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JOINT VENTURES BETWEEN UNITED STATES FIRMS AND SOVIET ECONOMIC ORGANIZATIONS*

HAROLD J. BERMAN**

At present there are no commercial joint ventures, in the strict sense, in existence between United States firms and Soviet economic organizations;¹ that is, there are (with one special exception)² no enterprises in which the two sides contribute capital, share profits and losses, and carry on joint management.³ There are about a dozen such joint ventures between Soviet economic organizations and private companies in various Western European countries, but these are chiefly organizations for marketing Soviet exports — automobiles, oil, lumber products, and the like.⁴ In any case, although it is fascinating, and even somewhat ironic, to see Soviet state economic organizations participating in capitalist enterprises outside the Soviet Union,⁵ that is a wholly

* Report delivered at a colloquium of the Russian Research Center, Harvard University, October 31, 1974. The Report also served as a report to the U.S.-U.S.S.R. Trade and Economic Council, in whose behalf the author conducted interviews on legal aspects of joint ventures in Moscow in May-June, 1974. Footnotes have been added by the editors, except where otherwise indicated.

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1. An analysis of the Soviet system of foreign trade, including a short discussion of East-West joint ventures, is given in H. J. Berman and G. L. Bustin, *The Soviet System of Foreign Trade*, BUSINESS TRANSACTIONS WITH THE USSR 25, 69-70 (R. Starr ed. 1975) [hereinafter BUS. TRANSACTIONS WITH THE USSR].

2. The U.S.-U.S.S.R. Trade and Economic Council, a trade promotion council, is itself a kind of joint venture; Soviet and American members participate on an equal basis, and there is joint management by Soviet and American executive officers both in New York and Moscow. [Author's footnote.]

3. There are various levels of economic cooperation between western businesses and Soviet trading organizations which fall short of a full joint venture. See *infra* note 9. For a discussion of the various forms of East-West economic cooperation and their limitations, see Berman & Bustin, *supra* note 1 at 67-69; see also, Pederson, *Joint Ventures in the Soviet Union: A Legal and Economic Perspective*, 16 HARV. INT'L L.J. 390 (1975). The Pederson article relies on the present paper, in its then unpublished form, for some of its information as well as some of its principal themes.

4. Kiralfy, *The Union of Soviet Socialist Republics*, EAST-WEST BUSINESS TRANSACTIONS 338 (R. Starr ed. 1974) [hereinafter EAST-WEST BUS. TRANSACTIONS].

5. For a discussion of Soviet concern about the implications of increased East-West economic involvement for Soviet ideology, see Fitzpatrick, *Soviet-American Trade, 1972-1974: A Summary*, 15 VA. J. INT'L L. 39, 69 (1974).

different matter from the participation of capitalist enterprises jointly with Soviet state economic organizations in the production and marketing of goods within the Soviet Union. Such a joint venture seems, at first, quite unlikely if not impossible; yet it is being seriously discussed by responsible American businessmen and high Soviet officials.⁶

Even if a true U.S.-Soviet joint venture never materializes, careful consideration of the problems and possibilities of such an enterprise will, I believe, at least shed light on the limitations of present forms of economic exchange between the United States and the Soviet Union. If such joint ventures do materialize, they may help to engender significant long-range changes within the Soviet economic system, as well as have important long-range effects on Soviet foreign policy. These must, however, be only latent consequences, and not manifest purposes of such joint ventures; otherwise, they will not be tolerated by the Soviet authorities.

It is not just eager American businessmen but also sober Western statesmen who are talking about "investment" — and not just "trade" — in the Soviet Union. Secretary of State Kissinger, in his Special Report on U.S.-Soviet Relations presented to the Senate Foreign Relations Committee on September 19, 1974 stated: "Over time, trade *and investment* may leaven the autarkic tendencies of the Soviet system, invite gradual association of the Soviet economy with the world economy, and foster a degree of interdependence that adds an element of stability to the political equation" (italics added).⁷ The interesting word is "investment" — something that would hardly have been thought of before the early 1970s. Investment presumably (though not necessarily) means joint ventures in the sense already indicated, since it is hardly possible that the Soviet Government would allow foreign resources to be contributed in the Soviet Union without Soviet participation in their management.⁸

6. Cf. *East-West Investment Proceedings of the American Bar Association National Institute, Washington, D.C. 1975*, 10 INT'L LAWYER 35-64 (1976).

7. The full text of Secretary Kissinger's remarks may be found in *Hearings on United States Relations with Community Countries Before the Senate Comm. on Foreign Relations*, 93d Cong., 2d Sess. 238 *passim* (1974).

8. Soviet writers do not (at least thus far) accept the word "investment" (in Russian, *investitsiia*, *kapitalovlozhenie*) in this context, since they consider that it connotes "surplus value" and "exploitation." Yet the Russian word *vkład*, meaning "contribution," "deposit," "input" (and also "investment") is acceptable, and Americans may have to adjust to this fine distinction. [Author's footnote.]

Soviet willingness to explore the question of joint ventures was suggested in a major speech by Secretary General Brezhnev at Kiev in June 1973. The speech was reported at great length in Pravda, Izvestia, and elsewhere, but the part concerning economic cooperation with capitalist countries was only summarized; it was merely stated that "Comrade Brezhnev spoke about the importance of the development of large-scale and long-term economic cooperation between the Soviet Union on the one hand and the socialist countries and capitalist states on the other" Presumably, Brezhnev said a great deal more on the subject, since Soviet visitors to this country thereafter — for example, Dzherman Gvishiani, Deputy President of the State Committee on Science and Technology, and Georgii Arbatov, Director of the Institute of U.S. and Canadian Studies — indicated in conversations that Brezhnev's Kiev speech gave the green light to serious discussions concerning more intimate, more diffuse, and more enduring economic relationships between Soviet state economic organizations and individual firms of market economies. In the fall of 1973 the Institute of World Economy and International Relations, in Moscow, in a report made at the request of Gosplan, called for manufacturing and research projects involving continuous and close cooperation with Western firms. Also, Gvishiani, speaking in San Francisco in September 1973 to a group of business leaders from 75 countries, stated that the most important feature of the contemporary stage in the development of economic relations between the Soviet Union and the advanced Western countries is a transition from "sporadic commercial deals to a planned and programmed economic cooperation on a stable and long-term basis."

More concretely, Gvishiani also said that he could visualize cooperative arrangements whereby 30 to 40 percent of the output of a Soviet plant could be put at the disposal of a Western firm for a long-term period, during which time the Western partner could, through contractual arrangements, control the quality of such output destined for it and could effectively participate in management on an advisory or consultative basis or as an employee of the Soviet partner. This may not, by its terms, fulfill the American concept of a joint venture; on the other hand, "quality control" and "management contract" are very expandable concepts.⁹

9. With respect to the degree of interdependence of the parties, the present typical form of close cooperation between the Soviet Union and a Western firm,

In Moscow in June 1974 I was told by Deputy Director Shershnev of the Institute of U.S. and Canadian Studies that nearly twenty scholars in that Institute are now studying American economic and legal literature dealing with joint ventures in order to determine whether to recommend that the Soviet Government give serious consideration to encouraging arrangements with similar effect. Shershnev said he had no objection to the term "joint venture," although, he added, it may have different meanings to different people. "Joint undertaking" or "joint enterprise" (*soumestnoe predpriatie*, or possibly *soumestnoe predprinimatel'stvo*) would be preferable terms from the Soviet viewpoint.

It may be that the failure to report at length Brezhnev's remarks of June 1973 on economic cooperation with capitalist countries was due to a conflict over the extent to which such cooperation should go. For example, some Soviet officials have dismissed American talk about joint ventures in the Soviet Union as illusory and have said that they would be impossible under the Soviet economic system. Others have said that Soviet statements disparaging such close forms of economic cooperation were "correct when made but incorrect for the future."

From the standpoint of American business there are two chief disadvantages in restricting our economic relations with the Soviet Union to exports and imports. The first is that for certain types of economic enterprise, profits from exporting are not as great as the potential returns from direct investment. The second is that U.S. exports to the Soviet Union are limited by the capacity of the Soviets to pay in hard currency earned by their exports to the U.S. and to other advanced industrial countries, and those Soviet exports are limited, in turn, by the Soviet capacity to produce the goods needed in the U.S. and other

the so-called industrial cooperation agreement (ICA), falls between the full joint venture on the one hand and the typical export-import contract on the other. Soviet export-import contracts are generally specific, short-term agreements for the purchase and sale of goods. ICAs appear in a variety of forms, including, for example, licensing and subcontracting contracts. See text at note 17 *infra*. Generally, an ICA involves an exchange of capital and technology from the West for goods and services from the socialist partner; ICAs do not, however, provide for Western input to the Soviet management process. In the joint venture, Western management skills are included in the package of Western contributions. An excellent analysis of the "levels" of economic involvement between Western firms and East European countries is found in C. McMILLAN AND D. P. ST. CHARLES, JOINT VENTURES IN EASTERN EUROPE: A THREE-COUNTRY COMPARISON 12 (1973); cf. Berman and Bustin, *supra* note 1, at 25 ff., especially 64-72.

advanced countries. Soviet export capacity might be greatly enhanced, however, by increased efficiency derived from American participation in Soviet management and marketing. The Soviets could export, to others or to us, the products of our joint ventures and thereby earn the hard currency needed to increase their imports from us.

The Soviet interest in joint ventures is parallel to the American interest.¹⁰ The Soviets want to acquire American managerial and marketing skills and to increase their capacity to produce goods for export to advanced industrial countries. In addition, the overriding Soviet desire to acquire advanced technology is much more likely to be satisfied by long-term joint management of pooled resources — the essence of a joint venture — than by the importation of technology, however extensive the supervision on the part of the foreign licensor.

To give a typical example, an American company negotiates a contract with a Soviet foreign trade organization to license certain sophisticated technology in the field of electronics. The Soviet party to the contract wants a guarantee that if the designs and instructions of the American exporter are followed by the Soviet producer, the resulting equipment will work. The American party is hesitant. It knows that if *its* scientists and technicians follow the designs and instructions, the equipment will work, but it cannot be sure that *Soviet* scientists and technicians — however well trained and however skilled — will get the same results. It therefore insists that the guarantee be limited to situations in which the equipment is produced by Soviet personnel with the same *experience*, and not only with the same training and skills, as its own personnel.

This example suggests that Soviet production capabilities would be enhanced if the American producer sent not only its equipment but also its scientists and technicians — and managers — to the Soviet Union for an extended period of time to help the Soviets acquire the experience necessary to guarantee the efficiency of the technology. It suggests, further, that the importer of technology will always be behind the foreign producer of that technology: by the time the importer has mastered the technology, the producer has gone beyond it. The Soviets under-

10. For a discussion of the factors motivating Eastern European countries to enter into joint ventures with Western businesses, including a discussion of related contract negotiation issues, see R. KRETSCHMAR AND R. FOOR, *THE POTENTIAL FOR JOINT VENTURES IN EASTERN EUROPE* 15-17 (1972).

stand fully that in many situations it is better to import technology than goods, since with the foreign technology one may be able to produce the goods more cheaply at home; but they are only beginning to understand that in many situations it is also better to import both the equipment *and the personnel* in order to produce at home the technology as well, and also in order to give the foreign partner an interest in the continued updating of the technology.¹¹

That the Soviet Union is coming to this understanding is clear from the development of Western participation in Soviet production. Although joint ventures have not, thus far, been accepted by Soviet organizations as a form of international economic enterprise within the Soviet Union, the Soviet Government has nevertheless, in the past decade, moved well beyond the classical export-import transaction, including the export-import of technology (through sale of licenses)¹² and the sale of entire production units (with or without additional technical assistance to put them in operation). To an ever-increasing extent, Soviet organizations, under industrial cooperation agreements, have imported capital equipment and advanced technology on a long-term basis, in return exporting finished goods and raw materials which are themselves the product of the cooperative enterprise. These arrangements, although they constitute "trade" rather than "investment," differ from the classical import-export transaction in that they involve (a) continuing transfers over a relatively long time, (b) a higher degree of interdependence and cooperation, and (c) more complex organizational ties. They also differ, however, from joint ventures in the strict sense, since they do not involve long-term joint management of pooled resources, with sharing of profits or losses.

The immediate Soviet interest in industrial cooperation agreements is to acquire high-quality equipment and technology; to pay for these not in hard currency but in exports; and to take advantage of Western marketing skills and outlets for Soviet products. The immediate interest of Western business firms is to receive finished goods or raw materials at a price well below the cost of home production, owing partly to the low cost of

11. The involvement of a Western partner also insures the utilization of Western marketing outlets, although *supra* this may be achieved without a joint venture. Cf. McMILLAN & ST. CHARLES, *supra* note 9, at 18.

12. Cf. Starr & Casella, *Technology Transfers, Licensing and Cooperation Agreements with the USSR*, BUS. TRANSACTIONS WITH THE USSR 125, 126-35.

Soviet labor and primary materials and partly to the low cost of transferring existing values to a new market.

Industrial cooperation agreements may be quite complex. For example, a few years ago Parsons Whittemore, a French subsidiary of a United States firm, agreed with the Soviet foreign trade organization Prommashimport to build a \$160 million pulp and paper complex at Ust-Ulim in Siberia, for which 35 French firms were to supply equipment for various processes. Prommashimport, acting as a commission agent for various Soviet economic organizations, was to pay for the initial imports of equipment and technology over a period of approximately eight years by exporting a portion of the expected annual output of 500,000 tons of cellulose. In addition, Parsons Whittemore was to purchase 85,000 tons annually for sale in France and other Western European countries.¹³

Another agreement that has attracted wide publicity is the undertaking in 1973 by Armand Hammer's Occidental Petroleum, together with Chemico, to build a chemical fertilizer complex in the Soviet Union, with commitments to purchase four million tons of ammonia, urea, and potash over a 20-year period, while the Soviets will purchase from Occidental Petroleum one million tons of superphosphoric acid.¹⁴

Many other similar arrangements could be mentioned, such as the recent agreement of a West German steel consortium to build an iron and steel plant near Kursk at a total cost of \$2.2 billion, and the purchase over a 10-year period some millions of tons of iron-ore pellets and steel products (subsequently, the Soviet side agreed to pay cash instead). Also impressive are various Soviet-Japanese deals to develop timber resources in the Soviet Far East and Siberia, with Japan agreeing to provide hundreds of millions of dollars' worth of timber-production equipment in return for timber.¹⁵

It seems obvious that if the Western exporter of the plant and equipment and technology is to be reimbursed by the delivery of a portion of the output, he will have a very strong interest in the way in which the plant and equipment and technology are installed and used to produce that output. Yet thus far the Soviets have been very reluctant to accept any

13. McMILLAN & ST. CHARLES, *supra* note 9, at 13.

14. Fitzpatrick, *supra* note 5, at 49.

15. Kiralfy, *supra* note 4.

foreign cooperation — including, incidentally, not only Western, but also Eastern European cooperation — in the management of Soviet enterprise. They are reluctant to permit foreign on-site project surveys and they will rarely disclose production figures. When they purchase licenses for the use of Western patents and know-how, they usually (although not always) refuse to pay royalties in the ordinary sense, which would require disclosure of the number of units produced, and they never agree to pay a percentage of profits; instead they prefer to pay a lump sum in advance, even though it costs them more. The concern for secrecy is diminishing, however, and conceivably it could be overcome in particular instances.

There are other obstacles to joint ventures which seem even more substantial. Some are more legal than economic: How can a foreigner's investment be secured when he cannot, under Soviet law, own the means of production — how can he have an "equity," as we say, in Soviet plant and equipment, or in the plant and equipment which he himself provides, once it is transferred to Soviet soil? Second, how can a foreigner share in management of a Soviet state enterprise? How can he exercise his shared managerial rights in a system that gives absolute power of economic planning and administration to central authorities (Gosplan, industrial ministries, Gosnab, Gosbank, the Ministry of Foreign Trade, etc.)? After all, the Soviet planned economy is not merely a general framework within which economic enterprises operate; it is also a hierarchical system of administrative authorities in which the enterprise is the lowest unit.¹⁶

There are other problems that are more economic than legal, although they have an important legal dimension: How are profits to be measured? How are prices to be set for the products of the joint venture, and for the products used by the joint venture (materials, energy, etc)? How are assets to be valued? How are conversion ratios to be set for measuring ruble and dollar expenditures and receipts?

Turning first to the legal questions, we can dispose of one important dimension quite readily. Soviet legal restrictions on private ownership of means of production, and the consequent absence of any possibility of equity participation in the Western sense, are not a substantial obstacle, since there are no legal

16. For a detailed treatment of the administration of the Soviet economy, see A. NOVE, *THE SOVIET ECONOMY: AN INTRODUCTION* 27-150 (2d rev. ed. 1969).

restrictions on the power of Soviet foreign trade organizations to contract with foreign firms. In other words, a Soviet foreign trade organization may theoretically incur any contractual obligation toward a foreign firm that it wishes to incur, and may thus give the foreign firm *by contract* everything that the foreign firm normally seeks to acquire *by ownership*.¹⁷

It is important to note, in this connection, that the Soviet Foreign Trade Monopoly gives the central leadership a much greater leeway in the field of foreign trade than in domestic transactions. Foreign trade arrangements are treated quite differently from domestic arrangements. Foreign trade is subject to special foreign trade legislation and is only residually subject to domestic law.

The foreign firm may feel somewhat naked, at first, with only contractual rights and no ownership rights. In fact, it is much better off. A contractual obligation, for example, backed by a bank guarantee, to repatriate profits and, if necessary, capital, in convertible currency,¹⁸ would give more security than the most absolute form of ownership, which may be only as good, in the last analysis, as a court proceeding can make it. Moreover, by such guarantee-backed contractual provisions the foreign firm may, by agreement, be protected against taxes or any other obligations. Finally, even managerial control can be preserved in this way. For example, it could conceivably be provided by contract that if the managerial advice given by the Western partner were not followed, the Western partner could withdraw and would be paid a certain sum as liquidated damages (or in Soviet parlance, penalty).

The fact that such guarantees *can* be provided by contract does not, of course, mean that they *will* be. At a meeting in Tbilisi in April 1974 at which a group of prominent Americans met for four days with a group of prominent Soviet citizens to discuss ways of promoting peaceful relations between their two countries — the eighth of the so-called “Dartmouth” con-

17. A consideration of contract as a medium for investment in socialist countries may be found in W. Friedmann, *The Contractual Joint Venture*, 10 COL. J. WORLD BUS. 57 (1972) and in McMILLAN & ST. CHARLES, *supra* note 9 *passim*. Pederson has analyzed the legitimacy under Soviet law of the use of contracts by FTOs to accomplish the ends of foreign ownership, *supra* note 3, at 410-11.

18. The various guarantee possibilities, including domestic guarantees by the Overseas Private Investment Corporation for U.S. investors, are explored in Pederson, *supra* note 3, at 413-14.

ferences — one of the sessions was devoted to a discussion of the possibility of establishing joint ventures, and the Soviet participants, while agreeing that the problem should be studied further, stressed that institutional differences between the two countries must be taken into account and, in particular, that “Soviet constitutional regulations and traditions must not be infringed.”

Soviet constitutional regulations and traditions would not only preserve the abstract right of state ownership of land and means of production but would also prevent any appearance of capitalist exploitation or imperialism. Some Americans have proposed to avoid the ownership question by means of long-term leases, but this may be ideologically unacceptable, if only because Karl Marx wrote that the bourgeoisie often disguises its exploitative property rights in the form of security devices in which ownership is retained by the creditor while use is transferred to the debtor.¹⁹ On the other hand, rather broad rights of possession and use, and limited rights of disposition, are already separated by Soviet doctrine from abstract ownership: they can be exercised by enterprises themselves as part of “operative management.”²⁰ Still, Soviet “constitutional regulations and traditions” would almost certainly impose severe limitations upon the rights of a joint venture to dispose of assets and upon its rights of management generally. Here the joint venture encounters the range of problems that are more economic than legal, although they have an important legal dimension.

In order to determine what the Soviets might permit to be done in a joint venture by contract, it may be useful to examine what Romania and Hungary, in 1971 and 1972 respectively, have authorized by legislation.²¹ The Romanian law²²

19. Marx referred specifically to purchases by consumers with payments in installments, the seller retaining the right of repossession in case of default. In fact, Soviet FTOs have leased foreign ships, trucks, construction materials, and, very likely, other kinds of property. [Author's footnote.]

20. See Berman, *JUSTICE IN THE USSR* 114-17 (rev. ed. 1963).

21. For general discussion of the Romanian and Hungarian experience, see Burgess, *Direct Foreign Investment in Eastern Europe: Problems and Perspectives of Romania's Joint Venture Legislation*, 6 *LAW & POL. IN INT'L BUS.* 1059 (1974); Note, *The Legal Framework for American Direct Investment in Eastern Europe: Romania, Hungary, and Yugoslavia*, 7 *CORNELL INT'L L.J.* 187; see generally *EAST-WEST BUS. TRANSACTIONS*, *supra* note 4; Pederson, *supra* note 3, at 397-406.

22. Law No. 1 of March 17, 1971, Official Bulletin of the Socialist Republic of Romania (hereinafter Official Bulletin), trans. in 11 *INT'L LEGAL MAT'LS* 161 (1972); implemented in Decrees No. 424 and 425, Nov. 2, 1972, Official Bulletin No. 121,

is of special interest because one joint venture between a United States firm and a Romanian economic organization, called Rom Control Data, or Romcontrol, has been established under it. Romcontrol is a joint venture, in Bucharest, between the Minnesota computer manufacturer Control Data Corporation and the Romanian Industrial Group for Electronics and Vacuum Technique.²³ The 1971 Romanian statute under which it was organized provides that the operation of "mixed companies," as they are called, shall not be governed by the central economic plan, that they may sell and buy abroad directly, and that all accounts except wages and salaries shall be in hard currency. In other words, what is contemplated is that the mixed companies shall operate in what has been called a "foreign currency enclave,"²⁴ and as much as possible shall avoid involvement in the domestic Romanian economy. The statute authorizes joint management, including a veto power for each party, and the distribution of profits in proportion to capital contribution. However, the foreign investor may generally not have more than 49 percent of the total capitalization and in any case may never possess effective majority control.²⁵

The restriction of the joint venture to a foreign currency enclave helps to resolve some of the most critical questions of pricing. Presumably, even goods sold by the joint venture to domestic buyers should be sold at export prices minus transportation and insurance charges.²⁶ Nevertheless, to the extent that the joint venture procures materials, energy, fuel, and the like, from the domestic socialist economy and to the extent that it sells its products within that economy, it cannot help but be deeply involved in the network of what the Soviets call "material-

Nov. 4, 1972, trans. in 12 INT'L LEGAL MAT'LS 651 (1973). For an analysis of the provisions of Hungarian, Romanian, and other East European joint venture legislation see Gordon, *The Developing Law of Joint Ventures in Eastern Europe*, 9 TEX. INT'L L.J. 281, 303 (1974).

23. For a description of the Rom Control venture, see Donaghue, *Control Data's Joint Venture in Romania*, 8 COL. J. WORLD BUS. 83 (1973).

24. For a discussion of the different methods which are used by socialist countries to overcome the currency problem, including the "enclave" system, see Pederson, *supra*, note 3, at 401-06.

25. Law No. 1, *supra* note 23, art. 59.

26. A discussion of pricing and related problems may be found in Berman and Bustin, *supra* note 1, at 55-58; Pederson, *supra* note 3, at 424-30.

technical supply," and therefore it cannot help but be deeply involved in the central economic plan. In the Soviet context, therefore, I believe that the entire operation of a joint venture, down to the last details, should, if it is to succeed, be cleared in advance with at least a dozen different Soviet bureaucracies, starting with Gosplan and ending with the local soviet, and the clearing in advance would have to take place at least annually throughout the life of the enterprise. The original contract would have to include pre-arranged long-term renewable contracts with Soviet domestic producing and marketing enterprises and units as well as with Soviet Foreign Trade Organizations.

Additionally, the American partner to a joint venture in the Soviet Union may want to provide by contract for freedom from a number of aspects of the planned economy. A few of the things the American partner to a joint venture in the Soviet Union would want to contract out of include: directive planning, unlimited inspections, freedom from changes in plans or orders without prior consultation, absolute dependence on Soviet sources of supply, turnover taxes, and success indicators other than profits.²⁷

It is impossible to know how these fascinating and frustrating complexities should be resolved until they are converted from hypothetical speculations to actual experience. If the past is a reliable guide, they are apt to prove less troublesome in practice than in theory.

We return, in conclusion, to the contrast between joint ventures and industrial cooperation agreements as they are now structured. Although obviously a high degree of cooperation is required to make industrial cooperation agreements work, these agreements do not, as yet, deeply involve the non-Soviet party in the internal legal and institutional structure of the Soviet economy. Relationships are often commenced by agreement with the State Committee for Science and Technology, a committee of the USSR Council of Ministers charged with coordinating all scientific and technological research in the Soviet Union. Once the State Committee is satisfied, the Western firm then makes a contract with one of the Foreign Trade Organizations that carry on the actual export and import operations. For example, the Western firm would contract with Litsenzintorg if technology is to be transferred, or with one of the machinery importing Foreign

27. Some of these points of contract negotiations are elaborated upon in Pederson, *supra* note 3.

Trade Organizations (e.g., Mashine Import, Stankoimport, Prom-mashimport) if plant and equipment are to be transferred, and so on.²⁸ The Foreign Trade Organization's domestic customer — usually the economic ministry charged with responsibility for providing the particular type of product or service within the Soviet Union — may be brought into the discussions with the non-Soviet party at some stage of the contract negotiations; in addition, there will usually be relations with the ministry, and with particular state enterprises under the ministry, when supervision of installation of plant and equipment is required or when after-sales services are involved. However, a main feature of the arrangement is the high degree of centralization of decision-making on the Soviet side and the great distance that is maintained between the non-Soviet party and the ultimate Soviet users of his product. Only the Foreign Trade Organization is empowered to enter into a foreign trade transaction; the economic ministry and its enterprises, which have control of the technical side of the transaction, must remain in the background of the actual negotiations. Even the State Committee on Science and Technology is not empowered, under Soviet law, to enter into foreign trade transactions. The non-Soviet party may seek guarantees from the Soviet contract-partner that its domestic customers will act in certain ways, but he himself is not directly involved in their operations. He is asked to take the internal operations of the Soviet economy as a given.

The exclusion of foreign interference was, of course, one of the fundamental purposes of the Soviet Foreign Trade Monopoly, established by Lenin in April 1918,²⁹ before the introduction of the program of War Communism: all exports and imports were concentrated in the hands of a few central state agencies in order to protect the Soviet economy against foreign penetration. There was no desire to eliminate foreign trade but only to conduct it in such a way as to, first, reduce Soviet dependence on foreign capital and foreign goods and, second, advance Soviet economic development (principally by the importation of producer goods and technology). These two aims were among the basic objectives

28. For a complete list of FTOs and their functions (export, import, technical assistance and special services) see Berman and Bustin, *supra* note 1, at 30 n.24.

29. Sobranie Uzakononii RSFSR No. 33, item 432, translated in Quigley, *The Soviet Foreign Trade Monopoly* 202-04 (1974).

of the Revolution, and they remain essential parts of Soviet foreign economic policy.

Nevertheless, despite ideology, history has worked a substantial transformation in the nature of Soviet foreign economic relations. In the past 30 years, the Soviet economy has become an integral part of the world economy. This is more than a hope; it is a reality. The hope is that the reality will be increasingly recognized and more fully understood both by the Soviet Union and by its trading partners.

It was World War II which brought the Soviet Union back into the world economy. In the immediate post-war period, to be sure, Soviet economic ties with the United States, Western Europe, and Japan were broken by the Cold War. But by the same token, Soviet economic ties with Eastern Europe were greatly strengthened. From a short-range point of view, this could be viewed as Soviet economic domination over her "satellites." In a larger historical perspective, it was the creation of an interdependence between the Soviet economy and the economies of the Eastern European countries, which in turn retained some of their economic interdependence with the West. In time, all the socialist countries have become increasingly involved economically not only with each other but with virtually all other countries of the world.

As a result, Soviet economists and jurists, writing about the purposes of the Soviet Foreign Trade Monopoly, and about foreign trade planning generally, have added to the two original primary purposes — economic independence and industrialization — a third, namely, the promotion of the international division of labor. This refers in the first instance to trade with the other CMEA countries, but it also refers more broadly to trade with non-socialist countries.

The Eastern European countries are now leading the way in the development of new forms of international economic cooperation among themselves as well as with the West. A few joint enterprises — *sovместnye predpriiatiia* — have been established with the CMEA. Romania and Hungary have enacted laws that have paved the way for joint ventures with Western firms. The Soviet leadership is being very cautious, but it is unquestionably beginning to be seriously interested in joint ventures, especially with large U.S. firms. The degree of caution is itself a sign of the very great potential economic and political significance of such an intermarriage between Soviet state eco-

conomic organizations and American private corporations. I have in mind two obvious main points of significance: economically, once market-oriented Western managers start to operate within the Soviet planned economy, they may contribute to a decentralization of Soviet economic administration and a rationalization of the price structure; and politically, once mergers begin between Soviet and American organizations, the net of economic involvement may become so complex and strong that it will be able to contain political conflicts.