was at 14 telephone numbers per hundred people, 7 rural and 18 urban¹¹⁴. It placed the country as fifth among the CIS states, but the government set a goal to triple the density within the next five to 10 years. At present, the telephone density per 100 urban inhabitants is 20,5 telephones. The Company serves more than 1.7 million urban and 377,000 rural telephone services subscribers, and the total installed capacity is at 2.4 million lines. The digitalization level of the local network is at 45 percent with a 16 percent increase from the year 2000. *Kazakhtelecom* has established ties with 154 foreign telecommunication companies and 17 operators in the CIS and the Baltic States, offering quality communication services with over 230 countries of the world¹¹⁵. The company's share in the long-distance services market is equal to 92 percent, international communication with the CIS countries – 89 percent, and with the rest of foreign countries – 79 percent.

The payphone network system, which became almost none existent after the Soviet Union breakdown due to discontinuation of manufacturing payphones and new system incompatibility, is now rapidly emerging. For instance, 5 706 payphones are now available for use with the phone card around the country, covering all cities and every rural area. The payphones are imported from two

113 International Tax and Investment Center, <http://www.iticnet.org/publications/TwnsndCom.pdf>

114 Kazakhstan Gateway, Economy, Telecommunications Overview, <http://www.kazakhstan-gateway.kz/economy/communications/index.htm>

115OJSC "Kazakhtelecom," Company Overview, November 2003

foreign manufacturers – *Schlumberger Company* of France and Spanish *Siemens Elasa*. According to the 2002 annual report of the Kazakhtelecom almost 1000 payphones had been installed in the 2002¹¹⁶.

The company has acquired credit rating from major international rating agencies such as *Standard & Poor's* and *Fitch*. Its rating has been increased by the Fitch rating agency from “BB-” to “BB,” and has a “stable outlook.¹¹⁷” Due to its importance to Kazakhstan’s economy, Kazakhtelecom’s share in the GDP is at 1.5 percent, and good credit history, the national telecommunications operator has been enlisted into the Official List of the Kazakhstan Stock Exchange as well as into the Program of State "Blue Chips" Stocks Sale¹¹⁸.

Kazakhstan's telecommunications sector has been undergoing a major transformation in the recent years and is currently one of the most advanced in the CIS. The so-called Intelligent Network has been introduced. The Network provides such services as prepaid card calling, account card calling, credit card calling, freephone service which is more commonly known as “toll free”, charged information service, which allows the initial service subscriber to get additional income by providing further service to the end use, and televoting, which is becoming increasingly popular among the polling and television companies that use it for conducting public opinion surveys. By 2005 the construction of a 10,000 km National Information Super Highway (NISH) covering all the regions of Kazakhstan is planned to be completed. NISH will be the shortest telecommunications route running from Europe to China, Japan and Southeast Asia, which will allow Kazakhstan to become the main transit centre between Europe and Asia.

The construction of the Fiber Optical Communication Line, which is envisaged to incorporate 6 regional and 29 local centers comprising a national through traffic operation and

116 OJSC “Kazakhtelecom” Annual Report - 2002, p.15

117 OJSC “Kazakhtelecom” Annual Report - 2002, p.9

118 Kazakhstan Investment Promotion Center, Investment Climate, Press Release, Business-Forum “Kazakhstan – Europe: Investments and trade”, November 5-6, 2003, Budapest, Hungary

digitalization of the whole territory, was started in 2002, and its first - Eastern section has been successfully completed. A large-scale National Satellite Network Construction Project is also being implemented¹¹⁹.

At the end of this year the company has signed the Loan Agreement with the consortium of international banks led by the European Bank for Reconstruction and Development (EBRD) for the total amount of US\$110 million, in order to restructure its debts and modernize the network. The new loan is an addition to Kazakhtelecom's 1999 loan of US\$50 million from EBRD, yet it is the first syndicated one¹²⁰. Finance is arranged jointly by the EBRD and Standard Bank London. EBRD is providing US\$60 million of its own funds with a seven-year maturity, while the remaining US\$50 million is being syndicated to five commercial banks (*Standard Bank London, Raiffeisen Zentralbank Bsterreich, Citibank, Credit Lyonnais and WestLB AG*) with a five-year maturity¹²¹.

The timing of the deal is not accidental, as the government is planning to proceed with greater market liberalization for its telecommunications sector. The access the Kazakhstani national operator gained to international capital markets through this transaction is intended to help optimize funding costs and invest in developing the network. Currently, the Kazakhstani government has a stake of 51 percent share in the company¹²². In efforts to help the Kazakhstani government promote a transparent regulatory framework for the telecommunications sector, a number of foreign legal experts have been recruited to provide the authorities with technical assistance. Thus, for instance, Japan and Taipei China have each given US\$200,000, while the European Union has provided US\$364,000 for successful implementation of the telecommunications sector privatization program.

Along with the provided technical assistance various domestic governmental agencies and companies in the telecommunications sector organize special presentations, conferences and

119 Kazakhtelecom's Press Release, September 2003, www.kazakhtelecom.kz

120 Wallis, Richard, "EBRD Supports Largest Telecoms Operator In Central Asia", EBRD Press Release, December 3, 1999

121 Stedman, Michael, "Kazakh Telecoms Leader Wins \$110 Million Eyeing Market" Reform, Pravda Newspaper, June 10, 2003

122 International Telecommunication Union, World Telecommunication Indicators Database, October 9, 2003,

<http://www.itu.int/ITU-D/ict/publications/world/world.html>

exhibitions in order to promote the prospected privatization program and increase public awareness of it. One of such promotional conferences was held in Istanbul, in April of last year and was dedicated to highlighting investment opportunities of the Kazakhstani telecommunications sector. *“Kazakhstan - Regional and International Overview of Investment Opportunities in Kazakhstan’s Telecom Industry”* was organised by the Ministry of Transport and Communications of the Republic of Kazakhstan and several international companies, such as International Trade and Exhibitions (JV) Ltd (Great Britain), EUF (Turkey), Iteca (Central Asia and the Caucasus), and Business Events Management Ltd (Great Britain), OJSC “Kazakhtelecom,” and Kazakhstani cellular phone company “Kcell.¹²³” The exhibition on Kazakhstan’s telecommunications and IT industry promotion - Astana KITEL, has turned into an annual event and is becoming increasingly popular among domestic and foreign companies in attracting new investment into the sector. The fifth annual exhibition – Astana KITEL-2003 was visited by more than 70 telecommunications and IT companies from 15 countries¹²⁴.

Along with Kazakhtelecom, a number of other telecommunications service providers operate in the Kazakhstan market: Kazinformtelecom (KIT), Nursat, Jaryk, SA Telcom, and KAZINTEL. The above companies provide such services as Internet, Infotel international network, international Intelsat-based satellite communications network, paging, and satellite television. KAZINTEL Company comprised of three well-known Kazakhstan telecommunications companies such as Arna, Astel, and Ratel, serves as the local telephone communications operator in Almaty city, as well as provides data transmission and satellite communications systems.

In March 1999, GSM-standard cellular phone service was introduced in Kazakhstan. Two GSM operators emerged in the Kazakhstan telecommunications market. “K'cell” is Kazakhstan-Turkish joint venture formed by the national operator between Kazakhtelecom, which holds 49 percent of

¹²³ Ministers of Turkey, Caspian Region and Central Asia Meet at Annual Regional Telecommunications Summit and Exhibition in Istanbul, Kazakhstan Press Club, April 14-16, 2002

¹²⁴ Astana KITEL-2003, Press Release, September 9-11, 2003 <http://www.astanakitel.iteca.kz/ru/2003/desc/>

the shares and Turkcell, owner of the 51 percent of the shares¹²⁵. “K-Mobile” is a joint venture of the Kazakhstani Investel Company and Turkish Rumeli Telecom, each has 30 and 70 percent of the shares respectively¹²⁶.

The long-awaited arrival of GSM to Kazakhstan has resulted in strong downward pressure on AMPS standard-based cellular equipment and services in Kazakhstan. Launching of two competing GSM operators resulted in much lower prices and new services, thereby making mobile service available to the Kazakhstani middle class. For instance, prior to the introduction of competition in the cellular services market the number of mobile service subscribers was at about 30,000. Altel the first mobile operator, formed through a Kazakhstan-British joint venture with Wireless Technology Corporation, had virtually exclusive monopolistic rights as the second mobile company “Zharshi” had a tiny share of the market. The dramatic boom in mobile services, which has started with the introduction of competition in the mobile services market, has been successfully continuing with the annual growth of nearly 200% being recorded in 2002¹²⁷.

Recently the Government has adopted a program on further development of telecommunications sector and has announced its plans to introduce the third generation cellular services in the Code Division Multiple Access (CDMA 2000) format. The Committee on Telecommunications Services and Information under the Ministry of Transport and Communications has already conducted the tender in accordance with the Law on Government Procurement and awarded the lines at 800 MHz and 450 MHz radio frequencies to the tender winner, which are Altel and Zharshi ¹²⁸. Kazakhtelecom according to the latest information is planning to develop mobile services in less attractive rural areas of the country.

¹²⁵K-Cell Company Information, K-Cell Website, <http://www.kcell.kz/en/company/>

¹²⁶K-Mobile Company Information, K-Mobile Website, <http://www.k-mobile.kz/ru/company/>

¹²⁷The Global Information Inc., 2003 Information Highways and Telecommunications In Asia: Volume 8: Armenia, Azerbaijan, Bhutan, Brunei, Georgia, Kazakhstan, Kyrgyzstan, Maldives, Mongolia, Nepal, Tajikistan, Turkmenistan, Uzbekistan, 9th Edition, June 2003 http://www.gii.co.jp/english/pa14618_information_highways_v8.html

¹²⁸Kazakhstan Is Going To Develop the CDMA Format Mobile Services Network, CDMA Kazakhstan, June 3, 2003 http://www.cdma.kz/script_site.html?id=149

CONCLUSION

The overall situation with the development and reformation of the Kazakhstani telecommunications sector is positive. The country has been able to revitalize its telecoms industry, by constantly upgrading it and replacing the Soviet time, outdated equipment with the services and equipment of international class. The national operator, monopolistic company *Kazakhtelecom* has proved itself to be a profitable enterprise with good management strategy. According to the company's year 2002 financial report, its net profits in 2002 rose by 59 percent compared to 2001, amounting to a total of 11,558 million Tenge, which is 4,282 million Tenge greater than in the previous year.¹²⁹ The company is also one of the major taxpayers. In 2002, for example, the total amount of taxes it paid was equal to 13.2 billion Tenge¹³⁰.

Despite the seeming success of the telecoms industry in Kazakhstan it is evident that such success was largely possible due to the closeness and protection of Kazakhstan's telecommunications market. Thus, the Government of the country implemented protectionist measures, such as awarding exclusive monopolistic rights on virtually all telecoms services to the national operator *Kazakhtelecom*, has been a major reason for the company's and industry's successful development and expansion. Even though it is hard to accuse the national telecoms operator in not having an incentive to provide the best services and not being a profitable enterprise, it is still clear that once competition is introduced into Kazakhstan's telecommunications market, the Kazakhstani telecoms customers will enjoy lower prices, higher quality services, a wider array of service choices, and latest technology, because the new operators along with the exiting ones would have to provide better and lower cost services in order to compete in the market. In its turn, a more efficient telecommunications sector will improve the efficiency of numerous business endeavors,

¹²⁹ Kazakhtelecom's Annual Report, 2002, p.9 http://www.kazakhtelecom.kz/eng/financy/ar_eng.pdf

¹³⁰ The Ministry of Finance's Tax Committee Annual Report – 2002, <http://mf.minfin.kz/>

thereby boosting the whole country's economy. An improved telecommunications infrastructure will also help attract increased levels of foreign direct investment.

In addition with the near future prospect of joining WTO, there is no other choice for Kazakhstan's Government but to realize the necessity and importance of demonopolizing and liberalizing the telecoms industry. Thereby, the Government has already undertaken its first steps towards the market liberalization and pursuant to its commitments is determined to complete this process in the next several years. The transition from a state monopoly to a liberalized market requires Kazakhstan to undergo a complete revision of its telecommunications regulatory framework, since efficient legislative and regulatory frameworks are critical success factors for liberalization. Thus, telecom regulators such as the Kazakhstani Ministry of Transport and Communications must be independent from governments and at equal distance from all operators, in particular the dominating ones. The government on a non-discriminatory basis must guarantee access rights to all competitors.

One prime objective of regulating telecommunications is to protect the interests of customers. Inefficient public operators, or greedy private licensees, usually overprice telecom services. Regulatory authorities, therefore, are requested to raise awareness amongst customers in order to enable them making informed spending. In monopolistic or partially liberalized markets, regulation is viewed as a substitute for competition. Whereas in fully liberalized markets, competitive forces provide some sort of self-regulation. However, the net effect of telecom regulations in the Arab countries is unclear. It will take sometime to have a reliable record of accomplishment.

Nevertheless, according to a report by *Interfax*, the government of Kazakhstan intends to end Kazakhtelecom's exclusivity in the domestic and international long-distance markets by the end of 2003, earlier than previously planned. The government's existing liberalization plans for the telecommunications sector call for Kazakhtelecom to lose its long-distance services monopoly in the

first quarter of 2004. The government also plans to prepare the legal and regulatory groundwork for the liberalization of the telecoms sector this year, and to develop a mechanism for financing rural operators.

The Committee on Communications and Information of the Republic of Kazakhstan has been given until the end of 2003 to prepare for equalizing communications services tariffs and to develop a mechanism for financing unprofitable telecoms services through the introduction of fees for access to international bandwidth for alternative operators. In general, liberalization is expected to result in a reduction in long-distance tariffs and an improvement in service quality.

In general, I believe that opening up the telecommunications sector to private telecom service providers would have several positive effects not only on Kazakhstan's telecoms industry, but on its economy in general. First of all, because demonopolization will naturally result in increase of telecoms service providers, it will decrease the unsatisfied demand for telecommunications services. Secondly, new service providers will precede attempts to expand their customer bases by lowering rates and improving their services. They will also want to try to expand their overall customer base, which will require investment in physical infrastructure.

In addition, there are number of areas, especially rural ones, which still do not have adequate and in some cases any telecommunication services. Therefore, the new market comers can be possible investors into the services for rural and small town areas. As a result, of such investments, which could become possible with the market liberalization, Kazakhstan's overall tele-density will increase.

Moreover, Kazakhstan's businesses will also benefit from telecoms market liberalization, as the telecoms infrastructure becomes more efficient, tele-density increases, services quality improves and prices drop. The numerous companies and businesses would have to spend less time and effort in order to get access to high quality, reliable telecoms services. They will also have to spend less money on communication with their customers and business partners as the tariff rates decrease as a result of competition.

Finally, the telecoms market liberalization will increase the amount of foreign direct investment into Kazakhstan. For instance, at the current time, foreign companies looking for investment opportunities abroad, might very well be turned off by the inefficient communications services and its expensiveness. Hence, once the telecommunications sector is liberalized, and service quality, prices, and reliability improve, Kazakhstan will be far more attractive to foreign companies wishing to establish themselves not only in Kazakhstan but also in the Central Asia region, as Kazakhstan is the best choice for doing so.

On top the liberalization will speed up the process of integrating Kazakhstan into the global trading community as well as into the global telecommunications community. The Trans Asia-Europe Optical Fiber Cable (TAE) project that begun in August of 1995, is a good opportunity to do so. This international fiber-optics communication line is envisaged to connect China, Central Asia, Iran, and Turkey with the European continent, with future outlets to the U.S. via Japan. In 1998 the southern branch of TAE (1750 km) went into operation, and construction of the western branch (2500 km) began in April 1999¹³¹. The rapid and successful development of telecommunications in Kazakhstan has already encouraged several foreign manufacturers and suppliers, such as Motorola, Lucent Technologies, Ericsson, Siemens, Alcatel, Nokia, Daewoo, and Nortel, to establish a presence in the Kazakhstani telecoms market. Yet, considering high demand for telecommunications products and services in the oil, gas, power generation, banking, financial, aviation, and governmental sectors, liberalization of the Kazakhstan's telecoms market will attract even more foreign companies, i.e. foreign investment.

Finally, while it is obvious that the market liberalization will first of all hurt the current market leaders such as Kazakhtelecom and limited number of mobile phone companies, it is as well

¹³¹Utenkova, L., "Kazakhstan: Telecom Market Developments & Liberalization, US Commercial Service, Almaty, Kazakhstan, September 2003, <http://www.bisnis.doc.gov/bisnis/bisdoc/030915KZTele.htm>

clear that we are coming close to the time when competition and a free market will be reality in the telecommunications sector in Kazakhstan. The WTO accession of Kazakhstan will serve as a stimulus for such process, and in accordance with the WTO and specific GATS provisions will ensure non-discriminatory treatment, market accessibility and open competition in the country. Open competition, once allowed, will bring currently artificially and unjustifiably high set long distance, international calling service, Internet, satellite and mobile services prices down, which will provide a greater number of Kazakhstani population with the opportunity to get access to the telecommunications services.

Kazakhstan's Membership In Regional Trade Arrangements And How They Affect On Kazakhstan's WTO Accession

When a WTO member enters into a regional integration arrangement through which it grants more favorable conditions to its trade with other parties to that arrangement than to other WTO members' trade, it is contrary to the basic WTO principle of non-discrimination and most favored nation treatment such as envisaged by the GATT's Article I of the GATT and the GATS' Article II. Nevertheless, WTO member countries are allowed to enter into such arrangements under specific conditions, which are spelled out in three major sets of rules.

For instance, Paragraphs 4-10 of the Article XXIV of the GATT, where Paragraph 4 provides for the formation and operation of customs unions and free-trade areas covering trade in goods, it states that:

“The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a customs

union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories.”

The 1979 Decision on “Differential and More Favorable Treatment, Reciprocity and Fuller Participation Of Developing Countries” or the so-called “Enabling Clause,” permits preferential trade arrangements in trade in goods between WTO’s developing country members. In addition, the GATT’s Article V “Economic Integration” provides the possibility to conclude regional trade agreements in the services trade area both for developed and developing countries.

Therefore, the formation of regional trading blocks and customs unions in principle is not inconsistent or in violation of the WTO rules. Yet, formation of the preferential regional agreements is possible only if those arrangements do not increase the overall trade barriers and impose more restrictive trade environment for those WTO members, which are not party to the regional trade agreement.

It is a continuing trend that the regionalism or the formation of different free trade areas and customs unions is becoming more and more popular around the world. During the last decade the world has witnessed a major prevalence of regional trading arrangements. Even the so far conservative East Asian countries were very successful in forming new regional agreements in order to promote greater trade and secure their geo-political interests. The regional trade agreements cover virtually all aspects of trade, ranging from services and labor mobility to environment and rules of origin. Thus, for example, since the creation of the GATT in 1947, 254 regional trade arrangements have been notified and over 130 of them were notified after 1995¹³². According to the latest study conducted by the OECD, the preferential regional trade agreements already account for 43% of

¹³²The World Trade Organization Website, http://www.wto.org/english/tratop_e/region_e/regfac_e.htm

world trade, and this is expected to increase to 55% by 2005 if all the regional trade agreements currently in the pipeline are realized¹³³.

Nevertheless, while it is clear that the preferential regional trade agreements can be a good complement to the global trade it can in no way replace the necessity for multilateral trade, including coherent multilateral rules and progressive multilateral liberalization. Indeed the basic framework in which most if not all of the regional trade arrangements work now, are based on the rules and regulations, and cover those sectors highlighted by the multilateral trade and the WTO. The distinctive feature of the regional trade agreements, which explains its attractiveness, is that they frequently expand beyond set WTO provisions by containing ones that are more far-reaching in a wide range of sectors. Such flexibility is possible due to limited number of participants and greater easiness of negotiations. For instance, in trade in services almost all regional trade blocks adopt a “top-down” or “negative-list approach,” which means greater liberalization.

In addition, with the labor mobility, regional trade agreements often offer greater accessibility and opportunities for temporary movement of service suppliers. Such provisions often include full national treatment, guaranteed special market access for service suppliers and facilitated access for certain groups¹³⁴.

Matters concerning investment and government procurement also are of greater scope in the regional trade agreements. Thus, they envisage special rights to establish a presence in other countries covered by the trade agreement, and in case with the government procurement they usually have larger scope of commitments and greater access.

The formation of the regional trade arrangements also gives an opportunity for the member countries to form unified legal basis, which in its turn, allows for greater and faster protection and

¹³³Regionalism and the Multilateral Trading System, The Role Of The Regional Trade Agreements, policy Brief, OECD, August 2003, p.2

¹³⁴Mansfield, Edward D. “Multilateral Determinants of Regionalism: The Effects of GATT/WTO on the Formation of Preferential Trading Arrangements,” University of Pennsylvania, September, 2002

enforcement of the intellectual property rights. On top, such regional blocks allow its member countries to be more precise with the trade remedies such as safeguards, antidumping and subsidies. In fact, the provisions often contain strong regulations prohibiting such trade remedies as subsidies.

Finally, regional trade arrangements give a chance to those countries, which are not yet WTO members, to also enjoy freer trade and promote trade liberalization on a narrower basis.

OVERVIEW OF KAZAKHSTAN'S REGIONAL TRADE ARRANGEMENTS

After the breakdown of the Soviet Union in 1991, the post-Soviet states had to face the rest of the world in the age of rapidly accelerating globalization. The task of smooth and quick integration into the new world posed serious challenges to all of the post-Soviet republics. Since, globalization has a distinguishing characteristic of rewarding those who can effectively practice and keep up with it, while harshly punishing those states, which fail to do so, former Soviet states had no other choice but to come together to form an alliance of states, which could help them to incorporate into the world community faster and with lesser casualties.

The overriding objective, to which all of the post-Soviet states agreed in Almaty, Kazakhstan in December 1991, was to sign the agreement establishing the *Commonwealth of Independent States (CIS)*. The original goal of creating the CIS in late 1991 was to ensure the genuine sovereignty and political independence of the republics, while preserving a “common economic space” of the Soviet period¹³⁵.

The realization that the CIS system was not efficient and strong enough to make the member states to comply with the goals and obligations they had under the agreement, led many member-states to search for some other ways of integration, in a form of sub-regional, more

¹³⁵Suezawa Megumi, “Falling Apart or Coming Together? Processes of Decentralization and Integration in the CIS” <http://src-h.slav.hokudai.ac.jp/publicn/86/suezawa.pdf>

narrowly defined cooperation than the CIS. On the other hand, the CIS countries realized that despite their wish to integrate into wider and more impressive communities such as the European Union or NATO, for Ukraine and Belarus' for instance, or form a coalition with Turkey, for the Central Asian states like Kazakhstan, the reality did not pose such opportunities for them. There were number of obstacles, such as differences in the levels of socio-economic development, domestic political instability, increasing threat of religious extremism and others.

The Eurasian Economic Community or the "*EvrAzEs*," as it is known by its Russian language acronym, was the brainchild of Kazakhstan's President Nursultan Nazarbaev. The economic group comprised of Belarus, Kyrgyzstan, Kazakhstan, Tajikistan and Russia, was founded on October 10, 2000 through the adoption of the *Agreement on Institution of EEC* by state-participants of the Customs union, and began functioning in May of 2001¹³⁶. The group represents the most ambitious effort yet to create Eurasian customs union and free trade zone since the breakdown of the USSR. The Agreement itself is a logical continuation of partnership, which started with the signing, on January 6, 1995, of the Agreements on Customs union between the Russian Federation, the Republic of Belarus and the Republic of Kazakhstan, which was later, joined by the Kyrgyz Republic and the Republic of Tajikistan.

The basic goal of the EEC is to bring to realization the framework for Eurasian integration, which began with earlier interstate treaties and agreements such as the Customs Union Agreement. The EEC is designed to sponsor cooperation in five broad categories: free trade, customs, common market of products, services and labour, and currency, which will be accomplished through the monetary union¹³⁷. Each of these categories is broken down further into specific spheres of cooperation. For instance, integration anticipates that inter-state coordination and policy

¹³⁶Interparliamentary Assembly of Eurasian Economic Community Website, "Overview Of The Interparliamentary Assembly of Eurasian Economic Community Establishment," http://www.mpa.eurasec.ru/en_index.htm

¹³⁷Telebaev, G.T. and Omirseitova, A., "Central Asian Integration: Objective and Subjective Parameters," "Analytic" Journal, The Kazakh Institute For Strategic Studies Under the President of the Republic of Kazakhstan, June 2002, www.kisi.kz

harmonization will require coordinated policies to promote a single labour market and coordinated labour migration policy. To do so the countries have agreed to unify/ bring into conformity their domestic legislation in such areas as labour standards, national educational standards, etc., to ensure that labour qualifications are recognized uniformly throughout the participating areas.

The important addition in the EEC, which did not exist in the CIS system or the Customs union in its framework, is its official status. Somewhat like the GATT the EEC was not recognized as the international organization, and thus, compliance and enforcement of its rules, provisions and regulations was not binding, which led to inability for the Agreement to function as was foreseen. The EEC however, is a regional international organization and is now officially recognized as such by the United Nations¹³⁸. While the EEC is not intended to limit the sovereignty of its member states, it does provide for the delegation to the EEC of some negotiating responsibilities within the international organizations. The organization is managed through the Inter-State Council, an Integration Committee, an Inter-Parliamentary Assembly, and the Eurasian Economic Community's Court. The chairmanship in Interstate Council and Integration Committee is rotated consequently in order of the alphabet by each state. The Secretariat of the Integration Committee is comprised of 85 executives headed by the Secretary General, including 20 people working on quota basis: Russia – 8 people, Belarus' and Kazakhstan – 4 people each, Kyrgyzstan and Tajikistan – 2 people each. According to the approved proposal 1/3 of the executives of the Integration Committee's Secretariat are located in Almaty, Kazakhstan and 2/3 – in Moscow, Russia¹³⁹.

The significant advantage of the EEC in comparison with its predecessor the Customs union, is a system of decision making by "weighted voting." The weighted voting system is largely used by the international organizations and the regional trade arrangements, nevertheless, its adoption to the

138 Central Asia Agency of Political Research (APR), "EurAsEs: Opportunity for Integration," <http://www.caapr.kz/show.php?rua040503-01.htm>

139 Kushumbaev, S.K., "Impact of Globalization on Central Asia: Regional Integration and Security," The Kazakh Institute of Strategic Research Under the President of the Republic of Kazakhstan, http://www.kisi.kz/Parts/NatSec/a2_kushkumbaev.html

EEC shows that the member states have studied and learned from the experience of various international organizations and made an effort to form their Community on real estimation of the situation. Thus, based on the financing and weighted voting scheme adopted by the Community, Russia exercises forty percent of the voting rights and is responsible for meeting forty percent of the organization's operating expenses. Belarus and Kazakhstan each have twenty percent share. Kyrgyzstan and Tajikistan each have ten percent. The EEC Charter specifies that a vote on major policy issues will require two-thirds agreement. The voting formula would thus imply that, on any given major policy issue, Russia would have to have at least two other states supporting it to win a vote. On the other hand, it also implies that Russia will exercise veto power on major policy issues¹⁴⁰.

Positive Effects of the EEC

First of all, the EEC is perceived by its members as a step towards ASEAN or NAFTA-style international policy agreement. Therefore, it allows thinking that the main purpose of the EEC is directed towards real interaction and not mere coexistence as in previous integrational attempts. Secondly, while the EEC is not intended to put any constraints on its members, it does include a common position representation within international organizations through its joint delegation.

Third, all of the Community member states, except the Kyrgyz Republic which is WTO member since 1998, are vigorously interested and looking forward to joining WTO. Russia and Kazakhstan as large exporters of oil, gas, copper, aluminum, and steel are being undermined and injured by not being members of the WTO. For example, Russia and Kazakhstan due to not being WTO members experienced huge steel sales loss, as the United States' Department of Trade imposed the safeguard measures on the imports of certain steel products last year. The European

¹⁴⁰ Gleason, Gregory, "The Reintegration of Eurasia: Functional Theory and Interstate Policy Coordination," Paper Prepared for the Panel Of the European Union and Post-Communist Space, February 25 - March 1, 2003
<http://www.unm.edu/~gleason/mats/reintegration.pdf>

Communities, Japan, Korea, China, Switzerland, Norway, New Zealand and Brazil made a complaint to the WTO's Dispute Settlement Body (DSB) and on July 11, 2003 the WTO's DSB issued report of the panel, concluding that "the safeguard measures imposed by the United States on the imports of certain steel products are inconsistent with the WTO Safeguards Agreement and GATT 1994.¹⁴¹" Nevertheless, the inability of Russia and Kazakhstan to take any sufficient action on this matter by themselves taught them a lesson, and in some way speed-up their WTO accession negotiations. In addition the US' imposition of the antidumping measures showed that both countries have similar goals and face similar problems; thus, they should act jointly by launching synchronized customs-tariff policy, united position in relations with the WTO and other international economic organizations. The notion of common goal, as in the case with the EC, has become one of the main cornerstones of the EEC and is shared and promoted now, not only by Russia and Kazakhstan, but also by Tajikistan, Belarus and Kyrgyzstan.

Speaking about additional advantages of the EEC, one must note that within its framework freer trade regime has already started to work and customs duties and other tariff and non-tariff restrictions are being progressively and constantly eliminated. For example, according to the EEC's first Secretary General *Gregoriy Rapota* the antidumping measures, which existed in member countries, have been reduced from almost 20 to only 1, and abolishment procedure of the last remaining measure is being currently discussed by the member-states. The EEC's program on "Development Priorities for the years 2003-2006" foresees harmonization of energy and transportation tariffs as one of its major and urgent goals. The recent establishment of a transnational transportation company "TransEurasia," can be viewed as prove for existence of mutual commitment among the EEC member states. Further work towards establishment of the

¹⁴¹ Panel report out on US safeguard measures on steel products, World Trade Organization, July 11, 2003
http://www.wto.org/english/news_e/news_e.htm

Transportation Union and unification of railroad tariffs is also on its way¹⁴². The drafts of the “Agreement on exchange of information on transfer pricing among the customs and tax agencies of the member states”, and “Agreement on temporary work activities of the EEC member states” have been preliminary approved.

On top, the countries are intended to establish a regional alliance of gas producers. When established such a group could play a similar function for the CIS countries as that played by the OPEC for the Persian Gulf oil producers¹⁴³. The EEC member states are currently working on a project on joint extraction and development of hydrocarbon-energy resources of Kyrgyzstan and Tajikistan and formation and introduction of mutual tariff codes and classification system.

The EEC by its nature can be the basis for economic stabilization and growth through the development of trade and production relations of the member states. Attracted by such opportunity, several other CIS states such as Armenia, Moldova and Ukraine currently hold an observer status in the organization¹⁴⁴.

Obstacles To Further Integration

Despite seemingly active process of integration, the differences in social, economic and political levels of development and liberalization among the EEC member states, increasingly hinder its further development. For instance, according to the World Bank’s report and the development assistance/poverty reduction program sponsored by the World Bank, EBRD, ADB and the IMF, the seven low-income countries of the Commonwealth of Independent States include Armenia,

142 “EEC’s Development Priorities For the Years 2003-2006: Establishment of the Transportation Union and Unification of the Railroad Tariffs,” Moscow Meeting of the EEC Delegations, The National Information Agency KazInform, <http://www.nkkazinform.kz/index.php?lang=rus&select=search&event=1>

143 Statement To the Press by Russian President Vladimir Putin Following Interstate Council Meeting of the Eurasian Economic Community, Dushanbe, April 27, 2003, released by the Ministry of Foreign Affairs of the Russian Federation, Information and Press Department, April 4, 2003

<http://www.in.mid.ru/bl.nsf/0/4ae2daee11ee469043256d1600513b26?OpenDocument>

144 Humphries, Conor, “As neighbors join EU, Ukraine Discusses Free Trade With Moscow,” The Ukrainian Weekly <http://www.ukrweekly.com/Archive/2002/500202.shtml>

Azerbaijan, Georgia, the Kyrgyz Republic, Moldova, Tajikistan, and Uzbekistan. As one can clearly see, the two of the so-called “CIS-7” are also members of the Eurasian Economic Community¹⁴⁵.

As stated in the IMF’s annual report on the overall economic performance of the CIS countries, the real GDP in the Republic of Kyrgyzstan declined in 2002, while the level of external trade remained especially low. The World Bank’s report indicates that the absolute poverty is very high: severe poverty (at PPP \$2.15 per day) affects 18 percent of the population, and 52 percent are considered poor, having income below PPP \$4.30 per day¹⁴⁶.

The Republic of Tajikistan is also among one of the least developed economies in the CIS. Thus, for example, based on the World Bank’s overall assessment of the economic situation in Tajikistan the absolute poverty is extremely high and undernutrition is significant. Severe poverty (at \$2.15 per day) affects some 68 percent of the population, and over 95 percent are considered poor (below \$4.30 per day). Poverty has increased significantly during the transition, as a result of dramatic GDP decline and sharp increase in inequality¹⁴⁷.

In addition, despite the EEC’s progress it still faces a lot of criticism from the skeptics and the opponents of the Community¹⁴⁸. The critics claim that the EEC does not and cannot solve existing problems and set tasks. Indeed, they claim that the organization itself is rather a superficial body, which only addresses appearances and perceptions, and does little to overcome them¹⁴⁹.

145 “The Low-income Countries of the CIS: Progress and Challenges in Transition,” Lucerne Conference of the CIS-7 Initiative, The World Bank Group, ADB and EBRD, Switzerland, January 20-22, 2003

<http://lnweb18.worldbank.org/ECA/CIS7.nsf/ECADocByUnid/85256C370063EBBE85256C1400591146?Opendocument>

146IMF Staff Report, “The Kyrgyz Republic: Third Review Under the Poverty Reduction and Growth Facility and Request for Waiver of Performance Criteria”, July 20, 2003 <http://www.imf.org/external/pubs/cat/longres.cfm?sk=16733.0>

147The World Bank: Tajikistan Country Brief, The World Bank, 2002

<http://lnweb18.worldbank.org/ECA/eca.nsf/Countries/Tajikistan/643F47CBD6B72A8A85256C2500671AF8?OpenDocument>

148Svoik, Petr, “By Its Definition Asymmetric Political Systems Do Not Integrate,” Navigator.kz, February 25, 2003

<http://www.navi.kz/articles/4print.php?artid=2717>

149Masanov, Nurbolat, “Next Fiction: Similar to the CIS,” Navigator.kz, February 25, 2003

<http://www.navi.kz/articles/4print.php?artid=2716>

Complications For Kazakhstan

Kazakhstan's participation in the regional trade agreement such as the EEC is on the one hand beneficial and leads to trade liberalization, while on the other hand, serves as a hamper to its WTO negotiations and accession process.

First of all, if we look back the EEC was initially designed as the customs union among five states. However, formation of the customs union was particularly difficult given different stages of WTO accession among the member states. Thereby, the establishment of common external tariff rate was not achieved and as a result the EEC members had to apply to the WTO individually and submit their own tariff schedules. In addition, in 1998, despite deep economic recession and industrial stagnation, the Kyrgyz Republic became the first CIS state to gain WTO membership. It did so by complying with the WTO rules and regulations and committing itself to an average customs duties tariff of 7,47%, provisioning limitations of the national regime and market access in the services trade, and limited government support to agriculture by 5%, similar to developed economies¹⁵⁰.

Following the Kyrgyz accession to the WTO, Russia and Kazakhstan complained that the WTO commitments made by the Kyrgyz violated the commitments they had made to their customs union partners and would cause trade deflection, not only in goods but also in services, in the light of porous customs controls between Kazakhstan and the Kyrgyz Republic¹⁵¹. The EEC members have come to realization that the formation of the customs union was not as easily achieved as they thought and topped with the differing priorities for trade integration with non-CIS countries, prospect formation of a free-trade zone was perceived as more realistic goal.

Nevertheless, Kazakhstan has lost almost two years and initial stimulus in pursuing WTO accession negotiations. Thus, on a unilateral base Kazakhstan took steps to reduce its trade barriers.

¹⁵⁰Makenbaeva, Irina, "Kyrgyz Republic: WTO Accession and the Benefits of Membership," p.3

¹⁵¹Michalopoulos, Constantine, "WTO Accession For Countries In Transition," World Bank, p.8

At present, for example, Kazakhstan trades with 137 WTO member countries and applies an average tariff rate at 8.6 percent, while items for “zero” to 15 percent tariff rate comprise 95 percent of all tradable commodity items¹⁵².

The country’s WTO accession was also slowed down by the fact that the Customs union and later the EEC envisaged cooperative WTO negotiations. Thereby, Kazakhstan had to adopt to the pace of economically less developed and more restrictive Tajikistan and Belarus. In addition, since the CIS Agreement and the EEC provide preferential treatment to the member countries in the form of “zero” tariff rate on imports from member states, and greater market access, Kazakhstan had difficulties in WTO negotiations in justifying such preferential provisions. Finally, because deciding on official status and form of the regional trade arrangement took much time, it was impossible for Kazakhstan to clearly explain the purpose and structure of the regional trade agreement, as well as to take firm stand on where it was regarding the regional trade arrangement.

Nevertheless, in overall assessment, the process of regional trade integration has been useful as political and economic trial case for the country. Thus, it was an example of how to conduct negotiation talks, clearly state your strategic interest and resources you are willing to sacrifice in order to achieve them. Taking into account Kazakhstan’s WTO accession process, I believe that the experience of the regional trade integration would be useful for more important and difficult process Kazakhstan’s accession to WTO. In particular, the misperceptions about the real degree of negotiations difficulty and needed time, suggest that Kazakhstani officials tend to seriously underestimate the complexity and political difficulty of such negotiations. Such finding could be helpful in the country’s WTO negotiations, where clear assessment of the real situation is one of the essential elements to successful WTO accession. Integration with the CIS countries in the framework of the CIS, the Customs Union, the EEC, and recently announced formation of the Common Economic Space (CES) between Russia, Kazakhstan, Ukraine and Belarus, will be helpful

¹⁵²Innovative-Industrial Development Strategy Of the Republic of Kazakhstan For 2003-2015, p.24

to the relevant government bureaucracies in gaining political and technical expertise in negotiating and implementing reductions in trade barriers.

Finally, I believe, that the regional trade arrangements Kazakhstan became part of showed the international community Kazakhstan's commitment to liberalization. In particular, the regional integration was always targeted towards greater multilateral cooperation, deeper partnership integration and more trade liberalization. The CIS, the Customs Union, and the EEC all were advocates for tariff and non-tariff trade barriers reduction and expansion of trade both in goods and services.

THESIS CLOSING REMARKS

Based on the experiences of the countries, which have successfully transformed from closed economies to free trade market ones, there are a number of economic gains from such transition as they benefit from specialization and more efficient resource allocation. The reduction of trade barriers such as quantitative restrictions, unjustifiably high tariff rates and other non-tariff obstacles, has been one of the major goals of the international community. The successful initiation of such liberalization processes and formation of the binding WTO rules and regulations have been recognized as the main achievements of the international community in economic area multilateralism.

Nevertheless, due to the difficulties and multiple obstacles faced by the developing and least developed nations and often doubtful commitment of the developed WTO member countries to address such concerns, contrary to the economic rational there are still numerous opponents and critics of the WTO system and multilateral trade liberalization around the world.

Such opponents have doubted WTO's ability to incorporate development into its main goals. They have criticized everything from the enforcement of intellectual

property rights to liberal customs policy reforms as by their view they pose an eminent threat to the least developed and less secured countries' development.

The problem of high implementation costs is coupled with the belief that the WTO has failed to deliver promised gains to the poor countries in such important areas as textiles and agriculture, where tariff reductions have been slower than in industrial sectors. As a result, the developing states believe that the pattern of protectionism is in favor of the rich and is biased against the poor since the trade barriers for and on the goods produced by those poor are among the highest. They also argue that topped with the “participation constraint”, such as insufficient negotiating experience, small and inexperienced Geneva Permanent Mission delegations, inability to fully participate in many important WTO meetings, and poor domestic inter-agency work organization, does not allow the poorer states to fully enjoy or exercise WTO benefits.

Many low-income countries are fearful of the possible implications of trade liberalization for them. The main reason to such fear is the lack of understanding and assistance on behalf of the developed nations to make sure that all of the WTO rules, regulations and obligations that come with them, make clear sense and are understood by the developing countries.

Nonetheless, since it is in the developing countries own interest to have strong and effective WTO multilateral trading system, it should also be in their interest not to simply be a part to new multilateral trade talks and give their comments on suggested proposals by the developed members, but to take an initiative that would allow them to create such policies that are receptive of their interests and goals.

Kazakhstan as one of the developing countries and prospect WTO member should thereby, be more careful by not overreacting to the claims of the trade liberalization opponents. It is totally, understandable that in any other country or community, there are always supporters and opponents of the issue, and Kazakhstan is not and cannot be an exception to such situation. Yet, it should not

follow the populist ideas, as it is always easier to be protectionist rather than liberal, and continue its path towards greater liberalization and integration into the global multilateralism.

Despite some free trade opponents' argument that the WTO had failed to achieve its main goal, it is clear that the most important goal of this organization has been and is continued to being achieved. The reciprocal removal of barriers to trade in goods and services has been taking place since the formation of the GATT and has intensified with the creation of the WTO. Therefore, it is not a question of joining or not joining the WTO, but rather a question of assessing costs and benefits and trying to choose a less burdensome pace for each individual country and case.

Indeed, because the benefits of globalization and the gains of increased global integration are unevenly distributed across and within nations, the reforms required for wider benefit enjoyment will become even greater as the current and future rounds of WTO multilateral trade negotiations continue.

Therefore, it is essentially important for Kazakhstan to be in tact with the global developments; otherwise, it may be stuck in the early capitalism forever. Further protection of the market from competition will eventually lead to hopeless, lagging domestic industry, and mere raw material imports will not be able to substitute for underdeveloped manufacturing and processing sectors.

In general, Kazakhstan has achieved a sizeable success in restructuring its economy, implementing liberal policies, creating legal framework based on the international standards, and enforcing their provisions.

Therefore, in the intellectual property right protection and enforcement Kazakhstan, which started from the scratch, as the Soviet system did not foresee any legal or regulatory framework for the protection of the intellectual property rights, is among the most advanced countries of the CIS. Annual volumes of licensed Microsoft and other IT companies' product sales are the best prove of Kazakhstan's success. Yet, in order for Kazakhstan to become WTO member and to more

importantly be able to fulfill its ambitious goals in innovative-industrial development the country still has a long way to go. It is necessary for the intellectual property rights protection system-building nation to ensure that their new domestic legal texts fully correspond to the provisions of the relevant international conventions as well as the TRIPs Agreement. Effective enforcement, which is central to the TRIPs Agreement, depends on effective institution building in the legal system as a whole, which, in turn, is part and parcel of the difficult process of systemic transformation. Thereby, it is important that Kazakhstan continues its work in the enforcement of the intellectual property rights protection.

Despite considerable changes and restructurings undertaken by the Kazakhstani government in the country's electricity sector, there are still numerous unresolved and unaddressed issues which handicap further development and restructuring of the electricity sector, and the economy in general. It is clear that further liberalization and more competition, which will push companies in the electricity sector to replace obsolete equipment, upgrade their facilities, and increase efficiency in order to be compatible, need to be introduced. Taking into account poor technical conditions of the electricity sector it becomes obvious that large investments are necessary. To attract such invest, Kazakhstan has insure its commitment for fear competition and liberal reforms.

Pursuit of reform in services is no easy task, and the Government of the country should be ready to face domestic resistance and pressure for continuing protectionism. It should also make all the possible efforts so its national schedule submitted to the WTO, reflects the reality of its situation. Reforming the regulatory systems in services, and thoughtfully opening up the market to wider domestic and international competition is thus very much in Kazakhstan's domestic economic interest. These reforms cannot be accomplished overnight, since both the government and the industry need time to assess the situation and necessary knowledge and skills. Moreover, since economic dislocations and consequences accompany all reforms, they need to be implemented at a socially acceptable pace of adjustment.

Despite the seeming success of the telecoms industry in Kazakhstan, the fact that such success was largely possible due to the closeness and protection of Kazakhstan's telecommunications market. Opening up the telecommunications sector, however, will result not only in lower tariffs and better quality service as a result of competition, but will also hurt current market leaders such as Kazakhstan's national operator – Kazakhtelecom.

Nevertheless, it is undeniable that in the globalization era it is totally unacceptable and economically unsustainable, especially for the small economies like Kazakhstan, to remain closed and exercise protectionist attitudes. Thereby, Kazakhstan's WTO accession negotiations should serve as a stimulus for liberalization and global integration process, by insuring provisions of non-discriminatory treatment, market accessibility and open competition. In addition, Kazakhstan may and should use its regional integration experience with the CIS, the Customs Union, and the EEC, in more difficult, complicated, but at the same time more important negotiations of its WTO accession.

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