PROBLEMS AND PROSPECTS OF TRADE WITH EASTERN EUROPE AND CHINA

PROCEEDINGS OF THE LAW DAY CONFERENCE HELD AT THE UNIVERSITY OF GEORGIA SCHOOL OF LAW UNDER THE SPONSORSHIP OF THE AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON EDUCATION ABOUT COMMUNISM AND THE AMERICAN BAR ASSOCIATION SECTION OF INTERNATIONAL LAW.


REMARKS OF THE KEYNOTE SPEAKER, MR. CHESTERFIELD H. SMITH*

Law Day was inaugurated by the American Bar Association as a day when citizens reaffirm their dedication to the rule of law and to liberty as safeguarded by the American system of justice. It is a day to remind Americans of their responsibility in maintaining and improving our justice system through personal interest and individual participation. As in any civilized society, Americans must continually re-evaluate, re-analyze, and re-structure existing governmental institutions to better meet the legitimate and ever-expanding needs of our citizens. This Law Day conference has a broader scope, encompassing the rule of law as it pertains to the world community of nations.

The significance of East-West trade lies not only in the basic economics of trade balances and import-export quotas but more importantly in the real probability that such trade will enhance mutual understanding and cooperation between the communist and noncommunist world.

Nations with trade allowances are more likely to enjoy harmonious relations than those with no commercial ties. History is witness to the suffering and anguish which result when peoples and nations fail to communicate and cooperate with each other. Although fear and mistrust characterize relationships between powerful governments of the

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world, in time mankind will discover the means to resolve differences and to clarify relationships among nations without resorting to armed conflict. Just as a single nation uses its legal institutions to solve internal disputes and resolve the consensus of its people, nations will succeed at an international level. Recent conferences and agreements concluded by our President with the Soviet Union and China point in that direction.

The increased interrelation of the noncommunist and communist worlds through business and trade relations will necessarily require the formation of structures for settling business differences. For example, trade embargoes may soon be replaced by the granting of most favored nation trading status. The result will be a stronger reliance upon international legal structures and agreements and international courts of arbitration. The early American experience under the new federal system showed that increased trade and interdependence spawned rules and legal institutions which eventually replaced force as a means of settling differences.

Our goal must be to discover effective means whereby every man, woman, and child can live, travel, and do business anywhere in the world at all times in peace, dignity, and freedom. The best of human traits emerge when men interact for a common purpose.

The worldwide spread of court-administered justice is the logical consequence of a full-blown economic relationship among all nations of the world. The American Bar Association has long recognized that our responsibility as men who honor and cherish the law transcends the boundaries of our own country. The time has come for us as men of the law to unite with the aid of the international legal and business communities in the effort to bring all the people of the world closer together and under the rule of law.
REMARKS OF MR. WILLIAM J. CASEY

In seeking to build and expand trade and economic relations between East and West, the United States hopes to improve standards of living, to scale down military competition, and to construct a foundation of economic interdependence on which a structure of peace can be built.

Another objective of our present economic policy is to eliminate the disadvantages to American businesses caused by Western Europe’s and Japan’s ten year headstart in trading with the Soviet Union, Eastern Europe, and China.

In speculating about the shape of East-West trade one should bear in mind that although the Chinese will sell raw materials, they will not permit foreign exploitation or development of their resources. Nor will the Chinese go into debt.

The Soviets, however, take a broader view. The Soviet Union has deemphasized traditional trade patterns based principally on the fleeting character of the price mechanism. They desire to examine other forms of cooperation, particularly long-term projects related to the development of their natural resources. As these projects are implemented, the Soviets will enjoy the benefit of American markets, equipment, technology, and managerial skills, as well as additional foreign exchange. For the United States, the output of these projects will go not only to the amortization of capital investment in kind along with a return on capital, but they will also contribute to the satisfaction of our energy and raw materials requirements.

To develop such trade American firms will need to cooperate among themselves and learn to barter their goods for Soviet goods and convert such goods to cash on the world market. These techniques must neces-
sarily be developed by the private business system.

Political and economic relations are inextricably intertwined. The pace of advancement in the economic sphere thus has been regulated by the pace of advancement in the political sphere. The President's policy has been to build a lasting interdependence of interests encompassing the entire spectrum of our relations with the East. We will not attempt to force negotiations in one area, as in the field of trade, for example, in order to bring progress in such other areas as political, cultural, or military affairs. We prefer a balanced approach bringing less dramatic but more certain developments.

Generally, economic relationships may be considered normalized when American trading relations are on the same basis as now exist between communist countries and the rest of the developed world. Specifically, relations are considered normalized when no embargoes on special goods exist, diplomatic relations are firmly and fully established, arbitration procedures are established, public and private debt claims are settled, maritime, civil aviation, environmental protection and business facilitation agreements are concluded, and most favored nation status is granted on the part of the United States. In this sense, Yugoslavia and Poland have normal relations with the United States, and U.S. relations with the Soviet Union and Rumania are approaching normal. Hopefully, the normalization of economic relations will soon develop between the U.S. and such countries as Hungary, Czechoslovakia, Bulgaria, Albania, East Germany, and Mongolia.

As the international system undergoes basic change, trade and monetary reform is urgently needed. Thus, the President is seeking broad new legislative authority vital to the United States in maintaining its leadership role in the construction of a new international economic order reflecting today's economic realities. Obstacles to trade annually cost billions of dollars through inefficient use of resources.

Structural problems in East-West trade require government initiative in solving problems of trade between market and state-controlled economies. American ambassadors have been instructed to give trade relations emphasis. The State Department's commercial staff has been increased, an East-West Trade Policy Committee under the chairmanship of George Schultz has been created, and commercial negotiations have been concluded. Only United States policy on strategic trade controls is not negotiable at this time. However, in cooperation with the International Coordinating Committee (COCOM) the embargo list of strategic materials is under review and will be reduced.

Financial policy is the key to further East-West trade expansion.
Communist nations as a group will be net importers of financial resources in the next decade. Old debts must be settled and basic items such as provisions for credit established. To this end the $800 million lend-lease settlement with the Soviet Union and the Export-Import Bank’s extension of credit to Poland have proven to be essential. Further progress has been made in the forms of competitive bank rates and terms, agricultural exports, cooperation of private export credit institutions, and negotiation of taxation and licensing agreements.

Americans can learn much about joint ventures from the Japanese who have had success in this field, particularly in gas and oil arrangements. East European countries with a satisfactory record with joint ventures are now permitting equity investments. Even the Overseas Private Investment Corporation, which is geared to investment in less developed countries, is operating in Rumania and Yugoslavia.

Remarks of Congressman Phillip T. Landrum

International problems have a direct impact on the jobs, incomes, and living standards of Americans. Not attending to such matters can diminish prosperity at home and provoke friction abroad. The Trade Bill under consideration by the Congress, though specifically involving traditional trading partners, inevitably points to nontraditional partners.

Answers to the following questions will determine United States trade policy with communist nations. Where does the responsibility for fixing trade policy lie? What is the power of Congress under the Constitution in foreign trade policy? What is the position of the United States in the world economy? How can the United States correct its large deficit? Why are economic relations with communist countries so limited? What is the effect of trade with communist countries on the national security of this country? How does such trade affect the traditional trading partners of the United States? Issues posed by these questions will be debated at hearings on the Trade Reform Act of 1973 which begin on May 9.

Politicians must be careful not to let their natural resistance to change affect their decisions in this situation. It is imperative that the United States take steps in trade reform, a project more difficult than tax reform. Many sectors must combine skills to make the changes needed if the United States is to regain a top position in world trade and influence. The consequence of idleness in this matter will only lead to further decline in our international trade.
The problem of responsibility for fixing trade policy with foreign nations involves a process whereby the executive branch proposes and the legislative branch disposes. A working example of such a process is the Trade Reform Act of 1973.

The urgency of trade reform is in large measure prompted by the $6.5 billion trade deficit incurred by the United States in 1972, general world monetary instability, and a shift in market power due to the rapid economic growth of Japan and Western Europe. In order to return to the posture of a sharp and competent competitor the United States must remove artificial trade barriers. Americans will face difficult competition for the increasingly limited world resources in future years. The "free trade" policy of past years cannot be allowed to continue in the face of restrictions placed on access to markets. Markets for American products must be open abroad as we open our own markets to the exports of other nations.

There will be no negotiation on trade matters related to security. However, the United States control list, beyond the multilateral list of the International Coordinating Committee (COCOM), has shrunk from 550 to 120 items in the past six months and should contain no more than 50 items by the May 29 deadline date set in the Equal Export Opportunity Act of 1972. The list has undergone a systematic review by a government interagency panel.

The United States must maintain its strength during trade negotiations. This requires that our negotiators be candid and show respect for the other party and at the same time maintain their own dignity and self-respect. Generally, the most satisfactory results come from long periods of difficult negotiations.

Although a major strength of the United States in foreign trade is the diversity, flexibility and initiative of the private sector, our political institutions will also play a major role in the establishment of East-West trade relations. Our system of checks and balances, a critical press and an informed public provide the equilibrium and introspective criticism which form the basis of our great strength in dealing in an adversary context.

A special problem posed by the expansion of East-West trade is the extent to which the U.S. government may intrude into the private sector. This problem becomes especially acute as our businesses compete or negotiate with the often disparate economic power of the state controlled corporate monopolies of the Eastern countries, whose governments often play a key role in assisting their enterprises to win con-
tracts. It is in such situations that our government might appropriately assist American companies.

Three governmental organizations have been established to assist American enterprises in the competition for East-West trade. The Joint U.S.-U.S.S.R. Commercial Commission communicates daily in government to government exchanges. The Commerce Department conducts an active assistance and coordination program with the private sector although it does not participate in actual negotiation. Finally, the Commerce Department’s Bureau of East-West Trade Policy formulates general government policy. The fact that the rules of the game have changed makes it necessary that government play an active, more aggressive role although the exact nature of that role remains uncertain.

REMARKS OF DR. JACOBUS T. SEVERIENS

World trade has taken a broader meaning than simple import-export relations. The complexity of trade and the different legal systems involved require that standards be established, possibly in the form of a code of behavior, applicable to all nations concerned with trade and covering matters that have heretofore been dealt with on a bilateral basis.

In its consideration of trade reform the Congress should review all trade legislation including the Johnson Act. Further, the Webb-Pomerene Act could be extended to import organizations so that importers could trade with socialist countries on a unified basis.

SECOND SESSION, MODERATED BY PROFESSOR DEAN RUSK*

SOVIET-AMERICAN TRADE

Evgeniy V. Bugrov**
Andrzej B. Burzynski***
Gabriel M. Wilner†

REMARKS OF MR. EVGENIY V. BUGROV

The agreement signed by President Nixon and Premier Brezhnev during Mr. Nixon’s visit to the Soviet Union in May 1972, stands as a good and encouraging example of how to succeed in international business.

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Two of the 12 basic principles of the agreement merit comment. Item One states that the principle of peaceful coexistence is the basis for the relationship between the United States and the Soviet Union. This statement marks a turning point in the relationship between our two countries and indicates that a significant start has been made in reshaping Soviet-American relations. Item Seven states that our two countries regard expansion of commercial and economic relations through appropriate agreements, including long-term contracts, as a necessary element in the strengthening of bilateral relations. Negotiations have led to agreements in the areas of lend-lease, reciprocal aid and claims, reciprocal credit arrangements, and commercial maritime relations. Additionally, a joint U.S.-U.S.S.R. Commercial Commission has been established. It must be emphasized that negotiations on these agreements were greatly assisted by the realistic approach of both sides.

By the terms of the trade agreement both countries agree to grant to the other most-favored-nation treatment in customs, duties, and formalities related to import and export. Further, the agreement provides that each country will seek to encourage the establishment of effective business links between Soviet and American companies taking into account the resources and long-term requirements of each country in raw materials, equipment, and technology. The agreement provides for the possibility of limiting the import of "sensitive" items. The Soviet Union does not intend to ship goods to the United States that would disrupt the American internal market. Both the United States and Soviet Union will establish commercial offices in the capital city of the other country. Also, an international trade center will soon be constructed in Moscow to satisfy the business needs of foreign companies.

The trade agreement is most significant in view of the total lack of business contacts between our two countries. If the legislative bodies of the United States and Soviet Union approve the trade agreement, there is no reason that the goal of increasing Soviet-American trade to triple the 1969-71 level during a three year period cannot be reached.

The granting of most-favored-nation status to the Soviet Union by the United States cannot be considered as an act of economic assistance. The absence of trade over the past quarter century has been costly to both countries. Those who describe resumption of trade relations between our countries in terms of benefit to the Soviets and loss to the Americans forget the lessons of history and misrepresent the agreement between our governments.

It should be noted that Soviet trade reached $35 billion during 1972 and an increasing volume of trade was transacted with western countries.
and Japan. Last year Soviet trade with capitalist countries totaled $8 billion, a figure three times greater than in 1962. At present, Soviet trade with 90 countries is being conducted on the basis of most-favored-nation treatment. My understanding is that none of these 90 nations regard themselves as providing economic assistance to the Soviet Union.

The policy of no trade with the Soviet Union has failed to slow the industrial growth of the Soviet Union. Soviet industrial output is currently 14 times the 1940 level. The "no trade" policy has stimulated the Soviet search for new trading partners. For example, trade between Japan and the Soviet Union reached $1.1 billion in 1972, and a 1971 Soviet-Japanese trade payments agreement contemplates a further increase in total trade volume. Methods of cooperation regarding the construction of a Siberian oil pipeline and exploration of coal deposits and off-shore oil and gas fields are under discussion with Japanese firms. Soviet trade with the Federal Republic of Germany reached $1 billion in 1972, a 50 percent increase from 1970. Under a June 1972 agreement the Soviet Union will deliver natural gas to West Germany in exchange for metal parts. The agreement further contemplates transactions in chemicals, furniture, and other industries. Also, economic trade and cooperation with France has increased in recent years, and under present agreements the trend will continue.

Even without normalized trade relations, the industrial output of the Soviet Union is more than 75 percent of that of the United States. The Soviet Union now produces more steel than the United States. The Soviet economy will continue to press no matter what happens to Soviet-American trade.

I would like to underline the fact that the Soviet Union is not interested in trade with the United States more than the United States is interested in trade with the Soviet Union. With this understanding in mind we can view trade as a kind of cooperation rather than an exercise in counting possible mutual gains.

By all standards our economies complement each other, and we are, therefore, not competitors. In this respect Soviet-American trade could favorably influence the United States balance of trade. However, without most-favored-nation status our two nations will remain potential rather than actual trading partners. The most-favored-nation treatment is an internationally recognized condition for the development of trade and would serve to rectify the present discrimination against the Soviet Union in the field of trade. The improvement in political relations has served as an incentive to the development of improved economic rela-
tions. The improved economic relations will produce further political improvements and a civilizing effect on Soviet-American political relations. Those who trade and participate in joint economic ventures are not expected to think in terms of cold war. It is that simple, and it is a lesson for the future.

The whole business of Soviet-American trade requires a realistic approach. The Soviet Union believes there are economic benefits and possibilities for both the United States and the Soviet Union in developing long-term and large-scale economic cooperation. The Soviet Union enjoys an abundance of those natural resources which the United States lacks or has in short supply. Such resources could become available through a variety of mutually beneficial approaches.

It must be emphasized that the Moscow agreement specified that the bilateral development of normal relations should be based on noninterference in internal affairs. The Soviet Union suggests no changes in American domestic affairs as a precondition to trade and expects the American side to reciprocate with regard to internal Soviet policies, including emigration regulations. Applications of Soviet citizens wishing to leave the country for permanent residence abroad are considered on an individual basis. Generally, these applications are granted. For example, over 95 percent of those who applied to emigrate to Israel in 1972 received permission to leave. It may be noted that more than 2,000 persons who received permission to leave for Israel in 1972 did not in fact make use of that permission. The decree of the Presidium of the Supreme Soviet of August 3, 1972 provides that Soviet citizens who receive permission to emigrate can be exempted fully from refunding state education expenses. Consequently, only such normal and insignificant duties which were also collected before August 3, 1972, are being collected and will be collected from those leaving the Soviet Union for permanent residence in other countries. No time limitations have been put on the effect of this decree. As is true in other states, Soviet citizens may be denied permission to go abroad for reasons of national security. Attempts to tie the granting of most-favored-nation status to changes in Soviet internal regulations are seen by the Soviet Union as efforts to thwart trade between our countries. The Soviet Union and United States belong to different social and economic systems and an approach of noninterference in internal affairs is imperative. You may be assured that the Soviet Union with its good will is prepared to meet the United States halfway in a joint venture called Soviet-American trade, a venture based on full equality and mutual benefit.
A few years ago lawyers were suddenly faced by what appeared to be a new idea, namely cooperation among countries in the various stages of the manufacturing and marketing process. In time lawyers found that from a legal point of view the problems arising from such economic cooperation could be dealt with through the traditional contract of sale and contract of licensing. However, economic cooperation in the form of direct investment is excitingly different because it invokes the distinction between legal systems governing countries of different social systems.

There are a number of barriers for western firms that desire to create joint ventures that would operate in socialist countries. A psychological barrier has been created by unfavorable pre-World War II foreign investments, the socialist concept of revolution under the slogan of liberating workers from foreign capitalist oppression, and 20 years of socialist thinking which rebuffed all capitalistic ideas. This psychological barrier has been somewhat broken, however, by the fact the socialist countries are now strong enough to negotiate participation of western capital in their countries on a more equal basis. Western firms still hesitate, though, to immerse their capital into economic systems which are centrally planned and operate under rigid price controls.

There are also a number of legal obstacles in socialist countries to the input of western capital. For example, how would the property of a joint venture in a socialist nation be classified? What type of legal entity would a joint venture be in a country which recognizes only public or state-owned enterprises as legal persons? What are the workers' rights in such ventures? How can such joint venture companies deal directly with foreign companies?

Socialist countries have taken a twofold approach to these problems. Yugoslavia, Rumania, and Hungary, for example, have provided legislative guidelines. Generally, such legislation is recent in origin and rather broad in scope, permitting the parties wide negotiating authority. The other approach taken by Poland, however, rejects legislation and prefers experience on a case-by-case basis. The multifaceted problems that restrict western trade with socialist countries show that lawyers on both sides have an enormous task ahead of them in creating legal foundations for future economic cooperation.

REMARKS OF PROF. GABRIEL WILNER

It should be noted that Soviet-American trade relations have come a long way since the decision not to trade at the close of World War II.
Contrary to the desires and forecasts of both countries, neither the American nor the socialist economies collapsed during the nontrading period.

Although we can applaud what the United States and Soviet Union have done bilaterally, there is responsibility on the part of both East and West to shape an economic system which will take into account the needs of all peoples, including those of the developing world. Perhaps we ought to think of going further and, in helping ourselves, help the rest of the world that needs our help so badly.

**DISCUSSION OF AUDIENCE QUESTIONS**

**QUESTION:** Will not trading our technology for Soviet goods and resources be detrimental to American security?

**MR. CASEY:** In terms of American economic security, it depends upon the items of technology exchanged and the terms of the transaction. Proper payments over an extended period of time may enhance our financial position. In terms of military security, the United States will continue to protect its position.

**MR. BUGROV:** The Soviet Union has reached parity with the United States in strategic weapons. The Soviet government realizes certain problems are posed.

**QUESTION:** Which items would the Soviet Union wish to obtain from the United States?

**MR. BUGROV:** The Soviet Union is interested in buying both consumer goods and industrial items, and in selling technology.

**QUESTION:** What changes in prices and restrictions would be caused by granting the Soviet Union most-favored-nation status?

**MR. LAZARUS:** Most-favored-nation status refers to a two column tariff system, one column based on the 1930 tariff system, and the other on a more liberal system consistent with GATT agreements. There are very few countries of the world to whom the United States does not extend most-favored-nation status. Although such status would positively affect such traditionally traded goods as vodka or nickel, it would also make a significant difference in the possibility for trade in new goods. Also, placing the two countries in a position of equity would establish a firm foundation for the growth of future trade.

**QUESTION:** Why should Soviet internal affairs have any bearing on the decision of the United States to trade with the Soviet Union?
MR. LANDRUM: The United States has a psychological barrier to overcome here. The Trade Reform Act of 1973 which seeks to give the President authority to negotiate terms of mutual and beneficial interest must travel the route of 435 members of Congress and 100 members of the Senate with their extremely diverse opinions. Generally, as long as the Soviet Union and United States remain within their fundamental orbits and concepts of what they want for their people, there is no reason why we cannot develop a satisfactory trade relationship without interference by either in the other's internal affairs.

QUESTION: Why did 2,000 individuals granted emigration permits by the Soviet government refuse to emigrate during 1972?

MR. BUGROV: I am sure the reasons are quite diverse. One of the reasons may be that hundreds of people who emigrated to Israel now wish to return to the Soviet Union.

QUESTION: Was the temporary allowance of increased emigration a concession to meet the United States halfway?

MR. BUGROV: I do not believe the change in emigration was a concession. The change was prompted by the desire not to create difficulties for those who wish to emigrate. The change is a standing policy which will remain unchanged.

MR. WILNER: As I commented earlier, in multilateral relations economic advantages or economic relations are sometimes used for unrelated purposes. For example, the United Nations Security Council has used economic sanctions in dealing with non-economic questions. I see nothing in the large picture that is inconsistent with putting forth different points of view and hoping to get better conditions, economic or otherwise.

QUESTION: In view of the lack of representation of the “third world” at this conference, is it true that in seeking economic unity the large economic powers are perpetuating the unified and systematic repression of third world countries, particularly the African nations?

MR. CASEY: Certainly not. Both countries have developed programs of assistance and contribute to the World Bank and other multilateral institutions which promote the development of third world countries. The process of creating and fostering East-West trade must be carried on within the global economic system which must serve the mutual interest of all countries.
MR. BUGROV: The Soviet Union is not prepared to do anything detri-
mental to African nations, in developing economic relations with the
United States, and the Americans have never suggested that we do so.

QUESTION: In what capacity did Secretary Brezhnev sign the U.S.-
U.S.S.R. Trade Agreement?

MR. BUGROV: In a capacity corresponding to President Nixon.

QUESTION: Which southeastern ports will be open to the Soviet Union
under the Maritime Agreement?

MR. LAZARUS: Savannah. Also, Tampa, Baton Rouge and New Orleans
on the Gulf.

QUESTION: Would the Soviet Union consider joining international or-
ganizations such as the International Monetary Fund or GATT?

MR. BUGROV: There are no immediate plans of the type; however, it is
a future possibility.

QUESTION: If the Soviet Union has ceased collecting exit fees, what is
considered the greatest obstacle to granting most favored nation status
to the Soviet Union?

MR. LANDRUM: The road is littered with obstacles but the largest obsta-
cle is convincing the American public that the government is not giving
away its technology, scientific accomplishments or strategic advantages
in developing trade. Thus an important part of the trade problem is
educational.

MR. BUGROV: In view of the Congressman's statement, it should be
noted that article 8 of the U.S.-U.S.S.R. Trade Agreement reads as
follows: "The provisions of this agreement shall not limit the right of
either government to take any action for the protection of its security
interests."

QUESTION: Has the Soviet Union ever made demands concerning the
internal affairs of the United States?

MR. WILNER: I am unaware of any specific demand in open negotia-
tions.

MR. BUGROV: I have never heard of a single case when the Soviet Union
requested any changes in the American internal affairs as a precondition
for any negotiation.

MR. LAZARUS: It should be noted that the United States government
has made no demand on the Soviet Union with regard to emigration
policy. The Congress, as an independent institution of government, has pending before it an amendment cosigned by a number of its members which includes a conditional authorization to the President to extend most favored nation status, which condition is based on the Soviet emigration policy. Yet no government institution has made a demand, and this problem is entirely within the context of our legislative process.

**QUESTION:** Is the recent wheat sale by the United States to the Soviet Union indicative of future "mutually advantageous" trade agreements?

**MR. BUGROV:** The wheat was purchased with hard currency. If the deal was disadvantageous to the United States, it could have been refused. As to the future, if trade barriers were removed, the Soviet Union would buy American grain on a more or less permanent basis in return for Soviet goods.

**MR. LANDRUM:** It must be said that they bought better than we sold.

**QUESTION:** Will the Soviet government permit equity participation in joint ventures within the Soviet Union?

**MR. BUGROV:** Currently the Soviet Union has no legislation allowing equity participation of American corporations and finds such legislation unnecessary. The Soviet Union is prepared to accept credits in order to develop certain types of industry and to repay the credits with interest. It is a question of form of return rather than substance. Up to now the western companies have accepted profits in the form of interest rather than dividends without complaint. The joint ownership question is not a bone of contention in Soviet-American relations.

**QUESTION:** What are the major items the United States will purchase from the Soviet Union?

**MR. CASEY:** There is no limitation on what the United States may buy. Currently the United States is most interested in raw materials, gas and minerals. As our trading relationship develops and as the usual technologies of manufacturers increase, more consumer items and manufactured goods will be traded. For example, the Soviet Union has a superior skill in medical instruments and hospital supplies.

**MR. BUGROV:** The list could be expanded. The Soviet Union is prepared to sell planes and any items which are commercially acceptable to American business.
During the President’s first term in office several developments occurred which bear directly on the establishment of international peace and stability. Among the President’s major accomplishments in this area are the conclusion of the Vietnam war, the opening of the door to mainland China, piercing the walls of the Kremlin, and laying the foundation for restructuring the international monetary and economic system. Present negotiations continue in the SALT talks and in the European Security Conference concerning a mutual and balanced reduction of forces in Europe.

But no structure of peace can be strong unless it encompasses international economic affairs.

The present international economic system had its beginning at Bretton Woods at the end of World War II at a time when the United States had all the chips, was willing to give and asked for little. Our goal then was to develop a stable free world which meant that other nations had to be strong.

Today, these goals have been reached but the Bretton Woods system no longer serves us so well. Our aid programs came to represent a steady drain on our economy, and the dollar, battered by inflation and a generation of deficit in our balance of payments, is no longer a pillar of world strength. In 1972 our balance of payments deficit was over $9 billion, and from 1970 to 1972 our imports expanded 40 percent while exports went up only 15 percent.

As a result, and to hasten stability at home, the President intensified the battle against inflation, surcharged imports, barred trading in gold, and obtained new parities for the dollar.

Last fall at the World Bank Meeting, the President said: “We are secure enough in our independence to freely assert our interdependance. We shall press for a more equitable and a more open world trade. We shall not turn inward in isolationism and in turn we shall look to our friends for evidence of a similar rejection of isolationism in economic and political affairs.”

Progress is being made on the monetary front. We are presently working with the “Group of Twenty” and are taking an integrated approach to the problems of short term capital flows, trade figures, monetary values, and foreign investment.

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Where we have to make progress now is on the trade front.

The last decade saw some progress in this field with the implementation of the Trade Expansion Act of 1962 and the Kennedy Round of trade negotiations. But at that time we had a substantial trade surplus and not too much attention was paid to such inequities as unfair barriers to our agricultural exports.

To provide for needed reform, as well as for expansion, the President has submitted the Trade Reform Act of 1973, which seeks to achieve five major purposes.

First, it would enable the government to join in negotiating a more open world of trade. The act would give the President the power to negotiate changes in non-tariff barriers and authorize him over a five year period to either raise or reduce tariffs as a part of a negotiated trade package.

Second, it would enable the government to seek a more equitable trading world where our goods can compete fairly with those of other countries. To this end the President would be authorized to retaliate against unfair or illegal barriers to our products abroad. It would also streamline authority to deal with dumping and with the subsidization of exports by other countries, and it would put patent infringement by imported goods on the same basis as domestic goods.

Third, the act would ease the adjustment process our workers face by virtue of a sudden flood of imports from abroad. Unemployment caused by imports would be dealt with in the same manner as unemployment from other causes. A new system of unemployment insurance and pension reform has been proposed to help in the adjustment.

Fourth, the President would be empowered to temporarily raise or reduce tariffs as a means of last resort to meet imbalances which occur by virtue of another country having a persistent balance of payments surplus or deficit. This power could also be used to fight inflation by increasing the supply of goods under significant price pressures. This would, of course, call for adjustments to the provisions of our GATT agreements.

Fifth, the act would enable the President to grant preferences to developing countries.

That portion of the act which would empower the President to grant most favored nation status to communist countries subject to congressional approval has proven to be the most controversial aspect of the act due to the Soviet emigration policies. But as those policies have become liberalized, opposition should decrease.

Companion legislation would also allow exporters to join in the
bidding process without violating the anti-trust laws.

The Trade Reform Act will provide us the equal negotiating powers we need in negotiating with equals. It does not represent a power grab on the part of the President, but rather embodies a logical extension of powers that have been granted to presidents in the past to reflect changing international economic realities.

For example, through the 1930's, especially with the enactment of Hawley-Smoot, the Congress exercised directly its Constitutional mandate to lay and collect duties and to regulate commerce with foreign nations. But the experience of those years proved the necessity of delegating to the executive under broad guidelines the authority to set tariffs and to negotiate. Every trade bill since 1930 has recognized this imperative and has increased the power of the President to negotiate on tariffs.

The present act contains no unprecedented departures, and provides only for improvements, especially the ability to act more promptly. The only exemption involves the generalized preferences to developing countries, but this is an authority the President has been requesting for years.

The Trade Reform Act will give the President the capacity to meet the challenges posed by the magnitude and pace of economic change which confronts us today.

DISCUSSION OF AUDIENCE QUESTIONS

QUESTION: What is the significance of the granting of most favored nation treatment to the Soviet Union within the context of the Trade Reform Act?

MR. FLANIGAN: The act recognizes that the granting of MFN status to the Soviet Union is one of the conditions contained in the three year Soviet-American trade agreement recently concluded. If the trade agreement is not extended under its terms upon its expiration, then we can reconsider all the connected rights, including MFN.

QUESTION: What would happen to our workers displaced by tariff reductions if Congress does not approve the actions of the President that lead to their displacement and if Congress does not approve the unemployment insurance or pension reforms that are being proposed?

MR. FLANIGAN: The Trade Act would place such workers in the same position as workers who are displaced for some other reason such as some new environmental policy. He will not be treated differently as he has been in the past. The President can, though, restrain imports for up to five years. These workers still have the benefit of the job retraining funds, job search funds, and relocation grants that are available to all displaced workers.
QUESTION: How will the trading negotiations be conducted under these new measures?

MR. FLANIGAN: The Administration intends to seek congressional approval to combine the functions of the White House Special Trade Representative, who has a negotiating function, with the Council on International Economic Policy, which has a policy function. The Special Trade Representative, whose position was created by the 1962 Trade Expansion Act, will be negotiating under the policy direction of the Council on International Economic Policy.

QUESTION: How will the Trade Reform Act change the various retaliatory powers embodied in existing laws, and how can the President be expected to use them?

MR. FLANIGAN: The Trade Expansion Act of 1962 empowered the President to retaliate primarily in the area of agricultural goods. The new act would facilitate retaliation with respect to industrial goods. The new act would also embrace the current anti-dumping and countervailing duties laws. New means of retaliation would be authorized either by way of tariff or non-tariff barriers, but the new law would not specify the exact form of retaliation to be used in response to any specific act.

QUESTION: Is it dangerous for the United States to increasingly rely on Middle East oil supplies considering the instability of governments in that area?

MR. FLANIGAN: From 1959 until earlier this year we were bound by the Mandatory Oil Program which put a quota system on imports of oil out of national security concern for relying on outside sources of energy. Clearly, however, we have not been able to develop domestic sources of energy, and until we do so, we will have to rely increasingly on sources from abroad. We recognize the instability of the Middle East governments, but we are looking to other sources from North Africa, Indonesia, Venezuela, and hopefully, the Soviet Union.

QUESTION: Would the granting of generalized preferences to the developing countries be confined to industrial and high technology goods?

MR. FLANIGAN: A major goal of the negotiations is to spread tariff reductions and non-tariff barrier reductions across the board to include also agricultural products and semi-manufactured goods.

QUESTION: What safeguards against abuse are contained in the companion legislation which would allow groups of exporters to join in bidding on major proposals from abroad without violating the anti-trust laws?
MR. FLANIGAN: The suggested changes in the Webb-Pomerene Act are very limited and are directed to the ability of an association of bidders to bid for major foreign products. The changes would not grant a power to allocate markets between competitors.

QUESTION: If the retaliatory powers are granted, could or would they be used for political reasons?

MR. FLANIGAN: It would be nice in this uncertain world to be able to answer that question with certitude, but rest assured that it will always be charged at some point that they are being used for political reasons.

THIRD SESSION, MODERATED BY MR. BENJAMIN BUSCH*

SINO-AMERICAN TRADE

Victor Hoa Li**
Graham Metson**
Donald Clark†
Reg Murphy††

REMARKS OF DR. VICTOR HOA LI

The current attention of the American public to trade with China is in part due to the fact that trade reflects the symbolic and dramatic shift in relations between the United States and China. Ping-pong was the ice breakers but trade is one of the principal means by which the shift will be implemented. We should keep in mind that just as trade replaced ping-pong, something else can replace trade.

Before exploring the prospects of trade with China, it is important to examine the reasons that trade is desirable to Americans. There is a long-standing myth about the China market to the effect that there are hundreds of millions of consumers in China waiting to purchase western products and in return wish to sell raw materials and agricultural products. Foreign companies have often erroneously regarded the large Chinese population as a "volume market" for their products.

But in determining the future volume of Sino-American trade, one must look at existing trade patterns. The total volume of China's two-way trade is not large, amounting to about 4 to 5 billion dollars yearly.

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or about $7 per person. In contrast, the United States conducts an annual two-way trade of 80 to 90 billion dollars, or about $400 per person. Total Chinese trade is likely to increase in the future, but the increase will be slow and geared to the increase in the size of the Chinese economy. If China becomes more willing to take long-term credits, trade may increase more rapidly. The push toward industrialization may increase the need for western technology, but it will probably not dramatically increase trade volume. There may even be a cutback in trade if China is serious about its policy of self-reliance and emphasis on agriculture.

Present Chinese trade statistics show that approximately 75 percent of Chinese exports is in foodstuffs, animal products and textiles. There is little American demand for their products except in the form of specialty or novelty items. Metals and minerals compose 15 percent of Chinese exports, and this area may grow in attraction for American traders. The remainder of China's exports is in specialities such as rugs, dishes and jade carvings, and a large number of such "doodads" and "knicknacks" must be sold to get a good return. Generally, this trade pattern shows that sales to the United States will be limited and consistent with Chinese sales to Japan and to the industrialized countries of Europe.

Chinese purchases from the United States have largely been in minerals, chemicals, metals, and machinery and equipment. Although the United States has much to sell in these areas, trade is complicated by the trade restrictions placed on the very high technology items in which the United States enjoys a direct competitive advantage. In other items of trade the United States faces stiff competition from West Germany and Japan. Furthermore, the Chinese will not disrupt their established trade relationships just to give the United States a substantial share.

It would appear that in 1973 Sino-American trade will reach $200 to $300 million, well above the $100 million of 1972. Although American trade with China has grown faster than expected, it should soon level off in the $400 million to $500 million per year range. This figure would increase greatly if off-shore petroleum reserves are developed. To put this trade in perspective, bilateral trade at a level of one half billion dollars would only be one half of one percent of the American total. However, Americans should not view the lack of trade as the result of Chinese obstructionism.

One should view trade as a part of a society's overall activity and realize that it reflects the same concerns and attitudes that affect the society's actions in other areas. This is especially true of China with a
strong, centralized, bureaucratic control of trade. As an example, Chinese trade contracts usually contain a clause that in its worst form states, "a dispute will be solved amicably but if this is not possible, the case will be submitted to a Chinese tribunal sitting in Peking for arbitration." However, the arbitration clause is invoked very rarely and appears only to be a method of ousting the jurisdiction of foreign courts. In case of dispute the first part of the clause becomes operative, and the Chinese tend to reject suggestions of arbitration before the Peking panel.

The Chinese enter into relations with a foreign trader very slowly. Early trading is carried on in small, often disappointing sums. After traders decide they are happy with each other the amount of trade increases rapidly. Perhaps the same attitude applies to other relations—a slow careful groping until a point of good faith is established and a friendly atmosphere develops.

Clearly, trade decisions involve a mix of political and economic considerations. It is interesting to note that the Chinese put more political considerations into trade than is customary in the United States and apply different political considerations to different situations. The Chinese use of political leverage is shown by China's relations with its largest trading partner, Japan, and with its largest European trading partner, West Germany. Japanese businesses must become "friendly firms" and are subjected to a full range of political principles and conditions. In this manner China has been successful in influencing Japanese policy toward China. However, German businessmen have not been subjected to the imposition of such political conditions. For example, during early German trade negotiations with China the United States put pressure on the German government not to include a certain amount of state recognition of China in exchange for a Chinese admission that West Berlin was a part of West Germany. When Chancellor Erhardt and President Johnson issued a statement that there would be no recognition in the trade agreement the Chinese said little. Later, when American pressure forced the cancellation of negotiations for a $70 million steel mill to be financed by credit guaranteed by the German import-export government agency, there was no visible angry response from the Chinese. But a similar incident relating to the purchase of a vinyl plant on credit from the Japanese caused a major furor.

Perhaps the difference in the Chinese response can be explained by the proximity of Japan and the cultural and historical affinity between the two countries. In any event, China felt it could influence Japanese policies but not those of West Germany. It is probable that the United
States fits on the spectrum somewhere between West Germany and Japan. As political relations between China and United States change, so will the economic strategies of the two countries and the fortunes of Sino-American trade.

**REMARKS BY MR. GRAHAM METSON**

Although the political implications of trade are quite significant, both sides feel that trade could be economically advantageous.

Political relations between China and the United States have improved enormously, as evidenced by the opening of the Washington and Peking liaison offices which will provide the two countries the opportunity to maintain direct, face-to-face contact. Also, the National Council for U.S.—China Trade, a unique organization of high-level businessmen, will soon be organized. Its goal is to increase understanding between China and the United States and to inform American businessmen of Chinese business practices and prospects.

An important and difficult question is whether the Chinese will increase the orientation of their economy toward foreign trade. The Chinese have broken with their previous practice of transacting exclusively on a cash basis and have made several medium term credit purchases. Japan and Great Britain are exploring the possibility of further credit sales. In this regard it should be noted that in undertaking a new process the Chinese are very thorough and often investigate the same ground several times.

Although the Chinese now appear to be interested in credit from the private sector, there are a number of problems regarding American credit. The most pressing problem is the settlement of private American claims. Until these claims of more than $196 million are settled, Chinese ships or commodities entering United States jurisdiction are subject to seizure by the Claimants. Such claims prohibit the possibility of a Chinese trade fair in the United States and entry of Chinese ships into American ports. The Chinese are often forced, therefore, to transact with us indirectly through third parties.

Another obstacle to trade stems from 1950 when the United States blocked all Chinese assets located in the United States. As a result, the Chinese refuse to transact directly with American banks. An agreement in principle on this question has been reached and further negotiations are underway.

The Chinese view the lack of most favored nation treatment as an impediment to trade and an affront to Chinese national pride. Discussions on this point are necessary. A host of minor problems, such as
copyright agreements, shipping lines and direct air traffic between China and the United States, must be discussed before trade can become normalized.

Remarks of Mr. Donald O. Clark

Americans are often guilty of "projectionism", or attributing to foreigners the same characteristics that we possess as Americans. This is a serious problem in international trade. Americans must realize that the Chinese people are quite different from Americans. The oriental culture, including both China and Japan, emphasizes mediation, conciliation and accommodation. The accommodating nature of the oriental businessman may frustrate the demanding, impatient nature of the American businessman who may consider such acts to be sneaky. Misunderstandings are increased because Americans have traditionally neglected study of oriental society and institutions, concentrating on Europe instead.

There are some constants that provide guideposts in international trade. Unlike the free-for-all capitalistic system, the Chinese economy is controlled both internally and externally. Each year the Ministry of Trade and the Peoples Bank of China collaborate on a central plan. Such planning gives the government great flexibility in its trade program. Businessmen can expect the Chinese government to import items in short supply and to export those products it has in surplus. This means that China will be acquiring highly sophisticated items and basic goods which are not produced or available in the country. Also, the government can be expected to engage in trade to acquire foreign exchange. Viewing trade with China in these terms gives a businessman an indication of the success he will have in trade with China.

The Chinese Ministry of Foreign Trade has seven foreign trade corporations under its control. Each trade corporation is responsible for its area of expertise. The Chinese have shown a penchant for F.O.B. sales on imports and C.I.F. sales on exports. This gives the Chinese the opportunity to control shipping and utilize Chinese insurance companies. Although foreign businessmen view China's shipping practice with concern, in reality it has not proven to be a serious obstacle to trade.

The reason so few cases reach arbitration before the Commission for Promotion of Foreign Trade in Peking stems from the basic oriental idea that litigants should be able to settle the dispute themselves. Also, practicalities often dictate reluctance on the part of foreign businessmen to subject themselves to the unknown statutes and processes of a foreign court. However, the developing practice of American businessmen to
rely on legal processes to settle disputes may represent an obstacle to the settlement of differences with Chinese firms, especially since the Chinese trade officer is a government official with standards to meet. Generally, it is considered best to reach agreement on the problem in dispute and attempt to recoup losses on later contracts with assistance of the Chinese official. Obviously, there is some risk in this approach.

In China agreements must be in writing. Contracts are usually standardized and weighted toward performance in contrast to American contracts which are usually breach-oriented.

It should be noted that companies trading with the Chinese have encountered unexplained delays in getting the actual trade underway, and the United States has created some interesting situations in this regard. For example, we sold China an RCA satellite station which contained items on the COCOM list and then had to go to COCOM to ask for permission to sell the equipment. The situation proved to be highly embarrassing to us.

In closing it would be wise to note a statement by Chairman Mao, “We should unite with their people [the United States] and strive to co-exist peacefully, do business with them and prevent any possible war, but under no circumstances should we harbor any unrealistic notions about them.”

REMARKS BY MR. REG MURPHY

Despite the somewhat guarded forecasts of the earlier speakers, the next few years will likely bring a large expansion of Chinese-American trade. For example, Lockheed is negotiating the sale of Hercules aircraft. Also, American business has the capability to make large sales of services to the Chinese. China has made the internal commitment to industrialize, and this will create a demand for services which does not currently exist in China.

The Chinese commitment to trade is evidenced by the fact that, contrary to previous practice, they are considering the process of going into debt. Also, they are now seeking to acquire foreign exchange by establishing industries that produce export items.

The Chinese have not yet made a decision regarding tourism. Although tourism is an excellent source of foreign currency, the Chinese are hesitant to open their doors to foreign influences which they consider corruptive. Without tourism trade becomes more important.
The question of trade cannot be separated from the political, cultural, or psychological aspects of East-West relations. The communist concept of peaceful coexistence must be taken into account as part of a realistic approach to trading relationships. The concept embraces not only cooperation, as Mr. Bugrov pointed out, but competition and struggle between systems as well. And, of course, ideological coexistence is not possible.

With these realities in mind, the goals of each side in East-West trade must be examined. The communist literature regarding economic relations shows that peaceful coexistence is a part of the overall political program. The East European countries are very keen to take advantage of western know-how and industrial expertise to speed the pace of their industrial development. They are trying to build consumer societies, and although they will buy consumer goods from the West, they are much more interested in buying the means to produce consumer goods. As for the Soviets, in some areas of technology, like defense and space, they are very well advanced, but in other areas, like capital industry, the petro-chemical industry and computers, they are far behind.

The West seeks not only economic gain, but also the opportunity to expose the East to western ideas in an effort to encourage certain processes in that part of the world.

East-West trade is currently more important for the East than for the West because the East is still weaker economically. In the long run the competitive situation in Western countries may require new markets,
and this situation may lead to quite objective gains for western companies.

The West is particularly concerned, however, with restrictions imposed in the East on the free flow of information, persons and ideas. These restrictions currently represent an obstacle to any further improvement in trade and relations between the two sides.

Another obstacle to East-West trade is the concern on both sides that they not become too dependent on each other. The Soviet Union acknowledges the need to raise its technology by dealing with the capitalist world but is concerned with retaining unity within the East European Bloc as well as maintaining its own self-sufficiency. There is much concern in Western Europe that the large import of Soviet raw materials will give the Soviet government an effective hold over the economy of Western Europe. Further, if the United States solves its natural gas shortage with imports from the Soviet Union, a position of increasing dependence would be created.

The improvement in relations between East and West might begin by each side making an effort to know more about the other. A better understanding will enable each party to examine its position from a more correct perspective. Recent years have seen an increased flow of objective information between East and West, and this provides each side a better view of trade opportunities and helps to remove erroneous images and misunderstandings.

REMARKS OF MR. JEREMY RUSSELL

I want to start by very briefly going over some of the basic steps which would be fundamental in understanding relations with Eastern Europe.

Firstly, one must understand what the possibilities of trade really are. How do you find out? Consult the annual and find the plans of the country. Consult the survey of trade. Consult your commercial press in Moscow. Consult some of the mass publications available from official and semi-official bodies, chambers of commerce, and after that have a look at what your competitors are doing.

Secondly, one must decide whether one's own particular line or commodity has a future in the Soviet market, or if the Soviet Union is likely to have commodities to export that would be of interest to you.

One criterion for your end product should be whether it is a technological leader. Another might be if it could be easily demonstrated as involving a significant saving in manpower or raw material cost to the Soviet economy.

Thirdly, one must determine the correct procedure for contacting the present organization in the USSR at the right level. Should the State
Committee for Science and Technology be involved or an industry minister or the Ministry of Foreign Trade? Should the president of your company go to Moscow or the sales representative or chief technologist or the public relations man or the whole lot or nobody at all? Again, you must consult the experts.

And, first of all, one must familiarize himself with the invitation, accommodations, travel and visa formalities.

Armed with an untiring sense of humor and the patience of Job, it is at about this stage that one comes into contact with those elusive things having to do with the practical difficulties or possible realities of transactions with nations having state operated economies.

In the course of preparing this talk, I developed a list of these difficulties about a yard and a half long. I began to mull over them, and I asked myself whether the difficulties were really what we wanted to talk about; or were they not something that one really talked himself into? If one changes his conception of it, would not many of these difficulties become merely differences? And then I asked myself whether these differences were such as to give rise in practice to any genuine clashes between the basic systems operated by Russia and by my country. On looking back on my experiences in East-West trade in the last nine or ten years, I arrived at the answer, "No."

Now, understand we didn't come here to find fault with anybody in this trading system, particularly with such a distinguished representative from the USSR and such a distinguished gathering from the West. There is no right or wrong party in all this, merely a familiar and unfamiliar setup with, on the one hand, a bunch of guys trying to do the best for themselves and their organization and their country and, on the other hand, a bunch of guys trying to do the best for themselves, for their organization and their country.

Indeed, there are differences in motivation, in the time scale used from day to day in transactions, in the degree of bureaucracy, and in the content and nature of communications in the information flow. This can certainly give rise to difficulties if it is misunderstood, and I intend to examine some of these differences and offer some suggestions for reconciling them. And when I've done that, I would like to share with you some of my experiences in commercial contact with the Russians in the hope that by the time I finish, some of the difficulties will have transformed themselves into something easier. I also hope that a more mutual understanding would be generated, for, when all is said and done, we have to get down to the serious business of cohabiting this planet and efficiently mobilizing its resources through trade and other means for all mankind. The problem is how to avoid any participant
being forced into or slighted into a disadvantageous position.

The fact that the countries of Eastern Europe exercise complete control over all aspects of foreign trade means that, to a considerably greater extent than in many other parts of the world, foreign trade is employed to further the political and economic objectives of the government. There is apparently a Western desire for trade for trade's sake, and one gets the impression that trade with the Russians normally is regarded as something of a necessary evil.

The availability of currency within COMECON will naturally give rise to a situation where every purchaser from outside COMECON may scrutinize very carefully to see whether a deal can be made inside COMECON or whether the commodity cannot be acquired through barter. Indeed, an end user who wants to have a Western product imported has to justify the purchase not only to his ministry but also to GASPEC and GASPAN, and this takes time.

Looking at the structure of the trading system between Eastern and Western Europe, one finds in the West hundreds of thousands of independent companies making their decisions about when to import and to export, subject to relatively few government controls, such as a purchasing embargo list. In the Soviet Union, however, trade is conducted through a Ministry of Foreign Trade with 16 trading organizations, each concerned with the import and export of specific groups of commodities, and they act on behalf of their clients, who will be ministers, factories, shippers, and so forth.

In some other COMECON countries there are autonomous industry trusts which perform the same sort of function with foreign industries. The Soviet Ministry of Foreign Trade, however, determines the overall direction in which their trade shall go. And if it decides that 65 percent of a COMECON country's trade shall be with other COMECON countries, that tends to be the result. The Ministry can also decide which foreign countries should get the most trading attention, especially if this will in some way assist long term goals or objectives.

Now, I'm not saying that the governments of some COMECON countries don't also sometimes act in some other way, but they usually do act in accordance with the ministry's objectives.

All that I have just said can result in some instabilities, particularly during the early stages of one's trading relations in this field. If you want to sell something to Eastern countries, but you really do not have enough of the product, their technologists will say they need it. Then you talk it over with the Ministry, but they say they can't get the money to import it. You offer to buy something from them, but they do not know whether this will be available. And if you go to the trading organi-
zations, they will tell you not only that they do not have any calls for your product but also that they are buying it from your competitors elsewhere. Or you want to buy something from them which you know they have a lot of, but they say they have none available for export. Next week you find it all turning up in your neighboring country, which has just concluded an agreement with the Soviets.

There is nothing particularly unethical or immoral about all of this. It does, however, rate very high on the international policy.

The fact of the matter is that the operation of controlled foreign trade by the state gives those companies a great deal of power; more, perhaps, than many of their Western counterparts. Now, this is particularly so regarding imports in COMECON, where the volumes of products to be purchased are frequently so great that competition within the West drives prices down well below normal levels. There are wider indications of this in especially large scale international economic corporations. It becomes clear that no single capitalist concern can or ought to handle the necessary financial arrangements. International consortia may be able to handle it, but governments are clearly going to have to be increasingly involved. There are many cases being talked about right now which involve provision by the capitalist forces of very large sums, billions of dollars of trade to the Soviet Union for both machinery and technology in the short term against the ultimate export of raw materials or manufactured goods resulting from a joint venture over a much longer term. I am sure that both sides are giving a great deal of thought to the practical wisdom of becoming so heavily involved with both economic and political cooperation with each other, although I personally feel convinced that such international cooperation, if undertaken in a spirit of mutual trust, is a good and an essential element.

Another area that tends to lead to difficulties is that of communication. The average capitalist trading organization probably approaches the communist countries’ markets from the standpoint of making a killing—a profit. Alas, things are not that simple. It’s not for me to say what the motivations of the communist trade are, but they can be a little different. Of course, they want to sell at a profit, and they think they can. Of course, they want to buy at the least possible price. But they’re trading on behalf of the state. They are accountable to the state for their actions. They are carrying state plans and using state finances. There must be no risk to the state. The foreign trade must, ideally, come off second best.

I suggested earlier that the time scale in the operations of trade practiced by state controlled countries can give rise to difficulty. Just about everything to do with day-to-day trade takes a great deal longer
there than it does in my country. For example, if one pessimistically hopes to sign a contract in one month, one had better hope for three. If one expects to make eight business trips a day in Moscow, one had better be prepared to make only four. I think that this has a lot to do with one of the main areas of difficulties—that of communication. Many of them are really problems that result from a difference in the form of communication. Of course, there are difficulties in physical transportation. Although Moscow is only three hours from Paris, the process of getting a visa to visit the USSR can be very involved. Written communications from Eastern Europe tend to take a long time coming. They are quite often dated three or four weeks prior to the time they actually arrive.

It certainly is important to be able to speak an East European language and, in fact, the more the better.

Finally on this question of communications, COMECON purchasers are not particularly wide open to what we would call normal sales promotional activities, such as advertising, and they are particularly not susceptible to the hard sell. They can, however, be reached through the technical press and through technical expositions and trade fairs. But this, of course, takes a little bit longer.

I have had the good fortune to be engaged in transactions with the Soviet Union since about 1965. I say good fortune because I really consider this type of trade to be a most interesting and absorbing one, and one that forms a philosophical and academic bridge as well as ties that are purely economic and commercial. My transactions have been as widespread with the Russians as from the ministers on the one hand to officials in textiles on the other hand. In many of my contacts, I encountered suspicion of my motives and intentions, purely from unfamiliarity and from preconceived ideas about what a representative of a large capitalist monopoly company would have to be like. Why in the world did I want to cooperate with them except to steal their treasures? Well, it took a year or two to break down these mental barriers and convince them of my sincerity. The next development was a very vigorous good will offensive on their part, and I just about had to learn to keep my head above vodka without them stealing my treasures. And they certainly did try. I survived that, they then threatened to chunk my product in favor of my competitors who, they said, offered them much better prices, delivery terms and discounts and so on and so on and other inducements. And this was really a difficult thing to ignore, particularly when so much of what they said was true. One just had to dig in and pull one's socks up.

Eventually, after considerable government work by both sides, there
was a protocol signed or some unwritten agreements concluded, and this tends to make things easier, and then negotiations slowly proceeded to the next level involving money and terms and talks of extra deals.

I won’t bore you with the nature of the handling of negotiations, and I mean not to suggest conclusions. But perhaps I might mention some aspects of the negotiations which have been in force over the last eight years or so.

Firstly, I always found that they have never entered negotiations unless they thought they had more to gain than I had. However, they always tried to convince me that they were doing me a favor by agreeing to negotiate at all. There is no doubt that seven or eight years ago foreign trading practices were rather less sophisticated, but this is certainly not the case now.

Secondly, the COMECON countries have become far more conscious of the powerful trading position which they actually do have, and they are learning very rapidly indeed how to use that power in their dealings with Western traders. They do, of course, enjoy the tremendous advantage of being able to play off not only one capitalist country against another—and they are past masters at that—but also one country’s traders against other traders. Of course, they not only do that but they are doing it well and are being helped by us Westerners who are running all over one another to get a part of the spoils which we apparently convinced ourselves exist. This is what strikes one, and I believe that we are really being put on our mettle. I think that it will do us good if we don’t lose our heads. One has heard it said that if the Soviet Union did not exist it would have to be invented, but there is no sense in just handing everything over on a plate simply in order to put one over on his competitor.

Thirdly, it always used to worry me how long negotiations have to take, how the Russians could allow so much time to slip by without making decisions. But I gradually realized how they actually use time to their advantage. I started by being a bit too eager to cross the middle, but now I’ve learned to take a very much longer view in my negotiating position than I used to.

If I may briefly touch on the human side, the individuals that I had contacts with were nearly always very friendly and basically interested in the same things that I was, although they looked at the problem from a different viewpoint. They take pride in a job well done, particularly if they can acquire merit in the eyes of their colleagues for having scored an economic victory. I find, too, that they are remarkably well informed about the aspects of negotiations which really matter. They will
suddenly be tough and difficult to work with. They seem to respect toughness in their opponents, and I think that they have very little respect for too considerate a trader. They are, as a rule, perhaps, more mercurial than some of their COMECON partners, and one or two of them can enter a revolving door behind you and come out in front.

In conclusion I would just like to make a few general points. It is no good any more thinking that the COMECON states are sitting there crying out for intercourse with the capitalist world and that all they will pay for exports are cheap raw materials. This is very often not the case. They are concerned, however, with selectively importing high technology and equipment, buying luxuries and producing export quality goods acceptable to more countries in the West. They are becoming increasingly well placed in this field and they will use, of course, whatever political or economic riches that are available to them. They will not be looking for any favors, nor will they be granting any. If you can just put yourself in their position for a few moments, beginning with your contacts with them, it will be much easier to avoid the waste of expenditure of much material and mental effort. The practical realities that I have talked about are not, it seems to me, such as would lead one to a pessimistic attitude towards developing trade with state controlled economies. On the contrary, a restrained, farsighted and confident approach is likely to be more successful than an impetuous short term and chauvinistic one.

I would like to leave you with this story about the traveling circus which came to an East European capital. They came to the strong man act, and the strong man got up on the stage and bent a few iron bars and tore a few telephone directories in half. Then his assistant brought on the table a glass and a lemon, and the strong man took out this lemon and squeezed it over the glass. Sweat stood on his brow and his muscles knotted as he filled that glass half full with the juice. He turned to the audience and said, "Would anybody like to try and do better on this?" And then a small, distinguished, elderly man got up from back, picked up the same lemon and looked at it for a bit. Then he held it over the glass and gently squeezed out the juice, and the glass spilled over. The audience was fascinated by this and said, "Who is this guy?" And they were told, "That is the Minister of Foreign Trade."

Remarks of Mr. David Winter*

Under a foreign trade monopoly system, only certain organizations

*A comprehensive article on the practical realities of dealing with socialist economics by Mr. Winter will appear in Volume 4, No. 2 of the Ga. J. Int'l & Comp. L.
are allowed to engage in foreign trade. The legal considerations involved in dealing with such a system are many and diverse, and the structure of trade in this area contains both formal and practical elements.

The East European countries as a whole contain over 15 percent of the world's land area and over 340 million of its people. These countries can be viewed as a bloc for the following reasons. They share a similar ideological background, and factors which influence trade decisions are much the same throughout. Prices in Eastern Europe often do not reflect world market prices. Foreign trade is monopolized in these countries by the relatively small number of foreign trade corporations or companies, which generally act as intermediaries between the western seller and the end user in the socialist country. Eastern Europe has characteristically sold raw materials to the West and imported manufactured goods.

The future of trade with the East European countries appears to call for increased reliance on licensing and cooperation agreements, as well as a likely increase in joint ventures involving the transfer of technology and marketing techniques. Finally, transactions with the socialist countries tend to be very large. The lawyer who practices in East-West trade is faced on the one hand with often enormously valuable and complex contracts. He is, therefore, inclined to protect his client in every way possible. On the other hand, to transact with the eastern countries he must be flexible and in many cases reduce to the bare minimum the legal protection his client needs. As a practical example, the Soviet trading corporation, V/O Licensintorg, specializes in such matters as technology and the transfer of patents. It acts as an intermediary between the foreign importer and the internal Soviet enterprise which developed the technology but which has no right to make foreign trade contracts. The practical difficulties of such a structure, though, are usually more apparent than real.

In some eastern countries this rigid structure is giving way somewhat to the decentralization of the foreign trade planning system. Certain internal Hungarian enterprises, for example, are allowed to trade for their own needs on a limited basis. But the western trader must always be careful to see that the party he deals with is acting within the scope of his authority.

There are several practical aspects of contract drafting that should be noted. Practice has shown that contracts should be highly detailed but simply expressed. The socialists are very much performance oriented, and conditions should be clearly expressed and understood. Penalty clauses should be drafted with care and should provide terms of liqui-
dated damages. The Western trader must also pay careful attention to *force majeure*, law of the contract, and choice of forum clauses. East Europeans can be relied on to abide by the terms of an arbitration award, and the possibility of an East European party pleading sovereign immunity is remote.

In conclusion, problems regarding contracts between western firms and East European enterprises are no different than those pertaining to any international contract. Possibly there are fewer problems in most situations, but there do exist special considerations which may cause difficulty. These difficulties, however, are normally resolved amicably, and with very few exceptions, East European countries do not dishonor their obligations. Further, the size of the orders makes these enterprises immensely valuable customers. Once the eastern enterprise has confidence in the western firms, repeat business comes almost automatically and business dealings with similar enterprises in other countries in Eastern Europe can be expected to increase.

**Questions of the Panel by the Audience**

**Question:** After the contract is signed, what is the course of Soviet performance with respect to the installation of plants, especially in such matters as housing for engineers and delivery of the goods?

**Mr. Russell:** Generally, all the amenities the western trader wishes to have provided by the Soviets for his workers must be spelled out in the contract. Soviet officials are usually unwilling to grant concessions not provided for in the contract.

**Question:** Are there general conditions that Soviet or socialist enterprises insist on placing within the contracts which they handle?

**Mr. Winter:** Yes. Soviet foreign trade corporations will produce a contract containing general conditions but many clauses within it are negotiable. It is a good negotiating point to produce your contract before your Soviet partner produces his. It is best to take a Russian form and adapt it to the practicalities of your own position. Also, it is a very good idea to divide the pages of the contract in two, with the left side in Russian and the right side in English. One must be careful that the translation is correct.

**Question:** Are there organized courses in the legal principles of East-West trade in the law schools of Great Britain or the continent?

**Mr. Winter:** No, but there are courses on Soviet law.
QUESTION: What is the form of guarantee typically required by the Soviets?

MR. WINTER: Generally, in large contracts, the Soviets retain a certain percentage, usually about ten percent, of all payments until performance is completed properly. Also, there are all the usual equipment warranties. As far as payment itself is concerned, sometimes a letter of credit is issued; sometimes payment is guaranteed by the Bank of Foreign Trade. Often, however, no payment guarantee is required at all because the credit of the Soviet Union and many East European countries is among the highest in the world.

QUESTION: What methods are used to familiarize the businessmen of the East and West with their counterparts on the opposite side of the Atlantic?

MR. VAN DEN HEUVEL: The Germans are best at this. They have established private institutions which conduct special courses on East-West trade developments.

QUESTION: Do attorneys generally participate in negotiations with socialist enterprises or are negotiating results referred to lawyers who ing states and investors.

MR. RUSSELL: Generally a lawyer is not called in until negotiations reach a certain point between the Ministry or trading organization and the western firm.

MR. WINTER: Lawyers are usually called in when the contract is ready for signing. Often lawyers are not called in.

MR. HODGKINS: From my experience I would recommend that a lawyer be present throughout negotiations.

MR. RUSK: Very often the common law lawyer who is used to dealing within the adversary process will leave it to the opposing lawyer to take care of himself with respect to the fine print and meaning of the language. Is it fair to say that in negotiating in Eastern Europe one must make very clear to his opposite number what he means?

MR. WINTER: That is a perfectly fair statement. In this respect it is very valuable for a lawyer to have command of an East European language or German. Although interpreters are excellent, they get tired after days of negotiation and interpret things in their own manner.

QUESTION: In transactions with the eastern enterprises do you normally associate a local lawyer to assist with local law?
MR. WINTER: I have never associated a local attorney.

QUESTION: In preparation for dealing with socialist companies how important is a historical and cultural study of the people as opposed to a strictly legal or business study?

MR. VAN DEN HEUVEL: Psychological studies and understanding are of the greatest importance. For example, the two Germanies have been separated for only 20 years, but the differences in communicating with them are enormous.

QUESTION: What are the prospects of the Soviets undertaking with western firms joint ventures in oil operations?

MR. RUSSELL: Although the Soviet Union may have oil and gas to spare, most is located in inaccessible places. The Soviet Union is now reluctant to offer raw materials in exchange for western hard currency. There are two probable reasons for this. First, demand for oil is increasing faster than Soviet production. Second, the Soviet Union wants technology, equipment, expertise, and very long-term credits. The western partner would be expected to contribute a vast amount of credit, which would be paid for over a period of 15 to 20 years. The western partner would also be expected to supply the know how and technology and go into the field for some time. One has to take into consideration the price of energy during the intervening 15 to 20 years. Although much thought is given about the advisibility of joint ventures, often it depends on the location and type of venture involved. The Soviets are probably more interested in off-shore rather than on-shore ventures.

QUESTION: What shape would the joint venture take?

MR. WINTER: There would be no joint venture in a true western sense, chiefly because of philosophical and political considerations. The lack of control and inability to own property does not mean, however, a less desirable result for western firms. There are many variations in joint venture arrangements. Generally, the western partner would put in know how, machinery and money, and the East European partner will provide the buildings, land and personnel. Both parties would share in the profits and marketing.

QUESTION: Do you recommend the use of specialized European agencies and trading houses to represent American exporters?

MR. RUSSELL: It depends on the nature of the business. For example, when dealing in a straightforward commodity transaction, agents may be used successfully. Although the organizations do a thoroughly good job, direct contact is in nearly all cases preferable.
MR. HODGKINS: Would you recommend specialists in switch and barter transactions?

MR. RUSSELL: Yes. A trader can set up his own switch and barter operation, and often this is not as difficult as it appears, or he can rely on the expertise of one of these specialized trading houses. These houses are very useful if the decision to include switch or barter goods comes at the eleventh hour.

QUESTION: What do you consider to be a meaningful guarantee against such hazards as expropriation, nationalization, or restriction on the repatriation of proceeds?

MR. WINTER: These are not really meaningful hazards.

MR. HODGKINS: The socialist countries adhere strictly to bargains they have made.

QUESTION: Can you describe Soviet efforts to facilitate movement into and out of the country? How difficult is it to obtain visas?

MR. RUSSELL: A resident of Great Britain must submit a visa application ten days in advance with a voucher stating that he has accommodations booked in the Soviet Union. When absolutely necessary, there should be little difficulty in moving rapidly within the country and receiving full cooperation from the Soviet embassy.

QUESTION: What is the value of advertising in the Soviet Union, and what Soviet efforts have been made to increase access to one's Soviet counterpart?

MR. RUSSELL: Advertising is most effective through technical journals, and it is best that the advertisement have a high technical content. However, the Soviet Committee on Science and Technology is very well informed about western technology, so advertising is of minimal value. It would be more advantageous to visit trade fairs and exhibitions where the western trader can meet the end user of his product. It is also possible to meet end users by visiting Soviet factories and research institutions.