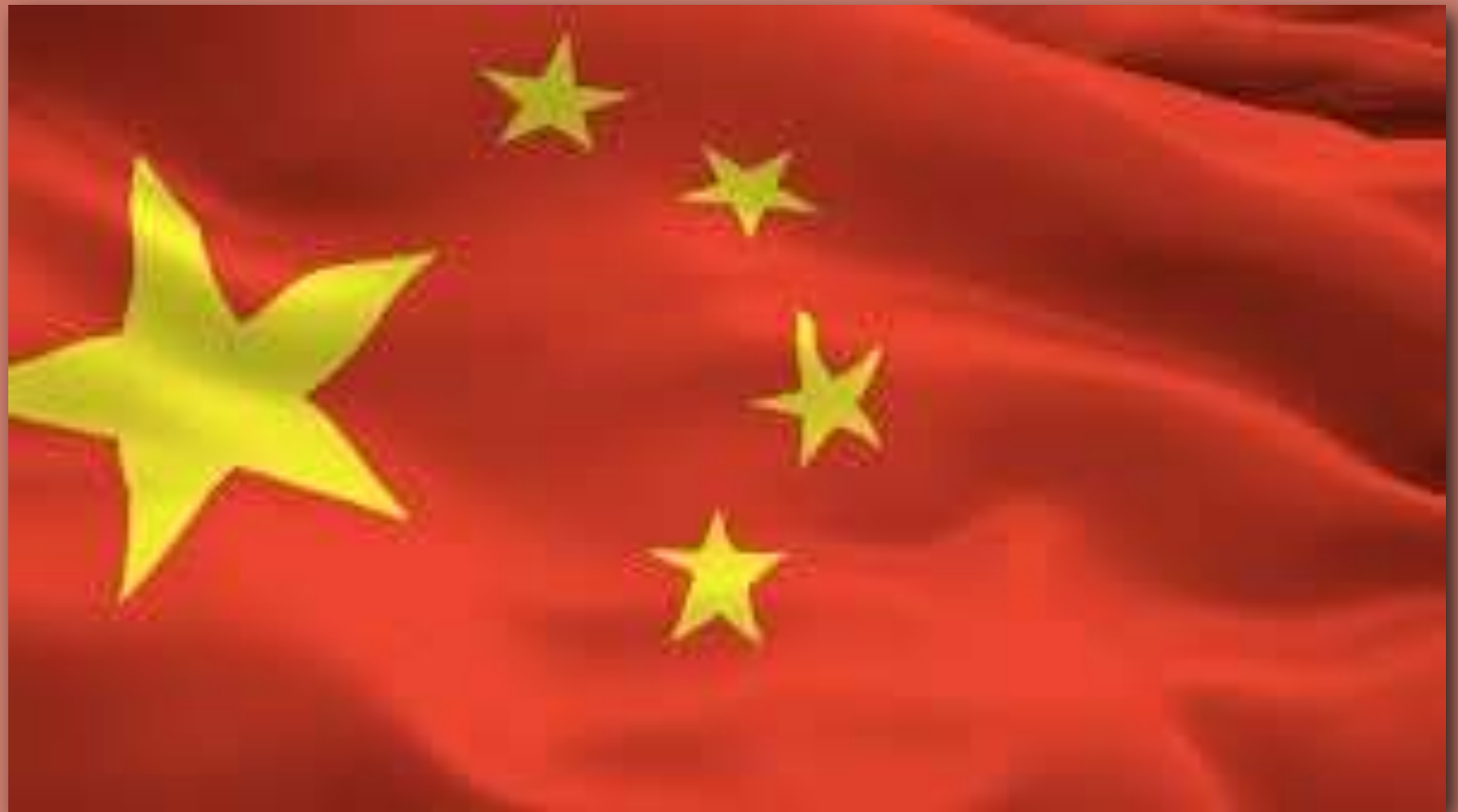


BILATERAL INVESTMENT RELATIONS IN ENERGY



KAZAKHSTAN



PRC



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&
PARTNERS

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ENERGY AND NATURAL RESOURCES LAW | 4 FEBRUARY 2020

KAZAKHSTAN AND CHINA

GENERAL

- 114 BILATERAL agreements and documents since 1992
- TREATY BETWEEN THE REPUBLIC OF KAZAKHSTAN AND PEOPLE'S REPUBLIC OF CHINA CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENT | 10 AUGUST 1992
- FRAMEWORK AGREEMENT BETWEEN THE GOVERNMENTS OF THE REPUBLIC OF KAZAKHSTAN AND GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA ON DEVELOPMENT OF COMPREHENSIVE COOPERATION IN THE OIL AND GAS AREA | 17 MAY 2004 | AMENDED IN 2007 AND 2009

PREAMBLE.

MAIN GOALS

1. Desiring to promote greater economic cooperation between them, with respect to investment by nationals and companies of one Party in the territory of the other Party;
2. Recognizing principles of mutual respect to sovereignty, equality and mutual benefit
3. With objective of development of economic cooperation between two states



PREAMBLE

WHATS MISSING?

- Reference to right to regulate (e.g. regulatory autonomy, policy space, flexibility to introduce new regulations) **No**
- Reference to sustainable development **No**
- Reference to social investment aspects (e.g. human rights, labour, health, CSR, poverty reduction) **No**
- Reference to environmental aspects (e.g. plant or animal life, biodiversity, climate change) **No**

DEFINITION OF INVESTMENT

ASSET BASED DEFINITION

"Investment" means every kind of investment in the territory of one Party ~~owned or controlled directly or indirectly by nationals or companies of the other Party, such as equity, debt, and service and investment contracts~~; and includes:

~~(i) tangible and intangible property, including movable and immovable property, as well as any property rights related thereto, such as mortgages, liens and pledges;~~

~~(ii) a company or shares of stock or other interests in a company or interests in the assets thereof;~~

~~(iii) a claim to money or a claim to any obligation having economic value, and associated with an investment;~~

(iv) intellectual property which includes, inter alia, rights relating to:

~~literary and artistic works, including sound recordings, inventions in all fields of human endeavor, industrial designs, semiconductor mask works, trade secrets, know-how, and confidential business information, and trademarks, ~~service marks~~, and trade names; and~~

(v) any right conferred by law or contract, and any **rights for exploration and production of natural resources**;

TERRITORY

DEFINITION

- Includes "...jurisdiction for the purposes of exploration, development, production and exploitation and preserving natural resources..."



APPLICABILITY PRE- AND POST-ESTABLISHMENT

ARTICLE 7

- It shall apply to investments as of 1 January 1985.

MFN

ARTICLES 3 AND 10

- “Each Party shall permit and treat investment, and activities associated therewith, on a basis no less favorable than that accorded in like situations to investment or associated activities of nationals or companies of any third country...”

CARVES OUT FOR PREFERENCES IN:

- free trade zones,
- customs and economic unions,
- organizations of economic assistance or international treaties
- international tax treaty
- trade near borders

STANDARDS OF TREATMENT

ARTICLE 2

Promise of stimulating investments

Support in visas and permits.

Treaty is not FET qualified.

No prohibition on unreasonable, arbitrary measures.

EXPROPRIATION

ARTICLE 4

- Investments shall not be expropriated or nationalized either directly or indirectly through measures tantamount to expropriation or nationalization ("expropriation") except:
 1. for public purpose;
 2. in a nondiscriminatory manner;
 3. upon payment of compensation
 4. legal manner
- Compensation in the event of wars, civil riots, situations - MFN clause

CURRENCY CONTROL PROVISION

ARTICLE 5

Each Party shall permit all transfers related to an investment to be made freely and without delay into and out of its territory. Such transfers include:

(a) returns;

(b) payments for technical assistants and technical maintenance;

(c) proceeds from the sale or liquidation of all or any part of an investment;

(d) payments made under a loan contract;

(e) salaries and remuneration ~~and~~

~~(f) additional contributions to capital for the maintenance or development of an investment.~~

FORUMS FOR DISPUTE SETTLEMENT

ARTICLES 8 AND 9

State vs State

Disputes between China and Kazakhstan - ad hoc arbitration / Usually Arbitration rules of UNCITRAL

If ad hoc does not work then address to Chairman of ICJ (UN)

Investors vs State

1. investors seek a resolution re expropriation, try appoint arbitration judges and ad hoc or after 6 months period, and if does not help then:

- Chairman of Arbitration Institute Stockholm Commercial Chamber

No requirement for transparency of arbitral proceedings.

SURVIVAL CLAUSE

ARTICLE 12

- one year's written notice to the other Party
- **effective for a further period of five years** from such date of termination.

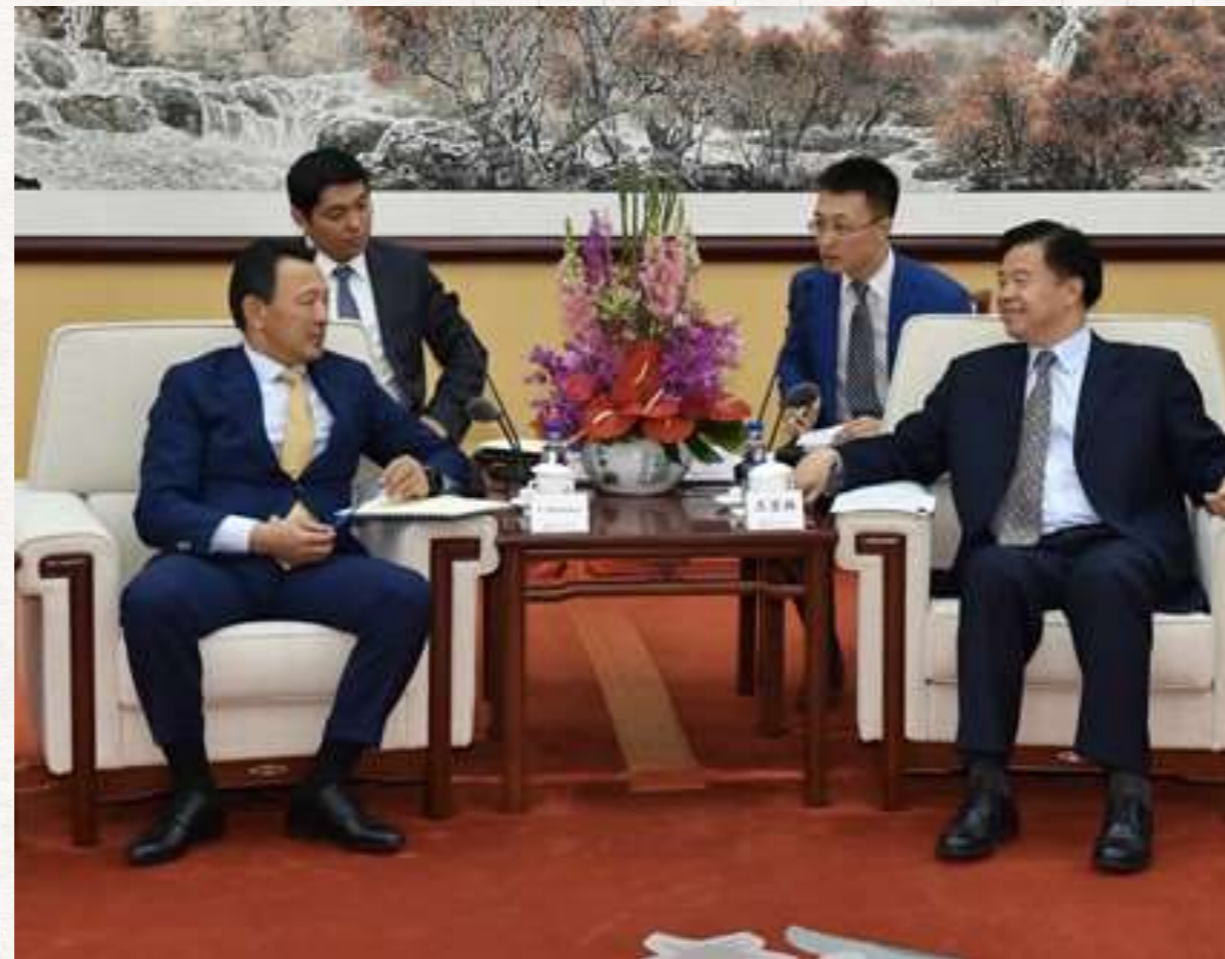


- FRAMEWORK AGREEMENT BETWEEN THE GOVERNMENTS OF THE REPUBLIC OF KAZAKHSTAN AND GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA ON DEVELOPMENT OF COMPREHENSIVE COOPERATION IN THE OIL AND GAS AREA 17 MAY 2004
- SEPTEMBER 24, 1997 GENERAL AGREEMENT WAS SIGNED BETWEEN THE MINISTRY OF ENERGY AND NATURAL RESOURCES OF THE REPUBLIC OF KAZAKHSTAN AND CHINA NATIONAL PETROLEUM CORPORATION (CNPC) IN RESPECT OF PROJECTS AIMED AT FIELD DEVELOPMENT AND CONSTRUCTION OF OIL PIPELINES.

PARTICIPANTS



CNPC



MAIN FOCUS

Main focus:

- assistance and creating new conditions for oil and gas projects in Kazakhstan and China
- exchange of information and consultations on the issues of oil policy, technologies, projects and trade
- to take cooperation to a new level

Specific focus:

- financing, construction and use of oil pipelines
- rights to investors to use their technical standards in HSE, environment, etc.
- tariffs should be not less than costs plus profit for effective management

KAZAKHSTAN GUARANTEES

ARTICLE 7

- no discrimination of oil and gas transportation from third countries by its antimonopoly committee
- solution of issues (no problems?) with oil export quotas including transit oil with regards to oil transportation to china
- connecting mainstream oil pipelines in Kazakhstan with oil pipeline Atasu - Alashankou.
- 14 October 2009 - technical capacity for

CHINA GUARANTEES

- long term contracts for purchase oil for oil transportation to China
- construction of Chinese section of oil pipeline Atasu - Alashankou by deadline.



ACCESS TO CASPIAN

ARTICLE 12

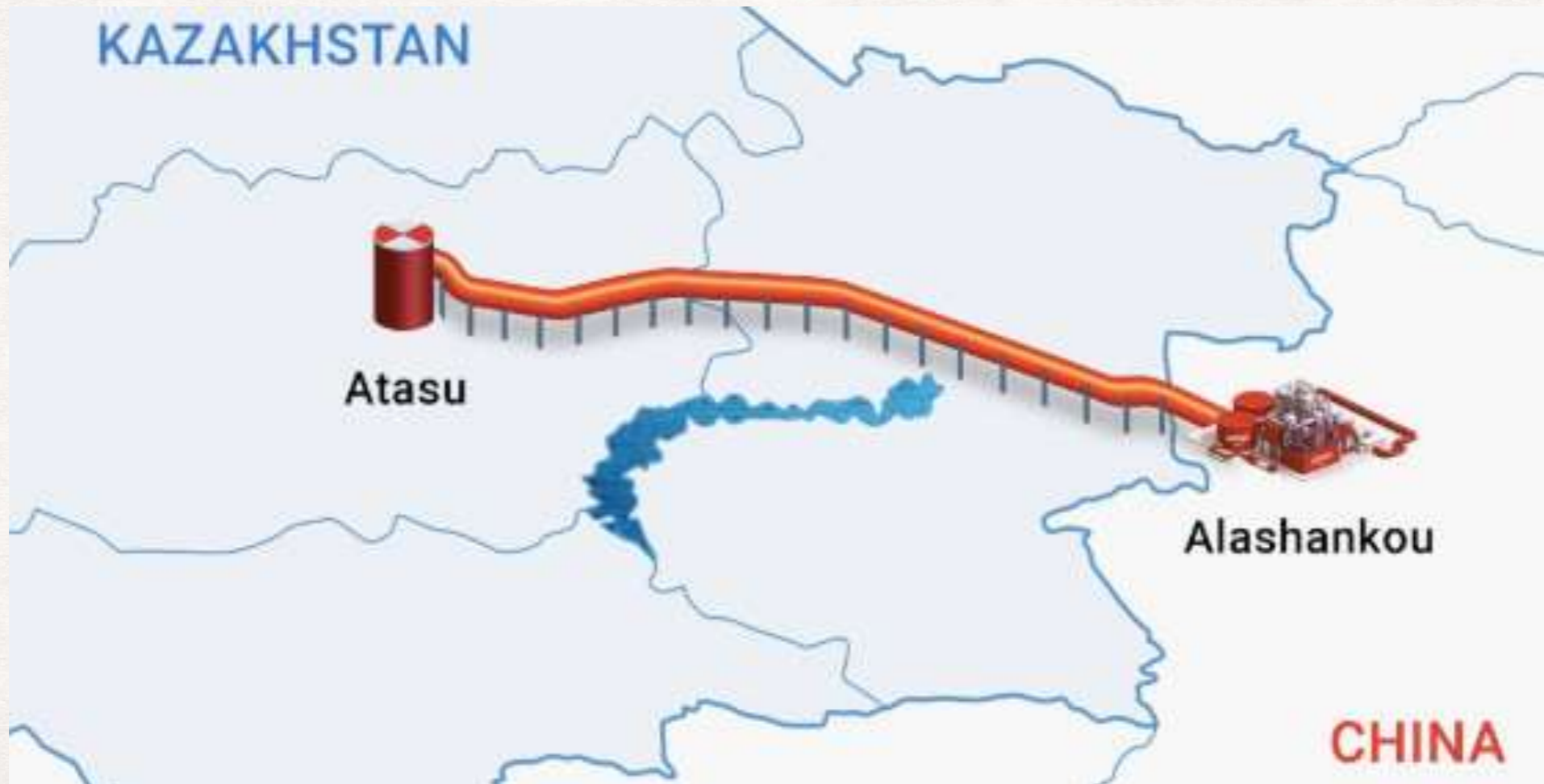
- Kazakhstan Government supports participation of CNPC and other Chinese companies in exploration and production of oil deposits in the Kazakhstani sector to procure resources for the pipeline



PROJECT COMMENCEMENT

KAZAKHSTAN CHINA PIPELINE

- Atasu-Alashankou - The pipeline, 965 km long, passes through the territory of Karaganda, East-Kazakhstan and Almaty regions. Pipeline route starts from Atasu pump station in Karaganda region to Alashankou terminal station in Xinjian province of China

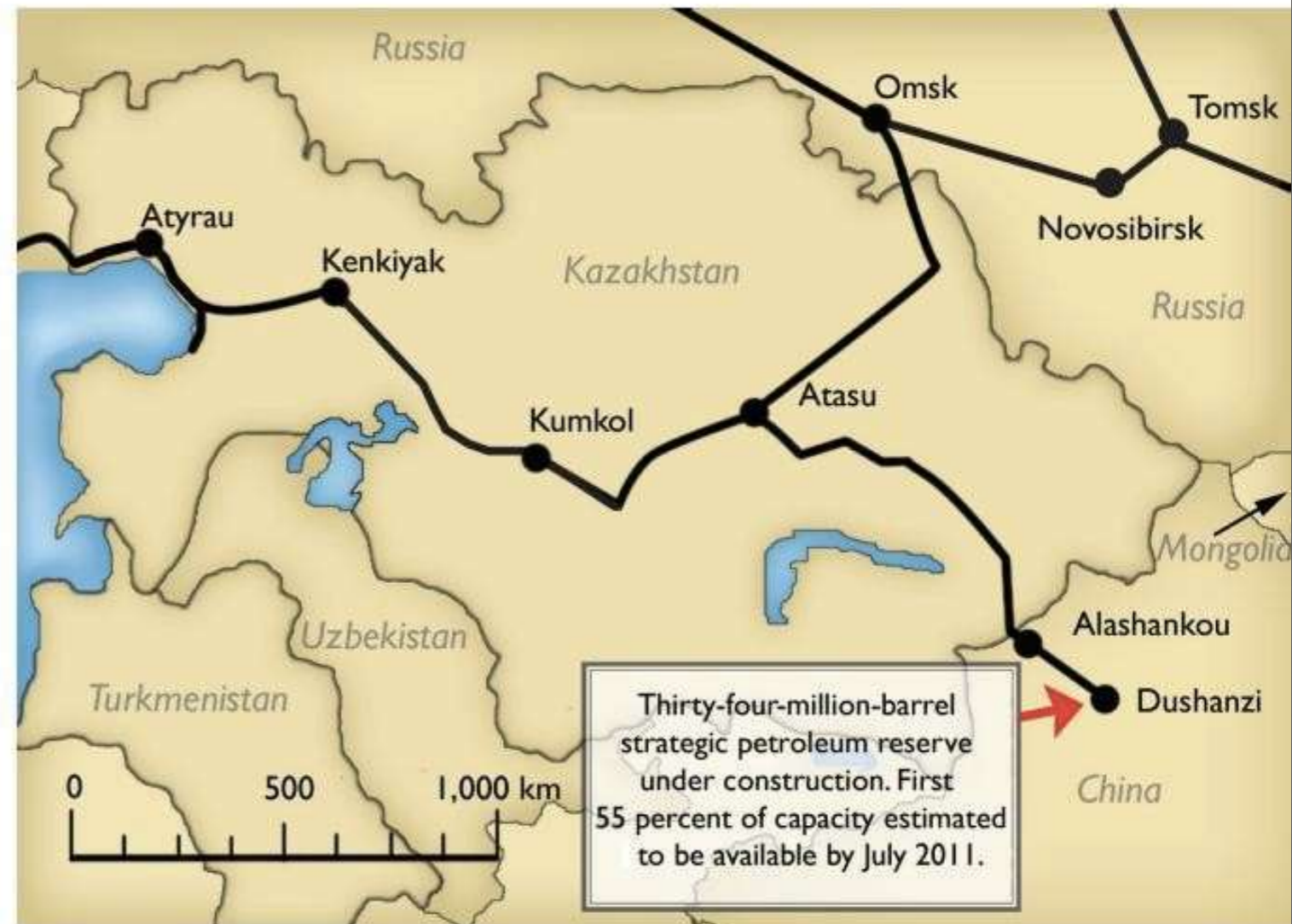


PROJECT EXPANSION IN 2007

KAZAKHSTAN CHINA PIPELINE

- Expansion to Atyrau-Kenkiyak-Kumkol-Atasu in 18 August 2007
- Demand from CNPC for highest possible support of oil export during time necessary to compensate investments made
- oil pipeline is intended for transportation of oil from West-Kazakhstan and Aktobe oilfields.

KAZAKHSTAN-CHINA OIL PIPELINE: EXISTING ROUTE



PROJECT EXPANSION IN 2009 KAZAKHSTAN CHINA PIPELINE



- guarantee from Kazakhstan Government to increase technical capacity for oil transportation of Kumkol-Karakoin-Atasu
- capacity of CNPC to pump more oil.
- to actively take measures to reach 20 mln tonnes capacity for KCP

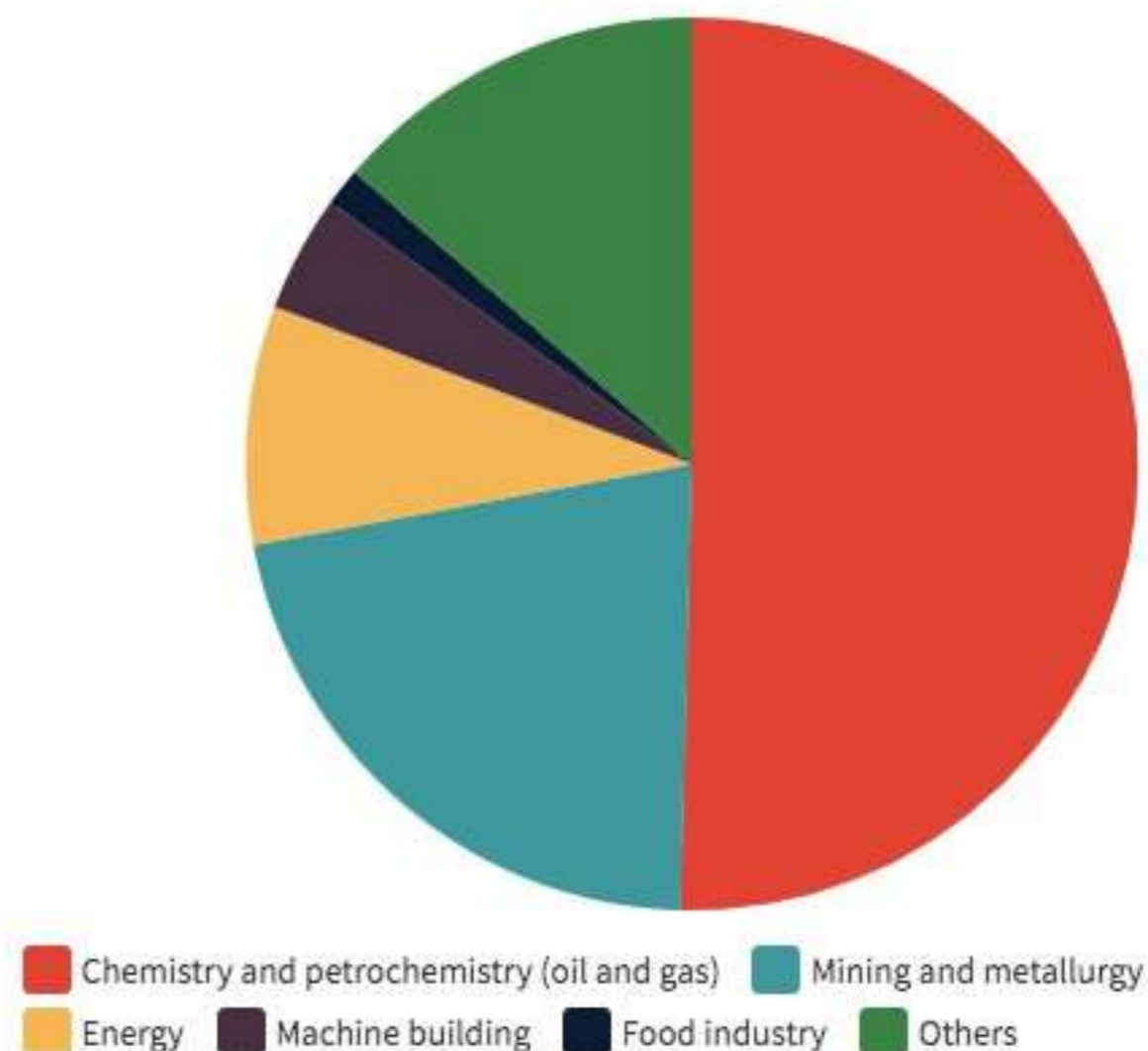
CHINA INVESTMENTS IN KAZAKHSTAN / EXPORT OF RESOURCES

Selected projects

- 1997 Aktobemunaigas \$325mln / 67-85%
- 2003 North Buzachi 100%
- 2005 Petrokazakstan - **\$4.18 bln 67%**
- 2007 KARAZHANBAS- \$1.91 bln 50%
- 2009 MMG ? 49%
- 2013 Kashagan - \$5.4 bln - 8.4%
- 2014 Shymkent Refinery - 50%
- 2019 expansion memos with KMG / KTG
- PE funds / CITIC CAPITAL / HK
- Uranium JV Irkol
- Moinak Hydroenergy station
- Beineu-Shymkent gas pipeline
- Khorgos centre
- 51 projects for a total \$27bln+
- 2793 companies with Chinese equity
- **Total investments: _____ \$43 bln**
- **Total lending: _____ \$50 bln**

Chinese investments in Kazakhstan, by sector

Total US\$27.6 billion



China's new thirst for energy is the price it (and Kazakhstan?) is paying for economic success.

CHALLENGES IN FOREIGN INVESTMENTS



Photo illustration by John Lyman

WORLD NEWS / 18 FEB 2019

Daniel Wagner

China and Neocolonialism in Africa



1



EROSION OF NATIONAL SOVEREIGNTY

2



LACK OF TRANSPARENCY

3



UNSUSTAINABLE FINANCIAL BURDENS

4



DISENGAGEMENT FROM LOCAL ECONOMIC NEEDS

5



GEOPOLITICAL RISKS

6



NEGATIVE ENVIRONMENTAL IMPACTS

7



SIGNIFICANT POTENTIAL FOR CORRUPTION



SUSTAINABLE DEVELOPMENT GOALS

Goal 1: End poverty in all its forms everywhere



“...new forms of inequalities, caused by climate change and unequal access to technology, my slowdown the progress. The existing and emerging inequalities need to be addressed with new measures and policies...”



Kazakhstan

SUSTAINABLE DEVELOPMENT GOALS OUR FOCUS MORE

HOME NEWS CENTRE PRESS RELEASES

UNDP REPORT: KAZAKHSTAN ACHIEVED HIGH HUMAN DEVELOPMENT SINCE 1992, BUT EXISTING AND EMERGING INEQUALITIES NEED TO BE ADDRESSED WITH NEW POLICIES

Posted on December 11, 2019

UNDP Report: Kazakhstan achieved high human development since 1992, but existing and emerging inequalities need to be addressed with new policies