

January 24, 2002

OUR FILE NUMBER  
172,758-2  
498800

WRITER'S DIRECT DIAL  
202-383-5318

WRITER'S E-MAIL ADDRESS  
cguymon@omm.com

Case No.: A-834-807  
Total Number of Pages: 41  
Investigation  
Public Document  
This Document Contains No Business  
Proprietary Information

**PUBLIC DOCUMENT**

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

Attn: Albert Hsu & George Smolik

**Re: Rebuttal Comments Regarding Market Economy Status for the Republic of Kazakhstan -- Antidumping Duty Investigation of Silicomanganese from Kazakhstan (A-834-807)**

Dear Secretary Evans:

In its notice of postponement of the final determination in the above-referenced investigation, the Department of Commerce ("Department") requested that rebuttal comments on Kazakhstan's status as a non-market economy country be submitted no later than January 24,

2002.<sup>1</sup> On behalf of Transnational Company Kazchrome (“Kazchrome”), we submit the following comments and attached materials in further support of the request that the Department grant Kazakhstan market economy status. These materials became available after the December 10, 2001 deadline for initial public comment, and serve to rebut the previous submissions made by Petitioners<sup>2</sup> regarding their views of Kazakhstan’s qualifications for market economy status under the relevant factors, listed in Section 771(18)(B) of the Tariff Act of 1930.<sup>3</sup>

First, as to the extent to which Kazakhstan’s currency is convertible into the currency of other countries, there can be no dispute that the *tenge* is fully convertible. Petitioners’ submissions—while addressing a number of factors that are not mentioned in the Act—neglect to address this factor at all. As Kazchrome pointed out in its original submission requesting market economy status for Kazakhstan, the Department has already recognized Kazakhstan’s achievement of currency convertibility.<sup>4</sup>

Second, the Department must consider the extent to which wage rates in Kazakhstan are determined by free bargaining between labor and management. In addition to Kazchrome’s previous comments on this factor,<sup>5</sup> recent news articles about Kazakhstan make reference to

---

<sup>1</sup> *Notice of Postponement of Final Determinations for Antidumping Duty Investigations: Silicomanganese From Kazakhstan and India*, 66 Fed. Reg. 63,522, 63,523 (December 7, 2001).

<sup>2</sup> See Letter from Verner, Liipfert, Bernhard, McPherson and Hand, Chartered, Counsel for Petitioners, to the Honorable Donald L. Evans, Secretary of Commerce (Dec. 10, 2001) (incorporating by reference the three previous submissions by Petitioners providing comments regarding Kazakhstan’s status as a non-market economy).

<sup>3</sup> 19 U.S.C. § 1677(18)(B).

<sup>4</sup> See Kazakhstan: Year 2000 Investment Climate Statement, BISNIS, U.S. Dept. of Commerce, 13 September 2000 (attached at Tab 7 to Letter from O’Melveny & Myers LLP for Kazchrome to the Honorable Donald L. Evans, Secretary of Commerce (June 28, 2001) requesting market economy status for the Republic of Kazakhstan (hereinafter “Kazchrome’s Market Economy Request”).

<sup>5</sup> See Kazchrome’s Market Economy Request; see also Letter from O’Melveny & Myers LLP for Kazchrome to the Honorable Donald L. Evans, Secretary of Commerce (August 14, 2001) responding to petitioners’ opposition to market economy status for Kazakhstan; Letter from O’Melveny & Myers LLP for Kazchrome to the Honorable Donald L. Evans, Secretary of Commerce (December 7, 2001) responding to supplemental questionnaire on market-oriented industry status (hereinafter “MOI Supplemental Questionnaire Response”).

wage rates in Kazakhstan. In its December 17, 2001 Survey of Kazakhstan, *The Financial Times* heralded Kazakhstan's strong economic growth which had allowed for an increase in public sector wages.<sup>6</sup> An article published the same day in *The Moscow Times* also remarked on Kazakhstan's economic growth in the past year and noted that "The average monthly salary...rose 17 percent after inflation to \$101, the highest in the former Soviet Union and \$15 more than Russia's."<sup>7</sup> Such high (for the region) and increasing wage levels indicate that market forces are at work in determining wages. The specific example of Kazchrome's labor relations at its Aksu Ferroalloy Plant has been described in Kazchrome's MOI Supplemental Questionnaire Response<sup>8</sup> and demonstrates that wages are the result of free bargaining.

Third, the Department must consider the extent to which joint ventures or other investments by foreign firms are permitted in Kazakhstan. The evidence already submitted on this factor overwhelmingly favors granting market economy status to Kazakhstan. Representatives of the very companies that are some of the largest sources of foreign investment in Kazakhstan—including ChevronTexaco, ExxonMobil, Motorola, DHL, and the members of the American Chamber of Commerce in Kazakhstan—have submitted comments attesting to Kazakhstan's openness toward foreign investment. These are companies with first-hand knowledge of the climate in Kazakhstan for foreign investment.

Other sources echo these individual companies' praise for Kazakhstan's welcoming environment for foreign investment. The article in *The Moscow Times*, mentioned above, also reported that "Unlike in Russia, the government's decisions are carried out throughout the

---

<sup>6</sup> See Anthony Robinson, "Survey – Kazakhstan: Strong growth momentum is likely to be maintained," *The Financial Times*, Dec. 17, 2001 at 1. (Attached as Exhibit 1.)

<sup>7</sup> Christopher Pala, "Nomads No More," *The Moscow Times*, Dec. 17, 2001 at 2. (Attached as Exhibit 2.)

<sup>8</sup> See MOI Supplemental Questionnaire Response at 6-7 and Exhibits 9-10.

country, an advantage that foreign investors cite frequently...Kazakhstan is more investor-friendly than Russia.”<sup>9</sup> Foreign direct investment in Kazakhstan continues to increase, rising to \$2.13 billion in the first half of 2001, with the United States contributing the greatest share, at nearly 47 percent.<sup>10</sup> Foreign investors also appreciate the creation of the Foreign Investment Council, a forum for regular discussions with the President of Kazakhstan concerning foreign investment issues.<sup>11</sup> And the President of the European Bank for Reconstruction and Development (EBRD), Jean Lemier, recently characterized Kazakhstan as having the most favorable investment climate of all CIS countries.<sup>12</sup>

Fourth, the Department should consider the great extent to which Kazakhstan has progressed in relinquishing government ownership or control of the means of production. Previous submissions have thoroughly addressed this factor. While assessments may vary as to the precise percentage of the economy of Kazakhstan that has been fully privatized, there is agreement among the various sources that Kazakhstan has progressed most of the way to full privatization. Many of the sectors that remain in government control do so for a reason, because they are strategic industries or natural monopolies. The same situation exists in many recognized market economies, where key sectors of the economy like energy and transportation remain under state control. The Ministry of Economy and Trade of the Republic of Kazakhstan submitted additional information to the Department identifying companies recently privatized

---

<sup>9</sup> *Id.*

<sup>10</sup> *See* Robinson, *supra* note 6, at 2.

<sup>11</sup> *See id.* at 3.

<sup>12</sup> *See* Oral Karpishev, “Kazakhstan’s investment climate best in CIS,” *ITAR-TASS News Agency*, Dec. 15, 2001. *See also* “EBRD praises economic reforms in Kazakhstan,” *Central Asia & Caucasus Business Report*, Dec. 17, 2001; “EBRD praises Kazakhstan’s economic success,” *BBC Monitoring*, Dec. 16, 2001; “EBRD praises economic reforms in Kazakhstan,” *Interfax News Agency*, Dec. 15, 2001. (Attached as Exhibit 3.)

and outlining plans for the privatization of additional “blue chips” and other large companies in the near future.<sup>13</sup>

Fifth, the Department should also recognize the extent that market forces—rather than the government—determine the allocation of resources and the price and output decisions of enterprises. To supplement the materials Kazchrome and the Government of Kazakhstan have already provided regarding this factor, attached are several articles recognizing the progress in the banking sector in particular, which has been an important consideration in the Department’s previous determinations of graduation to market economy status.<sup>14</sup> The survey in *The Financial Times*, cited above, also noted that “A recent flight amnesty drew over Dollars 450m out of mattresses and into the banking system.”<sup>15</sup> EBRD President Lemier described Kazakhstan’s banking sector as “the best in the CIS.”<sup>16</sup>

Kazakhstan’s central bank (the National Bank of Kazakhstan) has received repeated praise for its reforms, which, “coupled with fiscal and monetary discipline, have kept inflation on a declining path.”<sup>17</sup> The central bank has been afforded sufficient independence and power under talented leadership to enable its efforts to create “a world-class banking and financial sector.”<sup>18</sup> “Dozens of banks were closed when the Central Bank imposed strict capital

---

<sup>13</sup> See Letter from the Ministry of Economy and Trade to the Secretary of Commerce of the United States of America, submitted December 27, 2001. Although the level of privatization in Kazakhstan already warrants revocation of NME status, the future plans for additional companies to be privatized demonstrates the Government of Kazakhstan’s continued commitment to economic reform.

<sup>14</sup> 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”) at 15-17 (tracing the development of the banking sector in Latvia and commending the central bank in Latvia for reforms).

<sup>15</sup> See Robinson, *supra* note 6, at 3.

<sup>16</sup> Karpishev, *supra* note 12.

<sup>17</sup> See Robinson, *supra* note 6, at 3.

<sup>18</sup> Pala, *supra* note 7, at 2-3.

requirements. ... Today there are 40 banks in Kazakhstan, all private except for a state import-export bank and a state development bank.”<sup>19</sup>

Finally, the Department may consider other factors it deems appropriate. Petitioners suggest that factors unrelated to the economy should be given great consideration. Kazchrome asserts that this catch-all category should more appropriately be used to encompass other *economic* attributes of Kazakhstan. Many market economies around the world employ social and political systems that are different from those favored by the United States and western European countries. Such choices should not be held against a country being considered for graduation to market economy status, especially given Kazakhstan’s unique situation, at the crossroads between Europe and Asia.

In addition to the other factors previously suggested by Kazchrome for consideration by the Department, the attached articles highlight Kazakhstan’s economic success, which should be taken into account in determining that the time has come for its non-market economy status to be revoked. For 2001, Kazakhstan’s GDP growth is estimated at 13 percent, “the highest in the fast-recovering post-Soviet economic world.”<sup>20</sup> Meanwhile, inflation has been declining and is now in the single digits.<sup>21</sup> Kazakhstan has “laid the groundwork for a thriving market economy,” and “has come of age—both politically and economically.”<sup>22</sup> Of all the post-Soviet states in the Caucasus and Central Asia, “Kazakhstan has survived best and is even beginning to prosper—and that makes it rather unique.”<sup>23</sup>

---

<sup>19</sup> *Id.* at 3.

<sup>20</sup> *See* Robinson, *supra* note 6, at 1.

<sup>21</sup> *See id.* at 3.

<sup>22</sup> Robinson, “Survey – Kazakhstan: This strategic, oil-rich country has come of age,” *The Financial Times*, Dec. 17, 2001 at 1. (Attached as Exhibit 4.)

<sup>23</sup> *Id.* at 2.

The article in *The Moscow Times*, cited previously, hailed Kazakhstan's "double-digit growth and single-digit inflation in an economy that Russia, which colonized Kazakhstan for two centuries, can only envy."<sup>24</sup> The article went on to explain that "financial reforms...have lifted the country out of the doldrums," and "have given it the most prosperous economy of the Commonwealth of Independent States countries and put it in the league of Central Europe and the Baltic countries."<sup>25</sup> Indeed, Kazakhstan's economic growth places it in the same league as countries like Poland and Hungary, which have achieved recognition as market economies. Kazakhstan's GDP growth rate over the past five years is 26 percent, compared to 26.2 percent for Hungary and 24.4 percent for Poland.<sup>26</sup>

Another important consideration should be Kazakhstan's efforts at integration into the global economy. This was a crucial issue at the recent meeting of Presidents Nazarbayev and Bush in Washington. The leaders of these two countries committed to strengthen their long-term, strategic partnership "aimed at bringing Kazakhstan increasingly into the global economy."<sup>27</sup> In their joint statement, Presidents Nazarbayev and Bush pledged "to advance our bilateral economic, trade, and investment relations."<sup>28</sup> The statement continues: "Achieving these goals requires...enhancing Kazakhstan's strong record on economic reform. We also intend to cooperate to advance Kazakhstan's integration in the global economy by supporting

---

<sup>24</sup> Pala, *supra* note 7, at 1.

<sup>25</sup> *Id.*

<sup>26</sup> "Kazakhstan's real GDP growth has been at Polish, Hungarian level in past five years," *Interfax News Agency*, Dec. 16, 2001. (Attached as Exhibit 5.)

<sup>27</sup> "U.S., Kazakhstan sign oil development pact," *Calgary Herald*, Dec. 26, 2001. (Attached as Exhibit 6.)

<sup>28</sup> "Joint Statement by President George W. Bush and President Nursultan Nazarbayev on the New Kazakhstan-American Relationship," *Public Papers of the President*, Dec. 21, 2001, at 2. (Attached as Exhibit 7.)

Kazakhstan's accession to the World Trade Organization on the basis of standard and agreed criteria, and its graduation from the Jackson-Vanik Amendment."<sup>29</sup>

The Department should keep in mind that each of the six factors is framed in terms of "the extent" to which the transition has been made, "suggesting that complete *laissez faire* or a perfectly competitive market economy is not the applicable standard."<sup>30</sup> Petitioners' efforts to point out Kazakhstan's imperfections under certain of the six factors do not undermine Kazakhstan's qualifications as a market economy country under the Act, because the progress already made far exceeds the amount that has yet to be achieved.

Finally, the Department should also take note that, other than Petitioners (a one-company U.S. industry), no other U.S. industry or company has filed comments in opposition to the request for revocation of Kazakhstan's NME status. On the contrary, numerous U.S. companies and associations have placed their support for ME status for Kazakhstan on the record in this case.

---

<sup>29</sup> *Id.*

<sup>30</sup> 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) at 16; see also Latvia NME Status Memo at 20; 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) at 14. (All previously provided as exhibits to Kazchrome's Market Economy Request.)

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,

Kermit W. Almstedt  
CarrieLyn D. Guymon  
John P. Maloney, Jr. (lead)  
Peggy A. Clarke  
for O'MELVENY & MYERS LLP

Counsel to Transnational Co. Kazchrome and  
Aksu Ferroalloy Plant and Considar, Inc.

## Exhibit List

Exhibit	Description
1	Survey – Kazakhstan: Strong growth momentum is likely to be maintained
2	Nomads No More
3	EBRD Praises Economic Reforms in Kazakhstan
4	Survey – Kazakhstan: This strategic, oil-rich country has come of age
5	Kazakhstan’s real GDP growth has been at Polish, Hungarian level in past five years
6	U.S. Kazakhstan sign oil development pact
7	Joint Statement by President George W. Bush and President Nursultan Nazarbayev on the New Kazakhstan-American Relationships

**Exhibit 1**

**Survey – Kazakhstan:  
Strong growth momentum is likely to be maintained**

**Exhibit 2**

**Nomads No More**

**Exhibit 3**

**EBRD Praises Economic Reforms in Kazakhstan**

**Exhibit 4**

**Survey – Kazakhstan:  
This strategic, oil-rich country has come of age**

**Exhibit 5**

**Kazakhstan's real GDP growth has been at  
Polish, Hungarian level in past five years**

**Exhibit 6**

**U.S. Kazakhstan sign oil development pact**

**Exhibit 7**

**Joint Statement by President George W. Bush and President Nursultan Nazarbayev on the  
New Kazakhstan-American Relationships**