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The Honorable Donald L. Evans
Secretary of Commerce
U.S. Department of Commerce
International Trade Administration
Central Records Unit, Room 1870
14th and Constitution Avenue, N.W.
Washington, D.C. 20230

Attn: Brandon Farlander and Jean Kemp

Re: Response to Petitioners' Opposition to Market Economy Status for the Republic of Kazakhstan -- Antidumping Duty Investigation of Silicomanganese from Kazakhstan (A-834-807)

Dear Secretary Evans:

On July 30, 2001, Petitioners filed comments opposing the requests for market economy ("ME") status filed by both the Government of Kazakhstan ("GOK") and the Transnational Company Kazchrome and Aksu Ferroalloy Plant ("Kazchrome") in the above-referenced

antidumping duty investigation.¹ On behalf of both Kazchrome and the GOK,² we hereby respond to those comments and again request that the Department of Commerce (the “Department”) revoke Kazakhstan’s nonmarket economy (“NME”) status according to Section 771(18)(A) of the Tariff Act of 1930, as amended (“the Act”).³

In summary, Petitioners’ comments are unpersuasive in that they presuppose a legal standard for market economy status that is contrary to Section 771(18) of the Act. Petitioners’ entire submission rests on this presupposition, i.e., that the Department will impose a legal standard of the Petitioners’ own invention – namely the “perfect market economy standard” – that is inconsistent with both the law and Department precedent.⁴ Kazchrome and the GOK recognize that Kazakhstan has not achieved a perfect *laissez faire* economic system, and not once did either the GOK or Kazchrome make such a representation in their respective submissions. In fact, Kazchrome stated for the record that “Kazakhstan’s new market economy faces some continuing transition challenges which remain to be met . . .”⁵ Notwithstanding the fact that this has already been acknowledged, Petitioners have gone to great lengths both highlighting and over-emphasizing the challenges facing Kazakhstan’s new market economy. The reason for this approach by Petitioners is obvious: Only by raising the bar for market economy graduation well above that set forth in the law can Petitioners hope that the Department will not graduate Kazakhstan.⁶

¹ See July 30, 2001, Comments on Market-Economy Claim, submitted by Verner, Liipfert, *et. al.* (“Petitioners’ ME Comments”).

² Kazchrome has been informed that the GOK will be submitting a separate letter to the Department in which the GOK will inform the Department that this submission by Kazchrome is representative of any and all rebuttal comments that the GOK would place on the record.

³ See Section 771(18)(A) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1677(18)(A).

⁴ See Section 771(18) of the Act. See Memorandum to Robert S. LaRussa, *Antidumping Investigation of Certain Small Diameter Carbon and Alloy Seamless Standard Line and Pressure Pipe from the Czech Republic: Non-Market-Economy (“NME”) Country Status* (November 29, 1999) (hereinafter “Czech Republic NME Status Memo”). See Memorandum to Troy Cribb, *Antidumping Duty Investigation of Certain Steel Concrete Reinforcing Bars From Latvia – Request for Market Economy Status* (January 10, 2001) (hereinafter “Latvia NME Status Memo”). See Memorandum to Robert S. LaRussa, *Antidumping Duty Determinations on Cold-Rolled Carbon-Quality Steel Products from the Slovak Republic – Market vs. Non-Market Economy Analysis* (October 13, 1999) (hereinafter “Slovakia NME Status Memo”).

⁵ See June 28, 2001, Letter to Secretary Evans on behalf of Kazchrome, *Request for Market Economy Status for the Republic of Kazakhstan* (“Kazchrome ME Request”) at 2.

⁶ Accepting Petitioners’ new standard, one would have to seriously question whether the Department could have recently revoked the NME status of the Czech Republic, Latvia, or Slovakia.

Both Kazchrome and the GOK supplied the Department with the full text of numerous reports and analyses attesting to Kazakhstan's progression to a market economy. Kazchrome and the GOK placed these on the record, in their entirety, for the Department's complete consideration and analysis. In pouring over more than one thousand pages of reports on Kazakhstan, all already provided on the record by Kazchrome and the GOK for the Department,⁷ Petitioners have managed to extract a handful of quotations and paraphrases that they deem "so clear that the [Department] should decide now not to embark on a market-economy investigation in this case."⁸ Kazchrome and the GOK urge the Department to reject this rhetoric and to examine the entire record of evidence concerning Kazakhstan's progression to a young and growing market economy in making its ME determination for Kazakhstan. An examination of that record, and the preponderance of evidence concerning economic reforms in Kazakhstan, demonstrates that Kazakhstan has achieved the extent of institutional reforms and economic liberalization necessary for market economy graduation according to the standard set forth in Section 771(18) of the Act and by the Department's recent precedent, *i.e.*, the graduations of the Czech Republic, Latvia, and Slovakia to market economy status.

I. Applicable ME Standard According to Section 771(18)(B) and Department Precedent

The statutory factors in Section 771(18)(B) of the Act to be considered by the Department in its ME determinations are preceded by the phrase "the extent."⁹ Accordingly, the Act directs the Department to take into account the degree, or extent, of progress achieved for each of the statutory factors in making its ME determination, as opposed to requiring the Department to determine if some "perfect ME destination" has been reached. In its graduation of the Czech Republic, the Department stated unequivocally:

⁷ Notably, Kazchrome and the GOK chose to supply the Department with the full text of the sources consulted and cited by the Department in past ME determinations, rather than artfully quoting and supplying only selected portions of reports that are most complimentary of Kazakhstan's progress. Kazchrome and the GOK placed on the record the full text of each and every source relied on or quoted in their submissions. Thus, Kazchrome and the GOK deliberately provided the full weight of the evidence concerning the extent of Kazakhstan's market-based economic reforms for the Department's complete consideration.

⁸ Petitioners' ME Comments at 1.

⁹ See Section 771(18)(B)(i)-(v) of the Act.

We note at the outset that each of the six statutory factors discussed is framed in terms of the *extent* of government intervention, and not in terms of absolutes, suggesting that complete *laissez faire* and a perfectly competitive market economy is not the applicable standard.¹⁰

In addition, the Department has determined that no single factor in Section 771(18)(B) of the Act is determinative for its ME analysis. In its decision regarding the Czech Republic, the Department said:

[T]he statute provides no direction or guidance with respect to the relative weight that should be placed on each factor in assessing the overall state of the economy, which implies that the Department may use discretion in its evaluation, based upon unique facts in each case.¹¹

In fact, the Department has exercised that very discretion in its ME determinations regarding the Czech Republic, Latvia, and Slovakia, expressly noting areas where reform had not yet been accomplished in those countries and setting forth caveats to the extent of reform that had been achieved. For example, while graduating the Czech Republic, the Department noted:

Despite the extensive privatization that has occurred to date, there remain problems in the Czech Republic's industrial and banking sectors, such as insolvency, weak corporate governance and bad debts, which are hindering restructuring and efficient resource allocation and use. We first note that bad debts and weak corporate governance are not problems unique to transition economies. Second, although many Czech enterprises are insolvent and losing money, many others are solvent and profitable.¹²

Similarly, in graduating Latvia, the Department stated:

Despite these achievements, some problems and obstacles remain. State-owned enterprises in the energy, transport and telecommunication sectors, enterprises which the government has been slow to privatize, still account for a significant share of GDP. Uncollected taxes, particularly in the energy sector, are a relatively large share of GDP, and land registration is proceeding slowly, frustrating the development of a fully functioning land market and the badly needed fixed-asset investment on which that depends. Judicial capacity constraints are undermining government efforts to enforce bankruptcy laws, combat corruption, and promote the rule of law.¹³

¹⁰ Czech Republic NME Status Memo at 16 (emphasis in original and added); *see also* Slovakia NME Status Memo at 14; *see also* Latvia NME Status Memo at 20.

¹¹ Czech Republic NME Status Memo at 16.

¹² *Id.* at 16-17.

¹³ Latvia NME Status Memo at 1-2.

As shown by these statements, in its past ME determinations the Department weighed the statutory factors – appropriately based on the preponderance of evidence – and determined that ME status was warranted, despite the existence of remaining obstacles to market reform facing the countries at issue. In doing so, the Department assessed the overall state of those economies, considering both the accomplished progress and the unmet challenges, and decided that ME status had been achieved. As such, neither the law nor Department precedent supports the height of the ME graduation bar – the perfect market economy bar - that Petitioners want the Department to employ in this case.

In their submission, Petitioners hope to make select statements dispositive, thereby removing the Department’s appropriate discretion under Section 771(18) of the Act. These select statements appear within volumes of evidence regarding Kazakhstan; however, the Petitioners do not want the Department to take appropriate consideration of the overall weight, or preponderance, of evidence in making its ME determination for Kazakhstan. Instead, Petitioners hope the Department will accept discrete statements regarding structural challenges that Kazakhstan continues to address as grounds for denying ME status. Notwithstanding, the Department’s practice is to consider the entire record and the preponderance of evidence regarding the overall extent of economic reforms in making an ME determination. Kazchrome and the GOK request only that the Department continue that practice in accordance with Section 771(18) of the Act.

When graduating Latvia, after noting many of the same structural challenges presently facing Kazakhstan, the Department stated:

“On the whole, however, based on the preponderance of evidence related to economic reforms in Latvia . . . we recommend that the Department find that Latvia has operated as market-economy country . . .”¹⁴

Similarly, in granting ME status to Slovakia, the Department said “[b]ased on the preponderance of evidence related to economic reforms in Slovakia, . . . , the Department should revoke Slovakia’s non-market economy (“NME”) country status.”¹⁵

¹⁴ *Id.* at 2.

¹⁵ Slovakia NME Status Memo at 1; *see also* Czech Republic NME Status Memo at 1.

Relying on the correct standard under Section 771(18) of the Act and the Department's recent ME determinations, the Department should continue to examine the entire record and, based on that record, properly determine that a preponderance of the evidence regarding the large extent of market-based economic reforms in Kazakhstan supports its graduation. As such, the NME status of Kazakhstan should be revoked.

II. The Extent of Kazakhstan's Economic Reforms under 771(18)

A. The Tenge is Freely Convertible

Section 771(18)(B)(i) of the Act directs the Department to consider the extent to which Kazakhstan's currency is convertible. Kazchrome and the GOK have demonstrated for the Department that Kazakhstan's currency, the *tenge*, is freely convertible into the currency of foreign countries.¹⁶ In November 2000, the International Monetary Fund ("IMF") stated: "Kazakhstan's exchange system remains free of restrictions on the making of payments and transfers for current international transactions."¹⁷ In September 2000, the Department noted that Kazakhstan has adopted Article 8 of the IMF articles of agreement and has agreed that it will not restrict current account transactions such as currency conversions or the repatriation of investment profits.¹⁸ The Department stated that, "[t]here are minimal restrictions on converting or transferring funds associated with an investment into a freely usable currency at a legal market clearing rate," and added that "[f]oreign investors may convert and repatriate tenge earnings made inside Kazakhstan."¹⁹

The extent of Kazakhstan's reform under this factor was not seriously challenged in Petitioners' ME Comments. Therefore, Kazchrome and the GOK will trust that the ample information already on the record showing the *tenge's* free convertibility is sufficient for the Department's analysis of the extent of Kazakhstan's progress under this statutory factor.

¹⁶ See Kazchrome ME Request at 6-8.

¹⁷ IMF, *Republic of Kazakhstan—Staff Report for the 2000 Article IV Consultation*, SM/00/257, November 17, 2000 (hereinafter "IMF Staff Report") at 5. See Tab 6 of Kazchrome ME Request.

¹⁸ See Kazakhstan: Year 2000 Investment Climate Statement, BISNIS, U.S. Dept. of Commerce, 13 September 2000 (hereinafter "DOC Investment Statement") at 5. See Tab 7 of Kazchrome ME Request.

¹⁹ *Id.* at 5-6.

B. Wage Rates in Kazakhstan are Largely Determined by Free Bargaining

Section 771(18)(B)(ii) of the Act directs the Department to consider the extent to which wage rates in Kazakhstan are determined by free bargaining between labor and management. First, Kazakhstan has demonstrated its commitment to a free labor market through significant legislative action since independence from the former Soviet Union.²⁰ These include a 1992 Law on Collective Bargaining Agreements, the ratification of 15 International Labor Organization (“ILO”) Conventions after Kazakhstan’s 1993 entry into the ILO, a 1993 Law on Professional Labor Unions, a 1996 Law on Labor Disputes and Strikes, and the keystone January 1, 2000, Law “On Labor.”²¹

Second, these legislative actions have taken hold in Kazakhstan and its labor force now realizes the benefits of the market-based labor structure in Kazakhstan. The U.S. Department of State (“State”), in its 2000 Country Commercial Guide on Kazakhstan, noted that “[t]here are instances of unions successfully negotiating collective bargaining agreements with management.”²² In addition to bargaining for better wages and benefits, as provided for in Kazakh law, workers in Kazakhstan have gone on strike to increase their leverage with management and raise their standards of living. The State Department observed that “[t]eachers, miners and workers at a variety of enterprises have gone on strike for, generally, short periods in the past several years.”²³ This evidence demonstrates that Kazakhstan’s legislative enactments regarding labor rights are being put into practice and market forces are now at work in the Kazakh labor market.

Furthermore, macroeconomic indicators of wages provide additional evidence that market-based labor reforms have been implemented – International Financial Statistics show that average monthly wages in Kazakhstan have nearly tripled between 1995 and 2000.²⁴

²⁰ See Kazchrome ME Request at 8-10.

²¹ See U.S. Department of State FY 2000 Country Commercial Guide: Kazakhstan at Ch. VII, D. See Tab 16 of Kazchrome ME Request. The Law on Labor guarantees all the basic rights of workers in accordance with international standards, including the right to join trade unions and other organizations (Art. 7) and the right to form organizations in order to conduct bargaining and enter into collective agreements with employers (Art. 32). It sets minimum standards, but specifically provides that “parties to the individual contract of employment and collective agreement shall be entitled to agree on better [terms and conditions].” (Art. 5.)

²² *Id.*

²³ *Id.* (emphasis added).

²⁴ See IMF, International Financial Statistics, May 2001 at 468. See Tab 11 of Kazchrome ME Request.

The labor situation at the Aksu Ferroalloy Plant is a telling case in point. Independent unions are active at the Aksu Plant and laborers are free to bargain collectively. In addition, individuals also have the right to freely negotiate their own wages and Aksu not only complies with the Law “On Labor,” but exceeds many of its minimum requirements. Significantly, the average wage at the Aksu Plant is 32,000 *tenge* per month, well above the minimum wage of 2800 *tenge* per month.

Although independent unions are still in the minority in Kazakhstan, they are increasing in number. As seen in Kazchrome’s submission, there have been instances where independent unions faced opposition in Kazakhstan. However, the continued existence of government-sponsored unions has not suppressed Kazakh workers or disallowed free bargaining between labor and management.²⁵ Moreover, the fact that independent unions are still in the minority has not prevented Kazakh workers from attaining the rights, protections, and rising wages that are a product of their newly free labor market, as demonstrated above. The preponderance of evidence provided by Kazchrome and the GOK shows the large extent to which wage rates in Kazakhstan are now determined by free bargaining between labor and management.

C. Joint Ventures and Other Foreign Direct Investment Receive Strong Support in Kazakhstan

Section 771(18)(B)(iii) of the Act directs the Department to consider the extent to which joint ventures or other investments by non-Kazakh firms are permitted in Kazakhstan. Foreign direct investment and participation in the Kazakh economy have not only been permitted, but are actively encouraged by the GOK. Both in law and in fact, foreign firms have complete access to the Kazakh market. The Department itself stated that “Kazakhstan’s generally liberal investment regime means that no sectors of the economy are closed to investors. The GOK plays both

²⁵ Petitioners have not demonstrated that the GOK, in fact, intervenes in the negotiation of wages in any manner in Kazakhstan. Nor have they refuted the economic statistics attesting to the rising wages and rights achieved by Kazakh workers through exercising their legal rights to negotiate freely with management and strike. It appears that Petitioners expect the Department to ignore the weight of this evidence and simply accept their unsupported assertion that the minority status of independent unions, in and of itself, taints the labor market in Kazakhstan.

implicit and explicit roles in attracting foreign investment.”²⁶ In 1999, Kazakhstan ranked third, behind only Hungary and Poland, among former socialist-bloc countries in its level of foreign investment at U.S.\$1.5 billion.²⁷ Foreign investors participate in privatizations in Kazakhstan and are involved in the energy, steel, mineral extraction, and many other sectors of the economy.²⁸

As described in detail in Kazchrome’s ME Request, the GOK has passed several laws that support and encourage foreign investment, and protect the rights of foreign investors.²⁹ Although some reports have commented on the challenges faced by some foreign investors in Kazakhstan in the past (all disproportionately emphasized by Petitioners), these are generally exceptional in nature and run counter to the trend and weight of evidence that show a high success rate and level of foreign investment in Kazakhstan. In fact, the EBRD’s 2000 Transition Report highlighted recent progress in Kazakhstan’s transition, especially regarding commercial law (including those laws covering corporate governance and the protection of shareholder’s rights).³⁰ From 1999 to 2000, Kazakhstan’s overall score for its progress in the legal transition of commercial law was raised by the EBRD, indicating that Kazakhstan now falls within a category where “[c]omprehensive legislation exists in at least two of the three areas of commercial law that were the focus of this survey – pledge, bankruptcy and company law.” It is noteworthy that Kazakhstan’s 2000 score, reflecting the increased extensiveness and effectiveness of Kazakhstan’s commercial laws and the judicial support for those laws, is higher than that of both the Czech Republic and Slovakia, and equal to that of Latvia.³¹

There are more than 130 U.S. companies operating in Kazakhstan and 300 registered U.S. joint venture companies, twenty of which are involved in large-scale projects in the oil and gas, mining, and energy sectors.³² Kazakhstan has attracted over U.S.\$10 billion in foreign direct investment since 1993 and the United States has taken the lead, accounting for over 50%

²⁶ DOC Investment Statement at 2. *See* Tab 7 of Kazchrome ME Request.

²⁷ *See* Freedom House Report at 20. (Table B). *See* Tab 8 of Kazchrome ME Request.

²⁸ *Id.* at 344.

²⁹ *See* Kazchrome ME Request at 10-11 and accompanying footnotes. *See* Kazakhstan Investment Profile 2001 at 8. *See* Tab 13 of Kazchrome ME Request.

³⁰ *See* European Bank for Reconstruction and Development (“EBRD”) Transition Report 2000 at 34-35. *See* Tab 12 of Kazchrome ME Request.

³¹ *Id.*

³² *See* Kazakhstan Investment Profile 2001 at 8. *See* Tab 13 of Kazchrome ME Request.

of investment in Kazakhstan in 1999.³³ Certainly, not every investment works out perfectly.³⁴ However, the overall environment for foreign investment and participation is open and equitable. Furthermore, the GOK is working diligently within the framework of the Foreign Investors' Council ("FIC") to encourage further foreign investment in Kazakhstan and to provide a forum for investors and the GOK to discuss investment issues in Kazakhstan.³⁵ The FIC, headed by President Nazarbaev, has worked directly with foreign investors to address issues and to continue the implementation of reforms to further improve the investment climate in Kazakhstan.³⁶ Of particular note, the FIC recently adopted a Declaration on the Ethical Code of Foreign Investors to ensure that high ethical standards are observed in business dealings in Kazakhstan, including those involving the government.³⁷

As detailed above and in Kazchrome's ME Request, there is compelling evidence that demonstrates the large extent to which Kazakhstan's economy is open to foreign investment. Furthermore, the GOK has responded favorably to the expressed concerns of foreign investors regarding local law enforcement and continues to work in a cooperative manner to increase even further both the level and the success rate of foreign investment in Kazakhstan. Although short of perfection, the GOK has created a continually improving environment of openness and encouragement to joint enterprises and other foreign investment. As evidenced by the high level of foreign investment in Kazakhstan, the GOK strongly supports joint ventures and other foreign direct investment by non-Kazakh firms.

D. Kazakhstan Has, To a Large Extent, Privatized the Ownership and Control of the Means of Production

Section 771(18)(B)(iv) of the Act directs the Department to consider the extent of government ownership or control of the means of production. As of 1999, the EBRD reported

³³ *Id.*

³⁴ While this is an area where one may conclude that Kazakhstan has fallen short of perfection, perfection is not the legal standard under Section 771(18) of the Act, as seen in the Department's graduations of the Czech Republic, Latvia, and Slovakia.

³⁵ Kazakhstan Investment Profile 2001 at 10. *See* Tab 13 of Kazchrome ME Request.

³⁶ *Id.*

³⁷ *Id.*

that the private sector accounted for 60% of Kazakhstan's GDP.³⁸ However, more up-to-date figures from the GOK show that the private sector now accounts for over 75% of GDP.³⁹ In addition, the Economist Intelligence Unit reported that private sector consumption accounted for 76.3% of GDP in 1999.⁴⁰ This demonstrates that the GOK retains, at most, ownership of only a diminishing minority of enterprises in Kazakhstan, and an amount less than some recently-graduated countries. Regarding the remaining government ownership in Kazakhstan, it should be noted that the continued government ownership of certain enterprises in the Czech Republic, Slovakia, and Latvia did not preclude their graduations to market economy status. For example, in the graduation of Latvia, the Department noted:

Ports, airports, the postal and railway systems, cultural organizations such as the national ballet, and regional road maintenance and agricultural research units will not be privatized. The remaining large enterprise privatizations have been problematic for several reasons. In some cases, *e.g.*, electricity and telecommunications, the government is both owner and regulator and is struggling with the problem of how best to divest and deregulate, given the importance of economic efficiency in these sectors and concerns about privatization revenues. In other cases, *e.g.*, transport, the government is not willing to give up a controlling interest.⁴¹

One could, as the Petitioners have, point to the fact that Kazakhstan's privatization progress has slowed. But, after the mass-scale privatizations in 1996 and 1997, a slowdown, after such a large scale of early investment, is not atypical. Of greater importance, the GOK has already accomplished a significant degree of privatization to date, as demonstrated by the continually increasing private-sector share of GDP shown above. Further, the evidence demonstrates that the GOK has privatized its formerly state-owned economy more fully and openly to foreign investors than countries that have been recently graduated by the Department. Regarding recent progress in this area, the Department stated – with respect to Kazakhstan – in its Year 2000 Investment Climate Statement, “[s]ince 1995, the Government has wholly privatized many large-scale companies and sold majority shares in other companies to foreign investors. Privatization moved ahead quickly in 1996 and into the Summer of 1997 in all sectors

³⁸ See EBRD, “Transition report 2000,” at 176. See Tab 12 of Kazchrome ME Request.

³⁹ See GOK ME Request.

⁴⁰ See EIU Country Report, “Economic Structure.” See Tab 9 of Kazchrome ME Request.

⁴¹ Latvia ME Status Memo at 12-13. (emphasis added) (footnotes omitted).

of the economy, including oil and gas, power generation, coal, and telecommunications.”⁴² This contrasts markedly with the situation in Slovakia when it received ME status, where the Department noted that “the second wave of large-enterprise privatization did not proceed without problems. The direct sales process suffered from a lack of transparency and fairness in the timing of sales, the choice of buyer, and the terms and conditions of sale. This effectively precluded foreign investor participation.”⁴³

Petitioners would have the Department believe somewhat of a non-sequitur, i.e., that privatization has neither occurred in Kazakhstan nor will it continue. In their opposition, they state: “No large-scale firms have been privatized More than 300 of the largest enterprises remain fully state-owned.”⁴⁴ This selected partial quotation, as presented by Petitioners, is at best misleading to the Department. The actual source statement is: “No large-scale firms have been privatized compared to the programme target of four enterprises by the end of March 2000 and 10 enterprises by the end of 2000.”⁴⁵ In fact, as quoted above from a Department report, “the Government has wholly privatized many large-scale companies.”⁴⁶ It is true that, compared to the progress up until 1998, privatization has slowed. However, the large extent of Kazakhstan’s progress to date in the privatization area is well documented for the Department’s

⁴² DOC Investment Statement, paragraph 10. (emphasis added). See Tab 7 of Kazchrome ME Request.

⁴³ Slovakia ME Status Memo at 10. (emphasis added).

⁴⁴ Petitioners’ ME Comments at 4.

⁴⁵ Kazakhstan Investment Profile at 11 (emphasis added). See Tab 4 of the GOK ME Request. At this time, Kazchrome and the GOK feel compelled to remind the Department of Petitioners’ misrepresentation of a Department memorandum in their Petition requesting initiation of this investigation. In arguing for India as the surrogate country, **Petitioners asserted that the Department had determined in a recent memorandum that Egypt does not produce merchandise comparable to silicomanganese. In fact, the memorandum merely stated that Egypt could not provide a source for an electricity value in that proceeding.**

We raise this **unfortunate fact of misrepresentation** again only because it is now particularly relevant. In this specific instance, Kazchrome and the GOK have already placed the relevant document on the record and, thus, could quote from it fully to provide the Department with the appropriate context for the Petitioners’ extracted quotation. However, in their comments throughout their July 30th submission, Petitioners have supplied no supporting documents for many of their other quotations and assertions. **Therefore, in many cases, the Department has been denied the opportunity to review the Petitioners’ selected quotations and paraphrases in their original context in order to determine their accuracy. Given their track record in this investigation, it would be quite a leap of faith for Petitioners now to expect the Department to accept their paraphrases of articles, reports, and news clippings as wholly accurate.** See Kazchrome’s August 7, 2001, *Letter to Secretary Evans re: Comments and Relevant Information to Value Factors of Production*, where this credibility issue has already been set out in greater detail.

⁴⁶ DOC Investment Statement, paragraph 10.

consideration.⁴⁷ Furthermore, the GOK's commitment to even greater levels of privatization has been demonstrated. The IBRD stated: "The privatization of 'blue-chip' enterprises is likely to begin in 2001 as the environment for foreign investment improves. Shares in Kazakhtelekom, electricity generation companies, regional power distribution companies and other large and medium-sized enterprises (mainly in the extractive sector) are planned for full or partial privatization."⁴⁸

In addition, Petitioners overstate the number of remaining state-owned enterprises and their economic impact in Kazakhstan.⁴⁹ The IBRD report, quoted by Petitioners, states that "[t]he privatization of small- and medium-scale enterprises (SMEs) and farms is nearly complete, but about 100 large and 260 medium enterprises remain under public ownership."⁵⁰ However, Petitioners omitted this portion from their selected quotation, hoping to focus the Department's attention away from the GOK's demonstrated accomplishments in privatization.⁵¹ Then, while attacking the GOK's economic statistics, Petitioners declared: "First of all, given that more than 300 of the largest enterprises remain entirely in state hands . . ." ⁵²

The weight of the evidence provided to the Department shows that the private-sector in Kazakhstan now accounts for between 60-65% and more than 75% of GDP, depending on the source.⁵³ The extent of Kazakhstan's progress compares very favorably to the privatization progress of countries recently granted ME status by the Department. When graduating Slovakia, the Department observed that "the share of assets privatized at the end of 1997 exceeded

⁴⁷ See Kazchrome ME Request at 11-14 and accompanying footnotes.

⁴⁸ See IBRD Memo at 15. (In a footnote, the IBRD noted that the EBRD is planning to acquire a 30-percent stake in Kazakhtelekom, reducing the Government's stake from 50 to 35 percent.) See Tab 2 of Kazchrome ME Request.

⁴⁹ See Petitioners' ME Comments at 4.

⁵⁰ IBRD Memo at 14. See Tab 2 of Kazchrome ME Request.

⁵¹ See Petitioners' ME Comments at 4.

⁵² Petitioners' ME Comments at 6, footnote 14 (emphasis added). Here, Petitioners declare without support that the GOK's reported private sector share of GDP (76.7%) cannot "possibly be correct." How they have deemed this percentage to be not "correct" is unclear. Petitioners provide no alternative cites to any up-to-date statistics to rebut the GOK's figure. This is for good reason – there are none! The EBRD did report, using information that dates to the beginning of 1999, that about 330 very large enterprises remain to be privatized and account for "about one-third" of GDP. See Freedom House Report at 340. See Tab 8 of Kazchrome ME Request. This indicates that, at the least, the Kazakh economy is two-thirds, or over 65%, privatized – this is a level recognized as sufficient for graduation in the Latvia and other ME determinations.

⁵³ See Kazchrome ME Request and the GOK ME Request and supporting exhibits. Note that the EBRD reported private-sector share of GDP at 55% in 1998. Given that it now stands much higher, regardless of the exact figure, the continued upward trend of the private-sector's share of the economy is not in controversy.

60 percent.”⁵⁴ Thus, the share of government-owned assets in Slovakia stood at almost 40 percent and, further, the Department stated: “The National Property Fund and other Ministries still manage companies in those sectors excluded (so far) from the privatization process, including utilities, the postal service, telecom, railways, some agricultural enterprises, several large banks, and some large enterprises in the machinery sector . . .”⁵⁵ When graduating Latvia, the Department noted that “the private sector accounted for 65 percent of GDP.”⁵⁶ In addition, the Department commented: “State-owned enterprises in the energy, transport, and telecommunications sectors, enterprises which the government has been slow to privatize, still account for a significant share of GDP.”⁵⁷

These decisions demonstrate that the Department does not require “perfect” privatization in order to find ME status. Latvia and Slovakia had between 35 and 40 percent of their GDPs still under government ownership when they were graduated. Kazakhstan has retained a smaller percentage than this and that percentage continues to decline, as demonstrated above. Kazchrome and the GOK request that the Department consider the favorable extent to which the GOK has privatized its economy, including the overall weight of the evidence in this area, under Section 771(18) of the Act and Department precedent in the Czech Republic, Latvia, and Slovakia ME determinations.

E. Kazakhstan Has, To a Large Extent, Privatized Control Over the Allocation of Resources and Price and Output Decisions of Enterprises

Section 771(18)(B)(v) of the Act directs the Department to consider the extent of government control over the allocation of resources and over the price and output decisions of enterprises. The extent to which Kazakhstan has progressed in this area has been outlined for the Department in detail.⁵⁸ Further, the World Bank spoke directly to this factor when it stated:

Economic and trade liberalization have largely been accomplished. Public administration and financial sector reforms, and a new legal and regulatory framework are under way.

⁵⁴ Slovakia ME Status Memo at 10 (emphasis added).

⁵⁵ *Id.*

⁵⁶ Latvia ME Status Memo at 12 (emphasis added).

⁵⁷ *Id.* at 1.

⁵⁸ See Kazchrome ME Request at 14-18 and accompanying footnotes.

With the privatization of most of the small and medium-sized enterprises, the government's scope in the economy decreased significantly by the late 1990s.⁵⁹

In addition, the World Bank added that:

Since independence in 1991, Kazakhstan made substantial progress towards transforming its economy into a market-oriented system. Although this progress has been intermittent, important economic and institutional reforms have been implemented and the size of the government significantly reduced, particularly from the mid-1990s. Liberalization of the economy (freeing most prices, interest rates, and exchange rates) and trade regime (elimination of quantitative restrictions and rationalization of import tariff schedule) has largely been accomplished. Reforms for opening up and deepening the financial sector are in an advanced stage of implementation, and deregulation and a new regulatory framework for the normal operation of a market economy is progressively replacing the old system of regulation.⁶⁰

Although Kazakhstan has not achieved a perfect *laissez faire* economic system,⁶¹ its substantial progress to date in allowing market agents to determine pricing and output decisions, instead of the government, is well reported by the World Bank.

Petitioners urge the Department to view the extent of Kazakhstan's progress toward a completely market-based economic system as a ruse. Indeed, despite the overall analysis of the World Bank (see above) attesting to Kazakhstan's progress in liberalizing its economy, the Petitioners make several sweeping generalizations to the effect that the GOK is secretly controlling and running everything in Kazakhstan's economy.⁶² Again, relying on selected quotations (often without providing supporting exhibits), Petitioners are attempting to divert the Department from considering the preponderance of evidence and the overall weight of information regarding the extent of Kazakhstan's market-based economic progress.

Overall, to what extent have prices been liberalized in Kazakhstan? As of 1998, it was reported that "[p]rices are almost completely liberalized except for some basic foodstuffs."⁶³

Although subsidies do exist in Kazakhstan (as they do in many Western, market-oriented

⁵⁹ World Bank, Public Expenditure Review ("PER"), Volume 1 at viii. See Tab 1 of Kazchrome ME Request.

⁶⁰ PER, Volume II: Main Report, Chapter 1: Transition and Challenges at 1 (emphasis added).

⁶¹ It is doubtful that any country has achieved a perfect *laissez faire* economic system, if one exists.

⁶² See Petitioners' ME Comments at 12-13 (where they state "[t]he government continues to intervene in the economy in many other ways" and "[t]he government also exercises significant indirect control of economic activity through onerous licensing and regulation.").

⁶³ Freedom House Report at 343 (The report added that subsidies do continue to exist for the agricultural sector and state-owned enterprises). See Tab 8 of Kazchrome ME Request.

countries), a comparison of the GOK's State Budget data between 1999 and 2000 shows "a reduction in subsidization of industry and utilities, which is a commendable direction the government is taking."⁶⁴

Furthermore, the strength of progress and reform in Kazakhstan's banking sector has significantly increased the extent to which capital is allocated according to market forces.⁶⁵ The reform-minded policies of the National Bank of Kazakhstan (NBK) have led to consolidation and privatization within the banking sector, as well as improvements in the regulatory and accounting structures therein.⁶⁶ As a result of strict minimum capital requirements and the overall requirement of adherence to international standards, the number of banks has been reduced from over 200 in 1993 to 48 at the beginning of 2001.⁶⁷ The EBRD observed:

Some foreign banks, most notably Citibank (US), have been aggressively entering the Kazakh market and have been successful in attracting blue chip corporates away from the local banks. Smaller Kazakh banks with limited capital resources and less expertise have consequently seen their market shares decreasing. Competition will continue to increase, particularly from foreign banks, but also from domestic private pension funds, which create strong demand for domestic bonds and therefore compete with banks in lending.⁶⁸

Competition and market-based reforms have led to increased confidence in the banking sector in Kazakhstan and increased levels of bank lending.⁶⁹ Bank lending rose by 85 percent between 1999 and 2000 and bank deposits increased by 72 percent during the same period.⁷⁰

Furthermore, the solvency of the banking sector and of bank loans to the market demonstrates, overall, that capital is not being directed to non-performing or unproductive enterprises in Kazakhstan. Most bank loans in Kazakhstan are classified as "standard," with only a small percentage classified as unsatisfactory (3.4%), high risk (2.6%), or loss (4.7%).⁷¹ The people of Kazakhstan now have much greater trust in the banking sector, as evidenced by the growth of

⁶⁴ PER, Volume II: Main Report, Chapter II: Expenditure Priorities at 33. See Tab 1 of Kazchrome ME Request.

⁶⁵ In its graduation of Latvia, the Department stated: "The issue of government control over production decisions and the allocation of resources is, perhaps, most critical as it concerns the allocation of capital, specifically bank credit." Latvia ME Status Memo at 15 (emphasis added).

⁶⁶ See Kazakhstan Investment Profile at 27. See Tab 13 of Kazchrome ME Request.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ See EIU Country Report, "Economic policy outlook." See Tab 9 of Kazchrome ME Request.

⁷⁰ *Id.*

⁷¹ See IBRD Memo at 71. See Tab 2 of Kazchrome ME Request.

individual deposits by 26.2 percent in the fourth quarter of 1999.⁷² This will serve only to continue the increasing levels of bank deposits and market-based bank lending in Kazakhstan.

As demonstrated above and in Kazchrome's ME Request, market forces now dictate to a large extent the pricing and output decisions of enterprises across the economy in Kazakhstan. At the same time, certain industries have been designated as natural monopolies and, thus, are subject to special regulatory regimes.⁷³ The Anti-Monopoly Committee within the Ministry for Strategic Planning is responsible for the regulation of the power sector, telecommunications, gas and oil pipelines, railroads, air navigation, water supply and sewer systems.⁷⁴ Petitioners assert that continued GOK regulation in these areas is inconsistent with the existence of a market economy. However, their criticisms are without economic foundation. In a discussion of the role of government in a market economy, the World Bank stated:

Uncontested markets, where decreasing costs tend to drive out competitive forces, also require government regulation if they are to be efficient. That is, technical efficiency requires that a single firm produce the product, while allocative efficiency requires that multiple firms produce the product. Public utilities are a case in point, and to some degree, telecommunications. Although a large part of the transition process in Kazakhstan involves getting the public sector away from controlling private enterprise through privatization, there may be cases of uncontested markets where a clear rationale for maintaining government control exists⁷⁵

As Kazakhstan continues its progress as a new market economy, the GOK may decide that it is necessary to amend its regulations in certain areas in response to market forces. In fact, market-based changes have already been achieved in the power sector.⁷⁶ "Among the former communist countries, only Hungary has moved further in power sector transition."⁷⁷ Kazakhstan has unbundled power generation, transmission and distribution; formed a regulatory body which has developed significant expertise; introduced the private sector in some areas; and liberalized the

⁷² See Kazkommerts Securities 2000, Sector Research, Banks at 15. See Tab 14 of Kazchrome ME Request.

⁷³ See Freedom House Report at 343. See Tab 8 of Kazchrome ME Request.

⁷⁴ See World Bank, "Kazakhstan: Joint Private Sector Assessment," available at http://www.worldbank.kz/content/esw7_eng.html

⁷⁵ World Bank, PER, Volume II: Main Report, Chapter II: Expenditure Priorities at 23. See Tab 1 of Kazchrome ME Request.

⁷⁶ See David Kennedy, "Regulatory reform and market development in power sectors of transition economies: the case of Kazakhstan," EBRD Working Paper No. 53, June 2000, "Abstract." See Tab 15 of Kazchrome ME Request.

⁷⁷ *Id.* at 1.

market for large users.⁷⁸ The wholesale electricity market follows principles of competition, allowing generators to enter into contracts with large users and electricity distribution companies for the sale or purchase of power.⁷⁹

Furthermore, the remaining GOK regulation of natural monopolies is similar to regulation in the Czech Republic, Latvia, and Slovakia at the same time they achieved ME status. Without supporting documentation, Petitioners declared that the GOK's regulation of natural monopolies "goes well beyond that seen in market economies."⁸⁰ This statement is inconsistent with recent Department ME determinations. The Department granted ME status to the Czech Republic where it noted that there were price controls affecting a limited number of goods and services "covering energy products, utilities, rents, and some public services."⁸¹ In its Latvia determination, the Department stated that "[o]nly public transportation, utilities (water, sewage), residential and industrial energy (electricity, gas, steam) and housing remain subject to government price regulation, in many cases at the municipal government level."⁸² In the Slovakia ME determination, the Department observed similar price controls of energy products, utilities, rents, and public services.⁸³ These statements show that the Department has taken appropriate consideration of the regulation of natural monopolies within economies and found that ME status was warranted even in the face of such regulation. Kazakhstan's decreasing regulation of its natural monopolies is in line with what the Department has observed in other new market economies.

The preponderance of evidence regarding economic reforms in Kazakhstan demonstrates the large extent to which the GOK has removed itself from control over the allocation of resources and the price and output decisions of enterprises. Although additional reforms will lead to even greater economic productivity in Kazakhstan, the extent of Kazakhstan's progress to date has been substantial and market forces are now, to a large extent, determining the allocation of resources in Kazakhstan.

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Id.

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Id. at 17.

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Petitioners' ME Comments at 11.

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Czech Republic ME Status Memo at 12. *See* Tab 3 of Kazchrome ME Request.

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Latvia ME Status Memo at 15. *See* Tab 4 of Kazchrome ME Request.

83

See Slovakia ME Status Memo at 11. *See* Tab 5 of Kazchrome ME Request.

F. Kazakhstan Has Made Market-Based Progress in Other Areas that Support Its Graduation to ME Status

Section 771(18)(B)(vi) of the Act directs the Department to consider “such other factors as the administering authority considers appropriate,” in making its determination regarding a country’s graduation to market economy status. Kazchrome and the GOK have provided substantial evidence concerning Kazakhstan’s openness to foreign trade and integration into the global trading system, its progress towards accession to the WTO, its emergence on global capital markets along with the United States’ considerable investment in its economy, its comprehensive tax system based on international models, and its enactment of national competition laws and improving judicial system.⁸⁴ Overall, these advances provide compelling and further relevant evidence of Kazakhstan’s status as a new market economy country.

In response to all this relevant evidence concerning the advances made by Kazakhstan since its independence from the Soviet Union in 1991, Petitioners have engaged in a wide-ranging assault on Kazakhstan as a country.⁸⁵ Regardless of Petitioners’ unduly harsh and irrelevant attack on Kazakhstan, we request that the Department consider the preponderance of evidence concerning reform and progress in Kazakhstan under Section 771(18) of the Act.

First, Kazakhstan naturally maintains friendly relations with the Russian Federation. This is the result of a shared cultural foundation,⁸⁶ their proximity as neighbors, and security concerns given the spread of an Islamic armed militancy from the south.⁸⁷ Furthermore, because Kazakhstan is land-locked, many of its exported products travel through Russian territory. However, these political and geographical realities do not change the fact that Kazakhstan is increasingly integrating itself into the global market economy. This is demonstrated by the

⁸⁴ See Kazchrome ME Request at 18-21.

⁸⁵ See Petitioners’ ME Comments at 24-29. It is difficult to ascertain what, if any, information in Section IV of Petitioners’ ME Comments has any relevance to the Department’s determination regarding whether Kazakhstan has achieved the extent of reforms necessary such that it operates on “market principles of cost or pricing structures.” See Section 771(18)(A) of the Act. **In point of fact, Section IV of Petitioners’ ME Comments is not germane to the ME issue.**

⁸⁶ It is reported that approximately 30 percent of Kazakh citizens are of Russian ethnicity. See Tab 8 of Kazchrome ME Request.

⁸⁷ See EIU Report, Headline: Political Outlook, Body: International Relations. See Tab 9 of Kazchrome ME Request.

geographical distribution of Kazakhstan's exports and imports, which have moved decidedly away from the original emphasis on trade with countries of the Baltics, Russia, and the Other States of the former Soviet Union ("BRO"). In 1995, trade with non-BRO countries constituted only 41.89% of Kazakhstan's exports and 29.36% of its imports. By 1999, Kazakhstan's trade with non-BRO countries had risen to 69.90% of its exports and 56.31% of its imports.⁸⁸ These percentages include 22.9% of exports to, and 25.3% of imports from, the EU.⁸⁹

Additionally, relations with the United States continually improve for mutually beneficial economic and strategic reasons. In cooperation with the United States, the GOK has taken steps to address the issue of refugees entering Kazakhstan. It is reported that there are "some 18,500 refugees in Kazakhstan at the moment, of whom about 12,500 are from Chechnya (Russia). The other refugees came to Kazakhstan mainly from Afghanistan and Tajikistan."⁹⁰ In this area, the international foundation Counterpart Consortium has begun to implement a refugee integration project with financial backing from the American Bureau of Population, Refugees and Migration, which is a structural subdivision of the U.S. State Department.⁹¹ The reported goal of this project is "to help the institutional development of the nongovernmental organizations (NGOs) working with refugees by providing training and consultation."⁹² This provides one example of American-Kazakh cooperation in the area of human rights.

The trend of increasing cooperation and warm relations between Kazakhstan and the United States has been noted recently in the statements of some Members of Congress in the Congressional Record. In a statement regarding Kazakhstan made by the Honorable Ron Paul of Texas, Congressman Paul declared:

Indeed, Kazakhstan, despite the difficulties of its transition period, has carried out large scale economic and political reforms, especially when compared to the rest of the newly independent states.

⁸⁸ See January 2001 IMF Country Report No. 01/20, *Republic of Kazakhstan: Selected Issues and Statistical Appendix* at 71-72, Tables 32-33. See Tab 17 of Kazchrome ME Request.

⁸⁹ See EIU Country Report, "Economic Structure." See Tab 9 of Kazchrome ME Request.

⁹⁰ 'Refugee integration programme launched in Kazakhstan,' Interfax-Kazakhstan news agency, 7 May 2001. Attached at Tab 1.

⁹¹ *Id.*

⁹² *Id.*

Kazakhstan is a young country located in a critically strategic region with “rough” neighbors and it is crucial for the U.S. to work with this country both politically and economically to ensure their security, independence and progressive development.

This year is the 10th anniversary of Kazakhstan’s independence and during this period Kazakhstan has shown its commitment to work with the U.S. in many areas, including sensitive ones, and has proven to be our reliable partner.⁹³

In a statement regarding Kazakhstan made by the Honorable Edolphus Towns of New York, Congressman Towns stated:

Mr. Speaker, I would like to draw the attention of my colleagues to the issue of strengthening trade relations with one of the most promising countries of the post-Soviet era – the Republic of Kazakhstan. Kazakhstan has long been seen as a crossroads between East and West – a meeting place not only of continents, but of cultures, values, ideas, resources and trade

The potential for cooperation and progress is great, and the time for action now. We must break away from the outdated constraints of a past era and seize the opportunity to put trade ties with Kazakhstan on a more solid, mutually beneficial basis. Mr. Speaker, keeping in mind the importance of promoting and developing active U.S. trade relations with Kazakhstan which will not only open this huge market for Americans but also help to pave the way for true democracy in this country, I proudly cosponsored the legislation (H.R. 1318) that would grant permanent trade relations to Kazakhstan.⁹⁴

In a letter placed on the record by the Honorable Robert Wexler of Florida, it was stated:

Realizing that the majority, of peoples of Kazakhstan subject to mass repression at the time of Stalinism and fascism have been deprived of possibility to develop their culture and language, the Government of Kazakhstan encourages creation of ethnic and cultural centers in all regions of the country. The Jewry is not an exclusion. The only Jewish school in the Central Asian region successfully functions in our country, construction of 10 new synagogues is underway in the largest cities of Kazakhstan. In general, 3000 religious organizations of 46 confessions function in Kazakhstan. None of the other countries in the region can demonstrate such achievements.

In our sincere belief the Kazakhstan Government’s aspiration to preserve and strengthen stability and interethnic concord both in the country and the whole region should be encouraged by the USA. We proceed from the fact that a country which liberated the minds of people would be to a larger extent successful in achieving prosperity than a

⁹³ Tab 2.

⁹⁴ Tab 3.

society burdened with heavy heritage of the past, such as amendment of Jackson — Vanick.⁹⁵

Given Kazakhstan's progress in both economic and non-economic areas, as noted above, the Department should consider the present climate in Kazakhstan and the current strong relations between the United States and Kazakhstan in making its ME determination regarding Kazakhstan. These "other factors" provide compelling further evidence that Kazakhstan has earned the right to be awarded ME status at this time under Section 771(18) of the Act.

III. Conclusion

For all of the foregoing reasons, as well as those detailed in the GOK's and Kazchrome's ME Requests already on the record, the Department should revoke the NME status for Kazakhstan. Kazakhstan's economy now operates on the basis of market principles to such a sufficient and substantiated extent that Kazakhstan's domestic prices and costs can reasonably be used as a basis for calculating normal value within the meaning of U.S. antidumping law.

⁹⁵ Tab 4.

This document has been served in accordance with the attached certificate of service. Please do not hesitate to contact the undersigned should you have any questions regarding this submission.

Respectfully submitted,

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