

## ВНЕШНЕЭКОНОМИЧЕСКАЯ ПОЛИТИКА

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SPECIFICS OF NON-TARIFF REGULATION  
IN KAZAKHSTAN'S TRADE POLICY

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**Abstract:** The Republic of Kazakhstan became one of the first members of the Eurasian Economic Union (EAEU) that was formed on January 1, 2015. As a full member, this country had to change its legislation in accordance with the EAEU legal acts. This article is devoted to non-tariff measures (NTMs) applied by the Republic of Kazakhstan in the context of the Eurasian economic integration. The importance of NTM research is defined by the fact that excessive regulatory policies may result in decreased growth rates of economy and overall loss of welfare. UNCTAD's database (TRAINS/WITS database) was used in order to analyze national NTMs. In total, 239 national actively applied NTMs were analyzed and systematized. Most of them are either import-related technical measures (Technical barriers to trade – TBT, Sanitary and phytosanitary measures – SPS measures) or export-related technical measures. Together they account for approximately 94.8% of applied national NTMs. In addition to the analysis of NTMs in terms of their type and the type of affected products, the author revealed the conformity of Kazakhstan's national NTMs to basic principles of the World Trade Organization (WTO): most-favored nation (MFN) principle and national treatment clause. Thus, our research determined measures that represent a violation of MFN principle or national treatment clause, so these NTMs may be barriers to trade of the Republic of Kazakhstan with other countries.

**Keywords:** Eurasian Economic Union (EAEU), Republic of Kazakhstan, non-tariff measures (NTMs), trade barriers, most-favored nation principle, national treatment clause.

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ОСОБЕННОСТИ НЕТАРИФНОГО РЕГУЛИРОВАНИЯ  
В ТОРГОВОЙ ПОЛИТИКЕ КАЗАХСТАНА

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**Резюме:** Республика Казахстан является одним из государств-основателей сначала Таможенного союза с Российской Федерацией и Республикой Беларусь, созданного 1 января 2010 г., а позже Евразийского экономического союза (ЕАЭС), который начал функционировать 1 января 2015 г. Как член ЕАЭС страна взяла на себя обязательства гармонизировать свое национальное законодательство в соответствии с основными положениями нормативно-правовых актов союза. В данной статье анализируются национальные нетарифные меры (НТМ), применяемые Республикой Казахстан в своей торговой политике, в свете развития евразийской интеграции. Исследование основывается на данных об НТМ Казахстана, собранных Конференцией ООН по торговле и развитию (ЮНКТАД). Анализ 239 действующих нетарифных мер позволил сделать выводы о структуре нетарифного регулирования Казахстана: большинство мер – это технические меры, применяемые в отношении импорта (санитарные и фитосанитарные (СФС), меры и технические барьеры в торговле (ТБТ)). В текущих условиях технические меры, направленные на регулирование экспорта, также играют значительную роль в торговой политике страны. Вместе эти два типа мер составляют почти 95% всех НТМ Республики Казахстан. Кроме систематизации типов мер и товарных групп, к которым они применяются, НТМ Казахстана проанализированы с точки зрения их соответствия основополагающим правовым принципам Всемирной торговой организации (ВТО): режиму наибольшего благоприятствования (РНБ) и национальному режиму. Результаты исследования позволяют сделать предварительные выводы о том, какие нетарифные меры могут являться барьерами в торговле с зарубежными странами и тем самым замедлять экономический рост самого Казахстана.

**Ключевые слова:** Евразийский экономический союз (ЕАЭС), Республика Казахстан, нетарифные меры (НТМ), торговые барьеры, режим наибольшего благоприятствования (РНБ), национальный режим.

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Over the several past decades the role of tariffs as main instrument of trade policy has decreased. This happened due to the fact that since 1995 many countries<sup>1</sup> have joined the World Trade Organization (WTO) and it limited the scope of use of tariffs that they may apply against their trade partners. In addition to this, countries actively started to form regional<sup>2</sup> and preferential trade agreements<sup>3</sup> that were also aimed at decreasing the level of tariffs that agreeing parties may use against each other. As tariffs decreased countries began to apply more NTMs in their trade policies.

As most other countries in the world, Kazakhstan adopts NTMs due to the following main reasons: to correct market failures; to protect consumers from low quality or dangerous products; to protect national industries from foreign competition and stimulate local production of goods.

The Republic of Kazakhstan was one of the first countries to join the Eurasian Economic Union as initially it was a member of the Customs Union between the Republic of Belarus, the Russian Federation and the Republic of Kazakhstan itself that was formed on January 1, 2010. As for any other EAEU member, NTMs in the Republic of Kazakhstan are introduced via two channels: either via EAEU legislation, or via national legislation.

In general terms this article analyses a vast group of NTMs that is defined within UNCTAD's methodology that is quite different from the point of view of the Eurasian Economic Commission. As such, according to article 46 of the Agreement on EAEU [Agreement

<sup>1</sup> 164 countries are members of the WTO as of end of 2018.

<sup>2</sup> Reciprocal trade agreements between two or more parties.

<sup>3</sup> Unilateral trade agreements granting preferences to specific countries (e.g. developing countries).

on *Eurasian Economic Union*, 2014] there are 5 types of non-tariff measures: export and import prohibitions, quantitative restrictions, exclusive right to export/import, automatic licensing measures, authorizations (licenses). These measures are listed in Decision of April 21, 2015, No. 30 “About Non-tariff measures”.

In turn, in addition to this group of EAEU measures UNCTAD’s methodology includes SPS, TBT, different taxes and financial measures in NTMs. Some of these “additional” measures find their reflection in supra-national EAEU legislation as well.

For example, according to paragraph 3 of article 53 of section X of the Agreement on EAEU [*Agreement on Eurasian Economic Union*, 2014] countries do not apply the requirements of national technical regulations if corresponding technical regulations of the Union are adopted. In turn, national technical regulations can be applied to products included in the list of products that are subject to obligatory requirements (that is given in Decision of Commission of Customs Union of January 28, 2011, No. 526 [Commission of Customs Union, 2011]) and that do not have corresponding Union technical regulations applied to them.

Nevertheless, some of the measures are adopted within national legislation of corresponding member states and are applied by these members only. For example, Kazakhstan applies its own VAT (value added tax) and excise tax rates which are considered to be national NTMs. Still, it should be noted that some of national measures hinder integration within EAEU and increase costs for exporters/importers.

The current article concentrates more on measures that are adopted only within national legislation and are applicable only in case of the Republic of Kazakhstan and not in case of other EAEU members.

## NTMS OF THE REPUBLIC OF KAZAKHSTAN: TYPES AND PRODUCTS

Application and introduction of national NTMs in the Republic of Kazakhstan is regulated mostly by 5 authorities: the Ministry of Finance, the Ministry for Investments and Development, the Ministry of Agriculture, the Ministry of Energy and the Ministry of Healthcare. Together these authorities cover application of 48 trade- and NTM-related legal acts (approximately 80% of total national trade- and NTM-related legal acts).

In total, UNCTAD’s (TRAINS/WITS) database contains classification of 239 nationally applied NTMs in the Republic of Kazakhstan (as of end of 2017). Import-related TBT measures, SPS measures and export-related measures comprise approximately 95.0% of total coded national non-tariff measures (see *figure 1*).

Most frequently used import-related requirements are: TBT labelling requirements (17.15% of the total number of national NTMs) and temporary geographic prohibitions for SPS reasons (9.62% of the total number of national NTMs) (see *table 1*). As for export-related measures, most frequently used measures are technical measures of category “Export technical measures, not elsewhere specified” mostly consisting of requirements on testing, labelling, packaging, etc. (see *table 2*).

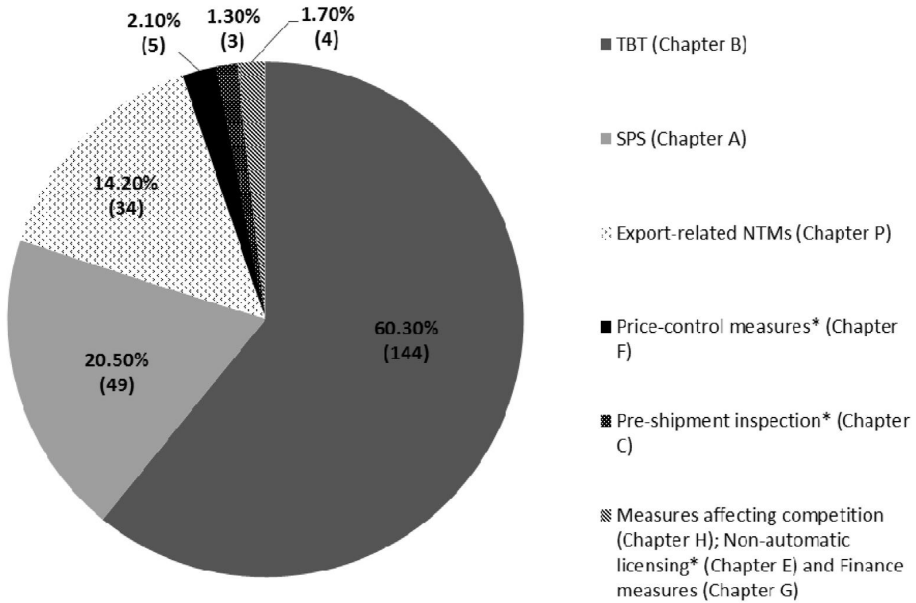


Figure 1. National non-tariff measures of the Republic of Kazakhstan by chapter, as of end of 2017

Notes:

1 \* – Price-control measures – “Price-control measures, including additional taxes and charges”; Pre-shipment inspection – “Pre-shipment inspection and other formalities”; Non-automatic licensing – “Non-automatic licensing, quotas, prohibitions and quantity control measures other than for SPS or TBT reasons”.

2 Number in parenthesis is the total number of NTMs of the Republic of Kazakhstan classified under specific chapter.

Source: compiled by the author on the basis of WITS/TRAINS database [WITS/TRAINS Database, 2018].

Table 1

*Quantity and share of detailed groups of NTMs of the Republic of Kazakhstan, as of end of 2017*

2-3 digit NTM code	Description	Quantity	Share of total national NTMs of the Republic of Kazakhstan	2-3 digit NTM code	Description	Quantity	Share of total national NTMs of the Republic of Kazakhstan
A11	Temporary geographic prohibitions for SPS reasons	23	9.62%	B81	Product registration requirement	3	1.26%
A14	Special authorization requirements for SPS reasons	1	0.42%	B82	Testing requirement	17	7.11%
A21	Tolerance limits for residues of or contamination by	1	0.42%	B83	Certification requirement	11	4.60%

2-3 digit NTM code	Description	Quantity	Share of total national NTMs of the Republic of Kazakhstan	2-3 digit NTM code	Description	Quantity	Share of total national NTMs of the Republic of Kazakhstan
	certain (non-microbiological) substances						
A22	Restricted use of certain substances in foods and feeds and their contact materials	1	0.42%	B853	Traceability information requirements: Distribution and location of products after delivery	1	0.42%
A31	Labelling requirements	2	0.84%	B859	Traceability information requirements: Traceability requirements, n.e.s.	1	0.42%
A33	Packaging requirements	1	0.42%	B89	Conformity assessment related to TBT, n.e.s.	3	1.26%
A41	Microbiological criteria of a product	1	0.42%	B9	TBT measures, n.e.s.	4	1.67%
A51	Cold/heat treatment	7	2.93%	C3	Requirement to pass through specified port of customs	1	0.42%
A59	Treatment for elimination of plant and animal pests and disease-causing organisms in the final product, n.e.s. <sup>4</sup> .	1	0.42%	C4	Import monitoring and -surveillance requirements and other automatic licensing measures	2	0.84%
A63	Food and feed processing	2	0.84%	E621	Other TRQs included in other trade agreements: Global allocation	1	0.42%
A64	Storage and transport conditions	2	0.84%	F69	Additional charges, n.e.s.	1	0.42%
A81	Product registration requirement	2	0.84%	F71	Consumption taxes	1	0.42%
A82	Testing requirement	2	0.84%	F72	Excise taxes	2	0.84%
A83	Certification requirement	1	0.42%	F73	Taxes and charges for sensitive product categories	1	0.42%

<sup>4</sup> Not elsewhere specified.

2-3 digit NTM code	Description	Quantity	Share of total national NTMs of the Republic of Kazakhstan	2-3 digit NTM code	Description	Quantity	Share of total national NTMs of the Republic of Kazakhstan
A89	Conformity assessment related to SPS, n.e.s.	2	0.84%	G14	Refundable deposits for sensitive product categories	1	0.42%
B14	Authorization requirements for TBT reasons	6	2.51%	H11	State trading enterprises, for importing	1	0.42%
B21	Tolerance limits for residues of or contamination by certain substances	3	1.26%	H9	Measures affecting competitions, n.e.s.	1	0.42%
B22	Restricted use of certain substances	2	0.84%	P11	Export prohibition	1	0.42%
B31	Labelling requirements	41	17.15%	P13	Licensing- or permit requirements to export	5	2.09%
B32	Marking requirements	5	2.09%	P21	State trading enterprises, for exporting	1	0.42%
B33	Packaging requirements	6	2.51%	P4	Measures on re-export	2	0.84%
B4	Production or post-production requirements	1	0.42%	P5	Export taxes and charges	3	1.26%
B41	TBT regulations on production processes	10	4.18%	P62	Certification required by the exporting country	3	1.26%
B42	TBT regulations on transport and storage	14	5.86%	P69	Export technical measures, n.e.s.	15	6.28%
B49	Production or post-production requirements, n.e.s.	1	0.42%	P7	Export subsidies	1	0.42%
B6	Product identity requirement	1	0.42%	P9	Export measures, n.e.s.	3	1.26%
B7	Product-quality or -performance requirement	14	5.86%	Total		239	100.00%

Notes:

1. Sum of shares may not add up to 100% due to rounding.

2. Source: compiled by the author on the basis of WITS/TRAINS database [WITS/TRAINS Database, 2018].

Table 2

*Composition of export technical measures, not elsewhere specified (NTM code P69), the Republic of Kazakhstan, as of end of 2017*

Legal act	Measure implementation date	Measure description	Affected products
Law of the Republic of Kazakhstan of February 11, 1999 No. 344 "About plant quarantine"	11.02.1999	It is required to run tests on quarantinable products (analyze on the presence of quarantine objects) in order to receive phytosanitary certificate for exports of these products from Kazakhstan	Quarantinable products of low and high (phytosanitary) risk
Environmental code of the Republic of Kazakhstan	23.01.2007	Labels on exported ozone-depleting substances and products must bear the phrase "Destroys ozone layer"	Ozone-depleting substances
Environmental code of the Republic of Kazakhstan	23.01.2007	Transport packages for exported ozone-depleting substances and products must bear the phrase "Destroys ozone layer"	Ozone-depleting substances
Environmental code of the Republic of Kazakhstan	25.04.2015	Imported and exported ozone-depleting substances are subject to consumption records. Consumption records are done on the basis of identification of ozone-depleting substances via direct and indirect indicators. Direct indicators are labels and technical documentation on products; indirect indicators are diagnostic characteristics of a product (year of production, name of manufacturer, etc.). Importers must provide information on the name and location of buyers and supposed purpose of use. No later than the 1st quarter of each year (following the reporting year) importers/exporters must present information on the real volumes of imports/exports of ozone-depleting substances, etc.	Ozone-depleting substances
Order of February 9, 2016 No. 44 "About approving rules of public accounting of nuclear materials"	09.04.2016	Prior 30 days to exports of nuclear materials importer must present notification (volume of exports, name of product, etc.)	Nuclear (radioactive) materials
Order of February 9, 2016 No. 44 "About approving rules of public accounting of nuclear materials"	09.04.2016	Legal entities that work (i.e. import/export) with nuclear materials must present special reports to authorities (the Ministry of energy of the Republic of Kazakhstan). E.g. according to article 25, in 5 days after imports of nuclear materials importer must present a report to the Ministry of energy that contains information on the name of products, amount, etc.)	Nuclear (radioactive) materials
Decree of June 20, 2016 No. 356	06.07.2016	In order to export precious stones, jewelry from the territory of Kazakhstan to countries except EEU members it is required to run expertise (testing) of these products	Precious stones (except rough diamonds), jewelry and other (alike) products
Order of April 28, 2016 No. 401	12.07.2016	From the text of regulation it seems that all imported/exported precious stones, jewelry and other	Precious stones (except

Legal act	Measure implementation date	Measure description	Affected products
“About approving rules for conducting expertise of precious stones, jewelry and other products from precious stones and precious metals”		(alike) products must be marked with platemark (label of manufacturer)	rough diamonds), jewelry and other (alike) products
Order of April 28, 2016 No. 401 “About approving rules for conducting expertise of precious stones, jewelry and other products from precious stones and precious metals”	12.07.2016	All exported/imported precious stones, jewelry and other (alike) products are subject to public marking (mark of assay)	Precious stones (except rough diamonds), jewelry and other (alike) products
Law of the Republic of Kazakhstan of July 20, 2011 No. 463-IV “About public regulation of production and distribution of certain oil products”	07.03.2015	In order to import/export oil products it is required to have accompanying note	Petroleum, aviation and diesel fuel, heavy oil
Law of the Republic of Kazakhstan of July 16, 1999 No. 429-I “About public regulation of production and distribution of ethanol and alcohol products”	16.03.2015	It is restricted to distribute (export/import) alcohol products without accompanying notes (i.e. document intended for monitoring of distribution and movement of ethanol and alcohol products: volume and value of imports/exports, name of buyer and seller)	Alcohol products (including ethanol)
Law of the Republic of Kazakhstan of July 16, 1999 No. 429-I “About public regulation of production and distribution of ethanol and alcohol products”	17.05.2015	In addition to accompanying notes it is required to have a declaration on production/distribution of ethanol and alcohol products in order to import/export the aforementioned products	Alcohol products (including ethanol)
Law of the Republic of Kazakhstan of December 30, 1998 No. 339 “About public control of distribution of certain types of weapons”	06.05.2005	All weapons and ammo that are exported from Kazakhstan are subject to obligatory conformity assessment (i.e. it is required to run tests on products in order to receive certificate of conformity)	Weapons and ammo, bullets
Law of the Republic of Kazakhstan of December 30, 1998 No. 339 “About	06.05.2005	After receiving certificate of conformity products are labelled with symbol of conformity	Weapons and ammo, bullets



Legal act	Measure implementation date	Measure description	Affected products
public control of distribution of certain types of weapons”			
Decree of June 20, 2016 No. 356	06.07.2016	In order to export diamonds from Kazakhstan it is required to run expertise (testing) of these products	Diamonds (rough)

Source: compiled by the author on the basis of WITS/TRAINS database [WITS/TRAINS Database, 2018].

As such, for import-related measures it can be stated that the most affected by national measures are the following HS<sup>5</sup> groups: 38 (Miscellaneous chemical products), 22 (Beverages, spirits and vinegar – mostly alcohol products), 72 (Iron and steel), 01 (Live animals), 35 (Albuminoidal substances; modified starches; glues; enzymes). It must be noted that products from HS group 38 (Miscellaneous chemical products) are being the most affected by national NTMs (57 NTMs affect at least one code within HS 38). On average 33–34 national NTMs affect at least one code within other HS groups (22, 72, 01, 35). In addition to the aforementioned products, it seems that possibly HS 29 (Organic chemicals) may also be the most affected by national NTMs product group: 41 NTMs affect at least one HS code within this HS group.

Most of import-related NTMs that affect HS groups 38, 22, 72, 01, 35 and 29 are technical measures (either TBT or SPS, it depends on product group). Other types of measures are not applied that much to these products, but still their application along with technical measures may lead to increased costs for importers (as more resources are required to comply with NTMs from different chapters than to NTMs from the same chapter – i.e. different nature of requirements).

As for export-related measures, the most affected products are products of HS groups 38 (Miscellaneous chemical products), 72 (Iron and steel), 82 (Tools, implements, cutlery, spoons and forks, of base metal; parts thereof of base metal), 32 (Tanning or dyeing extracts; tannins and their derivatives; dyes, pigments and other coloring matter; paints and varnishes; putty and other mastics; inks) and 22 (Beverages, spirits and vinegar) (see *table 3*).

Table 3

*Composition of NTM P9 for HS groups 38, 72, 82, 32, 22*

Legal act	Measure implementation date	Measure description	Affected products
Law of the Republic of Kazakhstan of November 15, 2010 No. 351-IV “About public regulation of production and distribution of biofuel”	23.04.2015	For exports it is required to have a declaration on distribution of biofuel (so called Balance of distribution of biofuel; mostly used for statistical and monitoring purposes)	Biofuel (biodiesel, bioethanol, biomethanol, biobutanol, fuel wood, fuel bricks, wood waste, turf pit, fuel pellets, biogas, bio-hydrogen)
Order of January 22, 2016 No. 27	01.07.2016	Companies that imported/exported military	– Arms; – Military equipment;

<sup>5</sup> HS stands for Harmonized Commodity Description and Coding System that is an international nomenclature for the classification of goods.

Legal act	Measure implementation date	Measure description	Affected products
		equipment on a quarterly basis by the 10th day of a month following a reported quarter must present a report on imported/exported products. The report contains information on the volume of imported/exported products, their price (per unit), contract number, etc.	<ul style="list-style-type: none"> <li>– Nuclear and special non-nuclear materials, equipment, sources of ionizing radiation and corresponding goods of dual use;</li> <li>– Chemicals and products of dual use (used for production of chemical weapons);</li> <li>– Pathogenic agents, their genetically modified forms and fragments of genetic material that can be used of production of biological and toxic weapons;</li> <li>– Missile technologies, engines, components used for production of missiles;</li> <li>– Weapons of mass destruction;</li> </ul>
Law of the Republic of Kazakhstan of July 16, 1999 No. 429-I “About public regulation of production and distribution of ethanol and alcohol products”	16.06.1999	Exports of ethanol and alcohol products can only be done by legal entities registered in Kazakhstan (residents of Kazakhstan)	Alcohol products (including ethanol)

Source: compiled by the author on the basis of WITS/TRAINS database [WITS/TRAINS Database, 2018].

## NATIONAL NTMS OF THE REPUBLIC OF KAZAKHSTAN AS BARRIERS

Application of import-related NTMs may result in unequal treatment of foreign producers among each other (MFN) or unequal treatment of foreign and national producers (national treatment). So it is crucial to analyze these aspects of application of national import-related NTMs. As for export-related measures, their analysis in terms of MFN principle and national treatment clause is quite ambiguous (most export-related measures are not subject of regulation by international organizations) as two aforementioned principles are not that relevant to these measures in terms of interpretation (compared to import measures).

Therefore, the current section of the article will be concentrated on the analysis of consistency of application of national import-related NTMs (applied in the Republic of Kazakhstan) in the context of most-favored nation principle and national treatment clause.

Approximately 79% of national NTMs of the Republic of Kazakhstan are applied equally to all countries (see *table 4*).

Table 4

*Conformity of NTMs of the Republic of Kazakhstan to MFN treatment principle, as of end of 2017*

	Number of import-related measures
Applied to all countries on equal basis	164 (80.00%)
Applied to third countries (i.e. except EAEU members)	4 (1.95%)
Applied only to EAEU members	0 (0.00%)

	Number of import-related measures
Temporary prohibition measures for SPS reasons (applied to certain countries)	32 (15.61%)
Applied only to the Russian Federation	2 (0.98%)
Applied to a certain set of countries	3 (1.46%)
Total	205 (100.00%)

Source: compiled by the author on the basis of WITS/TRAINS database [WITS/TRAINS Database, 2018].

Measures that are applied only to third countries come from the following legal acts:

- Order of December 6, 2016 No. 498 “About tariff-rate quotas for duty free imports of cane raw sugar to the territory of Kazakhstan for 2017” (Order 498) [Minister of national economy of the Republic of Kazakhstan, 2016].

- Decree of June 20, 2016 No. 356 “About approving the rules for imports to the territory of the Republic of Kazakhstan from countries except Eurasian Economic Union members and exports from the territory of the Republic of Kazakhstan to these countries of precious stones, jewelry and other products, imports to the territory of the Republic of Kazakhstan and exports from the territory of the Republic of Kazakhstan of unprocessed natural diamonds taking into account certification scheme of Kimberley process and about losing force of certain Decisions of the Government of the Republic of Kazakhstan” (Decree 356) [Government of the Republic of Kazakhstan, 2016].

Order of April 28, 2016 No. 401 “About approving rules for conducting expertise of precious stones, jewelry and other products from precious stones and precious metals” (Order 401) [Minister for investment and development of the Republic of Kazakhstan, 2016].

Measure E621 from Order 498 is “non-WTO obliged” tariff-rate quota (global allocation). Presumably this measure can’t be viewed as discriminatory as even from the technical point of view import tariffs are not applied to regional trade agreement (RTA) members (in case of the Republic of Kazakhstan), therefore, tariff-rate quotas are not applicable to them as well.

Measures from Decree 356 (expertise/testing) and Order 401 (marking with platemark (manufacturer’s label) and public marking (mark of assay)) are applied to precious stones (except rough diamonds), jewelry. In a way these measures treat third countries and EAEU members differently as national legislation does not extend the measure application to EAEU members.

According to Section XI, article 56, point 4, each Union member may introduce temporary prohibition SPS (sanitary, veterinary-sanitary and quarantine phytosanitary) measures [*Agreement on Eurasian Economic Union*, 2014]<sup>6</sup>. These prohibition measures may be applied on a country level (aggregate level), on a regional level within a country (i.e. applied to a certain region/district/state within a country), on a company level within a country (i.e. applied to a certain company(ies) within a country). In turn, we consider only temporary SPS prohibition measures applied on a country level basis that were coded in the UNCTAD’s database as region or company level measures are very case-specific.

The Republic of Kazakhstan applies 32 temporary SPS prohibition measures that are applied to certain countries that suffer from outbreaks of certain diseases. Most of the measures (21 measures) were adopted in the period of 2011–2014, eight measures were adopted in the period 2015–2016 and only three measures were adopted in 2017. So the majority of SPS temporary prohibition measures were adopted quite some time ago. And that may be a possible in-

<sup>6</sup> Here these measures are assumed to be adopted due to the outbreak of diseases only.

direct evidence of violation of MFN principle (these measures may be barriers), though more detailed analysis on this matter is required<sup>7</sup>.

Measures against the Russian Federation (B9 – import notifications and C4 – requirements to present report on imported-exported goods) are applied within Order of January 22, 2016 No. 27 “On approval of Rules on forming the list of goods and list for monitoring of imports (exports) of military equipment and technologies between the Republic of Kazakhstan and the Russian Federation” [Minister of defense of the Republic of Kazakhstan, 2016], that, in turn, is adopted in accordance to the Agreement between the Republic of Kazakhstan and the Russian Federation on military and technical cooperation [*Agreement between Republic of Kazakhstan and the Russian Federation on military and technical cooperation*, 2015]. Therefore, it is highly improbable that these measures are discriminatory.

Three measures (B31 – labelling requirements; B32 – marking requirements; B853 – requirement to have consumption records) that are applied to a certain set of countries cover the requirements on imports of ozone-depleting substances. These measures are applied only to members of Montreal protocol, as imports of these products from countries that are not members to Montreal protocol are prohibited [Board of the Eurasian Economic Commission, 2015].

Out of 205 nationally applied import-related measures 44 measures are not applied to domestic producers. There are several reasons to this fact. Firstly, data from TRAINS/WITS was coded from legal acts covering import-export operations and sometimes these legal acts do not specify requirements for local producers. Secondly, the nature of the measures themselves stipulates their application only to foreign producers (e.g. SPS temporary prohibition measures, measures to protect national security). Thirdly, preliminary analysis shows that for some measures (at least for four NTMs without taking into account temporary SPS prohibition measures) it is highly probable that they are barriers (e.g. measures applied to alcohol products).

Most of national measures are coded under national sources of information. Still, there is one specific case of Decision of the Board of the Eurasian Economic Commission of August 16, 2012 No. 134 “About legal acts in the sphere of non-tariff regulation” (Decision 134) when national measure was coded under EAEU legislation.

As such, most measures of Decision 134 have already lost force. Nevertheless, one measure on export prohibition of timber, recovered (waste and scrap) paper or paperboard from Decision 134 is still in force for the Republic of Kazakhstan. It was introduced in accordance to article 47 and Annex 7 to the Agreement on EAEU [*Agreement on Eurasian Economic Union*, 2014] as unilateral non-tariff measure of the Republic of Kazakhstan. These products are crucial for internal market of the Republic of Kazakhstan – they are included in the list of products that are crucial for EAEU market [Board of Eurasian Economic Union, 2016]. Therefore, it seems that the measure is adopted in order to support national producers (of products and those that use these products as intermediates).

The Republic of Kazakhstan also adopts temporary prohibition measures (except SPS prohibition measures mentioned earlier) that are in line with basic provisions of Agreement on EAEU. Still, preliminary analysis shows that some of these measures probably may be viewed as obstacles as they are adopted on a quite frequent basis (e.g. iron and steel waste, ferrous scrap) and become some sort of permanent regulatory measures.

Overall analysis of NTMs applied in the Republic of Kazakhstan revealed specifics of trade policy in part of application of NTMs in this country and shed light on the technical aspect of description and application of measures:

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<sup>7</sup> In particular, further research of ad valorem equivalents (AVE) (e.g. [Kee, Nicita, 2016]) or the determinants of the adoption of NTMs (e.g. [Hergheliegiu, 2016]) will allow us to make definite conclusions on the economic effects of the NTMs applied by the Republic of Kazakhstan.

– Some of national NTMs applied in the Republic of Kazakhstan may present barriers from the point of view of measures' requirements and from the point of view of procedural obstacles associated with the implementation of the measures. As such, old testing facilities, outdated testing methods, costs associated with receiving conformity approval documents, authorizations and licenses result in the fact that some measures create artificial obstacles that hinder trade (both intra- and extra-EAEU trade), simultaneously increasing transaction costs for importers and exporters of the Republic of Kazakhstan.

Several national measures were found to be in violation of MFN principle and national treatment clause. Application of such measures hinders trade of the Republic of Kazakhstan with other countries (EAEU members and non-EAEU members).

Most temporary prohibition measures tend to be barriers (additional burden) for importers and exporters as most of these measures are applied frequently on a long-term basis.

Selected legal acts introduce 239 non-tariff measures that are currently applied by the Republic of Kazakhstan. Most of the national NTMs are either import-related technical measures (TBT, SPS measures) or export-related technical measures. Together they account for approximately 94.8% of applied national NTMs.

Import-related measures are mostly applied against such products as "Miscellaneous chemical products", "Beverages, spirits and vinegar", "Iron and steel", "Live animals", "Albuminoidal substances; modified starches; glues; enzymes". These products are mostly subject to such NTMs as technical measures, but non-technical measures are applied against imports of these products as well. Such combination of applied measures may lead to increased costs for importers.

Export-related measures are directed to such products as "Miscellaneous chemical products", "Iron and steel", "Tools, implements, cutlery, spoons and forks, of base metal; parts thereof of base metal", "Tanning or dyeing extracts; tannins and their derivatives; dyes, pigments and other coloring matter; paints and varnishes; putty and other mastics; inks" and "Beverages, spirits and vinegar". Unlike the imports, there is no single prevailing type of measures applied against exports from the Republic of Kazakhstan. Therefore, it may point indirectly to the fact, that export NTMs constrain export possibilities of the Republic of Kazakhstan that, in turn, may negatively influence growth rates of Kazakh economy [Sudakov, 2016].

Analysis of import-related NTMs' correspondence to MFN and national treatment clause reveals some interesting facts in addition to the analysis of NTMs in terms of NTM type and type of affected product analysis. As such, most of national NTMs (80% of national NTMs – 164 measures) are applied equally to all countries. Nevertheless, preliminary analysis showed that up to 35 import-related NTMs (including temporary SPS prohibition measures adopted due to outbreaks of certain diseases) applied in the Republic of Kazakhstan may represent violations of MFN principle.

In turn, 44 import-related measures were found to be unequally applied to foreign and local companies. This happened due to several reasons. Firstly, analyzed legal acts may cover requirements only for import/export operations, while analogous requirements may be listed in non-trade related legal acts. Such measures are not in violation of national treatment clause. Secondly, the nature of measures themselves implies their application only to foreign companies (e.g. temporary SPS prohibition measures due to outbreaks of diseases). These measures may be discriminatory as they may represent permanent barriers instead of temporary measures. Thirdly, applied measures may violate national treatment clause.

Not taking into account temporary SPS prohibition measures due to outbreaks of diseases (that were found to be possible barriers within MFN analysis) at least up to 4 NTMs applied in the Republic of Kazakhstan may represent violation of national treatment clause and may be barriers for imports of certain goods. This conclusion is also applicable to products within HS 22 group (Beverages, spirits and vinegar).

Also the Republic of Kazakhstan applies export prohibition measure against timber, recovered (waste and scrap) paper or paperboard. These products are crucial for the internal market of the Republic of Kazakhstan, therefore, this measure seeks the purpose to support national producers of such products and national producers that use these products as intermediate goods. Nevertheless, it must be noted that excessive regulatory policies (that are also implemented for rent-seeking reasons) may result in decreased growth rates of economy and overall loss of welfare [Melitz, 2005].

In addition to temporary SPS prohibition measures adopted due to outbreaks of certain diseases, the Republic of Kazakhstan uses temporary measures mostly prohibiting exports of certain products (in addition to export prohibition measure against timber, recovered (waste and scrap) paper or paperboard that is applied on permanent basis). These temporary measures are applied frequently and, therefore, may represent examples of excessive regulatory policies that create additional obstacles for exporters.

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