Prospects for Investment in the Soviet Union: A Survey of Political and Economic Factors

Gail L. Eggleston
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by Gail L. Eggleston*

I. A Brief History of United States-Soviet Commercial Relations

Significant commercial contacts existed between the United States and Russia before the Bolshevik Revolution. Russia accounted for one-tenth of U.S. exports in 1911, and supplied substantial portions of U.S. naval stores.¹ In the early years of the Soviet regime, American aid contributed significantly to the rehabilitation of the Soviet economy; under Lenin's New Economic Policy, concessions were granted to American capitalists for the exploitation of Soviet natural resources and the establishment of factories and mines.² During the early Stalinist era, American entrepreneurs expanded their involvement in the development of Soviet industry; by 1931 the Soviet market was absorbing nearly two-thirds of all U.S. exports of agricultural equipment and power-driven metal-working machinery.³ Such important contacts led to U.S. diplomatic recognition of the Soviet Union in 1933, the establishment of the Export-Import Bank in 1934 to finance transactions, and the grant of most-favored-nation [MFN] treatment in 1935.⁴ When the Lend Lease agreement was signed in 1942, American exports to the Soviet Union had reached $2.5 billion per year.⁵

This mutually profitable relationship ended in 1947 due to the advent of the Cold War and disagreements over Lend Lease repayment terms. The United States imposed an embargo upon the shipment of strategic commodities to communist countries under the Export Control Act of 1949.⁶ Private loans to countries in default on their debts to the United States were prohibited under the Johnson Act of 1934,⁷ and the MFN status of Communist countries was revoked by the 1951 Trade Agreements Extension Act.⁸ During the Korean War the United States adopted the Mutual Defense Assistance Act (Battle Act) of 1951⁹

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²Id. at 640.

³Id. at 641.

⁴Id.

⁵Id.


⁸Wilson, et al., supra note 1, at 641.

promoting an embargo on Western goods "which might contribute to the military strength of the Soviet bloc."

Not until 1956 was commercial contact re-established through the decontrol of certain categories of exports to the Soviet Union. Commercial relations were further advanced by the 1959 summit talks between Eisenhower and Khrushchev, which led to a narrowing of the definition of strategic goods excluded from trade. During the Kennedy and Johnson administrations, the Johnson Act was reinterpreted to permit medium-term credits linked to U.S. export transactions, and U.S. longshoremen agreed to allow fifty percent of export cargoes to be shipped in non-U.S. bottoms. These developments permitted the 1964 sale of $110 million worth of wheat. Further steps were taken to improve the competitive position of American businessmen; in 1966 more items were removed from the list of controlled exports, and a bill styled The East-West Trade Relations Act was introduced to eliminate trade discriminations against Communist countries. The bill failed to pass in 1966 and again in 1969, but the Export Administration Act of 1969 (which replaced the Export Control Act of 1949) loosened many restrictions on trade with Communist nations. None of these actions, however, substantially affected the level of U.S.-Soviet trade.

In the post-Stalin period, Soviet economic policy has encouraged the development of commercial relations with industrialized Western nations as a means to achieve high industrial and agricultural growth rates. The Soviet Union has developed a considerable trade with Western Europe, exchanging raw materials for advanced equipment. Not until 1971, when export credits of the Export-Import Bank of the United States [Eximbank] again became available to socialist countries, did the United States begin to participate actively in trade with the Soviet Union. Reciprocal visits by U.S. and Soviet commercial delegations initiated a new era in East-West trade; in November, 1971 a group headed by the U.S. Secretary of Commerce traveled to Moscow and in May, 1972 the U.S.S.R. Minister of Foreign Trade came to Washington.

These exchanges laid the foundation for the Moscow Summit of May, 1972, where President Nixon and General Secretary Brezhnev agreed to establish a Joint Commercial Commission to negotiate a

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10Wilson, et al., supra note 1, at 642.
11Id.
12Id.
15MORTON, supra note 13, at A-5. In 1968, Congress prohibited Eximbank export credits to socialist countries for the duration of the Vietnam War and denied waiver authority to the President until 1971, but commercial financing by private firms was not foreclosed.
16Id. at A-8.
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comprehensive trade agreement and essential supporting agreements. The Commission rapidly achieved significant improvements in trade relations and continues to be an important force in their development; conclusion of bilateral trade agreements in each of the specified areas came by October 1972.

On July 8, 1972 the Soviet Union signed an agreement with respect to purchases of grain whereby it would purchase at least $750 million in U.S. grains for delivery over a three year period, if the United States would make $500 million credit available through the Commodity Credit Corporation. Another grain purchase agreement having a term of five years was concluded on October 20, 1975, indicating a policy of continuing agricultural interdependence.

The Agreement Regarding Certain Maritime Matters, signed on October 14, 1972, was designed to promote two objectives: the increase of maritime commerce between the two nations by reciprocally opening major ports of call to specified types of vessels and the provision of equal opportunity for vessels of both nations to participate in that increased trade. The agreement opened forty specified ports in each country to access by vessels of the other, established freight rates and gave the vessels of each the opportunity to carry at least one-third of all cargoes moving between the two nations. The agreement was a boon to the American shipping industry, increasing substantially employment of the U.S. bulk cargo fleet. An upward trend in laid-up tonnage was reversed, due primarily to the transport of grain to the Soviet Union.

The two governments concluded an agreement on the settlement of Lend Lease, reciprocal aid and claims on October 18, 1972. Under this agreement the United States was to receive at least $722 million over the period ending July 1, 2001, as payment on loans which had been outstanding since World War II. Several installments were paid, but the balance was conditioned upon the extension of MFN treatment to the Soviet Union.

20T.I.A.S. No. 7513.
21U.S.-SOVIET COMMERCIAL AGREEMENTS, supra note 17, at 23.
22Immediately before the Maritime Agreement was signed, forty-three U.S. cargo ships totalling 1.4 million deadweight tons were laid up for lack of cargo. Industry sources predicted further increases in these figures. After implementation of the agreement the bulk fleet was fully employed for the first time in several years. As of March 1, 1973, contracts had been signed creating over 210,000 man days of seafaring employment. See Wilson, et al., supra note 1, at 649.
A comprehensive Trade Agreement was also signed; the nine articles, three annexes and accompanying exchange of letters created a new legal framework for the development of U.S.-Soviet trade. Article I granted MFN status, providing that each country would reduce tariffs on products from the other country to the level applied to equivalent products imported from other nations. Anticipating actions by both governments to facilitate the exchange of goods and services between the two countries, Article 2 projected a tripling of bilateral trade over the three year period of the agreement. To prevent import-induced disruption of either country's domestic market, a safeguard procedure was established in Article 3. Article 4 required that all payments be in U.S. dollars or other freely convertible currency agreed upon. The establishment of a U.S. Commercial Office in Moscow and a Soviet Trade Representation in Washington was authorized by Article 5. According to Article 6, U.S. firms could establish accredited business facilities in Moscow and Soviet Foreign Trade Organizations [FTO's] could be established in the United States. Article 7 encouraged settlement of commercial disputes by arbitration under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Protection of government security interests was covered in Article 8. The final article provided for effectuation of the agreement and authorized further meetings of the U.S.-U.S.S.R. Commercial Commission.

A separate Agreement on Financing Procedures between the U.S. Eximbank and the U.S.S.R. Foreign Trade Bank was also signed on October 18, 1972. Unlike the Lend Lease Settlement, it was to be effective even if the Trade Agreement was never implemented. Under this agreement Eximbank has extended direct credits in connection with export sales to the Soviet Union. The credit facilities of the Soviet Foreign Trade Bank (Vneshtorgbank) and those of the FTO's are likewise available to American importers.

In 1972 an Agreement on Exchanges and Cooperation in Scientific, Technical, Educational, Cultural, and Other Exchanges was reached, and a Joint Commission on Science and Technology was established. A summit meeting held in Washington in 1973 yielded a proposal for a bilateral tax treaty with provisions to avoid double taxation. In the June 1974 Moscow Summit, several trade-related agreements were concluded, notably a long-term Agreement to Facilitate Economic, Industrial, and Technical Cooperation. The agreement specifies areas

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26 Agreement Regarding Trade, October 18, 1972, reproduced in U.S.-SOVIET COMMERCIAL AGREEMENTS, supra note 17.
27 Wilson, et al., supra note 1, at 654.
28 Id. at 655; [1972] 23 U.S.T. 791; T.I.A.S. No. 7343.
29 See Cole and Maguire, Tax Consequences of Transactions with the USSR, in BUSINESS TRANSACTIONS WITH THE USSR 139 (R. Starr ed. 1975).
in which the governments will encourage development of projects. To exchange information and forecasts of basic economic, industrial and commercial trends, yearly meetings of experts are to be held under the auspices of the Joint Commercial Commission.\textsuperscript{31}

The Soviet Union repudiated the Trade Agreement of 1972 after Congress added the Jackson-Vanik Amendment to the Trade Act of 1974,\textsuperscript{32} and amended the Export-Import Bank (Eximbank) Act in 1975.\textsuperscript{33} The Jackson-Vanik Amendment conditioned the granting of MFN treatment to non-market economy countries upon free emigration of all citizens. The Eximbank Act in 1975 made extension of U.S. government credits to the Soviet Union also dependent on changes in Soviet emigration policy.\textsuperscript{34}

Soviet repudiation of the trade agreement caused no significant deterioration of the business climate for American companies. Delays in the negotiation of new contracts and preferential treatment for other Western countries' firms have been reported.\textsuperscript{35} However, Soviet officials have made it clear that they expect trade with the United States to grow despite the failure of the trade agreement.\textsuperscript{36}

Although the expected political rapprochement has not occurred, both countries expect substantial economic benefits from expanded commercial relations and several new forms of commercial interaction have developed. Because the Soviet government conducts all foreign trade as a monopoly, the U.S. government is more active in foreign trade with the Soviet Union than with other foreign trading partners in order to equalize the bargaining positions of the parties.

Greater participation by the U.S. government is achieved in several ways, including activity by the Joint Commercial Commission in monitoring trade at the operational level. The Bureau of East-West Trade, a unit of the Domestic and International Business Administration of the U.S. Department of Commerce, functions as the major government mechanism for assisting U.S. firms interested in trade with Eastern countries.\textsuperscript{37} It contains the executive secretariat for the Joint Commercial Commission and provides detailed economic information on socialist countries for U.S. firms.\textsuperscript{38}

Since 1973 the United States has maintained a Commercial Office in Moscow to promote the development of U.S.-Soviet economic relations and to expand the services available to U.S. businessmen in

\textsuperscript{31}Starr, \textit{supra} note 19.
\textsuperscript{35}Id. at 67.
\textsuperscript{36}Id.
\textsuperscript{37}U.S. DEPT OF COMMERCE, OVERSEAS BUSINESS REPORTS 74-01 at 10 (1974).
\textsuperscript{38}Id.

II. Industrial Cooperation Agreements

Commercial transactions between American firms and Soviet organizations have increased in complexity as well as quantity. While individual import and export transactions still constitute the bulk of bilateral trade, a new arrangement has been developed to meet the economic needs of both countries. The "industrial cooperation agreement" is more complex than a simple sales or purchase, but less complex than an ordinary joint venture. Traditional joint ventures are infeasible since the Soviet Union presently forbids both private ownership of the means of production and foreign participation in economic planning.

In the context of U.S.-Soviet economic relations, industrial cooperation agreements have been defined as those "between enterprises belonging to different economic systems which go beyond traditional export/import operations based on monetary settlement and include set reciprocal product/service flows extending over a number of years." The usual characteristics of such projects are:

1) major impact on the Soviet economy,
2) substantial cost,
3) expected duration of ten to fifteen years,
4) purchase of equipment requirements on long term credit,
5) reimbursement of credits at least in part by delivery of product of enterprise,
6) export sales of product continue after repayment of original investment.

Four distinct types of industrial cooperation with Western enterprises have emerged: licensing with payment in product, turnkey with payment in product, coproduction and specialization, and subcontracting. Licensing agreements involve the manufacture of goods according to specifications under a license granted by the Western firm. Pay-

39Id. at 12.
40Id.
43Id. at 780.
ment is in finished products or components that are exported by the licensor. An example of this arrangement is the recent agreement with Phillip Morris, Inc. for the production of Marlboro cigarettes in the Soviet Union. Along with royalties, payments are to be in Soviet tobacco for the use in Marlboro’s European brands and for use in the development of a test program for tobacco production in the Moldavian Republic.45

The most common type of industrial cooperation project is the turnkey arrangement. The Western firm supplies the entire production facility, including design and construction of the plant, equipment, personnel training and technical assistance.46 At least partial payment is usually made in the resultant product, although this is not required if Soviet internal needs can absorb the entire output of the plant.47 U.S. firms have contracted with the Soviet Union to provide turnkey plants in several areas:

- PPG Industries48 and Reichhold Chemicals Corp.49 are to construct plastic resin plants;
- Internex International is to provide a plant for the manufacture of car radiators, heaters, oil coolers and other similar equipment for the Kama River truck project;50
- Chemtex Corp. is to construct artificial fiber and foil-making facilities;51
- General Instruments is to provide a plant, technology, components and assembling equipment for the production of pocket calculators, in a $28 million deal;52
- Allis Chalmers Corp. signed a contract to construct an iron-pelletizing plant for $50 million;53
- Union Carbide signed a preliminary agreement for the joint design and construction of a ferro-manganese plant;54
- DuPont is to provide a plant for the production of chromium dioxide for audio-visual tapes;55
- Pullman Corp. is to construct four ammonia fertilizer plants;56
- Bendix Corp. expects to finalize an agreement to construct a plant

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466 Overseas Business Reports, supra note 37, at 5-6.
486 Osofsky, supra note 25, at 72.
496 EASTERN EUROPE REPORTS, supra note 35, at 155.
506 Id. at 366.
516 Id. at 127.
526 Id. at 197.
536 Id. at 238.
546 Id. at 323.
556 Id.
565 BUSINESS EASTERN EUROPE, supra note 47, at 237.
for the production of spark plugs, with payment in product to be sold outside the Soviet Union;\textsuperscript{57} FMC Corp.\textsuperscript{58} and Arthur G. McKee & Co.\textsuperscript{59} have contracted to build baby food plants.

An increasingly popular variation in licensing and turnkey cooperation agreements is a counterpurchase provision. This allows the Western firm to receive payment in raw materials or in a product not produced under the license or facilities that are the subject of the contract. An example of a counterpurchase provision in a licensing arrangement is Pepsico's agreement to supply licenses and bottling plants for the production of soda in the Soviet Union in exchange for Russian vodka which is imported into the United States. This arrangement has proven so successful that the 1972 contract was renewed and expanded in 1976 to provide for construction of a second bottling plant.\textsuperscript{60}

Less common are coproduction and specialization agreements. Components of the final product or members of a line of products are manufactured by each party, then parts are exchanged and each party independently assembles and markets the completed product or entire line.\textsuperscript{61} Also in limited use are subcontracting arrangements, which may function as the means for product delivery under a more comprehensive industrial cooperation project, or to supplement the Western firm's production capacity.\textsuperscript{62} These two types of arrangements may be employed to take advantage of the lower Soviet wage scale for labor-intensive projects.\textsuperscript{63}

Most industrial cooperation projects involve the development of energy resources and the production of heavy machinery, chemicals and computer technology. The Soviet Foreign Plan for 1976 through 1980 encourages the development of energy resources.

The joint exploration and exploitation of the extensive mineral and fuel resources located in Siberia are essential for the Soviets to achieve projected growth rates on schedule.\textsuperscript{64} The exploitation requires U.S. technical assistance in the areas of metallurgy, coal extraction, transportation and power transmission.\textsuperscript{65} The Soviets also need labor-saving machinery and special Arctic technology due to the insufficient

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\textsuperscript{57} \textit{Business Eastern Europe}, supra note 45, at 46.
\textsuperscript{58} \textit{id.} at 72.
\textsuperscript{59} \textit{id.} at 159.
\textsuperscript{60} \textit{Bus. Int'l Corporation, Eastern Europe Reports} 14 (1976).
\textsuperscript{61} \textit{Overseas Business Reports}, supra, note 37, at 6-7.
\textsuperscript{62} \textit{Smith}, supra note 42, at 771.
\textsuperscript{63} Soviet workers have the lowest wage scale in Eastern Europe, where wages are substantially lower than in the West. \textit{5 Eastern Europe Reports}, supra note 60, at 70.
\textsuperscript{64} Siberia contains the world's second largest oil deposits, estimated at 834 billion barrels; the world's largest natural gas deposits, an estimated 6.6 trillion tons, and untapped sources of enormous amounts of hydroelectric power. \textit{Bus. Int'l Corporation, Doing Business with the U.S.S.R.} at I-15 (1975).
\textsuperscript{65} C. Friesen, \textit{The Political Economy of East-West Trade} 17 (1976).
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Because of the Soviet need for U.S. assistance, resource exploitation projects are likely to become more common. However, the substantial capital outlays and long-term repayment provisions required for such cooperation projects ordinarily make them feasible only for large multinational corporations.

During the 25th Party Congress, Premier Kosygin stressed the importance of industrial cooperation projects in achieving economic growth. General Secretary Brezhnev emphasized the benefits of the buy-back features of these projects.

Industrial cooperation projects provide an opportunity for Soviet enterprises to gain Western technology and familiarity with Western managerial skills and marketing techniques. Perhaps most important, these arrangements enable the Soviet Union to obtain skills, technology and commodities for which its hard currency reserves would be inadequate to purchase outright. The Soviet Union is thus able to avoid further increase in its hard currency deficit, which soared to $6.3 billion in 1975. Increased output in raw material production will also generate more hard currency to improve the Soviet balance of payments.

III. Soviet Economic Organization and Trade Procedures

Experience of U.S. firms indicates that conclusion of an industrial cooperation agreement with the Soviet Union involves years of negotiation and considerable bureaucratic delay, due to the centrally-planned Soviet economy.

A. Central Planning System

All Soviet economic activity is conducted in accordance with a plan drafted by the State Planning Committee (Gosplan). Gosplan is

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66DOING BUSINESS WITH THE U.S.S.R., supra note 64 at, I-17.
68FRIESEN, supra note 65, at 12. According to a 1976 survey, 40 of the 53 U.S. firms which had then signed industrial cooperation agreements with the SCST were among the 300 largest corporations ranked by Fortune 500. Theriot, U.S. Governmental and Private Industry Cooperation with the Soviet Union in the Fields of Science and Technology, in SOVIET ECONOMY IN A NEW PERSPECTIVE, supra note 42, 739 at 749.
69Smith, supra note 42, at 768-69.
70Peterson, supra note 44, at 396.
71Farrell and Ericson, Soviet Trade and Payments with the West, in SOVIET ECONOMY IN A NEW PERSPECTIVE, supra note 42, 727 at 728.
under the policy directives of the Politburo, which is the supreme policy-making body of the Central Committee of the Communist Party. Government agencies make all economic decisions, supervise their execution, set prices and own the means of production. A hierarchy of economic plans is promulgated with long-range plans to establish general directions for ten or fifteen years. Five-Year Plans set targets for production, investment, output mix and growth for that period. More specific annual plans detail production quotas, allocate resources among industries and regions and allow for adjustments based on production figures of the previous year. Each industry and region is the subject for annual and monthly plans, which contain even more specialized sub-plans specifying the input and output allotted for individual enterprises.

The entire system of plans is formulated and administered under the supervision of Gosplan, which in turn delegates supervision of the various industries to the All-Union Ministries and supervision of the regions to the Republic and regional Gosplans. The planning agencies draft preliminary plans after receiving reports from industrial enterprises on their productive capacity and estimated requirements. After a lengthy process of sending the plans to higher authorities for approval after each modification, the final national plan is ratified by the Council of Ministers and the Central Committee. Once, approved, all transactions must conform to the national plan since it has the force of law.

B. Foreign Trade System

The Soviet Ministry of Foreign Trade coordinates all foreign trade transactions. The Ministry formulates and administers rules and plans for import and export of goods, negotiates trade agreements with foreign countries, directs the activities of Foreign Trade Organizations and Trade Representations, formulates and administers customs rules and issues licenses for the conduct of trade. Within the Ministry of Foreign Trade in 1976, the Soviets established a new Department for Compensation Projects with Capitalist Countries, in order to alleviate the organizational obstacles facing cooperation agreements. This department is expected to increase the flexibility of terms in cooperation agreements since it has the power to make arrangements between FTO’s for counterpurchase agreements. The department should also

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73 Id.
74 Id. at 5.
775 Business Eastern Europe, supra note 47, at 332.
reduce the number of contacts a Western firm must make by forcing one industrial ministry to provide products necessary for another ministry to obtain commodities from the West.78

Foreign Trade Organizations are the instrumentalities through which the Soviet state engages in foreign trade. Each of the more than sixty FTO's handles trade transactions of a specific character, defined in terms of a general type of product or service. The FTO's act as intermediaries between foreign firms and the Soviet enterprises which are importing goods, exporting goods or both. There are no legal links between Soviet enterprises and foreign firms.79 Each FTO is a legally independent entity with its own assets and with civil liability on the contracts it signs. The Soviet state is not liable for the obligations of the FTO nor is any FTO liable for the obligations of any other organization.80 The FTO's operate on basic commercial principles in concluding contracts on behalf of Soviet industrial ministries and enterprises and have wide latitude in determining the conditions of these transactions within the scope of their authority.81 Actual purchasing decisions are made by the enterprises which will use the imports, often based on recommendations of the State Committee for Science and Technology and on overall political and economic considerations.82

The State Committee for Science and Technology [SCST] is responsible for planning the development of technology for the entire Soviet economy. No Soviet enterprise can obtain funds for scientific or technological research and development without this Committee's approval.83 While not empowered to enter contracts with foreign firms, the SCST can conclude agreements with foreign firms as an initial step in selecting foreign suppliers of technology and equipment to be integrated into the economic plan. Over fifty U.S. firms have signed these Science and Technology agreements.84 After the SCST selects the firms to be involved and arranges financing, it then proceeds to supervise the project and coordinate it with other research and development projects.

Working closely with the Ministry of Foreign Trade and the SCST is the U.S.S.R. Chamber of Commerce, which is an independent organization of over 1,800 members, including the FTO's, industrial enterprises, and other economic organizations.85 The Chamber of

78Id.
79Kiralfy, supra note 75, at 313.
80Berman and Bustin, supra note 76, at 31.
81OVERSEAS BUSINESS REPORTS, supra note 37, at 13.
82Id.
83Berman and Bustin, supra note 76, at 36.
84U.S. Companies with Science and Technology Cooperation Agreements with the Soviet State Committee for Science and Technology, supra note 67.
85OVERSEAS BUSINESS REPORTS, supra note 37, at 13.
Commerce establishes links with foreign economic organizations, organizes trade fairs, receives foreign trade delegations, sends Soviet trade delegations abroad, handles international patent applications, and issues certificates of origin, goods inspection, and customs clearance. The Chamber also maintains the Foreign Trade Arbitration Commission [FTAC] and the Maritime Arbitration Commission to settle international commercial disputes.

C. Contracting with the Soviet Union

Soviet FTO's have "standard form" contracts specifically designed for transactions with Western trading partners. A Western firm may obtain provisions that vary to a certain extent, depending on the relative bargaining power of the parties in the particular deal. Prolonged negotiations will result for foreign firms seeking significant variations that require the FTO to consult with superior authority. The FTO representatives will be informed as to the performance record of the Western firm and concessions granted by it on other projects. However, Western negotiators will probably not be able to acquire comparable data on the FTO or end-use Ministry because the Soviets are secretive and other firms are unwilling to reveal the details of their transactions with the Soviets. Experience has shown that the FTO negotiators are tactically very skillful and a company "may find that a deal can only be concluded with the Soviets at a high business risk."

Generally, contracts with Soviet organizations are more detailed than those among Western parties and are interpreted very literally so that in practice linguistic problems have not arisen. The Soviet law of contracts is much the same as that of the civil law countries. Certain standard contract provisions have regularly caused concern to Western

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86Berman and Bustin, supra note 76, at 134.
87The standard Soviet foreign trade contract contains an arbitration clause, with the preferred forum being the FTAC in Moscow. While an element of mistrust on the part of Western firms is natural as the FTAC is controlled by Soviet authorities "it is generally acknowledged that Moscow FTAC has a good record for sensible, impartial decisions."

Soviet policy in favor of arbitration is very strong. The U.S.S.R. is a party to both the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the 1961 European Convention on International Commercial Arbitration. Under these Conventions the Soviet FTO's will agree to submit to arbitration in the country of the foreign claimant or a mutually acceptable third country, sometimes specifying the Rules of Procedure of the United Nations Economic Commission for Europe. If no procedural rules have been specified, as frequently happens, past East-West arbitrations held in Stockholm have been conducted under the Swedish Arbitration Act and the Regulations governing the Arbitration Institute of the Stockholm Chamber of Commerce. Norberg and Stein, Arbitration of U.S.-U.S.S.R. Trade Disputes, in BUSINESS TRANSACTIONS WITH THE U.S.S.R. 175, at 177-81. (R. Starr ed. 1975).

88OVERSEAS BUSINESS REPORTS, supra note 37, at 16.


90Kiralfy, supra note 75, at 323.
trading partners. Arbitration clauses frequently contain no provision as to choice of law or rules of procedure and fail to mention whether the parties have the right to agree on another form of dispute settlement. However, Soviet law permits the parties to specify the country whose law shall apply to the transaction. In the absence of express agreement, Soviet law follows the principle of lex loci contractus, the place to be determined by Soviet law, which for contracts concluded by correspondence is the country where the acceptance of the offer is received. The parties should expressly state the agreed terms.

Soviet organizations often interpret force majeure clauses differently than other countries, since the centrally planned Soviet economy is subject to serious disruption when contractual obligations are not fulfilled. Specifically, the FTO's exclude labor strikes and material shortages as excuses for nonperformance, but seek to include unilateral acts of Government. All force majeure possibilities should be written in the contract in specific language rather than general terms.

Clauses dealing with sanctions normally require strict performance guarantees and impose severe penalties for failure to perform to the letter of the contract. Specific performance rather than damages is the focus of a contract with a Soviet organization; therefore, the Western company should be careful not to overcommit its abilities and resources.

Formalities are extremely important to the validity of Soviet contracts. Two authorized persons must sign every contract, but it may be difficult for a foreigner to learn the persons authorized to act for a given organization. The doctrine of ultra vires is strictly applied in the Soviet Union, so a contract is valid only if made with the FTO having authority in the relevant area of the economy.

The governments of the Soviet Union and the United States, in the 1972 Trade Agreement, provided that commercial contracts between Soviet FTO's and U.S. firms "will generally be concluded on terms customary in international commercial practice." However, trade customs do not apply where the law which governs execution of the contract expressly regulates the disputed issue, or where the parties agree to depart from established trade custom. The Joint Commercial

93OVERSEAS BUSINESS REPORTS, supra note 37, at 17.
94Starr, *supra* note 89, at 94.
95Stein, *supra* note 91, at 113.
96id.
97Agreement Regarding Trade, *supra* note 26, art. II(2).
98Ginsberg, *supra* note 92, at 325.
Commission is empowered to "monitor... U.S.-U.S.S.R. commercial relations, ... resolving issues that may be of interest to both parties..." Thus standard provisions which cannot be compromised to the satisfaction of both parties and in conformity with custom may be referred to the Committee for intergovernment consideration.100

D. Industrial Property Protection

Industrial property protection is available to U.S. nationals under Soviet patent, trademark and industrial design laws through the Patent Bureau of the U.S.S.R. Chamber of Commerce. The Bureau serves as exclusive agent for all applications from foreigners to the State Committee for Inventions and Discoveries.101 The U.S.S.R. is a party to the Paris Convention on the Protection of Industrial Property, thus U.S. nationals are entitled to the same protections as provided for Soviet nationals.102

Inventions are protected by patents and inventors' certificates; both certify recognition, priority and authorship. A patent lasts fifteen years and gives the inventor exclusive right to the invention in the U.S.S.R.103 An inventor's certificate, which is permanent, gives the state the exclusive right to the invention and entitles the inventor to guaranteed payments based on use and privileges specified by law.104 Soviet nationals usually acquire inventor's certificates since all means of production are state-owned and the inventor cannot produce the product.105 Foreigners prefer to acquire patents because the recognized ownership rights serve as a basis for negotiating licensing agreements with Soviet organizations and for preventing importation of products which it covers.106

A foreign national is entitled to a "right of priority" for patent and trademark applications, according to which an application in the U.S.S.R. within one year of the original foreign filing will date back to that first filing.107 The exclusive right of the foreign national may be limited by the "right of prior use" which allows the Soviet enterprise to continue to use an invention without payment of compensation if it was in use before the application was filed.108 Absolute novelty is required in order to obtain a Soviet patent; the invention must not have

99 Agreement Regarding Trade, supra note 26, art. IX(2).
100 Starr, supra note 89, at 106.
103 Kiralfy, supra note 75, at 334.
104 Id.
105 Overseas Business Reports, supra note 37, at 19.
106 Id.
107 Id.
108 Kiralfy, supra note 75, at 335.
been disclosed in the U.S.S.R. or abroad to an indefinite number of persons in such a way that its embodiment becomes possible.\textsuperscript{109}

Trademark protection is available for both product and service marks. Trademarks will not be in force until registered, and the first applicant is entitled to registration regardless of prior use, although a foreigner must establish use of the mark in commerce in order to file an application.\textsuperscript{110} Registration entitles the owner to exclusive use with a right to prohibit imported or unauthorized products bearing the mark. Registration will be denied if the mark is similar to one already registered, or if the applicant's home country does not allow reciprocal registration.\textsuperscript{111} Registration is available for a maximum term of ten years which can be extended, and rights can be licensed or assigned.\textsuperscript{112}

Licensing is controlled by a special FTO, v/o Licensintorg, which is charged with acquiring licenses abroad and selling Soviet licenses to foreign countries. Agreements are frequently made with the FTO for the particular industry involved, but must comply with the set procedures and with any relevant international agreements and be approved by v/o Licensintorg.\textsuperscript{113} The SCST establishes priorities and makes final decisions on the acquisition of foreign technology. Along with the FTO's, the SCST is directly involved in licensing of technology.\textsuperscript{114} Licenses usually run between five and ten years, with payment on a lump-sum basis or in installments and in hard currency or in product. Many variations are available but any license agreement will be extremely detailed and will involve hard bargaining.\textsuperscript{115}

E. Financing Practices

Financing imports into the Soviet Union is handled by the State Bank [Gosbank], which controls the entire Soviet banking system and participates in the formulation of the country's comprehensive economic policy. The Foreign Trade Bank [Vneshtorgbank] is responsible for administering foreign trade payments, providing credits to the FTO's, and coordinating relations with Western financial institutions.\textsuperscript{116} In addition, four banks are owned and operated abroad by the Soviet Union (in London, Paris, Zurich and Frankfurt) primarily to finance short-term commercial transactions and to assist in the financ-

\textsuperscript{109}Van Dyke, supra note 101, at 111.
\textsuperscript{110}Id. at 119.
\textsuperscript{111}Kiralfy, supra note 75, at 333.
\textsuperscript{112}Van Dyke, supra note 101, at 121.
\textsuperscript{113}Id. at 127.
\textsuperscript{114}Kiralfy, supra note 75, at 336.
\textsuperscript{115}Id. at 337.
\textsuperscript{116}Anikin, Credit and Finance in Soviet Foreign Trade, in American-Soviet Trade: A Joint Seminar on the Organizational and Legal Aspects 27, 28 (U.S. Dep't of Commerce 1975).
ing of medium-term projects when full Western credits are not available.117

Vneshtorgbank functions as the recipient of credits in transactions for the import of equipment and technology.118 Since Vneshtorgbank is a major international bank with a strong credit rating, the commercial credit risk is very low in Soviet transactions. Unsecured credit terms are common, though letters of credit remain the usual method.119 Low interest rates, generally six percent or slightly over, are demanded by Soviet FTO's on the basis of their excellent payment record. The difference between the low interest rate paid by the Soviets and the prevailing interest rate is covered by the seller's profit margin. Long term credit (up to fifteen years) is sought by the Soviets.120

Limits on U.S. financing of exports to the Soviet Union curtail the expansion of commercial relations. Some scholars have suggested that the collapse of the 1972 Trade Agreement was caused as much by the passage of legislation limiting Eximbank credit to the Soviet Union to $300 million over four years, an amount "wholly inadequate to finance tremendous Soviet imports of U.S. technology and equipment," as by U.S. demands for changes in Soviet emigration policy.121 American commercial banks are limited by the Johnson Act of 1934 which prohibits loans involving foreign governments which are in default on their obligations to the United States; however, the Attorney General has ruled that certain financing arrangements are outside the scope of the Johnson Act.122 Federally chartered banks are restricted to lending a maximum of ten percent of their gross capital funds to a single borrower. This "effectively limits the amount that the U.S. banking system could have on loan at any one time to any one socialist country to a theoretical maximum of about $2.0 billion."123 Export credits have been made available through branches or subsidiaries of U.S. banks in Europe, sometimes in conjunction with European or Japanese banks.

The limits on Eximbank activity in transactions with the Soviet Union dampen the interest of commercial banks in this area, thus compounding the adverse impact on our competitive posture.124 This combined lending capacity cannot support any major portion of the large transactions contemplated and already undertaken. Thus far, "the vast majority of U.S. exports to socialist countries has been paid in cash or has been financed by the commercial banking system."125

117Id. at 29.
118Id.
119OVERSEAS BUSINESS REPORT, supra note 37, at 21.
120Id.
121See, e.g., Osofsky, supra note 25, at 730.
122OVERSEAS BUSINESS REPORTS, supra note 37, at 22.
123Morton, supra note 13, at 36.
124Id. at 37.
125Id. at 39.
This is no longer an adequate source of financing. Government credits are necessary if U.S. firms are to compete successfully with the firms of other countries for Soviet business, especially for industrial cooperation projects.

IV. Experience of U.S. Firms

A significant number of U.S. firms have now successfully concluded trade and cooperation agreements with the Soviet Union. Some projects have been completed or have made substantial progress, and information on their experiences has been made available. These experiences show that several steps are necessary before agreements can be concluded.

Personal contact, preferably establishment of a continuing relationship, has been found essential even in the earliest stages of negotiation.126 A visit to the Moscow office of the FTO by high-ranking representatives of the Western firm is recommended for presenting promotional information. The staging of an international trade exhibit to display the firm's products has become a popular method of making a good impression on potentially valuable contacts.127

Many U.S. firms have signed protocol agreements with the SCST to create an atmosphere of mutual goodwill and provide a framework for future specific business transactions.128 Protocols generally express an intent to conduct joint research and development projects in a certain industrial area.

The 1974 protocol between Sperry-Rand Corp. and the SCST exemplifies such an agreement; it provided for the exchange of scientific and technological information, joint analysis of technical problems, joint research and development, and consideration of eventual licensing.129 Tangible benefits were found to result from the protocol. The ongoing relationship with the Soviet government that allowed Sperry-Rand to obtain early information about profitable opportunities and preferential treatment in the subsequent award of Soviet contracts was a primary benefit.130 Following a large 1974 exhibition of its full line of computer systems, business machines, farm equipment, hydraulic equipment, and consumer goods, Sperry-Rand received a $10 million order from Aeroflot for computerized reservation and air traffic control systems.131

126OVERSEAS BUSINESS REPORTS, supra note 37, at 14.
127Id.
128U.S. Companies with Science and Technology Cooperation Agreements with the Soviet State Committee for Science and Technology, supra note 67.
130Id.
131Id.
An Austrian company, Stollack AG, signed the first such protocol agreement with the SCST in 1968 for joint research and development of industrial paints and processes for the automobile, wood, furniture and leather industries. Stollack AG reported similar improvements in access to Soviet end-use industries and lessening of bureaucratic procedures in further business dealings.132

Between mid-1972 and late 1976, fifty-four such protocols were signed by U.S. firms with the SCST.133 In early 1977 Soviet authorities indicated that in the future protocols would be signed with Western firms only if concrete commercial possibilities were evident. Previously, delays had been caused by administering numerous agreements with little potential.134 A frequently cited reason for the failure of more protocols to result in cooperation projects is the Soviet Central Planning System.135 U.S. export controls have also thwarted several proposed projects, usually those involving technology with military potential.136

In negotiations pursuing the protocol agreements, N. Tretyukhin and B. Borisov137 have announced that buy-back agreements will be favored. Coproduction and specialization agreements such as have been successful with COMECON countries will also be considered. These announcements came as a result of a new attitude toward dependence on Western suppliers in areas not vital to the Soviet economy or military.138

The opening of permanent channels of communication, signing of protocol agreements, and negotiation of preliminary contracts do not automatically result in the conclusion of an industrial cooperation agreement. In 1974, Gulf Oil began to investigate the possibility of becoming involved in a joint project for the exploration of oil deposits off the shore of the Soviet island of Sakhalin; in February, 1975 Gulf signed a science and technology cooperation agreement with the SCST139 and was informed by Soviet authorities that the proposal was being considered;140 in November, 1975 Gulf signed with the Japanese

133Id. at 273.
134U.S. Companies with Science and Technology Cooperation Agreements with the Soviet State Committee for Science and Technology, supra note 67.
1356 BUSINESS EASTERN EUROPE, supra note 45, at 41.
1355 BUSINESS EASTERN EUROPE, supra note 47, at 25.
1346 Denial of United States export licenses prevented the construction of a complex for the production of commercial jet liners and the sale of a computer reservation system, on the ground of “national interest.” Osofsky, supra note 25, at 720, and 5 BUSINESS EASTERN EUROPE, supra note 47, at 51.
137N. Tretyukin is part of the Planning and Economics Department of the Ministry of Foreign Trade and B. Borisov is the President of the U.S.S.R. Chamber of Commerce and Industry.
1346 BUSINESS EASTERN EUROPE, supra note 45, at 41-42.
134U.S. Companies with Science and Technology Cooperation Agreements, supra note 67.
140Osofsky, supra note 25, at 723.
Sakhalin Oil Development Company to provide consulting engineering services. Negotiations continued over a two year period and no agreement was ever reached on the extent of Gulf's participation and interest in the proposed project. Gulf did play a small part in the initial exploration under the contract with the Japanese firm, but eventually was replaced by a French firm with less sophisticated technology that was adequate for Soviet purposes at that time.

Other U.S. firms interested in participating in the exploitation of Soviet natural gas resources have made greater progress in their negotiations than Gulf, although finalization of such arrangements remains speculative. Tenneco, Inc., Texas Eastern Transmission Corp., and Brown & Root, Inc. approached the Soviet Union even before the government-level trade discussions began between the United States and the Soviet Union. This consortium of U.S. firms presented preliminary proposals for major investment in the North Star Project for the development of gas deposits in Western Siberia. In early 1973, Brown & Root signed a cooperation agreement with the SCST and later became one of the first U.S. firms to establish a permanent office in Moscow.

These firms offered to provide equipment, technology and services to explore the Urengoi field, construct a liquidation plant, and lay a pipeline to transport the liquified natural gas [LNG] to other parts of the Soviet Union. In return the firms would share in the output to be shipped to the United States. A twenty-five year term, with shipments of 2.1 billion cubic feet of LNG per day is contemplated. The major obstacle to the conclusion of arrangements is the Soviet requirement that the project be completely financed by the U.S. firms "from gas wellhead to export delivery point." Financing the estimated $3 to $4 billion required could take years to arrange in light of U.S. laws. The U.S. law limiting Eximbank credits available to the Soviet Union to a total of $300 million, with a $40 million sublimit for energy projects unless Congress passes specific enabling legislation after determining that the project is in U.S. national interest is one obstacle. Another obstacle is the law restricting loans made by U.S.

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141 EASTERN EUROPE REPORTS, supra note 35, at 325.
143 Id.
144 Kosnik, supra note 41, at 45.
145 U.S. Companies with Science and Technology Cooperation Agreements, supra note 67.
146 Accredited U.S. Companies in Moscow, unpublished list supplied by U.S.S.R. Affairs Division, Bureau of East-West Trade, U.S. Dep't of Commerce.
147 Kosnik, supra note 41, at 45.
148 Id. at 6.
149 Id. at 44.
150 Id. at 149.
commercial banks to a single entity to ten percent of the bank's net worth.\textsuperscript{151}

In addition, Soviet policies hinder rapid conclusion of an agreement despite the country's need for increased energy production to promote industrial growth and generate hard currency. Any cooperation project must be reflected in the Soviet economic plan, which may take years in the case of such a major project. Once resources are allocated to the project and future production is scheduled, no flexibility is provided to allow for unexpected developments.\textsuperscript{152} Although estimated deposits are adequate to meet the demands of the current plan for domestic and export needs,\textsuperscript{153} and the Urengoi field clearly has the capacity to supply the total quantity of LNG required to repay U.S. investors without serious depletion,\textsuperscript{154} Soviet officials periodically express concern over the appropriateness of pledging substantial portions of their nation's energy reserves to the West.\textsuperscript{155}

The extent of participation by the three U.S. firms in the North Star Project has also been the subject of special consideration on both sides due to the size of the investment required. The usual forms of industrial cooperation agreement do not allow Western firms a voice in the decision-making process, without which the firms are reluctant to commit such a large amount of capital.\textsuperscript{156} Soviet authorities determine the direction and extent of industrial cooperation under these agreements, and the Western firm must accept the internal operations of the Soviet economy as a given.\textsuperscript{157} Compensation or buy-back provisions are tailored to correspond to the importance of the project and the foreign exchange allocation made in the annual import plan.\textsuperscript{158}

In 1976 the Soviet Deputy Foreign Trade Minister expressed continued Soviet interest in dealing with U.S. firms. He mentioned the possibility of new types of arrangements allowing the firms to control product quality and to "participate in the investment cost" of facilities they provide.\textsuperscript{159} Another Soviet spokesman stated that

\begin{itemize}
  \item practice will suggest forms of cooperation providing a mutually acceptable basis for settling matters like a guaranteed share of the profits of the enterprise being set up with the assistance of the foreign investor, the latter's say in the technical and commercial policy of the enterprise, and representation of his interests in management.\textsuperscript{160}
\end{itemize}

\textsuperscript{151}Id. at 153.
\textsuperscript{152}Id. at 60-67.
\textsuperscript{153}Id. at 78.
\textsuperscript{154}Id. at 45.
\textsuperscript{155}FRIESEN, supra note 65, at 19.
\textsuperscript{156}Interview, supra note 142.
\textsuperscript{157}Berman and Bustin, supra note 76, at 69.
\textsuperscript{158}Smith, supra note 42, at 780.
\textsuperscript{159}BUSINESS EASTERN EUROPE, supra note 47, at 87.
\textsuperscript{160}BUSINESS EASTERN EUROPE, supra note 47, at 249.
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Soviet consideration of foreign ownership shares in joint ventures as a way to avoid committing such a large share of the country’s resources for the repayment of loans indicates a softening of the Soviet position toward Westerners.161

Without such concessions by the Soviet Union, U.S. firms would hesitate to commit further capital to the development of Siberian resources, as international political relations are deteriorating and substantial funds are required for energy projects in other countries.162

Experience of Occidental Petroleum

The U.S. firm with the most substantial investment and promising prospects for future cooperation projects in the Soviet Union is Occidental Petroleum. Occidental’s president, Armand Hammer, is one of the leading proponents of expanded commercial relations between the United States and the Soviet Union. As early as July 1972, Occidental became one of the first U.S. firms to sign a science and technology cooperation agreement with SCST.163 The cooperation agreement resulted in an Occidental subsidiary signing a counterpurchase agreement by the end of the year.164

Then another Occidental subsidiary, Hooker Chemical Corp., concluded an agreement with the Ministry of Foreign Trade in April 1973. Hooker Chemical Corp. agreed to exchange large quantities of superphosphoric acid [SPA], a chemical fertilizer, for an equivalent amount of Soviet-produced ammonia, urea and potash.165 The Department of Commerce approved the transaction since the United States has a surplus of phosphate rock and the products to be imported from the Soviet Union are in short supply in the United States due to the shortage of natural gas.

During late 1973 and throughout 1974, the parties negotiated specific terms for the various contracts implementing the chemical barter transaction. The Soviet Union agreed to provide over $360 million for financing the construction of the fertilizer complex in the United States.166 Occidental/Hooker agreed to supply technology, equipment, materials and services to enable the Soviets to construct pipelines for ammonia, terminals for ammonia, urea and SPA, and railroad car tanks for SPA.167 These products are to be of U.S. origin wherever possible and are to be financed with credits obtained by the

162 FRIESEN, supra note 65, at 144.
163 U.S. Companies with Science and Technology Cooperation Agreements, supra note 67.
164 Occidental Petroleum Co., Prospectus, April 10, 1974, at 52. [hereinafter cited as Occidental Prospectus].
166 id.
Soviet Union, $180 million from Eximbank and $180 million from U.S. commercial banks.\textsuperscript{168} To generate funds to repay these credits, Occidental/Hooker agreed to purchase a maximum of 1.6 million metric tons of ammonia per year in addition to the amount obtained under the barter, until the debt is repaid.\textsuperscript{169}

During the 1974 negotiations, Occidental/Hooker agreed to begin purchasing ammonia, urea and potash at Soviet ports in 1978 and to begin deliveries of SPA at that time.\textsuperscript{170} The amount of SPA for 1978 is to be 10,000 metric tons, rising to a minimum of 480,000 metric tons in 1979 and one million metric tons per year for 1980 through 1997.\textsuperscript{171} By 1975, it was apparent that the prices fixed for the 1978 deliveries of SPA had been fixed at a level substantially lower than the current domestic price and production cost, but fortunately prices for 1979 deliveries had not been fixed during the 1974 negotiations.\textsuperscript{172} Prices for the ammonia and urea, which will determine the amounts to be sold, will be based on the level of prices in the U.S. domestic market and world markets each year, subject to certain minimums.\textsuperscript{173} The amounts of ammonia, urea and potash are set according to SPA amounts, with the annual sales price for each fertilizer component to be established six months in advance of each contract year.

Under a separate contract, Occidental/Hooker agreed to purchase an additional 600,000 metric tons of ammonia per year for ten years beginning in 1978.\textsuperscript{174} Two fixed-price contracts at $100 were signed in June 1974 for the construction of the port and pipeline facilities.\textsuperscript{175}

In October 1975, Occidental and an unrelated French corporation contracted with the Soviet Union to supply $300 million in technology, design, equipment and construction supervision for an additional ammonia pipeline system.\textsuperscript{176} According to subsequent agreements, Occidental alone would supply equipment, materials and technical documentation constituting twenty-five percent of the supply portion of the original contract.\textsuperscript{177} Occidental reported to the SEC that “work under all three contracts is proceeding on schedule.”\textsuperscript{178}

\textsuperscript{168}Id.
\textsuperscript{169}Id.
\textsuperscript{170}Occidental Petroleum Co., Form 10-K, 1974 Annual Report to the SEC 46 [hereinafter cited as Occidental, 1974 10-K Form].
\textsuperscript{171}Id.
\textsuperscript{172}Occidental Petroleum Co., Form 10-K, 1975 Annual Report to the SEC 23, [hereinafter cited as Occidental, 1975 10-K Form].
\textsuperscript{173}Occidental, 1973 10-K Form, supra note 167, at 24.
\textsuperscript{174}Occidental, 1974 10-K Form, supra note 170, at 46.
\textsuperscript{175}Id.
\textsuperscript{176}Occidental, 1975 10-K Form, supra note 172, at 24.
\textsuperscript{177}Occidental Petroleum, Registration Statement, Amendment No. 2 to Form S-7, at 36.
\textsuperscript{178}Id.
In November 1975, a Hooker subsidiary signed a protocol with the Soviet Ministry of Chemical Industries. The protocol contemplates a cooperation project for the production of caustic soda and chlorine. The project is expected to be developed like the fertilizer transaction once financing is arranged.

Occidental is involved in other major commercial transactions with the Soviet Union. In 1973, another Occidental subsidiary, Garrett Research and Development Company, signed a contract to design an international trade center in Moscow. Occidental was to serve as general contractor for the entire project and to obtain American subcontracts for equipment and services. Eximbank agreed to provide $36 million in credits, with Chase Manhattan Bank supplying the remainder of the $110 million needed. Design work was completed for the trade center in December 1975, and in March, 1976, Occidental contracted to provide procurement and technical assistance during the construction of the trade center. Under the latter contract, Occidental procured material, equipment and systems from U.S. suppliers.

In early 1974, Occidental signed a preliminary agreement with El Paso Natural Gas Co. and a Japanese consortium to form a joint venture for the exploration and development of natural gas fields in the Yakutsk area of Siberia. In November 1974, these parties concluded an agreement with the Soviet Union to seek the estimated $400 million financing needed to begin exploration. Repayment for the exploration is to be in exports of liquified natural gas. A long-term purchase of 20 billion cubic meters per year is contemplated. Occidental would have a twenty-five percent interest in production, increasing to a one-third share of LNG in excess of 1.5 million cubic feet per day. Occidental's interest is to be adjusted to reflect the eventual purchase of half of the production of the field by the Japanese. Once exploration begins, an estimated $5 to $6 billion investment over the subsequent five-year period is anticipated. Initial financing is to be sought from the Eximbanks of the United States and Japan, and from commercial banks in both countries.

While these projects seem to indicate increased cooperation on natural gas exploration in the Soviet Union, the Soviets are now

180Occidental, 1974 10-K Form, supra note 170, at 68.
181Id.
182Osofsky, supra note 25, at 721.
183Occidental, 1975 10-K Form, supra note 172, at 31.
185Occidental Prospectus, supra note 164, at 52.
186Occidental, 1974 10-K Form, supra note 170, at 54.
187Id.
188Id.
189Id.
shifting their focus to other resources. Preservation of petroleum and
gas reserves, which will be needed in the future, concerns the Soviets.
Therefore, the Soviets are now shifting the focus of their energy
programs to coal use and production.190

Economic and Political Considerations

The Soviet Union’s acquisition of U.S. technology, methodology
and advanced equipment through industrial cooperation projects, and
the resulting growth in economic interdependence, have generated
concern as to whether such transactions are in the best interests of the
United States. However, the United States has many controls on trade
with the Soviet Union. The export of goods and data of possible
strategic importance is effectively controlled by the Export Administra-
tion Act of 1969; the Department of Commerce seeks clearance from
both the State and Defense Departments before granting licenses for
export to the Soviet Union. The Department of Commerce has denied
export licenses for certain types of heavy equipment technology191 and
complex computer systems.192 Due to the sharp separation of the
military and civilian sectors of the Soviet economy and the cumbersome planning procedures which prevent any effective cross-filtering of developments, even vast computer and industrial process systems adapted to the civilian economy are unlikely to be used by the military.193 The United States has recently changed its policy to reduce delays in granting export licenses and effect license denials only where the product is of definite military significance.

Sales of non-strategic technology to socialist countries are no more
harmful to U.S. interests than similar sales to non-socialist countries,
with one exception: narrowing the technological gap between East and
West is a political disadvantage. In reality, however, U.S. develop-
ments in many areas are only a few years ahead of Soviet technology
and, in other areas, are behind Soviet technology, particularly for wide
diameter pipelines, large-scale turbines and certain steelmaking pro-
cedures.194 While the Soviet Union clearly needs technological expertise for its computer, electronic, chemical and truck-building industries, mere examination of a purchased product is ordinarily not sufficient to reveal manufacturing technology. When the technology is obtained, Soviet economic practices and policies hinder any further technological progress.195 Acquisition of U.S. technology in the past has not allowed the Soviets to advance to a leadership position in the

190FRIESEN, supra note 65, at 19.
191OSOFSKY, supra note 25, at 720.
192FRIESEN, supra note 65, at 128-39.
193Id.
194Id.
195Id.
field and is unlikely to do so in the future, in the absence of internal reform.\textsuperscript{196}

American technology is available to other Western nations, and if U.S. firms forego transactions, it is likely that another Western country will provide the same or equivalent technology. The U.S. market can be protected from disruption by procedures outlined in the 1972 Trade Agreement and by tariffs and duties already imposed. The role of Western technology in the Soviet economy is insubstantial; total imports of technology-embodied manufactured goods from the industrialized West comprised only one-half of one percent of the Soviet GNP in 1974.\textsuperscript{197}

Evaluation of the possible disadvantages to U.S. economic and political interests requires balancing against the probable advantages. Trade between the United States and the Soviet Union has weighed heavily in favor of the U.S. balance of payments; total trade reached a new record of $2.5 billion in 1976, of which more than $2.3 billion was in U.S. exports.\textsuperscript{198} But while the dollar value of U.S. machinery and equipment exports has increased, the U.S. share of Soviet orders placed in the West has dropped from a high of twenty-two percent in 1974 to twelve percent in 1976.\textsuperscript{199} Continued decline is projected, unless cooperation arrangements can be made to alleviate Soviet hard currency problems.\textsuperscript{200}

Expanded commercial dealings with the Soviet Union provide growth incentives for the U.S. domestic market by creating more jobs and supplying income for investment in the development of new technology. Certain benefits will accrue to the United States from joint research and development arrangements, because the quality of Soviet research is exceptionally high and the number of Soviet scientists and engineers who concentrate in theoretical fields of chemistry, physics and mathematics is greater.\textsuperscript{201} In addition, the United States cannot afford to forego a major source of raw materials and energy which industrial cooperation projects potentially offer.

U.S.-Soviet trade as a whole is expected to suffer from the increase in political tensions between the two countries under the Carter Administration. Immediately following the rejection of the 1972 Trade Agreement, the Soviet Union attempted to shift orders placed with U.S. firms to other Western sources. While industrial projects already underway were continued, Soviet authorities ordered that subcon-

\textsuperscript{196}KOSNIK, supra note 41, at 139.
\textsuperscript{197}THE UNITED STATES ROLE IN EAST-WEST TRADE, supra note 13, at 47.
\textsuperscript{198}U.S. DEPT OF COMMERCE, OVERSEAS BUSINESS REPORTS 77-27 at 9 (June 1977).
\textsuperscript{200}U.S. DEPT OF COMMERCE, OVERSEAS BUSINESS REPORTS 77-17 at 4 (March 1977).
\textsuperscript{201}FRIESEN, supra note 65, at 32.
tracts were to be given to Western European firms whenever possible. At a 1976 meeting of the U.S.-U.S.S.R. Trade and Economic Council in Moscow, General Secretary Brezhnev stated that projected growth in U.S.-Soviet trade would be reached only if U.S. tariff and credit discriminations were ended. U.S. Treasury Secretary William Simon's report that continued growth in trade statistics reflected shipments on back orders and contracts signed in the past and that current orders were lagging reinforced Brezhnev's remarks. Soviet orders will continue to be made for U.S. commodities essential to planned industrial and agricultural expansion when the U.S. commodities are clearly superior to European or Japanese counterparts. Similarly, industrial cooperation projects will be arranged with U.S. firms having superior technology where that technology is necessary. However, no major cooperation agreements for energy projects with U.S. firms have been finalized in the last two years, and negotiations to implement past agreements have been progressing slowly, if at all.

2026 BUSINESS EASTERN EUROPE, supra note 45, at 113.
2035 BUSINESS EASTERN EUROPE, supra note 47, at 389-90.