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# Legal and Institutional Barriers to United States--Soviet Trade: Soviet Perspective

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# LEGAL AND INSTITUTIONAL BARRIERS TO UNITED STATES-SOVIET TRADE: SOVIET PERSPECTIVE

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## I. INTRODUCTION

Traditionally, law, economics, and politics have always been interrelated elements. Within this interaction economics and politics have often alternated as the leading determinant of future development, whereas law has acted as an appendage of both or, at least, as a catalyst for future political and economic changes in the given society. This analysis of the close interaction between law, economics, and politics applies not only domestically but also internationally. If foreign policy is nothing but a continuation of domestic policy by other means, it follows that the foreign policy of a particular nation is shaped by a variety of factors including domestic and international politics. Thus, the conduct of a nation's foreign policy is a multifaceted process that includes diplomatic, economic, cultural, scientific, and technological relations as well as military operations, if necessary. Within this context, foreign trade is only one of the many instruments utilized in the conduct of foreign policy. For both the United States and the Soviet Union foreign trade has always been and will continue to be, to paraphrase Clausewitz, a continuation of political relations by other means.

Since 1917 United States-Soviet trade has undergone numerous periods of relative upsurge of decline. During each of these periods, political and diplomatic factors were most crucial in determining trade contacts between the two nations. Economic considerations were sometimes relegated to the background by both parties, particularly by the United States. The present upsurge in United States-Soviet trade is the result of the decontrol policy initiated by President Nixon in 1969.[1] In his inaugural address on January 20, 1969, President Nixon spoke of the dawning of a new era of negotia-

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1. For details of these decontrol measures see G. SMITH, SOVIET FOREIGN TRADE—ORGANIZATION, OPERATIONS AND POLICY, 1918-1971 (1973).

tion destined to replace the old policy of confrontation between Moscow and Washington.[2] Between 1969 and 1972, President Nixon worked relentlessly to give some practical effect to this new policy, which culminated in the Governments of the United States and the Soviet Union signing a series of far-reaching agreements in 1972. Among these agreements were the following: the Basic Principles of Relation Between the United States and the U.S.S.R.;[3] Protocol on Expansion of Air Services Between the United States and U.S.S.R.;[4] Convention on Taxation;[5] Protocol on Establishment of a U.S.S.R.-United States Chamber of Commerce;[6] Protocol on Trade Representation;[7] Agreement on Transportation;[8] Agreement Regarding the Settlement of Lend Lease, Reciprocal Aid and Claims;[9] Agreement Regarding Certain Maritime Matters.[10] The cumulative effect of these agreements paved the way for the signing of a trade agreement between the two countries on October 18, 1972.[11] The latter agreement, however,

2. The inaugural address of Richard M. Nixon, Jan. 20, 1969. 60 DEP'T STATE BULL. 122-23 (1969). The spirit of the address was captured by President Nixon's Secretary of State, William Rogers, in a speech before the Council on Foreign Relations at New York City on September 28, 1972, in which he spoke of the change in United States policy towards the Soviet Union from containment to engagement. *See* W. Rogers, *From Containment to Engagement,* 67 DEP'T STATE BULL. 470-73 (1972).

3. 11 INT'L LEGAL MATERIALS 756 (1972) [hereinafter cited as I.L.M.].

4. 12 I.L.M. 897 (1973).

5. *Id.* at 899.

6. *Id.* at 905.

7. *Id.*

8. *Id.* at 910.

9. Lend Lease Settlement with the Soviet Union, Oct. 18, 1972, [1972] 3 U.S.T. 2910, T.I.A.S. No. 7478.

10. Maritime Agreement with the Soviet Union, Oct. 14, 1972, [1972] 4 U.S.T. 3576, T.I.A.S. No. 7513.

11. The signing of the Agreement with the Union of Soviet Socialist Republics Regarding Trade, 67 DEP'T STATE BULL. 595 (1972) [hereinafter cited as 1972 Trade Agreement], was accompanied by five exchanges of letters dealing with the provisions of articles 3, 5 and 6 of the 1972 Trade Agreement itself. For text of the trade agreement, the exchange of letters and the accompanying Presidential determination making the Soviet Union eligible for credits from the EXIM Bank of the United States see 67 DEP'T STATE BULL. 581-604 (1972).

A legal analysis of the 1972 Trade Agreement can be found in: Starr, *A New Legal Framework for Trade Between the United States and the Soviet Union: The 1972 US-USSR Trade Agreement,* 67 AM. J. INT'L L. 63-83 (1973); Grzybowski,

will not become effective until the United States grants the Soviet Union most-favored-nation (MFN) status as provided in article 1 of the 1972 Trade Agreement.

The long delay over the granting of MFN status to the Soviet Union notwithstanding,[12] the mere signing of the 1972 Trade Agreement has raised the volume of trade between the two countries to an unprecedented level. For example, since the signing of the 1972 Trade Agreement, American exports to the Soviet Union in 1972, including grain sales, totalled 546.7 million dollars as against 161.7 million dollars in 1971, while Soviet sales to the United States reached 95.4 million dollars in 1972 as opposed to only 57.6 million dollars in 1971. The latest available figures for the first ten months of 1973 showed that United States exports to the Soviet Union totalled 1.05 billion dollars with imports from the Soviet Union standing at 160 million dollars.[13] On the whole United States-Soviet trade has increased sevenfold since 1971, as evidenced by the financial statements of certain United States corporations.[14]

The 1972 Trade Agreement seems to have opened the gates of United States-Soviet trade, and American businessmen are no doubt anticipating the prospects for profits, which they hope to

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*United States-Soviet Union Trade Agreement of 1972,* 37 LAW & CONTEMP. PROB. 395-428 (1972); Osakwe, *Legal Aspects of Soviet-American Trade: Problems and Prospects,* 48 TUL. L. REV. 536-59 (1974).

12. The 1972 Trade Agreement has encountered difficulty in the United States Congress where Title IV, the Jackson Amendment, of the Trade Reform Act of 1973, H.R. 6767 93d Cong., 1st Sess., §504 (1973) has taken a negative stand on the granting of MFN status to the Soviet Union. Senator Jackson (D., Wash.) contends that the United States should deny MFN status to the Soviet Union until it agrees to relax its emigration practices and allow Soviet Jews to emigrate freely. After more than a year of sometimes hostile debate on the issue, it now looks as if an accommodation will be reached on the MFN question between Congress and the Ford Administration. An agreement has been reached to grant MFN status to the Soviet Union on a temporary basis for a one year period, while Congress observes the Soviet Union's action on the emigration issue. *See* Hunt, *Soviet Trade Bill Seems Likely Soon After Compromise,* Wall Street J., Aug. 16, 1974, at 11, col. 6. For an overview of the Trade Reform Bill of 1973 and its potential impact on East-West trade see Gates and Muir, *The United States in Pending World Trade Negotiations,* 7 VAND. J. TRANSNAT'L L. 609, 623-27 (1974).

13. 76 U.S. NEWS & WORLD REP., March 4, 1974, No. 9 at 67.

14. 83 NEWSWEEK, Feb. 25, 1974, No. 8 at 43.

reap from such bilateral trade. So tantalizing are these propsects that the Yankee trader, traditionally an economic animal, is willing to call upon the United States Government to lift all national security restrictions on commercial intercourse with the Soviet Union. The fact remains, however, that international trade is too serious a business to be left in the hands of businessmen. The former United States Secretary of Commerce, Mr. Peter G. Petersen, captured this theme when he noted in a 1972 Moscow Press Conference:

> [I]t has been said that war is too important to be left to the generals. I think it might be said that trade is getting too important to be left to commercial ministers. For me to suggest that the progress of trade will not be affected by the larger political environment would be, I think, not to understand that there is relationship between economics and politics. The more favorable the political environment, the more political tensions are reduced, given the kind of system we have in the United States, the more likely, I think that the American public, the Congress, and others will support the concept of expanded trade, and support the concept of expanded credit.[15]

Even though the 1972 Trade Agreement, when it enters into force, will create a new legal framework for United States-Soviet trade, it does not, for the most part, supersede the domestic laws of the sovereigns regarding foreign trade. In other words, the 1972 Trade Agreement was intended only as a legal bridge between the domestic laws of the United States and the Soviet Union. It is true, of course, that the 1972 Trade Agreement calls for a modification of certain aspects of the signatories' domestic legislation when such a change is necessary. For example, article 1 of the 1972 Trade Agreement calls for reciprocity in granting MFN status to goods originating in or exported to each country. To meet this obligation, the United States has to alter some of its existing statutes that restrict trade with the Soviet Union.[16] For the purpose of deciding

15. The Secretary of Commerce, Peter G. Petersen, who was also the United States Chairman of the U.S.-U.S.S.R. Joint Commercial Commission, made these remarks at a Moscow Press Conference on Aug. 1, 1972, in response to the question of whether the United States was trying to fuse trade questions with general political and foreign policy considerations. 67 DEP'T STATE BULL. 285, 292 (1972).

16. For a review of some of the United States laws that must be amended to

to amend or retain these various domestic foreign trade laws, each party, under the 1972 Trade Agreement, is granted certain rights under article 1, paragraph 3, and article 3 in addition to the right to protect its national security as provided by article 8. Accordingly, article 2, paragraph 2 of the 1972 Trade Agreement provides that:

> [C]ommercial transactions between the United States of America and the Union of Soviet Socialist Republics shall be effected in accordance with the laws and regulations then current in each country with respect to import and export control and financing as well as on the basis of contracts to be concluded between natural and legal persons of the United States of America and foreign trade organizations of the Union of Soviet Socialist Republics. Both Governments shall facilitate, in accordance with the laws and regulations then current in each country, the conclusion of such contracts, including those on a long-term basis, between natural and legal persons of the United States of America and foreign trade organizations of the Union of Soviet Socialists Republics. It is understood that such contracts will generally be concluded on terms customary in international commercial practice.[17]

This means that any contract between an American corporation and a Soviet foreign trade organization will be simultaneously regulated by the will of the parties as expressed in the contract itself, by the pertinent laws of both the United States and the Soviet Union, by applicable provisions of United States-Soviet trade and other related agreements, as well as by customary international law in situations where no contractual or treaty law governs.

This article will discuss only those Soviet laws that have not been preempted by the 1972 Trade Agreement. To facilitate this task, these Soviet laws will be discussed under three separate headings: (1) general principles of Soviet foreign trade, (2) the legal status of Soviet foreign trade organizations, and (3) the miscellaneous barriers to the improvement of trade relations with the Soviet Union.

At this point two caveats are in order: first, when the 1972 Trade Agreement goes into effect, the relationship between the 1972

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conform to the 1972 Trade Agreement see PISAR, COEXISTENCE AND COMMERCE-GUIDELINES FOR TRANSACTIONS BETWEEN EAST AND WEST (1970); SMITH, *supra* note 1; Osakwe, *supra* note 11; Starr, *supra* note 11.

17. 1972 Trade Agreement art. 2, ¶2.

Trade Agreement and Soviet laws on foreign trade shall be governed by two related principles of Soviet conflict of laws. The first principle provides that "[i]f by an international treaty or convention to which the USSR is a party other rules are laid down than those contained in Soviet civil legislation, then the rules of the international treaty or convention [will] apply."[18] The same proposition applies to the territory of the Russian Soviet Federated Socialist Republic (R.S.F.S.R.).[19] In addition, the second principle provides that "[a] foreign law is not applied if its application would be repugnant to the fundamentals of the Soviet system."[20] The second caveat relates to the arbitration clause in the 1972 Trade Agreement by which "[b]oth Governments encourage the adoption of arbitration for the settlement of disputes arising out of international commercial transactions concluded between natural persons of the United States of America and foreign trade organizations of the Union of Soviet Socialist Republics, such arbitration to be provided for by agreements in contracts between such persons and organizations, or, if it has not been so provided, to be provided for in separate agreements between them in writing executed in the form required for the contract itself."[21] Such disputes between natural persons of the United States and foreign trade organizations of the Soviet Union may relate not only to the application and interpretation of specific provisions of a traded contract but also to the compatibility of certain provisions of the trade agreement with Soviet law.

## II. GENERAL PRINCIPLES OF SOVIET FOREIGN TRADE

### A. *Basic Concepts*

The term "general principles of Soviet foreign trade," refers to

18. R.S.F.S.R. 1961 GRAZH. KOD. (Civil Code) §568.

19. A. Kiralfy (transl.), The Civil Code and the Code of Civil Procedure of the Russian Soviet Federated Socialist Republic (R.S.F.S.R.) 1964, *in* LAW IN EASTERN EUROPE (1966). [Hereinafter all references to the R.S.F.S.R. Civil Code are to Kiralfy's translation.]

The same principle that is contained in article 569 of the R.S.F.S.R. Civil Code can be found in article 169 of Osn. Grazh. Zak. S.S.S.R. i Soiuz. Resp. (1969) (Fundamental Principles of Civil Legislation), which was promulgated by a law of the Soviet Union of Dec. 8, 1961. *See* [1961] 50 Ved. Verk. Sov. S.S.S.R. (Supreme Soviet U.S.S.R.).

20. R.S.F.S.R. 1961 GRAZH. KOD. (Civil Code) §568.

21. 1972 Trade Agreement art. 7, ¶1.

those basic principles of Soviet Government and Communist Party policy that have found their way into concrete statutes and other normative enactments regarding the organization and operation of Soviet foreign trade. Certainly, these general principles cannot all be placed on the same level of authority, although some are so fundamental that they may not be compromised under any circumstances. Other principles are flexible enough to be left to the respective foreign trade organizations for their discretionary application. Within this context there are two distinct categories of general principles of Soviet foreign trade—the imperative and the dispositive norms. With regard to imperative norms both the Soviet foreign trade organization and the corresponding foreign trading partner are under an obligation to comply with them to the fullest. Failure to do so would result in the nullifcation of the transaction or other possible legal repercussions. On the other hand, the parties to a foreign trade transaction are relatively free to adapt the dispositive norms of Soviet foreign trade to suit their particular transaction. In this analysis, emphasis will be placed on the imperative norms of Soviet foreign trade.

Before discussing these general principles it is necessary to bear in mind certain basic facts about the Soviet political and legal system. First, the Soviet Union is a communist party-state with the Communist Party of the Soviet Union (CPSU), as the only official political party. Even though there is a functional division of the Soviet state into three traditional departments of government—the legislative, executive, and judicial—with the legislative branch as the most powerful organ, there is no doubt that the CPSU is superior to all three branches of government, including the legislative. This means that the general principles regulating Soviet foreign trade can be found not only in the normative acts of the three departments of the Soviet state but also, and perhaps more importantly, in the resolutions and decisions of the CPSU. For all practical purposes the CPSU operates as a *deus ex machina* and its leadership role [22] is felt in all aspects of Soviet life, includ-

22. Article 126 of the 1936 U.S.S.R. Constitution comes closest to articulating the preeminent role of the CPSU in the Soviet Society. It states: "[T]he Communist Party of the Soviet Union . . . is the vanguard of the working people in their struggle to build communist society and is the leading core of all organizations of the working people, both government and non-government." KONSTITUTSIYA (Constitution) §126 (U.S.S.R., 1936) [hereinafter cited as KONST.].

ing the formulation of Soviet foreign trade policy. Secondly, within the formal hierarchy of Soviet law, the U.S.S.R. Constitution is supreme, although on an informal basis, resolutions of the CPSU take precedence over the provisions of the U.S.S.R. Constitution. A Soviet trade agreement or any other Soviet treaty that is in conflict with the U.S.S.R. Constitution is technically invalid,[23] but if the same treaty were signed[24] pursuant to a stated CPSU policy, it will be deemed valid even though it conflicts with a constitutional provision and usually in such a case, the constitution will be amended to comply with such a treaty obligation. To this extent the Constitution of the Soviet Union is only a legal instrument placed at the generous disposal of the CPSU.[25]

### B. *General Principles Governing the Conduct of Soviet Foreign Trade*

1. *Official Recognition of the Close Interplay of Foreign Trade and Foreign Policy.*—In the conduct of its foreign trade the Soviet Union does not apply the same standards to all trading partners. Rather, categorizing the community of nations into three major groups for foreign policy purposes, the Soviet Union applies different standards in its trade with countries of the socialist, capitalistic, and neutral (Third World) camps. At its 23rd Congress, the CPSU enumerated the following basic principles underlying Soviet foreign trade: (a) complete equality on all sides, (b) respect for the state and national security of trading partners, (c) non-interference in the internal affairs of other countries, and (d) mutual benefit and conscientious fulfillment of all obligations. In addition

23. The supremacy of the U.S.S.R. Constitution over all other laws and treaties of the Soviet Union is implied in articles 14, paragraph (d); 20; and 69 of the U.S.S.R. Constitution. KONST. §§14(d), 20, 69. Hereinafter, all references to the U.S.S.R. Constitution are to the 1936 Constitution, as amended.

24. Whether Leonid Brezhnev, the First Secretary of the CPSU, can validly sign an international agreement on behalf of the Soviet Union, in the light of the fact that he is not a member of the Government, is an academic question. A member of the Government he may not be, but in reality he has the inherent authority to represent the Soviet Union in any international transaction and his signature on any Soviet treaty is not only valid but, as is often the case, carries more political weight and indicates the significance that the Soviet Union attaches to such an agreement or treaty.

25. For an analysis of the juridicial nature of Socialist Constitution see CONSTITUTIONS OF THE COMMUNIST PARTY-STATES v-vi (J. Triska ed. 1968).

to these general principles, however, Soviet foreign trade with each of the three trading camps or zones is governed by special rules designed for those particular countries. Whereas "[e]conomic, scientific, and technical ties of the Soviet Union with other socialist countries, [were] aimed at further strengthening the community and consistently promoting the economic integration of the [COMECON] countries . . . development of stable external economic, scientific, and technical ties with developing Asian, African, and Latin American countries shall be continued on terms of mutual benefit and in the interest of strengthening of their economic independence."[26] On the other hand, the Soviet trade policy with capitalist countries is to enter into "economically justified commercial, scientific, and technical contacts with those industrially developed capitalistic countries which show willingness to develop cooperation with the Soviet Union in these spheres."[27] In other words, when trading with the capitalist countries of the West, the Soviet Union professes to seek no political gains from such trade. Rather, the Soviet decision to trade with any particular nation in this capitalistic bloc will depend essentially on economic considerations and on the willingness of the Western nation to trade with the Soviet Union on equal terms. The Soviet Union will neither attempt to use such trade relations to extract political concessions from such a state nor, for its part, yield to political pressure from any Western nations. On its face this attitude differs from the underlying policy of Soviet trade with the Socialist and Third World nations. Consistent with the Soviet concept of trading blocs, article 1 of the 1972 Trade Agreement, which deals with the reciprocal granting of MFN status, allows for this policy of preferential trading zones.[28]

2. *State Monopoly of Foreign Trade.*[29]—The decree of April 22, 1918, entitled "Decree on the Nationalization of Foreign Trade"[30]

26. 1971 VNESHNIAIA TORGOVLIA (Foreign Trade) No. 4, at 5 *quoted in* SMITH, *supra* note 1 at 30.

27. *Id.*

28. 1972 Trade Agreement, art. 1, ¶3.

29. For a general review of the domestic organization of Soviet-foreign trade see PISAR, *supra* note 16, at 141-60; Hertzfeld, *Foreign Trade,* I ENCYCLOPEDIA OF SOVIET LAW 280-82 (F. Feldbrugge ed. 1973) [hereinafter cited as ENCYCLOPEDIA]; Quigley, *Soviet Foreign Trade Agencies Abroad: A Note,* 37 LAW & CONTEMP. PROB. 465-73 (1972).

30. It might be of historical interest to note that the original idea for the

represented the first Soviet decree to proclaim the principle of state monopoly of foreign trade.[31] Article 1 of this decree provides: "All foreign trade is nationalized. Trade transactions for the purchase or sale of any product [of the extracting and processing industry, of agriculture, etc.] with foreign states or individual trading enterprises abroad shall be carried out in the name of the Russian Republic by specially authorized agencies. Apart from these agencies, all trade transactions with foreign countries for import or export are prohibited."[32] This was followed by the provision of article 2, which stipulates that "[t]he Peoples' Commissariat of Trade and Industry shall be the agency in charge of the Nationalized foreign trade."[33] Even though the 1918 decree avoided the use of the term "monopoly," such meaning was inferred since it granted to the Soviet state the exclusive and unmitigated right to conduct all Soviet foreign trade operations through designated state agencies.

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nationalization of Soviet foreign trade (which was allegedly initiated by Mikhail Larin, a leading Bolshevik radical economic reformer and strongly supported by V.I. Lenin) met with strong opposition from other leading members of the Bolshevik Party. Even after the policy was promulgated in April 1918, the antimonopolists continued to resist the idea until it was irreversibly entrenched into the Soviet system by a Decree of the 9th All-Russian Congress of Soviets in Dec. 1921. 4 Sob. Uzak. i. Rasp. R.S.F.S.R., [1922] Item 43, art. 11. For a short history of the origins and the official reasons for this new policy see G. KALIUZHNAIA, PRAVOVYE FORMI MONOPOLII VNESHNEI TORGOVLI SSSR V IKH ISTORICHESKOM RAZVITII (The Legal Forms of the Monopoly of Foreign Trade of the U.S.S.R. in their Historical Development) (1951). D. MISHUSTIN, SOTSIALISTICHESKAIA MONOPOLIIA VNESHNEI TORGOVLI SSSR (Socialist Monopoly of Foreign Trade of the U.S.S.R.) (1938); J. QUIGLEY, THE SOVIET FOREIGN TRADE MONOPOLY—INSTITUTIONS AND LAWS 3-36 (1974); Kovan, *Pravovye Problemy Ustanovleniia Monopolii Vneshnei Torgovli Sovetskogo Gosudarstva* (Legal Problems Connected with the Establishment of Monopoly of Foreign Trade of the Soviet State), Sov. Y.B. INT'L L. 290-300 (1968) [hereinafter cited as Kovan].

One Soviet commentator claims that Lenin was the author of the idea of a Soviet monopoly of foreign trade and specifically cites two of Lenin's writings to document the claim: *Groziashchaia Katastrofa i kak s nei borot'sia* (Impending catastrophy and how to battle it—was written on the eve of the October Revolution of 1917), and *Ocherednye Zadachi Sovetskoi valsti* (The next tasks of the Soviet Power—written somewhere between March-April of 1918). Kovan, at 290-91.

31. 33 Sob. Uzak. i Rasp. R.S.F.S.R. [1918] Item 432.
32. 33 Sob. Uzak. i Rasp. R.S.F.S.R. [1918] Item 432, art. 1.
33. 33 Sob. Uzak. i Rasp. R.S.F.S.R. [1918] Item 432, art. 2.

The spirit of the 1918 decree was reiterated in a 1922 decree,[34] which for the first time used the term "monopoly" to refer to the authority of the state in the conduct of Soviet foreign trade, stating that "the foreign trade of the RSFSR shall be a state monopoly."[35] Despite the unequivocal language of the 1922 decree, the exact scope of this state monopoly remained unclear. The question that persisted was whether the two decrees precluded private agencies from engaging in any form of foreign trade transactions. In October 1925, the Central Committee of the CPSU adopted a resolution[36] rendering an interpretation of the concept of "state monopoly of foreign trade." The resolution provided in part:

> Its essence [the monopoly's] is that the state itself carries out management of foreign trade through a specially created agency (the People's Commissariat of Foreign Trade); establishes which organizations may carry out actual foreign trade operations in which branches and in what volumes, determines working for the goals of improving the economy and socialist construction by means of an export-import plan, what and in what quantities may be exported from the country and what may be imported into it; and it directly regulates import and export and the operations of foreign trade organizations through a system of licenses and quotas.[37]

The 1925 interpretative resolution of the Central Committee of the CPSU has been construed by a student of Soviet foreign trade "to mean that the conduct of foreign trade by non-commissariat government agencies and even by private companies does not violate the monopoly principle, so long as all trade is closely regulated by the state."[38] The latter interpretation, however, may be correct only in the context and circumstances of the 1920's. At that time there were still mixed trading companies in the Soviet Union, while under the present conditions in the Soviet Union such an

34. Decree on Foreign Trade of March 13, 1922, 24 Sob. Uzak. i Rasp. R.S.F.S.R. [1922] Item 266 Presidium of the All-Union Central Executive Committee. For a detailed enumeration of subsequent decrees, which were aimed at reasserting the principle promulgated in the 1918 and 1922 decrees see Kovan, *supra* note 30, at 295-300.

35. 24 Sob. Uzak. i Rasp. R.S.F.S.R. [1922] Item 266.

36. Resolution of the Plenum of the Central Committee of the Worker-Peasant Party (Bolsheviks) on Foreign Trade, October 5, 1925, *reproduced in* QUIGLEY, *supra* note 30, at 205-10.

37. *Cited in* QUIGLEY, *supra* note 30, at 74.

38. QUIGLEY, *supra* note 30, at 74.

interpretation would not be applicable, especially since article 14, paragraph (h) of the U.S.S.R. Constitution speaks of an uncompromising state monoply of foreign trade. Similarly, the limitations on the uses of personal property[39] under article 10 of the U.S.S.R. Constitution would not permit private involvement in the sphere of foreign trade. Therefore, it seems to this writer that under the present state monopoly principle, only the Soviet state or any authorized subdivision thereof may engage in foreign trade operations, including not only export-import operations but also foreign currency transactions[40] as well as the insurance[41] of export-import goods and transport.

Through the mechanism of state monopoly of foreign trade the Soviet Government strives not only to exclude all competing private interests from this vital area, but also to insure the coordination of its foreign trade policy with its overall domestic and foreign policy. In the words of one Western commentator, "[e]very segment of Russian . . . business life is entirely monopolized, both horizontally and vertically. At home and abroad the omnipresent state operates on an exclusive and gigantic scale as owner, inves-

39. The 1936 U.S.S.R. Constitution recognizes only three types of property interests: state, cooperative and collective farm (article 5), and personal property (article 10). Private property, per se, is unconstitutional in the U.S.S.R.

40. *See* Statute of U.S.S.R. State Bank, 18 Sbor. Post. Prav. S.S.S.R. [1960] Item 160. All foreign currency transactions are concentrated in the hands of the U.S.S.R. State Bank which by a decree of April 3, 1954, was removed from the jurisdiction of the U.S.S.R. Ministry of Finance. *See* Decree of April 3, 1954, [1954] 9 Ved. Verkh. Sov. S.S.S.R.; [1968] 1 Sbor. Zak. S.S.S.R. at 282. In foreign financial transactions, the U.S.S.R. State Bank operates in close collaboration with the *Vneshtorgbank S.S.S.R.*, the Foreign Trade Bank of the U.S.S.R., which specifically deals with foreign trade finance. For details see, Winter, *Banking*, I ENCYCLOPEDIA, *supra* note 29, at 76-77. For detailed regulation of banking and loan operations in the U.S.S.R. see articles 269-74, 391-95 of R.S.F.S.R. GRAZH. KOD. (Civil Code) as well as the corresponding provisions of Osn. Grazh. Zak. S.S.S.R. i Soiuz. Resp. (Fundamental Principles of Civil Legislation).

41. A decree of November 28, 1918, nationalized all insurance operations in the Soviet Union. Whereas all domestic insurance business is concentrated in the hands of an agency called *Gosudarstvennoe Strakhovanie (Gosstrakh)*, all foreign trade insurance business is entrusted to another agency called *Inostrannoe Gosudarstvennoe Strakhovanie* (popularly known as *Ingosstrakh*). For details see Rudden, *Insurance*, I ENCYCLOPEDIA, *supra* note 29 at 323-26; Rudden, *Soviet Insurance Law*, 12 LAW IN EASTERN EUROPE (1966).

tor, miner, buyer, producer, moneylender, shipper and insurer."[42]

3. *The Conduct of Foreign Trade Through State Operational Agencies.*—The effective implementation of state monopoly on foreign trade calls for the concentration of authority in one governmental agency. In the Soviet Union such authority is vested in the Ministry of Foreign Trade (MFT)[43] which is solely responsible for the overall coordination of Soviet foreign trade.[44] This agency's constitutional authority is derived from a host of provisions in the 1936 U.S.S.R. Constitution such as article 14, paragraph (h) which proclaims the principle of exclusive federal jurisdiction over foreign trade matters and articles 75 and 77, which grant the exercise of this exclusive jurisdiction to the all-union ministry of foreign trade. The head of this ministry, designated the Minister of Foreign Trade of the Soviet Union, is empowered, under articles 72 and 73 of the U.S.S.R. Constitution, to direct and coordinate all questions connected with foreign trade. It is true that the minister often consults with a ministerial collegiate (an advisory body comprised of the minister as the ex officio chairman, his deputy ministers, and other top executives within the Ministry of Foreign Trade)[45] on major policy matters, but under article 16 of the General Statute on U.S.S.R. Ministries, the ultimate responsibility for making the decisions rests with the minister himself.[46] This, how-

42. Pisar, *Crossroads for The Multinationals,* Wall Street J., June 26, 1974, at 14, Col. 4.

43. The Ministry of Foreign Trade of the U.S.S.R. was created by a decree of August 24, 1953. *See* [1968] 1 Sbor. Zak. S.S.S.R. 268.

44. The Customs Code of the U.S.S.R., which was adopted on May 5, 1964, and became effective on July 1, of that year, charges the Central Customs Administration with the direct supervision of all customs operations within the Soviet Union (article 2 of the Customs Code). But article 1 of the Code establishes the Central Customs Administration as a subordinate agency of the MFT thus giving the latter the right to control all Soviet customs operations. *See* Customs Code of the U.S.S.R., [1968] 1 Sbor. Zak. S.S.S.R. 338-62.

45. Admittedly, in several of its provisions, the General Statute on U.S.S.R. Ministries seeks to preserve the relative autonomy of the various ministerial collegiates. (See articles 15 and 18 of the General Statute.) These safeguards, however, do not often work out in practice.

46. General Statute on U.S.S.R. Ministries was promulgated by a decree of the Council of Ministries of the U.S.S.R. on July 10, 1967. Article 17 of the Statute enumerates the specific powers that are delegated to the Minister. An English translation of this statute can be found in BERMAN & QUIGLEY, BASIC LAWS ON THE STRUCTURE OF THE SOVIET STATUTE 83-97 (1969).

ever, does not empower the minister of foreign trade with absolute power in the area of foreign trade, for institutional checks on his authority can be found in the General Statute on U.S.S.R. Ministries.[47]

Up to the mid-1950's, the Ministry of Foreign Trade's monopoly over Soviet foreign trade was unmitigated and pervasive, but with the subsequent decentralization of the Soviet economic apparatus some of the tasks of the Ministry of Foreign Trade were passed on to other ancillary state agencies. The most prominent of these agencies are the State Committee of the U.S.S.R. Council of Ministers for Foreign Economic Relations, which was created in 1957[48] as a replacement for the now defunct Chief Administration for Economic Relations with Countries of Peoples' Democracy; and the Committee on Inventions and Discoveries, which was formed in 1955[49] and charged with the patenting of Soviet inventions abroad. This technical function is to be shared, however, with the MFT and the State Committee of the U.S.S.R. Council of Ministers for Coordination of Scientific Research Work,[50] which was superseded by the State Committee for Science and Technology[51] in 1965. All of the above state agencies work in close collaboration

47. For such checks see articles 1 and 12 of the General Statute on U.S.S.R. Ministries. *Id.* at 83, 86.

48. *See* [1957] 15 Ved. Verkh. Sov. S.S.S.R. Item 388.

49. *See* art. 3, ¶(a) of the Statute on the Committee on Inventions and Discoveries of the U.S.S.R. Council of Ministers, promulgated by a decree of the U.S.S.R. Council of Ministers, No. 274, Feb. 23, 1956. The authority of the committee was subsequently expanded in 1961 to include the sale abroad of licenses to Soviet products as well as the right to go before the Council of Ministers with a positive recommendation to purchase licenses to foreign products. See article 6 of the Methodological Instructions on the Procedure for preparing Materials on the Sale and Purchase of Licenses Abroad which was promulgated by a decree of the Committee on Inventions and Discoveries of the U.S.S.R. Council of Ministers on Dec. 19, 1961.

50. *See* Edict of the Presidium of the U.S.S.R. Supreme Soviet of April 8, 1961, [1961] 15 Ved. Verkh. Sov. S.S.S.R. Item 167; *See also* Statute on the State Committee of the U.S.S.R. Council of Ministers For Coordination of Research Work [1961] 20 Sbor. Post. Prav. S.S.S.R. Item 148, promulgated by a decree of the U.S.S.R. Council of Ministers, Law of Dec. 23, 1961.

51. *See* Law of the Supreme Soviet of the U.S.S.R., October 2, 1965 [1969] 39 Ved. Verkh. Sov. S.S.S.R. Item 558. The Committee was recognized under a new statute, which was promulgated on October 1, 1966. *See* [1966] 21 Sbor. Post. Prav. S.S.S.R., Item 193.

with the MFT. Among the other state and social organizations that operate outside the sphere of, but not necessarily in competition with, the MFT are: the State Planning Committee of the U.S.S.R. Council of Ministers, popularly known as the GOSPLAN, which acts as a conduit between the MFT and the Soviet federal parliament; the U.S.S.R. Ministry of Finance, which plans the currency limits to be placed on the foreign purchases of the MFT; the state agency for foreign insurance, known as *Ingosstrakh,* which is charged with all matters related to cargo insurance; the State Bank of the U.S.S.R., which coordinates all Soviet foreign currency transactions; the U.S.S.R. Ministry of Merchant Marine which, under the provisions of the U.S.S.R. Merchant Marine Code of 1968,[52] is charged with the responsibility for all Soviet maritime shipping operations but collaborates with the MFT in matters related to international shipping; the All-Union Chamber of Commerce, which acts as the promotional agent for Soviet foreign trade organizations (FTO's) and also operates two arbitration tribunals-the Foreign Trade Arbitration Commission (FTAC)[53] and the Maritime Arbitration Commission. The MFT also develops contacts with international, regional and national economic organizations, exchanges trade delegations with foreign countries, and renders translation services to Soviet FTO's.

4. *Use of Trade Delegations.*—Because of the principle of state foreign trade monopoly, the Soviet Government entrusts to its var-

52. U.S.S.R. Merchant Marine Code, adopted by a decree of Sept. 17, 1968. *See* [1971] 3 Sbor. Zak. S.S.S.R. 42-111.

53. The Soviet Foreign Trade Arbitration Commission (FTAC) is a very peculiar institution, which was established in 1932 at the instigation of a handful of Soviet organizations. It is not a state agency, but rather is regarded as a social organization. Like all the other recognized social organizations in the Soviet Union (e.g. the CPSU, trade union organizations, the Young Communist League, the Znanie Society, etc.) it enjoys the full support of the Soviet Government. Even though it is not a state agency it was chartered by a joint act of the Central Executive Committee and the Council of Peoples' Commissariats of the USSR which was promulgated on July 17, 1932. Any agreement by a Soviet FTO to arbitrate before the FTAC has the force of law in the Soviet Union and the decisions of the FTAC itself is binding at law. For details on the juridical status and a review of the activities of the FTAC see Ramzaitsev, *Deiatel'nost' VTAK v Moskve v 1957 goduy* (Activities of the FTAC in Moscow during 1957), Sov. Y.B. INT'L L. 463-75 (1958).

ious foreign-based trade delegations[54] the task of soliciting business for the numerous Soviet FTO's. Further, these trade delegations also serve as information gathering instruments for the Soviet MFT. For some time the legal status of the trade delegations was unclear, thereby presenting such issues as, *inter alia,* whether the officials of the trade delegation enjoyed traditional diplomatic immunity, whether the delegation itself was immune from court actions in a host country, and whether the delegation was a general or special agent of the FTO's on whose behalf it occasionally purported to enter into trade contracts. In response to the uncertain status, the 1972 Trade Agreement attempted to define the powers of any Soviet trade delegation that would operate within the territory of the United States at any time in the future.[55]

Soviet trade delegations operate in close cooperation with the respective FTO's at home, to the extent that whenever the representative of an FTO visits a foreign country the Soviet trade representative in that country acts as his "local counsel" on both the foreign trade laws of the host country and on the foreign trade laws of the Soviet Union. Further, whenever an FTO signs a trade contract with a foreign country in the Soviet Union, it is traditional for the FTO to deposit a copy of that agreement with the Soviet trade representative residing in the contracting country. Therefore, three functions characterize the role of Soviet trade delegations abroad: (1) as a local counsel to visiting FTO officials, (2) as a depository for trade agreements, and (3) as a travelling salesman for the FTO's.[56]

5. *Separation of Foreign Trade from Domestic Trade.*— Clearly, control of Soviet foreign trade is almost totally separated from that of domestic trade. Whereas the all-union ministry[57] of foreign trade is charged with the coordination and direction of all

54. An historical analysis of the role of trade delegations in the conduct of Soviet foreign trade is found in Quigley, *supra* note 29, at 465-73.

55. *See* Annex III and IV of the Trade Agreement which respectively defines the status of the trade representation of the U.S.S.R. in the United States and the status of the United States Commercial Office in the Soviet Union.

56. In those countries where the activities of the Soviet trade delegation are not regulated by any specific trade agreement, the powers of the trade delegation may even include the right to sign trade agreements on behalf of a Soviet FTO. *See* QUIGLEY, *supra* note 30, at 87-92.

57. Under the Soviet constitutional system there are four categories of minis-

Soviet foreign trade, the conduct of domestic trade is entrusted to the union-republican and autonomous-republican ministries of trade. Such a bureaucratic separation of foreign and domestic trade operations has certain disadvantages. First, such separation leads to a lack of coordination in the planning of domestic and foreign trade. For example, Soviet foreign trade organizations have been known to export commodities that were badly needed by the domestic market.[58] Also in the sphere of foreign trade operations occasional conflicts have arisen between competing FTO's over import policies.[59] Furthermore, the separation of domestic and foreign trade operations tends to insulate the foreign trader from the producing and consuming Soviet enterprises, thereby requiring all contracts between the foreign trader and Soviet primary producers to be channeled through a competent FTO, which could be frustrating for the Western businessman.[60] Moreover, such a bifurcated system may create difficulties in seeking legal redress, for as one commentator noted:

> Under the monopoly foreign trade system, Soviet enterprises never enter into direct contractual relations with foreign parties. Therefore, if a foreign purchaser violates a contractual obligation, he is sued by the [FTO] not by the producing enterprise. And if the purchaser alleges breach on the Soviet side, he sues the [FTO] alone. Suits between the [FTO] and supplier are normally kept quite separate from any suit between the [FTO] and the foreign purchaser. If an [FTO] pays damages to the purchaser as a result

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tries: (1) all-union ministries (these are ministries that exist only at the federal level, *see* article 77 of U.S.S.R. Constitution); (2) union-republican ministries (these exist both at the federal and union-republican levels, *see* article 78 of U.S.S.R. Constitution); (3) republican ministries (these exist at the level of union-republics only, *see* article 51 of R.S.F.S.R. Constitution); (4) autonomous-union-republican ministries (these exist both at the levels of the union-republic and the autonomous republics, article 69 of R.S.F.S.R. Constitution). Whereas the Soviet Ministry of Foreign Trade exists only at the federal level, the ministry of trade (domestic) exists at all three levels of sovereign power—federal, union-republic, and autonomous-republic.

58. For an account of one such instance see QUIGLEY, *supra* note 30, at 54.

59. *Id.* Such interagency competition was condemned by the CPSU in its directives issued at the 24th Congress. *See* High Authority of the CPSU, 24th Cong., ___ Sess., Doc. No. ___, ___ Dues. ___ (1971).

60. The relationship between the FTO's and the domestic enterprises is vividly described by QUIGLEY, *supra* note 30, at 127-53.

of the supplier's improper performance, the [FTO] brings a separate action against the supplier in state arbitrazh.[61]

It should be added, however, that even though foreign and domestic trade are separated, the former is not necessarily excluded from the overall national economic plan. As a matter of fact, Soviet foreign trade is determined by the demands of the national economic plans at all stages. For example, the adoption of the ninth five-year economic plan (1971-75) by the CPSU during its 24th Congress meant that Soviet foreign trade priorities during that period will be determined strictly in the light of the economic plan itself.[62] Articulating this fact, the CPSU stated in its directive that "the development of our foreign trade and the extension of our economic, scientific, and technical cooperation with other countries should promote the successful fulfillment of the tasks of the new five-year plan period."[63]

The above cited examples are among some of the imperative norms of Soviet foreign trade. All of these general principles have found specific articulation in constituent instruments of the various FTO's, as well as in other state laws relative to the authority of the FTO. A closer analysis of the delegated powers of the FTO is the subject of the next section of this study. In looking at these powers it should be borne in mind that the powers of an FTO are essentially enumerated powers. This is not to say that FTO's do not have implied or inherent powers; rather, their implied powers flow specifically from those enumerated in their constituent instruments or in other relevant acts, and accordingly, powers not enumerated may not be freely implied.

## III. LEGAL STATUS OF THE FTO'S[64]

### A. *Introduction*

The FTO is at the very center of all Soviet foreign trade opera-

61. *Id.* at 144.

62. For a brief but penetrating discussion of the integration of foreign trade operations into overall economic planning, see Hertzfeld, *Export and Import,* I ENCYCLOPEDIA, *supra* note 29, at 263-64.

63. *See* High Authority of the CPSU, *supra* note 59, at 201.

64. Different Western authors have called the FTO's by different names: export-import corporations (PISAR, *supra* note 16); monopoly corporations (SMITH, *supra* note 1, at 9); monopoly export-import corporations (*id.* at 8); export-import

tions, and while numbering approximately 54, FTO's account for over 95 per cent of all Soviet foreign trade.[65] One research study shows that "of the fifty-four FTO's presently operating, six specialize in trade with developing countries and are subordinate not to the Foreign Trade Ministry, but to the State Committee for Foreign Economic Relations; six others are subordinate neither to the Foreign Trade Ministry nor to the state committee but to agencies whose primary concern is the domestic economy; five FTO's perform service functions for other FTO's; and three specialize by countries rather than products."[66]

Within the context of Soviet law the FTO's enjoy the status of juridical persons.[67] However, in a legal system where there is no private enterprise and where all juridical persons engaged in foreign trade are subdivisions of the state, it is necessary to shed some light on the scope of the legal personality conferred on the FTO's by Soviet law. The remainder of this section discusses the juridical status of FTO's.

### B. *Specialization of FTO's*

1. *Commodity Specialization.*—The FTO's, whether directly

combines (QUIGLEY, *supra* note 30); FTO (Starr, *supra* note 11). Pisar in his book (PISAR, *supra* note 16) used more than three different terms to refer to the same entity: export-import corporations (*id.* at 147), foreign trade corporations (*id.* at 147), export-import enterprises (*id.* at 148); Hertzfeld speaks of all-union foreign trade corporations (Hertzfeld, *supra* note 29, at 280); Professor Kiralfy speaks of external trade associations (Kiralfy, *supra* note 19); Professor Adahl spoke of foreign trade firms (I ENCYCLOPEDIA, *supra* note 29, at 328); Parsons spoke of state trading organizations (Parsons, *Recent Development in East-West Trade: The US Perspective*, 37 LAW & CONTEMP. PROB. 548, 553 (1972)). Official translations by both the United States and Soviet Governments have used the term FTO (*see* 67 DEP'T STATE BULL. 581-604 (1972); High Authority of the CPSU, *supra* note 59, at 201). These differences in translation notwithstanding it should be noted that all references are to the same agency—the *Vneshtorgovye Ob'edineniia* as opposed to the *Proizvodstvennye Predpriiatiia* (domestic primary producers).

65. For a list of the existing FTO's see Osakwe, *supra* note 11, at 554-59; QUIGLEY, *supra* note 30, at 212-15.

66. *See* QUIGLEY, *supra* note 30, at 105.

67. A brief but comprehensive analysis of the juridical status of Soviet FTO's under Soviet law can be found in Ramzaitsev, *Znachenie Novykh Zakonov SSSR v Oblasti Grazhdanskogo Prava i Protsessa Dlia Regulirovaniia Sovetskykh Vneshneekonomicheskykh Otnoshenii* (The Significance of New Laws of the

engaged in the export or import of goods or in the provision of ancillary services to other FTO's, specialize in specific commodities or services. Therefore, an FTO that specializes in one group of commodities may not transact in any other unauthorized items. For example, the *Novoesport* specializes in carpets, jewelry, and handicraft only, whereas *Promsyrimport*, on the other hand, specializes in pig iron, ferrous alloys, and other steel products. Also, whereas *Sovexportfilm* specializes only in films, the *Sojuzprushnina* specializes in furs, bristles, and animal hair as well as organizing fur auctions and concluding long-term agreements for deliveries of fur goods to foreign firms.[68] One of the best known of the FTO's is the *Mezhdunarodnaya Kniga,* which specializes in books, periodicals, newspapers, pictures, maps, gramophone records, postage stamps, and film strips as well as engaging in book publication.

The commodities list of each FTO is established by the Minister of Foreign Trade and is generally included in the FTO's constituent instrument.[69] Only the Minister of Foreign Trade may alter this list once it has been adopted, thereby granting the FTO an absolute monopoly over foreign trade transactions related to all items on its commodities list. In this sense, the FTO's are monopolies within monopolies.[70]

It might, however, be consoling to the American businessman to know that a recent survey[71] showed that not one Soviet FTO has been found to exceed its authorized power in its foreign trade transactions—an indication that the foreign trader can safely rely on the FTO's unilateral claim as to the scope of its authority. A second point to be noted is that even though a Soviet FTO may not transact in commodities or services not enumerated in its charter, an *ad hoc* authorization from the Ministry of Foreign Trade will be sufficient authority to enable an FTO to exceed its

U.S.S.R. in the area of Civil Law and Procedure For the Regulation of Soviet Foreign Economic Relations), Sov. Y.B. INT'L L. 407-17 (1963).

68. For a list of the special commodities in which the various FTO's may transact see Osakwe, *supra* note 11, at 554-59.

69. An example of such detailed enumeration of the powers of an FTO can be found in article 5 of Stankoimport, 8 VNESHNIAIA TORGOVLIA (Foreign Trade) 61-62 (1966).

70. PISAR, *supra* note 16, at 147.

71. Ramzaitsev, *supra* note 53, at 408.

charter limitations. A leading Soviet commentator writes:

> Presumably, it is not excluded, that with the permission of the Ministry of Foreign Trade which is charged with the implementation of state monopoly on foreign trade, an FTO may enter into foreign trade transactions in those commodities or services that are not listed in its charter. In such a case, however, the transaction may not be considered ultra vires so long as the permission (or the directive) of the MFT may be looked upon as the granting of [additional] authority to the FTO in excess of the latter's special agency powers.[72]

2. *Country Specialization.*—While most of the FTO's specialize in commodities, at least three, the *Dalintorg, Lenfintorg*, and *Vostokintorg,* specialize in countries or trading zones. The *Dalintorg* specializes in coastal exports and imports between the Far East regions of the Soviet Union and Japan, while the *Lenfintorg* trades in consumer goods with Finland and Norway, and the *Vostokintorg* specializes in rolled metal products, cement, glass, timber, and imports wool, cotton, coffee beans, and traditional goods from the Far and Near East. The practical implication of the geographical limitations on the operations of these three FTO's is that they may not engage in foreign trade business with any other countries outside their zonal jurisdiction.

3. *Service Specialization.*—Another category of FTO's are those that do not engage in export or import transactions directly but merely confine their operations to providing ancillary services to other FTO's. For example, the *Vneshtorgreklama* merely contracts with other FTO's to provide them with commercial advertisements both at home and abroad,[73] while the *Vneshtorgizdat* seeks to educate the other FTO's, through its periodic publication, about foreign trade operations.[74]

### C. *Scope of FTO Autonomy*

1. *Degree of Financial Autonomy.*—The FTO's are subdivisions of the state but at the same time they are considered separate legal entities.[75] They are allotted a certain amount of financial and

72. *Id.*
73. Charter of Vneshtorgreklama, 7 VNESHNIAIA TORGOVLIA 50-51 (1965).
74. Charter of Vneshtorgizdat, 9 VNESHNIAIA TORGOVLIA 45 (1964).
75. *See* Charter of Stankoimport art. 1, 8 VNESHNIAIA TORGOVLIA 61-62 (1966).

material resources from the state budget for a given period of time,[76] during which they are expected to operate at a profit. In all their operations they are expected to give a full accounting to a designated state authority. Under this principle of economic accountability an FTO may not be held liable for the obligations of the Soviet State, or for that matter, for the obligations of another FTO.[77] Similarly, the Soviet state per se cannot be held liable for the obligations of the FTO. The FTO may sue and be sued in its own name,[78] with its liability limited to its assigned assets. Moreover, it may acquire or lease property both in the Soviet Union or abroad and it may participate in mixed companies.[79]

2. *Degree of Administrative Autonomy.*—Even though the FTO enjoys some degree of financial autonomy from the state, it is generally subject to administrative control from above, especially since an FTO is generally created by an act of the Council of Ministries upon the recommendation of the Minister of Foreign Trade. Further, it takes an act of the U.S.S.R. Council of Ministers, upon the recommendation of the Minister of Foreign Trade, to merge, break up, or liquidate an FTO. The FTO is subject to additional administrative control since the top officials of an FTO, including the Chairman, his deputies and other members of the FTO collegiate, are appointed and removed by an order of the Minister of Foreign Trade.

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76. The property assigned to an FTO does not belong to the recipient FTO but rather is merely passed on to the FTO's "operative management." The property in the hands of the FTO's is still state property and, therefore, may be utilized by the FTO only in accordance with its defined purpose and within the limits established by law. For the pertinent laws regulating the uses of such property see U.S.S.R. F.P. Civ. L. arts. 19-32.

77. Charter of Stankoimport art. 2, *supra* note 69.

78. Since the foreign exporter or importer does not have direct contacts with the Soviet primary producer or domestic wholesaler, any such foreign company that violates a contractual obligation is sued not by the Soviet domestic primary producer or wholesaler but rather by the appropriate Soviet FTO. Similarly, if the foreign corporation alleges violation of the terms of the contract it sues the FTO. If the FTO suffers any damage from such foreign suits (*e.g.*, as a result of the Soviet primary producer's improper performance), it then may bring separate action against the primary producer in a state *arbitrazh*. *See* Law No. 25 of Jan. 26, 1960, Order of the Minister of Foreign Trade, art. 8 [1960].

79. A typical provision regulating the power of an FTO in these matters is article 6 of the Charter of Stankoimport, *supra* note 69.

### D. *Requirements for Making Valid FTO Contracts*

1. *Soviet Formalities.*—For the contract[80] of an FTO to be valid at law, it must conform to certain formalities established under Soviet law: all such contracts must be in writing and must be signed by two persons—one shall be the chairman of the FTO or his deputy and the other a person authorized to sign foreign trade transactions; bills of exchange and other monetary obligations issued by the FTO in Moscow must have the signature of the FTO's chairman or his deputy and that of the FTO's chief accountant. In the event that an FTO is required to conclude a foreign trade transaction or issue bills of exchange or other monetary obligations outside Moscow, either within the territory of the Soviet Union or abroad, these transactions must be signed by two persons who have been granted a power of attorney by the FTO's chairman.[81]

The implications of these procedural requirements are that no oral contracts are permissible, contracts may not be concluded through the tacit acquiescence of the parties, contract offers must be made in writing, and any subsequent modifications of an existing contract must conform to the formalities governing the signing of a new contract. These restrictive rules, requiring two signatures and precluding oral contracts, would certainly tend to work a hardship on a foreign party who may be used to a more casual way of doing business. Speaking in general terms about the requirements of form in East European foreign trade contracts, one commentator has noted that "[a]greements concluded by handshake or telephone, or which are confirmed by telex or cable, are always risky. In dealings with communist enterprises they are in danger of being declared unenforceable, even invalid. If the parties intend to reduce their contract to writing but fail to do so, the bargain they have struck will not be legally binding; this is a fairly universal rule."[82] The commentator's advice to the prospective Western businessman is that:

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80. For a general discussion of the nature and functions of Soviet foreign trade contracts see Hertzfeld, *Foreign Trade Contracts,* I ENCYCLOPEDIA, *supra* note 29, at 283-84.

81. *See* Law No. 1 of Dec. 26, 1935, Procedure for Signing Foreign Trade Transactions, [1936] 1 Sbor. Zak. S.S.S.R. Item 3, art. 2. *See also* Charter of Stankoimport, art. 10, 8 VNESHNIAIA TORGOVLIA 61-62 (1960).

82. PISAR, *supra* note 16, at 302.

> [b]oth the original agreement and the subsequent variation of its terms should be fully documented. If changes, made face to face or by telephone, result in additional costs for the Western firm, there is likely to be no recovery in the absence of subsequent confirmation of amendatory protocol, letter, telex or cable. Most important, an oral agreement to arbitrate contractual disputes will likewise prove to be inoperative, leaving the private firm to seek remedy in a communist People's Court. By the same token, an award entered in a Western country pursuant to an unrecorded arbitral submission may be denied enforcement in the country of the unsuccessful state trade.[83]

Moreover, it is irrelevant whether the contract was executed in the Soviet Union or abroad, for the applicable Soviet conflict of laws principle states that "the form of foreign trade transactions concluded by Soviet organizations and the procedure for their signing irrespective of place of conclusion of such transactions, shall be determined by the legislation of the USSR."[84] This is a strict departure from the universally recognized principle of *lex loci contracti* and is a perilous trap into which an unwary foreign businessman may fall.

Under article 48 of the R.S.F.S.R. Civil Code, any transaction that does not conform to legal requirements is invalid and requires restitution by the parties for goods received under the transaction, unless other consequences are required by statute. Additional provisions of the Civil Code that prescribe formalities for foreign trade transactions include article 3, which specifically states that "foreign trade relations are governed by the special foreign trade legislation of the USSR and by the general civil legislation of the USSR and the RSFSR;"[85] article 45, which provides that the "[f]ailure to observe the formalities for an extended trade transaction as well as the failure to observe the procedure for the signature invalidates the transaction."[86] Further, article 564 addresses itself to the authority of foreign corporations to conclude trade contracts inside the Soviet Union, namely, that "[f]oreign enter-

83. *Id.* at 306. At 301-16 Pisar discusses the detailed formalities relative to the creation and performance of agreements with Soviet FTO's.

84. U.S.S.R. F.P. Civ. L., art. 125 *in* [1968] 2 Sbor. Zak. S.S.S.R. 398. This rule corresponds with R.S.F.S.R. GRAZH. KOD. (Civil Code) §565 (2) (1957).

85. U.S.S.R. F.P. Civ. L., art 3 *in* [1968] Sbor. Zak. S.S.S.R.

86. U.S.S.R. F.P. Civ. L., art 45 *in* [1968] Sbor. Zak. S.S.S.R.

prises and organizations may without special permission effect transactions in the RSFSR in the course of external trade, and the accounting, insurance and other operations connected with it, with Soviet external trade associations and other Soviet organizations which have been given the right to effect such transactions,"[87] while article 566 provides that "[t]he rights and duties of parties under external trade transactions are defined by the law of the place where they were concluded, unless the parties otherwise provide by their agreement. Soviet law decides in which place a transaction is [regarded as] effected."[88] In the case of a contract entered into through correspondence between the contracting parties, the place which, under Soviet law, will be considered the proper *locus contracti* will be determined by article 162 of the R.S.F.S.R. Civil Code, which provides that "when an offer to conclude a contract indicates a time-limit for an answer, the contract is deemed concluded if the person making the offer receives an answer from the other party accepting the offer within the time set."[89] However, under article 163 "when such an offer is made in writing [without a time-limit for acceptance] the contract is deemed concluded if an acceptance is received within the time normally necessary for such receipt."[90] In short, the *locus contracti* is considered to be the place where the offeror receives the offeree's acceptance which usually is at the offeror's domicile.[91] There is no

87. The principle promulgated in article 564 of the R.S.F.S.R. Civil Code gives currency to the provision of article 12 of a March 11, 1931 Decree of the Council of Ministers of the U.S.S.R. entitled *The Procedure Governing the Conduct of Soviet Foreign Trade Operations by Foreign Corporations on the Territory of the USSR,* [1931] 24 Sbor. Zak. S.S.S.R. Item 197. The Decree generally provides that a foreign corporation may engage in foreign trade business in the Soviet Union only with the express permission of the Government, but article 12 waives any such requirement for a special permission if the business being conducted by the foreign corporation entails only trade negotiations or the conclusion of isolated trade contracts that do not entail establishment of a permanent business operation in the Soviet Union.

88. U.S.S.R. F.P. Civ. L., art 566 *in* [1968] Sbor. Zak. S.S.S.R.

89. U.S.S.R. F.P. Civ. L., art 162 *in* [1968] Sbor. Zak. S.S.S.R.

90. U.S.S.R. F.P. Civ. L., art 163 *in* [1968] Sbor. Zak. S.S.S.R.

91. R.S.F.S.R., 1964 GRAZH. KOD. (Civil Code) art. 165 provides that an answer from the offeree agreeing to make a contract on different terms from those proposed in the original offer is to be treated simultaneously as a refusal of the offer and a counter-offer.

doubt that these numerous detailed regulations place a heavy burden on the prospective foreign businessman to know and insist upon full compliance with Soviet law in all his transactions with a Soviet FTO.

2. *Scope of FTO authority.*—The Soviet FTO's are subject to very stringent *ultra vires* rules. The FTO is considered a special creature of the state with its constituent instrument defining its purpose and authority. An unauthorized act by an FTO is invalid *ab initio.* Specifically, two provisions of the R.S.F.S.R. Civil Code address themselves to the issue of unauthorized acts: under article 49, any transaction effected with an object contrary to the interests of the State or against public policy is invalid, whereas under article 50 a transaction concluded by a legal entity in contradiction to the purposes specified in its charter, or in the general statute on Foreign Trade Organizations of the given type, shall be invalid. Therefore, to determine whether an act is *ultra vires* or not, one shall look not only to the charter of the FTO in question but also to other Soviet statutes and acts that may govern the transaction. Thus, in practical terms, the foreign party is required to comply strictly with procedure in dealing with a Soviet FTO, for even when the FTO misrepresents or perhaps misunderstands the scope of its authority, the contract is considered *ab initio.*

### E. *Summary—Legal Status of FTO's*

In summarizing the legal status of the FTO, it should be noted that the FTO is "an economic organization, a legal person and a body autonomous in business transactions. At the same time, pursuant to law, the [FTO] is unconditionally subject to the directives of the Ministry [of Foreign Trade] which, in accordance with the Constitution of the USSR, has authority over foreign trade."[92] Because of the principle of state monopoly of foreign trade and because of the eminent position occupied by foreign trade in the overall conduct of Soviet foreign policy, the FTO is subject to strict procedural requirements and *ultra vires* rules in its contractual dealings with foreign enterprise. The general principle of *lex loci contracti* is sufficient for domestic Soviet trade, but not in the area

92. Award of the FTAC on the claim filed by Jordan Investments, Ltd., an Israeli company against the combine Soiuzneftexport, 53 AM. J. INT'L L. 789, 803 (1959).

of foreign trade where it may be forced to yield to a compelling state interest, which to the Soviet legal mind, to hold otherwise would be tantamount to an unacceptable compromise of Soviet state sovereignty.[93]

## IV. Miscellaneous Barriers to Improved Trade Relations with the Soviet Union

In addition to having a centralized economy, the Soviet Union is also a closed society. While the first factor is directly responsible for certain legal barriers to foreign trade, the second factor—the closed society—has resulted in a series of indirect, but nevertheless, serious and far-reaching restrictions on improved trade relations with the Soviet Union. This section discusses restrictions on foreign trade operations in the Soviet Union.

### A. *Strict Soviet Supervision of the Internal Movement by Foreigners*

For a combination of reasons, the Soviet Government restricts the movement of all aliens and stateless persons within the Soviet Union. Usually, these individuals are restricted to the major cities such as Moscow, Leningrad, and Kiev, and a permit is required for them to move from one major city to another. Not only do violations of these domestic movement rules constitute a serious administrative offense but they are also viewed as criminal acts under certain circumstances. Article 197-1 of the 1961 R.S.F.S.R. Criminal Code provides:

> The malicious violation by foreigners and persons without citizenship of the rules for movement on the territory of the USSR, that

93. A detailed analysis of the Soviet Conflict of Laws principles pertaining to foreign trade operations can be found in Lunts, *Vneshnetorgovaia Kuplia-Prodazha—Normy Sovetskogo Kollizionnogo Prava, Otnosiashchiesia k Kontraktam Po Eksporty i Importy Tovarov* (Foreign Trade Sales and Purchases—Norms of Soviet Conflict of Laws Relative to Contracts on the Export and Import of Goods), Sov. Y.B. Int'l L. 261-76 (1960). The conflict of laws principle regulating trade between a Soviet FTO and the trading organizations of the COMECON countries are different from those that regulate trade between the Soviet Union and Western countries. In the case of intraCOMECON trade the applicable principles are assembled in The General Conditions For the Delivery of Goods Within Comecon, adopted in 1958. *See* Lunts, *Id.*

> is, a change of place of residence, a visit to points not stated in USSR entry visas, or a deviation from a route of a journey stated in travel documents, committed without special permission thereof, if such persons have previously been twice subjected to administrative exaction for violation of the stated rules, shall be punished by deprivation of freedom for a term not exceeding one year or by correctional tasks for the same term, or by a fine not exceeding 50 rubles.[94]

The businessman, by the nature of his operations, often acts spontaneously and requires freedom of movement, not only inside the country where he conducts his business, but, as often is the case, across state frontiers. The Soviet visa regulations require that if a businessman who resides in Moscow wishes to travel to Leningrad or Kiev or Tiflis, he must obtain a permit from the local police authority. If he is driving, the police permit usually details the route along which he must travel and locations where he may make resting stops. It is much easier to regulate his movements if he is flying since the airline ticket counter will normally request to see his police permit before selling him a ticket. The same rule applies if for any reason the businessman wishes to make a brief business visit to any point outside the Soviet Union. There is no doubt that a well-intentioned businessman will make an effort to comply with these laws, but such tight regulation of movement within the country will undoubtedly have a chilling effect on the operational freedom of the prospective businessman.

### B. *Housing Problems*

The second barrier is posed by the acute housing shortage in the Soviet Union, which has three types of home ownership—state, cooperative-collective farm, and personal ownership.[95] Under article 25 of the Fundamental Principles of Civil Legislation of the U.S.S.R. and the Union Republics, as well as under article 10 of the U.S.S.R. Constitution, a personal house is designed to satisfy the personal convenience of the owner and as such it "may not be used to derive unearned income."[96] This means that the private

94. All citations to the R.S.F.S.R. Criminal Code are to Professor Berman's translation. *See* H. BERMAN, SOVIET CRIMINAL LAW AND PROCEDURE—THE RSFSR CODES (2d ed. 1972).

95. KONST. arts. 5, 10.

96. F.P.Civ.L. art. 25.

Soviet citizen cannot, even if he so wishes, rent his house or portions thereof to an American businessman for whatever purpose. Similarly, the property of a collective farm, a cooperative organization, or of any other social organization may not be placed at the disposal of a foreign businessman. Under the provisions of articles 23 and 24 of Fundamental Principles of Civil Legislation of the U.S.S.R., the property of these social organizations may be put only to such uses that correspond with the aims of the organization, and invariably, renting such property to a private foreign business will be incompatible with such aims.

These limitations leave the foreign business with only one option—*i.e.* to find a suitable state-owned building in which to locate its offices. Unfortunately, the search for office space in Moscow or Leningrad can take up to two years. Even when one is found the accommodation is not often the best that could be hoped for, since, as a general rule, ground floor accommodations are denied to foreign businesses, which often find themselves assigned to upper level quarters where members of the public cannot casually drop in. Thus, the implication is that the foreign businessman in search of office space in the Soviet Union is totally at the mercy of the Soviet Government whose fullest cooperation is a *conditio sine qua non* for obtaining even a modest accommodation. In anticipation, or rather in recognition, of some of the difficulties connected with locating office space in the Soviet Union, the United States in article 6 of the 1972 Trade Agreement extracted a pledge from the Soviet Government to make a good faith effort to help United States businessmen in need of accommodations.[97]

### C. *Lack of Commercial Advertising Facilities*

Another obvious obstacle to improved trade links with the Soviet

97. An agreement has been concluded with the Soviet Union that would enable a Western concern, the Occidental Petroleum Corporation of America, to build an international trade center in Moscow. It is expected that upon completion of the center (which will have four buildings of 20-25 floors including a 600-room hotel, 625 apartments for foreign businessmen, an auditorium, exhibition pavillion, shops, theaters, concert hall, restaurants, swimming pool and a 600-car garage) it will house most Western businesses and thus alleviate to a great extent the present helplessness of United States businessmen who are looking for adequate accommodations in the Soviet capitol. Wall Street J., April 22, 1974, at 5, col. 1.

Union is the lack of commercial advertising facilities. Since domestic Soviet businesses have never felt the need to persuade consumers to buy their products, the Soviet Union has not developed a system of commercial advertising such as one inevitably finds with competitive salesmanship. The American businessman, who looks upon commercial advertising as an integral part of his operations, feels frustrated when he is informed that he cannot advertise his goods in the Soviet Union. One possible method, however, by which the United States businessman can advertise his goods is to include fact sheets in the package along with the goods, and as long as these fact-sheets do not carry any political materials, the Soviet Government will not prohibit them.[98]

### D. *Lack of Direct Contacts Between United States Businessmen and Soviet Consumers*

An ideal business atmosphere permits direct links between producers and consumers. Market research helps the producers know what the consumers want and enables them to adapt to those needs. In the Soviet Union, however, such direct links are not possible. The FTO is interposed between the foreign businessman on the one hand and the Soviet primary producers, domestic wholesalers or general consumers on the other. This, of course, means that the foreign businessman does not know exactly how these recipients are reacting to his commodities.

Similarly, a foreign importing company has no way of communicating the needs of its clients to the responsible Soviet primary producers. All such communications must be channeled through the FTO, which in some instances "sanitizes" them before passing them on. All indications are that even some officials in the Soviet Union would like to see a loosening of this bureaucratic interposition between the foreign trader and the Soviet consumer. At the 23rd Congress of the CPSU, Soviet Premier Alexei Kosygin, in effect, called for a relaxation of the present arrangement so that the foreign trader can have a freer access to Soviet primary producers.[99]

98. There are indications that the Soviet Union is gradually loosening its restrictions on commercial advertising by permitting a few politically innocuous advertisements on a selective and experimental basis. However, massive commercial advertisement in the Soviet Union is still a long way off.

99. Kosygin, *The Directives of the 23rd CPSU Congress For the Five Year*

### E. *Bad Image of the Yankee Trader in the Soviet Union*

Among the many barriers to enhanced trade relations with the Soviet Union is the traditionally bad image that the American trader has in the minds of Soviet citizens. Despite *detente* and the well-publicized determination of the Soviet Government to trade with the United States, the Yankee trader, to the average Russian, is still a ruthless, profit-mongering, unscrupled, economic animal. This image of the American businessman sometimes conveys the impression that the United States capitalist would seize any available opportunity to restore capitalism in the Soviet Union, and naturally, the Soviet Government does little to correct this slanted image. The result is that the Soviet citizen enjoys American products whenever he finds them but is still suspicious of the motives that propelled the American businessman into the Soviet market.

### F. *Lack of Secretarial and Other Services*

The scarcity of secretarial and other administrative services in the Soviet Union is among the many operational inconveniences that the American businessman must endure. As a result of the lack of an open labor market from which the foreigner can recruit needed services, coupled with both the official Soviet policy of discouraging direct contacts between its citizens and foreign businessmen, and the Soviet Government's need to infiltrate the local offices of foreign businesses, the Soviet Government insists that all requests by foreign businessmen for local secretarial, administrative and other service personnel should be directed to an appropriate government agency, which in turn recruits such persons and assigns them to the respective foreign businesses. Since these staff employees are selected by the State, the foreign businessman is often wary of their presence, feeling that they have been placed by the Government to monitor their operations. These fears may or may not be justified, but the fact remains that business cannot prosper under such an atmosphere of mutual distrust.

### G. *Unavailability of the Services of a Local Attorney*

Another obstacle is the difficulty of obtaining the services of a

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*Economic Development Plan of the U.S.S.R. for 1966-1970*, N.Y. Times, April 6, 1966, at 1, col. 5.

local attorney in the Soviet Union. Even if a Western businessman has sufficient legal advice from Western experts on Soviet law, there is still the need to retain a local attorney. Under article 7, paragraph 2 of the 1972 Trade Agreement:

> [E]ach Government shall ensure that corporations, stock companies, and other industrial or financial commercial organizations including foreign trade organizations, domiciled and regularly organized in conformity to the laws in force in the other country shall have the right to appear before courts of the former, whether for the purpose of bringing an action or of defending themselves against one, including but not limited to, cases arising out of or relating to transactions contemplated by this Agreement.[100]

This right, however, cannot be fully realized unless the American businessman can avail himself of the services of local counsel. Perhaps to ameliorate this problem the Soviet Government should consider establishing an FTO that would specialize in rendering legal services to foreign corporations operating in the Soviet Union.

### H. *The Language Problem*

An American businessman who cannot speak the Russian language is at a distinct disadvantage. Obvious language problems aside, differences in nuance and convention often create misunderstandings. For example, when a Soviet trade representative says, "I'll study a proposal," he means no, while if he is interested in the offer he will suggest modifications or make a counteroffer immediately.

To conduct serious business negotiations through an interpreter is not an easy task, and at first, would tend to dampen the interest of a prospective United States businessman. With adequate preparation, however, the problem of translation can be resolved, but this does not remove the chilling effect on foreign businessmen contemplating doing business in the Soviet Union.

### I. *Joint Ventures in the Soviet Union*

Even though the Soviet Union is willing to trade with the United States and despite the fundamental concessions that the Soviet Union has already made, there is a limit to Soviet concessions in

100. 1972 Trade Agreement, art. 7, ¶2.

their commercial dealings with Americans. One form of operation, which the Soviets are not willing to enter, is the establishment of joint ventures with American corporations. The Soviet Government has expressed its sentiments on the propsects of such joint ventures, clearly precluding foreign involvement in Soviet domestic projects.[101] Thus, the message is clear that the present prospects for United State-Soviet joint ventures are null.

While there are numerous obstacles to improved United States-Soviet trade, there are additional problems, which have been at least partially resolved by the 1972 Trade Agreement such as (1) the method of payment for United States goods (traditionally, the issue has been whether or not the Russians will be willing to pay in convertible currency rather than in kind), (2) the potential for the repatriation of capital gains from the Soviet Union, (3) the question of arbitration of disputes over the interpretation or application of a trade agreement, (4) the threat of expropriation by the Soviet Government,[102] and (5) the question of prompt, adequate, and effective compensation in the event of nationalization.

## V. Conclusion

After 57 years of Soviet-American history, trade relations between the United States and the Soviet Union are at their best today, with 1972 marking the beginning of a new era, in terms of both the actual volume of trade and in the breaking down of the traditional barriers that had restricted trade between the two

101. For an indication of the current Soviet attitude toward United States-Soviet joint ventures see interview with Nikolai S. Patolichev, Soviet Minister of Foreign Trade, U.S. News & World Rep., March 18, 1974, 59, 62.

102. It is doubtful whether the 1972 Agreement per se is an absolute guarantee against Soviet nationalization of private investments in that country. Any such unilateral takeover of American private property may be justified by the Soviet Government under the national security clause of article 8 of the 1972 Trade Agreement. Resort to nationalization of foreign property is certainly a political measure which cannot be fully regulated by a legal instrument. For a brief analysis of the prevalent Soviet Government attitude toward nationalization under international law see Osakwe, *Nationalization*, 2 Encyclopedia, *supra* note 29, at 464-65.

Even if nationalization is not carried out, requisition of such private alien property may be necessitated by Soviet public interest. For details on Soviet law of requisition see Osakwe, *Requisition*, 2 Enclyclopedia, *supra* note 29, at 583-84.

countries. With the signing of the 1972 Trade Agreement, the flow of trade, which had fluctuated since 1935,[103] has increased at a constant rate and appears to be of a permanent nature. The new spirit of *detente* seems to have overcome the sporadic antagonism that characterized United States-Soviet trade relations since 1951 when the Soviet Union was denied most-favored-nation status in the American market.[104] Nevertheless, under article 1 of the 1972 Tradé Agreement both parties promised to grant on a reciprocal basis a most-favored-nation status thereby eliminating a serious source of contention. This provision, however, requires congressional action by the United States, for under the 1962 Trade Expansion Act the President is prevented from extending favorable tarriff rates or duty free treatment to any communist countries, except Yugoslavia and Poland, without congressional approval.[105] Since the signing of the 1972 Trade Agreement, the Executive has continually sought most-favored-nation status for the Soviet Union but to no avail.[106] It appears, however, that a workable compromise over the Trade Reform Act will be reached in Congress,[107]

103. The first trade agreement between the United States and the Soviet Union was signed in 1935 thanks to the diplomatic breakthrough in United States-Soviet relations in 1933. *See* Commercial Relations Agreement with USSR, July 13, 1935, 49 Stat. 3805 (1935), E.A.S. No. 81.

104. Under the 1935 Trade Agreement the Soviet Union was granted MFN status but only to be denied that status in 1951 (i.e. after the outbreak of the Korean War). The Trade Agreement Extension Act of 1951, ch. 141, §5, 65 Stat. 73 granted the President power to terminate the existing trade agreement and this was done on December 23, 1951.

105. Trade Expansion Act of 1962, §1861 (a), 19 U.S.C §1801 *et seq.* (1970).

106. A major obstacle to the granting of MFN to the Soviet Union has been the Jackson Amendment to the Trade Reform Act of 1973 [H.R. 6767, 93rd Cong., 1st Sess., §504 (1973)], which seeks to predicate the granting of MFN to the Soviet Union upon that government's relaxation of its emigration policy.

107. The Wall Street Journal recently reported that a behind-the-scene agreement has been reached between the Ford Administration and the anti-*detente* forces in the Senate [these generally include Senators Henry Jackson (D. Wash.), Abraham Ribicoff (D., Conn.), and Jacob Javits (R., N.Y.), all of whom seem to have the strong backing of AFL-CIO's George Meaney] under which the President would be permitted at least one year in which to grant various trade concessions to the Soviet Union while seeking assurance that the Soviet Union liberalizes its emigration policies toward Soviet Jews. Such a compromise would mean that Senate approval of the trade legislation (without the Jackson Amendment) is almost inevitable. *See* Wall Street J., Aug. 16, 1974, at 11, col. 6.

insuring the viability of the 1972 Trade Agreement.

Assuming that the Trade Agreement becomes effective, one should remember that, at best, it represents only a legal bridge between the domestic foreign trade laws of the two sovereigns. The guarantees provided in the agreement will eliminate some of the legal complications of doing business with the Soviet Union,[108] but as any seasoned businessman knows, guarantees per se are not enough. The major problem of trading with an unorthodox nation, like the Soviet Union, lies in the extra-legal hazards connected with such a venture. These hazards have not been and cannot be totally removed by an intergovernmental trade agreement. Only a prolonged period of peaceful trade between the two countries will build the requisite mutual trust. One can only hope that with time the Soviet Union will allow freer trade with the West, and particularly with the United States, but until this time comes, it will only be reasonable for the prospective American businessman to realize that there are still certain inherent risks in doing business with the Soviet Union.

The Soviet Union wants to trade with the United States, but at the same time it welcomes only the strict law-abiding businessman. Ignorance of Soviet laws can lead to a host of unpleasant repercussions for the American businessman. It may lead to the unenforceability or invalidity of a trade contract; it may result in ignominious expulsion from the Soviet Union with or without forfeiture[109] of one's business investments and, possibly, it might even lead to criminal prosecution and, upon conviction, to possible imprisonment. The only advice one can give to an American contemplating doing business in the Soviet Union is to know the scope of the authority of your Soviet opposite number, obey the local laws and customs and while in the Soviet Union not engage in any

108. It should be pointed out that for each of these obstacles posed on the Soviet side of the trade barrier there are corresponding American restrictions on trade with the Soviet Union. These United States restrictions take the form of import restraints, credit limitations, strategic export restrictions, denial of MFN status, etc. For details on United States perspectives on United States-Soviet trade law see PISAR, *supra* note 16.

109. For a general discussion of the Soviet law on the forfeiture of property as a sanction for breach of the law by its owner see Osakwe, *Forfeiture,* I ENCYCLOPEDIA, *supra* note 29, at 288-90.

political activities that would create doubts in the minds of the Soviet authorities as to the sincerity of your professed business motives.