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9:05 a.m.

CHAIRMAN SHIRZAD: Good morning, everybody.

I'm glad that we were all able to get here this morning for this hearing. I'm surprised and pleased by the turnout.

I'll go through some prepared remarks, and then we'll go through the process of having each side make their argumentation.

Welcome to the Department of Commerce's hearing on the Status of the Russian Federation as a Non-Market Country Under the U.S. Antidumping and Countervailing Duty Laws. My name is Faryar Shirzad. I'm the Assistant Secretary for Import Administration.

I think it would be appropriate now for each person on the Commerce Panel to identify him or herself for the record.

MR. MAY: I'm Jeffrey May. I'm the Director of Policy for Import Administration.

MR. HSU: I'm Albert Hsu, Counsel with IA.

MR. CLAEYS: Steve Claeys, Chief Counsel for Assistant Secretary of Import Administration.

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1 MS. MAYER: Barbara Mayer, Import
2 Administration.

3 MR. RICHARDSON: Dave Richardson, Office of
4 Counsel for Import Administration.

5 MR. SMITH: Chris Smith, Import
6 Administration.

7 MR. SMOLIK: George Smolik, Import
8 Administration.

9 MS. ERKUF: Becky Erkuf, Import
10 Administration.

11 MR. KERVAK: William Kervak, Office of Chief
12 Counsel.

13 CHAIRMAN SHIRZAD: This public hearing is
14 not subject to the Administrative Procedures Act.
15 However, a verbatim transcript of the hearing is being
16 made for the official record. Parties involved in the
17 hearing should make arrangements directly with the
18 reporter at the end of the table to obtain copies of the
19 transcript.

20 Additionally, please ensure that any new
21 factual information that you present today is submitted
22 to the Department by 5 p.m. on Friday, March 29, 2002.

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1 We will be allowing parties to address rebuttal comments
2 or points raised in this hearing or in prior submissions.
3 Rebuttal comments are due by 5 p.m. on Monday, April 8,
4 2002.

5 We have provided to you a schedule for the
6 hearing. Each participant has been given ten minutes for
7 their presentation, except for where a participant
8 requested additional time as allowed by our public
9 notice. Where a participant has made such a request,
10 we have granted the requested time. I suggest that we
11 follow the hearing schedule, as distributed to you. Are
12 there any comments in this regard?

13 As you begin your presentation, I'd
14 appreciate it if you could introduce yourself and the
15 party you represent. No proprietary information should
16 be divulged during this public hearing. Please adequate
17 precautions to ensure that the comments are based on
18 information that is non-confidential and appropriate for
19 disclosure.

20 Unless there are any questions, I propose to
21 give the floor to the first speaker, Deputy Minister
22 Andrei Sharonov of the Russian Federation. Welcome.

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1 MR. SHARONOV: Thank you, Mr. Chairman,
2 ladies and gentlemen. Thank you for the providing me
3 with the opportunity to participate in the present
4 hearing and to provide the view of the Russian Federation
5 to the venerable representatives of the U.S. Department
6 of Commerce on why Russia deserves to be granted market
7 economy status for the purpose of all the antidumping
8 laws.

9 My presentation will be a short overview of
10 the progress that Russia had made since the dissolution
11 of the old Soviet system of overwhelming state control to
12 what it represents now: A country that has satisfied the
13 Department's statutory criteria sufficiently that it
14 should be declared as a market economy. I will do so by
15 addressing the statutory criteria that the Department is
16 directed to consider in making its determination.

17 First of all, I'd like to address whether
18 the Russian Federation has privatized a large majority of
19 ownership and control of the means of production. Russia
20 started a massive privatization program in the early '90s
21 to transfer its means of production to the private
22 sector. As a result of this privatization process, the

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1 share of the property in Russia entirely owned by the
2 state significantly decreased.

3 For example, in 1990, state enterprises
4 comprised 90 percent of the Russian economy, and private
5 companies consisted of less than ten. Presently,
6 however, due to privatization and other reform policies
7 instituted by the government, this proportion has almost
8 completely reversed. As a result, in the year 2001,
9 privately controlled companies produced approximately 86
10 percent of Russia's GDP. These state-owned enterprises
11 are concentrated in the sector that are traditionally
12 owned by the state in most other market economy
13 countries, such as defense, education, housing and public
14 utility sectors.

15 I would also like to note that the level of
16 privatization in Russia is well above the share comprised
17 by some other market economies. For example, in France
18 -- this information is from OACD -- the state owns
19 approximately 30 enterprises in that country. Hence the
20 low level of enterprises that are state-owned in Russia
21 rivals the level in other countries that are
22 unquestionably market economies.

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1 Finally, I would like to point out that the
2 decrease in the state's control over the means of
3 production can also be seen by the decrease in the level
4 of government spending as a percentage of GDP.
5 Currently, the Russian government's spending, as a
6 percentage of GDP, is less than 15 percent.

7 With respect to the next factor, the level
8 of joint venture and other investments by known Russian
9 firms in the Russian Federation, other parties here today
10 will testify about the business climate in Russia on the
11 basis of their own experience.

12 I would now like to address another
13 statutory criteria: The extent to which the government
14 has privatized control over the allocation of resources
15 and over the price and output of enterprises. The reform
16 in Russia has successfully transferred most of the
17 property to the private sector. According to the Russian
18 Institution and the civil code, everyone in Russia has
19 the right to engage in entrepreneurial activities,
20 acquire and dispose of property for that purpose and
21 allocate profit into the development of the enterprise.
22 In addition, the arbitrary interference of the state into

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1 the private affairs of entrepreneurs is prohibited. As
2 a result of all these rights afforded by the legislation,
3 Russian enterprises make their own decision with respect
4 to investment, labor, output, sales, costs and expenses
5 and all other aspects of their business operations
6 without any government intervention.

7 Furthermore, the state's involvement in the
8 allocation of resources is virtually limited to the
9 regulation of prices for a limited range of products and
10 services. The Russian government has engaged in a
11 restructure in the nature of monopolies. For example, in
12 the sector of electricity, a trade system administrator,
13 a national grade company and a system operator were
14 created last year. As a result, the Russian government
15 regulatory power is being further reduced.

16 With respect to currency convertability, I
17 am pleased to state the Russian ruble has been freely
18 convertible for both domestic and foreign account
19 transactions. Furthermore, the exchange rate for the
20 Russian ruble is determined by market forces. The
21 process of liberalizing foreign exchange operations in
22 the Russian Federation started in the early '90s when the

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1 government had a monopoly on foreign trade and currency
2 by decentralizing external economic activity and creating
3 a foreign exchange market based on market principles.

4 Shortly after its accession to the
5 International Monetary Fund in 1992, Russia abolished the
6 use of multiple exchange rates and introduced a uniform
7 exchange rate. Since then, only one exchange rate has
8 been used for current payments and for movement of all
9 capital. In 1996, Russia adopted Article Number 8 of the
10 IMF Articles of Agreement. By adopting that article,
11 Russia removed all restrictions on payments and transfers
12 for current international transactions.

13 Residents and non-residents of Russia also
14 have the right to a hold accounts in foreign currency or
15 in rubles in banks that are resident legal entities of
16 the Russian Federation. Furthermore, both residents and
17 non-residents have equal rights to exchange foreign
18 currency in Russia, which is based on the supply and
19 demand for the ruble. The Bank of Russia acts like any
20 other participant in the foreign exchange market.

21 The final statutory criteria I would like to
22 address is whether wages in the Russian Federation are

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1 largely determined by the free bargaining between labor
2 and management. Russia's institution in labor laws
3 carefully balance the competing rights of government,
4 employers and employees. This balance ensures that
5 market force operate to set wages freely in the Russian
6 economy, because none of the three parties have the power
7 to interfere with or circumvent those forces.

8 As part of this carefully crafted balance,
9 Russia law provides fundamental legal protection for the
10 Russian workers. This includes the right to bargain
11 freely for wages, the right to strike and the right to
12 form and to participate in trade unions. It also
13 guarantees workers the right to move freely, permitting
14 workers to change jobs without hinderance, and it
15 provides a safety net for unemployed workers. These
16 rights, protections and entitlements collectively provide
17 workers with the ability to withhold their labor and
18 hence with bargaining power to negotiate freely for wages
19 with their employers.

20 The recently enacted labor code in Russian
21 refines but does not alter this careful balance. Instead
22 it enhances certain employer rights, reforming rules that

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1 remained from Russia/Soviet era labor code without
2 sacrificing basic guarantees for workers.

3 With respect to the rights of workers, the
4 new labor code provides that no limitation shall be
5 placed on the maximum amount of payments each worker may
6 receive. A crucial right in enabling workers to bargain
7 freely for market wages. The new labor code also
8 requires that a majority of the workers in an enterprise
9 approve any decision to strike. This provision protects
10 the majority of an enterprise labor force against the
11 actions of minority that could put all workers' jobs at
12 risk.

13 In conclusion, I would like to state that
14 the economical and political conditions in Russia have
15 improved dramatically since the dissolution of the Soviet
16 Union. At least since the end of the 1990s the Russian
17 government has had laws and policies in place that have
18 enabled Russia to operate on the basis of market
19 principles. These changes and the progress seen to date
20 in Russia are irreversible. Hence, the Department should
21 revoke Russia's non-market economy status and use the
22 domestic prices and costs of Russia's enterprises as a

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1 basis for calculating normal value within meaning of the
2 United States antidumping law. The Russian government's
3 policies are as market oriented as, if not more than,
4 other economies than the Department determined qualified
5 for revocation of non-market economy status. Thank you
6 very much.

7 CHAIRMAN SHIRZAD: Thank you. The way we've
8 structured the schedule, as you all can see from the
9 schedule that we've issued, it allows for a few minutes
10 of questions after each speaker. So I'll allow the Panel
11 also to chime in if they have any questions of their own.

12 Mr. Minister, thank you for your comments.
13 One area in which a lot of the folks who've raised
14 concerns about Russia's market economy status -- one area
15 that has been an issue of concern has been the regulatory
16 structure of natural monopolies and how the government in
17 particular establishes prices or regulates prices in that
18 sector, particularly as it relates to energy pricing.
19 There's been some outside reports suggesting that prices
20 in the energy sector, for example, are not even set at
21 cost recovery levels, and that has distortive effects
22 that spill over into the economy more generally. What

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1 can you tell us about that?

2 MR. SHARONOV: Okay. There are some
3 activities and results in this area. First of all, the
4 current practice of the Russian government in the
5 regulation of natural monopolies is based on the cost
6 plus principle to regulate tariffs. So we take in mind
7 all costs, all correspondent costs for any natural
8 monopoly and take into account making the final decision
9 about the level of tariffs. By the way, the last
10 decision of the Russian government was this February when
11 the price for gas and electricity was increased 20
12 percent. And for railroads sector, for 16 percent.

13 But I think at the same time Russian
14 government made decision to transform natural monopolies
15 to split activity networking in the electricity sector
16 from generation and distribution. And the Russian
17 government is squeezing their responsibility only at the
18 sector as a transmission in the United States. And
19 Russian government will gradually go from regulation
20 price for generation and for distribution.

21 So in this year, about 15 percent of the
22 sales in the electricity market will be non-regulated.

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1 And during the next year, 100 percent of generation
2 prices will be non-regulated. So these two lines, to
3 squeeze their responsibility, the government as a
4 regulator, and to lead to the cost plus methods in the
5 regulations.

6 CHAIRMAN SHIRZAD: How is the cost plus
7 approach manifested in your regulations? Is this a
8 formula that you apply --

9 MR. SHARONOV: Yes.

10 CHAIRMAN SHIRZAD: -- or how is this
11 implemented?

12 MR. SHARONOV: There is a special federal
13 regulator, it's called Federal Energy Commission, which
14 is responsible for tariffs regulation for gas,
15 electricity and railroad sector. And for
16 telecommunication, there is a ministry with the same
17 procedure. So natural monopoly -- each natural monopoly
18 applies to the appropriate regulator with some papers
19 which should establish the background for revising
20 tariffs due to some changing inflation, so on and so
21 forth. And there is procedure about two months when the
22 Federal Energy Commission should look through these old

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1 backgrounds and make final decision. If natural monopoly
2 will not be satisfied by that decision, in terms of costs
3 should be covered, it could apply to the court to revise
4 the decision of the Federal Energy Commission. So it's
5 typical for any natural monopolies.

6 CHAIRMAN SHIRZAD: Another area of concern
7 that's been raised by a number of the comments has to do
8 with the degree to which there -- at least some would
9 argue there's a divergence between the laws on the books
10 and the ability of a private party to seek redress in the
11 court system, for example, for the enforcement of the
12 laws. And the argument being that the inability to seek
13 redress in the court system presents such a significant
14 distortion in the economy that it undermines its full
15 operation to say under-market principles. What can you
16 tell us about the court system, the enforcement of the
17 rule of law, the ability of private parties, particularly
18 foreign investors, for example, to seek redress in Russia
19 courts?

20 MR. SHARONOV: Yes. The next speaker, Blake
21 Marshall, will observe this topic in particular, talking
22 about their own experience involving the court system in

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1 Russian Federation. So I could address your question or
2 it's the next speaker.

3 MR. MAY: I think, Minister, just one thing
4 to follow up on in your remarks, on the record that we
5 have before us, there are different figures about the
6 percentage of the private sector in Russia in terms of
7 GDP, and you mentioned an additional figure today of 86
8 percent, if I heard correctly. I'm just wondering where
9 that number comes from in terms of the data points that
10 that's drawn from and sort of your views on what
11 percentage we should be looking at in terms of the
12 private sector.

13 MR. SHARONOV: I guess you imply two
14 different figures, because initially, two years ago, we
15 talked about 74 percent share of GDP produced in the
16 private sector. Now, this last figure of 86 percent
17 relates to the middle of year 2001. So distance between
18 these two figures is one year. And this percentage, 86
19 percent, is produced by companies where government has
20 from zero up to 49 percent. So government has no control
21 of this sector.

22 CHAIRMAN SHIRZAD: So if I can understand,

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1 the percentage that you gave us is for wholly state-owned
2 sector is 14 percent?

3 MR. SHARONOV: Yes. Yes.

4 CHAIRMAN SHIRZAD: Okay. Because there's
5 conflicting -- I guess there's --

6 MR. SHARONOV: Entirely owned.

7 CHAIRMAN SHIRZAD: I see. Because there is
8 -- the percentage is, what, that the EBRD publishes,
9 suggests that the state owns up to, what, 30 percent?

10 PARTICIPANT: Yes, it's 30, but I think that
11 includes some enterprises that are mixed ownership. So
12 some judgment has to be made about if you have this
13 category of mixed ownership, what enterprise -- what
14 share of those enterprises are appropriate treated within
15 the state. These two figures can -- they're not the
16 saying the same thing. You're talking about the share of
17 GDP attributable to wholly owned enterprises.

18 MR. SHARONOV: Taking in mind all shares in
19 non-controlled entities.

20 CHAIRMAN SHIRZAD: Okay. Thank you. Does
21 the Panel have any more questions? Okay. All right.
22 Well, thank you, Mr. Minister.

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1 MR. SHARONOV: Thank you.

2 CHAIRMAN SHIRZAD: Our next presenter is
3 Neil Ellis from the law firm of Powell, Goldstein,
4 counsel to JCS Severstal, Novolipetsk Iron & Steel
5 Corporation.

6 MR. ELLIS: Thank you. Good morning. My
7 name is Neil Ellis, law firm of Powell, Goldstein, Frazer
8 & Murphy. I'm joined by various other people here, by
9 the way: Stanley Alexander, also Daniel Pinistra and
10 Meredith Blakesly and Scott Antell from Arthur Anderson
11 who are available also to answer particularly the
12 technical questions that we have.

13 We are appearing obviously in support of the
14 Russian government's request to determine that Russian
15 should be designated as a market economy. We've
16 presented a lot of information and arguments in support
17 of our position in the briefs that we have filed with the
18 Department, so I just want to focus on a few important
19 points in the time I have.

20 I also would like to take a few minutes to
21 respond to some of the points made by the domestic steel
22 producers in their letter or submission of February 28.

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1 CHAIRMAN SHIRZAD: Neil, you may want to
2 speak up a little so the folks in the back can hear you.

3 MR. ELLIS: Sorry. Okay. First on
4 overview, we believe that there's no question that Russia
5 has satisfied the statutory criteria in Section 1677.18
6 so that it should be declared a market economy.
7 Specifically, the statutes defines a non-market economy
8 country as one that, quote, "does not operate on market
9 principles of cost or pricing structures so that sales of
10 merchandise in such a country do not reflect their fair
11 value of the merchandise." And the question is does this
12 describe conditions in Russia? We submit that it does
13 not.

14 The important point to remember is that
15 perfection is not the standard to be applied in this
16 determination. And the Department has repeatedly noted,
17 quote, "Each of the six statutory factors is framed in
18 terms of the extent of government intervention and not in
19 terms of absolutes, suggesting that a complete laissez-
20 faire in a completely competitive market economy is not
21 the applicable standard." That was, for example, in your
22 memo of November '99.

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1 Thus in order for Russia to be found to be
2 a market economy it does not meet some theoretical ideal
3 of a competitive market. Rather, the relevant inquiry is
4 to compare Russia to other market economy countries and
5 in particular, in the case of Russia, to other former
6 communist countries of eastern and central Europe that
7 have recently been designated as market economies. When
8 compared to the situations in those countries at the time
9 of the Department's determinations, the data for Russia
10 show that it likewise should be designated as a market
11 economy.

12 Incidentally, we believe that this point is
13 particularly illuminated by the Department's decision
14 yesterday to revoke Kazakhstan's non-market economy
15 status. We've not yet seen the underlying memo in that
16 case, but in the notice of the final determination the
17 Department recognized that although Kazakhstan's progress
18 had not been smooth and uninterrupted, quote, "The
19 totality of Kazakhstan's reforms in liberalizing its
20 economy demonstrate that it has completed the transition
21 to market economy." And we would submit that Russia has
22 progressed at least as far as Kazakhstan in terms of the

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1 factors cited by the Department: the convertability of
2 its currency, labor mobility and wage reforms, allocation
3 of resource decisions by the private sector and
4 liberalization of price controls.

5 Another point in the current case is that
6 much of this dispute focuses on the de facto conditions
7 in Russia, not on the du jure legal developments, which
8 generally seem to be recognized as establishing a strong
9 framework for market economy.

10 In looking at the de facto question, it
11 can't be denied that there have been enormous changes in
12 Russia in its economic system over the past decade.
13 Indeed, the country has undergone a wrenching economic
14 overhaul that it's hard for us sitting here, frankly,
15 even to imagine. The question is not whether there have
16 been changes in the Russian economic system but rather
17 whether these enormous economic changes supported by the
18 vast revisions of the legal system have been sufficient
19 to justify the Department's recognition that Russia has
20 developed into a market economy, bearing in mind again
21 that the standard is not less here. We submit again that
22 the answer should be yes.

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1 I would like to point to a few of the most
2 salient economic developments, but first I want to touch
3 on one other matter. A few of the opposing parties bring
4 issues that we submit are not very relevant to the
5 statutory criteria for the Department's determination and
6 will just have the impact of inflaming this issue. These
7 issues include corruption and the alleged lack of an
8 independent judiciary, among others. Regarding
9 corruption, while it's existence obviously regrettable
10 wherever it occurs, it should be clear to all observers
11 that President Putin and his advisors have embarked on a
12 serious anti-corruption campaign, which includes the
13 revision of licensing and regulatory procedures, which
14 reduce the opportunities for graft and corruption.

15 More fundamentally, corruption is not really
16 a criterion by which a country's market economy
17 designation is to be measured, and rightfully so. There
18 have been some massively corrupt over the years whose
19 market economy designation was not in question, such as
20 the Philippines under President Marcos. And I don't mean
21 to offend people here with particular examples, but just
22 the concrete examples help.

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1 Put simply, corruption and communism are two
2 different things. The existence of corruption does not
3 convert a country into an NME nor does it prevent an NME
4 from developing into a market economy. While it's to be
5 regretted, it has nothing to do with the question of the
6 existence of a market economy.

7 And the same is true as to the existence of
8 an independently functioning judiciary, which I will pass
9 on for the sake of time, but just to mention that, except
10 to note that again it is hard to understand the
11 connection, because there are dozens of countries around
12 the world that have limited or no functioning judiciary
13 whatsoever. And I'm not going to name names here, but we
14 can imagine them just from the news. And it's not a
15 question that those countries have somehow slipped into
16 non-market economy status. Not only is Russia's dispute
17 resolution system better than many but it's quality
18 should not play a role in the decision of the Department
19 on this issue.

20 Turning to the statutory criteria, I would
21 just like to touch on a few points quickly, but in
22 particular I would like to emphasize the developments as

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1 to the statutory criteria in light of the conditions in
2 the other countries as to which the Department has
3 considered the market economy in question.

4 The first criteria on the convertability of
5 currency, several facts should be borne in mind. First,
6 in Russia, market forces freely determine the official
7 exchange rate of the ruble. Second, the convertability
8 of the ruble for use in connection with current account
9 restrictions is, in the words of the U.S. Commercial
10 Service, quote, "unrestricted." And those factors, by
11 the way, from what we could tell from the Kozak
12 determination were cited there as well.

13 And, third, the minimal remaining currency
14 controls are no more severe than those routinely
15 maintained by other market economy countries, such as
16 Poland at the time the Department made the Polish
17 determination, and even in France and Italy, which the
18 Department also cited in the Polish determination, and
19 India and Brazil. Indeed, the fact that India's
20 currently controls are at least as extensive as Russia's
21 is particularly significant, given that India is not only
22 considered by the Department to be a market economy but

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1 the fact it's regularly used as a surrogate for China.

2 On the second criteria, the extent to which
3 wage rates are determined by free bargaining between
4 labor and management, several factors should be noted
5 here too. First, the Russian government maintains a
6 minimum wage but no maximum, unlike some of the other
7 countries that the Department designated as market
8 economies.

9 Wage rates are largely determined -- second,
10 wage rates are largely determined by market forces of
11 supply and demand, not by the government, which is
12 reflect, as shown in our rebuttal brief, by the fact that
13 there are differences in pay scales in different regions
14 across the country and across different industries within
15 the economy.

16 And, three, the labor has a right to strike
17 freely in Russia, but the number of work stoppages has
18 declined in the past few years, as the problem of wage
19 arrearages has been reduced.

20 On the third criterion, the extent to which
21 investments by firms of other countries are permitted, in
22 this case, in Russia, perhaps the best evidence of

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1 Russia's increasingly hospitable climate for FDI is
2 demonstrated by the fact that between 1993 and 2000 total
3 in-flows of FDI into Russia rose on an average of a
4 little bit over 22 percent per year, as seen in the
5 chart, the data, that we have on Page 91 of our rebuttal
6 brief.

7 Moreover, the limited restrictions that
8 remain on foreign direct investment in Russia compare
9 favorable to the situations in eastern European countries
10 at the time that the Department revoked their
11 designations. Those countries had restrictions on
12 foreign investment in real estate and various industries,
13 such as telecommunications, energy, defense and timber,
14 et cetera.

15 These countries, by the way, also confronted
16 foreign investors with difficulties, which are described
17 in the Department's notices in those countries and are
18 summarized in our rebuttal brief on Pages 87 to 89.
19 Again, these problems were not considered so severe that
20 they prevented the Department from revoking their NME
21 designation. The same is true for Russia.

22 On the fourth criterion, the extent of

1 government ownership or control of the means of
2 production, the impact of the vast privatization drive in
3 Russia can't be denied. The result is that -- well,
4 again, there are conflicting numbers here, but 74 percent
5 of the GDP in 2000 was produced by private enterprises,
6 as stated in Russian government's memorandum submitted to
7 the Department. This figure is very close to the EBRD's
8 estimate in its 2001 transition report of 70 percent, and
9 it's also, as Deputy Minister Sharonov pointed out, it's
10 less than the figure they've estimated now for 2001 of 86
11 percent.

12 And the latter point, by the way, the 86
13 percent number, I would note, was submitted and accepted
14 by the negotiating parties in the WTO team working on the
15 accession of Russia to the WTO. Russia submitted that
16 figure as being the current estimate of GDP generated by
17 private enterprise, and it was accepted and adopted by
18 the working parties, including the United States.

19 Okay. Although some of the opposing parties
20 point to the fact that Russia has not privatized the rail
21 and energy sectors, we would submit that this factor
22 alone is not particularly illuminating for your market

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1 economy determination. Governments of many market
2 economy countries own their own rail systems. Indeed,
3 this is a common phenomenon throughout western Europe.
4 Countries that are, I assume, beyond a doubt considered
5 market economies.

6 And the governments of many countries,
7 especially those like Russia that are rich in
8 hydrocarbons, own or control their own national petrol
9 chemical industries, such as Saudi Arabia, Mexico,
10 Venezuela, again, countries that are clearly regarded as
11 market economies. There's no reason to distinguish
12 Russia on the fact that it runs its railroads and
13 regulates or owns its energy sector, although, again, as
14 the Deputy Minister pointed out, it is -- even on the
15 latter, it is beginning or it has begun the phase-out of
16 its ownership and control.

17 Last, on the fifth criterion, control over
18 the allocation of resources and prices, the Russian
19 Federation has removed itself, to a large extent, from
20 control over these economic decisions of private
21 enterprises. In its memorandum submitted to the
22 Department in this proceeding in last July, the

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1 government estimated that state regulation or prices
2 covers products and services corresponding to only 15
3 percent of the GDP. This figure is close to that
4 calculated in the 1999 Index of Economic Freedom
5 published by the Heritage Foundation, which is a source
6 that is relied upon by our opponents, which concluded
7 that 90 percent de facto prices are set by free
8 enterprises.

9 The last area I'd like to just mention is
10 addressing a couple of the additional comments filed by
11 the domestic steel producers on February 28. They argue
12 that our rebuttal brief that we filed on February 7 is
13 inaccurate and misleading, but a review of their argument
14 suggests that except for a few typographical errors,
15 which I apologize for, in fact our data was fine. I
16 obviously don't have time to go into all of this. We may
17 do so in the new opportunity for rebuttal you suggest.

18 There are a couple points I do want to
19 mention here while I still have a few minutes. First,
20 they very casually assert that, quote, "The right to
21 freely strike is gone in Russia," contrary to our
22 interpretation of the impact of the new labor code. They

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1 base this conclusion on a quotation taken out of context
2 of a statement made by the Minister of Social
3 Development, which is Exhibit 15, I think, to their
4 additional comments. Here the Minister stated that,
5 quote, "We have included a harsh condition in the new
6 law." But the context of that speech, which is not
7 available in their comments, shows that he used the term,
8 "harsh," ironically. The supposedly harsh provision of
9 the labor law operates in a way, as Mr. Sharonov just
10 mentioned, to balance the right to strike with an
11 assurance that the majority of workers in an enterprise
12 would be protected from work interruptions, from a strike
13 with which they disagree and which is support or driven
14 by only a tiny minority of the workers at a given
15 enterprise.

16 Just as one example of the domestic steel
17 producers omissions from the quote, the Minister preceded
18 his statement that they quote about the harsh condition
19 with the statement, "The procedure of calling a strike
20 has been facilitated. It is now possible to organize a
21 strike at shorter notice, clearly showing an intent on
22 the part of the Russian government that the right of

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1 strike is not to be undermined or weakened by the new
2 law."

3 In any event, regardless of his intent in
4 using the word, "harsh," the provision of the labor law
5 requiring the support of a majority of workers in an
6 enterprise is the same as established practice in the
7 United States. Here in the United States, although the
8 identification of the percentage required is not in law
9 as it is in Russia, it is left to the constitutions and
10 bylaws of individual entities.

11 But the standard practice throughout the
12 country is to require a majority vote. And some unions,
13 in fact, even require a super majority, a 60 percent or
14 two-thirds vote, before a strike may be called. The
15 reason is obvious: The union wants to make sure it has
16 the support of its workers before it drags them out.
17 Thus, if this provision in this Russian labor code
18 requiring a majority vote has destroyed the right to
19 strike freely, then that right also is absent in the
20 United States. Clearly, this condition in Russia cannot
21 be anymore indicative of NME status than it is for the
22 United States.

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1 One other point I'd like to mention --
2 actually, there's several others, but there's one more I
3 will leap to. The domestic steel producers call the data
4 -- repeatedly call the data that we submitted on foreign
5 direct investment misleading and false and grossly
6 misstated, all sort of bad things, and there are
7 additional comments on Page 4 and 11. In fact, the
8 opposite is true. They arrive at different figures from
9 us because they start with net investment, foreign
10 investment. That is net of inward and outward investment
11 flows, which is a very different measure from our data on
12 total in-flows into a country.

13 And in fact we are showing you the income --
14 to personalize it, the income of a person. They are
15 showing a snapshot of a checkbook, where obviously you
16 would have a very large in-flow but also a very large
17 out-flow. You end up with a small net. That is not
18 informative. And they gloss over this distinction, which
19 the EBRD source, which the point out -- which they cite
20 to, makes this point, because the EBRD says, quote,
21 "Gross in-flows of FDI are in some cases considerably
22 higher than net in-flows on account of increasing

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1 interregional investment flows. In other words, in
2 particular, because of increasing investment outward
3 bound from Russia to its neighboring countries.

4 CHAIRMAN SHIRZAD: Neil, I think we're going
5 to have -- you're going to have to close.

6 MR. ELLIS: Okay. In conclusion -- that's
7 fine. I just want to note that the breadth and depth of
8 Russia's commitment in changes to a market economy are
9 indisputable, and the notion that after all of these
10 changes Russia remains a non-market economy, a communist
11 country, is absurd. Thank you very much. Sorry for
12 taking too much time.

13 CHAIRMAN SHIRZAD: Thanks, Neil. Our next
14 speaker is Andrew Somers, the President of the American
15 Chamber of Commerce in Russia. Mr. Somers?

16 MR. SOMERS: Thank you, Mr. Deputy
17 Secretary. Appreciate the opportunity to give the views
18 of 650 American companies who are operating in the
19 Russian marketplace. I'm going to try to convey to you
20 some sense of the dynamic processes which are underlying
21 the acceleration of Russia's transition to a market
22 economy.

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1 Our members, most of them are the American
2 blue chip, well-known, brand companies that operate in
3 the United States, feel a certain competitive in the
4 sense that they are working in the Russian Federation and
5 have a real sense of what is going on there, regardless
6 of interpretation of statistics and macro economic facts,
7 which we think are very positive, but nevertheless, I
8 will try to convey what is going on there from the
9 perspective of people who are working there.

10 The American Chamber of Commerce, as you
11 know, submitted extensive comments in rebuttal to those
12 who would argue that Russia does not deserve a change of
13 status, so I will not repeat those arguments, and I will
14 try not to repeat the very excellent points made by
15 Deputy Minister Sharonov who is one of the leaders in the
16 drive to push Russia through the transition to a market
17 economy, nor the excellent summary by Mr. Ellis.

18 I'd like to make three points. First of
19 all, American companies are thriving economically in
20 Russia. Secondly, American companies feel a strong sense
21 of ownership in the transformation of Russia from a state
22 economy to a market economy. And, thirdly, I'd like to

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1 comment briefly on the mindset of people who live and
2 work in Russia, both Americans and Russians.

3 With respect to my first point, many of the
4 American companies operating in Russia over the past two
5 years have experienced significant revenue growth in the
6 double- and even triple-digit range. This is from 2000
7 over 1999, 2001 over 2000, and the prospects for 2002 are
8 equally positive. I think this is important not only for
9 its absolute reflection of profit but we're talking about
10 companies that are operating from market economy
11 principles. They have business plans that you would all
12 recognize. They retain executive search firms to solicit
13 employees, both Russian and American, who qualify for
14 high-level jobs in Russia.

15 They are operating as if Russia is a market
16 economy. That is not to say there are not problems in
17 Russia with customs, certification standards, but the
18 market is driving the success of American companies. The
19 consumer market is expanding. The power of consumers to
20 spend money has grown significantly in the past two
21 years. This is what is driving the success of American
22 companies in Russia.

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1 The second point I would like to make is
2 about the ownership that American companies feel in the
3 transformation of the Russian economy. The Russian
4 government, the ministries, the дума, the presidential
5 administration, has been very accessible to the American
6 business community in terms of its views about what
7 should be done. And the reason is pretty simple: To us
8 it reflects the fact that the Russian government is
9 committed to become a market economy and in fact has gone
10 a long way to becoming a market economy.

11 We are invited to testify before the дума,
12 we have 17 committees -- tax, customs, medical care --
13 who are invited to meet and have dialogue with committees
14 of the дума who discuss taxes and customs and head up
15 health care. We have meetings at the Ministry of
16 Economic Development and Trade, the Ministry of Finance.
17 There is an active dialogue between the American business
18 community and the Russian government, and that is why we
19 feel that we are participating in this process and why we
20 believe very firmly that Russia is a market economy.

21 The third point I would like to make has to
22 do with the mindset, and if it's permissible, I'd like to

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1 just read a very brief statement from our own magazine,
2 Am Cham News of April and May of 2002, from Dimitri Kozak
3 who was President Putin's Chief of Legislative -- rather,
4 Judicial Reform in Russia.

5 And in his article, he's referring to the
6 enormous economic and political transformations which are
7 taking place in Russia. And he says, I quote, "All these
8 transformations are undertaken with the sole purpose of
9 creating a democratic rule of law state with a modern
10 market economy in order to ensure not in word but indeed
11 the implementation of a key constitutional provision that
12 human and civil rights are the supreme value." Now, I
13 find this very significant, not only because it refers to
14 a market economy, but he does it in the context of a
15 civil society in democracy.

16 The Russians are making the same connection
17 Americans are making between market economy and
18 democracy. They have the same belief that there is a
19 connection, that one reinforces the other, and that is
20 another reason why we believe that it's very important
21 that the Department of Commerce find what we believe to
22 be true, that Russia is a market economy, because this

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1 will further stimulate Russia's drive to a fully
2 democratic system.

3 If I may quote again, very briefly, from the
4 same magazine. Nadezhda Salischeva, who is one of the
5 outstanding lawyers in the Russian Federation, commenting
6 on the new administrative code which will take effect
7 July 1, 2002. And this is an enormous task which has
8 been implemented to revise the old Soviet administrative
9 code into one that is modern. And Mrs. Salisheva says
10 that, "A new code was required that reflects the
11 realities of Russia's market economy, the transition
12 periods and full-fledged entry into a market economy, as
13 well as new labor relations." Again, here is an
14 outstanding leader in Russia who believes that Russia is
15 well on the way to a market economy.

16 With respect to the mindset, I'd also like
17 to point out that there has been significant improvement
18 in corporate governance, a voluntary corporate governance
19 code was published by the Securities and Exchange
20 Commission, if I may use the American translation of the
21 Russian name for that Commission. This reflects an
22 understanding that corporate governance is in the self-

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1 interest of business. It's not just a great moral
2 virtue. It's a recognition by the government and by
3 businesses that transparency will lead to increased
4 shareholder value, and there are already a number of
5 examples in Russia where companies that have adopted
6 corporate governance have seen their share values double
7 and triple.

8 A second point on mindset, the tax
9 legislation, which has reduced individual income to 13
10 percent and corporate income to 24 percent and which also
11 recognizes ordinary and necessary business expenses.
12 This to me is a key reflection of the Russian
13 government's decision to allocate to market forces, as
14 opposed to the government, how money should be spent.
15 Businesses and the individuals have far more income to
16 spend and actually drive the market than they did before
17 the tax legislation was introduced. Again, to me this is
18 a substitution of the market for government allocation of
19 resources.

20 And the final point I would make on mindset
21 is judicial reform. One of the key changes in the
22 judicial system in favor of a market economy has been a

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1 decision, which is now law, which no longer permits
2 business and economic cases to be tried in courts of
3 general jurisdiction. They must be tried in so-called
4 arbitration courts, which have expertise in business
5 cases. This is going a long way to prevent an abuse
6 which has occurred in Russia where each side of the party
7 goes to a court of general jurisdiction and ends up with
8 contradicting decisions, which can't be implemented. Now
9 there is one court that all economic decisions must be
10 tried in, and this is an effort by the government, among
11 many, to get at the problem of implementing judicial
12 decisions, an issue that was referred to earlier by you,
13 Mr. Assistant Secretary. The Russians are well aware of
14 the problems in their legal system, and under Mr. Kozak's
15 leadership significant progress is being made.

16 So with that, I would close by saying that
17 the American business community in Russia, many of the
18 Russians who are operating in business and certainly the
19 leaders of government believe that Russia is well on
20 their way to becoming a market economy, and we
21 respectfully reaffirm our request that Russia's
22 application for change of status be granted. Thank you.

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1 CHAIRMAN SHIRZAD: Thank you, Mr. Somers.
2 What I'd like to do is allow the remaining speakers who
3 are here in support of Russia's market economy status to
4 make their presentations and then to save questions for
5 the group as a whole. I've allowed some of the speakers
6 to go a little bit over time. I'll obviously allow the
7 same courtesy to the opponents, to the extent there's a
8 little bit more time allowed. But even with that sort of
9 flexibility that I'll try to bring into the system, I'd
10 appreciate it if you could try to stay within the
11 allotted time period we've designated.

12 Our next speaker is Z. Blake Marshall, the
13 Executive Vice President of the U.S.-Russia Business
14 Council. Mr. Marshall?

15 MR. MARSHALL: Good morning, and thank you,
16 Mr. Secretary, for the opportunity to testify today on
17 behalf of the 260 member companies of the U.S.-Russia
18 Business Council. We're based here in Washington, D.C.,
19 and all but a handful of those 260 member companies are
20 American companies operating in every industry sector in
21 the Russian economy.

22 Here at the outset, I want to applaud the

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1 Department of Commerce for the professionalism and
2 seriousness with which you've approached the task of
3 making a determination on Russia's NME status. During
4 the public comment phase of this process, we have
5 garnered a good deal of input from our member companies,
6 both in anecdotal and more substantive forms. In our
7 view, the time has come to officially recognize what is
8 so obvious to so many, that Russia is no longer a
9 communist country with a centrally planned economy.
10 Based on the statutory criteria, the overwhelming
11 preponderance of evidence speaks strongly in favor of
12 revoking Russia's NME status. In fact, based on those
13 determining criteria, I can't think of a single one of
14 our member companies that would oppose revocation.

15 Let's recall what the standard is and is
16 not. Russia does not have to be a perfectly functioning
17 market economy to deserve market economy status. The
18 Department's precedence in east central Europe and the
19 Baltics have clearly established that. The fact is that
20 hundreds of American companies are operating there
21 successfully on the ground, as my friend and colleague
22 Andy has just demonstrated. And any suggestion to them

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1 that they are operating somehow under non-market
2 principles and mechanisms would frankly be met with
3 bewilderment.

4 The observations that I will make this
5 morning are based on the Council's decade of experience
6 in assisting American companies with their business
7 development in post-Soviet Russia. I'm sure the law
8 firms filing in opposition do a good job of representing
9 their domestic clients here in Washington. However, I am
10 less convinced that they have painted an accurate picture
11 of the Russian marketplace in early 2002. Many of the
12 arguments posed were rooted in mid-1990s dynamics. Those
13 in opposition make convenient use of outdated material in
14 support of generalizations that frankly don't reflect the
15 reality that is Russia today.

16 Let me offer just one example. One of the
17 submissions in opposition states that rather than
18 relaxing barriers to foreign investment further
19 restrictions on foreign investment are currently
20 envisioned. The Russian administration and the state
21 дума are discussing additional legislation which would
22 specify areas in which foreign investment should be

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1 prohibited or restricted. Let me make three points in
2 response.

3 First, the fact that there is any such
4 discussion in post-Soviet Russia shouldn't really
5 surprise anyone here, given the pace and magnitude of
6 Russia's transformation. Second, it's misleading to
7 suggest there's been much more than discussion. I've
8 participated in many of these duma discussions since
9 1994, and not much has come of them. Russia has not
10 implemented any broad foreign investment screen-out
11 mechanisms or serious restrictions. In fact, the trend
12 is just the opposite. Witness the cap on foreign banking
13 activity lifted just last year. While we've seen other
14 sporadic attempts to prohibit or restrict foreign
15 investment in areas such as the insurance and tourism
16 industries, one should ask Allianz and American Express,
17 for instance, about those successes.

18 These past attempts were a function of
19 communist minorities that are withering away with each
20 failed effort in the duma. There can be no doubt that in
21 Putin's Russia the train has left the station, leaving a
22 small xenophobic constituency behind.

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1 Third, to the extent there exists any such
2 restrictions, they are clearly the exception and not the
3 rule. And as such, these are really market access issues
4 to be discussed. The standard for market economy is not
5 free, unfettered access for foreign investors; indeed,
6 the restrictions in several graduated European countries
7 are far more severe. We have the WTO accession process
8 to meticulously negotiate questions of market access.

9 Joint ventures and other investments by non-
10 Russian firms are not only permitted in the Russian
11 Federation, but the encouragement of joint ventures and
12 investment activity is a matter of stated government
13 policy, and there is abundant evidence of policy
14 implementation ranging from tax incentives to the
15 establishment of no worse than national treatment for
16 foreign investors. Importantly, this is not merely a
17 theoretical construct; it's practical application is
18 evident every day in every sector of the economy.

19 As a result of the Russian government's
20 concerted effort to attract foreign investment, FDI is
21 expected to double by 2005. The FDI statistics are
22 replete with prominent examples of the long-term

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1 commitments American firms have made to the Russian
2 market, a few of which I would like to share with you
3 this morning.

4 As you've noted from their own compelling
5 submission, Lockheed Martin's partnership with the state
6 enterprise, Khrunichev, has been, from its inception, a
7 for-profit commercial venture operating according to the
8 forces of supply and demand in a competitive marketplace.
9 In one of Russia's most sensitive sectors, Khrunichev is
10 a shining example of commercial autonomy as it makes all
11 decisions related to resource allocation, pricing and
12 output based on customer requirements and market forces.

13 Ford Motor Company is investing \$150 million
14 to produce the focus platform in Leningrad Oblast. Also
15 in northwest Russia, Phillip Morris investment \$330
16 million in its Ezur facility in 2000 and last fall
17 announced an additional \$100 million investment to expand
18 production. The Company had expected to recover their
19 initial \$330 million investment in the factory by 2009,
20 but the enterprise is operating so successfully that it
21 will pay for itself by the second quarter of 2003.

22 Announced in early 2001 the \$330 million

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1 deal that General Motors has crafted with Avtovaz, an
2 industrial giant transformed from the Soviet era, will
3 produce thousands of the Neva sport utility vehicle under
4 the Chevy brand name. The EBRD was so convinced of the
5 potential that it took both a debt and an equity stake in
6 the project, part of the bank's optimistic outlook on
7 Russia overall, which yielded a 50 percent increase in
8 its funds dedicated to Russia and the INS over the next
9 five years.

10 The Caspian Pipeline Consortium, led by
11 Chevron, Texaco and Exxon Mobil, has successfully built
12 a 1,000-mile pipeline at a cost of \$2.6 billion, of which
13 \$2.2 billion is being invested in Russia. Most recently,
14 Exxon Mobil announced a \$4.7 billion commitment to phase
15 one development of the Soklin One Offshore project, which
16 could total \$20 billion upon completion.

17 I could offer numerous other examples:
18 Wrigley, Mars, Kraft, International Paper, the list goes
19 on and on. Since Minister Sharonov has done such a good
20 job of updating us on the privatization agenda in Russia
21 and demonstrating the continued progress that the Russian
22 Federation is making, he has also drawn compelling

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1 parallels to the experience I think this morning, I will
2 skip over the section of comments I wanted to make on
3 government ownership, control of the means of production.

4 Let me just say that in conclusion the
5 American business community operating in Russia strongly
6 supports the revocation of Russia's NME status. To deny
7 Russia official recognition as a market economy would be
8 to deny Russia's current reality and the truly startling
9 progress achieved over the past decade. How could those
10 companies' success stories take place in anything other
11 than a market economy. Those firms would be shocked
12 indeed if confronted by an abstract notion that somehow
13 Russia has not cleared the mark. Thank you very much for
14 your time.

15 CHAIRMAN SHIRZAD: Thank you, Mr. Marshall.
16 I think what we'll do here is allow the Panel to ask a
17 few questions of the proponents, and I think I'll modify
18 the schedule a little bit and suggest that we go to a
19 break before Mr. Edlin speaks. And I understand you're
20 here in opposition to Russia's market economy status?

21 MR. EDLIN: That's correct.

22 CHAIRMAN SHIRZAD: Okay. Well, so I want to

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1 thank all the speakers here who are here in support. I
2 think one of you, I thought, made the point well, which
3 is that there's a -- one of the issues that the
4 Department will have grapple with in making this
5 determination is to really discern the degree to which
6 there's a gap between what the law provides in Russia and
7 what the sort of de facto environment is there on a
8 variety of factors. Clearly, there is -- in a wide range
9 of areas, the legal environment has addressed the factors
10 that we are obligated by law to look at in determining
11 whether or not Russia's a market economy.

12 But there are questions that the opponents
13 have raised and our economists have begun to look
14 carefully at that come to the question of whether the
15 legal environment -- whether the de facto environment is
16 fully reflective of the du jure conditions. And this
17 issue comes up in a number of areas, the rule of law and
18 others. One that I'd like to raise as my first question
19 -- and I'll allow any of you to answer; whoever wants to
20 answer it, I'd be happy to hear from -- has to do on the
21 issue of wages. Clearly, there are laws in place now
22 that allow the free bargaining of wages or intended in

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1 that direction, but there appears to be, according to the
2 opponents, significant evidence of wage arrears and other
3 indicators, suggesting that in fact wages are not fully
4 set by markets and that workers are responding to signals
5 other than what you would see in a market environment.
6 What is the response to that issue, and I'll throw it
7 open to any of you.

8 MR. SOMERS: If I could just briefly --
9 Andrew Somers -- I don't have statistics to give you, but
10 I believe that the arrears issues has been significantly
11 reduced in Russia. There was enormous arrears when Mr.
12 Yeltsin was President, and over the years those
13 arrearages have been significantly reduced. And I think
14 that whatever arrears exist now are reflective not so
15 much of some kind of lack of a free labor market but
16 economic realities in certain industries, in certain
17 plants, in certain areas of Russia. It's not a
18 philosophy; it's trying to deal with difficult situations
19 that were inherited economically.

20 I'm not aware of a disparity between -- a
21 significant disparity between free wage bargaining and
22 reality. I'm sure there are gaps between the new labor

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1 code, which became effective only a few months ago, and
2 what's out there. But I think Russia should be given the
3 opportunity, the time to address those gaps without
4 penalizing them, waiting until they have a perfect labor
5 market.

6 MR. ELLIS: Scott Entel from Arthur Anderson
7 also has some information.

8 MR. ENTEL: Yes. I've been in Russia
9 working for over nine years. Actually, the new labor
10 code addresses payment arrears. It penalizes the company
11 for not paying wages on time, and it can become a
12 criminal offense. I believe the decline in wage arrears
13 -- it was quite high in the early '90s and is down; in
14 fact, they're doing payment-in-kind rather than cash
15 extensions.

16 In many areas where Western businesses are,
17 there are actually serious labor shortages and very --
18 the wages increases substantially. It was also mentioned
19 the head hunting, recruiting business are extremely
20 active in this area. Today, there is a shortage of
21 Western-trained, highly-skilled individuals, also in the
22 engineering sector and many sectors.

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1 CHAIRMAN SHIRZAD: There's a similar
2 question with regard to the prevalence of barter in the
3 economy. Some have argued that it's a significant
4 factor, as others suggest that it's declining. The
5 problem that barter raises, as does the issue or
6 arrearages, is that it puts squarely before us as the
7 Department the question of whether the price and cost
8 information that we would derive in Russia are
9 sufficiently reflective of market conditions so that
10 they're adequate for us to use in our dumping
11 calculations and then potentially in the countervail
12 context. What about the issue of barter? Is there
13 anybody that can speak to that?

14 MR. SOMERS: I would refer you to the U.S.
15 Embassy for statistics on that, because I think they can
16 be very eloquent in showing that the percentage of barter
17 has dropped significantly over the past two or three
18 years. Certainly, in the electrical industry, for
19 example, Mr. Chubias has made a great deal about how
20 under his leadership cash has been substituted for barter
21 in terms of payment for electrical bills.

22 But more importantly, I am sure, and I will

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1 try to get this information to you, I don't have the
2 statistics myself, but, again, it reflects the mindset
3 that we have in Russia, that barter is becoming almost,
4 I won't say non-existence, but a very small part of the
5 system of exchange of value versus cash. And there's
6 been great recognition by the government and by business
7 that this has to be eliminated.

8 MR. MARSHALL: I would just add a brief
9 comment to say that a great deal of the barter problem
10 over the last several years stem from the 1998 financial
11 crisis. And once confidence in the ruble was restored,
12 cash transactions picked up immediately, and they have to
13 this date, in addition to the evidence that a fair amount
14 of the problems stem from electricity supplies from UES,
15 which now demands 100 percent cash payment for all of its
16 services. That has taken a big chunk of the problem
17 right off the table. Subsequently, you can take a look
18 at tax collection. Clearly, those are cash-based
19 transactions that are taxed by the Russian government,
20 and the numbers, the trend line, is very steeply sloped.

21 PARTICIPANT: One additional point -- Eric
22 Blake with Arthur Anderson -- and that is that Slovakia

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1 declined with its revocation to handle barter comparable
2 to the Russians.

3 MR. MAY: I'd like to just ask a question on
4 the foreign direct investment issue, one of the factor
5 that we're asked to look at by the statute, and the
6 figures for Russia on a per capita basis, a number of
7 commentators have pointed out, are somewhat lower than a
8 number of other countries that we've looked at recently.
9 And I was wondering if you could address what factors
10 have sort of accounted for that and your view on that?

11 And one thing that I noticed in one of the
12 submissions from the opponents, they noted a World Bank
13 study done in 2000 indicating a concern about the loss of
14 FDI within the Russian economy, citing a 90 percent
15 chance of losing the FDI. I just wanted to see if you
16 had any response or thoughts about that particular
17 information that was provided to us?

18 MR. HSU: May I expand on that question. I
19 think Jeff's statement applies. So just assume that he
20 was talking about those supports.

21 The proponents of graduation have focused on
22 many of the positive outcomes of Russian efforts and I

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1 think that there are many, but there are also many
2 negatives, and I was wondering if you could fold Jeff's
3 question into a slightly larger question, which is could
4 you possibly reconcile Russia's recent sustained economic
5 recovery with generally recognized problems that remain
6 concerning corruption, capital flight, the level of FDI?
7 And I understand Mr. Ellis' comment about corruption and
8 that he doesn't view it as appropriately included in our
9 analysis, but the sixth factor under 77-118(b) is a
10 catch-all, and it is a place where Mr. Shirzad can
11 consider other factors that he felt. And given the
12 commentary, both in the academic and elsewhere, on a
13 scale, I think that it would be appropriate in your
14 response to address that.

15 MR. SOMERS: Go ahead. You want to go?

16 MR. MARSHALL: Let me just jump in first and
17 then I'll cede to my colleague, Andy Somers.

18 First, on the per capita FDI ratios, without
19 converting this to a classroom historical exercise, I
20 would point out a couple of factors, and I don't have --
21 I don't think there's an exact scientific response to
22 your answer. The per capital comparison shows how much

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1 Russian potential is out there to be further development,
2 no question about it. The economies in east central
3 Europe no doubt had an enormous head start in attracting
4 foreign direct investment by virtue of the shock therapy
5 approach implemented in the early 1990s.

6 By contrast, the Russian Federation grappled
7 with its directional course, at least through the 1990s
8 six presidential elections, the duma parliamentary
9 elections showed these sort of theoretical debates during
10 the early and mid-1990s about the attractiveness of
11 allowing foreign investors into the marketplace, and
12 those were interesting academic and theoretical debates
13 up until 1996, I would submit. And there was a fork in
14 the road, if you will, with that presidential election in
15 which Mr. Yeltsin defeating Mr. Zyuganov, the communist
16 candidate.

17 A long comes 1998, just two years later, as
18 they are getting on their feet and putting the wheels in
19 motion, and we all know what effect that had on the
20 Russian economy and the attractiveness of foreign
21 investment. When it comes to the assets themselves on
22 the ground, many were neglected for many, many years, and

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1 I would submit that the legacy of Soviet industrial
2 malaise does not compare at all to the attractiveness of
3 some of the assets in Poland, the Czech Republic,
4 Slovakia. Many of these assets require further
5 rehabilitation, required investment consolidation. There
6 were social policy considerations that had to be taken
7 into account that were complicated mathematical formulas,
8 to say the least.

9 In terms of the World Bank study, citing 90
10 percent of FDI potentially disappearing, I'm not familiar
11 with it. I can't imagine actually what they're referring
12 to.

13 On the very good points that Mr. Hsu has
14 raised with respect to corruption and capital flight, let
15 me take a second first. This is one of those areas,
16 capital flight that is, much like barter, where no one
17 has that exactly correct set of data that I'm aware of.
18 You can find a statistic to support almost any assertion
19 in this category. But the conventional wisdom on the
20 capital flight question is that not only is it declining
21 but Russian capital is being quickly repatriated to
22 invest in Russian industry. That is the strongest signal

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1 yet to "Come on in, the water's fine." Russian capital,
2 Russian businessmen who took their money out of the
3 country earlier to put it to more productive uses are now
4 reinvesting in the Russian economy in dramatic fashion,
5 the gas plant, the automobile plant at Gazprom is just
6 one notable exception -- one notable example in that
7 regard.

8 And with respect to corruption, sure, it's
9 a problem. It's a problem in a lot of different
10 countries. It needs to be addressed. Our strong view is
11 that the Russian government treats it with an impressive
12 level of seriousness and purpose these days. It may have
13 been overlooked in the mid-1990s for too long.

14 But the campaign that they have launched is
15 more than just making a showcase trial out of one cabinet
16 minister who's been sacked fairly recently. It in fact
17 stems from -- it relates to the reforms that are being
18 put in place in his industry, in the railways industry,
19 for example, not allowing middlemen to put in place
20 charges that allowing a direct cost method to shippers on
21 the railway system, rather than allowing brokers and
22 government officials to put in place padding charges that

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1 present opportunities for corruption. They've cleaned
2 that up, and the licensing and regulatory reforms,
3 decreasing the number of licenses that are required from
4 the government to establish a business and to conduct a
5 business are impressive trends in that direction.

6 MR. HSU: Just for future response, I'd just
7 like to clarify my question with respect to one element.
8 I didn't intend for you to address the negative items on
9 a piecemeal basis. The thought was to address them
10 collectively and to reconcile the negatives with the
11 positives. That's what --

12 MR. MARSHALL: Sure. Well, that's a good
13 segue probably to your comments, Andrew.

14 MR. SOMERS: Thank you. I think I'd like to
15 first say that I think the lack of investment -- the
16 relative lack of investment -- and the U.S. has, I think,
17 compared investment in Russia with investment in Costa
18 Rica, which is a telling comment on the confidence up
19 until recently of American investors in Russia, although
20 to us over there it's a positive, because it indicates
21 the enormous room for investment. But it's a fact I
22 think no one will dispute that the image of Russia and

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1 the United States has been distorted for a long time
2 here, both through the television, through the
3 newspapers, and indeed it was only in the middle of last
4 year with the visit of Secretary Evans, first of his two
5 very significant trips to Russia, that we in Russia began
6 to see when we came to the United States the beginning of
7 a shift to a more realistic view of what is happening in
8 Russia. A year ago, most Americans, even those at high-
9 level corporate executive positions, would ask about the
10 mafia, whether I had a gun, whether I had a driver with
11 a shotgun to make sure I got to work on time. These are
12 all images that were profoundly inculcated in the
13 American view of Russia up until a year ago. I can tell
14 you that from personal experience.

15 In the past year or less, that image is
16 starting to change. As a result, and it's again, to try
17 to answer your question holistically, it's a result in
18 part because of the sustained improvement in the Russian
19 economic picture over the last three years. It's in part
20 a reflection of what Blake referred to, that there's
21 clear evidence that Russians are beginning to invest in
22 the Russian economy. And what foreign investor is just

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1 going to come into another country when he sees that
2 local investors are not investing? Foreign investors are
3 now beginning to see this local investment.

4 And, thirdly, the American government, and
5 I can refer to the President here, four meetings at the
6 summit level with President Putin, with discussions on
7 issues such as small business, not to mention investment,
8 the creation of the Russian-American business dialogue,
9 which was announced after the Genoa summit by Presidents
10 Bush and Putin, reflecting that both Presidents want the
11 business communities to start driving change and continue
12 driving change in Russia. These are almost sea changes,
13 I think, in what has happened publicly in Russia in the
14 last nine months. And these will reflect positively on
15 investment decisions.

16 Four or five months ago, a CEO of one of the
17 biggest companies in America said to me he believed it
18 was time now for his company to invest significantly in
19 Russia, because he's seen the changes. Would I be
20 willing to meet with his board of directors and the
21 states so that a voice other than his could be heard?
22 Why? Because these directors all ask the same questions:

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1 What about the mafia, what about the guns, what about
2 crime?

3 So I think that we're seeing the -- I think
4 the reasons for the negatives that you pointed out were
5 profound, and I think they're beginning to change in part
6 because of U.S. government policy, in part because of the
7 recognition by the American business community that the
8 Russian government has made enormous strides in pushing
9 Russia toward a market economy.

10 And just on corruption, I would endorse what
11 Blake Marshall said. President Putin has recognized this
12 publicly; he hasn't tried to hide it. There have been
13 significant legislative and administrative acts which are
14 reducing the number of licenses. The President said that
15 it doesn't make sense to try to arrest every clerk who
16 takes a bribe. You have to get it to systemic reasons,
17 and one of the reasons for bribery in Russia has been the
18 enormous number of regulatory agencies where every
19 business has to get 65 different licenses in order to do
20 something. The Russian government has recognized this is
21 a source of corruption, and they have dramatically
22 reduced the number of activities that have to be

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1 licensed. And I think this is a very positive reflection
2 of the government's intention and willingness to deal
3 with corruption.

4 CHAIRMAN SHIRZAD: Mr. Somers, let me thank
5 you for that. Barbara, why don't you ask -- I think
6 she's got one question. Why don't we try to get through
7 this quickly. We'll take our break, and then pick back
8 up.

9 MS. MAYER: Regarding labor and wages, some
10 have suggested that although the right to strike is
11 protected, the right to strike collectively for wages is
12 not. Is that true and has the new labor code addressed
13 it?

14 PARTICIPANT: The new labor code makes it a
15 criminal offense company directors to not pay wages on
16 time. There are interest and provisions for not paying
17 wages on time.

18 MS. MAYER: So they can strike collectively?

19 PARTICIPANT: Yes, subject to a 50 percent
20 majority requirement. But also with arrears there are
21 penalties on the corporate directors for not paying on
22 time.

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1 CHAIRMAN SHIRZAD: Okay. All right. Well,
2 thank you for that. I'd like to suggest a break until
3 10:35. We'll start right away with the opponents. Thank
4 you.

5 (Whereupon, the foregoing matter went off
6 the record at 10:20 a.m. and went back on
7 the record at 10:35 a.m.)

8 CHAIRMAN SHIRZAD: What I'd like to do now
9 is to resume our hearing on the status of the Russian
10 Federation as a non-market economy under the dumping and
11 countervail laws. We'll roughly follow the schedule that
12 we've laid out in our schedule, in our published
13 itinerary.

14 What I'd like to do is to start with, as the
15 schedule sets forth, with Richard Edlin from the
16 Greenberg Traurig Law Firm. I understand that Mr. Edlin
17 has to leave immediately after his presentation, so what
18 I'll do is I'll allow a couple of minutes for questions
19 for you, Mr. Edlin, and then what I'd like to do is then
20 to allow the remaining speakers, all of whom are here in
21 opposition to Russia's market economy designation, to
22 make their presentations and then to save questions until

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1 the end if that's acceptable to everyone.

2 And I'm going to try to be flexible as much
3 as possible, but I would urge all of you to keep within
4 time limits so that we can keep this schedule since we
5 have do a sizable number of presenters left to go
6 through. Mr. Edlin?

7 MR. EDLIN: Thank you, Mr. Shirzad, members
8 of the committee. I'm Richard Edlin, partner in the law
9 firm of Greenberg Traurig. With me is Howard Vine, also
10 with Greenberg Traurig. And we represent SPI Spirits,
11 which is the maker of Stolichnaya vodka and also in
12 certain jurisdictions the holder of the trademark and in
13 other jurisdictions holders of reversionary rights to the
14 trademarks.

15 I listened with great care to the remarks
16 from the Deputy Minister for Economic Development in
17 Russia and to the other comments, and our recent
18 experience in Russia has been dramatically different than
19 the situation that has been portrayed previously.

20 Just a brief history. Vodka is a very large
21 industry in Russia, perhaps the second largest industry
22 in Russia. Formerly it was state-owned, and it was

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1 privatized in 1991. In the privatization process, my
2 client acquired trademarks to Stolichnaya and other
3 Russian vodkas and had the right to export and sell that
4 vodka.

5 I have a submission, Mr. Shirzad, in
6 writing, which we can hand out now or later, but an
7 exhibit to our submission is the October 1992 official
8 statement from the first Deputy Minister for the Ministry
9 of Foreign Economic Relations, which I presume is
10 somewhat of similar standing to Mr. Sharonov. And in
11 that submission, it clearly states that SPI is a legal
12 entity in the Russian Federation and the successor of its
13 Soviet predecessor, which was a company of essentially
14 the same name. And that it has the right to export
15 Russian vodka to the USA under the following trademarks,
16 including Stolichnaya.

17 Now, since that privatization process, SPI
18 has been doing just that until very recently when the
19 Russian government has launched a mission to nationalize
20 the vodka industry. Now, I sit here as a proponent of
21 free trade, free markets, the rule of law and the respect
22 for private property, and our client has been failed in

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1 each of these goals and endeavors, presumably, a market
2 economy, with respect to its own rules of law.

3 There are currently, sitting in the port at
4 Caliningrad, 67,000 cases of Stolichnaya vodka that is
5 the property of our American distributor, Allied Domecq.
6 That is approximately five percent of the total amount of
7 vodka -- of Stolichnaya vodka that will be sold in the
8 United States this year. That is -- and for anybody who
9 is not a vodka drinker, Stolichnaya is far and away the
10 leading Russian vodka. Those containers have been the
11 subject of litigation in Russia, and there is a court
12 order which requires them to be released, and the
13 government will not release them. That is a significant
14 amount of product, and we have absolutely no reason to
15 believe, based on recent acts taken by the Russian
16 government, that they will allow us to export any more
17 Stolichnaya vodka, because they have said that they will
18 no longer respect the statements which were issued by the
19 Russian Federation in 1992, and there can be nothing more
20 clear, no more plain, than this statement which we've
21 attached to our submission.

22 Now, this constitutes a complete reversal of

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1 the privatization process in an extremely significant
2 industry within the former Soviet Union. But the tactics
3 that have been used, which include threats of criminal
4 prosecution and credible reports of threats to personal
5 safety, are extraordinarily troublesome, and we will be
6 dealing with those issues in other venues. But it is
7 important to consider what is going on now within the
8 Russian Federation with respect to a very high-profile
9 product in a very, very important industry within the
10 Russian Federation.

11 The rule of law would also suggest that a
12 country would follow and respect its treaty obligations.
13 Russia is a signatory to the Paris Convention which
14 respects the rights of trademarks around the world. Our
15 laws on trademarks state that regardless of the situation
16 in any other country, the valid holder of an American
17 trademark is unaffected by what occurs with that brand in
18 any other country. And that is basically the rule of law
19 that obtains in most civilized jurisdictions. Russia's
20 signed that treaty.

21 And I listened very carefully this morning
22 as my colleagues across the table suggested that Russia

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1 was respecting the rights of private enterprise, was
2 attempting to privatize and had no interest in
3 nationalizing, and I believe that the words were, "any
4 industry that is not typically owned by governments in
5 market economies," in defense and those sorts of examples
6 were used. I'm not aware of any market economies in
7 which the government tries to own the means of production
8 of products like vodka. And, clearly, what is happening
9 now is that the privatization program that was entered
10 into is being rolled back, is being rolled back through
11 the methods, unfortunately, through the methods of the
12 Soviet or which we would have hoped would have been
13 discarded long ago, and the rule of law is being
14 completely undermined in connection with what amounts to
15 nothing more than a naked grab of assets within the
16 Russian Federation.

17 But whatever happens within the Russian
18 Federation, there will be no justification and no
19 reasonable excuse that a government could have in a
20 market economy to prevent a company such as my client
21 from exporting product out of the country, unless it were
22 trying to monopolize that product, and that is exactly

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1 what is going on. The means of production are being
2 either directly or indirectly nationalized within Russia
3 as we speak, and there can be no better proof of that
4 than the fact that Allied Domecq, which now owns five
5 percent of its sales, that vodka sits on the port. It is
6 subject to a court order requiring its release, and
7 nothing is being done, other than letting it sit there,
8 and the government refuses to take any action in effect
9 of its own court orders threatening criminal prosecutions
10 which are wholly and completely baseless.

11 So we find ourselves in the situation now
12 that one would have expected to have found oneself in ten
13 and 15 and 20 and 30 years ago. Things have gone back
14 from the promise of privatization. This is an
15 unfortunate and ominous harbinger of regression, because
16 these acts are being taken by the Ministry of
17 Agriculture. These acts are not being taken by another
18 private entity. These acts are not being undertaken by
19 litigants to a court proceeding. These acts are being
20 undertaken by the government itself, and that is what is
21 the most troubling aspect of this.

22 I don't think on this particular topic that

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1 I have anything more in addition to what our written
2 submissions would be, but I will be happy to take any
3 comments.

4 I should also -- I should further point out
5 that following the statements issued by the Russian
6 government as to the rights of my client to export and
7 sell Stolichnaya vodka, our client -- or my client spent
8 tens of millions of dollars and settled \$39 million of
9 state debt or more, all with the knowledge of the Russian
10 government, all with the understanding from the Russian
11 government that it was taking place.

12 So under our notions of due process, under
13 our notions of -- if nothing else, we acted in complete
14 reliance upon the statements and the acquiescence of the
15 Russian government in all the acts that took place. And
16 the Russian government in the entire decade that we've
17 been selling vodka has not suggested in a single
18 jurisdiction that we did not have the right to sell that
19 product, nor could it because we were granted those
20 rights. So this is nothing but a regressive posture and
21 a regressive tactic. And we would respectfully ask your
22 committee to carefully examine this before it considers

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1 granting a benefit to a government that is acting in a
2 way that's inimical to our notions and all Western
3 notions of free trade and free commerce.

4 CHAIRMAN SHIRZAD: Thank you, Mr. Edlin.
5 What I'll do is I'll allow a couple minutes for
6 questions, because I know you need to run. It's
7 obviously difficult for us, these types of specific
8 examples are very helpful, because I think there are
9 anecdotes on both sides, those raised by the proponents
10 and the opponents, which are helpful because they help
11 illustrate the issues that we are required to look at as
12 a Department under our law. So it's difficult for us to
13 know about the specifics of your circumstance.

14 Certainly, it's obviously not within our
15 mandate necessarily to determine what exactly has
16 happened with your particular situation with the Russian
17 government. But I think what would be helpful, though,
18 is to understand a little bit about the process that you
19 went through in this particular dispute. Your client is
20 an American company or a Russian company?

21 MR. EDLIN: Our client is a Dutch company
22 that is the sole supplier of Stolichnaya to the American

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1 markets. It has assigned its trademark rights to an
2 American company owned by Allied Domecq, and in 2010 our
3 client will again own the American trademark.

4 CHAIRMAN SHIRZAD: So the specific thing
5 that happened is you sought redress in Russian courts,
6 you won a favorable ruling, but the government is not
7 complying with that ruling?

8 MR. EDLIN: That's exactly right. There's
9 a court order, and we are joined in that effort by an
10 American company, which is Allied Domecq. And there are
11 a number of American interests that are affected by this.
12 There is an entire bonded warehouse in New Jersey that
13 exists solely for the importation of Stolichnaya vodka.
14 It sells one and a half million cases in the United
15 States a year. It's a substantial trade. And we have
16 obtained, for our benefit and the benefit of Allied
17 Domecq in the American market, a court order in Russia
18 which requires the release of this vodka. And the
19 Russian government has it sitting there and just refuses
20 to comply with that order.

21 CHAIRMAN SHIRZAD: So you felt that your
22 experience in the court system is satisfactory; the

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1 government, however, is flouting the direct order of the
2 court. Is that basically a fair way to summarize?

3 MR. EDLIN: As was alluded to earlier, there
4 have been a variety of legal avenues and legal courts and
5 different court interpretations which has been
6 problematic in Russia. The suggestion was but now that's
7 been fixed, because now we have a court system that will
8 be respected and a court system that will not produce
9 contradictory results. We obtained one of those results,
10 and the government ignores it.

11 And when anyone goes and suggests that the
12 vodka should be released, there have been suggestions of
13 criminal prosecutions and investigations, and in one
14 instance a member of my client's staff was told that in
15 a subsequent investigation of his house his mother might
16 not fair well. So these are the sorts of things that
17 lead to the questions of what about their guns and the
18 mafia? The thing that has stereotypically been a
19 reflexive action is in fact taking place right now with
20 respect to our clients selling a significant product in
21 a significant industry within Russia.

22 CHAIRMAN SHIRZAD: Who was the opposing

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1 party in the litigation, was it the government or a
2 private party?

3 MR. EDLIN: No, it was the government.

4 CHAIRMAN SHIRZAD: Okay. Again, I --
5 Albert?

6 MR. HSU: Is this essentially a dispute over
7 how the trademark rights were acquired or is this
8 essentially a dispute about free trade and investment?

9 MR. EDLIN: Well, I think it's nothing more
10 than a dispute over free trade, frankly, because whatever
11 the trademark rights are in Russia can have absolutely no
12 effect on who owns the American trademarks. There was
13 litigation in this country in the early '90s over exactly
14 that issue with respect to Stolichnaya vodka, and our
15 distributor at the time was Pepsi-Cola, which has since
16 gotten out of the liquor business. But there was the
17 claims in that case that there we didn't in fact own the
18 trademark in Russia and had no right to then distribute
19 the product to an American distributor. And the court in
20 the 7th District of New York said at that time it's very
21 confusing what happened, and we need to resolve that
22 question, because whatever happened it has no effect on

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1 the rights of the American trademark holder.

2 And free trade principles would suggest, and
3 it was suggested earlier today that free trade principles
4 are the goal of the government, there would be nothing in
5 free trade principles that I am aware of that would
6 permit a government to interfere with a company that has
7 been exporting and selling vodka out of Russia for the
8 last ten years to interfere with exactly that same
9 process simply because it doesn't like it anymore.

10 MR. HSU: Okay. But what if the government
11 felt that there is no property right to that trademark
12 and unlawfully sold?

13 MR. EDLIN: They could decide that it was
14 not only improperly sold but that it was obtained through
15 the greatest fraud every committed on the Russian people,
16 and it wouldn't change the analysis one bit, because free
17 trade principles would tell us that our client could go
18 to a Russian distillery, place an order for vodka spirits
19 and give it to the American trademark holder, sell it to
20 the American trademark holder. And the American
21 trademark holder can slap a Stolichnaya label on it and
22 sell it as Stolichnaya. That's what free trade suggests.

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1 We're not suggesting --

2 CHAIRMAN SHIRZAD: You mean the Paris
3 Convention rules, basically.

4 MR. EDLIN: And the Paris Convention rules
5 and general rules of free trade, as articulated, I
6 believe, as the goals of the government by the Deputy
7 Minister who's here today suggest that the government
8 wants to promote private enterprise within Russia. This
9 is not an industry that is typically owned by Western
10 governments or I'm not aware of any other governments
11 that own the means of production in vodka.

12 CHAIRMAN SHIRZAD: Okay. Well, Mr. Edlin,
13 why don't we do this: I think the -- well, first of all,
14 your comments have been very helpful. We have, as I've
15 sort of stated already, we have a mandate to look at
16 certain factors to determine what story they tell
17 regarding the nature of the Russian economy. I think
18 your situation is important for its own sake, but for our
19 purposes I think we need to look at it through the lens
20 of what story it tells about whether or not Russia
21 satisfies the individual factors. My understanding is
22 that you don't have any submissions in the record at this

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1 point --

2 MR. EDLIN: I have it here, and --

3 CHAIRMAN SHIRZAD: Okay. To the extent you
4 want to provide anything, whether it's this document or
5 a future document, I think it's helpful, to the extent to
6 which you could tell the story, of why you think the
7 factors have not been satisfied and whether or not your
8 experience represents any sort of systemic problems that
9 we as a Department need to make sure we take into account
10 as we make our determination. And, again, we have no --
11 obviously, no confidence to decide on the merits of your
12 particular case, but the broader lessons that you think
13 we should draw from it will be helpful.

14 MR. EDLIN: Thank you. Well, we raise it
15 just for those broader lessons.

16 CHAIRMAN SHIRZAD: Okay. I'd like to allow
17 for a free exchange, but I want to make sure I'm not --
18 how should we structure this? Are the parties
19 uncomfortable with allowing a little bit of back and
20 forth? That would be my preference, but I want to make
21 sure since the proponents -- the opponents didn't get a
22 chance to ask questions to the proponents, I don't want

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1 to alter the rules in mid-course in a way that people
2 would find unfair.

3 MR. WARD: It makes sense for all of the
4 rest of them. In other words, since Mr. Edlin has to
5 leave, maybe the back and forth on his issue can be had
6 now, and then the back and forth can be had on the
7 remainder after the opponents, the rest of us, have had
8 our chance to present our position for questions to be
9 asked. And then you can determine how much time remains
10 for all of the sort of free-for-all period.

11 CHAIRMAN SHIRZAD: Is that acceptable to the
12 parties? I would like to follow --

13 PARTICIPANT: I did not hear.

14 CHAIRMAN SHIRZAD: Mr. Ward is suggesting
15 that what we do is to allow a very brief -- that's my
16 addition to that -- a very brief exchange in connection
17 to Mr. Edlin's issue since he needs to go, but then to
18 allow all the opponents to make their presentations. We,
19 as a Department, the Panel will ask whatever questions
20 that we have, and then we would allot some additional
21 time at the end to allow the parties to pose questions to
22 each other and tease out particular issues. If it's not

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1 acceptable, then we'll sort of stay with the ground rules
2 we have. If it is acceptable --

3 PARTICIPANT: My preference is to stick with
4 the ground rules that you've already stated.

5 MR. EDLIN: It's fine with me. I'm happy to
6 take some questions.

7 CHAIRMAN SHIRZAD: Yes. I don't want to --
8 frankly, it's important for us to maintain a process that
9 doesn't cause anybody any heartburn, so why don't we --
10 Mr. Edlin, thank you. Unless there's anymore time we
11 want to spend on process, why don't we move on to the
12 substance of the presentations? Thank you very much.

13 MR. EDLIN: Thank you very much. Sorry that
14 I have to leave.

15 CHAIRMAN SHIRZAD: What's that?

16 MR. EDLIN: Sorry that I have to leave.

17 CHAIRMAN SHIRZAD: Yes, that's a good point.
18 We do have the opportunity for rebuttals in writing, and
19 we will obviously consider those carefully as they're
20 presented to us.

21 I think our next speaker is Val Slater from
22 the law firm of Akin, Gump. It's not Val Slater? Oh,

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1 it's -- okay. All right. Our next presenter is Brad
2 Ward and Brent Bartlett from the law firm of Dewey
3 Ballantine and Stephen Narkin from Skadden, Arps.

4 MR. WARD: We are here representing domestic
5 integrated steel producers: Bethlehem Steel Corporation,
6 National Steel Corporation and the United States Steel
7 Corporation. We'll jump right into it.

8 In the short time available, we want to
9 highlight some of the evidence presented in our
10 submissions that demonstrates the Russian Federation
11 cannot and should not be found to be a market economy for
12 purposes of the anti-dumping law. As has been noted, the
13 statute defines a non-market economy as one which, quote,
14 "Does not operate on market principles or cost of pricing
15 structures so that sales in the country do not reflect
16 the fair value of the goods." The evidence presented by
17 domestic steel producers and other parties is
18 overwhelming that the economy of the Russian Federation
19 does not operate on market principles. While some
20 incremental liberalization has in fact occurred and may
21 be underway, it's insufficient.

22 The situation in Russia appears to be two

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1 steps forward, one and a half -- one and three-quarters
2 step back. The simple fact of the matter is that the
3 Russian economy remains far from free and open and cannot
4 reasonably be said to be a market economy.

5 Before we address some specific statutory
6 criteria, I think it's important to highlight a few
7 general points. The Russian press reports suggest that
8 a political deal has been made, assuring Russia of a
9 market economy status. We presume such reports to be
10 merely a misunderstanding by Russian parties or
11 manifestations of wishful thinking. We know the
12 Department's well aware that it cannot consider a
13 determination regarding market economy status as a
14 political reward or benefit to be bestowed upon Russia.

15 The Department is well aware that political
16 considerations is not one of the elements of the
17 statutory criteria. In fact, one of the principle
18 reasons that the administration of the AD and CBD laws
19 was transferred to the Department in 1979 was in fact to
20 depoliticize their application.

21 There's been discussion today about du jure
22 versus de facto analysis, and we think that's absolutely

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1 the critical consideration. Proponents of a change in
2 Russia's status would have the Department believe that
3 enactment of laws or issuance of decrees are sufficient
4 to achieve a market economy in fact. You might even
5 examine laws and decrees and look at the words, and you
6 might argue that they're a market economy. But the
7 Department doesn't end its analysis there, it shouldn't
8 end its analysis there. It doesn't merely observe the
9 words, it looks at what happens in fact.

10 What are the circumstances in the economy in
11 Russia? It's abundantly clear that they -- that Russia,
12 at this point, does not possess a market economy. Where
13 liberalizing laws have been enacted or decrees issued,
14 they have frequently had little or no impact. Laws have
15 been circumvented or ignored or countermanded by other
16 laws or actions by other government agencies. Our briefs
17 and submissions are full of this evidence of this fact.
18 In other instances, the claimed passage of laws didn't in
19 fact take place. The simple fact is that regardless of
20 the state of the law in Russia, the economy does not
21 operate on market principles.

22 I'd like to address what I call sort of

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1 aspirations versus achievements. It's important for the
2 Department to distinguish between aspiration and the
3 actuality on the ground. The Department is being asked
4 to elevate aspirations and good intentions and maybe even
5 expectations and some incremental movement toward a
6 market economy over the fact that the economy doesn't, as
7 a whole, operate on market principles.

8 The Department has recognized the continuing
9 failure of the Russian economy to operate on market
10 principles. One quick example is the Department's global
11 steel trade report of July 2000, where the Department
12 notes the lack of, quote, "normal business considerations
13 at the investment, production and selling stages in the
14 Russian steel industry," unquote. The good intentions of
15 Russian political leaders are to be encouraged, but those
16 intentions cannot be given more weight than the facts and
17 the requirements of the statute.

18 The date cited in support of graduation of
19 market status is flawed and unreliable and doesn't
20 provide a basis for you -- a basis of substantial
21 evidence for you to determine to graduate Russia to
22 market economy status. In general, the state of

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1 statistics in the Russian economy is very poor. A great
2 deal of it is either unavailable, outdated or of
3 questionable accuracy. In fact, the submission on behalf
4 of the Russian government provides very little
5 information from the Russian government, but rather
6 relies very heavily on secondary sources. The data that
7 does exist, and we've been talking about this morning, is
8 quite wildly contradictory, which is indicative of the
9 fact that official reliable statistics are not available.

10 In sum, the proponents of graduation are
11 asking the Department to take a leap of faith and base a
12 very, very momentous decision on weak and inconsistent
13 data, at the very least. It's important too for the
14 Department to consider carefully the implications -- the
15 trade policy implications of its decision in this matter.
16 Past decisions that graduate Latvia or Poland or Slovakia
17 necessarily had a limited potential impact on the U.S.
18 economy.

19 Accordingly, had the Department determined
20 in those cases to graduate a case on incorrect statistics
21 or a misunderstanding of the circumstances, the potential
22 negative impact on the United States economy would be

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1 very limited. Those economies were smaller, their export
2 industries were necessarily of a smaller magnitude. They
3 did not have the potential to disrupt world trade to the
4 extent that Russia has. Russia seriously has excess
5 capacity, foreign excess of its domestic demand in a
6 variety of products, particularly in steel products.

7 There are currently nine outstanding anti-
8 dumping duty orders or suspension agreements regarding a
9 variety of Russian products. In addition, the United
10 States government has negotiated a comprehensive steel
11 agreement that covers another very broad -- 15 very broad
12 steel categories. This was all done in recognition of
13 the fact that Russian steel producers can swamp the
14 United States market with enormous volumes of imports
15 very quickly, as was done in 1998 with respect to hot-
16 rolled steel.

17 But there's more than just the potential for
18 vast imports that should give the Department some pause
19 here when considering its decision. If the Department
20 wrongly grants market economy treatment to Russia,
21 enormous distortions in your anti-dumping analysis will
22 necessarily occur. Input prices and expenses are not set

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1 by the market forces, and they will be using your
2 analysis of normal value. You would have unreliable and
3 opaque financial statements that would be used to
4 determine cost of production.

5 Transactions between nominally, unaffiliated
6 parties, typically accepted by the Department without
7 looking behind them, would disguise all manner of shady
8 deals of a variety of sorts. And the Department would be
9 bound by its own precedent not to look behind those
10 transactions between those nominally, unaffiliated
11 parties.

12 So you would be setting up a situation in
13 which there would be distortions per se. You would know
14 that at the outset. These distortions, or avoiding these
15 distortions are precisely the reason that the statute has
16 these criteria in it. They are there so that you will
17 reach an analysis based on information and circumstances
18 in an economy that you can rely on, that you can have
19 faith in, that are trustworthy. That's not the case
20 here.

21 A premature decision to graduate Russia will
22 simply result in a situation in which it's very difficult

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1 for the Department to rationally and fairly administer
2 these laws. That's the net effect.

3 Now I'll give the floor to Mr. Bartlett, and
4 economist with our firm, to discuss two statutory
5 criteria that I think are particularly -- where it's
6 particularly apparent that the Russian economy doesn't
7 operate on market principles.

8 MR. BARTLETT: Thank you. I'm going to
9 speak briefly to the criteria of government ownership
10 control and then separately to the criterion of the
11 government allocated resources setting prices.

12 On the issue of government ownership and
13 control, I think the first most important thing I think
14 that the public must look at ownership and control. It's
15 interesting that Deputy Minister Sharonov this morning
16 said that in their statistics they include government
17 ownership, up to 49 percent, as effectively being
18 private. I think the evidence in this case submitted by
19 all the parties suggests that such partial privatizations
20 are not really indicative of true privatizations.

21 There are five reasons I'd like to go
22 through quickly that the numbers being put forward -- the

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1 ever-rising numbers being put forward by the Russian
2 Federation really are not reliable with respect to
3 privatization.

4 First, there are two government agencies in
5 Russia: The Ministry of State Property and the Ministry
6 of Economic Development and Trade. We keep careful
7 statistics about the extent to which they've privatized
8 the companies that have been privatized, the sectors, how
9 much they got for them, what percentage of the company
10 was privatized. None of that information has been
11 provided to the Department. We pointed out in our first
12 submission the day before the two-digit number and no
13 supporting material behind that. And as Mr. Ward said,
14 there are then citations to secondary sources. In a
15 classic anti-dumping or countervailing duty
16 investigation, that would not be acceptable. You'd have
17 to have backup information and even then verify it.

18 As we indicated in our first submission,
19 there's one source that actually looks at a fairly
20 detailed level privatization that occurred in the Russian
21 Federation over the past decade, and that's the World
22 Bank database. It's available online, we submitted as

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1 Table A in our submission, and there a couple things we
2 said about that. One, these are the companies that are
3 the dominant core sectors that in fact the Deputy
4 Minister was referring to as being the most important.
5 So the companies we're about to look at are acknowledged
6 by all to be the companies are important to this
7 decision.

8 Second, is the data only go up through 1998,
9 1999 and when we called the World Bank to find out why,
10 they said because the privatization program is basically
11 a halt they told us this last summer. And to the best of
12 our knowledge, they've not gotten that database going
13 again.

14 The second factor I want to go through
15 quickly is the fact that a lot of these privatizations
16 that are being trumpeted by the Russian Federation, and
17 including, we think, in their statistics, although it's
18 not transparent so it's not clear how, are private -- I'm
19 sorry, are partial privatizations. In Figure 1, which I
20 hope everybody got a copy of our chart, and we'll try to
21 hand out here, for those companies that are in the World
22 Bank database where you could identify the percent of the

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1 company that was actually sold in the privatization
2 transaction. This graph ranks them from full
3 privatization, which are the first transactions on the
4 left, all the way down to very, very small pieces of a
5 company being privatized.

6 As our brief goes, the submission

7 CHAIRMAN SHIRZAD: What is the horizontal
8 access? Is this number of privatizations or percentage
9 or what is it?

10 MR. BARTLETT: These are transactions, so
11 there were 63 transactions.

12 CHAIRMAN SHIRZAD: Over what time period?

13 MR. BARTLETT: The starting point I believe
14 is '91. It's about the time of the transition to --

15 CHAIRMAN SHIRZAD: These are in thousands or
16 --

17 MR. BARTLETT: I'm sorry. The numbers down
18 at the bottom are simply a ranking of those transactions.
19 There were 63 major transactions --

20 CHAIRMAN SHIRZAD: I see.

21 MR. BARTLETT: -- privatization
22 transactions. On the vertical axis --

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1 CHAIRMAN SHIRZAD: It's a sample.

2 MR. BARTLETT: Well, this is what the World
3 Bank -- the World Bank tried to track all the major
4 privatization transactions for the large companies. This
5 is the Gazprom, UES, Luke Oil, all the companies that
6 we've been talking about.

7 CHAIRMAN SHIRZAD: Okay.

8 MR. BARTLETT: There are of course thousands
9 and thousands of other privatizations out there, and they
10 tend to be various. As Figure 2 shows, almost all of
11 the value of these company transactions are in segments
12 where somewhere between zero and ten percent of the
13 company is sold off. So these are not the privatizations
14 you often saw in eastern Europe where entire companies
15 are being sold to be run by private investors or foreign
16 investors. Small pieces are being sold off.

17 Moving on to the -- I should point out in
18 the Ukraine case, and we've got this in our brief, the
19 Department does base on some very good partial
20 privatizations. As we said in our brief, six major
21 companies cited by anti-dumping respondents as being part
22 of Russian future privatization plans supposedly is

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1 evidence of Russia's good intentions with regard to
2 privatizations. Four already appear on the World Bank
3 Table of past privatizations: Gazprom, Luke Oil, Simyets
4 Invest and Slovet. Indeed, these four yet to be
5 privatized companies account for eight of the 69
6 transactions listed on the market for 50 percent of the
7 total sales value.

8 So we have this problem which is -- which
9 gas problem is the classic case where these transactions
10 are being cited as progress towards privatizations, and
11 they're also being -- these same companies are being
12 touted as companies that are on block for future
13 privatizations.

14 The third reason not to accept the Russian
15 Federation's privatization number is in a lot of these
16 transactions they're government-to-government sales.
17 What's happening -- and we go through several of these
18 from the World Bank database in our submission -- what's
19 happening is a government agency is putting a private --
20 putting a company up for bid as being sold by another --
21 being purchased by another government-owned company or
22 even another government agency. And that's a frequent

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1 problem, particularly sales to regional and local
2 government entities.

3 The fourth problem is what phrase -- if you
4 type into an Internet source, you'll find many examples
5 of either recent renationalization or denationalization
6 of these companies. To quote a recent study by some
7 George Washington University professors, they say,
8 "Regional and municipal governments have also reasserted
9 property rights and claims in the wake of the August
10 crisis, August 1998. Since mid-1998, de facto
11 regionalization of previously privatized property had
12 taken place among several well-known corporations." And
13 their study emphasizes this often happens at the regional
14 and local level. So a lot of the statistics being put
15 forth by the Russian Federation only relate to central
16 government control.

17 Our brief goes through a case study of the
18 six medium-sized steel companies in Russia. There are
19 three large ones, six medium-sized steel companies.
20 Three of those, after being privatized, reverted back to
21 regional and local government control.

22 Finally, the fifth reason not to accept the

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1 75 or 86 percent number from the Russian Federation is
2 that it relates just to government ownership, at best,
3 and not to the control issue. And the record is replete
4 with examples where the government has zero stake in a
5 company and yet is using a series of other means to
6 control the decisions made by those companies. It
7 occurred at the largest level, and I will quote an OECD
8 study that just came out: "The government appears to be
9 playing a more active role as the dominant shareholder of
10 Gazprom and UES." And as we all know, Gazprom and UES
11 are core companies here.

12 In fact, the OECD went on to say, or
13 actually earlier said, "In size, scope and economic
14 importance, the natural gas and electricity sectors,
15 Gazprom and UES, occupy a central place in the Russian
16 economy." Later they say, "Russian gas and electricity
17 remain dominated by two large monopolies, Gazprom and
18 UES, whose significance in the Russian economy goes far
19 beyond production and sales of energy. These companies
20 have functioned essentially as quasi-financial
21 institutions administering large subsidies to firms and
22 households on the basis of rather complex relations and

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1 agreements with their state organs at all levels of
2 government."

3 And the OECD, again, goes on to say,
4 "They're playing a more active role." And this is a
5 February 2002 OECD study. It's happening in large
6 companies, medium companies and small companies.

7 One more quote is the same OECD study said,
8 "One striking characteristic of Russian small business
9 surveys," now these are mostly private companies, "is the
10 number of complaints of harassment or extortion by
11 various state organs." Now, this is not the corruption
12 that was referred to earlier by the proponents of the
13 transition. This is state organs calling the shots as
14 state organs of what happens in these small companies.
15 This is what's being complained about. The OECD says it
16 even compares unfavorably to what's going on in eastern
17 Europe when it made other decisions.

18 With the one minute I have left, I will --
19 by the 30 seconds I have left, according to Mr. Ward, I
20 just want to mention briefly on Criterion 4 the
21 government control over allocation. Again, this goes
22 back to control versus just government ownership. The

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1 World Bank has said Russia's economic problems resulted
2 from distorted price incentives in addition to weak
3 institutions. And the anti-monopoly law, which is being
4 trumpeted as a good thing, is in fact used again at the
5 regional and local level thousands of times a year to use
6 this cost plus method, that's being referred to here
7 earlier, as the method of setting natural monopoly
8 prices.

9 To give you an example, if a shoe factory is
10 in a region and it's the only shoe factory in that region
11 because of how the Soviets set up their economy, that's
12 considered a national monopoly by the local folks, and
13 they'll try to regulate the prices of the shoes coming
14 out of that. And it's largely because of the employment
15 effect. It has nothing to do with competition policy.
16 Back to Brad.

17 MR. WARD: I want to make a couple of very
18 brief points to sum up. One is I would focus -- ask the
19 Department to focus and review the transcript of this
20 hearing, because not only in the submissions but also in
21 this hearing there have been statements where it clear
22 and implicit that what we're talking about is an

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1 intention. There's a future tense used as to moving
2 toward, intending to create, will in the future, progress
3 toward a market economy, not an accomplished fact, but it
4 is an intention, an aspiration, movement but not an
5 achievement.

6 I want to make -- much has been made by some
7 presenters about the fact that American companies are
8 making money in Russia now. Well, I'm not an economist,
9 that's why I've got one with me, but my understanding is
10 that you can make money in market and non-market
11 economies. And in fact companies like Pepsi and IBM were
12 making money in Russia, in the Soviet Union before 1989.
13 Making money in an economy doesn't necessarily mean it's
14 a market economy.

15 I'd also like to highlight one additional
16 point with respect to the statutory criterion regarding
17 the extent to which wages are determined by free bargain.
18 We included at Exhibit 8 -- Exhibit 6, excuse me, to our
19 rebuttal comments of February 7, an excerpt from a
20 Department of State report on Russia dated March 2001.
21 And I'd like to read a couple of sentences from it.
22 Quote, "Although the law recognizes collective

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1 bargaining, in practice, employers often refuse to
2 negotiate and agreements are not implemented." Another
3 sentence, "Most strikes are considered technically
4 illegal as the procedures for disputes remain exceedingly
5 complex." Another sentence, "Reprisals for strikes are
6 common, although strictly prohibited by law." What this
7 passage illustrates is both that wages are not determined
8 by free bargaining in Russia, and, second, that there is
9 a stark -- very stark difference between the state of
10 affairs du jure and de facto in Russia.

11 Again, I think that the point for the
12 Department here is that Russian parties have expressed a
13 perennial resolution to improve their economy and achieve
14 a market economy one day. This is not that day.

15 CHAIRMAN SHIRZAD: All right. Thank you,
16 Mr. Ward and Mr. Bartlett. Steve, are you presenting as
17 well? No. Our next presenter is Val Slater for the law
18 firm of Akin, Gump.

19 MS. SLATER: Thank you. Good morning, Mr.
20 Shirzad and members of the Department staff. My name is
21 Valerie Slater. I'm with the law firm of Akin, Gump,
22 Strauss, Hauer & Feld. I'm appearing today on behalf of

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1 the Ad Hoc Committee of Domestic Nitrogen Producers. The
2 Ad Hoc Committee's members include many of the largest
3 U.S. producers of nitrogen fertilizers which are used to
4 grow various crops throughout the United States. With me
5 today are my colleagues, Bruce Wilson and Ann Kusic of
6 Akin, Gump, and also present is Mr. Jesus Peralta of CF
7 Industries, one of the principal members of the Ad Hoc
8 Committee.

9 At the outset, I wanted to express thanks to
10 you, Mr. Shirzad, for getting this on a schedule today
11 when we couldn't finish in the morning, when those of us
12 who need to go celebrate a holiday can be on our way. I
13 also note the provision of refreshments which I hope will
14 be a tradition that's now going to continue at Department
15 hearings.

16 CHAIRMAN SHIRZAD: Steve's paying for it out
17 of his own pocket.

18 (Laughter.)

19 MS. SLATER: The U.S. nitrogen fertilizer
20 industry is not one that has used the trade laws very
21 often or very broadly. Although nitrogen fertilizers are
22 imported into this country from a wide array of sources,

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1 ranging from European suppliers to the Middle East, to
2 Trinidad and Tobago, the industry here has always
3 welcomed that competition and has been able to compete
4 effectively with fairly traded imports.

5 The only imports that have been problematic
6 are those from the former Soviet Union and particularly
7 from the Russian Federation. These imports have
8 repeatedly wrought havoc in the U.S. market, leaving the
9 industry with no choice as a last resort but to seek
10 relief from very disruptive surges of very low-priced
11 product.

12 Anti-dumping disciplines were imposed on
13 urea exports in 1987, and in 1999, the ITC unanimously,
14 which is unusual over there, found that that order was
15 still required. A suspension agreement was accepted on
16 another Russian nitrogen fertilizer product called
17 ammonium nitrate in 2000. Currently, the United States
18 industry is suffering the effects from unprecedented
19 levels of yet a third nitrogen fertilizer being imported
20 from Russia, urea ammonium nitrate solutions.

21 My purpose here today is not to make a case
22 concerning injury from Russian imports. Instead what I'd

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1 like to do in this hearing is to make sure that the
2 Department clearly understands the extent to which the
3 nitrogen fertilizer industry problems with unfairly
4 traded imports are a direct result of the continuing
5 operation of key sectors of the Russian economy on a non-
6 market basis.

7 Russian government policies and practices
8 ensure that the production and pricing of Russian
9 nitrogen fertilizers are not a function of market-
10 determined costs, of production efficiencies or of supply
11 and demand.

12 Now, let me be clear, first of all, the
13 record before the Department establishes unequivocally
14 that none of the criteria, broadly viewed, for graduation
15 of a country to market economy status are met here.
16 These factors have been set out greatly in our written
17 comments, and I'm not going to repeat them. I want to
18 note, however, that with respect to every factor, very
19 recent reports by agencies of the United States
20 government have reached conclusions that make it clear
21 that Russia's transition to date has not been adequate to
22 merit graduation at this time.

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1 I urge the Department to pay particular
2 attention as you go through the voluminous evidence
3 before you. Pay attention to the recent conclusions
4 reached by this Department, by the State Department, by
5 the Department of Energy and the other federal agencies,
6 which have been tasked with studying and reporting on
7 conditions in the Russian Federation and their various
8 reform efforts. And Mr. Ward just mentioned one. There
9 are numerous federal reports that date within the last
10 six to eight months which are extremely instructive in
11 that regard. All of those sources are cited in our
12 briefs, and I'll leave it to you to pull them -- or to
13 Mr. Hsu to pull them from the many written pages.

14 The Russian Federation has not transitioned
15 to the point that application of market economy
16 methodologies in anti-dumping cases can make any sense or
17 be meaningful. Nowhere is this more clear than in the
18 nitrogen fertilizer sector. Nitrogen fertilizers are
19 made out of natural gas, not the energy source. It is
20 the feed stock from which the fertilizer is created.
21 Natural gas accounts for 50 to 80 percent of the cost of
22 production, depending on the particular product involved.

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1 In the Russian Federation, the federal
2 government sets the price of natural gas to industrial
3 users, including nitrogen fertilizer companies. The
4 market does not determine the price of the gas sold to
5 domestic industry generally or to domestic fertilizer
6 producers in particular. In contrast, natural gas is
7 exported from Russia to Europe and elsewhere at prices
8 that are determined by the market. The government-
9 determined price within the Russian Federation is orders
10 of magnitude lower than this market-determined export
11 price.

12 The difference is astonishing. The
13 Department of Energy's EIA, the Energy Information
14 Administration, reported in October of 2001 in its Russia
15 country analysis brief that domestic Russian gas prices
16 were set at \$12 to \$14 per 1,000 cubic meters. This was
17 compared, according to the EIA, with an export price of
18 \$130 to \$150 per 1,000 cubic meters -- more than ten
19 times difference in the domestically determined price and
20 the market set export price.

21 There are other reports that indicate that
22 export prices are four to five times higher than the

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1 government-determined domestic prices. But however you
2 look at it, the differences are astonishing.

3 Recently, in January of this year, Russia's
4 Federal Energy Commission, which we heard a little bit
5 about earlier this morning, recommended a substantial
6 increase in domestic natural gas prices, an increase, by
7 the way, which would still have left domestic prices far
8 below the market-determined export rates. But the
9 government stepped in and countermanded the decision of
10 the FEC, the Federal Energy Commission. A much smaller
11 increase was permitted. Gazprom, the Russian gas
12 producer, was among those who were openly unhappy with
13 the move, complaining about the continuing low domestic
14 prices and arguing that they're threatening Russia's own
15 energy security and Gazprom's investment capability. And
16 we've provided to you, I think, in our rebuttal brief
17 some of the articles concerning that particular event.

18 For the fertilizer sector, the continuing
19 and strict government control of domestic industrial
20 prices means that fertilizer producers who would be too
21 inefficient to operate based on commercially determined
22 gas prices continue to produce, and they continue to

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1 produce vast quantities of nitrogen principally for
2 export. Russia accounts for roughly 20 percent of the
3 world's exports of nitrogen fertilizers.

4 It means that Gazprom, which could not
5 obtain commercially adequate return on domestic gas
6 sales, has invested heavily in the fertilizer sector.
7 Gazprom turns its gas into fertilizer because the
8 fertilizer, unlike the domestic gas that it can sell, can
9 be sold and exported for hard currency.

10 Barter was mentioned earlier. Much of the
11 nitrogen fertilizer that's exported into the world
12 markets and into the United States has been obtained
13 through barter arrangements for the gas, which is
14 supplied to the fertilizer companies. Some of this was
15 set out and described in our initial filing.

16 The Russian government's continued control
17 of natural gas means that Russian producers will continue
18 to manufacture and export nitrogen and to set prices
19 without regard to any real market-determined
20 efficiencies. It means that U.S. producers will continue
21 to face floods of this material. The United States is a
22 prime target for these exports.

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1 The nitrogen sector does not operate on a
2 market basis and provides an excellent example of
3 continued control of pricing and allocation of resources
4 and continuing central control of key sectors. Now, the
5 only response we've heard from this in the briefs filed
6 by the Russian steel producers has been to suggest, and
7 we heard it a little bit briefly this morning, that
8 government involvement in natural resources, and energy
9 in particular, is not inconsistent with a market economy.

10 But let's be clear. We're not talking in
11 this case about the Russian government merely holding
12 shares in Gazprom, we're talking about controlling
13 interests and controlling interests on the board of
14 directors. We're not talking about simply a situation
15 where there might be continuing government ownership of
16 some reserves. Indeed, in this country, contrary to the
17 suggestion made by the Russian steel producers, although
18 the U.S. does in fact retain ownership of certain oil and
19 gas reserves, our government leases those lands to
20 producers who develop and sell the production at market-
21 determined prices.

22 Gas price regulation in this country, again

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1 contrary to the suggestion by the Russian steel
2 producers, has never included the regulation of sales to
3 large industrial users who buy directly from the gas
4 suppliers. And we'd be happy, if it would be helpful to
5 you, to provide a detailed analysis of the difference
6 between the kinds of gas regulation that have occurred
7 here and which occur in the Russian Federation today.
8 Prices to industrial users in the United States who buy
9 directly from the large gas suppliers have always been
10 set by the market. Our gas regulation has been, when it
11 has existed, generally, in terms of pipeline regulation,
12 pricing has been limited to situations which affect
13 consumers and small businesses.

14 The argument that U.S. nitrogen producers
15 are not concerned with market economy situation in
16 Russian but just don't want to compete with producers
17 with access to cheaper gas is misplaced and, frankly, a
18 little bit silly. U.S. producers are efficient, well-
19 situated to serve U.S. agricultural markets. They
20 compete successfully with very gas-rich countries, like
21 the Middle East, Trinidad and Tobago, and they will be
22 able to compete with Russian producers if and when

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1 natural gas in Russia is priced according to the supply
2 and demand.

3 I want to just briefly turn to one quick
4 comment that was made this morning. The Russian
5 producers and representatives this morning argued that,
6 "Well, in any event, yes, we're controlling gas, but we
7 are setting the price in accordance with production
8 cost." The EIA, I want to make sure I mention, has
9 recently, last October, specifically noted that Russian
10 gas prices domestically do not cover production costs.
11 But even if they were set in accordance with costs, even
12 if there was some evidence that that was the case, I have
13 to say that's not the equivalent of being in a supply and
14 demand or market-related pricing situation.

15 This government's own country commercial
16 guide for Russia, published in July 15 of last year,
17 noted that Russia's control of electricity, natural gas
18 and railroad sectors accounts for 13 percent of Russia's
19 GDP. More importantly, and this is language that I think
20 we have to keep in mind, we recognized in that report,
21 our government recognized, that Russian control over
22 these enterprises has, quote, "distorted the economic

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1 landscape," end quote.

2 The economic landscape in the nitrogen
3 fertilizer industry is highly distorted by Russia's
4 continuing control over natural gas pricing. Cost,
5 production and pricing of these products are a function
6 of a state-determined gas price, and as long as that
7 price is artificially suppressed and state-determined,
8 there will not be an operation on a market economy basis,
9 and our trade laws will not be effective for domestic
10 producers.

11 We urge the Department not to render trade
12 laws ineffective for this critical U.S. industry. We've
13 relied upon these laws sparingly and as a last resort in
14 the face of massive floods of product that continue today
15 to be affecting the market as a result of Russian
16 government policies and practices. Thank you.

17 CHAIRMAN SHIRZAD: Thank you, Val. The next
18 speaker is Joan Borsten, the President of Films by Jove.

19 MS. BORSTEN: Good morning. I've been an
20 executive in the U.S. motion picture industry for over 15
21 years, and I am currently President of the Los Angeles-
22 based film production and distribution company, Films by

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1 Jove.

2 Ten years ago, in May 1992, we signed a
3 contract with Russia's leading animation studio to
4 restore and market a large body of Soviet era animated
5 films. Today the Russian animation that we distribute
6 can be seen in theaters and on television all over the
7 world and is available on video cassette and DVD in
8 thousands of retail outlets in North America, South
9 America, Europe and Asia. We're proud to have
10 contributed to the safeguarding and promotion of
11 Russian's rich artistic heritage.

12 Despite the moral satisfaction of our work,
13 our experience as investors in the Russian Federation has
14 been extremely difficult due to inappropriate and illegal
15 interference in our commercial and contractual affairs by
16 officials at the Russian Government. I'm here today to
17 briefly describe the extraordinary difficulties we have
18 encountered as investors in Russia, because our
19 experience has direct bearing on two of the International
20 Trade Administration's criteria for changing Russia's
21 status as a non-market economy: Criterion Number 3,
22 constraints on foreign investments, and Criterion Number

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1 6, other relevant factors, specifically in our case,
2 political pressure, which was brought to bear on the
3 Russian commercial courts by officials of the Russian
4 Ministry of Culture.

5 Over the past ten years, my Company, Films
6 by Jove, has invested more than \$4 million to acquire,
7 repair, restore and distribute a significant collection
8 of Soviet-era animated films, making them accessible for
9 the first time in the West. Seven years after we began,
10 in 1999, when the animated film project began to show a
11 profit for the Russian Animation Studio and my Company,
12 officials of the Russian Ministry of Culture began a
13 campaign to retroactively void our contract.

14 Their efforts began when they set up in
15 Moscow a dummy corporation with the same name as the
16 Russian studio from whom we had licensed the animation
17 rights. Ministry of Culture officials claim that the new
18 company, established in 1999, was the true copyright
19 holder back in 1992 instead of the entity with whom we
20 had contracted. Hence, they claimed, our contract was
21 void.

22 There then began a protracted series of

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1 suits and countersuits, decisions and appeals in Russian
2 courts between the Animation Studio, which had licensed
3 the rights to us, and the Ministry of Culture. During
4 this period, Films by Jove suffered financial losses
5 because the Ministry of Culture prohibited the Russian
6 State Film Archive, the source of our prints, from
7 supplying us with films for which we had the rights.

8 One of our contractual obligations was to
9 defend the Russian studio's copyright against pirates in
10 our distribution territory, which included the United
11 States. In August 2000, when we were engaged in a
12 lawsuit for copyright violation in the U.S. Federal Court
13 for the Eastern District of New York against a convicted
14 felon, the dummy corporation set up by the Russian
15 Ministry of Culture joined the suit as a third party on
16 the side of the felon.

17 Their objective in joining the suit against
18 us in the U.S. court was to gain a ruling that Films by
19 Jove was not the legitimate copyright holder of the
20 animation. The Ministry was thus tenacious in the
21 campaign to undermine my Company's rights, and we were
22 unexpectedly burdened with enormous legal expenses in the

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1 effort to defend ourselves. As it turned out, the
2 Russian Ministry of Culture allied itself with the losing
3 party in the U.S. District Court. Films by Jove won the
4 case. The felon, to whom the Ministry allied itself,
5 subsequently pleaded guilty to pirating the intellectual
6 property of the Motion Picture Association of America and
7 the Recording Industry of America using master tapes and
8 optical disks illegally manufactured in Russia.

9 At the same time that the Russian Ministry
10 of Culture was challenging our copyright in the U.S.,
11 they were continuing in the Russian courts to challenge
12 of the legitimacy of the animation studio that had
13 contracted with us. After a series of rulings against
14 the Ministry, the Ministry of Culture officials, together
15 with officials of the Office of the Prosecutor General,
16 met with a representative of the High Arbitration Court
17 and directed the judges of the High Arbitration Court to
18 vacate all the decisions which had gone against the
19 Ministry.

20 The basis for the action was, quote,
21 "Protection of state interest," unquote. Russian
22 government efforts to undermine our investment did not

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1 end with direct pressure on Russian judges. Most
2 recently, in November 2001, Ministry of Culture officials
3 significantly damaged my company' interest by sending
4 letters via Russian embassies to broadcasters with whom
5 we are negotiating, informing them falsely that only
6 licenses issued by the dummy corporation were legitimate
7 and implying that Films by Jove could not therefore
8 contract for the rights.

9 These misleading statements have deceived
10 our trade partners, interfered with our commercial
11 activities and caused us serious financial losses from
12 damage to our reputation and lost sales. The unrelenting
13 efforts of the Russian government to annul the
14 contractual rights of Films by Jove and to destroy our
15 investment have come to the attention of the U.S.
16 Congress.

17 Last week, Representatives Berman, Weldon,
18 Waxman, alarmed by the evidence which we presented to
19 them, sent an official letter to Deputy Prime Minister
20 Matveyenko pointing out, one, quote, "The officials of
21 the Russian government appear to have inappropriately
22 influenced the decisions of the Russian courts in

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1 violation of the constitutional separation of powers
2 between the two branches of government; two, that such
3 efforts directly harm the long-term investment of Films
4 by Jove; and, three, that the Ministry of Culture does
5 not appear to be committed to safeguarding the rights of
6 American investors contrary to President Putin's repeated
7 statements pledging that investors will be guaranteed a
8 level playing field, adherence to rule of law, an
9 independent judiciary and no government interference in
10 third party contracts."

11 In summary then, on the basis of our
12 experience as investors in the Russian film industry, we
13 urge the International Trade Administration, in reviewing
14 the status of Russia as a non-market economy, to take
15 into consideration the fact that American investors in
16 Russia still risk serious and financially damaging
17 government interference in their commercial activities.
18 Thank you for giving us the opportunity to present our
19 views.

20 CHAIRMAN SHIRZAD: Thank you, Ms. Borsten.
21 Our next speaker is Daniel Pickard from the law firm of
22 Wiley Rein & Fielding.

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1 MR. PICKARD: Good morning. I'm Daniel
2 Pickard of Wiley Rein & Fielding, here this morning on
3 behalf of Nucor Corporation, and the Committee for Fair
4 Beam Imports.

5 We urge the Department of Commerce not to
6 revoke the NME status of the Russian Federation at this
7 time. The U.S. government previously recognized that
8 Russia's transition to a functioning market-based economy
9 will be a gradual one. Although Russia may be on the
10 road to a market economy, it has by no means arrived at
11 that destination. In some areas, problems resulting from
12 the 1998 financial crisis have undone progress toward a
13 market economy. We respectfully submit that any
14 revocation of Russia's NME status should occur only as
15 part and parcel of Russia's accession to the World Trade
16 Organization.

17 An examination of each factor in the
18 Department's six-prong test demonstrates that Russian
19 prices do not represent fair value and that NME
20 designation remains appropriate. First, Russia fails the
21 Department's test regarding currency convertability
22 because it restricts convertability of its currency in a

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1 matter that is not indicative of a free market.

2 Government currency controls to combat
3 capital flight remain a significant concern as do
4 licenses for foreign exchange transactions lasting over
5 90 days. In fact, one of the world's largest accounting
6 firms recently noted earlier this year that the degree of
7 exchange restrictions and controls applicable to the
8 ruble means that it is not convertible outside of the
9 Russian Federation. Previous submissions in favor of
10 revocation have stated that foreign exchange and
11 financial systems in Russia are still at an early stage
12 of development and are not unable to withstand events in
13 international markets. This is precisely why NME status
14 is still appropriate.

15 Russia wage rates are also not sufficiently
16 determined by the market. Resistance to organized labor
17 and the power of corrupt business leaders have prevented
18 market forces from establishing a fair working wage.
19 Russian wages are extremely low with limited wage
20 mobility. Russian wage arrears have been an
21 international issue for years, amounting to U.S. \$1.14
22 billion in June 2001.

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1 Additionally, there is significant evidence
2 of violent anti-unionism and physical intimidation of
3 Russian workers. Russia's ongoing history of non-payment
4 of wages and weak labor unions indicate that Russia is
5 not currently a market economy with respect to wage and
6 wage rates.

7 Third, Russia excessively controls the
8 extent to which it permits joint ventures or other
9 investment by foreign firms. As previously discussed,
10 barriers to foreign direct investment in Russia are both
11 de facto and du jure, with allowable foreign investments
12 highly managed by the state. U.S. trade representative
13 has noted Russia's frequent and unpredictable changes in
14 Customs regulations and enforcement and the resulting
15 negative impact on foreign and domestic trade in
16 investment.

17 The Department has previously recognized
18 Russia's political and economic instability, the lack of
19 solid corporate governance laws, impractical trade, tax,
20 banking and investment regulations as inhibiting
21 successful foreign investment. On this factor alone,
22 Russia cannot be considered a market economy, because it

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1 has failed to marketize its legal and investment
2 infrastructure. Other countries had more liberalized
3 foreign investment laws as well as more substantial
4 amounts of foreign investments when they received non-
5 market economy status from the Department.

6 The fourth and fifth elements in the
7 Department's test for revocation of NME status examine
8 the extent government ownership control the means of
9 production, allocation of resources, price and output
10 decisions. Post-Soviet reforms in these areas have been
11 partially successful, at best. The government continues
12 to directly interfere in production, price and output
13 decisions. In addition, substantial blocks of assets
14 have yet to be privatized, and Russia's movement toward
15 privatization has stalled in general.

16 The previous submissions and previous
17 statements this morning document the extent of
18 government-owned business and mixed state and private
19 ownership, which further argues in support against
20 revocation at this time. As recently as November 2001,
21 the economists commented on market interference by the
22 Russian government, describing a crony-ridden, state-

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1 dominated system that keeps old businesses going but
2 chokes off capital from new ones.

3 Of fundamental importance is the fact that
4 the pricing of basic Russian commodities is not market-
5 driven. The Russian government regulates prices on goods
6 and services, representing at least 15 percent of the
7 national GDP. Russian government price controls impacts
8 sectors as diverse as natural gas, agriculture and public
9 transportation. Natural gas accounts for over 54 percent
10 of Russia's energy consumption, yet it is still sold at
11 less than the cost of production. President Putin
12 himself has remarked that electricity prices in Russia
13 are three to five times cheaper than world prices. The
14 Department, too, has recognized that Russian energy
15 producers do not operate on profit. With respect to
16 Russian steel production, the Department's global steel
17 trade report stated that the Russian economy consists of
18 enterprises that would not be viable in a market economy.

19 Russia is not currently a free market
20 system. In 2000, the Council of Foreign Relations noted
21 that Russia did not have a market economy, ranking it
22 93rd out of 123 countries in terms of economic freedom.

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1 A year later, the Council ranked Russia 117 out of 123,
2 significantly behind the People's Republic of China. In
3 response to the central question at the heart of the
4 Department's inquiry, sales of fundamental commodities in
5 Russia are not cost based.

6 It is also important to note that Russian
7 corruption has sustained an enormous black market. Some
8 have estimated that black market accounts for at least 50
9 percent of Russia's GDP. Such a developed underground
10 economy represents a phenomenon that prevents the fair
11 pricing of merchandise necessary for the country to be
12 considered a true market economy. In fact, the
13 centrality of Russia's black market may be the most
14 probative factor as to whether Russia still operates as
15 an NME. Such a black market only arises when the
16 official market fails to meet consumer demand for goods
17 at fair market prices.

18 We'd also like to make a point about the
19 timing of this inquiry. It is our position that Russia
20 does not currently meet the six-factor test. Further,
21 accordingly, revocation of Russia's NME status would be
22 inappropriate at this time. As to going forward, it is

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1 our position that revocation of Russia's NME status
2 should only occur as part and parcel of their accession
3 negotiations to the World Trade Organization.

4 In conclusion, sufficient evidence has been
5 submitted to demonstrate the Department shouldn't revoke
6 NME -- Russia's NME status at this time. The
7 government's restrictions on its currency, its denial of
8 fundamental worker rights, limitations on foreign
9 investment and its control of production prices and
10 resources all indicate that Russia is still an NME.
11 Accordingly, Nucor and the Committee for Fair Beam
12 Imports urge the Department not to alter Russia's
13 designation as a non-market economy at this time. Thank
14 you.

15 CHAIRMAN SHIRZAD: Thank you, Mr. Pickard.
16 Our next presenter is Stephanie Doyal from the law firm
17 of Schagrin & Associates.

18 MS. DOYAL: Good morning. My name is
19 Stephanie Doyal. I'm from the law firm of Schagrin &
20 Associates. I am appearing today on behalf of Gallatin
21 Steel Company, IPSCO Steel, Incorporated, Nucor
22 Corporation, Steel Dynamics, Incorporated and Weirton

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1 Steel Corporation. These companies are domestic,
2 integrated, mini-mill steel producers.

3 First, I would just like to state for the
4 record that we concur in the opinions expressed today by
5 counsel from Dewey Ballantine and Wiley Rein & Fielding,
6 who also represent other domestic steel producers, and
7 have already spoken in opposition to revocation of the
8 Russian Federation's non-market economy status.

9 My comments today will be very brief. I
10 would just like to reiterate our position that the
11 Department should decline to revoke the Russian
12 Federation's status as a non-market economy at this time,
13 because many obstacles remain which require additional
14 reform.

15 As outlined in our comments filed with the
16 Department, while the Russian Federation has made
17 significant progress since the collapse of the Soviet
18 Union in 1991, each of the areas delineated in the
19 statutory factors needs further reform before the Russian
20 Federation should be classified as a market economy for
21 purposes of anti-dumping and countervailing duty law.

22 Revocation is not justified at this time,

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1 and the progress the Russian Federation has made is
2 undermined by existing rampant corruption, limited rule
3 of law and excessive state intervention in and ownership
4 of several key industries, such as the natural gas and
5 electricity industries, which for steel production are
6 all extremely important and constitute some of the major
7 raw material inputs.

8 Therefore, we urge the Department to decline
9 to revoke the Russian Federation's non-market economy
10 status at this time. Thank you, and this concludes my
11 remarks.

12 CHAIRMAN SHIRZAD: Thank you. Our next, and
13 I think last, presenter is Clifford Stevens from the law
14 firm of Verner, Lipfert.

15 MR. STEVENS: Good morning. I'm Cliff
16 Stevens of the law firm of Verner, Lipfert, Berhard,
17 McPherson & Hand. We represent Elkem Metals Company and
18 Globe Metallurgical, U.S. producers of silicon metal.

19 The U.S. silicon metal industry is currently
20 suffering severe injury because of a surge of dumped
21 imports from Russia that are being sold in the U.S.
22 market at aggressively low prices. U.S. silicon metal

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1 producers and unions recently filed a petition requesting
2 the imposition of anti-dumping duties on these imports.
3 Distortions of prices and costs in the Russian economy
4 allow the Russian producers to sell at prices that do not
5 reflect economy reality, a situation that the non-market
6 economy provisions of the statute are intended to
7 address.

8 For example, as many commentators have
9 forcefully argued and shown, state control over the
10 energy sector allows Russian silicon metal producers to
11 receive electricity, the most important cost of producing
12 silicon metal, at well below market rates and well below
13 the cost of producing electricity. Revocation of
14 Russia's NME status would be inconsistent with
15 congressional intent that domestic industries be
16 protected from such distortions through application of
17 the NME provisions of the statute.

18 Many of the other parties have concentrated
19 their efforts on providing a detailed explanation of why
20 Russia does not qualify for market economy status based
21 on the specific factors the Department considers. So as
22 not to duplicate these efforts, I thought it would be

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1 useful to focus my presentation on the central question
2 before the Department today: Whether or not functioning
3 markets exist in Russia.

4 Section 771.18(a) of the Tariff Act defines
5 an NME country as, quote, "any foreign country that the
6 Department determines does not operate in market
7 principles of cost or pricing structures so that sales of
8 merchandise in such countries do not reflect the fair
9 value of the merchandise," end quote. Russia fits
10 squarely within this statutory definition.

11 Consistent with the statute, in NME cases
12 the Department has recognized that the issue is not
13 whether substantial reform has occurred, but rather
14 whether functioning markets are in place and prices and
15 costs adequately reflect market considerations. In
16 declining to revoke Russia's NME status in 1995, the
17 Department stated, quote, "The Russian economy, having
18 emerged from a centrally planned system, is in a state of
19 transition. Many of the state controls have been
20 abandoned, but that does not mean that functioning
21 markets have replaced controls. Because the evidence
22 does not demonstrate that prices and costs in Russia

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1 adequately reflect market considerations, we cannot at
2 this time alter Russia's designation as a non-market
3 economy country."

4 Similarly, in determining not to revoke
5 Ukraine's NME status, the Department found that, quote,
6 "While significant progress has been made in Ukraine's
7 transformation to a market economy, we cannot conclude
8 that Ukraine should be treated as a market economy for
9 purposes of the anti-dumping law. While many of the
10 state controls have been abandoned, functioning markets
11 have not completely replaced government controls."

12 While Russia has dismantled its former
13 centrally planned economy, numerous independent observers
14 have concluded that functioning markets have not replaced
15 the prior system. First, a vast portion of the economy
16 remains under direct state control. According to a 2001
17 International Monetary Fund article, in the key
18 infrastructure services, including electricity, heating,
19 natural gas supply and transmission and rail transport,
20 state-dominated monopolies still play a major role. And
21 in purchasing manufacturing inputs, new firms,
22 particularly new smaller firms, have little choice.

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1 There is usually only one supplier and pricing is not
2 cost based for these core products and inputs.

3 Second, even where privatization has
4 occurred in Russia, the resulting changes in ownership
5 have not altered the fundamental structure of the Russian
6 economy. Again, according to the IMF, quote, "The
7 industrial configuration established by administrative
8 and central planning during the Soviet era is still
9 largely entrenched, and a new industrial sector in which
10 competitive market forces determine behavior has yet to
11 emerge fully," end quote.

12 Regarding privatization, another observer
13 stated, quote, "When communism collapsed, the government
14 lifted its economy controls and rapidly privatized
15 enterprises. However, these enterprises, a coordinated
16 network of suppliers and producers under communism,
17 quickly formed a network of their own." This observer
18 noted that the new network did not behave as enterprises
19 do in markets economies.

20 Third, the Russian economy still suffers
21 from a severe lack of competition. According to the IMF,
22 quote, "In many sectors, the principal constraints on

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1 entry by new firms in Russia are the anti-competitive
2 market structure and the anti-competitive conduct of
3 existing dominant firms, which is often sanctioned or
4 supported by local governments," end quote.

5 The same IMF article further states that,
6 quote, "Many manufacturing firms are shielded from
7 competition because of structural and institutional
8 impediments," end quote.

9 Numerous observers have noted that Russia
10 lacks the institutional structures necessary for
11 functioning markets. An August 2000 paper, published by
12 the European Bank for Reconstruction and Development,
13 found that Russia has, quote, "problems with the
14 transition towards credible market-based institutions and
15 financial systems," end quote.

16 Similarly, a 2001 article by another
17 commentator stated that in Russia, quote, "Institutional
18 structures necessary to support the continued evolution
19 of capitalism are notably weak or absent," end quote.

20 Russia has been given poor and declining
21 scores in recent independent studies of transition
22 economies. We attached in our written comments excerpts

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1 from a Freedom House publication called, "Nations in
2 Transit," which is a survey of the direction and state of
3 political and economic transition among the states of
4 central and eastern Europe and the former Soviet Union.
5 It's funded primarily by the U.S. Agency for
6 International Development. The Freedom House study bases
7 its survey on rankings and nine political and economic
8 subcategories, including -- which are grouped into three
9 broad areas: democratization, rule of law and economy
10 liberalization.

11 In the 2001 Nations in Transit survey,
12 Freedom House concluded that despite the legal and
13 economic reforms Russia has instituted in recent years,
14 it awarded them very low scores during the 1997 to 2001
15 period, and in fact the scores during that period
16 actually worsened, which caused Freedom House to place
17 Russia in the middle moving downwards category of
18 transition economies.

19 In particular, Russia's scores in the
20 individual categories of privatization, macro economy
21 policy and micro economy policy were relatively low as
22 compared to other transition economies. Together these

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1 categories encompass an examination of the legal
2 framework for privatization and the present state of the
3 privatization process, tax reform, fiscal and monetary
4 policy and banking reform, property rights, property and
5 liberalization, the ability to operate a business and
6 other pertinent factors that are considered in the
7 Department's analysis.

8 In summary, Russia is in the same position
9 as when the Department last denied it market economy
10 status. It still does not have functioning markets, and
11 prices and costs remain severely distorted on an overall
12 basis in the economy. Congress intended that these
13 distortions be addressed through application of the NME
14 provisions of the statute. It would be improper and
15 contrary to congressional intent for the Department to
16 grant market economy status to Russia at this point in
17 time. Thank you.

18 CHAIRMAN SHIRZAD: Thank you, Mr. Stevens.
19 My understanding is that this is the last of the
20 presenters that we have today. Is there any amendments
21 to the schedule that I need to know about? Albert?
22 Jeff?

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1 Thank you to all of you. Those were very
2 helpful comments. I think as one area that I'd like to
3 open, whether Ms. Slater or anybody else wants to address
4 the question, is the degree to which the regulatory
5 environment of the energy sector in Russia how that
6 varies from what you would find in other economies where
7 you do have an equivalent of a public utilities
8 commission or a FERC or some governmental entity whose
9 function it is to ensure that pricing in a natural
10 economy -- in a natural monopoly industry doesn't -- you
11 know, the pricing practices aren't abusive in some
12 fashion. You were alluding to some differences. What
13 can you share with us that we need to think about in that
14 regard?

15 MS. SLATER: Well, certainly, I don't claim
16 to be an energy expert, but what I have learned in trying
17 to understand the differences between the types of gas
18 regulation, for example, that are used here in the United
19 States and what's currently happening in Russia I think
20 come down to some pretty key points.

21 First of all, the regulations of natural gas
22 pricing, when it was prevalent, was typically in terms of

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1 prices of gas for sale for resale. So it was the
2 consumer gas that was being regulated. Now the basis for
3 that is something I'd have to look into. I understand
4 that there typically were margins of profit built in for
5 the sellers.

6 What was not regulated, even in the heyday
7 of gas regulation here, were sales directly from gas
8 producers, Louisiana Power & Light, to large industrial
9 users, either within or even across state lines,
10 purchases that were for use by the purchaser rather than
11 for resale were not regulated. That was another pure
12 market dynamic supply and demand and negotiation.

13 And aside from that, there's the issue of
14 transportation and pipelines and so on. Transportation
15 regulation for energy I think is fairly common, and
16 that's a very different kind of concern when the
17 particular one that we're talking about, the fertilizer
18 industry, which is the pricing of the input to the user.
19 We can certainly look at that in more detail. I don't
20 know whether you have more.

21 MR. BARTLETT: I think there are three
22 things when we looked at the energy industry. One is

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1 saying that, well, this is just interference of the
2 energy industry and it happens all over the place. It's
3 kind of like saying, well, in Hawaii, the government
4 interferes in tourism. Much of the important economy
5 structure of Russia, from that standpoint, is actually
6 built around the energy sector. That's where they claim
7 they have a competitive advantage, and that's what's
8 being interfered with.

9 Second, it's being interfered with, not just
10 in a sense of lowering price or regulating price, but as
11 the OECD has said, they're actually picking winners and
12 losers based on the access to the energy. And then,
13 third, which doesn't relate to energy directly but the
14 major mammoth energy companies in Russia have a gas
15 problem. They have to read -- the media over here has
16 taken over much of the media in the Russian Federation.
17 They've extended themselves into telecommunications. As
18 the OECD says, they're operating as a quasi-fiscal
19 institution. So what's happening in the energy sector
20 not only affects energy inputs on a highly discriminatory
21 basis, but it also is growing in terms of putting it in
22 other areas of manufacturing.

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1 CHAIRMAN SHIRZAD: The statute, as everybody
2 knows, enumerates a number of factors that were directed
3 by Congress to look at, including a catch-all factor. Is
4 there a sense among the folks in terms of whether we
5 should be weighting one more than the other? Obviously,
6 it's a matter of discretion.

7 The ultimate challenge that we have as a
8 Department is to take the various factors that are there
9 for us to look at, as well as whatever other factors we
10 deem appropriate to consider, and see how the mix of
11 those factors in a particular environment contribute or
12 don't contribute to assuring that price signals and
13 costing -- the cost structure is such that it's
14 sufficiently market oriented that it allows us to do our
15 anti-dumping analysis using the actual prices in the
16 market.

17 The story of market economies varies.
18 You'll have high degrees of one government interventions
19 or state control and one sector the story of one factor
20 in market economies greatly as compared to other market
21 economies. Is there a common view on the part of the
22 opponents that there are certain factors we need to give

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1 greater weight to that trump the others? Is that sort of
2 what I'm hearing in the presentation or no?

3 MR. BARTLETT: I think one thing that fits
4 that question is the interrelationship between two
5 factors is perhaps more important in Russia than anywhere
6 else, and that is the relationship between foreign direct
7 investment and corporate governance in minority
8 shareholder rights. A lot was said today about the
9 quantity of foreign direct investment and debates over
10 that. What you hear from some of these individual
11 investors is that the quality of that FDI is not what
12 they thought it would be because of the other commerce
13 factor of the corporate governance and shareholders'
14 rights and the ability to enforce their rights. So even
15 if you have a great deal of FDI coming into Russia, you
16 need to look at the interaction with the other factors as
17 to the quality. And I think if you line up the factors,
18 you can repeat that exercise of how does one factor score
19 given what you know about the problems of other factors.

20 MR. SOMERS: If I could respond to that, at
21 least as one of the proponents --

22 CHAIRMAN SHIRZAD: Well, actually, I'm

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1 sorry. I think when we talked about the ground rules, we
2 -- unfortunately we're in a position now where we're sort
3 of stuck to our schedule which sort of allots time. I'm
4 happy to revisit that, but I understand there's some
5 concern on the part of some of the participants about
6 going off our ground rules, which I am reluctant to do
7 unless everybody's in agreement on that.

8 MR. SOMERS: I didn't realize you had asked
9 -- I thought you would ask everyone. I didn't realize
10 you would ask only the opponents.

11 CHAIRMAN SHIRZAD: We're unfortunately sort
12 of in the box here unless people are willing to revisit
13 how we approach this.

14 MR. MAY: Yes. I think what we've allowed
15 for is the rebuttals to be done in writing and not to
16 have a rebuttal period here. This is just a question
17 period for those who just made presentations.

18 CHAIRMAN SHIRZAD: Yes. Clearly, the
19 questions that any of us ask either side are meant to be
20 addressed by all of you, and there are a number of sort
21 of general questions that I actually will raise at the
22 very end that I think are helpful for both sides to

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1 address in writing when we present -- when parties submit
2 their post-hearing briefs or any other post-hearing
3 submissions that they put in. Why don't I -- again, I'm
4 happy to revisit the structure, but unless I hear
5 otherwise, I think we're stuck to our bifurcated process,
6 if I can put it that way.

7 Does the Panel have questions? Albert?

8 MR. HSU: Yes. I have a question on the
9 energy sector issue and it's directed towards Mr.
10 Bartlett. There are many analysts out there that deem
11 the energy sector problem as a very complicated one where
12 the government's trying to balance needs to stabilize the
13 economy and to limit the rate of inflation growth with
14 the need to equalize and bring energy prices up to world
15 price levels. There are also institutional constraints
16 in the energy sector that prevent Gazprom from cutting
17 service off to all delinquent payers. These are actually
18 constitutional rights, and I believe that they have been
19 trying to limit the scope of the application of those
20 rights and Gazprom has been successful in cutting service
21 off to some industrial users.

22 So my question to you is I think the problem

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1 is at least twofold: There is a natural monopoly pricing
2 problem -- there's a general pricing problem, and then
3 there's a restructuring problem. And I think Gazprom
4 would welcome higher prices, because they'd make more
5 money, and I believe they would happily operate it as a
6 monopoly if they were allowed to do that. But the
7 government reform efforts are targeted, in large part, at
8 restructuring gas. And so I think some of the
9 statements you may be hearing about, the government
10 trying to assert more control over Gazprom, may reflect
11 the government's efforts to overcome Gazprom's resistance
12 to restructuring, putting aside the price issue. And I
13 think that's a complicating factor, and it's not -- the
14 impression I get from these analysts -- and when I say
15 analysts, that includes the OECD to which -- the report
16 to which you refer -- it's a much more complicated issue
17 than just the government telling Gazprom, "You will sell
18 at this price."

19 So I was wondering what your views are on
20 the existence of these two issues, separate issues --
21 pricing and restructuring -- and whether some of the
22 things that you point to can be reconciled on that basis?

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1 MR. MAY: Right. Just on a residual note,
2 as people are responding, if they could just identify
3 themselves for the record, it will be a little easier to
4 follow in the transcript.

5 MR. BARTLETT: Right. I'm Brent Bartlett,
6 economist from Dewey Ballantine. First of all, I'll say
7 I agree with --

8 MR. HSU: I just forgot one thing. I
9 believe Mr. Bartlett or Val pointed out that the
10 government had declined to raise the utility prices by
11 the full extent to which FERC had recommended, and I
12 believe that that was purely -- that reflects purely the
13 concerns of the government about inflation. And, again,
14 if you can comment on that for me.

15 MR. BARTLETT: First of all, I think I agree
16 with your analysis on this wholeheartedly. We do have
17 these different issues going on with Gazprom. In fact,
18 you can get very confused reading whether Gazprom is run
19 by the Russian government or the Russian government is
20 run by Gazprom. I mean there are all these political
21 connections that going on that make sorting out the
22 decisionmaking and why they're doing certain things

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1 difficult.

2 I think there are three points I'd like to
3 make. Number one is some of these policy decisions are
4 being made with the best of intentions and may even be
5 made for very good reasons. For example, regulating the
6 natural monopoly aspects of Gazprom in the UES presence
7 in many areas. But that doesn't make it a market.
8 Oftentimes what you see, and the restructuring part of
9 what you're talking about, is in fact evidence for the
10 opponents of graduation, and that is they're trying to
11 restructure the situation and move it towards a market
12 where the supply of energy is not in the natural monopoly
13 position, as it doesn't have to be. It's not in Europe,
14 it's not in the United States, for most part anymore.
15 And all of this evidence that the government is heavily
16 involved trying to restructure what's going on there is
17 in fact evidence that they're not done yet.

18 And I think my last point is there's the
19 pricing issue on natural monopoly, there's the
20 involvement for restructuring issues. There's a heavy,
21 heavy third category, and that is from the top of the
22 Russian Federation government all the way down to the

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1 local levels, a lot of these energy prices are being set
2 for industrial policy purposes.

3 MR. HSU: You mentioned evidence that you
4 saw of discriminatory pricing?

5 MR. BARTLETT: Right.

6 MR. HSU: Where you have seen that?

7 MR. BARTLETT: Well, if you look in our
8 submissions, particularly with respect to industry, we're
9 interested in the steel industry. When you get past the
10 three large steel companies down to the six small steel
11 companies, we have a lot of anecdotal evidence of --
12 well, what you mentioned was somebody not paying their
13 bill, Gazprom or UES actually wanting to cut off a
14 company, and then the government, oftentimes the regional
15 or local government, intervening and trying to sort
16 things out and say, "Well, they haven't paid, but you
17 understand they employ a third of the people in town, and
18 you just can't do that."

19 MR. HSU: Okay. But in terms of
20 discriminatory practices, you haven't seen evidence of
21 different prices.

22 MR. BARTLETT: Well, to me, an effective

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1 price is the volume going in and the value coming out.

2 MR. HSU: I know. Let's put aside the
3 effect of prices, just the nominal price of gas.

4 MR. BARTLETT: I couldn't cite you anything
5 right now. If we find any, we'll stick it in our
6 response brief.

7 MS. SLATER: Mr. Hsu, this is Valerie
8 Slater. We have seen that in recent years with respect
9 to the fertilizer sector, and in our original submission
10 you have copies of the relevant statutes. There have
11 been particular mandated prices to particular sectors in
12 the past. And whether those are still in effect I think
13 is the issue of some debate. At this point, what we
14 understand to be case, there is a uniformly set
15 industrial price.

16 MR. HSU: Right. I have one more question.
17 Mr. Bartlett referred to the vast extent of state control
18 over Russian enterprises, far greater than official
19 statistics suggest. And I was just wondering for what
20 purpose do you think this control is being exercised. I
21 mean is it to control production, investment, prices?
22 And in that regard, if the control is being exercised to

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1 produce -- to control investment, then why have we seen
2 fixed investment in Russia decline? Why did we see fixed
3 investment in Russia decline between '92 and '98? If the
4 government was in a position to effectively control
5 enterprises, as you're suggesting, why would the
6 government effectively allow the decapitalization of its
7 own assets?

8 MR. BARTLETT: Right. I have two answers.
9 One is for these purposes it doesn't matter. The
10 government's calling the shots, and the story should
11 probably end there. But I think, substantively, the
12 answer to your question is you know mostly what I do is
13 subsidies and countervailing duties as a career, and I've
14 always said what you see in terms of government policy
15 with respect to subsidization, which I think is an analog
16 to government control here, is sometimes it's for -- it's
17 very clever and very well done for very specific
18 industrial policy purposes. Other times it's tantamount
19 to corruption by the officials. And there's a whole
20 spectrum in between.

21 Russia, as one of the largest countries in
22 the world, you can find all of that. In fact, you can

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1 find all of that within Gazprom. You can find industrial
2 policy targeting, you can find corruption of high
3 officials, you can find political motivations on the part
4 of factions within these organizations. I think you name
5 it and you can find some action by these entities that is
6 traceable to that motivation. But to circle back, the
7 problem is it's not profit maximizing behavior by the
8 part of organizations that are trying to operate on
9 market principles, and that's the important part here.

10 MR. WARD: One point -- this is Brad Ward
11 with Dewey Ballantine. I think that the statute doesn't
12 say that you're permitted to distort your own market for
13 any good reason or a bad reason; it's just are you a
14 market economy, yes or no? And that's why, as Brent
15 said, it really doesn't matter the reasons why there may
16 be regulation or distortion. It's the fact of is it a
17 market or is it not, and the fact is it's not.

18 MR. BARTLETT: And I think if your point
19 goes to, in some cases, economists would say, "Well,
20 you've got a distortion of the market, so the government
21 has to intervene to bring it back to market prices, say."
22 I think the weight of the evidence of this case says not

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1 a lot of that is going on in Russia. You know, you don't
2 see a lot of studies being done about what would the
3 market do here, and while we're still in control, we'll
4 try to shoot towards that. That's just not what's
5 happening.

6 MR. SOMERS: Mr. Chairman, at the risk of
7 being censored, I find that this meeting perhaps should
8 change its format. First, I want to compliment -- the
9 questions are very insightful and they're very even-
10 handed, but the proponents have been solvent for the last
11 two and a half hours. We have a Deputy Minister of
12 Economic Development and Trade here who's listening to
13 the opponents cite facts, figures, statements about
14 pricing policy, and he will be relegated, I guess, to
15 filing an extensive written brief which will put the
16 Russian Federation at a severe disadvantage, given the
17 limits of time, geography.

18 And I just say that, again, while I applaud
19 the fairness of the way this hearing is being conducted,
20 the American Chamber of Commerce, whose 650 American
21 companies have a strong interest in designation of Russia
22 as a market economy, not because Russia filed but because

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1 we believe that our ability to improve the market and our
2 profitability will increase. I feel that we should
3 continue this hearing all afternoon or that some other
4 method --

5 CHAIRMAN SHIRZAD: Well, I --

6 MR. SOMERS: I'm sorry.

7 CHAIRMAN SHIRZAD: -- appreciate the input.
8 I'm eager to have a free exchange. I think one of your
9 colleagues, frankly, is concerned about modifying our
10 approach, and I have to respect that objection. So
11 unless there are other thoughts or if there is revisiting
12 of people's views in terms of how we should structure
13 this hearing, I think in the interest of fairness I need
14 to maintain the rules that we started with unless, Mr.
15 Ellis, unless you have --

16 MR. ELLIS: Well, we can revisit it as long
17 as we structure it in a fair way. What would be the
18 alternative?

19 MR. WARD: On behalf of the opponents, I
20 know that we don't have anything to fear from a free
21 exchange here. On the other hand, we did remain silent
22 during the presentation of the proponents and during

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1 questions. We're just sort of giving and equitable
2 distribution of time and approach here. But I leave it
3 to the Chair.

4 CHAIRMAN SHIRZAD: Give me one minute.

5 (Pause.)

6 CHAIRMAN SHIRZAD: What I'd like to propose
7 I think the points raised about allowing -- well,
8 obviously, I have to make sure there's a free exchange
9 while making sure that there's nothing in the structure
10 of our hearing that either gives either side an unfair
11 advantage or the perception of either side has an unfair
12 advantage. At the same time, I'm mindful that we have a
13 very distinguished set of visitors here on both sides of
14 this issue, and I'm loathe to give up the opportunity to
15 hear from everybody.

16 What I would suggest that we do -- and,
17 again, this will have to be something that everybody will
18 have to agree to, otherwise we'll have to revert back to
19 our current structure -- is to allow the opponents to
20 finish and then to take a short break and then return and
21 allow either side 15 additional minutes to make comments,
22 to answer questions, whatever it happens to be, but not

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1 to allow for a direct interchange since I think that
2 might be the concern that some folks may have. If that
3 structure is acceptable, the problem that we have or the
4 burden that you all will have is structuring --
5 allocating your time amongst yourselves in a manner that
6 will be satisfactory to everybody.

7 MR. ELLIS: We can probably fight it out.

8 CHAIRMAN SHIRZAD: Okay. Well, why don't we
9 -- well, I'll have to add one footnote to this. The
10 issue was raised by Mr. Edlin, because Mr. Edlin is not
11 here, I think we'll have to leave that issue out of
12 bounds for the discussion since he's not here to speak
13 for himself to the extent there's anybody that has
14 comments in response to that. So we'll leave that off
15 the itinerary.

16 What I'd like to do is finish with the
17 opponents, we'll take a five-minute break, both sides
18 sort of organize yourselves however you want, and then
19 we'll give each group an opportunity to go back. I do
20 appreciate the comment in the back. I agree very much
21 that this is worth the time that -- any time that we can
22 provide for it.

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1 So why don't we pick back up sort of where
2 we were. Albert, are you -- Mr. Hsu, are you finished
3 with your questions? Did you have more questions for the
4 opponents?

5 MR. HSU: I do have one more question.

6 CHAIRMAN SHIRZAD: Okay.

7 MR. HSU: This, again, is for Mr. Bartlett
8 and maybe Val, and this goes back to a question I asked
9 before. Can you just, in very, very clear terms --

10 MR. BARTLETT: Probably not.

11 (Laughter.)

12 MR. HSU: Is that because you're a lawyer or
13 is it because this is very complicated?

14 (Laughter.)

15 MR. BARTLETT: I'm not a lawyer.

16 MR. HSU: If you focus on the generally
17 recognized difficulties that persist in Russia that we
18 talked about this morning, the corruption, the low level
19 of FDI, what exactly in your view makes those problems
20 dispositive of the fact, in your view, that Russia does
21 not have a market economy? Also taking into account that
22 those problems characterize many market economies to

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1 varying degrees. What is it -- something more than just
2 pointing to the problem. What is it that makes -- what
3 is it about those problems in particular that make Russia
4 not have a market economy, in your view?

5 MR. BARTLETT: Right. Well, first of all,
6 no one thing is dispositive, as the Assistant Secretary
7 said. Second is if you look at the purpose of why we're
8 here, it's in effect to ask the question, if you do a
9 dumping case, say, does the cost structure that you're
10 looking at for this company reflect the actual costs in
11 this economy of what's happening? So you're looking at
12 the input of capital. Well, you've got a lot of problems
13 with the capital market over there with respect to not
14 only FDI but minority shareholder rights, banking systems
15 and everything else. Do you have proper costs for the
16 inputs, such as the feed stock or the production of
17 nitrogen? Do you have labor rates that reflect the
18 actual costs of these people getting up in the morning
19 and going to work? And on each criterion, you seem to
20 come out empty.

21 MR. HSU: On the issue of capital, the
22 quote, "bad side" of -- or the "bad aspect" of FDI is

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1 that it's low. The, quote, "good side" of FDI being low
2 is that if there are problems with minority shareholders
3 rights, particularly with respect to FDI, it can't really
4 be causing a big distortion in the capital market.

5 MR. BARTLETT: I think, actually, I would
6 agree with you completely if we had a domestic market
7 that wasn't terribly distorted. As our submissions have
8 said, the domestic market for capital is terribly
9 distorted, and I think the reason you have the FDI
10 criterion, among others, is, well, if you have problems
11 in the transition of a capital market within the economy,
12 are you at least allowing foreign capital free of profit-
13 driven to come in and substitute for that role? And here
14 the answer is no. You have the domestic capital problem,
15 and you have the foreign capital problem. It's not
16 getting in.

17 And, again, to get back to the profit
18 maximization point, with the problem of minority
19 shareholder rights and corporate governance, the FDI that
20 is coming in oftentimes, and nothing against this, it can
21 be very legitimate, comes in in a minority shareholder
22 role to then simply get dividends out of the economy.

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1 It's not participating actively in many cases. There are
2 counter examples. In many cases, it's not actively
3 participating in the operation and the profit maximizing
4 decisionmaking in that sector.

5 MR. HSU: Okay. But is the problem with
6 domestic capital markets one of distortion or one of
7 underdevelopment? I mean the banks are not doing a good
8 job fulfilling their role as financial intermediary, but
9 the government is also not sitting there allocating
10 capital.

11 MR. BARTLETT: I would disagree actually
12 with that second statement, and I think I can point to
13 stuff in our submissions about that, and you can do it
14 with that or upon rebuttal. But to answer your question,
15 the FDI criterion I think is there on is that money
16 coming in in sufficient flows from market economies to
17 indicate that there is a profit-driven motivation and
18 decisionmaking -- more than motivation, decisionmaking,
19 that is based on actual cost in that economy? And,
20 again, you get to all the other criterion, and I think
21 that's the question is, at least from the anti-dumping
22 standpoint, are the costs you're looking at real costs or

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1 are they distorted? And as Mr. Ward said, as long as
2 they're government-distorted, it sort of doesn't matter
3 whether it's under or over or underdeveloped. You treat
4 developing country markets as markets, because at least
5 the prices there, in most cases, are reflective of supply
6 and demand, even if the institutions are underdeveloped.

7 So it's not just underdeveloped -- to answer
8 your question, I think it's more of a distortion problem
9 than an underdevelopment problem. If they were
10 underdeveloped and private, so be it. If they're
11 underdeveloped and the government still is in there
12 making those decisions, that's the problem.

13 CHAIRMAN SHIRZAD: Jeff?

14 MR. MAY: Yes. I think, just picking up on
15 that point, I think what you're sort of raising is the
16 degree of distortion that you're encountering. I take
17 it, because in market economies you do have distortions
18 introduced into the market, be it subsidies or other
19 activity. So I take it what you're getting at is the
20 degree of distortion is where we need to be putting our
21 focus and emphasis. Is that --

22 MR. BARTLETT: Yes. In a different way than

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1 you would do in a countervailing case, obviously. I
2 think, again, I do countervailing. We're always looking
3 for a benchmark. Here's the -- when you look at this
4 input, here's what it would be in a fair market situation
5 or a free market situation. Sometimes you have to go
6 across border to find it, oddly enough, and --

7 MR. MAY: Why would you do that?

8 (Laughter.)

9 MR. BARTLETT: Because you're legally
10 mandated to.

11 MR. MAY: That's another hearing.

12 MR. BARTLETT: But the problem you have in
13 a situation like Russia is not that there's one input
14 that's being distorted so you can kind of look around in
15 the economy for a decent benchmark, the problem is
16 everything else is distorted. And so you can't begin to
17 engage in the exercise of trying to find that free market
18 benchmark. It's either finding costs in a dumping case
19 or ever since the Georgetown Steel decision in a
20 countervail case, where you say it's not that the
21 government's doing things for the wrong reasons or these
22 prices are -- it's not just that the prices are

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1 distorted, because you can bring countervail cases
2 against them, they're distorted in such a way and so
3 badly that you can't go in an investigation and get to
4 the bottomline answer of what would be happening in a
5 free market economy, because so many things are
6 distorted. And I think that goes back to the mixed
7 problem. All these criteria are important.

8 MR. MAY: I just have one last quick
9 question --

10 CHAIRMAN SHIRZAD: Sure.

11 MR. MAY: -- hopefully quick, to Mr. Ward
12 about one of the points that you raised. You made a
13 number of arguments arguing against figures that the
14 Russian Federation has put forth on the percentage share
15 of the private sector, but it wasn't clear to me what
16 number you're arguing for in your presentation and
17 submissions. What do you think the right number is on
18 that point?

19 MR. WARD: I don't think we have a good
20 idea, do we?

21 MR. BARTLETT: I think the numbers --

22 MR. WARD: I'll let Mr. Bartlett answer

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1 that.

2 MR. BARTLETT: Our first point is that's
3 part of the problem is that -- first problem is that
4 there is no source that has been made available as to
5 what that number is. Our second point is if you look at
6 the EBRD study and you look at the score that they gave
7 the privatization of large corporations, they gave them
8 a three plus. And if you go in and kind of sort out what
9 a three plus means, it means that the large corporations,
10 which as the Deputy Minister said today is sort of the
11 core of their economy, and we agree, the score translates
12 into between 25 and 50 percent of the country has been
13 privatized, and yet there are still corporate governance
14 problems. That's what that three plus score means.

15 Carrying it further for your purposes under
16 that criterion, government ownership in terms of shares
17 is where you start, and then you start asking, okay, now
18 what further government control exists, even beyond the
19 ownership question? And then you rapidly can bring that
20 number down even further. Mikel Zolovich here, my
21 colleague, used to work for a Russian company, and as he
22 points out, it's traded on the New York Stock Exchange.

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1 The government owns 49 percent of the company in Russia.
2 You can buy here, it has portfolio investment, not FDI.
3 The government calls the shots of that company. The
4 government negotiates contracts for it internationally,
5 hires employees, everything else. So beyond the
6 ownership question, you've got the control question,
7 which is non-quantifiable.

8 MS. MAYER: You mentioned that 15 percent of
9 the prices are regulated. How does that compare with
10 other countries and the content of those prices? That's
11 including utilities and what not. Those are similarly
12 regulated in Western economies?

13 MR. PICKARD: We'll do a little bit
14 additional research for you and we'll address it in the
15 rebuttal comments.

16 CHAIRMAN SHIRZAD: All right. Well, why
17 don't we do this: We'll take a brief break. We'll
18 resume. We'll hear from the proponents. You'll organize
19 yourselves however you see fit, and then the opponents.
20 I'm happy to give either side 15 minutes. If there's a
21 real clamor for more than that, I'm happy to accommodate
22 that as well. And then the opponents similarly you'll

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1 have to organize yourselves in terms of how you want to
2 take the time. I don't suggest necessarily that you have
3 to fill your time. If you'd rather --

4 (Laughter.)

5 CHAIRMAN SHIRZAD: If you'd rather do it in
6 sort of a Q&A form or however you want to take your time,
7 that's fine by us. I clearly want to make sure everybody
8 feels like they've had their say. So with that, why
9 don't we pick back up at 20 till.

10 (Whereupon, the foregoing matter went off
11 the record at 12:30 p.m. and went back on
12 the record at 12:45 p.m.)

13 CHAIRMAN SHIRZAD: Why don't we begin our
14 hearing, resume our hearing. I think what we've decided
15 upon, if it continues to be acceptable to everybody, I'll
16 follow the format that I suggested before we broke, and
17 that is to give the proponents about 15 minutes time,
18 however they want to allocate it among themselves, to
19 address further issues or issues raised in the course of
20 the opponents' presentation, and then provide a similar
21 period of time for the opponents to have their say. So
22 I don't know who's planning to speak on behalf of the

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1 proponents.

2 MR. ELLIS: Once again, my name is Neil
3 Ellis. We allocated our time using pre-market
4 principles, which means that the cast of the marketplace
5 resulted in five of us, I think, will be speaking, I not
6 being one of them.

7 (Laughter.)

8 MR. ELLIS: That's how free market
9 principles work. Except to make one point.

10 CHAIRMAN SHIRZAD: You didn't barter for it,
11 did you?

12 MR. ELLIS: No, no. Cold cash. Before I
13 turn the floor over to the Deputy Minister again, I
14 wanted to make one point. As someone said, I think one
15 of the opponents said, you have objective criteria here,
16 which is of course is true, in the statutes. But this is
17 not an absolute process. In other words, there is no
18 absolute laissez-faire sort of competitive world in which
19 we're seeking to identify in Russia or any other country
20 when you do this exercise. So instead you have to, in
21 effect, do a comparison of Russia's status in 2001 or
22 currently with other countries.

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1 And the opponents' focus, when they focused
2 at all on other countries, they focused almost
3 exclusively on the United States, and we are not
4 pretending that Russia is the United States. I don't
5 even think Russia necessarily would want to necessarily
6 model itself after the United States in all respects.
7 That isn't the issue that you have to decide, and we do
8 not have to decide if energy regulation or whatever is
9 similar in Russia to the United States. The question is
10 whether or not there are free market principles primarily
11 applicable here, such that the cost and prices are usable
12 in the dumping process.

13 And it's interesting that none of the other
14 parties basically have tried to talk about what Poland or
15 Hungary or yesterday's decision on Kazakhstan how that
16 would help illuminate the Department's determination in
17 this case. And we think, as we've discussed in our
18 briefs thoroughly, it's very illuminating.

19 And with that introduction, I will turn the
20 floor or something over to Deputy Minister Sharonov.

21 MR. SHARONOV: Okay. Thank you, Mr.
22 Chairman. First of all, I would like to tell of us that

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1 we are not completely satisfied about the level of
2 development of the Russian economy. But nevertheless we
3 are continuing to work forward, and we hope that we
4 already passed through some threshold which were
5 important to make your decision. And just three remarks
6 about particular things which were discussed here from
7 one side.

8 First of all, about government regulating
9 policy, I'd like to explain or to clarify that a
10 government regulates gas and railroad tariffs because
11 they are natural monopolies indeed, but not because of
12 their share in the national economy, just because of
13 their status as a natural monopoly. And the government
14 will continue doing even this natural monopoly will be
15 restructured, and government will just squeeze the
16 responsibility for the core monopoly and refuse, taking
17 away from competitive area like generation, for example,
18 or cargo transportation in railroad sector.

19 But next very important point, there is no
20 different treatment for different plants, industries or
21 branches. No different treatment in terms of tariffs.
22 All branches have the same tariffs in gas and

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1 electricity. And there is a difference only between
2 households and industries. And if Gazprom has some
3 troubles in tariffs, it is just to household tariffs, not
4 due to industry tariffs. We have the same equal tariffs
5 level for any industry in the Russian Federation.

6 And the last topic, it's the share of
7 private sector. The privatization, it's a process, and
8 this picture is just a moment picture for some moment.
9 And I'd like to inform you that, for example, government
10 few times tried to privatize some particular companies,
11 like Gazprom, like Yukers, like Luke Oil, it's the
12 biggest oil companies in Russian Federation. And the
13 process is following. For example, Gazprom initially had
14 100 percent of state-owned shares. They had 52; now less
15 than 38. Yukers, it's the biggest oil company in the
16 Russian Federation. It started from 100 percent; not
17 government has zero in this Company. And Luke Oil, from
18 100 to 52; now seven. Seven percent is owned by
19 government, and it's problem just a time when it would be
20 more interesting in terms of money to sell out this final
21 share. But it's not absolutely not controlled over these
22 companies. Thank you.

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1 MR. ELLIS: Okay. Now, I'd like to turn it
2 over to Andrew Somers and then to Blake Marshall.

3 MR. SOMERS: Thank you. Six hundred and
4 fifty member companies operating in the Russian
5 Federation, most of whom are American, would really be
6 surprised that there is a debate about whether is a
7 market economy in Russia. Not about the fact that
8 problems have been pointed out here. As Deputy Minister
9 Sharonov said, Russia is not a perfect state in terms of
10 laissez-faire economy. But in fact tremendous
11 achievement has been already made by the Russian
12 Federation. Russia is a market economy. We have a very
13 vibrant push from the private sector on corporate
14 governance. It's not only the Securities Commission,
15 which has issued corporate guidelines, but there's
16 institutions like the Investor Protection Association,
17 the Corporate Institute on Corporate Governance. These
18 are private individual associations which are pressuring
19 Russia to adopt independent directors on major companies,
20 which are rating company, according to the corporate
21 governance, and they've had remarkable success, as
22 reflected in their own score cards over the past couple

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1 of years.

2 The tax laws, both individual and corporate,
3 have shifted allocation of resources from the government
4 to private industry and to private individuals to allow
5 them to decide how are they going to spend their money.
6 This is a market economy. And, thirdly, and the last
7 point I will make, is judicial reform has made tremendous
8 inroads related to problems that the opponents have
9 discussed here. It's not perfect but in fact judicial
10 reform is well on the way. And I would categorize
11 judicial reform as one of the major achievements of the
12 Russian government in the past year. I'm finished.

13 MR. MARSHALL: I'm Blake Marshall from the
14 U.S.-Russia Business Council, and I'd like to just spend
15 a couple of minutes and pick up on the points raised
16 previously with respect to foreign direct investment and
17 what I believe is a false distinction between quality
18 versus quantity. Somehow the misimpression might have
19 been left that only Ford and General Motors are able to
20 invest in Russia because of perceived corporate
21 governance risks, and nothing could be farther from the
22 truth.

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1 The statute actually seeks to make a
2 determination about whether foreign investors are allowed
3 to invest in assets within the Russian Federation that
4 they deem attractive. The level is not particularly
5 relevant and not particularly instructive, so we could
6 spend all afternoon debating those numbers.

7 Second point I'd like to make is that with
8 respect to corporate governance, the number of minority
9 shareholder violations that we see, that we work on on a
10 daily, weekly basis, has dramatically declined in that
11 last three years, since August of 1998, and it has done
12 so precisely because many of the -- what were the
13 companies we violated minority shareholders' rights have
14 gone about the tedious process of being audited according
15 to Western GAP or IAS standards. That is now sort of the
16 exception for most of these major enterprises -- the
17 rule, rather, for most of these major enterprises and not
18 the exception.

19 Furthermore, they have gone beyond the
20 tenets of the Russian government-sponsored corporate
21 governance code and adopted their own commercial codes of
22 conduct that they implement on a firm level basis.

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1 That's the reason they're able to attract investment, in
2 some cases in addition to foreign direct investment, the
3 portfolio investment in-flows have been absolutely
4 astonishing. The market was up 81 percent last year;
5 it's up 42 percent in the first quarter of this year
6 already.

7 That would not be the case if these were
8 serious risks to minority shareholders that still pertain
9 in the Russian economy. Nor would you see ratings
10 agencies like Standard & Poor's Moodys & Fitch upgrade
11 their ratings for the Russian market on a nearly
12 continual basis. They can't publish the upgrades fast
13 enough. That would not be the case if the amendments to
14 the joint stock company law had not been adopted last
15 year, which seek to address, and effectively do address,
16 the issues of capital dilution that have been under
17 discussion for many, many years. Minority shareholders'
18 rights have been substantially strengthened, and the
19 violations of those interests are on the way out very,
20 very quickly.

21 And I think just finally, to wrap up, it
22 goes back to Mr. Hsu's point earlier today about

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1 balancing the positive and negative factors. The
2 risk/reward calculation in the Russian market is
3 perfectly alive and healthy. These companies are able to
4 make their investment decisions based on objective
5 criteria, and where problems remain they factor that into
6 the investment equation.

7 MR. ELLIS: Now, Meredith Blakesly has one
8 or two points also.

9 PARTICIPANT: Actually, this is -- one
10 factual correction.

11 PARTICIPANT: Who are you with?

12 PARTICIPANT: Arthur Anderson. The
13 suggestion was made that the government does not maintain
14 statistics on privatized companies within Russia. That
15 simply is not true. We submitted them ourselves, we put
16 them in our brief, we even broke it down industry by
17 industry. They are available online, and they cost about
18 \$50 per person subscribed to them. They are further
19 supported by the secondary sources, which we also used.
20 There's of course the difference in definitions between
21 secondary sources and primary sources and these companies
22 in between. I don't believe that between zero and 59 is

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1 a bad measurement, a way to measure to control. But
2 they're available online, and you can get the cites in
3 our brief.

4 The second thing is, to answer the question
5 of how much other governments actually participate in
6 local economies, according to the recent budget from the
7 U.S., the U.S. spends 26 percent of government spending
8 as a percentage of GDP in the United States versus 14
9 percent in Russia. Clearly, all governments, including
10 the United States and many others, spend a large portion
11 and have a significant influence on the U.S economy as
12 well.

13 PARTICIPANT: I want to make a final point,
14 which goes to the availability of the data issue. Mr.
15 May, at the end of the session a few minutes ago, asked
16 the opponents what they thought the number was for the
17 private sector contribution in GDP in Russia. And the
18 answer was, "We don't know, and the reason we don't know
19 is there's not the data there. The best we can do is to
20 point to some statistics from the European Bank for
21 construction and development on large companies."

22 The same study to which opponents pointed

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1 has precisely the statistic that Mr. May asked for; that
2 is, a global statistic on overall private sector
3 contributions in GDP. I'll give you the cite, but it is
4 70 percent in the year 2000, which corresponds very
5 closely with the figure that was originally at issue,
6 74.4 percent, the number that was provided by the Russian
7 government last year for the year 2000. The numbers were
8 there. They're there in the primary sources; they're
9 there in the secondary sources.

10 MR. ELLIS: Okay. I think we have maybe a
11 minute and a half left, and with that time I'd like to
12 have Scott Entel from Arthur Anderson's Moscow office.

13 MR. ENTEL: Yes. Much has been said about
14 the lack of rule of law and the lack of the ability to
15 address the courts. As Andrew mentioned, I would say
16 that the function of the process is the one that's
17 successful in areas of Russia. Let me tell you a little
18 bit about our -- in Russia, it is fast. Your case from
19 filing to resolution will be solved in five months.
20 Compare that to the case against the IRS, about five
21 years. It is cheap. We typically do a case, depending
22 on how many levels it goes to, anywhere from about

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1 \$20,000 to \$100,000. Compare that with a case before the
2 IRS -- half a million dollars, perhaps a million dollars
3 in court fees. And it is successful. We win 90 percent
4 of our cases. Keep in mind these are cases where the
5 government's interests are at risk; they are losing
6 money. Ninety percent of the time we win. We have a
7 refund or typically a credit against other taxes.

8 CHAIRMAN SHIRZAD: So there's no gap between
9 winning and the actual compliance by the --

10 MR. ENTEL: Typically, it will be a credit
11 against other taxes. It's more efficient and in some
12 cases it will be an actual refund. Now, the average --
13 as I said, we're good at it. We win 90 percent of the
14 time. The average is 60 percent success rate for it. So
15 litigation in courts they work; very, very successful.

16 CHAIRMAN SHIRZAD: One question that I had,
17 which would be helpful. I don't know if the Minister
18 would like to address it or if anybody else wants to
19 address it, what explains the degree to which the Russian
20 government has maintained ownership in certain companies?
21 There seems to be some suggestion that the prevalence of
22 companies in sectors in which the government in its

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1 privatization process has maintained some degree of
2 minority ownership. Is there some policy objective that
3 is being furthered by that or what explains that
4 situation?

5 MR. SHARONOV: Just current situation and
6 the government would like to leave these companies. But
7 the government would like to do it, taking in mind market
8 projections. So it just might below price for such a
9 sector and the government is just waiting for the better
10 time. But the least enterprises to be privatized is
11 quite high, and the side of the Ministry of State
12 Property it's possible to look through this. It's very
13 huge, very huge, the list of enterprises to be privatized
14 this particular year. So a government will finalize in
15 very short time -- will finalize this process.

16 PARTICIPANT: If I may add to the Minister's
17 response. Based on our experience with companies that
18 have been our clients, Russian companies, the gradual
19 divesting of government shares has been determined by one
20 management issue, which the Minister referred to. It's
21 just a long list. But more important, perhaps, at least
22 with respect to those companies that we've dealt with,

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1 the price of their shares is going up, and the government
2 has been waiting, has been timing the transaction to
3 essentially make more money.

4 CHAIRMAN SHIRZAD: Who manages the
5 privatization? Is it through the government or is there
6 outside folks?

7 MR. SHARONOV: No. For the government there
8 is specific structure. It's separate from the Ministry
9 of Public, as it's Russian Federal Fund of Assets. It's
10 a special structure for selling, just selling. They do
11 not make decision about what kind of assets should be
12 sold, but they should just sell as expensive as possible.

13 CHAIRMAN SHIRZAD: I have a question for the
14 folks from Arthur Anderson. What is the market in Russia
15 for accounting services, consulting, all these things
16 that suggest a development of a mature degree of
17 corporate governance and the adherence to GAP and those
18 types of things that one would think are indicative of
19 kind of a mature market system? What is the story there
20 in terms of demand for those services?

21 MR. ENTEL: The companies that come to us
22 initially typically are those that are seeking capital

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1 markets or trying to run a market. Today, our portfolio
2 of clients initially started with Western companies.
3 Today, on the audit side, and I think this is typical,
4 about 80 percent of our work is Russian companies; 20
5 percent is --

6 CHAIRMAN SHIRZAD: Is there a geographic
7 concentration to the clients? Are these just in a big
8 city or is this all over?

9 MR. ENTEL: Well, obviously, Moscow and St.
10 Petersburg, the natural capital and the cultural capital,
11 have the majority of sales offices and businesses have
12 migrated there. But many of the large companies, the
13 steel mills -- Russia has 11 time zones, and the mills,
14 many steels are foreign and our auditors, they go out for
15 lunch and you don't see them again.

16 (Laughter.)

17 CHAIRMAN SHIRZAD: Sounds like our
18 verifiers.

19 MR. ENTEL: And their wages, the wages that
20 are paid are Western wages, European standard wages.
21 Some of our people are paid more than offices in the U.S.
22 office. That wasn't true in '93 when I started. We

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1 started our people at \$200 a month. On a Friday night if
2 you said, "Tanya, let's go for a beer," they couldn't
3 afford it because I always had to pay. By '94, Friday
4 night, "Scott, let's go drinking." Today, we have
5 numerous people well over \$100,000. Our starting wage is
6 \$1,400. That is market rate. Things have changed.

7 CHAIRMAN SHIRZAD: And are there academic
8 programs at the universities there catching up to the
9 level of economy development?

10 MR. ENTEL: Yes. We have -- there are
11 numerous MBA and legal programs that are based in Russia.
12 Many of our people study there, business administration.
13 After the '98 crisis, many of the firms, because of a
14 drop in business, sent their people -- Russia does one
15 thing well, and the Soviet Union did it, it educated its
16 people very well. And my firm and other firms, when
17 business went down after '98, we sent people abroad. All
18 of them were immensely successful, and following their
19 work there they all actually wanted to come back. We had
20 people in our London office, we had people in Denver,
21 U.S., numerous places.

22 CHAIRMAN SHIRZAD: Albert? Okay. All

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1 right. Well, thank you for that. What I'd like to do is
2 now give the opponents a few minutes -- 15 minutes,
3 however they'd like to share the time.

4 MR. WARD: Thank you. This is Brad Ward,
5 for the record, with Dewey Ballantine. We have a very
6 few points. We won't take all of the 15 minutes. One
7 thing I would like to highlight is that there is a
8 continued and continual use, both in the presentations
9 orally here today and the submissions in writing,
10 regarding future tense. In other words, these are plans
11 and strategies in progress and intentions. But that all
12 means that there is an implicit acknowledgement that
13 there is no market now.

14 That is not what you're here to decide is
15 whether they're on the road, whether they're doing a good
16 job and in three years they will be. That's not the
17 analysis the Department's to undertake. The analysis the
18 Department's to undertake is whether or not, at this
19 time, they are a market economy or not, based on the
20 criteria in the statute. That's the simple question.

21 The issue has been raised about other
22 countries and how they -- other countries the Department

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1 has graduated to market economy status and opponents'
2 reaction to it. I think there are several points. First
3 is this is a case about Russia. This is about what the
4 facts are in this case, not about Latvia, Poland, et
5 cetera.

6 Second, to the extent that those are in any
7 way instructive, it has to do with the considerations,
8 the issues that the Department examined. And that's what
9 you're doing here, you're looking at the same kinds of
10 factors, the same kinds of criteria, the same kinds of
11 data. That means your analysis is similar. It doesn't
12 mean that any particular decision with respect to Poland
13 necessarily means a yes or a no with respect to Russia.
14 That's not what goes on here. Each of those countries is
15 necessarily an incomplete analogy. A decision with
16 respect to Latvia or Slovakia or any other country does
17 not compel a yes or a no answer with respect to Russia.

18 The question was raised about weighing the
19 factors in the all others -- the catch-all criteria. The
20 entire situation -- the criteria themselves are intended
21 to help the Department determine whether or not they
22 would get in fact a better analysis by considering this

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1 a market economy. In other words, is your decision going
2 to benefit or hinder your anti-dumping analysis of
3 Russian cases? Is it going to add or detract from your
4 analysis? That's the point. Is there a magic formula
5 that you throw corruption and bankruptcy laws and these
6 other things in a specific order and give them any
7 specific weight? No. But it is -- again, the goal has
8 to be are you going to improve somehow your analysis --
9 your dumping analysis if you were to graduate Russia to
10 a market status? I think Brent has at least one other
11 point.

12 MR. BARTLETT: Actually, two points. One is
13 on the statistics we didn't say they don't exist. In
14 fact, we are quite adamant of the fact that the Russian
15 Federation keeps enormous amounts of statistics. What
16 was put on the record, however, would be vastly
17 insufficient if this were an anti-dumping or a
18 countervailing duty case. It doesn't speak to any of the
19 issues we've raised in terms of how many of these
20 companies were sold to other government entities or other
21 government-controlled entities? What were the shares for
22 the important companies, and what's been sold? Again,

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1 you look at the World Bank data, which the World Bank is
2 specific numbers out of the Russian Federation and you
3 have the chart articulated. These are not very
4 encouraging answers on control.

5 The last point on the statistics I think is
6 it's interesting that the statistics are based on 49
7 percent government control being counted as private,
8 because 51 percent is private. Well, that would put
9 Gazprom in the private category, from what was just said
10 over there, and I want to hear these guys say Gazprom is
11 a private entity and run as a private operation. I mean
12 that just doesn't pass the test, I'm sorry.

13 On Brad's point about, and actually going
14 back to the Assistant Secretary's point about weighting
15 the criteria, I suggest an approach here. One is that
16 you look -- when you're looking at a specific country,
17 you consider what kinds of industries and what kinds of
18 inputs of those industries are important for the kinds of
19 trade cases you'll be considering. For example, if it's
20 a country that's highly labor intensive and its export
21 sector is labor extensive, you'd probably put more weight
22 on the wage rate question and the labor rights question.

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1 If you had another country that exports something that
2 had almost no labor content, such as semiconductors, you
3 might give that very little weight. What we have in
4 Russia, if you go through and you pull up the statistics
5 on what Russia trades or potentially trading because of
6 their comparative advantage, you're going to see a lot of
7 energy-intensive sectors, so you ought to be giving a lot
8 of emphasis to the capital, the labor and the material
9 inputs to the energy sector and the price regulation
10 there.

11 And I think I had one more point on the --
12 oh, something was said about the eastern European markets
13 that have been moved over. Let me give you a concrete
14 example of why you just can't sort of formulate, look at
15 a simple number and translate it over. Again, on
16 privatization, a lot of the problem -- there are two main
17 problems we've seen since '98 on privatization in Russia.
18 It has to do with transfer of control from the federal
19 government down to the regional and local governments, on
20 the one hand, and then the actual renationalization and
21 reprivatization. In a country like Poland, that's just
22 not an issue. You don't have these issues where we're

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1 taking control of these companies that then privatize,
2 not only privatized by the Russian Federation but by the
3 federal government. So the cookie cutter approach in
4 looking at some of the simple numbers doesn't work,
5 particularly when the country is complicated.

6 MS. SLATER: I just wanted to take an
7 opportunity to agree with Mr. Ellis, which doesn't happen
8 very often, but it's always pleasurable when it does.
9 There are -- I absolutely think he's right that the
10 question is are there free market principles at work that
11 allow you to look at costs and prices when you do a
12 dumping case. And, certainly, in the nitrogen fertilizer
13 sector, the answer is, no, you cannot look at government
14 price for natural gas, which is -- the supply and pricing
15 of which is set by the government into these fertilizer
16 entities and hope to have any even close to reasonable
17 picture of what real market-determined costs and pricing
18 ought to be. And that is clearly the case here.

19
20 And I want to -- there was a sort of comment
21 made a few minutes ago that we shouldn't be comparing the
22 Russian situation with respect to control of its gas and

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1 electricity to the United States. And I have mentioned
2 U.S. regulation of gas only because the Russian steel
3 producers have made that comparison in their own brief.
4 But if you look at our submission, the original
5 submission, there are discussions of what was done in
6 other cases involving other countries that have
7 graduated. In graduating Poland, the Department noted
8 that even though prices were regulated, they had already
9 been allowed to rise dramatically. There was a plan in
10 place that should have been significantly implemented to
11 get those prices get to market economy level. Slovakia
12 was in a similar position. In cases where the issue has
13 come up, and I agree that pricing of these particular
14 resources in those countries was not as big an issue in
15 terms of anti-dumping analysis, but even in those cases,
16 there has been a much greater move toward achieving a
17 real market-based cost situation. So I would also agree
18 with him that those cases would be worth examining.

19 And, finally, I think I have to second what
20 I think was a very apt observation by the Dewey
21 Ballantine Group, and that is you do have to look at your
22 factors in terms of what it will mean for the

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1 administration of this law and whether you can hope at
2 the end of the day when you've decided to graduate a
3 country to have an analysis that's more meaningful,
4 that's more accurate in terms of measuring fairness of
5 pricing, fairness of sales to this country than you have
6 presently. And with respect to the Russian Federation,
7 products that it exports, certainly with respect to
8 nitrogen fertilizer, you would not have a better analysis
9 by going to a market economy. Thank you.

10 CHAIRMAN SHIRZAD: Okay. I think that
11 probably does it. I want to just make sure, because this
12 is a very important issue, and we're lucky to have so
13 many folks here who've spent so much time looking at this
14 issue. What I'd like to do at this point, unless there's
15 any sort of last minute thoughts that people want to
16 share, that we should try to bring this thing to a close.

17 There are a couple of points I made at the
18 beginning that I think are worth reiterating here, and
19 that is that if there's any new factual information that
20 you have presented today, we will ask you to submit it to
21 the Department by five o'clock in Friday, March 29, 2002.
22 Obviously, in writing, and what else do we need from the

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1 parties?

2 All right. Okay. Because of the sort of
3 the unique nature of this proceeding, we'll ask you to
4 submit any additional, in writing, the factual
5 information that you may have presented today in writing
6 as well as on a diskette and we'll put it on the web site
7 that I guess we have up to allow all the parties to be
8 able to have access to whatever information is submitted.
9 So the deadline for factual information is five o'clock
10 on Friday. We will also allow parties to address
11 rebuttal comments or points raised in this hearing or in
12 prior submissions by five o'clock on Monday, April 8,
13 2002. Anything else I need to share?

14 Well, with that, I want to --

15 MR. ELLIS: Mr. Chair, I have one question.
16 I know there's no formal scheduling here, but do you have
17 any idea of when the Department will reach a decision on
18 this issue?

19 CHAIRMAN SHIRZAD: Well, I'll have to talk
20 to the team, and we'll want to get sort of the
21 information that comes in and then evaluate based on that
22 how much time we'll need to --

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1 MR. ELLIS: Given the size of the rebuttals
2 you may get on the 8th, it won't be the 9th, for example.

3 (Laughter.)

4 CHAIRMAN SHIRZAD: I asked Jeff if I could
5 rule from the bench, and he said no. We'll see what we
6 get on the 8th and then we'll try to make an assessment
7 of how much time we'll need.

8 I want to close by telling all of you how
9 much I appreciate the seriousness with which you've taken
10 this process. I'm obviously honored by the presence of
11 the Deputy Minister as well as the other folks who've
12 come in long distances. I'm also gratified that
13 everybody has done so much work in focusing on the
14 particular factors that by law we're obligated to look
15 at. I think the seriousness with which the written
16 presentations have been approached and the oral
17 presentations have been made here today is a credit to
18 all of you, and on the behalf of the Department I want to
19 thank you for doing that. We obviously have an
20 obligation now on our part to carry our end of the
21 bargain to make sure that we give all of your thoughts
22 and comments as much as the full consideration that

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1 they're due. So we'll see what we get by Friday, and
2 then by the 8th, and then we'll hopefully have a sense of
3 when we'll be able to come out with a final determination
4 on this.

5 With that, unless there's any final
6 comments, I want to thank everybody and bring the hearing
7 to a close.

8 (Whereupon, at 1:20, the hearing was
9 concluded.)

10

11

12

13