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July 7, 2000

Dr. Gary Linden
Contracting Officer's Technical Representative
Office of the Director
US Agency for International Development
Central Asian Republics Regional Mission
97A Furmanov Street
Almaty, K2
Kazakhstan

Subject: **Final Report, Central Asia Trade and Investment Project**

Reference: **Prime Contract No. EPE-I-00-95-00071-00, Task Order No OUT-EPE-I-801-95-00071-00**

Dear Dr. Linden:

Booz·Allen & Hamilton is pleased to submit the final report for the above referenced Central Asia Trade and Investment Project for the period of March 1, 1999 to April 3, 2000.

Authored by the long- and short-term staff on the project, the enclosed report details how the Booz·Allen team assisted USAID to improve the trade and investment climates in Kazakhstan, the Kyrgyz Republic, Uzbekistan, and Turkmenistan over the contract period. Additionally, the accompanying CD contains the project library for the project.

The Booz·Allen & Hamilton team looks forward to continued work with the Central Asia Mission. If you have any questions concerning this report, please contact me at telephone number (703) 902-5896.

Sincerely,

Norm Kirsch
Program Manager

Enclosure: As stated

CC: James Neeley
Mark Belcher
Jody Schubert
Deqa Farah

A

Central Asia Trade and Investment Project

Completion Report

Commercial Law Program Task Order
Trade and Investment III
Kazakhstan, the Kyrgyz Republic, Uzbekistan and Turkmenistan

Submitted to:

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July 2000

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COMMERCIAL LAW PROGRAM TASK ORDER
TRADE AND INVESTMENT III
KAZAKHSTAN, THE KYRGYZ REPUBLIC, UZBEKISTAN AND TURKMENISTAN

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Commercial Law Program Task Order
Trade and Investment III
Kazakhstan, the Kyrgyz Republic, Uzbekistan and Turkmenistan

INTRODUCTION

This report summarizes the results of Booz·Allen & Hamilton's accomplishments under the US Agency for International Development (USAID) Central Asia Trade and Investment Project ("Project") between March 1, 1999 to April 3, 2000. The primary mandate of the Project was to improve the environment for international trade and investment in Kazakhstan, the Kyrgyz Republic, Uzbekistan, and Turkmenistan. A key part of the implementation strategy was to use accession to the World Trade Organization (WTO) as a catalyst to reform and a yardstick of performance in legal and regulatory reform, as WTO accession involves a thorough review and analysis of all legislation affecting a country's trade and investment regime.

Each country has demonstrated varying levels of enthusiasm toward WTO membership. As a result, the team provided different levels of technical assistance to the governments of each country depending on the priority they attributed to membership and the timetable for joining. Nevertheless, the WTO accession process has proven to be a valuable avenue through which to pursue reforms. At present, the accession process is well underway in Kazakhstan, in its infancy in Uzbekistan, and still awaiting conception in Turkmenistan. The Kyrgyz Republic became a full member to the WTO in December 1998. Booz·Allen has provided technical assistance in legal and regulatory reform to Central Asia under USAID contracts since 1995.

KAZAKHSTAN

Although Kazakhstan's progress towards WTO accession slowed in early to mid 1999, the Government of Kazakhstan's (GOK) commitment to the success of this process seemed revitalized in the late 1999. In 1999, the GOK enacted a number of laws important to WTO accession, including the Customs Code, laws on trade and investment remedies, and laws on standards and intellectual property rights. Further, the Inter-Ministerial Commission began to meet more often to discuss WTO issues. The GOK developed and submitted its improved Offer on Services, responded to the questions from WTO Members the United States, the European Union, and Australia, developed the third version of its Offer on Goods, and updated the agricultural support tables. These and other documents, composing a complete submission for admission, were submitted to the WTO in April 2000. While there is no set date, it is expected that these latest submissions will lead to the next Working Party meeting as early as September 2000. Assuming that Kazakhstan also resolves the hard political decisions described above, WTO membership is possible in 2001.

Objectives

The objectives of the Project in Kazakhstan for the relevant period were to:

1. Assist the GOK in its effort to establish a sound trade and investment environment, including the modification of laws and regulatory provisions relating to international trade and foreign investment.

2. Support the GOK in its effort to make substantial progress toward WTO accession; and,

3. Improve the overall investment "climate" in Kazakhstan through the identification and lessening of administrative and bureaucratic barriers to private sector development.

Key Results

With Project assistance, relevant GOK ministries drafted and Parliament enacted new trade and investment laws, or amendments to existing laws, and promulgated appropriate regulations to bring those laws into compliance with WTO requirements. These laws/amendments/regulations include:

- Law on Standardization
- Law on Certification
- Law on Selected Breeding Achievements
- Law on Patents
- Law on Copyright and Associated Rights (in process)
- Law on Integrated Microcircuits (in process)
- Law on State Procurement (in process)
- Amendments to the Criminal and Civil Codes to include Intellectual Property Rights enforcement measures.
- Law on Subsidies and Countervailing Measures
- Law on Antidumping Measures
- Law on Safeguard Measures on the Import of Goods
- Phytosanitary Laws and Regulations
- Law on Plant Quarantine
- Law on Trademarks Service Marks
- Law on the Origin of Goods
- Law on Protection of Selective Achievements

Of special importance, Parliament also enacted Amendments to the Customs Code, which incorporate WTO principles on customs valuation, rules of origin, transit, and border protection of intellectual property rights.

In addition to the WTO-specific legal provisions in the above list, the following constitute the most significant results and outputs achieved during the reporting period toward Object 2 for Kazakhstan, supporting the GOK in its effort to make substantial progress toward WTO accession:

With substantial Project assistance, the GOK developed and submitted to the WTO its improved Offer on Services, its third version of its Offer on Goods, and its updated WTO Document ACC/4, describing subsidies in the agricultural sector. A GOK delegation (which also included the Project's Senior Economist, Svetlana Alzhanova) participated in the third WTO Ministerial Conference in Seattle in November-December of October 1999. The delegation made an official presentation of Kazakhstan's position on main WTO issues.

Progress

Significant Issues - The GOK has yet to make a number of hard policy decisions that are necessary if Kazakhstan is to become a member of the WTO. These include limitation of the amount of the import processing fees currently collected by Customs, elimination of the customs practice of mandatory temporary storage warehousing of imported goods, and reformation of the current system of applying VAT on imports.

Major Changes Anticipated in Project Activities - Due to the expectation that the GOK will continue to pursue accession to the WTO throughout 2000 at the same steady pace, the Project will focus exclusively on WTO accession and related matters. This means that previous Project activities in the area of Private Sector Development will not be continued. The Project will continue to support the GOK in negotiations on goods and services, provide technical assistance in drafting laws and regulations necessary to conform to WTO standards; and advise the GOK on legal measures to improve trade and investment environment. If the GOK begins a more vigorous pursuit of WTO membership in 2000, the Project may refocus some aspect of our efforts upon anticipating WTO implementation and institution-building concerns that are now the focus of the Project's effort in the Kyrgyz Republic.

Major Changes in Government Policy - At this time, it is expected that the GOK will continue to pursue accession to the WTO at the same steady pace, without any major change in policy. However, this status could change in a moment. For example, there may be stronger pressure from Russia in an effort to compel Kazakhstan to align its accession with Russia's, which is not expected for several years, or the Customs Union as a whole (minus already-acceded Kyrgyz Republic) . At some point, Kazakhstan may be forced to choose between its individual pursuit of WTO accession and a unified Customs Union approach: that point may come soon, as the consequences of the Kyrgyz Republic's WTO accession vis-a-vis the Customs Union are felt.

Devil's Advocate -

Q. **Should the effort to support the GOK's WTO accession effort be curtailed in light of its failure in 1999 to complete all work on legal reform necessary to comply with WTO? Does limited progress in the accession process indicate that the Government has reconsidered its interest in WTO accession?**

A. The GOK made significant progress on legal reform in 1999, but did not further this progress during negotiations. The failure to conclude successful negotiations should not be read as a lack of GOK commitment to WTO membership. Rather, in large measure, this failure may be attributable to the uncertainty created by the restructuring of state bodies and the change of the GOK in the second half of 1999. Towards the end of the year significant improvement was made in resuming progress toward accession. For example, the improved Offer on Services was completed and submitted to the WTO in November 1999, the improved Offer on Goods and the agricultural subsidy tables were completed and submitted for approval to the Inter-ministerial Commission on Accession to the WTO. Nevertheless,

significant political opposition to WTO membership remains, particularly from those who favor closer integration with the Russian Federation. Our continued assistance will be a key support to those favoring WTO accession and the fundamental economic reforms it requires.

***Q.* Kazakhstan may not join the WTO until Russia is member, and that is not likely to occur for several years or more. Therefore, why should the Project continue to provide technical assistance to the Government at this time?**

A. If Kazakhstan determined to delay accession in deference to Russia, the purpose of doing so would be to ensure that Kazakhstan and Russia coordinate their offers on market access negotiations in the WTO. The joint objective would be to ensure that the two countries negotiated the same tariff bindings in order to preserve the Customs Union. This would not require Kazakhstan to step aside or suspend its accession application. Rather, it could mean that the two countries would simply negotiate jointly with WTO members on market access tariff commitments.

In any event, apart from the market access tariff negotiations, Kazakhstan will be required to assure the WTO that its own trade and investment regime – laws, regulations, polices and procedures – conform to WTO rules. This obligation of legal reform in Kazakhstan is not dependent upon the outcome or timing of Russia's accession application. This process would continue even if Kazakhstan determined to negotiate jointly with Russia on comprehensive market access. It must continue, even if Kazakhstan decides only to accede at the same time as Russia; if it does not continue, Kazakhstan's own entry into the WTO could be delayed to a year or more after Russia's. Because the Project's primary work concerns this legal reform, the Project will continue to be both relevant and useful.

WTO Accession Process

Overview

The Project continued throughout the relevant period to support Kazakhstan's application for membership to the WTO. The Project assisted the GOK in preparing market access offers and in responding to questions by WTO members about Kazakhstan's trade laws and policies. This included both communications with the WTO Secretariat in drafting changes to the large number of laws and regulations necessary to conform the legal regime to WTO requirements.

Kazakhstan began the accession process in January 1996. In the two years that followed, the GOK submitted its Memorandum on Foreign Trade Regime, engaged in three rounds of multilateral and two rounds of bilateral negotiations, and responded to four rounds of questions from WTO members. In 1998-99, however, Kazakhstan's progress slowed. In part, this was due to disruption caused by the GOK's decision to move the capital to Astana in late 1997, restructure state bodies and the change of the Government of Kazakhstan and subsequent turnover of key personnel in many ministries. The downturn in economic conditions in the region, with resulting pressure towards trade protection, also may have contributed to the slower pace. In large measure, however, the slower pace may be due simply to the fact that, after two years of progress, negotiations have reached a mature stage where the GOK is faced with the difficult policy and political decisions necessary for WTO membership that it has to date postponed. These hard issues include limitation of WTO-inconsistent import processing fees, reform of the VAT import system, and reduction of protective tariffs on goods and barriers to entry of services.

In late 1999, the GOK appeared to have determined to resolve these remaining issues. Regular meetings of the high-level Inter-ministerial WTO Commission were organized to consider the outstanding issues. These were most importantly an agreed position on goods and on services, including the problematic issue of financial services and the delicate matter of foreign access to the banking and insurance sectors, telecommunications and transport. By early 2000, initial positions were agreed and included in the most recent submissions to the WTO.

Accession Status

In 1998, Kazakhstan participated in one Working Party meeting with WTO members in Geneva to discuss the terms of its membership (October 8-9). This was Kazakhstan's third Working Party meeting since it filed its application in 1996 and its first in about a year. At the October 1998 meeting in Geneva, the Kazakhstan delegation also engaged in market access negotiations on goods and services with individual WTO members, its second round of negotiations since 1996. Several members of the Project attended the Working Party meeting to provide support to the Kazakhstan delegation and to keep advised of the status of negotiations.

Background on Market Access Offers: The Project assisted the GOK in preparation of the offers and other documents necessary to enable the October 1998 meetings in Geneva. The offer on goods was submitted to the WTO Secretariat on June 5, 1998, while the offer on services was submitted in September 1998. The Project played a substantial role in the GOK's preparation of both offers, and worked closely with the Government and relevant ministries, including Energy, Industry and Trade, Finance, Transport and Communications, and Education. The Project's work included explaining the principles and rules of GATS to government officials, preparing detailed economic assessments of the likely impact of different offers on particular sectors of the economy, and researching historical levels of trade in certain products to facilitate economic modeling and forecasting. Finally, the Project assisted the GOK in the preparation of the offers themselves to the WTO as well as reports on status of current legislation in the service sector.

At the October 1998 Working Party meeting, WTO members welcomed Kazakhstan's revised offer on goods as a significant improvement over the initial offer. WTO members, however, emphasized the need for further improvements in Kazakhstan's offer, including commitment to the zero-for-zero sector agreements. A number of members submitted specific requests for market access commitments. Additionally with regard to services, a number of countries requested that Kazakhstan submit an improved offer before those countries would begin negotiations. Other countries provided Kazakhstan with specific requests for commitments in the service sector.

Following the October 1998 meeting, and throughout 1999 and early 2000, the Project continued to assist the GOK in preparation of revised Offers on Goods and Services. However, personnel changes in some key ministries meant a delay in approval for these offers.

By November 1999, however, the last version on Offer on Services was approved by GOK's Inter-ministerial Commission on Accession to the WTO and was sent to the countries concerned in that month. The Offer on Goods was approved by the Inter-ministerial Commission and sent to the countries concerned in April 2000. Kazakhstan requested the next Working Party meeting and next round of bilateral negotiations in Geneva to take place in the summer of 2000, though nothing seems likely before autumn.

Agriculture Negotiations: In previous years, the GOK had submitted to the WTO two sets of tables detailing agriculture export subsidies and domestic support (August 1996 and July 1997) with explanatory notes. Following the October 1998 Working Party meeting, WTO-member countries requested that Kazakhstan submit updated versions of these tables using the latest data available. The Project continued to work with the Ministries of Agriculture, Economy, Finance, and Energy, Industry and Trade in preparation of this data for the period 1996-1998 and again in 1999 and early 2000. This also required significant education regarding the Agreement on Agriculture, and technical assistance in creating tables in the required WTO format and drafting the necessary explanatory notes. The Document ACC/4, describing the export subsidies and domestic support figures, was approved by the Inter-ministerial Commission and forwarded to the countries concerned in April 2000.

WTO-Member Questions: A significant element of the Project's WTO work has been to assist the GOK in responding to questions it receives from WTO members regarding its trade laws and policies. In 1999, the Project assisted the GOK in preparing responses to four such rounds of questions.

In February 1998 the GOK responded to a set of questions from the United States, Australia and the European Union. There were 102 questions in total. These questions arose out of the 1997 Working Party meeting. Subject matter was varied, but included customs, intellectual property, standards, agricultural subsidies, and indirect taxation. The Project's role in this area has been to translate the questions for the Government and organize distribution to the relevant ministries and agencies. The Project also discusses the questions with relevant ministry staff where necessary, assists in research and formulation of the GOK's answer, and translates and compiles a single document in WTO-required format for filing with the WTO Secretariat.

Translation has been of particular importance, because the GOK lacks the specialized resources in this area and the Project has dealt with a very large volume of technical materials requiring translation (in The Kyrgyz Republic and Kazakhstan). Translations have been attended by necessary technical explanations where requested or required from the Kazakh side.

In 1999, the fourth round of WTO questions was received by the GOK (following the October 1998 Working Party meeting referenced above), adding to approximately one hundred (100) questions from the United States, European Union (EU), and Australia received in November 1998. The main focus of the questions concerned customs, standards, intellectual property, and agricultural subsidies.

In addition, the Project assisted the GOK to fulfill a number of commitments it made during the October 1998 Working Party meeting. Specifically, the Project prepared and sent to the WTO an updated list of excisable goods and excise rates; translated and forwarded translations of WTO-related legislation enacted by Kazakhstan in the prior year; and translated and submitted the Government's report on the economic situation in the Republic of Kazakhstan.

Education/Training: Also throughout 1999 and early 2000, the Project continued its efforts to educate Kazakhstan government officials about the WTO, the accession process, and the consequences of WTO membership for Kazakhstan. In March 2000 the Project presented jointly with the Ministry of Economy a two-day seminar to approximately thirty government officials and members of Parliament (on WTO matters, rules and principles of the WTO and benefits of the accession to the WTO). In October 1999, the Project provided a seminar to

the Customs Committee of the Republic of Kazakhstan regarding establishment of a database in Microsoft Access Software to analyze and count import-export statistics.

In support of this education effort, the Project also drafted a number of papers for, and met with, the new, high level officials within the Government concerning the same themes of the benefits and obligations of WTO membership, the process of accession, and the current status of Kazakhstan's application. The Project sponsored a trip to the WTO Third Ministerial Conference in Seattle for Mrs. Usmanova, Director of the Department of Foreign Economic Policy of the Ministry of Economy to participate as an observer during the Conference, taken place in November-December 1999. Mrs. Usmanova was accompanied by the Project's Senior Economist, Svetlana Alzhanova, who also acted as an advisor to the delegation and to the Minister of Economy.

Liaison: Finally, throughout 1999, the Project continued to play its role as a liaison between the WTO Secretariat and the GOK. The Project translated all documents submitted by the GOK to the Secretariat (approximately 1200 pages), including laws, reports, explanatory memos and letters; assisted in scheduling bilateral and multilateral negotiations; and otherwise assisted in exchange of information as needed. The Project also revised GOK comments regarding the Factual Summary of points raised at the first Working Party meeting in order to ensure completeness, accuracy, clarity, and consistency. Comments were submitted to the WTO Secretariat

WTO Accession: Legislation

Legislative Reforms - The Project continued advising various ministries of the Government in revision or creation of laws and regulations necessary to conform to WTO principles and agreements. The details of the Project's work on these laws is described in greater detail elsewhere in this report, but may be summarized as follows:

LAWS	CURRENT STATUS (as of 03.2000.)	COMMENTS AND CURRENT WORK
Foreign Investment Law and Law on State Support of Direct Investment	1.Passed on December 27, 1994; the latest amendments of August 2, 1999	Last amendments 2 of August 1999 Narrowing of the definition of ' direct investment', a reduction in the duration of available relief for land and property taxes.
Law On Standardization (new)	Came into the force N433 on July 16, 1999	Sent to WTO in October 1999 Law to implement WTO TBT Agreements
Law On Certification (new)	Came into the force N434 on July 16, 1999	Sent to WTO in October 1999 Law to implement WTO TBT Agreements
Customs Code	Amendments to Customs Code Came into the force N426 on July 16, 1999	Draft was sent to WTO in May 1999 Amendments Law to implement WTO customs agreements.
Law On Veterinary (new)	The Law was drafted by the Veterinary Department and was distributed among the Ministries	Law to implement WTO Agreement

LAWS	CURRENT STATUS (as of 03.2000.)	COMMENTS AND CURRENT WORK
	to be reviewed.	
Law On Plant Quarantine New)	Came into the force on 11.02.99 N344-1 3PK	Sent to WTO Law to implement WTO SPS Agreement
Law on Anti-Dumping (new)	Came into the force N421 on July 13, 1999	Sent to WTO in October 1999 Law to implement WTO Dumping Agreement
Law on Subsidies & Countervailing Duties (new)	Came into the force N441 on July 16, 1999	Sent to WTO in October 1999 Law to implement WTO Agreement on CVD and subsidies.
Gov. Procurement Law	The Amendments and changes were sent to the Ministries for reviewing.	Law to implement WTO GPA Agreement
Law on Safeguards	Adopted on.28.12.98 N337-1 3PK	Sent to WTO in March 1999 Law to implement safeguard duties
Law on Copyrights	Amendments recommended by Team to the Law were sent to the Copyright Agency. The Law is not included into the legislative Parliamentary time table.	The Draft of the Law On Ratification of Geneva Convention sent to the Parliament.
Patent Law (new)	Came into force on July 16, 1999 N427	Sent to WTO in October 1999 The Law implemented WTO TRIPs requirements.
Law on Trademarks, Service Marks and Appellations of Places of Origin of Goods (new)	Came into force on July 26 1999.N456	Sent to WTO in October 1999 The Law implemented WTO TRIPs requirements.
Law on Protection of Selective Achievements (new)	Came into force on July 13,1999.N422	Sent to WTO in May 1999 Law to implement WTO TRIPs requirements.
Law on Lay-out Designs of Integrated Microcircuits (new)	Sent to the Government in November In the Ministry of Justice	Ministry of Justice has an opinion that the Civil Code provisions on Layout Designs of Integrated Microcircuits are sufficient for regulation in that area. The Patent Office is insisting on adoption of the Law and one of the arguments is a WTO requirement.

LAWS	CURRENT STATUS (as of 03.2000.)	COMMENTS AND CURRENT WORK
Law on Provision of Unification of Measurements (new)	Majilis has approved the Draft. The Draft was sent to Senate.	Not sent to WTO yet
Law on Petroleum	Amendments Came into the force. 11 August 1999 N467	Not sent to WTO
Law on Commercial Secrets (new)	Antimonopoly Agency is working on the Draft of the law	The team is working on introduction of provisions into the Draft law, which are required by WTO (TRIPs)
Civil Code (Part II) (new)	Came into the force on July 1, 1999.	Not sent to WTO
Criminal Code IP (new)	Came into force on January 1, 1998	
Licensing Law	Last amendments Came into the force 16 July 1999 № 430-I, N436-I. Extension of number of activities subject to licensing	Not sent to WTO The team continues to monitor legislation in this sphere
Law on Concessions	In Legislation and Legal Reforms Committee of Majilis. Supposed to be initiated by the deputies of Majilis	
Law on Subsurface Utilization	Last amendments Came into force on 11 August 1999 N467	Not sent to WTO

Intellectual Property Laws - The Project continued in 1999 and early 2000 to assist the Government in implementing all necessary measures to improve its legal regime and make it compliant with WTO requirements including Trade-Related Aspects of Intellectual Property Rights (TRIPs). The new Patent Law and laws "On Trademarks, Service Marks and Appellations of Place of Origin of Goods" and " On Protection of Selective Achievements", adopted in July 1999, are in compliance with WTO (TRIPs) requirements. The Patent Agency is working on normative acts implementing these laws. The Copyright Law is at the stage of drafting.

Trade Remedy Laws - The Laws on Anti-dumping and the Law on Subsidies and Countervailing Measures were adopted in July 1999. The Project assisted in implementing of these laws on anti-dumping, safeguards, and subsidies and countervailing measures. The Project worked closely with the Ministry of Energy Industry and Trade to educate government officials about these laws through memoranda, seminars and meetings. Project experts participated in Working Groups drafting these laws, reviewed all changes made to the law by the Government and drafted memoranda reviewing these changes.

Standards, Certification, and Related Laws – Within the reporting period two new separate laws "On Standardization" and "On Certification" replaced the existed "Law on Standardization and Certification". The Project assisted the Agency on Standardization,

Metrology and Certification (Gosstandard) in drafting these two new laws to ensure compliance with the WTO TBT requirements. The new Law On Provision of Unification of Measurements was approved by Majilis.

A separate memorandum was prepared for each law, which sometimes resulted in the insertion of the Project's proposed language into the text of the draft law where appropriate. In most cases, we were able to review the draft law after numerous rounds of revisions made by the Government. The Project continued to keep track of the amendments, proposed by the team further during the discussions in the Working Groups in the Parliament. When necessary, we prepared further memoranda and held meetings to explain the importance of our proposals.

At the request of officials in the Ministries and Agencies (such as the Agency on Natural Monopolies Regulation, Protection of Competition and Small Business Support, the Committee on Standardization and Certification, the Veterinary Committee and the State Procurement Agency), the Project researched information on practices of other countries and recommendations of international organizations on necessary measures for implementation of laws in appropriate areas and translated these documents into Russian.

The Project reviewed the Law and Instructions and other law implementing Normative Acts in the sphere of State Procurement legislation and prepared a memorandum proposing amendments to the Law and Instructions. The Project also designed and prepared (compiled and translated) material for the State Procurement Agency WEB site.

The Project separately reviewed the existing Law on Veterinary, and drafted a memorandum with proposals to bring the law into compliance with WTO SPS requirements. The Project met on several occasions with the Director of the Ministry of Agriculture and the Chief of the Department on Veterinary in which they stated that they were prepared to make changes to bring the law into compliance with WTO requirements. The Draft was delayed because of restructuring of the Department, but by May 2000 is being distributed among the Ministries to be reviewed.

THE KYRGYZ REPUBLIC

The objectives of the Project in the Kyrgyz Republic for the relevant period were to:

4. Assist the Government of the Kyrgyz Republic in its effort to establish a sound trade and investment environment, including the modification of laws and regulatory provisions relating to international trade and foreign investment.

5. Provide post accession assistance to the Government and local business community; and,

6. Improve the overall investment "climate" through the identification and lessening of administrative and bureaucratic barriers to private sector development.

Post Accession Assistance – The Project continued substantial post accession assistance to the Government and to the local business community. This work assumes a wide variety of forms, including assistance in drafting "Notifications," which are required explanations submitted periodically to the WTO on the status of previously agreed to commitments, sometimes called "bindings." The Project has prepared over 35 such Notifications and

memoranda. In addition, the Project provides continuing advice concerning legislation and other Government actions, especially regarding their compliance with WTO requirements.

Notifications, Advice and Explanatory Memoranda – The Project developed and published a series of primers detailing the Notification requirements and procedures under the different WTO agreements. These materials have been distributed to the relevant ministries and agencies. In addition, a series of workshops were held to explain the Notification obligations and procedures to those responsible for filing the notifications. Amongst various Notifications and general information memoranda were included:

- At the request of the Ministry of Finance, the Project reviewed proposals of the business community for anti-crisis measures that were under review by the Parliament for their compliance with WTO requirements.

- The Project reviewed the objections of members of the Customs Union and described why Russia believes that some commitments of the Kyrgyz Republic to the WTO are in conflict with the Custom Union agreements.

- A Russian-language translation of videotapes containing a WTO seminar on Notification Procedures was prepared and used as a tool for training Kyrgyz officials. Training based on this seminar was developed for the various ministries and agencies along with the Russian language Technical Cooperation Handbook On Notification Requirements.

- The Notifications to the WTO Committee on Regional Trade Agreements concerning the bilateral free trade agreements of the Kyrgyz Republic with Moldova, the Russian Federation, Ukraine and Uzbekistan were submitted to the WTO via the Kyrgyz Republic's Permanent Mission in Geneva.

- The Project submitted information to the WTO Committee on Regional Trade Agreements in order to facilitate the examination of the Customs Union Agreements and all the free trade area agreements to which the Kyrgyz Republic is a signatory, in light of Article XXIV of GATT, 1994.

- Upon the request of Project's Ministry of Finance counterpart, the Team reviewed comments of Belarus, the Russian Federation and Kazakhstan to the draft Protocol On the Agreed Mechanism of Applying Temporary Safeguard Measures in Trade Between the Customs Union and Member States for their WTO compliance.

- Special Notifications were prepared on the CIS Free Trade Agreement and on the Russian Bilateral Free Trade Agreement with Kazakhstan. The Notifications were approved by the Interdepartmental Commission on Negotiations with the WTO and submitted to the WTO Council on Trade in Goods. On related matters, workshops were held to discuss the Notification requirements of the Article on Trade Policy Review Mechanism; Article XXIV GATT 1994

- Upon request of the Head of the Department of Foreign Economic Relations and WTO Post Accession Matters, the Team reviewed the draft Law On Basics of Foreign Economic Activity for consistency with the WTO rules.

- The Team prepared amendments to the Exim Regulations to bring them into compliance with the automatic licensing requirements of the WTO Agreement on Import Licensing.

- Regulations were drafted implementing the Law On Safeguards, as well as regulations implementing the Laws On Antidumping and On Subsidies and Countervailing Measures.

- Of special interest was the request to Mr. Rahat Toktonaliev, to attend a meeting with the Chinese commercial attache in Bishkek to discuss WTO issues with which the Kyrgyz Republic might be able to advise China for its present and future negotiations concerning its own accession - a compliment to the Kyrgyz Republic and the Project.

- As part of the Project's ongoing and extensive drafting of WTO notifications, Mr. Toktonaliev and Ms. Nurjan Togaibaeva prepared replies to questionnaires on Import Licensing Procedures, as required under Article 7.3 of the WTO Agreement on Import Licensing Procedures. The notifications were approved by the Ministry of Foreign Trade and Industry.

Free Trade Agreements and The Kyrgyz Republic: Understanding the Interpretations of Articles XXIV and XXVIII GATT 1994 - Notification workshops with relevant ministries and agencies were held on:

- The Textiles Agreement and the General Agreement on Trade in Services
- The Agreement on Agriculture
- The Agreement on Implementation of Sanitary and Phytosanitary Measures
- The Agreement on Technical Barriers to Trade
- The Agreement on Pre-shipment Inspection
- The Agreement on Implementation of Article VII of GATT
- The Agreement on Rules of Origin
- The Agreement on Antidumping (Article VI)
- The Agreement on Subsidies and Countervailing Measures
- The Agreement on Safeguards
- The Agreement on Trade-Related Investment Measures
- Paragraph I of Understanding of Article (STR)
- Paragraph 9 of Understanding of Balance of Payments
- Quantitative Restrictions and Non-tariff Measures

- The Agreement on Import Licensing Procedures
- The Agreement on Trade-Related Aspects of Intellectual Property (TRIPS)
- The Integrated Data Base.

WTO Oversight Body of the Kyrgyz Government - Mr. Rahat Toktonaliev, the Project's Senior Attorney in The Kyrgyz Republic, along with other Project staff and officials of the Ministry of Foreign Trade and Industry, assisted the Government in the establishment of an inter-ministerial body to coordinate and implement review of legislation and other government actions, in light of The Kyrgyz Republic's WTO bindings and other obligations. The Project also continues to provide *ad hoc* advice to the WTO Oversight Body of the Ministry of Foreign Trade and Industry as needed. The Project continues to organize and catalogue WTO correspondence for the Ministry of Trade and Industry's documentation project. The Project continues to facilitate in the organization and distributions of WTO documents forwarded from Geneva.

Specialized Notifications - As part of the Project's Post-Accession Assistance to the Government of The Kyrgyz Republic, we continue to provide training materials and support to the ministries responsible for WTO Notifications. Specifically, the team assisted in the preparation of notifications pertaining to the requirements of:

- Articles 16.4, 16.5, and 18.5 of the Agreement On Implementation of the Article VI of GATT 1994
- Articles 25.11, 25.12 and 32.6 of the Agreement On Subsidies and Countervailing Measures
- Article 12.6 of the Safeguards Agreement
- Annex B, paragraph 3 and paragraph 10 of the Agreement on the Application of Sanitary and Phytosanitary Measures

WTO Dispute Settlement Procedures - The Project presented a seminar slated in September on the subject of the WTO Dispute Settlement System. The training was given by Mr. Ake Linden, the Project's senior WTO advisor, to legal advisors from 23 different KR ministries and agencies responsible for implementing the WTO Agreements in the KR.

Training - The Project arranged for logistical and financial support for a one month fellowship (approved by the Project, WTO and USAID) for the Chief Assistant to the KR Minister of Foreign Trade and Industry regarding WTO issues with the Market Access Division of WTO in Geneva.

The Project also supported a two and a half-month training course in the WTO Trade Policy Division in Geneva (approved by the Project, WTO and USAID), for the Chief Specialist in the Department of International Organizations of the KR Ministry of Finance.

The Project arranged for USAID support for the Minister of External Trade and Industry and the Chief Assistant to the KR Ministry of External Trade and Industry to attend the November Seattle WTO Ministerial Meeting as well as select meetings in Washington [see below].

Within Government ministries, the Team met with specialists from the Securities Commission, National Bank, Auditing Commission, and MFTI and discussed the notification requirements under the Article III.3 of GATS and presented notifications drafted by the Team for their review. In addition, the Team's senior attorney addressed the staff of the Corporate Development Center under the Government of the Kyrgyz Republic and gave an overview of the Uruguay Round Agreements and the benefits of WTO membership.

Other Government meetings included an advisory meeting with the Head of the Department of Trade Regimes and Non-Tariff Regulation on the issue of introduction of the export licensing requirement for tobacco and its consistency with the WTO requirements. The Team met with Vice-Prime Minister Nanaev, at his request, to discuss issues of the Customs Union and their relationship to the KR's commitments with the WTO.

Project staff planned and supported the visit of the Minister of Foreign Trade, Energy and Industry (and Vice Prime Minister), Mr. E.K. Ourmaliev, the Director of Kyrgyzpatent, Mr. R.O. Omorov, and the Head of Relations with the WTO for the Ministry of Foreign Trade, Energy and Industry, Mrs. A.R. Rakhmanova, to the World Trade Organization Conference in Seattle and the Investment Roundtable in Washington D.C in the first two weeks of December 1999.

Private Sector Development - Focused Private Sector Development work began in November, when the new Country Manager, Mr. David Manly, visited Osh and met with staff of the business center funded by the UNDP Project. Meetings were organized and discussions held with local businesses and Government officials (Ministry of Trade, Customs etc.). Follow up meeting occurred with private businessmen individually.

Mr. Manly also visited the World Trade Organization headquarters in Geneva, as well as the International Trade Center there. Mr. Edil Kalashev, Chief Expert for Tariff Policy and WTO Dept, Ministry of External Trade and Industry was also at the WTO, on a one month internship, and Mr. Manly was able to make introductions to a number of sectoral experts, including Chief of Department, Mr. Bertil Byskov.

SME Development - Relevant to the work on SME development are the regional seminars which occurred in Osh and Issyk-Kyl in March 2000. The seminars concentrated on basic needs in preparing for trade and investment, outward and inward remissions, sales and marketing, database establishment and usage, with clarification of the impact of WTO membership, present and future, and exploration of further needs of government departments and the business community, and the possibility of developing a national strategy, including regional networking.

Future seminars and workshops are planned for the Project follow-on program, and serious attention is being given to the possible inclusion of 2/3 study tours of up to 10 days each to look at SME development (and constraints) in other countries.

Mr. Toktonaliev assisted the Ministry of Foreign Trade and Industry (and Minister Omoraliev) in preparations for the EC - The Kyrgyz Republic bilateral meeting on trade and investment issues held in Brussels early March. Mr. Toktonaliev also accompanied the Minister and the delegation to Brussels, to provide expert trade and investment advice. The team is continuing to provide support, as needed, to the WTO Department of the Ministry of Foreign Trade and Industry.

SME and Private Sector Development Seminars in Osh and Issyk-Kul

As part of the project deliverables, the two seminars were held in Osh (March 9-10, 2000) and Issyk-Kul (March 13-14, 2000) on Trade and Investment (plus advantages of WTO accession). Both seminars were well attended, although there were fewer representatives of the business community in Osh than had been hoped. The Issyk-Kul seminar overlapped with that organized for Procurement (see separate report of Larry Beck).

The main aim of the Trade and Investment component was to initiate a dialogue between government and local officials on the one hand, and the business community on the other. This appeared to be achieved admirably, with no confrontation, and a great deal of frank discussion and criticism of current problems facing business operators, especially by the officials, about their own shortcomings, notably the problem of corruption.

New laws affecting business were discussed, as well as the problems of dissemination and implementation of government decrees, and contradictions with local practices leading to harassment of small businesses. The local speakers, including members of Osh Governor's Office, the Osh regional committee for Foreign Economic Relations, the National Commission for the Development and Protection of Competition under the President of the Kyrgyz Republic, and the Ministry of Foreign Trade and Industry, were excellent, and very well received by the audience.

The WTO presentation by senior consultant, Ake Linden, was much appreciated. Officials of TACIS, UNDP and USAID attended seminars as observers, and also spoke from the floor.

David Manly, with Aigul Musakozhoeva of the Project and Ms.Anarhan Rahmanova, of the Ministry of Foreign Trade and Industry, were able to meet with the Osh Governor, and with the Deputy Governor, who discussed investment and trade needs in the region. They very much appreciated that the first BAH seminar had taken place there rather than in Bishkek.

TURKMENISTAN

Objectives

1. Assist in the establishment of a sound trade and investment environment through advice on modification of laws and regulations related to international trade and foreign investment, as needed, to enhance the legal/regulatory framework for foreign trade and investment to conform to global standards and to facilitate rather than impede foreign trade and investment;
2. Assist in the accession process to the WTO;
3. Assist in enhancement of the overall investment "climate" through eradication of administrative/bureaucratic barriers to business development, including (a) business registration/licensing requirements that artificially restrict market entry, and (b) restrictions on company profit margins and product profiles that impede efficient investment flows;
4. Assist in development and stabilization of the budgetary system, including (a) budget identification and classification, (b) classification of expenditures and revenues, (c) rationalization of the public investment planning process, and (d) recommendations designed to strengthen the financial management and control system; and

5. Provide limited support for development and implementation of privatization steps by the government of Turkmenistan that support the development of a favorable trade and investment environment, consistent with WTO accession, and facilitate the rapid and efficient transfer of state-owned assets to the private sector.

Significant Results of Project Assistance

- The Project assisted the Medjlis in development of three major pieces of commercial legislation, one of which was enacted in November 1999 (a law on joint stock companies), and two of which are on the Medjlis current legislative agenda (a law on business registration and a law on enterprises and entrepreneurship).
- The Project trained a core group of 20 customs officers in tariff classification, customs valuation, and commercial processing of imports and exports, providing them with the understanding and resources necessary to implement Turkmenistan's new import excise tax system in accordance with international standards.
- The Project assisted State Customs in development of a law on customs tariff incorporating WTO principles. The Medjlis also placed this law on its list of legislative priorities.
- Project staff presented two, semester-long classes on international business and economics at the Business School of Turkmen Polytechnic Institute for 45 university level students.

Significant Issues

- Most of the legislation that the Project assisted in developing is still in draft stage and subject to further revision by the government or Medjlis. Continued technical legal assistance is therefore essential to ensure that the proposed reforms are understood by lawmakers and realized in the enacted laws.
- Competing state entities involved in privatization and divided responsibilities (SPPA, CP/SAFI, MOAWR, line ministries, industry associations) and overlapping oversight (various deputy chairmen of Cabinet of Ministers).
- Lack of clear political commitment to privatization from highest government authorities; government's privatization program essentially "voluntary."
- Inadequate legislative and regulatory base for privatization, outmoded Soviet-style accounting standards; inconsistent application of existing policies and rules; excessive bureaucracy and control mechanisms; delays and procrastination;
- No securities/capital markets to facilitate privatization; unrealistic valuations and expectations of price; onerous payment terms; unnecessary restrictions on buyer's operation of the business; holding on to State's participation in joint ventures and residual shareholdings; large inter-company/inter-government debts being settled by off-sets and barter; large non-performing loans of banking sector; State Commodity Exchange actually hinders exports and diminishes potential export earnings from privatized companies.

Major Changes Anticipated in Project Activities (Modifications, Phase-Out, New)

At the direction of USAID, there will be major changes in the Project's future activities in Turkmenistan.

First, USAID "suspended indefinitely" the privatization component of the Project, effective May 31, 1999. It is not expected that the Project will continue these activities in the foreseeable future.

Second, the Project's budget reform component ended April 3, 2000. It is expected that another USAID contractor will continue this work in the near future.

Third, the trade and investment component of the Project has undergone a major shift in the focus of its activities. From a project primarily designed to assist the government in the legal and technical aspects of an application for membership in the World Trade Organization, the trade and investment component's main focus is now business education, general commercial law drafting, and private sector policy reform. It is expected that these will be the focus of any future activities of the Project in Turkmenistan.

Major Changes in Government Policy

There are no major changes expected in Turkmenistan's policy that would affect the Project's work.

Devil's Advocate

Q. It is the general perception that the government of Turkmenistan is uninterested or resistant to implementing the economic reforms necessary for transition to a market-based economy. The EBRD, for example, in its 1998 Transition Report, gives Turkmenistan generally low grades for progress in transition from a centrally-planned economy, and indicates that Turkmenistan lags behind all other Eastern European and CIS countries in economic reform. Given those conditions, why should USAID continue to invest in providing technical assistance to this government in commercial law drafting?

Whether or not USAID is present, the government will continue to enact laws and regulations that will have a significant impact – for better or worse – on private sector development. The government's future activity may be demonstrated by the Medjlis' legislative agenda, announced on April 8, 2000. It includes over 50 laws, including a number of important pieces of commercial legislation that have been recommended by this Project, such as a customs tariff law, a law on business registration, and a law on enterprises and entrepreneurship. In addition to the Medjlis, government ministries are developing other important pieces of commercial law, including amendments to the foreign investment law (State Agency for Foreign Investment), a customs code (State Customs), and trademark and patent laws (Patent Agency).

There is no guarantee that Turkmenistan (as any other country) will accept foreign experts' recommendations. However, the 1999 Civil Code and the 1999 Joint Stock Company Law, which were developed with assistance of US and European consultants and are generally considered consistent with international standards, demonstrate that Turkmenistan is not uninterested or resistant to all outside advice. By staying engaged, USAID has the opportunity to assist in the design of the legal framework that will regulate important aspects of private sector activity.

Progress

Improvement of Trade and Investment Environment

During the period of the Task Order, the Project assisted government ministries and the Medjlis in development of laws and regulations intended to improve Turkmenistan's foreign investment environment, facilitate import-export trade, and reduce bureaucratic barriers to start-up and operation of private businesses. The main focus of these legal drafting efforts was amendment of the foreign investment law, development of new laws on business registration, and development of expedited customs procedures.

In order to develop its legislative proposals, the Project conducted surveys of private business operators in Turkmenistan to determine main administrative barriers to businesses.

Finally, the Project also devoted a significant amount of time to teaching business and economics at the local Business School, in hopes of improving the understanding of future entrepreneurs and policy makers of principles of a market economy.

Foreign Investment Law.

In 1999, the Project worked intensively over a 4-month period with lawyers from the State Agency for Foreign Investment (SAFI) to develop amendments to the current Law on Foreign Investment. SAFI lawyers completed and submitted its amendments to Cabinet of Ministers Vice-Chairman Gurbanmuradov in December 1999 for presentation to the Cabinet of Ministers. As of the close of the current task order, the amendments had not yet been submitted to the Medjlis. Amendments to the Foreign Investment Law were not included in the Medjlis legislative program announced April 8, 2000.

Although the current Law on Foreign Investments (May 19, 1992, amended October 8, 1993) contains a number of important guarantees and protections for foreign investors, these are incomplete or, in some cases, contradicted by other laws. For example, while the law flatly prohibits "nationalization" of foreign investor's property, a separate "Law on Investments" (May 19, 1992) states that property may be nationalized provided compensation is paid, but does not define the conditions under which property may be taken by the government, or how compensation shall be determined. Similarly, while the Law on Foreign Investments provides that an investor may arbitrate investment related disputes outside of Turkmenistan, the law further provides that this right shall be subject to the government's agreement, effectively vitiating the guarantee. Also, while the law guarantees foreign investors the right to transfer property abroad, including currency, the law does not guarantee that profits earned in Turkmenistan by foreign investors in the national currency (manat) may be converted into a freely convertible currency.

SAFI's work on amendments to the foreign investment law was prompted, at least in part, by the Project's submission in 1998 of a model law and detailed commentary. Following the Project's submission of that model law, Mr. Gurbanmuradov, the Director of SAFI and currently a vice-chairman of the Cabinet of Ministers, charged SAFI lawyers with responsibility for development of their own amendments to the law.

In April 1999, SAFI submitted a first draft of the revised law to the Project for comments and recommendations. These the Project provided SAFI on June 10, 1999. In response to a second draft, the Project submitted a second set of comments to SAFI on July 15, 1999. Throughout these months, Project lawyers met weekly with SAFI lawyers to review and explain recommendations and comments, as well as to assist in technical drafting questions. In September 1999, the Project had a final conference with SAFI lawyers to discuss SAFI's revisions, and presented a summary of the Project's recommendations. Although SAFI may not have accepted all of the Project's recommendations, SAFI lawyers, at a minimum, better

understood international legal standards for foreign direct investment as a result of all our contacts.

In addition to recommendations and comments on the terms of SAFI's proposed laws, the Project prepared and submitted to SAFI a translation of a model law on foreign investment published by the International Law Institute; summary of US law on expropriation; a paper on international arbitration; and a paper on the use of tax holidays and tax incentives for foreign investment.

The Project's recommendations included proposals to remedy the defects in the current law identified above with respect to expropriation, repatriation of profit, and arbitration of investment-related disputes. Other main recommendations included:

(1) that the law eliminate or clearly define SAFI's project approval or screening requirements,

(2) that the law provide foreign investors with a "most-favored nation" treatment guarantee (that is, an investor from one country shall be treated no worse than an investor from any other country),

(3) that the law clearly specify any deviations from national treatment, and

(4) that SAFI delete from the law the special registration procedures applicable to foreign investors in favor of a registration law applicable to all legal entities, whether or not formed with foreign participation.

SAFI's final draft includes many of the Project's recommendations, in part or in whole. For example, the draft expands the guarantees and protections of foreign investors with respect to government expropriations. The draft also includes a MFN guarantee, in part (requiring the government to treat foreign investors alike in cases of compensation for losses resulting from civil disorder or other extraordinary conditions), and more clearly sets out foreign investors rights to repatriation and arbitration of investment disputes. Other recommendations were not accepted – such as providing consent in the law to arbitration, and clearly defining any project approval or screening requirements.

The Project's recommendations were also submitted to Mr. Kadyrov of the Medjlis, and it is hoped that they will be considered by the Medjlis when it takes up the amendments. However, the draft amendments do not appear on the Medjlis current legislative agenda.

Business Registration

In 1999, the Project assisted both the State Agency for Foreign Investment and a committee of the Medjlis in the preparation of two separate laws on government registration of legal entities. Although Article 52 of the Civil Code of Turkmenistan provides that legal entities shall be subject to state registration "as provided by law," no such law has yet been enacted. SAFI's draft law is entitled a "Law on Registration," while the competing draft developed by the Medjlis is the law "On Public Registry."

SAFI Draft "Law on Registration"

As was the case with revision of the foreign investment law, lawyers of the State Agency for Foreign Investment work on a law on registration was initiated in response to a report on business registration procedures and model law that the Project prepared and submitted to SAFI in January 1999. SAFI is currently the government agency responsible for registration of legal entities. In late July 1999, SAFI presented the Project a draft for review and comment. The Project submitted its first detailed comments to SAFI on November 2, 1999, and a second set of comments on December 27, 1999 in response to SAFI's revised draft.

The Project's main recommendations to SAFI included proposals to streamline the procedure for business registration by eliminating unnecessary paperwork and information

requirements; limit the period for SAFI's consideration of a registration application; support the "one-stop shop" concept of registration through elimination of requirements for approvals from other ministries; and simplify the procedure for companies' amendment of their registration documents. In general, it was our recommendation that SAFI should treat registration as a ministerial act, for which there was little need for administrative discretion.

It is our understanding that SAFI's lawyers presented a final draft "Law on Registration" to Mr. Gurbanmuradov in December 1999 to be presented for consideration to the Cabinet of Ministers. The greatest merit of SAFI's draft is that it would increase transparency of the registration process by setting out the procedure and documents required for registration. In most other respects, however, the law fails to improve registration process to any great extent. For example, despite recommendations to the contrary, SAFI's draft would require an applicant for registration to present documents to four different government ministries (SAFI, Statistics, Tax, and Labor Exchange), defeating the purpose of a "one-stop shop" registration.

Fortunately, a better law on registration is being separately developed by a committee of the Medjlis, and that law rather than SAFI's will be considered by the Medjlis, according to the April 2000 legislative agenda.

Medjlis Draft Law "On Public Registry"

The Project participated in the development of the law "On Public Registry" in the Fall of 1999, when it was asked by Mr. Kadyrov to review and comment on a draft. The draft law is a clear improvement of SAFI's proposal. Among other advantages, the Medjlis draft law would provide a clear procedure for registration at a single registration point ("one-stop" shop), require the registration body to process registration applications within 10 business days, require the registration body to specify immediately in writing any defects in the registration application. The draft law would also take the registration function from SAFI and place it under the Ministry of Justice.

A main defect of the Medjlis draft law is that the draft fails to specify in sufficient detail the documents and information required for registration of business entities. Many of the problems businesses now face in registration are caused by the government asking for unnecessary documents or information. According to the Project's surveys of businesses, the government often finds that "required" documents or information is missing, and delays registration. To reduce this kind of abuse, the law should include the list of required documents and required information, either expressly or by reference to other laws in which those documents are specified (such as the joint stock company law). The Project made this point to Mr. Kadyrov in its written comments and in person, as well as to the GTZ/TACIS legal team that participated in the initial drafts of the law. It is hoped that when the law is considered by the Medjlis, the point will be incorporated.

Customs Procedures

During the period of the Task Order 801, the Project drafted and submitted to the State Customs proposed regulations for procedures that would expedite the importation of commercial shipments. The procedures included:

(1) a pre-arrival declaration procedure which would allow importers to file all importation documents prior to the arrival of the goods;

(2) a periodic declaration procedure, which would allow an importer who frequently ships the same product to file only one declaration for all good imported in each month; and

(3) an authorization for the use of fax copies in lieu of originals. The Project recommended that procedures be adopted in regulations once the Customs Code is amended to provide authority for their use (see discussion below). During a

training seminar the Project also taught customs officers how to implement these procedures. The use of these procedures by customs is recommended by the World Customs Organization and the International Chamber of Commerce.

At the request of the State Agency for Foreign Investment, the Project analyzed and provided recommendations on a draft "Concept Paper" that an inter-ministerial commission had developed to reform the current system of free economic zones (or customs zones) in Turkmenistan. To assist SAFI in this work, the Project also provided SAFI with a translation of US Customs manual for foreign trade zone operations.

In addition to these formal recommendations, the Project advised State Customs as needed on particular questions of commercial processing that arose in customs officers' everyday work. For example, the Project assisted customs officers in determining the appropriate tax treatment of ship's stores and the classification of particular shipments of merchandise (such as internal fax modems, satellite television receivers, multipurpose vehicles). The Project was also asked by customs officers for international standards or agreements concerning issues that arose in their work, such as control of transit shipments. Certain of this advice was in written form; more often it was provided in the context of meetings and discussions with the legal department or individual customs officers.

Administrative and Regulatory Barriers to Business Development

In June and July, 1999, the Project conducted in-depth interviews of approximately 30 private businesses located in and around Ashgabat. Similar interviews were conducted by the Project in January through April of 1998. The purpose was to identify major regulatory and administrative barriers that private businesses face in Turkmenistan, with a view to developing recommendations (with input from the businesses) for legal and regulatory reform. Respondents were asked, in particular, about their experiences with business registration, customs declaration and import-export procedures, government audits and inspections, and contract registration.

On the basis of those surveys, the Project drafted and submitted to government counterparts a report and recommendations on improvements to the administrative and regulatory regime for private business operations. Many of the recommendations made were based on suggestions of the businesses that the Project interviewed. Certain of the recommendations supported legal or policy changes that the Project had previously proposed to government ministries or the Medjlis in the context of technical assistance in development of particular laws. The proposals included the following:

- revision of the current system of price control (shifting responsibility for control of valuation of imports and exports from the Commodity Exchange to Customs, in accordance with international customs valuation rules);

- expediting and simplifying business registration procedures through adoption of the draft law "On Public Registry" that was developed by the Medjlis with Project assistance, as noted above;

- reduction of government inspections and audits of businesses through better exercise of the Hakims' current authority to coordinate inspection activities; and

- adoption of customs pre-arrival and periodic declaration procedures to expedite import/export processing.

The government counterparts that the Project distributed the report to included Cabinet of Ministers Vice-Chairman Gerklenova, Mr. Grishan of the Medjlis, Mr. Kadyrov of the Institute of Democracy and Human Rights, Mr. Baidjaev, the head of the business support

agency under the Cabinet of Ministers, Mr. Ataev of the Commodity Exchange, and Mr. Kyliev of the State Agency for Foreign Investment. Copies were also requested by and provided to World Bank and OECD representatives.

Joint Stock Company Law and Law on Enterprises

During the period of the Task Order, the Project acted as advisors on commercial law questions to the Medjlis, through the then-Chairman of the Committee on General Legislation (Mr. Vladimir Kadyrov, who is also the director of the Institute of Human Rights and Democracy). This relationship resulted from an April 27, 1999 letter from Mr. Glenn Anders to the Chairman of the Medjlis proposing that the Medjlis use the Project for technical advice on laws affecting trade and investment. Because Mr. Kadyrov oversees the work of TACIS legal advisors, he proposed that the Project work with the Medjlis through his offices, an arrangement to which the Project agreed.

As a result of this collaboration, the Project was asked to review and comment on three laws in the Fall of 1999. These were:

(1) the law "On Public Registry", mentioned above,

(2) a law on joint stock companies, and

(3) a law on entrepreneurship and entrepreneurs.

The three laws represent the Medjlis first efforts to implement through detailed legislation the more general provisions of the 1999 Civil Code.

Law on Joint Stock Companies

The request to review the draft law on joint stock companies came in October from Mr. Kadyrov. The draft was apparently modeled on the Russian joint stock company law, and covered all important aspects of corporations, including their formation, share structure and distributions, rights and obligations and obligations of shareholders, directors and officers; management structure; and merger, dissolution and liquidation. In general, the Project's review showed that the principles and concepts of the law were consistent with contemporary U.S. corporation statutes. The Project's comments largely concerned rights and protections that should be afforded minority shareholders. In addition to Mr. Kadyrov, the Project's written recommendations were provided to Mr. Orazov, then Vice-Chairman of the Cabinet of Ministers, at his request.

The Medjlis enacted the law on joint stock companies on November 23, 1999. A number of important changes were included in the enacted law as a result of the Project's recommendations. These include elimination of certain unnecessary documents required for registration and limitation of the government's discretion to refuse registration; heightened voting requirements for amendments to charter to protect minority shareholders; and provision of shareholder's right to contest certain decisions of joint stock company management.

Law on Enterprises and Entrepreneurship

Also in October 1999, the Project was asked for and submitted its comments and recommendations on a proposed law developed by the Medjlis "On Enterprises and Entrepreneurial Activity." The law is intended to provide the rules for formation and liquidation of private business organizations, with the exception of joint stock companies (*i.e.*, individual entrepreneurs, general partnerships, limited liability companies, "industrial

cooperatives"). It will define a procedure for their recognition by the states as legal entities; sets out the rights and obligations that run between the individual participants of enterprises; and defines the relationship between the enterprise and third parties, such as creditors.

In view of the limited time given to review the draft law, the Project focused its comments concerning the law on enterprises and entrepreneurship on the registration and related procedures, charter fund requirements, and treatment of enterprises with foreign investment. The Project also contacted and incorporated a number of comments of other international organizations with an interest in the law, such as the TACIS Support to Farmer's Associations (cooperatives), ICNL (status of non-governmental organizations), and TACIS/GTZ, which prepared an initial model draft of the law.

The law on enterprises and entrepreneurship is still under consideration by the Medjlis, but it was included in the Medjlis legislative agenda announced April 8, 2000.

Business Education

From January to April 2000, the Project taught a course on International Business at the Economics and Business School of the Turkmen Polytechnic Institute. The Project taught two separate groups of students, each of which met twice a week during the semester (that is, 6 hours of class time per week for 14 weeks). One of the two classes was taught in English to a group of 15 students, while the other was taught in Russian to a group of 20 students. In addition to lectures, the Project prepared a mid-term and final exam for the students. Subjects of the lectures included the following:

- International trade theory
- Trade documentation and financing
- Marketing
- Government influence on trade
- Foreign direct investment
- Economic integration and cooperative agreements
- Intellectual property
- Foreign Exchange
- Customs and product standards
- Impact of multinational enterprise
- Foreign Investor – Country Evaluation and Selection

USAID Global Training Project provided English and Russian language textbooks (Daniels and Radebaugh, International Business: Environments and Operations) to the students.

Accession to WTO: Process

Despite all the recommendations, analysis, information and educational efforts provided by the Trade & Investment Project since its opened its office in Ashgabat in February 1997, and despite the advice of a number of other donors (such as TACIS) and international organizations, Turkmenistan has yet to take the first step toward membership in the World Trade Organization.

While government counterparts at working levels generally support WTO membership (and a number have had long-term training in Geneva), there has been no signal from the President that WTO membership should be sought. Accordingly, although the Task Order calls for

such technical assistance, the Project had no possibility of providing the government assistance in preparation of a "Memorandum of Foreign Trade Regime" for submission to WTO members; no possibility of providing the government assistance in preparing proposed tariff bindings for the WTO Secretariat; and no possibility of providing the government support during WTO working party meetings on the accession application.

As was stated in the Closing Report for Task 800, the Project in Turkmenistan has thus shifted its focus to general trade and investment reform assistance of the kind described above. However, in order to help continue a dialogue within the government on merits of joining the WTO, as well as to leave the government with a base of information that would allow it to proceed through the accession process more easily once the political decision is made, the Project engaged in two WTO-accession related activities during the period of Task 801: (1) a complete revision of a 70-page report assessing Turkmenistan's compliance with WTO requirements, and (2) occasional advice to Ministry of Trade officials, as requested, on questions regarding WTO requirements.

Foreign Trade Regime Assessment Report

Throughout the Task Order period, the Project monitored and analyzed changes in trade and investment laws and policies for conformity with WTO and international standards. In March 2000, on the basis of this analysis, the Project completed a revision of 70-page foreign trade and investment assessment report that the Project had first prepared and submitted to the government in late 1997. The March 2000 revised report will be translated and submitted to those government counterparts responsible for trade and investment policy.

The Project's Report is intended to provide Turkmenistan with a realistic assessment of the changes in laws and policies that will be required if it wishes to become a member of the WTO or, simply, improve legal environment for international trade and foreign direct investment. It will further provide Turkmenistan with the essential information that will be necessary for the government's preparation of a WTO Memorandum of Foreign Trade Regime, and should thereby reduce some of the early complexity of the WTO accession process for the government once it decides to take that step.

WTO Technical Advice

The Project advised government counterparts on various questions related to WTO membership during the course of the Task Order as they arose from time to time. Thus, for example, the Project drafted an analysis for the Ministry of Trade of the benefits and obligations of becoming a WTO observer, as opposed to a member; a memorandum for the Ministry of Trade on access of cotton exports to the US market;

In addition to this advice, the Project provided Ministry of Trade with originals and translations of WTO-related publications, including the Uruguay Round Agreements; WTO commentary on the main trade agreements; statistics on worldwide trade and foreign direct investment and US trade legislation; business licensing rules in the United States; assessment of government fees, *etc.*

Accession to WTO: Legislation

Throughout the period of the Task Order, the Project continued to monitor, review and propose amendments to draft legislation affecting the foreign trade regime to ensure compliance with WTO and other generally-accepted international standards. As described below, the Project provided technical assistance to the government with respect to the following pieces of WTO-related legislation in particular: a customs code, a customs tariff law, and a law on trademarks. In addition, the Project organized formal WTO-related training.

Customs Code

During Task Order 801, the Project's customs attorney assisted the legal department of State Customs of Turkmenistan in their initiative to amend Turkmenistan's customs code to bring it into compliance with international standards, recommended practices of the World Customs Organization, and WTO requirements. State Customs had developed an initial draft of amendments which appeared to be largely modeled on the customs code of Kyrgyz Republic. However, based on our analysis, the draft contained a number of inconsistencies with international standards (in part this may have been due to the fact that Turkmen State Customs was not working with the final, WTO-compliant version of the Kyrgyz Republic's law).

The project first completed a review of Chapter 27 - The Methods for Determining the Customs Value and Procedures of Application- of the proposed amendments to the Customs Code for compliance with international standards including those of the World Trade Organization (WTO) Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade 1994. Recommended language was provided that would bring the Chapter into compliance with international standards. Explanations and examples were provided to explain the recommended language. An entire section concerning related parties was missing from the proposals and was recommended for inclusion. The recommendations of the project were submitted to the legal department in July 1999. Customs informed us that all our proposals were incorporated into the proposed amendments of the Customs.

The project was then asked by customs to review the proposed amendments to the customs code concerning the various entry regimes. The project reviewed the proposed amendments for compliance with the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention). The regimes reviewed included for example, declaration procedures, transit, warehousing, and all regimes involved in the import/export process. The review also included recommendations for new provisions concerning preliminary decisions, and border enforcement of intellectual property rights in compliance with World Customs Organization and World Intellectual Property Organization recommendations. Where necessary language was provided to bring the proposed amendments into compliance with international standards. Our proposals were provided to Customs in November 1999.

Customs Tariff Law/Trade Remedy Laws (Antidumping/Countervailing Duty/Safeguards)

In addition to the Customs Code, State Customs developed with Project assistance a "Law on Customs Tariff." This draft law was included by the Medjlis placed on the Medjlis legislative agenda announced in April 2000. The draft law and the recommendations prepared by the Project were presented to the Ministry of Justice in the Fall of 1999. The draft Law on Customs Tariff includes provisions on rules of origin, special duties and valuation that are in compliance with World Customs Organization, international trade facilitation standards, and WTO requirements.

An important reason for Customs promotion of this draft law On Customs Tariff is to eliminate the role of Commodity Exchange in the import and export process. At present, all import and export contracts must be registered at the Commodity Exchange before goods may pass through Customs. The Commodity Exchange uses this authority to ensure that the contract price for the exported or imported goods is consistent with the "average world price level." The process is opaque, contradicts generally-accepted international standards (by establishing minimum import values, the procedure violates WTO Valuation Agreement) and, as reported to the Project in its surveys and interviews of businesses, adds unnecessary

time and expense to the import process. Businesses have identified this procedure as one of the greatest barriers to trade in Turkmenistan. It is hoped that this law will give customs the authority to calculate the value of merchandise, a function that is traditionally performed by the customs.

The draft Law on Customs Tariff also includes provisions that would give Customs the authority to assess anti-dumping and safeguard duties. Once this law is passed laws would have to be implemented establishing the procedures for the assessment of these types of duties. The Project has provided translations of the model anti-dumping and safeguards laws that were prepared by the WTO. We have discussed future assistance with the customs after the passage of the Law on Customs Tariff.

Foreign Trade Training

On November 8- 10, 1999, the Project, with the Ministry of Trade and Foreign Economic Relations, presented a seminar on the international framework for trade in goods and services. The seminar took place at the Turkmenistan Institute of Manuscripts, and was attended by approximately 50 government officials from a range of Turkmenistan's ministries and agencies, including the Ministry of Trade, Customs, State Standards, the State Agency for Foreign Investment, the State Commodity and Raw Materials Exchange, Ministry of Textiles, and government industry associations. The seminar was presented by members of the Project, as well as Mr. Vangelis Vitalis, who is the first deputy secretary, Embassy of New Zealand in Moscow, as well as an expert in trade in agriculture. The deputy minister of the Ministry of Trade (Mr. Ibrahaim Koluk) and the deputy chief of mission of the U.S. Embassy (Ms. Markowitz) opened the seminar.

The general theme of the seminar was the relationship between trade liberalization and economic development. The subjects of individual lectures included the benefits and costs of trade liberalization; customs facilitation; the connection between liberalized trade and foreign direct investment; protection of intellectual property rights; basic trade terms; international regime for regulation of product standards; trade in agriculture; international arbitration; and, the legal measures that a government may take against unfair imports. The Project prepared a 100-page manual for each of the participants.

The seminar received a significant amount of media attention, including two articles in the main newspaper of Turkmenistan, the *Neutral Turkmenistan*, local television and radio coverage, and a report by the Russian wire service *Interfax*.

Following the seminar described above, Mr. Broxholme of the Project presented a separate lecture and roundtable discussion on international arbitration at the State Agency for Foreign Investment. This was attended by approximately 10 government officials.

Customs Training

Harmonized System Training

In November 1999 the Project presented a 5 day seminar "Principles of Tariff Nomenclature/Harmonized System" to 18 customs officers representing all customs points, 6 members of Chambers of Commerce and 2 officials from the Ministry of Trade.

The purpose of the seminar was to instruct customs officers in the use of the Harmonized Commodity Description and Coding System (Harmonized System). The Harmonized System is an international system used to classify imported or exported merchandise and is also used to assign duty rates. The course substance consisted of background information on the Harmonized System and the World Customs Organization, a detailed explanation of the structure of the Harmonized System, and in-depth study of the 6 General Rules of Interpretation that set out the principles of classification in the Harmonized System. Although most of the participants use the Harmonized System daily in their jobs they had

never received training on how to use the system. Copies of the CIS Harmonized System and the Explanatory Notes in Russian were provided to the participants.

Customs Valuation

In February 2000 the Project presented a 5 day seminar on "The Principles of Customs Valuation" to 20 customs officers from each customs point of the State Customs of Turkmenistan. The purpose of the seminar was to instruct customs officers in the proper application of the international system of the valuation of merchandise. The international system is designed to simplify and harmonize governments' methods for the assessment of value used to calculate taxes and duties on imports, and thereby reduce trade barriers.

An understanding of the rules for customs valuation under the international system is particularly important for Turkmenistan because it is hoped that when the Customs Tariff Law (mentioned above) is adopted, customs officers may assume exclusive responsibility of control of import-export values. At present, the Commodity Exchange controls prices under methods that would be prohibited under the international system, and in a manner that presents one of the greatest obstacles to business development.

The substance of the course consisted of background information on the international valuation system and the World Customs Organization; an in-depth study of the primary method of valuation, transaction value, and its rules and exceptions; and the other 5 methods used in the international system to determine the value of value of merchandise. Each student was provided a training manual specifically prepared for this course.

Entry Procedures

In March 2000 the Project presented a seminar to 20 officers of the State Customs of Turkmenistan, 2 officers from the Ministry of Trade, and 6 officers from Chambers of Commerce. The goal of this course was to teach customs officers the international standards developed by the World Customs Organization and other international organizations. These standards were developed to assist customs to streamline customs procedures, which would not only make Customs more effective and efficient but would also facilitate trade.

The particular customs procedures that the Project addressed in the seminar were selected in cooperation with the State Customs of Turkmenistan. The customs procedures were selected to address areas where problems currently exist or to teach new procedures in the proposed amendments to the Customs Code or Law on Customs Tariff.

Most of the customs officers attended all three of the seminars provided by the USAID Trade and Investment Project. The participants selected are the best and brightest of the customs officers in Turkmenistan. These participants not only train colleagues in subjects of our previous seminars. By having them attend seminars in all courses we hope to have developed educated and well rounded customs officers not only so that they can become good trainers but also so that they can assist in the development of customs policy.

The Project has also provided assistance to the Legal Department of Customs to help in the establishment of a training unit. A memo prepared by the Project provided all information on how a training unit should be established, administered, equipped, course itinerary, selecting participants, etc.

Summary

In the period of Task Order 801, the Project shifted focus of its activities from WTO technical assistance, and was able to make important progress in the areas of general commercial law drafting, business education, and customs reform. Much of this work by the Project, however, is still in the "pipeline," and not yet realized. For example, a number of

draft laws that the Project assisted government counterparts with over the last year or more is still under review by the government or committees of the Medjlis. Similarly, while a core group of customs officers have been trained in international standards, this is the first such intensive training most have received since Turkmenistan became an independent country, and must continue to be supported if it is not to be lost.

UZBEKISTAN

Objectives

1. Assist in the establishment of a sound trade and investment environment, including the modification of laws and regulatory provisions relating to international trade and foreign investment as needed. Enhance the legal/regulatory framework for foreign trade and investment to conform to global standards and to facilitate rather than impede foreign trade and investment;

2. Assist in the accession process to the WTO; and,

3. Enhance the overall investment "climate" through eradication of administrative/ bureaucratic barriers to private sector business development, including business registration/licensing requirements that artificially restrict market entry and restrictions on company profit margins and product profiles which impede efficient investment flows.

Significant Successes and Issues

Significant Successes

Cabinet of Ministers Resolution on Liberalization. On June 10, 1999, the Cabinet of Ministers issued a resolution setting forth a 50+ page "liberalization program." According to the resolution the program will be implemented over the years 2000-2004, culminating, among other things in WTO accession. The resolution contained many liberalizing policy-related changes advocated by the Project over the previous two years.

Among many other positive initiatives, the resolution requires ministries and state agencies to develop specific tactical programs to achieve the following strategic macroeconomic policy goals:

(i) promotion of a healthy SME sector;

(ii) liberalization of the currency market, including measures needed to prepare for the introduction of current account convertibility in the year 2000;

(iii) improvement of the export potential of the country and to deepen its integration into international economic organizations by 2004, including liberalizing foreign economic activity, increasing foreign investment and improving the tariff system;

(iv) defining the role of Uzbekistan in the world economy in a manner that no longer talks about economic development in terms of "self-sufficiency," but in terms of comparative advantage;

(v) increasing the independence of the court system and the rule of law;

(vi) increasing competition and decreasing the monopolization of the economy;

(vii) reforming the banking system; and

(viii) increasing the development of a market infrastructure. This resolution has since been followed by numerous statements by the President on the need to liberalize, and a large GOU conference on the liberalization policy was held in March 2000.

GOU establishes formal dialogue with American Chamber of Commerce in Uzbekistan (AmCham) on resolution of Trade and Investment issues.

Pursuant to the GOU's request, ad hoc working groups of the AmCham were established to develop more detailed position papers/recommendations on the following issues raised in AmCham's 1999 White Paper:

(1) customs delays,

(2) tax problems,

(3) import contract registration,

(4) burdensome business registration procedures,

(5) currency convertibility problems,

(6) export earnings surrender requirement,

(7) barriers to investment in the natural resource sector,

(8) banking restrictions, and

(9) the need for a law recognizing the validity of private arbitration.

The Project participated substantially in all of these working groups, and – as of April 2000 – papers containing detailed recommendations were submitted to the GOU on the first seven issues.

Reorganization of GOU's Intergovernmental Working Group on WTO Accession (IWG).

In line with Project recommendations, the GOU reorganized and reactivated the IWG in a manner intended to more efficiently pursue the WTO accession process. A major meeting of the IWG was held in late December 1999, and a work-plan for WTO accession was discussed and is under development.

Submission of answers to questions from WTO. The Project assisted the IWG in preparing answers to the first round of questions on the Memorandum received from member countries; answers to these questions were submitted to the WTO in March 2000.

Major WTO training. The Project successfully completed a number of WTO-related training courses, including a technical 2-day seminar on the preparation of WT/ACC/4 in May, 1999;

a general WTO conference for all members of the IWG during the week June 14-19, 1999; and a WTO negotiation simulation for the senior 12 members of the IWG on June 22-23, 1999.

Reduction of Price and Profitability Controls. The Project continued to successfully assist the Anti-Monopoly Committee (AMC) implement its policy of (i) eliminating price declaration requirements and the system of controlling the prices and profit margins of purported monopolies (with the exception of natural monopolies) and (ii) moving to monopoly regulatory system based on monitoring the economy for abuses of monopoly power.

New law "On Foreign Economic Relations." The Project, at the request of the Cabinet of Ministers and the MFER, provided liberalizing recommendations for the substantial amendment of the law "On Foreign Economic Relations," which serves as the legal basis for much of the regulatory control exercised by the MFER over economic activity. Among other things, the Project recommended that law be amended to eliminate the authority of the MFER to require that businesses engaging in foreign trade must register as a "Participant in Foreign Economic Relations" with the MFER. The proposed amendments will be considered by the Parliament on May 25, 2000.

Anti-Interference Order. On February 3, 2000, the President's Apparatus issued an internal order to eight state bodies having regulatory authority (1) emphasizing the need for a policy of economic liberalization, (2) criticizing GOU officials for apathy in implementing this policy, illegally interfering in the activities of economic entities, and creating barriers to entrepreneurship; and (3) requiring those bodies to forward proposals on reducing their size and avoiding illegal interference in the activity of economic entities.

New law "On Entrepreneurship and Guarantees of Entrepreneurial Activity." A new general law on investment activity was drafted by the Project in response to a request by several GOU officials. Using the Project's draft as a basis, the GOU drafted a new law on Investment Activity that went through first reading in The Parliament in December 1998. The new law was renamed, finalized and passed on April 14, 1999.

Draft law "On Guarantees of the Freedom of Entrepreneurial Activity." The GOU redrafted a proposed law on entrepreneurial freedom that was provided to the Project for review and comment. The new law is scheduled for its first reading in the Parliament on May 25, 2000.

New law "On Non-Governmental Non-Commercial Organizations. The GOU drafted a new law on non-governmental non-commercial organizations that was provided to the Project for review and comment. The new law went through first reading in The Parliament in December 1998. The law was finalized and passed on April 14, 1999.

Draft Business Registration Procedures. The Project continued its efforts aimed at streamlining the procedures and easing the restrictions faced by foreign and local investors in registering a business in Uzbekistan. The Project's draft business registration procedures were also adopted by the AmCham, which delivered a position paper to the GOU advocating the adoption of the draft procedures.

Draft law "On Licensing." The Project reviewed and commented on a new draft law on licensing that is aimed at reducing the list of business activities subject to licensing, and to reduce and/or rationalize the licensing requirements applicable to those activities. The draft law is to be considered at the Parliament on May 25, 2000.

Amendments to the law "On Natural Monopolies." The Project reviewed and commented on draft amendments to the law "On Natural Monopolies." The amendments were passed by the Parliament on August 19, 1999.

New law "On Leasing." The Project reviewed and commented on a new law "On Leasing." The law was passed by the Parliament on April 14, 1999. The new law is aimed primarily at providing a legal basis for finance leasing.

New customs regulations. The Project successfully assisted the State Customs Committee in further expanding the regulatory framework for implementing the three main pieces of Customs legislation that the Project had worked to pass under prior Task Orders. Seven new sets of customs regulations were developed and passed with Project assistance in 1999.

Significant Issues

Further assistance is required in order to significantly improve the business and investment environment; a fact that many GOU officials now recognize. Furthermore, the new liberalization policy requires it. Thus, there is a need to continue the on-going critical review of the legal and regulatory framework and the development of recommendations to improve it.

In addition, the GOU will be in need of considerable legal drafting assistance in connection with the promulgation of new laws and regulations intended to implement the new liberalization policy. Otherwise, the self-interested bureaucrats may undermine the new policy by drafting laws and regulations that continue to provide them with the ambiguity and discretion they need to continue rent-seeking activities.

Additional documentation required for accession negotiations remain to be finalized and submitted to the WTO, including the Government's answers to the second round of questions from WTO-members concerning the Memorandum (expected to be received by Fall, 2000), WT/ACC5 (describing legal barriers to foreign service suppliers), and, most problematic, WT/ACC/4 (the document providing information on the types of and extent of Uzbekistan's governmental support for agriculture);

Uzbekistan's WTO offers on goods and services must be prepared and negotiated with WTO members.

Major Changes in GOU Policy and Project Activity

Government Policy Changes

Background. For the past three and one half years, primarily as a result of currency and other controls implemented by the GOU beginning in late 1996, the economic situation in Uzbekistan – despite official statistics and claims to the contrary – has been deteriorating. An abundance of anecdotal information suggests that living standards throughout the country have fallen significantly. Although Tashkent itself was initially somewhat buffered from these effects, there are now clear signs of falling living standards in Tashkent as well. The situation was forcefully brought to the GOU's attention in February 1999, when six car bombs exploded in and around GOU buildings in Tashkent. Anti-GOU leaflets have since

been distributed on several occasions in 1999 and early 2000 at local bazaars. Furthermore, there have been intermittent reports of occasional engagements between GOU forces and (purportedly Islamic) insurgents from neighboring Afghanistan and Tajikistan, primarily in the Fergana Valley. There has been a visible increase in the police/military presence on the streets in and around Tashkent. Control at the borders with neighboring countries has also been substantially increased.

The country's slide into economic crisis appears to be accelerating. This fact appears to be widely recognized throughout the GOU and the population as a whole. In 1997 and most of 1998, the black market exchange rate for the local currency was generally about two times the official exchange rate; however, over the course of 1999 and into early 2000 the black market rate gradually increased to a rate more than five times the official rate. However, on May 1, the GOU devalued the official rate by 35% to 231, thereby reducing the ratio to about three-to-one.

The GOU reportedly has insufficient foreign earnings/reserves and domestic revenues to cover its budgetary needs. It has therefore been relying very heavily on international lenders, like the World Bank, the IFC and national export credit agencies, to finance construction projects and imports. Many of the obligations of ostensibly "private" borrowers are guaranteed by the Ministry of Finance or the Government-owned National Bank of Uzbekistan (NBU), which are suspected to have a large number of such off-book contingent obligations. Furthermore, it is reported that the GOU has recently dedicated a significant portion of its hard currency resources to acquiring more modern military equipment in order to deal with potential insurgents and civil unrest. As a result, there has been increasing speculation that by year-end 2000, the GOU (and the many recipients of GOU or NBU guaranteed loans and export credits) may have significant difficulty in servicing their international obligations as they come due.

The GOU has therefore been enlisting a number of measures in an effort to raise or preserve revenue. For example:

(1) importers and foreign investors have experienced a very dramatic reduction in the amount of hard currency available for conversion;

(2) the GOU has attempted to increase the pace of "privatization" of major economic enterprises in an effort to raise hard currency from foreign investors; however, the effort met with little if any success due primarily to the substantial overpricing of the shares in the entities up for sale;

(3) the GOU tax authorities have significantly increased tax collection efforts, often using their power to close a business that refuses or is unable to pay its – at times, questionably high - tax bill;

(4) in March of 2000, the GOU began requiring all foreign persons (with the exception of diplomatic personnel) to pay for state services (including tickets on the state-owned airline, medical services, telephone bills, etc.) in hard currency;

(5) the GOU's Central Bank has recently ordered a foreign-owned bank in Uzbekistan to sell (for soums at the still highly overvalued official rate) two million USD to the NBU, which apparently has inadequate hard currency resources; and

(6) the President has successfully been soliciting additional export credits, to be handled by the NBU, from various export credit agencies of (e.g., South Korea and India).

A new liberalization policy? In short, Uzbekistan appears to be entering the kind of economic crisis that may precipitate genuine economic reform. There is great concern that the economic policies that the GOU has pursued since late 1996 have actually undermined the political and economic stability that the GOU had heretofore pointed to as its greatest achievement.

In mid-April, 1999, the President gave a speech before the Parliament in which he directed that economic and political "liberalization" were now the highest priorities of the GOU. It should be noted that the President also serves as the Chairman of the Cabinet of Ministers and appears to be directing the Prime Minister and the Cabinet of Ministers to focus on a broad range of liberalization initiatives. The President's speech of mid-April was followed on June 10, 1999, by a lengthy resolution of the Cabinet of Ministers outlining a number of specific liberalization programs that the GOU officials were to have elaborated by the end of the year (including a program for the introduction of current account convertibility in the year 2000, and a program aimed at accelerating the pace of WTO accession).

In January of 2000, the President again articulated in a public speech the need to pursue a new policy of liberalization. On February 1, 2000, the President again articulated this policy at a meeting of the Interdepartmental Coordinating Council on Reforms and Investment.

On February 3, 2000, the President's Apparatus issued an internal order to eight state bodies having regulatory authority:

(1) emphasizing the need for a policy of economic liberalization,

(2) criticizing GOU officials for apathy in implementing this policy, illegally interfering in the activities of economic entities, and creating barriers to entrepreneurship; and

(3) requiring those bodies to forward – by February 15 – proposals on reducing their size and avoiding illegal interference in the activity of economic entities.[1]

In early March, a 2-day conference was held for 200 GOU officials on the new liberalization and economic reform policy.[2] And on May 1, 2000, the GOU took the first major steps toward unifying the official and black market exchange rates (a necessary precondition for the introduction of current account convertibility) by eliminating the "commercial exchange rate" and devaluing the official exchange rate of the national currency by more than 35%. And there are high level rumors that another substantial devaluation will occur by mid-summer, 2000. Finally, On May 25, 2000, the Parliament will consider – and probably adopt

[1] This order tends to support the Project's prior assessments that there is a division in the GOU between a number of officials who openly are in favor of substantial liberalization (this group reportedly includes the Prime Minister and many officials in his de facto apparatus, the "Cabinet of Ministers") and officials who do not want to see their control over specific areas of economic activity decreased.

[2] Mr. Klawonn, Country Manager of the Project was the only non-GOU official requested to make a presentation.

– a document establishing the legislative priorities associated with the new liberalization policy.

With respect to WTO accession, in December of 1999, a large meeting of the now-reorganized IWG was held at the Cabinet of Ministers to discuss a program for achieving WTO accession by 2004 *at the latest* (however, recent conversations with IWG officials have indicated that there is now a strong desire to move that date forward by at least a year; but, at the moment, that appears to be somewhat unrealistic). In March 2000, the GOU finally submitted its answers to the first round of questions received from WTO member countries on its Memorandum on Foreign Trade Regime (that had been submitted to the WTO in September 1998). And the IWG has recently accelerated its efforts to finalize WT/ACC/4 and WT/ACC/5, informational documents that must be submitted to the WTO as part of the accession process.

Therefore, major macro-economic policy changes may now be on the horizon; and there appears to be a genuine desire to substantially improve and expand the legal framework affecting business and investment activity, with a very heavy emphasis on giving private businesses legal protections against a predatory bureaucracy. For example, the GOU (through the Ministry of Foreign Economic Relations) opened a formal dialogue with the American Chamber of Commerce in Uzbekistan (AmCham) to discuss in more detail many of the issues raised by the AmCham in its May 1999 White Paper on investment problems in Uzbekistan.[3] The necessity of this dialogue had been recommended by the Project several times in the previous two years.

As a result, the dialogue between the AmCham (which represents a broad segment of the foreign investment community) and the GOU has improved dramatically recently. Pursuant to the GOU's request, ad hoc working groups of the AmCham were established to develop more detailed position papers/recommendations on

(1) customs issues,

(2) tax issues,

(3) import contract registration,

(4) business registration,

(5) currency convertibility,

(6) the export earning surrender requirement,

(7) barriers to investment in the natural resource sector,

(8) banking restrictions, and

[3] We note here with some satisfaction that the AmCham developed its first investment issues White Paper in 1998 at the urging and with the direct involvement of the Project. The AmCham developed its 1999 White Paper on its own initiative; however, the Project was requested to and did provide considerable input. Thus, we believe justified in claiming that the Project's involvement was critical in (i) making a large number of GOU officials aware of the various problems in the investment environment and (ii) opening this necessary dialogue between the GOU and the foreign investment community.

(9) an arbitration law.

The Project participated in all of these working groups, and – as of April 2000 – papers containing detailed recommendations were submitted to the GOU on the first seven issues. Papers on the other two issues will be submitted in May (the paper on arbitration law contains a proposed law on international commercial arbitration, the working draft of which was provided by the Project).

Although the liberalization program, especially as articulated in the resolution of June 10, 1999,[4] still contains some troubling aspects (e.g., it contains provisions that indicate that the GOU is still determined to pursue a state-directed strategic investment policy intended to promote the production of finished goods for both the domestic and export markets), it is the Project's opinion that, as articulated by the President, the new liberalization policy constitutes a serious, substantive, positive and fundamental change in GOU policy thinking, at least among higher level officials.

Conclusion. Uzbekistan is facing a growing and very serious economic crisis. Several international organizations have produced estimates indicating that the country's GDP was either flat or actually declined in 1999. Since these estimates are all based to a greater or lesser extent on the questionable official statistics of the GOU, it can probably be assumed that GDP experienced a rather significant decline in 1999. With respect to foreign direct investment, even the GOU's official statistics demonstrate a precipitous decline in 1999. The same statistics also indicate that the GOU's borrowings from international credit sources increased significantly in 1999.

Furthermore, according to forecasts made by financial and banking experts earlier this year, Uzbekistan is having increasing difficulty in finding the foreign currency needed to service an increasingly large number of maturing international obligations. Adding pressure to this crisis is the prospect of significantly reduced hard currency earnings from cotton exports this year due to a severe water shortage; there are numerous anecdotal reports that a substantial portion of this year's cotton crop has already been lost. The water shortage has also damaged the country's wheat crop and the GOU will need to obtain credits to import foreign wheat to make up the shortfall.

Therefore, the new liberalization policy may be seen as a direct consequence of the GOU's need to access new money from sources such as the IMF, as well as the possibility of needing to enter into rescheduling negotiations with its existing creditors later this year. In short, the liberalization policy may be driven more by the perceived need to satisfy existing and potential new credit sources rather than a philosophical commitment to the economic rationale for liberalization. Whatever the motivation, there is a possibility that the GOU may begin taking steps in the short to medium term to liberalize the economy, beginning with substantial devaluations of the country's currency. Devaluing the currency also has the virtue of compressing imports, thereby conserving the country's hard currency reserves and increasing somewhat the ability of the GOU to service its international debt obligations. It can also be expected that the GOU will continue to take, at least in the short term, whatever measures it deems expedient (including a continuation of confiscatory measures that violate the rights of private investors) to obtain the hard currency needed to service its debts.

[4] Many of the ideas contained in the resolution have been the subject of a large number of memoranda, lectures, meetings and training seminars that the Project had delivered to GOU officials during the two year period prior to its promulgation.

Nevertheless, even if it is the intent of policy-level officials to begin passing laws and regulations that begin to reduce the scope of GOU involvement in the economy, that effort faces a number of challenges.

First, the liberalization policy as conceived may not go far enough to represent meaningful reform.

Second, even if high-ranking policy makers are intellectually convinced of the desirability of substantial liberalization, they face resistance from both the country's oligarchs (who currently are reaping huge economic profits from the defacto monopoly status that results largely from the privilege to convert local currency into hard currency at the still overvalued official rate and from their ability to influence GOU officials to oppress potential and existing competitors), and from the GOU bureaucracy that relies heavily on the rent-seeking opportunities that excessive regulation provides. For example, in accordance with current GOU practice, any new laws intended to implement a liberalization policy will likely be drafted by the very bureaucrats responsible for their implementation. Such bureaucrats desire increased – not decreased – regulatory authority. Thus, experience teaches that such new laws and regulations will likely be drafted in a manner that pays only lip service to a liberalization policy, while still providing the affected bureaucrats with the ambiguity and discretion they need to continue substantial rent-seeking activities.

Third, even where they are clearly drafted, it can be anticipated that the day-to-day implementation and enforcement of such laws and regulations will face substantial resistance from the court system (which has yet to demonstrate any readiness to impose the rule of law on the GOU or powerful economic players) and middle and lower level bureaucrats who will be faced with reduced authority (and thus decreased rent-seeking opportunities) to regulate private economic activity. Finally, and most important, the GOU, faced with increasing civil unrest and challenges to its authority, may – at least in the short term - opt to deal with such problems in an ever more authoritarian manner[5] that actually increases rather than diminishes state control over the economy and political life of the country.

But there is little doubt that the unsustainability of the current economic policies is becoming increasingly evident. And with or without the implementation of an economic reform policy, the country can be expected, for the foreseeable future, to experience increasing (and possibly severe) economic difficulties, with the expected concomitant negative effects on its political stability.

Changes Anticipated in Project Activities

The Government failed until recently to push forward on the procedural elements of WTO accession. For example, the Memorandum, which had been substantially completed by June of 1997, was not submitted until late September 1998; and little or no substantive steps were taken by the GOU to actively pursue WTO accession until late 1999 and early 2000. Therefore, the Project concentrated its efforts in 1999 on improving the business and regulatory environment for both foreign and local investors. Even these efforts met with limited substantive success, as the GOU spent much of 1999 developing, but not implementing, the elements of its new policy of economic liberalization. (See, e.g., the Cabinet of Ministers Resolution of June 10,1999, setting forth a comprehensive program of liberalization initiatives to be pursued by the GOU from 2000-2004).

[5] In April 2000, the GOU military began re-registering all males between the ages of 17 and 50.

However, it now appears that the GOU may be on the verge of a serious attempt at implementing some aspects of that liberalization policy, and – as a consequence –the WTO accession effort is receiving far greater attention from GOU officials. For example, a large meeting of the IWG was held in late December 1999 to set an agenda for pushing forward the process, probably as part of the GOU's new liberalization policy; and the answers to the first round of questions received from WTO member countries were submitted to the WTO in March of 2000.

The Project met on a number of occasions in late 1999 and early 2000 with GOU (particularly, MFER) officials to work on a plan for WTO assistance to be carried out in the year 2000. The latest draft of that plan was submitted to the Project for review in March 2000. As part of that plan, the Project agreed to prepare and deliver seminars on, and to assist in the preparation of, WT/ACC/4 and WT/ACC/5. The project also agreed to deliver a seminar on antidumping, countervailing duties and safeguard laws. The Project also agreed to assist the MFER and the GOU in developing a WTO compliance review mechanism to check all laws and regulatory enactments for WTO compliance.

However, because USAID decided to terminate the Project's activities by sometime in the summer of 2000, the Project has since agreed with the MFER to attempt to focus exclusively on completing as much of the agreed upon WTO training prior to Project closing. If the Project were to have continued, it would have focused both on providing the WTO accession assistance requested by the MFER, and assisting the Cabinet of Ministers in drafting the first and second rounds of new laws and regulations that are intended to implement the new policy of liberalization. It would have also worked with the Ministry of Justice to train specialists to identify WTO compliance problems with draft legislative and regulatory enactments.

Progress

Improvement of the Trade and Investment Environment

Background. In an effort to identify and eliminate obstacles to trade and investment and regulatory barriers to business development and operations, the Project continued to conduct ongoing reviews of the policy, legal and regulatory trade and investment environment that both foreign and domestic investors must deal with in registering, operating and liquidating a business. As part of this effort, the Project regularly interviewed both local and foreign businesspersons, especially those from the small and medium sized business sector, to obtain detailed information on the day-to-day impediments they face.

Such activities resulted in the development of many recommendations aimed at improving Uzbekistan's trade and investment policy, legal, and regulatory regime. A number of these recommendations were developed in conjunction with the American Chamber of Commerce in Uzbekistan (AmCham). The AmCham submitted its second annual White Paper (developed with substantial Project assistance to the GOU in May of 1999; the White Paper was followed, at the request of GOU, with a number of more detailed position papers and recommendations (also developed with Project assistance) on a range of issues.

Improvement of Trade Regime. The Project assisted the Government of Uzbekistan in improving its trade regime by providing day-to-day advice to the State Customs Committee aimed at bringing customs laws, regulations and practices into conformity with WTO requirements and accepted international practice. A more detailed description of the customs aspects of the Project's activities is provided in Section D.4 below. In addition, the Project provided the GOU with a memorandum that provided a number of recommendations aimed

at improving the trade regime by bringing the country into compliance with WTO requirements. This memo is described in Section D.3 below. The Project also developed or provided substantial assistance in developing a number of other policy papers and recommendations, described immediately below, aimed at improving other aspects of the GOU's trade regime.

- **Current account convertibility.** The Project, together with a working group of the AmCham that included the IMF resident representative, developed and submitted a position paper describing the need for a devaluation of the national currency, the elimination of the official exchange rate, and the introduction of current account convertibility. The paper also discussed the issues that must be dealt with in implementing these recommendations. The paper encouraged the GOU to abandon its current practice of using currency conversion controls as a means for controlling imports, and urged the GOU instead to use normal customs duties and international standards (including sanitary and phytosanitary standards) for that purpose. The recommendations contained in the paper are also aimed at moving the country into line with WTO requirements, as the GOU's currency convertibility controls constitute an extraordinary burdensome non-tariff barrier to trade in conflict with a number of WTO agreements. Note: the GOU took a step toward currency convertibility on May 1, 2000, when it eliminated the GOU-dictated "commercial" exchange rate and devalued the "official" rate of the national currency by 35%.

- **Import contract registration.** The Project, together with a working group of the AmCham, provided a position paper proposing measures aimed at further streamlining (and eventually eliminating) the process of import contract registration. Since import contract registration is a tactical measure used to implement currency conversion controls, the paper urged the use of the proposed streamlined process until current account convertibility is introduced, at which time import contract registration should be eliminated completely. The recommendations contained in the paper are also aimed at moving the country into line with WTO requirements, as import contract registration constitutes an extraordinary burdensome non-tariff barrier to trade in conflict with a number of WTO agreements.

- **WTO-consistent import protection laws:** The Project continued to provide the GOU with advice on the three draft laws previously supplied by the Project: Antidumping Duties Law, Countervailing Duties Law and a Safeguards Law. The draft laws are based on the requirements of the relevant WTO agreements.

- **Acceptance of certificates of conformity.** The Project determined that standards officials at the border were continuing to routinely find reasons to reject obviously genuine certificates of conformity issued by accredited foreign testing laboratories and certification bodies. This practice was being used by officials to support rent-seeking activities and to enable Customs and Standards officials to take large samples of the concerned goods "for testing." The Project again identified the continuing existence of this problem and reminded the GOU of its obligations, established under domestic law and certain international agreements, to ensure the routine acceptance of such certificates. The Project's work was adopted by the AmCham and included in the AmCham's position paper on Customs issues that was submitted to the GOU.

- **Temporary importation under bond.** The Project, together with the AmCham working group on Customs issues, issued a position paper again encouraging the GOU to establish procedures providing for the temporary importation of goods under bond. The law, the

Customs Code, provides for such importation; however, no procedures had been promulgated to implement this provision.

- **Methodology for the application of excise taxes on imported products.** The Project again reminded the GOU about a flaw in the methodology being used by the State Tax Committee to assess excise taxes on imported excisable products. The flaw resulted in the assessment of effective excise tax rates that at times were actually substantial multiples of the published nominal rates. The Project again recommended the adoption of a methodology that is consistent with international norms. Note: the Project also noted that the establishment of excise tax rates for imported goods that are higher than those applied to similar domestic products is contrary to the WTO principle of national treatment.

- **Fast track customs clearance procedures for imported perishable goods.** The Project, together with AmCham, produced a policy paper again recommending the establishment of several customs border posts that are capable of warehousing and clearing perishable goods quickly. The Project's advice was modeled on the basis of the U.S. "Aphis" system.

- **Export earnings surrender requirement.** Fifty percent of all hard currency export earnings must be converted into soums at the highly overvalued official rate. The Project, together with an AmCham working group, produced a policy paper that again demonstrated how this surrender requirement substantially impairs the ability of local producers to export competitively. The paper urged the elimination this requirement or at least a substantial reduction of the percentage subject to surrender.

- **New law "On Foreign Economic Relations."** The Project, at the request of the Cabinet of Ministers and the MFER, provided liberalizing recommendations on the substantial amendment of the law "On Foreign Economic Relations," which serves as the legal basis for much of the regulatory control exercised by the MFER over economic activity. Among other things, the Project recommended that law be amended to eliminate the authority of the MFER to require that businesses engaging in foreign trade must register as a "Participant in Foreign Economic Relations" with the MFER. The proposed amendments will be considered by the Parliament on May 25, 2000.

Improvement of Investment and Business Regulatory Environment. The Project assisted the Government of Uzbekistan in improving its investment and business regulatory environment by providing regular advice to the GOU, primarily the Cabinet of Ministers and the Presidential Apparatus, by describing and then providing recommendations for reducing a number of impediments to the establishment, operation and liquidation of business organizations in Uzbekistan. The Project's main methods for identifying these problems involved the routine critical review of the laws and regulations affecting investment and business activity and the conduct of regular and on-going interviews of more than 100 foreign investors and local businessmen. The problems that were identified as a result of these efforts allowed the Project to then develop detailed recommendations aimed at their reduction or elimination. These recommendations were incorporated into a number of policy papers submitted to the GOU, including the AmCham's May 1999 White Paper on the obstacles to foreign investment in Uzbekistan, and the issue-specific position papers later developed by AmCham at the request of the GOU.

- **VAT taxes.** The GOU assesses a 20% VAT tax on capital equipment purchased for use in productive activities. It is a long-standing international practice that VAT is not

intended as a tax on business, but a tax on consumption, and most countries remove the effect of the tax from businesses by ensuring that they are allowed a 100 percent VAT input credit at the time of the transaction. The Project, together with AmCham, developed a policy paper arguing for the adoption of such a credit in Uzbekistan.

- **Anti-Interference Order**. On February 3, 2000, the President's Apparatus issued an internal order to eight state bodies having regulatory authority (1) emphasizing the need for a policy of economic liberalization, (2) criticizing GOU officials for apathy in implementing this policy, illegally interfering in the activities of economic entities, and creating barriers to entrepreneurship; and (3) requiring those bodies to forward – by February 15 – proposals on reducing their size and avoiding illegal interference in the activity of economic entities.

- **Enforcement of the laws on foreign investment**. The AmCham's 1999 White Paper identified lack of enforcement of the foreign investment laws as a major investment problem in Uzbekistan. The Project assisted in the drafting of this section of the White Paper. The Project also independently provided the GOU with a detailed article-by-article review of the foreign investment laws identifying a number of specific instances where GOU officials had failed to observe those laws. The Project's review also provided recommendations aimed at improving the implementation of the foreign investment laws.

- **New law "On Entrepreneurship and Guarantees of Entrepreneurial Activity."** A new general law on investment activity was drafted by the Project in response to a request by several GOU officials. Using the Project's draft as a basis, the GOU drafted a new law on Investment Activity that went through first reading in The Parliament in December 1998. The new law was renamed, finalized and passed on April 14, 1999.

- **Draft law "On Guarantees of the Freedom of Entrepreneurial Activity."** The GOU redrafted a proposed law on entrepreneurial freedom that was provided to the Project for review and comment. The new law is scheduled for its first reading in the Parliament on May 25, 2000.

- **New law "On Non-Governmental Non-Commercial Organizations.** The GOU drafted a new law on non-governmental non-commercial organizations that was provided to the Project for review and comment. The new law went through first reading in The Parliament in December 1998. The law was finalized and passed on April 14, 1999.

- **Draft Business Registration Procedures.** The Project continued its efforts aimed at streamlining the procedures and easing the restrictions faced by foreign investors in registering a business in Uzbekistan. In particular, the Project regularly recommended that the GOU (i) reduce by at least 67% the minimum capital requirements applicable to enterprises with foreign investment (currently $150,000); (ii) create a one-stop shop for business registration; (iii) remove and or streamline many of the business registration procedures currently facing foreign and local investors. The Project delivered another comprehensive memo on this issue to the Cabinet of Ministers. The Project also drafted a complete new set of business registration procedures and provided these to the Cabinet of Ministers. The Project's draft business registration procedures were also adopted by the AmCham, which delivered a position paper to the GOU advocating the adoption of the draft procedures.

- **Small and Medium Sized Enterprises.** The Project engaged in ongoing efforts to educate the GOU about the critical role of SMEs in market economy countries. The

Project delivered a memorandum to the GOU pointing out how the current business regulatory environment is having a disproportionately negative impact on SMEs and – consequently – on the health of the general economic situation.

- **Draft law "On Licensing."** The Project reviewed and commented on a new draft law on licensing that is aimed at reducing the list of business activities subject to licensing, and to reduce and/or rationalize the licensing requirements applicable to those requirements. The draft law is to be considered at the Parliament on May 25, 2000.

- **Amendments to the law "On Natural Monopolies."** The Project reviewed and commented on draft amendments to the law "On Natural Monopolies." The amendments were passed by the Parliament on August 19, 1999. The Project's other work with the Antimonopoly Committee of the Ministry of Finance is described in Section C.5 of this report.

- **Draft law "On International Commercial Arbitration."** The Project drafted a new law on international commercial arbitration to deal in part with some of the inadequacies of the court system. The Project proposed this to the GOU, and it is currently being advocated by the AmCham.

- **New law "On Leasing."** The Project reviewed and commented on a new law "On leasing." The law was passed by the Parliament on April 14, 1999. The new law is aimed primarily at providing a legal basis for finance leasing.

WTO Accession: Process

The following highlights the technical assistance provided to the Government of Uzbekistan to educate and assist in their accession to the WTO:

- Assisted the Interministerial Working Group (IWG), which consists of officials from 18 state bodies, with the preparation of WTO-required materials, including WT/ACC/4 and WT/ACC/5.

- Assisted IWG in preparing answers to the first round of questions on the Memorandum received from member countries; answers to these questions were submitted to the WTO in March 2000.

- Held a series of ongoing meetings with the more focused WTO working groups that exist in each of the 18 state bodies that are members of the general IWG. Identified areas where the particular members of these WTO working groups need additional information, training, and/or assistance.

- Assisted the IWG in translating into English more than 100 laws, legal acts, regulations, instructions, internal orders, and international/regional agreements.

- Provided ongoing education to the members of the IWG and other GOU officials and members of the public about the contents and requirements of the WTO agreements, the history and organization of the WTO as an organization, the economic rationale for trade liberalization (the purpose of the WTO), the potential benefits and adjustment costs associated with WTO membership, and the WTO accession process. The education was provided in both formal training seminars (e.g., a technical 2-day seminar on the preparation of WT/ACC/4 was held in May, 1999, for officials of the IWG from the

Ministries of Agriculture, Finance and Macroeconomics and Statistics; a general WTO conference was held for all members of the IWG during the week June 14-19, 1999; and a WTO negotiation simulation was held for the senior 12 members of the IWG on June 22-23,) and in small focus group discussions with IWG and other officials from various state bodies.

- WTO education was also provided through the dissemination of numerous educational materials prepared by the Project, as well as through the translation and dissemination of official WTO documents and WTO-related articles. In this connection, the Project produced substantial new material and/or translated into Russian existing material on the contents and requirements of the WTO agreements, the history and organization of the WTO as an organization, the economic rationale for trade liberalization (the purpose of the WTO), the potential benefits and adjustment costs associated with WTO membership, and the WTO accession process. Provided this material to the general public, members of the IWG and other GOU officials - including two advisors to the President.

- Facilitated communications between the IWG and the WTO.

- Conducted ongoing monitoring of changes in the economic policy/legal framework of Uzbekistan for the purpose of identifying both positive and negative WTO-related compliance issues.

- In addition to the aforementioned economic/legal review, the Project conducted routine ongoing interviews with government officials, foreign and local business leaders, and foreign and local practicing attorneys in order to understand fully the legal regime and its implementation in Uzbekistan.

- Produced and provided to the IWG and other GOU officials – including two advisors to the President – a new WTO compliance memo identifying the major WTO compliance issues that the GOU must resolve prior to WTO accession.

- The results of the legal review were also used to prepare periodically updated drafts of WTO-required informational documents: WT/ACC/5, Information on Policy Measures Affecting Trade in Services, and WT/ACC/4, a document providing information on the extent of the subsidization of the economy (with special focus on export subsidies and the extent of the subsidization of agriculture. Both documents are currently under preparation by the concerned members of the IWG. The Project will hold a follow-up 2-day seminar on the preparation of WT/ACC/4 in April 2000. In May 2000, the Project will also begin holding service-sector specific 1-day seminars to assist the IWG prepare WT/ACC/5. The results of the legal review were also used by the Project in preparing draft answers to certain questions of WTO member countries; the GOU's first round of answers was submitted in March 2000.

WTO Accession: Legislation

Conformity to WTO Requirements

The team continually reviewed the legal and regulatory framework to identify those aspects that are not in compliance with the mandatory requirements of the WTO agreements or that may present substantial difficulty in the bilateral negotiations with WTO member countries. The review resulted in the production of a "new WTO compliance memo" that focused, in particular, on the law and regulations affecting the following areas:

- currency exchange restrictions;
- impediments to importing, including import contract registration and discriminatory and excessive excise taxes on imported goods;
- impediments to exports, including the use of discriminatory and excessive excise taxes, as well as the imposition of the highly burdensome 50% export earnings surrender requirement;
- various customs issues including customs valuation, customs fees, and rules of origin;
- intellectual property matters;
- foreign and local investment laws and regulations;
- business registration and licensing issues;
- transit restrictions;
- special purpose, antidumping and countervailing duties;
- inquiry points;
- restrictions on foreign service providers;
- government procurement;
- standards and other technical barriers to trade, such as sanitary and phytosanitary requirements; and
- government subsidies, especially export subsidies and agricultural subsidies.

The Project continually provided advice and conducted work directed at bringing many of these substantive areas into conformity with WTO requirements. In particular, the Project reviewed and proposed changes to existing laws and regulations, and in some cases drafted new laws and regulations, directed at bringing many of these substantive areas into conformity with WTO requirements.

Areas where such work was accomplished include: intellectual property, customs, antidumping, safeguards, countervailing duties, government procurement, foreign investment, business licensing, business registration, antimonopoly, and price controls. The project also again took the lead in assisting the US Embassy and the American Chamber of Commerce in Uzbekistan ("AmCham") in preparing briefing papers on many of these issues, which papers were used by the US negotiators during the second annual meeting of the US-Uzbekistan Joint Commission in Tashkent in May of 1999.

The Project continued to discuss with officials from the Cabinet of Ministers, the Ministry of Foreign Economic Relations, the Presidential Apparatus and the Ministry of Justice about the need to establish a procedure whereby all existing and proposed legislation is reviewed for WTO compliance issues. The Project continues to work with the senior legal specialists in the Presidential Apparatus and the Ministry of Justice to establish a WTO compliance review process for all existing and proposed laws, decrees and resolutions affecting trade and investment.

In addition, the Project continues to attempt to institute control mechanisms and procedures at each of the various ministries and state agencies to ensure that all existing and proposed regulations, instructions, implementing procedures and practices undergo some degree of review at the agency level in order to identify WTO compliance issues. To this end, the Project conducted mini-seminars or informational meetings with the individual officials of the WTO working groups located within each of the ministries and state agencies that are members of the IWG.

In connection with the above goal, the Project continued to prepare and/or translate a number of educational papers summarizing the provisions and implications of each of the major WTO Agreements. The Project provided these papers to the concerned members of the WTO working groups at the ministries and state agencies. This has helped the Project in its efforts to educate many Government officials about the strict nature of the requirements of the WTO Agreements and the complexity of the WTO accession process.

Institutional Development.

The Project provided critical assistance in strengthening the capabilities and/or expanding the role of several existing institutions.

Interministerial Working Group on Accession to the WTO (IWG). The Project succeeded in convincing the GOU to more efficiently organize and then institutionalize the IWG and to strengthen the capabilities of the IWG members (more than 18 state bodies) to comprehend the nature and requirements of the WTO and the process of accession, including the negotiation process. The Project continued to advocate the establishment of offices of WTO compliance at each state body to ensure that WTO requirements are complied with on an ongoing basis, even after accession. The Project routinely engages in WTO training of IWG officials aimed at educating these officials in understanding (i) the organization and operation of the WTO, (ii) the organization and process of negotiating accession, and (iii) the requirements and other content of all WTO agreements.

AmCham. The Project continued its role of encouraging and assisting the AmCham to take on the role of a lobbying organization. The Project determined that, if it was to succeed in getting the GOU to adopt liberalizing reforms, it was absolutely necessary that the GOU hear about the existence of the trade and investment problems created by the existing legal/regulatory regime, not just from technical assistance providers but also from actual foreign investors. As in 1998, the AmCham again in 1999, delivered to the GOU a White Paper entitled "Recommendations for Improved Foreign Investment Conditions in the Republic of Uzbekistan." The White Paper set forth a description of 13 major problems in the trade and investment environment of the country, together with recommendations for their resolution. As in 1998, the White Paper was again used to brief the US side of the US-Uzbekistan Joint Commission, which had its second meeting in May 1999. Furthermore, after the submission of the 1999 White Paper, the GOU (through the Ministry of Foreign Economic Relations) established a formal dialogue with the AmCham on a number of the issues identified therein.

Pursuant to the GOU's request, ad hoc working groups of the AmCham were established to develop more detailed recommendations on (1) customs issues, (2) tax issues, (3) import contract registration, (4) business registration, (5) currency convertibility, (6) the export earning surrender requirement, (7) barriers to investment in the natural resource sector, (8) banking restrictions, and (9) an arbitration law. The Project participated in all of these working groups, and – as of April 2000 – papers containing detailed recommendations were

submitted to the GOU on the first seven issues. Papers on the other two issues will be submitted in May (the paper on arbitration law contains a proposed law on arbitration drafted by the Project).

Antimonopoly Committee. The Project conducted ongoing intensive training of the staff of both central and regional antimonopoly committees. The training was directed at imparting market-based accepted methodologies for identifying and dealing with monopolies. See section D.6 below for more detailed information.

State Customs Committee. The Project conducted ongoing intensive training of the staff of both central and regional offices of the State Customs Committee. The training was directed at imparting an understanding of accepted international practice and methodologies in customs administration. See section D.5 below for more detailed information.

The Association of Advocates. The Project delivered one speech to the Association of Advocates aimed at encouraging them to play a critical role in creating a rule of law society by bringing and zealously advocating the claims of private individuals and businesses against state bodies and officials of the GOU.

The Association of Judges. The Project delivered one speech to the Association of Judges aimed at encouraging the judges to serve as the primary guarantor of the rule of law, and to undertake seriously their new role of providing an independent check on the activities of officials and state bodies.

The Supreme Economic Court. The Project gave two speeches to the Supreme Economic Court on the critical role that the rule of law, which is primarily guaranteed by the court system, plays in economic development.

The Association of Local Entrepreneurs. The Project continued its discussions with the leaders and members of this local chamber of commerce to encourage them to actively engage in a dialogue with GOU officials to identify and mutually resolve problems in the local business and investment environment.

TBT/SPS Inquiry Point. The Project continued to encourage the establishment of a TBT/SPS Inquiry Point. The Project followed up on its earlier memoranda explaining the need for and purpose of a WTO-compliant inquiry point for standards and sanitary/phytosanitary measures. The memorandum summarized WTO requirements for such an inquiry point. Uzgosstandard agreed to establish such an inquiry point in 1999, but as yet it is still not functioning.

GATS Inquiry Point. The Project continued to advocate the establishment of a GATS Inquiry Point and submitted again its proposal for establishing an inquiry point in conformity with the WTO General Agreement on Trade in Services (GATS). Work towards establishing such an inquiry point at the Ministry of Foreign Economic Relations was initiated; however, the work has now been on hold until the MFER and the GOU finalizes its plan for WTO accession.

Customs

Under the present Project the focus of technical assistance was concentrated on providing advice, as needed, to the State Customs Committee and assisting them in ensuring that the appropriate modernized and streamlined customs procedures are properly introduced.

Legislation. The previous Project was concerned with the drafting and implementation of the three principal pieces of customs legislation, the Customs Code, the Law "On Customs Tariff" and the Law "On the State Customs Committee" and also with several pieces of subsidiary legislation derived from the Customs Code. Under the current Task Order the Project Team consulted with the Legal Department of the State Customs Committee concerning the implementation of further subsidiary legislation relating to customs regimes and procedures. These were completed and issued as follows:

- **Abandonment of goods to the benefit of the State** (Regulation No. 695 of 8 April 1999);
- **Customs Bonded Warehouse** (Regulation No. 780 of 27 July 1999);
- **Rules on determining the country of origin of goods** (Rules No. 787 of 30 July 1999);
- **Re-import** (Regulation No. 818 of 14 September 1999);
- **Duty-Free Shops** (Regulation No. 719 of 10 May 1999);
- **Rates of Customs Fees** (Resolution No. 204 of 30 April 1999); and
- **Procedure for the completion of the Customs Cargo Declaration** (Procedure No. 834 of 3 November 1999).

Under the previous Task Order draft regulations on "Periodic declarations" and on "Border Enforcement of Intellectual Property" were forwarded to the Law Department. There has been no further progress on either regulation.

The draft regulation on "Periodic Declarations" is presently be reviewed by the Ministry of Justice. The draft on "Border enforcement of intellectual property is being re-worked by the Legal Department in accordance with the recommendations of the CIS customs co-operation agreements (Principles of Customs Legislation - 10th February 1995 and Co-operation and Mutual Assistance in Customs Business - 15th April 1997)

Assistance with day-to-day activities of the State Customs Committee. Generally, the assistance provided has been of a practical nature, either in the form of advisory meetings with senior officials of the State Customs Committee or informal discussions with individual officials.

The Project provided advice and information on an informal basis on various subjects including "Dry Ports", processing of imported goods under customs control, the funding of customs infrastructures and post-import control audit procedures.

The Team worked closely with the Head of the Customs Central Laboratory to prepare and issue Tariff Classification Rulings in instances where there were with the importers concerning the correct classification of imported goods. In all instances the disputes were to the detriment of the revenue

The Team assisted the Department on the Regulation of Customs Tariff and Payment by reviewing a formula based on the deductive value to be applied to the valuation of imported

goods using Method 4 (Deductive Value). An amending supplement (Supplement No. 1 of 30 December 1999) was issued to the "Instructions on the determination of customs value "

Further reviews were made of the "Rules on the declaration of customs value" issued on the basis of the unified regulations on the procedure for declaring and monitoring the customs value of goods as approved by the Council of CIS Customs Services Leaders on 14 September 1995.

The Team monitored the introduction of the new Customs Fee Structure as imposed by Resolution No. 204 of 30 April 1999. This Fee Structure was prepared in accordance with the recommendations made during the previous Task Order

Development of a formal selective inspection system. The Project Customs Team visited the following the major Customs Posts:

- Tashkent Aero Complex
- Tashkent Airport Cargo Complex
- Tashkent Rail Complex - Chukursay
- Gishtkuprik Road Border Post

The purpose of these visits was to ascertain the present situation with regard to selectivity at customs post level and determine what further work is required prior to the preparation of instructions in the form of a Selectivity Manual.

At each of these posts there is a measure of selectivity, which is determined according to the experience of the customs official. However there is no guidance from the State Customs Committee as to how this should be applied. Furthermore there is a particular problem relating to the Prosecutors Office.

Customs Inspectors are reluctant to release goods without examination as they are regularly accused by the Prosecutors Office of inefficiency in instances where they have released goods which are also subject to controls by other government departments and the goods are subsequently found not to meet the requirements of that government department. The Prosecutors Office hold the customs officials responsible for not making proper checks for conformity, standards etc. which is covered by legislation other than the Customs Code.

This matter will have to be resolved before the introduction of selectivity based on risk analysis and the other government committees given to understand the concept of selectivity based on risk analysis.

The Team carried out a comprehensive analysis, by Tariff Heading, of the rates of customs import duty to establish a basis for discussions with the State Customs Committee on "risk analysis" and selectivity.

There is still a great deal of work to be done before a Selectivity Manual can be produced but a draft manual can be produced within the future Task Order.

Advance Rulings. Articles 114 to 116 of the Customs Code make provision for the customs authority to make and issue "preliminary decisions" (advance rulings) concerning classification, valuation and country of origin.

The Team provided advice and information on the preparation for the introduction of a procedure for making advance rulings on the classification of imported goods. The background information provided related to the systems in operation in the United States and the European Union and the attention of the State Customs Committee was drawn to the fact that as members of the World Customs Committee they should consider the acceptance of the WCO recommendation "Recommendation Of The Customs Co-Operation Council On The Introduction Of The Programs For Binding Pre-Entry Classification Information (20 June 1996)"

The Head of the Central Laboratory has been authorized by the Chairman to develop this system and the Team has advised that discussions should be held with the Department of Customs Control and the Department on the Regulation of Customs Tariff and Payment so that the system can be further extended to include the issue of advance rulings on valuation and country of origin. This work will be continued in the next Task Order.

Customs Training in other Central Asian Countries. The Uzbekistan Project Team together with the Project Customs Lawyers from Turkmenistan delivered two five day "Train The Trainer" Seminars on "Customs Valuation" and "Customs Procedures"

For both seminars, international standards were used as the basis. The "Customs Valuation" seminar related to the requirements of the WTO and the "Customs Procedures" seminar was based on the standards and recommended practices of the Revised Kyoto Convention.

Customs In-House Training. The Project Customs Team worked to strengthen the institutional capabilities of the State Customs Committee of Uzbekistan. As part of the ongoing effort, the Team held regular meetings with the Chairman of the State Customs Committee as well as Heads of Department, such as the Department on the Regulation of Customs Tariff and Payment, the Department of International Relations, the Department of Customs Control and the Customs Central Laboratory.

- The Project carried out post inspections to assess compliance with Uzbek law and regulations:

- The Project, in coordination with Global Training for Development, conducted a follow-up meeting for all the participants in the "Executive Observation Training Program" designed for decision-level, policy-making Uzbek Customs officials to ascertain what the result of the program would be in terms of changes or innovations within the State Customs Committee and how best the Project could assist with these changes.

- The Project acted as liaison between U.S. Embassy and Uzbek State Customs Committee in matters dealing with narcotics matters, procurement of equipment supplied by or being procured by the U.S. Embassy or the U.S. Department of Defense, or other matters or issues of interest to the U.S. Embassy of the Uzbek State Customs Committee.

WTO Accession. The project Team participated in a seminar entitled "WTO Requirements and the Accession of Uzbekistan" and gave a presentation on the "Customs Valuation Agreement - Implementation of Article VII of the GATT 1994"

WTO -Member Questions. The Team assisted the State Customs Committee with the preparation of answers to questions from the United States, Australia and the European Union relating to customs valuation.

Institutional Development. The Project Team attended the meetings of the Customs Working Group of the American Chamber of Commerce (AmCham) to advise them on their submission to the Chairman of the State Customs Committee requesting speedier clearance for perishable goods, the computerization of customs procedures, the development of a valuation database for reference pricing and the production of a manual that outlines procedures for customs clearance, including the necessary documentation, testing requirements and national variances to international standards.

The meeting with the Chairman was successfully received and he agreed to consider computerization of customs entry procedures and the preparation of a public information manual on customs requirements and procedures.

Anti-Dumping, Countervailing and Safeguard Regimes. Although draft legislation was submitted to the Inter-Ministerial Working Group (IWG) during the period of Task Order No. 800 there has been no progress on this issue. The IWG has not met for several months. In November 1999 the Ministry of Foreign and Economic Relations requested further copies of the draft legislation but there has been no further progress. Under the new Task Order it is planned to hold a seminar funded by Global Training to which all members of the IWG will be invited. This will provide an opportunity for some discussion on how best to make progress.

Profitability and Price Controls

The Project continued providing assistance and training Anti-Monopoly Committee (AMC) under the Ministry of finance on the elimination of price controls, the classification of enterprises as monopolies, concepts of market economy and the elimination of objectionable practices and use of best practices. There has been substantial improvement in the AMC's understanding of and attitude toward their responsibilities, particularly with regard to the promotion of competition, the protection of consumers' rights, the development of de-monopolization tactics and the restructuring of the AMC's control over business conduct.

As noted in the Final Report on the last task Order, the AMC had made it an explicit goal to eliminate all price declaration requirements and the system of controlling the prices and profit margins of purported monopolies by the end of year 2000. The AMC also declared its intention to instead rely completely on a system of monitoring the economy for abuses of monopoly power. These goals are set in the AMC's program to improve its operations as stated in "Major Strategic Measures to Improve the Operations of the Committee for De-Monopolization and Competition Development under the Ministry of Finance of the Republic of Uzbekistan For 1999-2000." In order to assist the AMC in achieving these goals the Project provided the AMC with the following assistance.

- The Project assisted training AMC staff on economics and anti-monopoly policy;
- The Project participated in conducting consultative work with heads of monopoly enterprises with regard to the issues of de-monopolization and restructuring.
- The Project participated in the development of AMC's methodology of tracking market abuses among enterprises.
- The Project participated in developing and conducting training seminars on the new methodology, and consultations on its efficient introduction into the AMC's activity.

- The Project conducted an analysis of the existing problems related to the market abuses based on the competition strategy that has been developed at the regional seminars.

- The Project participated in developing an anti-trust policy, especially for 'trusts,' holdings, associations, and interlocking directorships.

- The Project participated in developing measures for implementing the law "On Protecting Rights of Consumers" as well as the law "On Competition Among Entrepreneurs and Businessmen."

- The Project participated in the development of measures on improving the organizational structure of the administration (headquarters) of the Committee on De-monopolization and Development of Competition.

Summary

Uzbekistan has taken another substantive measure on WTO accession with its submission in March 2000 of the answers to the first round of questions from WTO members on the Memorandum on Foreign Trade Regime. There is also evidence that the GOU is viewing the WTO accession process with increasing seriousness. Uzbekistan has also made considerable progress in its improvement of customs regulations and antimonopoly regulations. There are also a number of reasons to believe that GOU policy level officials are, at the moment, committed to making a number of liberalizing changes over the next 12 months in the trade and investment legal and regulatory environment. However, the political and bureaucratic obstacles to liberalization and accession are considerable. The GOU still appears to be divided in its commitment to the legal and regulatory reform necessary to achieve liberalization and ultimately to accede to the WTO. The Project had been receiving increasing requests for technical assistance from a broad range of GOU officials; however, many of those requests will go unfulfilled in light of the planned termination of Project activities in the Summer of 2000. Nevertheless, it is anticipated that the GOU will seek from other providers additional technical assistance to improve its general legal framework affecting business and investment activity, especially in the area of commercial law reform.

CUSTOMS

Kazakhstan Customs Deliverables

1. Provide advice, as needed, to the Customs Committees of Kazakhstan, and assist in performing day-to-day activities to ensure appropriate implementation of streamlined customs procedures.

The USAID Trade and Investment Project Senior Local Lawyer, Ms. Larissa Deutsche, was selected in April 1999 to be an active participant in the review of the new Customs Code by the Committee on Economic, Finance and Budget of the Mazhilis. This proactive participation allowed the USAID Trade and Investment Project to provide direct advice to insure that the Customs Code maintained conformity to WTO requirements. In addition, the Trade and Investment Project used the opportunity of the review by the Mazhilis to "fine tune" some of the points in the code and include an additional provision for voluntary disclosure of inadvertent mistakes discovered by importers during their own reviews of their records.

In April 1999 the Project also was requested by Customs to conduct a review of the Customs to International Standards. The Trade and Investment Project initiated this review based on a request of the newly appointed Head of Customs Mr. Nukenov. This review resulted in a report and recommendations for Customs Modernization. The Customs has used this information to begin the process of modernization such as liberalization on the Temporary storage to permit reduced costs for the processing of imported goods.

In assisting the Customs committee in daily activities the Trade and Investment Project has also devoted substantial resources to working with the trade community, particularly the American Chamber of Commerce, Customs Working Group (CWG) in Almaty. The Project Advisor has worked to help educate the Customs on the needs to work in closer cooperation with importers and exporters. The initial relationship between the trade community and Customs at the beginning of 1999 was based on an adversarial relationship. This has now changed and the Customs Committee is working in partnership with the trade community on many issues.

As part of the change process the Project has helped the Kazakhstan Customs in understanding the significance of the amended Kyoto Convention (sometimes referred to as the Revised Kyoto Convention) as setting the standards for international Customs practices. shortly after its passage in late June 1999, the Project translated this important convention into Russian. Kazakhstan has also shared the Russian translation of the amended Kyoto with other members of the Customs Union.

Other highlights of the work of the Trade and Investment Project with the Kazakhstan Customs include:

1999 – 2000

- Startup of an Internet Web page in cooperation with the American Chamber of Commerce (development in progress).
- Development of a more liberalized Temporary Storage regulation.
- Reduction of the maximum period for Customs clearance from 3 days to 1 day.
- Initiation of an anti-corruption program within Customs including a "hot line" for reporting corruption.
- Expanded use of pre-arrival declarations.
- Establishment of a formal consultative body from the trade community that meets with Customs for the review of proposed changes in Customs regulations, laws and procedures.
- Initiation of public information seminars to facilitate trade.

The two most difficult issues related to Customs in Kazakhstan are related to computerization and the state owned company, Kedentransservice. Both of these problems are a result of senior level government activities, not directly under the responsibility of Customs. The computerization development by the Accept Company simply put is thus far a failure paid for by the importers over the last 3 years to the tune of $20 to $25 million dollars. The Project has provided the Ministry of the Economy with alternative suggestions for computerization

using the UNTAD ASYCUDA software (01-27-00 ltr to Bektasov). Kedentransservice is a government owned company under the Ministry of Economy. Kedentransservice engages in the activities normally provided by private industry such as the operation of Customs brokerage and warehousing. Kedentransservice at the same time engages in businesses licensed and regulated by Customs and provides financial support to Customs. This continues to be a flagrant conflict of interest placing Kedentransservice at an unfair advantage over the private enterprises also engaging in the same services.

2. Assist the governments in drafting and implementing regulations in Kazakhstan, to implement the WTO new origin rules, and provide training to Customs officers. All WTO countries will be required to adopt the new rules, which will be available at the start of 1999.

In the monthly report on Customs Activities for July 1999 USAID was advised that information had been received that the new WTO Rules of Origin were far from being complete. Based on the latest estimate of a completion date the new rules for origin would not be completed during this task order. Training and changes in regulation cannot be completed until the new WTO rules of origin are completed. As advised in July 1999 the new changes in the WTO Rules of Origin have not been completed to date. Potentially these new origin rules will be completed within the next year by the WTO. Only after the completion of the new rules will this object be relevant.

3. Assist in the drafting and implementing of a Customs Advance Rulings Procedure. This is a procedure by which importers may obtain from Customs a binding written ruling regarding the treatment of their goods prior to importation.

In the Drafting of the revisions to the Customs Code done under this and previous task orders, substantial efforts were put forth to establish a sound legal basis for Advanced Rulings, also know as Preliminary Decisions. This are covered under Section XIII. The initial review of the organizational structure of Customs under this task order disclosed that the Headquarters legal section is far from adequately staffed to provide meaningful work on an Advanced Ruling system. Where Advanced Rulings have proved to be a good concept but poor in implementation is in those countries that do not have a strong, computerized central record keeping system that can track the advanced rulings by case precedent. Such is the case in Kazakhstan where computerization is lacking behind schedule.

Despite this limitation, importers particularly from the large, multinational companies know that advantage of this process and have begun requesting rulings under the Customs Code provisions. The information that we have received is that at the present time there is a backlog of over 100 requests outstanding with the Customs Committee. A draft regulation on Preliminary Decisions was prepared by the Trade and Investment Project and delivered to Customs in December 1999.

The draft regulation was modeled after the US Customs regulations on Advanced Rulings. The US model was selected for this particular regime because it uses a well established case precedent system and public disclosure policy to make "special interests", non-transparent rulings less likely. Additionally a very tightly regulated internal Customs Policy on who could issue a Preliminary Decision was prepared and delivered to Customs. Again, the intent of the policy paper was to prevent the issuance of conflicting Preliminary Decisions. Training on the process of issuing Preliminary Decisions was conducted in February 2000 using the model regulation and policy developed by the Trade and Investment Project.

At the present time the regulations and policies are under review by the Customs Committee. It is anticipated that these regulations and policy positions will be adapted in the near future.

The Trade and Investment Project initially planned on identify specialized training for the full development of a Regulations and Rulings section in the Customs that should be responsible for the issuance of Preliminary Decisions. This training at this point would not be practical until the personnel are identified and a unit established.

4. Draft and recommend a Notice and Comment procedure for customs rule making. This is a procedure by which Customs would be required to publish proposed rules in advance of their implementation for review by the trade community, taking into account comments they provide.

A review of the legislation determined that no underlying legislation is in place for a full "Notice and Comment Procedure". Additionally a review of the organizational structure of Customs compared to international norms disclosed a very weak headquarters that lacks staffing to dedicate to the procedure of Notice and Comment at this time. However, a model regulation for the inclusion of a Notice and Comment Procedure was delivered to Customs in April of 1999. The Project also suggested that the Customs Code that was being reviewed by the Parliament could include this provision in the Code. The Parliament review committee declined to establish this present for government organizations in the Customs Code.

As an alternative to a full notice and comment procedure the Trade and Investment Project began seeking alternative methods of achieving the same goals. Working with the Customs Working Group of the American Chamber of Commerce, the Trade and Investment Project assisted Customs in the formulation of an agreement with the Trade and Investment Project and the American Chamber of Commerce for the establishment of a small Web page for Customs that would permit the distribution in a more timely manner of the changes in regulations. Additionally the Trade and Investment Project recommended a procedure that would distribute all new changes in the Customs Regulations by email to a subscriber group.

The Web page is now in development with the pro bono assistance of the largest Internet provider in Kazakhstan, Nursat. The Project worked closely with the trade community in Almaty during the negotiation for this process. In January 2000 the Trade and Investment project also drafted an internal policy procedure for the Customs Committee on the distribution of email information and maintenance of the Customs Web site. Subsequently, the Chairman of the Customs Committee has issued an order establishing the Web site. During the next task order it is anticipated that the Web site will be completed and the email distribution will be put into effect.

As a second alternative to a full notice and comment procedure the Trade and Investment Project recommended to Customs the establishment of a working group from private industry that would participate with Customs in formulating new policies and regulations. Working again with the American Chamber of Commerce, Customs Working Group, a letter in January 2000 was submitted by the American Chamber of Commerce to the Chairman of the Customs Committee suggesting a full Notice and Comment procedure. On March 1, 2000 an Order was issued establishing a working group from private enterprises to work with Customs on a review of the Customs Regulations. This working group is currently meeting on an almost daily basis with participants from various organizations rotating into the group. The Trade and Investment Project has on local Customs Advisor that is participating in these sessions.

5. Assist Customs in developing a formal selective inspection system, and ensure proper implementation of detailed manual-based instructions for implementation of the system.

The use of a selective inspection system requires the development of the concept of Risk Management. Under the current provisions of the Customs Code of Kazakhstan Customs Officers can be held personally liable for the failure to detect a fraud committed by the importer. This is incorporated in Article 199 of the Customs Code. With this type of provision, the officers are very hard pressed to not conduct a complete review. To help build an understanding of the process of selectivity, the World Customs Organization Risk Assessment Manual was translated into Russian and delivered to the Customs Committee. This document provides a complete methodology for the establishment of a manually based Risk Management system.

Additionally the Project has assisted the Customs Committee by conducting a review of the current practices of the Customs for comparison to International Standards in August 1999. At the conclusion of this review a report and recommendations was prepared and presented to the Customs Committee. Included in the recommendations is the establishment of a "Red line – Green Line passenger processing system for the processing of passengers.

To develop a test program as the basis for Risk Management and Selectivity the Project has provided additional training to Customs and assisted in the development of internal policies and procedures for more frequent use of a pre-arrival declaration process. The advantage to Customs of the pre-arrival declaration is the opportunity to review commercial declarations for potential fraud in a more in depth manner prior to the arrival of the cargo. Those declarations found to have a low risk can then be released with no examination or a cursory examination. The Trade and Investment Project has suggested that the Almaty 1 rail yard can be used for a test location for both an increased use of pre-arrival declarations and the use of selectivity.

To develop a test process for the Almaty 1 rail yard the Trade and Investment Project has worked with the American Chamber of Commerce, Customs Working Group, The Association of Freight Forwarders of Kazakhstan, Kedentransservice the operator of the Almaty 1 rail yard, and Customs. In October 1999 a proposed change in Customs procedures was written and delivered. This proposal is still under consideration by Customs.

6. Assist in the drafting of customs record keeping rules.

The regulations on the retention of records are an essential element in the development of an audit, or post entry control system for a Customs Administration. Without the requirements for the retention of records, the definition of what constitutes the records to be kept, how and where they are to be kept and most importantly the access of Customs to these records, the practice of post entry control can never be realized. At the same time, without the development of the post entry control process, the use of selectivity at the point of importation presents an unacceptable risk.

In August 1999 a working draft of a record keeping requirements regulation was prepared and presented to the Customs to begin the process of refining the regulation and adapting it to the Kazakhstan Customs Code. A locally hired Customs expert based in Astana was assigned to work on this particular part of the project. In January 2000, a Proposed regulation on record keeping requirements was delivered to Customs. This regulation will assist in defining the exact records that must be maintained by the trade community, how they must be maintained, and the process for access to these records by Customs. The Customs Committee is currently reviewing the new regulation of record keeping requirements.

Training

Under this Task Order, training will be provided to Customs officials through both on-the-job training and through a series of seminars covering, at a minimum, the following areas: customs declaration, customs valuation, customs processing, customs clearance, and customs audit. The performance of customs officers at regional customs houses will be audited to determine whether customs rules are being properly applied, and to determine the effectiveness of training in order to provide remedial training. The training unit established under the previous task order will be further developed through drafting additional teaching notes for customs instructors on specific customs issues, training additional customs officers to teach using the notes, and monitoring their performance in classroom situations.

The follow is a list of the training events for Customs under this task order. In addition to the training of Customs officials, training was expanded to include training of officials from the Ministry of Economy, the Tax Administration, Tax Police and the trade community. In addition to the delivery of the training, the Customs has been provided with all training materials used both in English and in Russian. This includes both the participant materials and the instructor manuals.

March 12, 1999 - Provide OJT to Almaty 1 Rail Yard on customs clearance and processing procedures.

March 23, 1999 - Provide OJT to facility operator, Almaty 1 Rail Yard on Customs processing.

April 23, 1999 - Provide on site train to the Customs Automation Department on:

- Customs clearance schemes in the EU and US
- Paper vs. electronic filing procedures in US
- Forms compliance in electronic filing
- Forms instructions in electronic filing
- WTO regulations on Customs entry procedures
- Bonding and guarantee systems for the transport of goods.

April 27, 1999 - Provide on site training to the Customs Automation Department on:

- Customs clearance schemes in the EU and US
- Paper vs. electronic filing procedures in US
- Forms compliance in electronic filing
- Forms instructions in electronic filing
- WTO regulations on Customs entry procedures
- Bonding and guarantee systems for the transport of goods.

May 18, 1999 - Deliver OJT to the Customs Committee in Astana on customs declarations, customs valuation. customs processing, customs clearance and customs audit. The emphasis of the training was on international stands for Customs

May 25, 1999 - Deliver OJT to the Customs Committee in Astana on customs declarations, customs valuation. customs processing, customs clearance and customs audit. The emphasis of the training was on international stands for Customs

June 25, 1999 - Provide OJT to the Customs Automation Department on IT systems for Customs.

July 8, 1999 - Delivery of OJT to the Customs Committee in Astana on customs declarations, customs valuation, customs processing, customs clearance and customs audit. The emphasis of the training was on international stands for Customs.

July 28, 1999 - OJT to Customs Committee Personnel Department on employee standards development.

August 10, 1999 - Delivery of OJT to Customs Committee on customs declarations, customs valuation, customs processing customs clearance and customs audit.

October 11, 1999 - Delivery of OJT on customs classification principles to Almaty Customs House staff.

October 25, 1999 - A 3-day combined classroom and on the job training was delivered to the Almaty Customs staff of the Organizational and Analytical Department. This training will provide a foundation the development of a Risk Management Policy used for a selective examination system.

October 26, 1999 - Delivery of OJT at Almaty 1 rail yard on customs declarations, customs valuation, customs processing, and customs clearance.

October 27, 1999 - Delivery of OJT to Almaty Customs house staff on merchandise classification principles.

November 11. 1999 - Training delivered in Astana to Customs Committee on the development of the email system for the distribution of public notices and the development of a Customs Web site by local professional staff member Andrey Moiyseev.

November 18,1999 - Delivery of OJT to the Ministry of Revenue on Revised Kyoto Convention principles and practices.

November 19, 1999 - Delivery of training to the Heads of Departments, Customs Committee on international customs practices.

November 30, 1999 - Delivery of training to the Customs Committee on use of email systems.

January 20, 2000 - Delivery of training to Ministry of Economy on WTO requirements for Customs Processing fees.

January 17-22, 2000 - Presentation at the Ministry of Revenue Seminar-Conference in Astana for Tax and Customs on the Revised Kyoto Convention and comments on the provisions of the new Customs Code.

February 7-10, 2000 - A four-day training session was delivered to 27 Customs Officers from all regions of Kazakhstan. This training session covered:

1. Theory of Valuation, Classification of Goods, and Rules of Origin

2. Practical examples of application of the WTO/Kazakhstan Customs Code valuation principles
3. Development of Sources of Information for Customs Officers.
4. Pre-Arrival Declarations
5. Risk Management at the micro and macro level.
6. Advanced Customs Control through Post Entry Control.
7. Advanced Rulings, theory and application.

March 28, 2000 - A public information seminar was held in Astana by the Customs and with the participation of the USAID Trade and Investment Project advisor on the issues of the procedures for Pre-arrival declarations and the order on the liberalized interpretation of temporary storage. This is the first in planned series of public information seminars.

The Kyrgyz Republic Customs Reform

Customs Deliverables

1. Provide advice, as needed, to the Customs Committee of the Kyrgyz Republic, and assist in performing day-to-day activities to ensure appropriate implementation of streamlined customs procedures.

Work with the Kyrgyz State Customs Inspectorate (SCI) has not had the success that has been achieved in Kazakhstan. This is not due to a lack of willingness on the part of the Customs to work with the USAID Trade and Investment Project, but more to a continuing problem of instability in the upper management of Customs. At the working and mid management levels the Customs has welcomed assistance. During the last year, three Directors have taken the leadership of Customs. With each of these changes, due primarily to a lack of career stability in the civil service, significant changes both in personnel and in organizational stability have occurred in the SCI. The changes in leadership are reported to be at the direction of Government, and the President. Part of the drive is to force more production from a demand revenue[6] system that continues to cause further destabilization of the revenues. This use of a demand revenue system is further evidenced by the frequent Presidential and Government Orders that are imposed on the Customs reportedly without consultation with Customs.

The Trade and Investment Project in providing daily assistance to the State Customs Inspectorate has expanded the points of contact to upper government and to other donor organizations such as US Customs, Tacis, the International Monetary Fund and the World Bank. A prime concern for the modernization of Customs is the lack of automation. Despite repeated recommendations from both the USAID Trade and Investment Project and other donor organizations there is what can almost be described as a phobia within government about prioritizing the need for automation of the Customs. Unquestionably the issue of an automated system would reduce the ability to extract rents from importers. The Trade and Investment Project has repeatedly urged the GOK to select the UNCTAD ASYCUDA system for automation of Customs as this is the most likely system to gain donor assistance in funding. A series of meetings and information has been delivered to the GOK on the automation issue.

[6] A Demand Revenue System is the description of a process where the budget forecast drives collections. It is a carry over from the old Soviet quota system. The Customs is simply to meet quota. How that is achieved is left to the Head of Customs.

Despite the relatively infertile environment for change, significant positive changes have occurred within the Kyrgyz Customs. The Trade and Investment Project has provided advice to the SCI on the development of a complete On the Job training system that will provide for a structured training methodology at minimal costs. This systems approach to training has not been implements but the training center has all the necessary tools to effect the implementation once approved by upper management. The advancement of the Training Center is also being worked in conjunction with the Tacis Project. It is anticipated that the On The Job training system will be implemented in the next task order.

A second success story due in large part to assistance from the Trade and Investment Project is on correcting the misuse of the Free Economic Zones as a mechanism for the avoidance of duties and taxes. In a letter to Customs the Trade and Investment Project provided opinion of the issuance of Kyrgyz Certificates of Origin for tea that was repackaged in the Free Economic Zones then entered in the Kyrgyz Economy with the avoidance of duties and taxes. The loss of revenues in this instance was in the millions of soum to the government. The position of Customs was that the repackaging did not change the country of origin under the Kyrgyz Customs Code. This position was strongly opposed by special interests. With the assistance of the Trade and Investment Project, Customs prevailed on this issue and substantial recoveries of duties were reported to us by Customs.

During the last year a substantial investment in assistance to the Kyrgyz Customs has been relating to the Customs Union. This is a primary example of the critical ties that the Trade and Investment Project has on the working level with the Kyrgyz Customs. The Trade and Investment Project locally hired Customs Technical Advisor has been invited as a guest of the Kyrgyz Customs delegation to the meetings of the Heads of Customs of the Customs Union. The Customs Union has technical working groups that are addressing the closer working relations between the members of the Customs Union (Russia, Belarus, Kazakhstan, Kyrgyz, Tajikistan). The assistance to the Kyrgyz Republic on issues relating to work with the Customs Union has a five fold compounding effect. As just one example, the Trade and Investment Project conducted a technical review of the proposed Customs Union rules for the determination of Customs valuation as compared to the World Trade Organization requirements. This review identified discrepancies between the proposed Customs Union Rules and the WTO rules on valuation. Suggested modifications have been now introduced by the Kyrgyz Customs to the Customs Union that will prevent a conflict between the Kyrgyz Customs Code and the Kazakh Customs Code rules on valuation that are WTO compliant. At the same time the Russian, Belarus and Tajikisan Customs will have an international agreement on Customs Valuation that is WTO compliant. The compounding effect of our work through the Kyrgyz Customs simple can not be overstated.

Besides the Customs Issues relating to the Customs Union, the Trade and Investment Project through this participation has provided the USAID Tax and Fiscal Reform Project with Customs Union agreements that are related to Tax issues. The Trade and Investment Project has also worked in conjunction the USAID Tax and Fiscal Reform Project on moving the Ministry of Finance to a closer coordination of the State Customs Inspectorate and the State Tax Inspectorate. The Trade and Investment Project has worked with Customs while the Tax and Fiscal Reform Project has worked with the Tax Inspectorate to move both agencies to a better cross functional relationship which is critical for the collection and protection of the revenues in a VAT environment. It is anticipated that this work will be expanded upon in the next year.

Additional achievements made under the task order include:

- Review of Customs policies, regulations and Customs Code for compliance with the amended Kyoto Convention.
- Initiation of the use of Customs brokers.
- Test program on reduced steps for Customs clearance.
- Assisting the Kyrgyz Customs in joining the World Customs Organization.

2. *Assist the governments in drafting and implementing regulations in the Kyrgyz Republic, to implement the WTO new origin rules, and provide training to Customs officers. All WTO countries will be required to adopt the new rules, which will be available at the start of 1999.*

In the monthly report on Customs Activities for July 1999 USAID was advised that information had been received that the new WTO Rules of Origin were far from being complete. Based on the latest estimate of a completion date the new rules for origin would not be completed during this task order. Training and changes in regulation cannot be completed until the new WTO rules of origin are completed. As advised in July 1999 the new changes in the WTO Rules of Origin have not been completed to date. Potentially these new origin rules will be completed within the next year by the WTO. Only after the completion of the new rules will this object be relevant.

3. *Assist in the drafting and implementing of a Customs Advance Rulings Procedure. This is a procedure by which importers may obtain from Customs a binding written ruling regarding the treatment of their goods prior to importation.*

To meet the deliverables, in April 1999 a draft regulation on implementing the provisions for the law on Preliminary Decisions contained in Chapter 54, "Providing the Persons Interested with Information and Consultation on Customs Matters" of the Customs Code was provided to the State Customs Inspectorate.

As with the case of Kazakhstan an initial review of the structure of the SCI revealed that the organizational structure of the SCI was woefully inadequate to support a well organized Preliminary Decisions system that is based on case precedent. At the present time, one of the biggest underlying problems within the SCI is a lack of a computerized customs system. The full implementation of a fair and transparent Advanced Ruling System requires that rulings are not issued for special interests or that ruling are not inconsistent with each other. Further the publication of the Advanced Rulings or Preliminary decisions is necessary to prevent abuse.

In July 1999 the SCI provided the project with a modified procedure that was based on the work by the Trade and Investment Project. A review of this modified version disclosed that it will provide at least some benefit for the issuance of Preliminary Decisions but lacks a case president review process. This draft regulation still has not been issued.

4. *Draft and recommend a Notice and Comment procedure for customs rule making. This is a procedure by which Customs would be required to publish proposed rules in advance of their implementation for review by the trade community, taking into account comments they provide.*

On June 17, 1999 in a meeting with Mr. Kalyk Imankulov, Chief Advisor to the Director, SCI, Kyrgyz Republic I suggested that we should begin work on a Notice and Comment

Procedure for Customs. Mr. Imankulov said that at the present time the SCI could not implement a Notice and Comment procedure as it would not be compatible with the current practices of the Kyrgyz Government. Mr. Imankulov, while sympathetic to the need for such a procedure within the Kyrgyz Customs, advised that often times Customs was not aware of either Governmental or Presidential Decrees effecting Customs until well after the Decree was in effect. I subsequently provided Mr. Imankulov with model regulations for a notice and comment procedure. These included copies of the proposed Kazakhstan Notice and Comment Procedure (notice and com kz) and copies of the applicable US regulations.

The development of a public information system in the Kyrgyz Republic is far less developed in the Kyrgyz Republic than in Kazakhstan. It is suggested that a step back during the next task order to place more emphasis on just the general education of the trading community will be more effective. On January 13, 2000 this proposal for public information seminars as part of the work proposed for the Trade and Investment Project with Customs was suggested to the Head of the Training division, Ms. Aina Sulaimankulova. In a meeting with the newest Chief of the State Customs Inspectorate in the Kyrgyz Republic, Mr. Azamat Kangeldiev on February 4, 2000 I identified the current work being done by the Trade and Investment Project. I suggested to him that one of the areas for future development was a series of public information seminars that would be co-delivered by Customs and by the trainers from the Trade and Investment Project. Mr. Kangeldiev agreed in principle to this proposal.

5. *Assist Customs in developing a formal selective inspection system, and ensure proper implementation of detailed manual-based instructions for implementation of the system.*

The use of a selective inspection system requires the development of the concept of Risk Management. To help build an understanding of the process of selectivity, the World Customs Organization Risk Assessment Manual was translated into Russian and delivered to the State Customs Inspectorate (SCI). This document provides a complete methodology for the establishment of a manually based Risk Management system.

Additionally the Trade and Investment Project has assisted the SCI by writing a risk management proposal on the development of risk management using the limited automation capability of the Customs Statistical Department to identify high-risk importers and commodities. This information could them be disseminated manually to the Customs houses. This proposal was accepted by the Customs in a meeting on June 17, 1999. In a meeting with Ms. Ludmila Arshinova, Head of the Statistical Department, Customs Headquarters on June 30, 1999 a statistical model assumption was provided to the SCI. This model was used to identify high-risk commodities and importers for the Customs.

In addition to the statistical modeling, a series of training papers were written and provided to the SCI that are used for point of entry determinations on selectivity and targeting for further search. These covered the search of commercial aircraft, search of luggage, search of persons, and search of commercial vehicles.

6. *Assist in the drafting of customs record keeping rules.*

The regulations on the retention of records are an essential element in the development of an audit, or post entry control system for a Customs Administration. Without the requirements for the retention of records, the definition of what constitutes the records to be kept, how and where they are to be kept and most importantly the access of Customs to these records, the practice of post entry control can never be realized. At the same time, without the development of the post entry control process, the use of selectivity at the point of importation presents an unacceptable risk.

August 1999 a working draft of a record keeping requirements regulation was prepared and presented to the Customs to begin the process of refining the regulation and adapting it to the Kazakhstan Customs Code. A locally hired Customs expert based in Bishkek was assigned to work on this particular part of the project. In February 2000, a proposed regulation on record keeping requirements was delivered to Customs. This regulation will assist in defining the exact records that must be maintained by the trade community, how they must be maintained, and the process for access to these records by Customs. The State Customs Inspectorate is currently reviewing the new regulation of record keeping requirements. At the present time, it is unknown if the regulations will be adapted and issued.

Training

Under this Task Order, training will be provided to Customs officials through both on-the-job training and through a series of seminars covering, at a minimum, the following areas: customs declaration, customs valuation, customs processing, customs clearance, and customs audit. The performance of customs officers at regional customs houses will be audited to determine whether customs rules are being properly applied, and to determine the effectiveness of training in order to provide remedial training. The training unit established under the previous task order will be further developed through drafting additional teaching notes for customs instructors on specific customs issues, training additional customs officers to teach using the notes, and monitoring their performance in classroom situations.

The follow is a list of the training events for Customs under this task order. In addition to the training of Customs officials, training was expanded to include training of officials from the State Tax Inspectorate, the judiciary, and the trade community. In addition to the delivery of the training, the Customs has been provided with all training materials used both in English and in Russian. This includes both the participant materials and the instructor manuals.

March 9, 1999 - OJT provided to Kyrgyz Customs' trainer in course delivery and content.

April 5, 1999 - Provide On the Job Training (OJT) to Custom Valuation Instructor for development of class materials.

April 13, 1999 - Provide OJT to Kyrgyz Customs Training Center on training methodology and course development.

April 12 to April 15, 1999 - Delivered classroom training on Customs Valuation to State Customs Inspectorate and State Tax Inspectorate.

April 15, 1999 - A course was delivered to the staff of the SCI Training Center. Subject matter included:

- The role of the Training Center in meeting strategic objectives of Customs.
- Tracking and evaluation of training.
- Class evaluations.
- Statistical analysis of evaluations.
- Reporting the results of training.
- Training Record Keeping Requirements

May 6, 1999 - Provide OJT on international banking practices as they relate to import and export transactions to Customs Managers.

May 7, 1999 - Provide on site training at Severnaya Customs Point on customs declarations, customs valuation. customs processing, customs clearance and customs audit.

May 31 to June 4, 1999 - Training to participant from SCI and STI on:

- Post entry Control
- Audit
- Importer Record Keeping
- Declaration and Import Processing

June 7, to June 10. 1999 - Training to participant from SCI and STI on:

- Post entry Control
- Audit
- Importer Record Keeping
- Declaration and Import Processing
- Sources of Information

June 9, 1999 - Delivered OJT to Osh Customs House Contraband Unit on anti smuggling techniques and investigations.

June 14 to June 18, 1999 - Training to participant from SCI and STI on:

- Post entry Control
- Audit
- Importer Record Keeping
- Declaration and Import Processing
- Sources of Information

June 30, 1999 - Provide Training the Statistical Department of selectivity and risk management.

July 1, 1999 - Training provided to Customs on Notification Requirements to WTO for Valuation, Pre-shipment contracts and Origin Rules.

July 12, 1999 - Training delivered in Bishkek to Customs Training Center personnel on Excel and using Excel programs to manage training evaluations and statistics. Training delivered by local staff of T&I Project.

August 23, 1999 - Delivery of OJT to the Customs Training Center on development of training policies and procedures.

August 24, 1999 - Delivery of training at the Intellectual Property Seminar. Topic delivered: The role of Customs in the Enforcement of Intellectual Property Regulations.

August 25 to August 27, 1999 - Training on Customs Valuation to the Customs and Tax Inspectorates.

October 4, 1999 - Delivery of OJT on development of training methodologies to the Customs Training Center staff.

October 5 to7, 1999 - Training on Customs Valuation to the Customs and Tax Inspectorates.

November 8, 1999 - Delivery of training at Tomak Customs House and Customs Point on:

- Customs Declaration
- Customs Valuation
- Customs processing
- Selectivity
- Customs Clearance

November 9, 1999 - Delivery of training at Tomak Customs House and Customs Point on:

- Customs Declaration
- Customs Valuation
- Customs processing
- Selectivity

November 10, 1999 - Delivery of On the Job Training at Kara Balta, the Kyrgyz Republic Customs House and Customs Point on:

- Customs Declaration
- Customs Valuation
- Customs processing
- Selectivity
- Customs Clearance

November 11, 1999 - Delivery of On the Job Training at Kara Balta, the Kyrgyz Republic Customs House and Customs Point on:

- Customs Declaration
- Customs Valuation
- Customs processing
- Selectivity
- Customs Clearance

January 12, 2000 - On site training on the Customs Automation systems for the Automation Department of the Kyrgyz Customs.

January 12, 13, 2000 - Training to the Customs Training Center on training methods and record keeping requirements for training.

March 10, 2000 - Deliver lecture in Osh to the trade community on the WTO/Customs Code of the Kyrgyz Republic Customs Valuation.

March 12, 2000 - Training to the State Customs Committee on the use of public information seminars.

March 14, 2000 - Deliver lecture in Issak-kul to the trade community on the WTO/Customs Code of the Kyrgyz Republic Customs Valuation.

INTELLECTUAL PROPERTY

During the period of Task Order 801 the USAID Trade & Investment Project provided technical assistance to the Governments of Kazakhstan, the Kyrgyz Republic, Uzbekistan and Turkmenistan on matters related to the development and reform of their national systems with respect to intellectual property protection and enforcement.

The primary mandate of the Trade & Investment Project from its inception was to improve the trade and investment environments in each of the four project-countries. A principal strategy was to use the WTO accession process as a vehicle to achieve legal and regulatory reform, for the WTO accession process involves a painstakingly thorough review and analysis of all legislation affecting a country's trade and investment regime. Where the legislation is found to be out of step with the international norms, as expressed in the WTO Agreements, corrections are required in the national scheme as a requisite for membership.

However, during the pendency of the Project it became clear that the four countries have demonstrated varying levels of enthusiasm to membership in the WTO and the norms it codifies. Accordingly, the Trade and Investment Project has had to deviate from the "reform-through-accession" model for those countries that have cooled, or never really warmed, to the to the idea of WTO membership. (The WTO accession process is well underway in Kazakhstan, in its infancy in Uzbekistan, and still awaiting conception in Turkmenistan. The Kyrgyz Republic became a full member in December of the WTO in 1998).

Nevertheless, the WTO accession process, in addition to being an end in itself, has proven a valuable avenue through which to pursue reforms. And although the project -countries differ in the priority they attribute to membership and regarding the timetable for joining, the governments realize that the norms inherent in the WTO agreements are not merely happenstance. That is to say they understand that the standards embodied in the WTO agreements are necessary conditions for attracting, and keeping, much needed trade and investment—critical objectives for these states.

This WTO-centered approach, as both a catalyst to reform and as a yardstick of performance, applies no less to the area of intellectual property than to other areas of trade and investment. Intellectual property is termed the "third pillar" of the WTO system. The GATT, which dealt only with trade in goods, added trade in services (GATS) and intellectual property (TRIPS) when it was transformed into the WTO. During the TRIPS negotiations "policymakers began to see that investment, trade, and technology transfer were discouraged by weak enforcement of intellectual property rights and thus that indigenous innovation and expression activity might be better encouraged by protection than by piracy of intellectual property."[7] Since the formation of the WTO five years ago, intellectual property has not diminished in its importance to world trade but, instead, has skyrocketed to center stage in today's technology-weighted global economy.

Intellectual property (IP) comprises several separate, but related, fields. They are, to use the categories of the WTO/TRIPS Agreement: patents, industrial designs, copyrights, trademarks, geographic indications, layout designs of integrated circuits, and trade secrets.

[7] Ryan, Michael P., 1998, Knowledge Diplomacy: Global Competition and the Politics of Intellectual Property, Brookings Institution Press, p. 17.

TRIPS builds on the legal base provided by the Paris Convention for the Protection of Industrial Property (1967), the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961), the Berne Convention for the Protection of Literary and Artistic Works (1971), and the Washington Treaty in Respect of Integrated Circuits (1989).

The project-countries have, by and large, developed their IP legislation with an eye on TRIPS (although some have had a closer eye on the Agreement than other). Likewise, the Project has analyzed legislation and reform efforts through the lens of the TRIPS agreement.

Technical assistance provided in the area of intellectual property, for purposes of this Report, can be divided into roughly three categories: 1) Legislation 2) "Geneva" assistance and 3) Training and education initiatives. Note that although the four project-countries have had widely divergent timetables regarding intellectual property reforms, many of the problems and issues are fungible, and, as a consequence, so to are initiatives brought to bear on these issues. This has permitted a certain amount of cross-fertilization between countries. This IP section of the Final Report will, where convenient. discuss such efforts collectively while others will be summarized country by country.

IP Counterparts:

As the field of intellectual property involves different subjects (i.e. patents, trademarks, copyrights, trade secrets) under the jurisdiction of different state agencies and the TRIPS agreement reaches even beyond the agencies directly responsible for intellectual property (i.e. customs, the judiciary and law enforcement bodies). the state bodies with which the Project works are many. A short list is illustrative:

- Patent and Trademark Offices: responsible for the granting of patents and trademarks and initiating legislation; constituted in all four project countries;
- Copyright Committees: responsible for legislation in the area of copyright and "neighboring rights" (i.e. rights of performers, producers of phonograms and broadcasters). It is a separate agency from the Patent and Trademark Offices in Kazakhstan and Uzbekistan but is a division within the Patent and Trademark Agency in the Kyrgyz Republic; no agency responsible for copyrights currently exists in Turkmenistan;
- Antimonopoly Committees: the principle agency that deals with matters of unfair competition such as unauthorized use of another's trademark;
- Customs Committees: the lead agency responsible for instituting border measures protection of intellectual property rights;
- Ministries of Justice: the chief agency to review and approve all new legislation in addition to overseeing the Prosecutor's Office and the Courts-- key for enforcement and implementation;
- Parliaments: responsible for enacting and amending legislation;
- Cabinets of Ministers: responsible for reviewing and approving regulations;
- Other special committees: Both Kazakhstan and the Kyrgyz Republic have in the past year set up interagency committees as mechanisms for dealing with policy formation and enforcement issues regarding intellectual property. Moreover there are separate committees established for the WTO accessions of Kazakhstan and Uzbekistan and for post-accession work in the Kyrgyz Republic. In addition there are *ad hoc* working groups formed to work select issues or pieces of legislation

In addition to official state agencies, intellectual property protection and enforcement implicates various non-state bodies—public associations, creative unions and industry groups. The best examples are the associations responsible for the collective management of authors' rights. These "public" organizations monitor uses of copyrighted works, and collect and distribute royalties to authors for these uses. These public organizations are in their infancy in Kazakhstan and remain state functions in the Kyrgyz Republic and Uzbekistan. Their status in Turkmenistan is uncertain.

A third category of "counterparts" if you will, is that of the "public"—those involved in the development or use of intellectual property. The best example is that of the broadcast industry (TV, cable, radio) which both produces protected works and consumes (i.e. transmits) copyrighted works. During the reporting period the Project has provided assistance to individuals in all three of these counterpart categories.

Project-wide Initiatives:

Border Measures

The enforcement provisions of the TRIPS agreement require member countries to adopt "border measures" for the protection of intellectual property rights (IPR). It is based on the recognition of the importance of customs bodies in the fight against trade in pirated copyright works and counterfeit trademarks. The procedure is to permit owners of IPR to apply to customs to suspend the release of goods suspected of violating IPR pending judicial determination. The Project has assisted the countries of the CAR to develop border measures regimes within their respective customs bodies.

Kazakhstan, with project assistance, amended its customs code in July 1999 to provide the authority to implement a border measures system. The Kyrgyz Republic, as the sole member of TRIPS in the CIS, grants such powers to its customs authorities. In Uzbekistan, the customs code, though far from perfect on this point, refers to the power of customs to enforce IPR. Thus authority resides with customs to adopt regulations which would detail the procedures for an effective border measures regime. During the reporting period the Project formed working groups, held numerous discussions with counterparts, commented on draft regulations, provided Russian language translations of key materials and provided training on the subject. On March 17, 2000, the customs bodies of the CIS met in Moscow to develop an agreement on border protection of IPR. The Project has provided comments on the draft agreement.

Even though progress has been made, instituting a border measures regime in these countries has proved challenging, not only due to the lack of automation within customs but because of the different agencies involved in devising the system. Customs does not have expertise in IP; the IP agencies (Copyright, Patent and Trademark) do not have knowledge or jurisdiction over customs procedures. Judicial procedures are also implicated in such a system. As a result, the most fruitful approach is to operate through working groups comprised of representatives from each of the affected agencies. The Project has been asked to take a coordinating role in Kazakhstan, has formed an informal interagency group in Uzbekistan, and is operating through the "Extended Committee of the State Agency of Intellectual Property in the Kyrgyz Republic. Turkmenistan has not yet adopted its revised customs code the draft of which contains provisions for the protection of IPR. .

Recently, in Kazakhstan, the President's Foreign Investment Council (a working group comprised of members of the business community) added IPR to its list of agenda items. The

Project, working with the private sector's Coalition for Intellectual Property Rights, specifically targeted "border measures" as a priority for its April 2000 action plan.

To date, none of the countries have a border measures system "up and running" however Kazakhstan and the Kyrgyz Republic should be ready to implements systems this year. There is hope that with assistance Uzbekistan can make marked progress this year towards such a system.

Geneva Assistance

The Project always devotes a substantial amount of time to assisting the project- countries with "Geneva." "Geneva" is a shorthand reference to the many and varied correspondence and paper traffic that travels between an acceding country and the WTO Secretariat, its constituent bodies, and the member countries of the Working Parties formed pursuant to the accession. This was true during the reporting period in the area of intellectual property as well. Acceding countries must file copies of all IP laws with the WTO Secretariat in the national language and an official WTO language. Several Kazak IP laws were reviewed, enacted and notified in English during the reporting period with Project assistance. Moreover, the submitted legislation often prompts questions and requests for clarification from Working Party countries which must in turn be responded to by the acceding country.

Such back and forth dialogue between the countries and Geneva does not end upon accession. In the area of intellectual property several sets of questions from members were submitted, via the TRIPS Council, to the Kyrgyz Republic this year. The Project assisted Kyrgyzpatent with its responses and in completing and filing its Checklist on Issues of Enforcement this year. In addition, it is incumbent on members to make specific "notifications" to Geneva (i.e. there are 166 for the Kyrgyz Republic). The Project directed this effort and developed materials that were the basis for a series of Notification Workshops. Officials from Kyrgyzpatent were specifically trained in the TRIPS Council notifications and procedures.

Training and Education

A key aspect of the Project's IP assistance during the reporting period focused on training and education. Notions of intellectual property, like those concerning ownership of physical property, are not intuitively understood given the region's socialist roots. IP, by its intangible nature, is even more anathema to the region. It is critical that the underlying philosophy for granting and enforcing rights in IP be embraced at some level—if not wholeheartedly—before progress can be made in enforcing rights codified in the laws. Such a paradigm shift is required by both government officials responsible for developing (i.e. legislative and executive) and implementing policy (i.e. judicial) as well as by the makers and users of IP objects in order to protect, claim, and pursue enforcement of IPR. To this end the Project devoted considerable efforts to educating and informing (persuading) the various players involved in IPR.

During the reporting period, the Project conducted intellectual property seminars in the capitals of Almaty, Bishkek and Tashkent with the support of AED/Global Training Project. Although the programs differed from city to city, each two-day event focused on the nation's legislation as contrasted with its international commitments as reflected in its current and anticipated treaty obligations. Substantial consideration was given to issues of implementation and enforcement. The Bishkek event was held in August of 1999 and featured the US Register of Copyrights among its lecturers. The Almaty seminar was held in March 2000, and benefited from the participation of three industry experts from Moscow. The Tashkent workshop was held the same month and also featured the Moscow experts in

addition to a copyright authority from WIPO in Geneva. All three events were well attended. The high level of presenters, both local and foreign highlighted the critical issues requiring immediate attention in order for these countries to meet international standards of IPR protection. During the recent March events many "side bars" were held to discuss specific areas of assistance in which the Project could contribute. These discussions created a certain enthusiasm to exploit during the coming contract period.

In addition to these in-country events, the United States Patent and Trademark Office, at the urging of the Project, set aside space for CAR representatives at its Visiting Scholars Program during ten days in October 1999. The Project financed and arranged for four officials to attend: two from the State Agency for Intellectual Property from the Kyrgyz Republic, and one each from the Patent and Trademark Offices of Uzbekistan and Kazakhstan. (Unfortunately a suitable candidate could not be identified from Turkmenistan). This well organized and comprehensive program covered patents, trademarks and copyrights and the institutional frameworks necessary to operate functioning systems. The participants gained first hand knowledge of how such systems operate in the United States and came back with a host of materials to inform their respective agencies.

The Project supported the Kyrgyz delegation to the WTO Ministerial meeting in Seattle, Washington in December 1999. The Director of the Kyrgyz State Agency on Intellectual Property was a part of the delegation. During his travel to the United States, the Project developed an itinerary and supplied support for meetings with his US counterparts in Washington, D.C. These contacts proved instrumental in keeping the Kyrgyz Republic off the US Trade Representative's (USTR) "Watch List" and within the GSP program.

Aside from the above IP specific programs, the Project's IP advisor developed and delivered the IP (TRIPS) component at several Project events on the subject of trade and investment related issues. Specifically, IP components were part of the June 1999 WTO program in Tashkent; the September 1999 Trade & Investment program in Ashgabad, the WTO seminar in Astana, and at two separate trade and investment seminars in the Kyrgyz Republic directed at the business community held in the cities of Osh and Issy Kul.

Also during the reporting period there were several regional seminars organized by the World Intellectual Property Organization in which the Project's IP advisor participated and presented. These included: the June seminar in Almaty on the subject of the new WIPO treaties and issues of copyright enforcement, a Bishkek seminar devoted to issues of collective management of author's rights, and a December 1999 event in Almaty on the subject of border enforcement of IPR. Lastly an IP presentation was made at a science fair held in Ashkabad in the autumn of 1999.

United States Bilateral Trade Agreements:

All four- project countries entered into bilateral trade agreements with the United States in the early nineties. These agreements contain commitments to protect intellectual property rights in return for "normal trade relations" (formerly "most favored nation" status). Pursuant to the IP obligations contained in these agreements, the International Intellectual Property Alliance, (IIPA) a Washington-based group representing US copyright industry interests, filed two important documents with the USTR during the past year. These filings allege that the Kyrgyz Republic, Kazakhstan, Uzbekistan and Turkmenistan (among others) have failed to meet their bilateral treaty obligations to provide "adequate and effective protection of intellectual property rights." The first petition was filed pursuant to the Special 301 process and requested that these countries be placed on the USTR's "Watch List." The second

petition seeks to have the GSP[8] benefits of the project-countries revoked (with the exception of Turkmenistan which was not granted GSP treatment). Again, the basis for the petition is the alleged failure to provide adequate and effective protection for IPR.

The Project has used the IIPA filings to bring to the attention of its IP counterparts the existence of the bilateral agreements, their obligations regarding IPR, and the consequences of failing to meet these obligations. Akin to using desired WTO accession as a tool for advocating for IP reforms, the Project has used the 301 and GSP processes to make its case. Given that all four project-countries are subject to the US bilateral and that three of the four benefit from GSP treatment this strategy has been useful.

In its petitions IIPA requested that the USTR place all four project-countries on its Watch List. The list was made public on May 1st, 2000, and the USTR followed IIPA's recommendations with the exception of the Kyrgyz Republic. In the related annual GSP review, hearings were scheduled for Kazakhstan and Uzbekistan for May 12, 2000, while the USTR failed to accept IIPA's GSP petition with respect to the Kyrgyz Republic. While piracy rates for copyrighted works remain high in all four project-countries, it is believed that the KR avoided 301 placement and GSP sanctions due to the active engagement of Kyrgyzpatent's director with the USTR and other US counterparts. This engagement is the result of the Project's active facilitation.

Country specific initiatives:

The Kyrgyz Republic

Laudably, the Kyrgyz Republic achieved full WTO membership in December of 1998. It is the only CIS country to have done so. The Kyrgyz Republic, having completed the accession process in record time, was consumed during the reporting period with matters attendant to institutionalizing the interagency body formed for its accession and formalizing its procedures for communicating with other state agencies responsible for WTO matters as well as with the WTO and its constituent bodies in Geneva. The Project has directed these efforts. In particular, and to the point, TRIPS documents are now routed directly to Kyrgyzpatent, the point agency for intellectual property matters. IP related documents are catalogues and archived at Kyrgyzpatent. Also, the Project has assisted Kyrygyzpatent in getting all pertinent laws and regulations, in English on its web site.

The Kyrgyz Republic's required notifications to the TRIPS Counsel were made in a professional and timely manner with the assistance of the Project. During the reporting period several sets of questions from member countries were submitted and responded to with Project advice and input. Specialized training was provided by the project regarding notification procedures in general and IP notifications in particular.

To its credit the Kyrgyz Republic became one of the first countries to sign the "new" WIPO treaties. These treaties were adopted post-TRIPS at the diplomatic conference in Geneva in December 1996. They do not enter into force until thirty countries ratify and deposit, which will hopefully happen at the end of this year. The Kyrgyz parliament for its part is expected to take up the ratification debate in its next session. In addition, the Kyrgyz Republic has prepared legislation, now with parliament, to ratify the Geneva Phonograms Convention, also expected for parliamentary action in the coming months.

[8] The Generalized System of Preferences (GSP) program is administered by the USTR. It provides certain developing countries with duty-free treatment to eligible products exported to the United States.

On anther issue, the Project provided comments to the law on Trade Names. The Project felt the law was not needed given the current law on trademarks and the law on unfair competition. Nevertheless the law was adopted in December of 1999 and the Project is now seeking amendments to eliminate certain bothersome provisions.

In November 1999 the Kyrygz government adopted a resolution creating an Extended Committee of the State Agency on Intellectual Property to coordinate efforts related to IPR enforcement. The Committee held its second meeting on April 13, 2000 at which the Project delivered remarks on the development of the customs border measures procedure. Subsequent to the meeting the Project was asked to provide comments on the recent draft CIS customs agreement on Measures to Prevent the Import and Export of Counterfeit Goods.

During the reporting period the Project worked with the legal staff of USAID/Internews to troubleshoot difficulties the broadcast industry is having with government regulation in the area of licensing audiovisual works. This work is expected to increase over the next contract period.

Kazakhstan

A number of TRIPs-related laws and regulations were enacted in Kazakhstan during the reporting period. Chief among these were: the Patent law (July 16, 1999), Trademark Law (July 26, 1999), the Law on Selective Achievements (July 13, 1999). The Project reviewed and commented on select provisions of these acts. The laws were notified to Geneva in October 1999. Also, on July 16, 1999 article 218 was added to the customs code. Article 218 contains the principle authority for border measures protection of IPR. The Project was instrumental in the customs code amendments and is active in the development of the implementing regulations which are necessary to bring the system "on line."

Other legislation underdevelopment and pending enactment are the laws on Commercial Secrets and Integrated Circuits, both of which implicate by the TRIPS agreement.

The law on integrated circuits has recently been approved by the Ministry of Justice and is expected to be enacted in the near future. The law on commercial (trade) secrets continues to be reworked. The Project has provided comments on the law. Notwithstanding that several of its comments have been incorporated into the latest draft, the Project would have to see additional revisions made to the law before supporting its passage.

Kazakhstan is not yet a member of TRIPS and, as a result, there exists a gap in its legislation concerning the protection of sound recordings. This makes it all the more important for Kazakhstan to join the Geneva Phonograms Convention. Fortunately, on April 19, 2000, the law on ratifying the Geneva Convention passed the lower house of Parliament and has now moved to the Senate. It is expected that the Senate will approve the legislation in the next few months. Another significant achievement this year was Kazakhstan's adherence to the Berne Convention. The Copyright Committee, under the Ministry of Justice has vowed to enact implementing amendments this year to the copyright law pursuant to the Berne and Geneva conventions—a position that the Project has actively advocated.

Kazakhstan has signed both new WIPO treaties (i.e. Copyright and Phonograms) but has ratified neither. These treaties update the Berne Convention and the Rome Convention for the "digital age." It is hoped that the parliament can be moved to ratify these agreements by the end of the year. Lastly, the antimonopoly committee has introduced amendments to the

law on Unfair Competition. The Project reviewed and commented on the proposed amendments.

Uzbekistan

Uzbekistan is in its early stages of the accession process and has yet to have its first Working Party meeting. Because of its lukewarm devotion to WTO membership, the TRIPS standards are not driving IP reform efforts in Uzbekistan. Nor has Uzbekistan made any progress towards joining key conventions such as Berne, Geneva, Rome or the new WIPO treaties. Nevertheless there have been certain achievements in the area of IP during the year. The Patent and Trademark Office has developed new trademark law and a law on integrated circuits. Significantly, amendments to the IP provisions of the criminal code have been proposed recently and, if adopted, would be a welcome improvement to the current provisions which are woefully inadequate as a deterrent to IPR infringement. Furthermore, Customs has taken an interest in instituting a border measures regime in line with the norms of the TRIPS agreement. The recent March seminar raised the awareness in the country of the importance of granting IPR protection and, through the remarks of numerous foreign experts, illustrated how behind Uzbekistan is in the development of its IP regime with respect to its neighbors. It is hoped that the May GSP hearings in Washington will add a further impetus for Uzbekistan to move forward with needed reforms.

Turkmenistan

During the reporting period Turkmenistan developed two new laws with respect to Patents and Trademarks. Prior legislation covered both fields in one law. WIPO commented extensively on the draft patent law. The Project was invited to comment to the trademark law. The regional IP advisor provided detail comments on the draft. Pursuant to these comments several working sessions were held with the deputy director of the Patent and Trademark Office and his skeleton staff to "mark up" the legislation. The revised draft, as of this writing, is awaiting action by the Parliament.

As noted earlier, much of the Project's IP assistance in Turkmenistan centered on training and education. The Project delivered remarks on the TRIPS Agreement and its importance to international trade as part of a broader three-day event devoted to trade and investment issues in Turkmenistan. Subsequently, the Team's IP advisor was invited to address a gathering of Turkmen scientists, inventors and businessmen on the subject of licensing technology. In addition, as part of the Project's educational outreach program, the Project's local attorney delivered an introductory series of university lectures on the subject of intellectual property.

Conclusion:

Progress in the field of IP during the reporting period obtained uneven results across the four project-countries. Not surprisingly, initiatives within the Project's control, requiring minimum commitments from counterparts--such as training and education events- were very successful. Other efforts, however, such as the enactment of legislative changes, which require the political will of the country to accomplish such reforms, obtained more mixed results. The governments of the Kyrgyz Republic and Kazakhstan exhibited fairly receptive attitudes to reform initiatives. at least relative to Uzbekistan and Turkmenistan. This was due in large measure to their WTO ambitions.

Nevertheless, certain initiatives have gained a foothold in all countries, and good working relationships have been nurtured, and trust gained, between the Project and its various

counterparts. The Project has identified discrete areas where real progress can be achieved over the next contract period in those countries where USAID will continue to be engaged.

PROCUREMENT

During the period of performance, the USAID Trade and Investment Project employed a Regional Procurement Attorney to provide technical assistance in Kazakhstan, the Kyrgyz Republic, Uzbekistan, and Turkmenistan. The overall objective of the technical assistance was to advance development of public procurement systems in each of these countries. Since each country was at a different stage of development with respect to public procurement, both the tasks performed and the results achieved differed significantly.

As background, the procurement activity of the governments in the Region accounts for the expenditure of that part of the national budget of each country that is not devoted to public salaries and debt service. While the figure will vary from country to country and depend upon how the figures are calculated, it is safe to say that in centrally managed economies, over 50% of the national budget is expended through the government procurement "system." These combined expenditures are undoubtedly the most significant economic activity in the Region. Thus, government procurement activity has a heavy impact on private sector development, on meaningful business development, on attracting foreign capital, and on giving substance to budget reform measures. In addition, and if desired, targeting of some aspects of government procurement activity can greatly benefit specific types of economic development, e.g. use of small business set asides to advance development of small and medium enterprises.

After reviewing the status of government procurement reform in each country in the Region and analyzing basic rule of law issues, development of a meaningful "system" for government procurement in each country was determined to be a simple and unifying objective for Project efforts in this subject area. Defining the objective in this way was also consistent with the notion that virtually all Project technical assistance in this subject area has regional relevance and applicability, since many of the problems and obstacles to development are similar in all countries in the region and the resolutions are based on common, well-accepted principles and procedures. Thus, using Project resources to assist in basic system development work was consistent with virtually all deliverables and, as important, consistent with and supportive of a wide range of AID program objectives in the Region. It bears noting that while much of the Project Scope of Work was directed toward meeting WTO requirements on government procurement, none of the procurement "systems" in the Region is even close to fulfilling the long-term objective of membership in the WTO Agreement on Government Procurement. However, Project assistance, particularly in Kazakhstan and the Kyrgyz Republic, has succeeded in moving each country closer to this long-term objective.

In the Kyrgyz Republic and Kazakhstan, the approach outlined above yielded specific tangible results and a working partnership in which well-motivated State Procurement Agencies have put Project technical assistance to good use as they move the process of system development forward. The procurement "system" in each of these countries was in a similar stage of development at the beginning of the reporting period, with actual implementation in the Kyrgyz Republic somewhat more advanced. In each instance, concrete legal reform advances and administrative steps have been taken during the reporting period which will move these "systems" significantly closer to meeting WTO requirements, particularly if continued development of information technology tools is encouraged and supported.

While meeting these requirements will take time in each country, results to date in Kazakhstan and the Kyrgyz Republic suggest that such meaningful and sustainable development is probable and that continued technical assistance would continue to yield significant results. With direct AID funding, a Government Procurement Training and Information Center in the Kyrgyz Republic is taking shape as a model for replication in the Region. Using the Center as a focal point, the Project has used direct AID funding to develop prototype procurement and supplier databases which have the potential to add transparency, efficiency and economy to the evolving procurement system and which have ready Regional applicability. State procurement website development is underway with Project assistance in both Kazakhstan and the Kyrgyz Republic which will eventually provide these countries with direct access to world markets and spur commercial and investor interest in the Region.

In Uzbekistan, the system development approach is just beginning to bear fruit with a new and somewhat convincing request by the Uzbek Government to assist in shaping a Government Procurement Unit to lead the drive toward adoption of a government procurement law and establishment of a State Procurement Agency. Since the new law is likely to be adopted in May and Project technical assistance is scheduled to end in May, the implementation assistance contemplated in the Project Scope of Work will not be completed, except to the extent that relevant work done in Kazakhstan and the Kyrgyz Republic will be imparted to Uzbek authorities as models for their own development.

In Turkmenistan, the GOT established a Government Procurement Unit in the Ministry of Economy and Finance in August 1999 that has been awaiting funding from the World Bank since then. The Project developed a draft work plan for the Unit with the Ministry and agreed to provide technical assistance to the Unit in drafting a law and regulations that will provide the legal framework for a government procurement system in Turkmenistan. Unfortunately, the early promise of a Unit to work as a counterpart in developing this legal framework has never materialized because the Unit has never come to life despite Project efforts to get the World Bank and the GOT to resolve their differences and fund the Unit. Accordingly, as in Uzbekistan, relevant work done in Kazakhstan and the Kyrgyz Republic will be available to the GOT as models when development of a procurement system moves forward.

The steps being taken in the Region toward development of meaningful government procurement systems counter the notion that progress toward rule of law is too sporadic to make much of a difference. While some of the macroeconomic prescriptions for economic development in the Region may be meeting both resistance and reality, it seems that the governments of each country are coming to understand that procurement reform is a good government issue and can go forward even while debate about other issues continues. Further, it is important to note that assisting governments in the Region to improve revenue production and budgeting systems is largely reduced to an academic exercise if expenditure of the funds is uncontrolled. Put another way, the absence of a meaningful "system" for government procurement will cripple efforts at establishing responsible fiscal regimes in the countries of the Region.

Project technical assistance during this reporting period has made a substantial positive impact in Kazakhstan and the Kyrgyz Republic. A meaningful "system" for government procurement in each of those countries is developing. As they continue to develop and mature, the progress made and the lessons learned should spur more rapid progress in Uzbekistan and Turkmenistan, particularly in Uzbekistan where a new law which has been the focus of Project assistance is about to be adopted.

Specific Deliverables

Kazakhstan and Uzbekistan

TOR Requirement: Continue to assist the governments in implementing all necessary measures to improve the legal regimes and make them compliant with WTO requirements on government procurement. [p. 7 and p. 17]

Deliverables: In Kazakhstan, the Project reviewed all existing procurement legislation and implementing regulations and worked with the State Procurement Agency (SPA) to develop an improved and complete legal framework for a government procurement system that will eventually meet WTO standards. Legal analytical charts were prepared as a basic tool for analyzing and outlining necessary improvements in the legal framework. Legal Memoranda were prepared and delivered to the SPA addressing significant issues.

Legal analytical charts were prepared as a basic tool for analyzing and outlining necessary improvements in the legal framework. Legal Memoranda were prepared and delivered to the SPA addressing significant issues.

In Uzbekistan, the Project worked with appropriate government officials (at present in the Cabinet of Ministers) to continue to advocate for adoption of a government procurement law and creation of a state agency responsible for implementation of that law. Meeting this deliverable included preparation of memoranda which outlined the arguments for adoption of the law and creation of the agency to assist government officials in overcoming opposition to these measures.

TOR Requirement: Assist in developing implementing regulations to the recently enacted law on government procurement of the GOK, and help the GOU with implementing regulations on government procurement. [p. 8 and p.18]

Deliverables: In Kazakhstan, where both an amended government procurement law and some implementing regulations exist, The Project worked with the State Procurement Agency to draft implementing regulations which fill the gaps in the regulatory framework, with special emphasis on those matters closely related to meeting international standards.

In Uzbekistan, where no law exists and the earliest possible adoption date is May 2000, the Project provided materials and some analysis relating to procurement developments in the Kyrgyz Republic and Kazakhstan and certain standard implementing regulations which will form the basis for virtually any government procurement system that will meet international standards. In addition, the Project facilitated attendance by the GOU official most involved in procurement issues at a Project-sponsored government procurement training conference in the Kyrgyz Republic at which development of the Kyrgyz system for government procurement was the focus.

TOR Requirement: Assist in establishing Procurement Training and Information Centers in Kazakhstan and Uzbekistan. The Center, in addition to providing training, shall operate as an information clearing house for state agencies as well as the private sector. The Center shall serve as (a) a repository for procurement related laws, bulletins, sample documents and other materials, and (b) a forum for seminars, meetings and workshops for both public and private groups involved in the procurement process. [p. 8 and p.19]

Deliverables: For the outline to establish a meaningful Procurement Training and Information Center, see the Deliverables section under the similar TOR for the Kyrgyz Republic. Referenced in that section are specific expenditures of AID funds directed toward development of such a Center. If a Procurement Training and Information Center is to be established in Kazakhstan and another in Uzbekistan, the application of similar resources in each of those countries will be required. However, much of the work done in the Kyrgyz Republic are directly applicable to similar efforts in both Kazakhstan and Uzbekistan, if similar resources are available. Note as well that a fully functioning Training and Information Center in the Kyrgyz Republic might be upgraded to meet regional needs.

In Kazakhstan, the Project discussed with the SPA a general format for establishment of a Procurement Training and Information Center and has assisted the SPA in development of a government procurement website.

In Uzbekistan, development of a training and information center in any meaningful sense is impossible in the absence of a state procurement agency.

TOR Requirement: Assist the GOU and GOK to develop educational materials such as articles and pamphlets. Also conduct seminars to educate the business community and government officials about the recently enacted laws in the area of government procurement. [p. 9 and p. 19]

Deliverables: In Kazakhstan, the Project developed analytical charts and other written materials which are designed to both assist the legal reform effort and serve as training tools for the SPA, procuring entities and the private sector. In addition, Kazakh procurement officials attended the Project-sponsored government procurement training conference in The Kyrgyz Republic, at which relevant educational and training materials were distributed.

In Uzbekistan, in the absence of a law or agency to serve as a counterpart, the best that could be done in this area was the ongoing exposure of GOU officials (see above re attendance at the Kyrgyz conference) to materials developed for use in other countries.

TOR Requirement: Assist both countries in developing appropriate databases and decision-support systems to properly implement the law on government procurement. [p. 9 and p. 19]

Deliverables: See the Deliverable set forth below regarding the establishment of a Procurement Training and Information Center in The Kyrgyz Republic and the development of pilot procurement databases. As noted above with regard to development of training and information centers, the pilot databases developed by the Project in The Kyrgyz Republic are readily transferable if the resources are available to do so.

TOR Requirement: Continue to organize, as needed, in-country seminars for policy makers in Kazakhstan and Uzbekistan on the substance and requirements of WTO agreements, including the Agreement on Government Procurement GPA). [p. 16-17]

Deliverables: In Kazakhstan, Project personnel met regularly with GOK officials responsible for developing and implementing government procurement laws and regulations to keep them informed on the requirements of the GPA and focused on meeting those requirements as a long-term goal.

In Uzbekistan, Project personnel met regularly with GOU officials responsible for attempting to develop a procurement law for adoption to keep them informed on the requirements of the GPA and focused on meeting those requirements as a long-term goal. Also, the role of

government procurement reform in meeting WTO accession requirements were among the topics discussed by Project personnel at a WTO conference in Uzbekistan in June 1999.

The Kyrgyz Republic

TOR Requirement: Continue to assist the Government of The Kyrgyz Republic in implementing all necessary measures to improve the legal regimes and make them compliant with WTO requirements on government procurement. [p. 17]

Deliverables: In The Kyrgyz Republic, the Project reviewed all existing procurement legislation and implementing regulations and worked with the State Procurement Agency (SPA) to develop an improved and complete legal framework for a government procurement system that will meet WTO Government Procurement Agreement (GPA) standards. Legal analytical charts were prepared as a basic tool for analyzing and outlining necessary improvements in the legal framework. Legal Memoranda were prepared and delivered to the SPA addressing significant issues.

TOR Requirement: Assist the government in developing implementing regulations for its recently enacted law on government procurement. [p.10 and p. 18]

Deliverables: The Project worked with the State Procurement Agency to draft new implementing regulations designed to fill the gaps in the regulatory framework, with special emphasis on those matters closely related to meeting international standards.

TOR Requirement: Assist in establishing a Procurement Training and Information Center in the Kyrgyz Republic. The Center, in addition to providing training, shall operate as an information clearing house for state agencies as well as the private sector. The Center shall serve as (a) a repository for procurement related laws, bulletins, sample documents and other materials, and (b) a forum for seminars, meetings and workshops for both public and private groups involved in the procurement process. [p. 10 and p.19]

Deliverables: The Project worked closely with the SPA in developing a Procurement Training and Information Center. During the course of the reporting period, the Project expended $7500 to develop pilot procurement databases for the Center, $4000 to provide equipment to the Center, and an additional $2500 in training and materials. The funding for these expenditures was provided by USAID. The establishment of the Center and the application of resources for its development was a major accomplishment of the Project during the reporting period. This Procurement Training and Information Center in the Kyrgyz Republic can serve as a model for similar centers in Kazakhstan and Uzbekistan.

In developing the Center, Project personnel assisted the SPA in designing the components of a Procurement Training and Information Center, including physical layout and personnel and equipment needs, in developing a pilot supplier database and a pilot procurement tracking database, and in developing the prototype for an SPA website. Of these accomplishments, none has more long-term significance than the development of the pilot databases. They have been developed and demonstrated, and they work. But they are only pilot databases which must be implemented to significantly influence procurement practices. If implemented, use of the databases would provide immediately increased transparency, significant savings of scarce Kyrgyz resources, and a significant reduction in corruption costs.

TOR Requirement: Assist the GOKR to develop educational materials such as articles and pamphlets. Also conduct seminars to educate the business community and government officials about the recently enacted laws in the area of government procurement. [p. 19]

Deliverables: In Kazakhstan, the Project developed analytical charts and other written materials which are designed to both assist the legal reform effort and serve as training tools for the SPA, procuring entities and the private sector. The Project worked with the SPA to develop a training strategy with SPA officials to assist in meeting SPA training needs with a particular emphasis on training trainers capable of providing basic training courses in the requirements of the new law and regulations and in the fundamentals of competitive procurement practices. In addition, almost all operational personnel from the SPA attended the Project-sponsored government procurement training conference in the Kyrgyz Republic in March 2000 at which relevant educational and training materials were distributed.

The training conference was designed to bring most SPA personnel together to provide training and explanation of the evolving "system" for public procurement in the Kyrgyz Republic, including discussion of legal reform and the legal framework, introduction of the databases, and the utilization of the Internet to facilitate public procurement. In addition to the focus on development of the Kyrgyz "system" for public procurement, the conference was designed to focus on Regional procurement issues. The training conference took place on March 14 –16 at Lake Issyk-Kul in the Kyrgyz Republic. Project personnel from the Bishkek, Almaty, and Tashkent offices and the Regional Procurement Attorney prepared presentations for the conference and during the conference delivered their presentations and conducted workshops. The Regional Procurement Attorney acted as co-chairman of the conference and Project staff were instrumental in making certain that the training conference went smoothly and met its objectives. In addition to SPA participants mentioned above, trainers/participants included high level procurement officials from most of the other countries in the Region. The meeting of these officials was the first such gathering to discuss Regional procurement issues.

TOR Requirement: Assist the Kyrgyz Republic in developing appropriate databases and decision-support systems to properly implement the law on government procurement. [p. 9 and p. 19]

Deliverables: See the Deliverables set forth above regarding the establishment of a Procurement Training and Information Center in the Kyrgyz Republic which includes discussion of the development of pilot procurement databases.

Turkmenistan

TOR Requirement: Organize, as needed, in-country seminars to educate policy makers in Turkmenistan on the substance and requirements of WTO agreements, including the Agreement on Government Procurement (GPA). [p. 12 and p. 22]

Deliverables: The Project met with GOT officials responsible for developing and implementing government procurement laws and regulations to inform them about the requirements of the GPA. However, with no law and no regulations in place and no active implementing agency or unit with which to work, focus on the GPA was viewed as a long-term goal.

TOR Requirement: Assist the GOT in implementing all necessary measures to improve the respective legal regimes and make them compliant with WTO requirements on government procurement. [p. 12 and p. 22]

Deliverables: The Project worked with appropriate government officials (in the Ministry of Economy and Finance) to continue to advocate for adoption of a government procurement law and creation of a state agency responsible for implementation of that law. In this context and with World Bank assistance, the Project succeeded in convincing the GOT to establish a Government Procurement Unit in the Ministry of Economy and Finance. [As noted above, that Unit has yet to be staffed and structured due to lack of World Bank funding for this purpose.] The Project provided the GOT with a detailed draft work plan establishment of a Government Procurement Unit and for preparation and adoption of a procurement law. In addition, the Project provided a Memorandum outlining proposals for the structure of a Government Procurement Unit.

TOR Requirement: Assist the government in drafting and enacting procurement legislation to ensure that the government procurement process (bidding process, review of bids, contract award) is competitive, transparent, fair and nondiscriminatory. [p.13]

Deliverables: Without a meaningful counterpart with which to work, the Project was unable to significantly advance the prospect of drafting and enacting procurement legislation, except to convince GOT officials that preparation of a simplified draft law on government procurement would be a first concrete step toward a government procurement process which is competitive, transparent, fair and nondiscriminatory and which is compliant with WTO requirements on government procurement. Steps taken in developing a solid legal framework for public procurement in the Kyrgyz Republic and Kazakhstan will be useful in assisting the GOT when there is a counterpart with which to work.

TOR Requirement: Provide proposals and/or drafts for the revision of the budget systems law. Recommend improvements to the annual budget process law that...establishes procurement procedures. [p. 14 and p. 23]

Deliverables: Project personnel had ongoing discussions with government officials regarding the interrelationship between budget systems that plan expenditures and procurement systems that carry out those expenditures.

BUDGET AND FISCAL REFORM PROGRAM TURKMENISTAN

Rationale

Chief among the inter-related components of economic and fiscal reform, the reform of the budget and budget process must be assigned top priority. Knowledgeable observers tend to agree that a comprehensive, transparent budget and budget process, thoughtfully formulated and faithfully executed, is the most fundamental of all desired economic and fiscal reforms.

It is the reform which offers the Government of Turkmenistan (GOT) the greatest leverage in attaining other economic and fiscal reforms, especially if the reformed process produces accurate and timely information on revenues and expenditures. Clearly it is a condition precedent for attaining and sustaining badly needed improvements in GOT service effectiveness and efficiency, and a more rational allocation of capital expenditure. Collaterally, budget reform can facilitate an orderly reduction in the inordinate role value-subtracting State-Owned Enterprises and the related practice of barter exchange. The reform

of the budget process is a crucial determinant of Turkmenistan's success in increasing private-sector investment and production. Unquestionably, a reformed budget and budget process will significantly help the GOT to establish and maintain 1) firmer control over the allocation of its scarce resources, an extremely important capability because it can lead to lower costs for services delivered more efficiently and effectively, and 2) a stable, predictable financial climate for investors, facilitating Turkmenistan's entry into the world economy.

During the period covered by this report, the Turkmenistan Budget Reform Team addressed 10 tasks identified in the Task Order applied to the Turkmenistan budget and budget process, with the following results:

Results

1. Percentage of expenditures included in the National Budget, including all items specified as "off-budget" increased to approximately 80%.

The GOT sharply enhanced the comprehensiveness and transparency of its FY2000 Budget documents, with very close to 100% of Ministries and Agencies represented in the volumes submitted to the Cabinet/President and Parliament. In form and content, the FY2000 budget documentation initiated the process of institutionalizing USAID-recommended reform concepts. The FY2000 Budget provided the Cabinet/President and the Parliament with substantially expanded documentation, in quality as well as quantity. In sharp contrast to previous practice, the documentation was topically organized and presented in sections.

It must be pointed out, however, that the Mejlis appropriation included special purpose funds and public enterprises. As recommended, in best practice, the financial plans of such agencies should be included in Budget documents, providing an opportunity for legislative review of these plans for conformity to general policies, but should not be subject to appropriation.

The FY2000 Budget formulation process also incorporated a very significant step to introduce reform concepts. During the formulation process, the GOT authorized the development of performance budgets by the Ministries of Health and Education and the City of Ashgabat. MEF leaders expressed satisfaction with this pilot effort, indicating further steps to fully institutionalize agency performance budgeting in future years. A caution is in order: The full institutionalization of performance budgeting requires computerized accounting and dynamic monitoring and reporting procedures, which were in the planning stage as of March 31, 2000. In this connection, a Presidential Resolution, issued February 1998, required that the Special Purpose Funds and other so-called "off-budget" entities submit periodic reports to Ministry of Economy and Finance. In developing the reporting format, the Ministry sought the assistance of the BRP Advisor. This involvement led to a request for USAID technical assistance to define a GOT accounting system which can properly support the reformed budget and budget process, including macro-economic planning. Subsequently, USAID provided key technical assistance to help the GOT prepare for the acquisition of World Bank financed computer resources to implement the recommended new accounting system. The importance of this initiative cannot be overstated.

2. Budget expenditure and revenue classification system completed and implemented.

The GOT adopted internationally recognized expenditure and revenue classifications and codes prior to the initiation of the Budget Reform Team. The classifications identify GOT entities with functions, such as Health, Education, etc. Within the entities, expenditures are classified only by economic concepts, such as salaries, equipment, etc. Thus, the

classification structure within GOT entities identifies only items of expenditure, unrelated to organizational units or activities. Consequently, the annual budget document has been almost entirely an assembly of accounting statements. For example, prior to the formulation of the FY2000 Budget, the process required the Ministries and Agencies to submit budget requests which were are compilations of numbers identified solely by economic classifications, unaccompanied by commentaries providing evidence of program and performance analysis. Starting with 3 pilot agencies in FY2000, the GOT required documentation including 1) an array of expenditures assigned to cost center(s), 2) an array of revenues related to the entity's services, 3) an array of performance data related to the entity's services, and 4) a commentary interpreting the relationship of expenditures to expected performance. As the cost center, associated with performance data, is the fundamental classification concept of results-oriented budgeting and a reformed budget and budget process, the cost center concept of classification was strongly recommended by the USAID advisor.

As noted previously, to demonstrate the application of the cost center concept, the USAID Budget Reform Program Team assisted GOT staff to formulate performance budgets for the Ministries of Health and Education and the City of Ashgabat. Impressed by these pilot models, the MEF leaders have indicated that they plan to fully institutionalize the recommended format and procedures.

3. Budget Systems Law drafted and presented to the Ministry of Finance.

In consultation with a working group established by the Ministry of Economy and Finance, the Budget Reform Team, the then USAID Advisor, Ercis Kurtulus, prepared three successive drafts of a new Budget System Law. In June 1998, however, the MEF Minister deferred further consideration regarding a new Law in favor of developing regulations to implement the current law. Within this context, the Budget Director also requested that the Budget Reform Program Team, under the leadership of Edward A. Lehan, develop a Budget Manual.

Pursuant to the Minister's request, the Budget Reform Program Team developed and submitted a draft of proposed regulations. Subsequently the responsible MEF Working Group ceased operations as Ministry leaders have been working out the procedural implications of an MEF reorganization adopted in July 1999.

A draft of the proposed Budget Manual was submitted on May 19, 1999, followed by Capital Budget Manual, May 27, 1999. These Manuals assume GOT adoption and implementation of recommended reform concepts. Although not formally adopted by the MEF, the contents of these Manuals have been the basis of subsequent training sessions and the introduction of reform recommendations in the FY2000 Budget.

4. Approximately 60 GOT staff trained on budget and program analysis.

The general dearth of performance data in budget documents, and the meager response to requests for program commentaries from MEF sectoral staff, suggests serious deficiencies in required analytical skill. The Budget Department functions as a compiler/consolidator, rather than a reviewer/evaluator/adjuster of budget estimates. It is generally acknowledged that the analytical capability of the Budget Department is weak. Obviously, the efficacy of a reformed budget and budget process rests upon skilled practitioners, not only in the MEF, but also in every agency. The MEF leaders are fully aware of this requirement, and its implications. In attacking the skill deficiency problem, the Budget Reform Team conducted a task-oriented program of formal and on-the-job training to enable the GOT to introduce recommended procedures and techniques. The institutionalization of results-oriented

budgeting will take many years, given strong, persistent leadership by the Budget Director, supported by a staff qualified to teach its values and techniques throughout the GOT. Consequently, the intellectual and programmatic development of the Budget Department deserved, and received constant attention from the Budget Reform Program Team.

By March 31, 2000, GOT officials have attended five formal training sessions conducted by the Budget Reform Team. During the period covered by this report, officials attended training sessions. Additionally, on-the job training was provided, as the occasion demanded during the development of the pilot projects and technical assistance assignments.

5. Recommendations designed to rationalize the composition of the total actual budget and, based on this examination, recommendations regarding priority areas for immediate expenditure rationalization made.

Given the general dearth of performance data in budget documents, and the meager response to requests for program information, the Budget Reform Team did not advance specific recommendations concerning expenditure rationalization. Within this constraint, the Team pursued a strategy of demonstration, providing examples of the application of analytical techniques and products. Examples, models and pilot projects were prepared and submitted to demonstrate the recommended formats and techniques, and to provide training materials. These included a model Budget Call, featuring a sample multi-year projection, budget improvement pilot projects in the Ministries of Health and Education and the City of Ashgabat, a model capital investment program and budget, sample evaluations of two proposed capital projects, and an alternative 1999 Budget document format to express the values of comprehensiveness, transparency and analysis. Additionally, the budget procedure manuals submitted by the Budget Reform Team included many provisions designed to encourage and facilitate program analysis as the basis for budget allocations.

6. Recommendations designed to rationalize the public investment planning process developed.

As previously noted, the Budget Reform Program Team developed and submitted a model Capital Investment Program and Budget and a Manual of Procedures, and provided training and technical assistance. The training and technical assistance program included two workshops, many on-the-job training sessions, and the development of two sample evaluations of two proposed capital projects. The FY2000 Budget documentation included a volume dedicated to capital investments, but this documentation did not include a multi-year program, a key reform concept. The capital investment analytical process also fell short of the practice recommended by the Manual of Procedures. On the plus side, the documentation provided to the President/Cabinet and the Mejlis was well-organized and clearly presented, representing an enhancement of comprehensiveness and transparency. Cabinet level interest in improving capital investment planning and budgeting has been reported, pointing toward the formulation of the FY2001 Budget.

7. Results incorporated in the guidance accompanying the call for preparation of annual budget.

The formulation of a model "Call for Estimates" was deemed the most effective method of encouraging the GOT to improve the quality of its budget call document. A model budget call was formulated and submitted prior to the period covered by this report, complete with a sample multi-year projection and reform-oriented budget formulation instructions, including a set of instructions devoted to the multi-year investment budget. The reorganization of the MEF in June 1999 focused attention on the data and skill deficiencies inhibiting the

formulation of a budget call in the form recommended. This recognition led to a request for a USAID-funded economic and fiscal policy specialist. The specialist's report recommended a cohesive multi-agency training and technical assistance program to improve research and planning capabilities related to the formulation of the annual Budget Call. At the close of the period covered by this report, the GOT requested USAID funding to initiate the recommended training and technical assistance program, pointing toward significant improvement in the FY2001 Budget Call due July 31, 2000.

8. Procedure for updating multi-year investment budget estimates through the application of basic cost/benefit analysis concepts to major categories of physical infrastructure investment developed and implemented

9. Expenditure determination process for key line ministries examined, expenditures in critical areas such as health care and education rationalized, and a system for the preparation of annual operating plans for individual ministries and for the government overall developed and implemented

The expenditure determination process is fragmented, especially with regard to capital investments. The expansion in FY2000 Budget document coverage and transparency was a significant step toward enabling the Budget Department to undertake a comprehensive examination of expenditure priorities across the whole system. As noted in the report on Task 5, the Budget Reform Team was not in position to advance specific recommendations concerning expenditure rationalization. Instead, the Team developed products which illustrate how the GOT should conduct the budget allocation process. These products, especially the budget manuals, expressed the following key characteristics of a reformed budget and budget process:

- Budget planning by the MEF/Central Bank prior to the annual Budget Call.
- Agency budget formulation based on cost centers, performance indicators and analytical interpretation.
- Budget implementation based on work plans, allotments and quarterly performance reviews.

In pursuing a strategy of demonstration, the Budget Reform Program Team provided examples of the application of analytical techniques and products. Examples, models and pilot projects were prepared and submitted to demonstrate the recommended formats and techniques, and to provide training materials. These included a model Budget Call, featuring a sample multi-year projection; budget improvement pilot projects in the Ministries of Health and Education and the City of Ashgabat; a model capital investment program and budget, sample evaluations of two proposed capital projects; and an alternative FY2000 Budget document format expressing the values of comprehensiveness, transparency and analysis. Additionally, the budget manuals submitted by the Budget Reform Program Team included many provisions designed to encourage and facilitate program analysis as the basis for budget allocations. The manuals also include provisions for the formulation of work plans and quarterly performance reviews thereon.

Lessons Learned

Since June 1998, the Budget Reform Program Team pursued a "strategy of demonstration," favoring the development of examples and models which illustrated the concepts of budget

reform. Because the Team sought to involve GOT staff as much as possible, the work progressed slowly, but solidly, with close attention to format aesthetics and the construction of informative data arrays. As completed, the products of this effort were distributed as widely as possible to broaden the potential base of support for reform concepts.
Based on favorable official reaction to the examples and models, and a series of GOT actions since November, 1998, one must be optimistic about the GOT's commitment and willingness to proceed with full scale institutionalization of budget reform.

Program Initiatives

Starting in April 2000, the Budget Reform Program Team expects to move from its reliance on the so-far successful strategy of demonstration to active engagement in budget dynamics. Looking forward, a successful reform program must address acknowledged problem areas of the budget and budget process, listed as follows:

1) Composition of the budget (appropriated funds) and the budget document, including key issues of coverage and transparency

2) Central budget unit organization, staffing, skill and procedures

3) Budget formats and formulation procedures inhibiting analysis and expenditure rationalization

4) Budgetary accounting and control capabilities

Consequently, a reformed budget and budget process must eliminate or substantially ameliorate key deficiencies in each of these inter-related problem areas.

By all reports, the accountable GOT officials regard the FY2000 Budget and budget process as a "breakthrough" achievement in the introduction of key budget reform concepts recommended by the USAID-BRT. In particular, the accountable MEF officials are eager to initiate budget planning for the FY2001 Budget early in 2000, pointing toward further institutionalization of the concepts introduced during the formulation of the FY2000 Budget.

The steps already taken by the GOT deserve strong endorsement, specifically the significant expansion of the coverage and transparency of the FY2000 Budget. Looking ahead, the key MEF officials understand that the full institutionalization of the recommended reforms, especially the nurture of the required staff proficiency, will be long process, requiring several years of sustained GOT attention to establishment of strong institutional supports for the reformed budget process. (The inter-related dimensions of the recommended reforms are can be appreciated by reviewing Appendix "A.") Provided, the GOT demonstrates its continued commitment to budget reform, as recommended, USAID should continue its support past the end of the current program ending in March 2000. USAID should support the development of quarterly Performance Reviews during FY2000. These Reviews are to be based on 19 Work Plans formulated by selected cost center managers in the City of Ashgabat. Work Plans are a prerequisite for the introduction of the recommended dynamic monitoring process. This process requires quarterly performance reviews to be conducted at the end of the second month of each quarter, leaving one month for corrective action in those cases of lagging performance. USAID should also support the effort to formulate a first-ever medium term macro-economic and fiscal framework to guide the formulation and execution of the FY2001 Budget.

To be conducted early in the FY2001 budget cycle, a government-wide training program, based on the Budget Manual, is absolutely required.

Ultimately, the success of budget reform and its relevance for the other inter-related components of Turkmenistan's overall economic and fiscal reform hinges on the efficacy of budget execution, that is, financial accounting and performance monitoring. It is therefore critical that USAID strongly encourages the implement BRP Team recommendations for accounting and treasury reform submitted in October 1999.

Appendix "A"

To close this report, we have appended an exhibit entitled, Essential Characteristics of a Reformed Budget and Budget Process. Covering seven inter-related dimensions of the budget system, this exhibit was submitted to the Ministry of Economy and Finance. In the interests of a coordinated reform effort, this exhibit has also been referred to representatives of concerned international organizations, including IMF, World Bank, UNDP and TACIS.

In outline form, the exhibit presents the desirable characteristics of a reformed budget and budget process, dimension by dimension.

Essential Characteristics Of A Reformed Budget And Budget Process

1.	SPECIFICATIONS
BUDGET DOCUMENT **Contents** A. Budget Message B. Summaries C. Financing Plan **D. Current Expenditures** E. Capital Expenditure F. Budget Law G. Financial Plans of Special Purpose Funds H. Financial Relationships of State-Owned Enterprises to the Budget	1) The appropriated section of the Annual Budget of Turkmenistan embraces the budgets of GOT entities, with characteristics which satisfy one, or more, of the following criteria: ➢ Entity disbursements are defined by law as subject to appropriation. ➢ Entity is defined by law as a "Ministry." ➢ Entity provides services free, or substantially free. ➢ Entity collects revenues from taxes and other compulsory exactions. 2) The non-appropriated section of the Annual Budget of Turkmenistan includes the financial plans of GOT entities with characteristics which satisfy one, or more, of the following criteria: ➢ Entity provides services which could be privatized, but currently requires subsidy or tax and regulatory relief. ➢ Entity receipts and disbursements are charged to bank account(s) designated for entity purposes. ➢ Entity pays taxes and dividends to the Government.

	➢ Entity receives GOT capital infusions, subsidies or loans. ➢ Entity is responsible for the payment of principal and interest on debt guaranteed by the Government.
2.	SPECIFICATIONS
BUDGET POLICY PLANNING The membership of the inter-agency Budget Policy Planning Team should include representatives of the Central Bank, MEF and other appropriate institutions.	Advised by the Policy Planning Team, the MEF Minister's annual call for estimates for the coming fiscal year includes: ➢ A concise statement outlining key issues, problems and opportunities facing the Nation ➢ A multi-year financial capability statement covering The upcoming Budget, and at least two years beyond ➢ A concise statement of potential program and project initiatives to be considered for inclusion in the upcoming Budget ➢ A budget calendar ➢ Budget Formulation Methodology
3.	SPECIFICATIONS
BUDGET FORMULATION	Revenue estimates are proposed by a Revenue Collection Action Plan Team, such recommendations to be based on: 1) Coverage Studies (Revenue Effectiveness) 2) Cost of Collection Studies (Revenue Efficiency) 3) Cost of Service Studies (Revenue Effectiveness) 4) Proposed Revisions of Revenue Measures Expenditure estimates at all levels throughout the Government are justified by the following analytical documentation: 1) Problem Definition 2) Goal(s) 3) Collaborators and Interested Parties 4) Conditions of Performance 5) Work Plan 6) Alternatives 7) Budget, formatted as follows: ➢ Cost Centers ➢ Financing Plan ➢ Performance Data ➢ Interpretative Commentaries All appropriations are based on "gross" estimates of cost

	All Capital Project Appropriations equal gross project cost
4.	SPECIFICATIONS
ALLOCATION POLICIES	Formal allocation methods strongly influence budget decisions, including the application of ➢ Unit Measures ➢ Investment Returns ➢ Weighting and Scoring ➢ Modeling Current expenditure appropriations balanced by current revenue Loans are used only to finance Capital Projects
5.	SPECIFICATIONS
BUDGET IMPLEMENTATION Effective budget implementation depends on the integrated employment of 1) budgetary accounting, 2) cash flow monitoring, 3) work plans, 4) quarterly allotments, and 5) quarterly performance reviews.	**Budgetary Accounting** ➢ General Ledger/Budget Integration ➢ Obligation/Commitment/Encumbrance Recognition ➢ Current Expenditure Appropriations lapse annually ➢ Capital Project Appropriations lapse at completion ➢ Performance Data accountability ➢ Timely reporting **Monthly Cash Flow Projections for remainder of fiscal year** **Work Plans** for every cost center embrace the following elements: ➢ Activities/Tasks ➢ Effort (Workhours, and, if available, costs) ➢ Outputs (Targets) ➢ Checkpoints (Milestones) ➢ Performance Ratios **Allotments** issued quarterly, based on Work Plans **Performance Reviews** conducted quarterly
6.	SPECIFICATIONS
BUDGET ORGANIZATION	Budget Department has comprehensive responsibility for 1) fiscal policy planning, 2) composition of the annual call for estimates, 3) formulation and production of the annual budget, including allocations for current and capital expenditure, and 4) the monitoring of performance. Budget Department staff is strictly qualified by education and experience to evaluate the merits of proposed allocations.

	Budget Department personnel are systematically reassigned to increase their knowledge of GOT problems and programs.
7.	SPECIFICATIONS
ACCOUNTING ORGANIZATION	**"Fund" accountability provides the basic organizing principle of the accounting system. Established Funds include:** ➢ **General Fund** ➢ **Special Purpose Fund** ➢ **Capital Projects Fund** ➢ **Debt Service Fund** ➢ **Public Enterprise Funds** **A computer-based, controllership form of accounting and budget control serves the entire GOT, effectively separating treasury and accounting functions** **Chart of Accounts facilitates the use of cost centers by all GOT entities**