U.S.-Soviet Trade: Problems and Prospects

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I. The Course Of Soviet-American Trade: Economics And Politics

A. The Background To The 1972 Trade Agreement

Before the Second World War, U.S. trade with the Soviet Union involved the U.S. export of machinery and equipment, and the import of minerals and animal products. Imports were normally one-fourth or one-third of the volume of exports. U.S. exports peaked in 1930 and 1931 with exports of $114 million and $104 million.1 U.S. exports to the Soviet Union never represented more than 2% of total U.S. exports, whereas Soviet imports from the United States at times constituted some 25% of total imports.2 With political recognition in 1933 came hopes of a dramatic upsurge in trade, but the failure to settle the debts and claims questions resulted in the failure of the U.S. Export-Import Bank to provide credits to the U.S.S.R. as it was intended to do. The Johnson Debt Default Act of 19343 made it illegal for private persons or institutions in the United States to extend loans to the U.S.S.R., since it was held to be in default in its obligations to the United States.

With the advent of the Cold War soon after the Second World War and the failure of the two sides to settle the lend-lease debts, the United States imposed a policy of denying its high technology products to the U.S.S.R. via an embargo list and the Export Control Act of 1948.4 This net was extended through the Coordinating Committee, or COCOM, to NATO allies. In 1951, Congress abrogated most-favored nation treatment for the U.S.S.R. and prohibited the importation of several kinds of fur from the U.S.S.R.,5 and in 1954 it enacted laws banning the export to the U.S.S.R. of military suppliers, weapons, and related technology.6 At this time, the sale to the U.S.S.R. of agricultural commodities for local currency on long term credit was prohibited.7

All these laws continued in effect up to 1973 and the volume of trade between the two countries dropped drastically.8 In 1962, 47% of Soviet

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2. Id.
5. Gillette, supra note 1 at 159.
6. Id.
7. Id.
8. American exports fell from $358 million in 1946 to $0.1 million per year on the average
imports of machinery came from the West, but U.S. trade with the Soviets at this time amounted to a total of $30 million out of a total import-export trade of over $36 billion. It was apparent to American businessmen that Western Europe and Japan—including many foreign subsidiaries of U.S. corporations—were deriving considerable economic gains from trade with the East at a time when the United States' need to expand exports was becoming acute. By 1966-70, U.S. exports to the U.S.S.R. reached $78 million annually with imports correspondingly at $54 million.

The Nixon administration in 1971 made trade overtures which were officially sealed at the Nixon-Brezhnev Moscow summit in May, 1972, when the two sides established a Joint U.S.-U.S.S.R. Commercial Commission to negotiate a trade agreement. What followed in October, 1972 was the conclusion of a maritime agreement, a lend-lease agreement, a finance agreement involving Export-Import Bank credits, and a three-year trade agreement. In essence, the U.S.S.R. was given MFN treatment and a modest amount of Export-Import credits to finance U.S. purchases and in return, it agreed to pay off a lend-lease debt of $722 million.

On July 8, 1972, it was announced by the United States that the Soviets had agreed to purchase $750 million of U.S. grain over a three-year period with U.S. credit furnished by the Commodity Credit Corporation. Subsequently, as a separate cash transaction, the Soviets purchased $1 billion of U.S. grain. On October 18, 1972, a general trade agreement and settlement of the World War II lend-lease debt was signed. As part of this agreement, President Nixon extended Export-Import Bank credit to trade with the Soviet Union. The general agreement, in addition to extending MFN treatment (article 1), expresses the intent of both sides to encourage and facilitate trade. If the expanding trade should result in market disruption, each country may impose unilateral import restrictions (article 3). Article 4 provides for all currency payments to be in either U.S. dollars or any other freely convertible currency mutually agreed upon by the parties. Article 5 calls for the opening of commercial offices by each government in the other country, but the commercial offices and trade representatives and their staffs are not to participate directly in the negotiation, execution, or fulfillment of the trade transactions. Article 6 provides in part that

from 1961 to 1955. U.S. imports from Russia dropped from $101 million in 1946 to $17 million annually from 1951 to 1955. While in 1956 and 1966 the United States reduced the number of commodities on the embargo list, it was not until the first great American-Soviet wheat sale of 1963-64 that real prospects of trade renewal and expansion appeared. Id. at 160.

10. Gillette, supra note 1 at 160.
11. Id.
12. Id.
13. Id. at 161.
Soviet foreign trade organizations in the United States and private natural and legal persons of the United States in the U.S.S.R. shall not claim or enjoy immunities from suit or execution of judgment with respect to commercial transactions. In Article 7 both sides declare they shall encourage the adoption of arbitration to settle disputes arising out of international commercial trade transactions by agreement between the parties. The Arbitration Rules of the Economic Commission for Europe of January 20, 1966, are to be utilized. Article 9 provides for a Joint U.S.-U.S.S.R. Commercial Commission to oversee and facilitate the agreement.

The Maritime Agreement, signed on October 14, 1972, facilitates access of ships of both sides to the ports of the other and provides that each carry, whenever possible, one-third of the total trade between them and that vessels of other countries carry the remainder. Forty U.S. ports and forty Soviet ports were opened to each side.

B. Trade Momentum Gathers Speed: 1972-75

In the debate over the merit of the 1972 trade agreement advanced in 1973, prominent American business executives, such as the top executives of Wheelabrator International Inc., John Deere and Co., Pullman Inc., International Harvester, Swindell-Dressler Co., and Brown Brothers Harriman and Co., came out in favor of extending MFN to the Soviets and liberalizing export restrictions. Business spokesman, Gene E. Bradley, urged that expanded trade with the socialist bloc represented for U.S. companies an opportunity without precedent. He quoted approvingly an estimate that U.S.-U.S.S.R. trade would reach $3 billion by 1976. Frederick B. Dent, then Secretary of Commerce, called the passage of the 1974 trade bill "absolutely essential if we are to be able to proceed in an orderly and expeditious manner to expand East-West Trade." Dent mentions, in the light of the antidumping provision of the agreement, the problem of deciding whether a communist export is being sold at less than fair value. Since there is no market mechanism to determine a fair price, the best one can do is to find out how much it would cost to produce and make sure it is not sold below that cost. As to the problem of the determination of which

15. Id. at arts. 3-4. See also Annexes I and II to the Maritime Agreement.
items threaten the security interest by their export, Dent says, we have to ask ourselves how much of the apprehension which caused the original listing is still warranted.\(^{20}\)

A U.S. delegation to the joint U.S.-U.S.S.R. Commercial Commission meeting, led by George Shultz, then Secretary of the Treasury, and Dent, visited the U.S.S.R. in October, 1973 and gave its support to the creation of a joint U.S.-U.S.S.R. trade and economic council, a private corporation which acts as an international chamber of commerce providing information on markets, trade regulations, etc. The Council opened permanent offices in New York and Moscow during 1973-74. Its membership consists of leaders of U.S. and Soviet industry.\(^{21}\)

Throughout 1974, large-scale Soviet-American business contracts were concluded. In early February, it was disclosed that a subsidiary of Chase Manhattan Bank had signed an agreement with the Soviet State Bank for exchanging business information useful for the promotion of Soviet-Western trade.\(^{22}\) In early March it was disclosed that one of the largest American accounting firms, Arthur Andersen & Co. of Chicago, soon would open a Moscow office in order to implement an agreement with the Soviet Government to aid it in the field of Western management techniques.\(^{23}\)

In February, it was learned that the Soviets had asked three U.S. aerospace companies to build a seven-factory complex for commercial airliners. Although the companies apparently were eager to sell jetliners to the Soviets, there reportedly was no chance the U.S. Government would approve. Apparently some $500 million was at stake involving McConnell-Douglas, Boeing, and Lockheed.\(^{24}\)

The Russians made it known as early as 1969 that they were interested in American firms building a truck factory, with a yearly capacity of 150,000 trucks, to be located on the Kama River. They approached Ford Motors, but the U.S. Government was reluctant to allow this, partly because of the Vietnam War. Ford withdrew from the negotiations, and the Satra Corporation interested the Mack Truck Corporation. In May, 1971, about a year after the Ford withdrawal, Mack Truck signed a preliminary agreement to design and supply equipment for a $1.4 billion plant. But in September, 1971, Mack dropped out of the project because of the U.S. Government's failure to issue export licenses. In August, 1971, the Department of Commerce authorized an export license for Swindell-Dressler, a Pullman subsidiary, for the foundry for the truck plant. On December 22, 1971, a $10 million foundry contract was signed. A second contract for

\(^{20}\) Dent, supra note 18.
\(^{22}\) Chase Subsidiary Signs Soviet Pact, N.Y. Times, Feb. 4, 1974, at 45, col. 3.
\(^{23}\) Arthur Andersen Office Due in Moscow, N.Y. Times, March 19, 1974, at 47, col. 1.
electric arc furnaces with Swindell-Dressler, worth $15 million to $16 million, was signed in October, 1972.25 As of September, 1973, two more contracts brought Swindell-Dressler up to a $43 million total in contracts.26

By March, 1974, some 65 contracts had been signed by the Russians with U.S. concerns relating to the Kama River factory. Eight of these companies were doing more than $10 million worth of business each.27 These contracts for some companies represent as much as 60% or 70% of their sales volumes. Swindell-Dressler's Kama contracts represent about 14% of its parent Pullman's annual sales in the engineering and construction fields, and the bonanza represented by about $270 million of machine tools contracted for the end of 1973 was expected to continue into 1974 with the Soviets sounding out at least 45 companies for more than $150 million in additional equipment. American orders for the Kama River project have been made by a special Soviet purchasing office in New York. According to Chase World Information Corporation, a subsidiary of Chase Manhattan, Kama River orders assumed significance for the entire U.S. machine-tool industry, which had been in a severe slump since 1971.28

In late March, 1974, the Soviets announced the signing of a preliminary accord with PPG Industries of Pittsburgh to build one of the world's largest complexes for the production of plastic resin.29 On April 19, 1974, the U.S.S.R. and an American consortium signed an $8 million design contract for a $110 million international trade center in Moscow to promote Western business.30 Occidental Petroleum Corporation was to serve as general contractor for the project. Its chairman, Dr. Armand Hammer, said the designs would be done by American companies with the intention of using American equipment. The U.S. Export-Import Bank approved a $36 million credit and Chase Manhattan offered a matching $36 million for purchase of American equipment. The Soviets were to spend another $8 million for U.S. imports. The center will include a 600-room hotel, space for 400 office suites, 625 apartments for foreign businessmen, an exhibition pavilion, a 2,000-seat hall, plus restaurants, shops, and theaters.31

26. Id. at 261.
27. Besides Swindell-Dressler, these were C-E Cast Equipment, $345 million; Holocraft and Co., $19.9 million; Ingersoll-Rand, $19.2 million; National Engineering, $15.4 million; La Salle Machine Tool, $12.4 million; Clevland Crane, $10.4 million; and Gleason Works, $10.1 million. Carborundum at $9.9 million and Landis Tool at $8.7 million hovered near this group. Shabad, Soviet Truck Project Spurs U.S. Business, N.Y. Times, March 5, 1974, at 47, cols. 2-5. See Agreement Relating to Establishment of the Temporary Purchasing Commission, 25 U.S.T. 6, T.I.A.S. No. 7772 (1972).
28. N.Y. Times, supra note 27.
29. PPG and Soviet Set Pact for Big Plastics Complex, N.Y. Times, March 20, 1974, at 55, cols. 1-2. PPG was known until 1968 as Pittsburgh Glass Co.
31. Id.
In May, 1974 it was announced that the International Paper Company had agreed to exchange paper-making technology for Soviet timber. No dollar value was given on it. The Soviets earlier in the year had enlisted Baxter Laboratories, an Illinois company, to supply technical knowledge for the design and engineering of a $20 million plant to make food-grade enzymes and related products. And in late June, 1974, the U.S.-based General Instrument Corporation announced the signing of a multi-million-dollar contract that would enable the U.S.S.R. to begin mass production of hand-held calculators. It was reportedly the first contract between the U.S.S.R. and an American electronic component maker, and had been approved by the U.S. Government. It amounts to a turnkey program to put the Russians into the consumer calculator business.

On June 28, Occidental Petroleum signed four contracts with the Soviet Union concerning a twenty-year, $20 billion chemical barter. This constituted the largest commercial transaction ever made between the United States and the U.S.S.R. It would, once in effect, generate a $1 billion two-way trade annually. A week before, the Soviets had signed a $200 million contract with Chemical Construction Corporation of the United States to build four large ammonia plants, which constituted the largest single contract awarded to date for American technology. Occidental signed two of its contracts for the design and construction of special port facilities on the Black and Baltic Seas to handle storage and trans-shipment of the chemicals. These were valued at $100 million. The ammonia from the plant is to be shipped to the United States and used to pay back close to $300 million in credits, half private and half from the Export-Import Bank which financed the plant and port facilities. All these contracts are based on a preliminary general agreement with Occidental of April, 1973 for the exchange of huge amounts of superphosphoric acid from an Occidental plant in the United States for huge amounts of Soviet ammonia, urea, and potash. On the same day of the Occidental deal, the First National City Bank of New York became the third U.S. bank to open a Moscow office; it joined Chase Manhattan, which opened its office in 1973, and the Bank of America, which opened just a few days before First National City.

Yet another contract of major proportions was obtained by General Electric in August, 1974, when it received a Soviet order for 65 gas turbine

35. Id.
38. N.Y. Times, supra note 36.
compressors valued at $250 million. These were to be used in the Soviet natural gas pipeline system. On November 23, two U.S. petroleum companies concluded a $400 million agreement with Japan and the U.S.S.R. for exploration of Siberian natural gas. Under it, the Japanese Export-Import Bank is to supply $100 million in credits on condition that the U.S. Export-Import Bank matches it. The U.S.S.R. is to spend $400 million on exploration. A week later, it was revealed that the Soviets had placed one of the largest orders ever received for underground mining equipment with the Ingersoll-Rand Company. It was valued at $15.8 million. In February, 1975, the president of Gulf Oil was told that his company was being considered by Moscow as a potential partner in the exploration and development of oil deposits off the Soviet Far Eastern island of Sakhalin. President Lee did sign an agreement on cooperation in petroleum related areas.

In the wake of the U.S. Export-Import Bank's low ceiling of $300 million in credits over four years for the U.S.S.R., the U.S. private banking sector is competing with West European banks to fill the credit void. The Bank of America offered to form a banking syndicate to lend the Russians $500 million to finance imports from the United States. The offer was made at a February 20, 1975 meeting in Washington of the U.S.-U.S.S.R. Trade and Economic Council. The Bank of America said the credits would help counter the U.S. recession and improve the U.S. balance of payments. But the Soviets turned in April to a bank consortium headed by Lazard Frères & Co. of France, which includes Morgan Guaranty Trust, Banque Nationale de Paris, and several other West European and North American banks. The loan of $250 million with an interest rate of 1 1/8% above the prevailing London international bank rate is supposed to be the largest private loan ever taken out by the U.S.S.R. It will be for five and a half years. In turning away, at least temporarily, from a U.S. consortium, the Soviets are underlining their determination not to be without alternatives to U.S. credits, public or private, and in doing this to reinforce their warning to the United States, issued during the trade bill deliberations of 1974, that Congress was threatening by its political conditions tremendous opportunities for American business in the Soviet market.

For the first six months of 1975, exports to the U.S.S.R. increased and were 65% higher than for the same period in 1974—about $521.21 million.

44. The limitation was imposed in 12 U.S.C.A. §635(3) (Supp. 1976).
as compared to $315.63 million. In light of the Soviet purchases of 10.3 million tons of U.S. grain in July and an additional 1.2 million tons of corn in late October, the likelihood is that figures will show the total worth of U.S. exports for 1975 was more than triple or even quadruple the $611.89 million 1974 total. This is based on the fact that the July sale of two million metric tons of wheat by Cook Industries of Memphis and Cargill, Inc., of Minneapolis was estimated to be worth some $470 million alone on the basis of their current price. There are at least nine million tons more to be evaluated, plus miscellaneous anticipated second-half 1975 chemical, machinery, transportation equipment, and manufactured goods exports to be taken into account. All in all, thanks to an estimated Soviet grain harvest shortfall of some 45 million tons below the targeted mark of 21.5 million tons for 1975, it appears that U.S. exports to the U.S.S.R. in 1975 will exceed the record year 1973 peak of $1200 million, which was also largely due to a similar Soviet crop failure. This highlights the crucial role since 1963 of Soviet grain purchases in stimulating sizeable U.S. trade balances with the U.S.S.R., since Soviet imports totaled only $349.52 million in 1974, and were running only some $133.83 million in the first six months of 1975.

In fact, Soviet imports have always run well below U.S. exports, making the Soviet-U.S. trade one of the most reliable sources of U.S. trade surpluses. In 1972, Soviet-U.S. trade transcended the high point of the 1960's, which came in 1964 when U.S. exports reached $146 million, primarily because of a $110 million sale of wheat. In 1972, U.S. exports to the Soviet Union more than tripled to $542 million and in 1973 they more than doubled again, hitting about $1.2 billion. The balance has generally been in favor of the United States and in 1973 the U.S. surplus reached more than $970 million.

About three years after former President Nixon's first Moscow trip to inaugurate a political and economic detente in May, 1972, Soviet-American trade had undergone only a modest increase. In 1974, only 1% of each other's exports were involved. U.S. sales to the U.S.S.R. dropped from $1.2 billion in 1973 to $600 million in 1974 as a result of reduced Soviet grain purchases. The net worth of U.S. agricultural exports to the

47. Trade Analysis Division, U.S. Dep't of Commerce, U.S. Trade Status with Socialist Countries 1, 11 (Aug. 13, 1975) [hereinafter cited as U.S. Trade Status].
50. Moscow Is Buying Wheat From Two U.S. Concerns, N.Y. Times, July 17, 1975, at 1, cols. 6-7.
52. U.S. Trade Status, supra note 47 at 11.
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U.S.S.R. had declined from $921 million in 1973 to $300 million in 1974. Despite this disappointing fall in exports in 1974, the United States maintained its typical trade surplus, exporting to the Soviet Union in that year $609 million in goods and importing only some $350 million. Listed below are U.S. exports to, and imports from, the U.S.S.R. for 1971-73 in millions of dollars.  

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<th>1971</th>
<th>1972</th>
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<tr>
<td>Exports</td>
<td>162</td>
<td>542</td>
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<tr>
<td>Imports</td>
<td>57</td>
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C. The 1975 Grain Purchases

Once again, the grain purchases by the Soviets in 1975 have created a new record volume of U.S.-Soviet trade and rekindled tremendous optimism about the future of Soviet-American trade. That the grain purchases of 1975 will have more than a one- or two-year lifting effect on this trade is guaranteed by the unprecedented five-year purchase agreement the two countries announced on October 20, 1975. It is to take effect on October 1, 1976, and under it the Soviets would buy six to eight million tons of American grain a year. From the American side, the agreement accomplishes the purpose of minimizing the impact on U.S. consumer prices of erratic Soviet purchases on the world grain market, since massive 1972 Soviet purchases were thought to have created a wave of inflationary food prices in the United States. President Ford noted in his statement welcoming the agreement that the minimum purchase of six million tons would represent $1 billion a year in export earnings. There is a safety clause to the effect that in case the total U.S. grain crop should fall below 225 million tons—something that has not occurred in the last fifteen years—the commitment to the eight million tons obligation is voided for that year. If the Russians should want more than eight million tons in any year, they are obligated to consult with the U.S. representatives before closing further deals. This clause is meant to protect the U.S. consuming public. According to Secretary of Agriculture, Earl Butz, the agreement has the virtue of stabilizing the American economy and allowing farmers to plan for full production and to make investments more confidently in machinery and labor.

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56. Id. at 60, col. 3.
57. Id.
58. Id.
59. Id.
Proponents of the grain agreement hold that predictable demand for U.S. grain would encourage more farm production and result in stable food prices. But one flaw is that the Soviets might resell the grain if it were to their advantage rather than store it for home use. Also, the absence of a firm lid on sales means the Soviets could buy beyond the upper limit of eight million tons. Another objection is that the agreement does not really unconditionally bind the Soviets to buy even the minimum, because in a good crop year in Russia or world-wide they can offer a price to U.S. firms that is too low and hence unacceptable. In effect, this is an illusory contract since one of the essentials, a specified minimum purchase price, is absent.

While the grain agreement negotiations were unfolding, there was much speculation that they would hinge upon the conclusion of a separate pact for the purchase of Soviet oil by the United States at a price below the prevailing world price set by OPEC. Thus the apparent U.S. strategy in the negotiation was to trade grain for oil and, in doing so, strike a blow at OPEC. Reportedly, the United States sought a 15% discount so that it could at least show the U.S. public that American negotiators would not be as "soft" as they were in 1973. But the Soviets refused, because they feared they might appear to be an adversary undercutting OPEC and the Arab cause. It has been pointed out that the 15% reduction would have been only symbolic and of no real economic value to the United States since the Soviet Union's maximum contribution might be 2% of total supply in the near term. In fact, only a minute portion of U.S. imports—some 20,000 barrels a day in the first eight months on 1975—came from the Soviet Union.

While the details have not been made public to date, it seems that the Russians did give the United States an option to acquire 200,000 barrels a day of oil at a price that would "assure the interests" of both governments. This is linked to a second stage agreement yet to be negotiated by which the United States would make advanced secondary oil recovery technology available to the Soviets, which would increase their present production by

63. The Soviet Union's capacity to produce and export oil today is only 150,000 to 300,000 barrels a day. It now produces 9.6 million barrels a day. U.S. oil imports in the first eight months of 1975 averaged 5.8 million barrels with consumption averaging 15.6 million barrels a day. Id. at 11, col. 1.
64. Imports from the Soviet Union averaged 17,000 barrels a day in 1974, 30,000 in 1973, and 8,000 in 1972. Id.
700,000 barrels a day, with the United States getting an option on the increased production.65

Although the oil deal has contributed only marginally to the solution of the U.S. oil shortage, the grain deal has been hailed as a successful tool in stabilizing world commodity markets and promoting U.S. agricultural exports to the Soviet Union.66 In addition, Secretary of Agriculture Butz sees the orderly fashion of the sales as needed to counter the emotional reaction against selling anything to the Russians.67 It is also hailed by optimistic proponents of Soviet-American trade as some evidence of the willingness of the Soviets to commit themselves to economic dependence on the capitalist supplies and thus of the substantial long-term potential interweaving of the Soviet and Western economies.68 This is meant to counter the notion, propounded by those wary of the motives of the U.S.S.R. in seeking Western technology and equipment, that all the Soviets want is to catch up with the West by massive technology transfers in order to achieve eventually an autarkic position.

D. Soviet-American Trade In Perspective

In the light of the inevitable euphoria over Soviet-American trade in the wake of the dramatic 1975 upturn, we should examine the role of Soviet-American trade in the larger context of world trade, East-West Trade in general, and the respective foreign trade postures of both participants. In addition, it is extremely important to characterize Soviet-American trade quantitatively in terms of the structure. Both the United States and the Soviet Union are large territorially, are well endowed with national resources, and have large and comparable populations. Such characteristics do not usually make for a large volume of foreign trade relative to total gross national product. Roughly speaking, the average value of U.S. exports and imports has traditionally been only some 8% of gross domestic product. It seems that the larger and more resourceful the country, the less it imports. There seems to be no correlation between the degree of economic development and the proportion of foreign trade to GNP. Figures for 1969 indicate that the United States was the largest in import-export turnover with $37.022 million, followed by West Germany ($27.101 million), the United Kingdom ($18.736 million), France ($16.221 million), and Japan ($15.509 million).69 While U.S. exports of merchandise have consistently run 4% to 5% of GNP over the last two decades until 1974, in

65. Presently the U.S.S.R. exports 2.5 million barrels of its total daily production of 9.5 million barrels. About 1 trillion barrels go to Eastern Europe and about 750,000 to Western Europe. N.Y. Times, supra note 51.
67. Id.
68. Id.
1968-69 England's ratio was 11%, Japan's 10%, West Germany's 19%, Denmark's 22%, and Belgium's 39%. The Soviet Union's annual foreign trade turnover constitutes some 5% to 6% of its GNP, and in 1971, a typical year, the U.S.S.R. ranked ninth in world exports. The U.S. share of world trade in 1959 was 16%; this fell to 13.5% in 1969. The Soviet share of total world trade in 1958 was 4.3%; in 1969 it had dropped to 3.9% with only 1.4% representing trade with non-socialist countries. This data should be compared with 1970 data on U.S. and Soviet GNPs as shares of the world GNP. The U.S. GNP is still by far the largest in the world; at $977 billion in 1970, it constituted 30% of world GNP. The U.S.S.R. GNP in 1970 constituted 16.5% of the world GNP. This made it the second largest GNP in the world, a position it still holds by a large margin.

During the 1960's, U.S. exports and imports annually grew faster than the U.S. economy. Exports in 1970 were about $43 billion and imports about $40 million. But 1971 produced the first trade deficits since 1893. The U.S. Council on International Economic Policy quotes an estimation that between 600,000 and 750,000 jobs were lost between 1964 and 1971 as the U.S. trade balance shifted from a $6.8 billion surplus to a deficit estimated at $2 billion. Agricultural exports are a significant portion of total value of U.S. production, and their ability to generate significant trade surpluses with the Soviet Union in 1963-64, in 1973-74, and again in 1975-76 portends a continuing key role in U.S. Soviet trade—a role enhanced by the 1975 agricultural agreement.

As of 1967, East-West trade constituted only 2.8% of world trade, but it has grown spectacularly in recent years. In 1960, 70% of the international trade of all developed countries took place among those countries; only 4% was with communist countries. In 1965, the figures were respectively 74% and 4%. But in absolute dollar totals, East-West trade has grown significantly. In 1960 it totaled $5.9 billion; by 1970 it had reached $16.1 billion. In 1973 it stood at $30.8 billion. There was another spectacular increase of 33.9% between 1973 and 1974 to $43.5 billion. The total U.S. exports to the East, mostly agricultural goods, were approximately $2.5 billion in 1973. For the 1972-74 period, agricultural commodities accounted for nearly 74% of U.S. total exports to the socialist countries. Yet even the heavy Soviet wheat and corn purchases in 1975, as of the summer of 1975, represented,

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70. H. Heck, INTERNATIONAL TRADE 3 (1972).
74. Id. at 11.
75. Id. at 14.
respectively, only 12% of total 1974 U.S. wheat exports and 18% of total corn exports. These proportions should be roughly the same for 1975 exports.78

The United States is well behind its West European and Japanese competitors in developing exports of manufactured goods to the Eastern bloc. In 1973, 72.7% of total exports of the industrialized West to the socialist countries were manufactured goods. Of this, $12.4 billion total of manufactured Western exports to the East, $10.4 billion went to the U.S.S.R. and Eastern Europe. The 1973 share of U.S. manufactured exports in all Western manufactured exports to the U.S.S.R. and Eastern Europe was only 3.6%. West Germany supplied 40.9%, France 10%, and Italy 8.7%. This U.S. share remained almost identical in 1974, although the value increased absolutely by some 56% from $374 million to $578 million.79 Secretary of Commerce, Rogers Morton, believed this share to be well below U.S. competitive potential in light of the fact that in 1973 the United States supplied more than 16% of the industrialized West's exports of manufactured goods.80

The total volume of U.S.-U.S.S.R. annual trade during the 1950's averaged less than $50 million a year. During the period 1960-68 it stayed below $110 million a year except in 1964, when, because of massive grain exports, it hit $184 million. The next year it fell to $100 million. In 1968 it was $99 million. It jumped to $177 million in 1969, then to $642 million in 1972.81 In 1973, because of massive soybean and grain deals, it hit $1,405 million82 only to fall back to $961.41 million in 1974.83 Even at its high point in 1973, U.S. exports to the U.S.S.R. constituted only 2% of U.S. total exports for that year. Twelve times as much was exported to Canada, twice as much to Mexico, and $400 million more to Belgium.84 In fact, total trade with socialist nations during 1967-69 constituted only 0.6% of total U.S. turnover.85

E. The 1972 Trade Agreement And The Ford Administration

Soviet-American trade is essentially similar in structure to Soviet trade with other industrialized Western countries, but one difference is the sporadic massive importation of U.S. agricultural produce. Aside from this, the pattern of Soviet exports to developed countries consists of industrial

79. Id. at 6.
80. Id.
81. C. STOWELL, SOVIET INDUSTRIAL PRIORITIES 224 (1975).
82. Id.
83. U.S. TRADE STATUS, supra note 47 at 11.
84. GOLDMAN, supra note 25 at 4.
raw materials and fuels, including oils, timber, non-ferrous metals, diamonds, cotton, and vegetable oils. The leading Soviet imports from the developed non-communist countries typically include machinery, equipment, and transportation facilities. Increasingly since 1972, the U.S.S.R. seems determined to involve the United States deeply in the process of updating the lagging Soviet economy. It became clear in 1972 with the October, 1972 trade agreement that the U.S.S.R. favors a quantum jump in bilateral trade with the United States, and this remains clear despite the failure of that historic agreement to be implemented because of the Soviet refusal to accept the Jackson Amendment in the 1974 Trade Act. This refusal in January, 1975 meant at least temporary nullification of the 1972 trade agreement, but hardly an end to the negotiations on the underlying issues, such as granting Most-Favored Nation (MFN) treatment to the U.S.S.R., liberalizing Export-Import Bank credit ceilings to the U.S.S.R., and settling the lend-lease debt. Ostensibly, the Soviet repudiation was based on the legislation's making the grant of MFN status contingent upon the Soviet agreement to liberalize its immigration policy. In separate legislation, the Export-Import Bank was required to limit credit to the Soviet Union to $300 million over four years. The Soviet undertaking to repay $722 million in lend-lease debts in a series of payments, two of which already have been delivered, is now voided. There is cause to believe that the real source of Soviet pain over the congressional action was not the highly political emigration provision, which was denounced as interference in the domestic affairs of the U.S.S.R., but rather the passage of a pathetically small $300 million four-year credit, which would be wholly inadequate to finance tremendous Soviet imports of U.S. technology and equipment.

President Ford blamed Congress for the collapse of the 1972 trade agreement by scoring legislative restrictions as meddling in the conduct of foreign policy. The administration did give an indication that it regarded the low Export-Import credit ceiling as the real culprit. The absence of MFN treatment for Soviet exports to the United States would not seem in itself a formidable barrier to the Soviets, since most of their exports consist of raw materials which are generally free of duty. In the wake of the Soviet repudiation of the congressional trade bill, the Soviets continued to conclude important deals with U.S. businesses.

86. OVERSEAS BUSINESS REPORTS, supra note 53 at 1920.
87. Trade Act on 1974, 19 U.S.C.A. §2432 (Supp. 1976). This was the provision regarding free emigration from the Soviet Union.
90. Congress Blamed For Moscow Rift, N.Y. Times, Jan. 16, 1975, at 1, col. 5.
91. Caterpillar Tractor signed a $21 million contract to deliver bulldozers to the U.S.S.R.,
A recent Central Intelligence Agency study of the Soviet economy indicated that the Soviet balance of trade with the West swung into surplus in 1974 after years of deficit because of much higher process for oil, gold, and other Soviet exports. The study estimated the Soviet surplus at between $500 million to $1 billion and said it expected this surplus to continue for the rest of the decade. The significance of this prediction, if correct, is that it assures the U.S.S.R.'s ability to pay for a much larger volume of imports from the West in the future without need of Western credits. Students of Soviet trade question, in light of the almost insatiable Soviet import requirements and the limited surplus of oil and gas the Soviets have for export because of their own growing energy consumption and their commitment to supply energy-deficient Eastern Europe, whether the surplus will hold up long. So, according to this view, Export-Import Bank credits or credits from Western private enterprise or governments are still crucial.

It has been suggested that the Soviets might build up credit or confidence by placing significant amounts of their repeatedly large gold reserves in the U.S. as collateral. Yet, another critic of large-scale U.S. credits for the U.S.S.R. feels that if the Soviets were not so secretive about their foreign currency reserves, they could raise credits through the Eurobond market. This might be a more appropriate source than the U.S. treasury for Siberian development funds.

Before his resignation as Secretary of Commerce, Rogers Morton was extremely impressed with the potential of the Soviet export market for U.S. businesses. He felt that a 15% annual increase in Soviet imports from the West through 1980 is a very conservative estimate. If the United States, with its present 4% share of the socialist bloc's manufactured goods import market, could raise this share to 10% by 1980, U.S. manufactured exports could be more than $4.5 billion by then, compared with slightly more than $717 million in 1974. Morton viewed the Eastern market as one that can put excess U.S. industrial capacity and labor to work and that, as a $47 million cash transfer deal was reportedly concluded by Gould, Inc., to sell equipment and technology for a heavy-duty engine bearing plant to the U.S.S.R. The United States approved the sale to the Soviet Union of a $10 million IBM 370/158 for process control. Shabad, U.S.-Soviet Trade Has Been Soaring Despite Absence of a Ratified Accord, N.Y. Times, Jan. 16, 1975, at 18, col. 6.

92. Soviet Has Trade Surplus With West, C.I.A. Reports, N.Y. Times, April 8, 1975, at 1, cols. 1-2.
96. The United States Role in East-West Trade, supra note 78 at 18-19 and 26-27.
in turn, would create new jobs here and benefit the U.S. balance of payments. The Eastern bloc, in exchange, could supply needed raw material imports or low-technology manufactured goods that would tend to displace only other imports rather than U.S. manufactured goods. Since the socialist bloc's combined population is about one-third of the world's total and occupies about 25% of the earth's surface with tremendous amounts of the world's mineral wealth, Morton said that in the long run the United States cannot afford its present discriminatory trade practices that limit U.S. exports to this tremendous market and handicap access to these much needed raw materials. Another analysis, prepared by the U.S. Foreign Service, emphasizes tremendous present business opportunities in the Soviet market for U.S. firms, especially those marketing machine-building, chemical and petrochemical, and power-generating equipment and technologies.  

F. Credits And MFN

It would seem that the issue of credits is at the heart of the matter of Soviet-American trade expansion. Yet the Soviets insist that MFN treatment must be extended to the U.S.S.R. The Soviets argue that they should not pay any price for the removal of discriminatory practices perpetrated by the United States during the times of the "cold war." The fact that the traditional Soviet exports to the United States are raw materials (like chrome ore), which enter either duty free or with a minimal duty, is no argument for continuing this discrimination.  

The Soviets hope to export far more industrial equipment and manufactured goods to the United States. American companies have shown increasing interest in Soviet designs and manufacture of power-generating equipment, processes in ferrous and non-ferrous metallurgy, laser equipment, and mineral extraction. Several large American companies--Kaiser Aluminum, du Pont, Reynolds Metals, Ethyl Corporation, and Andco Inc.--have gotten licenses for Soviet processes in casting aluminum and aluminum alloys in a magnetic field. Recently the U.S.S.R. licensed the  

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97. There also are high potential sales for U.S. firms producing components for the manufacture of automobiles, trucks, buses, and tractors; ground and aviation equipment, including items for airport modernization; equipment for mechanization of agricultural activities and for improved processing of agricultural commodities; and components for expanding and improving the quality of the Soviet oil and gas pipeline networks. U.S. FOREIGN SERVICE, FOREIGN ECONOMIC TRENDS AND THEIR IMPLICATIONS FOR THE UNITED STATES 8 (April, 1975).  

98. The Soviet jurist, E.T. Usenko, makes it clear that the U.S.S.R. considers itself an advanced industrial power with an already large export line of high-quality industrial equipment and believes that in order to buy more from the United States it must sell more. Usenko, Rezhim Naibolshego Blagopriatstvovaniia V Soversko-Amerikanskikh Torgovych Otnosheniakh (The Regime of Most-Favored Nation in Soviet-American Trade Relations), SOVETSKOE GOSUDARSTVO I PRAVO (No. 9, 1974).  

Texas utilities service to employ its technique for the underground gasification of coals.\textsuperscript{100} The U.S.S.R. sold its Belarus tractors for the first time to U.S. farmers through its agent, the Satra Trading Corporation. Tractor exports already make up the largest single category of Soviet manufactured imports in the United States. In 1974 they accounted for about $900,000 of Soviet-U.S. trade turnover, and the Soviets hope that 8,000 will be sold in the United States during 1976.\textsuperscript{101} The Lada 1200 and 1300, Russian-made Fiats, will be sold on the U.S. market for the first time in 1976, and the U.S.S.R. hopes within five years to sell 50,000 to 60,000 Ladas in the United States. The Soviets also have begun to sell cameras and bicycles in the United States.\textsuperscript{102} Within four or five years the Soviets hope to sell between $7 million and $8 million a year in machine tools\textsuperscript{103} and to increase their exports of finished textiles to the United States.\textsuperscript{104}

Ara Oztemel, chairman of the Satra Corporation, feels that since the Soviet repudiation of the 1974 U.S. Trade Act in 1975, $500 million to $800 million in business has been lost to the U.S. companies he represents.\textsuperscript{105} Oztemel not only expects East-West trade to grow substantially in the long term, but also expects an increasing number of high-quality consumer and industrial goods from the Soviet Union to enter the U.S. market.

Michael Kaser, the well known Oxford University economist and expert on East-West trade, detects in two Soviet decisions of January, 1975, signs that the Soviets are turning away from the United States as their prime source of Western technology and economic revitalization in the near future.\textsuperscript{106} Kaser concludes that changes in the Soviet relationship with the Council for Mutual Economic Assistance (COMECON), taken together with the Soviet repudiation of the Trade Act, point to much greater exchange with Europe, especially the Common Market, at the expense of trade with the United States. He also feels that the U.S.S.R. is seeking a greater trade role in Eastern Europe. If this is so, U.S.-Soviet trade projections will have to be scaled down, along with the general euphoria among U.S. businessmen.

\textsuperscript{100} Id.


\textsuperscript{102} The Russians Are Coming, \textit{FORBES}, Oct. 15, 1974, at 50-52.

\textsuperscript{103} N.Y. Times, Oct. 28, 1974, at 53, col. 2.


\textsuperscript{105} From the early 1950's until about three years ago, the Satra Corporation handled 50% to 80% of all U.S.-Soviet annual trade volume and today handles 2% to 30% of a much bigger pie. Satra's clients include IBM, Borg Warner, U.S. Steel, Bendix, British Plessy, and ICI. \textit{Dun's Review} 58, 61 (Oct. 1975).

\textsuperscript{106} Kaser, \textit{Soviet Trade Turns to Europe}, FOREIGN POLICY 123, 124-26 (Summer, 1975).
G. Some Structural Obstacles In Economic Detente

Whatever the merits of Kaser's analysis, the Swiss East-West specialist, Willy Linder, feels that the obstacles to greatly expanding Soviet-U.S. trade are not based in the present political climate, but in fact are rooted much deeper in the fundamental incompatibility of the two foreign trade systems. MFN status makes sense only in a multilateral, free-market economic system. Linder believes it has no place in an economic order in which the norms of foreign trade relations are established in terms of planning periods and a largely centralized decision-making process in which prices do not reflect shortages. Linder feels that the purely economic importance of MFN status is rather slight in the Soviet-U.S. trade context, and that granting it would not significantly influence the Soviet position on the American market; far more important is the low level of competitiveness of Soviet exports on Western markets. The larger problem for Linder is that the Soviet foreign trade system contains no decentralized incentives for an expansive structuring of foreign trade relations. The Western trader is bound to the state monopoly, which does not set its priorities according to the criteria of a free market. Thus, the Soviet Union cannot offer anything of equivalent value in exchange for its demand for liberalized access to Western markets. Soviet trade, like COMECON trade in general, is bilateral, and bilateralism is an obstacle to expanding the volume of foreign trade. Linder concludes that the economic content of detente can not yield anything very spectacular unless fundamental changes are made to reconcile the differences in the two foreign trade systems.

Edward Hewett objects to the granting of MFN status to the U.S.S.R. on the ground that it in effect would be granting them monetary compensation for the costs of their overcentralized economy. Moreover, it would amount to a subsidy of the few big exporting firms bound to make huge profits from their exports to the U.S.S.R.—a subsidy he feels they should pay themselves.

John Quigley recommends that the Soviets place greater reliance on their individual enterprise and on contractual relationships rather than on

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administrative or command relationships. The foreign trade monopoly allows exports despite domestic shortages, prevents unwanted goods from entering, and permits the sale of goods abroad at prices below their domestic price. There is not only excessive centralization with resulting problems of bureaucracy, but also harmful separation of the foreign trade function from the production function. A communications barrier is erected between the enterprise with an import need and the foreign trade personnel, and also between the enterprise and the foreign firm which might supply their demand, and the industrial enterprise is deprived of adequate incentives to engage in export production. Yet a change in the Soviet foreign trade mechanism at this date does not seem likely on the basis of recent Soviet statements.

II. Problem Areas Of Soviet-American Trade

A. Pre-1972 Controls

A major reason for the relatively low level of U.S.-Soviet trade is the high level of U.S. legal restrictions.

In 1969, an Export Administration Act was enacted. It retained controls on U.S. exports to socialist countries for reasons of national security but emphasized the need to expand U.S. exports to these countries rather than to restrict them. The 1968 Senate hearings, which led to the new legislation, disclosed that about $10 billion worth of goods was being exported annually to communist countries by non-communist countries with only 2% coming from the United States. Thus, the United States was seen as having effectively been cut off from a large market, yet it turned out that our restrictions did not hurt the communists, since they bought from other industrialized countries. It was also clear that the complex system of export controls had limited trade in non-strategic goods available from U.S. producers. Certain policy prescriptions emerged: that the export control act would be amended to state expressly that trade with the East in non-strategic goods would be encouraged, that security restrictions on exports should be limited to products that have potential military significance, and that validated licenses should not be required for U.S. products that were freely available from other highly industrialized countries.

111. Id. at 179.
114. For an opposing view, to the effect that the Western embargo served to limit only a small proportion of potential exports and was not a major factor discouraging East-West trade as of the early 1960's, see F. Pryor, The Communist Foreign Trade System 170 (1963).
The Export Control Act of 1949,116 under which the President could promote or curtail any or all exports from the United States, required all exporters to secure a license from the Office of Export Control within the Department of Commerce.117 The only restraint on the authority of the Office of Export Control to issue licenses for export to communist countries lay in a multilateral trade control scheme involving all the NATO countries (except Iceland and Japan).118 These parties agreed to embargo the shipment of listed strategic commodities that were judged to contribute directly to the Soviet bloc's strategic potential. The strategic embargo is administered by a Coordinating Committee on Export Controls (COCOM). In 1954 and 1958, pressures from NATO members challenging the strategic significance of certain items forced some items off the list.119

The U.S. philosophy of withholding trade with the East to gain political leverage has continually irritated U.S. allies, who look upon East-West trade as primarily commercial in motivation. The real leverage of the United States over its allies in maintaining the embargo will depend on how anxious the allies are to import U.S. products and technical data.120

Under the 1949 Act, the list and accompanying regulations, while indicating when validated licenses were required, did not indicate under what circumstances they would be granted or denied. This absence of clear criteria was a matter of great concern to exporters.

The Export Control Act of 1949 was amended in 1962 to authorize the President to deny licenses for exports if the products would add to the economic potential of the communist countries and if that potential was shown to be detrimental to the national security and welfare of the United States.121 The Export Administration Act of 1969 eliminated the "economic potential" criterion as well as that of "national welfare." Whether the product will "significantly increase the present or potential military capability" of a communist country is made determinative of whether an export

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120. Berman and Garson, U.S. Export Controls—Past, Present, and Future, supra note 118, at 842 (1967). The Office of Export Control also restricts the export of technical data, including information conveyed orally as well as in written form. Id. at 791. The U.S. Government maintains an embargo list significantly longer than that of COCOM. This is one reason why Western Europe's trade with the East is much greater than that of the United States, and it is a factor causing many American companies to conduct their East-West trade through foreign subsidiaries that often can obtain from the host government export licenses unobtainable by the parent in the United States. See Hoy, The Changing U.S. Regulation of East-West Trade, 12 COLUM. J. TRANS. L. 3 (1973).
121. 76 Stat. 127 (1962).
will affect U.S. national security. The Act stresses that if a given item or one comparable is available from other Western sources, the licensing authorities should consider granting a license so that U.S. sales are not lost to competitors. But American trade with the East actually includes a substantial business generated by American subsidiaries abroad which do not appear in U.S.-East trade statistics. Exports to the East by these subsidiaries have been estimated to be equal to, or larger than, exports to the East from the United States by American companies. In fact, foreign subsidiaries or branches of U.S. firms, like U.S. nationals, are subject to U.S. controls, which cover exports from one foreign destination to another of items originating in the United States and exports of strategic foreign-produced products using U.S. technology. They are also subject to U.S. control over certain transactions involving wholly foreign products, technical data, and funds, all of which are administered by the Office of Foreign Assets Control of the U.S. Treasury.

Another export control measure is the Mutual Defense Assistance Control Act, the so-called Battle Act, passed in 1951. No U.S. military, economic, or financial assistance may be given to any nation which knowingly permits shipment of any items on either of two State Department lists to any nation or combination of nations threatening the security of the United States, including the U.S.S.R. and all countries under its domination. The sanctions of the Battle Act are probably too crude to be effective, since the invocation of them would leave a smaller country all the more vulnerable to Soviet bloc influence.

U.S. credit controls are another substantial obstacle to U.S.-Soviet trade. The Johnson Act of 1934 makes it a crime for any individual, partnership, or private corporation or association to extend any loan to, or to purchase or sell securities of, a foreign government which is in default in the payment of its obligations to the United States. The Act specifically exempts public corporations created pursuant to special congressional legislation, such as the Commodity Credit Corporation, and special legisla-
tion was enacted to exempt the Export-Import Bank from the Johnson Act.\textsuperscript{131} By its terms, the Act prohibits merely the making of loans to certain governments, but the view developed that deferred payment arrangements for exports to countries subject to the Johnson Act, might be objectionable loans. In 1963, when the opportunity to make large grain sales to the U.S.S.R. materialized, the Attorney General ruled that sales by private American firms to the U.S.S.R. on a deferred payment basis were not objectionable loans but instead were legal credits.\textsuperscript{132} The State Department thereafter took the view that U.S. exports to Johnson Act countries on a deferred payment basis, with or without bank financing, are permitted if the credit terms are comparable to those extended for exports of the same commodities to other countries.\textsuperscript{133}

The Export-Import Bank will have to play a key role in Soviet-American trade if Soviet hard currency shortages in fact do require large credits in order to subsidize large-scale purchases from the United States. One of the reasons for the establishment of the bank in 1934 was to finance expected Soviet-U.S. trade.\textsuperscript{134} Again in 1945 when it was given greatly expanded lending authority,\textsuperscript{135} it was expected that a prime beneficiary would be the U.S.S.R. In 1968, legislation was enacted prohibiting the bank from extending credit to any "Communist country" unless the President determined this to be in the national interest.\textsuperscript{136} It was thought at this time, because of the 1963 grain deal, that the Soviets wanted credit for U.S. agricultural exports. In 1968, legislation prohibited the bank from making loans to any country assisting North Vietnam, with no discretion vested in the President to waive this prohibition.\textsuperscript{137} In 1971, this legislation was amended,\textsuperscript{138} clearing the way for the President to permit bank credits if in the national interest. This was done on October 18, 1972, concurrently with the signing of the U.S.-Soviet trade accord. By 1973, the bank had made four loans to the Soviets totaling $104 million and covering U.S. exports of $230 million. The bank also had issued preliminary commitments for loans of about $232 million and guarantees of an equal amount to U.S. commercial banks if such guarantees were needed. Still, as the Soviet appetite for credit grows, the big question is how much commercial banks will give without Export-Import Bank guarantees. A potential legal impediment to commercial banks' lending without such guarantees was re-
recently removed when the Comptroller of the Currency ruled that, for the purpose of the 10% legal lending limit to any one borrower, a U.S. commercial bank could treat each individual U.S.S.R. borrowing entity separately. 139

Soviet imports to the United States face antidumping duties. 140 Dumping, defined as price discrimination between national markets, is, under U.S. law, countered by the imposition of an additional duty against the dumped imports, based upon a comparison made between the export price of the commodity in question and its domestic price in the exporting country. 141 Since in the Soviet Union export prices are not necessarily based on costs of production, this presents a problem in determining what the goods are really worth and what the production costs really are. The 1921 Antidumping Act allows the Treasury Department to utilize the "best evidence available" approach; the price of a similar West European export to the United States may be evidence of the true value on the similar Soviet product. 142

Countervailing duties are a surtax imposed on U.S. imports that are subsidized by the home government; 143 the surtax is designed to neutralize the foreign subsidy. Countervailing duties could, with justification, be levied on virtually all communist exports, but if such a policy were even partially implemented, it would constitute a serious impediment to East-West trade and would be a difficult tool to use accurately because of lack of information. 144

In 1951, Congress prohibited the importation of seven kinds of furs and skins which the Soviet Union and China produced, but this provision has been repealed. 145 Still in effect is the prohibition of imports produced by convicts or forced labor provided for in the 1930 Tariff Act. 146 In 1951, the latter prohibition was applied to Soviet crabmeat, and it constitutes a barrier to Soviet Siberian timber exports to the United States. 147

In June, 1971, President Nixon terminated the executive policy begun by President Kennedy in 1964 which required at least 50% of all wheat and grain sold to the U.S.S.R. to be carried in U.S. flag ocean carriers. 148 Since

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139. See Sauer, supra note 134.
145. 65 Stat. 75 (1951) was repealed by 76 Stat. 78 (1962).
147. See Berman, supra note 173 at 509.
148. The provision was at 15 C.F.R. §376.3; President Nixon's deletion of it appears at 36 Fed. Reg. 11811 (1971).
U.S. shipping costs were substantially higher than foreign ones, this requirement had inhibited Soviet agricultural purchases to some degree.149

Direct investment by a U.S. person in a communist country, like all direct investment abroad, is restricted by the Foreign Direct Investment Program.150 The communist countries, with the exception of Yugoslavia and Rumania, are subject to the most restrictive investment limits in the schedule. If the United States wished to encourage direct investment in the U.S.S.R., the U.S. Overseas Private Investment Corporation (OPIC) would have to be authorized to provide insurance against appropriation, war damage, and inconvertibility of local currency holdings.151

B. The October, 1972, Trade Agreement

The 1972 Trade Agreement152 and the related Maritime Agreement of October 14, 1972,153 reflected the expectation that trade in 1972-75 would at least triple over the period 1969-71.154 A new legal framework for Soviet-American trade was established, with reciprocal granting of MFN status,155 settlement of the lend-lease debt,156 a procedure for preventing disruption of markets,157 government or government-sponsored commercial offices in Washington and New York,158 and some assurances of facilities in Moscow for U.S. businessmen.159 The Agreement also expressly provided that Soviet foreign trade organizations would not enjoy diplomatic immunity in the United States with regard to their commercial transactions.160 There was also a provision that disputes might well be settled by resort to third-country arbitration.161 The Agreement also provided for a Joint U.S.-U.S.S.R. Commercial Commission to monitor its implementation.162 The Maritime Agreement specified forty ports in each country to be open to the

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149. Hoya, supra note 124 at 16-17.
151. Hoya, supra note 124 at 17-18.
155. Id. at art. 1.
158. Id. at art. 5(1).
159. Id. at art. 5(3).
160. Id. at art. 6(2).
161. Id. at art. 7.
162. Id. at art. 9.
other 

on the basis of four-day notice instead of the previous 14-days notice,

and provided that each side shall have a right to at least one-third

of all cargos to be transported by its flag ships.

Rate provisions for different categories of cargo were established.

The consensus of experts is that the significance of MFN status is primarily political.

Robert Starr points out that since Soviet foreign trade organizations under Soviet law are independent legal persons with capacity to sue and be sued, the provision in article 6 of the Trade Agreement, ensuring that they could not claim immunities from execution or suit in the United States with respect to commercial transactions, was not a significant concession by the Soviets. Starr sees the mandate to negotiate an agreement establishing an arbitration mechanism for settling commercial disputes as a significant provision, since mutually satisfactory machinery for adjudication of disputes is an important factor in the expansion of Soviet-American trade.

A. Peter Parsons points out a major weakness of the 1972 Agreement: It leaves the 1969 Export Administration Act, with merely cosmetic improvements over the 1949 Act, intact. Despite the many improvements in the legal framework wrought by the 1972 Act, the burdensome, labyrinthine licensing requirements, which inevitably discourage U.S. exporters, remain.

Harold J. Berman stresses, in his analysis of the 1972 Agreement, that from a Soviet perspective perhaps the most significant feature of the Agreement is the fact that it creates a new legal framework within which governmental trade initiatives on the part of the United States are beginning to evolve. He has in mind specifically the Joint U.S.-U.S.S.R. Commission. Berman points out that the Executive Secretary of the American Section of the Commission is also the head of the new Bureau of East-West

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164. Id. at art. 4.
165. Id. at Annex III(1)(a).
166. Id. at Annex III(2) and (3).
168. Id. at 74.
169. Id. at 77.
Trade within the Department of Commerce. And he notes the fact that the Office of Export Control has been moved into the Bureau of East-West Trade undoubtedly facilitates the coordination of trade promotion with security controls.\textsuperscript{172}

Peter B. Fitzpatrick believes the issue of most immediate concern to both Soviet and U.S. businessmen is the availability of Export-Import Bank credits, which have been minimal since 1972.\textsuperscript{173} The threat of withholding credits undermines the future of the Soviet-U.S. energy-development negotiations. Trade might continue without MFN status, but without Export-Import Bank credits, large projects probably could not be financed. The liberalized treatment of Soviet organizations as separate entities\textsuperscript{174} could affect U.S. capital availability if Soviet development costs funded in the United States approach $20 billion over the 1970's. This could create a tighter squeeze on the U.S. money market, which, in turn, would require either substantial governmental participation in the financing or some new approach to the problem by the private sector.

Jerry Pubantz suggests another potentially important impediment to American-Soviet trade: the non-convertibility of the ruble.\textsuperscript{175} This was side-stepped in the 1972 Agreement by specifying payments in agreed convertible currencies.\textsuperscript{176}

\textbf{C. The Future Of The Trans-Ideological Enterprise}

With the first waves of petrodollar investment breaking on the U.S. domestic economy and taking the form of both direct and indirect investments, alarm has been expressed in some quarters, notably in Congress, about the impact of geographically concentrated foreign investments in U.S. corporations, land, and minerals. Several bills have been introduced to prohibit foreign ownership of certain designated industries and to limit such ownership in publicly held companies. There is legislation pending to authorize a comprehensive survey of foreign investment data and to establish a National Foreign Investment Control Commission. A Joint Congressional Committee on Foreign Investment Control has been proposed. The Ford administration's position is that no basis has been established for departing from the traditional U.S. policy of neutrality toward foreign investment in the United States. Under present American legislation, foreign interests may not obtain licenses to operate facilities for the

\textsuperscript{172} Comment, \textit{supra} note 171.
\textsuperscript{174} See text \textit{supra} at note 139.
\textsuperscript{176} Agreement Regarding Trade, Oct. 18, 1972, art. 4, \textit{reproduced in} 11 \textit{Int'l Leg. Mat'ls} 1321, 1325 (1972).
utilization or production of atomic energy. Yet the Nuclear Regulatory
Commission, formerly the Atomic Energy Commission, has allowed 50-50
joint ventures with foreign concerns for this purpose. Development of hy-
droelectric power sites on navigable rivers and streams is restricted to U.S.
corporations, but foreign control of such corporations is not prohibited.
Aliens cannot acquire or exploit mineral lands owned by the U.S.
Government, but they can control domestic corporations leasing such lands,
if their country allows reciprocal rights to U.S. citizens. Only six states
currently permit operations by foreign banks, and state laws on alien own-
ership of land range from a strict ban to no limit whatsoever on amount.
Clearly the stakes are too enormous to U.S. business interests abroad to
stampede toward restrictive legislation against OPEC investments here.
And there would hardly seem to be any imminent threat of a West Euro-
pean or Japanese takeover of significant U.S. industrial sectors. Least of
all would there be a threat along these lines from the Soviets.

But what of the possibility of significant U.S. equity capital being de-
ployed some day in the U.S.S.R.? Is the most the United States can hope
for along these lines the mere role of selling merchandise, technology, and
patents and perhaps the leasing of equipment and personnel to the Soviets
to be used at their instructions? What about some active entrepre-
neurial or managerial role by American businesses in the U.S.S.R.? Soviet
law still requires full state ownership of the means of production and blocks
foreign investment of equity participation and, in the absence of produc-
tion information and monitoring by outsiders, there is no guarantee that
the proper royalties for licensed technology will be counted unless one
accepts an initial lump sum payment.

Yugoslavia and Rumania provide examples of the restrictions and re-
quirements of trading with the Soviets. The first law permitting foreign
capital investment in Yugoslavia was enacted on July 27, 1967. By 1972,
fifty-two capital investment contracts with foreign firms had been negoti-
ated. A foreigner cannot simply invest capital. He must contract with a
Yugoslav party, establishing a joint venture through which he joins his
capital to that of a Yugoslav enterprise forming a Yugoslav corporation.
The scope of foreign investment is wide. Only banking, insurance, domes-
tic transportation, and social services are prohibited areas. According to a
Yugoslav authority on these joint ventures, Yugoslav practice indicates
that social ownership and workers' self-management can co-exist with for-

182. Sukijasovic, Legal Aspects of Foreign Investment in Yugoslavia, 37 LAW AND CONTEM-
By mid-1974, Rumania had established six joint ventures with Western companies, Hungary had two, and Yugoslavia had more than 120. The real breakthrough in Eastern Europe came in 1971, when Rumania became the first Soviet bloc country to legislate in favor of joint ventures.

The East European joint venture is a contractual partnership which creates a highly institutionalized form of industrial cooperation for the Western partner to expand into Eastern Europe and thus get a better grip on that market. The interest of all three East European countries utilizing it lies in developing exports earning hard currency and bringing in the latest technology and expertise in a self-financing form. All three allow the Western partner up to 49% of the equity, with exceptions if special national interests require it. All three grant a proportional share of profits and the right to transfer profits abroad and provide for a joint management committee with 50% representation to the Western side despite its minority ownership. In both countries, the Western partner’s invested assets are guaranteed. However, Western businessmen seem to prefer direct investment in East European enterprises and, if possible, an even larger control over production than present legislation of the three countries’ legislation allows.  

It seems that the core elements distinguishing joint ventures in Eastern Europe from ordinary industrial cooperation agreements are pooled assets, joint management, and shared risk. The Western firm would be attracted to this form because its cash outlay involved at the outset need not be great; it might take the form of contributing licenses, know-how, and specialized equipment. Moreover, the arrangement provides some measure of control over operations of mutual concern not present in industrial cooperation. The risk element is lower than in capitalist countries and is of a very different order—more political than economic.

The American business view of the new East European variant of the joint venture is cautiously positive. Emile Benoit, Professor of International Business at Columbia University, sees it as perhaps the best way of tapping the tremendous East European market. The Western partner will supply machinery, technical assistance, management advice and world marketing channels, and the host country will supply labor, raw materials, and the plant. Since the communist ideology holds that payment of profits to private owners involves exploitation of labor, it may be necessary to organize the projects in a way that will minimize or obscure the element of foreign private ownership. This can be done, suggests Be-

Porary Problems 474-75, 478, 484 (1972).

noit, through the use of extended terms in the sale of machinery and through Western acceptance of royalties and fees under licensing and management contracts instead of profit shares. These can be paid off in goods rather than cash to improve the cosmetic effect. This also minimizes the foreign exchange problems of the host country. In effect, the right to manage takes the form of a management contract rather than majority stock ownership. Benoit feels that the most important advantage of all to the Western partner in this joint venture is that it provides the opportunity to produce goods in the East for export to the West or to third countries. This is valuable, because Eastern Europe has a substantial supply of underutilized, skilled, and inexpensive technical manpower. The total control by the state of labor and production brings stability and predictability of production and production costs. Therefore, such ventures for American business could be very profitable. Samuel Pisar's views echo Benoit's. As he puts it, an American company wants control, and a contractual provision for a joint management committee provides control as effectively as formal equity. Indeed, a royalty payable in hard currency may be superior to equity, Pisar says.

How likely are the Soviets to be seduced by the idea of the new joint-venture-with-equity and management rights, as in Yugoslavia or Romania? It may be that if the Western or U.S. private banking sector, substantially deprived of Export-Import credits, is unable to finance the unslakable Soviet thirst for Western capital, then the Soviets may have to open up the management and control of joint-ventures to Western corporations as a substitute for these credits. From the perspective of the U.S. multinationals, the arguments in favor of direct participation in the East European market apply even better to the Soviet Union, since the U.S.S.R. has twice the East European population, infinitely more valuable natural resources, and vaster needs to service. It has the world's second largest gold production and is one of the largest diamond producers, and that can stand as collateral in place of the unconvertible ruble just as Soviet oil and natural gas can. For the typical U.S. multinational, a production base under its control to a certain extent in the U.S.S.R. would have tremendous profit potential. The risks involved would be no greater than they are under the present Soviet version of passive joint ventures, but the active management element and the equity interest now missing would ensure a far more dynamic dimension in the context of a still very safe production

187. See also Perlmutter, Emerging East-West Ventures: The Transideological Enterprise, 4 Colum. J. World Bus. 46-48 (1969). Perlmutter, Professor of Industry at the Wharton School, advocates what he calls "emergence theory" and "transideological thinking." Emergence theory holds that the cooperative interactions between ideologically different systems begin unobtrusively but lead to unrecognized but substantial interdependencies.
environment. It would be the best of both worlds.

The Soviets, of course, would be able to resort to legalistic cosmetics to assimilate this rape of their Marxian innocence. Their needs are great and the material advantages are mutual, so the right arrangements in time can be worked out. The Soviets themselves have been involved for decades in just these types of joint ventures outside the socialist world. They have sold Soviet cars in Finland in this manner since 1947, and they participate in mixed companies in Sweden, Norway, France, Belgium, and England.188 These have been, until recently, marketing ventures rather than manufacturing businesses. One might well anticipate a reverse flow of production joint-ventures if and when the Soviets lose their Marxian virtue.

III. Conclusions

It seems that the major American industrial multinationals, together with their American multinational bank allies, are demanding that the U.S. Government promote officially and institutionally their trade with the U.S.S.R. In a time of economic slowdown at home, the Soviet market has a tremendous potential for multi-million-dollar and even billion-dollar, short-term and long-term sales and joint ventures. American penetration no longer is merely an attempt to recapture what the United States should have had, but rather is an effort to open up the vast Soviet market to American technology on a grand scale.

The crucial role must be played by the U.S. Government as promoter, insurer, arranger, and banker. The multinationals are asking for an openly activist U.S. Government role, anchored in a solid institutional intergovernmental framework that ultimately will involve a series of commercial treaties and agreements, of which the ill-fated October, 1972, agreement is but the forerunner. The institutional base of Soviet-American trade will proceed apace, despite what some see as a recent Soviet step toward Western Europe away from the United States in pique over the Jackson Amendment. To the extent that this shift materializes, I would venture that it is merely tactical. Even in the short-run, the Soviets cannot avoid excessive infusions of U.S. technology if they stick to their priority of technology transfer from the West. There is no substitute in the short or middle term for the "American connection."

The multinationals have argued effectively in recent years that the reason the U.S.S.R. has been unable to integrate efficiently modern technology into its production process probably lies in the very nature of its political and economic system, in the poor diffusion of technical information, the institutional separation of research, design, and production, and the inhibiting influence of low depreciation rates on the diffusion of new types

of machinery. Moreover, it would take many years to put together the
industrial milieu necessary to copy U.S. computers. So the U.S. lead is
safe.

Despite conservative, defense-minded critics, these arguments, together
with the prestige and resources of their sponsors, should prevail. The only
questions are how quickly and completely. Perhaps the best argument of
the trade advocates is that, without new, large-scale projects such as the
Soviet connection alone can assure, profit expansion essential to sustain
the research and development so crucial to the American technological
margin will not be forthcoming, and stagnation will result.

Because of the growing institutionalization of government-to-
government commercial relations between the United States and the
U.S.S.R., which center around the Bureau of East-West Trade and the
Joint Soviet-U.S. Commercial Commission, there is a fair possibility of a
“family situation” developing between the U.S. officials (who have crucial
inside information on Soviet needs and intentions and the power to ap-
prove or disapprove of export licenses) and, on the other hand, the few
American multinationals which stand most to benefit from such informa-
tion and favorable judgments. It hardly would be a novel event if the
regulator were suborned by the prime subjects of its scrutiny. The effect
would be to create a new aristocracy of exporters with tremendous leverage
over a significant area of foreign policy and with a vested interest in accom-
mmodating the Soviets even in matters not directly related to their bread-
and-butter stakes.

The Soviet market is lucrative for the multinational sector of the U.S.
economy. But it is highly doubtful that this is true for the American
consumer-oriented industries, which are more job-generative. Hence, tre-
Mendous profits for leading research-intensive sectors will not necessarily
generate massive or even substantial numbers of jobs domestically. Moreo-
ver, if there are more and more joint ventures in the U.S.S.R., the jobs will
be primarily for a small number of American technicians. If it should come
to pass that equity joint ventures in the U.S.S.R. by American corpora-
tions become a reality, there may be, in fact, an outflow or loss of domestic
jobs. It is certainly conceivable that GNP would grow impressively in this
manner while the unemployment rate remains stable or even increases. In
any case, the impact of American production abroad on the U.S. job mar-
ket is a complex one and, when conducted by high technology enterprises,
does not augur well for reducing the largest class of the unemployed, the
unskilled. So the labor unions may prove to be unimpressed with the
prospect of American businesses relocating behind the Iron Curtain, where
they ironically can find cheap, strike-free labor. Those businesses could
ship back to the United States goods which might have been produced in
the United States.

There is another danger to domestic business if Soviet-American trade
and joint ventures blossom on a grand scale. The necessary outflow of
capital could dry up the reservoir of domestically available credits and lead
to a credit-investment drought, with all that entails for utilizing domestic
production capacity to the fullest, for expanding and renewing domestic
capital stock, and for investing in the housing and public services sectors.

Finally, it would seem the cruelest of grand illusions to see in the Soviet
connection the solution, or even a significant amelioration, of the present
and seemingly long-run American energy dependence. Siberian oil and gas
simply will not be available at least until the early 1980's, and even then
it is hardly likely that the Soviets would want to mortgage it substantially
to the United States. Given their ever-increasing energy consumption at
home and the political imperative of continuing indefinitely to supply
most of Eastern Europe, as well as the desire to export to Western Europe
for political reasons, there hardly could be enough left over to supply a
substantial amount of the growing petroleum and gas needs of the United
States. So to see U.S.-Soviet trade in this light is to perpetuate an illusion.

The Soviet disapproval of the 1974 Trade Act was merely a minor set-
back on the road to institutionalizing mutual trade on a grand scale. All
the principles embodied in the expired 1972 Trade Agreement have, in
effect, become the minimum assumptions the next successful negotiations.
By that time, the ongoing economic realities probably will have placed far
more complex and specific items on the legislative and diplomatic agenda.