NOTES

THE TRADE ACT OF 1974: SOVIET-AMERICAN COMMERCIAL RELATIONS AND THE FUTURE

I. INTRODUCTION

Commerce tends to wear off those prejudices which maintain destruction and animosity between nations. It softens and polishes the manners of men. It unites them by one of the strongest ties—the desire of supplying their mutual wants. It disposes them to peace by establishing in every state an order of citizens bound by their interest to be the guardians of public tranquility.

—Frederick William Robertson*

On January 3, 1975, President Gerald Ford, expressing reservations, signed the Trade Act of 19741 into law.2 Those reservations were uttered with regard to the danger that the Act would seriously harm, as Secretary of State Henry Kissinger put it, “one particularly vexing aspect of America’s trade strategy: The normalization of commercial relations with the Soviet Union.”3 While the Act does provide far-reaching presidential authority to negotiate reductions in or to eliminate barriers to trade, thereby fostering economic development at home and abroad, it is a serious setback to “détente” in the area of Soviet-American commercial relations. This Note will describe the Trade Act, examine the history of Soviet-American commercial relations, and discuss the implications of the Act on the future of those relations.

II. THE TRADE ACT OF 1974

As presented by Congress, the purposes of the Act are: (1) to foster economic growth and full employment at home and to strengthen economic relations with other lands through open and nondiscriminatory world trade; (2) to lessen the barriers to such trade, assuring equivalent competitive opportunities for United States commerce; (3) to reform the General Agreement on Tariffs and Trade (GATT); (4) to provide procedures for protection of American industry and labor from injurious import competition and for assistance to them in the adjustment to changes in international trade flow; (5) to open up market opportunities for United States commerce in nonmarket economies; and (6) to provide access to products of developing countries in the United States market.4

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* The International Dictionary of Thoughts 146 (J. Bradley, L. Daniels, & T. Jones eds. 1969).
2 N.Y. Times, January 4, 1975, at 1, col. 3.
A. Title I—Negotiating and Other Authority

The latest round of GATT multilateral trade negotiations commenced in Geneva in September 1973. The talks have not been conducted seriously, however, because the United States Government has not had the authority to negotiate on substantive issues. Title I of the 1974 Trade Act provides the President with that authority. Section 101 delegates the basic authority for the President to enter into trade agreements with foreign countries, including the modification of any existing duties when the President determines that such duties are unduly burdensome to foreign trade. Limitations are placed on this authority. There can be no decrease of any duty below 40 percent of the rate which existed on January 3, 1975, except when that duty is not more than 5 percent ad valorem. No increase of a duty is allowed to be greater than the higher of: (1) 50 percent above the rate in column 2 of the Tariff Schedules of the United States as of January 3, 1975; or (2) the rate which is 20 percent ad valorem above the rate existing on January 3, 1975. The President is given further authority to reduce non-tariff barriers (and other distortions) to international trade by agreement with other countries, but only with the prior consultation of and approval by Congress.

The overall negotiating objectives of the United States are to obtain a more open and equitable market access and to decrease distortions of commerce. Other objectives are: (1) to obtain, for the agricultural and manufacturing sectors, competitive opportunities for exports from the United States to developed countries equivalent to the competitive opportunities afforded in United States markets to the importation of similar products; (2) to promote the economic growth of developing lands; (3) to agree on procedures allowing adjustments according to changes in competitive conditions in the domestic markets of both lands; and (4) to assure American access at reasonable prices to resources unavailable in the United States.

The Act requires that implementation of duty reductions over 10 percent

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5 1974 Hearings, supra note 3, pt. 1, at 276.
6 Id. pt. 2, at 462.
8 Id. § 2111(b)(2).
13 Id. § 2114.
14 Id. § 2116.
15 Id. § 2117.
16 Id. § 2118.
must take place in stages, rather than at once. The staging period may be as long as 10 years. The reduction may not be more than 3 percent ad valorem, or one-tenth of the total reduction, per year.\(^\text{17}\)

Section 121 provides that the President is to take the following steps toward the revision of GATT: (1) to revise the decision-making procedures so as to reflect more nearly economic interests;\(^\text{18}\) (2) to have GATT apply to all import restraints; (3) to extend GATT to cover a greater number of trade conditions in order to obtain equitable trade conditions; (4) to adopt international fair labor standards; (5) to revise the articles with respect to treatment of border adjustment for internal taxes; (6) to revise the balance-of-payments provision to recognize import surcharges as the preferred means to handle balance-of-payments deficits; (7) to improve the provisions governing access to food products, raw materials, manufactured and semiminished products; (8) to authorize procedures with respect to member or nonmember countries who deny such access, causing substantial injury to the international community; (9) to establish procedures for regular consultations and adjudication with respect to international trade; (10) to apply the principles of reciprocity and nondiscrimination to all aspects of international trade; (11) to define forms of subsidy which are consistent with open, nondiscriminatory trade; and (12) to establish an international agreement on articles.\(^\text{19}\) These provisions envision a dramatic restructuring and expansion of GATT. The provisions are ironic in that section 121(c) requires congressional approval of any revisions, while the original American accession to GATT was by executive agreement.

The President may, with the consultation and approval of Congress, impose nondiscriminatory, broad and uniform import surcharges and/or quotas to deal with large and persistent balance-of-payments deficits, and/or to prevent a significant depreciation of the dollar.\(^\text{20}\) The quotas may not be in effect for longer than 150 days, and the surcharges may not be greater than 15 percent ad valorem.\(^\text{21}\) Section 122 also provides for the temporary reduction of duties (of not more than 5 percent ad valorem) and for the temporary increase in the value or quantity of articles which may be imported in the event of large and persistent United States balance-of-trade surpluses or in face of a significant appreciation of the value of the dollar.\(^\text{22}\)

Section 123 provides the President with the authority to enter into trade agreements in order to grant new concessions as compensation to other countries if action is taken under section 203 to increase or impose duties or other

\(^{17}\) Id. § 2119.

\(^{18}\) At present, GATT article XXV provides that decisions are to be made by a majority vote, with each contracting party entitled to one vote. In this subsection Congress is attempting to obtain for the United States greater decision-making power in accordance with its position of influence and leadership in GATT. Gibson, supra note 11, at 569-70.


\(^{20}\) Id. § 2132.

\(^{21}\) Id.

\(^{22}\) Id.
restrictions. If the President determines that a major industrial country has not made concessions under trade agreements entered into under the Act which provide substantially equivalent competitive opportunities for American commerce, he may recommend to Congress legislation providing for the termination or denial of any American concessions entered into under such agreements. Section 127 holds that no reduction or elimination of any duty or other restriction shall be made if the President determines that such action would threaten to impair national security.

The Act provides numerous procedural steps to assure that the President will have sufficient information and advice to enter safely into trade agreements. The President is to furnish the International Trade Commission (formerly the Tariff Commission) with lists of articles to be considered for duty modification. The Commission is to advise the President as to the economic repercussions of such an action. He is also to receive advice from any appropriate Executive Department (Agriculture, Commerce, Defense, etc.). Public hearings are to be held. These steps are prerequisites to any American offer to decrease import restrictions of any sort. The Act creates an Advisory Committee for Trade Negotiations. An extensive procedure is established whereby the Committee will advise the President and Congress on all policy, technical, economic and other factors to be kept under consideration before and after all trade negotiations and agreements. Representation on the Committee will include members of government, labor, industry, agriculture, small business, service industry, retailers, consumer interests, and the general public.

An Office of the Special Representative for Trade Negotiations is established. The Special Representative will be the chief United States representative to trade negotiations, will be responsible for administration of trade agreement programs, will advise the President and Congress on all trade matters, and will be chairman of the Advisory Committee for Trade Negotiations. The Act establishes strict congressional procedures with regard to bills implementing trade agreements on non-tariff barriers, resolutions approving com-

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23 Id. § 2133.
24 Id. § 2136. A "major industrial country" includes Canada, Japan, the European Economic Community or any member thereof, or any other land so designated by the President. Id.
25 Id. § 2137.
26 Id. § 2151(a).
27 Id. § 2151(b).
28 Id. § 2152.
29 Id. § 2153.
30 Id. § 2154.
31 Id. § 2155(b)(1).
32 Id. § 2155.
33 Id. § 2155(b)(1).
34 Id. § 2171.
35 Id.
mercial agreements with Communist countries, and resolutions disapproving presidential actions or recommendations under the various sections of the Act. The sections prohibit amendments to implementing bills or approval/disapproval resolutions, and limit debate to 20 hours. A clear congressional policy to come to a speedy, definitive decision on trade matters (once those matters reach Congress) is seen here. Section 161 stipulates that five members each from the House Ways and Means Committee and the Senate Committee on Finance shall be designated as official advisors to United States delegations to international conferences, meetings and negotiating sessions on trade agreements.

B. Title II—Relief from Injury Caused by Import Competition

It was extremely important (lest protectionist forces were to prevail) that relief be provided for any economic disruptions which could result from the free trade policy of the Act. Title II sets forth a comprehensive program of such economic relief.

Whenever the International Trade Commission finds, upon thorough investigation, that an increase of imports is a substantial cause of serious economic injury (i.e., idling of productive facilities, inability to operate at a reasonable profit level, or significant unemployment) or threatens serious economic injury (i.e., a decline in sales, production, wages, or employment), it is to advise the President as to what form of import relief should be provided. Within 60 days the President is to determine what action, if any, is required and so report to the Congress. This action shall consist of: (1) an increase in duty on any article causing, or threatening to cause, serious injury to an industry; (2) a tariff-rate quota on an article; (3) quantitative restrictions; (4) the negotiation of market agreements with foreign governments, restricting the export of such an article into the United States; or (5) any combination thereof. If the President proclaims the implementation of no relief, or of a form of relief different from that recommended by the International Trade Commission, the Congress may disapprove the President's actions and implement the International Trade Commission's proposal. The President may not proclaim a duty increase greater than 50 percent ad valorem, nor may any quantitative restriction or marketing agreement permit the importation of a quantity or value less than the quantity or value of such an article imported into the United States during the most recent period which the President determines is representative of imports of such article.

36 Id. § 2191.
37 Id. § 2192.
38 Id. § 2211.
39 Id. § 2251.
40 Id. § 2252.
41 Id. § 2253.
42 Id. § 2253(c)(1).
43 Id. § 2253(d)(1).
44 Id. § 2253(d)(2).
The Act provides adjustment assistance for workers whose union's (or other representative's) application for assistance has been approved. In order for one to qualify for such assistance, the Secretary of Labor must have determined that an increase of imports in competition with the articles produced by the workers' firm has been a substantial cause of a significant decline of sales or production, leading to the total or partial separation, or the threat thereof, of a significant number or proportion of workers. If a worker is eligible he may receive remuneration of 70 percent of his average weekly wage (not in excess of the average weekly manufacturing wage), reduced by 50 percent of the amount of remuneration for services performed during such week, and reduced by any unemployment insurance received. Such an allowance may be received for up to 52 weeks. The Labor Department is required to make efforts to place workers in other jobs. If placement is impossible without training, the Department may approve such training for workers. The worker may receive an allowance during the training for up to 26 weeks. Job search and relocation allowances are available under certain conditions to help defray expenses in obtaining a position beyond commuting distance if no positions are available in the immediate area. Judicial review of determinations made by the Secretary of Labor is provided. The Nixon Administration estimated that the cost of the labor adjustment assistance program might reach $350 million.

If the Secretary of Commerce determines that an increase in imports has contributed importantly to a decrease in the sales or production of a firm, which leads to the total or partial separation, or the threat thereof, of a significant number or proportion of workers, then the firm so affected becomes eligible for adjustment assistance protection. If a firm is eligible, the Secretary of Commerce may grant assistance: (1) if the firm has no reasonable access to private financing; and (2) if the firm’s adjustment proposal (a) is reasonably calculated to contribute materially to the economic adjustment of the firm, (b) gives consideration to workers, and (c) shows that the firm will make reasona-
ble efforts to utilize its own resources for economic development. Two types of assistance may be provided: (1) technical assistance to develop a proposal for economic adjustment and/or assistance in implementation of such a proposal; or (2) financial assistance in the form of direct loans or loan guarantees (a) for acquisition, construction, installation, modernization, development, conversion, or expansion of land, plant, buildings, equipment, facilities, or machinery, or (b) to supply working capital necessary to implement the adjustment proposal. The Act places strict limitations on the availability, management, and repayment of such loans or guarantees. There is an aggregate limit of $3 million in guarantees and $1 million in loans to any one firm. The Nixon Administration estimated that the cost of the adjustment assistance for firms might reach $50 million.

Whenever the Secretary of Commerce concludes that a rise in imports has contributed importantly to the decline in sales or production of firms leading to the total or partial separation, or threat thereof, of a significant number or proportion of workers in a "trade impacted area" in which a community is located, that community is eligible to apply for adjustment assistance for communities. A Trade Impact Area Council for Adjustment Assistance is to be established in the trade impacted area. The Council is to develop a plan for economic rejuvenation and coordination of community action. Adjustment assistance is to consist of: (1) all forms of assistance, other than loans, which are provided under the Public Works and Economic Development Act of 1965, and (2) loan guarantees. The guarantees are to be administered under a detailed plan, and the United States share of loan guarantees on loans outstanding may not at any time exceed $500 million.

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57 *Id.* § 2342.
58 *Id.* § 2343. If technical assistance is provided by private entities, the Secretary of Commerce is authorized to share up to 75 percent of the cost. *Id.* § 2343(c).
59 *Id.* § 2344. The Act does not call for the institution of a "Trust Fund" with regard to financial assistance for firms. However, all repayments of loans, interest receipts, etc., are to become available for other financing and for expenses entailed under the program. *Id.* § 2347(c).
60 *Id.* §§ 2345-50. Priority is given to small firms (within the meaning of the Small Business Act) in the making of loans or guarantees. *Id.* § 2345(d).
61 *Id.* § 2345(h).
63 19 U.S.C. § 2371 (1975). The geographical boundaries of the "trade impacted areas" are to be determined in consultation with the Secretary of Labor. *Id.* § 2371(e).
64 *Id.* § 2372. The Council is to include representatives of certified communities, industry, labor, and the general public. *Id.* § 2372(b)(2).
67 *Id.* § 2373(g). Payments are to be made from a "Community Adjustment Assistance Fund." The Fund is to receive $100 million for the fiscal year ending June 30, 1975, and any necessary sums in successive years, plus any collections, repayments of loans, or other receipts received under the program. *Id.* § 2374. The General Accounting Office is to evaluate the effectiveness of these adjustment assistance programs and report to Congress on them within 5 years. *Id.* § 2391.
The Secretaries of Commerce and Labor are to establish a program to monitor imports of articles into the country, which will reflect changes in volume of such imports, related changes in domestic production and employment, etc. Any firm relocating in a foreign land is to give 60 days notice to all employees to be separated and to the Secretaries of Commerce and Labor. The firm is expected, but not required, to apply for and use adjustment assistance, offer other employment opportunities to separated workers, and to assist in the relocation of such workers. The Act thus expresses a desire that firms will assist in the easing of the economic pains of such a move, but provides for no guarantee of such assistance. In toto, title II thus establishes an extremely complex and time-consuming procedure to implement massive economic assistance in times of distress engendered by freer trade.

C. Title III—Relief from Unfair Trade Practices

Title III gives the President a number of tools to help counterbalance foreign activity which tends to give the imports of those lands an unfair competitive advantage over similar American-made products. Section 301 of the Trade Act provides that the President shall take certain steps when he determines that a foreign land: (1) maintains unjustifiable tariffs or other trade restrictions which impair commitments made to the United States or which discriminate against United States commerce; (2) engages in discriminatory policies which unjustifiably burden American commerce; (3) provides subsidies (or the practical equivalent of subsidies) on its exports, which results in a substantial reduction in sales of competitive American products; or (4) imposes unjustifiable restrictions on access to food, raw materials, manufactured and semimanufactured products which burden United States commerce. These steps are aimed at the reasonable elimination of such restrictions, including the cessation of trade agreement benefits to that country and the imposition of increased duties and other restrictions on the offending imports. Such actions are to be taken only if the remedies provided in the Antidumping Act of 1921 and section 303 of the Tariff Act of 1930 are inadequate to deter the practices. Before taking action, the President must: (1) provide the opportunity for the presentation of all views on the advisability of such a course; (2) hold public hearings if requested; and (3) request the International Trade Commission to advise him of the probable impact on the economy. Any presidential determination will take effect unless Congress adopts a concurrent resolution of disapproval within 90 days of the President's report to Congress.
Section 321 of the Trade Act amends the Antidumping Act of 1921,\textsuperscript{76} procedurally and substantively, in an effort to improve the administration of the Antidumping Act and to ensure vigorous and timely relief to domestic producers adversely affected by dumped imports.\textsuperscript{77} If it is determined by the Secretary of the Treasury that a domestic industry is being injured or is likely to be injured or prevented from being established because imports are being sold at less than fair market value, the Antidumping Act allows special duties to be placed on such imports. A dumping duty is imposed on imports covered if the purchase price or exporter's sales price is less or is likely to be less than the foreign market value or, if that can not be determined, the constructive value.\textsuperscript{78}

The Trade Act provides for the following changes: (1) published determinations containing statements of findings and conclusions (and their rationale) on all material issues presented; (2) imposition of time limits for the Secretary of the Treasury to determine whether dumping exists; (3) a requirement of private hearings prior to the determination; (4) amendments to the definitions of "purchase price" and "exporter's sales price"; and (5) amendments dealing with the determination of foreign market value.\textsuperscript{79}

Similarly, section 331 of the Trade Act amends the Tariff Act of 1930\textsuperscript{80} in order to grant more timely and comprehensive relief from injury caused by bounties or grants paid by foreign governments to their exporters. Section 303 of the 1930 Tariff Act requires the Secretary of the Treasury to impose a "countervailing duty" when he determines that a bounty or grant has been paid directly or indirectly on any dutiable imported product. The countervailing duty is equal to the amount of bounty or grant and is collected in addition to the normal customs duty.\textsuperscript{81} The Trade Act makes several changes in the 1930 Act: (1) it imposes limits on the time allowed the Secretary of the Treasury to determine whether a bounty or grant is being paid or not; (2) it broadens the scope of the statute to cover imports of duty-free articles if there is a determination of injury, but only if such determination is required by international obligations;\textsuperscript{82} and (3) it grants discretionary authority for the Secretary to remedy the problem under other sections of the Trade Act.\textsuperscript{83} Such determinations are

\textsuperscript{77} 1974 Hearings, supra note 3, pt. 1, at 309.
\textsuperscript{78} Id.
\textsuperscript{81} Id.
\textsuperscript{82} Under article VI of GATT, countervailing duties may not be imposed unless the foreign subsidies cause or threaten to cause material injury. However, this GATT requirement does not apply to the Tariff Act of 1930 because of GATT's "grandfather clause." Thus, no determination of material injury is necessary for dutiable articles. With regard to duty-free articles, the Trade Act does not require a showing of material injury, but merely a showing of "injury." 19 U.S.C. § 1303(b)(1)(A) (1975), amending 19 U.S.C. § 1303 (1970). As a result, this section may not conform with article VI of GATT. Gibson, supra note 11, at 595-96.
subject to the approval of Congress and successful attack by American producers, manufacturers or wholesalers.\textsuperscript{84}

Section 341 of the Trade Act amends section 337 of the Tariff Act of 1930\textsuperscript{85} to provide a greater assurance of due process in the administration of patent infringement claims involving foreign commerce. Section 337 of the 1930 Tariff Act declares unlawful unfair methods and acts of competition in the importation of articles which destroy or substantially injure United States industry or which restrain or monopolize commerce.\textsuperscript{86} The 1930 Act authorizes exclusion of such articles.\textsuperscript{87} Virtually all cases under the section have involved patent infringement.\textsuperscript{88} The Trade Act makes the following revisions: (1) it provides that the International Trade Commission, not the President, shall make the determination whether unfair acts or methods of competition exist (but determinations are subject to the President's approval); (2) it provides the right of judicial review in the United States Court of Customs and Patent Appeals; (3) it ensures the right of presentation of all legal and equitable defenses; (4) it permits, at the Commission's discretion, the continued importation, under bond, of articles under investigation for patent infringement; and (5) it exempts contested articles imported by and for the use of the United States Government from claims of patent infringement, but calls for compensation to the patentees of such articles before the Court of Claims.\textsuperscript{88}

D. \textit{Title IV—Trade Relations with Countries Not Currently Receiving Nondiscriminatory Treatment}

Title IV deals with trade relations with countries not currently receiving most-favored-nation (MFN) treatment. It makes freedom of emigration a prerequisite to the granting of such nondiscriminatory status,\textsuperscript{89} as well as providing other regulations for East-West trade. Title IV will be discussed in detail later.

E. \textit{Title V—Generalized System of Preferences}

Title V of the Trade Act marks the beginning of a United States policy to stimulate the economic growth of developing lands by a grant of special trade benefits.

The Trade Act provides that duty-free treatment may be provided for eligible articles for a "beneficiary developing country."\textsuperscript{90} Whether a land is to be so designated depends on: (1) an expressed desire for such treatment by the country; (2) the level of economic development of the country; (3) whether other developed lands are extending such treatment; and (4) the extent to which the

\textsuperscript{86} Id. § 1337(a).
\textsuperscript{87} Id. § 1337(d).
\textsuperscript{88} 1974 Hearings, supra note 3, pt. 1, at 314.
\textsuperscript{91} Id. § 2461.
country assures the United States it will provide equitable and reasonable access to the markets and basic commodity resources of the country. The Act puts a number of limitations as to which lands can be designated beneficiary developing countries. It excludes the following: (1) certain developed lands, such as Japan, South Africa, European Economic Community Member States, etc.; (2) Communist countries not receiving nondiscriminatory treatment, or Communist nonmembers of GATT and the International Monetary Fund, or any land dominated or controlled by international communism; (3) members of the Organization of Petroleum Exporting Countries (OPEC) or any similar arrangement of lands which withhold supplies of vital commodity resources or raise their prices unreasonably so as to cause serious disruption of the world economy; (4) lands which offer preferential treatment to products of other developed countries, but not the United States, to the significant detriment of United States commerce; (5) countries which have effectively nationalized United States controlled property without prompt, adequate and effective compensation, or negotiations thereto; (6) countries which do not cooperate with the United States to prevent narcotic drugs from entering the United States unlawfully; and (7) countries which do not recognize or enforce arbitral awards in favor of the United States. The latter three exceptions may be waived if the President determines it would be in the national economic interest to do so. The Act puts specific limitations on the articles which are eligible for duty-free treatment, including articles whose cost of production is not less than a specific percentage of their appraised value for all articles and an absolute prohibition of such treatment on certain articles. The Act gives the President the authority to terminate duty-free treatment with respect to all articles or only certain articles of the beneficiary developing country.

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* Id. § 2462(c). Such a determination is made by Executive order. The Congress must be notified of an intent to do so and the reasons for that action. Id. § 2462(a)(1). But congressional approval is not required.
* Id. § 2462(b).
* Id.
* Id. § 2463(b).
* Textile articles, watches, import-sensitive electronic and street goods, some footwear items, and some glass products may not be designated as eligible articles. Id. § 2463(c)(1).
* Id. § 2464. The President may withdraw, suspend, or limit the application of duty-free treatment if any of the conditions in 2462(b)(1)-(6) come into play. Id.
* Id. § 2464(c). The President shall withdraw duty-free treatment from any article upon a determination that either: (1) the country has exported to the United States during the calendar year a quantity of the article having an appraised value in excess of an amount which bears the same ratio to $25 million as the gross national product of the United States for the preceding calendar year bears to the American gross national product for calendar year 1974, or (2) the country has exported to the United States a quantity of any article greater than or equal to 50 percent of the appraised value of the total imports of the article into the United States during the year. Id. §§ 2464(c)(1)(A)-(B). The latter condition shall not apply with respect to any article if a like or directly competitive article was not produced in the United States on January 3, 1975. Id. § 2464(d). Both conditions may be waived and duty-free treatment continued with respect to an article if the President determines that: (1) there has been a historical preferential trade relationship
Thus, via title V the United States takes a limited first step toward the assistance of the developing lands in their economic development through less restricted trade.

F. **Title VI—General Provisions**

Title VI consists of a number of general provisions, including the wish of Congress to establish a free trade area with Canada\(^9\) and the limitation of $300 million in government backed loans, guarantees and insurance to the Soviet Union\(^10\) (to be discussed at length later).

The Trade Act of 1974 represents a rather comprehensive plan to regulate foreign trade. The opportunity for increased and less restrictive trade is presented. A clear policy to lower trade barriers and to foster economic growth is evident. Yet protectionist clauses abound in the Act. The Congress has endeavored to assure that if the American economy is injured by increased imports, relief will be at hand through economic assistance to those aggrieved, or through tightening the inflow of foreign goods. The Congress has made its consultation and approval necessary in a very large number of decisions, concerning foreign trade, to be made by the President. The Act ensures that the President will have all possible information available to him through the establishment of the various commissions and boards. The Act tries to assure that foreign governments will no longer be able to maintain restrictive trade barriers against United States commerce when the United States is permitting a much freer flow of trade from that land to America. A strong reaction to the recent petroleum “crisis” is reflected in the Act. Measures aimed at ensuring that countries will not restrict the flow of resources (either by unreasonably high prices or failure to sell), which are vital to the industrialized world, are seen in various places. Such measures are in contrast to the provisions in title V aimed at increasing (through duty-free treatment) the economic growth of developing countries who often are the holders of the same vital resources. (Query: What would be of greater economic benefit to a developing nation, a multiple increase in receipts from the sale of commodities, or duty-free treatment of a number of articles exported to the United States?) Despite all of these protectionist qualifications, the net result of the Trade Act as a whole should be the stimulation of less restrictive world trade.

### III. **Soviet-American Trade, 1917-1971**

Congressional authority to regulate foreign trade has been premised on the

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\(^9\) *Id.* § 2486.

\(^10\) *Id.* § 2487.
power granted by the commerce clause\textsuperscript{101} "to regulate commerce with foreign nations."\textsuperscript{102} Since the creation of the Soviet State in 1917, with economic and social views in opposition to American views and with the ever present danger of military conflict, the Congress has seen fit to legislate extensively with regard to trade with Communist countries.

The 1921 Antidumping Act\textsuperscript{103} and the countervailing duty requirements of the 1930 Tariff Act\textsuperscript{104} are laws of broad application and apply to the Soviet Union. The Reciprocal Trade Agreements Act of 1934\textsuperscript{105} authorized concessions to be granted to all lands, including the Soviet Union, in an effort to bring the economy out of the depression.

The Johnson Debt Default Act of 1934\textsuperscript{106} was enacted as a reaction to substantial defaults by European lands on bonds sold in America during World War I and the 1920's.\textsuperscript{107} The Act prohibits a number of financial transactions by Americans with foreign governments which are in default on their obligations to the United States. Included among the prohibited transactions are loans to and the purchase or sale of bonds, securities, or other obligations of those foreign governments.\textsuperscript{108} The Act has been applied to the USSR because of the failure of the Soviets to repay certain Czarist debts and certain World War II lend-lease loans.\textsuperscript{109} The term "loans" in the Johnson Act has been construed to apply to commercial credits of 180 days or longer.\textsuperscript{110} However, the apparent harshness of the Act is mitigated to a great extent because of a number of factors. First, most sales of commodities do not entail financing in excess of 6 months.\textsuperscript{111} Secondly, Attorney General Opinions have held that the Johnson Act does not apply to any of the following: (1) "foreign currency, postal money orders, drafts, checks, and other ordinary aids to banking and commercial transactions;"\textsuperscript{112} (2) sales transactions by American exporters on a deferred-payment basis;\textsuperscript{113} (3) lines of bank credit; (4) barter arrangements;

\footnotesize\begin{enumerate}
\item U.S. CONST. art. I, § 8.
\item 19 U.S.C. § 160 (1975); see text accompanying footnotes 76 through 79.
\item 19 U.S.C. § 1303 (1975); see text accompanying footnotes 80 through 84.
\item Ch. 474, 48 Stat. 943 (1934).
\item Hoyah, \textit{The Changing U.S. Regulation of East-West Trade}, 12 Colum. J. Transnat'l L. 1, 13 (1973) [hereinafter cited as Hoyah].
\item 1974 \textit{Hearings}, supra note 3, pt. 1, at 321.
\item S. Pisar, \textit{Coexistence and Commerce: Guidelines for Transactions Between East and West} 108 (1970) [hereinafter cited as Pisar].
\item 1974 \textit{Hearings}, supra note 3, pt. 1, at 321.
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and (5) deferrals of payment pending development of earnings.\textsuperscript{114} Thirdly, the Johnson Act does not apply to the operation of foreign subsidiaries of American banks.\textsuperscript{115} And fourthly, the Act exempts the following from the force of the statute: (1) any United States government corporation; (2) any foreign government which is a member of the International Monetary Fund and the World Bank; and (3) any transaction participated in by the Export-Import Bank (Eximbank).\textsuperscript{116} Thus, although some types of financial transactions may be clouded by the Johnson Act, it is really no longer a serious practical obstacle to most East-West transactions.\textsuperscript{117}

In contrast to the gradual relaxation of trade barriers among western nations since the conclusion of World War II,\textsuperscript{118} American legislation vis-à-vis trade with Communist nations has been quite stringent. Under the Trade Agreements Extension Act of 1951,\textsuperscript{119} Eastern European nations (including the Soviet Union) were denied most-favored-nation tariff treatment. The result is that imports from the USSR face a competitive disadvantage, because they are subject to custom levies established under the Tariff Act of 1930\textsuperscript{120} as set forth in column 2 of the Tariff Schedules of the United States.\textsuperscript{121} The rates are materially higher than those which are applied to imports from the rest of the world.\textsuperscript{122}

The 1951 Mutual Defense Assistance Control Act, as amended,\textsuperscript{123} (also known as the "Battle Act") authorizes United States participation in "COCOM," the "Coordinating Committee" of Western allies (including all NATO lands except Iceland, as well as Japan) who have agreed to prohibit all exports of strategic materials to Communist countries.\textsuperscript{124} The embargoed items include about 500 categories of arms, ammunition, implements of war, atomic materials and facilities, and other strategic goods.\textsuperscript{125} Participation in COCOM is voluntary. The designated items are at a minimum. The United States government maintains an embargo list significantly longer than the COCOM

\begin{footnotes}
\footnote{114} 42 Op. ATT’Y GEN. No. 27, at 5 (1967). \\
\footnote{115} 39 Op. ATT’Y GEN. 398, 401-02 (1939). \\
\footnote{116} Hoya, supra note 107, at 13. However, the Soviet Union is not a member of the International Monetary Fund and the World Bank, and it should be noted that other limitations have been placed on Eximbank credit to the USSR. \\
\footnote{117} Starr, Trading, supra note 112, at 1304-08. \\
\footnote{118} Since 1934, in fact, Western nations have made many bilateral trade agreements granting each other trade "concessions," reducing import duties on products from the other country, on a "most-favored-nation" basis. Since 1948 GATT, which now has 83 members, has held a series of multilateral negotiating sessions, progressively reducing maximum limits on tariffs. The latest round, as mentioned before, began in Geneva in 1973. Gibson, supra note 11, at 556-58. \\
\footnote{119} Ch. 141, § 25, 65 Stat. 73 (1951). \\
\footnote{122} PISAR, supra note 110, at 98. \\
\footnote{124} Starr, Trading, supra note 112, at 1302. \\
\footnote{125} Comment, What to Expect when Trading with the U.S.S.R.: The Problems Confronting the American Exporter, 2 SYR. J. INT’L L. & COM. 19, 23 (1974) [hereinafter cited as Comment].}

list. The Battle Act further prohibits American military, economic, or financial assistance to any country which knowingly permits shipments of arms, ammunition, implements of war, atomic energy materials, and other strategic goods to Communist countries. Since 1951, Presidents have not used their discretion to stop aid to offending countries, but they have used the Act as a bargaining lever in negotiations with other governments.

For 20 years the basic authority of the executive branch to regulate the export of commodities and technical data to Communist countries was the Export Control Act of 1949. This statute was superseded by passage of the Export Administration Act of 1969 as amended by the Equal Export Opportunity Act of 1972. The acts require export licences for virtually every export of goods or technical data to every country of the world except Canada. Under the 1969 Act, the purposes are to: (1) protect national security; (2) further American foreign policy and fulfill America’s international responsibilities; and (3) protect the domestic economy from shortages and from inflation as a result of abnormal foreign demand.

The new statute differs from the 1949 Act in that: (1) the statutory criterion in the 1949 Act, that the export of commodities and technical data must not contribute to the “economic potential” of the recipient country, is eliminated; and (2) in considering an export license application, the Commerce Department is required to make a finding of the availability of comparable products from other foreign sources. The Office of Export Control in the Bureau of Foreign Commerce administers the program. While all exports to Communist bloc lands require licenses, the regulations provide for different degrees of administrative control depending on the destination and type of goods or technology involved. Less sensitive exports are authorized under “general licenses” and do not require special advance publication or approval. Exports of a more sensitive nature can be shipped only pursuant to a “validated license,” which requires individual advance clearance from the Office of Export Control. Other agencies also exercise specialized licensing jurisdiction. Thus, the Department of State regulates exports of arms and related technical data; the Atomic Energy Commission controls sales of nuclear materials; the Treasury Department supervises the sale of gold and narcotics; and the Department of Agriculture, the Maritime Administration, and the Federal Power Commission grant export licenses.

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126 Hoya, supra note 107, at 8-9.
127 Pisar, supra note 110, at 133.
128 Ch. 11, 63 Stat. 7 (1949).
131 Hoya, supra note 107, at 7.
in their respective spheres of responsibility. Whether or not a validated license is needed can be determined by: (1) the type of goods and ultimate destination; (2) whether the article is on the "Commodity Control List" and (3) the discretion, ultimately, of the licensing body.

The strict American regulation of trade with the Soviet Union since World War II has also accurately reflected the feeling of the American people. As Samuel Pisar expressed it in Coexistence and Commerce:

For more than two decades the United States has been locked in a struggle with the Soviet Union, involving America's fundamental interests and requiring a significant portion of its material resources and political energies. Many United States citizens have died in armed conflicts linked in one way or another with the clash of Washington's and Moscow's foreign policies. The very survival of the United States has been solemnly pledged as security against the threat of Soviet attack on certain other Western states. Even where the military interests of the two blocs have not been counterpoised the struggle has frequently been continued by other means—diplomatic, ideological and economic.

Understandably enough, the grim scenario of East-West relations, which began to unfold in the early forties and late fifties, affected the political psyche of Americans at all levels.

Thus, the fear of contributing to Soviet military power through any type of economic assistance has flourished and is still very much alive today, despite the fact that economic boycotts of strategic products never harmed the development of Russian might, even when the economy of the USSR was much smaller and the cost of maintaining its military establishment was relatively much higher. The Soviets will continue a high level of military development regardless of any economic "aid" (trade) from the West.

In the 1960's various groups often united in drives to bring about boycotts of firms which sold Communist imports. The groups picketed, advertised, and distributed information in attempts to pressure business into foregoing the sale of imports from the Eastern bloc. Sometimes these tactics were successful. For example, the Firestone Rubber Company decided not to sign a contract for Rumanian rubber because of public pressure from the Young Americans for Freedom. Some labor unions refused to load wheat onto ships destined
for the USSR,141 while some municipalities enacted ordinances designed to discourage the sale of Communist-produced goods by requiring licenses and conspicuous signs to be placed in stores.142

Domestic public opinion also played a role in restraining the Government of the United States from taking advantage of trade “olive branches” extended by the Soviet Union. Throughout the 1950’s and 1960’s the Soviet Union approached the United States with plans of increasing Soviet-American trade. In 1952 Stalin convened a special trade meeting in Moscow at which there was much talk of billions of dollars of annual business between the two countries.143 In 1958 Nikita Krushchev proposed to President Eisenhower a trade agreement, listing many goods which the Soviet Union wished to purchase or sell in the United States. In 1964 Alexei Kosygin renewed the offer of such an agreement.144 The United States rejected both offers. The Trade Expansion Act of 1962145 continued to prevent the extension of MFN status to the Communist countries, with the exception of Yugoslavia and Poland.

A thawing of the American position began with regard to trade in the mid-1960’s. The Johnson Administration submitted the East-West Trade Relation Act of 1966,146 which would have authorized the grant of MFN status to the Soviet Union. However, the bill was never reported out of committee.147 In 1968 the Congress amended the Export-Import Bank Act148 to restrain the bank from financing transactions with Russia, but this amendment was repealed by Congress in 1971.149 In 1970 and 1971, export licensing requirements for over 1,700 commodities were eased.150 Such a relaxation reflects the more liberal policy of the 1969 Export Administration Act.151 Indeed, “the Congress has made clear that national security controls over exports shall be administered to facilitate, and not prevent, trade in nonstrategic goods and the Executive Branch has shown that it can exercise considerable flexibility to relax controls as relations with Communist countries improve.”152

Trade between the United States and the Soviet Union has been rather small in terms of dollar amounts. From 1950 to 1959, United States exports to the Soviet Union averaged less than $1 million per year. Soviet exports to the United States during the same period averaged $21 million. In 1960 American

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141 Bilder, supra note 101, at 875-81.
142 Id. at 882.
143 New York Times, June 18, 1972, § 4, at 3, col. 3.
146 See 54 DEP’T STATE BULL. 838, 843-44 (1966).
147 Bilder, supra note 101, at 857.
149 1974 Hearings, supra note 3, pt. 1, at 316.
152 Starr, Trading, supra note 112, at 1301.
exports to Russia jumped to $39.6 million and generally climbed throughout the decade to $57.7 million in 1968. With the passage of the 1969 Export Administration Act, United States exports hit $105.5 million and reached $162 million in 1971. Soviet exports to the United States remained around the $20 million level until 1965 when they jumped to $42.6 million and reached $72.3 million in 1970. When these totals are compared to total trade figures, they appear rather insignificant. American exports to the Soviet Union represented less than 0.2 percent of America's total exports in 1965, and less than 0.5 percent in 1971. Soviet exports to the United States represented 0.5 percent of its total exports in 1965 and 0.6 percent in 1970. In 1971, Canadian-American trade totalled $23 billion and Japanese-American trade exceeded $11 billion, far higher than the Soviet-American total of $219 million in 1971.

IV. DEVELOPMENTS SINCE 1971

A. The Trade Agreement of 1972

The year 1972 was a historic turning point in Soviet-American commercial relations. In May 1972 President Nixon and Secretary-General Brezhnev agreed upon "Basic Principles of Relation Between the United States of America and the Union of Soviet Socialist Republics." The statement emphasized the two nations' desire to strengthen bilateral relations and to promote commercial and economic ties. Out of the negotiations which followed the Moscow summit came the Grains Agreement on July 8, 1972; the Maritime Agreement on October 14, 1972; and the Trade Agreement and the Lend Lease Agreement, both on October 18, 1972. Article 1 of the Trade Agree-

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152 1974 Hearings, supra note 3, pt. 2, Table, at 682.
153 Id. Tables, at 664, 682.
157 Grains Agreement with the Soviet Union, July 8, 1972, [1972] 2 U.S.T. 1447, T.I.A.S. No. 7423. The notorious wheat sale involved the sale of $750 million worth of grain, on a credit base of $500 million, to be repaid within three years of delivery dates.
158 Maritime Agreement with the Soviet Union, Nov. 22, 1972, [1972] 4 U.S.T. 3573, T.I.A.S. No. 7513. The Maritime Agreement centered on: (1) opening channels of maritime commerce between the two lands through the opening of major United States and Soviet commercial ports to calls by certain United States flag and Soviet flag vessels; and (2) affording those vessels the opportunity to participate equally and substantially in the carriage of all cargoes moving by sea between the two nations.
159 Trade Agreement with the Soviet Union, Oct. 18, 1972, 11 INT'L LEGAL MAT'LS 1321 (1972) [hereinafter cited as Trade Agreement]. The Trade Agreement was to enter into force upon the exchange of notices of acceptance, which has never taken place. See Starr, Framework, supra note 109, for a careful analysis and explanation of the Trade Agreement.
ment grants MFN status to each other country with regard to: (1) customs duties and any other charges in connection with trade; (2) internal taxation, sales, distribution, storage, and use; (3) charges on the international transfer of payments; and (4) rules and formalities in connection with importation or exportation. It should be noted that to grant MFN status is not, as many believe, to grant a "privilege," but is to remove a discrimination. The other party is merely treated, in trade matters, on an equal basis with the overwhelming majority of the world's countries. General MFN treatment is based on paragraph I of article I of GATT, which grants the same treatment to all other contracting parties with regard to duties as is granted to the most favored nation of the particular state. Article 2, paragraph 2 of the 1972 Trade Agreement preserves any restrictions which the United States has levied on the export of goods for national security reasons. Article 3 assures the right to take protective measures against market disruptions caused by imports from the other nation. Article 4 assures payment in freely convertible currency. Article 5 authorizes the United States Government to establish a Commercial Office in Moscow and the Soviet Government to establish a Trade Representation Office in Washington. Article 6 ensures reciprocal legal status via the waiver of sovereign immunity of corporations, foreign trade organizations, etc., in each country. Article 7 encourages the use of arbitration in the settlement of disputes. The Agreement does not specify any quantitative amount of trade to be attained, but article 2, paragraph 4 states that the USSR expects to place substantial orders in the United States for machinery, plant and equipment, agricultural products, industrial products, and consumer goods.
two governments "envision that total bilateral trade in comparison with the period 1969-1971 will at least triple over the three-year period" of the Agreement. In light of such language, the grant of MFN status should certainly stimulate an increase of Soviet imports from the United States. Indeed, the Agreement as a whole "embraces the view that trade in nonstrategic goods is to be encouraged." The Trade Agreement would have been impossible without the Lend Lease Settlement, which settled at $722 million the amount owed by the Soviet Union to the United States for assistance in World War II. The amount is to be paid by the year 2001, with the sum of $48 million being unconditional and the balance contingent upon the authorization by Congress of MFN status as specified in the Trade Agreement. In 1972 then, the forecast certainly was for increased trade and better relations between the two world giants.

B. Soviet-American Business Transactions—Practical Difficulties

At this point it would be profitable to digress slightly and discuss some of the practical difficulties involved in concluding a commercial transaction with the Soviets and some of the ways of getting around those difficulties. Businessmen dealing with the Soviet Union encounter many problems not met in the West. The basis of Soviet trade is a planned economy with a state monopoly of foreign trade. The Ministry of Foreign Trade is responsible for foreign trade operations. Foreign Trade Organizations (FTOs) handle all import-export arrangements for Soviet business and are the possessors of an extraordinary amount of bargaining power because of their status as representatives of the Soviet Government. An FTO is, however, an independent juridical person, liable for its obligations. An FTO buys goods to be exported from a Soviet manufacturing corporation and sells imported goods to Soviet corporate buyers. Each FTO is confined to activities prescribed to it in the national 5-year planning period. The economic plan is quite detailed. With respect to each item to be imported or exported, the plan contains descriptions of quantity and quality, estimates of payment for the total volume of each item to be received, and estimates of payments to be received for exported items. Overseas, the Foreign Ministry provides Soviet embassies with commercial attaches and other technical personnel; the Ministry also maintains trade delegations which issue import licenses, grant permits for transit of goods through Soviet territory, study local business conditions, promote sales for Russian export corpo-

173 Id. at 1323.
175 Starr, Framework, supra note 109, at 68.
176 Lend Lease Agreement, supra note 161.
177 Id.
178 Winter, The Licensing of Know-how to the Soviet Union, 1 J. WORLD TRADE L. 162, 163 (1967).
179 Rohlik, supra note 174, at 363-65.
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rations, furnish local business with market information in the Soviet Union, and act as agents for the FTOs. A Western businessman must deal with the representative of an FTO or a local trade delegation. He has access to the Soviet market only if the state economic plan allows. As an importer, he has a fair chance to buy goods from the FTOs. As an exporter, it is more difficult. His goods must be included in the import plan and the FTO must be specifically authorized to allow imports from the businessman’s state or business domicile. Without such prerequisites, and regardless of how much the FTO may like the exporter’s goods and commercial terms, he must wait at least until the next planning period.

In addition to the problems involved in dealing with a nonmarket country, other practical barriers must be overcome. It often takes 5 weeks to obtain visas to enter either country. Large portions of both Soviet and American territory are off limits to citizens of the other land. Language difficulties, difficulties in procuring the services of local attorneys, and problems with the sluggish Soviet bureaucracy are always present. Soviets tend to negotiate at great lengths. An agreement that most Western businessmen could easily expect to reach in a few days or weeks at most, may take months to conclude with the Russians. The Soviet aim is to haggle for price concessions and discounts. Moreover, there is an intense distrust of Westerners in the USSR. Soviets require translation into Russian of all data, including minor details like parts lists. Reputable American translation services should be employed. The Soviets do not allow mass media advertising. However, fact sheets (totally devoid of political information) may be placed in product packages and delivered to consumers. All details of any trade agreement should be spelled out unequivocally, including all contingencies. The Soviets do not honor agreements “in principle.” Joint ventures in the Soviet Union do not entail joint ownership and risk participation. Rather, they call for industrial cooperation by American companies in which the plant and enterprise become the property of the Soviet government, and the credit extended by the American “partner” is repaid by deliveries of products made in the plant. Soviets like to negotiate joint ventures as well as the licensing of American technology and the importation of whole factories and processes. Despite the difficulty involved, Soviet counsel should be retained, and all investments should be insured with American insurance. A foreign exporter is advised actively to seek contacts not only with the FTO in question, but also with officials of the Ministry of Foreign

180 Nehemkis & Schollhammer, supra note 132, at 27.
181 Rohlik, supra note 174, at 368.
183 Comment, supra note 125, at 34.
184 Osakwe, supra note 182, at 552-53.
185 Osakwe, supra note 132, at 31-33.
186 Osakwe, supra note 182, at 553.
Trade and of the Communist Party.\textsuperscript{187} The Soviets have a strong penchant for the use of arbitration.\textsuperscript{188} Lastly, it should be mentioned that the Soviets have a very good record of honoring contractual obligations.\textsuperscript{189}


The prospect for increased trade was fulfilled in the years 1972-1974.\textsuperscript{190} Soviet-American trade jumped from $219.2 million in 1971 to $642.3 million in 1972, and to $1.40 billion in 1973.\textsuperscript{191} Trade figures are expected to be lower in 1974, in the $1.17 billion to $1.3 billion range,\textsuperscript{192} because of the windup of the wheat deal.\textsuperscript{193} Before passage of the Trade Act, the U.S.-Soviet Trade and Economic Council painted the picture of $3 billion trade per year between the two lands in the year 1980.\textsuperscript{194} The United States has shown a trade surplus with the Soviet Union so far this decade, ranging from $46.4 million in 1970 to $451.3 million in 1972, and to $976.4 million in 1973,\textsuperscript{195} despite total United States trade deficits of $11.4 billion in 1972 and $3.8 billion in 1973.\textsuperscript{196} The 1974 United States trade surplus with the Soviet Union is expected to be between $500 million and $630 million.\textsuperscript{197}

The major reason for the increase in United States exports to Russia during this period has been the availability of credits to the Soviet Union from the Eximbank,\textsuperscript{198} the primary source of credit for all American foreign trade.\textsuperscript{199} The President has been given the power to authorize Eximbank loans to the Soviet Union upon a determination that such would not compromise national security.\textsuperscript{200} The bank has four basic export programs: (1) direct credit to borrowers outside the United States; (2) export credit guarantees; (3) export credit insurance; and (4) discount loans.\textsuperscript{201} Since 1973, the Eximbank has financed hundreds of millions of dollars worth of Soviet purchases in the United

\textsuperscript{187} Rohlik, supra note 174, at 368.
\textsuperscript{188} Starr, Framework, supra note 109, at 76-78.
\textsuperscript{191} 1974 Hearings, supra note 3, pt. 2, Table, at 682.
\textsuperscript{192} Fitzpatrick, supra note 190, Table, at 42.
\textsuperscript{193} N.Y. Times, Dec. 29, 1974, at 4, col. 1.
\textsuperscript{194} Id., Oct. 17, 1974, at 59, col. 7.
\textsuperscript{195} 1974 Hearings, supra note 3, pt. 2, Table, at 682.
\textsuperscript{196} Id. Table, at 661. These figures are on a c.i.f. basis.
\textsuperscript{197} Fitzpatrick, supra note 190, Table, at 42.
\textsuperscript{198} Id. at 40-41.
\textsuperscript{199} Comment, supra note 125, at 25.
\textsuperscript{201} Starr, Trading, supra note 112, at 1305.
States. Many of the United States-Soviet deals have received much publicity, especially the grain deal and several American contracts, which include the Kama River Truck Project and Dr. Armand Hammer’s Occidental Petroleum Company’s arrangements involving nickel-metal-finishing equipment, a fertilizer-chemical complex, the International Trade Center, and natural gas. These arrangements have usually involved barter and/or joint financing by the Eximbank and commercial banks. The export of high level technology has proved difficult. Export licenses have been delayed indefinitely on IBM’s proposed sale of its 370 computer system, Boeing’s proposed sale of jumbo jet frames, and other proposed sales of numerically controlled multiple-access tools which can be programmed to make military items as easily as civilian items. However, all in all, the years 1972-1974 represented a significant leap in the volume of United States-Soviet trade.

D. Darkening Skies—Congressional Qualifications to Expanded Trade

Statutory authority was needed to carry out the Trade Agreement. Immediately upon presenting the bill to Congress, the President met stiff opposition. Resentment was expressed that the Russian lend-lease debt was scaled down from $11 billion to $722 million conditionally and only $48 million unconditionally. Such a settlement made some Senators very apprehensive about entering into any more arrangements with the Soviet Union, despite the fact that the lend-lease settlement was typical of other lend-lease settlements and favorable in comparison with the English settlement. Some Congressmen opposed exporting advanced technology which could be used for military purposes, despite the existence and enforcement of export controls on high level technology and Secretary Kissinger’s assurances that the Soviet Union would continue to develop militarily even with a total boycott, and despite his argument that economic ties, not boycotts, would bring about a moderation in the arms race. Opponents contended further that America should not assist in the

203 Fitzpatrick, supra note 190, at 45-48.
205 Id., April 13, 1973, at 1, col. 2.
207 Fitzpatrick, supra note 190, at 50-51. Fitzpatrick’s article discusses each of these arrangements and many more contracts, agreements, etc., in detail.
208 E.g., the $36 million Eximbank and $36 million Chase Manhattan Bank arrangements, plus $8 million cash (supplied by the Soviets) for the $80 million of American goods and services are to go into the International Trade Center in Moscow. N.Y. Times, March 23, 1974, at 39, col. 2.
209 Fitzpatrick, supra note 190, at 59-60.
210 1974 Hearings, supra note 3, pt. 1, at 244.
211 Id. at 245.
212 N.Y. Times, June 23, 1974, § 3, at 1, col. 1.
213 See note 209 supra and accompanying text.
economic development of a country whose political system was antagonistic to the United States. Rather than invest in Soviet resources, opponents argued that the prudent path to follow would be to allocate comparable funds to the development of American self-sufficiency in energy.

The strongest, most vociferous, and emotional objections came from a broad coalition of Senators and Congressmen, led by Senator Henry Jackson, that opposed granting MFN treatment to a land which denied basic human rights. Specifically, they felt that the Soviet Union should not be rewarded with favorable trade status while denying its citizens the right to emigrate. Cosponsored by majorities in the Senate and House, an amendment (the "Jackson" or "Jackson-Vanik" amendment) was added to the Administration's bill. This amendment prohibited the granting of MFN treatment, credits, credit guarantees, or investment guarantees to any nonmarket economy that denied its citizens the right or opportunity to emigrate or to any country which imposed more than nominal restrictions on emigration. In the Soviet Union, travel is officially regarded as a privilege, not a right, and few Soviet citizens are able to obtain permission to leave the country. This policy prevails even if they are only requesting permission for a vacation. Despite this policy, Soviet authorities assured President Nixon in March 1973 that a significant increase in emigration would be continued indefinitely and that the "education tax" would be waived. Secretary Brezhnev personally gave American Senators the same assurance. As promised, the Soviets shelved the education tax by September 1973. They also announced ratification of the International Covenant on Civil and Political Rights, which affirms that "everyone shall be free to leave any country, including his own;" and they allowed Jewish emigration to increase from 1,000 in 1968 to 13,000 in 1971, to 32,000 in 1972, and to 35,000 in 1973. Despite such signs of good faith, the Congress insisted on the amendment, contending that quiet commitments were subject to different interpretations and could be more readily broken than formal commitments. Congress also felt that the amendment would provide the United States Government with bargaining leverage in reaching the goal of free emigration. With the passage of time, it became clear that Congress would not back down. Shortly before the bill was passed, and in the face of Soviet denials, Senator Jackson and

216 Id. col. 2.
217 The amendment is now the law, and can be seen in section 402 of the 1974 Trade Act. 19 U.S.C. § 2432 (1975).
218 Gibson, supra note 11, at 561.
221 N.Y. Times, April 24, 1973, at 1, col. 5.
223 Id., Sept. 28, 1973, at 1, col. 5.
224 Id., Jan. 16, 1975, Table, at 18, col. 2.
Secretary of State Kissinger made public an exchange of letters announcing an agreement to grant the trade benefits in return for Soviet assurances of a level of emigration of at least 60,000 per year. The Soviet Union never publicly acknowledged such an assurance, and in fact protested against such an unwarranted interference in its domestic affairs. Jewish emigration from the USSR decreased in 1974 to 21,000. At the last minute, probably in response to the fears of aiding Soviet economic and military development (mentioned above), the Senate-House Conference imposed a $300 million limit on government-backed credits or guarantees to the USSR.

E. The Trade Act of 1974: Title IV—Trade Relations with Countries Not Currently Receiving Nondiscriminatory Treatment

Title IV deals specifically with American trade relations vis-à-vis nonmarket countries. The President is to continue to deny nondiscriminatory treatment to the products of nonmarket lands not already receiving such as of January 1, 1975 (that is, all but Yugoslavia and Poland). In order to “assure the continued dedication of the United States to fundamental human rights,” the Act prohibits any nonmarket country from: (1) receiving MFN treatment; (2) participating in any direct or indirect United States program of credit, credit guarantees, or investment guarantees; or (3) concluding any commercial agreement with the United States until the time the President determines that such country no longer: (a) denies its citizens the right or opportunity to emigrate; (b) imposes more than a nominal tax on emigration or on the documents required for emigration; or (c) “imposes more than a nominal tax, levy, fine, fee, or other charge on any citizen as a consequence of the desire of such citizen to emigrate to the country of his choice . . . .” If the President determines that the requirements are met, MFN treatment, credits, and the like may be extended after a detailed report to Congress and approval pursuant to section 407 of the Trade Act.

The previous subsections can be waived within the first 18 months following the passage of the Act if the President reports to the Congress that: (1) he has determined that such waiver will substantially promote the objective of free emigration; and (2) he has received assurances that the emigration practices of the country will lead substantially to the same goals. There can be an extension of the waiver after the termination of the 18-month period if the President recommends such an extension and if the Congress approves concurrently the recommendation within at least 60 days after the end of the 18-month

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226 Id., Oct. 19, 1974, at 1, col. 5.
228 Id., Jan. 16, 1975, Table, at 18, col. 2.
229 Id., Jan. 16, 1975, at 1, col. 1.
231 Id. § 2432(a).
232 Id. § 2432(b).
233 Id. § 2432(c).
period. The President may terminate the waiver at any time. The House or Senate may exclude any or all countries named by the President from the waiver. If the House and Senate (within 45 days after the expiration of the 60 days) do not vote on the President's determination that the waiver should be extended, then the waiver will continue for 12 months. Thus, the Congress does leave room for the extension of MFN treatment by waiver without a requirement that the Congressmen vote on the issue.

If the President determines that a nonmarket economy nation is not cooperating with the United States in the accounting for, the repatriation of, or the return of the remains of all Americans missing or killed in action in Southeast Asia, then the United States may not grant MFN status, government-backed loans and guarantees to, nor enter into commercial agreements with, that country. The Act does not provide for a waiver in this situation.

The President may proclaim and enter into a bilateral commercial agreement providing nondiscriminatory treatment to the products of countries if he determines that the purposes of the Trade Act and the national interest will be promoted. Such a bilateral agreement will be subject to a number of protections for property rights, national security, and the domestic economy and subject to the approval of Congress.

If there is a finding by the International Trade Commission that imports from a Communist country have caused domestic market disruptions, then import relief as provided in sections 201, 202, and 203 is available. "Market disruption exists within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry." The Trade Act prohibits the grant of MFN status and government-backed credits or guarantees to, and the entering into a commercial agreement with, any land that places restrictions on the emigration of close relatives of American citizens. The Act does not provide for a waiver in this situation either, unless a waiver under section 2432(c) is applicable. The International Trade Commission is to establish and maintain a program to monitor imports of articles from, and exports to, nonmarket economies, and is to publish a detailed

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244 Id. §§ 2432(c)-(d).
235 Id. § 2432(c)(3).
236 Id. § 2432(d)(2).
237 Id. § 2432(d)(4).
238 Id. § 2433.
239 Id. § 2435(a).
240 Id. § 2435(b).
241 Id. § 2435(c).
242 Id. § 2436.
243 Id. § 2436(e)(2).
244 Id. § 2439.
245 Id. § 2439(d).
summary of such data quarterly, including their effect on the United States economy.\footnote{Id. § 2440.}

An East-West Foreign Trade Board is to be established to monitor such trade also. Any person who exports technology vital to the national interest of the United States to a nonmarket land, and any United States agency which provides credits, guarantees, or insurance to any such country, the sum of which is in excess of $5 million in any calendar year, must file a report with the Board.\footnote{Id. § 2441.}

F. \textit{The Prospects of Soviet Compliance with Section 402}

The economic importance of MFN status to the Soviet Union will be discussed later. However, it is necessary to point out that MFN status is not as economically important to the Soviet Union as it is to the United States, because the bulk of Soviet exports consists of raw materials which generally have a low duty or are duty-free, regardless of MFN status.\footnote{N.Y. Times, Jan. 16, 1975, at 18, col. 6. Manufactured goods account for only 15 to 20 percent of American imports from the Soviet Union. Id.} The real importance of MFN treatment to the USSR is its political significance.\footnote{Starr, \textit{Framework}, supra note 109, at 69.} It is a matter of "principle" to the Soviets,\footnote{Rohlik, \textit{supra} note 174, at 370.} a "matter of national pride: indeed, the Soviets, with some justification, consider our tariff discrimination against their exports to be a violation of international law."\footnote{Berman, \textit{supra} note 144, at 520.} To put the price of MFN status at the acceptance of intervention in domestic Soviet affairs was perhaps asking too much of the Soviets. In such a situation, the Soviets would be humiliated if they accepted MFN status. In light of the tremendous publicity given to the supposed Soviet "assurances" of increased emigration,\footnote{The mass media gave widespread national coverage to all of these developments.} and the added limitation on government-backed credit in the Act,\footnote{Secretary of State Kissinger described the $300 million limitation as "peanuts." N.Y. Times, Jan. 16, 1975, at 1, col. 5.} it is not surprising that the Soviet Union and the United States decided to nullify the Trade Agreement of 1972 in early 1975.\footnote{Id., Jan. 15, 1975, at 1, col. 1.} Secretary of State Kissinger announced on January 15, 1975, that Moscow regarded the linkage of free emigration to MFN status "as contravening both the 1972 agreement, which had called for an unconditional elimination of discriminatory trade restrictions, and the principle of noninterference in domestic affairs."\footnote{Id. It is true that none of the articles of the Trade Agreement explicitly condition the grant of MFN status in article I on noninterference in domestic affairs. Article 9 holds that the Agreement will enter into force upon exchange of written notices of acceptance. The Soviet Union was aware that such an exchange by the United States was dependent upon prior congressional approval of the agreement.} The Soviet Union could "not
accept [such] a relationship." Soviet sources indicated that the Kremlin leadership considered the $300 million ceiling as "insultingly 'small change.'" Roy Medvedev, the dissident Soviet historian, charged that Senator Jackson's efforts did help relax emigration rules at first, but his "ultimatum" eventually led to Moscow's decision to reject the agreement. As many expected, the Soviet Union announced in early February that it would suspend payment on the lend-lease settlement (the "unconditional" $48 million is lacking one installment) unless the United States granted it MFN treatment. It is remotely possible that in the future the Soviet Union will allow free emigration or assure the President of such, allowing the provisions of section 402 to operate and MFN status to be granted. However, under the present state of affairs, the prospect of that occurring is remote.

G. Most-Favored-Nation Status

Were most-favored-nation status reciprocally granted, there would almost certainly be a sudden increase in Soviet-American trade. Russian purchases would increase upon the attainment of normal commercial relations, not because of a resulting decrease in the price of American goods in the Soviet Union (the nonmarket economy does not work on a true price system; i.e., the price to be obtained will merely be that which is negotiated with the FTO, just as before), but because of a greater Soviet psychological willingness to buy from America as was seen in the aftermath of the Trade Agreement. The economic benefits to Soviet exports would be mainly non-tariff ones, such as financing, accreditation, business facilitation, the reduction of quotas, and so forth. The Soviets would probably find themselves in a more competitive position in the American market with regard to sales of cheap optical equipment, canned fish, bicycles, or Zhisuli automobiles, the Soviet version of the Fiat. The tariff on Soviet vodka and caviar would decrease significantly. A reduction in the tariff would probably have only a modest overall effect on the level of Soviet exports to America, because the large bulk of these exports will continue to consist of raw materials and semimanufactured products, for which tariffs are not now a significant obstacle because of their low rates. MFN status would benefit the United States not only through increased purchases by the Soviet Union, but also through agreements on increased rights of commercial representation, provisions for reciprocal credits, patent protection, increased business facilities, and the resolution of outstanding financial claims and bond approval. The USSR was thus, realistically, on notice that the Congress could put such a condition on the Act.

254 Id.
262 Starr, Framework, supra note 109, at 68-69.
obligations. However, any economic benefits to be received are linked very closely to the mental attitude of the Soviets in purchasing, and that mental attitude, as was previously demonstrated, is correspondingly closely linked to Soviet national pride.

H. **Section 613—Limitation on Credit to Russia—The Real Nemesis**

The greatest irony of the situation is that even if MFN status were exchanged, there would probably not be a very large increase in trade between the two countries because of the credit limitation placed by the Act in section 613 on government-backed credits, guarantees, and insurance. Section 613 of the Trade Act stipulates:

> After the date of the enactment of the Trade Act of 1974, no agency of the Government of the United States, other than the Commodity Credit Corporation, shall approve any loans, guarantees, insurance, or any combination thereof, in connection with exports to the Union of Soviet Socialist Republics in an aggregate amount in excess of $300,000,000 without prior congressional approval as provided by law.

The devastating effect this clause will have on trade is self-evident. It would now be advantageous to examine the reasons why each nation desires to trade with the other, and how the denial of MFN treatment, and more importantly the denial of credit, will seriously hinder the attainment of these goals.

I. **Soviet Aims in U.S.-USSR Trade**

The basic goal of Soviet economic policy in the past was the attainment of national economic autarky. The Soviets rarely tended to trade abroad merely for convenience or for obtaining marginal economies of supply. Rather, they sought to obtain those goods in which their domestic economy was productive. However, when it became evident that Stalin’s program of autarky had ended a necessary stream of Western industrial products, and had also closed off a possible market for the developing Soviet productive capacity, the Soviet Union decided to improve commercial contacts with the major industrial states, while continuing to avoid any reliance on other lands. To accomplish these goals, the Soviets now desire first to overcome deficiencies in their current operative state production plans through increased trade with

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265 Heretofore we have looked principally at the legal framework, the quantitative amount of goods being traded, and the practical and political problems of trading with the Soviet Union, with only a few glimpses at the reasons each country desires increased trade with the other.
267 Pubantz, Marxism-Leninism and Soviet-American Economic Relations Since Stalin, 37 LAW & CONTEMP. PROB. 535, 539 (1972) [hereinafter cited as Pubantz].
Secondly, the Soviets desire to obtain Western technology, of which the United States is the leading producer. A massive campaign is underway in the Soviet Union to modernize economic management, automate the planning system, and upgrade industry in order to stimulate lagging technological growth. As a result, Western capital and know-how are being openly courted to help in modernization and to mine the untapped gas, oil, lumber, copper, and nickel wealth of Siberia. Despite the fact that computer technology is often on the United States strategic goods list, the Soviets are most anxious to purchase such American technology. The most important non-technological item which the Russians desire to import is feed grain.

One of the Soviet Union's own constraints has become the largest obstacle to Soviet purchases of Western goods: the inconvertibility of the ruble and the Soviet practice of limiting foreign exchange reserves. As a result, Soviet FTOs are simply unable to make large-scale payments in dollars or other hard currencies. Thus, a third Soviet aim is to obtain foreign currency in order to finance the acquisition of needed goods from abroad. The Russians must make as many foreign sales of Soviet goods as possible in order to obtain convertible foreign currency. More importantly, substantial credits are needed in order to obtain foreign currency. Billions of dollars of credits are needed to finance the building of roads, pipelines, and facilities necessary to exploit Soviet resources. Without large Eximbank loans, sales of American products and services may easily be noncompetitive in the face of West European government-backed financing. Other forms of financing are available, including the payment of cash and the creation of barter arrangements, often in the form of a joint venture. Barter has been used by the Occidental Petroleum Company in many of its Soviet transactions. Indeed, Soviet economic planners see the possibilities as "immense" for large-scale arrangements, in which the

268 Nehemkis & Schollhammer, supra note 132, at 25.
269 Id.
271 Coexistence and Commerce: Ground Rules, supra note 189, at 2.
273 Id.
274 Nehemkis & Schollhammer, supra note 132, at 20.
275 Id. at 25.
276 Rohlik, supra note 174, at 365.
277 Hoya, supra note 107, at 31.
278 N.Y. Times, June 18, 1972, at 3, col. 1.
279 1974 Hearings, supra note 3, pt. 1, at 317. This broaches a policy question often raised by opponents of Soviet-American trade. Should the United States Government "subsidize" Soviet purchases with low-interest Eximbank loans? Resentment to such a subsidization of the Soviet economy was particularly acute in a related situation—the wheat agreement. The United States Government paid $300 million in export subsidies to American grain firms while the American consumer bore the cost of resulting wheat shortages. Fitzpatrick, supra note 190, at 44-45.
281 See note 180 supra and accompanying text for a description of joint ventures.
United States would provide plant and equipment and the USSR would provide raw materials and the finished products of such plants.252 However, few American companies seem interested in such arrangements at present.

A last Soviet aim for increased trade is based on the current Soviet policy of seeking peaceful coexistence with the United States. The Russians see cooperative economic relations as a strengthening and expansion of the process of "détente."253

In light of the Soviet desire for increased trade, it seems clear that the key requirement for such an increase, as far as the Soviet Union is concerned, is the availability of credit. Section 613 clearly restricts that availability and may very easily set back the chances for increased trade more than section 402.

J. American Aims in U.S.-USSR Trade

There are two major American aims in the development of Soviet-American trade. The first is an economic one. "To the West, economically congested and thirsting for new outlets, the communist world is a vast market . . . ."254 American economic growth would be stimulated with increased sales.255 Jobs for American workers would increase.256 The United States could begin to pick up a significant share of the East-West market, particularly since the needs of the Soviet Union coincide with the products in which the United States enjoys a competitive advantage, such as agricultural products and high-technology manufactures.257 Despite an increase in imports, the United States would probably continue to enjoy a highly favorable balance of trade with the Soviet Union, which could function as an offset against the high costs of importing oil.258 Improved trade relations are generally helpful to the solution of outstanding economic and commercial issues, such as settlement of claims, or the development of agricultural and trade information systems.259 It is unlikely that Soviet exports would threaten, rather than stimulate, United States production and employment. Existing United States law (e.g., the Antidumping Act or the market disruption provisions of the Trade Act) protects against severe injury due to imports and provides relief in the event of such injury.260 Some have expressed fear that increased Soviet imports could lead to undue dependence on Soviet raw materials.261 Such dependence is less likely to occur today than

253 Pubantz, supra note 267, at 544.
254 Coexistence and Commerce: Ground Rules, supra note 189, at 2.
256 Bilder, supra note 101, at 850.
258 Id.
259 Id.
261 Hoya, supra note 107, at 35. For a recounting of American objections to increased trade, see notes 207-25 supra and accompanying text.
in the past, because of the present American awareness of the danger of excessive reliance on foreign sources for commodities.

The second major aim of the United States in increasing trade with the USSR is a political one, that of obtaining peaceful coexistence. The United States hopes to encourage the Soviet Union to maintain a moderate course in foreign policy and to create linkages between the two lands that might put a "brake on a conflicting course" whenever a potential crisis arises. Secretary Kissinger noted in the Senate hearings on the Trade Act:

[T]o make bringing about democracy in the Soviet Union in the face of 300 years of Russian history followed by 50 years of Soviet history, a precondition to making peace, would doom us to decades of struggle, and the outcome would not be foreordained. We do not approve of the Soviet domestic structure. We do not like its values. We do recognize, however, that today, and for the immediate future, we are doomed to coexistence with the Soviet Union.

Trade and enmity do not go hand in hand as often as do trade and amity. Thus, it was hoped that better commercial relations would be a force weighing against the outbreak of hostilities.

The denial of MFN status advances neither of these two aims. The limitation on credit even more surely limits the possibility of large-scale sales by the United States to the Soviet Union and the resulting economic stimulation and support for peaceful coexistence.

K. Availability of Other Markets to the Soviet Union

With the exception of highly developed computer technology, which is available only from the United States, the Soviet Union has access to other sources for almost all of the technological goods it desires. This technology may not be exportable under present export restrictions. Credit, of course, can be obtained elsewhere if the Eximbank is no longer able to finance Soviet purchases. In 1958, shortly after President Eisenhower rejected a trade agreement with the Soviet Union, the British government accepted a very similar proposal with the Soviets. After receiving no positive response from the United States on another similar trade proposal in 1964, the Soviet Union negotiated a very elaborate set of intergovernmental trade arrangements with the French. West European and Japanese Governments frequently participate in the extension of credit to the Soviet Union for periods as long as 15 years. A Soviet-French trade pact signed in December 1974 included $2.5

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298 Id.
299 Id. at 491.
300 Id. at 388.
301 Fitzpatrick, supra note 190, at 58-60.
303 Berman, supra note 144, at 519.
304 Id.
305 Nehemki & Schollhammer, supra note 132, at 18.
billion of French credit to finance $3.5 billion worth of Soviet orders over the next 5 years. Therefore, the Soviets are not coming to the United States as a last resort. If they cannot obtain adequate, competitive financing here, credits and most goods are available elsewhere.

L. The Result

In the unlikely event that MFN treatment is exchanged in the near future, trade will probably increase to the modest degree that lower tariffs and fewer non-tariff restrictions will allow. But until the $300 million credit limit is removed, no significant expansion can be expected. With the situation as it is (that no Eximbank loans will be made to the Soviets until a "satisfactory" level of emigration is reached), trade can and will continue. Commercial banks can still arrange credit dealings. However, private banks have generally preferred Eximbank co-participation in the financing of exports to the Soviet Union. Without such government-backed financial support, it is doubtful that there will be any increase in private financing, and if anything, it is possible that there will be a decrease. Cash deals, barter, and joint ventures can and will continue, but most of such arrangements have been made in conjunction with some sort of financing. Since this financing has very often been Eximbank financing, such arrangements are less likely in the future. American businessmen in the Soviet Union plan on staying there and seeking new business while working on existing contracts. Few expect to lose contracts already signed, but without a new trade pact less offensive to Moscow, few American companies expect to receive any significant increase in Soviet business. Because of the increased political risk, American businessmen are likely to become more cautious in dealing with the Russians. Small and regional American banks, without wide experience in international business, are expected to become highly reluctant to lend funds to develop Soviet business. The Soviets are expected to become more selective in dealing with American businesses if Eximbank loans are not available. For a rapid expansion of Soviet-American trade, government-backed credits are essential. American exporters simply cannot compete with exporters from other countries whose governments offer such credits. The end result is that the Soviets will buy goods from European or Japanese companies, which are aggressively selling machinery and equipment to the Soviet Union. Potential American jobs will go to those countries willing to finance Soviet trade, while other American jobs will be eliminated. And, most

303 Id. col. 5.
304 Id.
305 Id., Jan. 17, 1975, at 2, col. 3.
308 Id. at 456.
309 Id. at 388.
sadly of all, emigration from the Soviet Union will probably continue to decrease.

M. Implications for Détente

Before the bill was signed, the Nixon Administration had insisted that passage of the bill with the Jackson amendment would be damaging to American progress in establishing normal relations with Communist countries and would seriously impede efforts to achieve more harmonious international relations. Secretary Kissinger himself stated that the "evolution toward a more moderate international system [and] . . . the prospects of peace, would be severely jeopardized . . . ." After the dissolution of the Trade Agreement, Secretary Kissinger sounded less pessimistic, indicating that there was no sign of hardening Soviet-American relations across the board. Most American specialists on the Soviet Union feel that the Kremlin intends to maintain relaxed relations with Washington, but they do not rule out the possibility that Moscow will stiffen its position on various fronts. It remains to be seen whether or not serious political problems will ensue as a result of the Trade Act. It is certain though, as Secretary of State Kissinger had to admit, that "détente has been set back."

V. Conclusion

The Trade Act of 1974 has provided the President with the authority needed to negotiate further reductions in worldwide tariff and other import barriers. The prospects for increased world trade have been enhanced. To that extent the Act may be considered a success.

However, in the area of Soviet-American commercial relations, the outlook is not optimistic. The New York Times editorialized that a number of lessons were to be learned from the affair. Among those lessons were: (1) that there is a very real linkage between détente and trade; (2) that the congressional role in foreign policy is advice and consent, not taking negotiations into senatorial hands or tying the hands of negotiators; and (3) that a superpower can not be pushed around by a Senator, especially when the Senator insists on humiliating public assurances from the superpower for 2 years. Perhaps the emigration figures and trade figures for 1975 will support the Times' point of view. From this author's point of view, title IV and section 613 of the Act are indeed most unfortunate and present serious impediments to the future of Soviet-American commercial relations. The efforts of the Congress to force the Soviet Union into concessions has had an effect diametrically opposed to the intended

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312 Id. pt. 2, at 475.
313 Id.
315 Id.
316 Id. at 32, col. 1.
result. Had the amendments not been made, the result probably would have been a higher level of American employment and business, a much freer flow of emigration from the Soviet Union, and another small step toward peaceful coexistence.

Kenneth Klein