

Reduced Customs Duties Following Kazakhstan's Accession to the WTO and Electronic Invoices – How They are Linked and What Kazakhstan Business Needs to Know about Them

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Kazakhstan's accession to the World Trade Organisation (WTO) is an important landmark in the country's history – the completion of a negotiation process that has helped Kazakhstan integrate fully into the global community. One of those integration measures was Kazakhstan's approval together with Eurasian Economic Union (EAEU) members of a list of goods (WTO List) on which Kazakhstan will apply reduced customs duties (WTO Rates) when importing them from outside the EAEU.

The WTO List currently include 1,347 commodity positions, which should rise to 3,512 or nearly 1/3 of all positions in the EAEU Foreign Economic Activity Commodity Nomenclature, which is the basis for the EAEU Integrated Customs Tariffs (ICT).

This being said, Kazakhstan businesses are about to find out how easy it will be to apply the list with reduced WTO rates. The answers can be found in the latest amendments to tax and customs law following Kazakhstan's accession to the WTO.

EVERYTHING STARTS WITH THE WTO LIST

According to a Protocol discussing several issues around the import and handling of goods in EAEU customs territory, ratified by all EAEU countries, and which entered into force on 11 January 2016 (EAEU Protocol), Kazakhstan has committed to creating a system for recording goods included in the WTO List and exported to other EAEU countries, and ensuring the details of goods in the WTO List subject to reduced rates and goods on which import customs duties are paid according to ICT rates match.

At the same time, the System should focus on **shipping documentation** containing details on goods, their quantities, customs declaration numbers, serial numbers of goods in customs declarations and confirmation of the payment of import customs duties (at reduced WTO or ICT rates).

A shipping document's existence in the System is a condition for export to other EAEU countries. However, if a

Kazakhstan exporter does not have the document available when selling goods included in the WTO List to other EAEU countries, the freight forwarder may be entitled to refuse to transport the goods.

Goods registered at reduced WTO rates and released for domestic use will be treated as conditionally released, i.e. under customs control in accordance with EAEU customs law.

It is clear that the purpose of the above is to prohibit the export of goods registered in Kazakhstan at reduced WTO rates to other EAEU countries and hinder their re-export, and maintain a common goods' market and a competitive environment in the EAEU.

WHAT HAS CHANGED IN EAEU CUSTOMS LAW SINCE 11 JANUARY 2016?

Eurasian Economic Commission Board Resolution 166 dated 15 December 2015 has amended the instructions for completing commodity declarations so that when goods are declared in a single

commercial batch, it is important to ascertain whether the entity doing so will apply the reduced WTO rate if the goods being imported are covered by the WTO List.

If the decision is taken to use reduced WTO rates on goods included in the WTO List, then the goods should be declared in a separate customs declaration. In this respect, for identification purposes, the serial number of the third element of the customs declaration number should start with "1".

ELECTRONIC INVOICES AS A TOOL FOR TAX AND CUSTOMS CONTROL

All customs declarations covering goods from the WTO List, irrespective of whether WTO or ICT rates have been applied, are covered by the System and monitored by the customs and tax authorities.

Electronic invoices will act as the main accounting document in a further sale of goods in Kazakhstan.

According to the new rules, a taxpayer should issue electronic invoices when:

- selling goods included in the WTO List and previously imported and registered for customs purposes from outside the EAEU based on a customs declaration
- selling goods imported into Kazakhstan from other EAEU countries (FEA CN and name match the WTO List) based on an application to import goods and pay indirect taxes
- selling goods made in Kazakhstan, whose FEA CN code and name match the WTO List
- exporting goods from Kazakhstan to another EAEU member country in connection with their transfer within a single legal entity, provided that the goods are in the WTO List and had been previously imported into Kazakhstan

Consequently, goods imported with reduced WTO rates may circulate freely in Kazakhstan under an electronic invoice. For this reason, electronic invoices, in addition to the basic details, should include specific information on the import customs duty rate applied (ICT or WTO), the name and EAEU FEA code of the goods, customs declaration number and serial number of the goods.

Under the new rules, for a sale of goods electronic invoices do not have to be accompanied by copies of a customs declaration or application to import goods and pay indirect taxes. However, in the future that may become a real barrier for exporters.

It will affect taxpayers who want to sell and export goods in the WTO List and registered under ICT rates to other EAEU countries. If a taxpayer that did not import goods according to the WTO List does not have a copy of a customs declaration and application to import goods, then the conditions to export goods cannot be recognised as met.

WHAT CONDITIONS SHOULD BE MET TO EXPORT GOODS INCLUDED IN THE WTO LIST?

If imports from outside the EAEU are initially registered under WTO rates, then they may not be exported to other EAEU countries. At the same time, we have learnt from the tax authorities that any difference between WTO and ICT rates cannot be paid.

If taxpayers that purchased goods according to the WTO List did not import them into Kazakhstan themselves, then the application of WTO rates can be tracked in an electronic invoice using the WTO abbreviation in column 12 "Additional Data" in Section B "Supplier Details", and by the number of the customs declaration in column 14 of Section G "Data on goods, work and services." In this case, the third element of the customs declaration number should start with "1".

To export goods in the WTO List and on which ICT rates were paid to other EAEU countries, taxpayers should provide a package of **shipping** documentation, which, in addition to standard transportation and commercial international freight forwarder documents, includes:

- a hard copy of an electronic invoice and declaration – if goods are being imported from outside the EAEU or
- a hard copy of an electronic invoice and application to import goods and pay indirect taxes – if goods are imported from other EAEU countries or
- a hard copy of an electronic invoice and original CT-1 certificate of origin – if goods were imported into Kazakhstan, but the name and code for the goods match the WTO List

The existence of a customs declaration and application to import goods and pay indirect taxes is only an issue for the export of goods imported at ICT rates into another EAEU member country.

HOW ARE SHIPPING DOCUMENTS CERTIFIED?

Taxpayers file applications with the state revenue authorities to certify electronic invoices, declarations or applications to import goods and pay indirect taxes as shipping documents, or an original CT-1 certificate of origin of goods. The documents required depends on how the goods entered Kazakhstan (from EAEU countries or non-EAEU countries).

Documents then undergo an in-house review or tax review to determine balances, the compliance of data and the legitimacy of the CT-1 certificate of origin. After the review, the state revenue authorities decide to either certify the copies of the documents provided or refuse to certify them.

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This process covers those goods covered by the WTO List according to name and FEA CN code, but were imported before the EAEU Protocol entered into force. In this case, the taxpayer should simultaneously file an application for a tax review to confirm balances of goods in the WTO List and the fact of an import of goods into Kazakhstan from non-EAEU countries before the EAEU Protocol entered into force.

EXPERT OPINION

Undoubtedly, Kazakhstan's entry to the WTO and the reduction in import duties for Kazakhstan to an average of 6.5% compared to the current ICT rate of 10.4% has been a positive development for businesses.

Any transitional period is a difficult time, but we hope that the introduction of a real-time electronic data exchange system among EAEU authorities will simplify and speed up the control procedure. The process itself for filing customs declarations and applications to import goods and pay indirect goods with time will become a surplus procedure, as the information provided will already be available in the state revenue authorities' data system.