

4 February 2002

Case No A-821-816

The Honorable Donald H. Evans
Secretary of Commerce
U.S. Department of Commerce
International Trade Administration
Central Records Unit, Room 1870
Constitution Avenue & 14th Street NW
Washington D.C. 20230

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

Dear Mr. Secretary:

In response to ITA's Inquiry into the Status of the Russian Federation as a Non-Market Economy Country Under the Antidumping and Countervailing Duties, I hereby submit on behalf of Films by Jove the enclosed rebuttal to some of the comments submitted on behalf of JSC Severstal, Novolipetsk Iron & Steel Corporation, and JSC Magnitogorsk Iron and Steel Works ("Russian Producers").

Substantial additional reforms are necessary before the United States government can revoke the RF's non market economy status, especially in the critical area of judicial reform. Today the RF is not even close to being a country governed by rule of law. The judiciary is anything but independent. US companies are still being victimized by RF government officials with private agendas who seek to expropriate the benefits of their work and investment.

Prematurely revoking NMS status sends the wrong message. Instead the U.S. must continue to work with the RF to insure that the dramatic shortcomings which still prevent the RF from being a market economy country are rectified in a timely manner. Only then will revocation of the RF's non market economy status be justified.

Should you require further information, or if I can answer any questions, please contact me at (818) 506-0550. Thank you.

Sincerely,

Joan Borsten
President

ITA's Inquiry into the Status of the Russian Federation as a Non-Market Economy Country Under the Antidumping and Countervailing Duty Laws

Films by Jove Rebuttal Comments

4 February 2002

III. The extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country.

The Russian Producers state: Joint Ventures and Other investments by Non Russian Firms Are Permitted in the Russian Federation ("RF").

Films by Jove rebuttal: As the Department of Commerce Handbook on Commercial Dispute Resolution in the RF points out: "One of the most important steps in the development of legal institutions supporting a market-based economy is the creation of effective dispute resolution mechanisms that can provide businesses, entering into contractual and commercial relations, with predictable enforcement of agreements. Also crucial is the existence of independent bodies that are able to interpret new laws authoritatively and apply them even-handedly, protecting the rights of organizations and individuals both in their dealings with one another, and with the bodies and agents of the state."

1) **Unfortunately** the Russian Federation's state arbitrazh court system, created in 1991, has yet to meet the standard set out above. Nothing is predictable or even-handed and the courts are not left to judiciously interpret law -- especially when the personal and financial interests of government officials are involved.

2) As detailed in an opinion prepared for the Eastern District Federal Court by distinguished Russian jurist Sergei Pashin: "In 1995-2000 the Russian courts received from federal budgets the sums that covered no more than 30-40% of their expenses. In 2001, for the first time in the post-Soviet period, half of the budget request of the court system was satisfied. Court chairmen, including the heads of the Supreme Court of the RF and the Higher Arbitrazh Court of the RF, are therefore interested in maintaining friendly relations with the authorities, especially because the judges and the staff of the aforementioned higher courts, while being on a relatively modest salary, receive far greater benefits (such as company cars, summer houses, low cost vacations at resorts, service in Kremlin hospitals and clinics for themselves and their families, clothing at special tailor's shops, passes to the exclusive cafeteria on Ilyinka street, and apartments) from the hands of the officials of the RF President's Administration.

3) "Court chairmen appointed to this post for life have enormous power over regular judges and they use that power extensively in selecting their staff or forcing judges who do not compromise with their conscience, to leave or be laid off on defamatory grounds; and in arbitrarily distributing the cases. It depends on the court chair whether the judge is promoted, whether his family moves from a dorm to a separate apartment in the near future, whether he takes his vacation in the summer or winter. In his activity, a court chairman performs the combination of administrative, legal, financing, managerial, and political functions."

4) The old Soviet practice of “telephone law” has not only resurfaced with a vengeance but taken on a new Russian twist: In the past, Communist party officials would intervene in court decisions representing the decisive opinion of the Party. Today, government officials and functionaries with a personal interest in the outcome of a case not only make phone calls to court administrators and judges, but unabashedly order representatives of the arbitrazh court to meetings in order to advise them of the so called “state interest,” which is nothing more than their own pecuniary interest.

5) In the past, pressured by the State or interested parties, the arbitrazh courts have refused to enforce arbitral awards unfavorable to the Russian side of the dispute, even when such awards were made by courts outside the RF but fully in accordance with the New York Convention to which the RF is a party.

6) Furthermore the Duma’s repeated failure to ratify the 1992 US-Russia trade bilateral leaves US investors with no effective recourse against Russian government interference in third party contracts (under the terms of the Treaty such arbitration would be held under the auspices of the World Bank’s International Centre for Settlement of Investment Disputes).

VI. Such other factors as the administering authority considers appropriate.

The Russian Producers state that Russia regularly receives GSP status from the United States.

Films By Jove rebuttal: The Russian Producers fail to mention that in August 2000 the International Intellectual Property Association (IIPA) was forced to file a petition with the US government for review of the RF’s inadequate copyright practices and asked the USTR to cancel the RF’s participation in the GSP Trade Program. The IIPA petition was accepted and the RF placed on the priority watch list.

The IIPA estimates at \$1 billion US losses due to the RF’s unwillingness to protect American intellectual property. The IIPA’s calculations do not take into account the massive piracy of US intellectual property by Russian pirates in the Russian Diaspora, the source of which is Moscow’s flourishing open air pirate markets. Russian émigrés operating in the US, Germany and Israel can and do buy at these markets illegally duplicated master tapes of all American movies which have ever been dubbed into Russian and regularly import massive quantities of illegally produced optical disks of music and software. Some of these émigré pirates have direct and personal links to RF government officials.

In summary: Based on FBJ’s current experience as an investor in the RF we believe that the RF should be denied revision of their status to market economy until such a time as the RF:

- 1) Implements rule of law;
- 2) Creates a truly independent judiciary which is not dependent on the State and which is free to apply law even-handedly;
- 3) Legislates and enforces laws which protect foreign investors from corrupt bureaucrats and government interference in third party contracts;
- 4) Demonstrates proper respect for intellectual property rights.