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February 7, 2002

PUBLIC DOCUMENT

Case No. A-821-816
Total Pages: 17, plus
2 Exhibits and 1 diskette

VIA MESSENGER

The Honorable Donald L. Evans
Secretary of Commerce
Attn: Import Administration
Central Records Unit, Room 1870
U.S. Department of Commerce
14th Street & Constitution Avenue, NW
Washington, DC 20230

Re: Status of the Russian Federation as a Non-Market Economy Country Under the Antidumping and Countervailing Duty Laws

Dear Mr. Secretary:

The Ad Hoc Committee of Domestic Nitrogen Producers ("Ad Hoc Committee") hereby submits rebuttal comments pursuant to the Department's *Notice of Initiation of Inquiry Into the Status of the Russian Federation as a Non-Market Economy Country Under the Antidumping and Countervailing Duty Laws,* 66 Fed. Reg. 54197 (October 26, 2001).[1] Specifically, this filing responds to certain arguments submitted by the Government of the Russian Federation and by a

[1] The members of the Ad Hoc Committee are CF Industries, Inc., El Paso Corporation, Mississippi Chemical Corporation, PCS Nitrogen, Inc., and Terra Industries, Inc.

group of Russian steel producers ("the Russian parties") in support of the revocation of Russia's non-market economy status.[2] Although extensive information already placed on the record provides compelling evidence that revocation of Russia's NME status cannot be justified at this time,[3] these rebuttal comments address particular assertions by the Russian parties.[4]

As an initial matter, however, the Ad Hoc Committee respectfully submits that the Department should consider only those developments that have been in place long enough to permit a reasonable assessment of their implementation and effectiveness in furthering Russia's transition to market principles. Thus, for example, it is premature to conclude that wage rates and other employment standards are sufficiently market-oriented after the passage of the new Russian Labor Code, which entered into force only on February 1, 2002. There is, as yet, no evidence that enterprises will comply with the code, that the government will fully enforce it, or even that it will remain in effect. Similarly, President Putin signed a decree on September 4, 2001 that expanded the role of the Federal Energy Commission. That agency had already been responsible for regulating the energy markets, but the new decree consolidated regulatory and tariff setting powers for the "natural monopolies," which include electricity, natural gas, oil and

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[2] See Memorandum of the Russian Federation (received Aug. 3, 2001) ("hereinafter Russian Federation Submission"); Submission On Behalf of JSC Severstal, Novolipetsk Iron & Steel Corporation, and JSC Magnitogorsk Iron and Steel Works (Dec. 10, 2001) ("hereinafter Russian Steel Producers' Submission").

[3] See Submissions On Behalf of the Ad Hoc Committee of Domestic Nitrogen Producers (Dec. 10, 2001) (hereinafter "Ad Hoc Committee Submission"); On Behalf of Bethlehem Steel Corp., LTV Steel Co., Inc., National Steel Corp., and United States Steel LLC (Dec. 10, 2001); (hereinafter "Bethlehem Steel Submission"); On Behalf of Gallatin Steel Co., IPSCO Steel Inc., Nucor Corp., Steel Dynamics Inc., and Weirton Steel Corp (Dec. 10, 2001); On Behalf of Nucor Corp. and the Committee for Fair Beam Imports (Dec. 10, 2001); and On Behalf of Elkem Metals Co. and Globe Metallurgical Inc. (Dec. 10, 2001).

[4] We have limited our rebuttal comments to only those items that we believe clearly underscore the premature nature of the Russian Federation's request to be assigned market-economy status under Title VII. The Ad Hoc Committee does not concede that the Russian Federation and Russian steel producers have provided sufficient evidence with respect to the factors not addressed in these rebuttal comments. Information already on the record makes clear that none of the Department's criteria has been satisfied.

gas pipelines, railroads, ports and terminals, within the transformed agency.[5] Although touted as a reform measure, as discussed *infra*, it already appears that the new agency may simply serve to concentrate federal government control of tariffs in these sectors. The Department must be certain not to give weight to very recent *de jure* developments because it is not known when – or even whether – new laws and regulations will have a meaningful impact on the Russian economy.

A. The Extent of Russian Privatization Is Not Adequate to Justify Market Economy Status Given Continued State Control Over Dominant Sectors in the Russian Economy

The Russian Federation and Russian steel producers contend that the extent of privatization in Russia justifies its graduation to market economy status, despite continuing government involvement in key large-scale enterprises.[6] The Russian steel producers argue that small-scale enterprises have been the primary beneficiaries of Russia's privatization efforts,[7] but that, in prior NME reviews, the Department has found that a certain degree of continued state ownership of large-scale enterprises will not preclude a finding that NME status should be revoked.[8] An examination of the facts relevant to Russia's privatization, however, makes clear that pervasive state control of the Russian economy continues today.

Although privatization of small-scale enterprises is laudable, it must be viewed in the context of its impact on the overall Russian economy. As discussed below, neither the absolute number of enterprises that have been privatized nor the extent of small-scale privatization in

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[5] See Decree No. 1091 (English translation) attached as Exhibit 1.

[6] See Russian Federation Submission at 17; Russian Steel Producers' Submission at 18.

[7] See Russian Steel Producers' Submission at 19.

[8] See id. at 19-20.

Russia are meaningful measures of the country's market transformation. To the contrary, the Russian parties fail to recognize a fundamental distinction between Russia and the five countries that have graduated to market economy status – the degree of privatization in those countries did reflect a substantial and irrevocable transition to a market-oriented economy. The same conclusion cannot be drawn with respect to Russia, however, because the government retains tight control over large-scale enterprises that have a significant and pervasive impact on the Russian economy as a whole.[9]

First, the sectors that remain under state control play a significant role in the Russian economy. For example, the Ad Hoc Committee has provided ample evidence demonstrating that the Russian government's continued control over Gazprom, Russia's largest enterprise, is a prime example of the extent to which the Russian government continues to maintain a tight grip on the means of production.[10] As noted by the U.S. Department of Energy, Gazprom produces nearly 94 percent of Russia's natural gas, which totaled 20.8 Tcf in 1999, operates the pipeline grid and compressor stations, and is Russia's largest earner of hard currency.[11] In addition, Gazprom's tax payments alone account for 25 percent of the federal government's tax revenues.[12]

As noted above, the prices charged by Gazprom for its gas are determined by tariffs set by Russia's Federal Energy Commission, the powers of which have been expanded recently to

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[9] See also Bethlehem Steel Submission at 23-32 for an in-depth discussion of the inherent unreliability of the statistics proffered by the Russian Federation.

[10] See Ad Hoc Committee Submission at 16-23.

[11] See "Russia Country Analysis Brief," U.S. Energy Information Administration, at 3 (Oct. 2001), *available at* www.eia.doe.gov/emeu/cabs.russia2.html.

[12] See id.

cover all natural monopolies in Russia.[13] This expanded agency will regulate around 65 percent of Russia's economy.[14] Moreover, recent reports indicate that this "tariff setting" body, while being given broader reach in terms of industry coverage, is experiencing increasing government involvement in its decisions.[15] The Russian government continues to direct large swathes of the Russian economy, including natural gas pricing and supply. The government has reportedly capped natural gas tariff increases, which were already much lower than Gazprom had requested.[16] Gazprom's pricing remains wholly under the control of the Russian government.

Not only is Gazprom controlled by the Russian government, but Gazprom, in turn, has acquired substantial interests in the Russian nitrogen fertilizer industry. During 2000, a Gazprom subsidiary, Mezhregiongaz, formed a 50/50 joint venture company with JSC Interchimprom.[17] At the time of the joint venture formation, Mezhregiongaz already held 30 percent of Interchimprom shares. The assets of five nitrogen plants were consolidated under the joint venture company, JSC Agrochimpromholding, and account for a significant portion of total fertilizer production capacity.[18] Moreover, Itera, the Russian gas trading company with close but

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[13] See, e.g., "Here's Your Agency," Vremya Novostei, Sept. 5, 2001, attached at Exhibit 1.

[14] See id.

[15] See id.; "FEC Officials Cry Foul as Unification on Hold," The St. Petersburg Times, Jan. 22, 2002, attached at Exhibit 1.

[16] See "Chairman Says Russia's FEC Wants 15%-18% Hike in Domestic Gas Prices," Prime TASS Economic News Agency, Sept. 5, 2001, attached at Exhibit 1.

[17] See Fertecon, "An Update of the Fertilizer Situation in Russia," at 15, *available at* www.fertilizer.org/ifa/publicat/bibio00/pdf/46.pdf (hereinafter "Fertecon Update").

[18] See id. In addition, through this arrangement alone, Gazprom controls almost 30 percent of Russia's nitrogen fertilizer capacity. Gazprom is reported to have interests in a number of other nitrogen fertilizer producers.

far less than transparent ties to Gazprom,[19] is exporting significant quantities of nitrogen fertilizer to the U.S.[20] Thus, the Russian Government's control of Gazprom and Gazprom's pricing of its product results in considerable direct involvement in the Russian nitrogen fertilizer industry and in Russia's exports of nitrogen fertilizers, which account for roughly 20 percent of the worldwide nitrogen fertilizer export market.[21] Market economy principles do not operate in Russia's nitrogen fertilizer sector, as a direct result of continuing government control of gas pricing and supply, the government's controlling interest in Gazprom, and Gazprom's extesive involvement in the nitrogen sector. The antidumping laws cannot operate meaningfully on a market economy basis under these circumstances.[22]

Finally, the Department itself has noted quite recently that three major natural monopolies in which the Russian Government retains control – electrical power generation and distribution, natural gas extraction and distribution, and rail transportation – together account directly for approximately 13 percent of Russia's GDP.[23] The Russian government's continuing grip on these sectors does not indicate transition to market principles.

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[19] Itera was established in 1992 and has grown into "a $3 billion business with operations in 24 countries, thanks largely to favors from Gazprom." See "Gazprom-Itera Ties Come Under Scrutiny," Radio Free Europe-Radio Liberty, Oct. 26, 2001, *available at* www.rferl.org/nca/features/2001/10/26102001092656.asp.

[20] For example, U.S. Customs data collected by Trade Intelligence, Inc. shows Itera as the exporter of substantial quantities of urea ammonium nitrate recently shipped to the United States.

[21] Fertecon, a recognized source of data on the FSU fertilizer industry, has reported that in 2000, Russian exports accounted for over 19 percent of world exports of ammonia, over 14 percent of world exports of urea, and 18.6 percent of world exports of urea ammonium nitrate.

[22] The importance of the antidumping laws to the U.S. nitrogen fertilizer industry, which ahs been subjected to repeated surges in Russian nitrogen exports, is discussed in our December 10, 2001 submission cover letter at 3.

[23] See "Country Commercial Guide – Russia," at Ch. 2, "The Government's Role in the Economy (Oct. 2001); *available at* www.usatrade.gov/website.ccg.nsf.

Second, even assuming that a significant number of small-scale enterprises are private, the workforce accounted for by these enterprises is another important consideration. According to the Department's own data, only 10 percent of the Russian workforce is employed by small- and medium-scale enterprises.[24] This means that almost the entire Russian workforce remains employed by large-scale enterprises, many of which participate in sectors that remain subject to government control. For example, Gazprom has approximately 300,000 employees, and Unified Energy Systems (UES), the majority government-owned holding company that controls the electricity sector, had over 668,000 employees in 2000.[25] The relatively small portion of the workforce employed in what is likely to be the private Russian sector is not an indication of a successful market transformation.[26]

Third, state control of large enterprises permeates Russia's industrial sectors. For example, despite the Russian government's suggestion that existing price controls are aimed at restraining anticompetitive prices that could hurt consumers,[27] information on the record demonstrates that price controls extend to the industrial sector as well.[28] This includes an order of the Federal Energy Commission that prohibits Gazprom from selling natural gas to industrial

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[24] See "Development of Small and Medium Enterprises in Russia," BISNIS, Dept. of Commerce (Nov. 2001), available at www.bisnis.doc.gov (hereinafter "Small and Medium Enterprises").

[25] See www.gazprom.ru; www.rao.ees.ru/en/business/report2000/3_1.html.

[26] As compared to a number of different countries, the percentage of the labor force employed by SMEs in Russia is proportionally quite small. As noted in the Ad Hoc Committee Submission at 28, 37 percent of the Czech labor force is employed by SMEs. The same source notes that 58 percent of the workforce in Georgia and 37 percent of the workforce in FYR Macedonia are employed by SMEs. See H. Broadman, "Competition and Business Entry in Russia," in Finance and Development (IMF, June 2001), at 5, *available at* www.imf.org/external/pubs/ft/. In addition, 72 percent of the European workforce and 52 percent of the U.S. workforce are similarly employed. See Small and Medium Enterprises at 1.

[27] Russian Federation Submission at 20.

[28] See also Bethlehem Steel Submission at 33-38.

purchasers at market-based prices.[29] Gazprom has recently been required to sell specified volumes of natural gas to producers of fertilizers, chemicals, and other raw materials with a 50 percent reduction from already artificially low prices.[30] In addition, a recent study found that Gazprom, other utilities, and local governments "systematically used offsets to transfer liquidity to the enterprise sector, primarily to large loss-makers."[31] Thus, because the Russian government effectively controls Gazprom and other utilities, it continues to interfere in the economy by requiring energy to be supplied to insolvent customers.[32]

Importantly, Russian price controls stand in stark contrast to the truly consumer-oriented price controls that were in place when the Department examined conditions in the five graduated countries. Price controls still in effect in the former NMEs at the time of the Department's determinations were largely for consumer goods and services, such as household water, gas and electricity, housing, and public transportation.[33] Further, at the time of graduation, even these controls were being phased out and the market was operating to effect price increases that reflected inflation and increases in the cost of production. For example, the Department noted that in the Czech Republic in 1998, water and sewer rates rose 11 percent, housing rents increased 25 percent, and electricity and natural gas prices rose 24 and 27 percent, respectively.[34]

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[29] See Ad Hoc Committee Submission at 26-27.

[30] Id., quoting Order #12/1 of the Federal Energy Commission (attached at Exhibit 4 of the Ad Hoc Committee Submission).

[31] Transition Report 2001, European Bank for Reconstruction and Development, at 86, citing a large firm data set study by Commander et al., 2001.

[32] See id.

[33] See, e.g., Czech memo at 12, Hungary memo at 14, Latvia memo at 15.

[34] See Czech memo at 12.

While limited controls on the prices of some consumer goods and services are not incompatible with transition to a market economy, the extent of price controls in Russia for goods and services to both industrial users and consumers is far closer to the state-controlled economy end of the spectrum than was the case in the countries for which NME status has been revoked. The persistence of price controls for industrial sectors of the Russian economy also suggests that privatization of small-scale enterprises is not a meaningful indicator of sufficient transition. Contrary to Russia's claim, "the number of state controlled enterprises" does not provide a meaningful indication of Russian transition to a market economy.[35]

B. The Russian Government's Price Controls Are Incompatible With Market Principles

The Russian parties have attempted to paint the Russian Government's continuing control of prices in benign terms. The Russian Government, while conceding continuing government control for key products and services supplied by natural monopolies, claims that this control is acceptable because prices reflect the actual cost of production.[36] The Russian steel producers claim that price regulation of natural monopolies in Russia is similar to that prevailing in other former NMEs at the time the Department made its determinations to revoke that status.[37] Both of these assertions are demonstrably incorrect.

Information readily available to the Department directly rebuts Russia's claim that it sets prices in a "market-oriented" manner. For example, contrary to the Russian government's claim that prices are set based on the actual cost of production, information on the record demonstrates

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[35] Russian Federation Submission at 18.

[36] Russian Federation Submission at 20.

[37] See id. at 20; Russian Steel Producers' Submission at 23.

that Gazprom is directed to sell natural gas to purchasers for $12-$14 per thousand cubic meters – a price that, according to a very recent analysis of the U.S. Energy Information Agency, is below the actual cost of producing natural gas and in stark contrast to Gazprom's market-driven export price of $130 - $150 per thousand cubic meters.[38] When the Russian government countermanded tariff increase decisions of the Federal Energy Commission in January 2002, the deputy chairperson of the FEC complained that "tariffs are in fact set at the government level" rather than by an independent regulator.[39] One Russian analyst noted that government involvement in tariff setting is increasing as the "government appears to be quite concerned with its macroeconomic benchmarks."[40] Market forces are not being permitted to set rates for industrial supplies of energy resources and every indication is that the situation is moving toward more – not less – government involvement.

Moreover, the Russian government continues to use price controls as a vehicle to support certain industries. According to the European Bank for Reconstruction and Development, "{t}he infrastructure monopolies . . . continue to be a key source of indirect subsidization to enterprises."[41] As discussed by the Ad Hoc Committee, OAU Nevinnomysskii Azot, a large Russian producer of nitrogen fertilizer, is just one example of a recipient of natural gas price subsidies conferred through artificially low, regulated prices for natural gas produced and sold by

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[38] See Ad Hoc Committee Submission at 21, citing "Russia Country Analysis Brief," U.S. Energy Information Agency (October 2001) at 3.

[39] See "FEC Officials Cry Foul as Unification on Hold," attached at Exhibit 1.

[40] See id.

[41] See Ad Hoc Committee Submission at 19. See also Bethlehem Steel Submission at 33-38 for a further discussion of the Russian Government's price control policies and practices.

Gazprom.[42] Indeed, as shown in Exhibit 4 of the Ad Hoc Committee Submission, the Russian Government decreed that, by law, 34 industrial producers of fertilizers and other chemicals would collectively receive approximately 4,600 million cubic meters of natural gas at prices 50 percent below the state-regulated wholesale price.

The failure to collect payments owed to state entities is another means by which the Russian government's price control system confers subsidies. Gazprom, for example, in 1999 "sold" approximately three quarters of its gas to non-paying customers. Only 20 percent of the payments that were made were made in cash, with the rest being made in barter goods such as chicken feed and sausages.[43] According to the EBRD, "{w}hile collection ratios have been improving in recent months, tariff adjustments have lagged behind the rate of inflation, increasing the level of subsidization" provided by the infrastructure monopolies, particularly in the energy sector.[44] In contrast, while there were some price controls in the former NMEs at the time they graduated to market economy status, these were directed toward consumer prices and not used as a means to control industrial output and employment, as is the case in Russia.[45]

In sum, ample record evidence belies the contention that the Russian government's price controls are consistent with market principles. Utilization of pervasive price controls to artificially ensure the continued operation of certain industrial sectors of the economy is simply not consistent with a transformation to market principles. This is a matter of grave concern to

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[42] See Ad Hoc Committee Submission at 27.

[43] See "Gazprom's Dilemma," The Wall Street Journal Interactive Edition (Aug. 30, 1999), available at www.wsj.com/public/current/articles/SB935787825339902555.htm.

[44] Russia Investment Profile 2001 at 14.

[45] See Poland NME Memo at 23; Czech NME Memo at 12; Slovakia NME Memo at 12; Hungary NME Memo at 14; Latvia NME Memo at 14.

U.S. nitrogen fertilizer producers, who are forced to compete with massive quantities of Russian nitrogen fertilizer produced using natural gas inputs that are artificially priced by the Russian government rather than by market forces.

C. The Amount of Foreign Direct Investment in Russia Is Insignificant Given the Size of Russia's Population and Economy

The Russian steel producers assert that Russia has an open investment policy and has attracted "significant" amounts of foreign investment.[46] As the Ad Hoc Committee has demonstrated, however, Russia has not yet established a legal, commercial or regulatory climate that welcomes foreign investment.[47] The absence of a positive foreign investment climate has severely hindered Russia's ability to integrate meaningfully into the world economy.

The table attached at Exhibit 2 vividly illustrates that foreign direct investment in Russia is, in fact, not significant. The population of Russia and the size of its economy dwarf those of the previously graduated NMEs: Russia has approximately 145 million people, compared to, for example, 38.6 million in Poland, 10.2 million in the Czech Republic, and only 2.4 million in Latvia.[48] Russia's 2000 estimated gross domestic product was $1.12 trillion, compared to $327.5 billion in Poland, $132.4 billion in the Czech Republic, and $17.3 billion in Latvia.[49] Yet despite its comparative size, cumulative foreign direct investment in Russia for 1989-2000 was only $85 per capita, barely above, for example, Ukraine's cumulative FDI of $67 per capita for that

[46] Russian Steel Producers' Submission at 14.

[47] See Ad Hoc Committee Submission at 8-13.

[48] Estimates as of July 2001. See The World FactBook 2001, Central Intelligence Agency, available at www.odci.gov/cia/publications/factbook/index.html.

[49] See id. These figures are adjusted to reflect purchasing power parity.

period. In contrast, cumulative FDI in the five graduated NMEs ranged from $669 to $2,102 per capita.[50]

The situation is no better if per capita FDI for only more recent periods is examined. The average per capita FDI for 1998-1999 in Russia was $16 (and $13 in Ukraine for the same period).[51] In the graduated NMEs, per capita FDI for the 1998-99 period ranged from $77 (Latvia) to $291 (Czech Republic).[52] Further, while 2000 per capita FDI in the former NMEs in 2000 ranged from $139 to $434, in Russia it was only $14.[53] Thus, not only is per capita FDI in Russia extremely small, but the trend shows an actual decrease in foreign investment in Russia during a period when FDI significantly increased in the five former NME countries. See chart at Exhibit 2.

Given the size of its population and economy, the amount of foreign direct investment in Russia would be expected to be far greater if the Russian economy was truly open to foreign investment. The simple absolute amount of foreign direct investment is not an accurate measure of an adequately open investment policy. As these per capita figures so clearly demonstrate, Russia has not established an open investment climate and has failed to attract a level of foreign investment that indicates a sufficiently transitioned economy.

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[50] See "Nations in Transit 2001," Freedom House, at Table F, available at www.216.119.117.183/research/nattransit/htm.

[51] See "Nations In Transit 2000," Freedom House, at Table B.

[52] See id.

[53] See Nations in Transit 2001 at Table F.

D. Russia's Future Accession to the WTO and Cooperation with NATO and the OECD Are Wholly Irrelevant to the Department's Analysis

Finally, the Russian steel producers claim that the Department should consider Russia's efforts toward accession to the World Trade Organization, its cooperation with NATO, and its participation in various activities of the Organization for Economic Cooperation and Development (OECD) as factors that favor revocation of Russia's NME status. However, these activities are wholly irrelevant to the Department's determination of whether to revoke Russia's NME status.

First, Russia's efforts to join the WTO, while laudable, do not evidence adoption of market economy characteristics that justify revocation of its NME status. In fact, transformation to a market economy in a manner that justifies graduation under Title VII is not a precondition of WTO membership. The recent accession of the People's Republic of China to the WTO illustrates this point. Even though China's accession required significant market reform commitments to the United States and to other WTO trading partners, China's entry into the WTO did not lead to revocation of its NME status under U.S. antidumping and countervailing duty laws.[54] In fact, notwithstanding China's WTO membership, it was agreed that China would continue to be considered a NME country under Title VII for 15 years after the country's WTO accession.[55] Similarly, the Czech Republic, Slovakia, Hungary and Latvia were all members of the WTO before the Department revoked their NME status.[56] Simply put, given that actually

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[54] See China Trade Relations Working Group, "Summary of U.S.-China Bilateral WTO Agreement," Feb. 2, 2000, available at www.usinfo.state.gov/regional/ea/uschina/bilat.sum.

[55] Id. at 4.

[56] See Czech NME Memo at 15; Slovakia NME Memo at 14; Hungary NME Memo 16; Latvia NME Memo at 19. Poland's NME status was revoked in 1993, before the formation of the WTO.

joining the WTO does not indicate a sufficient degree of transition to require revocation of NME status, mere engagement in the accession process certainly cannot be deemed to do so.

Second, NATO is a strategic military alliance whose purpose and objectives are also irrelevant to the operation of U.S. antidumping and countervailing duty laws. Russia's cooperation with NATO relates to shifts in Western global alliance priorities and is not an indication that Russia's economy is based sufficiently on market principles. Again, the Department has never considered a country's participation in NATO as a factor in its revocation analysis, and the Russian steel producers present no compelling justification for taking such an unprecedented action in this case.

Finally, Russia's cooperation with the OECD may be nothing more than recognition of Russia's relative size in the world economy. As described by the Russian steel producers, this cooperation entails participation in the OECD's regulatory reform review program and in dialogue on policy issues, such as global competition and worldwide steel capacity. In fact, the OECD website indicates that, through its Centre for Cooperation with Non-Members directorate, the OECD works with "a wide range of transition and emerging economies," Russia among them.[57] There is no suggestion that the OECD considers that Russia shares the "commitment to democratic government and the market economy" that is the hallmark of membership.[58] Therefore, Russia's "cooperation" with the OECD is simply irrelevant to the Department's determination on Russia's NME status.

Although the Department unquestionably has discretion to consider other factors that are relevant to revocation of a country's NME status, the "other factors" identified by the Russian

[57] See www.oecd.org.

[58] See id. under "Member Countries."

steel producers are not relevant or indicative of sufficient economic transition. None of these identified factors bears any relationship to Russia's transformation to a market economy, but rather simply represent Russia's increased engagement with industrialized nations as Russia emerges from its Soviet-era isolation. It would be entirely unprecedented and unreasonable for the Department to consider these "other factors" as support for revoking Russia's NME status, given the absence of evidence that these "factors" somehow indicate that U.S. antidumping laws could operate meaningfully as to Russia on a market economy basis.

III. CONCLUSION

For all of the reasons discussed above and in the Ad Hoc Committee's detailed submission of December 10, 2001, we urge the Department to consider carefully the extensive information on the record of this proceeding. The record evidence unequivocally demonstrates that Russia falls short of satisfying the statutory standards on every key indicator of a successful transformation to a market economy. The simple fact is that, although Russia is in the process of reforming certain areas of its economy, it is premature to revoke its NME status at this time. Russia's economy has not yet reached the threshold required by law and precedent for revocation of its non-market economy status. In fact, by any measure of progress toward a market economy, it is clear that Russia more closely resembles Ukraine – a country that the Department has found ineligible for NME revocation[59] – than it does the five countries that have had their NME status revoked. Freedom House ranks both Russia and Ukraine as "transitional economies" and "transitional governments," with virtually identical scores for economic

[59] Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Ukraine, 62 Fed. Reg. 61754 (Nov. 19, 1997).

liberalization, rule of law, and democratization.[60] As discussed above, per capita foreign direct investment levels in Russia and Ukraine are similar and do not even approach the levels in the graduated NMEs. Further, according to the EBRD, the development of market-supporting institutions is similar in Russia and Ukraine, and lag behind the graduated NMEs.[61] For all of these reasons, we respectfully request that the Department deny the current petition for revocation of Russia's NME status under Title VII.

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

Respectfully submitted,

Robert C. Liuzzi
President and Chief Operating Officer,
CF Industries, Inc., and Chairman,
Ad Hoc Committee of Domestic Nitrogen
Producers

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[60] See "Nations in Transit 2001" at Tables A and B. The economic liberalization score for Russia was 4.17 and 4.33 for Ukraine; the rule of law score for Russia was 5.38 and 5.25 for Ukraine; the democratization score for Russia was 4.63 and 4.44 for Ukraine.

[61] See "Transition Report 2001" at 18. The EBRD rated countries based on an unweighted average of transition indicators in 2001 for large-scale privatization, governance and enterprise reform, competition policy, infrastructure and financial institutions. On a scale of 1 to 4, Russia and Ukraine were both rated 2.3, as compared to, for example, 3.6 for Hungary (the highest-rated country) and 3.3 for the Czech Republic.