TABLE OF CONTENTS

PAGE

Introduction 1

I. General Points 2

II. Criterion One: The Extent of the Convertibility of the Russian Ruble 7

- A. Russia's Currency is as Convertible as the Currencies of the Other Countries Whose NME Designations Were Revoked at the Time of Their Revocation 7
- B. Rebuttal 10

III. Criterion Two: The Extent to Which Wage Rates are Determined By Free Bargaining Between Labor and Management 12

- A. Wage Rates Are Determined Through Free Bargaining in Russia, Without Interference by the Government 12
- B. Wage Rates in the Russian Federation Are Determined in Circumstances Similar to Those Which Existed in Kazakhstan When Its NME Status Was Revoked 13
- C. Rebuttal 16

IV. Criterion Three: The Extent to Which Joint Ventures and Foreign Investment Are Permitted in Russia 18

- A. Foreign Investment in Russia Has Expanded and Demonstrates a Long-Term Commitment to the Russian Market by Foreign Investors 18
- B. Russia Has Been at Least as Effective in Promoting Foreign Direct Investment as was Kazakhstan When the Department Granted It Market Economy Status 20
- C. Rebuttal 21
  1. The "Quality" of FDI in Russia 21
  2. The Accuracy of the FDI Data 24
  3. The Accuracy of the GDP Figures 26

V. Criterion Four: The Extent to Which the Russian Government Retains Ownership or Control of the Means of Production 28

- A. The Russian Government Has Privatized a Significant Portion of Its Economy 28
- B. Rebuttal 30
  1. Privatization of Large-Scale Enterprises 30
  2. The Proportion of GDP Generated by Private Enterprise 31
  3. Alleged Renationalization of Privatized Enterprises 33

VI. Criterion Five: The Extent of Government Control Over the Allocation of Resources and the Price and Output Decisions of Enterprises 33

A. Prices in Natural Monopolies are Regulated, But Not Fixed, By the Russian Government 33
B. The Extent to Which the Russian Federation Has Privatized Control Over the Allocation of Resources and Over the Price and Output Decisions of Enterprises Is Similar to that which Existed in Kazakhstan When Its NME Designation Was Revoked 36
C. Rebuttal 37

VII. Criterion Six: Other Factors 39

A. Barter 40
B. Corruption 42
C. WTO Accession 44

Conclusion 45

BEFORE THE
INTERNATIONAL TRADE ADMINISTRATION
UNITED STATES DEPARTMENT OF COMMERCE

In the matter of:	)	
	)	Case No. A-821-816
THE STATUS OF THE RUSSIAN FEDERATION AS A NON-MARKET ECONOMY COUNTRY UNDER THE ANTIDUMPING AND COUNTERVAILING DUTY LAWS	)	Number of Pages:
	)	**THIS DOCUMENT CONTAINS NO PROPRIETARY INFORMATION**

ADDITIONAL REBUTTAL BRIEF AND COMMENTS ON BEHALF OF THE RUSSIAN STEEL PRODUCERS AND THE U.S.-RUSSIA BUSINESS COUNCIL

Introduction

This brief is submitted in the inquiry by the Department of Commerce (the "Department") into the status of the Russian Federation as a market economy for the purpose of the U.S. antidumping law, on behalf of JSC Severstal, Novolipetsk Iron & Steel Corporation, JSC Magnitogorsk Iron & Steel Works (the "Russian steel producers"), and the U.S.-Russia Business Council. This brief is also supported by the Ministry of Economic Development and Trade of the Russian Federation. We are filing this brief on today's date, pursuant to the instructions from Assistant Secretary Faryar Shirzad at the hearing held by the Department on this issue on March 27, 2002, at which he stated that parties may address rebuttal comments or points raised at the hearing or in prior submissions.[1]

[1] Transcript of Hearing Before the Department of Commerce, Import Trade Administration, March 27, 2002, at 9 ("Tr.").

This brief is structured according to the six statutory criteria that the Department is directed to consider in determining a country's status as a market economy, 19 U.S.C. § 1677(18), but it does not review in detail the arguments that we have already made in prior submissions regarding Russia's satisfaction of those criteria.[2] Rather, in reviewing the applicability of the criteria to Russia's situation, this brief will (1) elaborate on a few key points made at the March 27 hearing; (2) respond to some questions raised by Department personnel at the hearing (especially those questions that were directed to our opponents, which we did not have an opportunity to address at the hearing); (3) rebut comments made by the opponents at the hearing and in their "Additional Comments" dated February 28, 2002;[3] and (4) elaborate on the relevance of the Department's recent determination revoking Kazakhstan's non-market economy ("NME") status to its current inquiry regarding Russia. Before we embark on this review, however, we address a few general points.

I. General Points

The first point we must emphasize is that Russian economic conditions have changed so dramatically over the past decade, and the role of the Government in the economy has declined so substantially over that time period, that the country has long been operating as a market economy. The parties opposing market economy status repeatedly asserted at the Department's

---

2 See Letter Filed on Behalf of JSC Severstal, Novolipetsk Iron & Steel Corporation, and JSC Magnitogorsk Iron & Steel Works by Powell, Goldstein, Frazer & Murphy, LLP (December 10, 2001) ("Russian Steel Producers' Letter"); see also Rebuttal Brief of JSC Severstal, Novolipetsk Iron & Steel Corporation, and JSC Magnitogorsk Iron & Steel Works, filed by Powell, Goldsten, Frazer & Murphy, LLP (February 7, 2002) ("Russian Steel Producers' Rebuttal Brief"); Rebuttal Comments of U.S. Russian Business Council (February 7, 2002).

3 Additional Comments of Bethlehem Steel Corporation, National Steel Corporation, and United States Steel Corporation, filed by Dewey Ballantine LLP and Skadden, Arps, Slate, Meagher & Flom, LLP (February 28, 2002) ("Dewey-Skadden Additional Comments").

March 27 hearing that our descriptions of the developments in Russia are merely future-oriented "aspirations," and that our statements are all couched in the "future tense."[4] Let us be very clear, then, that our statements are past- and present-oriented: the necessary developments have taken place (not "will take place") in Russia in order to establish a market economy that already satisfies the statutory criteria. Obviously, the momentum for reform will continue into the future, and additional proposals will be implemented by the Russian Government. But our acknowledgement that further change will occur should not be distorted into a concession that market economy status has not yet been achieved. That simply is not an accurate representation either of conditions in the country or of our position in this inquiry.[5]

The second basic point that we believe requires reiteration is that the Department's market economy inquiry is necessarily a comparative one. As the Department repeatedly has recognized in prior market economy determinations, there is no absolute standard by which the market economy designation may be determined; perfect *laissez-faire* capitalism is neither attainable nor required.[6] Rather, the designation of a given country, such as Russia in this case, must be determined through a comparison with the conditions existing in other market economy countries, including, in particular, other formerly-non market economies whose designations have recently been revoked by the Department. Indeed, the Department recognized this comparative approach in its very recent decision revoking Kazakhstan's NME designation, in

---

4 Tr. at 93, 107-08, 191 (Ward).

5 Thus, the statement by one of the parties opposing market economy status that conditions in Russia are the same as they were in 1995, when the Department refused to revoke the country's NME designation (Tr. at 143 (Stevens)), is just absurd.

6 See, e.g., Memorandum for Faryar Shirzad, "Antidumping Duty Investigation of Silicomanganese from Kazakhstan – Request for Market Economy Status," at 5 (Dep't Commerce March 25, 2002) (stating that in determining whether an economy is operating under market principles, the test "does not require that the countr[y] be judged against a theoretical model or a perfectly competitive *laissez-faire* economy") ("Kazakhstan NME Status Memo").

which it noted that it "must evaluate the totality of facts in determining whether a country has met the standard of a market economy. The Department's determination is based on comparing economic reforms in the country to how other market economies operate, recognizing that market economies around the world have many different forms and features."[7]

Moreover, to state the obvious, the relevant comparison for determining whether a country such as Russia is a market economy is not necessarily with the United States. Although we envision the United States as the paradigmatic example of a market economy, its specific features and conditions are not determinative of the status of other countries. The last sentence in the previous quote – "market economies around the world have many different forms and features" – evidences the Department's awareness of this fact. Thus, for example, the opponents' extensive comparisons of the manner in which prices in the natural gas industry are regulated in Russia with that in the United States[8] do not provide much insight into the designation of Russia as a whole as a market economy – revealing only the obvious fact that Russia differs from the United States in this one respect.

Another important point, whose difficulty was recognized in the questions asked by the Department during the March 27 hearing, is the appropriate manner in which the Department is to weigh the several statutory criteria used to determine whether a country is a market economy, and in particular, how to balance conditions in a country that support a market economy designation against those conditions that undermine it.[9] There is no easy answer to this question. Ultimately, the determination of how to weigh the factors in a given case is left to the

7 Id. (emphasis added). This recognition belies the efforts by the opponents to resist comparisons of Russia to the other countries whose NME designations were recently revoked (Tr. at 191-92 (Ward)) – for the obvious reason that such comparisons place Russia in a relatively good light.

8 Tr. at 98 (Bartlett), 118, 145-46 (Slater).

9 See Tr. at 63, 67 (Hsu), 147-48 (Shirzad).

Department's discretion, but three basic facts should be recalled as it exercises that discretion. First, as the Department recognized in the Kazakhstan determination, "it is not necessary that the country fully meet every factor relative to other market economies," so long as the Department can conclude that "economic reforms have reached a threshold level such that the country can be considered to have a functioning market economy in which prices and costs exist that can be tied to the U.S. antidumping law."[10]

Second, contrary to the assertion made by one of the opponents at the hearing, the Department should not attempt to weight the factors more or less heavily based on the perceived importance of certain sectors or resources in the economy of the country in question, or, even less, according to the industries that will be the subject of antidumping cases that may be filed against that country in the future.[11] Such an effort to weight the statutory criteria according to the economic conditions in the country at issue would be a very complex and subjective process, which the Department has never attempted to undertake in past market economy determinations. Furthermore, an effort to identify future possible subjects of antidumping cases is futile and irrelevant. Other than steel products – which are the subject of U.S. antidumping petitions regardless of the country at issue – the identity of industries that may be the subject of future antidumping investigations cannot possibly be predicted, because one cannot determine the trajectory of a country's economic development nor the range of products that it may export in the future. This is especially true with a country as large, resource-rich, and developed as Russia.

Third, and even more important, is the fact that the market economy determination is a macro-economic one, not based solely on conditions of specific industries in the country at issue.

---

[10] Kazakhstan NME Status Memo, at 5.
[11] Tr. at 194-95 (Bartlett).

While the steel and fertilizer industries have come to the Department in this inquiry with their opposition to the revocation of Russia's non-market economy designation, that does not mean that the market economy determination should be based on factors that are relevant to those industries alone. For example, the Ad Hoc Committee dwells at great length on the regulation of natural gas in Russia, and complains that the prices at which gas is provided to industrial users in Russia create competitive difficulties for the U.S. nitrogen industry.[12] As discussed in the hearing and further below, Russia's regulation of natural gas falls within the scope of established practices of market economy countries in regulating natural monopolies. But in any event, the market economy inquiry is not writ so small as suggested by the opponents; the conditions facing a single industry cannot lead to a given outcome on an issue of such economic breadth. Put another way, in many market economy countries, including the United States, the governments intervene in the economy and introduce distortions into the marketplace,[13] but such actions do not convert those countries into NMEs.

Finally, the opponents have warned the Department that granting market economy status to a country that is "really" a NME would insert distortions in the process of calculating dumping margins in future antidumping proceedings.[14] In response, we must emphasize that the converse is true as well – to refuse to revoke the NME designation for a country that has clearly achieved market economy conditions would be to continue to impose a grossly inappropriate method of

---

12 See Letter Filed on Behalf of the Ad Hoc Committee of Domestic Nitrogen Producers, at 21-23, 26-28 (discussing regulation of natural gas prices in Russia), and cover letter, at 3 (discussing regulation of natural gas prices and its impact on U.S. domestic industries) (December 10, 2001); see also The Ad Hoc Committee of Domestic Nitrogen Producers Rebuttal Brief, at 10-12 (discussing regulation of natural gas prices and its impact on U.S. domestic industry) (February 7, 2002); Tr. at 114-15, 119-20 (Slater).

13 See Tr. at 168 (May) (stating that "in market economies you do have distortions introduced into the market, be it subsidies or other activity").

14 Tr. at 95-96 (Ward).

calculating dumping margins on imports from that country. It is well-recognized that the NME "surrogate country" methodology provides at best only a rough approximation of the costs and prices in the home market (and hence, normal value), and experience demonstrates that the results are often the calculation of enormously inflated dumping margins.[15] Continuing to apply this methodology to a country that should be recognized as a market economy and to which the standard dumping calculation methodology should apply would be extremely unfair. Furthermore, the market economy inquiry should not be a result-driven exercise. If the country at issue has satisfied the statutory criteria to the relevant "threshold level[s]", as Russia has, its NME designation should be revoked.

We turn now to a review of the statutory criteria for determining Russia's status as a market economy.

II. Criterion One: The Extent of the Convertibility of the Russian Ruble

A. Russia's Currency is as Convertible as the Currencies of the Other Countries Whose NME Designations Were Revoked at the Time of Their Revocation

For the purpose of assessing a country's progress towards market economy status, currency convertibility should be viewed in two ways. First, it must be determined whether the country's currency is, indeed, convertible and, if so, to what extent and for what purposes. Second, it must be determined by what mechanism the country's currency's exchange rate is set.

---

15 For example, in the preliminary determinations issued last week in the carbon and alloy wire rod investigations, the average antidumping margin for the six market economy countries was 20.63%, while the average margin calculated for the two NME countries – Moldova and Ukraine – was more than 12 times as high (249.31%). Fact Sheet, Preliminary Determinations in the Antidumping Duty Investigations on Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine (Dep't Commerce, April 3, 2002) available at http://ia.ita.doc.gov/download/swr-factsheet/040302.htm.

With respect to the first point, Russia's currency is freely convertible for all current account transactions and for most capital account transactions, although Russia maintains very limited constraints on the latter. However, as the DOC has noted, "these types of capital account controls are common in many countries."[16] In this respect, Russia is no different from five of the six countries whose NME designation the DOC has revoked. The DOC revoked its NME designations of Hungary, Latvia, Slovakia, the Czech Republic, and Kazakhstan even though each country maintained significant exchange controls at the time.

- Hungary required forced repatriation of foreign exchange earnings and prohibited resident legal entities holding accounts in non-resident banks.[17]

- Latvia maintained controls on resident legal entities' portfolio and on direct investments abroad.[18]

- In Slovakia, residents were required to repatriate all export profits no later than 30 days from acquisition. This requirement also applied to invisible transactions and current transfers.[19] A permit was required for a variety of capital transactions, including purchases of capital market securities, bonds, and other debt securities and money market instruments.[20]

- In the Czech Republic, permits were required for the issuance of debt and mortgage securities and money market instruments.[21]

- In Kazakhstan, "[t]he NBK still ha[d] controls on some capital account

16 Kazakhstan NME Status Memo, at 7.

17 Memorandum for Robert S. LaRussa, "Antidumping Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Hungary – Market vs. Non-Market Economy ("NME") Analysis Memorandum," at 6 (Dep't Commerce February 23, 2000) ("Hungary NME Status Memo").

18 Memorandum for Troy Cribb, "Antidumping Duty Investigation of Certain Steel Concrete Reinforcing Bars From Latvia – Request for Market Economy Status," at 6 (Dep't Commerce Jan. 10, 2001) ("Latvia NME Status Memo").

19 IMF, "Annual Report on Exchange Arrangements and Exchange Restrictions," at 778-79 (2001).

20 IMF, "Annual Report on Exchange Arrangements and Exchange Restrictions," at 779-80 (2001).

21 IMF, "Annual Report on Exchange Arrangements and Exchange Restrictions," at 269 (2001).

> transactions, such as requiring NBK approval prior to importing or exporting currency amounts over $100,000."[22]

In short, as to the extent of the ruble's convertibility, Russia does not differ significantly from Hungary, Latvia, Slovakia, the Czech Republic, and Kazakhstan. Like Russia, all permitted free convertibility of their currencies for current account transactions but imposed certain limitations on the convertibility of their currencies for capital account transactions. On the other hand, Poland had no currency controls at the time of revocation, but only because the zloty *was not convertible* at that time.[23] As the DOC noted, the zloty "[could] not be freely exchanged outside Poland for foreign investment goods" at the time of Poland's NME revocation.[24]

With respect to the second point, the Russian ruble's exchange rate is set by market forces. Like the Czech, Slovak, and Kazakh currencies at the time that these countries were designated as market economies, the ruble floats independently.[25] This means that rather than being artificially fixed by the government at a particular level relative to other world currencies, market forces set the official exchange rate at which the Central Bank of Russia (CBR) buys and

---

22 Kazakhstan NME Status Memo, at 7.

23 Memorandum to the File, "Respondent's Request for Revocation of Poland's Non – Market Economy ("NME") Status," at 10, 33 (Dep't Commerce June 21, 1993) ("Poland NME Status Memo").

24 Id. at 10. At the time, the DOC decided that "[f]ull convertibility is not . . . necessary to link Poland's economy to world markets." It concluded that while "[i]t certainly is true that the zloty is not fully convertible (on both current and capital accounts) . . . [,] [t]the lack of full convertibility certainly does not disqualify Poland as a market economy. . . ." Id. at 33 (emphasis added).

25 Memorandum for Robert S. LaRussa, "Antidumping Duty Determinations on Cold-Rolled Carbon-Quality Steel Products from the Slovak Republic – Market vs. Non-Market Economy Analysis," at 5 (Dep't Commerce October 13, 1999) ("Slovak Republic NME Status Memo"); Kazakhstan NME Status Memo, at 8 (noting that the tenge's exchange rate has been freely set only since 1999).

sells rubles.[26] In contrast, the exchange rates of the Hungarian forint and the Latvian lat were pegged directly to other currencies at the time of NME revocation,[27] while, as noted above, the Polish zloty "[could] not be freely exchanged outside Poland for foreign investment goods" at the time of Poland's NME revocation.[28]

Given that the convertibility of the Russian currency compares favorably with that of every one of the six countries that have previously been designated market economies, the Department should find that it amply meets the currency conversion criterion for market economy designation.

B. Rebuttal

Dewey-Skadden assert in their Additional Comments that the draft currency reform legislation that we discussed in our rebuttal brief did not pass the Duma in the form in which it was introduced, but rather was rejected at the end of 2001.[29] While this is true as to the particular legislative initiative discussed in our rebuttal brief, the basic point we were making remains accurate – i.e., that legislative reform of Russia's currency rules is moving ahead steadily. This is evident from the fact that the Finance Ministry and the Economics Ministry are

---

[26] The official exchange rate of ruble is established by the Central Bank of the Russian Federation, being calculated on the basis of average-weighted exchange rates determined by various market forces.

[27] Hungary NME Status Memo, at 6 (forint pegged to euro and dollar); Latvia NME Status Memo, at 6 (lat pegged to IMF's Special Drawing Rights, a basket of major trading country currencies).

[28] Poland NME Status Memo, at 10.

[29] Dewey-Skadden Additional Comments, at 2. They also complain that we misquoted them in the discussion of pending currency reform legislation in our rebuttal brief. See id. at 3. We confess an error in that, after paraphrasing Dewey-Skadden's argument, we then inadvertently enclosed the paraphrase in quotation marks. The paraphrase is, however, an accurate summary of Dewey-Skadden's point — that efforts to enact legislation liberalizing Russia's currency laws are "dead." See id.

each drafting new versions of the currency reform legislation,[30] and the Economics Ministry has said that its new version of the law on currency controls and regulations will be completed by May of 2002.[31] Furthermore, the Duma is prepared to introduce its own currency reform legislation if the administration delays in submitting its own bill.[32] In addition, at least one industry group – the Russian Union of Industrialists and Entrepreneurs -- is actively preparing its own version of currency reform legislation.[33]

These developments are supported by the fact that two weeks ago, the former Chairman of the Central Bank of Russia, Viktor Geraschenko, resigned, "apparently under pressure from the Kremlin, which has long wanted the bank to adopt a more progressive monetary policy."[34] As Mr. Geraschenko's successor, President Putin nominated Deputy Finance Minister Sergei Ignatyev, who "is an architect of the administration's own banking-reform proposals."[35] In his confirmation hearings before the Duma, Mr. Ignatyev declared, "I favor a staged liberalization of currency regulation and currency control."[36] On March 20, 2002, the Duma confirmed the nomination.[37]

On another issue, Dewey-Skadden professes doubt that the IMF Agreement, pursuant to which the Russian Federation maintains full convertibility of its currency for current account

---

30 Business Law Review, "Duma Figure for Gradual Currency Deregulation," at 1 (February 26, 2002) (attached as Exhibit 1).
31 Business Law Review, "Economics Ministry Proposes New Version of Currency Control Law," at 1 (February 5, 2002) (attached as Exhibit 2).
32 RosBusinessConsulting Database, "Duma May Prepare Draft on Currency Regulations," at 1 (February 12, 2002) (attached as Exhibit 3).
33 Business Law Review, supra note 30, at 1 (attached as Exhibit 1).
34 The New York Times, "World Business Briefing Europe: Russia: Top Banker Resigns," at 1 (March 16, 2002) (attached as Exhibit 4).
35 Id.
36 News Bulletin, "Central Bank Head Nominee Speaks of Goals," at 1 (March 18, 2002) (attached as Exhibit 5).
37 The Russian Business Monitor, "Duma Appointed New Central Bank Chair," at 1 (March 22, 2002) (attached as Exhibit 6).

purposes, is a binding obligation under Russian law, and they state that, "it is not certain whether the [IMF Agreement] rises to the status of a treaty under Russian law."[38] The implication of their concern, of course, is that Russia is not legally bound to maintain the currency guarantees of Article VIII of the IMF Agreement and could disregard its obligation if it so chose. This suggestion is wrong from so many different points of view that it is difficult to know where to begin refuting it, but the short answer is that the Russian Federal Law on Treaties states that an "'international treaty of the Russian Federation' shall mean an international agreement concluded by the Russian Federation with a foreign state (or states) <u>or with an international organization</u>, in written form. . . ."[39] As such, Russia's adherence to the IMF agreement has the same binding legal status as that of any other statute or treaty of the Russian Federation.

III. Criterion Two: The Extent to Which Wage Rates are Determined By Free Bargaining Between Labor and Management

A. Wage Rates Are Determined Through Free Bargaining in Russia, Without Interference by the Government

As discussed in the Russian Steel Producers' Rebuttal Brief, the wage rates in Russia are not controlled by the government. This is evidenced by the fact that the only constraint on the freedom to set wages that the state imposes on management and labor is the establishment of minimum monthly wages for workers.[40] Additionally, Russian domestic legislation guarantees fundamental rights to workers -- such as the right to bargain freely for wages and the right to strike -- thereby ensuring them adequate bargaining power in negotiating wages.[41] The freedom

---

38 Dewey-Skadden Additional Comments, at 6.

39 Federal Law No. 101-FZ of July 15, 1995, "Russian Federation International Treaties Act," art. 2(a) (emphasis added) (attached as Exhibit 7).

40 <u>See</u> Russian Steel Producers' Rebuttal Brief, at 39.

41 <u>See</u> <u>id</u>. at 44-49.

of labor to negotiate wages without interference from the government is also evidenced by the "job vacancies" advertisements in national and local media and in the notices displayed outside factories and institutes. And though the number of strikes in Russia has declined over the past few years, this is due largely to an improving economy and a reduction in wage arrears – i.e., positive economic developments.[42] Further, the existence of wage rate differentials among professions and across geographic regions in Russia demonstrates that wages are based on market conditions of supply and demand, rather than being fixed by government fiat.[43]

Finally, it should be noted that the Federation of Independent Trade Unions (FNPR is the Russian abbreviation), the successor to the old Soviet trade union umbrella organization, has lost much ground to alternative unions in recent years and, in addition, a substantial number of workers are abandoning their union membership entirely. This trend reveals the freedom that labor in Russia now enjoys to establish and participate in independent unions that have increasingly replaced the old Soviet organizations, as well as the freedom not to participate in unions at all, and that the Government is no longer the vehicle through which wage rates are negotiated.[44]

B. Wage Rates in the Russian Federation Are Determined in Circumstances Similar to Those Which Existed in Kazakhstan When Its NME Status Was Revoked

The Russian Government does not intervene to dictate wage rates. As discussed above, only constraint on the freedom to set wages that the Russian Federation imposes upon management and labor is a minimum monthly wage for workers, which is analytically the same

---

42 See id. at 59.

43 See id. at 50-54.

44 See id. at 60-61.

as the hourly minimum wage imposed by U.S. federal law.[45] Thus, with respect to the determination of wage rates, the degree of government intervention in the Russian Federation is less than that which existed in Kazakhstan at the time the Department determined that the country had achieved market economy status. In Kazakhstan, the Department found that the government generally did not have laws that prescribed the administration of wages in the economy.[46] The Department noted, however, that the Government of Kazakhstan ("GOK") did intervene "in [state owned enterprises] and in the establishment of a minimum wage."[47] In Russia, the government intervenes only to establish a minimum wage rate; the government does not impose other wage rate controls. Thus, the Russian Government intervenes to a lesser degree than the GOK at the time the Department granted Kazakhstan market economy status.

Additionally, the Russian labor force is as mobile and free to pursue new employment opportunities as was the labor force in Kazakhstan at the time the Department granted it market economy status. As stated in the Russian Steel Producers' Rebuttal Brief, the 1993 Russian Constitution guarantees all persons freedom of movement and the right to choose where to live.[48] And although a residence registration system ("propiska") continues to exist in Russia, it functions merely as a notification requirement. Contrary to the assertions of one opposing party,[49] the registration system in Russia does not give the government the right to restrain workers' movements.

---

45 See Labor Code of the Russian Federation, art. 78 (art. 133 of the new Labor Code) and art. 77 ("Payment for labour of each worker shall depend upon his personal labour contribution and the quality of labour, and the maximum amount shall not be limited.") (emphasis added).

46 Kazakhstan NME Status Memo, at 9.

47 Id.

48 See Russian Steel Producers' Rebuttal Brief, at 48-49; 1993 Constitution of the Russian Federation, art. 27 (attached as Exhibit 1 of the Russian Steel Producers Rebuttal Brief).

49 See Dewey-Skadden Additional Comments, at 9.

Evidence also demonstrates that the labor force is as free to pursue new employment opportunities in Russia as existed in Kazakhstan at the time the Department granted it market economy status. In Kazakhstan, the Department found that the rapid expansion of certain sectors of the economy and the contraction of others provided evidence that the labor force was free to pursue new employment opportunities. Similarly, in Russia, there has been a substantial shift from public to private employment.[50] From 1992 to 2000, employment in state and municipal enterprises decreased by 45 percent.[51] During this same period, employment in privately owned enterprises increased by 131 percent, and employment in wholly-foreign owned and joint Russian-foreign private enterprises increased by 567 percent.[52] Moreover, there are great variances in pay from region to region and within different professions in Russia.[53] The expansion of employment in the private sector and contraction in the public sector and the differences in regional and professional pay scales suggest a dynamic labor market in Russia where workers are free to pursue new employment opportunities.

Further, the situation with respect to wage arrears in Russia is similar to that which existed in Kazakhstan at the time the Department found it to be a market economy. In Kazakhstan, the Department acknowledged that "wage arrears remain a problem."[54] However, the Department was willing to overlook the problem based, in part, on recent decreases in the amount of wage arrears in that country. Russia, too, experienced wage arrears problems in the past. But, like Kazakhstan, wage arrears in Russia have been significantly reduced, indicating

---

50 See Russian Steel Producers' Rebuttal Brief, at 62-64.
51 See id. at 62 (Figure 15).
52 See id. at 62.
53 See id. at 50-54.
54 See Kazakhstan NME Status Memo, at 10.

that the situation has greatly improved.[55] The improvement in conditions has been reinforced by the new Russian Labor Code, which criminalizes the failure by employers to pay wages on time.[56] As with Kazakhstan, the Department should find that the issue of wage arrears is not an obstacle to the revocation of Russia's NME designation.

C. Rebuttal

In their February 28 Additional Comments, Dewey-Skadden have misinterpreted the statement of the Minister of Social Development, Alexander Pochinok, regarding the effect of the new Labor Code. They quote the Minister's statement that the Labor Code has incorporated a new "harsh" provision, which requires that a majority of an enterprise's workers must support a decision to strike before the union may legally go on strike.[57] On this basis, Dewey-Skadden contends that under the newly enacted Labor Code, Russian workers' "right to strike freely is gone."[58] This conclusion, however, misinterprets the Minister's statement in that it is evident from context (which Dewey-Skadden failed to provide in their selective quotation) that he used the word "harsh" ironically. His thesis is that this supposedly "harsh" provision actually operates beneficially to protect the majority of workers from losing their paychecks in a strike with which they disagree called by a tiny minority of the workers.[59]

---

55 Tr. at 57-58 (Somers); 58-59 (Antel); see also Russian European Centre for Economic Policy, Russian Economic Trends Monthly, at 6 (February 2002) (stating that "[t]he stock of wage arrears was R29.9 bn by the end of December, compared with R31.7 bn at the beginning of the year. Over the year budget wage arrears decreased from R4.9 bn to R3.6 bn") available at www.resep.org/pdf's/e2002_02.pdf.

56 Tr. at 59 (Antel).

57 Dewey-Skadden Additional Comments, at 9-10.

58 Id. at 9.

59 Official Kremlin Int'l News Broadcast, "Remarks by Labor and Social Development Minister Alexander Pochinok at a Breakfast of the American Chamber of Commerce in Russia," at 3 (January 23, 2002) (attached as Exhibit 9).

Moreover, the Dewey-Skadden quotation omits the following language that provides context for the Minister's remark:

> The procedure of calling a strike has been facilitated, it is now possible to organize a strike at shorter notice, but, yes . . . [i]t is necessary to have the consent of the majority of the work collective. . . . Imagine an assembly line at a major enterprise…[where t]wenty people go on strike and 50,000 [of the enterprise's workers] suffer. . . . [A strike] is the most potent means of struggle for the right of workers, but the work collective should not suffer.[60]

Dewey-Skadden's highly selective quotation of the Minister's remarks conveys the erroneous impression that the new Labor Code is less protective of workers' rights than its predecessor, and obscures the fact that the new Code actually facilitates the procedures for engaging in a strike, which, the Minister affirms, is "the most potent means" of securing workers' rights.[61]

Moreover, whatever the Minister's intent in using the word "harsh" in his comments, the new Labor Code provision that requires the support of a majority of a union's membership before it may lawfully engage in a strike is the same as established practice in the United States. Here the identification of the percentage required for an affirmative strike vote is not defined by statute, but rather is left to the constitutions and bylaws of the individual unions. However, the standard practice is that unions require at least a majority vote before they will engage in a strike, and some unions require a super-majority vote of 60 percent or even two-thirds of their membership. Thus, if the provision in the new Russian Labor Code requiring a majority vote has destroyed the right to strike freely, as the opposing parties assert, then that right also is absent in the United States. Clearly, this condition in Russia no more leads to the conclusion that it is a NME than it does for the United States.

---

60 Id. at 3 (emphasis added).

61 Id. at 3.

IV. Criterion Three: The Extent to Which Joint Ventures and Foreign Investment Are Permitted in Russia

A. Foreign Investment in Russia Has Expanded and Demonstrates a Long-Term Commitment to the Russian Market by Foreign Investors

The conditions in Russia for foreign investment have been far more favorable than portrayed by the opponents to revocation of Russia's NME designation. Perhaps one of the best indications of the improvement of conditions in Russia for foreign investment is the fact that repatriation of Russian capital to the country has increased in recent years. As Mr. Marshall, the Executive Vice-President of the U.S.-Russia Business Council, stated at the Department's March 27 hearing, "the conventional wisdom on the capital flight question is that not only is it declining but Russian capital is being quickly repatriated to invest in Russian industry . . . . Russian businessmen who took their money out of the country earlier . . . are now reinvesting in the Russian economy in dramatic fashion . . . ."[62]

As a result of the Russian government's concerted effort to attract foreign investment, FDI is expected to increase by 59% by 2004.[63] At the March 27 hearing, several prominent examples of long-term commitments that foreign, and in particular American, firms have made to the Russian market were discussed, which reflect geographical diversity ranging from Northwest Russia to the Volga region to the Russian Far East. These examples include:

- Ford Motor Company is investing $150 million to produce the Focus platform in Leningrad Oblast.
- Also in Northwest Russia, Philip Morris invested $330 million in its Izhora facility in 2000, and last fall announced an additional $100 million investment to expand production. The company had expected to recover the $330 million invested in the factory by 2009, but the enterprise is operating so successfully that

[62] Tr. at 65-66 (Marshall). One piece of evidence of this repatriation trend is the fact that Cyprus, one of the major destinations of Russian flight capital, has now become a major source of investment in Russia.

[63] Investment Report, "GDP Forecast to Grow 3.8%-4.4% in 2002-2004," at 1 (August 24, 2001).

it will pay for itself by the second quarter of 2003.

- Announced in early 2001, the $330 million deal that General Motors has crafted with Avtovaz, an industrial giant transformed from the Soviet era, will produce thousands of the Niva sport-utility vehicle under the Chevy brand name. The EBRD was so convinced of the potential that it took both a debt and an equity stake in the project, part of the bank's optimistic outlook on Russia overall, which yielded a 50 percent increase in its funds dedicated to Russia/NIS over the next five years.

- The Caspian Pipeline Consortium, led by ChevronTexaco and ExxonMobil, has successfully built a 1,000 mile pipeline at a cost of $2.6 billion, of which $2.2 billion is being invested in Russia.

- Most recently, ExxonMobil announced a $4.7 billion commitment to Phase-I development of the Sakhalin-I offshore project, which could total $20 billion upon completion.[64]

Investments in Russia have also been made by other "name brand" American companies, such as Wrigley, Mars, Kraft, International Paper, etc.

Moreover, regarding the geographic and sectoral breadth of FDI in Russia, it is not nearly as concentrated in Moscow and St. Petersburg as the conventional wisdom might suggest. In early 2001, these two cities accounted for only one-third of all FDI in Russia.[65] Similarly, FDI is spread among a range of various industry sectors, contradicting any notion that the oil and gas industry is the sole recipient of FDI and that energy projects distort the data. For example, in 2000, the breakdown for FDI was as follows:[66]

Fuel	28%
Trade	18%
Food	16%
Communications	9%
Machine and Metal Processing	4%
Wood Processing	2%

---

64 Tr. at 53-55 (Marshall).

65 Troika Dialog, Foreign Direct Investment: A Regional Guide, at 14 (September 2001) (attached as Exhibit 10).

66 Russian Steel Producers' Rebuttal Brief, at 90 (Figure 17).

Other	23%

B. Russia Has Been More Effective in Promoting Foreign Direct Investment Than was Kazakhstan When the Department Revoked Its NME Designation

In 2000 and 2001, the Russian Federation enacted major tax reforms. Four chapters of Part II of the Tax Code cover the value added tax, excise tax, individual income tax and social tax.[67] The Individual Income Tax Chapter of the New Russian Tax Code changed individual income taxes to a flat tax rate of 13 percent for residents and 30 percent for non-residents and created a variety of new deductions to taxable income.[68] Additionally, a chapter on profits tax, as implemented, introduces transitional provisions from the old rules for certain aspects of the new profits tax regime.[69]

The tax reforms in Russia are similar to those that were introduced in Kazakhstan, which the Department found to encourage direct investment. In Kazakhstan, the Department found that the 1995 Tax Code, which "introduced a value added tax, income taxation of both individuals and enterprises, and a variety of excise taxes," and the 1997 Law on State Support for Direct Investment, which provided incentives in certain priority sectors, provided certainty with respect to tax treatment and thus encouraged direct investment.[70] Likewise, as the tax reforms in Russia significantly reduce the margin tax rates while increasing predictability, the Department should find that the Russian tax reforms are effective in encouraging direct investment.

As a result of the Government's concerted effort to attract investment in Russia, foreign

---

67 Federal Law No. 117-FZ of August 5, 2000, "Tax Code of the Russian Federation, Part II."

68 The Economist Intelligence Unit, "Country Commerce, Russia," at 47-49 (November 2001) (attached as Exhibit 19 of the Russian Steel Producers' Rebuttal Brief).

69 Federal Law No. 110-FZ of August 6, 2001, "On amendments and additions to the Federal Tax Code," art. 2.

70 See Kazakhstan NME Status Memo, at 11.

direct investment has increased substantially in the past several years. From 1993 through 2000 foreign direct investment in Russia increased over 225 percent.[71] Moreover, Russia has attracted foreign direct investment in more sectors than in Kazakhstan at the time the Department found it to be a market economy. In Kazakhstan, the Department found that much of the foreign direct investment flowed into Kazakhstan's oil and gas sectors,[72] which means that if oil and gas prices were to drop significantly, as they did in the late 1990s, FDI to Kazakhstan could all but dry up. In contrast, as noted above, foreign direct investment in Russia is spread among a wide range of industry sectors.

Further, as Mr. Somers testified at the March 27 hearing, the members of the American Chamber of Commerce in Russia, consisting of a large number of American companies including some blue-chip, "brand-name" corporations, feel favorably towards Russia, are "thriving economically" there,[73] and are already "operating as if Russia is a market economy."[74] The Department found similar comments by U.S. business interests operating in Kazakhstan to be "instructive" and ultimately concluded that the country had successfully promoted foreign direct investment.[75] As with Kazakhstan, the evidence discussed above demonstrates that the Russian Federation likewise is successfully encouraging foreign direct investment.

C. Rebuttal

1. The "Quality" of FDI in Russia

One of the opposing parties asserted at the hearing that the quantity of FDI in Russia is

---

[71] See Russian Steel Producers' Rebuttal Brief, at 91 (Figure 18).

[72] See Kazakhstan NME Status Memo, at 11.

[73] Tr. at 40-41 (Somers).

[74] Tr. at 42 (Somers).

[75] See Kazakhstan NME Status Memo, at 12.

somehow a misleading measure of this statutory criterion (notwithstanding the statute's emphasis on the "extent" to which foreigners are able to invest in the country under consideration) because the level of investment commitments overshadows the allegedly poor "quality" of FDI in Russia. This "qualitative" problem allegedly arises from the weak protection of minority shareholder rights under Russian corporate law, which thus places foreign investors in a passive investment role.[76] This argument is incorrect.

The number of instances where the rights of minority shareholders in Russia have been compromised has substantially declined in recent years, as many firms that had previously committed violations are now audited according to Western IAS/GAAP standards, comply fully with information disclosure requirements as they access international capital markets, and have implemented their own corporate governance codes to increase shareholder value.[77] The corporate governance rating system launched by the Institute for Corporate Law and Corporate Governance is also raising the pressure to reform, as Russian firms see the link between these ratings and their ability to raise capital.[78] And the Investor Protection Association is working across Russia to organize small shareholders to contest board elections, successfully placing independent directors on the boards of 38 major Russian companies in 2001.[79]

The evidence from portfolio investment further supports the positive FDI trends. The value of Russian shares rose a remarkable 81% in 2001 and are up an additional 35% in the first quarter of 2002 alone.[80] The inward capital flows that are driving up prices would be inconceivable if flagrant abuses of shareholder rights were the rule rather than the exception.

---

76 Tr. at 148-49, 166 (Bartlett).

77 Tr. at 180-81 (Marshall).

78 Tr. at 181 (Marshall).

79 See Ernst & Young, "Ernst & Young Participates in Russian Independent Director Program," An Eye on Russia, at 2 (October 2001) (attached as Exhibit 11).

80 See Russian Trading System, available at www.rtsnet.ru.

Nor would rating services such as Fitch, S&P and Moody's unanimously agree that Russia has become an increasingly attractive place to invest, yet these agencies upgraded their Russia ratings on several occasions last year and have continued to do so in early 2002.[81]

Finally, the high "quality" as well as the "quantity" of investment in Russia is supported by the Russian government's success in improving corporate governance rules, strengthening shareholders rights by closing previously exploited loopholes. These efforts have specifically targeted capital dilution and failure to comply with information disclosure requirements. Specifically, in terms of recent improvements, the Putin Administration has undertaken various initiatives, including:

- Strengthening the powers of the Federal Securities Commission, which imposed fines on 1,400 companies in 2000 for failure to disclose, a 10-fold increase over the previous year.[82]

- Drafting amendments to the Criminal Code related to nondisclosure, which will carry a punishment of up to three years in jail.[83]

- Drafting a new law on insider trading (which, if passed by the Duma, will take effect in January 2003).[84]

- Issuing a Corporate Governance Code based on OECD guidelines, on which the private sector has commented extensively. Importantly, the working groups tasked with developing the Code were comprised not just of international investors and law and accounting firms. The process also included representatives of natural monopolies such as Gazprom and UES, and major listed companies such as YUKOS and Sibneft, which, along with UES and Lenenergo,

---

81 See Ernst & Young, "Focus – The New Year," An Eye on Russia, at 2 (January 2002) (attached as Exhibit 12); Ernst & Young, "Financing and M&A News," An Eye on Russia, at 7-8 (December 2001) (attached as Exhibit 13); Arkady Ostrovsky, "International Capital Markets: Russia finds favour from ratings agencies," Financial Times (October 5, 2001) (attached as Exhibit 14).

82 U.S.-Russia Business Council and American Chamber of Commerce in Russia, Commercial Engagement with Russia: Policy Recommendations for the Bush Administration, March 2001.

83 Daniel Bases, "FSC Unveils Corporate Ethics Code: Code to Hasten Russia's Integration into Global Markets," Reuters, February 6, 2002.

84 Id.

have also adopted their own corporate codes. One of the principal guidelines dealing with independent directors is being implemented by the boards of major Russian corporations such as Aeroflot, Gazprom and Sberbank.[85]

- Adopting amendments to close loopholes in existing laws such as the Joint Stock Companies law and the Bankruptcy law. The amended Joint Stock Companies law, which now pertains to all companies (as opposed to the previous threshold of companies with more than 1,000 shareholders), provides for broader shareholder rights related to new share subscriptions, including a preemptive right to buy new shares in either a public or closed subscription, as well as greater related notification requirements. The law also reduces ambiguities pertaining to company charter changes, making any revisions that infringe upon shareholder rights subject to approval by 75 percent of preferred shareholders.[86]

2. The Accuracy of the FDI Data

In their Additional Comments, Dewey-Skadden also attacked the accuracy of the figures on per capita foreign direct investment that were submitted in our Rebuttal Brief.[87] A review of the data, however, reveals the accuracy of the figures we submitted to the Department, and that Dewey-Skadden distorted the information they submitted. Our figures on per capita foreign direct investment are taken from two sources: the Business Information Service for the Newly Independent States ("BISNIS") for 1997 – 2000[88] and the RosBusinessConsulting Database for 2001 and 2002.[89]

Dewey-Skadden attacks these numbers as "misleading and false" and as estimates "based on outdated information, or . . . grossly misstated."[90] Dewey-Skadden has arrived at different figures because it has started with net foreign direct investment, i.e., the net of inward and

85 Ernst & Young, An Eye on Russia (October 2001) (attached as Exhibit 11).
86 Troika Dialog, "JSC Law: Amendments Enacted, Loopholes and All" (August 15, 2001).
87 Dewey-Skadden Additional Comments, at 4, 11.
88 BISNIS, "Russia: Fact Sheet," at 2 (January 23, 2002) available at http://www.bisnis.doc.gov/bisnis/COUNTRY/russia_factsheet.htm (attached as Exhibit 15).
89 RosBusinessConsulting Database, "Volume of Foreign Direct Investments in Russia's Economy Growing," at 1 (December 6, 2001) (attached as Exhibit 16).
90 Dewey-Skadden Additional Comments, at 4, 11.

outward investment flows — a very different measurement that they erroneously equate with "Russia's FDI inflows."[91] This points to the fact that Dewey-Skadden overlooked the warning note from the EBRD that, "Gross inflows of FDI are in some cases considerably higher than net inflows on account of increasing intra-regional investment flows."[92] The difference in the two sets of figures is set out in the chart below.

Table 1 - Comparison of Gross FDI Inflows vs. "Net" FDI

	1997	1998	1999	2000	2001
FDI Inflows – Russian Steel Producers ($ billions)	3.9	3.4	4.3	4.4	5.0
"Net" FDI – Dewey-Skadden ($ billions)	4.0	1.7	0.7	-0.3	2.0
% Difference	3.5%	-48.4%	-82.5%	-107.8%	-60.0%

Even more misleading, Dewey-Skadden describes their data as FDI per capita "[a]ccording to the EBRD."[93] In fact, in the source cited by Dewey-Skadden, the EBRD did not calculate per capita FDI but merely gave the irrelevant net FDI figures that Dewey-Skadden then used as the basis for its own calculation. The correct figures are found in our Rebuttal Brief, in which we noted that between 1993 and 2000, inflows of foreign direct investment rose on average by 22.12%[94] per year in real terms. The RosBusinessConsulting Database projects an increase in FDI from 2000-2001 of 19% and from 2001-2002 of 20%.[95]

---

91 Id. at 11 ("[T]he fact that net FDI per capita in 2001 and 2000 were $13.76 and negative $2.38, respectively, underscores the fact that Russia's FDI inflows are not even near levels of recent NME graduates . . . .") (emphasis added).

92 EBRD, "Transition Report 2001, Energy in Transition," at 68 (November 2001) (attached as Exhibit 17).

93 Dewey-Skadden Additional Comments, at 11.

94 See Russian Steel Producers' Rebuttal Brief, at 91 (Figure 18).

95 Averages calculated on percentage increases from data given in RosBusinessConsulting Database, supra note 89, at 1 (attached as Exhibit 16).

Dewey-Skadden's confusion of FDI inflows with net FDI (the latter being the difference between inflows and outflows) illustrates a more serious problem with their submissions — a lack of facility with fundamental economic principles. Nowhere is this more glaringly evident than in the statement that "the Russian ruble suffered a devaluation of several hundred percent."

3. The Accuracy of the GDP Figures

On a related point, Dewey-Skadden argues that three of the charts in our rebuttal brief are misleading because in them Russia's GDP is expressed in nominal dollars rather than in "GDP in real terms."[96] Assertedly, expressing GDP in nominal dollars is misleading because it "fail[s] to account for the massive inflation that Russian [sic] has experienced."[97] In fact, however, it is standard practice in the publications of the "reputable sources" invoked by Dewey-Skadden -- the World Bank, the IMF, the EBRD, and the OECD -- to express annual GDP in a time series in nominal terms, unless there is a specific reason for indexing GDP to a particular starting date.[98]

Dewey-Skadden Additional Comments, at 7. Since a currency that suffers a devaluation of 100% becomes worthless and can no longer function as a means of exchange, it is hard to visualize the economy of a country whose currency suffers the misfortune of being devalued by "several hundred percent."

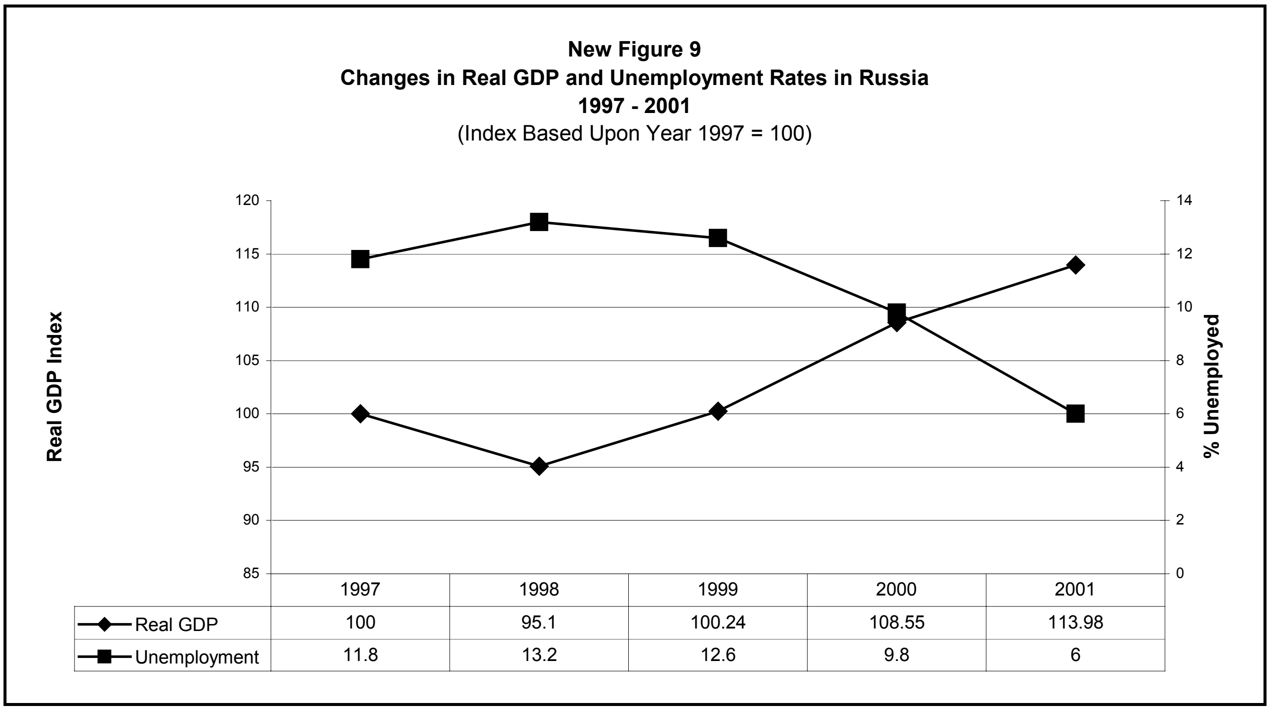
96 Dewey-Skadden Additional Comments, at 4.

97 Id.

98 Examples of reputable organizations that report GDP in nominal values include the following: The International Monetary Fund, International Financial Statistics, Russia, at 716 (January 2002) (attached as Exhibit 18); The World Bank, Country at a Glance Tables, Russian Federation, available at http://www.worldbank.org (September 2001) (attached as Exhibit 19); The U.S. Commercial Service, Country Commercial Guide Russia, Fiscal Year 2002, at 91, appendix B (attached as Exhibit 20); The Main Regional State Committee of the Russian Federation on Statistics, available at http://www.gks.ru/eng/, Table 1.1 (attached as Exhibit 21); Organization for Economic Cooperation and Development, "Changes in Nominal GDP, Real GDP, and Inflation 1964-1997," available at http://www1.oecd.org/std/hs1.pdf (attached as Exhibit 22); EBRD, supra note 92, at 173 (attached as Exhibit 17).

Our reference to these sources here highlights another incorrect allegation made by the opposing parties -- namely that there was a "glaring absence of reputable sources like the World Bank, the International Monetary Fund (IMF), the European Bank for Reconstruction and Development (EBRD) and the Organization for Economic Cooperation and Development (OECD)" in our Rebuttal Brief, which allegedly "highlight[ed] the weakness of Russian steel producers' claims." Dewey-Skadden Additional Comments, at 1. In fact, we cited to these sources extensively throughout the Rebuttal Brief. See Russian Steel Producers' Rebuttal Brief, at 20-22, nn. 57-58, 60-62, 66-68 (citing IMF data on currency conversion practices in other market economy countries); at 117 n. 290 (citing EBRD data on the degree of privatization in the telecom industry); and at 29, 138 (Figures 3 & 32) (citing IMF and World Bank data on flows of current and capital account transactions and on market capitalization, respectively).

In any event, in only one of the three charts referred to by Dewey-Skadden -- Figure 9 in our Rebuttal Brief -- does this objection have even minimal relevance. In Figure 9, if GDP is indexed to 1997, the first year in the Russian Steel Producers' data series, the point that Figure 9 makes remains unchanged: Russian unemployment and GDP move in inverse relationship. <u>See</u> revised Figure 9 below (using indexed GDP rather than GDP expressed in nominal dollars.)



	1997	1998	1999	2000	2001
Real GDP	100	95.1	100.24	108.55	113.98
Unemployment	11.8	13.2	12.6	9.8	6

Since Figure 10 in our Rebuttal Brief, the second assertedly "misleading" chart, shows GDP <u>in the United States, rather than in Russia</u>, we do not understand how expressing GDP in nominal dollars in this chart is misleading on the grounds that it "fail[s] to account for the massive inflation that Russian [sic] has experienced."[99] Finally, in Figure 32 in our Rebuttal Brief, market capitalization is measured for several different countries <u>in the same year</u>. Failing to adjust GDP figures for inflation becomes problematic <u>only</u> in a time series, when nominal

[99] Dewey-Skadden Additional Comments, at 4.

GDP from one period is not comparable to that of an earlier or later period because of inflation. This is not the case in Figure 32, which compares market capitalization in six countries in a single year – 2000.

V. Criterion Four: The Extent to Which the Russian Government Retains Ownership or Control of the Means of Production

A. The Russian Government Has Privatized a Significant Portion of Its Economy

Russia has already privatized a significant portion of its economy, and the percentage of companies in which the government still has an ownership interest is miniscule. As of January 1, 2001, the number of privatized enterprises numbered 130,180, progressing each year as follows:

Progress in Privatization of State Enterprises within 1993-2000

Year	1993	1994	1995	1996	1997	1998	1999	2000
Total Number of Privatized Enterprises, Including Enterprises Previously Controlled by Municipal Governments, Governments of Sub-National Entities, and the Federal Government	42,924	21,905	10,152	4,997	3,353	2,694	677	301
Municipal	-	11,108	6,690	3,354	1,462	1,251	453	200
Subject of the Russian Federation (Sub-National Entities)	-	5,112	1,317	715	340	503	44	74
Federal	-	5,685	1,875	928	1,651	940	180	27

It may be noted that the number of privatized enterprises has steadily declined over the years, reflecting the simple fact that as privatization progressed, there are fewer companies available to be privatized.[100]

[100] The Main Regional State Committee of the Russian Federation on Statistics, available at http://www.gks.ru/eng/, Table 13.8 ("Privatized Enterprises (Units) By Ownership Types and Privatization Methods in 1993-1997"), and Table 13.9 ("Structure of Privatized Enterprises (Units) By Ownership Types and Privatization Methods in 1998 -2000").

With respect to entities in which the government retains an ownership interest, there are only 3,524 commercial companies with federal state participation, broken down into the following sub-categories:

Number of Companies in Which the Government Retains an Ownership Interest

Percentage of Government Ownership	Number of Companies
100 percent	61
More than 50 percent; less than 100 percent	506
More than 25 percent; less than 50 percent	1211
Less than 25 percent	1746

As indicated above, as compared to the more than 130,000 companies privatized by Russia since 1992, the government has retained any ownership interest in only 3,524 companies, representing only two percent of the number of privatized companies.[101]

Furthermore, the Russian Government has recently privatized a number of large-scale enterprises. For example, as Deputy Minister Sharonov testified at the Department's March 27 hearing, the Russian Government has recently privatized the largest energy companies, such as Gazprom (initially 100 percent state-owned, now less than 38 percent);[102] YUKOS (initially 100 percent state-owned, now zero percent); and Lukoil (initially 100 percent state-owned, now 7 percent).[103] Additional enterprises privatized in 2001 include oil and gas companies (i.e., NORSIOIL, Nizhnevartorsk Oil and Gas Extracting Plant) and coal companies (i.e., JSC Kuznetsugol, JSC Kuzbassugol, Vostsibugol). Also, in 2001 the Russian Government decided to sell 34.5 percent of the shares of JSC Moscow Machine Building Plant Mayak, as well as a number of shares in seaport companies: 22 percent of the shares of JSC Murmansk Commercial

---

101 The Main Regional State Committee of the Russian Federation on Statistics, available at http://www.gks.ru/eng/.

102 The statement by Deputy Minister Sharonov belies the allegation made by an opposing party that the Government of Russia has a "controlling interest[]" in Gazprom. Tr. at 117 (Slater).

103 Tr. at 177-78 (Sharonov).

Seaport; 24.5 percent of the shares of Taganrog Commercial Seaport; and 24 percent of the shares of JSC Tuapsinsk Commercial Seaport. Further, the Russian Government has plans in place to privatize companies in 2002 in the telecommunications, air transportation, and military and defense sectors.

Finally, another measure of the decline in the Russian Government's control over the means of production is seen in the limited level of Government spending as a proportion of GDP. In Russia, the Government's spending constituted only 17.4% of the nation's GDP in 2000, which declined further to 13.8% in 2001.[104] By comparison, in the United States, the federal Government's spending comprised 18% of GDP in 2000[105] – roughly equal to the level in Russia.

B. Rebuttal

1. Privatization of Large-Scale Enterprises

One opposing party has argued that, although the privatization process proceeded in Russia in the past, the most recent data shows that the pace of privatization has slowed for the years 2001 to 2002.[106] The Department has recognized, however, that a decline in the rate of the privatization process need not prevent it from revoking a country's NME designation. In Kazakhstan, for example, the Department noted that a significant slowdown in the rate of privatization had occurred. This slowdown was in part based on the GOK's concerns about possible social unrest if it acted too quickly.[107] The Department concluded that Kazakhstan's

---

[104] See Russian Steel Producers' Rebuttal Brief, at 120 (Figure 28).

[105] United States Office of Management and Budget, Chart 1-1, "Government Spending as a Share of GDP, 2000," available at www.whitehouse.gov/omb/budget/fy2002/guid01.html (attached as Exhibit 23).

[106] See Dewey-Skadden Rebuttal Brief, at 13.

[107] See Kazakhstan NME Status Memo, at 14-15.

lack of progress, though a concern, should not prevent its market economy determination, in part because the remaining state-owned enterprises were subject to market forces in the form of foreign and domestic private competition, thus suggesting that the market forces largely dictated output and pricing decisions.[108]

The slowing pace of privatization in Russia is due to a cause that is at least as valid as Kazakhstan's. As stated in a working paper filed with the WTO Working Party on the Accession of the Russian Federation, "[t]he steady decrease in the number of privatized enterprises is explained by the fact that privatization of the major number of the enterprises, including enterprises in oil industry, metallurgy, sea and river transport, which are the most attractive for investors has been already completed."[109] Thus, while the rate of privatization in Russia may have slowed, it has slowed for a more positive reason than in Kazakhstan -- because the privatization process is almost complete -- not because the Russian Government is in any way reluctant to continue the process.

2. The Proportion of GDP Generated by Private Enterprise

Dewey-Skadden is correct in noting[110] that we inadvertently failed to quote a source for our statement that "[t]he share of goods and services produced by private enterprises in 2000 in Russia constituted 74.4 percent of Russian GDP."[111] The source for this figure is the Russian Government Submission, at 17, which in turn cites "official data of the Ministry of Economic

---

108 See id.

109 World Trade Organization ("WTO"), "Accession of the Russian Federation: Additional Information on Selected Areas of the Trade Policy Regime of the Russian Federation, Note by the Russian Federation, Revision," WT/ACC/SPEC/RUS/21/Rev. 1, at 6 (November 21, 2001) (attached as Exhibit 24).

110 Dewey-Skadden Additional Comments, at 2.

111 Russian Steel Producers' Rebuttal Brief, at 110.

Development and Trade." Furthermore, Dewey-Skadden's effort to use our oversight as a basis to challenge the validity of the 74.4% figure must be rejected. This Russian Government figure accords closely with that of the European Bank for Reconstruction and Development, which estimates that in 2000, Russia's private sector produced 70% of GDP.[112] Further support for the validity of this figure is contained in the submission of the Working Party on the Accession of the Russian Federation to the World Trade Organization, which states in relevant part:

> In accordance with the Decision of the Government of the Russian Federation No. 1 of 4 January 1999, the state owned enterprises are state organizations, institutions, unitary enterprises, as well as companies and enterprises which either fully belong to the state or where the state owns a controlling (over 50 percent interest (shares).
>
> At present enterprises with state property share in Russia are responsible for 14% of the total production of goods and services.[113]

This latter figure means, conversely, that 86% of Russia's GDP is generated by the private sector, which is significantly higher than the 74.4% figure submitted by the Russian Government for the year 2000, reflecting the status quo as of April 2001. The change in this figure is indicative of the continuing progress in privatization that is occurring in Russia.

In contrast, in 2000, Kazakhstan's private sector produced only 60% of the country's GDP.[114] The Department revoked Kazakhstan's NME designation, noting that notwithstanding "Kazakhstan's lack of recent progress" in privatizing large state-owned enterprises, "[c]ompetition in major sectors of the economy indicates that market forces are largely dictating output and pricing decisions in Kazakhstan."[115]

---

112 EBRD, "Transition Report 2001, Energy in Transition," at 188 (November 2001) (attached as Exhibit 2 of the Russian Steel Producers' Letter).

113 WTO, supra note 109, at 8 (attached as Exhibit 24). The validity of this figure is confirmed by the fact that the Working Group that issued the November 21st working paper, is composed of representatives of a number of WTO member countries including the United States.

114 Kazakhstan NME Status Memo, at 14.

115 Id. at 15.

3. Alleged Renationalization of Privatized Enterprises

One party opposing revocation stated at the hearing that regional and municipal governments have reasserted property rights, thereby creating a *de facto* renationalization of previously privatized property.[116] This party speculated that this fact suggests that the statistics put forth by the Russian Federation are misleading -- that the amount of state ownership that remains in Russia, 14%, only relates to federal government control. These statements are incorrect. The Goskomstat statistics that support the 14% figure include state ownership at any level of government – federal, state, or other. Furthermore, in examining this issue in the Kazakhstan determination, the Department found that the perception by investors that sub-national governments discourage foreign direct investment in favor of domestic ownership was insufficient to support the conclusion that Kazakhstan had not successfully promoted substantial foreign direct investment in that region.[117]

VI. Criterion Five: The Extent of Government Control Over the Allocation of Resources and the Price and Output Decisions of Enterprises

A. Prices in Natural Monopolies are Regulated, But Not Fixed, By the Russian Government

At the Department's March 27 hearing, an important distinction between government regulation and government control of the price and output decisions of private enterprises was overlooked. All countries, including many market economy countries such as the United States, engage in price regulation. Such regulation, however, should not be misconstrued as government

116 See Tr. at 104, 195-96 (Bartlett).
117 See Kazakhstan NME Status Memo, at 12.

"control." Price setting or controls refer to the artificial establishment of prices by the government without regard to market factors, such as production costs. Conversely, price regulation provides the government an oversight role in the setting of prices to ensure that distortions do not arise in industries dominated by a natural monopoly.[118]

Several Russian Government enactments establish the main principles of the state regulation of prices (tariffs) in the domestic market, implemented by the Government of the Russian Federation, federal authorities and sub-federal entities.[119] Regulatory acts issued by federal executive bodies concerning the state regulation of prices for goods and services must be published, and all decisions by the Government of the Russian Federation concerning state regulation of prices and tariffs, including those for services of natural monopolies, are published in the official government journal, "Rossiiskaya Gazeta".

In sectors where natural monopolies exist (the transportation of oil and oil products along the main pipelines; the transportation of gas along the main pipelines; the transmission of electric and heat power; transportation by rail; the services of transport terminals, sea and river ports, and airports; and the services of generally accessible electric and postal communication services), and in the case of products purchased exclusively or primarily by the State, such as defense

---

[118] A few examples of price regulation in the United States include cable television (typically regulated by municipal governments), telephone services (regulated by the Federal Communications Commission) and energy prices (typically regulated by state governments). The regulation of these U.S. industries is not considered "direct government control," and the regulation of similar industries in Russia cannot be considered evidence of government control in Russia.

[119] Decree of the President of the Russian Federation No. 221 of February 28, 1995, "On Measures to Improve the State Adjustment of Prices (Tariffs)" (as amended July 8, 1995) (attached as Exhibit 51 of the Russian Steel Producers' Rebuttal Brief); Resolution of the Government of the Russian Federation No. 239 of March 7, 1995, "On Measures to Streamline the State Regulation of Prices (Tariffs)" (as amended on February 8, April 15, July 31, 1996, June 30, 1997, July 30, December 28, 1998, February 6, May 7, June 16, and August 20, 2001) (attached as Exhibit 52 of the Russian Steel Producers' Rebuttal Brief).

products, pricing is based on production costs. As specified in the regulations cited above, the procedures and principles used for regulating the prices of goods and services regulated by the State differ depending on the type of goods or services involved. For example, in the case of air, road and river transport services involving competing groups of carriers, the carriers themselves have the right to set their own prices within established profit margins.

The following elements are considered in determining the prices for products and services of natural monopolies: the cost of production including the expenses of marketing; taxes and other payments; the cost of fixed production assets; the requirement of investment for reproduction purposes; depreciation charges; estimated profits; remoteness of different consumer groups to the production site of products and services; adequacy of the quality of the products; and services produced and marketed to the consumer demand.

Regional governments regulate prices for products and services classified as local natural monopolies. These include gas and solid fuel sold to the population; transportation of passengers and luggage by all means of public transport in municipal transport networks; communal services to households; water supply; and sewerage services. At the regional government level, prices for electrical energy provided by regional electrical power plants are also regulated, as well as prices for means of communal passenger transportation (except railways); and other public utilities. The regional executive bodies and local executive authorities must comply with pricing decisions taken at the federal level by bodies authorized to regulate the activity of natural monopolies.

B. The Extent to Which the Russian Federation Has Privatized Control Over the Allocation of Resources and Over the Price and Output Decisions of Enterprises Is Similar to That which Existed in Kazakhstan When Its NME Designation Was Revoked

In Russia, state price regulation cannot be exercised at all except with respect to a limited number of goods and services included on a list found in Resolution No. 239 ("Measures to Improve State Regulation of Prices (Tariffs)"). The list identifies products and services of natural monopolies (gas, electric and heat energy, transshipment of oil through pipelines, railway services, port services, etc.), defense industry products, and various social goods (i.e., certain drugs, prosthetics and orthopedic appliances).[120] In Kazakhstan, similar price liberalization laws were introduced, which provided for market prices for most goods, while delineating a limited number of sectors in which the GOK retained the authority to regulate prices.[121] The Department found that Kazakhstan's price liberalization laws were "significant in that they delineate the sectors in which the GOK may regulate prices," while prices in other sectors operate according to market forces.[122]

Moreover, the regulation of natural monopolies in the Russian Federation, as described above, is similar to the regulation of such monopolies in Kazakhstan at the time it achieved market economy status. Specifically, the Department revoked Kazakhstan's NME designation even though the government maintained price controls on a limited number of goods and services, including 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

120 Russian Government Submission, at § 5.
121 See Kazakhstan NME Status Memo, at 16-17.
122 Id. at 17.

systems; and postal services.[123] Although the list appears to be extensive, the Department recognized that 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."[124] Inasmuch as the natural monopolies in the Russian Federation that are subject to price controls are almost identical to those controlled by Kazakhstan, the Department should, as with Kazakhstan, recognize that Russia's regulation of natural monopolies does not conflict with a determination that Russia's NME designation should be revoked.

C. Rebuttal

At the March 27 hearing, one opposing party suggested that a "dual pricing system" exists in the natural gas industry in Russia, whereby different price levels exist for different industries, effectively allowing the Government of Russia to pick "winners and losers."[125] Department personnel, however, immediately called into question the validity of this statement at the hearing,[126] and another opposing party conceded that natural gas prices are currently set uniformly among industries within Russia,[127] which was confirmed by Deputy Minister

---

123 Id. at 18.
124 Id.
125 Tr. at 147 (Bartlett).
126 Tr. at 155-56 (Hsu).
127 Tr. at 156 (Slater).

Sharonov.[128] And, in fact, the order that authorized dual pricing for natural gas[129] was limited to 1999. There are no other legal provisions that provide for similar dual pricing mechanisms for other industries. Therefore, since 1999, Russia has not maintained any mechanisms that permit differential pricing of natural gas among industries.

The opponents' arguments regarding the alleged retention by the Russian Government of control over prices focus heavily on the price of energy, and particularly natural gas. But government regulation of energy prices is hardly indicative of the existence of a NME. As we noted in our Rebuttal Brief, many market economy countries regulate the prices at which energy resources may be exported or sold to consumers and industries in their home markets, especially those countries, such as Mexico, Saudi Arabia, and Venezuela, which, like Russia, are rich in hydrocarbon resources.[130] There is no suggestion that those countries have thereby become NMEs, and there is no reason to distinguish Russia on this score.

Moreover, in light of the fact that Russia has a uniform pricing system for the provision of natural gas to domestic industries, the opponents' complaint boils down to the fact that Russia provides this resource to its own industrial users at prices lower than those at which it is exported.[131] But this argument, in effect, is merely an effort to resurrect the old "natural resource subsidies" debate from the mid-1980s, in which it was argued that countries like Mexico with its

---

[128] Tr. at 177 (Sharonov) (stating that, "there is no different treatment for different plants, industries, or branches . . . no different treatment in terms of tariffs . . .").

[129] Order No. 12/1 of the Federal Energy Commission of March 24, 1999, "On granting a 50 percent reduction of prices of gas to enterprises which produce chemical fertilizers, chemical protections for plants, and raw materials for production thereof, in 1999." In addition, its preambular paragraph states that this order implemented decree number 256 of March 4, 1999, "On Measures Aimed at Accelerating the Provision of Chemicals to Agriculture Commercial Producers in the Year 1999," which approves certain measures identified therein for the year 1999 only.

[130] See Russian Steel Producers' Rebuttal Brief, at 98-99.

[131] Tr. at 114-15 (Slater).

natural gas and Canada with its timber were engaging in the same practice as that now being challenged in Russia's case.[132] In 1984 and again in 1988, Congress rejected efforts to define the practice of differential pricing of natural resources for domestic and export markets to be a countervailable subsidy, and instead enacted the specificity requirement of the countervailing duty law,[133] thus suggesting that Russia's practice could not even be considered a countervailable subsidy. More importantly for the current debate regarding Russia's designation as a market economy, it was never suggested during the "natural resource subsidy" debates that the countries engaging in the generalized (non-specific) provision of natural resources to domestic industries at lower prices than those at which the resources were exported, were thereby converted into NMEs. Again, there is no reason to treat Russia differently from Mexico or Canada on this basis.

VII. Criterion Six: Other Factors

Three topics have been raised in this inquiry that are allegedly of relevance to the Department's evaluation of Russia's market economy designation – barter, corruption, and its

---

132 The issue of "natural resource subsidies" centered on the concern that the economic conditions of many U.S. industries, such as the cement, ammonia, refining, lumber, and petrochemical industries, had deteriorated as a direct result of foreign governments' pricing of natural resources for domestic use at a fraction of the world market prices at which the same resources were exported from those countries. Competing U.S. industries believed that such policies were being pursued by a number of resource-rich countries to promote their own export industries and in the process were causing material injury to resource-based manufactures in the United States. See generally Natural Resource Subsidies: Hearings Before the Subcommittee on Trade of the House Comm. on Ways and Means, 99th Cong., 1st Sess. (1985) (Serial 99-32).

133 Section 1311 of the 1988 Omnibus Trade and Competitiveness Act amended 19 U.S.C. 1677(5) to state, in pertinent part, that "[i]n applying subparagraph (A) [defining a subsidy], the administering authority, in each investigation, shall determine whether the bounty, grant, or subsidy in law or in fact is provided to a specific enterprise or industry, or group of enterprises or industries." H.R. Conf. Rep. No. 576, accompanying H.R. 3, 100th Cong., 2d Sess., at 83-84 (1988).

accession to the WTO. As discussed below, the existence of barter has declined drastically in Russia, so it should not be considered an important factor that could prevent the country's recognition as a market economy. Corruption has declined, and, as recognized by the Department in its recent Kazakhstan determination, this is not particularly relevant to the market economy issue. As to Russia's WTO accession efforts, it is at least as far along the process as Kazakhstan, which the Department recognized favorably, and as the Department also noted, WTO accession is not a prerequisite for market economy designation.

A. Barter

While it is true that barter continues to play a role in the Russian economy, that role has declined dramatically in recent years. As an initial matter, it should be noted that determining how large the role of barter is depends on what is meant by "barter." Certain commentators use "barter" as a synonym for non-monetary payments generally, including debt offsets and promissory notes as well as barter in the strict sense. Used in this broad sense, "barter" (hereinafter "barter *lato sensu*") is an antonym of "cash payments." Other commentators use "barter" in the strict sense to mean payment in goods or services in lieu of cash. Used in this sense, "barter" (hereinafter "barter *stricto sensu*") is an antonym of "other types of non-monetary payments and cash payments." The distinction is critical.

The Bank of Finland's Institute for Economies in Transition calculated that as of late 2000 monetary forms of payment in Russia rose to over 70 percent of all payments from approximately 50 percent the previous year.[134] The Institute also reported that during 2001, non-monetary payments (barter *lato sensu*) by Russia's largest tax-paying enterprises and monopolies

[134] Bank of Finland, Russian & Baltic Economies, The Week in Review, at 3 (March 22, 2002) (citing data on barter from Goskomstat) (attached as Exhibit 25).

shrank to 22-23 percent of all payments.[135] The Russian Economic Barometer reported an even lower figure, finding that non-monetary transactions (barter *lato sensu*) by the approximately 200 industrial firms it monitors had dropped to about 20 percent of total transactions by autumn 2001.[136] This figure is consistent with that of the Russian European Centre for Economic Policy, which reported that as of January 2002, cash accounted for 77 percent of all payments by industrial enterprises.[137] Finally, the Institute for Economies in Transition points to yet another source that places the figure at only 14 percent during autumn 2001.[138] According to the most recent report – this from the Russian European Centre for Economic Policy -- barter *lato sensu* continues to decline as a proportion of total payments for goods and services in Russia, and as of January 2002, cash accounts for 77 percent of all payments by industrial enterprises.

As to barter *stricto sensu*, the figures are far lower. The Russian State Statistics Committee (Goskomstat) reports barter *stricto sensu* separately in its survey of Russia's largest tax-paying enterprises and monopolies. As of late 2000, it reported that barter transactions *stricto sensu* in these firms stood at only 3 percent.[139] This figure declined even further over the following year, to the level of 1.6 % in January 2002.[140]

To place the current level of Russian barter *lato sensu* in context, it should be noted that two of the six countries whose NME designation the Department has revoked had levels of barter comparable to Russia's. In 1999, at the time of the Slovak Republic's NME designation was

---

135 Bank of Finland, Institute for Economies in Transition, Russian Economy: The Month in Review, at 3 (March 8, 2002) (citing data on barter from Goskomstat) available at http://www.bof.fi/env/fin/it/index.htm (attached as Exhibit 26).

136 Bank of Finland, supra note 134, at 3 (attached as Exhibit 25).

137 Russian European Centre for Economic Policy, supra note 55, at 12 (noting that the report's authors believe this declining trend in barter to be irreversible) (attached as Exhibit 8).

138 Bank of Finland, supra note 135, at 3 (attached as Exhibit 26).

139 Bank of Finland, supra note 134, at 3 (attached as Exhibit 25).

140 Goskomstat, Social Economic Situation on Russia (February 2002).

revoked, nearly 20 percent of the Slovak Republic's GDP was due to barter transactions.[141] In 1999, the most recent year for which data are available, barter in Kazakhstan represented 17.9% of GDP.[142] In neither case did the Department find that level of barter indicative of a non-market economy. In the case of Kazakhstan, the Department observed that "the recent reduction in non-payments and wage arrears have reduced the need for barter transactions, as producers and workers are able to pay for goods and services in cash. . . ."[143]

B. Corruption

As discussed in our Rebuttal Brief, the opposing parties attempt to link corruption in the Russian Federation to the country's allegedly continuing status as a NME.[144] However, the image of corruption and "criminalization" in Russia is of doubtful current validity, as noted by Mr. Somers at the March 27 hearing.[145] Indeed, the Russian Government has made serious efforts to attack corruption, in part by eliminating conditions that provide opportunities for it to

---

141 Dalia Marin, Daniel Kaufmann, Bogdan Gorochowskij, "Barter in Transition Economies: Competing Explanations Confront Ukrainian Data", The World Bank, January 2000, available at http://www.worldbank.org/wbi/governance/pubs/barter.htm (citing data on barter from the World Business Environment Survey, World Bank-EBRD 1999) (attached as Exhibit 27).

142 Id. at 3 (attached as Exhibit 27).

143 Kazakhstan NME Status Memo, at 16.

144 See Russian Steel Producers' Rebuttal Brief, at 140-41.

145 As Mr. Somers stated at the hearing (Tr. at 67-68),

> "[I]t's a fact I think no one will dispute that the image of Russia . . . has been distorted for a long time here, both through the television, through the newspapers, and indeed it was only in the middle of last year with the visit of Secretary Evans, first of his two very significant trips to Russia, that we in Russia began to see when we came to the United States the beginning of a shift to a more realistic view of what is happening in Russia. A year ago, most Americans, even those at high-level corporate executive positions, would ask about the mafia, whether I had a gun, whether I had a driver with a shotgun to make sure I got to work on time. These are all images that were profoundly inculcated in the American view of Russia up until a year ago. I can tell you that from personal experience."

exist.[146] For example, as Mr. Marshall and Mr. Somers testified at the hearing, middlemen are no longer allowed to impose extra charges to shippers who use Russia's railways; and the number of licensing requirements for entrepreneurial activities has decreased and the processing of licenses has been streamlined.[147]

Furthermore, to the extent that there is perceived corruption in Russia today, it is inapposite to the Department's market economy determination. The limited relevance of corruption to the Department's market economy determination was explicitly recognized in the Kazakhstan case. In Kazakhstan, the Department, while taking note of the level of corruption in the country, found that its existence "[did] not alter the fact that prices and costs in Kazakhstan are being generated through market forces."[148] Moreover, the Department recognized that "even in market economies, there exist varying degrees of corruption."[149] As with Kazakhstan, the Department should find that the existence of perceived corruption in the Russian Federation is

---

[146] Tr. at 66-67 (Marshall); 70-71 (Somers).

[147] Tr. at 66-67 (Marshall); 70-71 (Somers); see also Federal Law No. 128-FZ of August 8, 2001, "On Licensing Specific Types of Activity" (significantly reducing the types of business activities that require licensing; providing uniform, federal procedures for applying for and granting licenses; guaranteeing transparency and public scrutiny; identifying a specific list of documents needed to apply for a license and the specific timeframe in which a decision must be made by the authorities; and identifying a procedure for appeal) (attached as Exhibit 28); Federal Law No. 134-FZ of August 8, 2001, "On the Protection of Legal Entities' and Individual Entrepreneurs' Rights in the Case of Exercise of State Control (Supervision)" (protecting the rights of legal entities and individual entrepreneurs in state enforcement proceedings) (attached as Exhibit 29).

[148] Kazakhstan NME Status Memo, at 21.

[149] Id. According to the index cited by the Department in the Kazakhstan case, the levels of perceived corruption in the Russian Federation, as with Kazakhstan, are no higher than levels that exist for several other countries that the Department routinely considers to be market economies (e.g., Ecuador, Pakistan, Indonesia). See Transparency International, Corruption Perceptions Index 2001, available at www.transparency.org/cpi/2001/cpi2001.html.

insignificant in differentiating it from other market economies.

C. WTO Accession

The Russian Federation is currently in the process of applying for accession before the WTO, and negotiations are progressing. As recognized by the Department in the case of Kazakhstan, however, accession to the WTO is not a necessary prerequisite for the Department to recognize the Russian Federation's market economy status.[150] In Kazakhstan, the Department found that it was sufficient that the GOK had taken affirmative steps to adopt trade policies and legislation to bring its trade closer into conformity with WTO standards.[151] Likewise, the Russian Federation has adopted policies and legislation in order to bring its trade closer into conformity with WTO standards. In January of this year, the Government of Russia submitted to the Working Party on the Accession of the Russian Federation an extensive list of the types of legislation that it has enacted in the context of economic reform in order to bring itself into compliance with the WTO.[152] The Government also has plans to bring additional laws into compliance with the WTO, including standards, the customs code, and trade laws, such as safeguards, and the antidumping and countervailing duty laws.

Inasmuch as the Russian Federation, like Kazakhstan, has taken affirmative steps to bring its trade regulations closer to conformity with WTO standards and that its accession process is well underway, the Department should similarly find that the status of Russia's accession to the

---

150 The Department's revocation of Kazakhstan's NME designation despite the fact that that country has not yet acceded to the WTO is sufficient rebuttal to the argument made by one opponent that Russia's market economy designation should only be changed "as part and parcel" of its WTO accession. Tr. at 128, 134 (Pickard).

151 See Kazakhstan NME Status Memo, at 21-22.

152 WTO, "Accession of the Russian Federation: Implementation of the Plan of Legislative Work in Various Fields Relevant for Economic Reforms and/or WTO Rules and Disciplines," WT/ACC/RUS/45/Rev.1, January 15, 2002 (attached as Exhibit 30).

WTO is not a significant factor in differentiating the Russian Federation from other market economies.

Conclusion

For the foregoing reasons, we submit that the economic developments in Russia over the past several years have been enormous in their breadth, profound in their depth, and irreversible in their course. There is only one appropriate conclusion: Russia is, and has been, operating as a market economy. The U.S. antidumping law should be applied by the Department in a manner that recognizes the reality of the sweeping economic developments in Russia discussed above, in our previous submissions to the Department, and at the March 27 hearing. The Department should determine that the Russian Federation has satisfied the criteria in 19 U.S.C. § 1677(18) and revoke its NME designation for the purpose of the antidumping laws.

::ODMA\PCDOCS\WSH\261236\1