

УКРАЇНЬКА
АСОЦІАЦІЯ ПІДПРИЄМСТВ
ЧОРНОЇ МЕТАЛУРГІЇ
(UkrMet)



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ASSOCIATION OF FERROUS
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February 1, 2006

Case No. A-823-812
Total No. of Pages: 8
Changed Circumstances Review

PUBLIC DOCUMENT

The Honorable David Spooner
Assistant Secretary for Import Administration
U.S. Department of Commerce
ATTN: Import Administration
Central Records Unit, Room 1870
14th Street and Constitution Ave., N.W.
Washington, D.C. 20230

RE: Changed Circumstances Review re Ukraine's Status as a Market Economy

Dear Assistant Secretary Spooner:

This rebuttal paper is submitted pursuant to the Federal Register Notice of January 18, 2006 (71 Fed. Reg. 2904) by the Ukrainian Association of Ferrous Metallurgy Enterprises (UAFME) in support of the request of the Ministry of Economy and European Integration dated April 2, 2005 that Ukraine be recognized as a market economy. UAFME filed comments on January 25, 2006.

This rebuttal paper responds to allegations raised in opposition to recognition of market economy status of Ukraine.

1. Comments on behalf of R&J Trading Company International Inc.

The submission on behalf of R&J Trading Company appears to deal with events starting in 1994-1996, and the failure of the government of Ukraine since then to agree with R&J's claim. The allegation with respect to this proceeding appears to be that there are corrupt people in the government of Ukraine and that this is not consistent with a market economy. To the extent that this claim is relevant to this proceeding, this one claim is belied by the more widely-based analysis by Transparency International, as described in the UAFME submission of January 25,

2006. The Transparency International survey shows that Ukraine is perceived as less corrupt now than it was in prior years, and that it is perceived as less corrupt than many of the economies which the Department has recognized as being market economies.¹

<u>Rank</u>	<u>Country</u>
70	Egypt
78	Morocco
	Sri Lanka
107	UKRAINE
	KAZAKHSTAN
117	Philippines
126	RUSSIA
137	Indonesia
144	Pakistan

2. Comments on behalf of the American Iron and Steel Institute.

- AISI points to the “2006 Index of Economic Freedom” to state that Ukraine is “mostly unfree” and that it has high barriers to foreign direct investment. As the UAFME submission of January 25, 2006 points out, that same index shows that Ukraine is considered a far freer economy than many of the countries which Commerce considers to be market economies.²

<u>Rank</u>	<u>Country</u>	<u>Status</u>
92	Sri Lanka	comparable market economy
97	Morocco	comparable market economy
98	Philippines	comparable market economy
99	UKRAINE	
110	Pakistan	comparable market economy
113	KAZAKHSTAN	recently graduated to market economy status
122	RUSSIA	recently graduated to market economy status

¹ See UAFME January 25, 2006 submission at page 3 and supporting table.

² See UAFME January 25, 2006 submission at page 2 and supporting table (*citing to Heritage Foundation/Wall Street Journal Index of Economic Freedom 2006 (January 4, 2006)*).

128	Egypt	comparable market economy
134	Indonesia	comparable market economy

In addition, the increase in foreign investment, and the steady flow of new deals³ in the most recent months, undercuts the claim that there is a high level of barriers to foreign direct investment. Most notably, the largest steel producer in the United States purchased the largest steel producer in Ukraine in October 2005.⁴

- AISI refers to a World Bank Labor Study concluding that “most labor is still employed in the public sector in the Ukraine” and that “wages are determined in a centralized way,” and that there are major barriers to investment, citing pages 1 and 3 of that study. But page 6 of that same study makes clear that its reference to the private sector is only to the “de novo” private sector, which does not include firms which have been privatized. The study itself cites outdated 2004 data that 47% of total employment is in the private sector. Importantly, the study does not show 2005 or 2006 data (*e.g.*, figure 3), and much of it relies on 2003 data (the study is based primarily on data collected in March to June of 2003 and May to August of 2004. *See* World Bank Labor Study at 40. Indeed, its main conclusion about barriers to growth is based on a 2002 survey (*see* figure 14, on page 28). The references to wages being determined in a “rather centralized way” attributes this to the role of trade unions, rather than state control. *See* World Bank Labor Study at 3. United States firms operating in Ukraine confirm that wages are set by bargaining between employers and employee groups, rather than the state. *See* letters submitted by Motorola, AES, UTC, PBN, and ADM.⁵
- AISI claims that the increase in wage arrears from 1.1112 billion hryvnia in January 2005 to 1.1134 billion hryvnia in December 2005 is somehow relevant to the market economy status. Even if it were, correcting for inflation,⁶ this would represent a 9.2 % decrease, rather than a 0.2% increase in absolute terms.
- AISI points to a World Bank website listing Ukraine as 124th for ease of starting a business, and 141st for protecting investors. However, the materials attached to the

³ *See* UAFME January 25, 2006 submission at page 6 and supporting articles.

⁴ *See* UAFME January 25, 2006 submission at page 6 (“obvious example is the October 2005 purchase by Mittal Steel, the largest U.S. steel producer, of Kryvorizhstal (now Mittal Steel Krivi Rig). The purchase was conducted through the most transparent privatization possible, a live auction broadcast on national television.”).

⁵ *See* UAFME January 25, 2006 submission at page 5.

⁶ At a rate of 10.3%, *see* http://www.gis.org.ua/ework/free/inflation1997_2003.htm. On the site, the information regarding the inflation rate is available from 1997 to 2005 and is based on data of the State Statistics Committee.

AISI claim do not include the “economy characteristics” methodology of that study, which show that this claim is based on the regulatory framework in effect in January 2005. *See* Ease of doing business: an appendix at 91.⁷ As the study notes, “[T]he ease of doing business index is limited in scope.... Thus, while Jamaica ranks similarly (at 43) on the ease of doing business to France (at 44), this clearly does not mean that businesses are better off operating in Kingston rather than in Paris.”⁸

It should be noted that more recent data, cited in the UAFME submission of January 25, 2006, show that the Freedom House index ranks Ukraine above all the countries which Commerce has listed as market economies comparable to Ukraine, as well as Russia and Kazakhstan, and the Wall Street Journal index shows Ukraine ranked above Russia and Kazakhstan, as well as three market economy countries considered comparable to Ukraine by Commerce.

<u>Rank</u>	<u>Country</u>
2.5	UKRAINE
2.5	Indonesia
3.0	Sri Lanka
3.0	Philippines
4.5	Morocco
5.5	Egypt
5.5	RUSSIA
5.5	KAZAKHSTAN
5.5	Pakistan

- Finally, AISI claims that the Transparency International study shows that corruption is a serious concern in Ukraine. The same study shows that Ukraine is considered tied with Kazakhstan and is less corrupt than Russia, and than three other countries found by Commerce to be market economies comparable to Ukraine.

3. Comments on behalf of Wire Rod Petitioners

The Wire Rod Petitioners’ comments appear to indicate that having a parliamentary form of government, and elections which the incumbent government may lose, is an indication that Ukraine is not a market economy. There is no basis in the statute -- or U.S. policy -- for that reasoning. The Wire Rod Petitioners also claim that the recent increase in natural gas prices

⁷ *See* http://www.doingbusiness.org/Documents/C.%20Appendix_ease%20of%20doing%20business.pdf.

⁸ *Id.*

charged by Russia to Ukraine, and the stress on energy supplies caused by recent low temperatures across northern Europe⁹ are indicative of non-market economy status. It then focuses on a speech by the President suggesting that the executive branch have more power and the Parliament less, and urging the Parliament to confirm judicial appointments which have been held up. See Wire Rod Petitioners' January 25, 2006 submission at Exhibit 2. Again, none of these topics fit within the statutory factors for graduating Ukraine to market economy status.

The bargaining over gas prices between Russia and Ukraine reflects the fact that Russia has large gas supplies and also controls the pipeline from Turkmenistan to Ukraine, but that the main gas pipeline from Russia to the EU runs through Ukraine. The resulting price is the product of bargaining. Without the Ukrainian pipeline, much of the value of Russian gas goes down.

Overall, the opposition seems to dismiss the actual, statutory standard for market economy status and attempts to substitute a higher standard. The issues raised in their January 25, 2006 submissions, even those based on outdated data rather than current conditions, only point out that Ukraine has not achieved "the perfect market economy" status; however, that is not the applicable statutory standard. The statute requires Commerce to consider "the extent to which" Ukraine has made progress on the six factors that are evidence of market economy conditions. For comparison, in graduating Russia to market economy status in 2002, Commerce noted Russian state shareholdings in numerous sectors of the economy, but acknowledged "these are sectors where many market economies retain residual (sometimes complete) state ownership."¹¹ Accordingly, perfect *laissez faire* economic conditions are not required. The concerns raised by those opposing Ukraine's request do not reflect the entire economic picture and appear to be bumps in the road faced practically by any new market economy (or, in fact, by many countries comparable to Ukraine that Commerce now treats as market economies).

In conclusion, Ukraine meets all the statutory tests and deserves to be treated as a market economy. Commerce has already determined that Russia and Kazakhstan are market economies. Ukraine meets and exceeds that standard.

⁹ See Kyiv Post, *Ukraine struggles to bear deep freeze*, by Rimma Men (Jan. 26, 2006), available at: http://www.kyivpost.com/nation/nation_general/23758/

¹⁰ 19 U.S.C. § 1677(18)(B).

¹¹ "Inquiry into the Status of the Russian Federation as a Non-Market Economy Under the U.S. Antidumping Law," Memorandum for Faryar Shirzad, Assistant Secretary, Import Administration through Jeff May, Office of Policy, June 6, 2002 (the "Russia Decision Memorandum") at 14.

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Thank you for your consideration of these comments. Finally, please find attached the English translation of the Ukraine Daily article regarding competitive bargaining between organized labor and Mittal Steel included after page 5 of UAFME's January 25, 2006 submission, which was inadvertently not included with that submission.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Dmytro Bilokurov', with a long horizontal stroke extending to the right.

Dmytro Bilokurov
General Manager, Ph.D.
Ukrainian Association of Ferrous Metallurgy
Enterprises

ATTACHMENT

Translation of Ukraine Daily article referenced in footnote 7 of UAFME's January 25, 2006 Filing

Mittal Steel promised the workers of Krivorozhstal to fulfill its obligations.

Mittal Steel clarifies the situation that has occurred due to the last reports of the mass media dealing with the demands of the metallurgist and miner unions.

The press release of the company states: "After consultations with the State Property Fund, Mittal Steel held a number of meetings with the metallurgist and miner unions Committee. They discussed the question of social welfare obligations under the purchase-sale agreement."

The new report states that due to the fact that there have differences dealing with interpretation of the place and time constraints of introduction of these welfare obligations, negotiations between the unions and Mittal Steel are still in progress.

The Mittal Steel Company hope that the result of these negotiations will satisfy both parties and will guarantee long term support and success of "Krivorozhstal."

According to the news report at this time "constructive meetings have been held, and the negotiations will continue until a solution is found."

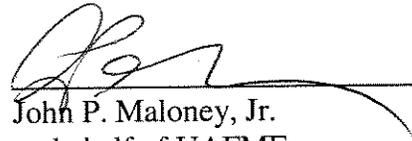
The press service states that Mittal Steel will without question implement its obligations, stated in the purchase-sale agreement and they assure that they will due everything for there fulfillment.

Mittal Steel Company will promote the success of Krivorozhstal and is certain that it will transform the mill into leading producer in Europe.

PUBLIC CERTIFICATE OF SERVICE

Carbon and Certain Alloy Steel Wire Rod from Ukraine:
Changed Circumstances Review, A-823-812

I hereby certify that a copy of this document was served on the following parties, via mail or hand-delivery service, on this 1st day of February, 2006.


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on behalf of UAFME

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February 1, 2006