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The Honorable Donald L. Evans
Secretary of Commerce
U.S. Department of Commerce
International Trade Administration
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Attention: Edward Yang (Room 7860)
Albert Hsu (Room 3713)

Re: Inquiry Into the Status of the Russian Federation as a Non-Market Economy Country Under the Antidumping and Countervailing Duty Laws

Dear Mr. Secretary:

These comments are submitted on behalf of JSC Severstal, Novolipetsk Iron & Steel Corporation, and JSC Magnitogorsk Iron and Steel Works (collectively, the "Russian producers") in the above-captioned inquiry into the status of the Russian Federation as a non-market economy ("NME") country.[1] For the reasons stated below, the Russian producers hereby

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[1] Notice of Initiation of Inquiry Into the Status of the Russian Federation as a Non-Market Economy Country Under the Antidumping and Countervailing Duty Laws, 66 Fed. Reg. 54197 (Dep't Commerce Oct. 26, 2001). The Notice requests that submissions include an index or table of contexts, and that each comment should be introduced with a summary. Given the brevity of the comments that follow, however, the Russian producers have not deemed it necessary to include these items in this submission. However, each comment begins on a separate page, as requested in the Notice.

support the request submitted by the Government of the Russian Federation[2] for revocation of the Russian Federation's NME status under Section 771(18) of the Tariff Act of 1930, as amended ("the Act"), 19 U.S.C. § 1677(18). The Russian producers request that the revocation be effective as of July 1, 2000.

I. INTRODUCTION

The Department of Commerce ("Department") must consider the following factors, listed in Section 771(18) of the Act, in determining whether the Russian Federation's status as an NME should be revoked:

(i) the extent to which the Russian Federation's currency is convertible into the currency of other countries;
(ii) the extent to which wage rates in the Russian Federation are determined by free bargaining between labor and management;
(iii) the extent to which joint ventures or other investments by non-Russian firms are permitted in the Russian Federation;
(iv) the extent of government ownership or control of the means of production;
(v) the extent of government control over the allocation of resources and over the price and output decisions of enterprises; and
(vi) such other factors the Department considers appropriate.[3]

The Department has previously noted "that each of the six statutory factors discussed is framed in terms of the *extent* of government intervention, and not in terms of absolutes, suggesting that complete *laissez faire* and a perfectly competitive market economy is not the applicable

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[2] Memorandum of the Russian Federation: Factors to be Considered Under Section 771(18) of Title VII of the Tariff Act of 1930 (Moscow 2001) ("Russian Government Submission").
[3] 19 U.S.C. § 1677(18)(B).

standard."[4] Given the ubiquity of government interventionism in countries around the globe, a country's NME status cannot be judged by the theoretical standard of complete *laissez faire*, but rather by comparison to other countries that are recognized as existing market economies. By that standard, the Russian Federation has unquestionably functioned as a market economy at least since the middle of 2000.

In addition, the Russian Federation has received repeated commendation by numerous international organizations and observers for the progress it has made since the dissolution of the Soviet Union, and particularly in recent years, in implementing the legal framework and institutions of an economy based on free market principles. For example, the European Bank for Reconstruction and Development ("EBRD") recently noted that

> [t]he year 2000 was the best year in terms of both political stability and economic performance since Russia's economic transition process began a decade ago. GDP has grown impressively and the budget has moved into a surplus, while inflation has remained at a moderate level and the rouble rate has remained stable. Soaring world oil prices and the low rouble exchange rate were the driving forces behind economic recovery, while the emergence of broad popular support for the

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[4] Memorandum for Robert S. LaRussa, "Antidumping Duty Determinations on Cold-Rolled Carbon-Quality Steel Products from the Slovak Republic – Market vs. Non-Market Economy Analysis," at 14-15 (Dep't Commerce Oct. 13, 1999) (emphasis in original) ("Slovak Republic NME Status Memo"); Memorandum for 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," at 16 (Dep't Commerce Nov. 29, 1999) (emphasis in original) ("Czech Republic NME Status Memo"); accord Memorandum for Troy Cribb, "Antidumping Duty Investigation of Certain Steel Concrete Reinforcing Bars From Latvia – Request for Market Economy Status," at 20 (Dep't Commerce Jan. 10, 2001) ("Latvia NME Status Memo") ("We note at the outset that each of the six statutory factors discussed is framed in terms of the *extent* of government intervention, and not in terms of absolutes, suggesting that complete *laissez faire* or a perfectly competitive market economy is not the applicable standard") (emphasis in original).

> new president increased political stability and enhanced the authority of federal power.[5]

The EBRD also noted that the "vigorous economic recovery in Russia and other CIS countries…also supported advances in reform. Russia saw a significant improvement in corporate governance and business practices which was supported by an upturn in corporate profits."[6] Furthermore, the World Bank recently stated that "[i]nternational rating agencies continued their upgrading of Russia's economy, and Russia's equity markets and its sovereign debt have weathered the worldwide post-September downturn well."[7]

A review of the statutory factors listed in Section 771(18) of the Act demonstrates that revocation of Russia's NME status is required. As a result of economic and institutional reforms undertaken since the dissolution of the former Soviet Union in 1991, the Russian currency is now fully convertible on current account transactions, wages in the private sector are determined by free bargaining between labor and management, and the Russian Federation actively promotes foreign direct investment. Furthermore, privatization of formerly government-owned means of production in Russia has encompassed a large number firms, to which a very high percentage of the country's gross domestic product ("GDP") is attributable, and pricing and

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5 European Bank for Reconstruction and Development, Russian Federation Investment Profile at 2 (2001) ("EBRD 2001 Investment Profile"), attached hereto as Exhibit 1.

6 European Bank for Reconstruction and Development, Transition Report at 11 (2001) ("EBRD 2001 Transition Report"), attached hereto as Exhibit 2.

7 The World Bank Group, "Russian Economic Report: October 2001, Recent Economic Developments" ("World Bank 2001 Economic Report"), available at http://www.worldbank.org.ru/eng/group/ereports/10_01/ereport1.htm, attached hereto as Exhibit 3.

production decisions now rest primarily with the private sector. In light of these and other developments in the statutory factors governing the Department's determination, discussed in detail below, the Russian producers urge the Department to determine that Russia has operated as a market-economy country since July 1, 2000, and that this determination be effective for all current and future administrative proceedings.

II. A COMPARISON OF THE RUSSIAN FEDERATION TO COUNTRIES THAT HAVE GRADUATED TO MARKET ECONOMY STATUS CONFIRMS THAT REVOCATION OF RUSSIA'S NME STATUS IS APPROPRIATE

An analysis of each of the six statutory factors that the Department is to consider in determining whether the Russian Federation's NME-country status should be revoked shows that the Russian Federation's policies and the status of the country's economy are as market-oriented as, if not more than, those countries already granted market economy status. In fact, an examination of the evidence concerning economic reforms in the Russian Federation demonstrates that it has achieved the extent of institutional reforms and economic liberalization necessary to achieve market economy status according to the standards set forth in Section 771(18) of the Act and by the Department's recent precedent -- *i.e.*, the graduations of Poland, the Slovak Republic, the Czech Republic, Hungary and Latvia to market economy status. Furthermore, a review of the reasons that led the Department not to revoke Ukraine's NME status reveals that the Russian Federation's situation is readily distinguishable from Ukraine's.[8]

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[8] See Certain Cut-to-Length Carbon Steel Plate from Ukraine, 62 Fed. Reg. 61754 (Dep't Commerce Nov. 19, 1997) (final determ.) ("Ukraine NME Determination"). In the investigationn of hot-rolled carbon steel from Ukraine that recently was completed, respondents and the Government of Ukraine one again requested revocation of Ukraine's NME status. However, because the Ukrainian parties submitted information in support of their request late in the proceeding, the Department was unable to adequately consider and analyze them, and it therefore declined to make a determination on the issue. See Certain Hot-Rolled Carbon Steel Flat Products From Ukraine, 66 Fed. Reg. 50401, 50403-50404 (Dep't Commerce Oct. 3, 2001) (final determ.). The Department is also currently evaluating the request for market economy status by the Republic of Kazakhstan, in the context of the antidumping investigation of silicomanganese from Kazakhstan. Notice of Preliminary Determination of Sales at Less Than Fair Value: Silicomanganese From Kazakhstan, 66 Fed. Reg. 56639 (Dep't Commerce Nov. 9, 2001). However, the Department's determination in that investigation will probably have little to offer in the way of analysis that might be applied to Russia's case because the thrust of the argument put forth by petitioners in the Kazakh investigation is whether the Government of Kazakhstan is democratic in nature, an issue that is not relevant to the present case. See, e.g., Letter from Verner, Liipfert, Bernhard, McPherson and Hand, Counsel for Petitioners, to the Honorable Donald L. Evans, Secretary of Commerce, at 14-22 (August 29, 2001); Letter from Verner, Liipfert, Bernhard, McPherson and Hand, Counsel for Petitioners, to the Honorable Donald L. Evans, Secretary of Commerce, at 3, 24-27 (July 30, 2001); see also Letter from O'Melveny & Myers, Counsel for Respondents, to the

A. <u>The Russian Federation's Currency Is Convertible Into The Currency Of Foreign Countries</u>

Honorable Donald L. Evans, Secretary of Commerce, at 19-22 (August 14, 2001).

The currency of the Russian Federation, the ruble, has been freely convertible for both domestic and current-account transactions.[9] **In Russia, the ruble can be freely exchanged for other currencies to purchase foreign goods and services, which means that it is said to be "internally convertible". Furthermore, in June 1996, Russia reformed its legislation governing the convertibility of its currency by adopting Article VIII of the International Monetary Fund ("IMF") Articles of Agreement.[10] The obligations imposed by this Article of the IMF Agreement include (1) the avoidance of restrictions on current payments; (2) the avoidance of discriminatory currency practices; and (3) the convertibility of foreign-held balances.[11] By adopting these obligations, the Russian Federation removed all restrictions on payments and transfers for current transactions, *i.e.*, currency conversions or import/export contracts and loans not exceeding 180 days.[12] As a result, the ruble became fully convertible for current account purposes.**

While the ruble is internally convertible, for the purpose of "external convertibility", capital account transactions remain subject to certain restrictions due to concerns on the part of the Russian Government regarding capital flight, which could greatly undermine Russia's

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9 See EBRD 2001 Transition Report at 188.

10 See International Monetary Fund, "Russian Federation: Financial Position in the Fund," available at http://www.imf.org/external/np/tre/tad/exfin2.cfm?memberKey1=819, attached hereto as Exhibit 4.

11 Stephen Zamora and Ronald Brand, Basic Documents of International Economic Law, "Articles of Agreement of the International Monetary Fund," at 337-340 (CCH 1990), attached hereto as Exhibit 5.

12 See U.S. Department of State, Country Commercial Guide FY 2001: Russia at 51-52 ("State Department 2001 Commercial Guide"), attached hereto as Exhibit 6.

economic reform efforts.[13] Hence, in accordance with provisions of the IMF Articles of Agreement, Russia maintains a few restrictions on the movement of capital in order to manage the outward flow thereof. In particular, the Russian Government limits the access of its residents to foreign currency on the domestic foreign exchange market if the currency is to be invested overseas, restricts direct investments by Russian residents abroad, and imposes limits on Russian residents obtaining real estate abroad.[14]

A similar situation existed in Poland when the Department was analyzing its market economy status. The Department found that the Polish currency, the zloty, was fully convertible on all current account transactions, but that capital account transactions remained restricted, due to concerns about capital flight.[15] It explained however, that "[f]ull convertibility is not . . . necessary to link Poland's economy to world markets; internally convertibility is sufficient."[16] The situation with respect to the Russian ruble is effectively the same, *i.e.*, the Russian currency is internally convertible, which is "sufficient" to link the Russian economy to world markets, and remains subject to similar capital account restrictions that applied to the zloty.

The status of the convertibility of the Russian ruble is also similar to that of the Czech koruna in 1999, the year the Department conducted an analysis of the Czech Republic's status as an NME country. In 1999, the Czech Republic still maintained some restrictions on capital

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13 Russian Government Submission at § 1.4.

14 Id.

15 Memorandum to the File, "Respondent's Request for Revocation of Poland's NME Status," at 10 (Dep't Commerce June 21, 1993) ("Poland NME Status Memo").

16 Id.

account transactions with respect to direct investments and the purchase of real estate abroad, and on the purchase by Czech residents of foreign securities.[17] Again, the existence of such restrictions did not prevent the Department from concluding that the currency convertibility factor, as a general matter, supported the conclusion that the Czech Republic had achieved market economy status. The same is true with the Russian Federation.

[17] Czech Republic NME Status Memo at 5.

B. <u>Wage Rates in the Russian Federation are Largely Determined by Free Bargaining Between Labor and Management</u>

With respect to wage rates in Russia, core labor standards are protected by law, collective bargaining is also legally protected, unions are gaining extensive rights, workers are actively enforcing those rights, and the government has developed mechanisms to assist workers.[18] The Russian Federation has adopted International Labor Organization ("ILO") conventions protecting worker rights,[19] which provide for equal opportunity and treatment with respect to employment and occupation, including payment conditions.[20] Furthermore, the Russian Government has demonstrated its continuing commitment to the strengthening of its free labor market via significant legislative action. The new Labor Code, expected to be adopted shortly by the Duma, includes specific provisions concerning the relationship between labor and management in the market economy, providing enhanced rights to laborers.[21]

Hence, with respect to the determination of wage rates, the degree of government intervention in the Russian Federation is less intrusive than the situation was in Poland at the time the Department determined that Poland was a market economy. In Poland, the Department found that the right to collective bargaining was legally protected and noted the existence of a legally-established minimum wage. However, in an attempt to contain wage increases and

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18 <u>See</u> Russian Government Submission at § 2; EBRD 2001 Transition Report at 188.

19 State Department 2001 Commercial Guide at 53. Although the State Department has noted that enforcement of these ILO conventions with respect to certain items (wage arrears and worker safety) is lacking, these issues do not affect the wage-related factors that govern the Department's market economy determination -- the interplay of labor-management negotiation and market forces that determine wage rates in the Russian Federation.

20 Russian Government Submission at § 2.1.

21 <u>Id</u>. at § 6.2.

prevent an inflationary wage spiral, the Government of Poland imposed an inflationary wage tax, the *popiwek*, which applied to excessive wage increases in the state sector.[22] In Russia, collective bargaining is legally protected as well, and there is also a minimum wage; however, the Government imposes no controls on excessive wage increases.

Furthermore, wages in Russia, for both the private and public sectors, are not set on the basis of a "tripartite arrangement", as they were in Hungary, the Slovak Republic, the Czech Republic and Latvia at the time that the Department analyzed those countries' status as market economies.[23] All of these countries, which were granted market economy status by the Department, relied on a tripartite arrangement between trade unions, employer organizations and the government to negotiate changes to wages, to set the monthly minimum wage, and to impose wage controls or restraints in specific situations or for specific industries. For example, in Hungary, the government convened the Interest Resolution Council to make recommendations on the average wage increase, which specified "minimum and maximum annual average increases that appl[ied] at the national and regional level to approximately 70% of employees."[24] Furthermore, in Hungary, "[f]rom time to time, the collective wage bargaining process [was] superseded by government-imposed, macroeconomic stabilization measures."[25] In Russia, by

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22 Poland NME Status Memo at 30.

23 See, e.g., Memorandum for Robert S. LaRussa, "Antidumping Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Hungary – Market vs. Non-Market Economy ("NME") Analysis Memorandum," at 728 (Dep't Commerce Feb. 23, 2000) ("Hungary NME Status Memo"); Slovak Republic NME Status Memo at 5-7; Czech Republic NME Status Memo at 5-7; Latvia NME Status Memo at 7-8.

24 Hungary NME Status Memo at 7-8.

25 Id. at 8.

comparison, although a minimum wage is guaranteed by law, labor and management are free to determine the upper limits of wage rates. In addition, businesses in Russia are free to choose the system of pay, tariff rates, salaries, bonuses, and benefits to be applied to various categories of workers or personnel.[26]

The Russian situation with respect to wage rates contrasts with the Department's findings as to Ukraine. That country's Tariff Rate System established a comprehensive system of job classifications and wage rates for state-owned enterprises; meanwhile, private enterprises were required to set up their own classifications and wage scales to reflect the government system.[27] The Russian Federation has no such comprehensive system of government job classifications on wage-rate setting. As mentioned above, other than establishing a government-regulated minimum on wage rates, the Russian government leaves the determination of wages entirely to labor-management negotiations and the operation of market forces.

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26 Russian Government Submission at §§ 2.1, 2.3.

27 Ukraine NME Determination, 62 Fed. Reg. at 61755.

C. Joint Ventures and Other Investments By Non-Russian Firms Are Permitted in the Russian Federation

The 1991 Law on Foreign Investment guarantees foreign investors rights equal to those enjoyed by Russian investors.[28] This principle was confirmed by the Russian Federation's July 1999 Law on Foreign Investment. On the policy front, the Government's actions have matched its legal developments, and the administration of President Putin has improved the business climate and attracted more foreign investment to Russia.[29] Hence, Russia has established an open investment regime based on the non-discriminatory treatment of foreign investors, the right of foreigners in many circumstances to fully own Russian firms, a set of investment guarantees based on internationally recognized practices, a growing number of bilateral investment treaties, and investment incentives such as favorable tax regimes under production sharing agreements.[30] As a result, Russia's treatment of foreign investment satisfies the statutory criterion for the purpose of determining whether the country is a market economy.

In particular, up to 100 percent foreign ownership is permitted in enterprises in many sectors of the Russian economy, and explicit restrictions on foreign direct investment so far have been limited to specific and highly sensitive sectors. Specifically, Russia imposes some restrictions on foreign acquisitions of natural monopolies, and in the aerospace and insurance industries.[31] As a result of its open investment policy, Russia has attracted significant amounts

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28 State Department 2001 Commercial Guide at 44.
29 Id. at 25.
30 Russian Government Submission at § 3.
31 See, e.g., State Department 2001 Commercial Guide at 44-45.

of foreign investment. Gross foreign investment in Russia in 2000 rose by 14.6 percent year-on-year from 1999 to $10.958 billion, of which foreign direct investment accounted for 40.4 percent ($4.429 billion).[32]

In addition, a major focus of the International Finance Corporation, a member of the World Bank Group, has been to develop a steady stream of foreign direct investment into locally owned and operated companies, to support the overall objective of improving the climate of investment in Russia.[33] Work to support this objective was split into two areas to enhance the effectiveness of efforts to promote foreign investment in Russia: (1) export-oriented natural resource projects; and (2) domestically-oriented projects where Russia has a natural comparative advantage, such as the forestry and automotive sectors.[34]

Furthermore, foreign firms are free to establish joint ventures in Russia to market and manufacture a broad range of goods and services. Goods that have been successfully manufactured and/or distributed by U.S.-Russian joint ventures established in Russia range from soft drinks, ice cream and cigarettes to elevators, oil, sport-utility vehicles and jet engines.[35] Russian companies are generally eager to license their technologies to foreign companies in

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32 EBRD 2001 Investment Profile at 9.

33 Russian Federation Country Management Unit, "Memorandum of the President of the International Bank for Reconstruction and Development and the International Finance Corporation to the Executive Directors on a Country Assistance Strategy Progress Report of the World Bank Group for the Russian Federation," at 17 (January 11, 2001), attached hereto as Exhibit 7.

34 Id.

35 State Department, Country Commercial Guide FY 2000: Russia, at 19, attached hereto as Exhibit 8.

exchange for the infusion of cash that joint ventures provide. For example, in 1998, a major American chemical manufacturer signed a $40 million agreement with a Russian chemical firm to license the Russian firm's chemical technology.[36] More recently, in October 2001, Department Secretary Donald Evans noted, in a speech to the American Chamber of Commerce in Russia, the historic significance of the first shipment of crude oil by the Caspian Sea Pipeline Consortium, a partnership that represents the largest-ever U.S. investment in Russia, exceeding $1 billion.[37] He also commented on the construction of a new state-of-the-art manufacturing plant for Frito Lay in Kashira that would bring $40 million and 350 jobs to Russia; and a joint venture between Mikron Corporation, a Russian company, and M.E.C., a company in New Jersey, to produce semiconductor equipment and parts.[38]

In 1993, the year the Department analyzed Poland's status as an NME country, it found that Poland was generally open to foreign investment, permitting joint ventures and 100 percent foreign equity participation. It did state, however, that foreign investment was restricted with respect to certain sectors of the Polish economy, such as real estate, certain strategic industries, and for the acquisition of state-owned enterprises.[39] Once again, the situation in the Russian Federation is as liberal, if not more so, than Poland at the time it was determined to be a market economy.

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[36] Id. at 20.

[37] "Remarks by Secretary of Commerce Donald L. Evans Before the American Chamber of Commerce," at 2 (October 16, 2001), available at http://www.amcham.ru/outside.php?show=news&id=17&a=0, attached hereto as Exhibit 9.

[38] Id.

[39] Poland NME Status Memo at 13.

D. The Russian Federation Has Privatized A Large Majority of the Ownership and Control of the Means of Production

As a result of economic reforms in place since the early 1990s, a Russian private sector has emerged that produces a very substantial proportion of the Russian gross domestic product. In mid-2001, the EBRD estimated that the private sector share of GDP in Russia was 70 percent,[40] while the Russian Federation has estimated that the private sector in Russia produced more than 75 percent of the country's GDP.[41] Both of these figures demonstrate the emergence of a substantial private sector as the productive engine of the Russian economy. This emergence occurred because of mass privatization conducted by the Russian Government early in the post-Soviet era, which resulted in a great decrease in the share of state-controlled property in the Russian Federation. Privatization occurred primarily through the issuance of vouchers and secondarily through direct sales to foreign and domestic investors.[42] As a result of the privatization of state-owned enterprises, as of January 1, 2001, there were 367,400 organizations in Russia with state or municipal ownership, 2,509,600 privately owned, and 144,500 with mixed ownership.[43] In other words, only 12 percent of the enterprises in Russia are currently entirely state-owned, while approximately 88 percent of firms involve some degree of private ownership.

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40 EBRD 2001 Transition Report at 12 (Table 2.1).
41 Russian Government Submission at § 4.4.
42 EBRD 2001 Transition Report at 188.
43 EBRD 2001 Investment Profile at 13.

Within the broad categorization of market-oriented reforms, the EBRD measures countries on a scale of 1 to 4+, where “1” represents little or no change from a planned economy and “4+” represents the standard of an industrialized market economy. Pluses or minuses indicate countries on the borderline of two categories. The EBRD transition indicators measure Russia as “4” with respect to small-scale privatization, which means that Russia has successfully achieved complete “privatisation of small companies with tradable ownership rights”.[44] Furthermore, the Russian Federation was cited as one of the few countries that “pursued mass privatisation programmes for large-scale enterprises relatively early in transition” – a group that includes the Czech Republic, Lithuania, and the Slovak Republic.[45] The EBRD also measured Russia’s progress with respect to large-scale privatization as “3+”, which means Russia had more “than 25 per cent of the large-scale enterprise assets in private hands or in the process of being privatised (with the process having reached a stage at which the state has effectively ceded its ownership rights).”[46]

In comparison, with respect to the extent of government ownership of the means of production, the Department found that in 1993, state-owned enterprises in Poland still accounted for approximately 60 percent of Poland’s output.[47] In Latvia, the proportion of the economy that was subject to state ownership at the time of the Department’s evaluation was less than in Poland in 1993, but still greater than Russia. The Department found that in Latvia, “the private sector

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[44] EBRD 2001 Transition Report at 13.

[45] Id.

[46] Id. at 15

[47] Poland NME Status Memo at 16.

accounted for 65 percent of GDP."[48] Furthermore, the Department granted Latvia market economy status even though it found that the "[s]tate-owned enterprises in the energy, transport and telecommunication sectors, enterprises which the government ha[d] been slow to privatize, still account[ed] for a significant share of GDP."[49]

Similarly, the continued government ownership of certain enterprises in the Slovak Republic did not preclude that country's graduation to market economy status. When granting the Slovak Republic market economy status, the Department noted that "the share of assets privatized at the end of 1997 exceeded 60 percent,"[50] which means, conversely, that the share of government-owned assets in the Slovak Republic stood at somewhere near 40 percent. Further, the Department stated that the "National Property Fund and other Ministries still manage[d] companies in those sectors excluded (so far) from the privatization process, including utilities, the postal service, telecom, railways, some agricultural enterprises, several large banks, and some large enterprises in the machinery sector – particularly those involved in armaments production."[51]

In contrast, as to government ownership and control of the means of production, Ukraine has lagged far behind the Russian Federation in the process of privatization. In 1995 and 1996, the years the Department analyzed the data to determine whether Ukraine was a market economy, it found that only 34 percent and 44 percent, respectively, of Ukraine's state-owned enterprises had been privatized.[52] By comparison, as noted above, the Russian Federation's economy is largely privatized: only 12 percent of the enterprises in Russia are entirely state-

48 Latvia NME Status Memo at 12.
49 Id. at 1.
50 Slovak Republic NME Status Memo at 10-11.
51 Id. at 11.
52 Ukraine NME Determination, 62 Fed. Reg. at 61756.

owned, and private enterprises are responsible for producing 70-75 percent of the Russian GDP (depending on the source one cites).

The evidence makes it clear that privatization has effected a radical change in the economy of the Russian Federation. Economic decision-making is now largely in private hands and determined by market forces, and government ownership or control over the means of production has declined greatly in significance. Indeed, the level of government ownership of the means of production in Russia is lower now than were the levels in countries, such as in western Europe in the 1970s, whose status as market economies would never have been considered in doubt. Thus, there can be no question that this criterion for market economy status is satisfied in the current case.

E. <u>The Russian Federation, To a Large Extent, Has Privatized Control Over the Allocation of Resources and Over the Price and Output Decisions of Enterprises</u>

In Russia, the state currently exerts little control over the economic decisions of enterprises, and businesses set prices for their products independently of government involvement.[53] **With respect to the liberalization of trade and markets in Russia, the EBRD rates Russia as a "3" in the category of price liberalization. This is defined to mean that Russia achieved "[s]ubstantial progress on price liberalization" and "state procurement at *non-market* prices [have been] largely phased out."[54] In fact, state price regulation cannot be exercised at all in Russia except with respect to goods and services included on a list that can be found in Government Resolution No. 239, entitled "Measures to Improve State Regulation of Prices (Tariffs)." This list includes the products and services of natural monopolies (gas, electric and heat energy, transshipment of oil through pipelines, railway services, port services, etc.), defense industry products, and various social goods (*i.e.*, certain drugs, prosthetics and orthopedic appliances).[55]**

The Russian Federation has also removed itself, to a large extent, from control over the allocation of resources and the price and output decisions of enterprises. In fact, the state regulation of prices covers products and services that correspond to only 15 percent of Russia's GDP.[56] Furthermore, in July 2000, the Russian Government adopted a far-reaching plan for the

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53 Russian Government Submission at § 5.
54 EBRD 2001 Transition Report at 12-13 (emphasis added).
55 Russian Government Submission at § 5.2.
56 <u>Id</u>.

development of the Russian economy over the next 10 years, which is being rapidly implemented throughout the economy.[57] The thrust of the Government's medium term strategy to accelerate market-oriented reform is to improve the conditions for private sector growth. This implies a focus on reducing government intervention in the economy, in particular on the removal of administrative barriers to establish a level playing field for all companies.[58]

One of the main objectives of this strategy has been to reform the natural monopolies in Russia. This includes restructuring them to separate naturally monopolistic entities and potentially competitive activities, improving the network access for independent gas producers and rail operators, demonopolizing electricity generation and telephone companies, significantly reducing the lists of customers whose energy supply may not be cut off despite payment arrearages, and reducing cross-subsidies between categories of customers.[59] Although additional reforms will lead to even greater economic productivity in the Russian Federation, the extent of Russia's progress to date has been substantial, and market forces are now, to a large extent, the vehicle by which the allocation of resources in the Russian Federation is determined.

The regulation of natural monopolies in the Russian Federation is similar to regulation in the Czech Republic, Latvia, and the Slovak Republic at the time they achieved market economy status, and Russia's decreasing regulation of its natural monopolies is consistent with the

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57 See World Bank 2001 Economic Report, Implementation of the Government's Reform Agenda, available at http://www.worldbank.org.ru/eng/group/ereports/10_01/ereport10.htm, attached hereto as Exhibit 10. Furthermore, in July 2001, to follow up on this agenda, the Russian Government approved another reform plan for the next three years. Id.

58 Id.

59 EBRD 2001 Investment Profile at 4.

Department's observations regarding other new market economies. Specifically, the Department granted market economy status to the Czech Republic even though, at the end of 1997, the Czech government maintained price controls affecting a limited number of goods and services, "primarily for household consumption, covering energy products, utilities, rents, and some public services."[60] Similarly, in its Latvia determination, the Department stated that "public transportation, utilities (water, sewage), residential and industrial energy (electricity, gas, steam) and housing remain[ed] subject to government price regulation."[61] And as to the Slovak Republic, the Department noted that there were price controls on a number of goods and services, "primarily for household consumption, covering such items as energy products, utilities, rents, and some public services."[62] These decisions show that the Department recognizes that the regulation of natural monopolies does not conflict with the determination that a country has achieved market economy status.

In contrast, in Ukraine, state control over the allocation of resources and price and output decisions far exceeded the limited control present in the Russian Federation. In part, this was a function simply of the fact that the state-owned enterprise sector in Ukraine accounted for a far larger share of the economy than it does in Russia. In addition, in Ukraine, state-owned enterprises, as well as enterprises deemed to be monopolies, regardless of their form of ownership, were required to fill state orders if the government so requested.[63] Moreover, the

60 Czech Republic NME Status Memo at 12.
61 Latvia NME Status Memo at 15.
62 Slovak Republic NME Status Memo at 12.
63 Ukraine NME Determination, 62 Fed. Reg. at 61756.

Ukrainian government had authority to set the prices on products sold throughout the entire country, to set the domestic prices of monopolies, and to require monopolies to render to the government any monopoly profits deemed excessive.[64] This level of government control greatly exceeds that in the Russian Federation, where, as mentioned above, the state regulates prices for products and services that correspond to approximately only 15% of Russia's GDP. Furthermore, in Russia, there is no requirement that enterprises fulfill state orders, and no price and profit controls for monopolies equivalent to the Ukrainian system.

64 Id.

F. <u>The Russian Federation Has Progressed in Other Areas that Support Its Graduation to Market Economy Status</u>

Section 771(18) of the Act also directs the Department to take into account, in addition to the five factors enumerated in Section 771(18)(B(i)-(v), "such other factors as the administering authority considers appropriate."[65] Three other factors, described in detail below, that the Russian producers submit the Department should consider in the current case are (1) Russia's efforts toward accession to the World Trade Organization ("WTO"); (2) its recent cooperation with the North Atlantic Treaty Organization ("NATO"); and (3) its participation in the regulatory reform review program and various committees of the Organization for Economic Cooperation and Development ("OECD"). In addition to these three items, Russia also has an association agreement with the European Union (effective December 1997), and regularly receives "most-favored nation" treatment[66] and "Generalized System of Preferences" ("GSP") status from the United States.[67] All of these factors are relevant because they demonstrate an irreversible commitment by the Russian Government toward integration with the international community and its coordination with (or anticipated membership in) organizations of developed, market-economy countries, further confirming its own status as a market economy.

1. Accession to the WTO

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65 19 U.S.C. § 1677(18)(B)(vi).

66 <u>See</u> Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics, at Article 1 (1990) (authorizes "most favored nation" and nondiscriminatory treatment between the United States and Russia), attached hereto as Exhibit 11.

67 <u>See</u> USTR Reports, "GSP: Part II - **Information on Countries and Products Eligible for GSP** and Procedures for Modifying the GSP Program," <u>available at</u> http://www.ustr.gov/reports/gsp/part_ii.html.

Russia first applied to join the General Agreement on Tariffs and Trade in June 1993, and its successor, the WTO, in December 1995. Both the European Union and the United States strongly support Russia's goal of accession to the WTO, and have promised to do what they can to accelerate the accession process.[68] In order to accede to the WTO, Russia must describe how it is meeting WTO obligations and enforcing WTO rules, lock in market access terms for goods, specify how foreigners may provide services in its domestic market, and lock in agricultural domestic support and export subsidies.[69] Considerable progress has been made in these areas since Vladimir Putin became President in December 1999, including legislation on the customs code, and import licensing and certification. As part of its strategy for WTO accession, the Russian Government has been focusing on making its legislation compliant with WTO norms and rules, and it intends to draft approximately fifty more new laws and/or amendments to existing laws, in order to attain such compliance.[70]

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[68] See, e.g., "Russian WTO Accession Fact Sheet," The White House, Office of the Press Secretary (Nov. 13, 2001) ("Russian WTO Fact Sheet"), attached hereto as Exhibit 12; see also BNA, Inc., International Trade Reporter, "Russia Establishes Stance for WTO on Farm Subsidies, Defends Subsidies," at A-4 (Dec. 3, 2001), attached hereto as Exhibit 13.

[69] Russian WTO Fact Sheet at 1.

[70] Russian Government Submission at § 6.4.

2. Cooperation with NATO

As the Department is well aware, NATO is a military alliance that consists of 19 independent member countries in Europe and North America, whose primary former purpose was the containment of the Soviet Union and its allies. The recent meeting of President Vladimir Putin with NATO Secretary General George Robertson is another significant example of the fundamental changes that have affected Russia's relationship with the United States and Western Europe, and has signaled the breadth of its cooperation with the western free-market democracies. At the end of last month, President Putin and Secretary General Robertson held discussions in Brussels on the future of the relationship between Russia and NATO. It was reported that, at the meeting, President Putin sought a "major influence inside the alliance while NATO Secretary General George Robertson dangled a possible decision-making role for the Russians in arms proliferation and anti-terrorism projects".[71] In fact, Robertson floated a proposal "to allow Russia to take part in decisions along with the current 19 NATO members on specific issues, including the campaign against terrorism".[72] Robertson also said that "NATO and Russia must move toward cooperation with 'some urgency'," and that "NATO planned to hold its first joint military exercises with Moscow at some point and to invite Russia to a joint conference on terrorism in January."[73]

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71 The Washington Post, "NATO Explores Giving Moscow Expanded Role; Partnership Would Upend Old Rivalry," at 1 (November 24, 2001), attached hereto as Exhibit 14.

72 Id.

73 Id. at 2.

More recently, in another meeting in Brussels on December 6, 2001, the NATO foreign ministers decided to bring Russia deeper into NATO's planning and decision-making. They approved the creation of a council consisting of the 19 alliance members and Russia with the goal of fostering cooperation in such tasks as fighting terrorism, promoting arms control and peacekeeping. Secretary of State Colin L. Powell told reporters that the council, scheduled to be in place by May, would "enhance our partnership with Russia to build a more open, cooperative and confident relationship that reflects the values and interests we share with Russia. . . . This is an opportunity for NATO and Russia to improve qualitatively the way we work together."[74] The new council is seen by the U.S. administration and allied governments as an endorsement of President Putin's determination to move Russia closer to the West, especially since the terrorist attacks last September. According to a senior administration official in the United States, Moscow's willingness to help the United States respond to those attacks -- for instance, by sharing intelligence and approving the U.S. use of military bases in former Soviet republics -- has had a profound impact in making NATO more open to closer ties with Russia.[75]

3. Participation in the OECD

The OECD is an organization of 30 primarily developed countries established for the purpose of providing their governments with a setting to discuss, develop and perfect economic and social policy.[76] By deciphering emerging issues and identifying policies that have been

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74 The Washington Post, "NATO Sets New Council, Giving Russia a Limited Role," at A47 (December 7, 2001), attached hereto as Exhibit 18.

75 Id.

76 "What is OECD," available at http://www.oecd.org/about/general/index.html.

proven effective, it helps policy-makers in its member countries adopt productive economic strategies. It is also well known for its individual country surveys and reviews.

According to the OECD website, Russia became the first non-OECD country to participate in the OECD's regulatory reform review program, "which examines the compatibility of policy framework of individual countries with efficient markets and good governance".[77] A meeting took place in Moscow last month to launch the 2-year project and introduce the program to senior Russian officials, business representatives and academia. This project follows over a decade of cooperation between the OECD and the Russian Federation to help the Government address institutional and policy issues essential for economic and social progress.[78]

In addition, the dialogue between Russia and the OECD on policy issues is reinforced through Russia's participation in formal OECD bodies, such as its competition and steel committees. The quarterly meetings on steel convened by the OECD address both immediate and longer-term issues regarding the global steel industry. At the meeting in September, for example, industry representatives discussed the current situation and the outlook for steel, and government officials agreed upon concrete actions to facilitate reduction in inefficient steel capacity world-wide.[79] In addition, in October 2001, Russia attended the first Global Forum on Competition as an observer to the OECD's Committee on Competition Law and Policy

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77 "OECD Meets with Russian Officials to Launch Regulatory Reform Review, 19-20 November 2001, Moscow, Russian Federation," available at http://www.oecd.org/oecd/pages/home/displaygeneral/0,3380,EN-document-0-nodirectorate-no-12-21309-0,FF.html, attached hereto as Exhibit 15.

78 Id.

79 "Conclusions of the High Level Meeting on Steel, 17-18 September 2001," available at http://www.oecd.org/oecd/pages/home/displaygeneral/0,3380,EN-document-590-17-no-12-17412-590,FF.html, attached hereto at Exhibit 16.

("CLP").[80] The CLP provides a forum for discussing methods of countering anti-competitive government regulations and corporate behavior in order to ensure that markets function properly and serve their fundamental purpose of benefiting society. Russia's participation with these OECD bodies demonstrates that it is well on its way to becoming a fully integrated member of the global market economy.

80 See "OECD Organises First Global Forum on Competition," available at http://www.oecd.org/oecd/pages/home/displaygeneral/0,3380,EN-document-590-17-no-12-18881-590,FF.html, attached hereto as Exhibit 17.

III. CONCLUSION

For all of the foregoing reasons, the Russian producers submit that economic conditions in Russia have changed so substantially since the dissolution of the Soviet Union that the Department should revoke the Russian Federation's NME status. At least since mid-2000, the Russian economy has operated on the basis of market principles to a sufficient extent that the domestic prices and costs of its enterprises can reasonably be used as a basis for calculating normal value within the meaning of the U.S. antidumping law. The Department's analysis in the NME determinations for Poland, the Slovak Republic, the Czech Republic, Hungary and Latvia provide no basis for distinguishing between those economies at the time they achieved market economy status and the Russian Federation. As to all of the factors identified in Section 771(18) of the Trade Act, the Russian Government's policies are as market-oriented as, if not more than, those economies at the time the Department determined that they qualified for revocation of

NME status. Accordingly, the Department's decisions to revoke the NME status for those economies support the conclusion that revocation for the Russian Federation is appropriate as well.

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