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BY HAND

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

Attention: Edward Yang (Room 7860)
Albert Hsu (Room 3713)

Re: Investigation Into the Status of the Russian Federation as a Non-Market Economy Country Under the Antidumping and Countervailing Duty Laws, 66 Fed. Reg. 54197 (2001) - Rebuttal Comments of the American Chamber of Commerce in Russia

Dear Mr. Secretary:

On behalf of our client, the American Chamber of Commerce in Russia ("AmCham"), we submit the following comments in rebuttal to those made in opposition to changing the status of Russia from a non-market to a market economy. By way of background, the

AmCham was founded in 1994 and is the largest and most influential Western business organization in the Russian Federation, with over 650, mostly U.S. company, members operating within Russia. AmCham maintains chapters in both Moscow and St. Petersburg. It promotes favorable investment conditions in the Russian Federation for Western business by endorsing solutions to trade issues that protect and benefit its members, supporting greater cooperation between Western companies and their Russian partners, and providing timely and accurate information on the Russian market.

Please do not hesitate to get in touch with the undersigned should you have any questions.

Respectfully submitted,

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I. Introduction

In considering whether or not to change a country's status from a non-market to a market economy, the Department analyzes the extent to which resources are allocated by the market or government, taking into account government involvement in currency and labor markets, pricing, and production and investment decisions.[1] There is no "bright line" test for making this determination.

Significantly, in order to make a positive market economy determination, complete *laissez faire* and a perfectly competitive market economy is not required.[2] Rather, the Department has made clear, in previous cases,[3] that an economy which is in transition toward complete control by market forces can merit a positive market economy determination. Even countries that are only in the middle of the state to market transition can qualify as market economies.[4]

Russia clearly more than meets this standard.

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[1] Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine, 62 Fed. Reg. 61754, 61755 (1997).

[2] See e.g., Decision Memorandum, U.S. Dept. of Commerce, Antidumping Duty Determinations on Cold-Rolled Carbon Quality Steel Products from the Slovak Republic - Market vs. Non-Market Economy Analysis, Oct. 13, 1999 at 15.

[3] See, e.g., Decision Memorandum, U.S. Dept. of Commerce, Antidumping Duty Investigation of Certain Steel Concrete Reinforcing Bars from Latvia - Request for Market Economy Status, Jan. 12, 2001.

[4] See, e.g., Decision Memorandum, U.S. Dept. of Commerce, Respondent's Request for Revocation of Poland's NME Status, June 21, 1993 ("Poland Decision") at 33.

> The Russian economy is increasingly producing good news: strong GDP growth, burgeoning foreign exchange reserves and trade surpluses. Inflation is moderate by earlier standards, the currency is stable, reform of the tax code is well advanced and beginning to show early positive results, and the regulatory framework is improving. The effects of the 1998 crisis are fading and there are signs of a sustained recovery, including in the regions. Each economic success enhances the standing and confidence of President Putin's team, and paves the way for further reform.[5]

Russia has taken significant steps since the fall of the Soviet Union to dismantle the old command economy, and to establish an economy based on market principles. By 2000, 70% of Russian GDP came from the private sector, up from less than 10% only eight years earlier.[6] This transition has taken on a seemingly irreversible momentum, in the last three years[7] during which the Duma has enacted at least 14 major laws further liberalizing the economy.[8] The World Bank's top expert has

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[5] U.S. Department of State, Country Commercial Guide Russia, Fiscal Year 2002, July 15, 2001 (http://www.usatrade.gov/Website/ccg.nsf/CCGurl/CCG-RUSSIA2002-CH--003622B5) ("Russia Country Guide") at 4.

[6] Broadman, Harry G., "Competition and Business Entry in Russia," Finance and Development, June 2001 (http://www.imf.org/external/pubs/ft/fandd/2001/06/broadman.htm), citing, official statistics.

[7] "With Russia now well down the road towards a modern market economy, the focus of the debate centers not on whether to move forward but how fast and what should be the most appropriate structure for Russia's unique circumstances." Russia Country Guide at 2.

[8] The laws include the following:

1. Part III of the Civil Code governing-private international law, effective March 1, 2002.
2. Revisions to the Joint Stock Company Law designed to further protect minority shareholders, effective January 1, 2002.

3. Land Code adopted in October 2001 permitting the private ownership of land.

4. Major amendments to the 1992 Law on Currency Regulation and Currency Control liberalizing the currency control regime, effective July 2001.

5. The first four chapters of Part II of the Tax Code took effect from January 1, 2001. The chapters govern value-added tax, personal income tax, payroll tax and excise tax. The new chapters in the Tax Code replace the complex existing legislation regarding these taxes and significantly streamline and rationalize the tax system.

6. Chapter 25 (Corporate Income Tax) of Part II of the Tax Code, effective January 1, 2002 (<u>See</u>, discussion below at 24 for details of this law).

7. The law "On the Defense of Competition in the Financial Services Market" regulates competition in the banking, insurance, leasing, securities and other financial services sectors, effective December 28, 1999.

8. The Law on Foreign Investment in the Russian Federation designed to guarantee investors' rights and attract new foreign investment, effective July 12, 1999.

9. The Law on the Insolvency of Credit Organizations provides clarification of the procedures for dealing with insolvent banks, effective March 1, 1999.

10. The Federal Law "On Gas Supply in the Russian Federation" provides a legal framework for regulation of natural gas development, pricing, and marketing, effective April 1999.

11. The "Enabling Law" for Production Sharing Agreements made changes to 12 other federal laws or codes to ensure harmony with the 1996 Law on Production, effective February 1999.

12. The law on "State Registration of Legal Entities", effective July 1, 2002 replaces the current web of federal and regional bodies in charge of company registration with a single Registration Authority.

13. The Labor Code of the Russian Federation No. 197-FZ, effective February 1, 2002 (<u>See</u>, discussion below at 10-11 for details of this law).

14. Federal Law No. 173-FZ "On Work Pensions in the Russian Federation" (the Pension Reform Law), effective January 1, 2002, which introduced major market-related reforms into the pension system, including the creation of individual retirement savings accounts to hold a portion of each worker's salary contribution to the pension fund until the worker reaches retirement age. Workers will be free to decide how these funds are invested.

indicated that the rate of approved reforms in Russia in 2001 was higher than in any country in the Organization for Economic Cooperation and Development.[9] Further significant measures are planned to be taken in the next year.

Russia's transition to a market economy is also evidenced by Russia's serious negotiations to join the WTO, and by the Department's own actions in recent antidumping cases involving Russia. Indeed, in all cases in the period since the dismantling of the Soviet Union, in which Russian companies requested separate rates and participated throughout the proceedings, the Department concluded that there is a lack of *de jure* and *de facto* control by the Russian Government over their export activities.

A change in Russia's status from a non-market to a market economy will significantly benefit the already substantial numbers of U.S. companies operating in Russia by encouraging the continuing liberalization of the economy.[10] It will also

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> "Pension reform was launched last year by adopting basic legislation that ensures the transition to an accumulative pension reform system. This is one of the most important steps for the institutional development of professional investors, financial markets as well as savings and investment processes . . ." Expert Institute of Russia and the American Chamber of Commerce in Russia, Joint Report, The Economic Situation and Investment Climate in Russia (Feb. 2002) at 20.

[9] Ruehl, Christof, as quoted in The St. Petersburg Times, Dec. 28, 2001.

[10] Many of these companies are involved in The Russian American Business Dialogue, a mechanism endorsed by Presidents Bush and Putin for the private sector in both countries to identify obstacles to trade and investment and to make concrete policy recommendations to both Presidents. It is an additional driving force in Russia's transition to a market economy. A progress report reflecting the views of major business

acknowledge the strong and swift role that Russia has played over the last several months in helping the United States achieve a number of critical foreign policy objectives. In this light, AmCham urges the Department to designate Russia as a market economy for purposes of U.S. antidumping law.

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associations in Russia and the United States was delivered in December to Secretary of Commerce Evans and Minister of Economic Development and Trade Gref.

II. Detailed Rebuttal

AmCham's specific rebuttals to the arguments of the opponents of a change in status are as follows:

1. Argument in Opposition - Russia's currency is not freely convertible.[11]

Rebuttal - Previous cases have suggested that full currency convertibility is not a requirement to find that a market economy exists.[12] Indeed, the Department has previously pointed out that two well known market economies (France and Italy) have not always had fully (externally and internally) convertible currencies, due to restrictions on capital account transactions.[13]

While the Russia ruble is not yet freely convertible for all types of transactions, in 2001, Russia took important steps in that direction. In a significant liberalization of the currency laws, Russia abolished the licensing requirement for foreign currency loans with terms over 180 days.[14] The new

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[11] See letter from Robert E. Lightheizer and Alan W. Wolff to Faryar Shirzad, Assistant Secretary for Import Administration (Dec. 10, 2001) at 9-10("Comments of Dewey/Skadden"); letter from Charles O. Verrill, Jr. to Faryar Shirzad, Assistant Secretary for Import Administration (Dec. 10, 2001) ("Comments of Wiley Rein and Fielding") at 6-9; letter from Roger B. Schagrin to Faryar Shirzad, Assistant Secretary for Import Administration (Dec. 10, 2001)("Comments of Shagrin Associates") at 8-9, and letter from Robert C. Liuzzi to the Honorable Donald L. Evans, Secretary of Commerce (December 10, 2001)("Comments of Domestic Nitrogen Producers") at 1-2.

[12] See, Poland Decision at 34.

[13] Id.

[14] Central Bank Regulation No. 1030-U (Sept. 10, 2001), effective October 1, 2001 (the "Regulation").

regime substantially simplifies the ability of Russian corporate borrowers to attract and repay hard currency loans from non-resident banks and companies for terms of over 180 days ("long-term currency loans"). Previously, such loans required individual licenses from the Central Bank, and this requirement often delayed cross-border financings.

Under the Regulation, Russian companies are allowed to receive and repay long-term currency loans subject to compliance with a simplified notification procedure, and provided that the loan proceeds are credited to accounts in licensed Russian banks. In addition, the Regulation expressly permits hard currency payments by borrowers under the indemnity and damage provisions of loan agreements; by third parties (e.g., other than the borrower) to repay long-term currency loans, but only from Russian bank accounts; and pursuant to certain security arrangements under loan agreements.

Russia also recently liberalized several key provisions of the Law on Currency Regulation and Currency Control (the "Currency Law").[15] The main changes came into effect in mid-2001, and further such reforms are expected in the near future.

Russian resident companies and individuals may now freely conduct several new categories of transactions without obtaining a license from the Central Bank. These include:

- providing long-term trade credits for export sales of certain transportation vehicles, audio and video

[15] RF-3615-1 (Oct. 9, 1992), as substantially updated and liberalized by Law of the RF No. 130-FZ, effective August 10, 2001 "On Admendments to Certain Legislative Acts of the Russian Federation Concerning Currency Control" and Law of the RF No. 72-FZ dated April 18, 2001 "On Changes and Revisions to the Law on Currency Control".

equipment, and military equipment, as long as the proceeds are repatriated to Russia within three years;

- providing similar trade credits for exports of certain services (for example, in such sectors as construction), as long as the proceeds are repatriated to Russia within five years;
- entering into insurance and reinsurance contracts in hard currency, for terms up to five years; and
- opening foreign bank accounts in non-convertible currencies (such as Kazakh tenge or the currency of other former Soviet countries and trading partners) to facilitate payments for imported goods and construction services.

Similarly, the definition of "currency transactions" (generally free from regulation) has been revised to include "non-trading settlements" (which includes such diverse items as court-ordered judgments, wages, notarization fees, and copyright royalties; moreover, the Government now has the right to add to the list).

In addition, resident individuals may also invest in securities denominated in foreign currency, including direct investments overseas, in amounts up to US$75,000 per calendar year,[16] and new Central Bank Regulation No. 142-P allows certain unlicenced, direct equity investments in other countries of the Commonwealth of Independent States ("CIS"), in amounts up to US$10 million.

Finally, and perhaps most significantly, Federal Law No. 130-FZ "On Amendments to Certain Legislative Acts of the Russian Federation Concerning Currency Control," effective August 10, 2001, reduced the portion of hard currency export proceeds that

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[16] The Currency Law, Article 6(2).

must be converted into rubles from 75% to 50%. This applies to the export of goods, services or technology. Further plans would reduce the surrender requirement to 25% in 2003, and abolish it completely in 2004.[17]

[17] Russian Country Guide at 10.

2. Argument in Opposition - Russia’s labor laws are same as those that were in effect from the Soviet era and provide no effective rights for workers, resulting in poor labor conditions and low wages, paid late.[18]

Rebuttal - The arguments in opposition fail to recognize the existence and impact of the enactment of a significant new labor law in Russia, effective February 1, 2002. The new law, of indefinite duration, conforms to the conventions of the International Labor Organization, revamps the business - labor relationship and provides extensive new rights to workers. As recently explained by Russian Labor and Social Development Minister Alexander Pochinok,[19] the new law:

- establishes the voluntary nature of the employment relationship,and procedures for negotiations (collective bargaining) between employees and employers, which must take place if requested by either side;
- provides for workers electing representatives of their choice;
- provides for signed collective employment agreements, trade unions negotiating on behalf of workers, and, as long as they represent a majority of workers at an enterprise, calling a strike;
- requires that unions be apprised of employer decisions affecting workers;
- prohibits the dismissal of trade union leaders if they are protecting the rights of workers;

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[18] See Comments of Dewey/Skadden at 12-15; Comments of Wiley Rein & Fielding at 9-13; Comments of Shagrin Associates at 7-8; Comments of Domestic Nitrogen Producers at 3-7.

[19] The full text of Minister Pochinok's remarks are set forth in Exhibit A.

- guarantees overtime pay for workers spending more than the agreed upon time on their job;
- workers cannot be forced to work overtime; and
- delays in payment of wages more than 15 days have become subject to a collective labor dispute procedure.

As further explained by Minister Pochinok, no labor law is submitted to the government without being discussed by a special commission consisting of 30 union officials, 30 employer representatives, and 30 government officials, and the minimum wage is being rapidly increased. It has risen from a base of 83 rubles to 450, and is likely to be increased further. In addition, a special labor court to adjudicate employer-employee disputes, based on similar courts created in Germany, has been established in Moscow. If it works well, more such labor courts will be created.

3. Argument in Opposition - Foreign investment restrictions in Russia demonstrate that Russia continues to maintain a nonmarket economy.[20]

Rebuttal - Though Russia, to date, has attracted less foreign investment than some other countries of the former Eastern Bloc, foreign investment inflows have still been significant -- reaching $34.4 billion as of September 2001 -- a level similar to that of the Czech Republic.[21] Foreign investment as a percentage of GDP in Russia is 9.7% which compares with 11% for Italy and 12.7% for the United States.[22] The OECD concluded, in a May 2001 report, that Russia possesses "an adequate, rules-based legal and regulatory environment for investment."[23]

There are other significant facts demonstrating that foreign investment conditions in Russia have improved and are indicative of a market economy.

- In 1999 and 2000, Russia attracted $9.56 billion and $10.96 billion in total foreign investment,

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[20] See Comments of Dewey/Skadden at 16-22; Comments of Wiley Rein & Fielding at 13-17; Comments of Shagrin Associates at 5-7; Comments of Domestic Nitrogen Producers at 8-13; and letter from William D. Kramer to The Honorable Donald L. Evans, Secretary of Commerce (Dec. 13, 2001)("Comments of Verner Liipfert") at Comment II, page 3.

[21] "Results Related to Activities of Foreign Companies in Russia in 2001", AKDI International Consulting, citing, figures published by the Russian State Statistical Committee.

[22] "Foreign Direct Investment, A Regional Guide" Troika Dialog (Sept. 2001) at 4. Foreign companies are never going to have as big an investment impact on a geographically large country like Russia as they would on a smaller country. Id.

[23] "The Investment Environment in the Russian Federation," OECD (May 2001) at 5.

respectively -- an increase of over 12%. Total foreign investment in the first three quarters of 2001 was $9.7 billion -- 23% higher than in the same period in 2000.[24]

- Russia's position in the annual Financial Times ranking of countries most attractive to foreign investment improved from 49 in 1999 to 32 in 2001.[25]
- Moody's and Standard and Poor's both increased Russia's sovereign rating in 2001.[26]
- In 2001, Russia attracted foreign investments from over 170 countries. In both 1999 and 2000, the United States was the primary foreign investor.[27] U.S. companies such as Caterpillar, Coca-Cola, Ford, Gillette, International Paper, Lucent, Otis Elevator, Philip Morris, RJ Reynolds and Wrigley have all made investments.[28]

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24 "Results Related to Activities of Foreign Companies in Russia in 2001", AKDI International Consulting, citing, figures published by the Russian State Statistical Committee.

25 "Results Related to Activities of Foreign Companies in Russia in 2001", AKDI International Consulting.

26 Id.

27 Russia Country Guide at 76.

28 Russia Country Guide at 18. Other AmCham companies with significant investment in Russia include MARS, Proctor and Gamble, Conoco, General Motors, Pepsi, Motorola, Formtrust-Newform, United Technologies, Alarko, Japan Tobacco International, Hines, Alcoa, Anglo-American School, Chevron, MCT/RTDMC, Kraft Foods, Halliburton, StoryFirst Communications, Millicom International Cellular, BP, DaimlerCrysler, Boeing, GE, Lockheed, Exxon, Baker Hughes, Amervest and SovLink Group. Source: American Chamber of Commerce in Russia.

In addition, the Law on Foreign Investment, effective July 12, 1999,[29] contains basic legal protections for foreign investors. Foreign investors are entitled to rights no less favorable than domestic investors "with exceptions established by federal laws." Restrictions are allowed "only to the extent required" by a broad laundry list of goals, such as protection of "public morals and health . . . [or] . . . the defense and security of the State." Special privileges may also be granted by law to promote Russian social and economic development. Foreign investors are entitled to make investments in any manner not expressly prohibited by law, and to reinvest or repatriate profits and other distributions freely, after payment of applicable taxes. Further, foreign investors have the right to compensation for damages inflicted by illegal acts or omissions of Russian authorities; and to protection from seizure or nationalization of their investments, except pursuant to federal law and with payment of compensation and damages.

The Law establishes certain categories of investment that are entitled to special protection or privileges:

- Commercial organizations in which a foreign investor owns at least 10 percent of equity are entitled to the same protections under the law as the foreign investor itself.
- Russian companies with more than 25% foreign equity ownership, or that are implementing "priority investment projects" are eligible to take advantage of a tax stabilization provision.
- Qualifying companies and projects can use a tax stabilization clause prohibiting increases in the rates of certain import duties and federal taxes until

[29] Law of the RF No. 160-FZ dated July 9, 1999 (effective July 12, 1999) "On Foreign Investment in the Russian Federation".

initial investments have been recouped (up to a maximum of seven years, unless this period is extended by the Russian Government under certain conditions) with exceptions for protective customs tariffs on commodities, excise tax, VAT on domestic goods, and pension fund payments.

4. Argument in Opposition - Poor corporate governance demonstrates the lack of a market economy and increases risks to foreign investors.[30]

Rebuttal - While certain corporate scandals during the period 1997-2000 created negative publicity related to Russian corporate governance, in the past several years, many officials and companies have taken important steps to redress some of the regulatory and systemic deficiencies that led to such abuses, with an emphasis upon self-regulatory organizations focused upon securities market participants.

First, the Russian Government enacted important revisions to the Joint Stock Company Law, effective January 1, 2002, which are designed to increase the protection of minority shareholders.[31] These revisions include many generally accepted corporate governance principles. Significantly, preemptive rights available to minority shareholders were increased. A shareholder holding at least 10% of a company's stock may call an extraordinary shareholders' meeting. A shareholder holding at least 1% of a company's stock has the right to file a complaint against a member of the Board of Directors or the General Director seeking reimbursement for damages caused by their actions or failures to act.

Any shareholder has the right to challenge in court a General Assembly decision if the decision violates the shareholder's rights and lawful interests. Any shareholder has preemptive rights that permit it to require that the company purchase its stock at fair market value (determined by an

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[30] Comments of Dewey/Skadden at 19-22.

[31] Law of the RF No. 120-FZ dated August 7, 2001 "On Introducing Revisions and Amendments to the Federal Law on Joint Stock Companies."

independent appraiser), if the General Assembly of Shareholders adopts a decision on (1) reorganization of the company, (2) approval of a "major transaction", or (3) introduction of amendments to the charter limiting the rights of the shareholder.

Second, the Federal Commission for the Securities Market ("FCSM") supervised the drafting of a Code of Corporate Conduct (soon to be finally implemented) designed to enhance good governance rules in Russian companies with over 1,000 shareholders, including effective protection of shareholders' rights and interests, equitable treatment of shareholders and transparency of decision-making.

The abuse of minority shareholders in Russian companies through such means as dilutions and asset stripping has decreased, as evidenced by formerly criticized companies such as Yukos, which has made great efforts to improve its image over the past two years by promoting and implementing Corporate Governance, and has seen its share price and market capitalization soar as a result.[32]

Finally, NGOs in Russia are increasingly influencing corporate behavior. The Institute of Corporate Law and Corporate Governance, headed by the former director of the FCSM, Dmitri Vasiliev, publishes a corporate governance score card, rating companies on a score of 1-10. The Investor Protection Association tracks and publishes the incidence of independent directors on company boards.

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[32] Yukos shares rose 191% in value in 2001. New York Times, Business Section, Feb. 3, 2002 at 8.

5. Argument in Opposition - There is insufficient privatization of the Russian economy to demonstrate the existence of a true market economy.[33]

Rebuttal - Russia has privatized a large number of enterprises, including many of its largest, most valuable companies. The Russian Federation completed its small-scale and mass privatization program by 1994, succeeding in transferring ownership of 40% of state-owned enterprises to approximately 40 million citizens. By the end of 2000, over 66% of the total number of state-owned enterprises had been privatized and over 75% of Russian employment is now estimated to be accounted for by privately owned companies.[34] Included among the privatized entities are some of Russia's largest oil, chemical, machine and metallurgical companies. According to the OECD, Russia's massive privatization has endowed the Russian economy "with a basic corporate sector, a corporate securities market and its first network of institutional investors"[35] -- all hallmarks of a market economy.

New privatizations are planned.[36] State Property Fund head, Vladimir Malin, recently said that a list of more than 400 Russian Government stakes in companies slated for sale in 2002 had been submitted for approval.[37] The list reportedly includes

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[33] See, e.g., Comments of Dewey/Skadden at 24-25; Comments of Wiley Rein & Fielding at 17-19; Comments of Shagrin Associates at 3-5; Comments of the Domestic Nitrogen Producers at 16-23; and Comments of Verner Liipfert at Comment II, page 2.

[34] Report on the Results of Privatization in 2000, Aug. 2, 2000, prepared by the Russian Government, Article 2.1.

[35] "The Investment Environment in the Russian Federation," OECD (May 2001) at 5.

[36] Russia Country Guide at 60.

[37] The Moscow Times, Feb. 5, 2002.

a stake of 20% minus two shares in the national telecommunications holding company, Suyazinvest, 19.68% of the oil company, Slavneft, and 38.41% of the coal company, Vorkutangol, as well as stakes in the Western Siberian Metals Combine, the oil company Samotlorneftegaz, and the coal company, Gukovugol.[38]

[38] Id.

6. Argument in Opposition - Russia's "Natural Monopolies" are extensive and demonstrate continuing government control over the economy.[39]

Rebuttal - While UES, Gazprom, and the Railways are large, partially state-owned monopolies, they, by no means, are of such a size or importance that they prohibit the development of a market economy in Russia. Many Western market economies have similar monopolies or have only recently privatized them.[40] Moreover, UES and Gazprom, in the past several years, appear to be pushing for a stronger market orientation as they emphasize profits and punish customers for non-payment.

Both UES and Gazprom have fairly diverse shareholdings consisting of a large number of private shareholders and foreign investors. Gazprom, in fact, is not majority owned by the government, though the government is the largest shareholder. It is 61% owned by private shareholders. The government holds 38.37% of the shares, Russian citizens hold 19.79%, Russian companies hold 31.53%, and foreign investors hold 10.31%.[41] UES is approximately 48% privately owned. As of December 31, 2000, the government held 52.55% of the shares, companies (both foreign and domestic) held 42.49%, and individuals held 4.96%.[42]

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[39] See Comments of Dewey/Skadden at 37-38; Comments of Wiley Rein & Fielding at 17-20; Comments of Shagrin Associates at 3-5; and Comments of the Domestic Nitrogen Producers at 16-23.

[40] The United States deregulated its gas markets in the late 1970s. In Europe, Britain was the first country to deregulate its markets fully, beginning only in 1986 with the privatization of British Gas, and then the break-up of its monopoly on gas transmission and distribution. Some other European countries have not gone as far. "Gazprom Follows Path Laid By West," TheMoscowTimes.com (July 26, 2001) at 1.

[41] See, www.gazprom.ru/rus/billboard.

[42] See, www.rao-ees.elektra.ru/ru/investor/obsh/sc_strucnew.htm.

Both companies, over the past several years, have taken concrete steps toward reform and demonstrated a new focus on profits that often runs counter to government interests. UES, for example, has taken a "get tough" approach to customers that do not pay their bills, including governmental organizations,[43] and has begun to undertake a major restructuring, including the creation of a competitive electricity market. Over the past three years, 78% of the general directors at the company's 250 subsidiaries have been changed.[44]

In the last year, Gazprom has ousted allegedly corrupt top managers and implemented a series of reforms designed to increase accountability and take better control over assets. Major foreign investors have endorsed these reforms as positive.[45] In addition, expected competition from a number of Russian and Western oil companies (including Yukos and Shell) intending to develop their Russian natural gas production capabilities could bring an end to Gazprom's monopoly position.

Finally, in May 2001, the Russian Government approved plans to restructure UES and the Railway Ministry. In the same month, Gazprom's longtime Chairman, Rem Vyakhirev, was replaced with a man, Alexei Miller, viewed as being more open to reform and he has quickly moved to open the company's finances to closer outside scrutiny.[46]

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[43] Even military facilities are not immune to cut-offs of service. See, "Nation Struck By Wave of Power Cuts", TheMoscowTimes.com (Feb. 1, 2002) at 7.

[44] "Clubais Doesn't Mind the Heat Over UES", TheMoscowTimes.com (Dec. 20, 2001) at 1.

[45] "Ruhrgas Upbeat on Gazprom", The Moscow Times (Jan. 18, 2002) at 7.

[46] Russia Country Guide at 8. "From Gazprom King To Second String", TheMoscowTimes.com (June 4, 2001) at 12.

7. Argument in Opposition - Russian bankruptcy laws are inconsistent with market economy principles.[47]

Rebuttal - Russian bankruptcy laws are being revamped. Amendments to the 1998 bankruptcy law, effective January 1, 2002,[48] are designed to redress some of the most flagrant abuses, including asset stripping and groundless bankruptcies brought against otherwise solvent firms, which had, at times, characterized past insolvencies in Russia.

These amendments include (i) minority shareholders are no longer permitted to bring bankruptcy proceedings against a company (this provision was abused by minority shareholders to bankrupt solvent companies), (ii) government representatives (in instances in which the state is a creditor) may vote at creditors meetings and will be placed in the same credit category as corporate creditors, a move designed to increase the government's incentive to fight for fair distribution, (iii) new procedures for appointing liquidators (to protect against the appointment of interested parties that favor certain creditors), and (iv) new protection against bankruptcy due to small debts through provision of a 20 day grace period to settle debts.

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[47] See, e.g., Comments of Dewey/Skadden at 49-51.

[48] See, "Cabinet Steps to Rid Bankruptcies of Criminal Hue", The Moscow Times (Nov. 14, 2001) at 5.

8. Argument in Opposition - Russia does not provide for the free sale of land.[49]

Rebuttal - Effective in October 2001, a major land law revision[50] provides for the private ownership and sale of forest land, city land, land under existing buildings and factories as well as new buildings, etc., with certain restrictions. This law gives equal opportunities in buying and selling land to both Russians and foreigners, except that foreigners are not be able to buy plots in areas close to national borders or those important for national security reasons.[51] In addition, the new law allows the privately owned land to be used as collateral so that mortgages can be procured. Rural land law reform is expected to be enacted in 2002.[52]

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49 See, e.g., Comments of Dewey/Skadden at 66-68.

50 Land Code of the Russian Federation No. 136-FZ, dated Oct. 25, 2001.

51 Prime-TASS Economic News Agency, Oct. 31, 2001.

52 Prime-TASS Economic News Agency, Jan. 18, 2002.

9. Argument in Opposition - Russia's tax laws are inconsistent with a market economy.[53]

Rebuttal - Russia has enacted a major rewrite of its tax laws providing for a flat individual income tax of 13% (effective January 1, 2001), and corporate profits tax of 24% (effective January 1, 2002), down from 35%.[54] This law, for the first time, recognizes certain ordinary and necessary business expenses and bad debt as deductions from income, and makes depreciation rules consistent with international practices. As noted by the Department of State,

> Russia is deeply involved in creating a tax system which is comparable with those of advanced, market economies, and in bringing some relief from levels of taxation which throw out of balance the government's needs for revenue and businesses' needs to grow. The reform process is both well advanced and sweeping in its scope, impacting government funding at all levels.[55]

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[53] See, e.g., Comments of Dewey/Skadden at 51-54.

[54] The Moscow Times, Jan. 17, 2002.

[55] Russia Country Guide at 8.

III. Conclusion

For the foregoing reasons, the American Chamber of Commerce in Russia respectfully requests that the Department change Russia's status from a non-market to a market economy.

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