BEFORE THE
UNITED STATES DEPARTMENT OF COMMERCE

Inquiry Into the Status of the Russian Federation as a Non-Market Economy Country Under the Antidumping and Countervailing Duty Laws	Inv. No. A-821-816 Investigation Total Pages: 21 Contains No Business Proprietary Information **<u>PUBLIC DOCUMENT</u>**

COMMENTS OF NUCOR CORPORATION AND THE COMMITTEE FOR FAIR BEAM IMPORTS

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I. Summary of Comment

Under U.S. law, the term non-market economy refers to any country determined not to operate on market principles of cost or pricing structures, so that sales of merchandise in such a country do not reflect the fair value of merchandise. 19 U.S.C. § 1677(18)(A). Extensive direct and indirect government involvement in production, price, and output decisions; Russian restriction on the free movement of capital; the absence of a fair working wage; and the persistent and egregious influence of corruption throughout the entire Russian economy demonstrate conclusively that Russian prices do not represent fair value. Accordingly, the Department of Commerce should reject the Russian Federation's request for revocation of its non-market economy status.

II. Introduction

Corruption in contemporary Russia is a pervasive fact of life -- indisputable and well known. Notably, corruption has resulted in the creation and maintenance of Russia's famous -- and enormous -- black market. Although Russia is no longer a centrally-planned economy, neither is it a free market system. As stated in the 2000 Council on Foreign Relations article, "Russia does not have a market economy. In terms of economic freedom, Russia ranks 93rd out of 123 countries . . . ."[1] In the 2001 Economic Freedom Report, Russia is ranked 117 out of 123,

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[1] Jose Pinera, *A Chilean Model for Russia*, Council on Foreign Relations (September 2000) at 2 available on Lexis-Nexis, and Economic Freedom of the World Annual Reports (attached as Exhibit 1).

significantly behind the People's Republic of China (number 81).[2] Indeed, as to International Trade, Russia is listed last, in effect 58th out of 58 countries.

Corruption has so disrupted Russian economic life that it impacts every aspect of the economy evaluated by the Department in this inquiry. Therefore, these comments provide only selected illustrations of why it would be improper to revoke Russia's NME status. A voluminous treatise is unnecessary and would only belabor the point.

In determining whether a country merits NME treatment, the Department considers the following factors: (i) the extent to which the currency of the foreign country is convertible into the currency of other countries; (ii) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management; (iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country; (iv) the extent of government ownership or control of the means of production; (v) the extent of government control over the allocation of resources and over the price and output decisions of enterprises; and (vi) such other factors as the administering authority considers appropriate. No single factor is dispositive and the Department may use discretion in its analysis based upon the unique facts of each case.[3]

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[2] *Id.*

[3] See e.g., Antidumping Duty Investigation of Certain Steel Concrete Reinforcing Bars From Latvia, *Memorandum from Holly A. Kruga to Troy H. Cribb: Non-market Economy Status Revocation (January 12, 2001).*

As discussed more thoroughly below, Russia maintains restrictions on its unstable currency, resists the rights of its workers to organize, limits direct foreign investment, and significantly interferes in price and production decisions. Furthermore, its rampant corruption evidences its failure to become a free market system. Thus, an objective consideration of the factors listed above demonstrate that Russia is not yet a market economy.

Additionally, we note that Russia has requested market economy status prior to its WTO accession. But the process should proceed in the opposite order. China's recent accession is a useful model – China has acceded to the WTO, but will be considered an NME for several years following accession in light of its current status and economic development. Russia should be treated in a similar manner.

III. Russia Restricts Convertibility of the Unstable Ruble

As one of the world's largest accounting firms noted earlier this year: "Exchange restrictions and controls exist relating to converting Russian Roubles into other currencies. At present, the Russian Rouble is not a convertible currency outside of the Russian Federation."[4]

The ruble has proven to be so problematic that leading economists have advocated scrapping the currency and adopting the euro.[5] For example, the Russian

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4 PricewaterhouseCoopers, "Doing Business in the Russian Federation" (2001) ("PricewaterhouseCoopers Report") at 51 (excerpts attached as Exhibit 2).

5 *A Chilean Model for Russia* at 5.

currency has experienced repeated periods of high inflation, suffered a collapse of the financial system, and undergone a 75-percent devaluation since 1998. Indeed, "Russians are understandably distrustful of the ruble and . . . {so} citizens seem to have chosen to use the dollar and other foreign currencies, rather than the ruble, whenever they can."[6] Of course, citizens use foreign currencies on the black market. Reliance on these underground currencies only lessens the importance of official markets and bodes poorly for Russian liberalization of currency controls.

The devaluation of the ruble, ensuing market instability, and protectionist tariff levels have negatively impacted Russia's participation in international commodities markets and fostered an unstable market at home. For example, the United States Trade Representative's 2001 Report on Foreign Trade Barriers emphasizes import and export difficulties Russia has encountered because of swings in the ruble's value subsequent to the financial crisis of August 1998.[7] Exporters approach participation in the Russian market with caution "due to the reduced availability of trade financing and bad experiences with payment and clearance after the August 1998 financial crisis. . . . ."[8] Such characteristics are not indicative of a stable and free marketplace.

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6 *Id*. at 5-6.

7 *See, e.g.,* United States Trade Representative 2001 National Trade Estimate Report on Foreign Trade Barriers at 378-79. Imports into Russia are generally at a substantial price disadvantage because, *inter alia*, Russia has had high import tariffs since 1995 – ranging from five to thirty percent

8 *Id*. at 378-80.

Even as Russia requests revocation of its NME status, it recognizes that it maintains significant limitations as to the availability and convertibility of currency:

> Russia maintains restrictions on movement of capital in order to manage the outward flow of capital. Russia, therefore limits the access of its residents to foreign currency on the domestic foreign exchange market if the currency is to be invested overseas.[9]

Russia's difficulties in maintaining a stable currency cannot be divorced from the nation's rampant corruption and cronyism and have resulted in further restrictions on the free movement of capital. As Russia stated in its request for revocation of its NME status, "{a}t present, in order to ensure the stability of economic growth, restraint on unemployment and inflation, and support the balance of payments, the Russian Federation is compelled to restrict international transfers of capital for its residents."[10] The Russian Government defends its restrictions on the movement of capital because, as even it acknowledges, the Russian foreign exchange and financial systems are "still at the early stage of development" and unable to withstand events in international markets.[11] This is precisely why NME status is still appropriate. Thus, the instability and the lack of convertibility of the

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9 Memorandum of the Russian Federation, Factors to be Considered Under Section 771(18) of Title VII of the Tariff Act of 1930 (July 26, 2001) ("Memorandum of the Russian Federation") at 3.

10 *Id*.

11 *Id*.

ruble, as well as the government's restraints on the free movement of capital, demonstrate that Russia has not yet made the move to a market system.

IV. Russian Wage Rates Are Not Determined By the Market

Resistance to organized labor, and the power of corrupt business leaders, have prevented market forces from establishing a fair working wage. Russian wages are extremely low, with the current monthly minimum wage at 200 rubles, or about US $7.00.[12] Russia's ongoing history of nonpayment of wages, weak labor unions, and corruption all indicate that Russia is not currently a market economy with respect to wages and wage rates.

Organized labor is particularly weak in the Russian Federation. Most notably, the nation's "hopelessly outdated" labor code was adopted in 1971, and has not been updated since the fall of the Soviet Union.[13] The code does not recognize private employment, and does not cover 80 percent of the Russian workforce.

The Russian Duma postponed passage of a new labor code in December 2000, after protests in May and December brought 300,000 workers to the streets. However, the continuing weakness of the Russian economy means that any labor reform is likely to come at the expense of worker rights, as noted in this November 29, 2001, article from The Moscow Times:

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12 PricewaterhouseCoopers Report at 14.

13 Sergey Ivashko, "Russian Trade Unions Oppose New Labor Code," Gazeta.ru, Dec. 15, 2000, available at http://www.gazeta.ru/2000/12/15/RussianTrade.shtml (attached as Exhibit 3).

> President Vladimir Putin urged trade unions on Wednesday to shoulder their share of responsibility for implementing reforms he said were vital for the country's future prosperity.
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> Putin addressed a congress of the Federation of Independent Russian Trade Unions, the country's largest, as parliament geared up for what is certain to be a stormy debate on a labor code to replace Soviet-era legislation.
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> . . .
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> Russia's trade unions, successor to a Soviet-era movement that offered little opposition to Communist authorities, remain weak 10 years after the collapse of the Soviet state. The Federation of Independent Russian Trade Unions is by far the largest grouping but often does not command a majority on the shop floor of many factories.
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> Putin noted in his address that the new code's approval had been delayed despite approval from international organizations. The code, passed in first reading in July, aims to fill gaps in 1960s-era legislation that does not recognize private employment. That leaves 80 percent of the workforce operating outside the legal framework.[14]

Russia has been plagued for years by wage disputes, as its weak unions demanded the full and timely payment of wages in Russia while millions of Russian workers went without pay for months.[15] A perpetuating cycle of wage arrears reached 55 trillion rubles, or US $9.2 billion, at the end of 1997.[16] In 1998, payment of wage arrears in Russia became an international issue, when Russian

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14 Reuters, "Putin Asks Unions to Back Reform," The Moscow Times, Nov. 29, 2001, at 4, (available at http://www.themoscowtimes.com/stories/2001/11/29/014.html) (attached as Exhibit 4).

15 Tuck Wesolowsky, Russia: Trade Unions Face Skeptical Public, Radio Free Europe/Radio Liberty, 12 January 2000 (available at www.rferl.org/nca/features/2000/01/F.RU.000112155117.html) (attached as Exhibit 5).

16 Ernst & Young, "Doing Business in Russia" at 6 (1998) ("Ernst & Young Report") (excerpts attached as Exhibit 9).

trade unions again organized massive protests and its leaders were forced to meet with the IMF and the World Bank in order to obtain redress.

In a November 2001 address to the Federation of Independent Trade Unions of Russia (FNPR) Congress in Russia, the general secretary of the International Confederation of Free Trade Unions signaled his concern that worker and wage protection in Russia remains inadequate: "Russia is in the process of negotiating its accession to the WTO. It should only go in when there is protection for Russia's industries and workers."[17]

Furthermore, a growing resistance to organized labor has been developing in the country. Indeed, a prominent international labor organization has observed that "{a}nti-unionism is present in all its forms in everyday life, from refusal to negotiate to physical violence."[18]

Current pending legislation will further restrict the rights of Russian workers, facilitating the firing of workers by management and restricting the unions' ability to work with management on crucial issues such as wages, training, working conditions and healthy and safety rules. The proposed reforms would also

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[17] Address by Bill Jordan, ICFTU General Secretary to the FNPR 4th Congress Moscow, 28 – 30 November 2001, (available at http://www.icftu.org/displaydocument.asp?Language=EN&Index=991214374).

[18] *Annual Survey of Violations of Trade Union Rights 2001*, International Confederation of Free Trade Unions, available online.

limit unions from putting pressure on employers to sanction managers who violate the rights of workers and union delegates.[19]

There is an epidemic of violations of workers rights in today's Russia. In the first nine months of 2000, labor inspectors recorded more than one million violations of workers' rights, including 25,000 violations of collective agreements and contract procedures; 63,000 violations of working hours regulations; and 148,000 violations regarding payment to workers.[20] Furthermore, there has been frequent anti-union violence.[21]

Additionally, and as the Department has previously recognized, Government intervention disrupts employment throughout the economy. As to the steel industry, as one example, if government assistance was eliminated at least one medium sized and most smaller steel companies would be closed with an estimated 100,000 workers losing their jobs.[22] "The Organization for Economic Cooperation and Development has commented that the pricing of Russian and Ukranian steel exports was often "uneconomic" due to, among other things, the use of barter and the orientation toward production rather than profits . . . The government's willingness

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19 *Id*.

20 *Id*.

21 *See* id.

22 Report to the President, Global Steel Trade, Structural Problems and Future Solutions, International Trade Administration, U.S. Department of Commerce (July 2000) ("Global Steel Trade Report") at 43.

to sanction barter largely explains the dramatic increase in its use and the ability of so many unproductive enterprises to stay in operation."[23]

In short, worker wages in Russia are not determined by free bargaining between labor and management. Russia's Soviet-era Labor Code, its weak trade unions, and its ongoing problems with corruption and nonpayment of wages all suggest an economy that is not yet marketized. Accordingly, this factor also mitigates in favor of maintaining Russia's NME status.

V. Russia Excessively Controls the Extent to Which Joint Ventures or Other Investments By Foreign Firms Are Permitted

Foreign direct investment in Russia remains highly controlled by the state. The U.S. Trade Representative has found that "{f}requent and unpredictable changes in Russian customs regulations and erratic customs enforcement have created problems for foreign and domestic trade and investment. . . ."[24] As the Department has previously recognized, the "factors inhibiting foreign investment in Russia include political and economic instability; the lack of solid corporate governance laws; and impractical trade, tax, and investment regulations."[25] On this

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[23] Global Steel Trade Report at 50. The increased use of a barter system also further demonstrates the lack of a convertible currency in the Russian Federation.

[24] United States Trade Representative 2001 National Trade Estimate Report on Foreign Trade Barriers at 378. *See also* Heritage Foundation 2002 Index of Economic Freedom at 341.

[25] Global Steel Trade Report at 48.

factor alone, Russia cannot be considered a market economy, because its legal and investment infrastructure are not marketized.

In its most recent analysis of foreign trade barriers, the U.S. Trade Representative has commented on Russia's "strong political bias toward supporting domestic industries" and cited complaints by U.S. companies regarding the "lack of transparency and discriminatory treatment of foreign companies in {certain} state tenders."[26] Where foreign or joint ventures operate in Russia, they remain relatively tightly controlled. Their success often is hampered by official and unofficial bias toward Russian enterprises, as well as "regulations and notification requirements {that} can be confusing and contradictory."[27] For example, 1996's federal law on "Banks and Banking Activity" permits foreign banks to establish Russian subsidiaries but restricts total capitalization and mandates that a certain number of employees and managerial staff be Russian nationals and/or proficient in Russian.[28]

The degree of foreign participation in aerospace, natural gas, banking, electricity, alcohol production, telecom and other industries is highly regulated as well.[29] For example, since 1999, majority foreign-owned insurance companies have

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[26] United States Trade Representative 2001 National Trade Estimate Report on Foreign Trade Barriers at 381.

[27] *Id*. at 384.

[28] *Id*. at 383.

[29] *See, e.g.,* Ernst & Young Report at 20.

operated under restrictions on their capitalization levels and prohibitions against selling certain kinds of insurance.[30]

In the eyes of the U.S. government, a "lack of corresponding tax and customs regulations," as well as "significant restrictions on ownership of real estate in some cities and regions in Russia" vitiate some of Russia's recent progress to protect foreign investment from unforeseen tax changes or additional limits on investment levels.[31] Further, "foreign providers of services have sometimes noted discrimination in obtaining licenses from local authorities and often end up paying a range of fees that domestic companies allegedly bypass via bribes."[32] Restrictions on direct foreign investment, both under the law and due to corruption, demonstrate that it is inappropriate to revoke Russia's NME status at this time.

The impact of corruption on foreign investment cannot be overstated. Governments and private entities alike have commented on corruption's far-reaching impact on Russian markets. The U.S. Trade Representative has found that:

> {c}rime and corruption in commercial transactions and problems with the implementation of customs regulations also inhibit investment. The lack of rule of law for business opens the door for crime and corruption in commercial transactions. In addition, Russian trade and investment would benefit, for example, from improved dispute resolution mechanisms, the systematic protection of minority

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30 United States Trade Representative 2001 National Trade Estimate Report on Foreign Trade Barriers at 383.

31 *Id*. at 384.

32 *Id*. at 383.

> stockholders rights, conversion to international accounting standards, and the adoption and adherence by companies to business codes of conduct. More transparent implementation of customs and taxation regulations is also necessary. Further, foreign-owned firms that adhere to legal obligations and international accounting standards are at a disadvantage in comparison to domestic firms, which routinely cancel inter-enterprise debts and maintain non-payment of external debts.[33]

Ernst & Young, a private international consulting group, agrees with the U.S. government's assessment of the state of corruption in Russia and its impact on foreign investment:

> {B}ureaucratic obstacles inherited from the Soviet period continue to pose disincentives for investment. Corruption and influence-peddling have created a hostile climate for business, and a law-based society that provides stability for investors does not yet exist . . . {C}ommercial law remains undeveloped, and those laws, regulations and tax rates that do exist shift constantly. This uncertainty makes long-term business planning difficult.[34]

Even the Russian request to the Department acknowledges the numerous limitations on direct investment under existing laws. The written request states that restrictions on foreign investment include those imposed on the basis of "public morality," human health, "the rights and legitimate interests of other persons," and because of defense and security interests. These restrictions implicate:

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33 *Id*. at 385.

34 Ernst & Young Report at 5.

> sectors where {a} natural monopoly exists, {and} special regimes may exist for establishment and operation of foreign investments in frontier areas and restricted administrative units, . . . {as well as} and limitations may be imposed on participation of foreign investors in the privatization of state and municipal enterprises, on employment of foreign persons, and on enterprises dealing with cultural heritage of the Russian federation.[35]

In the unsettled law of the Russian Federation, any standard business transaction could fall into one of these restrictions on foreign investment.

The reservation of such wide latitude to the Russian government essentially nullifies any Russian commitment to the principle of national treatment. This concern has not gone unnoticed by the United States Trade Representative, whose 2001 Report on Foreign Trade Barriers notes that "{t}he potentially large number of exceptions {to national treatment of foreign investors} thus gives considerable discretion to the Russian government" to discriminate against foreign interests.[36]

Russia's foreign investment climate manages simultaneously to be greatly controlled and yet so extremely unstable. Therefore, Russia does not merit revocation of its NME status.

VI. The Russian Government Directly and Strongly Interferes in Production, Price, and Output Decisions

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[35] Memorandum of the Russian Federation at 10.

[36] United States Trade Representative 2001 National Trade Estimate Report on Foreign Trade Barriers at 384.

The Russian Government still regulates large sections of the national economy, with substantial blocks of assets yet to be privatized, such that revocation of its NME status would be blatantly improper.[37] Indeed, a recent study by Ernst & Young found that the "economic reforms launched after the collapse of the USSR in 1991 have been only partially successful."[38] In Russia today:

> there is no rule of law; private landowner rights are virtually nonexistent; many businesses receive government protection; key enterprises are still largely owned by the state; minority shareholder rights are regularly violated and corporate governance rules are extremely weak; the ruble is unstable; tax rates are confiscatory; government spending is high; and Moscow's bureaucracy is larger than it was even during Soviet times.[39]

This is not a description of a market economy.

A November 2001 article in the Economist noted that the "Government interferes very widely. The crony-ridden, state-dominated banking system keeps old businesses going but chokes off capital from new ones. Small firms, the backbone of most strong economies, in Russia are becoming fewer. The

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37 PricewaterhouseCoopers Report at 9.

38 Ernst & Young Report at 5.

39 *A Chilean Model for Russia* at 2.

bureaucracy and the corrupt overlap between politics and business are still the country's biggest problems."[40]

Furthermore, Russia's movement toward privatization has stalled. After the financial crisis:

> The government privatization program was disrupted due to the virtual collapse of equity markets in Russia. As a result many privatizations were cancelled or delayed. For example, the auction on sale of Rosneft, the major current 100% government owned oil company was moved and then even cancelled due to the undervaluation of shares.[41]

The pricing of fundamental Russian commodities is not market driven. The Russian government continues to exercise price controls on sectors of the market including energy, public transportation and certain commodities, such as grain.[42] Perhaps the most concrete example of the remaining NME-status of Russia is seen in the natural gas industry. Russia holds the world's largest natural gas reserves, and is the worlds' largest exporter of natural gas. Natural gas accounts for over 54% of Russia's energy consumption, yet it is still sold at *less than the cost of production.*[43] Gazprom, which controls over 90 percent of the nation's natural gas, "currently is forced by the Russian government to sell gas to domestic users for

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40 *Lurching Ahead*, The Economist, November 29, 2001 available at http://www.economist.com/world/europe/PrinterFriendly.cfm?Story_ID=886386 (attached as Exhibit 6).

41 PricewaterhouseCoopers Report at 11.

42 Ernst & Young Report at 9.

43 *Russia Country Analysis Brief*, Energy Information Administration, available at www.eia.doe.gov/emeu/cabs/russia2.html.

$12–14 per thousand cubic meters, less than it costs to produce, while the export price is $130-$150 per thousand cubic meters."[44]

As cited in the Department's Global Steel Trade Report, "{t}he Russian economy remains a hyper-industrialized system composed of enterprises *that would not be viable in a market economy*, supported by transfers from energy and raw materials sectors."[45] Even President Putin has remarked that "electricity prices in Russia are three to five times cheaper than world prices."[46] Indeed, the Department recognized that Russian energy producers do not operate on profit motives:

> A financial analysis of the regional electric suppliers in Russia indicates that profitability has not been the primary concern; instead the sector was increasingly used as {a} source of subsidies to inefficient industries whose role remains that of supporting the federal government's industrial and anti-inflationary policy rather than maximizing its own earnings and asset values."[47]

The Russian Government regulates the prices of goods and services representing at least 15 percent of the national GDP.[48] Price regulation exists for

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44 *Id.*

45 Global Steel Trade Report at 49 (emphasis added).

46 *Id.*

47 *Id*. (citations omitted). As another example, the Russian government also tightly controls alcohol production and sale, managing several facets of this market in an effort to increase government budget revenues. For example, the United States Trade Representative has noted in its most recent inquiry into foreign trade barriers that "Throughout 2000, the government continued tight controls on alcohol production, including import restrictions, export duties, strip stamps, and again this year, increased excise taxes." United States Trade Representative 2001 National Trade Estimate Report on Foreign Trade Barriers at 379.

48 Memorandum of the Russian Federation at 20.

gas, electricity, and heat energy; transshipment of oil through pipelines; railroad services; port services; defense products; "ritual services;" and even drugs, prosthetic and orthopedic appliances.[49] In Russia, "nearly 80 percent of national income is socialized through hidden subsidies and cross-subsidies. This amounts to nearly-total socialism without central planning or big government."[50]

These facts conclusively demonstrate that sales of fundamental commodities do not operate on market principles of cost or pricing structures, so that sales of such products do not reflect the fair value of the merchandise. This data answers the central question at the heart of the Department's inquiry.

VII. Other Factors/Corruption

Russia is infected with widespread corruption – a phenomenon that prevents the fair pricing of merchandise necessary for the country to be considered a true market economy. In fact, many consider Russia to be one of the most corrupt nations in the world. The centrality of its black market may be the most probative factor as to whether Russia still operates as an NME. Such a black market only arises when the official market fails to meet consumer demand for goods at fair market prices.

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[49] *Id.*

[50] *The Russian Economy, Fact and Fancy about Post-Communist Economic Reforms*, November 21, 2000, available at www.russiaeconomy.org/comments/112100.html (attached as Exhibit 7).

Corruption in Russia is "part and parcel of political, economic and social life."[51] Experts have estimated that the black market accounts for at least 50 percent of Russia's GDP.[52] One measure of the extent of corruption is that an estimated $7 billion, one-half of the illegal income of organized crime, is estimated to be used for corrupt payments to government officials.[53]

The market disruption caused by such rampant and entrenched corruption is well known in the West, and appreciated within Russia itself. For example, the Russian Federal Security Service "lists the spread of corruption and the dimension of organized crime as the first and second threats to the foundations of Russian society and the State. . ."[54] The presence of the massive black market and the runaway corruption in Russia are unabashed evidence of the lack of free market conditions.

VIII. **Conclusion**

In conclusion, neither the Russian Government nor Russian steel producers have submitted evidence sufficient to demonstrate that the Department should revoke Russia's NME status. The Russian government's restrictions on its unstable

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51 *Transparency International Global Corruption Report,* available online, at 109.

52 *Heritage Foundation 2002 Index of Economic Freedom,* available online, at 341 (attached as Exhibit 8).

53 *Final Recommendations and Guidelines for Action, Corruption and Organised Crime in States in Transition*, Joint Project Between the Commission of the European Communities and the Council of Europe, February 1998 at 3.

54 *See* id. at 2.

currency, the denial of fundamental worker rights, limitations on foreign investment, and the control of production, prices and resources – all contrary to free market principles -- as well as the existence of a massive black market clearly indicate that Russia is still an NME. Accordingly, the Department should not alter Russia's designation as a nonmarket economy at this time.