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# Effect of Soviet Ideology on the Legal Framework and Policy of US-USSR Trade

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*Introduction: Theory*

The Communist Party of the Soviet Union (CPSU) plays a dominant role in decision-making at all governmental levels in the USSR.[1] This note examines the role that ideology plays in Soviet foreign trade policy, the structure of the Soviet foreign trade monopoly, and some of the problems that American businessmen may encounter in trading with the Soviets.

Essentially, Marxism is an analysis of history and a prediction. It analyzes the stages of class dominance throughout history and explains why the proletariat will eventually succeed to worldwide power.[2] Karl Marx predicted two essential steps in a successful communist[3] world revolution. First, the revolution would originate in a highly self-sufficient, industrialized nation;[4] and, second, simultaneous revolutions would occur throughout the industrialized world.[5] But when the Bolsheviks finally consolidated power in Russia, they faced the task of feeding a primarily agrarian nation, half-starved from the ravages of World War I and a prolonged civil war, and alone in a world of hostile capitalist states. Trade with the West became necessary for Lenin's government to continue in power.[6]

Trade relations with capitalist countries presented the problem of reconciling Soviet practice with Marxist doctrine. Marx had asserted that legal norms must reflect the will of the ruling class.[7] Western international legal norms obviously did not reflect the will of the Soviet ruling class. Lenin reconciled this apparant contradiction by accepting these

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[1] W. W. KULSKI, THE SOVIET REGIME 86 (1963); for a brief discussion of the Communist Party as the source of all power in the USSR, see generally Osakwe, *Legal and Institutional Barriers to United States-Soviet Trade: Soviet Perspective*, 8 VAND. J. TRANSNAT'L L. 85, 91 (1974); see also J. RESHETAR, THE SOVIET POLITY 230-231 (1971).

[2] The best introduction to the basic tenets of Marxism is K. MARX & F. ENGELS, THE COMMUNIST MANIFESTO (1848).

[3] For purposes of this paper, "communist" will refer generally to a system of social organization in which all economic and social activity is controlled by a single and self-perpetuating party. "Capitalist" means generally a system in which market and economic operations are left mainly to private incentives with relatively minimal state control. "Western" is used interchangeably with "capitalist." It refers to ideological tendencies rather than strict geographic location: for example, Japan is included under the term "Western."

[4] K. MARK & F. ENGELS, THE COMMUNIST MANIFESTO, in ESSENTIAL WORKS OF MARXISM 24 (A. Mendel ed. 1965); G. KENNAN, SOVIET FOREIGN POLICY, 1917-1941, 11-12 (1960).

[5] Mendel, ed., *supra* note 4, at 24; G. KENNAN, *supra* note 4, 11-12; H. MARCUS, SOVIET MARXISM: A CRITICAL ANALYSIS 80 (1961). Marcus' book provides an excellent analysis of the relationship between Marxist theory and Soviet practice.

[6] G. KENNAN, *supra* note 4, at 33.

[7] Kamenka, *The Soviet View of Law*, in the SOVIET POLITICAL SYSTEM (R. Cornell ed. 1970).

Western norms so long as they were used in a manner which advanced the policy and goals of the Soviet state.[8]

The Soviet need for trade with the West produced another ideological problem. According to Lenin, business transactions between capitalist and less developed nations necessarily involved an "exploiter-exploited" relationship. Since the Soviet Union would have to assume the role of the "exploited", trade with the West would have the effect of partially subsidizing the capitalist system.[9] To appease purists in the CPSU, Lenin rationalized that attracting the interest of Western enterprises would result in commercial tension and rivalry between capitalist nations and hasten their ultimate collapse.[10]

Later, Stalin employed a policy of "autarky" to limit trade with the West. The Soviets would deal with the West only to the extent necessary to expedite Soviet self-sufficiency.[11] The concept of "autarky" changed when the Soviet Union extended its power into Eastern Europe after World War II. Two world markets suddenly confronted each other—the Western capitalist market and the Soviet-East European communist market. Self-sufficiency extended to the communist bloc as a whole,[12] and the concept of international division of labor within the communist bloc arose. Each communist country would specialize in specific industrial areas and trade with its neighbors for needed goods.[13]

At the same time, the Soviet stance on trade with capitalist nations was modified from greater to lesser emphasis on self-sufficiency.[14] The result was to permit Western imports if they aided the rate of the economy's growth per se. Although the policy of self-sufficiency of the Soviet-East European market has also been relaxed since the early 1950s, it continues to exert much influence on Soviet trade patterns.[15] The Soviet Union still conducts one-half to two-thirds of all its trade with East European nations.[16]

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[8] S. PISAR, COEXISTENCE AND COMMERCE 246-247 (1970). The Soviet Union did not officially recognize this compromise of principles until 1956; see Hildebrand, *Soviet International Law: An Exemplar for Optional Decision Theory Analysis*, 20 CASE W. RES. L. REV. 141, 195 (1968).

[9] P. WILES, COMMUNIST INTERNATIONAL ECONOMICS 8-10 (1969).

[10] G. KENNAN, *supra* note 4, at 36.

[11] P. UREN, EAST-WEST TRADE 71 (1966). The idea was that exports were to be made only to obtain imports, and imports were sought only to remove costly bottlenecks in Soviet production. The hope was that the imports would help to attain such a rate of industrialization as to make international trade unnecessary in the future.

[12] *Id.* at 75.

[13] *Id.* at 84.

[14] Smirnov, Zotov, and Shagalov, *Evaluating the Economic Effectiveness of Foreign Trade*, 1 AM. REV. OF SOVIET AND EASTERN EUROPEAN FOREIGN TRADE 1, 3, 4 (1965).

[15] For arguments by the Eastern European nations that too much trade with market economies would create a detrimental rivalry with the communist world market, *see generally* E. TAMEDLY, SOCIALISM AND INTERNATIONAL ECONOMIC ORDER 269 (1969).

[16] Diumulen, *The Soviet Union in the System of International Economic Relations*, 1 AM.

The Soviets have found increasing trade with Western nations more attractive for both economic and political reasons. Western technology, expertise, and modern machinery help accelerate industrial growth and exploitation of natural resources in the Soviet Union. American farm imports have been increasingly in demand as a result of chronic Russian agricultural shortages. Furthermore, the evolution of detente and the Soviet ideological split with China have helped to create a climate more conducive to US-USSR trade in the 1970s.

*Soviet Foreign Trade Framework*

The Western businessman confronts a foreign trade monopoly[17] in the Soviet Union. The structure of the CPSU parallels that of the government at all levels with the Party having ultimate authority.[18] By controlling the government foreign trade monopoly, the CPSU insures consistency with its overall domestic and foreign policy.[19]

This state monopoly is the most highly centralized branch of the Soviet economy.[20] The State Planning Committee of the USSR Council of Ministers (Gosplan), the USSR Ministry of Foreign Affairs, and the Ministry of Foreign Trade jointly plan Soviet foreign trade policy.[21] Once the Ministries have set trade policy for annual and five-year periods,[22] the planning groups of Soviet industries make recommendations to the appropriate Soviet industrial ministry concerning particular areas where foreign imports or assistance may increase productivity or resolve technological problems. If the industrial ministry approves the planning group recommendations, the Ministry of Foreign Trade, which is responsible for the administration of Soviet foreign trade, will use its subordinate Trade Representations and Foreign Trade Organizations to find the best available foreign technology.[23]

The Soviet Foreign Trade Organizations (FTOs) are the buying and selling agents for Soviet industries. The FTOs pick the foreign supplier

REV. OF SOVIET AND EASTERN EUROPEAN FOREIGN TRADE 39, 43 (1965); Patolichev, *Foreign Trade: Opportunities and Prospects*, SOVIET LIFE, March 1976, at 29.

[17] Generally, "foreign trade monopoly" means that only the Soviet state or its authorized subdivisions may engage in foreign trade operations. As a result, all private interests are excluded. *See* Osakwe, *supra* note 1, 93-97; for in depth treatment, see generally J. QUIGLEY, THE SOVIET FOREIGN TRADE MONOPOLY: INSTITUTIONS AND LAWS (1974).

[18] J. RESHETAR, *supra* note 1, at 230-231.

[19] Osakwe, *supra* note 1, at 96.

[20] R. STARR, BUSINESS TRANSACTIONS WITH THE U.S.S.R. 26 (1975).

[21] *Id.*, at 26.

[22] For more specifics on this process of state planning for foreign trade, see R. STARR, *supra* note 20, at 60.

[23] Ayre, *Negotiating Commercial Contracts with the Soviets*, 61 A.B.A.-J. 835 (1975). The State Committee on Foreign Economic Relations (deals with certain aspects of trade with other socialist countries and Third World nations) and the State Committee on Science and Technology (has the task of helping acquire foreign technology and skills) work closely with the Foreign Trade Ministry; R. STARR, *supra* note 21, at 27.

and negotiate the contract.[24] There were 61 FTOs operating as of 1974.[25] Usually, each FTO takes care of the Soviet Union's entire requirements for a particular product.[26] For example, the Soyuznefteksport FTO handles all Soviet exports and imports of oil and oil products. The Stankoimport FTO exports and imports machine tools and ball bearings.[27] The effect is to give the Soviet buyer tremendous leverage with the American seller who must compete with other Western firms for this controlled market.

The FTOs are legal entities. They may acquire property rights in their own name, rather than in the name of the Soviet state, and may sue or be sued.[28] Incentives in the form of bonuses and other benefits are given to encourage profits. The annual net profits are turned over to the state treasury as state income.[29]

Even though the FTOs have legal autonomy and certain economic powers, they are still part of the Soviet monopoly of foreign trade and are ultimately responsible to the CPSU for their actions. A Party organization exists within each FTO and intervenes actively in its administrative operations.[30] The main purposes of the Party organization are to insure loyalty to Party doctrine and to promote work efficiency.[31]

*Problem Areas*

Althought the Soviet approach to international law,[32] to a system of economic planning, and to foreign trade monopoly greatly facilitate the

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[24] Ayre, *supra* note 23, at 835. The main branches of each FTO are mostly located in Moscow. To the effect that FTOs are good credit risks, *see* Ayre, *id.* at 838: "It is doubtful whether there has been any litigation for collection or specific performance brought against an FTO;" also to this effect, *see* Kiralfy, *The Union of Soviet Socialist Republics*, in EAST - WEST BUSINESS TRANSACTIONS 314 (R. Starr ed. 1974).

[25] R. STARR, *supra* note 20, at 30.

[26] Duncan, *Selling the Soviets: A Story of Problems and Profits*, 3 AM. REV. OF SOVIET AND EASTERN EUROPEAN FOREIGN TRADE 2, 39 (1967); Ayre, *supra* note 23, at 836.

[27] R. STARR, *supra* note 20, at 31. For a complete list of the names of all Soviet FTOs as of 1974 and their general areas of commercial activity, *see id.* 31-32. Also, the charter of each FTO describes the specific range of its activity.

[28] R. STARR, *supra* note 20, at 31.

[29] *Id.*, at 31.

[30] J. RESHETAR, *supra* note 1, at 148.

[31] Functionally organized primary Party organizations are found not only in FTOs, but also in any Soviet enterprise, institution, farm, or military unit. They number about 350,000. J. RESHETAR, *supra* note 1, at 128. For more on CPSU organization and supervision, *see id.* at 128-150.

[32] Party ideology dictates a distinctive approach to international law. The U.S.S.R. insists that international norms be based on the express consent of states, preferably in treaty form. It also asserts Soviet state sovereignty on every occasion. This approach significantly limits the extent to which the Soviet Union will be bound by laws other than those they have made. The minimal role that Soviet international lawyers seem to play in determining foreign policy indicates the subordination of international law to foreign policy in the U.S.S.R.; Butler, *American Research on Soviet Approaches to Public International Law*, 70 COLUM. L. REV. 188, 222-227 (1970).

use of international trade as an instrument of foreign policy,[33] Soviet traders must still deal with market forces arising in both controlled and free world market economies. Problems in two important areas, arbitration and payment, illustrate the difficulties that arise when the two economic systems interact.

The Soviets have always expressed great reluctance to submit to commercial arbitration in foreign jurisdictions.[34] In 1932, the Soviet government established the Foreign Trade Arbitration Commission (FTAC) so that foreign trade disputes might be settled in Moscow by Soviet citizens.[35] Today the Soviets ardently seek to include an agreement to submit all disputes to FTAC jurisdiction in all contracts concluded with Western businessmen. However, FTAC rules differ greatly from those with which American businessmen are more accustomed.[36] Western traders remain wary of agreeing to FTAC arbitration in the Soviet capital.[37]

There has been some question of whether foreign national courts should enforce decisions of the FTAC in the absence of a treaty provision. It has been argued that the FTAC is a national court since all its members are Soviet nationals and the right to foreign counsel has been somewhat limited in the past.[38] Even so, United States practice has been to recognize the judgments of the FTAC.[39]. However, the Soviet Union has steadfastly refused to enforce foreign commercial arbitral awards in the absence of a prior agreement with the rendering nation.[40]

In 1972, the US and the USSR entered into a bilateral trade agreement containing an arbitration provision.[41] The provision called for arbitration of commercial disputes in third countries that are parties to the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Though the trade agreement is not presently

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[33] For a brief discussion of the interrelation of foreign policy and economic policy, *see* Osakwe, *supra* note 1, at 85.

[34] R. STARR, *supra* note 20, at 175.

[35] In April, 1975, the Presidium of the U.S.S.R. Supreme Soviet replaced the 1932 decree with a modern statute but the FTAC remains essentially the same. Statute on the Foreign Arbitration Commission attached to the U.S.S.R. Chamber of Commerce and Industry, 35 INT'L LEG. MAT., 1035 (1975).

[36] *E.g.*, The American Arbitration Association and the International Chamber of Commerce.

[37] R. STARR, *supra* note 20, at 176.

[38] *Id.*, at 179.

[39] *Id.*, at 179.

[40] Ginsberg. *Soviet International Trade Contracts and the Execution of Foreign Arbitral Awards*, in CONTEMPORARY SOVIET LAW ESSAYS IN HONOR OF JOHN HAZARD 204 (D. Barry ed. 1974).

[41] U.S. - U.S.S.R. Agreement on Trade, 11 INT'L LEG. MAT. 1321 (1972); *see* Article 7 at 1327.

in effect,[42] the US and the Soviet Union have begun using third country arbitral forums, such as Sweden, rather than the Moscow FTAC.[43]

A second important problem area in US-USSR trade concerns means of payment. The general shortage of convertible currencies in the Soviet Union makes the Western businessman reluctant to conclude a contract calling for payment in rubles. If he accepts rubles at the Soviet official exchange rate, he must then exchange them on the currency market at a price well below the international rate.[44] At the risk of discouraging potential Soviet buyers, Western exporters frequently mark up their initial price to include the possibility of lost foreign exchange earnings.[45]

One possible means of avoiding the exchange problem is a commodity pay-back arrangement. The Soviets employ this arrangement extensively in Western Europe and Japan. For example, in return for Japanese aid in extracting Russian timber and coal, the USSR supplies Japan with vast amounts of those two products.[46] While this method may be attractive when payments are made in Soviet natural resources, it may not be acceptable when repayment is in low quality consumer goods.[47]

Most Western countries trading with the Soviets have alleviated the payment problem by extending partial or complete credit terms to the Soviet Union.[48] In this regard, Congress has placed two restrictions upon extension of American credit. First, in 1974, Congress amended the 1945 Export-Import Bank Act to place a $300,000,000 ceiling on extension of credit to the Soviet Union.[49] Second, the 1934 Johnson Debt Default Act[50] effectively prohibits private general purpose loans to the Soviet Union.[51] The Johnson Act does not cover an extension of private commerical credit as part of a specific export transaction, but it is not always clear whether or not the Act will apply to a particular transaction.[52]

Besides the difficulties that arbitration and payment present, a num-

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[42] *See* text accompanying note 61 *infra*.

[43] R. STARR, *supra* note 20, at 180.

[44] E. TAMEDLY, SOCIALISM AND INTERNATIONAL ORDER 268 (1969).

[45] *Id.*, at 268.

[46] Patolichev, *supra* note 16, at 30.

[47] France had attempted another solution in the 1950s and early 1960s. It agreed with the Soviet Union to trade in equal value. This plan failed because the French government had no way of assuring that its entrepreneurs would buy a volume of Soviet goods at least equal to that imported by the Soviet government. Lopatkiewicz, *Institutionalizing East-West Commercial Relations: the Franco-Soviet Experience*, 15 HARV. INT'L L. J. 1, 12 (1974).

[48] The United States even extended credit to the Russians at substantially below-market interest rates to purchase wheat in 1972. Stevenson, *Detente and Dollar Diplomacy*, 9 INT'L LAWYER 733, 736 (1975).

[49] Pub. L. No. 93-646 § 8(b)(Jan. 4, 1975), 88 Stat. 2336, amending 12 U.S.C. § 635(e).

[50] 18 U.S.C. § 955.

[51] Hoya, *The United States*, in EAST-WEST BUSINESS TRANSACTION 9 (R. Starr ed. 1974).

[52] *Id.*

ber of other problems have inhibited Soviet-American trade. Following the expansion of communist powers in Eastern Europe and Asia in the 1940s, the US imposed an elaborate system of legal restraints, in the name of national security, on trade with communist countries.[53] Strategic factors dictated a policy of restricting the flow of sophisticated American technology to the growing Soviet bloc.[54] Although this policy has been relaxed with the advent of detente, Soviet customers are still subjected to more red tape and delays in buying from the US than from any other Western nation.[55] Consequently, US industries are often at a competitive disadvantage.

The Soviet Union has increasingly sought cooperative projects with the West in order to develop many of its natural resources. However, it usually has attempted to apportion this work among commercial interests of different nations so that no capitalist country can acquire control of an important sector of the Soviet economy.[56]

If the American businessman visits the USSR, he encounters various other trading problems. The Soviet Government imposes travel restrictions which make it difficult to pursue an effective marketing program.[57] The lack of contact between American suppliers and Soviet consumers inhibits development of effective sales strategies.[58] Furthermore, the Party limits access to Soviet economic data, the consideration of which is necessary to the making of intelligent business decisions.[59] The US trader can also expect to encounter difficulties in obtaining local office space and legal and secretarial services.[60]

*Conclusion*

Primarily as a result of a lessening of ideological conflict between the US and the USSR, trade relations between the two countries have improved vastly during the past fifteen years. In 1972, the US and the Soviet Union entered into a series of agreements which established a comprehensive legal framework for the development of trade between the two

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[53] Until recently, Washington has withheld political and legal support from interests seeking expanded commercial relations with the East. The U. S. had originally taken this position, in part, for economic reasons. It was feared that the communist states would flood Western markets with goods at less than cost. Lopatkiewicz, *supra* note 47, at 46.

[54] E. TAMEDLY, *supra* note 44, at 267.

[55] Duncan, *supra* note 26, at 39. For one American businessman's experience, *see generally id.*, pp. 38-53.

[56] Lopatkiewicz, *supra* note 47, at 46. It is not, however, certain to what extent this practice is due to strategic and ideological reasons, and to what extent it reflects the inability of one country to finance large Soviet projects. Thus, it is possible that the foreign investment capacity of the U. S. may prove an asset in the future for improving U. S.-Soviet economic relations.

[57] Duncan, *supra* note 26, at 38.

[58] Osakwe, *supra* note 1, at 114.

[59] Duncan, *supra* note 26, at 38.

[60] Osakwe, *supra* note 1, at 114.

nations.[61] In 1974, Congress passed a Trade Act which approved the 1972 agreements but which included a "freedom of emigration" stipulation.[62] Shortly thereafter, the USSR informed the US government that it would not accept a trading relationship based on the 1974 Trade Act legislation.

Still, the 1972 US-USSR Trade Agreement reflected a favorable climate for increasing trade with the Soviet Union. The 1972 Moscow summit established the Joint US-USSR Commercial Commission, which remains in operation. The Commission was created to resolve various economic problems between the two countries, and was responsible for putting together the 1972 Agreement.[63]

The gradual rise in Soviet and East European standards continues to generate pressures for making new and greater quantities of consumer goods available. The result may be increased trade with Western countries. For example, in 1974 West European trade with East European nations increased 43%.[64] American businessmen will surely participate in this favorable trade climate.

However, there are limitations on the extent of US trade expansion with the Soviet Union. Size, natural resources, and an advanced industrial base provide the USSR with the potential for economic self-sufficiency. Moreover, industrialized East European nations provide the Soviet Union with convenient trading partners on its borders. Competition from other Western nations for the Russian market will probably increase.

American domestic factors, such as concern over Soviet emigration policy, also threaten the development of US-Soviet trade. Solzhenitsyn's revelations about Soviet forced-labor camps had a substantial impact on American opinion about conditions in Soviet Russia.[65] Furthermore, reluctance to trade with the USSR, except on a basis of mutual and equal economic benefit, is shared by the substantial segment of Congress and US citizenry.[66]

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[61] *Supra* note 41, at 1321-1346.

[62] Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978 (codified in scattered sections of 5, 19, 26, 31 U.S.C.) (Jan. 3, 1975). *See* Title IV, sect. 401, at 220; making the implementation of U.S.-Soviet trade contingent on Congressional approval of Soviet emigration quotas for Soviet Jews.

[63] R. STARR, *supra* note 20, at 84.

[64] The Wall Street Journal, November 17, 1975, at 1, col. 3.

[65] *E.g.*, A. SOLZHENITSYN, THE GULAG ARCHIPELAGO (ONE AND TWO), (1974).

[66] Stevenson, *supra* note 48, at 733-739. In a speech before the National Institute on East-West Investment, in April 1975, Senator Adlai Stevenson decried the original Nixon policy of granting indiscriminate subsidized credit in order to assure increased U.S.-Soviet trade: "The issue is largely to what extent the U. S. should subsidize the development of the Soviet Union in order to obtain short-run, economic benefits, and seek to influence Soviet policy;" *id.*, 733. In the same speech he suggests that even should the U. S. gain access to Soviet energy resources, such as oil, it would be unwise for the U. S. to increase its dependence on foreign sources of essential raw materials; *id.*, 734.