



# LOCAL CONTENT

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Kazakhstan- Mining & Petroleum



Columbia Center  
on Sustainable Investment

A JOINT CENTER OF COLUMBIA LAW SCHOOL  
AND THE EARTH INSTITUTE, COLUMBIA UNIVERSITY

# The project<sup>1</sup> - background



- Resource-rich countries are increasingly inserting requirements for local content (“local content provisions”) into their legal framework, through legislation, regulations, contracts, and bidding practices. If successful, a policy to increase local content can lead to job creation, boost the domestic private sector, facilitate technology transfer and build a competitive local workforce. However, local content goals are often unfulfilled and the opportunities are not captured. For example, local content provisions typically require investors to meet targets measured as a percentage of investment, hours worked, equipment supplied, or jobs created. If targets are too high, they may either scare away investment or remain unmet as investors accept the fines or find loopholes. If they are too low, the country will not maximize potential linkages. This shows the importance of the framing of local content provisions. Targets, and other local content objectives, need to be carefully quantified, adapted to the local context and collaborative. Because local content provisions can be key to translating resource investments into sustainable benefits for the local population, this project examines the detail of the existing legal frameworks for local content in a number of countries.
- CCSI has conducted a survey of the local content frameworks of a number of countries – identifying the key legislation, regulations, contracts and non-binding policies and frameworks dealing with local content issues in the mining and petroleum sectors<sup>2</sup>. A profile was created for each country, summarizing the provisions in the legal instruments dealing with local content and highlighting examples of high impact clauses<sup>3</sup> – those containing precise language which might be useful as an example to those looking to draft policies to enhance a country’s local content<sup>4</sup>. The profiles examine provisions dealing with local employment, training, procurement, technology transfer, local content plans as well as local ownership, depending on the country’s approach to and definition of local content. In addition, as key to translating provisions into action, the profiles look at implementation, monitoring and enforcement provisions as well as the government’s role in expanding local involvement. Aside from emphasizing the strong clauses, which may be adaptable across countries, the profiles summarize the provisions but do not provide commentary, because local content is so context specific. The profiles are intended as a tool for policy makers, researchers and citizens seeking to understand and compare how local content is dealt with in other countries, and to provide some examples of language that might be adopted in a framework to achieve local content goals. Hyperlinks are provided to the source legislation, regulations, policies and contracts where available.
- <sup>1</sup> The project was managed by Perrine Toledano and Sophie Thomashausen. Research was conducted by Rachel MacDonald.
- <sup>2</sup> General legislation with provisions that relate to local content (for example, tax laws with incentives for local procurement or employment in any industry), was not included in the review. The review included dedicated mining or petroleum sector or specific local content legislation, regulations, policy and contracts.
- <sup>3</sup> Those clauses are framed and singled out by a "thumb up".
- <sup>4</sup> Our criteria for assessment of the quality of the provisions were language that is less likely to present a loophole, i.e. less likely to be subject to interpretation due to vagueness and more likely to lead to enforcement because of its clarity in terms of rights and obligations of both parties (state and investor), and reasonable in its obligations on the company. In addition, as mentioned above, we looked for clauses that encourage collaboration between the company and the government in defining local content targets and goals, and those where the government has a role, as well as clauses enabling implementation and monitoring of the requirements and those giving the government strong remedies to enforce companies’ compliance.



## The impact of international law

The World Trade Organization (WTO)'s agreements and investment treaties can present an obstacle to the realization of local content goals by prohibiting some types of local content requirements (a sub-category of “performance requirements”<sup>1</sup>). CCSI therefore surveyed the relevant WTO agreements and investment treaties in each country profiled to identify the provisions that may prevent, counsel against and/or shield local content standards. These provisions are quoted in the profile in order to show the potential barriers to implementation of local content so that they can be kept in mind when countries enter into these international investment treaties<sup>2</sup>. FTAs other than the WTO agreements, some of which may contain investment chapters, are not included in the scope of the review, but may also be relevant and should be similarly kept in mind.

<sup>1</sup>Performance requirements are measures in law, regulation or contract that require investors to meet specified goals when entering, operating or expanding in, or leaving a host country. Some are strictly mandatory; others are imposed as a condition for receiving some sort of added benefit or advantage.

<sup>2</sup>Countries implementing local content requirements should be aware of the possibility of a challenge to those provisions either through the WTO (state-to-state dispute settlement) or arbitration under the bilateral investment treaties (which is investor-state dispute settlement). While the potential for such actions may be low, they remain a risk depending on the circumstances, and particularly should relations between the state and the investor sour over the course of the investment.



## Highlights

- The Law on Subsoil and Subsoil Use of 2010 is the primary mechanism for regulating local content in the mining, oil and gas sectors in Kazakhstan.
- The Law on Subsoil and Subsoil Use includes comprehensive local content requirements that detail standards for employment, bidding and licensing, procurement of goods and services, enforcement, and monitoring.
- The Law on Subsoil and Subsoil Use is supported by a series of decrees regulating local content, including Decree 45/2012, Decrees 367/2009 and 964/2010, and Decree 1135/2010.
- After decades of negotiations, Kazakhstan completed its accession to the World Trade Organization (WTO) on June 15, 2015. Kazakhstan's accession will impact local content law and regulation in the coming years. Kazakhstan has begun a five-year transition period to bring its local content laws, policies and contracts into compliance with the new WTO requirements.
- CCSI analysis is based on non-official translations of laws and regulations as well as secondary sources on the decrees that were not publicly accessible. CCSI does not guarantee the accuracy of the texts or the analysis based on these sources.

	Employment Requirements
	Procurement Requirements
	Training Requirements
	Technology Transfer Requirements
	Monitoring and Enforcement Mechanisms
	Government Obligations in Support of the Companies' Program

## International law

### Legislation

[Law on Subsoil and Subsoil Use of 2010](#)

### Regulation

Decree 45/2012 on Expatriate Workforce Quota and Work Permit Use

Decrees 367/2009 and 964/2010 on the Measurement of Local Content and Unified Calculation Method

Decree 1135/2010 on State Program for Local Content Development

Decree 133/2013 Amendments on the Rules for the Procurement of Goods, Works, and Services for Subsoil Users

### Contract

[Model Contract for Production](#) 2015 by the Republic of Kazakhstan Subsoil Use Department

## Key definitions

**Local content work (services)** means: “The cumulative total share value of local content in goods used in carrying out the work in the contract price and (or) compensation of employees who are citizens of the Republic of Kazakhstan; the funds paid to the manufacturer of work (services) contract to perform work or services, minus the cost of goods used in carrying out the work, and the price subcontracts” (Law on Subsoil and Subsoil Use, Art 1.34).

**Kazakhstan manufacturer of work and services** means: “Citizens of the Republic of Kazakhstan and (or) legal entities established in accordance with the laws of the Republic of Kazakhstan, located on the territory of the Republic of Kazakhstan, using no less than ninety-five percent of the citizens of the Republic of Kazakhstan in the total number of employees” (Law on Subsoil and Subsoil Use, Art 1.36).

**Kazakhstan origin goods** means: “Goods for which issued the certificate of origin for domestic circulation, confirming its origin in the territory of the Republic of Kazakhstan” (Law on Subsoil and Subsoil Use, Art 1.58).

**Kazakhstan producer of goods** means: “The citizens of the Republic of Kazakhstan and (or) legal entities of the Republic of Kazakhstan, producing goods of Kazakhstan origin” (Law on Subsoil and Subsoil Use, Art 1.59).

**Local content in the product** means “The relative value of local materials used and the cost of production of goods from the territory of the Republic of Kazakhstan as a percentage of the final cost of the goods” (Law on Subsoil and Subsoil Use, Art 1.92).



## Rights and Applications

- The Law on Subsoil and Subsoil Use requires specific local content commitments in all subsoil bid contracts, at risk of bid rejection.

## Employment

- The Law on Subsoil and Subsoil Use imposes compliance with minimum training requirements.
- Decree 45/2012 provides a minimum target for local content in the workforce.

## Procurement

- The Law on Subsoil and Subsoil Use includes provisions mandating local procurement of goods and services, including a preference to Kazakhstani producers if within 20% of foreign bid price.

## Implementation

- Decree 1135/2010 includes specific local content objectives supported by a three stage implementation plan. The Decree includes generalized prescriptions for government implementation such as, “systematiz[ing] the state policy of development of local content and improving the legal framework with regard to strengthening the integration process”.
- Procurement rules require subsoil users to handle their tenders through a transparent procurement system

## Monitoring and Enforcement

- The Law on Subsoil and Subsoil Use mandates annual reporting of procurement plans and long-term schedules for purchasing goods.
- Decrees 364/2009 and 964/2010 create the Uniform Method of Calculation for the uniform reporting and monitoring of local content in goods, works, and services.



- The Law on Subsoil and Subsoil Use requires bids to contain local content specifications including: plans to undertake research and development in Kazakhstan, expenditure on infrastructure development, a commitment to training Kazakh personnel, and a commitment to local procurement of goods and services (Art. 50.3).
- The Law on Subsoil and Subsoil Use requires subsoil users to negotiate to determine acceptable local content commitments and development expenditures. If no agreement is reached, the law instructs for broad contract renegotiation (Arts. 60.3 and 60.7):

 “60.3 The competent authority and the subsoil user must, no later than two months from the date of receipt of the application, through direct negotiations jointly determine the following terms of a contract to mine:

1. Size of the local content in goods, works, services and personnel;
2. The amount of expenditure on social and economic development”

“60.7 In case of no agreement on the conditions specified in paragraph 3 of this Article, the competent authority and the person who made the discovery and evaluation of the deposit under a contract for exploration, must jointly determine the necessary conditions for re-competition on the size of a signing bonus, the local content in goods, works, services, and staff, as well as the cost of socio-economic development of the region and develop its infrastructure.”

- Art. 7 of the Model Contract reproduces the requirement in Art. 60.3 of the Law on Subsoil and Subsoil Use.



- The Law on Subsoil and Subsoil Use requires subsoil users to comply with minimum training requirements for Kazakh specialists established by a government-authorized body (Arts. 26.2.2 and 26.2.3).
- Decree 45/2012 provides a minimum target for local content in the workforce including: a 70% minimum target for Kazakh nationals in high level management positions and a 90% minimum target of Kazakh technicians, specialists and workers by headcount.\*
- In addition to creating foreign labor quotas, Decree 45/2012 includes a reporting method to ensure enforcement of those quotas (Arts. 2.7, 2.8, 2.9).

\* World Bank, "[Local Content Policies in the Oil and Gas Sector: Case Studies](#)" (2013), Table 3.1.



- The Law on Subsoil and Subsoil Use provides preferential treatment to “Kazakhstani Producers” in competitive bids. Kazakh bids are to be favored over foreign producers if they are within 20% of the foreign bid price (Art. 78.2).
- Subsoil users are required to use “equipment, materials and finished products manufactured in the Republic of Kazakhstan, provided that they meet the requirements of competition and the laws of the Republic of Kazakhstan” (Law on Subsoil and Subsoil Use, Art. 76.9).
- Subsoil users must acquire services from Kazakh producers when Kazakh producers “meet the requirements of the project document and the legislation of the Republic of Kazakhstan on technical regulation” (Law on Subsoil and Subsoil Use, Art. 78.1).
- Decree 1135/2010 includes targets for increasing local procurement of goods and services over time. For example, for 2014 it sought to increase the local procurement of goods and services in the subsoil oil and gas industry by 16% and 75%, respectively (Art. 1).



- The Law on Subsoil and Subsoil Use also requires contract terms to contain penalties for non-compliance with local content commitments (Art. 61.2).
- Decree 1135/2010 provides for the staged implementation of local content policy over the course of four years:
  - **Stage 1** (2010-2011): includes the “identification of priority categories for the development of goods and services in the internal market” (Art. 5.1.4).
  - **Stage 2** (2011-2012): includes the “implementation of the plan of preparation of production, services, and skills development” (Art. 5.2.1).
  - **Stage 3** (2013-2014): includes the “systematization of the state policy of development of local content and improving the legal framework with regard to strengthen the integration process” (Art. 5.3.1).



- The stated objectives of Decree 1135/2010 include (Arts. 1 and 4):



“1. The purpose of creating the conditions for sustainable development of the domestic production of competitive goods and services, and promote them on the internal market.

To systematize the state policy of development of local content, improving the regulatory framework.

Providing service and support to domestic producers.

Analysis and forecasting of the further development of domestic production pathways.

Assist in the implementation of projects to develop the production of the most popular in the domestic market of goods and services and the modernization of existing production facilities.”

“4. Setting objectives, target indicators and indicators to measure the results of the program against its goal which is creating the conditions for sustainable development of the domestic production of competitive goods and services, and promote them on the internal market.”

# Implementation (3)

- In 2013, amendments to the Rules for the Procurement of Goods, Works, and Services for Subsoil Users included a new, detailed plan for the practical implementation of procurement procedures (Decree 133/2013) .
- Kazakhstan utilizes an electronic procurement system to regulate procurement. All goods, works and services for subsoil use operations must be procured through the mandatory use of an online procurement system (Decree 133/2013, Art. 6.4).
  - The electronic procurement system screens companies that wish to participate in the procurement process. In order to participate companies must be legally capable, solvent and not subject to “liquidation or bankruptcy proceedings” (Art. 8).
  - Additionally, there is a prohibition on procurement between suppliers and consumers where there is a conflict of interest (Art. 11.1) :



A potential supplier is not allowed to participate if:

- 1) close relatives, spouse (s) or cousins of the potential supplier and (or) the authorized representative of the potential supplier have the right to decide on the choice of the supplier or are an employee of the customer;
- 2) potential supplier and (or) its worker provided to the customer consulting and (or) other services or acted as a general designer or as subcontractor for the preparation (..) of the feasibility study and/or project documentation or acted as the general designer or subcontractor [for those works];
- 3) the financial and economic activity of the potential supplier (...) is suspended in accordance with the legislation of the Republic of Kazakhstan (...).

- The 2013 amendment includes a new harmonized procurement system designed to streamline the procurement process.\*
  - For example, Decree 133/2013 includes a unification of the procurement procedures for most mining companies (excludes those engaged in “operations for the exploration or production of common minerals”) and companies engaged in oil and gas operations (Arts. 1 and 2.1).
  - Additionally, the amendments eliminated previous discrepancies that existed in procurement regulation with the goal of ensuring better transparency and competition of the procurement process (See Arts. 19, 26, 27, 33, 34).

\* Dina Berkaliyeva. ["New Rules on Procurement of Goods, Works, and Services Dedicated for Subsoil Use Operations."](#) Dentons - Kazakhstan Business Updates 2014.



- The Law on Subsoil and Subsoil Use requires the government of Kazakhstan to create (i) a specific, uniform formula to regulate and monitor the local procurement of goods and services; and (ii) procedures to report on expenditure on training and R&D (Arts. 16.55, 16.59, 16.61 and 16.62):



“The Government of the Republic of Kazakhstan shall...

16.55 Approve a unified methodology for calculating the local content organizations in the procurement of goods, works and services;

16. 59 Approve the procedure for calculating the minimum local content in goods, works and services during the mining operations to include in the conditions of competition for the right of subsoil use;

16.61 Approve the form and procedure for compiling and reporting of subsurface users on the performance of an amount of expenditure allocated to education, training and retraining of workers who are nationals of the Republic of Kazakhstan, involved in the execution of the contract, or the training of citizens of the Republic of Kazakhstan to the list of specialties, in coordination with the competent body;

16. 62 Approve the procedure for determining the cost of research and development activities in the territory of the Republic of Kazakhstan, required to perform work under the contract”

- Decrees 367/2009 and 964/2010 established a Unified Method of Calculation in fulfillment of Art. 16.55 of the Law on Subsoil and Subsoil Use.

# Monitoring and Enforcement (2)

- The Subsoil and Subsoil Use Law includes quarterly reporting of local procurement records, training expenditures, local content implementation programs, and employment data (Arts. 76.19, 76.20, 76.21).
- In addition to requiring local content reporting by subsurface users, the Subsoil and Subsoil Use Law requires the government to approve the form and procedures for the reporting on local content obligations (Art. 60.16).
- Where goods and services are acquired in violation of local procurement requirements, their purchase is not considered to satisfy contractual procurement requirements (Subsoil and Subsoil Use Law, Art. 77.6):



“Expenditure on acquisition of goods and services used during mining operations, the results of the contest, held outside the territory of the Republic of Kazakhstan, or acquired in violation of the established government of Kazakhstan about the purchase of goods, works and services during the mining operations are excluded from costs taken into account by the competent authority as the execution of subsurface contractual obligations.”



- The Subsoil and Subsoil Use Law requires subsoil users to submit: (i) medium and long-term purchasing plans; and (ii) annual programs for the purchase of goods, works, and services to a designated authority (Arts. 76.17 and 76.18):



“76.17 Annually no later than February 1 of the planned procurement for the year or no later than sixty days from the date of registration of the subsoil use contract to submit to the competent authority approved by the Government of the Republic of Kazakhstan order forms and annual program of purchasing goods, works and services for the coming year.”

“76.18 Annually no later than February 1 or no later than sixty days from the date of registration of the subsoil use contract to submit to the competent authority approved by the Government of the Republic of Kazakhstan, forms and procedure for medium- and long-term program of purchasing goods, works and services in the coming period.”



## Agreement on Trade-Related Investment Measures (TRIMs)<sup>1</sup>

- Kazakhstan has been a member of the WTO since June 22, 2015.
- Due to its recent accession to the WTO, Kazakhstan is currently in a transitional period of establishing compliance with WTO requirements. Accordingly, newly concluded subsoil contracts should not contain any requirements related to local content in goods and services, and existing contractual provisions relating to local content in goods and services will only remain in effect until January 1, 2021.<sup>2</sup>
- All World Trade Organization (WTO) Members must adopt and abide by the obligations of TRIMs. This can impact a country's ability to impose certain local content requirements (referred to as “investment measures”), to the extent they affect trade in *goods*.
- The following types of local content requirements are covered by TRIMs<sup>2</sup>:
  - requiring a company to purchase or use products of domestic origin – TRIMs prohibits discrimination between goods of domestic and imported origin;
  - limiting the amount of imported products that an enterprise may purchase or use depending on the volume or value of local products that the enterprise exports;
  - restricting foreign exchange necessary to import (e.g., restricting the importation by an enterprise of products used in local production by restricting its access to foreign exchange); and
  - restricting exports.

<sup>1</sup> The TRIMs Agreement clarifies existing rules contained in Articles III (National Treatment Obligation (NTO)) and XI (Prohibition on Quantitative Restrictions) of the General Agreement on Tariffs and Trade (GATT), 1994.

<sup>2</sup> Zhambekov, Nurzhan. The Central Asia Caucasus Analyst, “Kazakhstan Completes WTO Negotiations” June 24, 2015

<sup>3</sup> It is important to be aware of the types of measures prohibited under the TRIMs Agreement, in order to avoid the potential for dispute settlement under the WTO - a state can bring an action against another state for an alleged violation of the TRIMs Agreement (i.e. “state-to-state action”).



## General Agreement on Trade in Services (GATS)

- A separate WTO agreement, the General Agreement on Trade in Services (“GATS”), covers investment measures related to services (in Article XVI), including the following which are relevant to local content:
  - Requirements to use domestic service suppliers
  - Limits on the number of service suppliers
  - Limits on the total value of service transactions or assets
  - Limits on the total number of service operations or quantity of service output
  - Limits on the total number of natural persons permitted
  - Restrictions on or requirements for certain types of legal entities (e.g., joint venture requirements)
  - Imposition of domestic equity
- GATS only applies to those service sectors that the country chooses to include in its Schedule of Commitments. [Kazakhstan’s commitments](#) in relation to services procured by subsurface users may affect the implementation of the Decree 1135/2010 and the Law on Subsoil and Subsoil Use.



- As of 1 March 2016, Kazakhstan has entered into 48 bilateral investment treaties (BITs), but only 33 are in force as of April 2016.<sup>1</sup>
- Investment treaties are international agreements between two or more countries which establish the terms and conditions of foreign investment within each country and provide rights directly to the investors of each country which is party to the treaty. The treaties can contain restrictions on local content requirements.<sup>2</sup>
- Investment treaties can contain the following types of provisions, each of which affects a country's ability to impose local content requirements:
  - non-discrimination provisions (“national treatment” and “most-favored nation” obligations), which are relevant in the context of local content when:
    1. host countries require some foreign investors to source from certain goods and service providers but don't impose similar requirements on other investors; and
    2. host countries give an advantage to some domestic or foreign goods and services providers, but not to a foreign provider whose state has a relevant treaty with the host country. (Note that this is relevant only where the foreign provider of goods or services has or, intends to have<sup>3</sup>, a presence in the host country);
  - restrictions on capital transfers;
  - “pre-establishment” protections, which prevent a state from imposing conditions on foreign investors that are not imposed on domestic investors, such as requirements to transfer technology to local firms, to establish the firm through a joint venture, or to reinvest a certain amount of capital in the host country;
  - incorporation of the TRIMs agreement; and
  - *explicit* prohibition of performance requirements that go beyond what is restricted by the TRIMs Agreement.

<sup>1</sup> According to UNCTAD's [country specific list of bilateral investment treaties](#)

<sup>2</sup> It is important to be aware of the BITs a country has signed and the types of requirements prohibited under it, in order to avoid the potential for arbitration against the country - the majority of investment treaties allow investors to bring arbitration claims directly against the country in which they have invested (“investor-state arbitration”).

<sup>3</sup> I.e., the conditions under which an investor may enter into the territory of a party, not only the conditions once the investment is made.



- Of the 48 BITs signed by Kazakhstan, 21 were located and reviewed.
- Aside from the inclusion of National Treatment Obligations and Most Favored Nation clauses, performance requirements are otherwise limited or prohibited in several BITs and in one multilateral agreement. The most significant clauses are quoted below.

## Kazakhstan – Japan

Article 7: “Neither Contracting Party shall impose or enforce, in connection with investment activities in its Area of an investor of the other Contracting Party, any of the requirements listed (a) to (l) of this Article except for requirements existing at the date of admission of investments by that investor. No requirements imposed or enforced by a Contracting Party in connection with investment activities in its Area of an investor of the other Contracting Party shall be more restrictive than those existing at the date of admission of investments by that investor.

(b) to achieve a given level or percentage of domestic content;

(c) to purchase, use or accord a preference to goods produced or services provided in its Area, or to purchase goods or services from natural or legal persons or any other entity in its Area;

(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with investments of that investor;

(e) to restrict sales of goods or services in its Area that investments of that investor produce or provide by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) to restrict the exportation or sale for export;

(g) to appoint, as executives, managers or members of boards of directors, individuals of any particular nationality;

(h) to transfer technology, a production process or other proprietary knowledge to a natural or legal person or any other entity in its Area, except when the requirement:

(i) is imposed or enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws; or

(ii) concerns the transfer of intellectual property rights which is undertaken in a manner not inconsistent with any applicable multilateral agreement in respect of protection of intellectual property rights to which it is a party;

(i) to locate the headquarters of that investor for a specific region or the world market in its Area;

(j) to hire a given number or percentage of its nationals;

(k) to achieve a given level or value of research and development in its Area; or 7

(l) to supply one or more of the goods that the investor produces or the services that the investor provides to a specific region or the world market, exclusively from the Area of the former Contracting Party.”



## **Kazakhstan – Sweden**

Article 2.3: “Each Contracting Party shall at all times ensure fair and equitable treatment of the investments by investors of the other Contracting Party and shall not impair the management, maintenance, use, enjoyment or disposal thereof nor the acquisition of goods and services or the sale of their production, through unreasonable or discriminatory measures.”

## **Kazakhstan – Switzerland**

Article 2.3: “When a Contracting Party shall have admitted an investment on its territory, it shall grant the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance. Each Contracting Party shall, whenever needed, endeavour to issue the necessary authorizations concerning the activities of consultants and other qualified persons of foreign nationality.”

## **Kazakhstan – United States**

Article 3: “Subject to the laws relating to the entry and sojourn of aliens, nationals of either Party shall be permitted to enter and to remain in the territory of the other Party for the purpose of establishing, developing, administering or advising on the operation of an investment to which they, or a company of the first Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources.”

Article 4: “Companies which are legally constituted under the applicable laws or regulations of one Party, and which are investments, shall be permitted to engage top managerial personnel of their choice, regardless of nationality.”

Article 5: “Neither Party shall impose performance requirements as condition of, establishment, expansion or maintenance of investments, which require or enforce commitments to export goods produced, or which specify that goods or services must purchased locally, or which impose any other similar requirements.”



## Eurasian Economic Union: Vietnam Free Trade Agreement

Article 8.24 Performance Requirements:

- “1. Subject to the reservations set out in its individual national List provided for in Annex 3 to Protocol No. 1 neither Party to this Chapter shall in connection with establishment and/or activities impose or enforce in respect of commercial presences of persons of the other Party to this Chapter set up within the territory of the former Party, respectively, any requirement:
- a) to export a given level or percentage of goods or services;
  - b) to purchase, use or accord a preference to goods produced in its territory;
  - c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such establishment and/or activities;
  - d) to restrict sales of goods or services in its territory that such commercial presences produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
  - e) to transfer a particular technology, a production process, or other proprietary information to persons in the territory of the former Party; or
  - f) to supply exclusively from the territory of the former Party the goods that it produces or the services that it supplies to a specific regional market or to the world market.
2. Neither Party to this Chapter shall condition the receipt or continued receipt of an advantage in connection with establishment and/or activities of commercial presences of persons of the other Party to this Chapter set up within the territory of the former Party on compliance with any of the following requirements:
- a) to purchase, use or accord a preference to goods produced in the territory of the former Party;
  - b) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such establishment and/or activities; or
  - c) to restrict sales of goods or services in its territory that such commercial presences produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.”