

July 17, 2002

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Case No. A-823-812  
Total No. of Pages: 17  
Original Investigation  
Group III, Office 7 and Office of Policy  
**PUBLIC DOCUMENT**

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**DELIVERY BY HAND**

Secretary of Commerce  
U.S. Department of Commerce  
Attn: Import Administration  
Central Records Unit, Room 1870  
14th Street and Constitution Avenue, N.W.  
Washington, DC 20230

Attn: Mr. George Smolik (Office of Policy); Mr. James Doyle;  
Ms. Carrie Blozy; Ms. Lori Ellison

Re: **Carbon and Certain Alloy Steel Wire Rod from Ukraine: Request for  
Comments on the Status Of Ukraine as a Non-Market Economy  
Country**

Dear Mr. Secretary:

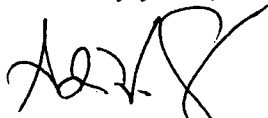
On behalf of Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc. ("Petitioners"), and in accordance with the deadlines and instructions provided in the Department's notice seeking comments on Ukraine's status as a non-market economy country, see Investigation of Carbon and Certain Alloy Steel Wire Rod from Ukraine: Opportunity to Comment on the Status of Ukraine as a Non-Market Economy Country, 67 Fed. Reg. 19,394 (Apr. 19, 2002) (the "Notice"), we submit the enclosed rebuttal comments.

These comments are timely filed in accordance with the deadlines set in the Notice, as amended by the Department.

This submission is being served in accordance with the attached certificate of service, and is being submitted to the Department in accordance with the instructions indicated in the Notice.

Please contact the undersigned with any questions that may arise concerning the enclosed.

Sincerely yours,



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R. ALAN LUBERDA  
ADAM H. GORDON

Counsel to Petitioners

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BEFORE THE  
INTERNATIONAL TRADE ADMINISTRATION  
OF THE  
U.S. DEPARTMENT OF COMMERCE

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CARBON AND CERTAIN ALLOY STEEL WIRE ROD FROM UKRAINE

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PETITIONERS' REBUTTAL COMMENTS CONCERNING  
THE STATUS OF UKRAINE AS A NON-MARKET ECONOMY COUNTRY  
UNDER SECTION 771(18) OF THE TARIFF ACT OF 1930, AS AMENDED

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July 17, 2002

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INTRODUCTION

On behalf of Petitioners,<sup>1</sup> we submit the following rebuttal comments for the Department's consideration as it conducts its inquiry into the status of Ukraine as a non-market economy ("NME") country under Section 771(18) of the Tariff Act of 1930, as amended ("the Act").<sup>2</sup> These comments are timely submitted in accordance with the Department's published notice initiating this inquiry,<sup>3</sup> as subsequently extended by the Department.

These rebuttal comments augment the comments previously filed by Petitioners,<sup>4</sup> and address the several submissions presented to the Department by parties advocating revocation of Ukraine's NME status.<sup>5</sup> The pro-revocation submissions – whether submitted by Ukrainian

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<sup>1</sup> Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.

<sup>2</sup> 19 U.S.C. § 1677(18).

<sup>3</sup> See Investigation of Carbon and Certain Alloy Steel Wire Rod from Ukraine: Opportunity to Comment on the Status of Ukraine as a Non-Market Economy Country, 67 Fed. Reg. 19,394 (Apr. 19, 2002).

<sup>4</sup> See Petitioners' Dec. 21, 2001 Comments; Petitioners' Mar. 13, 2002 Comments; Petitioners' June 17, 2002 Comments.

<sup>5</sup> Letter from O. Shlapak, Minister of Economy and for European Integration Issues of Ukraine to Honorable Donald Evans, Secretary, United States Department of Commerce, (June 14, 2002) (transmitted June 17, 2002 by Yaroslav V. Voitko, Chief, Trade and Economic Mission of Ukraine) (the "GOU Comments"); Letter from V.A. Nozdrachov, First Deputy of Managing Director, Ukrainian Association of the Enterprises of Ferrous Metallurgy, to The Honorable Donald Evans, Secretary of Commerce, The Ukrainian Association of the Enterprises of Ferrous Metallurgy comments on the Market Economy Status of Ukraine in the Antidumping Investigation of Carbon and Certain Alloy Steel Wire Rod from Ukraine; (June 13, 2002) (transmitted June 14, 2002 by Yaroslav V. Voitko, Chief, Trade and Economic Mission of Ukraine) (the "Metallurgy Association Comments"); Letter from A.S. Pojidaev, Head of the Central Committee of the Trade Union of Metallurgical and Mining Industry of Ukraine, to the United States Department of Commerce (May 15, 2002) (transmitted May 30, 2002 by Yaroslav V. Voitko, Chief, Trade and Economic Mission of Ukraine); Letter from O. Shlapak, Minister of Economy and for European Integration Issues of Ukraine to Honorable Donald Evans, Secretary of Commerce of the United States of America (May 27, 2002) (transmitted May 29, 2002 by Yaroslav V. Voitko, Chief, Trade and Economic Mission of Ukraine); and Memorandum from Kempton B. Jenkins, President, Ukraine-U.S. Business Council, to Department of Commerce, (...continued)

interests or by U.S. interests – fail to acknowledge or discuss the reality with which Ukrainians and foreign investors deal on a daily basis. Despite repeated references and citations to Ukrainian laws and regulations, they fail to address the myriad ways in which Ukraine’s entire economic system fails to facilitate a market economy. By and large, Ukraine has not improved its degree of market-orientation since the Department last considered – and rejected – a request for NME revocation in 1997.<sup>6</sup> The Department’s 1997 analysis rejecting Ukraine’s request for revocation of NME status found that Ukraine did not qualify as a market-economy country. The overwhelming credible record evidence before the Department in this inquiry requires the same conclusion in 2002.

### **ARGUMENT**

The arguments presented in the pro-revocation submissions have been fully addressed in the submissions made by Petitioners and by other parties supporting continuation of Ukraine’s designation as a non-market economy country. The record presently before the Department in this inquiry contains substantial evidence demonstrating that Ukraine’s status as an NME country should remain unchanged.

#### **I. PERSISTENT AND DIRECT INTERVENTION BY THE UKRAINIAN GOVERNMENT PREVENTS FULL CONVERTIBILITY OF THE UKRAINIAN CURRENCY**

The Government of Ukraine (“GOU”) argues that its 50 percent currency convertibility requirement “was and remains an instrument of providing for economic security of the State” in

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(...continued)

International Trade Administration, Comments on the Status of Ukraine as a Non-Market Economy Country (June 18, 2002).

<sup>6</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon Steel Plate From Ukraine, 62 Fed. Reg. 61,754, 61,755 (Nov. 19, 1997) (“CTL Plate From Ukraine”).

the period following “the 1998 world financial crisis.”<sup>7</sup> The GOU fails to acknowledge, however, that the same currency conversion requirement existed in 1997, and was a basis for denying Ukraine’s request for NME revocation at that time, before “the 1998 world financial crisis.”<sup>8</sup>

In light of this evidence, the GOU’s attempt to characterize its currency conversion restriction as a reaction to the 1998 financial crisis is demonstrably false, and should be rejected. The GOU’s hard currency conversion requirement was put in place and remains in place as a mechanism for the state government to forcibly capture and retain hard currency, at the expense of free convertibility of the local currency.

The GOU next asserts that its frequent and unsterilized interventions in the foreign currency exchange market are merely “aimed at maintaining stability in the currency market as well as neutralization of the destabilizing influence of adverse world financial crisis phenomena.”<sup>9</sup> On its face, this assertion admits that the GOU takes active steps to influence and control the foreign exchange market. Even the most charitable reading of this statement cannot avoid the import of this position. The GOU, when it deems it appropriate, can and does intervene in the foreign exchange market in order to influence the convertibility of the local currency.

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<sup>7</sup> GOU Comments at 3; see also Metallurgy Association Comments at 2 (“Introduction of the 50 percent surrender of foreign currency proceeds was a measure of anti-crisis macroeconomic management, rather than unsterilized intervention in the foreign currency market.”). These arguments and other information concerning currency availability have been previously addressed by Petitioners. See Petitioners’ Dec. 21, 2001 Comments at 11-17; Petitioners’ Mar. 13, 2002 Comments at 5-6; Petitioners’ June 17 Comments at 3 & 7-9.

<sup>8</sup> See CTL Plate From Ukraine, 62 Fed. Reg. at 61,755.

<sup>9</sup> GOU Comments at 4 (emphasis added).

## II. WAGE TARIFFS AND DE FACTO LIMITATIONS ON WORKER MOBILITY PREVENT FREE DETERMINATION OF WAGE RATES

The GOU asserts that there are no controls on free negotiation of wage rates in Ukraine.<sup>10</sup> These claims either are not true, or ignore the reality confronting Ukrainian workers who desire to apply market mechanisms in wage negotiations and job mobility.<sup>11</sup>

First, the Tariff Rate System, which was a basis for denying revocation of Ukraine's NME status in 1997,<sup>12</sup> remains in full force and effect in Ukraine. While the GOU presents an unclear argument that branch agreements prove that wages are set completely using market mechanisms, it fails to demonstrate – because it cannot – that the Tariff Rate structure has been removed. As discussed by Petitioners in prior submissions, the continued use and influence of this mechanism is incompatible with market economy status.<sup>13</sup>

The GOU next claims that there are no restrictions on worker mobility, emphasizing that in 2001 it did away with the “propiska” system that required all Ukrainians to register with the state in order to be able to live and work.<sup>14</sup> The GOU fails to acknowledge, however, that it has merely replaced this system with a different system of citizen registration that will have the same result. As noted in the comments filed June 17, 2002 by Bethlehem Steel Corporation, National

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<sup>10</sup> GOU Comments at 5.

<sup>11</sup> See Petitioners' Dec. 21, 2001 Comments at 17-21; Petitioners' Mar. 13, 2002 Comments at 7; Petitioners' June 17, 2002 Comments at 10-13.

<sup>12</sup> Id., 62 Fed. Reg. at 61,755.

<sup>13</sup> See Petitioners' Dec. 21, 2001 Submission at 17-21; Petitioners' Mar. 13, 2002 Comments at 7; Petitioners' June 17, 2002 Submission at 10-12.

<sup>14</sup> GOU Comments at 5.



Steel Corporation, and United States Steel Corporation, workers still must register their residence and provide evidence of residence that in practice will severely restrict mobility.<sup>15</sup>

**III. UNCERTAIN IMPLEMENTATION OF LEGISLATION AND UNPREDICTABLE LEGAL PROTECTION CONSTRAINS FOREIGN INVESTMENT**

The GOU's attempt to minimize the wide range of problems confronting foreign investors should be rejected. Extremely low levels of foreign direct investment result from uncertain legal rights concerning such critical aspects of investment as land ownership, and ineffective and unpredictable enforcement of rights that are supposed to exist.<sup>16</sup>

**IV. THE STATE CONTINUES TO HAVE PERVASIVE OWNERSHIP INTERESTS IN ENTERPRISES THROUGHOUT THE UKRAINIAN ECONOMY**

The pro-revocation submissions present ill-defined and misleading statistics concerning privatization in Ukraine. For example, the GOU provides no definition or description of how it categorizes enterprises as "governmental" or "non-governmental"; this issue is critical in light of the record evidence establishing that the GOU retains significant ownership interests in most "privatized" companies.<sup>17</sup> As fully addressed in Petitioners' prior submissions, privatization in Ukraine has proceeded unevenly at best, with the GOU retaining ownership positions in the majority of "privatized" Ukrainian enterprises.<sup>18</sup> Indeed, the respondent in this investigation,

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<sup>15</sup> See Comments of Bethlehem Steel Corporation, National Steel Corporation, and United States Steel Corporation at 10, 10 nn.27-28 & Exhibit I (June 17, 2002).

<sup>16</sup> See Petitioners' Dec. 21, 2001 Comments at 21-28; Petitioners' Mar. 13, 2002 Comments at 7-8; Petitioners' June 17, 2002 Comments at 13-15.

<sup>17</sup> See Petitioners' Dec. 21, 2001 Comments at 30-31; Petitioners' Mar. 13, 2002 Comments at 8-9; Petitioners' June 17, 2002 Comments at 16-8.

<sup>18</sup> See Petitioners' Dec. 21, 2001 submission at 28-34; Petitioners' June 17, 2002 submission at 16-19.

Krivorozhstal Iron & Steel Works, is wholly state-owned and has not been even partially privatized.<sup>19</sup>

V. SIGNIFICANT STATE INFLUENCE ON RESOURCE ALLOCATION ARTIFICIALLY INFLUENCES PRICE AND OUTPUT DECISIONS OF UKRAINIAN ENTERPRISES

The GOU continues to play an important role in setting prices in Ukraine, just as it did in 1997 when the Department last rejected its request that NME status be revoked.<sup>20</sup> Whether it is with respect to setting prices on goods and services “having decisive social influence”<sup>21</sup>, or with respect to setting “indicative prices” for the merchandise that is the subject of this investigation, the GOU exercises direct or indirect control over prices in Ukraine

on Ukraine's attempts to develop a market economy have been recently noted by the U.S. Department of Treasury:

Corruption, organized crime, smuggling and tax evasion are some of the significant problems confronting Ukraine as it continues its transition to a free market economy within the context of a democratic state.<sup>23</sup>

This recent statement exists in addition to the many other objective assessments described in Petitioners' prior submissions.<sup>24</sup> Corruption of the nature and degree experienced in Ukraine indicates a separate structural problem that impedes the country's transition to a market economy.

## VII. CONCLUSION

The criteria specified under Section 771(18) of the Act address fundamental elements of a country's economic structure and operation. In the case of Ukraine, analysis of each of the specified criteria reveals a country that has not completed the transition to a market economy. Mandatory conversion of hard currency and intervention in the foreign exchange markets render the Hryvnia not fully convertible. Government regulation of wage rates and de facto worker registration requirements prevent the free negotiation of wages. Uncertain legal protections and application of laws render the foreign direct investment landscape uncertain at best. Continued and pervasive state ownership of enterprises, including those purportedly "privatized", reveal an economy in which the state continues to control significant and substantial means of production. The GOU remains directly involved in setting prices, and thus influences resource allocation

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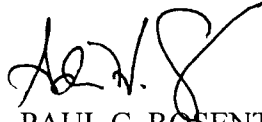
<sup>23</sup> U.S. Department of Treasury, Financial Crimes Enforcement Network, FinCEN Advisory Issue 29, Transactions Involving Ukraine at 1-2 (Apr. 2002) (available at <http://www.treas.gov/fincen/advis29.pdf>) (Exhibit 1 hereto).

<sup>24</sup> See Petitioners' Dec. 21, 2001 Comments at 6-10; Petitioners' Mar. 13, 2002 Comments at 4-5; Petitioners' June 17, 2002 Comments at 5-6.

throughout the economy. Lastly, continued corruption undermines the ability of Ukraine to develop functioning market mechanisms that are necessary to a full and functioning market economy.

Since the Department's last analysis in 1997, Ukraine has not succeeded in making the transition from an NME economy to a market economy. The Department should assess the record evidence before it in this inquiry and properly determine that revocation of Ukraine's NME status is not warranted at this time.

Respectfully submitted,



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July 17, 2002

# **EXHIBIT 1**



United States Department of the Treasury  
Financial Crimes Enforcement Network

# FinCEN Advisory

Subject:  
**Transactions  
Involving  
Ukraine**

Date:  
**April 2002**

Advisory:  
**Issue 29**

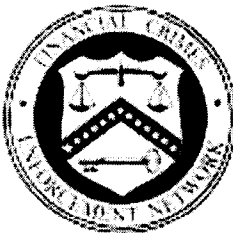
This Advisory is being issued to inform banks and other financial institutions operating in the United States of serious deficiencies in the counter-money laundering systems of Ukraine. The impact of such deficiencies on the scrutiny that should be given to certain transactions or banking relationships involving Ukraine, in light of the suspicious transaction reporting obligations of financial institutions operating in the United States, is discussed below.

The counter-money laundering regime embodied in the legal, supervisory, and regulatory systems of Ukraine suffers from certain serious, systemic problems as follows:

- Although banks in Ukraine are required to report large-scale and/or dubious transactions, they are not subject to penalty or sanction for failing to make such reports.
- Secrecy laws in the banking sector provide administrative authorities with limited access to customer account information. In the context of non-bank financial institutions, the relevant supervisory authorities have no ability to lift secrecy laws in connection with potential money laundering offenses.
- Non-bank financial institutions are under no obligation to identify beneficial owners when their clients appear to be acting on behalf of another party.
- Ukraine has devoted inadequate resources to investigating and prosecuting money laundering as evidenced by the lack of indictments, convictions and forfeitures by governmental authorities.
- Ukraine's acknowledged problems with pervasive public corruption interfere with its ability to apply and enforce anti-money laundering measures.

These deficiencies, among others, caused Ukraine to be identified in September 2001 by the Financial Action Task Force on Money Laundering (the "FATF") as non-cooperative "in the fight against money laundering." The FATF, created at the 1989 G-7 Economic Summit, is a 31 member international group that works to combat money laundering.

Ukraine's new constitution, approved in 1996, guarantees the right to own property and to engage in business. Corruption, organized crime, smuggling and tax



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evasion are some of the significant problems confronting Ukraine as it continues its transition to a free market economy within the context of a democratic state. Strengthening Ukraine's laws and regulations applicable to money laundering to comply with generally acceptable international standards would facilitate this transition.

The Government of Ukraine is aware of the problems presented by money laundering and has taken several actions to strengthen its regime in this regard. In 2000, it revised its law on banks and banking activity to lend important anti-money laundering disciplines to the banking sector. Presidential decrees preclude banks from opening new anonymous accounts and executing transactions on existing anonymous accounts unless they can identify the owners. A 2001 law on financial services and the regulation of markets for financial services holds the promise of extending anti-money laundering measures to the non-bank financial services sector after it takes full effect over the next two years. Changes to Ukraine's criminal code that entered into force on September 1, 2001 extend the range of predicate offenses for money laundering to all serious crimes. The President of Ukraine issued a Decree in December 2001 mandating the establishment of the Financial Monitoring Department ("FMD") by January 2002. Although it is not fully operational, the FMD will serve as a financial intelligence unit ("FIU"). Ukraine is now in the process of drafting a law that will provide a comprehensive framework for the establishment and operation of the FIU.

In spite of these and other instances of progress, a fundamental and comprehensive anti-money laundering law has yet to be enacted. Legislation being considered by the Verkhovna Rada, the Ukrainian parliament, has been designed to remedy this situation. Nonetheless, Ukraine's legal, supervisory, and regulatory systems create significant opportunities and tools for money laundering and increase the possibility that transactions involving Ukraine entities and accounts will be used for illegal purposes.

Thus, banks and other financial institutions operating in the United States should carefully consider, when dealing with transactions originating in or routed to or through Ukraine, or involving entities organized or domiciled, or persons maintaining accounts, in Ukraine, how the lack of adequate counter-money laundering controls in Ukraine affects the possibility that those transactions are being used for illegal purposes. A financial institution subject to the suspicious transaction reporting rules contained within 31 C.F.R. Part 103, and in corresponding rules of the federal financial institution supervisory agencies, should carefully examine the available facts relating to any such transaction to determine if such transaction requires reporting in accordance with those rules. Institutions subject to the Bank Secrecy Act but not yet subject to specific suspicious transaction reporting rules should consider such a transaction with relation to their reporting obligations under other applicable law. All institutions are particularly advised to give enhanced

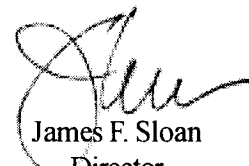
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scrutiny to transactions or relationships that do not involve established, and adequately identified and understood, commercial or investment enterprises, as well as to transactions involving the routing of transactions from Ukraine through third jurisdictions in ways that appear unrelated to commercial necessities.

It should be emphasized that the issuance of this Advisory, and the need for enhanced scrutiny for certain transactions or relationships, does not mean that U.S. financial institutions should curtail legitimate business with Ukraine.

To dispel any doubt about application of the “safe harbor” to transactions within the ambit of this Advisory, the Treasury Department will consider any report relating to a transaction described in this Advisory to constitute a report of a suspicious transaction relevant to a possible violation of law or regulation for purposes of the prohibitions against disclosure and the protection from liability for reporting of suspicious transactions contained in 31 U.S.C. 5318(g)(2) and (g)(3).

United States officials will continue to provide appropriate technical assistance to Ukrainian officials as they work to remedy the deficiencies in Ukraine’s counter-money laundering systems that are the subject of this Advisory.



James F. Sloan  
Director

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*FinCEN Advisory is a product of the Financial Crimes Enforcement Network,  
Department of the Treasury, Post Office Box 39, Vienna, Virginia 22183.  
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be addressed to the Office of Communications, FinCEN, (703) 905-3773.  
Information may also be faxed to (703) 905-3885.*



**PUBLIC CERTIFICATE OF SERVICE**

**Carbon and Certain Alloy Steel Wire Rod (Ukraine)**  
**DOC Case No. A-823-812 (OI)**

I hereby certify that on July 17, 2002, a copy of the foregoing public submission was served upon the following by hand delivery:

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ADAM H. GORDON