

Historical and legal aspects of the accession of the Republic of Kazakhstan to the World Trade Organization

Abstract. *The article examines the historical and legal framework for the process of Kazakhstan's accession to the World Trade Organization. Participation in this authoritative organization opens up great opportunities for economic growth for countries, but at the same time imposes certain obligations. After many years of multilateral negotiations, Kazakhstan managed to become a full member. The article describes the prerequisites for accession of the Republic of Kazakhstan to the WTO, the legal issues occurred with the introduction of negotiations, and demonstrated progress in the process of harmonization of national legislation with the conditions set by the Republic of Kazakhstan. The author decided not to consider each direction of the economy separately, but rather to pay more attention to the main documents that played a key role in the successful accession of Kazakhstan to the WTO.*

Keywords: *The World Trade Organization, WTO accession, world trade, foreign economic activity of the Republic of Kazakhstan, WTO membership, Kazakhstan's accession to the WTO.*

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Introduction

The World Trade Organization (WTO) is undisputedly the most important global organization in the field of international trade. Emerging from the General Agreement on Trade and Tariffs 1947 nowadays it has 160 fully independent states and several other subjects of international law including partly recognized as an independent country Taiwan, dependent territories Hong Kong and Macao and the European Union in its membership. Participating in such kind of organization gives the members specific possibilities regarding the economic sphere. Therefore, the agenda on joining the Republic of Kazakhstan to it was matter of time.

The process of Kazakhstan's accession has begun soon after USSR's collapse and gaining independence of all ex-members and lasted almost 20 years. In 1996 on late January Kazakh

government officially sent a joining application with the request to establish a Working Party on its accession pursuant to Article XII. We recall that Article XII of the Marrakesh Agreement Establishing the WTO (hereinafter referred to as "WTO Agreement") allow any state or even separate customs territory possessing full autonomy in the conduct of its external commercial relations to accede to the WTO Agreement [1]. Thus, the WTO gave an official start to the accession process of the Republic of Kazakhstan, which will be successfully completed only in 2015 after complex negotiations.

Methodology

The legal side of the process of Kazakhstan's accession to the WTO is not always widely covered in scientific circles. In this article, the author has collected and presented in chronological order

the most important moments in the history of the negotiation processes for our country's accession to this international organization. The study collected both quantitative and qualitative data. In the text of the article, you can find statistical data, such as the number of laws adopted and negotiations held, while at the same time, much attention is paid to the provisions of international treaties. The article mainly uses secondary data that was taken from official sources. An important role in data analysis was played by the official Internet resource of the WTO, which has a large database of international legal acts related to the organization. The advantages of this method of data analysis are the ease of using the search engine on the website and the availability of important documents in the negotiation processes.

Discussion

By writing the article about legal sides of Kazakhstan's accession process to the WTO we cannot avoid attaching importance to historical events that ultimately played a key role in this process. In the mid-90s, after the recent acquisition of independence, when the country established itself as a young state, there took place the main events that gave the start to the negotiation processes. Hence, on February 6, 1996 the official meeting of the General Council, the highest-level decision-making body of the WTO was held in the Centre William Rappard in Geneva, Switzerland where a number of subjects have been discussed including the issue of accession of Kazakhstan. The then Chairman Mr. K. Kesavapany once again drew attention to the communication from Kazakhstan demonstrating its desire to become a party and noticed its successfully completed economic program which had a considerably positive effect on the whole economic situation in the country. It was also noted by him that the process of accession to the WTO itself was being accomplished in the framework of Kazakhstan's mid-term trade liberalization reform program for 1996-1998. Kazakhstan's aspirations were supported by the United States, India, Pakistan,

the European Communities, the Philippines on behalf of the ASEAN countries and the Director General himself. Thus, in 1996, 16th of April the Working Party on Kazakhstan's accession was established, and Kazakhstan became an observer state of the WTO during the period when the Working Party was carrying out its work [2]. The terms of reference of the Working Party included submission to the General Council recommendations that may include a draft Protocol of Accession. The list of members of the Working Party subsequently changed several times depending on the circumstances, but at the initial stages it included countries such as Australia, Canada, Cuba, Czech Republic, European Communities and Member States, India, Japan, Mexico, Pakistan, Poland, Slovakia, Switzerland, Thailand, Turkey and the USA.

The first official multilateral negotiations were held on September 23, 1996. There was concluded a Memorandum on the Foreign Trade Regime (MFTR). According to the document called WT/ACC/22 which contains procedures for negotiations under Article XII of the WTO Agreement the MFTR is a document which provides a comprehensive summary of the acceding government's foreign trade regime, including relevant statistical data and it should be done pursuant to Annex I where is shown outline format for assuming it [3]. It is critical for acceding government to prepare a fully covered MFTR because it will have effects on further negotiations. In case of the Republic of Kazakhstan the document consisted of 191 pages, including 11 annexes, which contain detailed data on various areas of the economy, state system, and rule-making. Skipping the general information about the country's economic positions let us concentrate on issues connected to legislature only. Beside that the document gives detailed information about legal ecosystem of Kazakhstan it also contains the plans of the authorities to change the domestic legislature in order to meet the requirements. At the time there were 2 draft laws before Parliament which impact foreign trade: copy right law and amendments to President decree On Licensing. Moreover, the

government then intended to make significant changes to national legislation in three years. To do so, it was decided to divide required laws into three categories: drafts of completely new laws, existing laws for re-drafting and existing laws for amending.

Due to the fact that not much time has passed since Kazakhstan gained independence and its obvious lack of experience the first group included as many as twenty newly drafted laws and five codes. Nowadays some of them remained unchanged while the others are no longer valid and transformed into other documents. A bright example of “untouched laws” is the Law on Notaries adopted on July 14, 1997 which is still valid. Of course, since that time there were a number of changes and additions on it but it hasn't been completely replaced by other laws. Conversely, the Law on Individual Entrepreneurship of the same year, for instance, first was changed into the Law on Private Entrepreneurship of 2006 and on October 29, 2015 eventually the Entrepreneur Code of the Republic of Kazakhstan was adopted. These twenty laws and five codes cover different areas of country's vital functions. Beside notaries and entrepreneurship these laws were about government procurement, anti-dumping measures, depository activities, selection achievements, export control, joint stock companies, advertising, pedigree, livestock breeding, poultry, protection of computer programs, secret inventions, ecological control, issuance of sovereign guarantees, state control of foreign economic activities, foreign credits, payments for utilization of biological resources, banking guarantees, commercial utilization of outer space, investments of entrepreneurial agencies. The codes were mainly aimed to issues connected with transportation: The Trade Sea Navigation Code, The Code on Railroad Transport, The Code on River Transport, The Code on Subsurface and its Use.

The second group is for the laws which demanded re-drafting. There were eight laws and five codes in this group. They mainly dealt with topics related with developing competition,

consumer rights, state duties, local self-government, currency regulation, bankruptcy, employment, administrative violations, standardization. It also should be noted that the matters of basic legal regime for intellectual property protection within The Civil Code and both The Criminal Procedure Code and The Criminal Code were in the list.

The third and last group where it was sufficient to extend their validity consist of only seven laws. They are The Law on Medical Insurance, The Law on State Statistics, The Law on State Registration of Legal Entities, The Law on Oil, The Law on Peasant Farms, The Current Tax Legislation, The Law on Protection of Historic and Architectural Sites of Value.

Besides the above-mentioned plans for the national legislation, the MFTA had the provision warning about possible future changes in the lists due to Resolution # 211 issued by the government of the Republic of Kazakhstan on February 19, 1996, requesting all ministries and State committees submit proposals regarding changes to the legal environment and the foreign trade régime to conform to the WTO. Furthermore, the document contains naming of dozens of laws and legal acts affecting foreign trade regime and economy of the country on the whole in Annex 2.

Describing the legislative base of the Republic of Kazakhstan the authorities did not forget to mention judicial system of it. The MFTA has a clear description of national court system and other tribunals for solving disputes as well. Thus, in paragraph (c) of the MFTA it is said that judicial power in the state is exercised within the framework of a unitary court system divided among three tiers. Next, the descriptions of those three tiers including the Supreme Court, Oblast Courts and the Military Courts are followed afterwards. Description of Judicial, Arbitral or Administrative Tribunals or Procedures were reported in the document as well. “Foreign investors are free to negotiate choice of forum clauses with their private counterparts in the Republic of Kazakstan. Where foreign arbitral panels are selected and those panels render decisions pursuant to the terms of forum selection

clauses, judges in the Republic of Kazakhstan are obliged to recognize and enforce those decisions in accordance with the Republic of Kazakhstan's commitments as a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the 1969 Vienna Convention on International Agreements" stated in the MFTA [4].

After the circulation of the MFTA the initial cycles of questions and replies must be done. In this stage member states can gather more detailed and accurate information from joining country by questioning in the case they informed the Secretariat and the joining state in advance. The document drawn up after very first cycle of this procedure contained 120 questions and replies to them in different fields of state system. These are questions apart from those which were in addendum to the main document. Among them there were popular clarifying questions connected to the Customs Union. Members demanded Kazakhstan to provide the Working Party with the text of the Customs Union Agreement and all related legal acts to it. They were concerned whether the Republic of Kazakhstan can handle the process of harmonization of the national legislation being within the Customs Union where Russia, Belarus and the Kyrgyz Republic are included besides Kazakhstan. There have been five such cycles of question and replies before the updated Factual Summary of Points Raised, an informal document containing distilled report data from the MFTA, the initial cycles of questions and replies and other relevant supporting documents have had been prepared by the Secretariat in 2003. Subsequently, until the final accession, Kazakhstan held dozens of additional Q&A sessions in various areas, including issues related to agriculture, sanitary and phytosanitary measures, foreign trade regime, technical barriers to trade, intellectual property issues under TRIPS, changes in legislation and other important directions.

In 2005 the Secretariat mandated by the Working Party prepared the draft Report of the Working Party that is a formal document which spells out the agreed specific commitments

that the joining government would undertake as a WTO member. The document is similar to previous one with some exceptions. Firstly, it is a formal document. Secondly, it contains more detailed information considering the status quo update. Taking a paragraph of the draft Report of the Working Party describing industrial property protection we can notice the section has two additional sub-paragraphs compared to the Factual Summary of Points Raised where they simply stated: "to be completed" [6]. In any case, adoption of the Draft Report was an important event for Kazakhstan. On 8th official meeting of the Working Party in the same year the Chairman Amb. Vesa Tapani Himanen admitted that circulation of the first report was "a clear signal that this accession has taken an important step forward" [7].

As said above there were dozens of official and unofficial meetings on different themes between the parties. During these periodic meetings Kazakh side had been preparing several reports in relevant areas of national economy. For example, in order to start the process of bringing national legislation into line with the requirements of the Agreement on Agriculture Kazakh representatives should had to prepare a communication with relevant information about each taken measures in this direction. Similar documents were prepared in the field of sanitary and phytosanitary measures, technical barriers on trade, intellectual property, import licensing procedures, customs valuations, state-trading, subsidies and general harmonization of national legislation.

As lawyers we are primarily interested in legal side of the issue. The process of harmonization of the national legislation lasted throughout the negotiations. In order to facilitate business procedures, as well as improve the overall investment climate of Kazakhstan, amendments have been made to more than 50 legislative acts of the Republic of Kazakhstan. The republic had prepared so called Legislation Action Plan (LAP), the document which contains a full inventory of enacted WTO-related legislation and provides the roadmap for WTO-related domestic legislative

work. According to it legislation in the field of currency regulation, pricing and competition development, tax policy, customs regulation, import licensing, as well as the application of product safety measures, including technical regulation, and sanitary and veterinary measures, and the protection of intellectual property rights, has undergone major changes. The international framework of agreements concluded within the framework of the Eurasian Economic Union, which affects the sphere of foreign trade, has been also changed.

One of the most controversial issues was amendments to legislation related to energy resources. Thus, then the Law of the Republic of Kazakhstan dated June 24, 2010 No. 291-IV «On Subsoil Resources and Subsoil Use» which later in 2017 transformed to the Code of the Republic of Kazakhstan «On Subsoil and Subsoil Use», has undergone some significant changes. The changes made improve the situation of a number of subsurface users. For instance, for newly concluded contracts, obligations regarding local content in goods were excluded. Local content requirements remained in place for works, services, and personnel. The minimum amount of local content in works and services, declared by the state in the terms of the tender for obtaining the right of subsurface use and in the notice of the auction, should not exceed 50%. The law excludes the requirement for the mandatory use of equipment, materials and finished products produced in the Republic of Kazakhstan and for the mandatory use of the purchase of goods of local producers. These legislative improvements did not apply to contracts concluded before January 1, 2015. These contracts are subject to the legal regime established in them until the expiration of such contracts or until January 1, 2021.

Simultaneously with the changes in the requirements for the local content of goods, works and services, the definition of «Kazakhstan providers of works and services» has changed. Now these are individual entrepreneurs and (or) legal entities established in accordance with the legislation of the Republic of Kazakhstan, located in the Republic of Kazakhstan, engaging at least

ninety-five percent of the citizens of the Republic of Kazakhstan of the total number of employees excluding the number of chiefs, managers and professionals engaged in labor activities on the territory of the Republic of Kazakhstan as part of internal corporate transfer in accordance with the legislation of the Republic of Kazakhstan on employment and migration.

The changes also affected other areas of state activity. For example, there have also been changes in the labor legislation. In accordance with the Law, changes were introduced that affected the procedure for attracting foreign labor in the framework of internal corporate transfer. Under intra-corporate transfer is now understood to be temporary the transfer of a foreigner or stateless persons engaged in labor activities for the posts of supervisor, manager or a specialist in the legal the person established in the territory of a member country of the WTO and current for outside the territory of the Republic of Kazakhstan, to branches, subsidiaries, representative offices of this legal entity established in the territory of the Republic of Kazakhstan in accordance with the Kazakh legislation. Thus, within the framework of an internal corporate transfer, foreign employees can only be attracted from companies established in the territory of the WTO countries, sent to their Kazakhstan structural divisions or subsidiaries, as well as belonging to certain categories.

The similar changes were made in the legislation on intellectual property. For example, there has been a tightening of liability for trademark infringement. Now the amendments introduced by the law oblige a person who unlawfully uses a trademark or a designation similar to it to the extent of confusion to destroy the goods, the packaging of the goods on which the trademark, the name of the place of origin of the goods or the designation similar to it to the extent of confusion are placed. The same requirements are established for goods confiscated in connection with the commission of an administrative offense in the field of illegal use of a trademark, service mark or appellation of origin of the goods. Previously, the destruction of goods was provided only in cases where it was impossible to remove the image of an

illegally used trademark from the product or its packaging.

In addition to the main meetings of Kazakhstan in parallel held bilateral negotiations on the issues of access to national markets. It has submitted the revised offers on market access for trade in industrial goods and agricultural products as well as services. By the conclusion of all bilateral market access negotiations between interested members and the acceding government, the WTO Secretariat consolidates the results in the draft Schedule of Concessions and Commitments on Goods and Schedule of Concessions and Commitments on Services. By looking through them we can notice that Kazakhstan has rather selectively approached the issue of market access. For instance, in the field of providing education preferences were given to countries such as Azerbaijan, Armenia, Belarus, Georgia, Kyrgyz Republic, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan, Ukraine. Another example is existence of special regime of shipping in the Caspian Sea where only coastline countries were participants.

In total, the Working Party held twenty formal and a dozen informal meetings, not counting bilateral meetings on specific issues. In the last 20th negotiations, which were held on two separate dates May 22, 2015 and June 17, 2015 Kazakhstan's WTO accession package was ready for adoption by the Working Party. At the meeting WTO Director-General Roberto Azevêdo said: "The conclusion of Kazakhstan's accession is a tribute to the untiring efforts of the Government of Kazakhstan, as well as to the WTO and its Members. The high quality of the accession package will accelerate Kazakhstan's integration into the global trading system and provide a boost to Kazakhstan's economy for years to come" [8].

As a result of all these meetings and negotiations, on July 27, 2015, at the Ministerial Conference, the Protocol of Accession WT/L/957 adopted a decision on the accession of the Republic of Kazakhstan to the WTO. This protocol entered into force on November 30 of the same year, and by the Law of the Republic of Kazakhstan of October 12, 2015 No. 356-V «On Ratification

of the Protocol on the Accession of the Republic of Kazakhstan to the Marrakesh Agreement establishing the World Trade Organization of April 15, 1994» it was accordingly ratified [9].

Results

The WTO, as the most authoritative international organization in the field of regulating trade relations between countries, has the right to impose certain conditions on its members. Summing up the above, we conclude that the process of Kazakhstan's accession did not take place with ease and was accompanied by many years of work of specialists from various fields, including international lawyers. We have seen what changes the national legislation of the Republic of Kazakhstan has undergone to meet the requirements put forward. It became clear which countries provided support at the very beginning of the process. It also became clear that the government of Kazakhstan has done a lot of analytical work each time preparing a report with a detailed description of the entire economic ecosystem within the country, giving comprehensive answers to emerging questions from other members of the organization, defending the interests of its producers, and conducting very lively bilateral and multi-party negotiations for this purpose. Eventually, we learned how Kazakhstan managed to become an official 162nd member of the WTO.

Conclusion

Although Kazakhstan has become the official member of the WTO 6 years ago, it is still undergoing an adaptation period. As experts in the field of economics have already noted, this will be a big challenge for domestic manufacturers and enterprises. But it will also be a challenge for legal experts, as Kazakhstan is expected to face certain problems in improving its national legislation and resolving conflict of laws issues. Therefore, while Kazakhstan is undergoing an adaptation period to bring its legislation in line with the requirements of the WTO, research work in this direction will also continue.

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Қазақстан Республикасының Дүниежүзілік сауда ұйымына кіруінің тарихи-құқықтық аспектілері

Аннотация. Бұл мақалада Қазақстан Республикасының Дүниежүзілік сауда ұйымына кіру процесінің халықаралық және тарихи-құқықтық негіздері қарастырылады. Осы беделді ұйымға қатысу елдер үшін экономикалық даму үшін үлкен мүмкіндіктер ашады, бірақ сонымен бірге белгілі бір міндеттемелер жүктейді. Ұзақ уақыт бойы жүрген көпжақты келіссөздерден кейін Қазақстан оның толыққанды мүшесі бола алды. Мақалада Қазақстан Республикасының ДСҰ-ға кіруінің алғышарттары, келіссөздерді енгізу кезінде орын алған ұйымдастырушылық-құқықтық мәселелер сипатталады, сондай-ақ ұлттық заңнаманы Қазақстан Республикасының алдына қойылған шарттарға сәйкестендіру процесіндегі мән-жайлар көрсетілді. Автор экономиканың әр бағыты бойынша жеке-жеке қарастырудан бас тартып, Қазақстанның ДСҰ-ға кіруінде шешуші рөл атқарған негізгі құжаттарға көбірек назар аударды.

Түйін сөздер: Дүниежүзілік сауда ұйымы, ДСҰ-ға кіру, әлемдік сауда, Қазақстан Республикасының сыртқы экономикалық қызметі, ДСҰ-ға мүшелік, Қазақстан Республикасының ДСҰ-ға кіруі.

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Историко-правовые аспекты вступления Республики Казахстан во Всемирную торговую организацию

Аннотация. В данной статье рассматриваются историко-правовые основы процесса вступления Республики Казахстан во Всемирную торговую организацию. Участие в этой авторитетной организации открывает перед странами большие возможности для экономического роста, но в то же время накладывает

вает определенные обязательства. После многолетних многосторонних переговоров Казахстану удалось стать ее полноценным членом. В статье описываются предпосылки вступления Республики Казахстан в ВТО, организационно-правовые вопросы, имевшие место при введении переговоров, а также продемонстрирован прогресс в процессе приведения национального законодательства в соответствие условиям, поставленным перед Республикой Казахстан. Автором было решено не рассматривать каждое направление экономики по отдельности, а обратить больше внимания на основные документы, сыгравшие ключевую роль в успешном вступлении Казахстана в ВТО.

Ключевые слова: Всемирная торговая организация, вступление в ВТО, мировая торговля, внешнеэкономическая деятельность Республики Казахстан, членство в ВТО, вступление Республики Казахстан в ВТО.

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