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Commercial Treaties and International Trade Transactions in East-West Trade

Clive M. Schmitthoff*

I. INTRODUCTION

Operations of international trade law are transacted on two levels—that of public law and that of private law. This distinction is clearly drawn in the Report of the Secretary-General of the United Nations on *The Progressive Development of the Law of International Trade*,¹ a report which, it may be recalled, preceded the establishment of the United Nations Commission on International Trade Law (UNCITRAL) in December 1966. That report limits its ambit to the “law of international trade,” which is defined as “the body of rules governing commercial relationships of a private law nature involving different countries.”² The report excludes from its examination

international relations on the level of public law, such as those relating to the attitude and behaviour of States when regulating, in the exercise of their sovereign power, the conduct of trade affecting their territories. Illustrations of commercial relationships of this type are bilateral treaties of commerce or multilateral treaties, such as the General Agreement on Tariffs and Trade (GATT) or the Rome Treaty establishing the European Economic Community.³

This distinction is sometimes expressed in another fashion; it is said that the private law relations deal with the micro-economic aspect of international trade and the public law relations with the macro-economic aspect of trade.⁴

II. TRADE AGREEMENTS BETWEEN COUNTRIES WITH FREE-MARKET ECONOMIES

In the trading relations between countries with free-market economies, the distinction between the public and private law aspects of international trade is strictly observed. In particular, commercial treaties between such countries provide only the macro-legal framework within which their privately-owned-and-managed enterprises may carry on international trade. Whether these enterprises will

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1. U.N. Doc. No. A/6396 (1966).

2. *Id.* at para. 10.

3. *Id.* at para. 11.

4. Goldstajn, *Legal Aspects of the Systems of Foreign Trade*, TRANSACTIONS OF THE THIRD CONFERENCE OF ECONOMISTS AND JURISTS IN ZAGREB 4 (1966).

avail themselves of the possibility afforded by the commercial treaty and whether trade will be intensive, are matters normally left outside the control of the contracting governments. Rather, they depend upon the status of the market and the opportunities for profitability of individual trading transactions, as determined by the view managers of the enterprises take of the market position. True, in the free-market economies governments can influence the flow of trade between different states by methods of indirect interference, such as import and export licensing, quotas, exchange control, preferential customs treatment, and even antitrust regulations. However, it is the object of the General Agreement on Tariffs and Trade (GATT) to prevent or minimize the effect of such discriminatory practices. In this respect GATT provides on a multilateral basis what treaties of commerce between countries with free-market economies customarily provide bilaterally. Two commercial treaties between countries of free-market economies will serve to illustrate this proposition.

Article XIV of the Treaty of Friendship, Commerce and Navigation with the Republic of Nicaragua of January 21, 1956, provides, in time-honored phraseology:

1. Each Party shall accord most-favored nation treatment to products of the other Party, from whatever place and by whatever type of carrier arriving, and to products destined for exportation to the territories of such other Party, by whatever route and by whatever type of carrier, with respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation.

2. Neither Party shall impose restrictions or prohibitions on the importation of any product of the other Party, or on the exportation of any product to the territories of the other Party, unless the importation of the like product of, or the exportation of the like product to, all third countries is similarly restricted or prohibited.

3. If either Party imposes quantitative restrictions on the importation or exportation of any product in which the other Party has an important interest:

- (a) it shall as a general rule give prior public notice of the total amount of the product, by quantity or value, that may be imported or exported during a specified period, and of any change in such amount or period; and
- (b) if it makes allotments to any third country it shall afford such other Party a share proportionate to the amount of the product, by quantity or value, supplied by or to it during a previous representative period due consideration being given to any special factors affecting the trade in such product.

4. Either Party may impose prohibitions or restrictions on sanitary or other customary grounds of a non-commercial nature, or in the interest of preventing deceptive or unfair practices, provided such prohibitions or restrictions do not arbitrarily discriminate against the commerce of the other Party.⁵

Further, article 17 of the Treaty of Commerce, Establishment and Navigation between the United Kingdom of Great Britain and Northern Ireland and Japan of November 14, 1962, in part provides:

1. No prohibition, restriction, rule or formality shall be imposed or maintained on the importation into any territory of one Contracting Party of any product originating in any territory of the other (from whatever place arriving) which shall not equally extend to the importation of the like product originating in any other foreign country.

2. No prohibition, restriction, rule or formality shall be imposed or maintained on the exportation of any product from any territory of one Contracting Party to any territory of the other which shall not equally extend to the exportation of the like product to any other foreign country.

3. In so far as prohibitions or restrictions may be enforced in any of their territories on the importation or exportation of any products, the Contracting Parties undertake as regards import and export licences to do everything in their power to ensure—

- (a) that the conditions to be fulfilled and formalities to be observed in order to obtain such licences should be published promptly in such a manner as to enable the public to become acquainted with such conditions and formalities;
- (b) that the method of issue of the licences should be as simple and stable as possible;
- (c) that the examination of applications and the issue of licences to the applicants should be carried out with the least possible delay;
- (d) that the system of issuing licences should be such as to prevent traffic in licences. With this object, a licence issued to any person should state the name of the holder and should not be capable of being used by any other person.

4. The conditions to be fulfilled or formalities to be observed before quotas are allotted or licences are given in any territory of one Contracting Party in respect of—

- (a) the importation of products originating in any territory of the other, or
- (b) the exportation of products to any territory of the latter Contracting Party

shall not be more onerous than the conditions to be fulfilled or formalities to be observed before quotas are allotted or licences are given in the case of any other foreign country.⁶

5. [1958] U.S.T. & O.I.A. 449, T.I.A.S. No. 4024. See also McNAIR, *THE LAW OF TREATIES* 502-05 (2d ed. 1961).

6. CMD. No. 2085 (T.S. No. 53 of 1963).

Article 26 contains a provision safeguarding the rights of the contracting parties under GATT:

Nothing in the present Treaty shall be construed so as to derogate from the rights and obligations that either Contracting Party has or may have as a contracting party to the General Agreement on Tariffs and Trade or any multilateral agreement amendatory or supplementary thereto.

Of somewhat lower order than commercial treaties are trade agreements. An illustration is afforded by the agreement appended to the treaty between the United Kingdom and Japan.⁷ That agreement specifies import quotas for Japanese goods intended to be imported into the United Kingdom, and it sets forth the eventual date of "liberalization," that is the date of complete abolition of the import quotas. Trade agreements between countries with free-market economies are based on the same fundamental principle as are commercial treaties between these countries, that is, they deal only with the public law aspect of international trade.

III. TRADE AGREEMENTS BETWEEN COUNTRIES WITH STATE-PLANNED ECONOMIES

When considering the countries of centrally-planned economies, we encounter an entirely different situation. Commercial treaties and trade agreements do much more than provide the mere framework for private law transactions which may or may not take place. A close interrelation exists between the macro-and micro-aspects of international trade. Legal scholars in the countries of centrally-planned economies have frequently remarked on this phenomenon. Thus, Goldstajn observes that "the intervention of public law in the law of international trade is a phenomenon of increasing frequency."⁸ It has further been said:

While, from the academic point of view, it is possible to separate the public law aspect of commercial treaties from the private law aspect of individual contracts of sale, insurance, carriage, banking and so forth, it would be unrealistic to deny that the combination of these public and private law factors gives the law of international trade a particular flavour and complexion in the countries of socialist planning.⁹

The explanation for this close interrelation between the macro-and micro-aspects of international trade law in transactions in which countries of centrally-planned economies are the parties is provided

7. *Id.* at 91.

8. Goldstajn, *International Conventions and Standard Contracts as Means of Escaping from the Application of Municipal Law—I*, in *THE SOURCES OF THE LAW OF INTERNATIONAL TRADE* 115 (Schmitthoff ed. 1964 [hereinafter cited as *SOURCES*]). See authors quoted *id.* at 10 n.37.

9. Schmitthoff, *The Law of International Trade, Its Growth, Formulation and Operation*, in *SOURCES* 12.

by two features characteristic of the economic order of socialist states: (1) the fact that their economies are centrally-planned, and (2) the maxim that the states have foreign trade monopolies. The national plan, detailed by subordinate plans, occupies a central position in the economic-legal pattern of such countries. Usenko observes:

Planning, as one of the most important parts of the economico-organizational activities of the socialist state, represents a prerogative of the highest organs of state authority. The national economic plan, which has been approved by the highest organs of the state, acquires the authority of a law, in the legal sense.¹⁰

And Knapp states:

All socialist countries are planning their foreign trade. The foreign trade plan, elaborated or proposed by the ministry of foreign trade, becomes an integral part of the uniform state plan of development of the national economy.¹¹

The concept of the plan has had a decisive influence on the contract law in the countries of centrally-planned economies. In the words of Loeber:

Planned contracts are characterized by the fact that an act of planning predetermines, in greater or lesser detail, essential conditions of the contract. The planning act is issued to concrete parties and has to be implemented in a concrete contract. It is thus the will of an administrative (planning) agency which substitutes, wholly or in part, for the will of the contract partners.¹²

Three stages in planned contracts must be distinguished.¹³ The first stage has a preparatory character; after approval of the national plan (in the U.S.S.R., the All-Union plan), plans of subordinate character are transmitted down the channels of communication until each enterprise receives notification of its own production plan. The second stage involves the issuance of production and delivery orders to the relevant enterprises; in the words of Loeber, these orders transform "a program (plan) into legally binding administrative orders."¹⁴ The third stage occurs when, in pursuance of the production or delivery orders, a contract is concluded between the supplying and the buying enterprise. Sometimes these contracts only repeat the contents of the administrative orders, but there are also "free" con-

10. USENKO, *SOZIALISTISCHE INTERNATIONALE ARBEITSTEILUNG UND IHRE RECHTLICHE BEDEUTUNG* 70 (1966). (Translation from Russian). The quotations in the text were translated into English by the present author.

11. Knapp, *The Function, Organization and Activities of Foreign Trade Corporations in the European Socialist Countries*, in *SOURCES* 57.

12. Loeber, *Plan and Contract Performance in Soviet Law*, 1964 U. ILL. L.F. 128, 129.

13. *Id.* at 134-41.

14. *Id.* at 137.

tracts which are used to produce goods not included in plans of delivery and distribution, such as goods of local provenance.¹⁵

The outstanding feature of planned contracts, including contracts of international trade, is that the motive of the contracting parties, is not the incentive of profitability in prevailing market conditions; rather an act of state determination is substituted for such motivation. Moreover, we shall see that in the centrally-planned economies state determination applies not only to motivation, but also extends to the regulation of some, if not all, of the contents of the contract, that is, to the terms on which the contract is concluded. In view of these differences the question has been asked¹⁶ whether the planned contract is really a contract or whether it is a legal institution *sui generis*. It is unnecessary here to examine this question with respect to domestic contracts of centrally-planned economies. However, as far as foreign trade contracts are concerned—both those between two foreign trade corporations of centrally-planned economies and those between a single foreign trade corporation of such a country and an enterprise of a free market economy—the answer is clear: regardless of the difference in its motivation and the fact that some of the contract terms are stereotyped or determined from outside, the planned contract in a foreign trade transaction is a true contract in the traditional sense, as it is ultimately founded on the consensus of the contracting parties.

While in the international trade between a country of state-planned and a country of free market economy, the directions of the national plan affect the former country's attitude toward the individual trade contract, (that is, the transaction on the private law level), a further problem arises where international trade takes place between two countries with state-planned economies. In such a case, not only do two national plans have a strong influence on the contract between the foreign trade corporations, but also a third element enters into consideration—the need for harmonization of the two national plans as far as the trade between those two countries is concerned. This problem is sometimes referred to as “the problem of international socialist division of labour.” It is essentially a problem of coordination of several national plans in the international sphere—a coordination which can only be achieved by international treaties between the respective governments. Usenko states in that respect:

By virtue of the sovereignty of the socialist states the planned character of the division of labour between them can only be carried out by a coordination of their national plans. The coordination of the national

15. *Id.* at 143.

16. Loeber, *Plan and Vertrag im Zeichen der sowjetischen Wirtschaftsrefomen 1964-1965*, WIRTSCHAFTSPLANUNG IM OSTBLOCK 83-84 (Boettcher ed. 1966).

plans implies their adjustment and combination on the basis of public international law, by means of treaties pertaining to that branch of law.¹⁷

The coordination of national plans on the international sphere is facilitated by the fact that all socialist countries possess a foreign trade monopoly. This has been explained by Ionasco and Nestor:

The system of foreign trade peculiar to the socialist regime is that of state monopoly. According to this system all operations in this sector of the national economy are carried out by state economic organizations especially created for this purpose, the activity of which is directed, coordinated and controlled by the state. This function of direction and control is exercised by a government body specially created for that purpose.

The state monopoly of foreign trade forms the framework and the premises of the planning of foreign trade as a sector of the national economy which develops in accordance with the plan. Indeed, apart from the creation of the state monopoly for foreign trade, each socialist state—by virtue of its economic and organizing function—carries out the essential economic role of planning foreign trade at the same time as that of other sectors of the national economy.¹⁸

Knapp observes:

The fundamental principle of the organisation of foreign trade in the socialist countries . . . consists in the state monopoly of foreign trade expressed in different forms in the constitutional rules of the particular socialist states.¹⁹

The economic reforms in the countries of centrally-planned economies, which took place in 1964 and 1965, have led to a softening of the rigid concept of central planning. Although the concepts of central planning and foreign trade monopoly were essentially retained throughout this era of reform, their practical application has been rendered more flexible by the introduction of the value element and the admission of a degree of competition between state-owned enterprises. Kaser states that "greater liberty for enterprises in choosing the detail of their production profile is an expected concomitant of value planning."²⁰ However, it would be entirely wrong to interpret this change in economic policy as a return to capitalism. On the contrary, as Loeber rightly observes:²¹ "we experience not the capitalization or demolition of an economic system, but its strengthening, its modernisation and rationalisation."²²

17. USENKO, *op. cit. supra* note 10, at 70.

18. Ionasco & Nestor, *The Limits of Party Autonomy-I*, in SOURCES 168.

19. Knapp, *op. cit. supra* note 11, at 52. Knapp then gives illustrations from the constitutions of various socialist countries.

20. KASER, COMECON. INTERGRATION PROBLEMS OF PLANNED ECONOMIES 121 (1965).

21. Loeber, *op. cit. supra* note 16, at 85.

22. That does not exclude the possibility envisaged by J. K. Galbraith in the Fifth Reith Lecture that the pattern of organisation in the centrally-planned and free-market economies tends to converge. Lectures entitled "The New Industrial State and Socialism" in LXXVI THE LISTENER 881-84 (Dec. 15, 1966).

IV. COMMERCIAL TREATY FUNCTIONS COMPARED

It follows from the two features characteristic of the socialist order—that is, the notion of central economic planning and the concept of foreign trade monopoly—that the time-honoured free-market economy formula used in treaties of friendship, commerce and navigation, which emphasises the macro-economic aspect of international trade, is not appropriate where a state of centrally-controlled economy²³ is a contracting party. Reflected in the public law relations of the socialist state is the fact that in the socialist internal economy the state, by normative and legally binding provisions, regulates, more or less strictly, the behaviour of enterprises and that foreign trade enterprises, though independent legal persons, exercise by way of delegation the foreign trade monopoly of the state. Because its foreign trade corporations are geared to the state-controlled economy, the socialist state can adopt a more positive role in its commercial treaties than the free-economy state. The latter, by its commercial treaty practice, can only offer facilities to its self-motivated enterprises. This different character of the commercial treaty function is most readily discernible if both parties to a commercial treaty are countries of state-controlled economies. In that situation the commercial treaty will contain definite normative provisions affecting the micro-aspect of international trade law. It is of the greatest importance to appreciate this mixed—public and private law—character of a commercial treaty between two countries of state-planned economies. Usenko, with his usual clarity, observes:

It should be noted that the treaties between the socialist countries differ not only in nature, character and aims but also in their legal form from similar treaties between capitalist states. The legal nature of the problem . . . consists in the obligations which the governments undertake with respect to the quotas: Do they merely undertake to permit the importation and exportation of goods within the agreed quotas, or do they undertake to secure the realisation of the delivery of goods in accordance with these quotas? The different nature of that obligation determines the fundamental difference in the legal form of treaties between capitalist and socialist countries.²⁴

The normative character, on the level of private law, of provisions contained in a commercial treaty between countries of state-planned economies may be illustrated by the Trade Agreement between the Union of Soviet Socialist Republics and the Federal Republic of Yugoslavia of January 5, 1955.²⁵ This agreement is so important that it shall be reproduced here in full.

23. See note 5 *supra* and accompanying text.

24. USENKO, *op. cit. supra* note 10, at 237.

25. 240 U.N.T.S. 216.

Article 1

The exchange of goods between the USSR and the Federal People's Republic of Yugoslavia shall be effected in accordance with the general export and import system and with the currency regulations in force in the territory of each Contracting Party.

Article 2

For a period of twelve months, *i.e.*, from 1 January to 31 December 1955, deliveries of goods from the Federal People's Republic of Yugoslavia to the USSR and from the USSR to the Federal People's Republic of Yugoslavia shall be made on the basis of the commodity quotas laid down in schedules A and B annexed to this Agreement.

Article 3

The competent authorities of the two Contracting Parties shall reciprocally permit the exportation and importation of the goods specified in the agreed schedules of goods, within the limits of the quotas established therein.

The two Contracting Parties shall take all measures within the limits of their competence to ensure that the goods are exported and imported at the appropriate time, having regard to the seasonal nature of the exports and imports respectively.

Article 4

During the period in which this Agreement is in force, the agreed quotas of goods may be raised, or supplemented by the addition of other goods, in mutual agreement of the Parties.

The two Governments shall give sympathetic consideration to the exportation and importation of goods for which no quota is established in the agreed schedules or of which the quota becomes exhausted before the expiry of the stipulated period.

Article 5

Within the limits of their competence, the two Governments shall take all necessary measures to ensure that Soviet and Yugoslav foreign trade organisations conclude contracts within the framework of the agreed schedules of goods.

Article 6

In the absence of any agreement to the contrary between the foreign trade organisations of the two countries, reciprocal deliveries of goods shall be governed by the following conditions:

- (a) Yugoslav foreign trade organisations shall deliver their goods to the Soviet foreign trade organisations f.o.b. Yugoslav seaports or Danube ports, or f.o.r. Yugoslav frontier railway stations;
- (b) Soviet foreign trade organisations shall deliver their goods to the Yugoslav foreign trade organisations f.o.b. Soviet seaports or Danube ports, or f.o.r. USSR frontier railway stations.

Article 7

Payments arising out of import and export contracts concluded pursuant to this Agreement shall be made in accordance with the provisions of the Payments Agreement signed this day.

Article 8

The two Governments shall set up a Joint Commission, consisting of representatives of both Contracting Parties, which shall observe the application of the provisions of this Agreement and of the Payments Agreement referred to in article 7 and shall make appropriate recommendations where necessary.

The Joint Commission shall meet at the request of either of the Contracting Parties.

Article 9

Contracts concluded pursuant to this Agreement but not performed during the period in which it is in force shall be performed in accordance with the provisions of this Agreement and of the aforementioned Payments Agreement.

Article 10

This Agreement shall remain in force until 31 December 1955.

If neither Party has given notice of its intention to terminate this Agreement three months before the expiry of the said period the Agreement shall remain in force for further successive periods of one year until duly terminated. Schedules of quotas for reciprocal deliveries of goods for subsequent periods in which this Agreement is in force shall be agreed upon each year by the Contracting Parties.²⁶

This agreement is supplemented by the Payments Agreement of January 5, 1955, between the U.S.S.R. and Yugoslavia²⁷ whereby it is provided, *inter alia*, that the state banks of the two countries shall make arrangements for mutual credits and that they shall use United States dollars "as the currency of account."²⁸ The ceiling laid down in the Payments Agreement on the amount of credits which may be granted to each contracting party is 3,000,000 United States dollars.

In appraising the private law aspects of the Trade Agreement between the U.S.S.R. and Yugoslavia, one must bear in mind that Yugoslavia is not a member of the Council for Mutual Economic Aid. Consequently, the General Conditions of Delivery, 1958, do not apply to contracts between foreign trade corporations of those two countries. Yugoslavia has, in fact, arranged a bilateral set of conditions for the delivery of goods with Poland, known as the *General Conditions JUGPOL, 1964*,²⁹ but no general set of trade

26. The quotas contained in Schedules A and B of the Annex have been omitted.

27. 240 U.N.T.S. 234.

28. Payments Agreement, art. 3, *id.* at 236.

29. 1967 J. Bus. L. 86.

terms existed between the U.S.S.R. and Yugoslavia in 1955 when the Trade Agreement under review was concluded.³⁰ Hence, the main agreement must be evaluated without reference to any other documents.

The provisions bearing directly on private law, that is, those affecting the contracts to be concluded between the foreign trade organisations of the two countries, are those contained in articles 6 and 7 of the main agreement. Article 6 is of particular interest. It provides that, in the absence of any agreement to the contrary, the terms of delivery shall be f.o.b. or f.o.r.,³¹ as the case may be. Article 7 provides that payments arising out of "import and export contracts" shall be made in accordance with the Payments Agreement. Of further interest is article 5, which provides that the two governments "shall take the necessary measures to ensure" that their foreign trade organisations will "conclude contracts within the framework of the agreed schedule of goods." Usenko rightly observes³² that the obligation of governments to carry out the agreed quotas is a characteristic peculiarity of the trade treaties between the socialist states. In some of these treaties, particularly those of a long-term nature, the phrase "to carry out deliveries" occurs in place of the obligation "to ensure deliveries," but in the commercial treaty practice of the socialist countries there is no practical difference between these two formulations.³³

The combination of public and private law elements in commercial treaties between the countries of state-planned economies explains why some of these countries have been able to achieve the unification of trade terms applicable to export contracts by means of international conventions. These conventions have been concluded by the member states of the Council for Mutual Economic Aid. So far three conventions have become operative; the General Conditions for the Delivery of Goods of 1958,³⁴ the General Conditions for the Erection of Plant and Machinery, which came into operation on June 1, 1962; and the General Conditions for the Servicing of Machinery, Equipment and other Products, which became operative on

30. Nor do General Conditions of Delivery exist at present (Jan. 1, 1967) between the U.S.S.R. and Yugoslavia.

31. It should be noted that the term f.o.b. in art. 6 (a) and (b) is used in the English and continental European sense, denoting f.o.b. port and referring to carriage by sea or river only. The term f.o.r. denotes "free on rail." The term f.o.b. is thus used here in a meaning different from that attributed to it by the UNIFORM COMMERCIAL CODE § 2-319.

32. USENKO, *op. cit. supra* note 10, at 236.

33. *Id.* at 238-39.

34. Published in English by Berman, *Unification of Contract Clauses in Trade Between Member-Countries of the Council for Mutual Economic Aid*, 7 INT'L & COMP. L.Q. 659 (1958).

November 1, 1962.³⁵ The history of the General Conditions for the Delivery of Goods of 1958 is well-known. They took the place of twenty-eight sets of bilateral conditions for delivery which were appended as protocols to the bilateral trade agreements between the member countries of the Council for Mutual Economic Aid.

Each of the three above-mentioned conventions has the legal nature of multi-lateral treaties of public international law,³⁶ that is, their provisions have been embodied in the municipal laws of the member states of the Council for Mutual Economic Aid. In the words of Knapp, the General Conditions are "compulsory, and an enterprise may, when concluding a contract, depart from them only if the deflection is justified by the special nature of the merchandise or a special element in its delivery."³⁷

V. TRADE AGREEMENTS BETWEEN COUNTRIES WITH FREE-MARKET ECONOMIES AND COUNTRIES WITH STATE-PLANNED ECONOMIES

So far this article has been concerned with commercial treaties, trade agreements between countries with free-market economies and trade agreements between countries with state-planned economies, that is, with intra-group treaties. It was seen that the commercial treaties are purely on the level of public international law but that the trade agreements contain, in addition, provisions extending to the level of private law and are, in that sense, of mixed character. The last problem which must be examined is an inter-group treaty, that is, a trade agreement between a country with a free-market economy, on the one hand, and a country with a state-planned economy, on the other.

It is obvious that the motivation of the two contracting parties is different; this fact, however, is irrelevant. The problem—and one of great practical importance—is how the different concepts of the macro-aspect of international trade operate in an inter-group treaty. Do they conflict or is an accommodation possible?

The answer can be gathered from the Five Year Trade Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Union of Soviet Socialist Republics of May 24, 1959.³⁸ The most important provisions of this agreement are the following:

35. USENKO, *op. cit. supra* note 10, at 292.

36. *Id.* at 295.

37. Knapp, *op. cit. supra* note 11, at 68.

38. CMD. No. 1076 (T.S. No. 34 of 1960).

Article 1

(1) . . .

(2) . . . both Governments will, within the scope of the laws and regulations in force in the respective countries, facilitate the exchange of goods and services between the two countries on a mutually advantageous basis, without prejudice to the right of either Government to refrain from taking any measures under the present Agreement inconsistent with their essential security interests.

Article 2

(1) . . .

(2) The United Kingdom Government and the Government of the Soviet Union will arrange, in cases of necessity, for the Board of Trade in the United Kingdom and the Trade Delegation of the U.S.S.R. in the United Kingdom respectively to establish, by mutual agreement and in a spirit of friendly understanding, quotas on an appropriate basis for the import into the United Kingdom of any Soviet goods not subject to Open General Import Licence, and not otherwise provided for in the present Agreement.

Article 4

(1) . . .

(2) The lists of consumer goods which are to be the subject of such exchanges during the period from the 1st of July, 1959, to the 30th of June, 1960, and during the subsequent annual periods will be agreed from year to year between the competent United Kingdom authorities and the Trade Delegation of the U.S.S.R. in the United Kingdom.

Article 5

Representatives of the two Governments will meet once a year (or more frequently on the proposal of one of them) to examine the carrying out of the provisions of the present Agreement and if necessary to prepare recommendations to one or both of the Governments for the further improvement of trade relations between the two countries. The meetings of representatives referred to in this Article will normally take place alternately in London and Moscow.

Article 7

The United Kingdom Government and the Government of the Soviet Union will permit their organisations or business concerns to make available industrial and technical information to organisations or business concerns in the other country subject to the relevant legal and administrative requirements of the country providing this information and in accordance with normal commercial practice:

This type of agreement represents an interesting mixture of the two types of infra-group commercial agreements. In form, the socialist pattern is followed: the agreement is for a limited period, such as five years; the quotas are fixed year by year (article 4 (2)); and an annual review of its operation is provided for (article 5). This allows the correction of inadequacies in the application of the agreement and the coordination of the export and import quotas to the re-

quirements of the annual plan. In substance, however, the pattern of commercial agreements in free-market economies is followed: the two governments merely provide facilities for international trade (articles 1(2) and 2(2)), and they do not undertake "to ensure" or to "carry out" deliveries of goods. There is, consequently, no extension to the private law sphere in the inter-group agreement. No terms or conditions for the delivery of the goods are agreed upon; rather their negotiation is left entirely to the private law sphere, that is, to the contracts between the foreign trade corporations of the centrally-planned economies and the enterprises of the free market economies. In substance, the inter-group commercial agreement, like that between countries of free-market economies, limits itself to the macro-aspect of foreign trade. The answer to the question posed earlier is that an accommodation is possible. The inter-group commercial agreement has achieved a workable compromise between the different concepts of the macro-aspect of international trade in the East and the West.

VI. CONCLUSION

The following main conclusions can be drawn from these observations. It has long been realized—and since the publication of *The Sources of Law of International Trade*³⁹ in 1964 has become publicly known—that in the micro-aspect of international trade the trading methods of the countries of centrally-planned and free-market economies are essentially the same. Trammer rightly asserts that the comparison between the external commercial laws of the countries of planned and of free-market economy

does not cause [any] difficulty. The absence of such difficulties is not, as such, a characteristic feature because, quite simply, the law of external trade of the countries of planned economy does not differ in its fundamental principles from the law of external trade of other countries, such as, *e.g.*, Austria or Switzerland. Consequently, international trade law specialists of all countries have found without difficulty that they speak a 'common language.'⁴⁰

The present article has shown that, in the macro-aspect of international trade, the practice has likewise found ways and means of reconciling the aims of the different economic systems and that a workable pattern of commercial agreements in inter-group trading has emerged. The legal obstacles to an intensification of trading relations between the East and West have thus been largely overcome.

39. *Op. cit. supra* note 8.

40. Trammer, *The Law of Foreign Trade in the Legal Systems of the Countries of Planned Economy*, in *SOURCES* 42.