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## Editor's Foreword

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# Denver Journal

## OF INTERNATIONAL LAW AND POLICY

### Editor's Foreword

The five-day Conference whose proceedings are reported in this book was held in January 1974 in the afterglow of the 1972 U.S.-U.S.S.R. Trade Agreement and in the preliminary shadows of the so-called Jackson (or Jackson-Vanik) Amendment. Both of these were the subject of much discussion at the Conference, and in view of subsequent events a few introductory words must be said about them.

In the 1972 Trade Agreement the executive branch of the United States government committed itself to the elimination or substantial reduction of a great many of the American restrictions on trade with the Soviet Union which had accumulated during the period of acute tension that followed World War II. By its own terms, however, the Trade Agreement could not take effect until the U.S. Congress took legislative action to grant most-favored-nation treatment to imports of Soviet products, that is, to accord to such imports tariff rates as favorable as those accorded to imports from any other country. In 1972 and 1973 the Administration proposed a new Trade Act which, among other things, would repeal the 1951 law subjecting imports from Communist countries (Yugoslavia was excepted from the beginning and Poland since 1957) to the very high rates of the 1930 Tariff Act or, to put it otherwise, denying them the benefit of the very substantial tariff reductions which have been made periodically under bilateral and multilateral trade agreements since 1934 and which are applicable to all other countries. However, a proposed amendment to the Trade Act, sponsored by Senator Henry M. Jackson in the Senate and Representative Charles Vanik (among others) in the House of Representatives, set a condition: in order for a "non-market economy" to receive most-favored-nation treatment it would have to show to the satisfaction of the Congress that it permitted free emigration of its citizens.

In January 1974 it seemed likely, though not certain, that the Jackson Amendment would eventually be enacted into law. No one knew, however, what effect its enactment would have on Soviet-

American trade relations. Perhaps the Soviet leadership would be able to live with it. In October 1974 that hope was raised by a statement of Senator Jackson in which he read a letter addressed to him by Secretary of State Kissinger reporting certain assurances which Mr. Kissinger had received concerning Soviet intentions with regard to citizens desiring to emigrate.<sup>1</sup> However, after Congress on January 3, 1975 finally passed the Trade Act of 1974 containing the Jackson Amendment,<sup>2</sup> the Soviet government denounced it as an interference in Soviet internal affairs and declared further that it would not accept a trade status that is discriminatory and it would therefore not put the 1972 Trade Agreement into force.<sup>3</sup> At this point it was supposed by many that the efforts of more than three years to

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1. See the report of Senator Jackson's press conference of October 18, 1974. The letter from the Secretary of State to Senator Jackson stated that in "discussions" with Soviet representatives the United States government had been "assured" that: the Soviet government considered punitive actions against individuals seeking to emigrate to be in violation of Soviet law and would not tolerate such practices; unreasonable impediments would not be placed in the way of persons seeking to emigrate; applications for emigration would be processed in order of receipt on a nondiscriminatory basis; hardship cases would be processed sympathetically; a special tax on emigration, based on reimbursement of the Soviet government for the education it had provided to the emigrant, which had earlier been introduced and later suspended, would not be reintroduced; and the United States would be permitted to bring to the attention of the Soviet government indications that the above listed criteria and practices were not being applied, such representations to receive "sympathetic consideration and response."

Senator Jackson announced his satisfaction with the "understanding," and saw in it a justification for including in the Trade Reform Act another amendment which would permit the President to waive for eighteen months the requirements of the Jackson Amendment. He added, however, that he would consider the release of 60,000 emigrants per annum to be a minimum "benchmark" of Soviet compliance, and unless this quota were reached, he would oppose extension of MFN status beyond eighteen months. The President and the State Department had no comment on Senator Jackson's announcement, except that the Secretary of State strongly reiterated that the understanding with the Soviet Union did not specify any minimum number of emigrants.

It was widely anticipated in the United States that the "assurances" received by the Secretary of State signified that the Soviet government would accept the conditions set forth in the Jackson Amendment and would seek to comply with them. In the light of subsequent Soviet actions, it is more likely that the Soviet government had hoped that its assurances given to the Secretary of State would lead to a withdrawal of the Jackson Amendment or at least to a more substantial modification than that which Senator Jackson made.

2. Trade Act of 1974, Title IV, Pub. L. No. 93-618 (Jan. 3, 1975).

3. See Tass Statement, Pravda, Dec. 19, 1974, containing the letter of Soviet Foreign Minister Andrei Gromyko of October 26, 1974, concerning the Jackson press conference, *supra* note 1; U.S. Department of State Press Release 13 dated Jan. 14, 1975, 72 DEP'T STATE BULL. 139 (1975), containing Secretary of State Kissinger's news conference of January 14 announcing Soviet intentions with respect to the 1972 Trade Agreement.

revive Soviet-American trade had been wholly frustrated and that the two countries were about to revert to the situation that existed from 1948 to 1971 when trade between them was virtually moribund.<sup>4</sup>

Yet this prediction, too, has thus far proved to be wrong. In fact, the 1972 Trade Agreement, which technically never took effect at all, has served as an actual framework for many aspects of trade relations between the two countries from the time it was signed in August 1972 until the time of this writing (September 1975). It is true that the Soviet government is not obliged to make further payments on its World War II "lend-lease" obligations; such payments had been bargained for most-favored-nation treatment.<sup>5</sup> It is also true that, in addition to the Jackson Amendment to the Trade Act, an amendment to the Export-Import Bank Act, enacted at about the same time, made extension to the U.S.S.R. of large U.S. government credits likewise conditional upon changes in Soviet emigration policy.<sup>6</sup> Some observers at the time were of the opinion that the credit restrictions were even more offensive to the Soviet government and constituted an even greater barrier to expansion of Soviet-American trade than discriminatory tariff treatment. Nevertheless, trade between the two countries, which rose dramatically in 1972-74, did not decline significantly in 1975, although it was undoubtedly hampered somewhat by the American restrictions and by the Soviet response to them.<sup>7</sup> Meanwhile, the President has indicated his firm intention to

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4. In 1971 trade turnover between the United States and the Soviet Union was approximately \$200 million. This represented .2 per cent of total U.S. trade and .8 per cent of total U.S.S.R. trade. In 1972 trade turnover between the two countries was approximately \$650 million. In 1973 it was approximately \$1.4 billion. In 1974 it was approximately \$960 million.

5. Under the Lend-Lease Settlement of October 18, 1972, the Soviets were to pay to the United States \$722 million over a period ending July 1, 2001. \$12 million was paid on October 18, 1972, and \$24 million was to be paid on July 1, 1973, and \$12 million on July 1, 1975. In addition, 28 equal annual installments of approximately \$24 million were to commence in 1974 or 1975 after most-favored-nation treatment was granted to the Soviet Union. See U.S. DEPARTMENT OF COMMERCE, U.S.-U.S.S.R. COMMERCIAL AGREEMENTS 1972: TEXTS, SUMMARIES, AND SUPPORTING PAPERS 103 (1973). The installments of July 1, 1973, and July 1, 1975, were paid. The Soviets have not denied that they owe the United States for certain materials delivered under the World War II agreements, especially materials delivered after the end of the war. However, they have always insisted that the wartime agreements contemplated repayment in the context of the establishment of normal trade relations between the two countries after the war, and that such normal trade relations require the granting of reciprocal most-favored-nation treatment.

6. See Export-Import Bank Act of 1945, 1975 Amendments, 12 U.S.C. § § 635-635n.

7. U.S.-U.S.S.R. trade turnover in the first six months of 1975 totalled \$659 million. If this figure is projected on a twelve-month basis, it exceeds that of 1974 and that of 1973. On the other hand, the total trade of each of the two countries was substantially larger in 1975 than in 1974. In addition the increase of Soviet trade with

put before the Congress proposals to repeal the credit and tariff restrictions enacted in December 1974 and January 1975.

It has been necessary to recount this dramatic if dismal story in order to provide a proper setting for the reports presented here. It might otherwise be erroneously assumed that since they were written a year before the enactment of the Jackson Amendment they are now—to the extent that they are concerned with that Amendment—only of historical interest. On the contrary, they are as timely as ever, for the conditions that existed in 1973 when the Jackson Amendment was first under serious discussion are still in existence in 1975, namely, there are special tariff barriers erected against imports into the United States from the Soviet Union and most other Communist countries<sup>8</sup> and the Administration, supported by a combination of business interests and academic groups, is exerting strong pressure to remove those barriers in the near future.

However, the reader should not expect to find in this book an impartial presentation of both sides of this critical question. It hardly needs to be said that the American participants in the Conference opposed Soviet restrictions on emigration. However, none of them favored the use of tariff or credit restrictions as a means of attempting to induce the Soviet government to remove those restrictions.

It should be added that a look at the Table of Contents will show that much else is discussed in the book besides the Jackson Amendment.

The chief organizers of the Conference were, on the Soviet side, V.N. Kudriavtsev, Director of the Institute of State and Law of the Academy of Sciences of the U.S.S.R. since 1973, and his predecessor in that post, V.M. Chkhikvadze, and on the American side, William D. Rogers, a Washington lawyer, who in 1973-74 was President of the American Society of International Law, and Professor John N. Hazard of Columbia University, who was then one of the vice-presidents of the Society. They were greatly assisted by Charles W. Maynes of the Carnegie Endowment for International Peace, which provided the financial support for the Conference. Columbia Law School served as host.

In addition to the seven Soviet and five American reporters whose contributions are presented in these pages, three other Ameri-

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Japan, West Germany, and other industrial countries was proportionately greater than that of Soviet trade with the United States.

8. In August 1975 Romania acceded to the requirements of Title IV of the Trade Act of 1974 and obtained Congressional approval of the grant of most-favored-nation treatment. It thus joins Poland as a "non-market economy" entitled to receive the benefits of U.S. tariff reductions made since the enactment of the first Reciprocal Trade Agreements Act in 1934. (Poland is saved by a "grandfather clause" in Title IV, as is Yugoslavia, if Yugoslavia can be considered to be a "non-market economy.")

cans—Martin Domke, Donald Straus, and Isaac Shapiro—presented excellent supplementary papers and participated in the discussions. Mr. Rogers and Professor Hazard also participated in the discussions. John R. Connor, Jr., a vice-president of the U.S.-U.S.S.R. Trade and Economic Council, took part in two of the sessions. On the Soviet side, E.A. Vorankova of the U.S.S.R. Ministry of Foreign Trade also participated in the Conference although she did not present a report.

The discussions of the reports were lively and interesting, but they did not lend themselves to lengthy reproduction. Instead, highly abbreviated summaries have been inserted at several points in the text.

For the participants, the Conference—the first to be held between Soviet and American legal scholars<sup>9</sup>—provided an important opportunity for an open and friendly exchange of professional opinions. The justification for publishing this book, however, is not the need to have a record of the proceedings but rather the hope that its readers will find it interesting, informative, and useful in analyzing and evaluating legal and institutional aspects of Soviet-American trade.

*Harold J. Berman*

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9. A conference of Soviet and American legal scholars was scheduled to be held in 1965, sponsored by the Association of American Law Schools and the Institute of State and Law of the U.S.S.R. Academy of Sciences, but the Soviet side withdrew because of United States bombing of North Vietnam. The American reports were published by the Association of American Law Schools under the title *THE LAW OF U.S.-U.S.S.R. TRADE: PAPERS PREPARED FOR A CONFERENCE OF SOVIET AND AMERICAN LEGAL SCHOLARS* (1965).

