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The Honorable Carlos Gutierrez
Secretary of Commerce
U.S. Department of Commerce
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14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

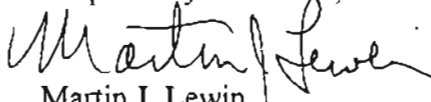
Re: Rebuttal Comments in Changed Circumstances Review of Ukraine's Status as a Non-Market Economy Under The Antidumping Duty Law

Dear Secretary Gutierrez:

Pursuant to the Federal Register of June 15, 2005, 70 Fed. Reg. 42029-42032, please find enclosed an original and six copies of Rebuttal Comments in the above captioned Review submitted on behalf of our clients, Leman Commodities S.A. ("Leman") and Azovstal Iron And Steel Works Ltd. ("Azovstal") in support granting Ukraine market economy status.

Leman and Azovstal are, respectively, an exporter and producer of steel products from Ukraine, including cut-to-length carbon steel plate from Ukraine subject to the Agreement Suspending the Antidumping Investigation on these products.

Respectfully submitted,


Martin J. Lewin

Counsel to Leman Commodities S.A. and
Azovstal Iron and Steel Works Ltd.

Appendix

Excerpts of Relevant Laws of Ukraine

UKRAINIAN LAW

TRANSLATION OF THE SELECTED PROVISIONS

Constitution of Ukraine dated 28 June 1996:

Article 41. Every person shall have the right to own, use and dispose of his property and the results of his intellectual and creative activities.

The right of private property shall be acquired according to the procedure established by law.

To satisfy their needs, citizens may use state and communal properties in accordance with the law.

Nobody shall be unlawfully deprived of the right of property. The right of private property shall be inviolable.

Compulsory alienation of private properties may only be used as an exception, based on societal need, on the basis and according to the procedure established by law, and under the condition of prior and complete compensation of their value. Compulsory alienation of such properties with subsequent full compensation of their value shall only be permissible under conditions of martial law or state of emergency.

Confiscation of property may only be allowed based on court decision in the cases, scope and procedure established by law.

Use of property may not be in prejudice to the rights, freedoms and dignity of citizens, the interests of Society, or worsen the natural environmental and natural properties of soil.

Article 42. Every person shall have the right to engage in entrepreneurial activities that are not prohibited by law.

The State shall ensure protection of competition in entrepreneurial activities. No abuses of monopoly position in the market, unlawful restriction of competition or unfair competition shall be allowed.

Article 43. Every individual shall have the right to work, including the right to earn a living from a job that he chooses freely or that he freely accepts.

Every individual shall have the right to proper, safe, and healthy working conditions, and to wages not below the level stipulated by law.

The right to timely receipt of one's compensation for work shall be protected by law.

Article 95. The budget system of Ukraine shall be built on the principles of fair and unprejudiced distribution of society's wealth between citizens and territorial communities.

The law on the State Budget of Ukraine shall exclusively establish the State's expenditures for the overall needs of Society, and the amounts and purposes of these expenditures.

Regular reports on revenues and expenditures of the State Budget of Ukraine must be promulgated.

Article 99. The hryvnia shall be the currency unit of Ukraine.

Ensuring stability of the currency unit shall be the main function of country's central bank — the National Bank of Ukraine.

Civil Code Of Ukraine No. 435-IV dated 16 January 2003:

Article 3. General Principles of Civil Legislation

1. The general principles of civil legislation shall be as follows:...

- 2) inviolability of the right of property, except for in the cases established by the Constitution of Ukraine and by law;
- 3) freedom of contract;
- 4) freedom of entrepreneurial activities that are not prohibited by law;

Article 167. Legal Forms of the State's Participation in Civil Relations

The State shall act in civil relations on the basis of equal rights with other participants in these relations.

The State may establish public legal entities (state enterprises, educational institutions, etc.) in the cases and according to the procedure established by the Constitution of Ukraine and by law.

The State may establish private legal entities (companies, etc.) and participate in their activities on the usual bases, unless otherwise stipulated by law.

Article 319. Exercise of Property Rights

1. An owner may own, use and dispose of his property at his own discretion.
2. An owner shall have the right to undertake any actions with regard to his property that do not contradict the law.

When exercising his rights and executing his obligations, an owner must observe the moral foundations of Society.

3. All owners shall be provided equal opportunity to exercise their rights.

Article 320. Owner's Use of His Property for Pursuing Entrepreneurial Activities

1. An owner shall have the right to use his property in pursuit of entrepreneurial activities, except for in cases established by law.
2. The law may establish the conditions for an owner's using his property for implementation of entrepreneurial activities.

Article 325. Private Property Rights

1. Subjects of private property rights include natural persons and legal entities.
2. Natural persons and legal entities may own any property, except for certain types of property, which they may not own under the law.
3. There is no limit on the composition, quantity and value of property that may be owned by natural persons and legal entities.

The law may establish restrictions on the size of a plot of land, which may be owned by natural persons and legal entities.

Article 326. State Property Rights

1. Included in the state property is the property, including monetary funds, which belongs to the State of Ukraine.
2. Government agencies exercise the right of property on behalf and for the benefit of the State of Ukraine.

Article 386. Principles of Protection of the Right of Property

1. The State shall ensure equal protection of the rights of all subjects of the right of property.
2. An owner, who has grounds to foresee the possibility of his right of property being infringed upon by other person, may turn to the courts with a request to prohibit such person from conducting any actions, which could infringe on his rights, or with a request to conduct certain actions to prevent such infringement.
3. An owner, whose rights have been violated, shall have the right to receive compensation for material and moral damages inflicted thereon.

Article 533. Currency of Execution of Monetary Obligation

Clause 3. Use of foreign currency, as well as payment instruments in foreign currency, when making settlements in the territory of Ukraine under obligations shall be allowed in the cases, according to the procedure, and under the conditions established by law.

Commercial Code of Ukraine, adopted by Law No. 436-IV dated 16 January 2003:

Article 10. The Main Directions of the State's Economic Policy

The main directions of economic policy that shall be determined by the State are as follows:

budget policy aimed at optimization and rationalization of revenue generation and use of the State's financial resources, increased efficiency of state investments in the national economy, agreement of national and local interests in the area of inter-governmental finance, regulation of state debt and assuring social justice in redistribution of national income;

Article 12. Means of State Regulation of Economic Activities

1. For implementation of its economic policy, execution of targeted economic and other programs, and programs for economic and social development, the State is using diverse means and mechanisms for regulation of economic activities.

2. The main means of the State's regulating influence on activities of economic entities are as follows:

state order, state task;
licensing, patenting and quote setting;
certification and standardization;
application of norms and limits;
regulation of prices and tariffs;
provision of investment, tax and other preferences;
provision of grants, compensation, targeted innovations and subsidies.

3. The conditions, scope, areas and procedure for application of individual types of state means of regulation of economic activities shall be determined by this Code and other legislative acts, as well as by programs for economic and social development. Establishment and cancellation of benefits and preferences in economic activities for certain categories of economic entities shall be implemented in accordance with this Code and other laws.

Article 19. State Control and Supervision of Economic Activities

Economic entities shall have the unrestricted right to independently pursue any economic activity that does not contradict the law.

Economic entities shall be subject to state registration as per this Code and the law.

The State shall implement control and supervision over the economic activities of economic entities in the following areas:

preservation and spending of funds and material valuables by economic entities – with regard to the status and reliability of accounting and reporting;

financial, credit relations, currency regulation and tax relations – with regard to fulfillment by economic entities of their credit obligations before the State and enforcing payments, compliance with the requirements of currency legislation and tax enforcement;

prices and pricing – with regard to the issues of economic entities' compliance with state prices for goods and services;

monopolies and competition – with regard to compliance with the antimonopoly and competition legislation;

land relations – with regard to use and protection of land; water relations and forestry – with regard to use and protection of water resources and forests and renewal of water resources and forests;

production and labor – with regard to production and labor safety, compliance with labor legislation; fire, ecological and sanitary and hygienic safety; observance of standards, norms, and rules that establish mandatory requirements with regard to conducting economic activities;

consumption – with regard to quality and safety of products and services;

foreign economic activities – with regard to issues of technological, economic, ecological, and social safety.

Unlawful interventions in and interference with economic activities of economic entities on the part of state agencies or their officials in the course of their implementing state control and supervision shall be prohibited.

State agencies and officials must carry out inspections and checks on the activities of economic entities without prejudice, objectively and quickly, while observing the requirements of the law and respecting the rights and lawful interests of economic entities.

Article 42. Entrepreneurship as a Type of Economic Activity

1. "Entrepreneurship" means an independent, enterprising, systematic economic activity at own risk implemented by economic entities (entrepreneurs) with the aim of achieving economic and social results and earning profits.

Article 43. Freedom of Entrepreneurial Activities

1. Entrepreneurs shall have the unrestricted right to independently pursue any entrepreneurial activities that are not prohibited by law.

2. Special conditions for implementing certain types of entrepreneurship shall be established by legislative acts.

3. The list of types of economic activities that are subject to licensing, as well as the list of types of activities, enterprise undertakings in which are prohibited, shall only be established by law.

Article 44. Principles of Entrepreneurial Activities

Enterprise undertakings shall be carried out based on:

free choice of the types of entrepreneurial activities by the entrepreneur;

the entrepreneur's independent formulation of the program of activities, choice of suppliers and consumers of products being produced, the mobilization of material-technical, financial and other types of resources, the use of which is not limited by law, and the setting of prices of products and services in accordance with the law;

the entrepreneur's free hiring of staff;

commercial calculation and commercial risk;

free disposal of the profits that the entrepreneur retains after payment of taxes, fees and other payments required by law;

the entrepreneur's independent performance of foreign economic activities and the entrepreneur's use of his share of foreign currency earnings at his own discretion.

Article 63. Types and Organizational Forms of Enterprises

7. Enterprises, depending on their number of employees and amount of gross revenue from sales per annum, may be categorized as small enterprises or medium or large enterprises.

Small enterprises (irrespective of their form of ownership) are enterprises where the average number of employees in the reporting (fiscal) year does not exceed 50 persons and the gross revenues from sales of goods (works, services) in this period does not exceed an amount equivalent to 500 euros according to the average annual exchange rate of the National Bank of Ukraine against the hryvnia.

Large enterprises are enterprises where the average number of employees in the reporting (fiscal) year exceeds 1000 persons and the gross revenues from sales of goods (works, services) exceed an amount equivalent to five million euros according to the average annual exchange rate of the National Bank of Ukraine against the hryvnia.

All other enterprises shall be considered medium-sized enterprises.

Article 133. Legal Regime of the Property of Economic Entities

The legal regime of the property of economic entities, which underlies their economic activities, is based on the right of property and other real rights – the right of economic conduct and the right of operational management.

The property of economic entities may be secured by other rights, in accordance with the conditions of a contract with the property owner.

The State shall provide equal protection of property rights for all economic entities.

Article 142. Profit (Income) of Economic Entity

The procedure for use of profit (income) from economic entity shall be established by the owner (owners) or its authorized body in accordance with the legislation and constituent documents. The procedure for using profits of state-owned enterprises and economic companies, whose statutory funds contain shares (stocks, interest) 50 percent or more of which are owned by the State, shall be carried out in accordance with Article 75 of this Code.

The State may influence economic entities' choice of the directions and amounts of using their profit (income) through norms, taxes, tax benefits and economic sanctions pursuant to the law.

Article 141. Special Characteristics of the Legal Regime of State Property in the Area of Economic Activity

State property in the area of economic activity includes integral property complexes of state-owned enterprises or of their structural units, immovable property, other separate, individually designated property of state-owned enterprises, shares (stocks, interests) of the State in the property of economic entities of various forms of ownership, as well as property secured for state institutions and organizations with the aim of implementing essential economic activities and property transferred to the free use of self-governing institutions and organizations or leased for use in economic activities.

State properties are managed according to the law by the Cabinet of Ministers of Ukraine and the central and local government executive agencies authorized thereby. In cases provided by law, state property may also be managed by other subjects.

The types of property, which may only be owned by the State, and whose alienation by non-governmental economic entities is not allowed, as well as additional restrictions with regard to disposing of certain types of property that are part of the fixed assets of state-owned enterprises, institutions, and organizations, shall be established by law.

Article 146. Privatization of State-owned and Communal Enterprises

1. The property of an integral property complex of a state-owned (communal) enterprise or of its individual units, which are single (integral) property complexes and are separated as independent enterprises, as well as unfinished construction projects and shares (stocks, interests) owned by the State in the property of other economic entities may be alienated for the benefit of citizens or non-governmental legal entities and privatized by these persons in accordance with the law.

2. Privatization of state-owned (communal) enterprises shall only be implemented as part of the execution of the state privatization program, which sets the goals, priorities, and conditions of privatization, and according to the procedure established by law.

3. Privatization of state-owned (communal) enterprises or of their property shall be implemented by means of:

buying/selling privatization objects at an auction or tender or by other methods that provide for competition between buyers;

buyout of a leased integral property complex of a state-owned (communal) enterprise in the cases and according to the procedure envisaged by law;

buyout of property of a state-owned (communal) enterprise in other cases envisaged by law.

4. Every citizen of Ukraine shall have the right to buy state property in the process of privatization, according to the procedure established by law.

5. General conditions and the procedure for implementing privatization of state-owned (communal) enterprises or their property shall be established by law.

6. For certain sectors of the national economy, the law may establish special circumstances for privatization of property of state-owned enterprises.

Article 147. Guarantees and Protection of Property Rights of Economic Entities

1. Property rights of economic entities shall be protected by law.

2. The State's requisitioning of an economic entity's property shall only be allowed in the cases, on the grounds, and according to the procedure established by law.

3. Any damages inflicted on an economic entity through violation of its property rights by individuals or legal entities, as well as by central government agencies or local governments, shall be compensated thereto under law.

Article 189. Price in Commercial Obligations

Clause 2. Prices in foreign economic agreements (contracts) may be denominated in foreign currency.

Article 190. Free Prices

1. Free prices shall be determined for all types of products (works, services), except for those, where state prices have been set.

2. Free prices shall be determined by economic entities independently, upon the agreement of the parties, and in the case of intra-company relations – also by decision of the economic entity.

Article 191. State and Communal Prices

1. State-fixed and regulated prices shall be set for resources that have a decisive impact on the general level and dynamics of prices, as well as on products and services that have significant social importance to the population. The list of such resources, products and services shall be approved by the Cabinet of Ministers of Ukraine.

2. According to the law, state prices shall also be set for products (services) of economic entities that are natural monopolies. The lists of types of products (services) of such entities shall be approved by the Cabinet of Ministers of Ukraine.

Article 386. Foreign Currency Settlements between Subjects of Foreign Economic Activity

Clause 1. Subjects of foreign economic activity shall have the right to open any foreign currency accounts, not prohibited by law, in banking institutions located in the territories of other states.

Clause 4. Subjects of foreign economic activity must provide information about the use of their foreign currency accounts to tax authorities according to the procedure established by law.

Article 391. Types of Foreign Investments

Foreign investors shall have the right to make investments in the territory of Ukraine in foreign currency, which is recognized as convertible currency by the National Bank of Ukraine, and in any movable and immovable property and property rights related thereto; and other valuables (property).

Article 397. Guarantees for Implementation of Foreign Investments

In order to assure the stability of the legal regime of foreign investments, the following guarantees for foreign investors shall be established: application of the state guarantees for protection of foreign investments in case of a change of legislation on foreign investments; guarantees with regard to compulsory requisitioning, as well as from unlawful actions by government agencies and their officials; compensation and payment of damages to foreign investors; guarantees in case of cessation

of investment activities¹; guarantees of the transfer of profits and use of revenues from foreign investments; other guarantees for implementation of investment activities.
Foreign investments in Ukraine shall not be subject to nationalization.

¹ According to Article 399, in case of cessation of investment activities in Ukraine, the foreign investor shall have the right to recover his investments, as well as any returns on these investments.

Land Code of Ukraine, approved by Law of Ukraine No. 2768-III dated 25 October 2001:

Article 22. Designation of Agricultural Land and Procedure for Its Use

Item 4. Agricultural land may not be sold into the ownership of foreign citizens, persons without citizenship, foreign legal entities or foreign states.

Article 80. Holders of the Land Ownership Right

Holders of the land ownership right include:

- a) citizens and legal entities – for private land;
- b) territorial communities, which realize this right either directly or through bodies of local self-government – for communal land;
- c) the State, which realizes this right through the relevant central government agencies – for state-owned land.

Article 81. Right of Property for Land for Citizens

Item 2. Foreign citizens and persons without citizenship may acquire property rights to plots of non-agricultural land within the limits of settlements, as well as to plots of non-agricultural land outside settlements, where the properties they own as private property are located.

Article 84. The State's Land Property Right

With the exception of communal and private land, all land in Ukraine is owned by the State. The right of state property of land shall be acquired and realized by the State in the person of the Cabinet of Ministers of Ukraine, Council of Ministers of the Autonomous Republic of Crimea, and the oblast, Kiev and Sevastopol City, and regional state administrations in accordance with the law.

State land that may not be transferred into private property, includes:

- a) nuclear power industry and space systems sites;
- b) land occupied by state railways, state-owned air and pipeline transport facilities;
- c) defense land;
- d) land occupied by natural reserve fund objects, historical, cultural and health resort facilities that have special ecological, health, scientific, esthetic and historical-cultural value, unless otherwise provided by law;
- e) forestry fund land, except for in the cases stipulated by this Code;
- f) water fund land, except for in the cases stipulated by this Code;
- g) land plots used for ensuring the activities of the Verkhovna Rada of Ukraine, President of Ukraine, Cabinet of Ministers of Ukraine, other central government agencies, the National Academy of Sciences of Ukraine and state branch academies of sciences;
- h) plots of land within alienation zones and zones of unconditional (compulsory) resettlement, contaminated by radioactive materials as a result of the Chernobyl disaster;
- i) plots of land assigned to the state vocational and technical educational institutions;
- j) plots of land assigned to the state and communal higher educational institutions;

The State shall acquire the right of property of land in the following circumstances:

- a) alienation of plots of land from their owners for reasons of societal need and for societal purposes;
- b) acquisition under purchase contracts, donations, exchange and through other civil agreements;
- c) acceptance of inheritances;
- d) transfer of communal land to the State by territorial communities;
- e) confiscation of a plot of land.

Article 90. Rights of Owners of Land Plots

1. Owners of land plots shall have the right to:

- a) sell or in any other way alienate the land plot, or lease, mortgage or bequeath it;
- b) work the land themselves;

- c) own crops and plantations of agricultural and other crops or other agricultural produce;
 - d) utilize for their own use, according to the established order, common minerals, peat, forest plantations, bodies of water, as well as other useful properties of land;
 - e) compensation for damages in cases envisaged by law;
 - f) erect residential buildings, production and other buildings and structures.
2. The infringed upon rights of owners of land plots must be restored according to the procedure established by law.

Article 129. Sale of Plots of State or Communal Land to Foreign States or Foreign Legal Entities

Item 3. The sale of plots of land owned by the State and territorial communities to foreign legal entities shall be permitted, provided the foreign legal entity has registered a permanent representative office with the right to conduct economic activities in the territory of Ukraine.

Labor Code of Ukraine, adopted by Law of Ukraine No. 322-VIII dated 10 December 1971:

Article 14. Collective Negotiations, Development and Conclusion of a Collective Agreement and Responsibility for Its Execution

Conclusion of a collective agreement shall be preceded by collective negotiations.

Article 21

A contract is a special form of labor agreement in which the term of its validity and the rights, obligations and liabilities of the Parties (including material liability), the conditions of material security and of organizing the employee's work, the conditions of the contract's termination, including anticipatory repudiation, can be set by the Parties.

Article 97. Remuneration of Labor at Enterprises, Institutions and Organizations

Forms and systems of remuneration of labor, performance standards, tariffs, schedules of rates, rates of pay, official salary schedules, conditions of introduction and levels of increments, additional payments, bonuses, rewards, compensation and guarantee payments shall be established by enterprises, institutions and organizations independently in collective contracts, in keeping with the standards and guarantees provided by the legislation, general and industry (regional) agreements. Where no collective contract is concluded at an enterprise, institution or organization, the owner or its authorized body must negotiate these issues with the elected body of the local trade union (trade union representative), which represents the interests of the majority of employees, or in its absence, with another entity authorized for representation by the work collective.

Article 94. Salaries and Wages

The level of salaries and wages shall depend on the complexity and conditions of work implemented, the professional and business qualities of the employee, the results of his work and of the economic activity of the enterprise, institution or organization, and shall not have a ceiling.

Article 97. Remuneration of Labor at Enterprises, Institutions and Organizations

The forms and systems of remuneration of labor, performance standards, tariffs, schedules of rates, rates of pay, official salary schedules, conditions of introduction and levels of increments, additional payments, bonuses, rewards, compensation and guarantee payments shall be established by enterprises, institutions and organizations independently in the collective contract, in keeping with the standards and guarantees provided by the legislation, general and industry (regional) agreements. Where no collective contract is concluded at an enterprise, institution or organization, the owner or its authorized body must negotiate these issues with the elected body of the local trade union (trade union representative), which represents the interests of the majority of employees, or in its absence, with another entity authorized for representation by the work collective.

Specific amounts of tariff rates (salaries) and wage rates of workers, official salaries of office workers, as well as increments, additional payments, bonuses and rewards shall be established by the owner or its authorized body, with due account for the requirements provided in Part Two, herein.

The Law of Ukraine No. 108/95-VR "On Labor Remuneration" dated 24 March 1995

Article 3. Minimum Wage

Minimum wage means the legislatively established level of wages for simple, unskilled work, which is the lowest level of compensation for an employee's monthly or hourly rate of work (effort).

The minimum wage presents a social guarantee of the State, which is mandatory in the whole territory of Ukraine for enterprises of all forms of ownership and methods of management.

Article 10. The procedure for setting and revising the amount of the minimum wage.

The amount of the minimum wage shall be set by the Verkhovna Rada of Ukraine upon submission of the Cabinet of Ministers of Ukraine, as a rule, once annually, in the Law of the State Budget of Ukraine, with due account for proposals developed by negotiations between the representatives of

trade unions and owners or their authorized bodies, which have united for conducting collective negotiations and concluding a general agreement.

Article 14. System of Contractual Regulation of Remuneration of Labor

Contractual regulation of remuneration of employees of enterprises shall be implemented based on a system of agreements concluded at the national (general agreement), industry (industrial agreement), regional (regional agreement), and production (collective contract) levels.

The collective contract provisions allowing remuneration of labor at a level below the standards set by the general, industry or regional agreements, however, not below the state standards and guarantees for remuneration of labor, may apply only provisionally, for the period of an enterprise's overcoming its financial difficulties, which may not exceed six months.

Article 15. Organization of Labor Remuneration at Enterprises

The forms and systems of labor remuneration, rates of output, wage rates, tariff schedules, official salary schemes, the conditions for implementation and amount of increments, additional pay, bonuses, compensation and other incentivizing, compensatory and guarantee payments shall be set by enterprises in a collective agreement, in keeping with the norms and guarantees provided by the legislation and general and industry (regional) agreements. Where no collective agreement has been concluded at an enterprise, the owner or its authorized body must agree on these issues with an elected body of the grass-roots trade union organization (trade union representative), which represents the interests of the majority of employees, and where there is no such representative — then with another body authorized for representation.

Article 20. Contractual Remuneration of Labor

Contractual remuneration of labor shall be established by agreement of the parties, based on the existing legislation and conditions of a collective contract, and shall be linked to performance of contractual conditions.

Article 21. Employee's Rights to Remuneration of Labor

The employee shall have the right to remuneration of his labor pursuant to legislative acts and a collective contract, based on the labor contract concluded.

The level of wages may not be below that set by the labor contract or below the minimum level of wages in case of non-performance of production tasks, production of defective articles or other reasons, provided by the existing legislation, which have occurred through the employee's fault.

Article 22. Guarantees of Observance of Labor Remuneration Rights

The entities in charge of managing the remuneration of labor shall have no right to make unilateral decisions on issues of labor remuneration, which worsen the conditions established by law, agreements and collective contracts.

Law of Ukraine No. 755-IV "On the State Registration of Legal Entities and Individual Entrepreneurs" dated 15 May 2003

This Law shall regulate the relations emerging in the area of state registration of legal entities, as well as of individuals who are entrepreneurs.

Article 25. Procedure for State Registration of a Legal Entity

5. The period for state registration of a legal entity should not exceed three business days, commencing from the date of receipt of documents for conducting state registration of the legal entity.

6. A Certificate of State Registration of a legal entity should be executed and issued (sent by registered mail with an inventory of its contents) to the founder or its authorized person by the State Registrar not later than the next business day after the date of state registration of the legal entity. Along with the Certificate of State Registration of the legal entity, the founder or its authorized person should be issued (sent by registered mail) one copy of the original constituent documents, bearing a stamp of the State Registrar confirming the state registration of the legal entity.

Article 43. Procedure for State Registration of an Individual Entrepreneur

3. The period for state registration of an individual entrepreneur should not exceed two business days after the date of receipt of the documents for conducting the state registration of the individual entrepreneur.

4. The Certificate of State Registration of an individual entrepreneur should be executed by the State Registrar and issued (sent by registered mail) to the applicant not later than the next business day after the date of state registration of the individual entrepreneur.

Law of Ukraine No. 959-XII "On Foreign Economic Activity" dated 16 April 1991:

Article 14. Making Settlements and Crediting Subjects of Foreign Economic Activity

All subjects of foreign economic activity shall have the right to: independently choose the form of payment in foreign economic transactions from among those that do not contradict the laws of Ukraine and that are in line with international rules.

Law of Ukraine No. 2121-III "On Banks and Banking Activity" dated 7 December 2000:

Article 47. Banking Transactions

Based on a banking license, banks shall have the right to implement...transactions with foreign currency assets...

Law of Ukraine No 185/94-VR "On the Procedure for Making Foreign Currency Payments" dated 16 June 1994:

Article 1. Earnings of residents in foreign currency shall be remitted into their foreign currency accounts with authorized banks within the deadline for payment of debts, as specified in contracts, however, not later than 90 calendar days from the date of customs clearance (issue of export freight customs declaration) of the products being exported, and in case of export of works/services or intellectual property rights – from the date of signing a certificate or other document evidencing execution of work, provision of services or export of intellectual property rights. Extension of said term shall require an individual license from the National Bank of Ukraine.

Foreign currency earnings of residents from export of products of ship-building enterprises and of domestically produced pharmaceuticals shall be credited to their foreign currency accounts with authorized banks within the deadline for payment of debts, as specified in the contracts, however, not later than 180 calendar days after the date of customs clearance (issue of export freight customs

declaration) of the pharmaceuticals being exported. Extension of said term shall require an individual license from the National Bank of Ukraine.

Article 3. Residents who buy foreign currency via authorized banks, for assuring implementation of their obligations to non-residents, must transfer such amounts within five banking days from the date of such amounts' being credited to the foreign currency accounts of the residents.

Article 5. In case of residents' violating the terms stipulated in Article 3 herein, the purchased foreign currency shall be sold by authorized banks within five business days on the inter-bank currency market of Ukraine. In this case, any exchange rate surplus, which might emerge under such transaction, shall be remitted to the State Budget of Ukraine on a quarterly basis, and any shortfall shall be charged to the resident's economic performance results.

Law of Ukraine No. 3356-XII "On Collective Contracts And Agreements" dated 1 July 1993:

Article 7. Content of a Collective Contract

The parties shall determine the content of the collective contract within the limits of their authority. The collective contract shall establish the mutual obligations of the parties with regard to settlement of industrial, labor and socio-economic relations, including: setting work quotas and remuneration of labor, setting the format, system, rates of wages and salaries and of other types of labor payments (increments, additional payments, bonuses, etc.);

Law of Ukraine No. 1045-XIV "On Trade Unions, Their Rights and Guarantees of Activity" dated 15 September 1999:

Article 38. The Powers of the Elected Body of the Local Trade Union Organization at an Enterprise, Institution or Organization.

The elected body of the local trade union organization at an enterprise, institution or organization shall:

3) jointly with the employer, decide issues of labor remuneration of the staff of the enterprise, on the forms and systems of labor remuneration, wage rates, tariff scales, schemes of official salaries, conditions for introduction and amounts of increments, additional payments, bonuses, rewards, and other incentive and compensatory payments;

Law of Ukraine No. 1457-III "On Eliminating Tax Discrimination between Subjects of Economic Activity" dated 17 February 2000:

Article 1. The national regime of currency regulation and administration of taxes and fees (mandatory payments) established by laws of Ukraine for enterprises, created without participation of foreign investments, shall apply in the territory of Ukraine to entrepreneurial entities or other legal entities, their branches, offices and standalone divisions, including permanent representative offices of non-residents (hereinafter referred to as "enterprises"), created with the participation of foreign investments, irrespective of the form and time of their investing.

Article 2. Enterprises established with the participation of foreign investments, as well as objects (results) of joint activities in the territory of Ukraine with the participation of foreign investments without creation of a legal entity, including those based on agreements/contracts on production cooperation, joint production, joint activities, etc., shall be subject to customs and currency regulation and taxation according to the rules, established by the legislation of Ukraine on the issues of currency and customs regulation and taxation of enterprises, created without participation of foreign investments.

Law of Ukraine No. 93/96-VR "On the Foreign Investment Regime" dated 19 March 1996:

Article 3. Forms of Implementation of Foreign Investments

Foreign investments may be implemented in the following forms: partial participation in enterprises created jointly with Ukrainian legal entities and natural persons, or acquisition of an interest in existing enterprises; creation of enterprises that are fully owned by foreign investors, branches and other standalone divisions of foreign legal entities, or acquisition of existing enterprises in full; acquisition of movable or immovable property, not prohibited by the laws of Ukraine, including buildings, apartments, premises, equipment, vehicles, and other properties by means of direct receipt of property and property complexes, or in the form of shares, obligations and other securities; buying independently or with participation of Ukrainian legal entities or natural persons of land use rights and use of natural resources in the territory of Ukraine; buying other property rights; economic (entrepreneurial) activities based on production-sharing agreements; in other forms not prohibited by Ukrainian law, including without creation of a legal entity based on agreements with economic entities of Ukraine.

Article 4. Objects of Foreign Investment

Foreign investments may be invested in any objects, investing into which is not prohibited by Ukrainian law.

Article 7. Legal Regime of Investment Activities

National treatment of investment and other economic activities shall be established for foreign investors in the territory of Ukraine, with the exceptions provided by the legislation of Ukraine and international treaties of Ukraine.

Article 13. State Registration of Foreign Investments

State registration of foreign investments shall be implemented according to the procedure determined by the Cabinet of Ministers of Ukraine. Unregistered foreign investments shall not be entitled to preferences and guarantees provided by this Law.

Article 16. Organizational and Legal Forms of Enterprises with Foreign Investments

In the territory of Ukraine, enterprises with foreign investments shall be established and shall operate in the forms provided by the legislation of Ukraine.

Article 18. Imposition of Duties

Property, brought in Ukraine as a foreign investor's contribution to the statutory fund of enterprises with foreign investments (except goods for sale or private consumption) shall be exempt from duties.

Article 26. Procedure for Dispute Resolution

Disputes between foreign investors and the State on issues of state regulation of foreign investments and activities of enterprises with foreign investments shall be examined by the country's courts, unless otherwise stipulated by international treaties of Ukraine. All other disputes shall be examined in Ukrainian courts or, upon agreement of the parties, in courts of arbitration, including those abroad.

Law of Ukraine No. 1576 "On Commercial Enterprises" dated 19 September 1991:**Article 3. Company Founders and Participants**

Foreign citizens, persons without citizenship, foreign legal entities, as well as international organizations, may act as founders of and participants in commercial enterprises, alongside citizens and legal entities of Ukraine, except for in cases established by legislative acts of Ukraine.

Law of Ukraine No. 334/94-VR "On Taxation of the Enterprises' Benefits" dated 28 December 1994**Clause 4.2.5.**

The amount of money or the price of the property which is received by a taxpayer as a direct investment or reinvestment into the corporate rights issued by this taxpayer, including monetary or property contributions, under agreements on joint activity in the territory of Ukraine without setting up a legal entity, shall not be included in gross revenue.

Law of Ukraine No. 697-XII "On Property" dated 7 February 1991:

Article 2. Right of Property

1. Right of property means social relations with regard to ownership, use and disposal of property regulated by law.
2. The right of property is protected by law in Ukraine. The State provides for stable legal relations of ownership.
3. Every citizen in Ukraine shall have the right to own, use and dispose of property, either individually or jointly with others.
4. Property in Ukraine has the following forms: private, collective, and state property. All forms of property have equal rights.
5. Property in Ukraine exists in various forms. Ukraine creates equal conditions for the development of all forms of property and for their protection.

Article 34. State (Republican) Properties

1. State (republican) property is made up of: land, property used for activities of the Verkhovna Rada of Ukraine and for establishment of state bodies by the former; property of the Armed Forces, state security agencies, interior troops and State Border Service of Ukraine; defense facilities; the Unified Power Grid; general-purpose transport, communication and information systems having state (republican) significance; funds of the republican budget; republican national bank, other state republican banks and their institutions, and the credit resources built thereby; republican reserve, insurance and other funds; property of higher and secondary educational institutions; property of state-owned enterprises; social and cultural sphere assets or other property, which makes up the material base of Ukraine's sovereignty, and ensures its economic and social development.
2. State (republican) property may also include property transferred to Ukraine by other states, as well as by legal entities and individuals.

Article 48. General Provisions

1. Ukraine provides legislative guarantees of equal conditions for the protection of the right of property for citizens, organizations and other owners.
2. An owner may demand redress for any infringements on his rights, even where these infringements are not combined with deprivation of ownership, and compensation for damages inflicted thereby.
3. Protection of the right of property shall be provided by courts or by courts of arbitration.
4. In case of Ukraine's adopting a legislative act, which terminates the right of property, the State shall compensate the owner for damages. Damages are to be fully compensated in accordance with the actual value of the property at the time of termination of the right of property, including loss of profit.

Article 49. Legitimacy of Ownership of Property

Ownership of property shall be considered legitimate, unless proven otherwise by court or court of arbitration.

Law of Ukraine No. 2163-XII "On Privatization of State Property" dated 4 March 1992:

Article 1. Concept and Goal of Privatization

Privatization of state property (hereinafter referred to as "privatization") means alienation of property owned by the State and of property owned by the Autonomous Republic of the Crimea for the benefit of natural persons and legal entities, which can be buyers according to this Law, with the aim of improving socioeconomic efficiency of production and of mobilizing funds for restructuring the Ukrainian economy.

Article 5. Privatization Properties

State properties subject to privatization include: property of enterprises, workshops, plants, production bays and other units, which are indivisible (integral) property complexes, where their separation as independent enterprises does not interfere with the technological integrity of production in the key specialization of the enterprise, from whose structure they are being separated; unfinished

construction projects and mothballed projects; and shares (stocks, interests) owned by the State in the property of economic companies and other associations.

The list of state properties not subject to privatization shall be approved by the Verkhovna Rada of Ukraine upon submission of the Cabinet of Ministers of Ukraine.

Article 8. Buyers

The buyers of privatization properties may include:

citizens of Ukraine, foreign citizens and persons without citizenship; legal entities registered in the territory of Ukraine, except for those stipulated in Part Three herein; and legal entities of other states. Buyers may not include: legal entities in which the State owns more than a 25 percent stake; central government agencies; and the staff of state privatization agencies.

Law of Ukraine No. 2319-IV "On Forming Competitive Bases During Privatization of State-Owned Shares (Ownership Interests, Equity Stakes) in Legal Entities' Property" dated 12 January 2005:

Article 4. Specifics of Sale of Objects of Privatization

The objects stipulated by this Law shall be privatized by selling a single block of the entire ownership interest owned by the State through a tender in accordance with the procedure approved by the State Property Fund of Ukraine and the State Commission for Securities and the Stock Market upon the approval of the Antimonopoly Committee of Ukraine, subject to the specifics stipulated by this Law, if other participants of an economic company which is being privatized have waived the pre-emptive right to acquire the state-owned shares (ownership interests) in the authorized fund of this company. The information concerning the deadlines for and conditions of holding tenders shall be promulgated in accordance with the legislation of Ukraine on privatization.

The initial value of objects of privatization indicated in Article 1 of this Law shall be determined in accordance with the legislation of Ukraine subject to the specifics of evaluating state-owned shares (ownership interests, equity stakes) in the property of economic companies.

If one application is submitted for a tender, the object of privatization shall be sold in accordance with the tender conditions at the price bid by the buyer, which shall not be less than the starting price.

Law of Ukraine No. 507-XII "On Prices And Pricing" dated 3 December 1990:

Article 3. Pricing Policy

The pricing policy is a component part of the overall economic and social policy of Ukraine, and it is aimed at providing equal economic conditions and incentives for development of all forms of ownership, economic independence of enterprises, organizations and administrative-territorial regions of the republic; a balanced market of means of production, goods and services; objective ratios in prices of industrial and agricultural goods, which would assure equivalent exchange; expanding the area of application of free prices; improving the quality of products; social guarantees, primarily for low-salaried and low-income citizens, including a system of subsidies in connection with growing prices and tariffs; creation of essential economic guarantees for manufacturers; and orientation of domestic market prices towards the level of world market prices.

Article 6. Types of Prices and Tariffs

Free prices and tariffs and state-fixed and regulated prices and tariffs shall be used in the national economy.

Article 7. Free Prices and Tariffs

Free prices and tariffs shall be established for all types of products, goods and services, except for those subject to state regulation of prices and tariffs.

Law of Ukraine No. 959-XII "On Foreign Economic Activity" dated 16 April 1991:

Article 8. State Regulation of Foreign Economic Activity

Ukraine shall independently formulate the system and structure of state regulation of foreign economic activities in its territory.

The State and its bodies shall not have the right to directly intervene in the foreign economic activities of the entities pursuing these activities, except for in cases when such intervention is carried out in accordance with this and other laws of Ukraine.

Law of Ukraine No. 1576-XII "On Commercial Enterprises" dated 19 September 1991:

Article 1. Commercial Enterprises

Enterprises may pursue any entrepreneurial activities that do not contradict Ukrainian law.

Commercial enterprises may acquire property and personal non-property rights, undertake obligations and appear before courts and courts of arbitration on their own behalf.

Law of Ukraine No. 698-XII "On Entrepreneurship" dated 07 February 1991:

Article 4. Restrictions in Implementation of Entrepreneurial Activities

Activities related to circulating narcotics, psychotropic substances, their analogs and precursors shall be implemented pursuant to the Law of Ukraine "On Circulation of Narcotics, Psychotropic Substances, Their Analogs and Precursors in Ukraine".

Activities related to the manufacturing and sale of military weapons and ammunition therefor, mining for amber, guarding of some of the especially important state-owned properties, the list of which is indicated according to the procedure established by the Cabinet of Ministers of Ukraine, as well as activities related to conducting criminology, forensic medical and forensic psychiatric examinations and the development, testing, manufacturing and operation of launch rockets, including their space launches for any purpose, may only be implemented by state-owned enterprises and organizations; the implementation of pawn operations may also be conducted by general partnerships.

Activities related to the production of mixed motor gasoline (A-76Ek, A-80Ek, A-92Ek, AI-93Ek, A-95Ek, A-98Ek), containing a minimum of five percent of high-octane oxygen additives of dehydrated commercial grade alcohol and ethyl-tretbutyl ester shall be implemented by oil refineries, the list of which shall be determined by the Cabinet of Ministers of Ukraine.

Activities related to the production of high-octane oxygen additives indicated in Part Four herein shall be carried out by state-owned distilleries, the list of which shall be determined by the Cabinet of Ministers of Ukraine.

Law of Ukraine No. 1682-III "On Natural Monopolies" dated 20 April 2000:

Article 1. Natural monopoly means a condition in a commodity market where satisfying demand on this market is more effective when there is no competition due to the technological specifics of production (in connection with a substantial reduction of production costs per commodity item as production increases), and the goods (services) produced by natural monopolies cannot be substituted during consumption with other goods (services), as a result of which, demand on this commodity market is less affected by fluctuations of prices of these goods (services) than is demand for other goods (services) (hereinafter - "goods").

The Law of Ukraine No. 679-XIV "On the National Bank of Ukraine" dated 20 May 1999

Article 2. Legal Foundations for Activities of the National Bank of Ukraine

The National Bank of Ukraine (hereinafter referred to as the "National Bank") is the central bank of Ukraine, a special central body of state administration, whose legal status, tasks, functions, powers and organizational principles shall be defined by the Constitution of Ukraine, this Law and other laws of Ukraine.

Article 6. Main Function

According to the Constitution of Ukraine, the National Bank's main function is ensuring stability of the Ukrainian currency unit.

To implement its main function, the National Bank shall facilitate maintenance of stability of the banking system, as well as stability of prices, within its terms of reference.

Article 7. Other Functions

The National Bank shall implement the following functions:

- 1) in accordance with the Underlying Principles of Monetary and Credit Policy developed by the Board of the National Bank of Ukraine, it shall develop and implement monetary and credit policies;
- 2) it, exclusively, shall issue the national currency of Ukraine and organize its circulation;
- 6) it shall determine the system, order and forms of payments, including inter-bank payments;
- 8) it shall provide banking regulation and supervision;
- 9) it shall keep the State Register of Banks and implement licensing of banking activities and operations in the cases envisaged by law;
- 14) it shall implement, in accordance with the powers to be defined by special law, foreign currency regulation; it shall stipulate the procedure for implementing transactions in foreign currencies; it shall organize and implement currency control over banks and other financial institutions, which have been licensed by the National Bank for implementation of foreign currency transactions;
- 15) it shall provide for accumulation and storage of gold and foreign currency reserves and implementation of transactions with same and with precious metals;
- 16) it shall analyze the status of monetary and credit, financial, price and foreign currency relations.

The Law of Ukraine No. 2121-III "On Banks and Banking" dated 7 December 2000

Article 6. Banks' Organizational and Legal Forms

Banks in Ukraine shall be established in the form of a joint-stock company, limited-liability company or cooperative bank.

The legislation on economic companies shall apply to banks to the extent that it does not contradict this Law.

Law of Ukraine No. 2299-III "On Joint Investment Institutions (Equity Stakes and Corporate Funds)" dated 15 March 2001

This Law defines the legal and organizational foundations for the creation, operation and responsibilities of joint investment subjects and the special characteristics of managing their assets, establishes the requirements to for the composition, structure and preservation of assets, the special features for placement and circulation of securities of joint investment institutions and the procedure and scope of disclosure of information by joint investment institutions with the aim of attracting and efficiently allocating investors' financial resources.

Article 3. Term Definitions

"Joint Investment Institution" (hereinafter — "JII") means a corporate investment fund or unit investment fund, which conducts activities related to consolidating (mobilizing) investors' money with the aim of earning profits by investing it into securities of other issuers and corporate real property rights.

Law of Ukraine No. 93/96-VR "On the Foreign Investment Regime" dated 19 March 1996

Article 7. Legal Regime of Investment Activities

National treatment of investment and other economic activities shall be established for foreign investors in the territory of Ukraine, with the exceptions provided by the legislation of Ukraine and the international treaties of Ukraine.

Article 8. Guarantees against Change of Legislation

If subsequent special legislation of Ukraine on foreign investment should change the guarantees for protection of foreign investments indicated in Section II of this Law, then within ten years after the enactment of such legislation, the foreign investor may request that the State guarantees for protection of foreign investments be applied as stipulated in this Law.

The rights and responsibilities of the parties defined in a production sharing agreement shall be governed by the legislation of Ukraine in effect at the time of its conclusion for the whole duration of such agreement. Said guarantees shall not apply to any changes of legislation related to issues of defense, national security, public law and order and environmental protection.

Law of Ukraine No. 74/95-VR "On News Agencies" dated 28 February 1995 with addenda incorporated by Law of Ukraine No. 1379-IV dated 11 December 2003

Article 9. Right to Establish New Agencies

Ukrainian natural persons and legal entities shall have the right to establish news agencies in Ukraine. Foreigners and foreign legal entities shall have the right to act as co-founders of news agencies in Ukraine.

The creation and activities of news agencies, whose statutory funds contain an interest owned by foreigners and/or foreign legal entities exceeding 35 percent, shall be prohibited.

Law of Ukraine No. 2343-XII "On Restoration of Solvency of a Debtor or Recognition of Him as Bankrupt" dated 14 May 1992

Law of Ukraine No. 898-IV "On Mortgage" dated 5 June 2003

Article 1. Term Definitions

The terms below, used in this Law, shall have the following meanings:

"mortgage" means a type of real property security for performance of an obligation, which is retained in the mortgage borrower's ownership and use, whereby the mortgage lender has the right, if the debtor defaults on the commitment secured by the mortgage, to satisfy its claim at the expense of the mortgage's subject matter before other creditors of this debtor, according to the procedure established by this Law;

Article 2. Legislation on Mortgage

Ukrainian legislation on mortgages is based on the Constitution of Ukraine and consists of the Civil Code of Ukraine, Commercial Code of Ukraine, Land Code of Ukraine, this Law and other normative legal acts, as well as the international treaties of Ukraine.

Article 3. Mortgage Effectiveness, Application and Priority

A mortgage can become effective based on an agreement, law or court ruling.

Law of Ukraine No. 1058-IV "On Obligatory State Pension Insurance" dated 9 July 2003

This Law, drafted in accordance with the Constitution of Ukraine and the Foundations of Ukrainian Legislation on Obligatory State Pension Insurance, shall determine the principles, guidelines and mechanisms for the operation of the system of obligatory state pension insurance, allocation, revision and payment of pensions, provision of social services at the expense of the Pension Fund, made up of insurance contributions by employers, budgetary and other sources envisaged by this Law, as well as regulate the procedure for the formation of the Cumulative Pension Fund and its use for financing expenditures used to pay for agreements on insurance of annuity pensions or lump sum payments to insured persons, members of their families and other persons as provided by this Law.

Law of Ukraine No. 356/95-VR “On Combating Corruption” dated 5 October 1995

This Law stipulates the legal and organizational principles for preventing corruption, detecting and terminating its manifestations, restoring the lawful rights and interests of natural persons and legal entities and eliminating the consequences of corrupt actions.

Combating corruption shall be conducted based on the clear legal regulation of the activities of state agencies, services and persons authorized to execute state functions and the ensuring of the guarantees of the rights and interests of natural persons and legal entities.

National Bank of Ukraine Resolution No. 597 “On Remittances of Money in National and Foreign Currency for the Benefit of Non-residents Under Certain Transactions” dated 30 December 2003

Clause 1. The following documents shall be regarded as justifications for authorized banks and other financial institutions transferring funds in the national and foreign currencies for the benefit (into accounts) of non-residents, both at the request of residents, who are subjects of entrepreneurial activities, and to satisfy obligations to pay for works, services and intellectual property rights under contacts that provide for their execution, provision or transfer by non-residents: contract with a non-resident executed in accordance with the requirements of Ukrainian legislation or another document, which according to Ukrainian legislation has the effect of a contract; documents, which evidence the actual services provided, works executed or intellectual property rights transferred.

Clause 4. In addition to the documents specified in Clause 1 herein, the justification for implementing transactions for payment for works, services and intellectual property rights indicated in Clause 1 herein, where the total value of services, works or intellectual property rights under a contract exceeds 50,000 euros, or the equivalent amount in other currency at the official hryvnia rate against foreign currencies, as established by the National Bank of Ukraine on the date of contract execution, shall be provided by a price examination report by the State Information and Analytical Center for Monitoring of External Commodity Markets, which certifies the correspondence of the contractual prices of the works, services or intellectual property rights, which are the subject matter of the contract, to market conditions.

Clause 5. In case of a written refusal to conduct a price examination by the State Information and Analytical Center for Monitoring of External Commodity Markets, performance of the transactions stipulated in paragraph one, Clause 4 herein, shall only be allowed upon the approval of the National Bank of Ukraine.

Verkhovna Rada Presidential Decree No. 1455-XII "On Protection of Foreign Investments" dated 30 August 1991:

- "1. Investments, profits, legal rights and interests of foreign investors in the territory of Ukraine shall be protected by the latter's laws.
2. Foreign investors must comply with the legislation of Ukraine and abstain from damaging its state, social, and economic interests.
3. The State may not requisition foreign investments, except for in natural disasters, emergencies, epidemics, epizootics, and other circumstances of an extraordinary nature. Decisions on requisitioning foreign investments shall be taken by the Cabinet of Ministers of Ukraine. Compensation to be paid to foreign investors in these cases must be adequate and effective.
4. Foreign investors shall be guaranteed transfer of their lawfully obtained profits and other amounts abroad, both in karbovanets² and in foreign currencies.
5. Foreign investors may reinvest profits in the territory of Ukraine.
6. Foreign investors shall pay the taxes established by the legislation of Ukraine.

² Karbovanets was the currency used in Ukraine before introduction of the hryvnia.

Cabinet of Ministers Decree No. 15-93 "On the System of Currency Regulation and Currency Control" dated 19 February 1993:

Article 2. Right of Property in Foreign currency Assets

Clause 1. Residents and non-residents shall have the right to own foreign currency assets that are located in the territory of Ukraine. Residents shall have the right to own foreign currency assets located outside Ukraine except for in cases provided by legislative acts of Ukraine.

Article 3. Status of Ukrainian Currency

Clause 1. The Ukrainian currency is the only legal instrument of payment in the territory of Ukraine, which is accepted without any limitations on payment of any claims and obligations, unless otherwise specified by this Decree or other acts of currency legislation of Ukraine.

Article 5. Licenses of the National Bank of Ukraine

Clause 1. The National Bank of Ukraine issues individual and general licenses for implementation of foreign currency transactions, which fall under the licensing regime pursuant to this Decree.

Clause 4. Individual licenses shall be issued to residents and non-residents for a one-time foreign currency transaction for the period required for conducting such transaction. The following transactions require an individual license:

- a) exporting, transferring, and sending foreign currency assets outside of Ukraine, except: exporting, transferring, and sending foreign currency outside of Ukraine by resident natural persons in the amount set by the National Bank of Ukraine; exporting, transferring, and sending outside of Ukraine by natural persons who are residents and non-residents of the foreign currency, which they earlier lawfully brought into Ukraine; payments in foreign currency, which are made by residents outside Ukraine to execute obligations to non-residents in this currency, as payment for products, services, works, intellectual property rights, and other property rights, except for payment for foreign currency assets and under agreements (insurance policies, vouchers, certificates) of life insurance; payments in foreign currency outside of Ukraine as interest on loans, income (profit) on foreign investments; taking foreign investment in foreign currency out of Ukraine, which investment was previously made in the territory of Ukraine, in case of cessation of investment activities;
- b) importing, transferring, and sending Ukrainian currency in Ukraine, except for the cases provided by Clause 2, Article 3, of this Decree;
- c) providing and receiving foreign currency loans by residents, where the terms and amounts of such loans exceed the limits established by law;
- d) use of foreign currency in the territory of Ukraine as a means of payment or collateral;
- e) placement of foreign currency assets in accounts and deposits outside of Ukraine, except for resident natural persons opening accounts in foreign currency during their stays abroad; opening of correspondent accounts by authorized banks; and opening of foreign currency accounts by the residents, indicated in paragraph four, Clause 5, Article 1 of this Decree;
- f) investing abroad, including by means of purchasing securities, except for securities or other corporate rights received by resident natural persons as gifts or inheritances.

Article 6. Procedure for Organizing Trade in Foreign Currencies

Clause 1. Trade in foreign currencies in the territory of Ukraine by resident and non-resident legal entities shall be carried out through authorized banks and other credit and financial institutions that have been licensed to trade in foreign currencies by the National Bank of Ukraine, exclusively on Ukraine's Inter-bank Foreign Currency Market.

Article 7. Procedure for Organizing Settlements in Foreign Currencies

In settlements between residents and non-residents, foreign currencies shall be used as means of payment within the limits of trade turnover. Such settlements shall only be conducted through authorized banks.

Article 8. Currency exchange rates.

1. Currency exchange rates denominated in the currency of Ukraine and the rates of currency valuables in foreign currencies, as well as in payment (clearing) units, are used for currency

transactions. Said rates are set by the National Bank of Ukraine with the approval of the Cabinet of Ministers of Ukraine.

Article 12. Area of Foreign Currency Control

Clause 1. Foreign currency transactions involving residents and non-residents shall be subject to foreign currency control.

Cabinet of Ministers Decree No. 928 "On Approving the Standing Order on the Procedure for State Registration of Foreign Investments" dated 7 August 1996:

Item 2. State registration of foreign investments shall be implemented by state registration bodies within three working days after their actual submission.

Item 9. Refusal of state registration for foreign investments is only possible when implementation of this investment contradicts the legislation of Ukraine or the documents presented fail to comply with the requirements of this Standing Order.

Item 14. State registration of a foreign investment shall remain effective for the whole period of the investment's operation.

Cabinet of Ministers Decree No. 135 "On the Rules of State Regulation of Prices (Tariffs) for Production and Technical Goods, Consumer Goods and Works and Services of Monopolies" dated 25 December 1996:

Clause 1. These Rules establish the procedure for state regulation of prices (tariffs) for production and technical goods, consumer goods and the works and services of natural monopolies and economic entities, which are violating the requirements of the law on protection of economic competition by setting such prices or other conditions for procurement or sales of goods, which would have been impossible to set in a situation of considerable competition on the market, or by setting different prices or different other conditions on equivalent contracts with economic entities, sellers or buyers without objective justifiable reasons therefore.

Cabinet of Ministers Decree No. 1548 "On Executive Bodies of City Councils Establishing Price (Tariff) Regulation" dated 25 December 1996:

Clause 1. To approve the powers of the central government's executive bodies, Council of Ministers of the Autonomous Republic of the Crimea, the oblast, Kiev and Sevastopol City state administrations with regard to regulation (setting of fixed and limited levels of prices (tariffs), trade (procurement and sales) surcharges, profitableness standards, and introduction of mandatory changes) of prices and tariffs for certain types of products.

Cabinet of Ministers Decree No. 1998 "On Improvement of Pricing Procedures" dated 18 December 1998:

Clause 1. To establish that the formation, setting and application by entrepreneurial entities of free prices in the territory of Ukraine shall be executed in the national currency only. Calculation of costs in dollar equivalents shall only be considered justified when calculating the price of imported components in the price structure.

Cabinet of Ministers Regulation No. 1438 "On Addition to the List of Objects which are Allowed to be Granted on Concession" dated 28 November 2004

The Cabinet of Ministers of Ukraine decrees:

To supplement the section "Objects, which can be built specifically in accordance with the conditions of a concession agreement to satisfy public needs" with a List of Objects, which are Allowed to be Granted on Concession, approved by Cabinet of Ministers of Ukraine Resolution No. 2293 dated 11 December 1999, with the following item:

"Highway 1st category"-". Brody – Rivne, 94.8 km long, Rivne oblast.

Cabinet of Ministers Regulation No. 155 "On Approving the Principal Conceptual Approaches to Improving the Efficiency of Management of State Corporate Rights" dated 11 February 2004

The principal conceptual approaches to improving the efficiency of management of state corporate rights (hereinafter referred to as the "Principal Approaches") have been developed with the aim of improving the system of managing state corporate rights and with due account for the Action Program of the Cabinet of Ministers of Ukraine.

The Principal Approaches are intended to ensure the State's economic security, control over the functioning of socially-significant sectors and improvement of efficiency of the financial and economic activities of economic companies, whose statutory funds have shares owned by the State, for maximum socio-economic impact gained from the operations of this sector of the economy.

Management of the State's corporate rights provides for addressing the following tasks:
providing for the participation of economic entities in implementing activities related to the implementation of state functions (economic security, defense, state reserves, social programs, state monopoly, etc.), as well as the achievement of other strategic goals stipulated by the State;
increasing, through improved financial performance of managed objects, the generation of taxes and fees for budgets, mandatory payments (contributions) into special-purpose state funds, as well as non-tax revenues in the form of dividends (income) distributed through shares (stocks, interests) in economic companies owned by the State;
implementing control over the use and preservation of property of economic companies, whose statutory funds contain an interest owned by the State.

Cabinet of Ministers Regulation No. 500 "On Establishing a Commission for Promotion of Pre-Trial Settlement of Disputes between Investors and the Executive Authorities" dated 15 April 2004:

1. The Commission for Promotion of Pre-trial Settlement of Disputes between Investors and the Executive Authorities (hereinafter referred to as the "Commission") is a standing consultative and advisory body to the Cabinet of Ministers of Ukraine.
2. In its activities, the Commission shall be guided by the Constitution and laws of Ukraine, acts of the President of Ukraine and Cabinet of Ministers of Ukraine, as well as these Standing Orders.
3. The Commission's main tasks are as follows:

to facilitate the pre-trial settlement of disputes between investors and the central executive authorities (hereinafter referred to as "subjects of legal relations") when there is a risk that lawsuits may be filed in Ukrainian courts;

to coordinate the work of regional commissions for the pre-trial settlement of disputes between investors and executive authorities and local governments.

Exhibit 1



Ukraine: Developments in the Aftermath of the Orange Revolution

Ambassador Daniel Fried, Assistant Secretary for European and Eurasian Affairs

Testimony Before the House International Relations Subcommittee on Europe and Emerging Threats

Washington, DC

July 27, 2005

(As prepared)

Mr. Chairman, Members of the Committee, I am pleased to be here today to discuss with you current developments in Ukraine.

As requested, I shall provide our assessment of the situation in Ukraine seven months after the historic Orange Revolution. I will also discuss our bilateral agenda with Ukraine, as laid out in the Joint Statement of Presidents Bush and Yushchenko in April of this year, and our views on the way ahead in U.S.-Ukrainian relations. I would also like to share some impressions from my recent visit to Kiev, my first to Ukraine as Assistant Secretary for European and Eurasian Affairs.

The Orange Revolution and U.S. Policy

At a pivotal moment in their nation's history, the Ukrainian people rejected a stolen election and chose freedom, democracy, and the rule of law over corruption and intimidation. In the weeks following the fraudulent November 21 second-round presidential vote, hundreds of thousands of ordinary Ukrainians braved snow, frigid temperatures, and a real threat of violence in order to peacefully take back control of their country's destiny and freely choose their leadership. Their courage and conviction captured the imagination of the world. We were, I submit, witnesses to a Ukrainian national identity taking shape through and thanks to a democratic transformation.

The consolidation of such a democratic transformation in Ukraine would have a profound and beneficial impact on its region. A democratic, free, and prosperous Ukraine would encourage reformers in neighboring countries, and in nations to its east. Our stake in this effort is high. The United States does not seek any sort of geopolitical advantage in Ukraine. Nor do we need to. As we learned beginning in 1989, the advance of American interests in what used to be known as the Soviet Union and Soviet Bloc is inextricably linked to the success of common values.

I am therefore proud of the role the U.S. and our European allies played in support of the Ukrainian people at this historic moment. Well before the election, we made clear to then-President Kuchma that we took him at his word when he said he would not run for a third term. The U.S. government never favored a specific candidate, and pledged to work with whoever won a free and fair election. Our objective was to seek to bring about conditions so that Ukrainians had an opportunity to choose their next leader without coercion or manipulation. To that end, we helped train and field domestic and international observers; educated judges on Ukraine's new election law; funded exit polls, media monitors, and parallel vote counts; and stressed that we viewed the conduct of the election as a test of Ukraine's commitment to democracy. U.S. assistance was fully transparent and focused on improving the integrity of the election process so that Ukrainians could better determine their own future. I am proud of our efforts.

We also warned that, should the election be judged less than free and fair by international standards, there would be consequences for our relationship, for Ukraine's hopes for Euro-Atlantic integration, and for the individuals responsible for perpetrating violations. In fact, even before

election day, several individuals clearly implicated in corrupt electoral manipulation did face consequences, for example, being told they would be unable to obtain a visa to travel to or conduct business in the United States. Such actions stained the reputations of key actors and served as a deterrent for others.

After credible reports of widespread violations and fraud, we made it known that we did not recognize the legitimacy of the November 21 results. We stressed that we expected the will of the Ukrainian people to be upheld, and that the use of force against peaceful demonstrators was unacceptable. In this effort, we worked closely with Europe, especially the European Union. I believe that our efforts, combined with those of European leaders – and particularly those of Presidents Kwasniewski and Adamkus, EU High Representative Solana and OSCE Secretary General Kubis – contributed to the peaceful and just outcome to the crisis. But we must remember who the true heroes were: ordinary Ukrainians, who did extraordinary things.

A Difficult Environment

The Ukrainian people's heroic choice of freedom was a giant leap forward in Ukraine's journey toward democracy and prosperity. It has ushered in the prospect of a profound change in Ukraine comparable to 1989 in Central Europe. But now the poetry of the Orange Revolution needs to be translated into the prose of programs to transform the Ukrainian polity, economy and society and prepare Ukraine to become a full-fledged member of the Euro-Atlantic community.

President Yushchenko and his government have set out a broad and ambitious agenda for transforming Ukraine into a modern European state. It is, I believe, the right direction. But Ukraine's new leaders are undertaking reforms in a complex and difficult political environment:

- First, the Orange Revolution lifted expectations extraordinarily high, both at home and among Ukraine's friends abroad. Meeting these expectations will require focus, hard work, consensus-building, and sustained implementation of reforms.
- Second, opposition to reforms remains strong. President Yushchenko's anti-corruption campaign threatens powerful interests, and the presidential election exacerbated regional tensions and, as a result of desperate campaign tactics, spurred concerns about separatism. Some of these concerns seem to have receded, however, as polls show substantially greater confidence in President Yushchenko and his government emerging in eastern and southern Ukraine. The mainstream opposition leaders also deserve credit for putting the separatist card back in the deck.
- Third, the new government is operating against the backdrop of the upcoming parliamentary elections in March 2006. The President and government recognize the importance of obtaining a working majority in the parliament (Rada) to implement their vision for Ukraine. Nevertheless, the government must be careful as it considers measures that may in the short term gain favor with voters but in the longer term threaten Ukrainian leaders' ability to reform and liberalize the economy and secure key priorities such as joining the WTO, attracting foreign investment, and achieving Market Economy Status.
- Fourth, the government is a coalition with ministers and others drawn from different parties with different philosophies and interests. There are also competing personal agendas. Democracy is messy, and unity is not the highest political value. But the new team must function as it faces hard decisions. Discord between coalition members has sometimes spilled out into the open, complicating decision-making.
- Finally, Russia still looms large in Ukrainian calculations. Ukraine's leaders know they must work hard to forge good relations with their eastern neighbor, while seeking closer integration with the West. At the same time, Russia needs to work hard to maintain a positive relationship with Kiev. Good, strong Ukrainian-Russian relations, and a successful, democratic and fully sovereign Ukraine able to make its own choices about its future, are in everyone's interest.

Impressive Successes

Despite this complex environment, President Yushchenko and his team have achieved significant successes in their first six months in office. On the domestic front, they have transformed the political scene. Respect for the rights of citizens has improved dramatically. The opposition has freedom of assembly, as witnessed by frequent and peaceful marches and demonstrations. The media operates more freely in contrast to the previous regime, when intimidation, pro-government ownership, favoritism in granting broadcast rights and frequencies, and government press guidance – the notorious "temnyky" – were the order of the day. However, self-censorship and concentrated ownership of the media are still a concern. The courts appear to be more independent, following the example of the Supreme Court's December 3 ruling that the second-round vote was flawed and that the run-off should be repeated. And, while far from perfect, the government does appear to be more transparent and open about its business. The press regularly reports on vigorous intra-governmental policy debates. In short, President Yushchenko and his government are forging a genuine democracy.

President Yushchenko and his team have also moved to combat endemic corruption by removing and sometimes prosecuting officials who abused their positions to enrich themselves, and by closing loopholes in legislation that allowed for graft. The anti-corruption campaign has already resulted in increased revenues from the Customs and Tax Services. Nevertheless, it is important that President Yushchenko ensures the honesty of his own government, and that its members not succumb to the temptations of corruption. Prosecutions are vital in deterring officials from engaging in corruption, but the authorities must avoid perceptions of political retribution and not be overzealous nor pursue unjustified cases against those associated with the previous government. The government should also continue to investigate such cases as the 2000 murder of the journalist Heorhiy Gongadze. The government has shown a new commitment to fighting trafficking in persons. It created a new department in the Ministry of Interior dedicated to fighting this scourge and has scored some victories on this front.

Delivering on its promise to increase the force of the market in the Ukrainian economy, the Yushchenko government has ended years of tax privileges for the powerful business oligarchies. After fierce debate, the Rada passed significant legislation related to WTO accession, lowering agricultural tariffs, reducing discriminatory trade measures, and strengthening protection of intellectual property rights.

Some of the new administration's most impressive successes have been in the foreign policy realm. President Yushchenko has dramatically transformed Ukraine's international image and put relations with the U.S. and Europe on a new track. In his foreign visits, he has exercised Ukraine's sovereignty, orienting itself toward Europe, putting its own interests first and foremost. He has committed Ukraine to supporting democracy and human rights both in the region and further abroad, as witnessed by Ukraine's votes for the UNCHR resolutions on Cuba and Belarus. These votes were not easy – Belarus is a neighbor, and Cuba has provided humanitarian assistance to child victims of the Chornobyl tragedy – and the Ukrainian government deserves credit for doing the right thing and adhering to its democratic principles. We are proud to have a new partner in the advance of freedom in this region.

President Yushchenko's energetic engagement of European leaders has already borne fruit, helping to produce an offer of Intensified Dialogue on Ukraine's NATO Membership Aspirations in April. In February, President Yushchenko also signed a three-year cooperation plan with the EU. This agreement aims to build capacities for a wide range of reforms needed to bring Ukraine closer to European standards.

Ukraine has also demonstrated real leadership in the region. President Yushchenko has energized the GUAM (Georgia, Ukraine, Azerbaijan, and Moldova) group, focusing it on promoting democracy, economic development, and security in the region, while developing its links to countries in Central and Eastern Europe that offer successful track records of reform. He has injected new energy into confronting thorny regional problems, and has initiated a proposal to find a solution to the frozen conflict in Transnistria.

As I mentioned previously, Russia represents a particular challenge for the new Ukrainian government, but also opportunities. The Kremlin openly supported President Yushchenko's electoral

rival, and has questions about the implications of Ukraine's new Euro-Atlantic orientation. I believe that President Yushchenko has done a good job of rebuilding ties and moving forward. The new Ukrainian administration understands that Ukraine and Russia are united by historical, cultural, language and economic bonds, and that good relations are essential. Of course, establishing strong relations is a two-way street. President Yushchenko has declared Ukraine and Russia to be "eternal strategic partners," and traveled to Moscow on his first foreign trip immediately after his inauguration. President Putin, in turn, visited Kiev in March, and the two presidents pledged to build stronger ties and maintain an open dialogue.

Some Concerns

We are greatly encouraged by the successes of the new government. But we are also concerned that, in the economic sphere, some essential free-market reforms have stalled. The new leadership may not have used the political capital it earned from the Orange Revolution as decisively as it could have to move Ukraine unequivocally toward a prosperous market economy integrated into the global economy. Specially, we are concerned by interventionist and inflationary policies that the Ukrainian government is pursuing, as well as by continued uncertainty over re-privatization. For example:

- Price controls on gasoline earlier in the year briefly produced shortages. President Yushchenko rescinded the measures, but the issue raised questions about the government's commitment to market principles. Continued protection of the agriculture sector, while not unique to Ukraine, also runs contrary to the steps Ukraine needs to undertake in order to join the WTO.
- The Yushchenko government has expanded on the commitments the previous government had made to increase pensions and public sector pay. Elimination of tax privileges and the government's anti-corruption campaign have dramatically increased state income, but the higher social spending, while understandable, has fueled inflationary pressures. Most observers predict a 2005 budget deficit of over three percent of GDP.
- We understand the arguments for re-privatization: under the previous regime, insiders used non-transparent means to grab major state enterprises at bargain-basement prices. But mixed signals about the extent of re-privatization have dampened both domestic and foreign investment. We welcome current Ukrainian efforts to establish clarity on the way ahead on this issue.
- While the tax and tariff privileges in the Special Economic Zones were largely used fraudulently, their abrupt elimination has caused problems for some foreign investors. We encourage predictability in economic policies affecting businesses, and are pleased to hear that President Yushchenko endorses this principle and is considering restoring some privileges to law-abiding businesses. Improving the climate for legitimate domestic and foreign investors is critical to Ukraine's economic future.
- Ukraine aims to diversify its energy supplies, reduce its energy dependence and bolster competition in the Eurasian energy sector. However, a vertically integrated, state-owned system of oil production, distribution, and sales – as some in the Ukrainian government advocate – will not improve the functioning of the market or address Ukraine's energy problems. We believe that Ukraine should instead focus on creating strong incentives and a stable environment for the private sector. What Ukraine needs are competition, transparency, and private investment in its energy sector.

Some of these interventionist policies may seem attractive to the Ukrainian government as it seeks to strengthen its popular support in advance of the 2006 parliamentary elections. But we are urging the Ukrainian government to consider the consequences of adopting measures that may be popular in the short term but that, if continued and unaccompanied by strong pro-growth policies, would fuel inflation, reduce macroeconomic stability, and undermine sustainable growth. Such a set of policies would jeopardize key Ukrainian objectives, such as joining the WTO, attracting foreign investment, and obtaining Market Economy Status. In the long term, the tested free market reforms, including the proper regulatory functions of a modern state in a free market that we have witnessed elsewhere, are what will boost the Ukrainian people's prosperity, not short-term populist policies.

I detect from my recent visit to Kiev that senior Ukrainian officials recognize that they have had a rough initial period on economic policy, and are committed to getting reforms on track. In fact, in many of the areas I have cited, we have seen questionable decisions followed by a course correction. As the Ukrainian government gains its footing, we hope it will move forward decisively to implement the economic reforms so vital to achieving their vision of Ukraine.

In fact, the approach of key markers, such as WTO Hong Kong Ministerial in December does seem to be focusing minds. The Ukrainian government had been slow in making progress to pass important WTO-related legislation. The absence of amendments strengthening the law against media piracy, as well as continued high tariffs and arbitrary sanitary regulations on poultry and agriculture products had been an impediment in our own bilateral accession negotiations.

I am therefore pleased to report that the parliament's recent passage of the Optical Disk amendments, as well as other WTO-related laws, constitutes a major step forward. It encourages us to hope that the parliament will adopt and the government will implement the remaining WTO legislation, including revised sanitary and phytosanitary (SPS) rules, technical standards, bank branching authority, and revisions to the foreign economic activity law. It is important that all WTO-related bills be submitted for review by the WTO members considering Ukraine's accession, to ensure consistency with WTO standards. We look forward to Ukraine doing so in the case of most of the recent laws.

U.S.-Ukraine Relations: A New Century Agenda

Since 1991, successive U.S. administrations have pursued steady objectives in relations with Ukraine: we seek to help Ukraine develop as a secure, independent, democratic, prosperous country with an economy based on free-market principles, one that respects and promotes human rights and abides by the rule of law, and draws closer to European and Euro-Atlantic institutions. During the latter half of the 1990s and the first years of the new century, however, U.S.-Ukrainian relations were in a holding pattern. The United States never forgot the strategic importance of Ukraine or lost faith in the Ukrainian people. But the scandals and corruption that came to characterize the previous regime presented serious obstacles to developing the kind of relationship we desired.

I am happy to say that the Orange Revolution has put us on a new trajectory, one characterized by open dialogue and closer cooperation. The interaction among senior U.S. and Ukrainian officials in 2005 has already intensified dramatically compared to 2003 and 2004.

We now have an historic opportunity to help Ukraine succeed with its reforms and advance its integration into Europe and Euro-Atlantic structures. Last November, President Bush said that we stood by the Ukrainian people in their hour of need. We did then, and we do today. Congress adopted the full \$60 million in supplemental assistance for Ukraine that the Administration requested. This amount is in addition to the \$79 million in assistance that we have already budgeted for Ukraine for fiscal year 2005 from FREEDOM Support Act funds.

We are working to ensure that the supplemental funds approved by Congress will help the new government pursue its highest and most immediate priorities. One focus will be on assistance to eastern and southern regions in Ukraine, where suspicion of reforms is strongest. We are directing the bulk of the funding toward programs and activities designed to:

- Combat corruption and promote judicial independence and the rule of law;
- Strengthen election administration and NGO capacities, and train independent observers in order to ensure free and fair parliamentary and local elections in March 2006;
- Support media openness through partnership programs and grants;
- Increase exchange programs and intensify outreach to eastern and southern Ukraine;
- Assist the Ukrainian government with WTO accession and with fiscal management issues, as well as with municipal government and agricultural sector reforms;

- Help Ukraine reduce its energy dependence, including through completion of the multi-year Nuclear Fuel Qualification Project;
- Support Ukraine's efforts to confront serious health issues such as the spread of HIV/AIDS and tuberculosis;
- Support coal mine safety in eastern Ukraine to generate small business development; and
- Facilitate the donation of millions of dollars of goods and supplies to needy Ukrainians.

President Yushchenko's visit to the U.S. in April represented a dramatic and positive shift in the relationship, and exemplified the new opportunities created by the Orange Revolution. In Washington, Yushchenko met with President Bush, Secretary Rice, Secretary Rumsfeld and other Cabinet officials, as well as with members of Congress and the Ukrainian-American community. I will not soon forget President Yushchenko's powerful and effective speech, and your warm welcome, at the historic joint session of Congress.

Presidents Bush and Yushchenko also agreed on a joint statement in Washington outlining the New Century Agenda for the American-Ukrainian Strategic Partnership. The document, which I encourage you to read as a significant blueprint for our new relationship, focuses on concrete areas for our cooperation. Let me mention a few.

- The United States and Ukraine pledge to work together to strengthen democratic institutions in Ukraine and to advance freedom in Europe, its neighborhood and beyond. We will work to defeat terrorism wherever it occurs and to advance economic development, democratic reforms and peaceful settlement of regional disputes. We will also work together to back reform, democracy, tolerance and respect for all communities, and peaceful resolution of conflicts in Georgia and Moldova, and to support the advance of freedom in countries such as Belarus and Cuba.
- In the area of economic policy, the United States and Ukraine will continue close cooperation on the issues that are vital to Ukraine's growth and prosperity. The Ukrainian government will seek U.S. recognition as a market economy. We are committed to working together to achieve Ukraine's accession to the World Trade Organization (WTO) and to moving as rapidly as possible to lift the provisions of the Jackson-Vanik amendment. We have initiated an energy dialogue to advance Ukraine's plans to restructure and reform its energy sector to encourage investment, diversify and deepen its energy supplies, bolster commercial competition, and promote nuclear safety.
- In terms of international relations, the United States pledges to support Ukraine's NATO aspirations and to help Ukraine achieve its goals by providing assistance with challenging reforms. Our support, however, cannot substitute for the important work that the Ukrainian government itself must undertake.
- The fight against the proliferation of weapons of mass destruction and their means of delivery is one of the most important issues facing the international community today. The United States and Ukraine will deepen our cooperation on nonproliferation, export controls, border security and law enforcement. We hope to deter, detect, interdict, investigate and prosecute illicit trafficking of these weapons and related materials. We also hope to enhance the security of nuclear and radiological sources and responsibly dispose of spent nuclear fuel.
- The security and stability of nations increasingly depends on the health, well-being and prosperity of their citizens. The United States and Ukraine therefore have committed to cooperate on a broad agenda of social and humanitarian issues, including halting the spread of HIV/AIDS and TB; fighting the scourge of organized crime, trafficking in persons and child pornography; and completing the Chornobyl Shelter Implementation Plan. We also support a bold expansion of contact between our societies. To this end, the United States and Ukraine will work to lower the barriers that separate our societies and to enhance citizen exchanges, educational training opportunities and cooperation between business communities of both countries.

A New Century Agenda: Progress To Date

This is a bold and ambitious agenda for the United States and Ukraine. Some of the tasks it lays out are longer-term; others can be completed fairly quickly. We are in close touch with the Ukrainian government to discuss these and many other issues. Ambassador Herbst meets with high-level Ukrainian officials almost daily. Secretary Rice and other high-level officials from the State Department and other U.S. agencies consult with their Ukrainian counterparts frequently. Members of Congress travel to Ukraine on a regular basis. At any particular time we are in the process of making preparations for two or three delegations.

Among the most significant mechanisms for maintaining close contact is a new U.S.-Ukraine Bilateral Coordination Group. This group, which I co-chair, is composed of senior U.S. and Ukrainian officials from a number of different agencies and complements the work being done through our embassies and high-level visits. The group is responsible for overseeing progress on implementation of the New Century Agenda.

Our first session was just a few weeks ago in Kiev, and I am happy to report on progress to date on some of the priorities identified by Presidents Bush and Yushchenko. Our operational principle is simple: as Ukraine moves ahead in its reforms so will our relations and our response. This process is now underway:

- **NATO:** The U.S. supports Ukraine's desire to draw closer to NATO. The pace, intensity, and end state of Ukraine's relationship with NATO will depend on Ukraine's own wishes, and on its willingness and ability to meet NATO performance-based standards through progress on reforms. For our part, we are committed to ensure that NATO's door remains open. We proudly led Allies to offer Ukraine an Intensified Dialogue on NATO Membership Aspirations at the April meeting of NATO foreign ministers in Vilnius, Lithuania. Intensified Dialogue provides a platform for Ukraine to work closely with NATO to prepare for the Membership Action Plan (MAP) program, the formal path to NATO membership. There is still much work to be done. The key is now for the Ukrainian government to complete the political, economic, defense, and security reforms required for membership consideration, and to build domestic support in Ukraine. A free and fair parliamentary election conforming to international standards in March 2006 will be an important marker. We look forward to working with Ukraine and our Allies as we take the NATO-Ukraine relationship to a new and more collaborative level.
- **NATO PfP Trust Fund:** Also at NATO, the U.S. announced that it would lead the first stage of a Partnership for Peace Trust Fund project to destroy obsolete and excess munitions, weapons, and MANPADS in Ukraine. Ukraine has enormous weapons stockpiles and ammunition dumps on its territory that present public safety, environmental and proliferation risks. There have already been explosions and fires at a number of these facilities as the result of accidents and unstable munitions. Given the size of the problem, the NATO PfP destruction program is fittingly the largest project of its kind ever undertaken anywhere. It will take about a dozen years to complete. As lead nation in the program, the U.S. is responsible for soliciting donations to the trust fund from other Allies. To date, the U.S. leads all donors with an initial contribution of \$2.14 million. Destruction activities should begin in the next few weeks.
- **Iraq and the Global War on Terrorism:** The U.S. deeply appreciates Ukraine's substantial military contribution toward building a peaceful, secure, and democratic Iraq. In keeping with his campaign promise to the Ukrainian people, President Yushchenko is conducting a phased withdrawal of the Ukrainian contingent in MNF-I throughout 2005, which will see the remaining troops return to Ukraine by the end of the year. Ukraine has consulted closely with us and with other coalition partners at every step. Ukraine, however, has made it clear that it will remain committed to helping Iraq. Ukraine will retain trainers and some staff officers in Iraq after the primary contingent departs, and has indicated its willingness to participate in reconstruction projects in a number of different economic sectors. Ukraine has also expressed interest in contributing to NATO's Training Mission in Iraq, and we are encouraging their participation in that effort.
- We also are very grateful for Ukraine's support for Operation Enduring Freedom in

Afghanistan. Ukraine has provided thousands of over-flight clearances, as well as military supplies to the Afghan National Army. Ukraine also has continued to play an active and constructive role in peacekeeping operations around the world, such as its 320-person contingent in Kosovo. Ukraine has also contributed troops and considerable resources to peacekeeping operations in Lebanon, Sierra Leone, Liberia, the Golan Heights, and Burundi. In short, Ukraine has been a key partner and contributor to common security and the global fight against terrorism. In recognition of this cooperation, we are including Ukraine in the Coalition Solidarity Fund and will continue to provide monies to assist with peace-keeping operations and other activities, such as for military inter-operability with NATO and for equipment and training.

- **Non-Proliferation:** We have made good progress with Ukraine on our non-proliferation agenda since the Orange Revolution building on a new political will from the Ukrainian leadership. We applaud Kiev's decision to expand our dialogue on these issues, and we are pleased to note a new openness in our discussions. Since March, Ukraine has signed the Second Line of Defense agreement to install radiological portal monitors at border locations; signed an Implementing Agreement to improve the security of radiological sources at the RADON sites in Ukraine; added certain chemical precursors to its control lists and consequently was admitted into the Australia Group; and agreed to destroy its last five strategic bombers and associated missiles under an existing DOD CTR project. We are working closely with the Ukrainians on these issues as well as on concluding a Biological Threat Reduction Implementation Agreement (BTRIA) and on the disposal of highly enriched uranium from sites in Ukraine. Ukraine is becoming a key partner in preventing illegal arms exports.
- **WTO:** The Ukrainian government has identified accession to the WTO this year as a major priority, and we strongly support Ukraine's bid. We have provided technical advice to the government and are consulting regularly in the informal working party meetings in Geneva. The Ukrainian government has struggled to push needed WTO-compatible legislation through parliament, but as I mentioned earlier – after a concerted effort by President Yushchenko, Prime Minister Tymoshenko, and Rada Speaker Lytvyn – on July 6-7 the Rada passed a number of important WTO-related bills. These included a set of amendments to Ukraine's Optical Disk legislation, which will strengthen Ukraine's protection of intellectual property rights, and bills on agricultural tariffs, insurance branching, auditing, automobiles, and oilseed export duties. But much remains to be done. If the government hopes to achieve its objective of joining the WTO this year, it must launch an all out effort to consolidate support and pass more legislation in the Rada this fall, and bring to closure the outstanding bilateral negotiations. But Ukraine's WTO prospects do appear to be brighter today than a month ago.
- With regard to the U.S.-Ukrainian agenda, passage of the Optical Disk amendments was particularly significant. The Administration expects to see quick and effective implementation of these amendments and strengthening of the enforcement of all IPR laws. Now that President Yushchenko has signed the amendments, without changes, into law, the Administration is examining whether to terminate \$75 million worth of trade sanctions currently imposed on Ukraine. This decision could be made within the next few weeks. In addition, the Administration will conduct a Special 301 out-of-cycle review of Ukraine, which is currently identified as a Priority Foreign Country because of a record of media piracy and weak enforcement of IPR legislation. We will also consider whether Ukraine's Generalized System of Preferences (GSP) benefits should be restored. We will continue to work with Ukraine on IPR issues in the context of the out-of-cycle review and our bilateral negotiations regarding Ukraine's WTO accession. With regard to the latter, Ukraine must address additional tariff, non-tariff, and services issues in its bilateral negotiations with us.
- **Market Economy Status:** In April, the Department of Commerce initiated a review of the Ukrainian government's petition for designation of Market Economy Status (MES). The review is a quasi-judicial process and must be completed by mid-January 2006. Department of Commerce officials have met several times with Ukrainian officials to discuss Ukraine's petition, and Commerce teams visited Kiev in March and again this month to go over the review process. For example, we have urged the government of Ukraine to reach out to foreign investors and address some of the concerns of the business community. We need to

see the Ukrainian government taking decisions this fall which demonstrate its increasing commitment to free-market principles.

- **Jackson-Vanik:** Ukraine has complied with the provisions of the Jackson-Vanik Amendment to the Trade Act of 1974 for over a decade. This Administration strongly supports Ukraine's immediate "graduation" from Jackson-Vanik and the extension of Permanent Normal Trade Relations to Ukraine. Some have resisted acting on Jackson-Vanik until Ukraine better addresses commercial issues, such as IPR. We view our WTO bilateral negotiations as the appropriate forum in which to press Ukraine on our commercial and trade concerns rather than using Jackson-Vanik. Nonetheless Ukraine's recent approval of Optical Disk amendments and other WTO-related legislation should merit reconsideration of the delay on graduation. As the Ukrainian people look for tangible signs of our new relationship, they are perplexed that Ukraine remains tainted by the legacy of Jackson-Vanik. We urge Congressional action on this matter.
- **Energy:** During his May visit to Kiev, Secretary Bodman initiated a consultative mechanism to help advance Ukraine's plans to restructure and reform its energy sector, diversify its energy supplies, and encourage investment. We have urged the Ukrainians to address the commercial viability of any energy strategy. U.S. firms are eager to invest in Ukraine, and it is vital that the government of Ukraine work with the private sector and create a transparent and supportive framework for investment.
- **Chornobyl:** The Chornobyl Shelter Implementation Plan (SIP) is a key element of the successful G7 effort that led to the permanent closure of the last operating nuclear reactor at Chornobyl in 2000. Together, the international donor community and Ukraine have pledged over \$1 billion to complete the SIP. The U.S. is the largest single donor. Our May 2005 pledge of \$45 million brings our cumulative total to \$203 million.
- **Visas:** We warmly welcome President Yushchenko's July 1 decree eliminating visa requirements for U.S. citizens traveling to Ukraine for business and personal trips of 90 days or less within a six-month period. President Yushchenko's far-sighted move, which complements an earlier similar decision to eliminate short-term visa requirements for citizens of EU countries and Switzerland, should boost tourism and investment, and facilitate people-to-people contacts. In response, we have eliminated non-immigrant visa issuance fees for Ukrainians, leaving only the (\$100) non-waivable application fee that is charged worldwide to all applicants for short-term U.S. visas.
- **Health:** HIV/AIDS is spreading in Ukraine at an alarming pace. As I mentioned previously, we intend to use some of the supplemental funding granted to us by Congress to expand the reach of ongoing anti-HIV/AIDS projects. We intend to help the Ukrainian authorities strengthen national institutions dealing with HIV/AIDS and its victims, expand care and support service for HIV-affected children from two to five of the eight most affected regions in Ukraine, and support legislation and policies for a national anti-retroviral treatment program and national prevention programs among key risk groups. Ukraine's current system for TB control is costly and ineffective. We plan to use some of the supplemental funding for prevention and care for HIV/TB co-infection, and to replicate a successful pilot project that dramatically decreases the cost and improves the effectiveness of TB treatment.

Conclusion

Earlier this month I led an inter-agency team to Kiev to meet with President Yushchenko, Prime Minister Tymoshenko, State Secretary Zinchenko, National Security and Defense Council director Poroshenko, Speaker Lytvyn, Foreign Ministry representatives, and others. I conveyed a simple message to all of my Ukrainian interlocutors. Ukraine has an historic window of opportunity – created by the heroism and determination of the hundreds of thousands of ordinary citizens who came together in the Maidan in Kiev and in the central squares of cities throughout Ukraine – to consolidate and make permanent reforms that will ensure a democratic, prosperous future within a Europe whole, free and at peace. The U.S. supports Ukraine's reform efforts and European and Euro-Atlantic aspirations and will respond meaningfully to key initiatives. But, like other reforming nations such as Poland before it, Ukraine and its leaders must make the necessary decisions and take the necessary steps. Ukraine's future is in its hands.

As I said at the outset, there are enormous expectations of the new government, and, given the complex and difficult environment and the enormity of the task at hand, Ukraine's transformation will not happen overnight. But it is vital that Ukraine's new leaders persevere and succeed. The stakes are clear for Ukraine, and the success of the Orange Revolution will have impacts beyond Ukraine's borders. It inspires hope in the hearts of the oppressed and signals that democratic freedom is on the ascendance.

To succeed, Ukraine's leaders must invest their substantial political capital in further reforms, particularly in the economic sphere where progress has been slow. There is never an easy time for difficult, but necessary reform: there is always an election on the horizon, a bureaucracy that resists, a constituency that opposes. But if the will is there, reform can be achieved. The Central European states have come a long way since 1989, and I personally witnessed the success of Poland's reforms in the 1990s. From my meetings in Kiev, I am confident that President Yushchenko and his team have the vision and commitment necessary to do what needs to be done, and to lead Ukraine into the new century. The U.S. will pitch in to help.

Thank you very much for allowing me to appear before your Committee today. I would be happy to answer any questions you may have.

Exhibit 2



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ARTICLES OF AGREEMENT OF THE INTERNATIONAL MONETARY FUND Article VIII - General Obligations of Members

Section 1. *Introduction*

In addition to the obligations assumed under other articles of this Agreement, each member undertakes the obligations set out in this Article.

Section 2. *Avoidance of restrictions on current payments*

(a) Subject to the provisions of Article VII, Section 3(b) and Article XIV, Section 2, no member shall, without the approval of the Fund, impose restrictions on the making of payments and transfers for current international transactions.

(b) Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member. In addition, members may, by mutual accord, cooperate in measures for the purpose of making the exchange control regulations of either member more effective, provided that such measures and regulations are consistent with this Agreement.

Section 3. *Avoidance of discriminatory currency practices*

No member shall engage in, or permit any of its fiscal agencies referred to in Article V, Section 1 to engage in, any discriminatory currency arrangements or multiple currency practices, whether within or outside margins under Article IV or prescribed by or under Schedule C, except as authorized under this Agreement or approved by the Fund. If such arrangements and practices are engaged in at the date when this Agreement enters into force, the member concerned shall consult with the Fund as to their progressive removal unless they are maintained or imposed under Article XIV, Section 2, in which case the provisions of Section 3 of that Article shall apply.

Section 4. *Convertibility of foreign-held balances*

(a) Each member shall buy balances of its currency held by another member if the latter, in requesting the purchase, represents:

- (i) that the balances to be bought have been recently acquired as a result of current transactions; or

- (ii) that their conversion is needed for making payments for current transactions.

The buying member shall have the option to pay either in special drawing rights, subject to Article XIX, Section 4, or in the currency of the member making the request.

(b) The obligation in (a) above shall not apply when:

- (i) the convertibility of the balances has been restricted consistently with Section 2 of this Article or Article VI, Section 3;
- (ii) the balances have accumulated as a result of transactions effected before the removal by a member of restrictions maintained or imposed under Article XIV, Section 2;
- (iii) the balances have been acquired contrary to the exchange regulations of the member which is asked to buy them;
- (iv) the currency of the member requesting the purchase has been declared scarce under Article VII, Section 3(a); or
- (v) the member requested to make the purchase is for any reason not entitled to buy currencies of other members from the Fund for its own currency.

Section 5. *Furnishing of information*

(a) The Fund may require members to furnish it with such information as it deems necessary for its activities, including, as the minimum necessary for the effective discharge of the Fund's duties, national data on the following matters:

- (i) official holdings at home and abroad of (1) gold, (2) foreign exchange;
- (ii) holdings at home and abroad by banking and financial agencies, other than official agencies, of (1) gold, (2) foreign exchange;
- (iii) production of gold;
- (iv) gold exports and imports according to countries of destination and origin;
- (v) total exports and imports of merchandise, in terms of local currency values, according to countries of destination and origin;
- (vi) international balance of payments, including (1) trade in goods and services, (2) gold transactions, (3) known capital transactions, and (4) other items;
- (vii) international investment position, i.e., investments within the territories of the member owned abroad and investments abroad owned by persons in its territories so far as it is possible to furnish this information;
- (viii) national income;
- (ix) price indices, i.e., indices of commodity prices in wholesale and retail markets and of export and import prices;
- (x) buying and selling rates for foreign currencies;
- (xi) exchange controls, i.e., a comprehensive statement of exchange controls in effect at the time of assuming membership in the Fund and details of subsequent changes as they occur; and
- (xii) where official clearing arrangements exist, details of amounts awaiting clearance in respect of commercial and financial transactions, and of the length of time during which such arrears have been outstanding.

(b) In requesting information the Fund shall take into consideration the varying ability of members to furnish the data requested. Members shall be under no obligation to furnish information in such detail that the affairs of individuals or corporations are disclosed.

Members undertake, however, to furnish the desired information in as detailed and accurate a manner as is practicable and, so far as possible, to avoid mere estimates.

(c) The Fund may arrange to obtain further information by agreement with members. It shall act as a centre for the collection and exchange of information on monetary and financial problems, thus facilitating the preparation of studies designed to assist members in developing policies which further the purposes of the Fund.


Section 6. *Consultation between members regarding existing international agreements*

Where under this Agreement a member is authorized in the special or temporary circumstances specified in the Agreement to maintain or establish restrictions on exchange transactions, and there are other engagements between members entered into prior to this Agreement which conflict with the application of such restrictions, the parties to such engagements shall consult with one another with a view to making such mutually acceptable adjustments as may be necessary. The provisions of this Article shall be without prejudice to the operation of Article VII, Section 5.

Section 7. *Obligation to collaborate regarding policies on reserve assets*

Each member undertakes to collaborate with the Fund and with other members in order to ensure that the policies of the member with respect to reserve assets shall be consistent with the objectives of promoting better international surveillance of international liquidity and making the special drawing right the principal reserve asset in the international monetary system.

| [<--Previous Section](#) | [Articles of Agreement](#) | [Next Section-->](#) |



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Exhibit 3

Doing business in 2005

Removing Obstacles to Growth

Doing Business in 2005

Removing Obstacles to Growth

A copublication of the World Bank, the International Finance Corporation and Oxford University Press

Cost measure

The text of the Company Law, the Commercial Code and specific regulations and fee schedules are used as sources for calculating the costs. If there are conflicting sources and the laws are not clear, the most authoritative source is used. The constitution supersedes the company law, and the law prevails over regulations and decrees. If conflicting sources are of the same rank, the source indicating the most costly procedure is used, since an entrepreneur never second-guesses a government official. In the absence of fee schedules, a governmental officer's estimate is taken as an official source. In the absence of government officer's estimates, estimates of incorporation lawyers are used. If several incorporation lawyers provide different estimates, the median reported value is applied. In all cases, the cost excludes bribes.

Time measure

Time is recorded in calendar days. It is assumed that the minimum time required per procedure is 1 day. Time captures the median duration that incorporation lawyers indicate is necessary to complete a procedure. If a procedure can be accelerated for an additional cost, the fastest procedure is chosen. It is assumed that the entrepreneur does not waste time

and commits to completing each remaining procedure without delay. The time that the entrepreneur spends on gathering information is ignored. It is assumed that the entrepreneur is aware of all entry regulations and their sequence from the beginning.

Paid-in minimum capital requirement

The paid-in minimum capital requirement reflects the amount that the entrepreneur needs to deposit in a bank before registration starts. This amount is typically specified in the Commercial Code or the Company Law. Many countries mandate a capital requirement but allow businesses to pay only a portion of it during registration, with the remainder paid after the first year of operation. For example in January 2004 the minimum capital requirement for limited liability companies in Armenia was 50,000 dram, of which half was payable before registration. In Honduras in January 2004 the minimum capital requirement was 25,000 lempiras, but only a quarter of this amount needed to be paid in before registration.

This methodology is originally developed in Djankov and others (2002) and adopted with minor changes here.

Hiring and firing workers

Every economy has established a complex system of laws and institutions intended to protect the interests of workers and to guarantee a minimum standard of living for its population. The OECD Job Study and the International Encyclopedia for Labour Law and Industrial Relations identify 4 areas subject to statutory regulation in all countries: employment, industrial relations, occupational health and safety, and social security. *Doing Business* focuses on the regulation of employment, specifically the hiring and firing of workers and the rigidity of working hours.

The data on hiring and firing workers are based on a detailed study of employment laws and regulations. The employment laws of most countries are available online in the NATLEX database, published by the International Labour Organization. In all cases, both actual laws and secondary sources are used to ensure accuracy. Conflicting answers are further checked in 2 additional sources, including a local legal treatise on employment regulation. Secondary sources include the International Encyclopedia for Labour Law and Industrial Relations. Finally, all data are verified and completed by local law firms through a detailed survey on employment regulations.

To make the data comparable across countries, several assumptions about the worker and the company are employed. The worker:

- Is a nonexecutive full-time male employee who has worked in the same company for 20 years.

- Earns a salary plus benefits equal to the country's average wage during the entire period of his employment.
- Has a nonworking wife and two children. The family resides in the country's most populous city.
- Is a lawful citizen who belongs to the same race and religion as the majority of the country's population.
- Is not a member of the labor union, unless membership is mandatory.

The business:

- Is a limited liability company.
- Operates in the country's most populous city.
- Is 100% domestically owned.
- Operates in the manufacturing sector.
- Has 201 employees.
- Abides by every law and regulation, but does not grant workers more benefits than what is legally mandated.

Indicators

Two indicators are constructed: a Rigidity of Employment Index and a Cost of Firing measure.

The Rigidity of Employment Index is the average of three sub-indices: a Difficulty of Hiring index, a Rigidity of Hours index and a Difficulty of Firing index. All sub-indices have several components. And all take values between 0 and 100, with higher values indicating more rigid regulation.

The Difficulty of Hiring index measures (i) whether term contracts can only be used for temporary tasks; (ii) the max-

imum duration of term contracts; and (iii) the ratio of the mandated minimum wage (or apprentice wage, if available) to the average value-added per working population. A country is assigned a score of 1 if term contracts can only be used for temporary tasks, and a score of 0 if term contracts can be used for any task. A score of 1 is assigned if the duration of term contracts is 3 years or less; 0.5 if the duration is between 3 and 5 years; and 0 if term contracts can last more than 5 years. Finally, a score of 1 is assigned if the ratio of minimum wage to average value added per worker ratio is higher than 0.75; 0.67 for ratios between 0.50 and 0.75; 0.33 for ratios between 0.25 and 0.50; and a score of 0 if the ratio is below 0.25. For example, term contracts are only allowed for temporary tasks in Uruguay (a score of 1), but they can be longer than 5 years (a score of 0), and the ratio of the mandated minimum wage to the value-added per worker in 0.10 (also a score of 0). Averaging the three subindices and scaling the index to 100 gives Uruguay a score of 33.

The Rigidity of Hours index has 5 components: (i) whether night work is restricted; (ii) whether weekend work is allowed; (iii) whether the workweek consists of 5 1/2 days or more; (iv) whether the workday can extend to 12 hours or more (including overtime); and (v) whether the annual paid vacation days are 21 days or less. If the answer to any of these questions is no, the country is assigned a score of 1, otherwise a score of 0 is assigned. For example, night work is not allowed in Vietnam (a score of 1), weekend work is restricted (a score of 1), the workday—with overtime—can extend to 12 hours (a score of 0), 6-day work weeks are allowed (a score of 0), and paid vacation is 16 days (a score of 0). The scores are then summed and scaled to 100 to get to the final index of 40 for Vietnam.

The Difficulty of Firing index has 8 components: (i) whether redundancy is not grounds for dismissal; (ii) whether the employer needs to notify the labor union or

the labor ministry for firing 1 redundant worker; (iii) whether the employer needs to notify the labor union or the labor ministry for group dismissals; (iv) whether the employer needs approval from the labor union or the labor ministry for firing 1 redundant worker; (v) whether the employer needs approval from the labor union or the labor ministry for group dismissals; (vi) whether the law mandates training or replacement prior to dismissal; (vii) whether priority rules apply for dismissals; and (viii) whether priority rules apply for reemployment. If the answer to any question is yes, a score of 1 is assigned, otherwise a score of 0 is given. Questions (i) and (iv), as the most restrictive regulations, have double-weight in the construction of the index. For example, an employer in Brazil has to both notify (a score of 1) and seek approval (a score of 2) from third parties when dismissing a redundant worker, she has to both notify (a score of 1) and seek approval (a score of 1) when dismissing a group of workers, and redundancy is not considered a fair grounds for dismissal (a score of 2). The law does not mandate priority rules for dismissal (a score of 0) or reemployment (a score of 0), and there is no requirement for retraining or alternative placement prior to dismissal (a score of 0). Adding up and scaling to 100 gives the final index of 70 for Brazil.

The Cost of Firing indicator measures the cost of advance notice requirements, severance payments and penalties due when firing a worker, expressed in terms of weekly wages. For example, in Cameroon an employer is required to give 16 weeks advance notice prior to a redundancy dismissal, the severance pay for workers with 20 years of experience equals 7 months of wages, and redundancy is grounds for dismissal so no penalty is levied. Altogether, the employer pays the equivalent of 46 weeks of salary to dismiss the worker.

This methodology is originally developed in Botero and others (forthcoming) and adopted with minor changes here.

Registering property

A business purchases land and a building in a peri-urban area of the most populous city. *Doing Business* covers the full sequence of procedures necessary to transfer the property title from the seller to the buyer. Every required procedure is included, whether it is the responsibility of the seller, the buyer, or where it is required to be completed by a third party on their behalf.

Local property lawyers and property registries provide information on required procedures, as well as the time and the cost to fulfill each of them. In most countries, the data are based on responses by both lawyers and officials in the property registries.

Assumptions about the business

To make the business comparable across countries, five assumptions are employed. The business:

- Is a limited liability company.
- Is located in a peri-urban area of the country's most populous city.
- Is 100% domestically and privately owned (no foreign or state ownership).
- Employs 50 employees, all of whom are nationals.
- Operates in general commercial activities.

Economy	Starting a Business				Hiring and Firing Workers				
	January 2004				January 2004				
	Number of procedures	Time (days)	Cost (% of income per capita)	Minimum capital (% of income per capita)	Difficulty of hiring index (0-100)	Rigidity of hours index (0-100)	Difficulty of firing index (0-100)	Rigidity of employment index (0-100)	Firing costs (weeks)
Albania	11	47	32.2	41.3	11	60	20	30	55
Algeria	14	26	27.3	65.5	56	60	50	55	17
Angola	14	146	884.6	64.4	44	80	100	75	116
Argentina	15	32	15.7	8.1	44	80	30	51	94
Armenia	10	25	7.0	4.5	17	40	50	36	17
Australia	2	2	2.1	0.0	0	40	10	17	17
Austria	9	29	6.0	64.1	0	80	40	40	55
Azerbaijan	14	123	14.7	0.0	33	40	40	38	42
Bangladesh	8	35	91.0	0.0	11	40	20	24	47
Belarus	16	79	25.3	44.3	33	60	70	54	21
Belgium	4	34	11.3	14.1	11	40	10	20	8
Benin	8	32	196.9	333.4	72	60	50	61	54
Bhutan	11	62	11.0	0.0	78	60	10	49	94
Bolivia	15	59	173.9	4.6	61	60	0	40	98
Bosnia and Herzegovina	12	54	46.2	65.0	78	40	30	49	33
Botswana	11	108	11.3	0.0	0	20	40	20	19
Brazil	17	152	11.7	0.0	67	80	70	72	165
Bulgaria	11	32	10.3	116.6	33	40	10	28	30
Burkina Faso	13	135	152.8	498.6	100	100	70	90	80
Burundi	11	43	191.5	0.0	50	40	60	50	41
Cambodia	11	94	480.1	394.0	33	80	30	48	39
Cameroon	12	37	182.5	232.0	61	80	80	74	46
Canada	2	3	1.0	0.0	11	0	0	4	28
Central African Republic	10	14	204.5	559.2	89	80	60	76	37
Chad	19	75	344.2	610.4	100	80	60	80	47
Chile	9	27	10.0	0.0	17	20	20	19	51
China	12	41	14.5	1104.2	11	40	40	30	90
Colombia	14	43	27.4	0.0	72	60	20	51	49
Congo, Dem. Rep.	13	155	556.8	246.8	72	100	60	77	62
Congo, Rep.	8	67	317.6	244.6	89	80	90	86	42
Costa Rica	11	77	25.7	0.0	44	60	0	35	38
Côte d'Ivoire	11	58	133.6	222.3	78	100	30	69	92
Croatia	12	49	14.4	24.4	61	60	50	57	55
Czech Republic	10	40	10.8	44.5	44	20	20	28	22
Denmark	4	4	0.0	48.8	0	40	10	17	39
Dominican Republic	10	78	25.4	1.9	11	80	30	40	70
Ecuador	14	92	47.4	10.4	44	40	70	51	131
Egypt, Arab Rep.	13	43	63.0	815.6	0	80	80	53	162
El Salvador	12	115	128.0	132.5	67	40	50	52	110
Estonia	6	72	7.5	49.7	11	80	40	44	33
Ethiopia	7	32	77.4	1821.9	50	60	20	43	48
Finland	3	14	1.2	29.3	33	60	40	44	24
France	7	8	1.1	0.0	78	80	40	66	32
Georgia	9	25	13.7	54.5	17	60	70	49	21
Germany	9	45	5.9	48.8	44	80	40	55	80
Ghana	12	85	87.5	31.4	11	40	50	34	25

Starting a Business

Hiring and Firing Workers

January 2004

January 2004

Economy	Starting a Business				Hiring and Firing Workers				
	Number of procedures	Time (days)	Cost (% of income per capita)	Minimum capital (% of income per capita)	Difficulty of hiring index (0-100)	Rigidity of hours index (0-100)	Difficulty of firing index (0-100)	Rigidity of employment index (0-100)	Firing costs (weeks)
Greece	15	38	35.2	125.7	78	80	40	66	133
Guatemala	15	39	62.8	31.8	61	40	20	40	170
Guinea	13	49	208.2	475.4	67	80	30	59	133
Haiti	12	203	176.1	182.4	11	40	20	24	26
Honduras	13	62	72.9	37.0	22	40	30	31	46
Hong Kong, China	5	11	3.4	0.0	0	0	0	0	13
Hungary	6	52	22.9	86.4	11	80	30	40	34
India	11	89	49.5	0.0	33	20	90	48	79
Indonesia	12	151	130.7	125.6	61	40	70	57	157
Iran, Islamic Rep.	9	48	7.3	2.1	0	60	60	40	122
Ireland	4	24	10.3	0.0	28	40	20	29	52
Israel	5	34	5.5	0.0	0	80	20	33	90
Italy	9	13	16.2	11.2	61	60	30	50	47
Jamaica	7	31	15.4	0.0	11	20	0	10	12
Japan	11	31	10.6	74.9	33	40	0	24	21
Jordan	11	36	52.0	1147.7	11	40	50	34	90
Kazakhstan	9	25	10.5	32.7	0	60	20	27	17
Kenya	12	47	53.4	0.0	22	20	30	24	47
Korea, Rep.	12	22	17.7	332.0	11	60	30	34	90
Kuwait	13	35	2.4	148.5	0	60	0	20	42
Kyrgyz Republic	8	21	11.6	0.6	33	40	40	38	21
Lao PDR	9	198	18.5	28.5	11	60	80	50	185
Latvia	7	18	17.6	41.4	78	20	50	49	42
Lebanon	6	46	131.5	82.3	44	0	40	28	103
Lesotho	9	92	58.4	17.7	0	60	20	27	47
Lithuania	8	26	3.7	62.8	33	60	30	41	34
Macedonia, FYR	13	48	11.6	89.5	33	40	40	38	38
Madagascar	13	44	65.3	50.7	28	60	60	49	41
Malawi	10	35	140.8	0.0	22	20	20	21	90
Malaysia	9	30	25.1	0.0	0	0	10	3	74
Mali	13	42	187.4	482.3	78	60	60	66	81
Mauritania	11	82	140.8	858.1	89	60	60	70	31
Mexico	8	58	16.7	15.5	67	60	90	72	83
Moldova	10	30	18.6	24.6	33	60	70	54	21
Mongolia	8	20	8.1	182.1	11	80	20	37	17
Morocco	5	11	12.3	718.6	100	40	70	70	101
Mozambique	14	153	95.8	14.5	72	80	40	64	141
Namibia	10	85	19.3	0.0	0	60	40	33	26
Nepal	7	21	74.1	0.0	22	20	90	44	90
Netherlands	7	11	13.2	66.2	28	60	40	43	16
New Zealand	2	12	0.2	0.0	11	0	10	7	0
Nicaragua	9	45	170.1	0.0	22	80	50	51	24
Niger	11	27	396.4	744.7	100	100	70	90	76
Nigeria	10	44	95.2	59.4	22	80	30	44	13
Norway	4	23	2.9	28.9	11	40	40	30	12
Oman	9	34	4.9	100.1	44	60	0	35	13

Economy	Starting a Business				Hiring and Firing Workers				
	January 2004				January 2004				
	Number of procedures	Time (days)	Cost (% of income per capita)	Minimum capital (% of income per capita)	Difficulty of hiring index (0-100)	Rigidity of hours index (0-100)	Difficulty of firing index (0-100)	Rigidity of employment index (0-100)	Firing costs (weeks)
Pakistan	11	24	36.0	0.0	78	40	30	49	90
Panama	7	19	25.1	0.0	78	40	70	63	47
Papua New Guinea	8	56	30.7	0.0	11	20	20	17	38
Paraguay	17	74	157.6	0.0	56	60	60	59	99
Peru	10	98	36.4	0.0	44	60	60	55	56
Philippines	11	50	19.5	2.2	22	60	40	41	90
Poland	10	31	20.6	237.9	11	60	30	34	25
Portugal	11	78	13.5	39.5	33	80	60	58	98
Puerto Rico	7	7	1.0	0.0	22	20	20	21	0
Romania	5	28	7.4	0.0	78	60	50	63	98
Russia	9	36	6.7	5.6	0	60	20	27	17
Rwanda	9	21	316.9	0.0	89	80	60	76	54
Saudi Arabia	12	64	69.7	1549.5	0	40	0	13	79
Senegal	9	57	112.9	270.4	61	60	70	64	38
Serbia and Montenegro	11	51	9.5	120.3	28	0	40	23	21
Sierra Leone	9	26	1268.4	0.0	78	80	70	76	188
Singapore	7	8	1.2	0.0	0	0	0	0	4
Slovak Republic	9	52	5.7	46.1	0	20	10	10	17
Slovenia	10	61	12.3	19.0	28	80	50	53	47
South Africa	9	38	9.1	0.0	56	40	60	52	38
Spain	7	108	16.5	16.9	67	80	60	69	68
Sri Lanka	8	50	10.7	0.0	0	40	80	40	108
Sweden	3	16	0.7	36.9	28	60	40	43	24
Switzerland	6	20	8.6	33.2	0	40	10	17	12
Syrian Arab Republic	12	47	34.2	5053.9	0	60	50	37	79
Taiwan, China	8	48	6.3	224.7	61	60	30	50	90
Tanzania	13	35	186.9	6.8	56	80	60	65	38
Thailand	8	33	6.7	0.0	67	40	20	42	47
Togo	13	53	229.4	485.7	89	80	60	76	84
Tunisia	9	14	11.0	327.3	61	0	100	54	29
Turkey	8	9	26.4	0.0	44	80	40	55	112
Uganda	17	36	131.3	0.0	0	20	0	7	12
Ukraine	15	34	17.6	113.9	33	80	80	64	94
United Arab Emirates	12	54	26.5	416.9	0	80	20	33	96
United Kingdom	6	18	0.9	0.0	11	40	10	20	25
United States	5	5	0.6	0.0	0	0	10	3	8
Uruguay	11	45	48.2	181.6	33	60	0	31	34
Uzbekistan	9	35	17.0	21.9	33	40	100	58	28
Venezuela, RB	13	116	15.0	0.0	78	80	10	56	83
Vietnam	11	56	28.6	0.0	56	40	70	55	98
Yemen, Rep.	12	63	269.3	1561.1	0	80	30	37	17
Zambia	6	35	22.8	2.7	0	40	40	27	47
Zimbabwe	10	96	304.7	53.0	11	40	20	24	29

Exhibit 4



Invest In Rivne Rivne Agency for Investment Attraction and Investor Assistance

NEWS

[21.07.2005] **Yuschenko Creates National Council And State Agency Of Investments And Innovations**

President Viktor Yuschenko has created the National Council of Investments and Innovations as consultative agency under the President and the State Agency for Investments and Innovations as a subsidiary agency subordinated to the President

This was disclosed in the President's decree No. 1116/2005 of June 19.

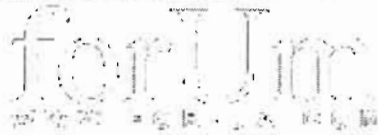
According to the decree, State Agency's functions are organizational, informational and technical support of the National Council's activity, preparation of offers to the President on activities of state agencies and public institutions in the sphere of investment and innovative actions, and support of innovative programs, that the National Council has approved.

As Ukrainian News earlier reported, on July 19 Yuschenko appointed Viktor Ivchenko as chairman of the State Agency For Investments and Innovations of Ukraine

Earlier the National Security and Defense Council recommended President Viktor Yuschenko to set up a government agency under the Economy Ministry to deal with investments.

(Ukrainian News, Hanna Drakonova, 07/21/2005)

Exhibit 5



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ForUm 2001-2005

10:26 05 August 2005

Timoshenko to cancel unnecessary regulations

Prime Minister Yulia Timoshenko stated that government would cancel 2249 regulations which limit business development in Ukraine. *Ukrainska Pravda* reported.

During her press-conference on Thursday, Timoshenko announced that her Cabinet found over 6 thousand regulations "that require further analysis in order to see whether they are beneficial for Ukraine from the normal regulatory function point of view, or simply exist to promote corruption "

"Out of these 6393 regulations, 2249 have to be cancelled immediately. They make up the chicken soup which feeds the pyramid of corruption," noted Timoshenko.

Also, she mentioned that additional 661 regulatory documents "require more work before they can be finalized."

Timoshenko reminded that these unnecessary regulations would have to be cancelled before September 1. "This is not going to be that simple. Government entities, including Ministries and local administrations will have to work together in order to have minimum regulations by September, when the summer vacation period is over," said Timoshenko.

President Victor Yushchenko called this task a personal responsibility and threatened to fire members of the Cabinet and heads of local administrations responsible for industries and regions where regulations that limit business development would be kept in place.

Exhibit 6

STRATEGiY

put the **i** in your strategy

OMV signs Black Sea E&P agreement

[Thursday, July 14, 2005 1:49:00 pm]

OMV, Central Europe's leading oil and gas company signed an agreement with the Ukrainian oil and gas companies NJSC "Naftogas of Ukraine" and NSC Chornomornaftogaz on joint activities in the Black Sea region, offshore Ukraine. In the course of the state visit of the President of Ukraine Viktor Juschtschenko to Austria, on July 13, 2005, the three partners agreed to cooperate in the bidding process for a production sharing agreement for exploration and production offshore Ukraine.

The area selected for future joint activities is the Block Skifska, located in the area between the Ukrainian/Romanian border and the Crimean peninsula. The water depth of this area is between 100 meters and 2,000 meters. Since this Block is unexplored, it is possible that it may hold a wide range of potential oil and gas resources. The three companies plan to bid for this Block during 2005.

Helmut Langanger, OMV Executive Board Member responsible for Exploration and Production stated: "Exploration activities in the Western Black Sea Region are a perfect fit to OMV's strategy. Any significant oil or gas find in that area would add value to our business in one of our core regions. E&P activities in the Ukrainian offshore area are the logical continuation of our efforts in offshore Romania and Bulgaria. We will build on our regional knowledge and technical expertise, and are delighted to partner with NJSC Naftogas and NSC Chornomornaftogaz, both of which have long term local experience".

Igor Franchuk, the President of the NSC "Chornomornaftogaz" noted, that joint work of the Austrian and Ukrainian oil-and-gas production companies enabled Ukraine quicker to integrate into the European community as an equal partner and should be the next step to the increase of the energy security of Ukraine – the main task set up by the President of Ukraine for the energy concept of the state. "This Bidding Agreement is the result of long term cooperation with OMV, started in 2002. Today we can say that we start concrete work on the realization of joint projects within the Black Sea offshore, - considers Mr.Franchuk.

OMV owns a balanced international E&P portfolio in 18 countries organized around five core regions, namely the Danube and Adriatic, Northern Africa, the British North Sea, the Middle East/Caspian and Australia/New Zealand. Following the acquisition of 51% of Petrom S.A., Romania's largest oil company, OMV's daily production volume is approximately 345,000 boe/d, and the company's reserves amount to approximately 1.4 bn boe as of December 2004.

Middle East's largest Marketing, Advertising & Media site

Exhibit 7

Додатковий інформаційний ресурс (ОІЕА)
Агентство з питань зовнішніх зв'язків
Адреса: 01001, Етап-1 од. Едіванаєв. 4
Телефон/факс 229-3353, <http://www.unian.net>
Факс інформаційної од. 229-3158, факс 229-3642
E-mail: market@unian.net

Concorde Capital and Colliers International to Launch \$100 million Ukrainian Real Estate Fund

[02.08.2005 13:09]

Concorde Capital and Colliers International have formed a strategic alliance to launch a dedicated Ukrainian Real Estate fund, the "Colliers-Concorde (Ukraine) Real Estate Fund". The fund, with 100 million USD in equity capital and a targeted portfolio size of 200 million USD, will focus on development projects in the office, retail, logistics and residential sectors of Ukraine's real estate market, according to a press release of the Concord Capital, posted at the PRNewswire.

The fund is being created to take advantage of the substantial opportunities that currently exist in the real estate market of Ukraine, a country undergoing significant economic and political transformation.

Concorde Capital, Ukraine's leading equity broker and provider of investment banking services, through its affiliate asset management company, Concorde Investors Limited, will serve as the management company for the fund. Colliers International, a world leader in real estate consulting and investment, will act as the fund's co-manager and property advisor.

In the opinion of Steven Cheshire, Partner of Concord Investors Limited: "The timing of a fund like this could not be better. The combination of a pro-business government, heightened foreign investor interest and a severe shortage of quality property in most sectors of the Ukrainian real estate market make this a perfect time for the Ukrainian market".

According to Oleg Myshkin, Partner at Colliers International, "The consistent economic growth of the past several years, expected liberal reforms and a high level of business activity, as well as the broad coverage that the latest presidential elections in Ukraine received in the international mass media, have determined the high appetite of international investors for Ukrainian risk".

Speaking about the fund, Mr. Myshkin says "We believe that the fast development of the banking system, as well as the entry of conservative institutional investors with a core strategy of acquiring prime income-producing properties will allow the fund to leverage returns on its investment through project and permanent finance, as well as to exit from completed projects".

Mr. Cheshire believes that by joining efforts the two companies will bring to the Ukrainian Real Estate market the highest institutional quality standards in real estate investment and management. "Drawn by the prospect of high yields and considerable asset appreciation, we see large western investors almost daily coming here to invest," – says Cheshire. "But developers are not offering a well-structured approach to building new premises -- the market is so immature it eagerly accepts low-quality malls and office centers. To do a first rate job, you need experienced professionals in the local market".

Speaking about partnership relations within new alliance, Mr. Cheshire says: "We are extremely pleased to be working with Colliers International. They bring significant resources and experience with their combined expertise from both the Kiev and Moscow offices. The breadth of talent on Colliers team is impressive and they have unique experience advising a large fund of this type".
UNIAN



Дарія-абаої

Exhibit 8



**The Effect of Privatization on Social Welfare in Ukraine:
The Practical Experience of SigmaBleyzer**



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Executive Summary

It is the opinion of SigmaBleyzer that privatization has had a positive overall effect on the quality of life and social welfare of the Ukrainian people. Salaries at privatized companies have increased significantly, sometimes by as much as three or four times. Wage arrears at privatized companies have been paid off faster, in greater amounts, and are currently lower (often by more than 50%) than at non-privatized companies. Tax revenues from privatized companies also exceed those from non-privatized companies. While privatization is still ongoing in Ukraine, these facts clearly indicate the positive dynamics in privatized sectors of the economy.

SigmaBleyzer manages three funds (Ukrainian Growth Funds or UGF) that collectively invested over \$100 million in a portfolio of more than 85 privatized companies. Of these investments, approximately ten were controlling stakes. At these companies, SigmaBleyzer was able to help turnaround struggling businesses that had been privatized. These included the Sevastopol Shipyard (SSY), Poltava Confectionery, the Makiivka Pipe Rolling Plant, the Zaporizhya Meat Processing Plant, and others. We have seen the difference that a private investor can make at every one of these companies. And while the results to date differ for various companies in the UGF portfolio, many would have gone bankrupt without privatization.

The examples of Sevastopol Shipyard, Poltava Confectionery, Berdyansk Agricultural Machinery, and the Melitopol Tractor Hydro Units Plant, described in this paper, will show how a company turnaround can improve the lot of the average citizen. The improvement of these companies created jobs, improved local tax collection revenues, helped local small and medium businesses grow, and increased consumer spending. Yet these turnarounds positioned the companies for even greater future growth. These trends are expected to accelerate as the companies continue to grow. As a result, we expect to see an ever increasing gap between privatized and non-privatized companies.

But even at those companies that we do not control, there is significant evidence that suggests that privatization has played an important role in improving social welfare. Our portfolio companies' evidence shows how government debts and wage arrears declined significantly, money that went directly into people's pockets. Wages also appear to have increased, which is supported by national trends.

Privatization in Ukraine did not hit its peak until the 1996-1998 period, and therefore, only now is an effective analysis becoming possible at many companies. We believe that over time, the evidence will clearly show that privatization has directly improved social welfare, despite the knowledge that the privatization process could have been much more transparent. We also believe that had Ukraine elected a much faster privatization pace at an earlier stage of country independence (for example in the 1992-1994 time frame), the positive social impact would have been much more pronounced by now.

I. Privatization in Ukraine

Economic Background

When Ukraine declared its independence in August 1991, it became the second largest European country in landmass and the fourth largest in population, with 50 million people. Ukraine's agricultural soil is extensive and rich; it used to be the breadbasket of the former Soviet Union, providing a large portion of its agricultural needs. Ukraine also has good mineral resources (iron ore, coal) and an adequate infrastructure. It has a well-educated and skilled labor force, with a significant engineering and scientific foundation. All this permitted Ukraine to supply much of the heavy industry of the former Soviet Union.

Despite these favorable conditions, Ukraine has had one of the most difficult economic challenges in Eastern Europe, with a long economic recession that lasted eight years. From independence in 1991 up to 1999, gross domestic product (GDP) declined every year, with a cumulative decline of about 60%.

The recession in Ukraine from 1991 to 1999 lasted so long because the country's initial conditions after independence were quite unfavorable, with major structural weaknesses and an economy highly dependent on the other former Soviet Republics. The collapse of the Soviet Union cut these production and trade relations. In addition, the country had a large percentage of military industries (25% of all companies produced military goods), which found themselves without markets after the end of the cold war.

Furthermore, due to negligible energy costs during Soviet times, many industrial processes were very energy intensive (in the early 1990s, Ukraine consumed 6 times more oil per unit of GDP than Western Europe). Energy imports are still important; in 2002, import of oil and gas represented 40% of merchandise imports and 20% of GDP. These energy-intensive firms became unprofitable when energy costs increased 5-10 times after independence.

Although the initial fall in GDP was amplified by unfavorable initial conditions, the slow economic recovery from 1991 to 1999 was also due to the very slow, piecemeal, and uneven implementation of economic reforms. This was due to lack of political consensus and to opposition from some groups in Parliament and vested interests. In fact, the structural weaknesses of Ukraine during Soviet times meant that major corporate restructuring was needed after independence. Unfortunately, from 1991 to 1995, very little was done: the Government followed a "preservation" strategy. That is, it tried to maintain the status quo through the payment of large, direct subsidies to state enterprises. Relying on Government subsidies for their existence, state-owned enterprises had little incentive to restructure themselves or privatize, and remained largely inefficient. These Government subsidies led to large fiscal budget deficits, monetary financing of these deficits, and hyper-inflation. During 1992-1993, with total fiscal expenditures at about 65% of GDP, the fiscal budget deficit reached 25% and 16% of GDP, respectively. The monetary financing of these deficits led to very high annual rates of inflation, which peaked in 1993 at 10,160% and which remained above 100% per annum in 1994 and 1995.

In 1994, Leonid Kuchma was elected President on the basis of a reform agenda. During 1996-1998, progress was made in many areas of economic reforms: prices and international trade were liberalized; small & mass privatization programmes were advanced significantly; the National Bank of Ukraine (NBU) was strengthened and monetary policy was implemented wisely; a new currency (Hryvnia or

UAH) was introduced successfully in September 1996; inflation was reduced to 10% by mid-1998; the exchange rate was maintained within a narrow corridor around 1.9 UAH per dollar from 1995 to mid-1998; Ukraine accepted IMF obligations under Article VIII (which requires foreign exchange convertibility for current account payments); and a new Constitution was approved in 1996, which guaranteed private property and market-based principles for the country's economy.

However, the fiscal budget deficit was not brought under control, remaining at about 6% of GDP from 1996 to mid-1998. From 1991 to 1998, fiscal budgets were prepared unrealistically, with overestimated revenues and excessive expenditures. In addition, the tax base was reduced by innumerable privileges and exemptions. Through the end of 1997, these fiscal budget deficits were financed by foreign borrowings. External debt increased from \$4.4 billion in 1994 to \$11.5 billion in 1998. Domestic Government short-term obligations (Treasury bills) increased to UAH 10 billion (\$5.2 billion equivalent) during the same period. Although the absolute size of foreign debt was not excessive, this debt was of short maturity. Therefore, the level of annual debt service payments was quite high, reaching \$3.2 billion in 1998, which put heavy pressure on Government finances.

During 1998, the Asian Crisis, large repayments on foreign debt, and delays in implementing fiscal and structural adjustments in Ukraine changed investor perceptions of the country. Furthermore, structural reforms had not reached the critical mass needed to revive confidence, investment and growth on a sustainable basis. In mid-1998, the Russian Financial Crisis accelerated capital outflows from Ukraine. Foreign reserves declined from \$2.3 billion at the beginning of the year to about \$1.0 billion by mid-year. With international reserves declining rapidly, the NBU had to stop selling foreign exchange in September 1998. The results of the financial crisis were far reaching, including a depreciation of the Hryvnia from about 1.9 UAH/US\$ in December 1997 to 3.4 UAH/US\$ by the end of 1998.

Despite the severity of the 1998 financial crisis, Ukraine was able to deal with it successfully and without resorting to the printing of money. The country was able to negotiate the volunteer restructuring of its public debt. But most importantly, from September 1998, the fiscal budget accounts were kept close to balance. The deficit for 1998 was contained at 2.1 % of GDP (compared to 6.8% in 1997). In the following years, Ukraine has been able to maintain fiscal discipline, with fiscal deficits below 2% of GDP. The control of large fiscal deficits has been a significant achievement, since they were the major source of Ukraine's economic imbalance in the past.

From 2000 to 2002, in addition to broadly satisfactory fiscal and monetary policies, the Ukrainian Government implemented a number of important economic reforms. They included progress in the privatization of large state enterprises, with six energy distribution companies privatized successfully in 2001; land reform in early 2000 that transferred land ownership to individual farmers and started the issuance of land certificates and titles; the elimination of unwarranted government interventions in the agricultural market and its commercialization; elimination of barter in utilities, with cash collections in the energy sector increased from about 12% in 1999 to 85% of sales in early 2001; significant reduction of barter in international trade; simplification of business registration requirements; reduction in the average number of inspections of businesses by government agencies from about 70 per year in 1990 to about 30 at present; introduction of European import certification standards, with mutual recognition of certifications; improvements in customs procedures to align them to European standards; approval of the Laws on Banks and Banking Services; approval of the Criminal Code; approval of the Budget Code that set clear and transparent formulas for the transfer of funds to local governments; introduction of Personalized Accounts in the Pension system; and successful external debt restructuring including the Paris Club and the gas debts with Russia and Turkmenistan.

The control of the fiscal deficit and the implementation of these economic reforms have had a major impact on the economy, with GDP growth of 5.9% in 2000, 9.1% in 2001, and 4.1% in 2002. Furthermore, since the beginning of 2000, the country has had positive foreign trade and current account balances. The foreign exchange rate has been quite stable at about 5.4 UAH/US\$ since early 2000. Foreign reserves increased from \$1 billion in early 2000 to \$4.3 billion in January 2003. The size of external public debt declined significantly, now representing only 25% of GDP.

But not everything is right in Ukraine. Additional significant improvements are still needed to sustain long-term growth. In particular, there is a need to revive the level of investment in the economy. Given the high level of un-utilized capacity, economic growth has been based on better utilization of existing investments. However, beyond 2002, growth based on improved utilization of existing capacity will be limited. Therefore, in order to continue the high rate of growth, new and significant additional investment will be necessary, particularly foreign investment since domestic savings are low.

The level of foreign investment has, however, remained low. A recent study carried out by the International Private Capital Task Force (IPCTF) under the Chairmanship of SigmaBleyzer outlined specific policy measures to attract more foreign investment into Ukraine. The study recommended a number of specific measures in nine policy areas, which are listed below according to their statistical impact on the flow of foreign direct investments. The individual impact of these policy measures was quantified from statistical analyses carried out in a sample of 50 countries. The nine policy areas are as follows: (i) liberalize and deregulate business activities; (ii) provide a stable and predictable legal environment; (iii) enhance governance and reform public administration; (iv) remove international capital and foreign trade restrictions; (v) facilitate financing of businesses by the financial sector; (vi) reduce corruption; (vii) minimize political risks; (viii) improve country promotion and image; and (ix) rationalize investment incentives. Based on this study, the Government developed an Action Plan in all of these areas. The successful implementation of this Action Plan would make privatization of the remaining large state enterprises more plausible.

A Short History of Privatization

The process of privatization began in 1992 and was aimed at transforming the country from a centrally planned economy to a market economy, increasing the private sector share of industry, and finding strategic investors to speed up the development of industries and companies. The privatization process has continued to evolve over time, with three distinct phases. It started at a modest pace that lasted from 1992 to 1994. It accelerated during its Second Stage from 1995 to 1998, when almost 70% of all privatizations were carried out. About 80% of the industrial sector is now privatized. In the current Third Stage, the remaining privatization consists of the largest state enterprises, principally in electricity distribution, telecommunications and metallurgy. There are also large state enterprises in fertilizers and petrochemicals.

First Stage (1992 -1994)

During this period, the main form of privatization was the leasing of entire property complexes by the employees of the companies, with full ownership transferred at the end of the leasing period. Privatized enterprises were mostly companies in the food and light industries. In many companies, "strong" directors, who did not want to lose control, took advantage of this form of privatization. The formal holders of the lease and owners of shares were employees, but in reality they were controlled by top managers. In fact, even though most companies were leased and sold to employees, the money that backed these employees was from a small circle of richer managers.

This form of privatization did not guarantee efficient ownership or management. Traditionally, state enterprises were just production units, without any sales, marketing or financial functions. Most managers therefore were not equipped for their new role. Only those enterprises able to deal in a market economy and financial matters were able to do better. The social effect of this stage of privatization, namely employment, salaries and common welfare, depended principally on the ability of the management to operate in this new business environment. The destiny of these companies and their employees, as well as the impact of these companies on GDP growth and welfare improvement, depended on the company management's ability to maneuver through the emerging market conditions of the time.

Still, many companies that were taken over and controlled by their managers succeeded and, as a rule, the financial results of these companies were positive, despite the economic crisis. Financially, they performed better than other enterprises that remained in Government hands. However, this could be explained by the fact that during this period the companies taken over by their managers were the most economically attractive prior to privatization.

On the other hand, there are very few successes of companies that had broad ownership by their employees. Many businesses that were privatized in this way generally did not survive long until a richer group of managers took them over, generally forcing many people out of work.¹ There are a few success stories such as Mariupol Illich Steel or the Kharkiv Biscuit Factory, but most ended in asset stripping or bankruptcy.

The effects of this "lease-with-an-option-to-buy" stage of privatization on the social and political situation in Ukraine were controversial, as by then the economy of the country was already faced with a system-wide crisis. On the one hand, the employees of the privatized enterprises could keep their jobs. But ownership was concentrated in the hands of a few privileged former managers. As a result of this stage, over 11,000 Ukrainian companies were (partly or wholly) privatized (see Table 2). It was also during this First Stage that a legislative base was established upon which all future privatizations would be organized. The government passed laws on the privatization of small, medium, and large state companies.

Second Stage (1995-1998)

During this period, a total of 70,526 enterprises were privatized throughout the country (representing about 70% of all privatizations since 1991). About 60% of the privatizations during this Second Stage (i.e., 42,000 enterprises) consisted of small enterprises, many of them in trading activities. They were sold principally to the employees and managers of the firm. The rest (28,000 enterprises) were medium and large enterprises that were sold both to employees and also to the public through the *Mass Privatization Program*.

The *Mass Privatization Program* was initiated and substantially completed during this period. The program began in 1995 when all Ukrainian citizens received the right to obtain privatization certificates (also known as vouchers); a special type of security that could be exchanged for shares of state companies sold in special privatization certificate auctions conducted by the National Certificate Auctions Network.²

¹ There are few statistics from this time that back up such conclusions, but these were SigmaBleyzer's observations of the process.

² The Economist Intelligence Unit, Country Economic News, Feb 1, 2002.

Another type of security used in these privatizations was the compensatory certificate, which was issued to cover the losses incurred by the holders of deposits in the State Savings Bank under the Soviet Union or during hyperinflation from 1991 to 1995.

Essentially, the voucher and certificate auctions worked as follows: 150-250 companies were put up for sale every month. This number grew to over 500 per month by the end of this phase. The owner of a voucher could apply to purchase shares of any company that was put up for sale. The size of each applicant's stake was then determined by the total number of applicants for that company (none were refused). At the completion of the auction, the new shareholder would receive documents certifying all shareholder rights. From 1994 to 2000, a total of 7,272 enterprises were privatized through voucher auctions, some of which were offered for sale several times due to the continuing privatization process (see table 1). A total of about 20,000 transactions took place. Over 8,000 of these transactions were for small and medium sized state companies. By the end of this phase, enough companies had been privatized so that the stock market reached a critical mass. It is at this time that we began to see people and companies trading shares on over-the-counter exchanges.

**Table 1: Number of Times Companies were Offered for Sale on Certificate Auctions
(by Stake Percentage)**

	0-5%	5%-25%	25%-50%	50%-75%	75%-100%	Total
1994	8	62	85	37	15	207
1995	83	455	487	231	39	1,295
1996	591	3,073	1,572	257	20	5,513
1997	945	4,335	1,569	178	25	7,052
1998	1,549	3,963	898	59	3	6,472
1999	41	144	27	0	0	212
2000	85	147	9	0	0	241
Total	3,302	12,179	4,647	762	102	20,992
%	15.7%	58.0%	22.1%	3.6%	0.5%	100%

Source: SigmaBleyzer

The Mass Privatization program had other unanticipated side effects. Ukrainian citizens could not purchase vouchers in large enough quantities to influence the management of their companies, as the legislative base did not (and still does not) provide for cumulative voting or other forms of protecting minority shareholder rights. Shareholders have significantly fewer mechanisms than in the West to protect their various rights. Furthermore, many Ukrainian citizens sold their certificates. In fact, in the early to mid 90's, high inflation rates led to increased poverty. Since people needed money immediately to buy food or pay for housing, it was more beneficial for these people to sell their privatization certificates to companies that purchased them for 2 to 8 hryvnas (Approximately \$1 to \$4 at the time), less than their par value of UAH 10. Having acquired a sufficient number of certificates, these companies took part directly in competitions and auctions. As in Russia, the result for Ukraine was that only a small number of people became real owners. They were able to influence the management and operations of the companies, but in many cases at the expense of a large number of un-protected minority shareholders. The Mass Privatization program may have succeeded in transferring a large number of enterprises to the general public and creating incentives for the companies to improve operations. But it failed to create sound corporate governance in most enterprises, particularly the protection of minority shareholders.

Third Stage (1999 to the present)

After 1998, the remaining enterprises to be privatized consisted of firms in strategic and monopolistic sectors, including electricity distribution companies (known as oblenergos), metallurgical companies, telecoms, and petrochemicals. Unlike the two preceding stages, the main emphasis during the third stage has been to find strategic investors and raise privatization revenues for the state. As a rule, during these larger cash privatizations, large stakes in medium and large companies were privatized through tenders or the stock exchange. The government set a list of criteria that potential investors had to meet if they wanted to purchase shares in these companies. This process of privatization has been quite slow. Only a handful of these large companies have been privatized so far. In particular, six oblenergos were privatized in 2001, but controversies in these privatizations led to stagnation of the process.

Results of the Privatization

As shown in Table 2 below, from 1992 to 2002, over 100,000 state enterprises were privatized in Ukraine. Of these, about 25,000 were central state enterprises and 55,000 were municipal state enterprises (these companies employed 3.5 million people or 24.2% of Ukraine's work force in 2002). Over 10,000 open joint-stock companies were created, and 8,500 enterprises in the agricultural sector were reformed.

Table 2: Number of Companies Privatized, 1992 – 2002

Year	Small Companies	Medium/Large Companies	TOTAL
1992	32	11	43
1993	2,434	1,253	3,687
1994	5,338	2,010	7,348
1995	10,320	4,562	14,882
1996	17,480	8,803	26,283
1997	8,554	7,308	15,862
1998	6,080	7,419	13,499
1999	4,518	3,660	8,178
2000	5,137	1,737	6,874
2001	5,321	929	6,250
2002	674	100	774
TOTAL	65,888	37,792	102,906

Source: State Property Fund of Ukraine

Despite the significant economic decline that arose in the process of transition from state (planned) economy to market economy, privatization has led to the creation of a market-based economy in Ukraine. Currently the share of non-state companies is about 85%, and they produce 60% of the total volume of industrial output in Ukraine. The greatest success was in the food industry, light industry, pulp and paper industry, and woodworking industry, where the process of privatization has been virtually completed. In these sectors, growth rates are several times higher than in industry as a whole. For example, during 2001, when GDP grew by 9.1%, the fastest growing processing industries were wood and wood processing (which grew by 28%), machine building (18.8%), pulp and paper (18.2%), food industry (18.2%), and textiles/apparel (14%). In 2002, with GDP growth of 4.1%, these industries grew by about 8%. In certain industries, such as food, most privatized companies appear to have enjoyed relatively strong financial growth as well.

In addition to better financial results, the general perception is that the management of these privatized companies has improved since they were privatized.

Social Effects of Privatization

As noted earlier, the collapse of the USSR, the disruption of economic ties that existed before 1990 and the lack of economic competitiveness of state enterprises led to a sharp deterioration of the financial situation of Ukrainian companies. This led to major declines in production volumes, which resulted in the mass dismissal of workers in 1991-1995. It also led to the accumulation of large wage arrears. Furthermore, many state enterprise employees were working just “on paper”, since they were asked by their management not to attend work and were not receiving any salaries. They remained with the expectation that they may be recalled to work in the future, which, of course, never happened.

High unemployment levels in industry (up to 30% in 1995, according to some unofficial estimates) and significant wage arrears forced workers to master new professions, often a downgrade compared to their former skills (e.g.: doctors and engineers becoming taxi drivers or salesmen). The phenomenon of hidden employment in the shadow economy appeared at this time, though it already existed in some form before the end the Soviet Union. From 1992 to 1995, the number of people employed in the shadow economy doubled and was estimated at 10 million (see table 3 for more recent data on wage arrears and official unemployment, which underestimates the real situation as noted above).

Table 3: Selected Employment Statistics

	1995	1996	1997	1998	1999	2000
Population of Ukraine at year end, million	51.3	50.9	50.5	50.1	49.7	49.3
People Employed, million	23.7	23.2	22.6	22.3	21.8	21.6
Unemployment Rate						
Officially Registered Unemployment, % to Employed Population	0.5	1.3	2.3	3.7	4.3	4.2
Application per 1 Vacant Position, number of people	2	11	20	30	24	17
Wage Arrears, \$ million	N/A	2,286.8	2,770.8	2,587.7	1,526.2	905.91

Source: State Statistics Committee of Ukraine

A key point to highlight is that the major reduction in employment that took place in Ukraine during the 1990's could not be blamed on privatization. It was the result of the fact that during Soviet times, most industrial enterprises were highly inefficient (in energy, raw materials and human resources use), were producing for declining markets (i.e., for the military), and were unable to compete in a market economy. In fact, many studies have shown that most state enterprises during Soviet times were not creating any value, but were value destroyers, with negative rates of returns if outputs and inputs were valued at international prices. After independence in 1991, most Ukrainian enterprises were either idle or running at 10-15% capacity utilization levels.

Under these circumstances, one of the key benefits of privatization (and thereby, the transition of Ukraine to a market economy) was not a major increase in employment, but an improvement in salary levels and productivity, and the reduction of wage arrears. The change to modern management methods at privatized companies resulted in the improvement of their efficiency. The appearance of interested owners (investors) stimulated improved companies' operations, which manifested itself, in particular, in the growing productivity of employees, better use of labor, and higher average monthly salaries compared to state companies (see tables 4 and 5 for comparisons for 2000 and 2001, respectively).

Table 4: Average Monthly Wages in Several Industries for 2000, US\$

Sector	Average	State	Non-State
Mining	74.12	69.28	82.77
Food Industry and Processing of Agricultural Products	49.08	41.74	49.74
Light Industry	28.84	20.46	29.08
Coke Production and Oil Refining	87.06	41.02	88.70
Metallurgy and Metal-Working	74.92	62.46	77.09
Machine-Building	40.40	38.70	40.88
Electricity, Gas, and Water Production	69.24	64.83	71.61

Source: State Property Fund of Ukraine

Table 5: Relationship Between Form of Ownership and Average Salary Rates for 2001

Sector	Average	State	Non-State
Mining	100%	93%	112%
Energy Materials Production	100%	92%	126%
Non-Energy Materials Production	100%	98%	101%
Processing Industry	100%	95%	101%
Food Industry and Processing of Agricultural Products	100%	85%	101%
Light Industry	100%	71%	101%
Wood Processing, Pulp and Paper	100%	119%	97%
Coke Production and Oil Refining	100%	47%	102%
Chemicals and Plastics	100%	105%	98%
Other Non-Metal Mineral Products	100%	127%	98%
Metallurgy and Metal-Working	100%	83%	103%
Machinery	100%	96%	101%
Other Production Sectors	100%	101%	100%
Production of Electricity, Gas, and Water	100%	96%	106%

Source: The State Property Fund of Ukraine

In nearly every industry, we consistently see that most privatized companies have higher salaries than non-privatized companies. In the metallurgy industry, a sector in which no new enterprises were created in the last 10 years, privatization caused a significant increase in average monthly salaries. These salary increases were in some case more than 100% as compared to the period before privatization (e.g. in 2001, average monthly salaries at Zaporizhstal were \$182 compared to \$75 in 1998, before privatization). In 2001, employees of privatized metallurgical companies earned more than 20% above what employees at similar government owned metallurgical companies earned. In the mining and energy materials production sectors, salaries at privatized companies (compared to non-privatized companies) were up to 20% greater in 2000, and up to 35% greater in 2001.

In general, non-state companies have significantly outperformed state companies in productivity and wage arrears. This lower level of arrears is a significant factor in employees being able to support their families and in their general well being. Wage arrears have long been a problem in the public sector. Many teachers and miners still have to wait several months before receiving their salaries. In Table 6 below, this differential is even more apparent. For example, in the mining industry, the average arrears are more than two-times less in the private sector. In only two industries (metallurgy and light industry) do we see a difference in this trend. Most likely, this is a result of the small sample of state companies remaining to be privatized in those sectors.

Table 6: Ukrainian Labor Data by Form of Ownership (by sector), 2001

Sector	Form of Ownership	Number of Companies	Number of Employees on Payroll	Labor Productivity, UAH '000/person	Average Wage Arrears, months
Industrial Production	TOTAL	45,425	4,082,637	42.91	1.46
	State	3,328	1,073,998	35.38	2.18
	Non-State	42,097	3,008,639	45.60	1.17
Mining	TOTAL	990	592,863	36.64	2.47
	State	325	412,874	27.44	3.05
	Non-State	665	179,989	57.75	1.34
Energy Materials Production	TOTAL	432	439,363	34.06	3.01
	State	258	372,006	26.65	3.30
	Non-State	174	67,357	74.96	1.92
Non-Energy Materials Production	TOTAL	558	153,500	44.02	0.87
	State	67	40,868	34.56	0.96
	Non-State	491	112,632	47.46	0.84
Processing	TOTAL	42,704	2,951,964	42.92	1.26
	State	1,932	405,513	36.49	1.70
	Non-State	40,772	2,546,451	43.94	1.19
Food Industry / Processing of Agricultural Products	TOTAL	8,586	54,872	56.80	0.96
	State	278	42,199	37.73	1.05
	Non-State	8,308	500,673	58.41	0.95
Light Industry	TOTAL	4,287	254,620	11.99	1.33
	State	129	4,355	16.14	1.10
	Non-State	4,158	250,265	11.91	1.33
Chemical and Petrochemical Industry	TOTAL	2,785	217,482	57.12	1.28
	State	70	57,075	51.87	1.80
	Non-State	2,715	160,407	58.99	1.10
Metallurgy and Metal-Working	TOTAL	2,733	456,308	81.01	0.95
	State	80	69,591	86.77	0.90
	Non-State	2,653	386,717	79.97	0.96
Machinery	TOTAL	10,039	976,189	22.55	1.84
	State	372	196,438	16.64	2.60
	Non-State	9,667	779,751	24.04	1.65
Production of Electricity, Gas, and Water	TOTAL	1,731	537,810	49.80	1.01
	State	1,071	255,611	46.44	1.19
	Non-State	660	282,199	52.83	0.87

Source: State Statistics Committee

A margin analysis of sales and costs of Ukrainian companies provides a similar view of the economic efficiency of state ownership versus fully privatized companies. As shown in Table 7 below, in 2001, state enterprises that were fully privatized showed better profitability than state-owned enterprises. These fully privatized companies paid more taxes than state-owned companies. These taxes ultimately benefit the citizens of Ukraine.

Table 7: Margin Analysis (% of Net Sales) in Ukraine, 2001

	Net Sales	Cost of Goods Sold	Gross Income (+) / Loss (-)	Operating Income	Other Expenses / Income	Pretax Income	Extraordinary Revenues (+) / Costs (-)	Taxes	Net Income (+) / Loss (-)
Full State Ownership	100%	88.7%	11.3%	3.9%	0.9%	4.8%	1.2%	-0.9%	5.2%
100% Privatized Enterprises	100%	77.6%	22.4%	12.9%	-1.3%	11.7%	0.0%	-3.9%	7.8%

Source: State Statistics Committee

Conclusions

The conclusions below represent the view of the staff of The Bleyzer Foundation and SigmaBleyzer. Although we tried to be as objective as possible, it may not be totally impartial as SigmaBleyzer has been an active participant in the privatization process. It does represent the view, however, of many private sector observers.

The First Stage of privatization was particularly difficult in Ukraine. Even though most companies were sold to employees, the money that backed these employees came from a small circle of richer managers. Some of companies did well. On the other hand there are very few successes from the companies that were broadly owned by employees without “consolidated” ownership control, and many businesses that were privatized in this way did not improve until richer managers or backers took over, generally forcing many people out of work.

In the Second Stage, the Ukrainian Mass Privatization model can be characterized as an attempt to implement a “social equality model”. All citizens, from the very young to the elderly, had an opportunity to purchase state companies through a system of auctions. However, as the legislative and normative base of privatization lacked depth, not all levels of the population had equal opportunities to participate in privatization.

Because of hyperinflation, income instability, and the general economic contraction that Ukraine experienced through 1999, a lot of privatized companies were sold for relatively small amounts. It is through this process, that we can see the rise of powerful industrial groups and other regional players (the so-called “Oligarchs”) that began to control significant parts of the Ukrainian economy.

Throughout the entire process, owners were not as numerous as hoped. On the other hand, in companies where ownership was concentrated and not fractured, there was a greater likelihood of restructuring and turning the business around. This, of course, resulted in greater social improvements as well as individual benefits. Therefore, the concentration of ownership in many industries has also been a major reason for the improvement in social welfare.

Our overall assessment of the Ukrainian privatization model in the Second Stage (from 1995 to 1998) is mixed. On the positive side, from 1995 to 1998, over 70,000 state enterprises were privatized, helping in the creation of a private sector market-oriented economy. On the negative side, the process was not transparent, percentages of big companies were often sold at severely discounted prices, the purchasers rarely had the best interest of the company at heart (rather, they were more interested in stripping assets or damaging a foe / competitor), and new owners did not always understand the business they had just purchased. In addition, the process was too slow. Comparisons with countries that privatized faster, such as Hungary or the Czech Republic, clearly show the advantage of privatizing faster. It has taken Ukraine more than ten years to reach a level that some countries reached in less than half that time. This resulted in a time delay between the act of privatization and results of privatization. Only in the last few years have companies begun to show positive results, which has certainly contributed to the positive GDP growth of the last three years (5.9% in 2000, 9.1% in 2001 and 4.1% in 2002). An attempt to equitably distribute state property failed to achieve the anticipated result and the method was costly in terms of promoting efficiency and growth as well.

It is still too early to evaluate the results of the Third Stage of Privatization from 1999 to the present. The focus of the Government in this stage has been more on helping the fiscal budget by making money from privatization and less on the transformation of the economic environment through privatization. It is true that to improve the quality of life of their people, the Ukrainian government needs additional revenues. But in our opinion this goal could be reached more quickly by creating a greater number of healthy and profitable privatized businesses, thereby bringing the government a higher level of tax revenues, rather than trying to maximize the privatization proceeds in an environment not considered by many as investor-friendly. This accelerated privatization approach would have resulted in higher economic growth, additional jobs and a significantly improved economic situation for Ukrainian citizens.

Despite the above problems, we believe that privatization was an important factor in improving the welfare of the Ukrainian people. The quality of life improved for employees at privately owned companies. As the tables above show, salaries at these companies increased and were more likely to be paid on time, an important characteristic considering the high levels of inflation during those periods. In addition, companies that had been privatized paid more in taxes to the government. This provided the government with greater revenues with which to provide services to the Ukrainian people.

II. The Experience of SigmaBleyzer

General Experience

The experience of SigmaBleyzer, which has been operating in the Ukrainian investment business for more than 10 years, corroborates the conclusions discussed above. The company took part in all stages of privatization and after privatization; its portfolio included over 85 companies in all the regions of Ukraine and in most industries. Today, the company manages three funds, working with a portfolio of more than 60 companies. Diversification of the portfolio resulted from a deeper analysis of the Ukrainian economy on both a macro and micro level.

The first years of transition in Ukraine were characterized by a sharp decline in production volumes. Most Ukrainian enterprises were either idle or running at 10-15% capacity utilization levels. The official statistics did not reflect the real level of unemployment, as people were registered as employed, in reality being on indefinite leave without pay. However, this led to an indirect effect of privatization. Since efficient management of joint-stock companies had not yet formed, the most active workers on leave-without-pay created their own small businesses, often remaining officially employed by privatized companies. Most of these employees never returned to the parent firm.

This deterioration of official employment, which continues in some government owned companies today, was not directly caused by privatization. It was a result of the economic inefficiency of enterprises during Soviet times. It is well known that most production in those days was oriented on the military-industrial complex. Those companies had to suddenly change their focus to new customers (primarily consumers), and most had no experience in doing so. Most of these companies were woefully inefficient in production and energy consumption. Most had to recreate supply chains and suffered a severe disruption in trade. These factors put tremendous pressures on the companies trying to transition to a market economy.

There are several companies in the UGF portfolio that shed light on how privatization helped both the companies and the social welfare of the people. They are discussed in the sections below, as follows:

- (j) The Sevastopol Shipyard (SSY)
- (ii) Poltava Confectionery
- (iii) Berdyansk Agricultural Machinery and Melitopol Tractor Hydro Units Plants.

(i) The Sevastopol Shipyard

The Sevastopol Shipyard (SSY) is a prime example of a company that was significantly transformed by privatization. The shipyard, established in 1783, was originally charged with building and repairing naval vessels on the Black Sea. Located on the Crimean peninsula in Sevastopol, SSY has favorable climatic conditions and protected bays that allow it to work year round. For most of its history, the shipyard catered mainly to the military, producing and repairing military vessels. Today, the company has shifted its focus to commercial orders.

SigmaBleyzer acquired relative control (and the largest stake) in 1998 when it increased its previous holdings to 47.4%. It acquired an additional 2.8% the following year, bringing its total up to 50.2%. During this time, military ship repair contracts could not be relied upon as both Russia and Ukraine had insufficient resources to pay for such repairs. Yet the company had been unable to attract significant number of commercial customers to its docks prior to SigmaBleyzer's purchase. The company was in crisis and desperately needed restructuring.

Prior to 1998, the Government (owner and manager of SSY) had split the company into 39 individual companies. Essentially, no real analysis took place; each department was simply established as a separate company. This resulted in companies within SSY misallocating and misusing resources, paying extra VAT payments, and causing general chaos. In addition, the company had not developed a Western-style marketing function.

There were also organizational problems. For example, in other countries, a single foreman is assigned to each ship as the representative from the repair company to oversee all aspects of the repair. He acts as a single focal point for the customer. At SSY, several representatives (from the 39 companies) would vie for control in order to make sure their individual part was completed without an overall care for the end customer. Delays in delivering the job were frequent. As a result, customers developed a highly negative opinion of the company and sales plummeted. At the end of 1997, the last full year under government control, the company posted revenues and net income of \$12.7 million and -\$0.8 million, respectively.

Several events occurred after privatization. A project team was assembled to lead the company out of crisis. Western experts were brought in to make key recommendations on how to improve and restructure the company. These included Libis Engineering Ltd. Naval Architects & Marine Consultants, PriceWaterhouse Coopers, Thunderbird Corporate Consulting, Barrents Group (USAID program), and the Citizen Development Corps. Such expertise was often relatively inexpensive (sometimes free under grants from bilateral institutions) and easy to find, yet the government had made no attempts to do so. In addition, a team of SigmaBleyzer restructuring experts was assigned to live and work in Sevastopol.

As our team worked with external experts, we developed a plan to divide the company into five profit centers. New controls were put into place to get a handle on the business. We helped the company make a strategic decision to focus on ship repair and the port, and to abandon floating cranes (high capital outlays, low demand). A full market analysis of the region was carried out and a professional marketing department was created. Modern systems to control work progress were installed. The company began focusing on its customer needs, which it had never known before. These included pricing, delivery time, quality, and customer service.

Best practices of Western shipyards were adopted for use at SSY. Examples included attracting agents, visiting owners, conducting exit-interviews with ship owners, establishing an estimate department, and facilitating yard visits with new potential clients. Small investments were targeted, most of which would come from internal funds.

All of these changes occurred over 1-2 years; something the Government had been unable to do itself during the previous five years. By 2001, as a result of these changes, revenues increased 43%, net income increased to \$0.8 million, port volumes increased 349%, the number of repaired ships grew 523% (to 44), and debts (salary, payments to the government and social insurance) decreased from \$7.91 million to \$1.44 million (see tables 10 and 11). Without these changes, the company would most likely have gone bankrupt.

Table 10: Key Data for the Sevastopol Shipyard by Year

	1996	1997	1998	1999	2000	2001
Net Sales (millions)	\$ 9.40	\$12.70	\$12.81	\$11.28	\$14.62	\$18.06
Net Income (millions)	-\$ 1.50	-\$ 0.80	\$ 0.80	\$ 0.76	\$ 0.52	\$ 1.70
Port - Cargo Loaded (tons)	N/A	176	146	263	705	790
Ships Repaired	N/A	7	8	25	44	47

Source: Sevastopol Shipyard

Table 11: Selected Comparison Data for the Sevastopol Shipyard

Company	Average Monthly Salary		Net Revenue per Employee		Number of Employees		VAT Payments, ('000)		Profit Tax, ('000)	
	1997	2001	1997	2001	1997	2001	1997	2001	1997	2001
Sevastopol Shipyard	\$48	\$96	\$ 1,728	\$ 5,424	7,352	3,330	\$1,592	\$1,319	\$497	\$861

Source: Sevastopol Shipyard

Not only did these changes improve the overall condition of the company, but they also helped the employees and residents of the city. As mentioned, nearly \$6.5 million in back payments were made to the city and central government. Profit tax payments increased by about 75%. VAT would have increased if not for company restructuring and special laws freeing SSY from part of the burden. Average salaries increased from \$48 to \$96 (1997 to 2001). This salary of \$96 was more than 50% greater than the average for the city of Sevastopol and all of Ukraine.³

The table above shows that the number of workers decreased compared to 1997, but that is due to structural problems that existed under the Soviet Union. Furthermore, many of the official employees in 1997 were not attending work or receiving any salaries. As noted earlier, they were employees only on paper (see Section on Data Challenges for more detail). The number of "real" employees in 1980, when SigmaBleyzer took over the company, was 2,880. Since then, the number of employees has increased from 2,880 to more than 3,330 (in 2001) as the company improved its competitiveness.

Finally, in our discussions with local officials, we have seen a 180-degree change in their attitude towards the benefits of private ownership. When SigmaBleyzer initially took control of the shipyard, the officials of the city were aggressive and standoffish. They felt that we should be creating more jobs and supplying more investment. However, as the shipyard began to function more profitably (see figure 1), they saw that investments began to flow regularly (from profits) and that the demand for employment also climbed to meet the needs of the company.

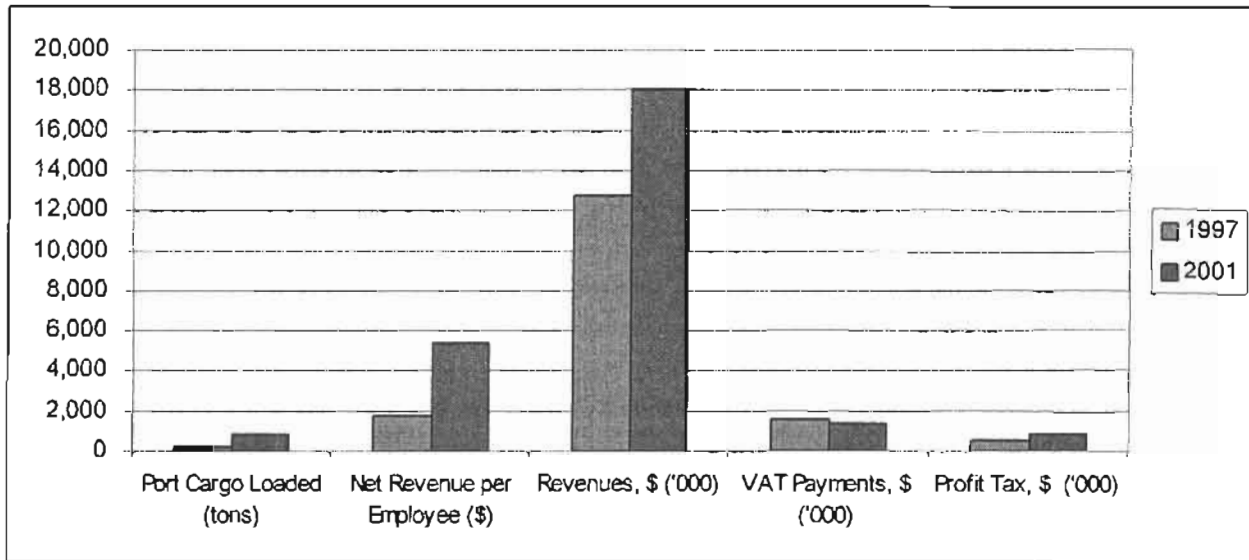
Today, we have a good working relationship with regional officials, because they have come to appreciate the large tax base, employment base, and the revenue that the company is able to generate for other local business. In Sevastopol, over 350 small to medium businesses are employing workers and paying taxes, because SSY is successful. That is, these companies' existence and success are directly tied to the success and improvement of the shipyard. They provide products or services that the shipyard uses to meet the needs of its clients. These include ship design studios, architectural firms, machinery shops, cargo movers, parts suppliers, marine companies, agents, subcontractors, and other businesses that depend on the continued success of SSY. The employees of these businesses may not be working for SSY

³ State Statistics Committee

anymore, but they are gainfully employed by healthy and tax-paying enterprises, creating value by working with SSY.

While we do not know the exact financial results of these other small businesses, we do know that they rely heavily on demand from SSY. The increase in port activities (to approximately 800,000 tons of cargo in 2001 – see figure 1) has generated significant revenues for the customs authorities and railroad movers. The creation and success of the English language summer camp at the SSY resort area brings in more than 800 kids and 1,200 other guests per year, bringing more spending dollars to the region. The result to the city is a greater tax base, more employed citizens, less expenses on social services, increased revenue from public transportation, and an overall increase in consumer spending.

Figure 1: Key Data from the Sevastopol Shipyard



Source: Sevastopol Shipyard, SigmaBleyzer

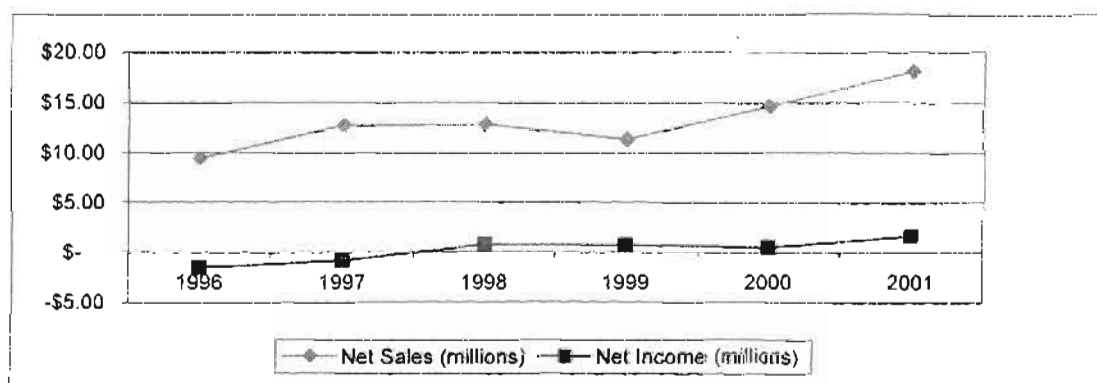
Could this turnaround have occurred under Government control? We do not believe so. First, the Government did not understand the problems or how to fix them. In fact, their “remedy” came close to destroying the business. Second, the Government did not have the contacts to bring in Western expertise, a crucial element in the turnaround. Third, restructuring would have become highly political if it had been Government-led and it would not have been optimal for the company. And fourth, the company did not have a Western marketing function, the know-how that previous Government attempts had failed to acquire.

(ii) Poltava Confectionery

Poltava Confectionery produces chocolates, biscuits, caramel and other candies. It was privatized in 1996 (though SigmaBleyzer did not buy control until 1999). Privatization of the controlling stake proved to be a key event in the life of Poltava. Until 1996, the company showed continuing declines, producing only 4,921 tons of confectionery products that year (it produced about 20,000 tons in 1990). In 1996, the managers of the company, purchased control of the company. SigmaBleyzer bought a controlling majority in 1999. Since that time, the growth has been phenomenal (see tables 14 and 15 for more details about Poltava).

In addition to the company doing well, it has increased the welfare of Poltava's citizens; more people are employed at the company, tax payments have increased, and salary levels have grown. According to management, Poltava Confectionery was one of the top five taxpayers in Poltava for 2001. This would not be possible without increased revenues and profitability at the company (see figure 2).

Figure 2: Poltava Confectionery Results, \$ million



Source: Poltava Confectionery

At the end of 2002, the company completed a \$4 million investment project (funded by UGF and SigmaBleyzer) in a new confectionery facility that should produce an additional 60,000 tons of confectionery products. All of the construction work was done locally, supporting several construction companies, electrical companies, parts suppliers, construction materials suppliers, and other local companies. More importantly, the company hopes to increase sales more than three times over the next few years. This will result in more jobs, better wages, higher tax payments, and a general improvement in the community.

Table 14: Yearly Results for Poltava Confectionery

	1996	1997	1998	1999	2000	2001
Net Sales (millions)	\$ 7.16	\$ 9.84	\$11.14	\$13.35	\$15.35	\$20.36
Net Income (millions)	\$ 1.03	\$ 1.28	\$ 1.09	\$ 1.18	\$ 1.23	\$ 1.37
Production Output (tons)	4,921	7,110	9,160	15,970	19,540	21,820

Source: Poltava Confectionery

Table 15: Selected Data for Poltava Confectionery

Company	Average Monthly Salary		Net Revenue per Employee		Number of Employees		VAT Payments, ('000)		Profit Tax, ('000)	
	1997	2001	1997	2001	1997	2001	1997	2001	1997	2001
Poltava Confectionery	\$60	\$84	\$13,526	\$14,330	987	1,421	\$1,555	\$2,735	\$560	\$665

Source: Poltava Confectionery

(iii) Berdyansk Agricultural Machinery and Melitopol Tractor Hydro Units Plants.

SigmaBleyzer bought controlling stakes in the Berdyansk Agricultural Machinery Plant and the Melitopol Tractor Hydro Units Plant in 1998-1999. The control by SigmaBleyzer and the formation of corporate management teams from SigmaBleyzer in these joint-stock companies became the basis for the turnaround and restructuring of the plants. Restructuring of these plants took place in the 1999-2001 period. The main restructuring efforts are described below.

Berdyansk produces agricultural machinery, including grain and grain/legume reapers; tractor-mounted mowers, bailers and cultivators; and about 200 spare parts for agricultural machinery (particularly harvesters). When it was privatized, the company was operating at 30% of its capacity, due to lack of demand. Historically, about 80% of the company's sales were exports to Russia and Kazakhstan. But this trade was disrupted after the split of the Soviet Union. The company was headed for bankruptcy. The reconstruction plan included concrete measures to seek new markets, recover sales to Russia and Kazakhstan, reduce unit material consumption, reduce labor costs, and reduce power consumption. The company also undertook a major restructuring of its facilities to improve production efficiency. All useful equipment (particularly welding and assembly) was relocated from a number of sites and concentrated at only one site. Other sites were scrapped. The company also outsourced some of its activities that were not economical, such as foundry. The company is still facing difficulties, but it is already turning around, with an increase in sales in US dollar terms of 11% in the last two years.

The Melitopol Tractor Hydro Units Plant was once the largest producer of hydraulic parts for tractors and other farm-equipment in the former Soviet Union. Its production included hydraulic distributors, hydraulic cylinders, hydraulic steering units, shock absorbers, clutches, differential blocking sensors, electro-hydraulic distributors, and pressure-sensitive valves and hoses. The customers of the Melitopol plant included over 200 assembly plants and more than 200 machinery-repair shops. Unfortunately, many of these companies have been working at a small fraction of their Soviet output levels, greatly reducing the potential size of Melitopol's market. This lack of demand in the years before privatization resulted in the company cutting its workforce from 10,000 to 2,200 people. The rehabilitation plan included an aggressive program to find customers in Ukraine and outside Ukraine. As a result, exports are significant principally to Russia, Italy, France and the USA. Operating costs were also reduced through the implementation of various cost reduction programs. In the first stage, the plant focused on the manufacturing of spare parts to serve the large stock of old-type tractors that already exist in the former Soviet Union countries. It also reduced costs by scrapping equipment that would not be needed and concentrating its production facilities in a few areas. As a consequence of these activities, since 1999, the company has been able to increase sales in US dollars by 8% per year, as noted in Table 8 below.

At the time of privatization, Berdyansk and Melitopol were significantly indebted (see table 12 for debt situation), had decreasing sales and production volumes, were having difficulty in finding customers, and appeared headed for bankruptcy. The table below shows that by 2002, these two companies had rebounded (Table 8). The 2002 figures show how quickly the companies improved after the restructuring plans were implemented.

Table 8: Net Sales of Selected Companies in the UGF Portfolio, \$ ('000)

Company	1999	2000	2002
Berdyansk Reapers	3,635	3,417	3,798
Melitopol Tractor Hydro Units Plant	2,865	3,128	3,624

Source: Company Financials

Reduction in Government Debt and Back Wages

The experience of the SigmaBleyzer companies is that they have been able to pay off or significantly reduce their debts to the Government and wage arrears to the employees (see table 12 below).

Table 12: Debts of UGF Portfolio Companies

Company Name	Government Debts, \$ ('000)		Wage Arrears, \$ ('000)	
	1997	2001	1997	2001
Central Ore Mining	\$ 8,654	\$ 881	\$ 2,152	\$ 755
Chimik	\$ 54	\$ 9	\$ 21	\$ 5
Conditioner	\$ 678	\$ 523	\$ 207	\$ 187
Dneporazot	\$ 2,020	\$ 1,533	\$ 5	\$ 373
Kharkiv Machine-Building Plant (Svitlo Shakhtarya)	\$ 1,018	\$ 63	\$ 432	\$ 62
Khartsyzsk Pipe Works	\$ 6,214	\$ 241	\$ 4,176	\$ 1,109
Kherson Combines	\$ 192	\$ 847	\$ 870	\$ 1,017
Kyiv Refrigerator #2	\$ 16	\$ 18	\$ 59	\$ 33
Makiivka Pipe Rolling Plant	\$ 408	\$ 80	\$ 179	\$ 337
Marganets Repair	\$ 1,107	\$ 6	\$ 505	\$ 17
Mariupol Ilichea Steel	\$ 9,551	\$ 1,809	\$ 3,625	\$ 4,224
Markokhim	\$ 5,135	\$ 615	\$ 145	\$ 102
Melitopol Compressor Plant** (data for 2000)	\$ 910	\$ 468	\$ 583	\$ 69
Melitopol Tractor Hydro Units Plant	\$ 865	\$ 10	\$ 527	\$ 152
Nikopol Pipe	\$ 208	\$ 61	\$ 226	\$ 11
Northern Ore Mining	\$295,650	\$ 876	\$52,417	\$ 1,232
Ordzhonikidze Ore Mining (data for 2000)	\$ 5,788	\$ 801	\$ 2,654	\$ 408
Pershotravnevy Agricultural Machinery Plant (Berdyansk Reapers)	\$ 1,387	\$ 177	\$ 864	\$ 132
Poltava Confectionery	\$ 86	\$ 50	\$ 42	\$ 123
Poninka Paper Combine	\$ 408	\$ 258	\$ 179	\$ 235
Rosava Tires	\$ 17,008	\$ 7,903	\$ 1,105	\$ 79
Sevastopol Shipyard	\$ 1,952	\$ 375	\$ 3,880	\$ 728
Slavyansk High Voltage Insulators	\$ 933	\$ 20	\$ 557	\$ 29
Zaporizhstal	\$ 4,055	\$ 3,372	\$ 3,074	\$ 1,995
Zhydachiv Pulp and Paper Combine	\$ 320	\$ 54	\$ 469	\$ 178
Zaporizhya Meat Processing	\$ 43	\$ 15	\$ 51	\$ 35
Totals	\$366,657	\$23,066	\$81,001	\$15,628

Source: *Company Financials, SigmaBleyzer*

From 1997 to 2001, SigmaBleyzer companies had a 94% drop in unpaid debts to the Government and an 80% drop in unpaid wages to employees. Clearly, the improved situation with wage arrears has been the key reason for some employees shifting from public to private sector. The wage arrears problem in the public sector has been a documented phenomenon for some time in Ukraine. As shown earlier in table 6, the backlog is generally higher in the public sector than in the private sector. Thus, the private sector is doing a better job at improving the welfare of its employees than the state.

The repayment of wage arrears by private companies was an important social and psychological issue of the ongoing post-privatization period. As the most acute social consequence of the crisis, wage arrears created a psychologically tense atmosphere. This often caused a negative attitude to the consequences of the privatization process. It was the post-privatization equity concentration and formation of corporate

management that ensured the appearance of efficient owners and management bodies controlled by joint-stock companies.

As presented earlier in Table 3, wage arrears were increasing until 1997 and declined sharply starting in 1998, with major declines in 1999 and 2000. From 1997 to 2000, wage arrears fell by more than 50% to less than \$1 billion.⁴ This is significant, since most owners only took control in 1997-1999. Therefore, the results in the reduction of wage arrears would seem to directly follow these privatization events.

This result was clearly part of the government's strategy as well. In most privatizations from the Third Stage, the government has generally stipulated two parts to the purchase: purchase price and debt payments. Naturally, companies pay less for the company knowing they will have to then pay off debts. A good example would be the Okean Shipyard, which was privatized in 2000. Prior to being privatized, the company had increased long-term debts to \$8.7 million (fluctuated in a range of only \$0.6 - \$0.8 million from 1995 to 1997). When Damen Shipyards purchased a 78% stake in 2000 (SigmaBleyzer already owned nearly 9% at that time), it paid approximately \$4.8 million. However, according to the agreement, it also paid an additional UAH 8 million (\$1.5 million) for unpaid salaries and debts to the government. This provided some immediate support to both public services and the local community that never would have occurred without privatization.

Conclusions

It is our opinion that privatization played a key role in improving the welfare of Ukraine's people. Wages have increased, debts have been reduced, communities receive more money from successful companies, and more small and medium companies have sprung up to support the larger privatized companies. Overall, the privatized companies have also enjoyed growing support from most regional or city leaders as taxable income has increased and more people are employed.

It is also our opinion that the first two stages of privatization were not carried out transparently enough and that too much wealth has been concentrated in a small number of owners. We feel these stages somewhat limited the full effect that privatization could have brought. However, the latest program of privatization has been better at providing a more transparent form of privatization. Such a trend must continue.

We also believe that the pace of the remaining privatizations must be significantly accelerated. Some objections to that by the Ukrainian government officials are based on their assertion that they simply cannot receive "fair" prices in the current environment. Our answer to them is that it is up to the market place to determine the fair prices and all that Ukrainian government can do to improve them is to create a better business and investment environment in the country.

⁴ State Statistics Committee

Appendix 1: A Short History of SigmaBleyzer

SigmaBleyzer is one of the largest and most experienced equity investors in Ukraine and manages three Ukrainian Growth Funds (or UGF family of funds). The first UGF fund was launched in 1996. Two more followed, resulting in approximately one hundred million dollars under management. SigmaBleyzer has distinguished itself from its many competitors, because UGF has not only maintained its value (unlike nearly all other Russian and Ukrainian funds), but increased in value. Through investment of the originally raised one hundred million dollars and reinvestment for several years of the proceeds of the realized exits, the UGF family of funds has invested over \$130 million in Ukrainian equities.

Using its financial expertise and international contacts network, SigmaBleyzer has helped in implementing Western management practices, attracting venture capital, advising on restructuring, helping in the transition to International Accounting Standards, implementing modern information systems, developing strong marketing and sales capabilities, and buying/selling shares in target companies. Professional analysts provide regular in-depth financial analysis on any company or sector. SigmaBleyzer currently follows more than 40 different sectors and 250 companies, as well as macroeconomic issues and the stock market. Our approach highlights an analysis of performance, expectations, and risks, thereby helping our investors make more informed decisions.

After working for several years in Ukraine, The Bleyzer Foundation was created as a non-profit, non-government organization in 2001. Its aim is to support the successful transition of the Former Soviet Union (FSU) countries into healthy, democratic market economies. The mission of The Bleyzer Foundation is to promote the development of the private sector and the use of best practices in government policies, which create capital-friendly environments and deliver improved quality of life. To achieve this objective, The Bleyzer Initiative was developed in 2000 - 2001 to provide a concrete action plan for all developing country governments to use in the transformation to a market economy. The Initiative is based on nine investment drivers that reflect the key policy areas that governments must address.

Over the last several years, we have worked to identify best practices among transition economies around the world in order to accelerate the flow of international private equity capital, and in particular, foreign direct investments (FDI). It is FDI that is truly the key to successfully completing transitions because it is the major source of financing the transitions, enabling economic growth and fighting poverty in developing countries. Those reform policies, or “investment drivers”, that have the greatest impact on FDI formed the basis for the Action Plan for Transition Economies, which is included in the Bleyzer Initiative.

The Bleyzer Initiative calls for a stronger partnership between the developed and developing countries. We believe that the transitions will be accelerated only if both work together. That is, developing countries need to implement the major economic reforms required to attract FDI, while the developed countries, on their part, must provide greater access to their markets, better targeted financial aid, and the know-how for building the market economy. Access to developed countries' markets is essential to generate and sustain economic growth in transition economies and developing countries, therefore enabling a more stable and secure environment in the world.

Appendix 2: Data Challenges

The former Soviet Union poses a significant challenge in evaluating the validity of data on a company level, especially when trying to compare companies across time periods. The planned economy under the Soviet government was the prime driver for building companies, allocating their expenses, creating a supply chain, and stimulating demand. When this system broke down, many companies could not sustain the business on their own and failed. Others looked to the government to continue supporting them, either through direct or indirect means. A few began to survive on their own.

Company data of privatized companies today is reasonably reliable to a certain point. In our experience, it is certainly more accurate than it was 10 years ago or even 2 years ago. However, older data is subject to significant doubt. We will use the example of the Sevastopol Shipyard (SSY) to illustrate our point. In 1990, SSY had 15,700 workers with sales of \$30.2 million. By 2001, the company had 3,609 workers with revenues of \$18.1 million.

Why are the employee numbers off? First of all, they include what we will call “phantom” workers. Official statistics did not reflect the real level of unemployment, as people were registered as employed, in reality being on indefinite leave without pay. As a result, they stayed on the company’s list as employed, while finding work elsewhere. Second, under the Soviet Union, everyone was required to work. Companies, therefore, were not set up to efficiently use their employees. Many workers performed useless tasks just to give them work. As spending was rationalized, it was clear that many employees simply weren’t needed or performed work that another employee could easily add to his/her workload. This is also one of the reasons that production per employee often radically increased. This is typical of most companies (pre-privatization) and is a well-known phenomenon of the period (certainly within the former Soviet Union).

Third, many of these employees supported municipal services such as public housing, public schools, hospitals, etc. that were funded by the Government. Since the company’s sales could not support such expensive public works, the company was forced to transfer these services back to the local government. Finally, some of the services were spun off or sold off, including company resorts and other businesses that were outside the core competencies of the company.

The net sales revenue from 1990 is also suspect, since this was under a command economy. There were only internal clients provided by the Government. Therefore, the comparison is not particularly helpful. With the loss of government orders, revenues and income at most companies declined significantly. When the supply chains were disrupted, companies had to become more competitive, something for which they were not ready and often failed to do.

Through our experience, we know that other numbers have either been inflated or reduced in order to make the company look better or worse. Companies today do everything possible to reduce net income to \$0 in order to avoid taxes and the law still provides relatively fair latitude in doing so. This should disappear in the future as the Government continues to institute GAAP/IAS rules.


Therefore, we realize that all of these numbers need to be taken with a healthy dose of skepticism. However, while the numbers themselves may be different, the trends still point to the same conclusions. Anecdotal evidence in our portfolio companies indicates that most companies have nevertheless, improved their situation dramatically after privatization, if the buyer had the desire to do so.

Appendix 3: Ukraine - Key Economic Statistical Data

	1996	1997	1998	1999	2000	2001	2002 (E)
GDP							
Real GDP, %	-10.0	-3.1	-1.9	-0.4	5.9	9.1	4.1
GDP (UAH, bn)	82	93	103	130	170	202	211
GDP/Capita (US\$)	870	856	828	612	555	775	824
Savings (%GDP)	20	19	18	22	20	20	21
Investments (%GDP)	23.1	21.5	20.7	17.4	18.6	20.4	22.5
Industrial Growth Rate, %	-5.1	-0.3	-1.0	4.0	12.4	14.2	7.0
Public Finances							
Fiscal Balance (%GDP)	-4.9	-6.6	-2.2	-1.5	0.6	-0.4	0.4
Revenues (%GDP)	37	30	28	25	29	27	28
Expenditures (%GDP)	42	37	30	27	28	28	28
Monetary Statistics							
Consumer Prices (%YOY)	39.7	10.1	20.0	19.2	25.8	6.1	-0.6
Monetary Base (%YOY)	38	45	22	30	40	37	34
Money Supply-M3 (%YOY)	35	34	25	40	45	42	42
Exchange Rate (UAH/\$)	1.9	1.9	3.4	5.2	5.4	5.3	5.3
Balance of Payments							
Goods Exports (\$, bn)	15.5	15.4	13.7	12.5	15.7	16.3	18.5
Goods & NFSE (\$, bn)	20.3	20.4	17.6	16.2	19.5	21.1	23.1
Goods Imports (\$, bn)	19.8	19.6	16.3	12.9	14.9	15.8	17.9
Goods & NFSI (\$, bn)	21.5	21.9	18.8	15.2	17.9	20.5	21.6
Trade Balance (\$, bn)	-4.3	-1.5	-1.2	1.8	1.5	0.6	1.5
Current Acc. Balance (\$, bn)	-1.2	-1.3	-1.3	1.7	1.5	1.4	0.8
Direct Investments (\$, bn)	0.5	0.6	0.7	0.4	0.6	0.8	0.5
Gross Reserves (\$, bn)	1.9	2.3	0.8	1.1	1.7	3.2	4.4
Public Debt							
External Debt (\$, bn)	8.8	9.6	11.5	12.5	10.3	9.8	8.1
External Debt Service (\$, bn)	1.2	1.2	1.8	2.0	1.7	0.3*	1.0
Domestic Debt (\$, bn)	1.3	4.6	3.7	2.9	3.8	4.0	4.0

* Direct public external debt service

Exhibit 9

<table border="1"> <tr><td>EURUSD</td></tr> <tr><td>Sell Buy</td></tr> <tr><td>1.24 1.24</td></tr> <tr><td>13 16</td></tr> <tr><td>Low High</td></tr> <tr><td>1.23 1.25</td></tr> </table>	EURUSD	Sell Buy	1.24 1.24	13 16	Low High	1.23 1.25	<p>The EURO is EASY to trade. See How >></p>	<p>FREE PRACTICE ACCOUNT CLICK HERE</p>	 <p>24 Hour Commissions Free Currency Trading</p>
EURUSD									
Sell Buy									
1.24 1.24									
13 16									
Low High									
1.23 1.25									

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Thursday August 11, 10:13 AM

Arcelor still interested in Ukraine's Krivorozhstal

PARIS (AFX) - Arcelor (Paris: [LU0140205948](#) - [news](#)) said it is still interested in Ukraine's Krivorozhstal after the government announced the launch of the privatisation for the country's leading steel producer.

'In 2004, Arcelor said it that it was interested in Krivorozhstal during the original privatisation process. The group is still interested today,' said an Arcelor spokesman.

The original attempt to sell-off the steel company was aborted in the midst of political turmoil surrounding the 'Orange revolution' which swept president Viktor Yushchenko to power.

Yesterday the process was reopened, with bids above 2 bln usd accepted until Oct 17. Officials said the sales of the 93.02 pct stake in the company will partly take the form of an auction, with bidders able to raise their initial offers once the results of the first round are announced.

Earlier today, Spanish daily La Gaceta de los Negocios reported that Arcelor had launched a bid for the Ukrainian group along with five other companies.

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Exhibit 10

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Nixon Tries Price Controls

Excerpt from *The Commanding Heights* by Daniel Yergin and Joseph Stanislaw, 1997 ed., pp. 60-64.

Essay

[Following the Kennedy-Johnson administration in the United States, there was a massive effort to manage the marketplace, in part by controlling wages.] This initiative was not the handiwork of left-wing liberals but of the administration of Richard Nixon, a moderately conservative Republican who was a critic of government intervention in the economy. As a young man during World War II, prior to joining the navy, Nixon had worked as a junior attorney in the tire-rationing division of the Office of Price Administration, an experience that left him with a lasting distaste for price controls.

What, then, were the forces that led Nixon to try to impose government management on the most basic elements of the market? Certainly, economic matters were hardly his passion. That was reserved for foreign policy. Even foreign economic policy did not much interest him. There was a memorable time during some moment of international monetary perturbation when he rudely suggested exactly what should be done with the lira. As for domestic economics, he liked to give his radio talks on economics at noon on Saturdays, because he was convinced that the only listeners would be farmers riding their tractors, and they were likely, in any event, to be his supporters.

For one thing, whatever the effects of the Vietnam War on the national consensus in the 1960s, confidence had risen in the ability of government to manage the economy and to reach out to solve big social problems through such programs as the War on Poverty. Nixon shared in these beliefs, at least in part. "Now I am a Keynesian," he declared in January 1971 -- leaving his aides to draft replies to the angry letters that flowed into the White House

from conservative supporters. He introduced a Keynesian "full employment" budget, which provided for deficit spending to reduce unemployment. A Republican congressman from Illinois told Nixon that he would reluctantly support the president's budget, "but I'm going to have to burn up a lot of old speeches denouncing deficit spending." To this Nixon replied, "I'm in the same boat."

While Nixon may have philosophically opposed intervention in the economy, philosophy took a rear seat to politics. He had lost very narrowly to John Kennedy in 1960 -- 49.7 to 49.5 percent of the popular vote. He sometimes blamed the state of Illinois, whose electoral votes had made all the difference and where the Chicago Democratic machine was known for its effectiveness in getting out all possible voters, dead as well as living. Kennedy won Illinois by just 8,858 votes. But Nixon certainly believed that mismanagement of the economy had also cost him the election. "He attributed his defeat in the 1960 election largely to the recession of that year," wrote economist and Nixon advisor Herbert Stein, "and he attributed the recession, or at least its depth and duration, to economic officials, 'financial types,' who put curbing inflation ahead of cutting unemployment." Looking toward his 1972 reelection campaign, Nixon was not going to let that happen again. And he had to pay attention to economics. Despite the optimism about government's ability to manage the economy, economic conditions had begun to deteriorate. The inflation rate, which had been 1.5 percent at the beginning of the 1960s, had risen to 5 percent. Unemployment was also up from the 3.5 percent level of the late 1960s to 5 percent.

So the central economic issue became how to manage the inflation-unemployment trade-offs in a way that was not politically self-destructive; in other words, how to bring down inflation without slowing the economy and raising unemployment. One approach increasingly seemed to provide the answer -- an income policy whereby the government intervened to set and control wages, whether in hortatory words or legal requirements. Such policies had become common in Western European countries. In the 1970s, the Democratic Congress provided the tools by passing legislation that delegated authority to the president to impose a

mandatory policy.

The administration remained overtly dedicated to markets. But there were those in it who believed that the "market" was more an idyll of the past than an accurate description of how the current economy functioned. To them, the economy was like the question that Lenin had expressed -- Kto kvo? -- Who could do what to whom? That is, they saw the economy "as organized by relations of power, status, rivalry and emulation." Government intervention was required to bring some greater balance to the struggles for power between strong corporations and strong unions that would drive the wage-price spiral upward.

A critical push toward an income policy came from Arthur Burns, whom Nixon had appointed to be chairman of the Federal Reserve. Burns was a well-known conservative economist; Nixon paid special attention to Burns because he had warned Nixon in 1960 that the Federal Reserve's tight monetary policy would accentuate the economic downturn and thus threaten Nixon's chances in the race against Kennedy -- which is exactly what had happened. Now, a decade later, in May 1970, Burns stood up and declared that he had changed his mind about economic policy. The economy was no longer operating as it used to, owing to the now much more powerful position of corporations and labor unions, which together were driving up both wages and prices. The now-traditional fiscal and monetary policies were seen as inadequate. His solution: a wage-price review board, composed of distinguished citizens, who would pass judgment on major wage and price increases. Their power, in Burns's new lexicon, would be limited to persuasion, friendly and otherwise.

Further reinforcement of the pressures toward control came with the recruitment of former Texas Democratic governor John Connally to fill the critical slot of Treasury secretary. The forceful Connally had no philosophical aversion to controls. Indeed he did not seem to have strong feelings one way or the other on economic policy. "I can play it round or I can play it flat," he would say. "Just tell me how to play it." What Connally did like was the dramatic gesture, the big play; and grabbing inflation by the neck and shaking it out of the system would be such a move.

A second issue was also now at the fore -- the dollar. The price of gold had been fixed at \$35 an ounce since the Roosevelt administration. But the growing U.S. balance-of-payments deficit meant that foreign governments were accumulating large amounts of dollars -- in aggregate volume far exceeding the U.S. government's stock of gold. These governments, or their central banks, could show up at any time at the "gold window" of the U.S. Treasury and insist on trading in their dollars for gold, which would precipitate a run. The issue was not theoretical. In the second week of August 1971, the British ambassador turned up at the Treasury Department to request that \$3 billion be converted into gold.

With inflation rising, the clamor to do something was mounting in both political circles and the press. At the end of June 1971, Nixon had told his economic advisors, "We will not have a wage-price board. We will have jawboning." But resistance to an income policy weakened with each passing month. The climax came on August 13-15, 1971, when Nixon and 15 advisors repaired to the presidential mountain retreat at Camp David. Out of this conclave came the New Economic Policy, which would temporarily -- for a 90-day period -- freeze wages and prices to check inflation. That would, it was thought, solve the inflation-employment dilemma, for such controls would allow the administration to pursue a more expansive fiscal policy -- stimulating employment in time for the 1972 presidential election without stoking inflation. The gold window was to be closed. Arthur Burns argued vociferously against it, warning, "Pravda would write that this was a sign of the collapse of capitalism." Burns was overruled. The gold window would be closed. But this would accentuate the need to fight inflation; for shutting the gold window would weaken the dollar against other currencies, thus adding to inflation by driving up the price of imported goods. Going off the gold standard and giving up fixed exchange rates constituted a momentous step in the history of international economics.

Most of the participants at the Camp David meeting were exhilarated by all the great decisions they had made. During their discussions, much attention was given to the presentation of the new policy,

particularly to television. President Nixon expressed grave concern that if he gave his speech during prime time on Sunday, he would preempt the tremendously popular television series *Bonanza*, thus potentially alienating those addicted to the adventures of the Cartwright family on the Ponderosa ranch. But his advisors convinced him that the speech had to be given before the markets opened on Monday morning, and that meant prime time. A few of the advisors would recollect that more time was spent discussing the timing of the speech than how the economic program would work. Indeed, there was virtually no discussion of what would happen after the initial 90-day freeze or how the new system would be terminated.

Nixon's chief of staff, H.R. Haldeman, went in to see the president privately at Camp David the evening before his speech. "The P. was down in his study with the lights off and the fire going in the fireplace, even though it was a hot night out," Haldeman wrote in his diary. "He was in one of his sort of mystic moods." Nixon told Haldeman "that this is where he made all his big cogitations.... He said what really matters here is the same thing as did with [Franklin] Roosevelt, we need to raise the spirit of the country; that will be the thrust of the rhetoric of the speech.... We've got to change the spirit, and then the economy could take off like hell." As he worked on the speech, Nixon tormented himself, worrying whether the headlines would read NIXON ACTS BOLDLY or NIXON CHANGES MIND. "Having talked until recently about the evils of wage and price controls," Nixon later wrote, "I knew I had opened myself to the charge that I had either betrayed my own principles or concealed my real intentions." But Nixon was nothing if not a practical politician, as he made clear in his masterful explanation of his shift. "Philosophically, however, I was still against wage-price controls, even though I was convinced that the objective reality of the economic situation forced me to impose them."

Nixon's speech -- despite the preemption of *Bonanza* -- was a great hit. The public felt that the government was coming to its defense against the price gougers. The international speculators had been dealt a deadly blow. During the next evening's newscasts, 90 percent of the coverage was devoted to Nixon's new policy. The coverage was favorable.

And the Dow Jones Industrial Average registered a 32.9-point gain -- the largest one-day increase up to then.

The Cost of Living Council took up the job of running the controls. After the initial ninety days, the controls were gradually relaxed and the system seemed to be working. But unemployment was not declining, and the administration launched a more expansionary policy. Nixon won reelection in 1972. In the months that followed, inflation began to pick up again in response to a variety of forces -- domestic wage-and-price pressures, a synchronized international economic boom, crop failures in the Soviet Union, and increases in the price of oil, even prior to the Arab oil embargo. Nixon, under increasing political pressure from the investigations of the Watergate break-in, reluctantly reimposed a freeze in June 1973. Government officials were now in the business of setting prices and wages. This time, however, it was apparent that the control system was not working. Ranchers stopped shipping their cattle to the market, farmers drowned their chickens, and consumers emptied the shelves of supermarkets. Nixon took some comfort from a side benefit that George Shultz, at the time head of the Office of Management and Budget, identified. "At least," Shultz told the president, "we have now convinced everyone else of the rightness of our original position that wage-price controls are not the answer." Most of the system was finally abolished in April 1974, 17 months after Nixon's triumphant reelection victory over George McGovern -- and four months before Nixon resigned as president.

In retrospect, some would call the Nixon presidency the "last liberal administration." This was not only because of the imposition of economic controls. It also carried out a great expansion of regulation into new areas, launching affirmative action and establishing the Environmental Protection Agency, the Occupational Safety and Health Administration, and the Equal Employment Opportunity Commission. "Probably more new regulation was imposed on the economy during the Nixon administration than in any other presidency since the New Deal," Herbert Stein ruefully observed.

Only one segment of the wage-and-price control

system was not abolished -- price controls over oil and natural gas. Owing in part to the deep and dark suspicions about conspiracy and monopoly in the energy sector, they were maintained for another several years. But Washington's effort to run the energy market was a lasting lesson in the perversities that can ensue when government takes over the marketplace. There were at least 32 different prices of natural gas, a rather standard commodity, each of whose molecules is based on one atom of carbon and four atoms of hydrogen. The oil-price-control system established several tiers of oil prices. The prices for domestic production were also held down, in effect forcing domestic producers to subsidize imported oil and providing additional incentives to import oil into the United States. The whole enterprise was an elaborate and confusing system of price controls, entitlements, and allocations. It was estimated that just the standard reporting requirements for what became the Federal Energy Administration involved some 200,000 respondents from industry, committing an estimated five million man-hours annually.

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Exhibit 11



Energy Price Controls: Been There, Done That

The Washington Post, May 21, 2001

Robert E. Litan, *Vice President and Director*, Economic Studies
Philip Verleger, *private economist*, California

The electricity crisis in California—now expected to spread to other parts of the country this summer—will soon launch a predictable battle not just over electricity but over gasoline prices as well. On one side are those who almost certainly will call for price controls to cushion the blow to consumers and to limit any price "gouging" by producers. On the other side will be those who will argue that price caps will worsen the problem by failing to encourage consumers to conserve, while discouraging producers—especially independent generators of electricity—from making new investments that eventually will alleviate any supply shortages. Price caps also generate artificial shortages, either electricity blackouts or lines at gas stations.

We should keep in mind that we've been here before. In 1979 crude oil prices surged while the nation was still saddled with a Byzantine system of oil price controls inherited from the Nixon administration. We should learn from the solution adopted then: removal of the price controls, coupled with a windfall profits tax on producers and a recycling of the proceeds to consumers. A similar system ought to be put in place for the current situation.

First a quick look back. The crude oil price controls adopted in 1971 eventually flowered into a complicated system that, by early 1979, set prices for 10 different types of crude oil—even though, of course, oil is fungible. The lowest-priced crude sold for about \$6 per barrel, while the most expensive, "stripper" oil, sold for about \$15. The patchwork system contained many perverse incentives. Rich producing wells were left to expire because producers had no incentive to maintain them, while investments poured into very small wells that would never make a difference to the nation's energy future.

Today generators of electricity face an equally complicated set of controls. Some independent power firms are effectively exempt from controls and sell their power at the highest possible price. Other generators, usually regulated utilities, produce the 21st century's equivalent of old oil and are forced to sell at prices one-tenth (or less) the prices charged by their decontrolled competitors. For example, in California, Southern California Edison's large nuclear unit receives only 3 cents per kilowatt hour, while some of the small, unregulated older plants owned by the generating companies receive 50 cents. Some firms even own both uncontrolled and controlled plants.

It gets worse. In 1979 U.S. allies called for the removal of price controls to bring down the price of oil. The critics asserted that the controls raised the world's demand for oil while depressing production by those outside the OPEC cartel. The consequence was a higher price for oil. Today electricity price controls have the same effect. Conservation is discouraged and low-cost production is shut down. The gap between supply and demand is filled with output from very high-cost facilities.

President Carter deserves credit for finding a way out of the mess in 1979. He took the bold and controversial step of removing price controls on oil but at the same time proposed a windfall profits tax on producers, which Congress enacted in 1980. The tax didn't take away all of the windfall profits—the excess generated by prices above the previous controlled prices—but it did take anywhere from 30 percent to 70 percent of them (depending on the price of the crude). The proceeds were recycled to consumers and to support of development of alternative energy sources. The windfall tax was removed by Congress in 1988, when crude prices were far lower and the tax was no longer generating revenue.

President Bush and Congress now have the opportunity to take a similar courageous step: remove all price

controls on electricity and enact a windfall energy profits tax. The tax should capture a portion of any electricity and gasoline price increases above a benchmark. The proceeds should be returned to consumers through income tax reductions that moderate the impact on the poor, small businessmen and other consumers who would suffer from higher prices. When prices come down—as they will once increased conservation and new production have come into play—the tax should be removed.

To be sure, a tax-refund system is tricky to design and will not be perfect. But as it was 20 years ago, a windfall profits tax is far preferable to both price controls and the prospect of even higher energy prices and windfall profits.

President Bush is right that the current energy crisis can be solved only in the long run. But wise policy can help all of us in the short run too—to avoid shortages, to preserve the benefits of price signals and to minimize the pain that short-term price increases can cause.

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Exhibit 12

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Ukraine Lifts Major Bans on Foreign Bank's Activities

[12 07.2005 12 40]



On July 7 Ukrainian parliament made drastic changes to the banking legislation equating the rights of foreign banks' subsidiaries and local banks. According to the amendments to the law on banks and banking activities passed by Verkhovna Rada (VR) the subsidiaries of foreign banks are included in Ukrainian banking system, according to IntelliNews.

Under the previous legislation the activities of foreign banks were limited. They could not open their branches in throughout Ukraine and provide services to private clients. These banks were just able to open their representative offices in the country. The new legislation removes all restrictions on foreign banks' activities.

All foreign banks' subsidiaries to be regulated on the same basis as Ukrainian banks with no exceptions.

According to the amendments passed all foreign banks' subsidiaries will be regulated on the same basis as Ukrainian banks with no exceptions. It is supposed that corresponding amendments will be added to the commercial law to fortify these standings. At the same time the new legislation places several conditions that determine the subsidiaries' activity in Ukraine.

According to IntelliNews, in general, the bank should be registered in a country that is not included in FATF blacklist and is regulated according Basel banking regulation principles. Besides, the banks' regulative capital should not be less then EUR 150mn and the minimal level of subsidiary's capital should amount to EUR 5mn.

Of course, the foreign bank should apply to the Ukrainian regulatory authorities to receive for its subsidiary the right to provide retail services in Ukraine. At the final stage a subsidiary should be granted a common banking license. After that national bank of Ukraine adds the subsidiary to the list of banks that are allowed to operate in Ukraine.

It is expected 8 biggest Ukrainian banks to be sold to international groups.

The new legislation will step in effect since the date of its publication (the exact date is not unveiled, but we suppose that the publication of law will happen by the end of September).

Approval of the amendments to the banking legislation is a final step that opens the way to the radical changes in domestic banking system. The rise of foreign banks interest in the Ukrainian banking system influences MPs in passing amendments to the current banking legislation.

President of Ukrsofsbank Boris Timonkin expects that of 8 out 11 biggest local banks will be purchased by foreign banks in nearest future. Timonkin informed that present owners of big Ukrainian banks started to make enquiries regarding prices they can for their stakes. "Today we speak today about the monitoring process not about real sales deals", Ukrsofsbank president notes in his written statement on July 5.

Although we doubt that 8 biggest Ukrainian banks will be sold to international banking groups in nearest year or so, we should underline a current trend characterized by increased interest to big local banks from foreign financial institutions. At present owners of 2 largest Ukrainian banks by their net assets are negotiating with international banks the future sale of their stakes. If the Ukrsofsbank (ranks 1st by the net assets) still keeps in secret the name of its bidder, Aval bank (with the 2nd

largest bank by its net assets volume) unveils the name of its future buyer.

Aval bank and Ukrasotsbank are first big Ukrainian banks to be sold.

According to the insider information (though not confirmed by the official side) Russian Alfa-bank is stated as a potential buyer of Ukrasotsbank. However, on June 21 Ukrasotsbank's president Boris Timonkin informed that the bank may be sold to a Ukrainian investor. At the same time Timonkin confirmed that the sale of the bank would take place until the end of the summer. To remind you, Ukrasotsbank's net assets amounted to USD 1.75bn, own capital totaled USD 183mn and credit portfolio made up USD 958mn as per June 1, 2005.

Aval bank makes it clear that its future owner is Raiffeisen International (Austria). In mid of June 2005 Raiffeisen group finished Aval bank's due diligence. According to honorary president of Aval bank Fedor Shyg Raiffeisen still did not make the final decision on whether to buy it or not.

Although Shyg does not exclude that Aval can be purchased by Raiffeisenbank-Ukraine (RBU) by the end of summer. RBU is a subsidiary of Raiffeisen International. RBU intends to buy 88% stake in Aval. Its own capital amounted to USD 250mn, as on Apr 1, 2005.

In beginning of 2005 Scandinavian SEB banking group acquires Ukrainian Agio bank for USD 30mn.

The recent meeting of Ukrainian president Victor Yushenko with CEOs of Raiffeisen International that took place in Kyiv on July 6 confirms the possibility of forthcoming Aval bank sale.

It seems that Aval will become the first Ukrainian big bank to be owned by an international banking group. The fact the sides still did not unveil the details of the deal can be regarded as attempt to keep the purchasing price in secret until the last minute. In fact this deal will determine the preliminary price for big Ukrainian banks and can influence the plans of another bidders.

To remind you it the beginning of 2005 Scandinavian SEB banking group through its subsidiary Vilniaus Bankas bought Ukrainian Agio bank. Gitanas Nauseda Vilniaus Bankas CEO unveiled lately to IntelliNews that the price paid for the banks was USD 30thsd. This sum cannot be regarded as a tentative price for big Ukrainian banks, we assure.

Polish banks increase their activities in Ukraine.

Interest from international banks to Ukrainian banks already formed a trend. In mid June this year PKO Bank Polski S.A. continued acquisition of Kredit Bank's (KB) shares. On Aug 24, 2004 PKO Bank Polski S.A. bought KB's 66.65% stake from another Polish bank, Kredyt Bank S.A. EBRD owns 28.2% in KB. The remaining 5.1% stake is dispersed between 8thsd minority shareholders.

PKO is interested to increase its stake in the bank to 95%-100%.

Besides PKO Bank Polski S.A. intends to give KB a USD 7mn subordinated loan for 8 years. KB (until 2001 Western-Ukrainian commercial bank) was founded in 1990 and is the largest bank in the Western part of Ukraine. KB's net assets made up USD 300.4mn, while the credit portfolio amounted to USD 215.5mn on Apr 1, 2005. KB's net profit in Q1/05 was USD 306thsd.

Another Polish bank Pecaio informed about its plans to increase activities in Ukraine. In particular the bank intends to enlarge its credit portfolio from EUR 30mn to EUR 100-120mn. Besides, after merger of German HVB with Italian Uni Credit (owner of Pecaio 57%), it is supposed that Ukrainian assets of both banks would be combined.

Belgium Dexia Bank intends to enter Ukrainian market.

Also Belgium Dexia Bank intends to enter Ukraine market, the Association of Ukrainian banks informed (AUB) on June 8, 2005. The exact date of its entrance in the Ukrainian market will soon be disclosed. Dexia Bank was founded in 1860 as Gemeentekrediet Bank of Belgium. It was aimed to support investment activity in big cities.

The bank merged with Credit Locale de France in 1996, creating Belgium-France banking Dexia Group.

Latvian Parex Banka also plans to intensify its activities in Ukraine and will use for this purpose a part of its issued EUR 100mn Eurobonds, Valery Kargin, the president of the bank informed on June 6. The Eurobonds were issued in May 2005. The organizers of the issue were JP Morgan and Credit

Suisse First Boston. The bonds have 3-year maturity and 4.75% interest yield.

At present Parex Banka has its representative office in Kyiv and plans to open another one in Dnepropetrovsk. Besides, affiliated with the Parex Group asset-managing company Parex Asset Management has domestic subsidiary, Parex Asset Management Ukraine.

S&P confirms recovery of Ukrainian banking system.

At last we should take into consideration the recent report of Standard & Poor's, issued on June 23. According to it the Ukrainian banking system recovered completely, S&P forecasts the fast growing of banks' assets during the coming year. S&P also predicts the rise of competition the sector.

The agency notes that National Bank's (NBU) steps taken at the end of last year helped to avoid mass cash withdrawals (caused by political situation).

These measures supported banks' liquidity and averted mass defaults of Ukrainian financial institutions. "Nevertheless, a number of important factors driving the future financial stability of individual banks and the industry as a whole still remain uncertain," S&P credit analyst Irina Penkina comments. "These primarily include the effects of the re-privatization process and the economic reforms of domestic corporates and financial-industrial groups, as well as the evolution of the banks' regulatory regime".

We expect large number of bank purchases in 2006.

Based on S&P's recommendations and because of the amendments to banking legislation passed we can state that favorable conditions for foreign banks' entrance into Ukrainian financial market were created.

Clearly it is a decision of a bank whether or not to enter Ukrainian market. However, state authorities significantly improved the regulations for their efficient operations in the country.

We expect large amount of bank purchases deals in the 2006. By then it will be possible to estimate the political risks due to next year's parliamentary elections.

This news was monitored by the ArtUkraine Monitoring Service for The Action Ukraine Report. IntelliNews - Ukraine This Week



Інформація-або

Exhibit 13



Aval Bank's majority shareholders have taken a decision on selling 93.5% of the shares to Raiffeisen International

22.08.2005

Kyiv, August 22.- The majority shareholders of Bank Aval have taken a decision on selling their stake of 93.5% to Raiffeisen International (Vienna, Austria). That was reported by the Bank's Press Center with reference to Chairman of the Board of JSPPB Aval Oleksandr DERKACH.

In his words, the relevant agreement was signed by the parties on 20 August this year. In accordance with the agreement with Raiffeisen International, the transaction price will not be disclosed. At the same time, as O. DERKACH reported, according to the given agreement, the minor shareholders of Bank Aval will obtain the right to sell their shares to Raiffeisen International during six months after the final legalization of the transaction at the price of selling shares of the majority stake.

Implementation of the agreement between Bank Aval and Raiffeisen International will be carried out during one or two months in accordance with the requirements of the Ukrainian and Austrian legislations.

As O. DERKACH reminded, the negotiations on a probability of selling a controlling interest of Bank Aval were started by the majority shareholders in January 2005. Their activation and successful completion were to a considerable extent conditioned by attraction of Merrill Lynch and FinPoint Investment Advisors, the legal firms Skadden Arps Slate Meagher and Flom LLP, and also the firm Shevchenko, Didkovsky and Partners as partners in conducting of the transaction.

An intention of Raiffeisen International to essentially increase its share in the Ukrainian financial market, on the one side, and a ramified regional network of Bank Aval, its stable financial position and successful cooperation with leading international financial organizations for many years, on the other side, played the key role in the successful negotiations."

Raiffeisen International is a steering unit for the subdivisions of Raiffeisen Zentralbank Österreich AG (RZB) in Central and Eastern Europe (CEE). Shares of Raiffeisen International are traded on the Vienna Stock Exchange. RZB owns 70 per cent of the stock, the rest is owned by institutional and private investors, including the European Bank for Reconstruction and Development and the International Finance Corporation. Before that, Raiffeisen International has operated the leading banking network in CEE with subsidiaries and leasing companies in 16 countries of the region and more than 5.7 mn clients, served through above 970 branches.

Bank Aval was founded in 1992. Currently it is one of the largest banks in Ukraine with a regional network of 1,400 subdivisions. The Bank provides a full range of banking services to corporate and private clients. The net assets of the Bank as of 1 June 2005 made up 15.019 billion hryvnias, the balance capital — Hr 1.318 bn, the authorized capital — Hr1 bn. The Bank serves 214,000 corporate customers and some 4 mn private clients.

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Exhibit 14

CABINET CANCELS 69 ENTREPRENEURSHIP REGULATORY ACTS

Ukrainian News Agency, Kyiv, Ukraine, Thu, August 18, 2005

KYIV - The Cabinet of Ministers has cancelled its 69 resolutions in the area of regulation of activity of entrepreneurs. Prime Minister Yulia Tymoshenko made the statement at a press conference, commenting on the decision passed at the Cabinet of Ministers meeting on August 17.

"Yesterday the government made its first step: 69 acts of government; at that the acts that kept the most corruptive millstone on the neck of entrepreneurs were annulled in full," she said. According to the prime minister, at its next meeting the Cabinet of Ministers plans to cancel 119 entrepreneurship regulatory documents more.

Tymoshenko said that in general she is pleased with the pace of work of the authority on revision of regulatory acts and voiced hope that by September 1, according to President Viktor Yushenko's commission, all regulatory acts of central and local authorities hampering the work of enterprises will be cancelled.

As Ukrainian News reported earlier, the Cabinet of Ministers, ministries and regional state administrations plan to cancel 2,249 acts regulating entrepreneurial activity by September 1.

Speaking at July 9 congress of the Our Ukraine People's Union party, Yushenko has promised that the new regulatory policy will be presented and that 1,300 acts with which the ministries and agencies regulate business will be nullified by September 1.

Presidential decree No.901/2005 of July 1 entitled "On Certain Measures on Implementation of the Government's Regulatory Policy" directed the Cabinet of Ministers to systematize and harmonize regulatory acts and significantly reduce their number by September 1.

(Source: "The Action Ukraine Report - AUR" - Number 544, August 22, 2005)

Exhibit 15

FT MARKETS: Ukraine receives S&P upgrade

By Päivi Munter

Financial Times; May 11, 2005

Ukraine's credit ratings were upgraded yesterday by Standard & Poor's, which cited improved prospects for a transparent economy and the rule of law in the country following last year's popular uprising that brought Viktor Yushchenko the presidency.

S&P raised Ukraine's foreign currency rating by one notch to the speculative grade category of BB- from B+ and the local currency rating by two notches to BB from B+. The outlook is stable.

The move brought S&P's foreign currency rating to par with the assessment by rival Fitch, while Moody's has Ukraine one notch lower at B1 with a stable outlook.

Helena Hessel, credit analyst at S&P, said: "Ukraine's improved creditworthiness reflects an enhanced political and policy environment. The new president . . . advocates transparency, the rule of law and democratic values, which should lead to the implementation of political, institutional and structural reforms necessary to transform Ukraine into a country with an open, democratic political system and a market-based economy."

Ukraine's economy has been growing strongly over the past few years, although from a low base.

Growth has flagged since the new regime took over as uncertainty on ownership of vital industries has hit business investment. The government is yet to unveil the list of privatised state companies it plans to reauction.

During the administration of the previous president, Leonid Kuchma, many large companies were sold to well-connected businessmen at below-market prices.

S&P said the government faced challenges from rising inflation and heavy pressure on government spending.

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Source: <http://news.ft.com/cms/s/1688c232-c247-11d9-866a-00000e2511c8.html>

Exhibit 16

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Transparency International Corruption Perceptions Index 2004

Corruption is rampant in 60 countries, and the public sector is plagued by bribery, says TI

Transparency International's Corruption Perceptions Index 2004 ranks a record 146 countries; most oil-producing nations are prone to high corruption

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London, 20 October 2004 --- "Corruption in large-scale public projects is a daunting obstacle to sustainable development, and results in a major loss of public funds needed for education, healthcare and poverty alleviation both in developed and developing countries," said Transparency International (TI) Chairman Peter Eigen today at the launch of the TI Corruption Perceptions Index 2004.

"If we hope to reach the Millennium Development Goal of halving the number of people living in extreme poverty by 2015, governments need to seriously tackle corruption in public contracting," said Eigen. TI estimates that amount lost due to bribery in government procurement is at least US\$ 400 billion per year worldwide.

A total of 106 out of 146 countries score less than 5 against a clean score of 10, according to the new index, published today by Transparency International, the leading non-governmental organisation fighting corruption worldwide. Sixty countries score less than 3 out of 10, indicating rampant corruption. Corruption is perceived to

be most acute in Bangladesh, Haiti, Nigeria, Chad, Myanmar, Azerbaijan and Paraguay, all of which have a score of less than 2.

"Corruption robs countries of their potential," said Eigen. "As the Corruption Perceptions Index 2004 shows, oil-rich Angola, Azerbaijan, Chad, Ecuador, Indonesia, Iran, Iraq, Kazakhstan, Libya, Nigeria, Russia, Sudan, Venezuela and Yemen all have extremely low scores. In these countries, public contracting in the oil sector is plagued by revenues vanishing into the pockets of western oil executives, middlemen and local officials."

TI urges western governments to oblige their oil companies to publish what they pay in fees, royalties and other payments to host governments and state oil companies. "Access to this vital information will minimise opportunities for hiding the payment of kickbacks to secure oil tenders, a practice that has blighted the oil industry in transition and post-war economies," said Eigen.

"The future of Iraq depends on transparency in the oil sector," added Eigen. "The urgent need to fund postwar construction heightens the importance of stringent transparency requirements in all procurement contracts," he continued. "Without strict anti-bribery measures, the reconstruction of Iraq will be wrecked by a wasteful diversion of resources to corrupt elites."

According to TI Vice Chair Rosa Inés Ospina Robledo, "across the globe, international donors and national governments must do more to ensure transparency in public procurement by introducing no-bribery clauses in all major projects." Speaking in Bogotá, Colombia, today, she said: "Tough sanctions are needed against companies caught bribing, including forfeit of the contract and blacklisting from future bidding."

Tenders should include objective award criteria and public disclosure of the entire process, argues TI. Exceptions to open competitive bidding must be kept to a minimum, and explained and recorded, since limited bidding and direct contracting are particularly prone to manipulation and corruption. Public contracting must be monitored by independent oversight agencies and civil society.

"Companies from OECD countries must fulfil their obligations under the OECD Anti-Bribery Convention and stop paying bribes at home and abroad," said Rosa Inés Ospina Robledo. "With the spread of anti-bribery legislation, corporate governance and anti-corruption compliance codes, managers have no excuse for paying bribes."

The Corruption Perceptions Index is a poll of polls, reflecting the perceptions of business people and country analysts, both resident and non-resident. This year's Corruption Perceptions Index draws on 18 surveys provided to Transparency International between 2002 and 2004, conducted by 12 independent institutions.

Countries with a score of higher than 9, with very low levels of perceived corruption, are predominantly rich countries, namely Finland, New Zealand, Denmark, Iceland, Singapore, Sweden and Switzerland. "But the poorest countries, most of which are in the bottom half of the index, are in greatest need of support in fighting corruption," said Eigen.

On the basis of data from sources that were used for both the 2003 and 2004 index, since last year an increase in perceived corruption can be observed for Bahrain, Belize, Cyprus, Dominican Republic, Jamaica, Kuwait, Luxembourg, Mauritius, Oman, Poland, Saudi Arabia, Senegal, and Trinidad and Tobago.

On the same basis, a fall in corruption was perceived in Austria, Botswana, Czech Republic, El Salvador, France, Gambia, Germany, Jordan, Switzerland, Tanzania, Thailand, Uganda, United Arab Emirates and Uruguay.

The index includes only those countries that feature in at least three surveys. As a result, many countries – including some which could be among the most corrupt – are missing because there simply is not enough survey data available.

The statistical work on the index was coordinated by Professor Johann Graf Lambsdorff at Passau University in Germany, advised by a group of international specialists.

London, 20 October 2004

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Table 1: TI Corruption Perceptions Index 2004

This table was compiled at the University of Passau on behalf of Transparency International. For information on data and methodology, please consult the frequently asked questions and the framework document.

TI Corruption Perceptions Index 2004					Survey reference**** (for more details, see table of sources)																
Country Rank	Country	2004 CPI Score*	Confidence Range**	Surveys Used***	1 EPS 2002	2 CU 2003	3 EIU 2004	4 FH 2004	5 II 2003	6 IMD 2002	7 IMD 2003	8 IMD 2004	9 MDB 2002	10 MIG 2004	11 PERC 2002	12 PERC 2003	13 PERC 2004	14 T/GI 2002	15 WMRC 2004	16 WEF 2002	17 WEF 2003
1	Finland	9,7	9.5 - 9.8	9			#			#	#	#		#					#	#	#
2	New Zealand	9,6	9.4 - 9.6	9			#			#	#	#		#					#	#	#
3	Denmark	9,5	9.3 - 9.7	10		#	#			#	#	#		#					#	#	#
	Iceland	9,5	9.4 - 9.7	8						#	#	#		#					#	#	#
5	Singapore	9,3	9.2 - 9.4	13			#			#	#	#		#	#	#	#	#	#	#	#
6	Sweden	9,2	9.1 - 9.3	11		#	#			#	#	#		#					#	#	#
7	Switzerland	9,1	8.9 - 9.2	10			#			#	#	#		#					#	#	#
8	Norway	8,9	8.6 - 9.1	9			#			#	#	#		#					#	#	#
9	Australia	8,8	8.4 - 9.1	15		#	#			#	#	#		#	#	#	#	#	#	#	#
10	Netherlands	8,7	8.5 - 8.9	10			#			#	#	#		#					#	#	#
11	United Kingdom	8,6	8.4 - 8.8	12		#	#			#	#	#		#					#	#	#
12	Canada	8,5	8.1 - 8.9	12		#	#			#	#	#		#					#	#	#
13	Austria	8,4	8.1 - 8.8	10			#			#	#	#		#					#	#	#
	Luxembourg	8,4	8.0 - 8.9	7						#	#	#		#					#	#	#
15	Germany	8,2	8.0 - 8.5	11		#	#			#	#	#		#					#	#	#
16	Hong Kong	8,0	7.1 - 8.5	13			#			#	#	#		#	#	#	#	#	#	#	#
17	Belgium	7,5	7.1 - 8.0	10			#			#	#	#		#					#	#	#
	Ireland	7,5	7.2 - 7.9	10		#	#			#	#	#		#					#	#	#
	USA	7,5	6.9 - 8.0	14			#			#	#	#		#	#	#	#	#	#	#	#
20	Chile	7,4	7.0 - 7.8	11		#	#			#	#	#		#					#	#	#
21	Barbados	7,3	6.6 - 7.6	3			#							#					#		
22	France	7,1	6.8 - 7.6	12		#	#			#	#	#		#					#	#	#
	Spain	7,1	6.7 - 7.4	11		#	#			#	#	#		#					#	#	#
24	Japan	6,9	6.2 - 7.4	15		#	#			#	#	#		#	#	#	#	#	#	#	#
25	Malta	6,8	5.3 - 8.2	4										#					#	#	#
26	Israel	6,4	5.6 - 7.1	10		#	#			#	#	#		#					#	#	#
27	Portugal	6,3	5.8 - 6.8	9			#			#	#	#		#					#	#	#
28	Uruguay	6,2	5.9 - 6.7	6			#							#					#	#	#
29	Oman	6,1	5.1 - 6.8	5		#	#							#					#		
	United Arab Emirates	6,1	5.1 - 7.1	5			#							#					#		
31	Botswana	6,0	5.3 - 6.8	7		#	#							#					#	#	#
	Estonia	6,0	5.6 - 6.7	12	#	#	#	#		#	#	#		#					#	#	#
	Slovenia	6,0	5.6 - 6.6	12	#	#	#	#		#	#	#		#					#	#	#
34	Bahrain	5,8	5.5 - 6.2	5						#	#	#		#					#	#	#
35	Taiwan	5,6	5.2 - 6.1	15		#	#			#	#	#		#	#	#	#	#	#	#	#
36	Cyprus	5,4	5.0 - 5.8	4		#	#												#		

37	Jordan	5,3	4,6 - 5,9	9			#	#	#	#	#	#	#	#	#	#	#	#	#
38	Qatar	5,2	4,6 - 5,6	4			#	#	#	#	#	#	#	#	#	#	#	#	#
39	Malaysia	5,0	4,5 - 5,6	15			#	#	#	#	#	#	#	#	#	#	#	#	#
	Tunisia	5,0	4,5 - 5,6	7			#	#	#	#	#	#	#	#	#	#	#	#	#
41	Costa Rica	4,9	4,2 - 5,8	8			#	#	#	#	#	#	#	#	#	#	#	#	#
42	Hungary	4,8	4,6 - 5,0	12	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Italy	4,8	4,4 - 5,1	10			#	#	#	#	#	#	#	#	#	#	#	#	#
44	Kuwait	4,6	3,8 - 5,3	5			#	#	#	#	#	#	#	#	#	#	#	#	#
	Lithuania	4,6	4,0 - 5,4	9	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	South Africa	4,6	4,2 - 5,0	11	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
47	South Korea	4,5	4,0 - 4,9	14			#	#	#	#	#	#	#	#	#	#	#	#	#
48	Seychelles	4,4	3,7 - 5,0	3			#	#	#	#	#	#	#	#	#	#	#	#	#
49	Greece	4,3	4,0 - 4,8	9			#	#	#	#	#	#	#	#	#	#	#	#	#
	Suriname	4,3	2,1 - 5,8	3			#	#	#	#	#	#	#	#	#	#	#	#	#
51	Czech Republic	4,2	3,7 - 4,9	11	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	El Salvador	4,2	3,3 - 5,1	7			#	#	#	#	#	#	#	#	#	#	#	#	#
	Trinidad and Tobago	4,2	3,6 - 5,2	6			#	#	#	#	#	#	#	#	#	#	#	#	#
54	Bulgaria	4,1	3,7 - 4,6	10	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Mauritius	4,1	3,2 - 4,8	5			#	#	#	#	#	#	#	#	#	#	#	#	#
	Namibia	4,1	3,5 - 4,6	7	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
57	Latvia	4,0	3,8 - 4,3	8	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Slovakia	4,0	3,6 - 4,5	11	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
59	Brazil	3,9	3,7 - 4,1	11			#	#	#	#	#	#	#	#	#	#	#	#	#
60	Belize	3,8	3,4 - 4,1	3			#	#	#	#	#	#	#	#	#	#	#	#	#
	Colombia	3,8	3,4 - 4,1	10			#	#	#	#	#	#	#	#	#	#	#	#	#
62	Cuba	3,7	2,2 - 4,7	4			#	#	#	#	#	#	#	#	#	#	#	#	#
	Panama	3,7	3,4 - 4,2	7			#	#	#	#	#	#	#	#	#	#	#	#	#
64	Ghana	3,6	3,1 - 4,1	7			#	#	#	#	#	#	#	#	#	#	#	#	#
	Mexico	3,6	3,3 - 3,8	11			#	#	#	#	#	#	#	#	#	#	#	#	#
	Thailand	3,6	3,3 - 3,9	14			#	#	#	#	#	#	#	#	#	#	#	#	#
67	Croatia	3,5	3,3 - 3,8	9	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Peru	3,5	3,3 - 3,7	8	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Poland	3,5	3,1 - 3,9	13	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Sri Lanka	3,5	3,1 - 3,9	8			#	#	#	#	#	#	#	#	#	#	#	#	#
71	China	3,4	3,0 - 3,8	16			#	#	#	#	#	#	#	#	#	#	#	#	#
	Saudi Arabia	3,4	2,7 - 4,0	5			#	#	#	#	#	#	#	#	#	#	#	#	#
	Syria	3,4	2,8 - 4,1	5			#	#	#	#	#	#	#	#	#	#	#	#	#
74	Belarus	3,3	1,9 - 4,8	5	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Gabon	3,3	2,1 - 3,7	3			#	#	#	#	#	#	#	#	#	#	#	#	#
	Jamaica	3,3	2,8 - 3,7	6			#	#	#	#	#	#	#	#	#	#	#	#	#
77	Benin	3,2	2,0 - 4,3	3			#	#	#	#	#	#	#	#	#	#	#	#	#
	Egypt	3,2	2,7 - 3,8	8			#	#	#	#	#	#	#	#	#	#	#	#	#
	Mali	3,2	2,2 - 4,2	5			#	#	#	#	#	#	#	#	#	#	#	#	#
	Morocco	3,2	2,9 - 3,5	7			#	#	#	#	#	#	#	#	#	#	#	#	#
	Turkey	3,2	2,8 - 3,7	13	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
82	Armenia	3,1	2,4 - 3,7	5	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Bosnia and Herzegovina	3,1	2,7 - 3,5	7	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Madagascar	3,1	1,8 - 4,4	4			#	#	#	#	#	#	#	#	#	#	#	#	#
85	Mongolia	3,0	2,6 - 3,2	3			#	#	#	#	#	#	#	#	#	#	#	#	#
	Senegal	3,0	2,5 - 3,5	6			#	#	#	#	#	#	#	#	#	#	#	#	#
87	Dominican Republic	2,9	2,4 - 3,3	6			#	#	#	#	#	#	#	#	#	#	#	#	#
	Iran	2,9	2,2 - 3,4	5			#	#	#	#	#	#	#	#	#	#	#	#	#
	Romania	2,9	2,5 - 3,4	12	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
90	Gambia	2,8	2,2 - 3,4	5			#	#	#	#	#	#	#	#	#	#	#	#	#
	India	2,8	2,6 - 3,0	15			#	#	#	#	#	#	#	#	#	#	#	#	#
	Malawi	2,8	2,2 - 3,7	5			#	#	#	#	#	#	#	#	#	#	#	#	#
	Mozambique	2,8	2,4 - 3,1	7			#	#	#	#	#	#	#	#	#	#	#	#	#
	Nepal	2,8	1,6 - 3,4	3			#	#	#	#	#	#	#	#	#	#	#	#	#
	Russia	2,8	2,5 - 3,1	15	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Tanzania	2,8	2,4 - 3,2	7			#	#	#	#	#	#	#	#	#	#	#	#	#
97	Algeria	2,7	2,3 - 3,0	6			#	#	#	#	#	#	#	#	#	#	#	#	#
	Lebanon	2,7	2,1 - 3,2	5			#	#	#	#	#	#	#	#	#	#	#	#	#
	Macedonia	2,7	2,3 - 3,2	7	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#

	Nicaragua	2,7	2.5 - 3.0	7	#	#											#	#	#	
	Serbia and Montenegro	2,7	2.3 - 3.0	7		#	#										#	#	#	
102	Eritrea	2,6	1.6 - 3.4	3		#												#		
	Papua New Guinea	2,6	1.9 - 3.4	4		#	#											#		
	Philippines	2,6	2.4 - 2.9	14		#	#		#	#	#	#	#	#	#	#	#	#	#	#
	Uganda	2,6	2.1 - 3.1	7		#	#											#	#	#
	Vietnam	2,6	2.3 - 2.9	11		#	#											#	#	#
	Zambia	2,6	2.3 - 2.9	6		#	#											#		#
		Albania	2,5	2.0 - 3.0	4	#		#											#	
108	Argentina	2,5	2.2 - 2.8	11		#	#		#	#	#	#	#	#	#	#	#	#	#	
	Libya	2,5	1.9 - 3.0	4		#	#		#									#		
	Palestinian Authority	2,5	2.0 - 2.7	3					#									#		
112	Ecuador	2,4	2.3 - 2.5	7		#	#										#	#	#	
	Yemen	2,4	1.9 - 2.9	5		#	#		#									#	#	
114	Congo, Republic of	2,3	2.0 - 2.7	4		#	#											#		
	Ethiopia	2,3	1.9 - 2.9	6		#	#											#	#	
	Honduras	2,3	2.0 - 2.6	7		#	#											#	#	
	Moldova	2,3	2.0 - 2.8	5	#	#	#											#	#	
	Sierra Leone	2,3	2.0 - 2.7	3		#	#											#		
	Uzbekistan	2,3	2.1 - 2.4	6	#	#	#	#										#		
	Venezuela	2,3	2.2 - 2.5	11		#	#		#	#	#	#	#	#	#	#	#	#	#	
	Zimbabwe	2,3	1.9 - 2.7	7		#	#											#	#	
122	Bolivia	2,2	2.1 - 2.3	6		#	#											#	#	
	Guatemala	2,2	2.0 - 2.4	7		#	#											#	#	
	Kazakhstan	2,2	1.8 - 2.7	7	#	#	#	#										#	#	
	Kyrgyzstan	2,2	2.0 - 2.5	5	#	#	#	#										#	#	
	Niger	2,2	2.0 - 2.5	3		#	#											#	#	
	Sudan	2,2	2.0 - 2.3	5		#	#		#									#	#	
	Ukraine	2,2	2.0 - 2.4	10	#	#	#	#										#	#	
128	Cameroon	2,1	1.9 - 2.3	5		#	#											#	#	
	Iraq	2,1	1.3 - 2.8	4		#	#		#									#	#	
	Kenya	2,1	1.9 - 2.4	7		#	#											#	#	
	Pakistan	2,1	1.6 - 2.6	7		#	#		#									#	#	
133	Angola	2,0	1.7 - 2.1	5		#	#											#	#	
	Congo, Democratic Republic	2,0	1.5 - 2.2	3		#												#		
	Cote d'Ivoire	2,0	1.7 - 2.2	5		#	#											#	#	
	Georgia	2,0	1.6 - 2.3	7	#	#	#	#										#	#	
	Indonesia	2,0	1.7 - 2.2	14		#	#		#	#	#	#	#	#	#	#	#	#	#	
	Tajikistan	2,0	1.7 - 2.4	4		#	#		#									#	#	
	Turkmenistan	2,0	1.6 - 2.3	3		#	#											#	#	
140	Azerbaijan	1,9	1.8 - 2.0	7	#	#	#	#										#	#	
	Paraguay	1,9	1.7 - 2.2	7		#	#											#	#	
142	Chad	1,7	1.1 - 2.3	4		#	#											#	#	
	Myanmar	1,7	1.5 - 2.0	4		#	#											#	#	
144	Nigeria	1,6	1.4 - 1.8	9		#	#		#									#	#	
145	Bangladesh	1,5	1.1 - 1.9	8		#	#		#									#	#	
	Haiti	1,5	1.2 - 1.9	5		#	#		#									#	#	

Explanatory notes

*CPI Score relates to perceptions of the degree of corruption as seen by business people and country analysts and ranges between 10 (highly clean) or (highly corrupt).

** Confidence range provides a range of possible values of the CPI score. This reflects how a country's score may vary, depending on measurement precision. Nominally, with 5 percent probability the score is above this range and with another 5 percent it is below. However, particularly when only few sources (n) are available an unbiased estimate of the mean coverage probability is lower than the nominal value of 90%.

*** Surveys used refers to the number of surveys that assessed a country's performance. 18 surveys and expert assessments were used and at least 3 were required for a country to be included in the CPI.

A "#" is given if the source mentioned in the column contributed to the assessment of a country.

****** Abbreviations are:**

BEEPS: Business Environment and Enterprise Performance Survey

CU: Columbia University

EIU: Economist Intelligence Unit
FH: Freedom House, Nations in Transit
II: Information International
IMD: World Competitiveness Report of the Institute for Management Development
MDB: A Multinational Development Bank
MIG: Merchant International Group
PERC: Political and Economic Risk Consultancy, Hong Kong
TI/GI: Gallup International on behalf of Transparency International
WEF: Global Competitiveness Report of the World Economic Forum
WMRC: World Markets Research Centre

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CERTIFICATE OF SERVICE

I, Martin J. Lewin, hereby certify that a copy of this document filed on behalf of Lemman Commodities, SA and Azovstal Iron and Steel Ltd. was served upon the following in accord with the Department's Regulations this 31st day of August 2005:

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**BEFORE THE
UNITED STATES DEPARTMENT OF COMMERCE
WASHINGTON, D.C. 20230**

**Case No. A-823-812
Changed Circumstances
Review of the Antidumping
Duty Order on
Carbon and Certain Alloy
Steel Wire Rod from
Ukraine**

PUBLIC DOCUMENT

August 31, 2005

**REBUTTAL COMMENTS OF
LEMAN COMMODITIES, SA
AND
AZOVSTAL IRON AND STEEL WORKS LTD.**

**INQUIRY INTO UKRAINE'S STATUS AS A NON-MARKET ECONOMY
UNDER THE ANTIDUMPING DUTY LAWS**

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These rebuttal comments are submitted on behalf of our clients, Leman Commodities, SA (“Leman”), and Azovstal Iron and Steel Works, Ltd. (“Azovstal”), in connection with the Commerce Department’s (“the Department”) Changed Circumstances Review of the Antidumping Duty Order on Carbon and Certain Alloy Steel Wire Rod from Ukraine. Leman and Azovstal are, respectively, an exporter and a manufacturer of steel products from Ukraine.

Summary of Rebuttal Comments

As detailed in these rebuttal comments, Leman and Azovstal support the position of the Government of Ukraine, set forth in its comments of April 2005¹, that pursuant to Section 771(18) of the Trade Act of 1930, as amended (the Act”), 19 U.S.C. § 1677(18), the Commerce Department should revoke Ukraine’s current status as a “non-market economy country” (“NME”) for purposes of the U.S. antidumping laws.

As detailed below, the comments in opposition to granting Ukraine market economy status reflect a misunderstanding or mischaracterization of Ukrainian law and Ukraine’s economic development. Ukraine has implemented significant changes in its laws and their implementation since the Department last reviewed its market economy status in 1997. Moreover, the election of President Yushchenko late last year marks a major turning point in Ukraine’s economic and political development and has further accelerated market oriented economic and legal reforms.

¹ “Information on Market Status of Economy of Ukraine in the Context of U.S. Antidumping Legislation,” April 2005 (hereafter, “Submission of the Government of Ukraine”).

Overview of Ukraine's Development as a Market Economy

In reviewing a country's NME status under section 771(18)(A) of the Act, section 771(18)(B) of the Act requires that the Department take into account the following six factors:

- (1) The extent to which the currency of the foreign country is convertible into the currency of other countries.
- (2) The extent to which wage rates in the foreign country are determined by free bargaining between labor and management.
- (3) The extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country.
- (4) The extent of government ownership or control of the means of production.
- (5) The extent of government control over the allocation of resources and over the price and output decisions of enterprises.
- (6) Such other factors as the administering authority considers appropriate.

The Department's evaluation of these statutory criteria does not require that countries be judged against a theoretical model or a perfectly competitive *laissez-faire* economy. Instead, as the Department noted in its Decision to revoke Russia's NME status², the Department's determination is based on comparing the economic characteristics of the

² "Inquiry into the Status of the Russian Federation as a Non-Market Economy Under the U.S. Antidumping Law," Memorandum for Faryar Shirzad, Assistant Secretary, Import Administration through Jeff May, Office of Policy, June 6, 2002 (the "Russia Decision Memorandum").

country in question to how other market economies operate, recognizing that market economies around the world have many different forms and features. Although it is not necessary that the country fully meet every statutory factor relative to other market economies, the Department must determine that the factors, taken together, indicate that reforms have reached a threshold level such that the country can be considered to have a functioning market economy.

The Department's decision to revoke Russia's NME status is an important benchmark in the current proceeding. Like Russia, Ukraine has undergone a period of transition since the break up of the former Soviet Union to move from the Soviet Union's centrally planned economy to a market economy, necessitating a wide range of legal and structural reforms in the areas of pricing and trading rights, privatization, property rights, business structures, foreign investment, and monetary and exchange rate policies. As detailed in the Submission of the Government of Ukraine, there have been many positive developments in these areas, particularly since the Department last reviewed Ukraine's status as a market economy country in 1997. As a result of these developments, Ukraine today certainly has reached a threshold level such that the country can be considered to have a functioning market economy as much as, if not more than, Russia had reached when the Department revoked Russia's NME status in 2002.

In analyzing the current situation in Ukraine today, two fundamental issues must be underscored. First, Ukraine under President Kuchma made substantial progress in reforming Ukraine's economy from the period of 1997, when the Department last

substantively reviewed Ukraine's market economy status, but those reforms were marred by cronyism and corruption. Second, and even more important, with the historic election of President Yushchenko in December of last year and his forming a government in January of this year, a revolution has occurred in all aspects of Ukrainian society, and many of the remaining problems in the business environment in Ukraine are being eliminated day by day.

The importance of the Orange Revolution on Ukraine finally achieving a "threshold level" of market economy development cannot be overstated. This importance clearly was reflected in the recent testimony of Ambassador Daniel Fried, the State Department's Assistant Secretary for European and Eurasian Affairs, before the House International Relations Committee, Subcommittee on Europe and Emerging Threats.³ In his testimony, Ambassador Fried began by providing an assessment of the situation in Ukraine seven months after the Orange Revolution as follows:

At a pivotal moment in their nation's history, the Ukrainian people rejected a stolen election and chose freedom, democracy, and the rule of law over corruption and intimidation. In the weeks following the fraudulent November 21 second-round presidential vote, hundreds of thousands of ordinary Ukrainians braved snow, frigid temperatures, and a real threat of violence in order to peacefully take back control of their country's destiny and freely choose their leadership. Their courage and conviction captured the imagination of the world. We were, I submit, witnesses to a Ukrainian national identity taking shape through and thanks to a democratic transformation.⁴

³ "Developments In The Aftermath Of The Orange Revolution," hearing before the House International Relations Committee, Subcommittee on Europe and Emerging Threats, July 27, 2005, at Exhibit 1.

⁴ *Id.*

Ambassador Fried went on to note the difficulties confronting President Yushchenko and his government in implementing the broad and ambitious agenda they have set out for transforming Ukraine into a modern European state: High expectations; strong opposition; upcoming parliamentary elections; a diverse governing coalition; and maintaining good relations with its Russian neighbor, while seeking closer integration with the West. At the same time, he pointed out the significant successes the new government already has achieved, not only in the political and social area, but also in the economic area:

Despite this complex environment, President Yushchenko and his team have achieved significant successes in their first six months in office....

* * * * *

President Yushchenko and his team have also moved to combat endemic corruption by removing and sometimes prosecuting officials who abused their positions to enrich themselves, and by closing loopholes in legislation that allowed for graft. The anti-corruption campaign has already resulted in increased revenues from the Customs and Tax Services....

* * * * *

Delivering on its promise to increase the force of the market in the Ukrainian economy, the Yushchenko government has ended years of tax privileges for the powerful business oligarchies. After fierce debate, the Rada passed significant legislation related to WTO accession, lowering agricultural tariffs, reducing discriminatory trade measures, and strengthening protection of intellectual property rights.⁵

⁵ Id.

Fried also noted that the courts appear to be more independent and that while far from perfect, the government does appear to be more transparent and open about its business.

While Fried's testimony suggests more work should be done to further advance democratic and economic reforms, it is clear from his testimony that much already has been accomplished and the government is actively moving in the right direction in both areas.

The forward movement of Ukraine noted by Ambassador Fried since the Yushchenko Government assumed office comes against a backdrop of economic reform, albeit imperfect and marred by cronyism and corruption, in the years leading up to President Yushchenko forming the current government. In their comments, opponents of revocation of Ukraine's NME status cite language in various reports that note problems of cronyism, corruption and bureaucratic red tape in Ukraine's business sector under President Kuchma. However, these same reports all note the progress Ukraine had made in market reform in recent years.

For example, the European Bank of Reconstruction and Development ("EBRD") strategy report for 2005-2007 notes "Ukraine has made some progress in transition over the period of the last Strategy. This includes the introduction of tax reform, new civil and commercial codes as well as pension reform. The banking sector has grown rapidly, not only in terms of deposits and lending, but also with several new products, including mortgage lending. This has been accompanied by some strengthening of supervision and

progress in dealing with money laundering.”⁶ The EBRD Strategy Report further notes that “a significant amount of new legislation of direct relevance to the EBRD’s work had been enacted, including new Civil and Commercial Codes and new laws on money laundering, personal income tax, leasing, mortgages and pensions. Certain other new laws, such as the Financial Services Law, came into full force, during the Strategy period.”⁷ Overall, the EBRD Strategy Report indicates progress has been made in each of six areas of the EBRD’s focus during the period of 2002-2004, including, *inter alia*, encouraging privatization and commercialization of major utilities, development of the financial sector, financing for small and medium size enterprises and micro or small enterprises, and financing the private corporate sector.⁸

Similarly, the World Bank’s “Country Assistance Strategy Progress Report For Ukraine For 2004-2007”⁹ notes improvements in both the business environment and the agriculture sector: “The quality of the business environment improved from 1998 to 2002 mainly through reforms on business registration and government inspections. Introduction of a simplified tax for small business led to rapid incorporation of new entities and the reduction of the shadow economy.”¹⁰ The Report also notes the consolidation and rapid development of the financial sector, Ukraine’s removal from the FATF blacklist in 2004, advancing land ownership rights and agriculture sector reform, and transparency and accountability in solving accumulated energy sector problems,

⁶ “Strategy For Ukraine 2005-2007, as approved by the Board of Directors on 17 May 2005,” European Bank for Reconstruction and Development, p. 4 (hereafter, “EBRD Strategy Report”).

⁷ *Id.* at 16.

⁸ *Id.* at 9.

⁹ “The International Bank For Reconstruction And Development And The International Finance Corporation Country Assistance Strategy Progress Report For Ukraine For 2004-2007,” World Bank, 19 May 2005.

¹⁰ *Id.* at 12.

including the resolution of old debts and new governance and ownership structures necessary to attract needed investment, as among Ukraine's accomplishment's during the period of 2002-2004.¹¹

The U.S. Government itself recognized this progress in its "2005 Investment Climate Statement – Ukraine," explaining, "Over the past few years, Ukraine has liberalized its markets, reduced regulation, eliminated most licensing requirements, eliminated most restrictions on foreign exchange and began the transformation of the agricultural sector from state-run farms to private agriculture."¹² Similarly, the U.S. Agency for International Development noted:

The GOU [Government of Ukraine] pursued the development of a sounder financial system by making progress in accounting reform and through the establishment of an independent regulator for non-bank financial institutions. These institutional developments, together with strong economic growth, have stimulated the financial sector not only to grow, but also to develop new and more sophisticated products. Important legal reforms included the passage of a Civil Code, a Personal Income Tax Law and a Legal Entity Registration Law.¹³

These reports by their nature are intended to point out areas for improvement. As such, they point out shortcomings in Ukraine's business environment where improvements are needed. However, by focusing on these shortcomings and by magnifying them through references to outdated reports discussing past shortcomings Ukraine already has addressed, opponents of revocation of Ukraine's NME status seek to

¹¹ Id at 4-5.

¹² "2005 Investment Climate in Ukraine", US Department of State, <http://www.state.gov/e/eb/afd/2005/43044.htm>. ("2005 Investment Climate in Ukraine").

¹³ "Ukraine The Development Challenge", USAID, <http://www.usaid.gov/policy/budget/cbj2005/ee/ua.html>.

obscure “the good progress made across a broad front of legal and regulatory issues concerning the general business climate”¹⁴ in Ukraine. Of equal importance, opponents of revocation acknowledge, but ignore, the fundamental changes in government arising from the Orange revolution, particularly the new Ukrainian Government’s commitment to openness and transparency and to the elimination of corruption that underlie these reports' criticism of Ukraine’s business environment under the previous government.

Set forth below are detailed responses to the specific comments of the opponents of revocation of Ukraine’s NME status under each of the statutory criteria the Department must consider in making its revocation determination.

¹⁴ “Improving the Conditions for Enterprise Development and the Investment Climate for Domestic and International Investors in Ukraine: Legal Issues with regard to Business Operations and Investment,” OECD, September 2004, Preface.

Responses To The Specific Comments Of The Opponents Of Revocation

I. The extent to which the currency of the foreign country is convertible into the currency of other countries

In its April 2005 submission, the Government of Ukraine noted that on September 24, 1996, Ukraine officially undertook the obligation of Article VIII of the Articles of Agreement of the International Monetary Fund (“IMF Agreement”).¹⁵ Article VIII is the provision of the IMF Agreement setting forth “General Obligations of Members,” which provides that in addition to the obligations set forth in other articles of the IMF Agreement, each Member undertakes the obligations set forth in Article VIII itself. These include, *inter alia*, avoidance of restrictions on currency payment (Section 2), avoidance of discriminatory currency practices (Section 3), and obligations relating to convertibility of foreign-held balances (Section 4).¹⁶ In its Decision Memo on Russia’s status as an NME, the Department pointed to Russia’s agreement to assume IMF Article VIII obligations in its determination that the ruble was fully convertible for current account purposes.¹⁷ As such, it is an important consideration in the Department’s assessment of Ukraine under this criterion, supporting the convertibility of Ukraine’s currency.

¹⁵ Submission of Government of Ukraine at 1.

¹⁶ “Articles of Agreement of the International Monetary Fund, Article VIII – General Obligations of Members”, <http://www.imf.org/external/pubs/ft/aa/aa08.htm> at Exhibit 2.

¹⁷ Russia Decision Memorandum at 8.

Apart from noting that Ukraine had assumed IMF Article VIII obligations, the Submission of the Government of Ukraine also noted a number of positive changes in the sphere of currency exchange regulation in Ukraine. It noted that commercial banks can purchase and sell foreign currency on the interbank exchange market; that the National Bank of Ukraine ("NBU"), Ukraine's central bank, participates in the currency exchange market pursuant to Article 1(iii) of the IMF Agreement "To promote exchange stability, to maintain orderly exchange arrangements among members, and to avoid competitive exchange depreciation"; and that banking reforms were enacted in 2001. Each of these points to the convertibility of Ukraine's currency into foreign currency.

While Ukraine has enacted special laws to regulate the procedure and conditions for use of foreign currency within its borders¹⁸, with the National Bank of Ukraine ("NBU") ensuring currency control¹⁹ to avoid capital flight and money laundering, as a practical matter, Ukraine permits the free conversion of Ukrainian hryvnia ("hryvnia" or "UAH") into foreign currency.

For example, in Ukraine, prices can be denominated in foreign currency in any contract involving a foreign party²⁰. Parties to such contracts are also free to choose the form of payment, so long as this does not contradict other Ukrainian laws or international rules.²¹

¹⁸ Civil Code of Ukraine No. 435-IV dated 16 January 2003, Article 533.

¹⁹ Cabinet of Ministers Decree No. 15-93 "On the System of Currency Regulation and Currency Control" dated 19 February 1993, Article 12.

²⁰ Commercial Code of Ukraine No. 436-IV dated 16 January 2003, Article 189.

²¹ Law of Ukraine No. 959-XII "On Foreign Economic Activity" dated 16 April 1991, Article 14.

Ukrainian law permits both residents and non-residents to hold foreign currency in Ukraine²². Resident and non-resident legal entities may transfer foreign currencies within Ukraine through any bank or other financial institution that possesses a license to conduct such transfers -- and almost all banks possess such licenses.

When companies need to convert UAH into foreign currency, or vice versa, they can do so for a small fee at any bank holding a license to conduct such exchanges, and again, almost all banks possess such licenses. The banks themselves then trade foreign currency on Ukraine's Inter-bank Foreign Currency Market to facilitate the exchanges²³.

The NBU sets the official currency exchange rate in Ukraine²⁴. But the difference between the official NBU exchange rate and various unofficial exchange rates is insignificant. As of 1 August 2005, the official UAH to USD exchange rate was 5.05 to 1; the unofficial exchange rate was 5.03 UAH to 1 USD.

Also, since President Yushchenko took office, the Government of Ukraine has further liberalized currency conversion, for example, eliminating the requirement that 50 percent of foreign export earnings be converted into UAH.²⁵

²² Cabinet of Ministers Decree No. 15-93 "On the System of Currency Regulation and Currency Control" dated 19 February 1993, Article 2.

²³ Cabinet of Ministers Decree No. 15-93 "On the System of Currency Regulation and Currency Control" dated 19 February 1993, Article 6, Clause 1.

²⁴ Cabinet of Ministers Decree No. 15-93 "On the System of Currency Regulation and Currency Control" dated 19 February 1993, Article 8.

²⁵ Joint NBU and Cabinet of Ministers Resolution No. 215 "On Amendments to the Crisis-proof Measures for Financial Stability" dated 30 March 2005.

Despite this evidence that Ukraine's currency is fundamentally convertible, the comments in opposition to revocation make numerous claims that Ukraine's currency is not convertible. These claims are addressed below.

Ukraine imposes tight restrictions on the export of hard currency

The comments in opposition point to NBU Regulation 482 in claiming that the Government of Ukraine imposed tight restrictions on the export of hard currency in November 2004. Regulation 482 concerned the procedures for making payments relating to foreign investment and the convertibility of hryvnia into hard currency when making and liquidating such investments²⁶. Specifically, these regulations obliged foreign investors to open special investment accounts at Ukrainian banks, to convert foreign currency investments into hryvnia through these accounts, and to re-convert hryvnia proceeds into foreign currency for repatriation of profits. However, these restrictions did not restrict the export of hard currency from Ukraine.

Moreover, Regulation 482 was repealed in April of this year.²⁷ At present, foreign investors can make investments, pay for acquisitions, and receive their profits all in foreign currency. There is no longer a need to convert from foreign to domestic and back to foreign currencies, or to open special investment accounts for this purpose. By repealing this regulation, the new government has demonstrated its commitment to

²⁶ National Bank of Ukraine ("NBU") Regulation No. 482 "On Approving the Instruction on the Procedure for Making Monetary Foreign Investments in Ukraine and Returning to the Foreign Investor His Investments as well as Repatriation of Benefits" dated 14 October 2004.

²⁷ NBU Regulation No. 154 "On Nullifying Regulation No. 482 of the National Bank of Ukraine dated 14 October 2004", dated 29 April 2005.

protect the rights of foreign investors as guaranteed to them by Ukrainian law,²⁸ in particular, the rights to make investments in foreign currency and to repatriate profits without hindrance. The regulation's repeal also relieves foreign investors of the need to pay fees to the banks for services related to the investment accounts and to currency conversion.

Transactions over \$50,000 must be approved by the NBU

The claim of opponents to revocation of Ukraine's NME status that transactions over \$50,000 must be approved by the NBU²⁹ is simply incorrect. The "\$50,000 restriction," contained in Regulation No. 597, applies only to payments under agreements whereby non-residents render services, execute works or transfer intellectual property rights to residents, and to residents' debts to non-residents under promissory notes³⁰. The Government of Ukraine requires payments in excess of \$50,000 under these agreements be verified by the State Information and Analytical Center for Monitoring External Commodity Markets ("the Center"). The purpose of the verification is to confirm that the prices stated in a contract for works, services or the transfer of intellectual property rights are at market prices. As a general rule, it takes no longer than one business day for the Center to complete its verification. If the Center examines a contract submitted for its review, but refuses to issue a positive "price examination report" (i.e., refuses to confirm

²⁸ Commercial Code of Ukraine No. 436-IV dated 16 January 2003 and Law of Ukraine No. 93/96-VR "On the Foreign Investment Regime" dated 19 March 1996.

²⁹ See, e.g., Collier Shannon Scott Comments, p. 10.

³⁰ NBU Regulation No. 597 "On Monetary Settlements in National and Foreign Currency for the Benefit of Non-residents under Certain Operations" dated 30 December 2003.

that the price quoted in the contract accords with market prices), the Ukrainian resident must instead seek a permit from the NBU in order to transfer funds abroad

Moreover, the purpose of the \$50,000 restriction is not to "influence currency flows" or to "maximiz[e] the government's hard currency holdings", as asserted by opponents of revocation of Ukraine's NME status. On the contrary, Ukraine imposed this restriction in response to requests from international institutions that Ukraine crack down on money laundering operations. The types of agreements subject to Regulation 597 are commonly used in money laundering and capital flight schemes. As a result, the Government of Ukraine decided to more strictly scrutinize such transactions so as to prevent the laundering of money obtained by criminal means.

In conjunction with other recent reforms, these restrictions have helped the Government of Ukraine identify 56 potentially fraudulent funds transfers involving approximately 80 million hryvnia in value. While showing that the issues of capital flight and money laundering are real, these restrictions also have demonstrated their effectiveness, as the 80 million hryvnia figure is down nearly 50% from 2003, when the restrictions helped to prevent the illegal transfer of 152 million hryvnia out of Ukraine.

Viewed in this context, the "restrictions" on payments in excess of \$50,000 and other restrictions intended to prevent money laundering and capital flight are not contrary to market economy principles. On the contrary, they are reforms consistent with

international norms adopted by market economy countries. In this regard, the EBRD in its Strategy Report for 2005-2007 for Ukraine noted:

Following its blacklisting by the Financial Action Task Force on Money Laundering (FATF), Ukraine embarked upon a significant programme of reform addressing the FATF criticisms during 2002 and 2003. In particular, in June 2003, new anti-money laundering legislation entered into force and the legal framework is now deemed generally in line with the “*Forty Recommendations on Money Laundering*” and “*Eight Special Recommendations on Financing Terrorism*” issued by FATF. Following the enactment and implementation of these reforms, in February 2004, Ukraine was removed from the “*Non-Cooperative Countries and Territories*” list.³¹

The EBRD also included this regulation as among Ukraine’s major achievements during the 2002-2004 period.³²

The Department also has recognized that currency restrictions of this sort are not inconsistent with a country’s treatment as a market economy.³³

Foreign receipts must be deposited within 90 days of a transaction

Under Ukrainian law,³⁴ residents' receipts in foreign currency must be remitted to their foreign currency bank accounts in Ukraine within the payment terms specified in the

³¹ EBRD Strategy Report at 59.

³² Id. at 19.

³³ Russia Decision Memorandum at 8.

³⁴ Law of Ukraine No. 185/94-VR “On the Procedure for Making Foreign Currency Payments” dated 16 June 1994, Article 1.

relevant contracts, but in no case later than 90 calendar days³⁵ after the date of customs clearance of products being paid for (or in case of export of works/services or intellectual property rights, no later than 90 calendar days after the date of signing a statement confirming the execution of the work, provision of the service or transfer of the intellectual property rights). Extending this 90-day period for transfer of foreign currency receipts requires a license from the NBU. Like Regulation 597, this provision was enacted in order to combat money laundering and capital flight.

Ukraine requires NBU approval of all transfers of hard currency

This assertion, contained in the comments of opponents of revocation³⁶, also is incorrect. Aside from a limited number of transactions, exhaustively listed in Cabinet of Ministers Decree No.15-93 “On System of Currency Regulation And Currency Control” dated 19 February 1993, neither NBU approval nor licenses are required for transfers of hard currency, and certainly not for the purposes of most concern to foreign investors in Ukraine.

In this regard, foreign currency can be transferred outside of Ukraine in an amount below the threshold set by the NBU; if it was earlier lawfully brought into Ukraine; in payment to a non-resident for products, services, works, intellectual property rights and other property rights (except when the payment is for other foreign currency assets or as payment on a life insurance policy); as interest on a loan or profit from a foreign

³⁵ For export of products of shipbuilding enterprises and domestically produced pharmaceuticals, the term is 180 calendar days.

³⁶ Collier Shannon Scott Comments at 10.

investment; and as repatriation of funds previously invested in Ukraine, upon cessation of the investment. UAH can legally be transferred into Ukraine if previously legally exported from Ukraine. Individuals can open foreign currency accounts while staying abroad. Banks with an appropriate license can open corresponding accounts abroad. Diplomatic, consular, trade and other diplomatic representatives of Ukraine can open foreign currency accounts abroad. Branches and representative offices of Ukrainian companies and organizations can open foreign currency accounts abroad.³⁷

Licenses are required for residents to provide and receive foreign currency loans, where the terms and amounts of such loans exceed the limits established by law; for using foreign currency in Ukraine as a means of payment or collateral; for depositing foreign currency assets in accounts outside of Ukraine, except as noted above; and for investing abroad, including by means of purchasing securities.³⁸ Again, these limited situations where licenses are required from the NBU are intended to prevent money laundering and avoid capital flight, not to impinge upon currency convertibility.

Ukraine has undertaken substantial intervention in the foreign exchange market

Opponents' claim that Ukraine substantially intervenes in the foreign exchange market is both incorrect and irrelevant. In this regard, the U.S. Government itself recognizes that the hryvnia has floated freely since 2000.³⁹ Moreover, market economy

³⁷ Cabinet of Ministers Decree No. 15-93 "On the System of Currency Regulation and Currency Control" dated 19 February 1993, Article 5.

³⁸ Id.

³⁹ 2005 Investment Climate in Ukraine.

countries often have intervened in currency exchange markets to moderate volatile currency fluctuations. Between 1990 and 1995, the United States and Germany bought or sold foreign exchange on 83 days and 82 days respectively. Since 1995, the Federal Reserve Board intervened twice in coordination with other countries' central banks, and the European Central Bank also has intervened at least twice in Foreign Exchange markets. Japan continues to conduct regular foreign exchange interventions.⁴⁰

Final Comments on Currency Convertibility

The Department has explained that a particular country's integration into world markets is highly dependent upon the convertibility of its currency. The greater the extent of currency convertibility, for both trade and investment purposes, the greater are the supply and demand forces linking domestic market prices in the NME country to world market prices. The greater this linkage, the more market-based domestic prices tend to be.⁴¹ As detailed above, there is no question that today, Ukraine's currency is freely convertible for this purpose, with limited restrictions in effect to avoid money laundering and capital flight.

⁴⁰ Dollar Adjustment: How far? Against What?, edited by Fred Bergsten and John Williamson, Institute for International Economics, 2004, p. 259, available at: http://www.iie.com/publications/chapters_preview/382/11ie3780.pdf

⁴¹ "Antidumping Duty Investigation of Silicomanganese from Kazakhstan - Request for Market Economy Status," Memorandum for Faryar Shirzad, Assistant Secretary for Import Administration, through Jeffrey May, Director, Office of Policy, Import Administration, 25 March 2005 ("Kazakhstan Decision Memorandum"), p. 6.

The Department has recognized that limited restrictions for this purpose are not a bar to revocation of a country's NME status under Section 771(18) of the Act. As the Department noted in 2002 in revoking Russia's NME status:

Because of Russia's progress on currency convertibility, capital flight, and, to a lesser extent, dollarization, has been a concern of the Russian government. For this reason, the government has imposed certain currency controls, the scope and extent of which have varied over time. For example, in trade-related matters, importers making advance foreign exchange (FOREX) payments for imports must deposit a ruble equivalent of the FOREX payment with an authorized bank, which is returned only after the imported goods clear customs. To limit the under-invoicing of exports and the over-invoicing of imports, import- and export-related transactions must be screened and processed by government-authorized banks acting as currency control agents. Exporters must repatriate their foreign exchange earnings and must surrender 50 percent (recently reduced from 75 percent) to the CBR in exchange for rubles. Capital account transactions, as a general rule, are subject to licensing requirements. Controls on capital account transactions, tightened after the 1998 financial crisis, are being gradually relaxed. Russia's currency controls as a whole are no different in nature than those of many developing countries, e.g., Chile, Thailand and Turkey.⁴²

Like Russia at the time its NME status was revoked, the limited restrictions under Ukraine's currency laws are no different in nature than those of many developing countries. As such, Ukraine's currency convertibility supports revocation of Ukraine's NME status.

⁴² Russia Decision Memo at 8 (Citations omitted).

II. The extent to which wage rates in the foreign country are determined by free bargaining between labor and management

The Department has explained that this factor focuses on the manner in which wages are set because they are an important component of producers' costs and prices, and in turn are an important indicator of a country's overall approach to setting costs and prices in the economy. The reference to "free bargaining between labor and management" reflects concerns about the extent to which wages are market-based, i.e., about the existence of a market for labor in which mobile labor service providers and employers are free to bargain over the terms and conditions of employment.⁴³ There is no question that based upon these standards Ukraine satisfies these criteria.

As detailed in the Submission of the Government of Ukraine, there exist both Constitutional and legislative guarantees relating to worker rights and labor unions. Article 44 of the Constitution of Ukraine guarantees the Ukrainian citizens the right to strike in order to defend their economic and social interests. Ukrainian citizens cannot be forced to participate or not to participate in a strike. Article 36 of the Constitution of Ukraine guarantees the citizens of Ukraine the right to participate in trade unions in order to defend their working, social and economic rights and interests. Article 12 of Law of Ukraine # 1045-XIV "On Trade Unions, Their Rights and Guarantee of Activity" dated September 15, 1999, guarantees trade unions independence.⁴⁴

⁴³ Kazakhstan Decision Memorandum, at 7; Russia Decision Memorandum at 9.

⁴⁴ Submission of Government of Ukraine at 7.

Earlier laws contain further labor and worker rights guarantees. Under Article 11 of the Labor Code of Ukraine,⁴⁵ enterprises, organizations, institutions of all ownership forms and economic activity that use hired labor are required to conclude collective agreements. Article 12 of the Labor Code of Ukraine provides that a collective agreement is to be concluded between an owner or his/her authorized representative on the one part and one or several trade unions or other representative bodies authorized by a working collective on the other part. Article 14 of the Labor Code of Ukraine requires collective bargaining before a collective agreement is concluded.

More recent legislation has added to these worker and labor rights. As set forth in the State Department's "Country Report on Human Rights—2004" section on Ukraine⁴⁶:

Changes adopted in 2003 to the Law on Trade Unions granted unions the status of "legal entities," requiring only that they supply a "notification of registration" as opposed to requiring approval from the MOJ to be established. After a new trade union informed the MOJ that it had been formed, the MOJ was required either to provide a letter confirming the union's legal status or request additional supporting documents from the union.⁴⁷

The State Department's Report goes on to point out labor problems that arose during the Kuchma Presidency despite these protections. At the same time it pointed to a vibrant Labor movement, with both the government affiliated union and independent labor unions protecting the interests of their members:

⁴⁵ Labor Code of Ukraine, adopted by Law of Ukraine No. 322-VIII, 10 December 1971.

⁴⁶ "Country Reports on Human Rights Practices - 2004," Released by the Bureau of Democracy, Human Rights, and Labor, February 28, 2005, <http://www.state.gov/g/drl/rls/hrrpt/2004/41715.htm>.

⁴⁷ Id.

All unions affiliated with the Federation of Trade Unions (FPU), which maintained strong ties to the Government and inherited assets from the official Soviet unions, as well as several new, independent labor unions, were registered. However, some independent unions, including the Independent Miners Union of Ukraine (NPGU) whose member unions represented a wide variety of trades and professions, chose not to register because the courts declared that the registration requirement was unconstitutional, since they became legal entities under the 2003 Law on Trade Unions. Although the FPU often coordinated its activities with the Government, it continued to work independently on some labor matters and advocated the right of workers to strike. The FPU has supported the protests of some professions over unpaid wages; however, most FPU affiliates worked closely with management. Enterprise managers were free to join the FPU. The FPU leadership has a political party, the All Ukrainian Party of Workers.

Independent unions provided an alternative to the official unions in many sectors of the economy. At year's end, there were 106 registered trade unions, including 42 traditional (FPU) and 64 new trade unions. According to the Confederation of Free Trade Unions of Ukraine (CFTU), 28 of the new trade unions were affiliated with the CFTU and the remaining 34 were affiliated with neither the FPU nor the CFTU. While exact membership figures were unknown, there were estimated to be fewer than 2 million non FPU members (down from 3 million in 2002) and 12 million (down from 14.5 million in 2002) members of FPU affiliated unions. The drop in union membership was attributed to general apathy and cynicism regarding the benefits of union membership, as well as the fact that membership was no longer required for certain benefits, such as sick leave.⁴⁸

Notably, as reflected in the State Department's Report, the politically affiliated FPU has worked independently of the government, has advocated the right of workers to strike, and has supported the protests of some professions. Also, while union membership has declined, government anti-union sentiment or activities are not cited as the reason. Rather, workers are free to join unions or not join unions based upon their

⁴⁸ Id.

perceived economic benefits, and workers in Ukraine, as in the United States, are opting out of unions based upon their perception that the benefits of union membership do not justify the cost.

While the State Department Report raises questions regarding labor problems that arose under the previous government, particularly in the period preceding the 2004 Presidential election, with the election of President Yushchenko, the government's attitude towards labor has improved. President Yushchenko, whose election was supported by Ukraine's independent trade unions, has specifically made combating poverty and worker rights part of the new government's agenda.⁴⁹

Apart from making unfounded broad-brush claims of anti-union bias, opponents of revocation of Ukraine's NME status focus on three broad areas in claiming that wage rates in the foreign country are not determined by free bargaining between labor and management. The first of these relates to government's "heavy involvement" in the labor market; the second, to wage arrears; the third, to hiring and firing "rigidities." Each of these is addressed below.

The Ukrainian Government's "heavy involvement" in the labor market

In arguing that the Ukrainian Government is heavily involved in setting wages, the opponents' comments allude to language in the Department's 1997 determination not to

⁴⁹ One element of the Cabinet's "Meeting the People" program of action is to combat poverty through improving wages.

revoke Ukraine's NME status that "it appears that with regard to wage rates and employment the government continues to be heavily involved," based upon the laws in effect at that time. Opponents of revocation ignore the fact that while the basic law remains in effect, much has changed in Ukraine in the more than seven years that have elapsed since the Department's determination, including the enactment of new legislation, and that the degree of government involvement in wages is greater in state owned enterprises ("SOEs") than with private enterprises, which increasingly dominate Ukraine's economy. Also, even within the shrinking State sector, greater flexibility exists than opponents claim.

While the Government of Ukraine establishes a minimum wage by law,⁵⁰ above this minimum level, wages are generally set through negotiations between an employee and his or her employer. Ukrainian law sets no cap on the amount of wages that an employer can pay its employees, and by law, wages may vary with the complexity and conditions of work, the professional and business qualities of the employee and the profitability of the employer.⁵¹

For SOEs, the government establishes a standard wage scale setting the rates it is willing to pay various types of employees for various skill sets. However, state employees are free to reject employment at the wages quoted by the government and are guaranteed the right to strike.⁵²

⁵⁰ Law of Ukraine No. 108/95-VR "On Labor Remuneration" dated 24 March 1995, Article 3.

⁵¹ Labor Code of Ukraine, adopted by Law of Ukraine No. 322-VIII dated 10 December 1971, Article 94.

⁵² Article 42 of the Constitution of Ukraine states: "everyone has the right to work, including the possibility to earn one's living by means of work he freely chooses and agrees to"; Article 43 of the Constitution of

In the growing private sector, which now constitutes almost two-thirds of Ukraine's economy, wages are negotiated freely, subject to applicable laws and the conditions of any applicable collective contract, and are conditioned on the employee's performance of his contractual obligations⁵³. Thus, the opponents' comments are misleading where they assert, for example, that "privately-owned firms must establish their own regulations within this framework", which seems to imply that the regulations applicable to state employees also bind employees of private firms.⁵⁴ The clear meaning of the language of the law⁵⁵, which is also supported by industry practice in Ukraine, is that employers and employees in the private sector are free to negotiate their rates for remuneration of labor and are not bound to adhere to any "tariff rate system".

While Ukraine maintains a salary schedule that grades jobs and salaries, in practice this "tariff rate system" generally is applied to State employees. In the private sector, which includes the majority of companies, companies have flexibility in naming and grading the positions of their employees within the context of collective agreements or through negotiations with their employees individually.

Some Ukrainian companies, especially SOEs, use collective agreements, essentially collective bargaining agreements, to set wages, and in some instances to address work

Ukraine states: "those who work have the right to protect their social and economic interests". Thus, the Constitution does not differentiate between the rights of employees of SOEs and employees of private companies.

⁵³ Law of Ukraine No. 108/95-VR "On Labor Remuneration" dated 24 March 1995, Article 20.

⁵⁴ Collier Shannon Scott Comments, p. 15.

⁵⁵ Law of Ukraine No. 108/95-VR "On Labor Remuneration" dated 24 March 1995, Articles 20 and 21.

quotas, raises, bonuses, incentive and compensatory payments, and the manner in which wages are paid.⁵⁶ However, formal collective agreements are not even required, and an owner or his representative may reach an agreement on labor issues with the relevant union, or in the absence of a union, with some other representative body for employees.⁵⁷ In practice, collective agreements are falling out of favor among both employers and employees. The majority of employers today hire employees on the basis of individual contracts, agreeing on wages with individual employees rather than with all employees as a collective. Ukraine's Labor Code specifically permits wages to be agreed upon in this manner⁵⁸.

Wage Arrears

One of the opponents of NME revocation for Ukraine includes wage arrears as a reason for not revoking Ukraine's NME status.⁵⁹ The Department has addressed the issue of wage arrears in at least one previous NME revocation determination.⁶⁰ However, there is no justification for denying Ukraine market economy country status on this basis.

As noted in the Submission of the Government of Ukraine, between 2002 and 2005, annual wage arrears have declined by two-thirds. The Submission attributed this to progressive improvements in wage payments generally.⁶¹ The Submission further noted that average monthly wages grew at an annual rate of 20 percent between 2000 and 2003

⁵⁶ Law of Ukraine No. 3356-XII "On Collective Contracts and Agreements" dated 1 July 1993, Article 7

⁵⁷ Law on Remuneration, Article 15.

⁵⁸ Labor Code of Ukraine, adopted by Law of Ukraine No. 322-VIII dated 10 December 1971, Article 21.

⁵⁹ Comments on behalf of the Rebar Trade Action Coalition, July 11, 2005, p. 17.

⁶⁰ Kazakhstan Decision Memorandum at 8.

⁶¹ Submission of Government of Ukraine at 12.

and that the monthly average wage in January 2005 was 28.3 percent above January of 2004⁶² (both well above the rate of inflation). The Submission attributed this growth to a combination of economic growth generally and the success of employees in collective bargaining.⁶³

The Department noted a similar decline in arrears in its broader assessment of whether Kazakhstan had satisfied this factor for purposes of NME revocation, along with other general factors relating to economic developments in the employment sector, including increasing real wages.⁶⁴ As such, wage arrears should not be a basis for the Department to reject revocation of Ukraine's NME status. On the contrary, as with Kazakhstan, the Department should consider the declining trend in wage arrears, along with increasing real wages as reflecting Ukraine's overall progress under this factor.

Hiring and Firing Rigidity

One of the opponents of revocation also has raised the novel claim in its comments that "rigidities" in Ukraine's employment structure demonstrate that that wages are not freely set by bargaining between employees and employers. In support of this contention, the comments point to a World Bank Study purportedly showing Ukraine received a low score in the Study's "Rigidity of Employment Index," as of January 2004.⁶⁵

⁶² Id at 8-9.

⁶³ Id at 8.

⁶⁴ Kazakhstan Decision Memorandum at 9.

⁶⁵ Comments on behalf of the Rebar Trade Action Coalition at 15.

Whatever the merits of the basic claim that employment rigidities preclude a finding that wage rates are freely established (a claim that is questionable), the overall Study cited in the comments shows Ukraine's measure on the Index (64) is comparable to Panama (63) and Romania (63), and lower, i.e., less rigid, than Brazil (72), France (66), Greece (66), Mexico (72), Morocco (70), and Spain (69). Given Ukraine's ranking within these market economy countries, there is no merit in the suggestion that Ukraine should be denied market economy treatment on this basis.⁶⁶

⁶⁶ "Doing Business in 2005 Removing Obstacles to Growth", World Bank, International Finance Corporation and Oxford University Press, 2005, available at <http://rru.worldbank.org/doingbusiness>. Relevant excerpts at Exhibit 3.

III. The extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country

There is no real question that Ukraine is open to joint ventures and other forms of foreign investment. In this regard, the Department in its 1997 determination in Cut-to-Length Carbon Steel Plate stated:

As a general matter, Ukraine is open to foreign investment and the necessary supporting legislation is in place. Under Ukraine's Foreign Investment Law of 1996, its fourth foreign investment law, registered foreign investors are guaranteed equal treatment with local companies. The law also provides certain protections, including general guarantees against expropriation, unhindered transfer of profits and post-tax revenues, and a ten-year guarantee against changes in legislation that affect these basic protections. In 1996, Ukraine also added new laws and regulations on energy and mining investment and taxation of goods and services imported by foreign investors. The U.S.-Ukraine Bilateral Investment Treaty, which took effect on November 16, 1996, provides further protection for U.S. investors; other such treaties exist with, among others, Canada, France, Germany, and Italy. Finally, Ukraine is a member of the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards, and has enacted an international commercial arbitration law....⁶⁷

The Department's 1997 determination that Ukraine is open to foreign investment recognized the legal underpinnings for foreign investment have existed in Ukraine since Ukraine's independence in 1991, when it passed its first legislation protecting foreign investments in the country⁶⁸. This legislation laid down the guiding principles of investing in Ukraine: it described the concepts of investments and profits and the

⁶⁷ Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine, 62 FR 61754, 61756, 19 November 1997.

⁶⁸ Verkhovna Rada Presidium Decree No. 1455-XII "On Protection of Foreign Investments" dated 30 August 1991.

protection of foreign investors' rights to both; it also forbade the State from confiscating foreign investments except under force-majeure; it permitted the repatriation of lawfully obtained profits and funds by foreign investors; and it permitted foreign investors to reinvest their profits in Ukraine. Ever since 1991, Ukraine has been building upon its foreign investment laws based upon that 1991 decree, working to attract foreign investors and create a level playing field for both domestic and foreign participants in the economy.

Ukrainian law permits foreign investment in any of the following forms:

1. partial participation in enterprises founded jointly with Ukrainian legal entities or natural persons;
2. acquisition of partial or total interest in existing enterprises;
3. creation of enterprises that are fully owned by foreign investors;
4. acquisition of movable or immovable property not prohibited by the laws of Ukraine, including buildings, apartments, premises, equipment, vehicles and other property;
5. buying independently or jointly with Ukrainian legal entities or natural persons the rights to use land and natural resources in Ukraine;
6. activities based on production-sharing agreements, especially in the oil & gas sector;
7. activities based on other cooperation with Ukrainian legal entities or natural persons without the creation of a legal entity⁶⁹.

⁶⁹ Law of Ukraine No. 93/96-VR "On the Foreign Investment Regime" dated 19 March 1996, Article 3.

Foreign citizens, stateless persons, foreign legal entities, as well as international organizations, may establish and participate in commercial enterprises alongside citizens and legal entities of Ukraine.⁷⁰ Moreover, foreigners are generally entitled to national treatment of their investments in Ukraine⁷¹.

To create equal opportunities for both foreign investors and resident companies, in 2003, the Ukrainian Government extended national treatment to enterprises established with the participation of foreign investors, as well as joint activities (without the formation of a legal entity) operating in Ukraine with the participation of foreign investors. This latter class of investment includes activities based on production-sharing agreements, joint production and joint activity agreements, and similar arrangements. Customs and currency regulation and taxation of such investments now proceeds according to the same rules applicable to domestic investments⁷².

Where Ukrainian law differentiates between domestic and foreign investment, it actually favors foreign investors, e.g., by exempting from customs duties property that is brought into Ukraine as a foreign investor's contribution to the statutory fund of a company⁷³. Neither cash nor property investments or reinvestments in Ukrainian

⁷⁰ Law of Ukraine No. 1576 "On Commercial Enterprises" dated 19 September 1991, Article 3.

⁷¹ Law of Ukraine No. 93/96-VR "On the Foreign Investment Regime" dated 19 March 1996, Article 7.

⁷² Law of Ukraine No. 1457-III "On Eliminating Tax Discrimination between Subjects of Economic Activity" dated 17 February 2000, Article 2.

⁷³ Law of Ukraine No. 93/96-VR "On the Foreign Investment Regime" dated 19 March 1996, Article 18.

companies are counted as gross revenue⁷⁴ of the company. As such, they are not subject to income tax.

Foreigners can invest in any object not prohibited by Ukrainian law⁷⁵. Ukrainian law grants foreign investors the right to make their investments in Ukraine in foreign currency, as well as in movable or immovable property or property rights⁷⁶, although limitations exist on the amount of investment foreigners can make in enterprises in some narrow sectors of the economy. Ukrainian law also permits for investors to acquire property rights in non-agricultural land,⁷⁷ although agricultural land cannot be sold to foreign states, persons or legal entities⁷⁸.

Registration of foreign investment in Ukraine is not required. However, registration is needed to receive favorable treatment under the law as discussed above.⁷⁹ Registration of foreign investments is not complicated, and government registration agencies must accomplish it within three working days after receiving a valid request. Refusal to register a foreign investment is only permitted if the investment violates Ukrainian law or if the documents in support of the application for registration are not in order.⁸⁰

⁷⁴ Law of Ukraine No. 334/94-VR "On Taxation of Enterprises' Benefits" dated 28 December 1994.

⁷⁵ Law of Ukraine No. 93/96-VR "On the Foreign Investment Regime" dated 19 March 1996, Article 4.

⁷⁶ Commercial Code of Ukraine, adopted by Law No. 436-IV dated 16 January 2003, Article 391; Law of Ukraine No. 93/96-VR "On the Foreign Investment Regime" dated 19 March 1996, Article 2.

⁷⁷ Land Code of Ukraine, approved by Law of Ukraine No. 2768-III dated 25 October 2001, Articles 81 and 129

⁷⁸ *Id.*, Article 22.

⁷⁹ Law of Ukraine No. 93/96-VR "On the Foreign Investment Regime" dated 19 March 1996, Article 13.

⁸⁰ Cabinet of Ministers Decree No. 928 "On Approving the Standing Order on the Procedure for State Registration of Foreign Investments" dated 7 August 1996.

In order to assure the stability of the foreign investment regime, Ukrainian law provides investment guarantees. The Commercial Code outlines these guarantees as including: protection of foreign investments from negative changes in the laws on foreign investments; protection from compulsory requisitioning or nationalization; protection from unlawful actions by government agencies and their officials; compensation and payment of damages to foreign investors; protection in case of cessation of investment activities⁸¹; guarantees of the repatriation of profits and proceeds of foreign investments; and other guarantees for implementation of investment activities. Foreign investors can enforce these and other rights in Ukrainian courts or courts of arbitration, as well as in foreign arbitration⁸².

Opponents of revocation of Ukraine's NME status generally concede that Ukraine is open to foreign investment under its laws, and therefore focus instead on issues of bureaucratic rigidity, transparency, and corruption and cronyism. However, in recent years, progress has been made in the area of "bureaucratic rigidity," and the President and has made transparency and the elimination of corruption and cronyism top government priorities.

Improvements in the area of bureaucratic rigidity in recent years have been duly noted by international financial institutions and by the U.S. Government. In this regard, the EBRD in its 2005-2007 Strategy Paper for Ukraine noted:

⁸¹ According to the Commercial Code of Ukraine, Article 399, in case of cessation of investment activities in Ukraine, a foreign investor shall have the right to recover its investments, as well as any returns on these investments.

⁸² Law of Ukraine No. 93/96-VR "On the Foreign Investment Regime" dated 19 March 1996, Article 26.

Recent surveys show some progress in simplifying company registration procedures, following a new law on registration of legal entities which took effect in mid-2004. Although the number of procedures required remains relatively high, the time taken and overall cost is comparable with the regional average.⁸³

Similarly, the State Department noted:

Over the past few years, Ukraine has liberalized its markets, reduced regulation, eliminated most licensing requirements, eliminated most restrictions on foreign exchange and begun the transformation of the agricultural sector from state-run farms to private agriculture.⁸⁴

According to the EBRD, the new government is preparing a program, which is expected to address most if not all of the remaining disincentives to investing in Ukraine. The guiding principles, outlined in a presidential decree, are the need to improve the investment climate and to encourage investment by increasing the transparency of both the ownership and operation of business entities, reducing the tax and administrative burden, tackling corruption, developing the financial sector and making privatization transparent and open to all interested parties.⁸⁵

On his recent visit to the United States, President Yushchenko expressed his conviction to crack down on corruption, and enlisted U.S. businessmen in the effort, imploring them to refuse to pay bribes to Ukrainian officials who requested them. On June 26, Vice Prime Minister Anatoliy Kinakh noted that cutting red tape and cracking down on corruption through the first six months of 2005 had resulted in Customs

⁸³ EBRD Strategy Report at 20.

⁸⁴ Doing Business in Ukraine: A Country Commercial Guide for U.S. Companies, U.S. & Foreign Commercial Service and U.S. Department of State, 8 February 2005.

⁸⁵ EBRD Strategy Report at 5.

collections increasing by 67% over last year, overall receipts to the State Budget increasing 50%, and the shadow economy shrinking by 7%.⁸⁶

In the area of investment, the government is working to establish "one stop shopping" for businesses, so that they can deal with a single agency when setting up, registering and licensing a new business direction. Recently, President Yushchenko created the National Council of Investments and Innovations as a consultative agency under the President, and the State Agency for Investments and Innovations as a subsidiary agency to provide organizational, informational and technical support of the National Council's activity, to prepare offers to the President on activities of state agencies and public institutions in the sphere of investment and innovative actions, and to support innovative programs that the National Council approves.⁸⁷

The new government also already has begun the process of eliminating unnecessary regulations, which the government views both as a disincentive to business investment and as a potential opportunity for corruption. On August 5, Prime Minister Tymoshenko announced the government would immediately cancel 2249 regulations that limit business development in Ukraine as part of a process of reviewing over 6000 regulations "to see whether they are beneficial for Ukraine from the normal regulatory function point of view, or simply exist to promote corruption."⁸⁸ President Victor Yushchenko called this task a personal responsibility and threatened to fire members of the Cabinet and

⁸⁶ <http://www.korespondent.net/main/40327>.

⁸⁷ Presidential Decree No. 1116/2005 dated 19 June 2005, reported in the Ukrainian News, 25 July 2005, <http://www.investinrivne.org/en/news/news/?pid=156> at Exhibit 4.

⁸⁸ "Timoshenko to Cancel Unnecessary Regulations", Forum, August 5, 2005, available at: <http://eng.for-ua.com/news/?id=1581> at Exhibit 5.

heads of local administrations responsible for industries and regions where regulations that limit business development are kept in place.⁸⁹

Despite press criticisms of the pace of activity of the new government, these initiatives already are resulting in new foreign investment activity in Ukraine.

- In May, following discussions with U.S.- based Hunt Oil and President Yushchenko, State Secretary Alexander Zinchenko and Naftogaz Ukrainy CEO Alexei Ivanchenko, it was announced that Ukraine and Hunt Oil will jointly develop oil blocks in the Black Sea.⁹⁰
- On July 13, Austrian company OMV, Central Europe's leading oil and gas company, signed an agreement with the Ukrainian oil and gas companies NJSC "Naftogas of Ukraine" and NSC Chornomornaftogaz on joint activities in the Black Sea region, offshore Ukraine, with the three partners agreeing to cooperate in the bidding process for a production sharing agreement for exploration and production offshore Ukraine.⁹¹
- On August 3, it was reported that global real estate giant Colliers International was joining with Concorde Capital to launch a real estate fund with \$100 million in equity and a targeted portfolio size of \$200 million, focusing on development projects in the office, retail, logistics and residential sectors of Ukraine's real estate market. The report quotes a representative of the partnership as explaining, "the combination of pro-business government, heightened foreign investor

⁸⁹ Id.

⁹⁰ UPI Energy Watch, May 24, 2005, <http://washingtontimes.com/upi-breaking/20050524-014715-1253r.htm>

⁹¹ "OMV signs Black Sea E&P agreement," 14 July 2005, [Strategy.com](http://www.strategiy.com), <http://www.strategiy.com/inews.asp?id=20050714134959> at Exhibit 6.

interest and severe shortage of quality property in most sectors of the Ukrainian real estate market makes this a perfect time for the Ukrainian market.” Another participant in the project noted “the fast development of Ukraine’s banking system, as well as the entry of conservative institutional investors with a prime strategy of acquiring prime income producing properties” as fitting within the partnership’s investment strategy.⁹²

⁹² “Concorde Capital, Colliers to Launch \$100M Ukraine Real Estate Fund,” August 3, 2005, Globe St.com, <http://www.globest.com> at Exhibit 7.

IV. The Extent Of Government Ownership Or Control Of The Means Of Production

In its original determination in 1997 on Ukraine's market economy status, the Department noted, "the Government of Ukraine has made significant progress in privatizing state-owned business enterprises. However, privatization has proceeded unevenly thus far, with relatively rapid results in small-scale privatization and a slower pace for large-scale privatization, and much of the economy remains in the hands of the government." The Department went on to note that "Ukraine has designated thousands of companies in sectors such as energy, communications, metallurgy, defense industries, and chemicals as "strategic" enterprises and therefore not eligible for privatization. These firms include most of Ukraine's largest companies and those with the greatest export potential. In addition, foreign investors can participate in the privatization process only through financial intermediaries (i.e., foreigners cannot acquire privatization certificates directly)."

A great deal has changed in the intervening seven plus year since that determination. In a February 2003 study on privatization, the SigmaBleyzer Foundation⁹³ set forth a "Short History of Privatization" in Ukraine.⁹⁴ The Study shows the progress from Ukraine's independence in 1991 through 2002. The Study concludes:

⁹³ The Effect of Privatization on Social Welfare in Ukraine: The Practical Experience of SigmaBleyzer, Sigma Bleyzer Foundation, 10 February 2003 at Exhibit 8.

⁹⁴ Id at 6-9, excerpted at Exhibit 8.

Despite the significant economic decline that arose in the process of transition from state (planned) economy to market economy, privatization has led to the creation of a market-based economy in Ukraine. Currently the share of non-state companies is about 85%, and they produce 60% of the total volume of industrial output in Ukraine.⁹⁵

Since 2002, Ukraine has made considerable further progress in continuing to privatize its assets and shift the bulk of the responsibility for ownership and control of those assets to the private sector though an ongoing process of strengthening Ukraine's laws aimed at ensuring the equal protection of all forms of the ownership rights and at restricting the government's control over the means of production.

Almost immediately upon independence, Ukraine established a set of laws relating to private property rights. One of the first legislative acts stipulating the basic principles and guarantees of state protection of all forms of ownership was the Law on Property, issued in the early 1990s⁹⁶. It defined the right of ownership as "social relations with regard to ownership, use and disposal of ownership regulated by law", and obligated the State to protect property rights⁹⁷. In Ukraine, every citizen has the right to own, use and dispose of property, either individually or jointly with others. Ukrainian law recognizes the following forms of property: private, collective and state property, each of which is equally protected by law⁹⁸. An owner can demand redress of any infringements of his rights and defend his rights in the courts or in the courts of arbitration. Only a court can

⁹⁵ Id at 9

⁹⁶ Law of Ukraine No. 697-XII "On Property" dated 7 February 1991.

⁹⁷ Law of Ukraine No. 697-XII "On Property" dated 7 February 1991, Article 2.

⁹⁸ Law of Ukraine No. 697-XII "On Property" dated 7 February 1991, Article 2.

determine that property ownership is unlawful⁹⁹. On those rare occasions when Ukraine might terminate a right of property, the State is required to compensate the property's owner for the taking¹⁰⁰.

The original principle of Ukrainian law, that all individuals have the right to own property, was later confirmed and expanded by the Constitution of Ukraine. According to this fundamental law of the Ukraine¹⁰¹, every person has the right to own, use and dispose of their property and the results of their intellectual and creative activities. Private property can be acquired according to legal procedures, and citizens can also obtain the right to use state and communal properties. The right of private property is inviolable. Compulsory alienation of private properties is prohibited, except for in cases when Society needs this, and even then, only with compensation for the taking.

The Ukrainian Law “On Concessions” of 1999 (the “Concessions Law”)¹⁰² further advanced the transition of state ownership to private use, establishing a general framework law for concessions. In addition, the Economic Code of Ukraine of 2003¹⁰³ also contains provisions on privatizations. The Concessions Law sets terms and procedures for the concessions of state and communal property, including procedures for open public tendering. According to the EBRD, provisions regulating project agreements

⁹⁹ Law of Ukraine No. 697-XII “On Property” dated 7 February 1991, Article 49.

¹⁰⁰ Law of Ukraine No. 697-XII “On Property” dated 7 February 1991, Article 48.

¹⁰¹ Constitution of Ukraine dated 28 June 1996, Article 41.

¹⁰² Law of Ukraine No. 997-XIV “On Concessions” dated 16 July 1999, Article 3.

¹⁰³ Commercial Code of Ukraine, adopted by Law No. 436-IV dated 16 January 2003, Article 146.

provide relatively clear guidance on the main issues to be covered and remain sufficiently flexible to allow the parties freely to negotiate terms.¹⁰⁴

In addition to the Concessions Law, issues such as licensing, procurement, natural resources development and utility activities are governed by a set of special or sector specific laws such as the Law “On Production Sharing Agreements”, covering oil, gas and mining sectors. The EBRD has stated this is a fairly adequate law under which the state can grant mineral rights to a private investor by way of a negotiable contract rather than a license. This law also helps facilitate private investment in these sectors by way of providing certain tax incentives and exemptions. In 1997, at the request of the Ukrainian authorities, the EBRD provided a commentary on this law. The EBRD Concession Laws Assessment, undertaken to evaluate applicable laws throughout the EBRD’s 27 countries of operation, revealed that Ukrainian laws were in “medium compliance” with internationally accepted standards.¹⁰⁵

In addition to these laws, Ukraine adopted new Civil and Commercial Codes, which went into effect in 2004 and which expanded both the regulation and the protection of ownership rights. The new Civil Code¹⁰⁶, for example, explains that individuals and companies can own any type of property, and that, with a few exceptions (e.g., foreigners being unable to own agricultural land), there are no limits on the type, quantity or value of the property that can be owned.

¹⁰⁴ EBRD Strategy Report at 60.

¹⁰⁵ Id at 61

¹⁰⁶ Civil Code of Ukraine, adopted by Law No. 435-IV dated 16 January 2003, Article 325.

Simultaneously with the Civil Code's entry into force, a Commercial Code also entered into force, expanding the regulation of property rights of companies, which is crucial to attracting foreign investment and strengthening Ukraine's market economy. The Commercial Code¹⁰⁷ confirms companies' rights to own property, as well as other rights, for example, the right to conduct business independently and the right to manage their property as they see fit. Companies' property can be secured by other rights, in accordance with the conditions of a contract with the property owner. The State provides equal protection of property rights for all economic entities. Moreover, an owner, whose rights have been violated, has the right to compensation not only for material damages, but also for moral damages¹⁰⁸.

The Commercial Code also describes how private sector companies and individuals can obtain title to state property through privatization sales. Under the law, privatization can involve the sale of state property to practically anyone -- Ukrainian citizens, foreign citizens and stateless persons and foreign and Ukrainian legal entities. The goal of such privatization sales is to improve socioeconomic efficiency of production and to mobilize funds for restructuring the Ukrainian economy¹⁰⁹. The effect of such privatization sales, however, has also been to transfer well over 50% of the nation's economy, and the vast majority of small and medium businesses from the government's control into the control of the private sector. As noted in the Submission of the Government of Ukraine, as of

¹⁰⁷ Commercial Code of Ukraine, adopted by Law No. 436-IV dated 16 January 2003, Article 133.

¹⁰⁸ Civil Code of Ukraine, adopted by Law No. 435-IV dated 16 January 2003, Article 386.

¹⁰⁹ Law of Ukraine No. 2163-XII "On Privatization of State Property" dated 4 March 1992, Articles 1 and 8.

2002, 65 percent of Ukraine's GDP was controlled by the private sector.¹¹⁰ The figure today is obviously higher, with additional privatizations and more rapid growth of private sector enterprises. According to the State Committee on Statistics of Ukraine, the private sector in 2004 accounted for over 91 percent of Ukraine's exports.¹¹¹

The Commercial Code describes what state assets can be privatized, as well as the principles and means of privatization¹¹². One year after the Commercial Code's entry into force, the GOU has undertaken additional measures to strengthen the legal basis for and increase the transparency of the privatization of the State's remaining state-owned assets. In 2005, Ukraine adopted a new law to increase the efficiency and fairness of privatization sales¹¹³.

Finally, in terms of privatization of land, Ukraine has taken enormous strides in freeing up its land for private ownership in recent years. Passage of the new Land Code now permits not just the State and territorial communities, but also citizens and legal entities, to own land.¹¹⁴ Landowners have the right to sell, lease, mortgage or bequeath land plots; to work the land and own crops; to exploit common minerals, peat and other

¹¹⁰ Submission of the Government of Ukraine at 18, citing the 2004 EBRD Report on Transition Economies. The percent of Ukraine's GDP accounted for by the private sector in is comparable to, if not higher than, the percent of Romania's GDP accounted for by the private sector when Romania's NME status was revoked in 2003 (Decision Memorandum, Antidumping Duty Administrative Review of Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania – Non-Market Economy Status Review, March 10, 2003, p. 15), comparable to Russia at the time its NME status was revoked (Russia Decision Memo at 15), and higher than Kazakhstan at the time its NME status was revoked (Kazakhstan Decision Memo at 10).

¹¹¹ *Id.* at 18.

¹¹² Commercial Code of Ukraine, adopted by Law No. 436-IV dated 16 January 2003, Article 146.

¹¹³ Law of Ukraine No. 2319-IV "On Forming Competitive Bases During Privatization of State-Owned Shares (Ownership Interests, Equity Stakes) in Legal Entities' Property" dated 12 January 2005, Article 4.

¹¹⁴ Land Code of Ukraine, approved by Law of Ukraine No. 2768-III dated 25 October 2001, Article 80.

useful deposits; to receive compensation for damage to their land in cases envisaged by law; and to erect residential and other buildings and structures¹¹⁵.

The comments of opponents of revocation focus on narrow segments of Ukraine's economy that have not yet been privatized and on corruption and cronyism during the Kuchma presidency, ignoring the dramatic increase in the private sector and concomitant decline in state ownership and control of the means of production in Ukraine since the Department's 1997 determination. The comments also question the commitment of the new government to privatization. However, as noted in the Submission of the Government of Ukraine, Ukraine has privatized companies in shipbuilding and the energy sectors through sales to foreign investors¹¹⁶ and has announced the State's 42% interest in Ukrtelecom, Ukraine's biggest telecom, will be sold. President Yushchenko has instructed the Cabinet of Ministers to prepare the coal-mining industry for privatization within the next 18-24 months.

The Cabinet of Ministers has already opened the nation's expressways (concessions for the operation of which are valued at 7 billion euro), its agricultural sector, and its aircraft construction industries (e.g. the Antonov construction company) to foreign investment. Plans are underway to further open the nation's insurance and banking industries to foreign investment. Moreover, established Ukrainian policy remains to privatize even those strategic stakes currently owned by the State. The government must periodically make its case for refusing to privatize these stakes and, failing that, they will

¹¹⁵ Land Code of Ukraine, approved by Law of Ukraine No. 2768-III dated 25 October 2001, Article 90.

¹¹⁶ Submission of Government of Ukraine at 21.

be privatized. Prime Minister Tymoshenko recently proclaimed these strategic plans at the “mini-Davos” conference held on 17 June 2005 in Kiev. The re-privatization of Krivorozhstahl, which opponents of revocation suggested might not occur, began on August 10.¹¹⁷

Final Comments on the extent of government ownership or control of the means of production

The Department has recognized that limited State ownership of the means of production, particularly in certain sectors of the economy, is not a bar to revocation of a country’s NME status. In its assessment of this criterion in relation to Russia’s status as an NME in 2002, the Department noted that the Russian state retained shareholdings in the energy (electricity and gas), transport, banking, telecom, insurance and defense industries, as well as in public service companies, but recognized “these are sectors where many market economies retain residual (sometimes complete) state ownership.”¹¹⁸ As discussed above, state ownership in Ukraine today is more limited in scope than Russia in 2002, and further privatization is one of President Yushchenko's key policies.

Similarly in the case of Russia, the Department noted in 2002 that land privatization had been “limited, piecemeal and *ad hoc*” without the benefit of clear rules on acquisition, ownership, and transfer rights, although the Department saw the prospect of

¹¹⁷ “Arcelor Still Interested in Krivorozhstal”, AFX News on Yahoo, <http://uk.biz.yahoo.com/050811/323/fpcex.html>, attached at Exhibit 9.

¹¹⁸ Russia Decision Memo at 14.

further land privatization through legislative changes that recently had been enacted.¹¹⁹ In the case of Kazakhstan, the Department determined that legislation in Kazakhstan prohibited private ownership of land plots designated for commercial agriculture other than those for personal auxiliary farming, gardening and dacha construction, land needed for defensive purposes and, among others, forestry and water reserves, and that the title to the land held under “land use rights,” (which the Department characterized as a holdover from the former Soviet Union), belongs to the State.¹²⁰ Nevertheless, the Department revoked Kazakhstan’s NME status.

As noted above, Ukraine is further along the road to land privatization than was Russia or Kazakhstan in 2002, having enacted a Land Code four years ago granting a broad range of private rights in real property.¹²¹

¹¹⁹ Id.

¹²⁰ Kazakhstan Decision Memorandum at 11.

¹²¹ Land Code of Ukraine, approved by Law of Ukraine No. 2768-III dated 25 October 2001, Articles 80 and 90.

V. The Extent Of Government Control Over The Allocation Of Resources And Over The Price And Output Decisions Of Enterprises.

In prior determinations to revoke a country's NME status, the Department has indicated the three key elements under this factor are (1) price liberalization; (2) banking sector reforms; and (3) (non-capital) resource allocations, i.e., the degree to which individuals and enterprises can freely engage in business activities.¹²² Despite claims to the contrary by opponents of revocation of Ukraine's NME status, revocation is appropriate based upon these three elements.

Price Liberalization

Opponents of revocation of Ukraine's NME status have focused on the issue of price liberalization, pointing to the Department's 1997 determination regarding Ukraine's market economy status and alleging that the facts bearing on the issue in terms of the Ukrainian Government's control over the means of production and setting domestic prices have not changed. This is incorrect.

Since the Department's 1997 determination, Ukraine's Law on Enterprises -- which the Department cited as requiring that state-owned enterprises or enterprises leasing state-owned enterprises fill state orders at the request of the government -- has been repealed,

¹²² See, e.g., "Decision Memorandum Regarding Estonia's Status as a Non-Market Economy Country for Purposes of the Antidumping and Countervailing Duty Law under a Changed Circumstances Review of the Solid Urea Order Against Estonia," 23 February 2003 ("Estonia Decision Memorandum"); Russia Decision Memorandum at 16.

effective January 1, 2004 by the Commercial Code.¹²³ Ukraine's Law on Restricting Monopoly and Preventing Unfair Competition, also cited by the Department in its 1997 determination in relation to Ukraine's status as a market economy, has been repealed as well.¹²⁴

Ukraine's Law on Supply of Production, which requires that enterprises the Government of Ukraine deems monopolies fulfill state orders, has not been repealed. However, the law is qualified under Article 2.8, which provides that monopolies are not required to fill state orders if such orders can only be fulfilled at a loss. Also, Article 12.2 of the Law of Ukraine "On Protection of Economic Competition" stipulates that when a company controls 35% of the market it is presumed to be a monopolist, but this presumption is rebuttable, further liberalizing its scope.¹²⁵

Similarly, although Ukraine's Law on Prices -- which authorizes the Government of Ukraine to set prices on products which affect the entire economy and to set domestic prices of monopolies -- has not been repealed, it is now qualified by the Commercial Code, which stipulates that state orders are to be conducted on a "bargaining (contract) basis."¹²⁶ In effect, the terms and conditions of state orders are now negotiated, as in all other commercial contracts.

¹²³ Commercial Code of Ukraine, adopted by Law No. 436-IV dated 16 January 2003, Part IX, clause 2.

¹²⁴ This law became null and void on 27 February 2002 (repealed by Law of Ukraine No. 2210-III "On Protection of Economic Competition" dated 11 January 2001).

¹²⁵ For example, UMC and Kyivstar control more than 80% of the Ukrainian mobile market, but neither is considered a monopolist under Ukrainian Law.

¹²⁶ Commercial Code of Ukraine, adopted by Law No. 436-IV dated 16 January 2003, Article 13.

As a practical matter, the trend in recent years in Ukraine clearly has been in the direction of price liberalization. In 2002-2003, price controls were set for urban transportation, but most Ukrainian cities have since repealed these controls at the local level. In 2000-2004, the previous government established minimum prices for grain, but these price supports have since been cancelled.¹²⁷ In 2003, Kiev local authorities set price controls on bread. These price controls were later cancelled by the Kiev City Council.¹²⁸ Price controls on gas established in 2004 under the previous government were subsequently cancelled.¹²⁹

Consistent with this trend toward price liberalization in Ukraine, more than 90 percent of prices in Ukraine are market based, with prices and tariffs regulated only for economically and socially important goods and services and those produced or provided by natural and artificial monopolies, such as public utilities and electric energy for individual consumption; prices for fuel and energy resources for individual consumption; and tariffs for transportation.¹³⁰ Contrary to the claims of opponents of NME revocation for Ukraine, the Ukrainian Government does not control the price of sugar. In fact, over the past two months, the price of sugar has more than doubled because private parties have cornered the market and the government has not intervened.¹³¹ As to grain, the government sets minimum prices¹³², similar to U.S. price supports on agricultural products, but does not set a maximum price.

¹²⁷ The directives canceling these controls are not available.

¹²⁸ Kiev City Council Decision No. 90/963, 23 October 2003.

¹²⁹ Cabinet of Ministers Resolution No. 994, 30 July 2004.

¹³⁰ Submission of Government of Ukraine at 25.

¹³¹ <http://www.podrobnosti.ua/analytics/2005/07/13/226647.html>.

¹³² CMU Resolution No. 399, 26 May 2005.

Moreover, contrary to the claims of opponents of revocation of NME status for Ukraine, the new Government is committed to further reducing the role of the state in pricing and in the allocation of resources. Despite some early missteps, new price controls have not been imposed. Although earlier this year Prime Minister Tymoshenko spoke of wanting to set price ceilings on meat and sugar, price controls have not been imposed on these products. Also, a temporary cap on gas prices to address a sharp rise in gas prices was canceled immediately following its imposition at the behest of President Yushchenko, who signed Decree No. 823/2005 “On Measures to Stabilize the Situation on the Oil And Oil Products Market” dated 18 May 2005. Clause 1 of this Decree stipulates:

1. To state that the activity of the Cabinet of Ministers of Ukraine in interfering in the operation of the oil and oil products market and regulating prices by using administrative methods conflicts with the basis of the market economy.

2. To draw the attention of the members of the Cabinet of Ministers of Ukraine to the fact that such a practice is inadmissible and is subject to personal responsibility for providing for the stability of the operation of said market.

Previously, Vice Prime Minister Kinakh spoke out against State administrative interference in the economy because it does not serve Ukraine's national interests¹³³, and Prime Minister Tymoshenko on July 28 stated that her government has never used and is not presently using administrative measures in the economy¹³⁴.

¹³³ Channel 5 TV and Channel 1+1.

¹³⁴ <http://www.korrespondent.net/main/127014>.

Prime Minister Tymoshenko on July 28 stated that her government has never used and is not presently using administrative measures in the economy¹³⁴.

The limited authority to regulate prices on a limited range of products, including products under monopoly control, does not disqualify a country from being deemed a market economy. In fact, such authority exists under U.S. law, and has been used on a number of occasions, including price controls during World War I and World War II, and wage and price controls to stem inflation introduced in 1971 under President Nixon,¹³⁵ which in the energy sector remained in effect until 1979.¹³⁶ Price regulation at the State level remains widely in effect today in the United States on many public utilities, including telecommunications, transportation and electricity.

The Department itself has recognized that limited price controls do not preclude a country from qualifying for market economy status. In its review of Russia's market economy status, the Department noted that Russian law mandated that government regulatory policies balance the interests of consumers and economic agents where natural monopolies exist and established a statutory list of natural monopolies: the gas and oil industries, electrical production and distribution, transportation, and postal and communication services.¹³⁷ The Department further noted:

"Natural monopoly" prices (e.g., electricity and gas production, transport services) remain subject to government regulation, ...

¹³⁴ <http://www.korrespondent.net/main/127014>.

¹³⁵ See, e.g., "Nixon Tries Price Control," Excerpt from *The Commanding Heights*, Daniel Yergin and Joseph Stanislaw, 1997 ed., pp 60-64, available at: http://www.pbs.org/wgbl/commandingheights/shared/minitextlo/ess_nixongold.html at Exhibit 10.

¹³⁶ "Energy Price Controls," *The Washington Post*, May 21, 2001, <http://www.brook.edu/views/op-ed/litan/20010521.htm> at Exhibit 11.

¹³⁷ Russia Decision Memo at 16.

most regulated prices, particularly those for gas and electricity (43 percent of the generation of which is gas-based), remain well below world-market levels and may not cover the cost of production. Thus, as is the case in some market economy countries (e.g., Venezuela in the late 1980s and early 1990s and Hungary and Indonesia now) regulated energy prices in Russia remain a significant distortion in the economy, as they encourage the wasteful use (mis-allocation) of Russia's energy resources and slow the adoption of more efficient production methods.”¹³⁸

Nevertheless, the Department revoked Russia's NME status.

Similarly in the case of Kazakhstan, the Department noted:

The list of natural monopolies includes companies that are involved in: oil and oil products transportation via main pipelines; gas and gas condensate products transportation via pipelines; transmission and distribution of heat and power; operation of main railroads, provision of air navigation, airport and sea and river ports services; provision of telecommunication services via local line networks; operation of water supply and sanitation systems; and postal services. Companies included in the list of natural monopolies may not change their prices more often than once every three months. Their prices are subject to governmental review and approval. Although the list of natural monopolies subject to price controls appears to be extensive, the sectors subject to price controls in Kazakhstan are the same as those in which many Western countries exercise price regulation, i.e., the transportation, utilities, telecommunications, and postal sectors.¹³⁹

Again, despite these price regulations, the Department revoked Kazakhstan's NME status.

As detailed above, Ukraine exercises price regulation in sectors similar to those in which Russia and Kazakhstan exercise price regulation, and in which many Western countries exercise price regulation as well. In recent years, Ukraine has liberalized its

¹³⁸ *Id.* at 16-17.

¹³⁹ Kazakhstan Decision Memo at 14.

price regulation and the new government is committed to further liberalization in this sector. As such, the existence of limited price regulation in Ukraine should not preclude the revocation of Ukraine's NME status.

Ukraine's Banking Sector

Apart from pricing liberalization, Ukraine's banking sector reflects market economy principles. The Department has recognized that an important measure of government control over production decisions and the allocation of resources is the degree to which the government is involved in allocating capital, and that given the importance of banks as an allocator of capital, the Department needs to evaluate the degree to which the State exercises control over the commercial banking sector, as opposed to allowing market forces to determine lending decisions.¹⁴⁰

With minor exceptions,¹⁴¹ opponents of revocation of Ukraine's NME status have not addressed this issue, implicitly acknowledging that the banking sector in Ukraine operates under market principles in the allocation of credit. Article 5 of the Law of Ukraine on Banks and Banking provides that "Banks shall have the right to independently hold, use and manage property owned by them" and specifically prohibits both the State and local government to influence in any way the management or

¹⁴⁰ Kazakhstan Decision Memo at 12.

¹⁴¹ The comments of the Ad Hoc Committee of Domestic Nitrogen Producers point to brief references in the EBRD Strategy Report regarding integrity and ownership issues under the old government and related party lending as challenges in the banking sector. However, as discussed below, the EBRD also notes substantial improvements in the banking sector in recent years and its importance as a source of credit to small and medium size enterprises and to micro and small enterprises.

employees of banks in the course of execution of their official duties or to interfere with bank activity.¹⁴² An EU funded study concluded in 2003 confirmed that “[t]he banking legislation of Ukraine is generally in compliance with the appropriate provisions of the EU law,”¹⁴³ while more recently, the EBRD noted that “[t]he banking sector has grown rapidly, not only in terms of deposits and lending, but also with several new products, including mortgage lending. This has been accompanied by some strengthening of supervision and progress in dealing with money laundering.”¹⁴⁴ The EBRD also noted with respect to Ukraine’s banking sector:

Although it is still relatively small, with total banking sector assets standing at some 38.8% of GDP and the gross customer loan portfolio standing at some 25.3% of GDP at the end of 2004, banks play an important role in financing local companies, given the undeveloped capital markets and limited FDI, and demand for credit is strong. Lending rates have fallen although they remain high and new products, such as leasing and mortgage financing, have been developed.¹⁴⁵

The EBRD further noted that its activities in Ukraine have improved the fundamental skills of private sector banks, strengthened the capital base of some banks, assisted in the development of the mortgage sector and warehouse receipts based lending, as well as facilitating trade with an expanding trade facilitation program.¹⁴⁶ The EBRD activities also have strengthened the capacity of the banks to make sound credit decisions, which

¹⁴² Law of Ukraine No. 1294-IV “On Banks and Banking,” as amended, dated November 20, 2003, Article 5, “Economic Independence of Banks”.

¹⁴³ “Banking Law: Scoreboard Paper on Approximation of Ukrainian Legislation to EU Law,” Ukrainian-European Policy and Legal Advice Centre, November 2003.

¹⁴⁴ EBRD 2005-2007 at 4.

¹⁴⁵ *Id.* at 21. The total banking sector assets in Ukraine in relation to its GDP of 38.8% compares favorably with those of both Russia (11%) and Kazakhstan (21%) when the Department revoked those countries’ NME status (Russia Decision Memo at 14; Kazakhstan Decision Memo at 13).

¹⁴⁶ *Id.* at 10.

has facilitated the financing of small and medium sized enterprises and micro or small enterprises, and as part of this process, the development of ProCredit Bank has had a profound demonstration effect in transforming perceptions of micro lending with repayment rates of over 99%.¹⁴⁷

Most recently, Ukraine has enacted legislation dramatically liberalizing the banking sector by according foreign banks' subsidiaries the same rights as domestic banks.¹⁴⁸ The legislation is a result of increasing foreign bank interest in Ukraine, reflected in the recent purchase by Austrian Raiffeisen International of a 93.5 % interest in Aval Bank¹⁴⁹, Ukraine's second largest bank, and the current discussions between Ukraine's largest bank Ukrsotsbank and foreign banks over its possible sale. The increasing involvement of foreign banks in Ukraine not only indicates that foreign banks are confident in their ability to operate independently in Ukraine; it also indicates the increasing importance of private banks in allocating capital.

Non-Capital Resource Allocation and Freedom to Engage in Business Activities

With respect to non-capital resource allocations and the degree to which individuals and enterprises can freely engage in business activities, the opponents of revocation of NME status for Ukraine also are silent, other than to allege that subsidies,

¹⁴⁷ Id.

¹⁴⁸ "Ukraine Lifts Major Bans on Foreign Bank's Activities," UNIAN-News from Ukraine, 12 July 2005, <http://www.unian.net/eng/news/news-67634.html> at Exhibit 12.

¹⁴⁹ "Aval Bank's Majority Shareholders have Taken a Decision on Selling 93.5% of the Shares to Raiffeisen International," Aval Bank Press Release, 22 August 2005, at <http://www.aval.ua/eng/press/news/?id=30047> at Exhibit 13.

of a sort no different from those existing in other market economies, affect resource allocation in Ukraine as well.

The Department has recognized that the key issue with respect to non-capital resource allocation and entrepreneurship is the degree to which individuals are free to engage in economic activities and to use their abilities and property for entrepreneurial activities.¹⁵⁰ There is no question that Ukrainian law provides such freedoms.

In recent years, Ukraine has made great strides in opening its economy to private ownership and limiting the influence of the State. The State no longer possesses a privilege in civil relations, having equal rights with private market participants¹⁵¹. As noted above, in 2003, Ukraine passed new Civil and Commercial Codes, strengthening the legal protection of the rights of property, freedom of contract and freedom of private owners to use their property as they see fit¹⁵², including for entrepreneurial activities¹⁵³. Ukrainian law prohibits unlawful interference by the State in the economic activities of private sector businesses,¹⁵⁴ and in general, private companies are permitted to independently determine their fields of business and how best to use their profits, so long as they comply with the law and adhere to their by-laws¹⁵⁵. Entrepreneurs have the right to independently perform any legal entrepreneurial activities¹⁵⁶ they choose. They are

¹⁵⁰ See, e.g., "Decision Memorandum Regarding Estonia's Status as a Non-Market Economy Country for Purposes of the Antidumping and Countervailing Duty Law under a Changed Circumstances Review of the Solid Urea Order Against Estonia," 28 February 2003, p. 17.

¹⁵¹ Civil Code of Ukraine, adopted by Law No. 435-IV dated 16 January 2003, Article 167.

¹⁵² Civil Code of Ukraine, adopted by Law No. 435-IV dated 16 January 2003, Article 319.

¹⁵³ Civil Code of Ukraine, adopted by Law No. 435-IV dated 16 January 2003, Article 3.

¹⁵⁴ Commercial Code of Ukraine, adopted by Law No. 436-IV dated 16 January 2003, Article 19, Clause 5.

¹⁵⁵ Commercial Code of Ukraine, adopted by Law No. 436-IV dated 16 January 2003, Article 142.

¹⁵⁶ Commercial Code of Ukraine, adopted by Law No. 436-IV dated 16 January 2003, Article 43.

free to formulate their own business plans; choose suppliers and freely seek out consumers for their products; seek material, technical, financial and other resources where they choose; set prices for their products and services as they choose; hire the staff they wish to hire; and dispose of their profits, including foreign currency profits, at their discretion, after paying all required taxes, fees, etc¹⁵⁷.

Most recently, Ukraine's Cabinet of Ministers cancelled its 69 regulations in the area of regulation of activity of entrepreneurs as part of a broader initiative, discussed above, to cancel 2,249 acts regulating entrepreneurial activity by September 1, with an additional 119 regulations relating to entrepreneurship scheduled to be cancelled at the next meeting of the Cabinet of Ministers. In announcing the cancellation of the 69 regulations, Prime Minister Tymoshenko specifically noted the action was intended to free entrepreneurs from regulation that encouraged corruption.¹⁵⁸

The freedom in Ukraine to engage in entrepreneurial activities is reflected in the growing number of small and medium size enterprises in the country. As detailed in the 2003 Study conducted by the SigmaBleyzer Foundation, the number of small and medium size privatized companies grew from 32 and 11, respectively, in 1992, to 65,888 and 37,792, respectively, in 2002.¹⁵⁹ The Government of Ukraine calculates that in 2003 there were over 272,000 small businesses in Ukraine (an increase of over 25% from 2000) and

¹⁵⁷ Commercial Code of Ukraine, adopted by Law No. 436-IV dated 16 January 2003, Article 44.

¹⁵⁸ "Cabinet Cancels 69 Entrepreneurship Regulatory Acts," Ukrainian News Agency, August 18, 2005, <http://www.interfax.kiev.ua/eng> at Exhibit J4.

¹⁵⁹ The Effect of Privatization on Social Welfare in Ukraine: The Practical Experience of SigmaBleyzer at 9.

2,770,000 individuals engaged in entrepreneurial activities.¹⁶⁰ These numbers clearly reflect the fact that individuals are free to engage in economic activities and to use their abilities and property for entrepreneurial activities.

Final Comment government control over the allocation of resources and over the price and output decisions of enterprises

In its prior determinations regarding revocation of a country's NME status, the Department has explained that decentralized economic decision-making is a hallmark of market economies, where the independent investment, input-sourcing, output and pricing actions of individuals and firms in pursuit of private gain collectively ensure that economic resources are allocated to their best (most efficient) use.¹⁶¹ Ukraine has made enormous progress in each of the areas the Department has viewed as reflecting decentralized decision-making since the 1997 determination regarding Ukraine's status as a market economy.

Despite the efforts of opponents of revocation of Ukraine's NME status to paint Ukraine as a centralized economy where the state controls prices and the allocation of resources, the current situation in Ukraine is marked by price regulation limited to natural monopoly sectors of the economy, in which western countries themselves often regulate prices; by a banking sector growing in importance as a source of finance for small and medium size business where foreign banks increasingly are active; and by a rapid

¹⁶⁰ Submission of the Government of Ukraine at 25.

¹⁶¹ Estonia Decision Memorandum at 15; Russia Decision Memorandum at 16.

increase in small and medium size business formation in the private sector under a legal structure guaranteeing their freedom to conduct business and to make independent business decisions. Ukraine's dynamic economic performance in recent years reflects its evolution into a decentralized market economy and the absence of state control over prices and the allocation of resources.

VI. Such Other Factors As The Administering Authority Considers Appropriate

Throughout their comments, opponents of revocation of Ukraine's NME status have cited corruption and the absence of rule of law as justification for denying revocation. While the Department has commented on the issue of corruption in prior determinations to revoke a country's NME status, the issue of corruption has not played a significant role in the Department's determinations.¹⁶² Moreover, to the extent the Department considers the issue of corruption and related issues in assessing whether to revoke Ukraine's NME status and in its overall assessment of whether to revoke Ukraine's NME status, the Department should consider as "other factors" the dramatic changes in Ukraine during the past year as a result of last year's presidential election.

The EBRD has characterized the election of President Yushchenko and the appointment of a government committed to accelerating reform as "the most significant development in Ukraine since independence in 1991."¹⁶³ Apart from the obvious political ramifications of the election, the economic ramifications of the election, both in the short term and in the longer term, are of enormous consequence.

Nowhere is the economic significance of the election greater than in the areas of corruption and the rule of law. The priority the new government has placed on

¹⁶² Russia Decision Memo at 20; Kazakhstan Decision Memo at 16.

¹⁶³ EBRD at 54.

eliminating corruption and enforcing the rule of law was described in the World Bank's 2005 Country Assessment Report for Ukraine, as follows:

The government, entering office with little time to plan following the protracted electoral cycle, with an ambitious agenda, and facing high expectations, has taken some time to settle. Recurring themes in the first few months are public accountability, improved governance, respect for the rule of law, and a determination to root out corruption and reduce the shadow economy.¹⁶⁴

This is further confirmed by the EBRD, which noted the importance of these issues to the new government and detailed the extensive range of initiatives the new government has undertaken in these areas:

It is necessary first of all to acknowledge and accept the scale of a problem before you reasonably expect to solve it, and the authorities in Ukraine appear ready to do this. In fact, their performance in office will be judged by the electorate largely on how effectively they can enforce the rule of law, bring down levels of corruption and dismantle the system of crony capitalism built up by their predecessors. The authorities have not thus far pursued an integrated, high profile anti-corruption programme. Such programmes in Ukraine (and elsewhere) have met with little success in the past. Instead, they are targeting areas where corruption has been a major problem – at the highest levels and the lower ones – and designing more discrete initiatives to tackle them. The rule of law/anti-corruption effort announced in the first few months of 2005 includes:

- Judicial reforms that will enhance transparency of judgements, facilitate dissemination of legal rulings, upgrade the technological capacity of the courts system and improve training and compensation for judges. There is also a need to tighten enforcement of judicial decisions, which will require better discipline in the executive branch as well as reforms of the bailiff system, law enforcement and the civil service.
- A strengthening of the Justice Ministry's authority to initiate disciplinary procedures against judges found to have engaged in corrupt activities.

¹⁶⁴ World Bank Report at 4.

- A revival of the “Clean Hands” campaign by the Justice Ministry, which will involve pledges by Government officials at all levels to work honestly and transparently, with monitoring and sanctioning mechanisms to encourage full participation. The Justice Ministry is also drafting a “Civil Service Code” that will enforce greater public disclosure by officials and narrow the space for conflicts of interest.
- The creation of a National Bureau of Investigation with a staff of 5,000 to fight corruption at the higher echelons of power. This has been endorsed by the Interior Ministry, the Prosecutor General’s Office and the National Security and Defence Council.
- Changes in the organisation and functioning of the Interior Ministry, including simplification of procedures for the traffic police to cut down on bribery.
- A radical overhaul and clean-up of the customs service, including much more stringent controls over customs officials, the installation of web cameras at border points and more regular inspections by the Interior Ministry and Security Services.
- A plan to aggressively pursue civil service reform and “cut the army of bureaucrats” in the country while increasing wages.
- Plans for de-regulation and reducing red tape that will lessen the incentives for government bureaucrats to extract bribes from businesses and private citizens – this includes streamlining licensing and registration procedures, limiting inspections and establishing one-stop shops for new businesses.
- Finally, there are a range of other policy initiatives that have elements of corruption-fighting inherent in them: the abolition of tax privileges for selected firms; the improvement and transparency in the management of state-owned firms (especially monopolies); putting an end to transfer pricing schemes; and conducting a review of possible illegal conduct in past privatisations which gave rise to problems of state capture.¹⁶⁵

¹⁶⁵ EBRD at 50-51.

These initiatives already are yielding results, with reports of the shadow sector of the Ukrainian economy being reduced by 7%, customs charges being increased by 67%, and income to the State Budget rising by 50%.¹⁶⁶

The new Government's commitment to eliminate corruption and strengthen the rule of law is further evidenced by Ukraine's recent enactment of landmark legislation strengthening Ukraine's intellectual property rights ("IPR") laws, particularly with respect to CDs and DVDs,¹⁶⁷ legislation long sought by the United States that had languished under the old government. The legislation imposes severe penalties on the producers of and dealers in CDs and DVDs that infringe IPR. The sanctions for circulation and production of illegal CDs and DVDs (as well as equipment and materials for their production) now include up to five years of imprisonment¹⁶⁸. The law also extends the powers of state regulators in this sphere and puts a single agency in charge of supervising protection of IPR in Ukraine,¹⁶⁹ providing the authorized state body greater powers to confiscate infringing CDs and DVDs, and to cancel the licenses of infringing parties¹⁷⁰. These new enforcement powers, combined with the heightened levels of criminal liability for IPR violations, are expected to substantially curb IPR violations against foreign investors in Ukraine.

¹⁶⁶ Statement of First Deputy Prime Minister Anatoliy Kinakh, speaking in Odessa on Tuesday, 26 July 2005, at a meeting of the Interdepartmental Council for Combating Smuggling and Corruption <http://www.korrespondent.net/main/126889>.

¹⁶⁷ Law of Ukraine No. 2734-IV "On Amendments to Certain Legislative Acts (Concerning Regulation of Transactions Related to the Production, Export and Import of Laser-Readable Disks, Equipment And Materials For Their Production)," 6 July 2005.

¹⁶⁸ Criminal Code of Ukraine No. 2341-III dated 5 April 2001, Article 203¹.

¹⁶⁹ Law of Ukraine No. 2953-III "On the Specifics of Government Regulation of the Activity of Subjects of Economic Activity Associated with the Manufacture, Export and Import Of Laser-Readable Discs" dated 17 January 2002, Articles 6, 9 and 9¹.

¹⁷⁰ Law of Ukraine No. 2953-III "On the Specifics of Government Regulation of the Activity of Subjects of Economic Activity Associated with the Manufacture, Export and Import Of Laser-Readable Discs" dated 17 January 2002, Articles 9 and 9¹.

The new government's initiatives in these areas have changed the atmosphere for doing business in Ukraine. In May of this year, Ukraine's credit ratings were upgraded by Standard & Poor's, which cited improved prospects for a transparent economy and the rule of law in the country following last year's election.¹⁷¹ Specifically, Helena Hessel, a credit analyst at S&P, cited as the reason for upgrading Ukraine's credit ratings:

Ukraine's improved creditworthiness reflects an enhanced political and policy environment. The new president . . . advocates transparency, the rule of law and democratic values, which should lead to the implementation of political, institutional and structural reforms necessary to transform Ukraine into a country with an open, democratic political system and a market-based economy.¹⁷²

As detailed above, the changes already undertaken, and the recognition that further changes will continue to occur, have dramatically improved the prospects for doing business in Ukraine, have resulted in growing foreign investment in energy, banking, real estate and other sectors of Ukraine's economy, reflecting Ukraine's status today as a market economy. As such, the Department should focus not on corruption and rule of law issues under the previous government, as advocated by opponents of revoking on Ukraine's NME status, but on the dramatic improvements in these areas and the new government's commitment to reform as appropriate "other factors" warranting revocation of Ukraine's NME status.

¹⁷¹ "Ukraine receives S&P upgrade," Päivi Munter, Financial Times; May 11, 2005, <http://news.ft.com/cms/s/1688c232-c247-11d9-866a-00000e2511c8.html> at Exhibit 15.

¹⁷² Id.

Final Comments regarding Corruption and the Rule of Law

The issue of corruption has repeatedly been raised by opponents of NME revocation for the countries of the Former Soviet Union.¹⁷³ While the Department has recognized that corruption is a serious issue, it noted that even in market economies, there exist varying degrees of corruption, and that corruption per se did not alter the fact that prices and costs were being generated by market forces.¹⁷⁴

The situation in Ukraine under the previous government was no different than the situation in those countries at the time the Department revoked those countries' NME status. In fact, Ukraine's ranking on Transparency International's Index in 2004--cited by opponents of revocation of Ukraine's NME status -- was the same as Kazakhstan.¹⁷⁵ Ukraine's ranking also was the same as Guatemala and Bolivia, and better than Indonesia, Pakistan and Bangladesh.¹⁷⁶

What is fundamentally different in the Department's current review of Ukraine's NME status is that Ukraine is committed to reform in this area as a priority of the new government and has initiated a wide-ranging program of initiatives to address the

¹⁷³ Russia Decision Memorandum at 18; Kazakhstan Decision Memorandum at 14.

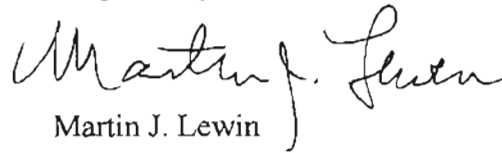
¹⁷⁴ Kazakhstan Decision Memorandum at 14.

¹⁷⁵ "Corruption Perceptions Index 2004", Transparency International, <http://www.transparency.org/cpi/2004/cpi2004.en.html> - cpi2004 at Exhibit 16.

¹⁷⁶ Id.

problem. As such, the Department should recognize the improvements in the areas of corruption and rule of law as supporting revocation of Ukraine's NME status.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Martin J. Lewin". The signature is written in a cursive, flowing style with a large initial 'M'.

Martin J. Lewin

On behalf of Leman Commodities
S.A. and Azovstal Iron and Steel
Works, S.A.