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# U.S.-SOVIET TRADE AGREEMENT AND INVESTMENT PROTECTION TREATIES

ANDRE W.G. NEWBURG \*

## I. INTRODUCTION

My remarks will focus on some aspects of Soviet international agreements dealing with trade, investment and financial matters, especially two commercial agreements between the Soviet Union and the United States: the trade agreement, which was already signed but not yet ratified by the U.S. Congress; and the investment treaty, which, at present, is being negotiated. The Soviet Union has to enact a vast amount of domestic legislation to adapt to a market economy, but it is through international agreements and through participation in multilateral arrangements, such as, the General Agreement on Tariffs and Trade (the GATT) and the European Bank for Reconstruction and Development (the EBRD), that the Soviet Union will become more closely integrated into the world economic system. Moreover, assumption of the obligations by the USSR in such international agreements is likely to have a significant effect on its domestic legislation and the pace of its economic reforms.

Until recently, the United States opposed Soviet membership in international financial institutions, such as, the IMF, the World Bank and the Asian Development Bank, largely on the ground that Soviet participation would be disruptive. That policy, however, now appears to have changed. For example, the United States, the Soviet Union, the EEC and some forty other countries have recently become founding members of the EBRD, whose central purpose is to foster political and economic reform in Eastern Europe. The United States insisted that, at least for an initial three-year period, Soviet borrowing from the bank be limited to the amount of its paid-in subscription, so that there will be no net capital transfer to the USSR. Nevertheless, it is significant that the Soviet Union has become a member of an international institution established to foster the transition towards open market oriented economies in Central and Eastern Europe.

## II. U.S.-SOVIET TRADE AGREEMENT

On June 1, 1990, Presidents Bush and Gorbachev signed the Agreement on Trade Relations (the Trade Agreement), which granted

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most-favored-nation status to the Soviet Union and made it easier for American companies to do business in the Soviet Union.<sup>1</sup>

From the Soviet perspective, "most-favored nation" status is important psychologically and symbolically, but Soviets agree that economically it is not urgent in the short run because of the relatively low level of Soviet-American trade and the limited export potential of the unsteady Soviet economy. Total trade between the United States and the Soviet Union amounted to only about \$5 billion in 1989, much of it consisting of American grain exports or imports of minerals from the Soviet Union.<sup>2</sup>

For the United States, the Trade Agreement is a sign of American interest in bringing the Soviet Union into the world economy. Although the granting of reciprocal most-favored nation status to the USSR is the centerpiece of the agreement, other important rights and benefits are included for American economic and business interests, including agreements with respect to tariff reduction, business facilities, protection of intellectual property rights and dispute settlement procedures.<sup>3</sup>

#### A. Lower Tariffs

Most-favored nation treatment would reduce tariffs on Soviet goods to an average of 5% from the present 40%. Also, this could make the Soviet Union a more attractive place for American companies to locate joint venture manufacturing plants for export sales to the United States.<sup>4</sup>

#### B. Business Facilities

The Trade Agreement contains a number of provisions intended to widen trade channels, including provisions permitting nationals of each country to open offices, advertise, meet with potential customers and otherwise promote commerce.

For American business, one of the most promising aspects of the Trade Agreement is the guarantee of faster consideration by Soviet

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1. Agreement on Trade Relations, June 1, 1990, Union of Soviet Socialist Republics-United States, 29 I.L.M. 946 [hereinafter Trade Agreement]; see *Major Agreements on Trade Facilitation, Grain Sales Signed at U.S.-Soviet Summit*, 7 Int'l Trade Rep. (BNA) No. 27, at 786 (June 6, 1990) [hereinafter *Major Agreements*]; Note, *Advancing Soviet-American Trade: The Legal Steps Necessary to Further Economic Sanctions*, 11 N.Y.L. SCH. J. INT'L & COMP. L. 463.

2. *The Economist Survey on the Soviet Union*, ECONOMIST, Oct. 20, 1990.

3. *Major Agreements*, *supra* note 1, at 786.

4. See generally Note, *Joint Venture Law in the Soviet Union*, 11 N.Y.L. SCH. J. INT'L & COMP. L. 499.

officials of applications for business accreditation.<sup>5</sup> Once accredited, American companies are to have various privileges in the USSR, including the right to import office equipment.<sup>6</sup> They will also have nondiscriminatory access to office space, housing, telecommunications and municipal services.<sup>7</sup> American firms will be given the right to hire Soviet nationals directly and to compensate them "on terms and in a currency that is mutually agreed between the parties."<sup>8</sup> The Soviets agree to take no longer than sixty days to approve or disapprove commercial accreditation. American firms will have the right to maintain local ruble accounts for use "in accordance with the applicable laws and regulations" of the USSR.<sup>9</sup> In order to achieve greater transparency of the Soviet regulatory system, the agreement also provides that each country's laws and regulations are to be made readily available to nationals of the other.<sup>10</sup>

### C. *Protection of Intellectual Property Rights*

One of the most important concessions obtained by the United States in the Trade Agreement is better copyright protection in the Soviet Union, including protection for computer software. Furthermore, in the field of industrial patents and trade secrets, the Soviets have undertaken to provide product patent protection, in addition to existing protection for processes, and to provide broad protection for trade secrets.

### D. *Dispute Settlement Procedures*

The article in the Trade Agreement on dispute settlement promises "national treatment with respect to access to all courts and administrative bodies."<sup>11</sup> It also encourages the use of arbitration agreements under the United Nations Commission on International Trade Law (UNCITRAL) rules.<sup>12</sup>

The Trade Agreement is an encouraging step, but it could be years before the Soviet Union develops into a major American trading partner. Opportunities for substantial expansion of business are limited, certainly in the short term. The Soviets do not produce much that the United States

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5. Trade Agreement, *supra* note 1.

6. *Id.* art. IV.

7. *Id.* arts. IV-V.

8. *Id.* art. IV.

9. *Id.* art. VII.

10. *Id.* art. VI.

11. *Id.* art. XI.

12. *Id.*

wants or needs. Soviet payment difficulties also create significant risks for American business. Thus, the immediate impact of the Trade Agreement, in many respects, may be largely political and symbolic.

### III. INVESTMENT PROTECTION TREATIES

Investment protection treaties aim to provide stable and non-discriminatory conditions for investment. The agreement typically contains assurances that investments by nationals of the other party will not be expropriated, impaired or discriminated against, and that adequate compensation will be paid in connection with any required taking, with recourse provided to arbitration in a neutral forum such as the Stockholm Chamber of Commerce.

The United States has recently begun negotiations on investment protection treaties with the Soviet Union and other East European countries. The Treaty Concerning Business and Economic Relations with Poland, signed in March 1990, achieves a high level of protection for American investors.<sup>13</sup> It provides, among other things, for reciprocal most-favored nation treatment, repatriation of export earnings and the progressive elimination of restrictions on the repatriation of zloty profits.<sup>14</sup> The treaty also contains important provisions with respect to dispute resolution. By such treaties, the United States is generally following a strategy of encouraging American business investment rather than committing large amounts of government aid.

The Soviet Union has concluded investment protection agreements with several countries, including Canada, Belgium, Finland, the United Kingdom and West Germany. South Korea and the Soviet Union initialed an investment protection agreement in September 1990. The United States has been engaged in negotiating an investment protection agreement with the Soviet Union since the beginning of this year. The American negotiators have indicated that the negotiations have served the purpose, not only of crafting a treaty, but, of informing and helping the Soviets understand the needs and expectations of foreign investors. Many observers believe that one of the keys to stimulating economic reform in the Soviet Union will be to improve the country's conditions for foreign investment. The treaty negotiations may have an influence on Soviet investment legislation, thereby making joint ventures more attractive.

The State Department has announced that there have been three rounds of negotiations during which a general agreement was reached on

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13. Treaty Concerning Business and Economic Relations, Mar. 21, 1990, United States-Poland, 29 I.L.M. 1194.

14. *Id.* arts. I-IV.

expropriation and dispute settlement provisions, but that it had not yet been possible to reach agreement on national treatment or on repatriation provisions. It is interesting that the State Department release noted that the Soviet republics and the central government are negotiating a new union treaty that would govern the relationships between the union and the fifteen republics. Presumably, this will raise many issues as to the authority and power of the union and of the republics in dealing with many of the matters typically covered by an investment protection treaty. The State Department comment on this issue is a diplomatic one; Soviet officials are continuing to study the concepts and responsibilities inherent in an investment protection treaty.

Thank you very much.

