NEW ASSOCIATION AGREEMENT BETWEEN THE EU AND KAZAKHSTAN

TRADE AND INVESTMENT PART

QUESTIONNAIRE

Introduction

In May 2011 the European Commission was authorised to open negotiations for an enhanced Partnership and Cooperation Agreement with Kazakhstan. Title 4 of this agreement concerns trade and trade related matters. This part will provide for an upgrade of the current PCA (Partnership and Cooperation Agreement) with Kazakhstan. The agreement will lay the foundation for a political association and a gradual economic integration ultimately bringing the two economies closer. It will aim at a high level of ambition, within the framework of a non preferential trade agreement and cover issues highlighted in this questionnaire.

Kazakhstan is not yet a WTO member. The work for Kazakhstan accession is ongoing whereby the major issue still open with the EU concerns commitments on export duties.

Kazakhstan being a member of the Customs Union with Russia and Belarus, the accession of Russia to the WTO will have an impact on its trade relations with other WTO members as Kazakhstan will have to take over Russian commitments in the fields covered by the Customs Union (for example SPS, TBT, import duties)

The questionnaire includes fairly detailed questions in order to capture all possible issues related to the EU’s trade interests in Kazakhstan. This approach may lead to some difficulties in filling in all the details of the questionnaire, in which case respondents are invited to focus on the questions which are of most relevance to them.

The questionnaire is divided into the following sections:

A. Trade in Goods
B. Trade in Services and Investments
C. Regulatory Issues (Intellectual Property Rights, Competition & State Aid)
D. Other issues

Please note that energy is taken up as all other sectors in the corresponding horizontal chapters, hence, questions in preceding sections on trade in goods, raw materials, trade facilitation and services/investment as well as other sections (transparency, dispute settlement) apply also to energy. Should there be any additional point you wish to draw the Commission’s attention to, please describe this under chapter “E. Other issues”.

In addition, where possible, we would appreciate receiving as specific information as possible (substantiated where possible by economic indicators and/or data) of respondents’ interests, prioritisation within sectors, and any proposals for solution, where problems have been identified.
The questionnaire has been prepared in order to provide the Commission with information to assist it in establishing priorities and taking decisions throughout the negotiating process. The Commission, subject to the application of the EU’s rules on access to documents\(^1\), will treat the information that you provide as confidential. EU rules on access to documents allow the Commission to withhold access to a document where disclosure would undermine the commercial interests of a natural or legal person or harm the EU’s relations with third countries, unless there is an overriding public interest in disclosure.

Please send your replies by 24 April 2012 to the following e-mail address:

\[\text{trade-industry@ec.europa.eu}\]

\[\text{***}\]

\(^1\) Regulation No 1049/2001
A. TRADE IN GOODS

The Trade in Goods section of this questionnaire is organised in the following manner:

1) General goods-related questions
2) Questions related to export restrictions
3) Questions related to import and export procedures (included under a general heading "trade facilitation")
4) Questions related to discrimination and transparency in domestic regulation and taxation
5) Questions related to trade defence instruments (safeguards; antidumping; anti-subsidy)
6) Questions related to Technical Barriers to Trade (TBT) (industrial goods)
7) Questions related to Sanitary and Phytosanitary Measures (SPS) (agricultural goods, fish and fishery products)

1) General goods related questions

a) i. What are the existing trade flows in your sector

   ii. What is your assessment of the potential for growth in this sector?

b) If possible, could you specify your overall “offensive” and “defensive” interests?

(Note: “Offensive interest” is understood to mean the interest you may have in gaining access to the Kazakh market. “Defensive interest”, is understood to mean competition - particularly unfair competition - from Kazakh firms in your domestic market.)

c) In your sector, do you see either:

   (i) an interest in EU companies supplying goods to Kazakhstan (i.e., an export interest) or

   (ii) an interest in EU companies setting up production facilities in Kazakhstan?

   (iii) How strongly (for example, in financial terms) would you rate the level of these interests?

d) What do you see as the main trade-related obstacles to doing business in Kazakhstan in your sector?

   (i) Non-tariff barriers (NTBs).

   (ii) Other measures like changes in the investment framework, state trading enterprises with special privileges (please indicate and describe them).

   (iii) Please rank these in order of what you see as their importance, with an indication of the criteria for the determination of priorities.
2) Questions related to access to raw materials (including energy) and export restrictions and prohibitions

a) Does your sector have an interest in purchasing raw materials from Kazakhstan? If so, please specify what raw material and describe its economic relevance. Are there any measures that could be included in an agreement to facilitate trade or reduce costs for trade in raw materials?

b) Does your sector face export restrictions or investment restrictions regarding establishment and/or exploration of mines with respect to Kazakhstan? If so, which (export duty; tariff rate quota, VAT rebate schemes; licensing; discriminatory promotion schemes)? Please specify the likely effect of their elimination.

c) Are you aware of dual pricing of raw materials, i.e. where raw materials are priced at a lower level on the domestic market compared to international market prices to the benefit of local production?

d) On top of legally binding provisions in an eventual EU-Kazakhstan agreement and as part of WTO accession, does your sector favour closer cooperation in the field of raw materials with Kazakhstan? If so, in which form (e.g. regular dialogue)? What could be the topics discussed in the framework of such a cooperation (e.g. rules, points of concern, alliance building with raw material producers and potential users)?

e) Do any environmental issues arise?

f) Does your sector have an interest in investing into the Raw Materials sector in Kazakhstan? Which are the specific issues which should be tackled to facilitate this? Please explain.

3) Trade facilitation (import, export and transit procedures including customs)

Do you face problems regarding one or several of the following issues? Please respond with yes/no and where possible provide a more detailed description of the problem faced.

a) Overall problems with procedures and requirements for imports, exports and/or transit (including of energy goods, like oil and gas) in Kazakhstan?

b) Specific problems related to:

- transparency / publication of and access to trade regulations  YES/NO
- documentation requirements  YES/NO
- data requirements  YES/NO
- fees and charges  YES/NO
- inspections and controls during clearance  YES/NO
- other customs procedures  YES/NO
- discriminatory treatment  YES/NO
- lack of uniformity in application of procedures  YES/NO
- customs valuation  YES/NO
- co-ordination between different border agencies  YES/NO
- use or non-use of information technology  YES/NO
- application/ non-application of relevant international standards  YES/NO
- procedures for legal recourse/appeal  YES/NO
4) **Questions related to discrimination and transparency in domestic regulation and taxation**

a) Is your sector faced with discriminatory measures and practices between domestically produced goods and imported goods into Kazakhstan? If so, describe the nature of this discrimination (e.g. is it based on legislation or on de facto discrimination? Does it concern a regular domestic regulation and/or taxation regime?) Can you provide written substantiation of discrimination (including reference to legislation)?

b) Do you encounter problems due to lack of transparency of Kazakh regulation, e.g. in the form of lack of publication of legislation or other documents? (Please also refer to the detailed questions under section C) below regarding transparency).

5) **Questions on trade defence instruments (anti-dumping, anti-subsidy and safeguards)**

a) Have you had experience related to the use of trade defence instruments in Kazakhstan (anti-dumping, anti-subsidy or safeguards)?

b) Were there particular difficulties in communicating with and/or receiving information from the Kazakh authorities dealing with trade defence instruments?

c) Have you encountered market distortions (subsidies, pricing policies) in Kazakhstan which should be addressed by e.g. trade defence measures or other types of measures or which create structural trade difficulties?

6) **Technical Barriers to Trade**

*Note:* In this context, Technical Barriers to Trade (TBT) is intended to mean technical regulations for products, standards, conformity assessment systems such as testing and certification procedures, and market surveillance and enforcement.

Please provide comments on the following issues. Comments are particularly welcome if you or your colleagues in the industry consider that some or any of the areas should take priority in the TBT discussions.

1) Have you found TBTs to be a problem in exporting your products to Kazakhstan?

2) If you have encountered such TBT problems, can they be explained as:

   (i) Specific "cases" of obstacles arising from specific rules applicable to a specific product or,

   (ii) of a systemic nature related to technical regulations in general or across product boundaries.

   (iii) Both of these?

3) Does Kazakhstan or its Provinces have national or provincial public comment procedures for proposed technical measures, to which industry can submit comments?
4) Do importers (or domestic industry in Kazakhstan) have other opportunities to submit comments during the drafting of new technical measures, before the proposal is adopted?

5) In your experience, have comments made by stakeholders been taken into account?

6) Have you experienced problems or difficulties arising from the division of responsibility for TBT-related measures between the government of Kazakhstan and the governments of its Provinces, or from regulatory differences between different parts of Kazakhstan?

7) On the basis of the provisions laid down in the WTO Agreement on Technical Barriers to Trade, do any or all of the following issues pose particular problems with regard to exporting your products to Kazakhstan?
   (i) transparency in the drafting procedure for new technical regulations or similar measures;
   (ii) poor alignment of Kazakh rules or standards to international standards;
   (iii) short implementation periods for new measures;
   (iv) discriminatory treatment, for example in the areas of testing, certification or market surveillance requirements;
   (v) excessive or discriminatory labelling requirements;
   (vi) burdensome, disproportionate or unnecessary standards, regulations, conformity assessment procedures or documentation requirements;

8) (i) With your knowledge of the technical regulations, standards and conformity assessment systems both in the EU and Kazakhstan; do you have any recommendations for solutions which would facilitate trade?
   (ii) Would your proposed solutions be achievable within the provisions of regulatory systems currently applied in the EC and Kazakhstan, or would changes to the systems or legislative framework be necessary?

7) Sanitary and Phytosanitary Measures (Agricultural products, fish and fishery products)

Sanitary and Phytosanitary Measures apply in order to protect human, animal, and plant health.

Your answers to specific product questions (a) to (c) will be taken as an indication of interest that might change over time.

(a) List the agricultural products (these include animals and animal products, plants and plant products and fishery products) you are currently exporting to Kazakhstan.

(b) List the agricultural products that you may be potentially interested to export in future to Kazakhstan (regardless of whether exports are currently taking place or have taken place in the past).

(c) Please specify the major Sanitary and Phytosanitary (SPS) barriers you have encountered in the past (or may potentially encounter) when trying to export agricultural products into Kazakhstan.

(d) Do you expect that an SPS chapter in the proposed future agreement will benefit your industry? If so, please clarify.
(e) On the basis of your previous response, which basic elements/provisions should an SPS chapter with Kazakhstan contain in order to potentially fulfil your priorities?

- Transparency (better notification provisions on SPS import rules including predictability and stability of SPS rules)
- Regionalisation for animal and plant diseases
- Equivalence (system of recognition)
- Pre-listing of exporting establishments
- Undue delays (provisions to avoid long delays to authorise/resume trade due to SPS or other administrative provisions)
- Other

B. TRADE IN SERVICES AND INVESTMENT

a) What are the main barriers that your sector encounters in services trade with Kazakhstan (ex. foreign service providers not permitted or access restricted, preferences given to domestic suppliers, complex bureaucratic procedures, authorisation/registration/licensing obligations, obligation to have a local commercial presence or residence, nationality or citizenship requirements, etc.)? Do you face difficulties regarding access to transport infrastructures, for example as regarding the transport fees charged?

b) What barriers do you find in establishing a commercial presence in the non-services sector (e.g. energy, mining, etc.)?

c) Do you consider the overall Kazakh investment climate to be attractive, if so, why, if not, what would you like to see improved? Do you have effective recourse to a fair and impartial domestic legal system? Do you encounter problems due to lack of transparency e.g. lack of publication of legislation or other documents relevant for your trade behaviour? Please also refer to the detailed questions under section C) below regarding transparency.

d) Do you observe any self-imposed company principles, standards or systems (i.e. voluntary codes of conduct or good practice for labour and employment relations, protecting the environment, health and safety, etc. that are agreed and followed by operators) contributing to achieving economic, social and/or environmental progress in the host country in order to foster sustainable development, in the context of investment or services trade, which it would be to your advantage to see generalised or codified in Kazakhstan? And if so, which?

2 Pre-listing of establishment means that, once the competent authority of an importing country has approved the audit and control system of the exporting country, from then on, the list of establishments authorised to export is maintained by the exporting country. This avoids the need for continuous inspections and so reduces delays.
C. REGULATORY ISSUES

1) TRANSPARENCY

• To the extent applicable, indicate what problems arise due to lack of transparency such as lack of publication of legislation, consultation of stakeholders, short implementation periods, rights of appeal, etc.

2) INTELLECTUAL PROPERTY RIGHTS

• Please indicate whether you consider intellectual property rights issues as priorities and specify which IPRs are the top priorities for you in Kazakhstan and why :

   (a) Copyright and related rights
   (b) Trademarks
   (c) Geographical Indications (GIs)
   (d) Designs
   (e) Patents
   (f) Data protection
   (g) Plant variety
   (h) Enforcement

3) COMPETITION AND STATE AID POLICY

• Have you encountered any anti-competitive practices in Kazakhstan (cartels that may impose price fixing, allocation of markets trade, abuse of dominant position where some entities discriminate against EU economic actors or impose margin squeeze or tying practices for purchase, anti-competitive mergers where mergers lead to one entity dominating market and imposing behaviour on market and/or acquisitions, vertical or horizontal restrictions of competition) that are harming your business? If so, describe briefly the nature of the practices and the problems encountered.

• Are you aware of instances where state aid or specific state trading enterprises privileges granted by Kazakhstan’s authorities has had adverse effects on you in particular in the transportation or energy sector or in the port? If so, describe briefly how state aid has harmed/is harming your business.

• What is your assessment of Kazakhstan situation in terms of adoption of competition law and enforcement? Are you aware of any system in place? If so, do you have comments? For example, do you think that the existing system is transparent and applied non discriminatorily? Are there elements that make you doubt the efficiency of the system? Please detail as much as possible how you perceive and consider the situation.

D. OTHER ISSUES

Are there any other issues that are not mentioned in this questionnaire and that you would like to address?