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Embassy of Ukraine

3350 M Street N.W., Washington, D.C. 20007
Tel.:(202) 333-0606 Fax (202) 333-0817
e-mail: info@ukr.com

TRADE AND ECONOMIC MISSION

Phone: (202) 349-2960, Fax: (202) 342-3874
e-mail: yvoitko@aol.com

July 17, 2002

Honorable Donald Evans
Secretary of Commerce
c/o Central Records Unit, Room 1870
US Department of Commerce
Pennsylvania Ave. & 14th Street, NW
Washington D.C. 20230

A-823-812
Investigation
Total pages: 28

PUBLIC DOCUMENT

Re.: Investigation of Carbon and Certain Alloy Steel Wire Rod from Ukraine: Opportunity to Comment on the Status of Ukraine as a Non-Market Economy Country (Rebuttal Comments)

Dear Mr. Secretary:

Please find enclosed the English translation of the letter dated July 16, 2002 and addressed to you by His Excellency Oleksandr Shlapak, Minister of Economy and for European Integration Issues of Ukraine, containing the rebuttal comments of the Government of Ukraine in connection with the opportunity to comment on the status of Ukraine as a non-market economy country.

I certify that the information submitted is accurate and complete to the best of my knowledge.

Respectfully submitted,

Yaroslav V. Voitko,
Chief, Trade and
Economic Mission of Ukraine

Enclosure: as stated, on 27 p.

I, Yaroslav V. Voitko, hereby certify that a copy of the foregoing document was served on the following parties by first class mail on this 17th day of July, 2002.

Adam H. Gordon, Esq.
Collier Shannon Scott
3050 K. Street, NW
Suite 400
Washington, DC 20007-5108

John C. Kalitka, Esq.
Garvey, Schubert & Barer
1000 Potomac Street, NW
Washington, DC 20007-350

_____ Yaroslav V. Voitko

LOGO
**MINISTRY OF ECONOMY
AND FOR EUROPEAN INTEGRATION ISSUES OF UKRAINE**

#52-26-27/821

July 16, 2002

**Honorable Donald Evans
Secretary
United States Department of Commerce**

Dear Secretary Evans,

Availing myself of this opportunity I would like to assure you of my highest consideration and inform of the following.

In accordance with the official notice dated April 19, 2002 within the antidumping investigation A-823-812 on imports of Steel Wire Rod *inter alia* from Ukraine, the United States Department of Commerce has initiated a public discussion of the issue of Ukraine's market economy status.

On June 17, 2002 the official materials were published at the US Department of Commerce official website by Ad Hoc Committee of Domestic Nitrogen Producers and Bethlehem Steel Corporation, National Steel Corporation, United States Steel Corporation with regard to Ukraine's status.

In accordance with 771(18)(B) of the US Tariff Act, the Ministry of Economy and for European Issues of Ukraine has prepared comments with regard to the market status of Ukraine containing the rebuttal arguments to the claims of the above companies (please see attached).

I hope that the comments prepared by the Ukrainian Side will assist the United States Department of Commerce in making its weighed decision about the conformity of Ukraine to the market economy criteria.

Again, I would like to assure you personally, and the United States Department of Commerce of my highest consideration.

Sincerely,

**O. Shlapak,
Minister of Economy and for
European Integration Issues of Ukraine**
(signed)

Enclosure: Comments of the Government of Ukraine
In Rebuttal of the Comments of Ad Hoc Committee
of Domestic Nitrogen Producers and Bethlehem Steel
Corporation, National Steel Corporation, United States
Steel Corporation Submitted on June 17, 2002 Within
the Context of Public Comments On Ukraine's Non-Market
Economy Status (stipulated by 771(18)(b) of the US Tariff Act)

**Comments Of the Government of Ukraine
In Rebuttal of the Comments of
Ad Hoc Committee of Domestic Nitrogen Producers and
Bethlehem Steel Corporation, National Steel Corporation, United States Steel Corporation
Submitted Within the Context of Public Comments Submission
On Ukraine's Non-Market Economy Status Revocation**

Having considered the comments submitted by Ad Hoc Committee of Domestic Nitrogen Producers as well as Bethlehem Steel Corporation, National Steel Corporation, United States Steel Corporation within the framework of opportunity to provide public comments for recognition of the market economy status of Ukraine, we believe it necessary to state that these comments are biased and not objective, and some of these are also unsubstantiated.

In this connection, rebuttal comments are submitted below to be considered by the United States Department of Commerce.

The arguments below prove convincingly that Ukraine's economy has been developing under market principles and conforms to the market economy criteria set in 771(18)(b) of the US Tariff Act, and continued application of discriminatory approach to Ukrainian enterprises in determining the normal value of Ukrainian goods by use of surrogate country methods would not correspond to GATT/WTO principles.

1. Extent of National Currency Convertibility

Allegations of the Ad Hoc Committee of Domestic Nitrogen Producers

The Ukrainian hryvnia is not convertible because the Ukrainian Government exercises extensive currency controls.

Comment of the Ukrainian side

It is necessary to note that Ukrainian hryvnia is a convertible currency for current settlements which is confirmed by the studies conducted by the EBRD experts¹. **As of today, all the currency regulation norms in Ukraine correspond to Article VIII of the IMF Statute².**

Currency regulations in force in Ukraine are aimed at maintaining stability on the currency market and aimed at providing transparency of currency resources movement among economic entities.

At the same time it is noteworthy that Latvia, at the time of its recognition as market economy, had in place certain controls over portfolio and direct investments abroad³.

Allegations of the Ad Hoc Committee of Domestic Nitrogen Producers and Bethlehem Steel Corporation, National Steel Corporation, United States Steel Corporation

In Ukraine there is a requirement for obligatory conversion of 50 per cent of exporters' revenues into national currency, which does not allow to conclude that hryvnia is a convertible currency

¹ See Transition Report Update 2002 – Published May 2002, <http://www.ebrd.org/pubs/index.htm>

² See Additional Comments of the Ministry of Economy and for Foreign Economic Issues of Ukraine dated June 14, 2002 with regard to conformity of Ukraine to market economy criteria set by 771(18)(B) of the US Tariff Act.

³ See Memorandum on the Latvia Non-Market Economy Status Revocation of January 10, 2001. Criterion No.1.

Comment of the Ukrainian side

As already stated in Comments of the Ministry of Economy and for European Integration Issues of Ukraine filed in June 2002, the requirement to submit 50 per cent of currency revenues was introduced during the 1997-1998 world financial crisis, and was intended to be and remains a mechanism providing for economic security of the state in the post-crisis period. This tool is also used in other countries including those considered to be market economies. Thus, the said requirement is in place in Russia which was recognized as a market economy by the US Department of Commerce (hereinafter, the USDOC)⁴.

Allegations by Bethlehem Steel Corporation, National Steel Corporation, United States Steel Corporation

The National Bank of Ukraine is actively and excessively interfering with the foreign exchange market operations in Ukraine

Comment of the Ukrainian side

We believe it necessary to draw attention of the USDOC that the National Bank of Ukraine is an equal participant of the foreign exchange market⁵, and the share of NBU's currency interventions over the first half of 2002 amounted only to 7 per cent of general trade volumes at the foreign exchange market of Ukraine. Thus, the NBU actions do not put obstacles for the effective work of the Ukraine's foreign exchange market.

At the same time it must be noted that National Banks of Hungary and Slovakia, the countries already recognized as market economies by the USDOC, have interfered with the foreign exchange market activities in order to support the national currency rates⁶.

Therefore, Ukraine has a stable currency which is convertible in current payments, and the Government does not interfere with foreign exchange market operations. This corresponds to market economy principles.

2. The Extent to Which Wages And Salaries Are Determined By Bargaining Between Workers And Employers

Allegations by Bethlehem Steel Corporation, National Steel Corporation, United States Steel Corporation

Ukraine has a tariff-based labor remuneration system which prevents from the establishment of wages/salaries on market principles

Comment of the Ukrainian side

It must be stressed that the tariff-based labor remuneration system practices, as noted by the USDOC experts⁷, are also used in Russia.

Both tariff schedule and tariff rates (which are the elements of the tariff system of labor remuneration) are determined based on the general (sectoral) agreement, i.e. the agreement between the workers and employers⁸.

⁴ See Memorandum on Market Economy Status of Russia dated June 6, 2002.

⁵ See Additional Comments of the Ministry of Economy and for European Integration Issues of Ukraine dated June 14, 2002 regarding the need to revoke Ukraine's NME Status in accordance with 771(18)(b) of the US Tariff Act

⁶ See Memorandum on Hungary's application on NME status revocation dated February 23, 2000, criterion No.1, and Memorandum on Slovakia's application on NME status revocation dated October 13, 1999, criterion No.1.

⁷ Memorandum on Russia's application on NME status revocation dated June 6, 2002, criterion No. 2.

Ukraine has no laws which would allow to say that the Ukrainian Government administers the establishment of wages/salaries (except for budget-financed enterprises and establishment of a minimum wage/salary rate). The practice of minimum wages establishment is also used in the United States and other market economy countries. The absence of governmental regulation of wages/salaries in Ukraine was also noted in the EBRD studies⁹.

Collective bargaining is the main component of the labor remuneration system in Ukraine. As of now, there has been concluded and has remained in force the General Agreement between the Cabinet of Ministers of Ukraine, Confederation of Employers of Ukraine and All-Ukrainian Trade Unions and Trade Union Association for the years 2002-2003.

Social dialog between the partners is conducted not only at the federal level but also at sectoral and regional levels. Thus, 75 sectoral and 27 regional agreements have been concluded and are currently in force.

At the production level, considerable progress in collective bargaining is also noted. As of April 1, 2002, there were 72.4 thousand collective agreements in force in Ukraine as opposed to 55.0 thousand as of similar date in 1998. As of April 1, 2002, 77.1% of Ukraine's workforce were covered by collective agreements compared to 65.5 per cent as of April 1, 1998.

The reports of international companies successfully working in Ukraine also testify that there is a bargaining character of labor remuneration in Ukraine¹⁰.

Allegations by Bethlehem Steel Corporation, National Steel Corporation, United States Steel Corporation

In Ukraine, labor is often remunerated not by money but by goods.

Comment of the Ukrainian side

It is necessary to note that, in accordance with Article 23 of the Law of Ukraine "On Labor Remuneration" dated March 24, 1995 No.108/95-BP, "wages of workers on the territory of Ukraine shall be paid in monetary units that are legal tender in circulation on the territory of Ukraine... As an exception, the collective agreement may envisage a partial payment of wages in kind (at prices not less than production cost) in industries or professional categories where such payments, that are equivalent to labor remuneration paid by money, are usual or desirable for workers..."

Taking into account the above, labor remuneration in Ukraine is effected in money form, and the practice of payments in kind is exceptional and is effected exclusively on contractual basis if this is acceptable for the workers themselves. In any other cases the labor remuneration by goods is prohibited.

Allegations by Ad Hoc Committee of Domestic Nitrogen Producers

High levels of shadow economy development in Ukraine influences the employees' payments and prevents from establishing the labor remuneration by means of collective bargaining between employers and employees (**no specific proof has been given to this statement!**)

⁸ See Additional Comments of the Ministry of Economy and for European Integration Issues of Ukraine dated June 14, 2002 regarding the need to revoke Ukraine's NME Status in accordance with 771(18)(b) of the US Tariff Act

⁹ See Transition Report Update 2002 – Published May 2002, <http://www.ebrd.org/pubs/index.htm>

¹⁰ See, e.g., a letter from JT International Company Ukraine CJSC, Exhibit 1.

Comment of the Ukrainian side

It must be noted that shadow economy problem is not inherent to the centrally planned (non-market) economies alone, where there exists a rigid and overwhelming control over economy by the State. For market economies, irrespective of the level of country's development, a certain extent of shadow economy development is characteristic, too. Ukraine is not an exception and, therefore, the allegations regarding the influence of shadow economy and violation of market principles during the establishment of labor remuneration rates is unsubstantiated and should not be taken into account by the USDOC.

Allegations of the Ad Hoc Committee of Domestic Nitrogen Producers and Bethlehem Steel Corporation, National Steel Corporation, United States Steel Corporation

There is a high level of wages and salaries arrears in Ukraine.

Comment of the Ukrainian side

Wages and salaries arrears in Ukraine appeared as a result of the global financial crisis of 1997-1998, and was reduced by 43.9 per cent in 2001. In 2001, real wages grew by 19.3 per cent compared to 2000. In the first quarter of 2002, real present incomes of population have grown by 16.6 per cent compared to the same period of last year.

Stable growth of population incomes and reduced wages/salaries arrears have created favorable conditions for the social sector development in Ukraine.

Allegations Bethlehem Steel Corporation, National Steel Corporation, United States Steel Corporation

The requirement for "propiska" (residence permit) has been eliminated in Ukraine; however, workers still need to register their place of residence by providing relevant documents that are often difficult to obtain

Comment of the Ukrainian side

It is noteworthy that Russia, which had been recognized as a market economy by the USDOC experts, has not yet eliminated the "propiska" requirement.

In Ukraine, as in Western European countries, instead of "propiska", the system of registration of natural persons has been introduced whose main purpose is to collect information during population censuses, and taxes collection.

The absence of Soviet-style "propiska" requirement in Ukraine is another important testimony of compliance with world standards in the area of human rights and liberties, and the registration system in no way limits the right of a worker to change his/her residence and is not a restriction in workforce movement.

Allegations of the Ad Hoc Committee of Domestic Nitrogen Producers and Bethlehem Steel Corporation, National Steel Corporation, United States Steel Corporation

Articles 11 and 16 of the Law of Ukraine "On Trade Unions, Their Rights and Guarantees of Activity" dated September 15, 1999 are in contradiction with ILO 87 Convention on the freedom of associations and guaranteed right for organization.

Comment of the Ukrainian side

It is necessary to stress that the requirements for trade union status set by Article 11 of the Law of Ukraine "On Trade Unions, Their Rights and Guarantees of Activity" (with amendments and additions introduced on December 20, 2001), and the requirement on trade union legalization as

to their conformity to the status (Article 16 of the Law) are similar to those set forth in trade union legislation existing in Russia and other market economy countries.

Thus, the legislative base regulating trade unions activities in Ukraine does not violate constitutional rights of Ukrainian citizens and corresponds to legislative norms of market economy countries.

Allegations of the Ad Hoc Committee of Domestic Nitrogen Producers

The Trade Union Federation of Ukraine and the trade unions connected with it have inherited the property of the official Soviet-time trade unions and have refused to provide a portion of this property to independent trade unions. The Trade Union Federation of Ukraine has maintained close ties with the Government.

Comment of the Ukrainian side

In accordance with Article 34 of the Law of Ukraine “On Trade Unions, Their Rights and Guarantees of Activity” dated September 15, 1999 No.1045-XIV, “Trade unions, their associations may have, in their ownership, funds and other property needed for their statutory activities.

The ownership right of trade unions and their associations shall emerge based on:

Acquiring property at the expense of membership dues, other own costs, donations from citizens, enterprises, institutions and organizations, or on other basis not prohibited by law;

Transfer, to their ownership, of funds and other property by the founders, trade union members, State authorities or local self-governance bodies.

Trade unions, their associations shall also have the ownership right to property and funds acquired as a result of economic activities of enterprises and organizations created by them.

...

Denial of trade unions of their ownership right, as well as their right for possession and use of property transferred to them for economic purposes can only happen based on the decision of court on the grounds stipulated by law”.

As to disputes between trade unions that may arise in the sphere of ownership relationships, Article 49 of the Law of Ukraine “On Ownership” dated February 7, 1991 No. 697-XII, “ownership of property shall be considered lawful unless otherwise established by court of law, arbitration court, conciliatory court”.

Therefore, in Ukraine the issue of trade union property is regulated at the legislative level, and the trade unions that are not members of the Trade Union Federation of Ukraine are equal in rights with other trade unions and can bear a complaint in court with regard to their property rights.

As to relationship between the trade unions and the Government, Article 12 of the Law of Ukraine “On Trade Unions, Their Rights and Guarantees of Activity” stipulates that

“In their activity, trade unions, their associations shall be independent from the bodies of state power and local self-governance bodies, employers, other public organizations, political parties, shall not report to them and not be controlled by them.

Trade unions shall independently organize their activities, hold meetings, conferences, congresses, sittings of the bodies created by them, and other events that are not contrary to the law.

Interference of the bodies of state power, local self-governance bodies, their officials, employers, their associations with statutory activities of trade unions, their organizations and associations, shall be prohibited.

In this regard, the Trade Union Federation of Ukraine as a trade union association is independent in its activities which is confirmed by the Ukrainian legislation¹¹.

Allegations of the Ad Hoc Committee of Domestic Nitrogen Producers

According to the Law of Ukraine “On Collective Contracts and Agreements” dated July 1, 1993 No.3356-XII, preference with regard to participation in wages bargaining is given to official trade unions (i.e., those connected with the Trade Union Federation of Ukraine) that creates obstacles for independent trade unions.

Comment of the Ukrainian side

It is necessary to underline that there is no differentiation between “official” and “independent” trade unions in Ukraine. In accordance with the legislation in force, all trade unions in Ukraine are independent from state government bodies, local self-government bodies, political and public organizations.

According to article 4 of the Law of Ukraine “On Collective Contracts and Agreements”, “... the right to conduct negotiations and to conclude collective contracts, agreements on behalf of hired workers is given to trade unions, trade union associations represented by their elected bodies, or to other representative organizations of workers duly authorized by working collectives”.

Thus, the Law in no way restricts the rights of trade unions but only requires that trade unions have certain authority from the working collective.

Allegations of Bethlehem Steel Corporation, National Steel Corporation, United States Steel Corporation

In Ukraine there exist obstacles to exercise the right to go on strike.

Comment of the Ukrainian side

According to Article 44 of the Constitution of Ukraine of June 28, 1996 No.254k/96-BP:

“... those who work have the right to strike to protect their economical and social interests.

The enforcement procedure of the right to strike shall be determined by the law taking into consideration the necessity of ensuring national security, health care, protection of rights and freedoms of other people.

Nobody can be forced to participate or not to participate in strike.

The ban on strike shall be possible only on the basis of the law.”

In particular, there is a prohibition to organize and participate in strike in Ukraine only for the representatives of those institutions whose activity is connected with the interests of

¹¹ See Article 12 of the Law of Ukraine “On Trade Unions, their Rights and Guarantees of Activity” dated September 15, 1999 No.1045-XIV cited above.

national security, guaranteeing the rights and freedoms of other people (civil servants, military personnel, law-enforcement bodies employees, etc). Similar restrictions of the right to strike exist in many market-economy countries, including the U.S.A. where certain categories of workers are prohibited from going on strike.

All other employees, in accordance with the legislation in force, have the right to strike that is guaranteed by the Constitution.

Taking into account the above, we would like to draw the attention of the US Department of Commerce to the inconsistency in allegations of Bethlehem Steel Corporation, National Steel Corporation, United States Steel Corporation who, while describing the high levels of wages arrears, were citing the examples of strikes of coal miners in November 2001 and mining industry workers in February 2002. This fact alone proves the absence of any restrictions on legal right to strike in Ukraine.

In view of the above, the Ukrainian side stresses that there are no obstacles in Ukraine for establishing wages/salaries by bargaining between workers and employers.

3. Status of Joint Ventures and Foreign Investors on the Domestic Market

Allegation of Ad Hoc Committee of Domestic Nitrogen Producers and Bethlehem Steel Corporation, National Steel Corporation, United States Steel Corporation

The volume of foreign investments into Ukraine's economy is too low.

Comment of the Ukrainian side

It is true that the volume of foreign direct investment in Ukraine does not fully correspond to the economic potential of Ukraine. A reason for this could lie in mistaken perception by foreign investors of "commonness of economic conditions" of the post-soviet area and authentication of Ukraine with Russia.

The consequences of the 1997-1998 global financial crisis and especially 1998 financial turmoil in Russia (which accounted for about 60 per cent of Ukraine's energy resources imports) led to the situation when foreign investors began to more cautiously consider their investment into Ukraine's economy which can be explained by ungrounded identification of investment potentials in Ukraine and Russia.

Positive reports of foreign investors prove that investment climate in Ukraine is favorable. The experts of the Ukraine-US Business Council have stated that over the past two to three years the investors have experienced the solid improvement in business conditions and that US companies continue to invest into Ukrainian economy.¹²

It is the American companies which are the biggest foreign investors in Ukraine. They occupy the first place in terms of volumes of foreign direct investment (FDI).

As of January 1, 2002 the volume of FDI from the USA amounted to USD730.869 million, or 16.6% of all FDI in Ukraine. Compared to other investor countries, the USA takes the leading role in terms of number of joint ventures in Ukraine: as of January 1, 2002 there were 1,122 US enterprises working in Ukraine and 699 enterprises with FDI.

¹² See Letter of US - Ukraine Business Council regarding the need for revocation of non-market economy status of Ukraine submitted on June 18, 2002

Allegation of Bethlehem Steel Corporation, National Steel Corporation, United States Steel Corporation

The legislation of Ukraine on foreign investment contains a lot of references to other laws. This creates the legal uncertainty regarding all aspects of foreign investment.

Comment of the Ukrainian side

It must be noted that effectiveness and objectivity of enforcement of the law provisions are determined not by the quantity of laws and references to them but by the legally guaranteed protection of foreign investment, establishment of equal conditions for investors and transparency of investment activity. The references to other laws that regulate the process of foreign investment is thus a necessity for ensuring the favorable conditions for investing.

Allegation of Ad Hoc Committee of Domestic Nitrogen Producers

Legislation in the sphere of foreign investment is enforced ineffectively in Ukraine. The tax regime is a major disincentive to investment because of the high effective tax rate, ambiguity and inconsistency of tax legislation, burdensome compliance requirements, the high number of taxes (over 30 different types), frequent changes in tax laws, and arbitrary and opaque tax administration.

Comment of the Ukrainian side

It is noteworthy that the problems of tax legislation cannot be treated as the determining factor in market economy analysis of Ukraine by the USDOC. Tax legislation of many market economies is far from perfect and experiences constant changes. While comparing the Ukrainian tax burden with that of some other countries, it is obvious that it is smaller than in many countries of the world.

Allegation of Ad Hoc Committee of Domestic Nitrogen Producers

The two laws governing business enterprises, the “Law on Enterprises” and the “Law on Economic Associations”, do not adequately protect minority shareholders against insider dealing, asset stripping and other abuses, place unnecessary restrictions on corporate finance, and create complexity and confusion

Comment of the Ukrainian side

The essence of the referenced allegations is quite obscure and the conclusions regarding the imperfection of the referenced laws of Ukraine is groundless. In view of the vagueness of the content of these allegations they should not be considered by the U.S. Department of Commerce at the time of making decisions on market economy conditions in Ukraine.

Allegation of Bethlehem Steel Corporation, National Steel Corporation, United States Steel Corporation

Local and state authorities have the right to inspect enterprises and other legal entities . . . Sixty different authorities have the right to seize bank accounts, revoke licenses, or impose similar punitive actions.

Comment of the Ukrainian side

The activities of duly authorized bodies in no way restrict the freedom of entrepreneurship in Ukraine. According to Article 27 of the Law of Ukraine “On Enterprises in Ukraine” of March 27, 1991 #887-XII:

“Interference of state, public and cooperative bodies, political parties and movements into business and other activities of the enterprise is not allowed except for cases provided by the legislation of Ukraine”

The rights of authorized bodies to inspect enterprises, to license, to introduce sanctions and exercise control over business activity are clearly determined by the legislation of Ukraine.

The Law of Ukraine “On Licensing of Some Types of Business Activities” dated June 1, 2000 #1775-III clearly determines the types of business activities that are subject to licensing, the order of licensing, establishes the state control in the sphere of licensing, responsibility of business subjects for the violation of legislation in the sphere of licensing.

Article 59 of the Law of Ukraine “On Banks and Banking Activities” dated December 7, 2000 #2112-III determines the order of seizure of banking accounts:

“The seizure of property or funds that are on the bank’ accounts as well as of the funds and other valuables of legal entities and individuals that are on the bank’s accounts shall be effected exclusively upon decision of the investigator supported by the sanction of state prosecutor, upon decision of government law enforcement officer in cases prescribed by laws of Ukraine or upon the court’s decision.”

The release of property is conducted upon decision of the authority that decided to seize, or upon the decision of the court.

The stopping of expenditure operations of banks on their own accounts, as well as stopping of expenditure operations on the accounts of legal entities or natural persons shall be effected exclusively by state bodies authorized by the law of Ukraine, and exclusively in cases stipulated by the Ukrainian law.

It shall be forbidden to arrest the correspondent accounts of banks or to terminate operations on such accounts.

Operations on accounts may be renewed by the body that has taken decision to stop them, or by decision of the court.

Penalties on the bank’s own funds, money funds and other values of natural or legal persons contained in the bank may be imposed in accordance with execution documents stipulated by the laws of Ukraine.

By decision of the court, penalties on the funds contained on the accounts of legal or natural persons expenditure operations on which are stopped by an authorized body, shall be subject to immediate and unconditional implementation except for cases when a moratorium may be introduced as stipulated by this Law”.

The effectiveness of such bodies’ activities is confirmed by foreign investors. Thus, JT International company has noted a successful experience of cooperation with local authorities in the city of Poltava¹³.

Allegation of Ad Hoc Committee of Domestic Nitrogen Producers and Bethlehem Steel Corporation, National Steel Corporation, United States Steel Corporation

¹³ See Exhibit 1.

There exist restrictions in Ukraine on foreign investment in certain sectors of economy (in particular, insurance, publishing, radio and TV, manufacturing of weapons, production of alcoholic beverages).

Comment of the Ukrainian side

It is true that there is a number of production and services industries in Ukraine where certain limitations exist as to foreign investing. However, the practice of limiting foreign investment into certain economy sectors is a generally accepted one.

In Slovakia, at the time of its recognition as a market economy, there existed a ban on foreign direct investment in the natural gas sector and electricity production, telecommunications, manufacturing of weapons¹⁴.

In Hungary, at the time of its recognition as a market economy, there existed restrictions on foreign investment in defense industry as well as national airline company "MALEV"¹⁵.

In the Czech Republic, at the time of its recognition as a market economy, there existed restrictions on investing into petrochemical sector, telecommunication, beer brewing¹⁶.

Thus, restrictions for foreign investment existing in Ukraine are no more rigid than similar restrictions in the countries already recognized as market economies by the USDOC.

Allegations of the Ad Hoc Committee of Domestic Nitrogen Producers

There is prohibition for foreign investors to own land in Ukraine.

Comment of the Ukrainian side

There is no prohibition for foreign investors' land ownership in Ukraine. Foreign citizens and legal entities have the right to acquire land into ownership according to Articles 81 and 82 of the new Land Code of Ukraine dated October 25, 2001 No.2768-III.¹⁷

Allegations of Bethlehem Steel Corporation, National Steel Corporation, United States Steel Corporation:

The sale of land to foreigners will only become regulated by legislation, at the earliest, on January 1, 2005. It is anticipated that 15 laws and 20 by-laws are required to fully implement the new Land Code.

Comment of the Ukrainian side

The IMF, in its assessment of the reforms implemented in Ukraine, has stated: "A new land Code ... allows for private ownership of land...", thus acknowledging the legal existence of private ownership on land in Ukraine.¹⁸ The sale of state-owned and municipal land to foreign governments and foreign legal entities is provided for by Article 129 of the Land Code:

1. "Sales of state-owned land plots to foreign states and foreign legal entities shall be effected by the Cabinet of Ministers of Ukraine upon agreement with the Supreme

¹⁴ See Memorandum on Slovakia's application on NME status revocation dated October 13, 1999, criterion No.3.

¹⁵ See Memorandum on Hungary's application on NME status revocation dated February 23, 2000, criterion No.3.

¹⁶ See Memorandum on Czech Republic's application on NME status revocation dated November 29, 1999, criterion No.3.

¹⁷ See Exhibit 2

¹⁸ See IMF concludes 2002 Article IV Consultation with Ukraine, Public Information Notice (PIN) #02/52 of May 8, 2002

- Rada of Ukraine.
2. Sales of land plots in municipal ownership to foreign states and foreign legal entities shall be effected by the appropriate Council upon agreement with the Cabinet of Ministers of Ukraine.
 3. Sales of land plots in state and municipal ownership to foreign legal entities shall be allowed provided such a foreign entity has registered its permanent representative office with the right to carry out business activity on the territory of Ukraine.
 4. Foreign states interested in buying land plots in state or municipal ownership shall submit their applications to the Cabinet of Ministers of Ukraine.
 5. Foreign legal entities interested in buying land plots shall submit application to the Council of Ministers of the Autonomous Republic of Crimea, oblast, Kyiv or Sevastopol city state administration or to rural, village, city Council. The application shall be accompanied by the land lease agreement, copy of incorporation of permanent representative office of the foreign legal entity entitled to carry out the business activity on the territory of Ukraine.
 6. Consideration of applications and sale of land plots shall be done by rural, village, city Council upon agreement with the Cabinet of Ministers of Ukraine.”

It is true that full implementation of the newly adopted Land Code of Ukraine does require the adoption of corresponding legal acts. However, it must be noted that, in contrast to Kazakhstan that is a market economy country and whose legislation does not provide for the sale of land but only guarantees 49 years of land lease only, the new Land Code of Ukraine does guarantee the right to land ownership to foreign states and legal entities. Besides, it is must be noted that even before the new Land Code of Ukraine of October 25, 2001 was enacted, the Land Code of December 18, 1990 #561-XII was in effect that had granted the foreigners the right to the long term land lease (up to 50 years).

Allegation of Ad Hoc Committee of Domestic Nitrogen Producers

Participation of foreign investors in privatization in Ukraine is “very limited”.

Comment of the Ukrainian side

The right of foreign investors to participate in privatization in Ukraine is stipulated by law. According to Article 8 of the Law of Ukraine “On Privatization of State Property” of March 4, 1992 #2163-XII:

“The following may be buyers of objects of privatization may be: citizens of Ukraine, foreign citizens, persons without citizenship; legal entities registered on the territory of Ukraine..., legal entities of other countries...”

The success of participation of foreign companies in privatization in Ukraine can be proved by comments of Ukraine-US Business Council of June 18, 2002¹⁹ and statement of US company “JT International” that successfully works on the Ukrainian market.²⁰

Allegation of Bethlehem Steel Corporation, National Steel Corporation, United States Steel Corporation:

“... foreign investors ... were unable to secure redress in spite of numerous de jure protections provided by laws and treaties”

¹⁹ See Comments of US - Ukraine Business Council on revocation of non-market economy status of Ukraine submitted on June 18, 2002

²⁰ See Exhibit 1

Comment of the Ukrainian side

In accordance with Article 26 of the Law of Ukraine “On Foreign Investment Regime” dated March 19, 1996 No.93/96-BP, “Disputes between foreign investors and State on the issues of state regulation of foreign investment and enterprises activities shall be subject to consideration by the courts of law in Ukraine unless otherwise provided by international treaties of Ukraine.

All the other disputes shall be considered in the courts of law and/or courts of arbitration in Ukraine or, as agreed by parties, in conciliatory courts including those abroad”.

It must be noted that the number of enterprises with foreign capital participation in Ukraine has been growing constantly which testifies to the confidence of foreign investors in Ukraine’s legal framework. In 2001 the number of enterprises with foreign investment grew by 590 compared to 2000 and totaled 8,793 as of January 1, 2002.

Allegation of Ad Hoc Committee of Domestic Nitrogen Producers:

“Accounting standards are still not fully developed, which requires enterprises with foreign investments to maintain two accounting systems.”

Comment of the Ukrainian side

The allegation of the lack of developed accounting standards in Ukraine is groundless. The Law of Ukraine “On Business Accounting and Financial Reporting” of July 16, 1999 No.996-XIV introduced the national requirements (standards) of business accounting that do not contradict to the international accounting standards (IAS).

The following internationally adopted principles of accounting are used in Ukraine: due diligence principle, historical prime cost principle, valuation, valuation and correspondence of earnings and expenses, disclosure of information etc. To assess stocks, enterprises of Ukraine may use the following valuation methods that are identical to those of IAS:

- identified value;
- average weighed value;
- sale price;
- normative expenditures;
- FIFO;
- LIFO.

According to the Law, enterprises in Ukraine are to prepare and submit the financial reports in a way identical to IAS1: Financial Reporting, Balance, Report on Financial Results (Report on Profits and Losses), Report on Capital Flows, Report on Own Capital, Notes and Explanations to Financial Reporting.

The “Balance” provision contains the structure, valuation and appraisal of assets, own capital and liabilities according to the provisions of IAS 1. In compliance with IAS1, enterprises of Ukraine shall prepare the Report on Financial Results based on the method of function or prime cost of sold product, where the costs are reported according to their functions as a part of cost of sale, marketing and administrative activities with disclosure of additional information on the character (elements) of expenditures (materials, labor remuneration, depreciation, etc.). Reports on capital flows shall be submitted in the way compliant to IAS7 in the context of production, investment and financial activities of the enterprise.

As of today, there are 25 accounting requirements (standards) used in Ukraine that are based on international standards of financial reporting. In addition to those mentioned above, they are: “Chart of Accounts of Accounting Assets, Capital, Liabilities and Business Operations

of Enterprises, Organizations” and instructions on its application; Methodical Recommendations on Application of Registers of Business Accounting, and Simplified System of Financial Reporting for the Subjects of Small Entrepreneurship.

Allegation of Ad Hoc Committee of Domestic Nitrogen Producers

Ukraine was ranked “as one of the most corrupt countries in the world and ... among the worst Eastern European countries ...”

Comment of the Ukrainian side

This allegation is rather unsubstantiated, as Ukraine pays considerable attention to the issue of fighting corruption. All the facts connected with this social evil are widely highlighted in mass media which, to some extent, may even create such an impression of corruption levels in Ukraine.

Also it must be noted that the cases of corruption and other phenomena connected with it are not the criteria that characterize the existence or absence of market economy in any country. They are inherent even in countries with old democratic traditions. The Department of Commerce stated in its analyses of non-market status of Kazakhstan and the Russian Federation:

“Although reports indicate that the level of corruption in Russia is substantial, this does not alter the fact that prices and costs in Russia are market-based...”²¹

Besides, the USDOC has noted that corruption is a phenomenon inherent also in market economies:

While the level of corruption in Russia is high it is no higher than corruption levels in some other market economies”²²

Corruption is not a factor that determines the conditions for price and cost of product formation. The confidence of foreign investors depends on the indicators of country’s development and not on their psychological perception of investing to Ukraine or any other country. Thus, corruption is not a factor determining the absence or presence of market economy in Ukraine.

4. The Extent Of Government Ownership Or Control Of The Means Of Production

Allegations of Bethlehem Steel Corporation, National Steel Corporation, United States Steel Corporation

In Ukraine, “a large majority of the national GDP continues to be generated by government-owned or government-controlled enterprises”.

Comment of the Ukrainian side

In Ukraine, equal legal conditions are created by legislation for the activities of enterprises irrespective of their forms of property ownership and organizational form of an enterprise (See Law of Ukraine “On Enterprises in Ukraine” dated March 27, 1991 No. 887-XII²³).

²¹ See criterion 6 of Memorandum on Inquiry into the Status of the Russian Federation as a Non-Market Economy Country Under the U.S. Antidumping Law of June 6, 2002

²² Ibid.

²³ See Exhibit 3.

According to the EBRD report regarding the economies in transition, in Ukraine not less than a half of GDP was generated by private sector since 1996, and in the year 2000 the private sector part in GDP was 60%.²⁴

As to the allegation about Government control over the activities of enterprises, it is untrue because, in accordance with Article 27 of the Law of Ukraine “On Enterprises in Ukraine”²⁵, interference of state bodies of power in economic and other activities of an enterprise is prohibited except for cases stipulated by law.

Allegation of Ad Hoc Committee of Domestic Nitrogen Producers and Bethlehem Steel Corporation, National Steel Corporation, United States Steel Corporation

Over 82 percent of industry, accounting for more than 54 percent of GDP in 2000, were former state property that had been turned into shareholding companies, but in which the state still holds 25 to 50 percent of the shares.

Allegation of Bethlehem Steel Corporation, National Steel Corporation, United States Steel Corporation

The GOU has retained over 200 large enterprises that alone account for about 70% of Ukraine's industrial output.”

Comment of the Ukrainian side

These allegations do not correspond to the reality and are groundless. The following table provides figures on joint stock companies and their stock sold to private sector:

Industrial joint stock companies of Ukraine
by percentage of privatized stock (as of July 1, 2000)²⁶

Industry	Percentage of Joint Stock Companies by the Percentage of Privatized Stock			
	Up to 49.9% inclusive	From 50 to 69.9% inclusive	From 70 to 99.9% inclusive	100%
Manufacturing	24.5	10.3	53.0	12.2

- does not include small enterprises

The statistical data prove that the share of state property in 65.2% of industrial joint stock companies in Ukraine does not exceed 30%. Also, as of the year 2000, 85.3% of all industrial enterprises in Ukraine were not state-owned and they accounted for 75.5% of industrial output. In particular, 92.7% of Ukrainian ferrous metallurgy enterprises were in not state-owned sector and produced 85.5% of the industry's output. In light industry, the share of non-state enterprises came to 95.4%, and they accounted for 97.8% of industry's output. Thus, the overwhelming majority of industrial enterprises in Ukraine work in a non-state sector and are not subject to state control.

Allegation of Bethlehem Steel Corporation, National Steel Corporation, United States Steel Corporation

“While... Ukraine has privatized large numbers of small and medium-sized companies, the government has failed to do so with the great majority of large enterprises.” There is “an

²⁴ See Transition Report Update 2002 – Published May 2002, <http://www.ebrd.org/pubs/index.htm>

²⁵ See Exhibit 3.

²⁶ See Official web-site of the President of Ukraine at <http://www.kuchma.gov.ua/tables/tab07.html>

underdeveloped legislative base..., the absence of political will to overcome strong resistance from local authorities and enterprise directors; parliamentary resistance”.

Allegation of Ad Hoc Committee of Domestic Nitrogen Producers

The pace of reform and privatization is hampered, however, by the Ukrainian government’s decision not to restructure large-scale enterprises before privatizing them” that makes it difficult for foreign investors to participate in it. The process of privatization experiences political pressure. There is an uncertainty about the Ukrtelekom privatization.

Comment of the Ukrainian side

Privatization of the state property is one of the priorities of Ukrainian economy reformation. Given the importance of guaranteeing the sustainable development of Ukrainian economy, the privatization decision-making with regard to each enterprise requires reasonable approach. The transfer of property from state or municipal ownership into private one has to be effected under conditions of transparency and observance of law.

The publications of influential international experts on privatization process in Ukraine (even if these publications are of negative character) prove the transparent character of privatization in Ukraine and free access to the process.

There are some large enterprises in Ukraine whose activity is connected with securing the general needs of state character or with formation of export potential of Ukraine. Therefore, the effectiveness of privatization is determined not by the speed of process but by the high economic indicators of the privatized enterprises. As it was mentioned above, the private sector accounts for the most part of industrial output of Ukraine which is an evidence of effectiveness of the chosen policy of privatization.

As for the Ukrtelekom privatization, it must be noted that this company plays an important role on the market of communication services in Ukraine and, therefore, the successful privatization of Ukrtelekom requires time and design of effective market-based mechanism of its sale.

As for the allegations of existence of political pressure on privatization and restricted participation of foreign investors, it is appropriate to turn to the privatization participants themselves. As noted by the Ukraine-US Business Council representatives, most recently AES Corporation took part in successful privatization of regional energy companies in Ukraine.²⁷ In this regard, the International Monetary Fund (IMF) has also noted the fact of “successful sale of six electricity distribution companies earlier this year and satisfactory compliance with transparency criteria”.²⁸ The participation of foreign investor in privatization of enterprises whose activity is of nation-wide importance is a convincing proof of transparency and absence of any political interference with privatization in Ukraine.

Allegation of Ad Hoc Committee of Domestic Nitrogen Producers

The Ukrainian parliament added several strategic enterprises to the list of companies that cannot be privatized, including the Zaria plant which is one of the largest producers of turbines for ships

²⁷ See Comments of US - Ukraine Business Council on revocation of non-market economy status of Ukraine

submitted on June 18, 2002

²⁸ See IMF concludes 2002 Article IV Consultation with Ukraine, Public Information Notice (PIN) #02/52 of May 8, 2002

and gas compressor units in the Commonwealth of Independent States”. The government controls the natural gas industry by having created “Naftogaz Ukrainy”. The Ukrainian government will not consider privatizing its major gas pipelines.

Comment of the Ukrainian side

In Ukraine, as in the majority of market economies, there exist state enterprises that are not subject to privatization in view of their strategic importance for the state. As noted by the experts of the US Department of Commerce in the memorandum on Russia’s non-market economy status revocation, the Government of Russia “retains shareholdings in the energy (electricity and gas), transport, banking, telecom, insurance and defense, as well as in public service companies...”²⁹ that are the spheres where a number of market economies maintain a partial or full state ownership. Thus, the existence of state enterprises in Ukraine does not contradict to the market economy principles.

As for the natural gas industry, it should be noted that this sector has a strategic importance for the entire State, and effective development of production and social spheres in Ukraine depends on its successful functioning. Taking into account that the Ukrainian state-owned gas companies buy, sell and transport the natural gas according to the contracts with domestic or foreign private companies under the market prices and tariffs, the functioning of the natural gas industry in Ukraine is based on the market principles.

Allegation of Ad Hoc Committee of Domestic Nitrogen Producers

Sales of agricultural lands and re-sales of privately owned land plots in Ukraine is prohibited till the year 2005. Till 2010 foreigners and non-Ukrainian companies are prohibited from owning agricultural lands, and free sales of agricultural land plots is prohibited, too.

Comment of the Ukrainian side

As already noted in considering Criterion No. 3 (Status of Joint Ventures and Foreign Investors on the National Market), as opposed to Kazakhstan that had been recognized a market economy by the USDOC experts and where there are no legislative provisions regarding land sales to foreigners, the current restrictions for sales of agricultural lands to foreign nationals will be eliminated with time.

Allegation of Ad Hoc Committee of Domestic Nitrogen Producers and Bethlehem Steel Corporation, National Steel Corporation, United States Steel Corporation

Nearly all joint-stock company activities, equity investments, and share acquisitions require approval by Ukraine's Antimonopoly Committee

Comment of the Ukrainian side

In accordance with Article 3 of the Law of Ukraine “On Antimonopoly Committee of Ukraine” dated November 26, 1993 No.3659-XII, the main tasks of Antimonopoly Committee of Ukraine are:

“... Executing the state control over observance of antimonopoly legislation;
preventing, revealing and stopping the violations of anti-monopoly legislation;
control over the economic concentration;
encouraging the development of fair competition.”³⁰

²⁹ See criterion 4 of Memorandum on Inquiry into the Status of the Russian Federation as a Non-Market Economy Country Under the U.S. Antidumping Law of June 6, 2002

³⁰ See Article 3 of the Law of Ukraine “On Anti-Monopoly Committee of Ukraine of November 26, 1993 #3659-XII

The antimonopoly legislation has been introduced in all market economy countries, and activities of the Antimonopoly Committee of Ukraine correspond to the world standards of antimonopoly legislation and in no way restrict the freedom of entrepreneurship.

5. The Extent of Control Over the Allocation of Resources and the Pricing and Output Decisions of Enterprises

Allegation of Bethlehem Steel Corporation, National Steel Corporation, United States Steel Corporation

The Cabinet of Ministers of Ukraine has price-setting authority, and determines lists of products, goods and services whose costs are subject to approval by specific divisions of government. Controlled prices include the price of coal set by the Energy Ministry.

Comment of the Ukrainian side

As to the state regulation of prices and tariffs, according to Article 9 of the Law of Ukraine of “Prices and Price-Setting” dated December 3, 1990 No.507-XII:

“... The state fixed prices and regulated prices and tariffs shall be set on resources that have a decisive influence over the general level and dynamics of prices on goods and services that have a crucial social importance, as well as influence on products, goods and services whose production is concentrated on enterprises that have a monopoly status on the market”³¹

It must also be noted that the state price-setting has also been noted by the US Department of Commerce experts while taking decisions on market economy status requests of Hungary³², Latvia³³, Kazakhstan³⁴, and the Russian Federation³⁵.

The existence of the market environment is determined by the ratio of free prices and prices that are set by the state. Ukraine managed to bring the volume of free prices to 90 per cent. The 10% remaining prices set by the state are within the frames acceptable for market economies.

³¹ See Article 9 of the Law of Ukraine “On Prices and Price –Setting” of December 3, 1990 #507-XII

³² See Criterion 5 of the Memorandum on Inquiry into the Status of Hungary as a Non-Market Economy Country Under the U.S. Antidumping Law of February 23, 2000

³³ See Criterion 5 of the Memorandum on Inquiry into the Status of Latvia as a Non-Market Economy Country Under the U.S. Antidumping Law of January 10, 2001

³⁴ See Criterion 5 of the Memorandum on Inquiry into the Status of Kazakhstan as a Non-Market Economy Country Under the U.S. Antidumping Law of March 25, 2002

³⁵ See criterion 5 of Memorandum on Inquiry into the Status of the Russian Federation as a Non-Market Economy Country Under the U.S. Antidumping Law of June 6, 2002

Allegation of Bethlehem Steel Corporation, National Steel Corporation, United States Steel Corporation

In its 1997 decision, the USDOC noted that the Government of Ukraine exercised strong control over price setting and decision-making processes of state-owned enterprises and enterprises effecting the leasing of state-owned enterprises. The USDOC noted that, under Ukraine's Law "On Enterprises in Ukraine" such enterprises had to fulfill state orders at the Government demand. According to the Law of Ukraine "On Product Supplies for State Needs" there is a requirement for monopoly enterprises to fulfill government orders in Ukraine. No evidence has been submitted to the USDOC that the situation is different now.

Comment of the Ukrainian side

In accordance with Article 20 of the Law of Ukraine "On Enterprises in Ukraine" dated March 27, 1991 No.887-XII,

"1. An enterprise (except for state-owned) shall independently plan its activities and define the prospects of its development proceeding from demand from the produced goods, works, services and from necessity to secure the production and social development of the enterprise, raising incomes.

...

2. Enterprise shall perform works and supplies for government needs on contractual basis according to the order set by legislative acts of Ukraine".

Compared to 1997, as of now the conditions for performing government orders have changed considerably, in particular, in connection with the adoption of the Law of Ukraine "On Purchase of Goods, Works and Services at Government Expense" dated February 22, 2000. The preamble to the said Law states that

"This Law shall establish general legal and economic principles for procedures of purchasing goods, works and services at Government expense.

The purpose of this Law is to create a competitive environment in this area, securing transparency in procedures for purchasing goods, works and services at Government expense, and achieving their optimal and rational use".

In accordance with Article 1 of the Law of Ukraine "On Purchase of Goods, Works and Services at Government Expense", "the supplier (performer) shall be an economic subject (resident or non-resident) that has confirmed his intent to participate in the purchase procedure, and is submitting or has submitted the tender proposal".

"Open bid shall be the main procurement procedure" as defined in Article 14 of the Law of Ukraine "On Purchase of Goods, Works and Services at Government Expense".

Thus, in Ukraine the performer of State order is determined as a result of bids, and the State orders are fulfilled on a contractual basis.

In accordance with final provisions of the Law of Ukraine "On Purchase of Goods, Works and Services at Government Expense", within the three months period after entering into force of this Law, the Cabinet of Ministers of Ukraine had to

“prepare and submit for consideration by the Supreme Rada of Ukraine its proposals as to bringing laws of Ukraine into conformity with this Law;

to bring all its normative and legal acts in conformity with this Law;

ensure the review and elimination, by the executive power bodies, of adopted normative and legal acts contradicting to this Law;

provide for the adoption of normative and legal acts needed for the implementation of the provisions of this Law”.

The corresponding decisions of the Cabinet of Ministers were taken as prescribed by the Law. In this regard, in determining the procedure for Government orders fulfillment, the Law of Ukraine “On Purchase of Goods, Works and Services at Government Expense” dated February 22, 2000 No.1490-III has legal priority over the Law of Ukraine “On Product Supplies for State Needs” dated December 22, 1995 No.493/05/BP.

As the Ministry of Economy and For European Integration Issues of Ukraine has noted in its earlier comments dated June 17, 2002, the system of state orders is effectively used by the market economy countries, including the U.S.A. to encourage the development of its nuclear, aerospace and other industries. Thus, the system of state procurement in Ukraine corresponds to the principles used in market economy countries.

Allegation of Ad Hoc Committee of Domestic Nitrogen Producers

The prices for natural gas bought by Ukraine from Russia are set on the basis of the government-to-government agreements and not by market conditions. The result is the purchase of massive amounts of natural gas by the Ukrainian Government at very low rates that reflect the distortions of heavy government intervention.

Comment of the Ukrainian side

It is noteworthy that even the mechanism of setting prices in the energy sector of Russia experiences certain extent of state interference.³⁶ Ukraine, while buying the natural gas in Russia, purchases it from the market–economy country, and therefore, Russian gas prices are market prices.

The Agreement between the Government of Ukraine and the Government of Russia on natural gas transportation to Ukraine and its transit to European countries through the territory of Ukraine entered into force on February 18, 1994 and valid till December 31, 2005 **only provides for general principles of Russian natural gas exports to Ukraine. This Agreement does not specify prices and the principles of price setting.**

Also it must be stressed that the shipments of natural gas to Ukraine from Russia are carried out under the contracts concluded directly between Ukrainian and Russian companies. One of the basic sellers of the Russian gas to Ukraine is the representative of the international group of companies “ITERA” that is incorporated in the U.S.A.³⁷ Thus, Ukrainian companies buy the natural gas from companies that originate and work in the market economy environment.

³⁶ *See* criterion 4 of Memorandum on Inquiry into the Status of the Russian Federation as a Non-Market Economy Country Under the U.S. Antidumping Law of June 6, 2002

³⁷ The founders of the Russian companies of “ITERA” group are the subsidiary companies “ITERA Group NV” and ITERA Energy L.L.C. (ITERA L.L.C.) incorporated as the legal entity on July 13, 1999 in 10151 Deerwood Park Blvd, Bldg. 100, Suite 410, Jacksonville, Fl. 32256, USA

Allegation of Ad Hoc Committee of Domestic Nitrogen Producers

Ukraine's economy is a hybrid and only partially reformed economy characterized by State controls that acquires the form of general and non-transparent permissions for selected enterprises, farms and banks

Comment of the Ukrainian side

We consider this allegation groundless. The above comments of the Ukrainian side on the essence of five criteria set in 771(18)(b) of the US Tariff Act prove that all the features of competitive market environment are inherent in Ukraine's economy.

6. Other Important Factors

Allegation of Bethlehem Steel Corporation, National Steel Corporation, United States Steel Corporation

There is a high level of corruption and bribery in Ukraine.

Comment of the Ukrainian side

The rebuttal comments on this issue were provided in Criterion 3 section (Status of Joint Ventures and Foreign Investors on the National Market).

List of Exhibits

1. Letter from JTI International Company, on 1 p.
2. Extract from the Land Code of Ukraine dated October 25, 2001 No.2768-III, on 2 p.
3. Extract from the Law of Ukraine "On Enterprises in Ukraine" dated March 27, 1991 No.887-XII, on 2 p.

Article 80. Holders of Property Rights on Land

Holders of the property rights on land shall be:

- (a) Citizens and legal persons, for the lands in private property;
- (b) Territorial communities that realize this right directly or through the bodies of local government, for the land in municipal property;
- (c) State that realizes the right through the bodies of state power, for the land in state property.

Article 81. Property Rights of Citizens on Land

1. Citizens of Ukraine obtain the land plots as property on the basis of:

- a) purchase under an agreement on sale, exchange, as a gift, according to other civil law contracts;
- b) free transfer of the land in state and municipal property;
- c) privatization of land plots which they had for use;
- d) acceptance of heritage;
- e) allotment in kind (on the landscape) of the land share belonging to them.

2. Foreign citizens and stateless persons can obtain the land plots as property for non-agricultural purposes within the borders of settlement areas as on the land plots for non-agricultural purposes outside the settlement areas if they own real estate located on such land plots.

3. Foreign citizens and stateless persons may obtain the plots as property according to the part two of this article in case of:

- a) purchase under an agreement of sale, exchange, as a gift, according to other civil law contracts;
- b) buyout of the land plots where their own real estate objects are located;
- c) acceptance of heritage.

4. Land for agricultural purposes inherited by foreign citizens as well as by stateless persons must be alienated (disposed) of within one year.

Article 82. Property Rights of Legal Entities

1. Legal entities established by the citizens of Ukraine or legal entities of Ukraine can obtain in property the land plots for business activity in case of:

- a) purchase under the agreement of sale, exchange, as a gift, according to other civil law contracts;
- b) founders' contribution of land plots to the chartered fund;
- c) acceptance of heritage;
- d) other grounds provided by law.

2) Foreign legal entities obtain the land plots as property for non-agricultural purposes:

- a) within the borders of the settlement areas in case of the real estate purchase and for construction of objects related to their business activity in Ukraine;
- b) outside the settlement areas in case of the real estate purchase.

3. Land for agricultural purposes, inherited by foreign legal entities, must be alienated (disposed of) within one year.

Extract (unofficial translation)

**LAW OF UKRAINE ON ENTERPRISES IN UKRAINE
(Enacted by SC Resolution #888-12, of March 27, 1991)
(Changed and amended according to Laws of Ukraine**

#2032-12 of 4 January 1992
#2544-12 of 7 July 1992
#2554-12 of 7 July 1992
#2685-12 of 14 October 1992
#2932-12 of 26 January 1993
#3170-12 of 4 May 1993
#3180-12 of 5 May 1993
#3292-12 of 17 June 1993
#3716-12 of 16 December 1993
#318/94 of 22 December 1994
#75/95 of 28 February 1995
#82/95 of 2 March 1995
#90/95 of 14 March 1995
#262/95 of 5 July 1995
#357/96 of 10 September 1996
#419/96 of 16 October 1996
#481/96 of 12 November 1996
#483/96 of 12 November 1996
#20/97 of 23 January 1997
#725/97 of December 16, 1997
#72/98 of February 4, 1998

Resolutions of the Supreme Council of Ukraine

#1293 -12 of 4 July 1991
#158/94 of 29 July 1994)

Decrees of the Cabinet of Ministers of Ukraine

#8-92 of 15 December 1992;
#10-92 of 15 December 1992;
#23-92 of 31 December 1992;
#24-92 of 31 December 1992;
#9-93 of 21 January 1993;
#10-93 of 21 January 1993;
#14-93 of 22 January 1993;
#15-93 of 19 February 1993;
#20-93 of 17 March 1993;
#39-93 of 26 April 1993;
#41-93 of 29 April 1993;
#42-93 of 29 April 1993;
#48-93 of 10 April 1993)

(The Law extends to punishment and medical-working enterprises under the Ministry of Interior pursuant to the Resolution of the Supreme Council of Ukraine #3786-12 of 23 December 1993; see also the Resolution of the Cabinet of Ministers #352 of 4 June 1994)

(The Law extends to enterprises under the National Agrarian University pursuant to the Resolution of the Supreme Council of Ukraine #158/94 of 29 July 1994) 2

(In the title and the text of the Law words "the Ukrainian SSR", "the Council of Ministers", "arbitration", "state arbitration" are substituted respectively with the words

"Ukraine", "the Cabinet of Ministers", "the court of arbitration" according to the Law N2685-12 of 14 October 1992)

This Law is aimed at realization of the Declaration on the State Sovereignty of Ukraine. This Law sets up types and organizational forms of enterprises, regulations for their establishment, registration, reorganization and liquidation, organizational mechanism for business undertakings under the conditions of transition to market economy.

This law establishes equal legal conditions for activities of enterprises regardless their forms of ownership and organizational forms.

This Law is aimed at providing independent activities of enterprises, sets up their rights and responsibilities during economic activities, regulates relations between enterprises and other enterprises and organizations, councils of people's deputies, state managing bodies.

Extract (unofficial translation)

.....
Article 27. Guarantees for Rights and Interests of Enterprises

1. The state shall guarantee rights and legal interests of the enterprises. While fulfilling economic and other activities an enterprise has a right on own initiative to take any decisions, that do not contradict to the legislation of Ukraine.

There shall be prohibited an interference into economic or other activities of an enterprise by state, public and cooperative bodies, political parties and movements, excluding where it is provided by the legislation of Ukraine.

2. Republican and local state and public bodies and their officials, while taking decisions concerning an enterprise and also in their relations with them, shall observe the provisions of this Law. The state bodies and officials may interfere into enterprise activities only within their competence, as provided by the legislation. Where a state or other body issues an act beyond its competence or the legislation, or there appear disputes in this connection, the enterprise has a right to apply to court or arbitration court for recognizing this act as invalid.

Losses (including expected, but not received income), caused to an enterprise due to orders of state or other bodies or officials, who violated the enterprise rights, shall be subject to compensation at their expense. Disputes regarding compensation of losses shall be settled in court or arbitration court in accordance with their competence.