

THE FOREIGN TRADE REGIME IN THE COMECON COUNTRIES TODAY

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I. THE SCOPE OF REFORM

Recently, in three important aspects, foreign trade techniques in socialist Europe were changed significantly. Economic expansion, the growing sophistication of national economies in the entire area and the need for closer cooperation, both among the members of the Council for Mutual Economic Aid (hereinafter Comecon) and with the free economy countries, have rendered the system of artificial separation of import and export activities from the production of goods obsolete. Accordingly, foreign trade has been made largely the responsibility of the producers again in an effort to involve them directly in more efficient competition for foreign consumers.¹ Second, in the effort to promote growing efficiency within the Eastern Bloc, the General Conditions of Delivery of 1958² and the international code of sales and deliveries³ were

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1. See generally K. Grzybowski, *Soviet Private International Law* 46 (1965); K. Grzybowski, *The Socialist Commonwealth of Nations: Organizations and Institutions* 29, 57 (1964); S. Pisar, *Coexistence and Commerce: Guidelines for Transactions between East and West* 243-316 (1970); Hoya, *The Comecon General Conditions—A Socialist Unification of International Trade Law*, 70 *Colum. L. Rev.* 253 (1970).

2. *Obshchie Usloviia Postavok Tovarov mezhdu Vneshnetorgovymi Organizatsiiami Stran-Uchastnits Soveta Ekonomicheskoi Vzaïmopomoshchi* (General Conditions for the Delivery of Goods Between Foreign Trade Organizations of Member-Countries of the Council for Mutual Economic Assistance), in *Mnogostoronnee Ekonomicheskoe Sotrudnichestvo Sotsialisticheskikh Gosudarstv* 121, 297 (Institut Gosudarstvi Prava Akademii Nauk SSR 1967). An English translation of the 1958 General Conditions appears in Berman, *Unification of Contract Clauses in Trade Between Member Countries of the Council for Mutual Economic Aid*, 7 *Int'l & Comp. L. Q.* 659 (1958). Hereinafter all references to the 1958 General Conditions of Delivery will be made by noting the relevant section number in the text.

3. *Polska Izba Handlu Zagranicznego* (Polish Chamber of Foreign Trade), *Foreign Trade Documentation Series* (1969).

reformed. Finally, in line with this development, the organization of commercial arbitration tribunals in the Comecon countries was tightened and significantly streamlined.⁴ In this regard, it is important to recognize that socialist foreign trade regimes were the result of Soviet experience dating back to when the Soviet Union was the only socialist country in the world, and that the institutions were designed primarily from this isolated point of view. The fundamental principle that foreign trade is a state monopoly and the responsibility of governmental organizations remains fully preserved in all Comecon countries with the possible exception of Yugoslavia.

II. FOREIGN TRADE AGENCIES

A. *The Soviet Union*

In the Soviet Union, the handling of foreign transactions was initially the responsibility of foreign trade delegations, a peculiarly Soviet organization, either attached to, or a part of, the diplomatic mission accredited to foreign governments abroad. Foreign trade delegations had no personality except that of the State which they represented, and their transactions engaged its financial responsibility. They were given a status in which two elements were combined. Although a part of the diplomatic mission, and therefore enjoying sovereign immunity as a trading agency, foreign trade delegations were subject to local jurisdiction and were responsible for discharging the obligations of the Soviet State from assets under their control, for that part of Soviet Government property which served directly the diplomatic aspect of their activities.⁵

As an instrument of foreign trade, trade delegations were found to be inadequate. In due course, the Soviet Union began to experiment with new forms of trading organizations which, after some development, have assumed the name of foreign trade associations. These associations are governmental agencies with the status of legal entities subordinate to the Ministry (Commissariat) of Foreign Trade, which issues charters determining their role in the foreign trade field. Each foreign trade association is responsible

4. K. Grzybowski, *The Socialist Commonwealth of Nations: Organizations and Institutions* 214-45 (1964) [hereinafter K. Grzybowski, *Socialist Commonwealth*].

5. K. Grzybowski, *Soviet Private International Law* 72 (1965) [hereinafter K. Grzybowski, *Soviet Law*].

for a specific line of products imported or exported abroad. Its directors and higher personnel are appointed by the Minister of Foreign Trade.⁶ The only exception to the commodity approach in the determination of the functions of foreign trade associations is Soviet trade with Finland, the sole responsibility of Lenfintorg, which handles exports and imports to and from Finland.⁷

The Soviet mechanism of foreign trade required little adjustment to direct commerce with the socialist countries. An adjustment became necessary when economic cooperation was transformed into a systematic reorganization of the industrial structure within the entire Comecon area. In response to a recommendation by the highest level of Comecon, a meeting of the party leaders of the Comecon countries in 1958, the Soviet Union established a State Committee for Economic Relations attached to the USSR Council of Ministers. The Committee, with the aid of four foreign trade associations controlling the import and export of machinery and factory equipment, began to implement a long range plan for industrial integration.⁸

B. *Modifications of the Soviet Model*

Yugoslavia initiated experimentation with different arrangements. In the nineteen-sixties, other Comecon countries followed suit, seeking credits, investment capital and a greater share of the free-economy markets, particularly in the categories of manufactured products, machinery, factory equipment and complete industrial plants. The realities of trade, internal problems affecting industrial processes, the drive towards raising the quality and quantity of commodity production and the attractiveness and competitiveness of goods exported abroad mitigated against the total separation of production from trade organizations. As a result, nearly all of the socialist countries of Eastern Europe were forced to modify their foreign trade organizations to de-emphasize the separation of trading agencies from production and to stress direct involvement of the producer in selling his product abroad or buying the kind of goods (prefabricated goods, machinery, raw materials and equipment) required by his factory or enterprise. Although a wide variety of standardized staples may be disposed of routinely in foreign markets, other forms of foreign trade, such as sales of

6. Id. at 72-73.

7. J. Jakubowski, *Przedsiębiorstwa w Handlu Międzynarodowym* 34-35 (1970).

8. K. Grzybowski, *Soviet Law* 74.

plants and machinery, fashions and clothing, automotive equipment, electronics, etc. necessitate direct contact between the producer and the sales market.

Currently, the socialist world appears to be split into two groups. China, North Korea, Mongolia, North Vietnam, as well as Cuba and Albania and the Soviet Union itself, have retained the original Soviet model of foreign trade organization. Yugoslavia has not only rejected the Soviet model of foreign trade organization, but also restructured the state monopoly of foreign trade. Other Eastern European socialist countries have combined the Soviet system of foreign trade monopoly with a new approach to handling foreign trade transactions. Bulgaria holds a special place in that group. While retaining government monopoly over foreign trade, the Bulgarians have abolished specialized agencies and replaced them with unions of producers and combinations of governmental and cooperative organizations responsible both for foreign trade operations and for serving the domestic market. However, the number of those unions is quite limited.⁹

Yugoslavia regards foreign trade operations as the responsibility of the association of producers under Article 4 of the Law of April 4, 1965.¹⁰ An association of producers is a separate legal entity financially accountable for all its obligations. Foreign trade in Yugoslavia is regulated by the Law of July 2, 1962, amended in 1965 and 1966.¹¹ Imports and exports are free and may be restricted only by federal legislation. At present, two such restrictions are in force. First, socialist enterprises alone have the right to engage in foreign trade activities. Privately owned industries and enterprises may not trade abroad. Second, enterprises embarking upon foreign trade operations must be of an appropriate size, permitting the employment of trained personnel to manage foreign trade transactions. In order to facilitate the creation of such organizations (Yugoslavia is not a country of large companies and corporations), the Law of July 12, 1967¹² provides that smaller enterprises may combine to establish trading consortiums and concerns which include economic organizations of other countries. Although the legal position of a foreign partner may not be more favorable than that of the Yugoslav counterpart, a foreign partner may transfer its

9. J. Jakubowski, *supra* note 7, at 53.

10. Law No. 34, *Sluzbeni list Demokratske Federativne Jugoslavje* (Yugoslav Official Gazette) (1965) [hereinafter *Sluzbeni list*].

11. Law No. 245, *Sluzbeni list* (1966).

12. Law No. 243, *Sluzbeni list* (1967).

share of profits from foreign trade operations. Organizations authorized to participate in foreign trade operations may establish agencies, branches or partnerships with foreign firms abroad as well. The only requirement is registration with the Yugoslavian Ministry of Foreign Trade.¹³

In other socialist countries, the government monopoly, directed exclusively by governmental agencies, remains the primary trading organization. In Poland, for example, foreign trade transactions are the responsibility of agencies organized as government enterprises (similar to the Soviet model), cooperative organizations and joint stock companies. Although different in form, these structures are still functionally homogeneous in the sense that they do not represent private economic initiative; however, there are cooperatives serving the farming interests of peasants. The same principle of State interest applies to joint stock companies which, despite their highly capitalistic form, represent the interests of a single stockholder, the State. Until recently, joint stock companies were composed of a rather limited number of service companies of commercial agencies and a large transfer and shipping firm which continued to function (despite its nationalization) under the name of the old "International Shipping and Transfer C. Hartwig Co."¹⁴ Otherwise, the bulk of foreign commercial transactions was handled by government enterprises of the Soviet type; now, however, the emphasis appears to have shifted to the direct involvement of producers in foreign trade operations. Recent Polish legislation tends to encourage the formation of new joint stock companies and cooperative organizations in order to organize producers to engage in foreign trade transactions.¹⁵

The legal status of foreign trade enterprises in Poland is determined by the 1950 decree on government enterprises¹⁶ and the 1964 Civil Code. These enterprises are chartered, organized and staffed by the Ministry of Foreign Trade or by other competent ministries. Their foreign trade operations must conform to the foreign trade regulations, identical for all types of foreign trade organizations as regards the legal capacity to make contracts, licensing of imports and exports and registration with the Polish Cham-

13. J. Jakubowski, *supra* note 7, at 54-55, 86.

14. *Id.* at 28-29.

15. Resolution of the Council of Ministers of Dec. 7, 1966, *Monitor Polski*, No. 69 (1966).

16. *Dziennik Ustaw* (Polish Official Law Gazette), No. 18 (1960) [hereinafter *Dziennik Ustaw*].

ber of Foreign Trade. Cooperative organizations and their unions are governed by the Law of February 17, 1961,¹⁷ while joint stock companies are regulated by the provisions of the old Commercial Code. These basic provisions afford significant opportunities to adapt the actual organization of foreign trade mechanisms to policy requirements. On December 7, 1966, the Council of Ministers decided to encourage the direct involvement of producers in foreign trade operations by permitting broad associations of producers to establish their own foreign trade agencies and by authorizing large government enterprises to handle their own transactions.¹⁸ Normally, in the case of a large company or a government enterprise, a foreign sales or imports department becomes an integral part of the enterprise's operation. Sometimes, smaller firms are encouraged to organize a joint stock company, of which they become stockholders, to handle their foreign trade transactions and represent their interests exclusively. The direct result of this approach is the multiplication of foreign trade organizations. Poland, for instance, has some 100 such agencies, compared to approximately 50 for the Soviet Union. This approach also tends to expand the regulatory functions of the Ministry of Foreign Trade, with an attendant emphasis on aspects of bureaucratic control, as well as directly involving producers in foreign trade transactions.¹⁹

Czechoslovakia is also experimenting with an approach resembling the Polish model, although on a grander scale. The basic organization is a separate foreign trade enterprise directly subordinate to the Foreign Trade Minister. Its applicability is limited, however, to smaller firms and producers. In addition, two new organizational forms have appeared. First, already existing foreign trade enterprises representing producers of specific assortments of commodities and goods were made a part of larger economic units, organized in the form of trusts or concerns (e.g., Skoda), which handle their products exclusively and are subordinate to competent economic ministries or industrial organizations. The second form enables those foreign trade enterprises to create a type of joint stock company whose shareholders are the organizing producers and firms. The shareholders elect boards of directors and managers, and thus control the operations of the trading agency.²⁰

17. *Dziennik Ustaw*, no. 12 (1961).

18. *Monitor Polski*, no. 69 (1966). See also B. Vaganov, *Organizatsiia i tekhnika vneshnej torgovli i drugikh sotsialisticheskikh stran* 24 (1963).

19. J. Jakubowski, *supra* note 7, at 29, 33.

20. P. Kalensky, *Pravni otazky rizeni zahranicniho obhodu clenских statu RVHP*, in *Studie z Mezinarodniho Prava* 109 (1966). Knapp, *The Function*,

The new foreign trade system introduced in the German Democratic Republic typifies the same trend. The East German innovation underscores another tendency present in Eastern Europe toward a higher degree of regional integration in the industrial sector. Currently, this reform is well advanced. In addition to foreign trade enterprises, East Germany has introduced other foreign trade structures. In accordance with the provisions of the ordinance of April 16, 1964,²¹ a number of the larger enterprises may be given the right of direct participation in foreign trade transactions, a typical example being the Zeiss Corporation. Still another approach, as in Poland and Czechoslovakia, subordinates foreign trade enterprises to branch industrial associations or economic ministries other than the Ministry of Foreign Trade. A fourth device involves the practice of licensing specific enterprises to conclude single deals which either exclusively affect that particular enterprise or, when combined with plenary power to handle a transaction, may require the cooperation of other enterprises and a considerable amount of technical expertise (e.g., plant installation, organization of a system of services, etc.).²²

Although the Rumanian system of independent foreign trade enterprises continues to be maintained, it is being supplemented and gradually replaced by associations of enterprises organized as corporate entities and empowered to make contracts with foreign traders. The aim is to give these associations control of foreign trade operations, particularly with respect to exports, thus allowing them to establish direct contacts with foreign clients and to explore the needs of a foreign market. In certain situations, major participants in associations are accorded the right to contract abroad. Sometimes, a joint foreign trade department has been established to handle the foreign transactions of member enterprises. Certain associations also manage imports, particularly of machinery and factory equipment.²³

Organization and Activities of Foreign Trade Corporations in the European Socialist Countries, in the Sources of the Law of International Trade 52 (C. Schmitthoff ed. 1964).

21. Recht in der Aussenwirtschaft 10 (Ministry of Foreign Trade of the German Democratic Republic 1968).

22. Schmandra & Treufeldt, Die Eigengeschäftigkeit der Exportbetriebe als Methode zur Steigerung des Ökonomischen Nutzeffekts der Aussenwirtschaftstätigkeit, in Recht in der Aussenwirtschaft 10, 82, 83-86 (Ministry of Foreign Trade of the German Democratic Republic 1968). See F. Enderlein, Recht im Aussenhandel 22 (1969).

23. Directives of the Central Comm. of the Rumanian Communist Party (1967); Florescu, The Legal Status of Foreign Trade Enterprises—Their Juridical Personality—in the Socialist Republic of Rumania, in Rechtsfragen der Kooperation zwischen Unternehmen in Ost und West 48 (1967).

In Hungary, foreign trade rights are allocated to large firms, which for a number of reasons must maintain direct connections with the foreign markets toward which their production is oriented. These firms enjoy a virtual monopoly in their line of production, or collaborate closely with foreign firms, again particularly with enterprises dealing in capital goods and factory equipment. Similar privileges are accorded to firms which, in their manufacturing processes, depend upon foreign imports of semi-finished products, parts or raw materials. In addition, import and export firms have been organized to represent smaller enterprises in foreign trade transactions. These firms differ from the foreign trade enterprises of the Soviet type, which they have gradually begun to replace, in that they buy and sell on commission rather than on their own account.²⁴

III. THE LEGAL STATUS OF FOREIGN TRADE ORGANIZATIONS

After a good deal of experimentation, the corporation and the contract—two typically capitalistic institutions—were found to be indispensable for the orderly administration of economic activity in the Soviet Union and, subsequently, in all socialist countries. These devices were required in order to identify the success of entrepreneurial initiative, the allocation of resources and the necessity for strict accountability. The role and usefulness of the contract as an organizing instrument in industry and commerce were empirically rediscovered, although for a while the replacement of the contract by the economic plan and administrative directives was envisioned.²⁵ The use of the contract in turn demonstrated the need for civil law codes regulating economic transactions as an indispensable part of the Soviet legal order (Unity of Civil Law Doctrine). Civil law provided the only acceptable legal framework for foreign trade operations in which governmental enterprises and agencies would have to cooperate with foreign traders and business partners. Moreover, civil law, as a legal basis for economic cooperation with free economy countries, was the only platform on which the legal equality of partners and fair dealing could be assured. As a noted Soviet jurist explained:

24. Osiatynski & Szilagyi, *Handel zagraniczny w nowym mechanizmie gospodarczym* WRL, *Handel Zagraniczny*, no. 3 (1968).

25. Cf. K. Grzybowski, *Soviet Law* 82-83. See V. Gsovski & K. Grzybowski, *Law, Government and Courts in the Soviet Union and Eastern Europe 1835 (1959)*.

When a transaction is referred to the rule of law competent in the place of contract, such rules of civil law are applied which a particular state enforces with regard to its physical and juristic persons. Otherwise, a discrimination against the foreign partner would occur, which, in turn, would result in the creation of a special legal regime for the trade organizations of the Soviet Union, thus upsetting foundations of the economic cooperation of the USSR with the capitalist countries.²⁶

Accordingly, the primary objective of the Socialist approach to foreign trade relations is to assure that, in all questions of status, the *lex patriae* (the law of the incorporation) of the foreign trade organization should be accepted as determinative of questions regarding their capacity, representation, extent of responsibility for obligations incurred and the validity of contracts.

In the Soviet Union, the status of foreign trade organizations is controlled by Article 13 of the Fundamentals of the Civil Legislation of the Soviet Union and of the Union Republics of 1962. In Poland, Article 40 of the Polish Civil Code of 1964 contains analogous provisions. In Czechoslovakia, which has enacted a separate Code of Foreign Trade (1963), Article 13 of that Code applies; while in Hungary, Article 31 of the Civil Code of 1959 deals with government organizations having the status of a separate legal entity. In Rumania, the relevant law is Article 37 of the Decree of 1954 on Persons Physical and Juristic; in Bulgaria, Article 6 of the Law on Government Enterprises of 1960 is applicable. Finally, in Yugoslavia, the law which determines the regime for foreign trade organizations is contained in Article 21 of the Organic Law on Socialist Enterprises of 1965.²⁷

The basic principle which determines the legal status of all these organizations is that they are separate legal entities, with assets which constitute their property. They are not responsible for the obligations of other similar governmental organizations, nor do their transactions impose liability upon the State and its exchequer. Although created by government decree, governmental enterprises, by whatever name described, are not included in the national budgets except to the extent of their profits, which constitute a part of the national revenue, or their losses, which are covered by gov-

26. S. Bratus, O normowaniu prawnym stosunkow majatkowych w SSSR, *Panstwo i Pravo* 631 (1960). Schmitthoff, *The Law of International Trade, Its Growth, Formulation and Operation, in The Sources of the Law of International Trade* 5-24 (C. Schmitthoff ed. 1964).

27. For the relevant parts of the texts of these laws, see J. Jakubowski, *supra* note 7, at 56-65.

ernment subsidies. In effect, their commercial activities are carried out on the basis of the so-called commercial accounting. Their status is somewhat comparable to that of a public corporation in a free economy country which, although organized along commercial lines, performs public functions for the benefit of the State. In the Soviet Union and other socialist countries, foreign trade associations, are subject to the rules of the civil code and federal regulations which determine:

The scope of the legal capacity of foreign trade organizations as governmental economic juristic persons, special legal status of trading organizations and their legal responsibility, their relations with the Ministry of Foreign Trade of the USSR and other foreign trade agencies of the government, exercise of legal powers . . . representation and form of contracts; property subject to execution.²⁸

These arrangements seek to combine two functions under the aegis of the trade agency: first, the role of government agency discharging an important function—i.e., the governmental monopoly of foreign trade; second, the role of a private entity, which enables the agency to enter into contracts regarded as commercial and, therefore, governed by the rule of civil law both in the Soviet Union and abroad. The latter role, in particular, assumes importance in the submission of contractual dispute, to commercial arbitration where the determination is controlled by the will of the parties.²⁹

As separate legal entities, government enterprises active abroad are not extended sovereign immunity and are subject to the jurisdiction of foreign courts.³⁰ Their property and commercial operations abroad are liable to taxation; moreover, their imports and exports are subject to customs duties, licensing and other restrictions in the foreign countries in which they do business. Creditors of these organizations may sue them in foreign and domestic courts. However, government economic enterprises must be distinguished from public persons which, although endowed with a separate entity

28. Genkin, *Pravovoe polozhenie sovetskikh eksportnykh i importnykh obedinanii za granitsej*, [1960] *Problemy mezhdunarodnogo chastnogo prava* 7-8; see also *Sovety po dielu eksporta*, [1968] *Vneshnaia Torgovla* 146; *Pozdniakov, Gosudarstvennaia monopoliia vneshnej torgovli v. SSSR*, [1967] *Sovetskoe Gosudarstvo i Pravo* 76.

29. K. Grzybowski, *Soviet Law* 89.

30. Cf. Pugh & McLaughlin, *Jurisdictional Immunities of Foreign States*, 41 *N.Y.U.L. Rev.* 28-33 (1966). See also *Dralle v. Republic of Czechoslovakia* (Sup. Ct. Austria 1949), 1950 *Int'l L. Rep.* 155.

status, are a part of the government and enjoy governmental immunity.³¹

Generally, the thesis that the law of incorporation is the competent law in all matters of status was accepted by the courts of the free economy countries. The only exception in this respect appears to be the question of legal representation, which in terms of public policy (*ordre public*) interests is subject to *lex fori* determination.³² Another consequence of incorporation as a government economic enterprise is that foreign trade organizations are subject to government regulations, including import and export licenses and prohibitions, which constitute *acta imperii* for which the economic enterprise is not responsible.

This matter was the subject of two decisions of commercial arbitration tribunals. Both tribunals held that government refusal to issue an export license constitutes an "Act of God" absolving the purveyor from the fulfillment of the contract. In a decision of the Soviet Foreign Trade Arbitration Board of July 3, 1958, in the case of the Israeli firm, Jordan Investments, Ltd.,³³ the plaintiff firm claimed damages in connection with the Soviet defendant's refusal to supply oil in accordance with a contract made by the parties.³⁴ The Soviet foreign trade agency, Soiuznefteksport, raised the defense of impossibility of performance due to the refusal of the Soviet

31. See *Krajina v. Tass Agency*, [1949] 2 All E.R. 274 (Ct. App.), 77 *Journal du Droit International* 888 (1950). L.J. Cohen said:

It seems to me that the evidence as to the nature of Tass must depend on its constitution and must be a question of Russian Law, and that we must look to the Russian statutes for any relevant evidence that is adduced as to Russian law . . . The evidence falls short of that which would be necessary to establish that Tass is a legal entity and that the Union of Soviet Socialist Republics, by procuring its incorporation, had deprived that particular department of the immunity which normally attaches to a department of a sovereign state. . . .

77 *Journal du Droit International* at 888.

32. Knapp, *supra* note 20, at 64-67. Belgian courts, e.g., seem to be of the opinion that for the purpose of the legal process, *lex patriae* of the corporation must cede before the rules of civil procedure of the country concerned, as the Code constitutes public law, and part of the public order of Belgium. *Volkseigen Betrieb Jenaer Glasswerk, Schot und Gen. v. Carl Zeiss Stiftung*, [1959] *Pasicrisie Belge* II 41.

33. *Jordan Investments, Ltd. v. Soiuznefteksport*, 11 *Sbornik informatsionnykh materialov: sektsiia prava vsesoiuznoi torgovoi palaty* 23 (1961) (Moscow Foreign Trade Arb. Comm'n 1958) (Collection of informational materials: law section of the All-Union Chamber of Commerce). An English translation of the award appears in 53 *Am. J. Int'l L.* 800 (1959).

34. The amount of damages sought was \$2,396,440.69. 53 *Am. J. Int'l L.* 800.

Government to issue an export license in connection with the Israeli-Egyptian War of 1956. The Soviet Foreign Trade Arbitration Board sustained the defense on the grounds that licensing of exports was an act of government power (*actum imperii*) over which the firm had no control.³⁵ The 1964 Civil Code of Russian Republic of the USSR deals with failure of performance in articles 222 and 235.³⁶ Article 222 provides that "the party who has not performed its obligation or who has performed in an improper manner, is materially responsible only in case of fault (intent or negligence) except in cases provided for in the law or under the terms of the contracts. Absence of fault must be proved by the party in breach." According to article 235, "[O]bligations are terminated by the impossibility of performance, if it was caused by circumstances for which the debtor is not responsible."³⁷

In the second case, the Polish Arbitration Commission entertained the claim of an East German firm which sued for damages for the breach of a contract for delivery of a certain amount of Polish coal. The Polish firm's defense was impossibility of performance based upon a prohibition, issued by the Chairman of the Polish Council of Ministers, barring the export of additional coal above amounts already delivered. The Polish Arbitration Commission sustained the defense, arguing that its decision and the resolution of the litigation on the civil law level did not preclude a subsequent finding of Polish responsibility for the breach of the international treaty. The Commission suggested that the East German firm could pursue its claims on that level.³⁸

While the distinction between *acta gestionis* and *acta imperii* retains its validity even within the orbit of the Comecon countries, a tendency towards restricting the impact of this concept in Comecon relations appears to be gaining currency. For example, the Polish-East German Protocol of December 19, 1968,³⁹ provides that an

35. Cf. S. Pizar, *supra* note 1, at 274-77; Schmitthoff, *Frustration of International Contracts of Sale in English and Comparative Law, in Some Problems of Non-Performance and Force Majeure in International Contracts of Sale 153-55* (1961); Berman, *Force Majeure and the Denial of an Export License under Soviet Law—A Comment on Jordan Investments, Ltd. v. Sojuznefteksport*, 73 *Harv. L. Rev.* 1128 (1960); Domke, *The Israeli-Soviet Oil Arbitration*, 53 *Am. J. Int'l L.* 787 (1959); Sassoon, *The Soviet-Israel Oil Arbitration*, *J. Bus. L.* 116, 132 (1959).

36. R.S.F.S.R. 1964 *Grazh. Kod.* (Civil Code of the Russian Republic of the U.S.S.R.) arts. 222, 235.

37. Author's translation. See K. Grzybowski, *Soviet Law* 79.

38. See J. Jakubowski, *supra* note 7, at 61.

39. *Handel Zagraniczny*, no. 1 (1969).

economic plan containing a change in foreign trade deliveries does not justify the *force majeure* (Act of God) defense, and that non-performance, either total or partial, as a result of changes in the economic plans for the period covered by the contracts shall be treated as a breach of contract.

In most general terms, there is little apparent difference in the legal regime governing foreign trade transactions with socialist countries when compared with that applicable to capitalist contracts. However, some socialist foreign trade experts advance the view that intra-bloc trade requires a stricter regime and that, for instance, the *force majeure* (Act of God) defense—relying upon governmental refusal to issue a license—should have no place in relations between socialist countries. These critics believe that members of the Socialist Commonwealth of Nations should demonstrate a higher degree of discipline and performance in fulfillment of their contractual obligations, particularly in those areas of economic activity where co-operation is recommended by the Council for Mutual Economic Aid.⁴⁰

IV. THE GENERAL CONDITIONS OF DELIVERY OF 1968

Another major feature of foreign trade reform within Comecon was the promulgation of a new version of the bloc's International Code of Sales.⁴¹ At its XXII Session (1967), the Permanent Commission for Foreign Trade of Comecon approved a revised form of the General Conditions of Delivery, in force since 1958, between the European members of the Socialist Commonwealth of Nations and the Mongolian People's Republic of the Commonwealth's Far Eastern Branch.⁴² The 1958 Conditions⁴³ were originally a result of an experience dating back to 1951, when Comecon's Secretariat put at the disposal of its members a set of rules entitled, "General Unified Conditions of Trade as Regards Agreements for Mutual Deliveries of Goods by the Member Countries of the Council for Mutual Economic Aid."⁴⁴

40. J. Jakubowski, *supra* note 7, at 64; see also Enderlin, *Die Anwendung in- und Ausländischen öffentlichen Rechts auf Aussenhandelsverträge*, [1963] *Staat und Recht* 8.

41. See note 3 *supra*.

42. Reutt, *Znowelizowane Ogólne Warunki Dostaw, Handel Zagraniczny* 5 (1969). Cf. K. Grzybowski, *Socialist Commonwealth* 57-61; See also Hoya, *supra* note 1, at 253.

43. See note 2 *supra*.

44. Cf. K. Grzybowski, *Socialist Commonwealth* 57-58. Reliance is placed herein upon information gleaned by the author from East German sources.

A. *The General Unified Conditions of 1951*

From the very beginning, these rules, which were not compulsory and could be readily adapted to meet specific conditions of economic cooperation between any two partners in the socialist bloc, became very popular. Even China, formally not a member of the Council, adopted the rules to regulate its transactions with other members of the bloc.⁴⁵ The usual implementing procedure involved the signature of bilateral protocols based upon the recommended rules of the Unified Conditions, by the foreign trade ministers of the Comecon countries to govern all types of trade operations concerning the import and export of goods. These protocols dealt with such questions as the form and terms of contracts, delivery of goods, packaging and transport, claims and counterclaims of the parties and disposal of disputes. They also directed the applicable law for the determination of various aspects of disputed transactions.⁴⁶

The practical effect of these "General Unified Conditions"⁴⁷ was to create a considerable degree of uniformity in the law of international sales within Comecon. In addition, delivery requirements for contracted commodities were established and various conflict of laws problems were resolved. In effect, the protocols resulted in the enactment of the General Unified Conditions as the law governing the most frequent types of foreign trade transactions and the achievement of significant unification in the law of international commerce. As the General Unified Conditions became incorporated into the internal foreign trade regulations, they also had considerable bearing upon the status of trade with free economy countries.

B. *The Conditions of Delivery of 1958*

Techniques of foreign trade in the period from 1951 until 1957 reached a high degree of sophistication. When, in 1957, Comecon decided to introduce a multilateral clearing system, permitting clearance of accounts between partners by the accumulation of

See also S. Pizar, *supra* note 1, at 256.

45. K. Grzybowski, *Socialist Commonwealth* 57-58; Reutt, *supra* note 42, at 6.

46. Protocols are in substance mutual agreements on the exchange of goods, e.g., a kind of planned contract, not a law. They are not published. However, models of such protocols are reported, from time to time, in foreign trade publications of the ministries of foreign trade of the socialist countries.

47. Polska Izba Handlu Zagranicznego (Polish Chamber of Foreign Trade), *Foreign Trade Documentation Series* (1957).

surpluses in the trade with other members, a first step towards establishing an international trade market in the socialist system was taken. This advance, in turn, required increased uniformity in the forms and legal aspects of foreign trade among Comecon countries. In 1957, the Foreign Trade Commission of Comecon produced a new improved version of the General Conditions of Delivery.⁴⁸ This version went into effect as of January 1, 1958, and was incorporated directly into the body of foreign trade regulations of each member country.

The General Conditions of Delivery of 1958 governed forms of contracts, their conclusion and coming into force, delivery, date of delivery, mutual claims in this connection and included special provisions regarding machinery and factory equipment. They also regulated transport techniques and the responsibilities of the parties related to the use of different kinds of transport. An important section of the General Conditions of Delivery embodied provisions dealing with transfer of risk problems. The Conditions also covered questions of payment, instructions of the parties and notifications required by law. Other provisions also dealt with liability for non-performance, the effect upon the contract of various occurrences and events affecting relations between the parties, including Acts of God and international agreements made by governments of the trading partners. According to Article 65 of the Conditions of 1958, "all disputes arising from contracts in foreign trade relations shall be subject to arbitration of the country of the respondent."

C. *The General Conditions of Installation Contracts of 1962*

The rapid success of the 1958 Conditions of Delivery encouraged the Council to attempt the same method of unification in two other areas of foreign commerce. Similar sets of rules dealing with General Conditions of Installation Contracts⁴⁹ and General Conditions of Technical Services⁵⁰ among Comecon members were approved and adopted by the member countries to take effect as of July, 1962.⁵¹

48. See note 2 supra.

49. Polska Izba Handlu Zagranicznego (Polish Chamber of Foreign Trade), *Ogólne Warunki Montażu RGPW 1962* (1970). See Morozov, *Mnogostoronnyye soglasheniia—deistvennaia forma ekonomicheskovo sotrudnichestva sovialisticheskikh stran*, 12 *Sovetskoe Gosudarstvo i Pravo* 75-85 (1963). See also *Vneshniaia Torgovlia*, no. 1, at 46 (1963).

50. Polska Izba Handlu Zagranicznego (Polish Chamber of Foreign Trade), *Ogólne Warunki Obsługi Technicznej RGPW 1962* (1970).

51. Reutt, supra note 42, at 5-6.

The purpose of the 1962 protocols establishing the General Conditions of Installation Contracts and of Technical Services was quite analogous. Contracts for the installation of machinery and factory equipment could be standardized in similar fashion to contracts of delivery. The Conditions of Installation Contracts deal also with such matters as the mode of their conclusion, their coming into force, as well as with incidental questions pertaining to the contract itself. They provide regulations regarding the import and re-export of tools bought by personnel and engineers in charge of the job, the treatment of foreign workers and experts, payments for the use of tools and for the work of specialists, rates and method of computation of salaries, wages and honoraria, technical conditions and rules of work, and the duties of parties with respect to accommodating teams of experts and technicians, their travel and medical expenses, social security, paid leave and all other matters connected with their presence in the territory of another country. The Conditions of Installation Contracts also contain rules dealing with liability for nonperformance and the legal consequences of Acts of God.

Article 47 of the Installation Contracts Conditions directs the settlement of disputes between parties by arbitration, excluding resort to courts, in the country of the respondent. The arbitration tribunal convened under Article 47 is also competent to deal with counterclaims.

Article 48 of the Conditions provides that the substantive law of the purveyor shall apply to all questions not covered, or not fully covered, by the Conditions of Installation Contracts or by the contract itself. The Conditions shall not apply, however, if the parties to the contract expressly agree that the nature of the particular transaction requires that a different set of terms shall govern and such terms are expressly stated.

D. *The General Conditions of Technical Services of 1962*

The General Conditions of Technical Services⁵² deal with two types of service contracts. One model contract governs the guarantee period of delivered machinery and factory equipment. The seller of the equipment who issues warranties regarding its performance must be informed and given the opportunity to discharge his obligations. He must also have an opportunity to import spare parts and to bring in personnel, tools and equipment required to fulfill his

52. See note 50 *supra*.

warranties. A second model contract deals with the organization of a network of servicing stations. The contract may provide for the training of local personnel to operate such services. Finally, the purveyor of services may also agree to provide machinery and equipment supplied from a different source. The settlement of disputes arising under the General Conditions of Technical Services follows the procedures provided in Section 65 of the General Conditions of Delivery of 1958.

E. *The 1968 Reforms*

For nearly a decade, the Conditions of Delivery drafted in 1958 and the more specialized 1962 Conditions controlled the transactional aspect of trade within the socialist commonwealth. However, the 1958 Conditions constituted the most important element of the foreign trade regime. In 1968, they were revised and expanded. The general purpose of the reform was to make the General Conditions of Delivery an even more perfect instrument governing foreign trade between Comecon members. Some of the provisions of the 1958 Conditions had not been detailed enough. At times, in order to fill gaps in the provisions, resort had to be made to the internal legal rules of the participating countries, with a resulting lack of uniformity of application. In short, the general purpose of the revision was to achieve greater perfection in contractual processes and the creation of a truly international code of intra-bloc sales. The extent of the revision is partly discernible from the fact that the 1958 version contained only 64 sections, while the 1968 version was expanded to 110 sections.

Innovations introduced by the General Conditions of Delivery of 1968⁵³ fall into three categories. First, an important degree of precision was introduced in defining offer, revocation and acceptance in section 1. Previously, parties were forced to fall back on the rules of their domestic law. Since the principle of split jurisdiction

53. *Obshchie Usloviia Postavok Tovarov Mezhdru Organizatsiiami Stran-Chlenov SEV (General Conditions for the Delivery of Goods between Organizations of Member Countries of Comecon) (1968)*. An English translation of the 1968 General Conditions of Delivery appears in Hoya & Quigley, *Comecon 1968 Conditions for the Delivery of Goods*, 31 *Ohio St. L. J.* 1-51 (1970). Reliance herein is placed on the official text of the 1968 General Conditions of Delivery published by Polska Izba Handlu Zagranicznego (Polish Chamber of Foreign Trade) in Russian, German and Polish. For an in depth analysis of the 1968 General Conditions, see Hoya, note 1 *supra*; Hoya & Quigley, *supra*. This article shall deal only with major changes, introduced by the 1968 General Conditions, important to the reorganization of the foreign trade pattern within Comecon.

governed each contract, the parties were, in effect, subject to two legal systems, depending upon the role of the party in the litigation, for jurisdiction and forum followed the respondent. Now the General Conditions of 1968 assure uniform solution of these problems.

A second major addition to the General Conditions deals with claims arising from faulty deliveries. The 1958 Conditions provided only for the seller's obligation to remove the defects (i.e., repair the defect, or replace a faulty piece of equipment, a part, or a shipment of unacceptable commodities). Other forms of redress depended upon the provisions of the respondent's domestic civil law, which again jeopardized uniformity in the treatment of claims. Furthermore, the presentation of claims and reclamations was regulated with little precision, causing delays and a good deal of controversy. The new regulations seek to establish a more precise regime in this respect. The present section 31 provides that options as to choice between repair or reduction in price belong to the buyer. The seller has the option to select the method of removing the defects. He may either replace defective goods, or effect repairs. However, if the buyer elects the alternative of a reduction in price, the seller may still choose either to eliminate the defect or to replace the goods or defective part of the goods, or to grant an agreed price reduction. It is only when the seller defaults again and fails to eliminate defects in an agreed or technically justified time that the buyer may demand a reduction in price. In such case, the buyer has the right to claim the penalty provided under the Conditions. Section 31 also contains provisions as to coverage of losses not reaching the agreed penalty or surpassing the agreed amount, the right of the buyer to rescind the contract, the mutual obligations of the parties in the event the delivered goods are unusable, and the role of the arbitration tribunal in determining the right of the buyer to exercise arbitration rights.

Sections 36 to 38 of the 1968 Conditions deal with all problems regarding the duty of the seller to provide equipment delivered with spare parts and guarantees in this respect, depending upon the durability, character, etc., of the goods. Parallel solutions were also adopted in section 75 which covers the rights and claims of the parties in cases where no contractual guarantees are involved. In that event, the provisions of section 75 apply as to shortages in deliveries or as to the quality of delivered goods.

Basic provisions regarding time limits for reclamations as provided in the 1958 Conditions were retained. The statute of limitation for claims concerning the quality of commodities is six months

from the date of delivery; for claims concerning quantity, the statute is three months. With respect to goods for which a guarantee had been given, claims must be presented within thirty days after expiration of the guarantee period, provided that the defect was discovered within the guarantee period. Claims and reclamations regarding the quality and quantity of perishable fresh vegetables and fruit must be presented within shorter periods, provided for in contracts. One innovation provides that failure to present a claim within the prescribed time deprives the buyer of the right to resort to arbitration.

The novelty of the 1968 Conditions in this connection centers on the more detailed provisions regarding the data necessary for reclamations which permit the seller to consider settlement of claims upon receipt. In such case, the seller has a duty to deal with a claim in substance, i.e., to immediately recognize or refuse the claim, in part or in whole, within agreed time limits or within sixty days if the contract contains no relevant provision. In cases concerning the delivery of complete plants or installations, the time limit for the seller's reply is ninety days. Where the petition for reclamation does not contain the required data, it is the duty of the seller to inform the buyer of the need for additional information. Should the petition be granted before the expiration of the reclamation period, the buyer has the right to amend the terms within seven additional days, even if the reclamation period itself has expired. There are other provisions governing the extension of time limits for answering reclamation petitions and sanctions for failure to reply, etc. Should the buyer refuse to extend the time limit accorded the seller to answer the reclamation petition, the buyer may resort immediately to arbitration, with the costs of the proceedings being charged according to the outcome of the litigation. However, should the seller fail to answer the claim and the buyer resorts directly to arbitration, the costs of the litigation will always be awarded to the buyer. A further innovation, again calculated to improve the overall standard of performance, involves the provisions regarding the statute of limitations.

These new changes are often the result of experience. Section 74 of the 1958 Conditions provided that:

The substantive law of the seller's country shall apply to relations of the parties regarding deliveries of goods on those questions that are not regulated or are not fully regulated by contracts or by the present General Conditions of Delivery.⁵⁴

54. Author's translation.

The meaning of this provision was the subject of divergent interpretation by Polish and East German arbitration tribunals. The Poles read this provision as requiring *renvoi* to the general provisions of the civil and commercial law in force. Their German counterparts thought that section 74 referred to regulations governing contracts between governmental enterprises. In fact, German commercial arbitration applied shorter terms of prescription and a stricter statute of limitations for the presentation of claims or counterclaims resulting from foreign trade transactions. Finally, the difficulty was solved in direct negotiations between the foreign trade ministers of the two countries, who accepted the Polish position. This viewpoint found reflection not only in the fact that the matter is now regulated by the section on the statute of limitations and uniformly mandated prescriptions, but also in the text of section 110 which replaced the 1958 version. Section 110 now provides in sub-section 2, which follows the original text of section 74, that:

2. By the substantive law of the seller's country shall be understood the general provisions of civil law, and not the special provisions established for relations between socialist organizations and enterprises of the seller's country.⁵⁵

The general period of limitation of actions was fixed at two years. A special statute of limitations of one year was instituted for three kinds of actions: claims for defects in quality, or quantity, of goods, and actions based on claims for payment of a penalty. The statute of limitations must be pleaded in arbitration proceedings. Performance after the period of limitations has elapsed does not entitle the debtor to reclaim his performance. The debt may be set off only with the agreement of both parties. Upon the running of the statute of limitations on the main demand, the period of limitation of action on supplementary demands shall expire as well. The period of limitation may be interrupted by the instigation of an action before the commercial arbitration tribunal or by a written acknowledgment of the debt by the debtor.

Third, the general purpose of the new Conditions was to provide a code for international trade among the socialist countries as independent of internal legislation as possible. At the same time, however, there is a considerable question to what extent these rules are obligatory (*jus cogens*) upon Comecon members. The 1958 General Conditions were interpreted to be applicable, unless contracts between the parties stated otherwise, thus giving the parties an option either to follow the rules of the general Conditions or

55. *Id.*

provide otherwise. Subsequently, in order to systematize trade and contractual activity and to assure uniformity of legal forms, the view that the 1958 Conditions of Delivery constituted an obligatory rule of law for the international trade of the Comecon countries was accepted.

That attitude became subject to considerable strain since the constant expansion of industrial production in the Soviet bloc countries required diversification of forms and conditions in contracts for new types of commodities. In due course, legal experts of the member countries grew seriously divided on this point and various commercial arbitration tribunals represented differing points of view. The principle that the parties may depart from the pattern established by the General Conditions was accepted, but it was accompanied by the insistence that their freedom in this respect is limited to specific situations requiring different rules or arrangements only.⁵⁶ At present, the prevailing opinion appears to be that the parties themselves should decide whether to adhere to the rules of the General Conditions. Comecon's Permanent Commission for Foreign Trade now shares this view. It has ruled, for example, that the parties may, by agreement, set their own terms as to various conditions of delivery of goods, depending upon the mode of transportation utilized (motor or rail).⁵⁷

This ruling represents an important precedent in the foreign trade regime among the Comecon countries, particularly with regard to the interpretation of the General Conditions of Delivery. For the first time in its history, the Commission assumed the role of an official interpreter of the General Conditions of Delivery, a role which previously belonged exclusively to the arbitration tribunals. In the past, differences of opinion among the arbitration panels were usually eliminated by agreement between the foreign trade ministers of the countries involved, since no supranational body existed which could overrule the legal decisions of the national arbitration courts. Under the system of the 1958 General Conditions, a good deal of guidance for the national arbitration tribunals was found in the decisions of the Soviet arbitration commissions which served as dispensers of legal solutions. Soviet practice is frequently quoted in the decisions of national tribunals.⁵⁸ The respect for Soviet know-how in matters of foreign trade and the desire to establish and follow practices common to all countries within the socialist orbit is attested by the fact that Soviet arbitration commissions have

56. Reutt, *supra* note 42, at 7-8.

57. *Id.* at 6.

58. See K. Grzybowski, *Socialist Commonwealth* 240-41.

been summoned on several occasions to arbitrate in disputes between members of the commonwealth in which no Soviet interests were involved.⁵⁹ The Soviet commissions accepted these requests because their rules of procedure do not exclude the possibility of rendering services in disputes between third parties. While the rules of other arbitral tribunals, in principle, also make their services available to any country, within or without the commonwealth, only Soviet arbitration commissions have handled disputes of this type in any volume.

With the Permanent Commission for Foreign Trade assuming the role of the official interpreter of the General Conditions, the situation has changed materially. Despite the fact that the General Conditions of 1968 have not been the subject of a formal international agreement, but have been given effect only by means of internal administrative instructions issued by the Ministers of Foreign Trade of individual Comecon countries to the State trading agencies, the action of the Commission suggests that the General Conditions are truly a piece of international legislation. The Commission's recommendation that the General Conditions should be given effects as of January 1, 1969, also indicates that it enjoys a supranational authority. However, the possibility that the Commission shall act, therefore, as a court of a last resort does not appear probable. Although it is a supranational body possessed of a high degree of authority, the Commission is not a judicial tribunal. In its sessions, it must rely on the services of experts and upon a process of negotiation and discussion. It may act only in situations in which legislative-type action is required and, therefore, its rulings cannot apply to either pending or decided cases. There is, nevertheless, a possibility that a Comecon tribunal of appeals or a council of arbiters of participating countries may be created in order to deal with legal questions arising in the course of foreign trade litigations. However, it is too early to forecast what its role will be either within the dispute settling process or in developing a uniform regime of foreign trade in the socialist system.

V. COMMERCIAL ARBITRATION IN THE COMECON COUNTRIES

Three factors determine the functions of Eastern European arbitration tribunals:⁶⁰ (1) jurisdiction; (2) organization; (3) pro-

59. *Id.*

60. For a comprehensive discussion of Eastern European arbitration practices, see S. Pisar, *supra* note 1, at 381-477; Leff, *The Foreign Trade Arbitration Commission of the USSR and the West*, 24 *Arb. J.* 1 (1969).

cedure.⁶¹ In the area of jurisdiction, a distinction must be drawn between the role of the tribunals in the foreign trade regime among socialist countries and in their relations with the free economy nations. Arbitration as a method of resolving disputes arising from foreign transactions is indicated both in the Comecon treaties and in those dealing with foreign trade outside the Comecon organization.⁶² The treaties differ, however, in one important detail. Only the Comecon agreements provide for compulsory and exclusive jurisdiction in the commercial arbitration tribunals set up initially for that purpose. The most important of these agreements are the General Conditions of Delivery of 1968, which provide in section 90 (replacing section 65 of the 1958 Conditions) that:

1. All disputes that may arise out of a contract or in connection with it shall be subject, to the exclusion of the jurisdiction of general courts, to consideration in arbitration procedure in the arbitration tribunal established for such disputes in the defendant's country, or by agreement of the parties in a third member-country of the Council for Mutual Economic Aid.
2. A counterclaim and a demand for set-off arising from the same legal relationship as the original suit shall be subject to consideration in the same arbitration tribunal that is considering the original suit.⁶³

As mentioned above, the General Conditions of Delivery apply to trade relations among the members of the Council, i.e., USSR, Bulgaria, Czechoslovakia, Hungary, Mongolia, Poland and Rumania. Albania, at one time a member of the Council for Mutual Economic Aid, has not participated in its activities since 1962.⁶⁴ Since 1964, Yugoslavia has been an associate member of Comecon on the basis of an agreement negotiated in September, 1964; its participation has included work in the Permanent Commission for Foreign Trade. Although the Yugoslavs have limited their membership to matters of economic cooperation (foreign trade and industrial development), their involvement is directly connected with the overall goal of the General Conditions of Delivery and the institution of commercial arbitration as practiced in the

61. See Knapp, *supra* note 20, at 52-69. See also A. Rubanov & A. Tschkvadze, *Some Aspects of the Unification of the Law of Sales, Unification of the Law Governing Sales of Goods* 33 (1966).

62. J. Hacker & A. Uschakov, *Die Integration Osteuropas 1961 bis 1965*, 126-28 (1966); *Sbornik mezhdunarodnikh dogovorow. . . . po voprosom torogovogo moreplavania* (1959).

63. Author's translation.

64. J. Hacker & A. Uschakov, *supra* note 62, at 126-27.

Comecon countries.⁶⁵ In addition to the General Conditions of 1968, two 1962 supplementary agreements dealing with installation contracts and servicing contracts contain similar provisions.⁶⁶

Another intra-bloc agreement incorporating an arbitration provision was concluded between the shipping administrations of the Danubian states in Bratislava on April 26, 1955. It deals with towing, assistance to ships and persons in distress, harbor administration and agency, and provides in its section 70 as follows:

Shipping administrations participating in the present agreement shall adopt proper measures for the peaceful settlement of all disputes which may arise in the execution of the present agreement or in connection with all related matters. Disputes, which are not peacefully settled, shall be subject to arbitration in the country of the defendant—jurisdiction of the general courts being excluded. The parties may also agree that an arbitral tribunal of another country shall be competent to adjudicate their disputes.⁶⁷

Compulsory commercial arbitration does not constitute a part of the legal regime in East-West economic transactions, primarily as a result of the different relationship between the State and the organization of foreign trade operations in free economy countries. A Western government may arrange for the solution of disputes by means of commercial arbitration, but the decision to submit a specific problem to arbitration can only be made by the trading organization rather than by the State. However, the Geneva Convention on the Protocol on Arbitration Clauses,⁶⁸ the Geneva Convention on the Execution of Foreign Arbitral Awards,⁶⁹ Convention on the Recognition and Enforcement of Foreign Arbitral Awards,⁷⁰ and the European Convention on International Commercial Arbitration⁷¹ all provide for the enforcement of arbitral awards rendered in disputes resulting from foreign commerce, provided that parties have contractually agreed to arbitration. The same rule applies to arbitration procedures prepared by the United Nations Economic Commission for Europe on January 20, 1966, which govern "where parties provide that disputes arising or to arise out

65. *Id.* at 127-28.

66. See notes 49 & 50 *supra*.

67. *Sbornik mezhdunarodnikh dogovorow. . . . po voprosom torogovogo moreplavania* 409 (1959). Author's translation.

68. Sept. 24, 1923, 27 L.N.T.S. 157.

69. Sept. 26, 1927, 92 L.N.T.S. 301.

70. June 10, 1958, 330 U.N.T.S. 38.

71. Apr. 21, 1961, 484 U.N.T.S. 384.

of a contract made between them shall be referred to arbitration under the Economic Commission for Europe's Arbitration Rules."⁷²

Commercial arbitration tribunals, as presently functioning in the socialist countries, are designed to serve trade both within and beyond the bloc. The first institutions of this type were established in the early nineteen-thirties in the Soviet Union, when it was the only nation in the world which had adopted a socialist system. But in the organization of commercial arbitration tribunals, socialist countries have closely followed models developed in free economies. Accordingly, their organization emphasizes independence from the official administrative mechanism of the State and they function within the circle of economic interests of the producers and merchants. Each socialist country has created its own international chamber of commerce, which acts as the official sponsor of commercial arbitration. Chambers of commerce, first established in the Soviet Union and later imitated in all socialist countries, are organized as quasi-social institutions, in effect as associations or representatives of the trading interests of each country.⁷³ The main function of the chambers of commerce is to provide an organizational framework for commercial arbitration.

Commercial arbitration bodies in socialist countries fall into two categories. Countries with considerable shipping interests and extensive maritime trade have established separate arbitration tribunals for maritime commerce. China, Czechoslovakia, East Germany, Poland and the USSR have jointly organized an international tribunal for maritime commerce in Gdynia to handle cases involving one or more of the parties. Other members of Comecon have created arbitration tribunals for all categories of foreign trade transactions.

The Soviet statute on the Maritime Arbitration Commission of the All-Union Chamber of Commerce, approved on December 15, 1930, set the pattern for other socialist institutions of this type. In 1932, a Foreign Trade Arbitration Board was established and was also attached to the All-Union Chamber of Commerce.⁷⁴ The first of the people's democracies which emerged after World War II to follow the Soviet example was Yugoslavia (1946). Its main arbitration commission was replaced in 1954 by a Foreign Trade Arbitration Court which, although slightly reconstituted, continues

72. L. Kos-Rabcewicz-Zubkowski, *East European Rules on the Validity of International Commercial Arbitration Agreements* 288 (1970).

73. K. Grzybowski, *Socialist Commonwealth* 224.

74. L. Kos-Rabcewicz-Zubkowski, *supra* note 72, at 215-25.

to operate under rules published in 1958.⁷⁵ In the following years, similar tribunals were successively organized in Poland, Czechoslovakia, Bulgaria, Hungary, Rumania, East Germany and Albania.⁷⁶

The first tribunals only remotely resembled the Soviet model, being shaped, on the whole, upon the Western pattern. However, in due course, arbitration tribunals were reconstructed to fit the needs of socialist trade. Initially, some of these institutions permitted registration of comparatively large panels of arbitrators and provided for a simple and informal procedure. As foreign trade between socialist countries expanded and the integration of the national economies gained momentum, these rather loosely organized panels of arbitrators became unsatisfactory and were replaced by smaller and more cohesive organizations.

The present organization of commercial arbitration tribunals follows the Soviet pattern. Panels of arbitrators are attached to international chambers of commerce, which appoint or register them and provide a mailing address for requests to institute the arbitral process. Usually, it is the responsibility of the chambers of commerce, which function as parent institutions, to enact rules of procedure. Members of the panels of arbitrators are selected for a period of up to two years. Sometimes, the chairman of the chamber of commerce or the plenary meeting of the chamber elects a so-called presidium of the tribunal and a secretary to handle the tribunal's business during the preliminary proceedings and to administer its affairs. In certain tribunals, this role is fulfilled by a single officer (secretary general) who administers the business of the arbitration tribunal. Some Comecon members limit the number of arbitrators on the panel. For example, the Albanian panel has only seven members. The Soviet Foreign Trade Arbitration Commission and the arbitral tribunals of Bulgaria and Rumania number fifteen arbitrators each, whereas the Soviet Maritime Arbitration Board has twenty-five members. The Polish Arbitration Tribunal is constituted of a panel of a minimum of thirty arbitrators; the arbitral tribunals of Czechoslovakia, East Germany, Hungary and Yugoslavia do not limit the number of arbitrators on their panels to any specific number.

Rules of jurisdiction depend on two criteria to determine the

75. V. Gsovski & K. Grzybowski, *supra* note 25, at 820-21.

76. See K. Grzybowski, *Socialist Commonwealth* 223-41. English texts of the rules of East European Arbitral Tribunals, brought up to date, are available in L. Kos-Rabcewicz-Zubkowski, *supra* note 72, at 119-238. Reliance herein is placed on the Polish text of the rules published by Polska Izba Handlu Zagranicznego (Polish Chamber of Foreign Trade) (1970).

scope of commercial arbitration: (1) the subject matter of the dispute, and (2) the class of persons admitted as parties to a dispute. The Soviet statute on the Foreign Trade Arbitration Commission states that the Commission was established "for arbitration of disputes arising from legal transactions involving foreign trade." The statute on Maritime Arbitration is more specific and lists the following classes of disputes as within its jurisdiction:

(a) disputes over compensation for assistance rendered by seagoing vessels to each other, or by seagoing vessels to a rivercraft or vice-versa (salvage); (b) disputes arising out of collision of seagoing vessels and rivercraft, or disputes arising from damage caused by seagoing vessels to port structures; (c) disputes arising from agreements on chartering seagoing vessels, agency services rendered to seagoing vessels, carriage of goods by sea, sea towage of vessels or rafts, as well as disputes arising from agreements on marine insurance; (d) disputes arising from damages caused to fishing vessels and other fishing gear, as well as from other damage caused in the sea fishing trade.⁷⁷

The Maritime Arbitration Commission also handles disputes arising in connection with the sailing of seagoing vessels and rivercraft on international rivers.

The jurisdictional provisions of the Gdynia Tribunal (Court of Arbitration for Marine and Inland Navigation) are even more elaborate.⁷⁸ They list as within the Tribunal's jurisdiction disputes arising from:

Charter parties and bills of lading,
 Contracts of handling goods,
 Brokerage and forwarding contracts,
 Insurance policies,
 Collisions of ships and assistance when a seagoing or inland vessel is involved,
 Damages to port accommodations and equipment,
 General coverage.

The Tribunal, however, is not competent in disputes involving labor issues.

Some of the tribunals offer their services only in disputes in which one party is a national of the tribunal. Other Comecon members stand willing to provide their arbitration services in any dispute so long as the matter relates to a foreign trade transaction and the parties have agreed to submit their disputes to a tribunal's

77. L. Kos-Rabcewicz-Zubkowski, *supra* note 72, at 215-25.

78. *Id.* at 174 et seq.

decision. Some of the statutes expressly offer the services of the arbitration tribunal when both parties are foreign and the case has no connection with the national economy of the tribunal's country.

Jurisdictional provisions, *rationae materiae*, found in the statutes and rules of the foreign trade arbitration tribunals are less specific than those found in the statutes of the Maritime Arbitration Tribunals. Albanian rules, for example, mention foreign sales, contracts of commission, agency, transport, insurance and storage as well as all other operations of foreign trade.⁷⁹ Rules of the Bulgarian Tribunal purport to deal with all civil disputes between Bulgarian economic organizations on the one hand, and foreign physical or juridical persons on the other.⁸⁰ Not all rules are specific in determining the persons who may sue or be sued in commercial arbitration proceedings. The Polish rules, for instance, are primarily concerned with the subject matter of the dispute, inasmuch as they restrict commercial arbitration to true foreign trade transactions:

The scope of activity which is assigned to the college of arbiters is to determine disputes resulting from bilateral commercial transactions, or from transport or insurance of goods, if one of the parties is a physical or a juristic person permanently residing outside the borders of the Polish People's Republic.⁸¹

Jurisdiction is based on the agreement of parties to submit their disputes to arbitration. It may take the form of a general arbitration clause in an international treaty or the form of a specific arbitration clause, included either in the contract covering the original transaction from which the dispute originated, or in a subsequent agreement concluded even in the course of the proceedings.

It appears, therefore, that an unbridgeable chasm exists between intra-Comecon trade and what may be conveniently labeled East-West economic relations. In practical terms, the conditions of engaging in commercial transactions with trade organizations of the socialist countries favor the jurisdiction of socialist tribunals. In the initial period of Soviet trade with capitalist countries, which lasted until the early nineteen-thirties, all contracts were made by the foreign trade delegations and were negotiated abroad. This

79. Id. at 119.

80. Id. at 163-64.

81. Id. at 127 et seq. Author's translation.

practice subjected the contracts, in accordance with the rules of trade and navigation agreements concluded with the free economy countries, to the jurisdiction of foreign courts and their *jus fori*. Since 1935, the responsibility for the bulk of foreign trade transactions was shifted from foreign trade delegations to foreign trade associations located in the Soviet Union. Subsequently, most foreign trade contracts have been made in the Soviet Union, which subjects them to the jurisdiction of Soviet courts and their *jus fori*. Furthermore, the usual contract form used by the Soviet foreign trade associations and, after World War II, the trading agencies of other socialist countries submits disputes arising from the transaction to arbitration in accordance with rules governing the contract itself. In effect, therefore, although submission to arbitration is a requisite in all specific contracts between the parties in terms of practical solutions, both trade relations within and beyond the bloc fall under the same regime.⁸²

VI. TRENDS

Reform has gone in two directions. In a number of the socialist countries of Eastern Europe, reforms regarding the legal capacity to make foreign trade transactions have liberalized the foreign trade regime. Instead of being highly concentrated, the power to make such contracts is now diffused within a fairly large circle of organizations, although it is still strictly controlled. Moreover, the reforms give foreign businessmen access to socialist markets in those countries in the sense that the importer, although still controlled by the foreign trade plan (with the exception of Yugoslavia), becomes the consumer. This development also permits direct cooperation between various commodities, primarily in the area of machinery and industrial equipment. It represents an important opportunity for market penetration by foreign importers or exporters, especially when planned targets become prospective and lend themselves to expansion or restriction, provided that balance is maintained. It also offers an opportunity for the economic integration of various industries. The fact that the General Conditions of Delivery of 1968, along with the additional General Conditions of Installation and Services Contracts of 1962, have provided an international legal system and dispute-settling mechanism in the area of intra-bloc collaboration suggests that the latter effect may also have been the aim of these reforms.

82. See K. Grzybowski, *Soviet Law* 38, 72.