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July 30, 2001

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

Re: Silicomanganese from Kazakhstan; Comments on Market-Economy Claim

Dear Mr. Secretary:

This letter explains why it is apparent that Kazakhstan is not a market-economy country. The facts regarding this issue are so clear that the Department of Commerce ("Department") should decide now not to embark on a market-economy investigation in this case, as the Government of Kazakhstan ("GOK")[1] and the Transnational Company Kazchrome and Aksu Ferroalloy Plant ("Kazchrome") have requested.[2]

Under the antidumping statute, a nonmarket-economy ("NME") country is "any foreign country that the {Department} determines does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise."[3] In determining whether a country operates on market principles, the Department takes into account the extent of government ownership or control of the means of

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[1] Letter from the Government of the Republic of Kazakhstan to the Honorable Donald L. Evans, Secretary of Commerce (July 9, 2001) ("GOK Submission").

[2] Letter from O'Melveny & Myers LLP, Counsel for Respondents, to the Honorable Donald L. Evans, Secretary of Commerce (June 28, 2001) ("Kazchrome Submission").

[3] Section 771(18)(A) of the Tariff Act of 1930 (the "Act"); 19 U.S.C. § 1677(18)(A) (2001).

production; the extent of government control over the allocation of resources and over the price and output decisions of enterprises; the extent to which the currency of the foreign country is convertible, wage rates in the country are determined by free bargaining between labor and management, and joint ventures or other investments by firms of other foreign countries are permitted; and such other factors as the Department considers appropriate.[4]

For numerous reasons, Kazakhstan does not qualify as a market-economy country under these criteria. The Kazakh state wholly owns more than 300 of the country's largest enterprises and is the majority owner of a very large number of other large and medium-sized companies. Many of these state-owned enterprises are in critical sectors of the economy, including energy, minerals and metals production, and transportation. The state also has retained large minority stakes in many other enterprises, and is exercising a significant degree of control over these enterprises by this means. The bottom line is that privatization of large-scale enterprises is at a very early stage, and while many small and medium-sized enterprises have been privatized, these enterprises are not as important in Kazakhstan as they are in more developed countries. In addition, privatization has slowed markedly. Recent public statements by GOK officials reveal an unwillingness to engage in substantial privatization of larger enterprises in the near term and a desire instead to improve the state's "management" of such enterprises.

The state exercises a high level of influence and control over price and output decisions and resource allocation by a variety of means in addition to outright ownership of enterprises. The state regulates the prices of a very large number of enterprises. Regulated prices for important commodities, including electricity, are held below cost-recovery levels. The state prioritizes and finances specific business activities through loan guarantees, credits provided to commercial banks and tax incentives. Agriculture is highly subsidized, and selected small and medium-sized businesses also enjoy direct state support. The commercial banking sector is underdeveloped and has little to do with financing the economy. Important parts of the financial system remain within state control.

Kazakh authorities have increasingly engaged in ad hoc trade restrictions that distort markets. The state also exercises significant indirect control through excessive regulation and licensing, in which procedures are non-transparent and decision-making criteria are unclear. Inter-enterprise arrears is a very significant problem because of weak bankruptcy procedures. Nonpayment for electricity is widespread, and allowed for political reasons or due to corruption. For these and other reasons, there is no basis for concluding that enterprises price goods at a level that reflects their full market-determined costs.

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[4] *Id.*

In addition, wage rates in Kazakhstan are not determined by free bargaining between labor and management. Rather, they are set by enterprise management and the state-controlled unions. Independent union activity is suppressed by the government and by enterprises (with government support).

There is extensive government interference in foreign investment and joint ventures. High level government officials personally scrutinize major foreign investment proposals, tender procedures are non-transparent and many deals are made behind closed doors or in a manner that limits competition. Government corruption in foreign investment deals is a major problem. The GOK seeks to find "failures" in contract performance by foreign investors in an effort to rewrite deals on terms more favorable to the government. In a number of well-publicized cases, Western investors have been forced to withdraw from the country. In addition, domestic investors are increasingly being favored over foreign investors, particularly outside of the oil and gas sector. As a result, the level of foreign investment in Kazakhstan is relatively low.

Important additional factors weigh strongly against awarding market-economy status to Kazakhstan. Kazakhstan has been widely criticized for its lack of democratic practices, human rights abuses and high-level government corruption. Political power is highly centralized in the office of the president. In addition, Kazakhstan recently has been moving toward increased economic integration and cooperation with Russia and other NME countries. Kazakh trade is still mostly Russia-oriented.

For all of these reasons (which are explained more fully below), the Department should deny Kazchrome's and the GOK's request for revocation of Kazakhstan's NME status in this investigation.[5]

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[5] This letter is not intended to be a point-by-point rebuttal of every assertion (many of which are unsupported) in Kazchrome's and the GOK's submissions requesting market-economy status. Such a point-by-point rebuttal is unnecessary because the facts so clearly show that Kazakhstan is not a market economy country under the statutory criteria. Moreover, it is apparent that many of Kazchrome's and the GOK's arguments are based on paper reforms and mere formalities. For example, regardless of the degree to which Kazakh law "guarantees worker rights" (*see* Kazchrome Submission at 8), workers in fact are impeded in their efforts to engage in collective bargaining through independent unions. Legal protections in general in Kazakhstan are highly questionable, in part because of the lack of an independent judiciary. In addition, Kazchrome's and the GOK's assertions about promised *future* reform efforts (*see, e.g.,* Kazchrome Submission at 13-14; GOK Submission at 8-9) are not relevant, because the issue is whether Kazakhstan was a market economy country during the investigation period.

I. There Is Extensive Government Ownership And Control Of The Means Of Production

A. The State Is The Sole Or Majority Owner Of A Very Large Number Of Large And Medium-Sized Enterprises

An April 2001 report issued by the European Bank for Reconstruction and Development ("EBRD"), contained in the GOK's own submission requesting market-economy status, states that:

> Around 5,000 medium-sized enterprises and 1,000 large enterprises remain in majority state ownership. No large-scale firms have been privatised . . . . More than 300 of the largest enterprises remain fully state-owned.[6, 7]

The more than 300 large enterprises that remain wholly state-owned accounted for "*about one-third of GDP*" in 1999.[8] A World Bank document submitted by Kazchrome states that the government is

> the most important shareholder among large transport, oil and gas sector firms, and maintains considerable control in the industrial

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[6] *Kazakhstan Investment Profile,* European Bank for Reconstruction, at 11 (Attached as Ex. 4 to GOK Submission). This document was "prepared with information available up to March 2001, derived principally from the EBRD, the World Bank, Reuters, BISNIS, and Kazakh government agencies."

[7] The state also retains a minority ownership in about 2,000 enterprises. *See Memorandum of the President of the International Bank for Reconstruction and Development ("IBRD") and the International Finance Corporation to the Executive Directors on a Country Assistance Strategy for the Republic of Kazakhstan ("Memo of the President of the IBRD")*, The World Bank, at 6 (January 16, 2001) (Attached as Ex. 2 to Kazchrome Submission).

[8] FREEDOM HOUSE, NATIONS IN TRANSIT 2000 at 340 (Attached as Ex. 8 to Kazchrome Submission). The EBRD notes that these fully state-owned companies include oil company KazakhOil, oil transit company KazTranzOil, gas transit company KazTransGas, railway company KTZ and energy utility KEGOC. The EBRD states that these enterprises "are natural monopolies and have strategic significance for the national economy, and as a result their sale is not considered advisable for the state, especially in view of the budget surplus." *Id*. Under the statute, the Department must take into account the full state ownership of these very large companies accounting for one-third of GDP in assessing the overall level of government ownership and control of the means of production in Kazakhstan.

> sector through shareholding in joint ventures with foreign investors.[9]

In addition, a World Bank report submitted as part of Kazchrome's claim states that "while most targeted small firms have been privatized, large scale privatization is still lagging behind."[10]

While Kazakhstan has privatized a substantial number of small and medium-sized enterprises, such enterprises "play a much less important role in Kazakhstan compared to developed countries or advanced transition economies."[11]

B. The State Is Exercising Control Over The Means Of Production Through Large Stakes In Privatized Enterprises And By Other Means

Furthermore, in many of the "privatized" enterprises, the GOK has retained large portions of the shares. In a document included in Kazchrome's submission, the World Bank states: "the government has retained large stakes in many of the 'privatized' enterprises without a convincing rationale."[12] Another World Bank document submitted by Kazchrome states that "{m}any enterprises have complained that the State has been blocking important decisions through its minority ownership."[13]

A Freedom House report contained in Kazchrome's submission states:

> There are many examples of firms and banks that are not fully privatized and some fully privatized firms that have been sold to an

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[9] *Memo of the President of the IBRD, supra* note 7, at 14 (Attached as Ex. 2 to Kazchrome Submission). *See also The EU's Relations with Kazakhstan-an overview*, the European Commission, <http://europa.eu.int/comm./external_relations/Kazakhstan/intro/index.htm> (July 12, 2001) ("Despite gradual reform, the state remains the most important shareholder among large firms in the transport, oil and gas sectors, and maintains considerable influence in the industrial sector through substantial shareholdings in firms managed by foreign investors").

[10] *Kazakhstan Public Expenditure Review*, The World Bank, Report No. 20489-KZ, Vol. I at xiii (June 27, 2000) (Attached as Ex. 1 to GOK Submission).

[11] *Memo of the President of the IBRD, supra* note 7 at 67 (Attached as Ex. 2 to Kazchrome Submission).

[12] *Kazakhstan Public Expenditure Review*, *supra* note 10, at xiii.

[13] *Memo of the President of the IBRD, supra* note 7, at 66 (Attached as Ex. 2 to Kazchrome Submission).

> unknown person or group often suspected of ties to the government. The legal boundaries between public and private sector activity are not well defined.[14]

The government also licenses mineral and energy resources (which account for a large percentage of the country's industrial output). An EBRD report cited in Kazchrome's submission states that in the minerals sector, "many companies acquired licenses under non-transparent conditions, and allegations of transfer pricing and corruption have since plagued the

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[14] FREEDOM HOUSE, *supra* note 8, at 338 (Attached as Ex. 8 to Kazchrome Submission). In its market-economy submission, Kazchrome states that

> the EBRD measured the private sector share of GDP in 1999 at 60%, up from 55% in 1998. It is likely that the current percentage of GDP attributable to the private sector is even higher . . . . The most current government figures show that the private sector now accounts for over 75% of GDP . . . . (see Request of the Government of Kazakhstan for Revocation of Non-Market Economy Status) . . . .

Kazchrome Submission at 11; *see also* GOK Submission at 7 ("In 2000, the vast majority of the gross domestic product (GDP) . . . was attributable to private enterprise -- 76.7% of GDP."). First of all, given that more than 300 of the largest enterprises remain entirely in state hands and these enterprises account for about a third of GDP, it does not appear that the 76.7 percent figure can possibly be correct. Second, the GOK provided no documentary support for the 76.7 percent figure or any explanation of how it was derived. All it provided was a table prepared for the purpose of this proceeding. GOK Submission at Exhibit 7. Third, it is apparent that the 76.7 percent GOK figure includes: (1) the output of "privatized" companies in which the GOK has retained significant ownership and (2) the output of joint ventures with foreign investors in which the GOK or state-owned companies participate. Specifically, another exhibit contained in the GOK's submission reports that 22.7 percent of industrial output was produced by "enterprises with states shares (without foreign shares)" and 44.3 percent of industrial output was attributable to "property of joint ventures with foreign shares" GOK Submission at Exhibit 5. It is unclear what portion of this 44.3 percent of industrial output is attributable to foreign joint ventures in which the GOK or state-owned companies participate, but it must be a significant portion given the large output of such joint ventures in the oil and gas sector. In addition, in deriving the 76.6 percent figure, the GOK treated large portions of the output of other sectors ("Construction," "Transport and Communications," and "Other Service") as attributable to "private property," without providing any information indicating the degree to which the claimed "private property" consists of enterprises in which the GOK maintains ownership shares.

sector."[15] Another EBRD report cited in the GOK's submission reports that "most mining industries are vertically integrated with state control of all activities."[16]

C. Privatization Has Slowed

Privatization has slowed markedly in recent years. The EBRD reports that "{i}n the first half of 2000, only US $65 million was raised in privatization revenues, less than in 1999 and only 17% of the annual target. The blue chip privatization programme {of companies in the metals and energy sector} is effectively stalled."[17] The Economist Intelligence Unit ("EIU") reported that "{t}he privatization program ran into difficulties in 2000 largely because the majority of Kazakhstan's large state enterprises -- especially in the electricity sector -- have heavy debt burdens."[18] A publication noted that while "a number of reasons were put forward for the privatization slowdown," the government appeared "reluctant to sell the country's largest enterprises to foreign investors, particularly in the oil and gas sector."[19]

There have been many instances where planned privatizations have been delayed or cancelled.[20] The U.S. Embassy in Almaty reported that:

> A December 1998 tender for sales of government holdings in Kazkhrom, Kaztsink, Aluminum of Kazakhstan and Sokolovsko-Sarbaiskoye did not take place as scheduled. Moreover, the sales of part of the state holdings in Aktobemunaigas, Kazakhmis, Mangistaumunaigas and Ust-Kamenogorskii (gas and metals firms) did not take place as scheduled in April of 1999.[21]

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[15] *Economic Transition in Central and Eastern Europe, Baltic States and the CIS,* Transition Report 2000: Employment, Skills and Transition at 175 (Table 2.1), European Bank for Reconstruction and Development (Attached as Ex. 12 to Kazchrome Submission).

[16] *Kazakhstan Investment Profile, supra* note 6, at 18 (Attached as Ex. 4 to GOK Submission).

[17] *Economic Transition in Central and Eastern Europe, Baltic States and the CIS*, *supra* note 15, at 174 (Attached as Ex. 12 to Kazchrome Submission).

[18] *Kazakhstan Country Report*, The Economist Intelligence Unit, at 8 (July 2001).

[19] *Kazakhstan: Introduction*, World of Information Country Report (February 2, 2001).

[20] *See 2000 Country Commercial Guide: Kazakhstan*, prepared by U.S. Embassy Almaty, U.S. Department of State, at 57 (July 1999).

[21] *Id.*

The State Property and Privatization Committee of the Kazakh Finance Ministry postponed in June of this year the auction to sell the state's interest in the People's Bank of Kazakhstan.[22] The EIU reported that "the government has scrapped a 1999 deal to sell part of the state-managed telecommunications operator, Kazakhtelekom, to the European Bank for Reconstruction and Development (EBRD) for US $70 {million}."[23]

In April of this year, the Kazakh Minister of Energy and Mineral Resources said that just four of the 22 electricity distribution enterprises were "ready for privatization," even though the "privatization of regional power distribution companies was supposed to begin in February 2001 and end in the first quarter of 2002 under ministry plans."[24] The EIU noted that even government plans to privatize those four regional distribution companies "are running behind schedule. The government will restructure the four regional electricity companies during 2001, with sales planned for 2002, a year behind schedule."[25]

In August 2000, the British Broadcasting Corporation ("BBC") reported that then Kazakh Prime Minister Kasymzhomart Tokayev stated that the "speed of implementing the privatization program in Kazakhstan has dropped down significantly this year, because companies are not ready to be sold."[26] The BBC reported that "Tokayev said that the trend threatens the plan for privatizing major industrial facilities in the second echelon of companies subject to privatization."[27] The BBC also reported in February of this year that

> On the whole, the state is planning to maintain its presence in certain branches of the economy through the mechanism of asset management and improving the quality of management. Prime Minister Yesenbayev stated 'It is clear that we must not get too carried away with selling off state properties, but work on how to manage them properly.'[28]

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[22] *See Auction to Sell State Holding in Major Kazakh Bank Postponed,* BBC Worldwide Monitoring (June 28, 2001).

[23] *Kazakhstan Country Report*, The Economist Intelligence Unit, at 18-19 (April 2001).

[24] *Kazak Gov't Not Pleased with Privatization of Power Companies*, Central Asia & Caucasus Business Report (April 2, 2001).

[25] *Kazakhstan Country Report*, *supra* note 23, at 19.

[26] *Slowdown in Kazakh Privatization,* BBC Worldwide Monitoring (August 12, 2000).

[27] *Id.*

[28] *Kazakhstan Refocuses Privatization Strategy-Finance Minister,* BBC Worldwide Monitoring

The state has also reversed privatizations. For example, in May 1999, the state oil company Kazakhoil "purchased an additional 45-percent share of the Atyrau refinery (previously held by a Swiss firm) for $10 million and took over management of the refinery."[29] The BBC states:

> Under one of the presidential decrees which were to reverse some of the privatizations, KazakhOil was created to act both as a NOC and as a holding company on behalf of the state. The oil and gas enterprises were transferred from the finance ministry to KazakhOil. KazakhOil moved quickly to take over some of the companies that were privatized.[30]

In summary, based on the current World Bank and EBRD data, it is clear that while limited privatization of enterprises has occurred in Kazakhstan, the wholly state-owned sector is huge, there are a very large number of majority state-owned enterprises and the state retains large stakes in a large number of other enterprises. Furthermore, even where the extent of government ownership has been reduced, the government frequently continues to exercise control over enterprises by other means.

II. There Is Extensive Government Control Over Price And Output Decisions And The Allocation Of Resources

The Kazakh government retains extensive control over price and output decisions and allocation of resources, both through its extensive ownership and control of the means of production as outlined above, and through its deep involvement in economic activity in the country.

A. The Government Controls Prices Of Many Key Commodities And Prices Are Held Below Cost-Recovery Levels

A 1999 International Monetary Fund ("IMF") paper states that in Kazakhstan and several other former Soviet states in central Asia, the government holds regulated prices for key goods and services -- notably electricity, water, heat, transportation and telecommunications -- at below-cost-recovery levels.[31] The Heritage Foundation 2001 Index of Economic Freedom states

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(February 25, 2000).

[29] *2000 Country Commercial Guide: Kazakhstan*, *supra* note 20, at 5.

[30] *Kazakhstan-Nurlan Balgimbayev, President of KazakhOil,* APS Review Downstream Trends (July 31, 2000).

[31] *See Economic Reforms in Kazakhstan, Kyrgyz Republic, Tajikistan, Turkmenistan, and Uzbekistan*, Occasional Paper 183 at 57-58, International Monetary Fund (1999). *See also*

that "{p}owerful state-owned industries control many wages and prices. Price controls continue on such items as agricultural products, transportation, and utilities."[32] The Heritage Foundation reports that "price controls in the utilities sector prevent producers from passing on their rising costs to the consumer."[33] The Kazakh national electricity transmission network is owned and operated by the state-owned Kazakhstan Energy Grid Operating Company (KEGOC).[34] An EBRD paper states that electricity "transmission prices do not reflect underlying costs thus incentives for underlying consumption and investment decisions are distorted."[35]

While limited privatization has occurred in the energy sector (for example, in power generation), the government remains heavily involved in the setting of prices and output through state ownership of key assets, purchases and sales of electricity, and licensing and regulation:

> A 1995 law on power set the framework for government policy in the sector. The state-owned National Electric Energy System is responsible for purchasing power from the independent power producers and surplus production from regional power suppliers, the transmission of that power to retail consumers and for the import and export of power. The state retains control over licensing production, transmission and distribution activities and import and export transactions, price regulation, power distribution, monitoring compliance with safety standards and establishing a regulatory framework for the industry. The Ministry of Energy and Coal regulates the sector.[36]

Generating Much Heat But No Kazakh Profits, New York Times (May 13, 2001). The IMF paper states that of the five countries examined, only Kazakhstan has made significant progress in periodically adjusting prices for these services to "*closer* to recovery-cost levels." *Id.* (emphasis added).

[32] *Kazakhstan,* The 2001 Index of Economic Freedom, The Heritage Foundation.

[33] *Id.*

[34] *See* Kennedy, David, *Regulatory Reform and Market Development in Power Sectors of Transition Economies: the case of Kazakhstan*, Working Paper No. 53 at 3, European Bank for Reconstruction and Development (June 2000).

[35] *Id.* at 1.

[36] *Kazakhstan: Introduction, supra* note 19.

There are many reports of the Kazakh government's Anti-Monopoly Committee ("AMC") artificially holding down prices of commodities (including electricity) at levels below full costs or that do not permit recovery of investment capital. The EBRD stated that the Belgian company Tractebel sold its assets in one of Kazakhstan's regional power distribution networks (Almaty Power Consolidated, or "APC") back to the GOK because the company had "repeated difficulties to gain the {AMC's} approval for tariff increases . . . ."[37] Because "regulators refused to raise electricity rates," Tractebel's electricity business in Kazakhstan was losing money.[38] A U.S. company, AES, also has been unable to generate any profits from its investment in a large coal-fired power plant in Kazakhstan because of regulators' refusals to permit AES to raise rates to cover its costs.[39] The EBRD has reported that "other investors are experiencing similar difficulties with the tariff rulings of the AMC" and that "{t}he regulatory practice of the AMC has been a source of concern for investors in other sectors as well."[40]

The GOK's concept of "natural monopoly" regulation goes well beyond that seen in market economies:

> There are over eleven hundred companies which are considered to be natural monopolies in Kazakhstan and which are under the supervision of the state Antimonopoly Committee. By law, natural monopolies cannot change their prices more than quarterly and must get the Antimonopoly Authorities' approval to do so. This month 94 natural monopolies applied to the Antimonopoly Committee for tariff increases. In 83 cases tariffs remained unchanged; seven monopolies had their tariffs lowered; only four companies managed to obtain approval to raise their tariffs.[41]

B. Companies Are Allowed To Continue Operating Without Paying Suppliers And Workers

Another critical problem is inter-enterprise arrears. The EIU reports that "{w}eak bankruptcy procedures mean that firms cannot be forced into insolvency, allowing them to keep operating despite financial difficulties, by not paying either their suppliers, creditors or workers.

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[37] *Kazakhstan Investment Profile, supra* note 6, at 21 (Attached as Ex. 4 to GOK Submission).

[38] *Generating Much Heat But No Kazakh Profits*, New York Times (May 13, 2001).

[39] *See id.*

[40] *Kazakhstan Investment Profile, supra* note 6, at 21 (Attached as Ex. 4 to GOK Submission).

[41] *Tractebel: Part I – Enter Kyrgyz Electricity*, Economic News (April 5, 1999).

The result is a chain of inter-enterprise arrears."[42] In particular, nonpayment for electricity is endemic. As one Western diplomat noted, "{t}he mind set in Kazakhstan is that electricity is a right, not a privilege that you have to pay for."[43] An EBRD paper states that "non-payment {for electricity} is allowed to persist for political reasons and due to corruption."[44]

C. State Support Of Enterprises And Industries And Other Government Practices Distort Price And Output Decisions And Resource Allocation

Direct and indirect state support of enterprises and industries is extensive and distorts price and output decisions and resource allocation. The World Bank, in a document contained in Kazchrome's submission, states that:

> Because the public sector remains so deeply entangled in typical private business activities, Kazakhstan is still highly vulnerable to soft budget constraints induced by the state's support of failing enterprises. Moreover, the government still maintains significant indirect influence in production enterprises through tax incentives, government loan guarantees, and direct support to agriculture and small and medium-sized businesses, thereby distorting economy-wide resource allocation.[45]

Agriculture is heavily subsidized. The EIU reported in July 2001 that the agricultural sector "is increasingly reliant" on government support.[46] "Agriculture . . . is gradually becoming more and more dependent on government subsidies."[47]

The government continues to intervene in the economy in many other ways that distort markets. A November 2000 IMF staff report submitted by Kazchrome states that:

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[42] *Kazakhstan Country Report*, *supra* note 18, at 22.

[43] *Generating Much Heat But No Kazakh Profits*, *supra* note 38.

[44] Kennedy, *supra* note 34, at 3.

[45] *Kazakhstan Public Expenditure Review*, *supra* note 10, at xiii (Attached as Ex. 1 to Kazchrome Submission).

[46] *Kazakhstan Country Report*, *supra* note 18, at 10.

[47] *Id.* at 23.

> The authorities have increasingly resorted to ad hoc trade restrictions to address perceived problems in domestic markets. In July 2000, the government renewed and expanded safeguard import duties on a large number of inputs for the construction and extractive industries. Further, to address shortages in the domestic market for fuel, the authorities have renewed an export ban on certain kinds of fuel, and in August decreed that petroleum producers supply mandated quantities to domestic refineries. This measure in effect re-introduces export restrictions that were temporarily imposed in the form of a crude oil export quota in late-1999.[48]

For all of these and other reasons, there is no basis for concluding that enterprises price goods in a manner that captures their actual production costs.

The government also exercises significant indirect control of economic activity through onerous regulation and licensing.[49] More than 300 types of economic activities are subject to licensing. Over 30 state agencies are granted direct regulatory authority over the private sector.[50] Licensing procedures are non-transparent[51] and "{d}ecision-making criteria are frequently opaque."[52]

D. The Government Is Heavily Involved In Financing Business Activities

An important factor in resource allocation is the allocation of capital. In Kazakhstan, important parts of the financial system remain firmly within the control of the state. An IMF paper states that in Kazakhstan and several other former Soviet republics in central Asia, "{a} few large state banks continue to account for the bulk of transactions, acting more as agents

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[48] *Republic of Kazakhstan*, International Monetary Fund Staff Report for the 2000 Article IV Consultation, at 14 (November 17, 2000) (Attached as Ex. 6 to Kazchrome Submission).

[49] *See The EU's Relations with Kazakhstan-an overview*, The European Commission; *See also The Removal of Constraints to Investment in Kazakhstan Project*, Draft Report at 19, U.S. Agency for International Development (February 2, 2001).

[50] *Id.* at 19.

[51] *See 2000 Country Commercial Guide: Kazakhstan*, *supra* note 20, at 14; *See also The Removal of Constraints to Investment in Kazakhstan Project*, *supra* note 49, at 20.

[52] *The Removal of Constraints to Investment in Kazakhstan Project*, *supra* note 49, at 19.

of the state than independent financial intermediaries."[53] Furthermore, Kazakhstan's banking sector "is poorly developed and thus has little to do with financing the economy. The government still owns many banks and controls most assets of the financial system."[54]

According to the World Bank, "Kazakhstan is beset with a substantial amount of . . . contingent liabilities in the form of loan guarantees."[55] Through these loan guarantees, the GOK has "prioritized and financed" specific business activities, such as the construction of hotels and manufacturing plants.[56] The World Bank identifies government loan guarantees as a source of "significant indirect influence" in the Kazakh economy that "distort{s} economy-wide resource allocation."[57] The World Bank also states that "a credit program is being developed where funding from the Government will be provided to commercial banks which will choose worthwhile projects, subject to approval by the Ministry of Energy, Industry, and Trade."[58]

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[53] *Economic Reforms in Kazakhstan, Kyrgyz Republic, Tajikistan, Turkmenistan, and Uzbekistan*, *supra* note 31, at 4.

[54] *Kazakhstan,* The 2001 Index of Economic Freedom, *supra* note 32. While the tenge is convertible, the GOK has at times restricted the free exchange of the tenge across the Kazakh border. "In April 1999, with the devaluation of the Tenge, a 50 percent surrender requirement on export proceeds was also introduced." *Kazakhstan Public Expenditure Review*, *supra* note 10, Vol. iii, annex 1.1 at 3 (Attached as Ex. 1 to Kazchrome Submission). "This requirement was lifted in November 1999, but the GOK retains the right to re-impose it at any time." *Kazakhstan*, International Monetary Fund Annual Report on Exchange Arrangements and Exchange Restrictions, at 470 (2000) (Attached as Ex. 10 to Kazchrome Submission).

[55] *Kazakhstan Public Expenditure Review*, *supra* note 10, Vol. iii at 54 (Attached as Ex. 1 to Kazchrome Submission).

[56] *Id.* at Vol. II, pg. 55.

[57] *Id.* at Vol. I, pg. xiv.

[58] *Memo of the President of the IBRD, supra* note 7, at 71 (Attached as Ex. 2 to Kazchrome Submssion). In its market-economy submission, Kazchrome asserts that

> The World Bank has praised the Government of Kazakhstan for its transformation from its role under the former Soviet model as an intrusive and pervasive force controlling all aspects of the economy to a 'mainly regulatory' role which aims at providing infrastructure, appropriately regulating economic activities, administering social justice, and protecting the poor and the environment.

E. More Reform Is Required To Dismantle The Still Dominant Public Sector In Kazakhstan

On an overall basis, many observers have concluded that Kazakhstan does not have a functioning market economy. An IMF paper notes that "scaling back of the *still dominant public sectors* . . . will require further progress."[59] An European Commission ("EC") report states that "{a}lthough in 1992 the Kazakh government embarked on a *gradual reform process towards* a market economy, structural and fiscal reform are still very much lagging behind."[60]

Based on an analysis of just the two statutory criteria discussed above, it is clear that Kazakhstan "does not operate on market principles of cost or pricing structures," requiring maintenance of its NME status under the statute.[61] An analysis of the remaining statutory criteria provides further confirmation of this fact.

III. There Is Extensive Government Interference With Foreign Investment And Joint Ventures

As explained more fully below, the GOK has been criticized extensively by the U.S. government and many independent observers for undemocratic practices.[62] Power is highly

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Kazchrome Submission at 14. That statement is at best misleading in that it suggests that the World Bank has found that Kazakhstan has made the transformation from a Soviet-style economy to one in which the state has a "mainly regulatory" role. The World Bank document cited by Kazchrome does not reach this conclusion. The document only notes that Kazakhstan has "made progress" in such a transition and that the GOK's stated long-term objectives -- in a document entitled "Kazakhstan *2030*" -- "are consistent with the role of government in a market economy." *Kazakhstan Public Expenditure Review, supra* note 10, at 23 (Attached as Ex. 1 to GOK Submission). The World Bank continues: "{t}o what extent these stated long-term objectives are translated into actual policies and to what extent these objectives can be achieved considering the present institutional environment are two major challenges that the government has to face at the present moment." *Id*.

[59] *Economic Reforms in Kazakhstan, Kyrgyz Republic, Tajikistan, Turkmenistan, and Uzbekistan*, *supra* note 31, at 4 (emphasis added).

[60] *The EU's Relations with Kazakhstan-an overview*, *supra* note 49 (emphasis added).

[61] Section 771(18)(A) of the Act; 19 U.S.C. § 1677(18)(A).

[62] *See, e.g., Kazakhstan,* Country Reports on Human Rights Practices-2000, Introduction, U.S. Department of State (February 2001).

centralized in the office of President Nursultan Nazarbayev.[63] By many reports, President Nazarbayev is running the government and the economy for the benefit of his family and a small circle of favored political elites.[64] This has had an important impact on foreign investment. While Western investors were initially attracted to Kazakhstan, largely because of its substantial oil and gas reserves, Western firms have learned more recently that:

> The same problems that deprive Kazakh citizens of any meaningful protection of their human rights -- authoritarian government with no separation of powers, political control of the judiciary, total lack of accountability for state agencies -- also leave foreign investors (as well as domestic property owners) without any means of enforcing contracts or protecting themselves from arbitrary confiscation.[65]

As detailed below, there have been numerous instances of arbitrary GOK intervention in foreign investments and joint ventures, including instances of expropriation.[66]

A. The GOK Uses A Variety Of Means To Interfere With Foreign Investors And Joint Ventures

The Commercial Guide prepared by the U.S. Embassy in Almaty states that foreign investors

> complain of arbitrary tax inspections and unanticipated taxes, problems with closure on contracts, delays and irregular practices in licensing, land fees, etc. Some foreign firms have expressed concern that government organizations fail to live up to their side

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[63] *See id.*

[64] *See, e.g., Coddling Dictators; The United States Has Diplomatic Ties With the Countries of the Former Soviet Union, Despite Flagrant Violations of Democratic Standards in These Countries,* The Nation (January 31, 2000); *Lawmaker's Rosy Report on Kazakhstan Ignores Grim Truth About Country*, The Washington Times (December 27, 1999).

[65] *Lawmaker's Rosy Report on Kazakhstan Ignores Grim Truth About Country*, The Washington Times (December 27, 1999).

[66] *See Kazakhstan: Introduction, supra* note 19. *See also Kazakhstan Investment Profile, supra* note 6, at 21 (Attached as Ex. 4 to GOK Submission); *Kazakhstan Country Report*, *supra* note 18, at 8 and 26; Roskill Information Services Ltd., *The Economics of Manganese,* at 3 (9th ed. 2000).

> of the contract (particularly regarding payment). This often prevents the foreign partner form moving ahead with its investment program. When this occurs, the investor is exposed to government charges of non-performance and the increasingly real possibility that the government will cancel the contract.[67]

The Guide warns that "U.S. companies are advised to approach any government contract with extreme caution."[68] The EIU reported in July of this year that a GOK commission is now examining 20 of the largest foreign investment contracts "with the explicit purpose of trying to find any lapses in contract compliance to use as a bargaining tool to force a renegotiation of the contracts on more favorable terms for the Kazakh government."[69]

B. The Investment Process Is Not Transparent And Open

Senior GOK officials personally screen major foreign investment proposals, and foreign investment and privatization processes are not open or transparent. The U.S. Embassy Commercial Guide notes "the problems of transparency in commercial transactions" and states that "{s}enior Kazakhstani government officials have a large say in major transactions, and decisions are often made 'behind closed doors.'"[70] The Guide states that major concerns remain

> in the area of government tenders, despite new legislation and government promises that tendering will be conducted in an open and fair manner. Tenders are sometimes issued just a week ahead of the application deadline, thereby limiting competition.[71]

As noted above, the EBRD found that in the mining sector, many companies acquired licenses under non-transparent conditions.[72] The EBRD noted the "apparent reluctance of the government to offer mineral deposits for open international tenders."[73]

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[67] *2000 Country Commercial Guide: Kazakhstan*, *supra* note 20, at 42.

[68] *Id.* 16-17.

[69] *Kazakhstan Country Report*, *supra* note 18, at 26. The EIU notes, "{a}lthough the government claims that the contracts are unfair, they were not signed under duress. Furthermore, Western lawyers advised the government during contract negotiations." *Kazakhstan Country Report*, *supra* note 23, at 29.

[70] 2*000 Country Commercial Guide: Kazakhstan*, *supra* note 20, at 53.

[71] *Id.* at 39.

[72] *See Economic Transition in Central and Eastern Europe, Baltic States and the CIS, supra* note

There have been a number of reports of high-level corruption in foreign investment deals in Kazakhstan. As has been widely reported in the press,

> US oil groups including the Mobil Corp and Amoco Corp paid hundreds of millions of dollars during the 1990s for Kazakhstan oil rights, but much of the money ended up in the private bank accounts of President Nursultan Nazarbayev and other senior officials, according to Former Kazakhstan Prime Minister Akezhan Kazhegeldin.
>
> To substantiate his claims, the former prime minister gave AFX News copies of documents tracing payments from the oil groups to Kazakh government accounts in Switzerland. The transactions then follow a money trail to British Virgin Islands accounts he says were controlled by Nazarbayev and other officials.[74]

In connection with these payments, the EIU has reported that

> The offshore accounts that the {U.S. Department of Justice} has traced are in Liechtenstein, Switzerland and the British Virgin Islands (BVI), and are linked to some of the Kazakhstan's highest government officials. The BVI has become a home away from home for Kazakh firms, particularly those linked to the government.[75]

Likewise,

> In a lesser-known case . . . prosecutors in Belgium and Switzerland are investigating $55 million paid to Kazakh business partners by Tractebel, the energy arm of the French conglomerate Suez. Tractebel's former chief executive acknowledged in a radio

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15, at 175 (Table 2.1) (Attached as Ex. 12 to Kazchrome Submission).

[73] *Id.*

[74] *Ex-Kazakhstan Premier Says US firms' Oil Fees Diverted to Ministers*, AFX News Limited, (July 18, 2001). *See also Generating Much Heat But No Kazakh Profits*, *supra* note 38.

[75] *Kazakhstan Country Report*, The Economist Intelligence Unit, at 13 (October 2000).

> interview last year that he had authorized the payments as commissions to win projects in 1996 and 1997.[76]

The Kazakh individuals that acted as consultants and partners of Tractebel and have been implicated in the investigation are Patokh Chodiev, Alijan Ibragimov and Alexandre Machkevitch,[77] the same three individuals who own shares in Kazchrome through a BVI company called Kazakhstan Mineral Resources Corporation ("KMRC")[78] and were awarded the Western investor's shares in Kazchrome by the Kazakh government after a dispute.[79]

C. There Have Been Many Instances Of Foreign Investment Failures Due To Arbitrary GOK Action

A number of Kazakh investment horror stories have been recounted in the press and by observers on the ground:

> "AES Corporation, an American power company, had invested US $70 million in the Ekibastuz facility since August 1996, but was forced to stop production in July 1998. An agreement between the Kazakh, Uzbek, and Kyrgyz Governments led to the Kazakh national grid being split into Northern and Southern sections. According to this agreement the Southern section is to be supplied by Kyrgyzstan, so depriving AES of some of its largest and best customers overnight."[80]

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[76] *Generating Much Heat But No Kazakh Profits*, *supra* note 38.

[77] *See Brussels Justice Accuses Ex-Partners of Tractebel in Kazakhstan (Justice: Soupconnes De Blanchiment,* L'Echo (June 15, 2001).

[78] Letter from Verner, Liipfert, Bernhard, McPherson and Hand, Chartered, Counsel for Petitioners, to the Honorable Donald L. Evans, Secretary of Commerce at 2 (July 19, 2001) ("Kazchrome Section A Deficiency Comments").

[79] *See* Roskill Information Services Ltd., *The Economics of Manganese,* at 3 (9th ed. 2000) ("The Kazchrome operation is the subject of a dispute between the Trans World Group (TWG) and Kazakhstan Mineral Resources (KMR), the former partners of Japan Chrome which acquired Kazakhmarganets in 1996. In June 1999 the government removed TWG from the shareholders' register and awarded their interest to KMR stating that TWG had damaged the financial interests of Kazakhstan.").

[80] *Kazakhstan: Introduction*, *supra* note 19.

> "One foreign investor, CCL Oil (US), has already withdrawn from the Chimkent refinery. CCL Oil was originally awarded the right to manage the Pavlodar refinery for five years in March 1997. Pavlodar is Kazakhstan's largest refinery, with a capacity of 7.5t/y (150,000 b/d). Because of the government's campaign against CCL Oil, Pavlodar operated at 9% of its capacity in 1999. The government seized the Pavlodar refinery from CCL Oil in July 2000, following a Supreme Court decision in October 1999 and handed 49% of the equity in the Pavlodar refinery to {state-owned} KazTransOil and 51% to Mangistaumunaigaz."[81]

> "Tractebel won the contract to manage the country's gas pipeline network in July 1997, but by the beginning of 1998 was embroiled in a dispute with the government. At one point Tractebel's accounts were frozen and access to its infrastructure assets blocked as the government accused the company of not living up to its obligations."[82] While Tractebel's electricity business in Kazakhstan was losing money because regulators refused to raise rates, it "was making a profit transporting gas through the pipeline. But when it got rid of the local partners, Kazakh banks froze its accounts and the government started a public campaign against the company."[83] "The Kazakh government pressured Tractebel in to leaving the country and it sold its interests in Kazakhstan for US $100 {million} in 2000."[84] The sale was to a state-owned company and the price was only half the amount invested.[85]

> "In April 2001, the government accused TCO -- a joint venture formed to extract oil from the Tengiz field in western Kazakhstan, near the Caspian Sea -- of violating various environmental regulations. Given Kazakhstan's poor regulatory environment, this can be interpreted as an attempt by the government to extract

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[81] *Kazakhstan Country Report*, Economist Intelligence Unit, at 28 (January 2001); *See also Kazakhstan, supra* note 32, at 28.

[82] *Kazakhstan: Introduction*, *supra* note 19.

[83] *Generating Much Heat But No Kazakh Profits, supra* note 38.

[84] *Kazakhstan Country Report, supra* note 23, at 24.

[85] *See Generating Much Heat But No Kazakh Profits*, *supra* note 38.

> higher profits from Chevron's operations in the country. The timing of the government's attack is also suggestive, because -- from the government's perspective -- Chevron's main purpose in Kazakhstan has been achieved with the completion of the CPC project, designed to carry oil from Tengiz through Russia to Western markets. The government needed the oil Company's technological expertise and financial resources to build a dedicated export pipeline, but Kazakhstan could now operate the pipeline, with the assistance of Russia's LUKoil."[86]

The Financial Times noted the "lengthening list of property disputes between international investors and their Kazakh partners or the Kazakh government."[87]

D. The Government Is Granting Preferences To Domestic Investors And Tightening Restrictions On Foreign Investors

Furthermore, the U.S. Embassy Commercial Guide notes that "{b}eginning in 1997, there has been a trend to grant preference to domestic investors over foreigners in most state contracts. September 1999 amendments to the oil and gas law requiring oil companies to use local goods and services represent an extension of this trend."[88] The EIU notes that "the treatment of foreign investors outside of key export sectors such as oil remains poor. There is a distinct impression that foreign investors are simply not welcome in domestically oriented sectors."[89] Government officials have embraced granting preferences to domestic investors. "President Nazarbayev has complained publicly that previous privatizations were executed too quickly and did not allow for the involvement of domestic investors. Other government officials have further expressed the need to 'protect' domestic producers from outside competition."[90]

Recent amendments to the laws regulating joint ventures in the energy sector "require investors to contract with Kazakhstani service-providers, and to purchase Kazakhstani equipment, goods and raw materials . . . ."[91] The amendments also require that "an unnamed

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[86] *Kazakhstan Country Report*, *supra* note 18, at 26.

[87] Financial Times (London), USA Edition 2 (February 13, 1999).

[88] *2000 Country Commercial Guide: Kazakhstan*, *supra* note 20, at 38.

[89] *Kazakhstan Country Report*, *supra* note 23, at 8.

[90] DOC Year 2000 Investment Climate Statement at paragraph 4 (September 11, 2000) (Attached as Ex. 7 to Kazchrome Submission).

[91] *2000 Country Commercial Guide: Kazakhstan*, *supra* note 20, at 42.

government body review all service contracts to ensure compliance with these requirements . . . ."[92] The requirements "may be challenged prior to Kazakhstan's hoped-for {World Trade Organization ("WTO")} accession negotiations since they appear to breach GATT and GATS rules and the Agreement on Trade Related Investment Measures."[93]

To make matters worse, this year Kazakhstan issued a new draft law on foreign investment that independent observers believe will make it easier for the government to nationalize companies and harder for foreign investors to take disputes to international arbitration.[94]

The Heritage Foundation 2001 Index of Economic Freedom summarizes the foreign investment situation in Kazakhstan:

> The government continues to screen much of the foreign capital entering the country, foreigners may not own land, laws are vague and inconsistently applied, and domestic investors increasingly are favored over foreign investors. Moreover the government may be retreating from such open policies as it does have. . . .[95]

Given all of the above, it is no great surprise that while foreign investment in Kazakhstan "is the highest among Central Asian countries," it is still "at a relatively low level."[96]

III. Wages Rates Are Not Determined By Free Bargaining Between Labor And Management

Collective bargaining through independent unions is an important means by which workers bargain freely for wages in market economies. Such collective bargaining does not occur in Kazakhstan, where independent unions are harshly and actively suppressed by the government and by enterprises (with government support).

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[92] *Id.*

[93] *Id.*

[94] *See Kazakhstan: Law Changes Spark Investor Concern,* Radio Free Europe/Radio Liberty <http://www.rferl.org> (June 12, 2001); *See also Kazakhstan Law Clouds its Future; Measure Hinders Foreign Investors,* The Washington Times (July 14, 2001).

[95] *Kazakhstan*, *supra* note 32.

[96] *The EU's Relations with Kazakhstan-an overview*, *supra* note 49.

Most workers in Kazakhstan remain members of state-sponsored and state-controlled unions established during the Soviet era.[97] While the law gives workers the right to join or form independent unions and to engage in collective bargaining, these laws are meaningless because enterprises and the government actively suppress independent union activity.[98] Independent unions and workers who join them are subject to threats and harassment by enterprise management, without legal recourse, and by central and local government authorities.[99] The 2000 U.S. State Department Country Reports on Human Rights Practices for Kazakhstan states:

> The state unions under the Communist system were, and for the most part still are, organs of the government and work with management to enforce labor discipline and to discourage workers from forming or joining independent unions.
>
> To obtain legal status, an independent union must apply for registration with the local judicial authority at the oblast level and with the Ministry of Justice. Registration is generally lengthy, difficult, and expensive. The process of registering a union appears to be completely subjective, with no published criteria. . . . Courts may cancel a union's registration, as a provincial court did in Kentau in 1998.
>
> The law does not provide mechanisms to protect workers who join independent unions from threats or harassment by enterprise management or state-run unions. Members of independent unions have been dismissed, transferred to lower paying or lower status jobs, threatened, and intimidated. According to independent union leaders, state unions work closely with management to ensure that independent trade union members are the first fired in times of economic downturn.[100]

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[97] *See* FREEDOM HOUSE, *supra* note 8, at 331 (Attached as Ex. 8 to Kazchrome Submission); *see also Kazakhstan, Country Reports on Human Rights Practices-2000,* at Section 6, U.S. Department of State (February 2001).

[98] *See id.*

[99] *See id.*

[100] *Kazakhstan, Country Reports on Human Rights Practices, supra* note 97, at Section 6.

According to a Freedom House report contained in Kazchrome's submission, judicial authorities and the Kazakh Ministry of Justice used their authority to liquidate two independent unions from a metallurgical plant, the Association of Independent Trade Unions of Kentau and the Independent Trade Union of Miners.[101] The same report states that in March 1999, local security agents told the largest independent voice for labor -- the Confederation of Free Trade Unions ("KSPK") -- that they had received orders to close down the KSPK within six months and produced a document from the government that confirmed that they had received those instructions.[102] The Freedom House states that independent unions "report constant harassment from central and local authorities. The independent coal mines union, the NPG, in Karaganda, and the Betonshchik Trade Union in Astana, were pressured not to form unions; their leadership lost their jobs in many cases."[103]

In Kazakhstan, wages are not determined by free bargaining between labor and management. Rather, they are set by enterprise management and the state-controlled unions.

IV. Other Factors Do Not Support Granting Market-Economy Status To Kazakhstan

In prior cases involving market-economy claims, the Department has examined such other factors as whether the country at issue has embraced democratic principles and is becoming integrated into the political and economic system of other market-based democratic countries.[104] In this case, the fundamental lack of democracy in Kazakhstan, as well as Kazakhstan's recent moves toward increased economic and political integration with Russia and other NME countries, are important additional factors supporting denial of the GOK's and Kazchrome's market-economy claim.

A. The GOK Is Fundamentally Undemocratic

In granting market-economy status to the Czech Republic, the Department stated:

> Finally, we must note the Czech Republic's vigorous embrace of democracy . . . . {The Czech Republic's} political reforms have

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[101] *See* FREEDOM HOUSE, *supra* note 8, at 331 (Attached as Ex. 8 to Kazchrome Submission) .

[102] *Id.*

[103] FREEDOM HOUSE, *supra* note 8, at 331 (Attached as Ex. 8 to Kazchrome Submission) .

[104] *See*, *e.g.*, Dep't of Commerce Memorandum from John Brinkman, Program Manager, to the File at 15 (November 29, 1999).

> helped strengthen and expand all-important economic freedoms that underlie all market economies."[105]

The contrast between the government of Kazakhstan and the Czech Republic on this score could not be more stark. As described above and discussed further below, the adherence to democratic practices, political freedoms and governmental transparency and accountability that really are fundamental to a market economy are absent in Kazakhstan.

The U.S. Department of State, in its 2000 Country Reports on Human Rights Practices, states that "{t}he state Constitution, adopted in 1995 in a referendum marred by irregularities, permits the President to dominate both the legislature and the judiciary, as well as regional and local governments."[106] An EC report states that:

> The first parliamentary elections were held in March 1994. Although controversial, these elections resulted in a relatively independent parliament. However, in March 1995 the constitutional court annulled the elections and the country was ruled by Presidential Decree until December 1995. The new constitution approved in 1995 reinforces the powers of the executive while limiting that of the legislative. Key decisions are taken by an elite group surrounding the president, with parliamentary parties acting as little more than government-sponsored pressure groups.[107]

In January of 1999, the GOK held a snap presidential election in which the only candidate capable of challenging President Nazarbayev -- Akezhan Kazhegeldin -- was deemed ineligible to run for president because of a technicality.[108] One publication summarized the widespread international criticism of the election as follows:

> The US government said that it failed to meet international standards, Human Rights Watch called them 'grossly unfair,' while the Organization for Security and Co-operation in Europe (OSCE) refused to send a full assessment team, criticizing the exclusion of Kazhegeldin and maintaining that the early election gave the

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[105] *Id*.

[106] *Kazakhstan,* Country Reports on Human Rights Practices*, supra* note 97, Introduction.

[107] *The EU's Relations with Kazakhstan-an overview*, *supra* note 49.

[108] *See Kazakhstan: Introduction, supra* note 19.

> opposition too little time to organize proper campaigns. This was the first time that the OSCE had refused to monitor a presidential election in a member state.[109]

Opposition political parties are subject to state-sponsored harassment. The EIU reported in July of this year that:

> The most important of the opposition movements, the {Republican People's Party of Kazakhstan ("RPPK")}, appears to be on the brink of collapse. Official harassment of the RPPK has forced the party to postpone indefinitely its party conference, which was originally scheduled to be held in Almaty in March. Mr. Kazhegeldin, {(the RPPK's leader)} now lives in exile in London. Party members are barred from traveling aboard to meet him and it is possible that the government may revoke his nationality.[110]

The Economist recently reported that "{o}f the eight opposition representatives (that {a German diplomat met in Almaty}), four said that at some time they had been physically attacked."[111] The EIU also reported that "{i}n recent years the government has used violence and dubious judicial methods to curb any attempts to create an effective opposition front."[112] Even as the GOK has "publicly touted democratic principles, it has progressively sought to silence political opponents, the independent media and {non-governmental organizations}."[113]

Freedom of speech and the press are indeed highly restricted in Kazakhstan. "Government interference in the workings of the media remains prevalent and the introduction of tenders for broadcasting licenses has resulted in the closure of a number of private media companies."[114] This year, the GOK introduced a new media law that "will allow it to crack down on the few newspapers and broadcasters that criticize the president, and there are signs that non-

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[109] *Id.*

[110] *Kazakhstan Country Report*, *supra* note 18, at 13.

[111] *Don't Know, Don't Care in Kazakhstan,* The Economist, at 40 (June 9, 2001).

[112] *Kazakhstan Country Report*, *supra* note 18, at 12.

[113] *Hearing of the Middle East and South Asia of the House International Relations Committee,* Federal News Service (June 6, 2001).

[114] *Kazakhstan: Introduction, supra* note 19.

governmental organizations (NGO's) are to be targeted next."[115] The obvious aim of these restrictions "is not only to prevent criticism of Mr. Nazarbayev but also to ensure that revelations about high-level corruption in Kazakhstan that are publicized abroad are not reported within the country."[116]

As stated above, President Nazarbayev has exercised his control over the state and the economy largely for the benefit of his family and favored political supporters. The EIU states:

> Mr. Nazarbayev has given two of his sons-in-law important positions in the government. . . . {One} son-in-law, Timur Kulibayev, is in charge of TransNeftGas a newly created state-owned oil and gas pipeline and transport company, set up in May.[117]

President Nazarbayev also appointed an individual who is under his direct control to head the state-owned oil company, KazakhOil.[118] In addition, as noted above, the U.S. government is investigating how millions of dollars paid by Western investors for oil rights "ended up in the private bank accounts of {President Nazarbayev} and other senior officials."[119] As one observer stated, "{t}he Kazakh economy has been reduced to a family-oligarchy kleptocracy."[120]

B. Kazakhstan Is Moving Toward Increased Integration With Russia And Other Nonmarket Economy Countries

In part because of the Western criticism of its human rights practices and lack of democracy, as well as geographical proximity, Kazakhstan recently has been moving toward greater military and economic cooperation and integration with Russia.[121] Euromoney reported in September 2000 that

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[115] *Kazakhstan Country Report*, *supra* note 18, at 7.

[116] *Id.* at 12.

[117] *Id.* at 13.

[118] *See Kazakh Prime Minister Resigns, Named to Head KazakhOil,* Interfax News Agency (October 1, 1999).

[119] *Ex-Kazakhstan Premier Says US firms' Oil Fees Diverted to Ministers*, *supra* note 74.

[120] *Coddling Dictators*, *supra* note 64.

[121] *See, e.g., One Step West and One Step East*, Euromoney (September 2000).

> relations between the Kazakh capital Astana and Moscow have never been warmer. Kazakhstan, along with the rest of central Asia, has become increasingly disillusioned with political relations with the west and is turning to Russia for the type of military and economic assistance enjoyed in the past.[122]

Euromoney also stated that "Russia's role in the Kazakh economy will increase not only because it has emerged as the main guarantor of its internal stability but also because Kazakh international trade still is mostly Russia-oriented."[123] Indeed, it remains the case that "Russia accounts for 40 percent of Kazakh foreign trade."[124]

> Jane's Intelligence Review reported in May of this year that President Nursultan Nazarbayev and the government of Kazakhstan are continuously reminded of their economic dependence on Russia. Not only is Russia a leading trade partner but Kazakhstan depends on Russia to export the majority of its oil. These economic ties, however, are not entered into blindly -- on the contrary, {the Kazakh government} openly favors increasing economic co-operation with Moscow.[125]

The economic difficulties Kazakhstan experienced as a result of the 1998 Russian financial crisis also highlight the high degree of interdependence between the Kazakh and Russian economies.

Belarus, Kazakhstan, Kyrgyzstan, Russia, and Tajikistan -- all NME countries under the antidumping law[126] -- last year set up a new organization, the Eurasian Economic

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[122] *Id.*

[123] *Id.*

[124] *Kazakhstan: Country Profile*, Middle East Review World of Information (September 28, 2000).

[125] *New Direction in Caspian Politics,* Jane's Intelligence Review (May 1, 2001).

[126] *See Notice of Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination: Steel Concrete Reinforcing Bars from Belarus,* 66 Fed. Reg. 8,329 (January 30, 2001); *Preliminary Determinations of Sales at Less than Fair Value: Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan; and Preliminary Determinations of Sales at Not Less than Fair Value: Uranium from Armenia, Azerbaijan, Belarus, Georgia, Moldova and Turkmenistan,* 57 Fed. Reg. 23,380 (June 3, 1992).

Community ("EEC").[127] President Nazarbayev recently stated that "I am very glad that {the EEC} was set up in {the Kazakh capital} last year with Russian President Vladimir Putin's active participation."[128] Nazarbayev said that trade between the five member countries had increased by 38 percent.

It is unclear if or when Kazakhstan will become a member of the WTO. The IMF stated in November 2000 that Kazakhstan's "WTO accession process is lagging."[129] The report states that the GOK did not submit a number of documents to the WTO Secretariat as scheduled and a planned meeting of the WTO accession committee was postponed.[130]

V. Conclusion

For the reasons set forth above, Kazakhstan does not satisfy the statutory criteria for obtaining market-economy status. Accordingly, the Department should reject the GOK's and

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[127] *Nazarbayev Praises First Results of Eurasian Community*, TASS (July 16, 2001).

[128] *Id*.

[129] *Republic of Kazakhstan, supra* note 48, at 14-15 (Attached as Ex. 6 to Kazchrome Submission).

[130] *See id.*

Kazchrome's claim that Kazakhstan is a market economy and not undertake a market-economy investigation in this case.

Very truly yours,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing letter was served on the following party by hand delivery on this 30th day of July, 2001:

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