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**VIA MESSENGER**

The Honorable Donald L. Evans  
Secretary of Commerce  
Attn: Import Administration  
Central Records Unit, Room 1870  
U.S. Department of Commerce  
14th Street and Constitution Avenue, N.W.  
Washington, D.C. 20230

Re: **Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania Administrative Review: Rebuttal Comments Regarding Romania's Non-Market Economy Status**

Dear Secretary Evans:

On behalf of the Ad Hoc Committee of Domestic Nitrogen Producers, we hereby provide rebuttal comments concerning Romania's non-market economy ("NME") status in response to the Department's request for comments (67 Fed. Reg. 57388, Sept. 10, 2002). These rebuttal comments are timely filed pursuant to the Department's extension of the deadline for rebuttals until December 30, 2002.<sup>1</sup>

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<sup>1</sup> See Department's notice of November 20, 2002, posted on [www.ia.ita.doc.gov/](http://www.ia.ita.doc.gov/).

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As the Ad Hoc Committee discussed in its November 8, 2002 submission, Romania has failed to make sufficient progress in reforming its economy to permit the Department to rely on domestic costs and prices to calculate normal value in antidumping proceedings involving exports from Romania. The Ad Hoc Committee reiterates that it would be premature for the Department to revoke Romania's non-market economy status at this time, particularly in the context of Romania's history of repeated failure to sustain reform efforts and the fact that the current Romanian government's reforms are relatively recent and, thus, not yet fully implemented. The Ad Hoc Committee is especially concerned about the continuing high level of involvement of the Romanian Government in the energy sector, and specifically the natural gas sector. As discussed below, the Romanian Government's involvement in the energy sector distorts the economy as a whole, thereby rendering costs and prices unreliable for the Department's antidumping analysis. The Romanian Government also continues to distort the economy through its quasi-fiscal activities and its involvement in the allocation of capital through state-owned banks, which control a significant portion of bank assets. Should the Department decide to revoke Romania's NME status despite the evidence that the economy has not yet been sufficiently transformed, however, the Department should, as it did in the Russia NME decision, explicitly recognize that energy prices are distorted by Romanian government policies and note that it will carefully scrutinize energy prices in future antidumping investigations of merchandise from Romania.

**1. The Romanian Government's Continuing Heavy Involvement in the Economy Precludes Revocation of Romania's Non-Market Economy Status at This Time**

The extensive involvement of the Romanian Government in the Romanian economy, in the form of ownership of the means of production, pricing policies not based on market forces, control of a significant portion of available capital, and shifting of assets through quasi-fiscal activities, is simply incompatible with a market economy. As the Ad Hoc Committee discussed in its November 8, 2002 comments, the Romanian Government has repeatedly shown in the period since the fall of the Communist government that it lacks the political will to significantly reform its economy.<sup>2</sup> Thus, although the Romanian Government claims in its October 23, 2002 comments that privatization of state-owned companies “has been at the heart of the political agenda” in Romania during the past ten years,<sup>3</sup> in reality the Romanian Government has proven incapable of sustaining its commitment to privatization.<sup>4</sup> The continuing significant involvement of the Romanian Government in the Romanian economy is particularly evident in the energy sector. Petrom and Romgaz are state-owned enterprises that dominate the oil and natural gas sectors, respectively. The Romanian Government notes that Petrom is on the list of large SOEs that will be sold under the terms of the World Bank's Private Sector Adjustment Loan<sup>5</sup> (an action

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<sup>2</sup> See Comments of Ad Hoc Committee of Domestic Nitrogen Producers (Nov. 8, 2002), Cover Letter at 2-3 (hereinafter “Ad Hoc Committee Submission”).

<sup>3</sup> Comments of the Government of Romania (Oct. 23, 2002), at 25 (hereinafter “Romanian Government Submission”).

<sup>4</sup> See Ad Hoc Committee Submission at 5-7.

<sup>5</sup> See Romanian Government Submission at 26.

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that has not yet taken place), but the government intends to sell only 51 percent of Petrom and will, thus, maintain what is likely the largest stake in the company.<sup>6</sup>

Regarding natural gas, the Romanian Government has made even less progress in privatization. The government has announced plans to privatize Romgaz but will not relinquish control of the enterprise, intending to maintain a 51 percent stake.<sup>7</sup> This majority stake in Romgas means that natural gas pricing and sales will remain under the control of the Romanian Government<sup>8</sup> and, therefore, will not be freely determined by the market. In addition, the privatizations of the two state-owned gas distribution companies, Distrigaz Nord and Distrigaz Sud, are not scheduled to occur until 2003 and 2004.<sup>9</sup>

Moreover, the Romanian Government's energy pricing policies distort the economy as a whole. While the Romanian Government claims that "most prices in Romania are liberalized," it admits that 18 percent of prices in the consumer price index are regulated, 9 percent of which are energy prices.<sup>10</sup> As the Ad Hoc Committee previously noted, however, the World Bank has found that "prices to both household and industrial consumers {are} significantly below cost recovery

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<sup>6</sup> See Ad Hoc Committee Submission at 8.

<sup>7</sup> See U.S. Department of Energy, An Energy Overview of Romania (last updated Oct. 7, 2002) at 17, at <http://www.fe.doe.gov/international/romnover.html>.

<sup>8</sup> See *id.*

<sup>9</sup> See World Bank Office in Romania, Romania Weekly Update (Sept. 3, 2002), at <http://www.worldbank.org.ro/ECA.Romania.nsf>; International Monetary Fund, Romania: First and Second Reviews Under the Stand-By Arrangement Staff Report, IMF Country Report No. 02/194 (Sept. 2002) at 17, at <http://www.imf.org/external/pubs/ft/scr/2002/cr02194.pdf> (hereinafter "IMF Reviews").

<sup>10</sup> Romanian Government Submission at 35.

levels.”<sup>11</sup> Given these below-market prices, it is disingenuous for the Romanian Government to claim that “since 1997 there are neither products nor services to the population that are subsidized.”<sup>12</sup> In fact, the IMF calculated that below-market prices and poor collection rates resulted in an implicit subsidy to the Romanian economy from natural gas alone of 3.9 percent of GDP in 2001 and a projected 2.5 percent of GDP in 2002.<sup>13</sup> It is simply incorrect, therefore, for the Romanian Government to claim that “domestic prices applied by the Romanian natural monopolies,” which include energy, “stand at levels comparable with those of other world producers.”<sup>14</sup>

Further, the IMF very recently noted that the Romanian Government’s “quasi-fiscal activities are extensive and their estimated cost is not included in the budget documents.”<sup>15</sup> The IMF also noted that the government’s quasi-fiscal activities extend to “large scale cancellation of tax obligations of state-owned enterprises. . . as evidenced, for example, by the cancellation of tax arrears (amounting to about 1 percent of GDP) of the energy production company Termoelectrica and some of its suppliers in December 2001.”<sup>16</sup> Thus, not only does the Romanian Government

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<sup>11</sup> Ad Hoc Committee Submission at 13, quoting World Bank, Country Assistance Strategy of the World Bank Group for Romania (May 22, 2001) at 9, at <http://www.worldbank.org.ro/ECA/Romania.nsf/ECADocByLink/Country+Assistance+Strategy?OpenDocument>.

<sup>12</sup> Romanian Government Submission at 35.

<sup>13</sup> See Ad Hoc Committee Submission at 12, citing IMF Reviews at 27, Table 5.

<sup>14</sup> Romanian Government Submission at 36.

<sup>15</sup> International Monetary Fund, Romania: Report on the Observance of Standards and Codes – Fiscal Transparency Module, IMF Country Report No. 02/254 (Nov. 18, 2002) at 11, at <http://www.imf.org/external/pubs/ft/sctr/2002/cr02254.pdf> (hereinafter “IMF Fiscal Transparency Report”).

<sup>16</sup> IMF Fiscal Transparency Report at 11.

continue to distort the economy through its energy policies, which include below-market pricing, poor collection rates, and cancellation of tax arrearages, such quasi-fiscal activities are not properly accounted for or disclosed by the government. This lack of transparency casts serious doubts on the reliability of any cost and price data, especially for energy in general and natural gas in particular, that the Department would be provided in an antidumping investigation involving merchandise from Romania, should the Department revoke Romania's NME status.

Finally, the Romanian Government attempts to minimize its involvement in the allocation of credit by stating that state-owned banks account for "only" 43-46 percent of the Romanian banking system's total assets and loans to state-owned enterprises account for "only" 10 percent of all lending activity.<sup>17</sup> The fact that the Romanian Government controls almost half of all banking assets does not demonstrate that "market forces determine lending decisions," as the government claims.<sup>18</sup> Rather, this concentration of assets in state-owned banks reveals the highly significant role the government continues to have in the Romanian economy.

In sum, despite some progress in reforming the economy, the Romanian Government continues to play a central role in the Romanian economy that is more characteristic of a state-controlled economy than of a market economy. The Ad Hoc Committee, therefore, strongly urges the Department to determine that Romania does not merit graduation to market economy status at

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<sup>17</sup> See Romanian Government Submission at 40.

<sup>18</sup> Romanian Government Submission at 40.

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this time, because costs and prices in Romania are not reliable indicators of market-driven values for use in antidumping and countervailing duty investigations.

**2. The Department Should Recognize That Energy Prices Are Not Market-Driven If It Decides to Revoke Romania's Non-Market Economy Status At This Time**

If the Department decides to revoke Romania's non-market economy status at this time, despite the compelling evidence that demonstrates that Romania has not yet sufficiently transformed its economy to merit graduation, the Department should explicitly recognize that energy prices in Romania are not determined by the market and distort the economy. The Department adopted this approach in its decision to graduate Russia to market economy status, when it noted that "energy prices. . . remain a significant distortion in the economy" and that "continuation of the Russian government's current energy price regulatory policies may warrant careful consideration of energy price data in future trade remedy cases."<sup>19</sup> This concern over energy prices in Russia is further reflected in the Final Agreement Suspending the Antidumping Investigation on Cold-Rolled Carbon Steel Flat Products From the Russian Federation and the proposed Agreement Suspending the Antidumping Investigation of Certain Cut-to-Length Carbon Steel Plate From the Russian Federation.<sup>20</sup> In both agreements, the Department stated that, for calculating normal value, it may disregard particular prices and costs within Russia that, for example, are not in the ordinary course of trade or do not reasonably reflect costs associated with

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<sup>19</sup> Inquiry into the Status of the Russian Federation as a Non-Market Economy Country Under the U.S. Antidumping Law, Department Memorandum at 19-20 (June 6, 2002).

<sup>20</sup> Investigation A-821-815 (Sept. 25, 2002) (hereinafter "Cold-Rolled Steel Agreement"); Investigation A-821-808 (Nov. 26, 2002) (hereinafter "CTL Plate Agreement"), at <http://www.ia.ita.doc.gov>.

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the production and sale of the merchandise.<sup>21</sup> The Department specified that costs related to energy are an area “in which adjustments may be necessary.”<sup>22</sup> As the Russia NME decision and the suspension agreements illustrate, the Department does recognize that costs and prices in a market economy may not be market based, and it has the legal authority to adjust its normal value methodology in order to account for costs and prices that would otherwise distort its calculations.

The extent of continuing Romanian government involvement in Romania’s energy sector renders energy costs and prices wholly unreliable for use by the Department to calculate normal value. Thus, were the Department to use such demonstrably unreliable data in an investigation involving Romanian exports, the purpose of the antidumping laws, i.e., to protect domestic industries from unfairly traded merchandise, would be undermined. Consequently, if the Department decides to revoke Romania’s NME status at this time, it should nonetheless recognize that Romanian government interference in the energy sector is such that costs and prices for energy are distorted, and state that it will closely scrutinize energy price data in any future antidumping investigation involving Romania.

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<sup>21</sup> Cold-Rolled Steel Agreement at 2, n.1; CTL Plate Agreement at 3, n.1.

<sup>22</sup> Id.



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If you have any questions regarding this submission, please do not hesitate to contact the undersigned.

Respectfully submitted,

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