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George M. Armstrong Jr.

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### Recommended Citation

Armstrong, George M. Jr. (1983) "Private Enterprise in a Planned Economy: Implementation and Nullification of Soviet Law," *Cornell International Law Journal*: Vol. 16: Iss. 1, Article 2.

Available at: <http://scholarship.law.cornell.edu/cilj/vol16/iss1/2>

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# PRIVATE ENTERPRISE IN A PLANNED ECONOMY: IMPLEMENTATION AND NULLIFICATION OF SOVIET LAW

*George M. Armstrong, Jr. †*

## INTRODUCTION

The Soviet Union's adoption of a new Constitution in 1977 signaled to many western scholars a fundamental change in Soviet policy concerning the rights of individuals to use private property for profit-making activities.<sup>1</sup> The new Constitution appears to acknowledge that the state owned, centrally planned economy has been unable to satisfy demand for food and light consumer goods. In addition, it seems to indicate that Soviet leaders have approved an expanded role in the economy for private production. In 1977, however, it was not apparent whether the Soviet government would implement the new constitutional provisions, or whether the modifications were significant only as propaganda.

Sufficient time has passed to judge, at least preliminarily, both the effect of the provisions of the new Constitution on the rights of individuals to use private property for profit, and the degree of official commitment to private enterprise as an alternative means of production. The responses of central, regional, and local legislative bodies, administrative agencies, collective farm managers, academic commentators, and individual farmers and handicraftsmen to the new constitutional norms demonstrate that implementation of this fundamental law in the Soviet Union is a complex process. The pol-

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† Associate Professor of Law, New York Law School. J.D. University of Pennsylvania, Ph.D. Princeton University. Author of *THE SOVIET LAW OF PROPERTY* (1983).

The author wishes to thank Professors Myres McDougal, B.J. George, James Brook, and George Dent of New York Law School for their comments on an earlier version of this paper. Andrew Penson, a third year student at this school, also assisted in the preparation of the manuscript.

1. See, e.g., Ginsburgs and Pomorski, *A Profile of the Soviet Constitution of 1977*, in *THE CONSTITUTIONS OF THE U.S.S.R. AND THE UNION REPUBLICS: ANALYSIS, TEXTS, REPORTS 3* (F.J.M. Feldbrugge, ed. 1979); Hazard, *Constitution for Developed Socialism*, 20 L. E. EUR. 1 (Part II 1978); Luryi, *New Constitution of the U.S.S.R. From Draft to Law*, *id.* at 35.

icies of the highest officials are often stymied by the hostility of their subordinates toward those policies, as well as by bureaucratic inertia, deliberate footdragging, and manpower and resource shortages.

The new rights to use private property for profit relate primarily to the agricultural sector. In addition, Soviet leaders favor some liberalization of the restrictions on private cottage industry and retail sales. The norms governing private manufacture are so ideologically sensitive, however, that the central government cannot disclose its true policy. In the area of handicrafts and private retail sales the government implements its policy of liberalization by creating opportunities for the exercise of prosecutorial discretion or nullification of the law. This manner of implementation allows the leadership to encourage certain economic behavior which is nonetheless criminal under Soviet law. Thus, by steadfastly condemning private enterprise, the Soviet leadership attempts to display its commitment to maintaining the ideological purity of Marxism in its policies, but, in reality, it tolerates a flourishing black market.

This article examines the legislation implementing the 1977 Constitution, and the response of governmental and quasi-governmental officials to this legislation. This study demonstrates that although Soviet peasants welcome the opportunity to commit more of their resources to private agriculture, local government officials have not distributed authorized state agricultural subsidies, assisted in the collection and sale of farm produce, or provided farm implements to the peasants, thereby impeding the orderly implementation of the new laws. Thus, the program of public assistance to private agriculture is failing. At the same time, an examination of Soviet handicrafts and private retail sales of consumer goods indicates that liberalization of the laws relating to cottage industries, and the widespread prosecutorial nullification of other criminal statutes, has considerably increased trade in second hand and privately manufactured household wares.

### HISTORICAL BACKGROUND

The October Revolution of 1917 heralded the birth of the Union of Soviet Socialist Republics. Before the October Revolution, the abolition of private control of the means of production was a fundamental feature of the Bolshevik political program. In *State and Revolution*, Lenin explained his theory that state control of agriculture and manufacture would increase economic efficiency:

This expropriation [of the capitalists] will make it *possible* for the productive forces to develop to a tremendous extent. And when we see how incredibly capitalism is already *retarding* this development, when we see how much progress could be achieved on the basis of the level of technique already

attained, we are entitled to say with the fullest confidence that the expropriation of the capitalists will inevitably result in an enormous development of the productive forces of human society.<sup>2</sup>

Lenin presided over the expropriation of the capitalists, but his death in 1924 left the task of inaugurating a system of national economic planning to Stalin. The government nationalized all land and all enterprises employing more than five workers immediately after the October Revolution,<sup>3</sup> but did not introduce collective farming or centrally planned industrial production until 1928.<sup>4</sup> The centralized, state controlled economy which Stalin created during the 1930s allowed the Communist party to accumulate immense amounts of capital, which it used to build the country's basic industries at the expense of production of consumer goods. At Stalin's death in 1953 the Soviet Union possessed a mighty base of heavy industry, but had minimal capacity for producing household goods or clothing, or for assuring a balanced diet for its people.<sup>5</sup>

Khrushchev tried to reform the economy by redesigning the system of planning. He substituted regional planning organs, which controlled all types of production within their districts, for central ministries, which had supervised all production in the nation within individual industries.<sup>6</sup> Khrushchev also tried to increase productivity through political education that was intended to instill selfless motivation in the populace.<sup>7</sup> Khrushchev believed that an individual truly committed to the "construction of Communism" should shun individual farming, cottage industry, and the desire to accumulate personal possessions.<sup>8</sup> Legislation during Khrushchev's tenure reduced the size of private agricultural plots,<sup>9</sup> while newspaper arti-

2. V.I. LENIN, 33 POLNOE SOBRANIE SOCHINENII 96 (1917).

3. On October 27, 1917 the Bolshevik government placed all trade in Moscow and Petrograd under the control of the city soviets. I Dekrety Sovetskoi Vlasti No. 20 (1917). In June of 1918, a government decree prohibited the purchase, sale, or lease of any enterprise or business without the permission of the People's Commissariat of Trade and Production. II Dekrety Sovetskoi Vlasti No. 270 (1918).

4. See M. LEWIN, RUSSIAN PEASANTS AND SOVIET POWER 446-514 (1975) for excellent discussions of agricultural collectivization.

5. In September, 1953 the Communist Party Central Committee adopted a resolution noting that "the needs of consumption cannot be fully satisfied by the socialized economy." *quoted in* R. KHALFINA, PRAVO LICHNOI SOBSTVENNOSTI GRAZHDAN SSSR 127 (1955).

6. See R. MEDVEDEV AND Z. MEDVEDEV, KHRUSHCHEV: THE YEARS IN POWER 104-05 (1976).

7. N. KHRUSHCHEV, O KOMMUNISTICHESKOM VOSPITANII 61 (1964).

8. *Id.* at 155. Khrushchev said, "In Communism, people should be free from attraction to private property, from egoism, from self-seeking, from everything that hinders people from living in Communism." *Id.* at 96.

9. Although Khrushchev initially eased the restrictions on private agriculture, by reducing taxes on income derived from household plots in the summer of 1953, see R. MEDVEDEV & Z. MEDVEDEV, *supra* note 6, at 34, in 1961 he encouraged collective farms

cles criticised acquisitive tendencies.<sup>10</sup> Khrushchev asserted that his program was not antithetical to a rising standard of living for consumers. He argued that generous public services could replace personal ownership of property.<sup>11</sup> He failed to convince other political leaders, however, that moral incentives could replace material reward as a stimulus to production.<sup>12</sup> His assault on the concept of personal property was probably a major cause of the political pressures that led to his premature retirement in 1964.

Brezhnev and Kosygin reversed Khrushchev's attempts at reform, and legitimized material incentives. Legislation enacted since 1965 has authorized government ministries to reward enterprises that exceed their targets under the National Economic Plan, and permitted industrial managers to grant bonuses to especially productive workers.<sup>13</sup> The new material incentives have led to an increase in personal disposable income.<sup>14</sup> The production of food and consumer goods, however, has not increased sufficiently to absorb the increase in consumer income. Poor harvests have become a chronic problem, and the state controlled press, traditionally uncritical of government policy, frequently expresses concern about the poor quality and meagre quantity of household goods that are available in shops.<sup>15</sup>

In the mid-1970s the Soviet leadership realized that material incentives would not elicit a greater commitment from the work force unless consumers could translate their buying power into a better standard of living. The leadership also may have feared that the augmented purchasing power of the people would result in political discontent if it was not matched by an increased supply of goods and

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to reduce the size of personal plots. See S. SAWICKI, *SOVIET LAND AND HOUSING LAW* 87-88 (1977).

10. F. Polozkov, *Bor'ba s Funeiadtsami i Stiazhateliami*, 1961 SOTSIALISTICHESKAIA ZAKONNOST' 28 (No. 3).

11. N. KHRUSHCHEV, *supra* note 7, at 165.

12. Soviet political leaders other than Khrushchev did not denigrate the importance of personal property during this period. At the Twenty-Second Party Congress, in 1961, Kosygin remarked, "It is necessary to expand the retail trade network by all possible means, to perfect the forms and methods of trade in the village, to bring to them the same conditions which exist in state trade in the cities." A. KOSYGIN, *IZBRANNYE RECHI I STAT'I* 127 (1974).

13. V. LAPTEV, *KHOZIAISTVENNOE PRAVO* 114 (1967).

14. According to the government, personal income has increased almost 50% in the past decade. *Pravda*, Aug. 28, 1982, at 1.

15. In seeking the factors that produce a phenomenon such as [the black market] one should look beyond [the speculator] himself to our design bureaus and light industry. Certainly one reason that speculators . . . can find such a ready market for their wares is that so many of our stores offer only outmoded and unattractive goods.

*And Why Young Speculators in Scarce Goods?*, 29 CURRENT DIGEST OF SOVIET PRESS 6 (Oct. 19, 1977) [hereinafter cited as CDSP].

services. The state-managed economy, however, could not supply these extra commodities.

The government acted on its observations concerning consumer demand by reforming the basic legislation regulating the private use of property in profit making activity. The legislative reforms were aimed at handicrafts and private farming. A statute enacted in 1976 removed many forms of handicrafts and artisan activities from a list of forbidden professions.<sup>16</sup> In addition, the 1977 Constitution committed the government to assist private farming.<sup>17</sup> In the realm of agriculture, where the failures of the state controlled economy had been most dramatic, the scope of legal reform was extensive. Although legislation enacted after 1977 indicates that the political leadership has remained committed to innovation in the area of private agriculture,<sup>18</sup> reforms in the laws governing private manufacture and the provision of services have been more tentative. In the private manufacture and services areas, national leaders have preferred to ease restrictions by encouraging prosecutors to ignore violations of the criminal laws regulating trade.

The reforms in private agriculture and manufacture, regardless of whether they achieved their goals, suggest a tacit admission by the government that the planned economy has failed to satisfy the needs of the people:

[T]he conclusion is inescapable that the draftsmen of the 1977 Constitution have shelved [the original Bolshevik] scenario. The language of the charter plainly concedes that the actual course of events does not seem to have followed the anticipated pattern and conveys the impression that the leadership has chosen to reconcile itself to a much more prosaic reality.<sup>19</sup>

By constitutionally expanding the ability of individuals to use property for private purposes, the government admitted that private production of essential goods is not merely a temporary expedient in the development of Communist society. Productive activity by private individuals is a fundamental principal of "mature socialism."<sup>20</sup> This modification of the right to control property is significant as an adaptation of Soviet Marxist ideology, even apart from any accompanying changes in sub-constitutional legislation, or in the practices of the local governments, police, and courts in implementing the new

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16. Postanovlenie Soveta Ministrov SSSR, May 3, 1976, SP SSSR 1976, No. 7, st. 39. For a discussion of the list of forbidden professions, see *infra* notes 141-54 and accompanying text.

17. U.S.S.R. Const. (1977).

18. See *infra* notes 39-48 and accompanying text.

19. Ginsburgs and Pomorski, *supra* note 1, at 30.

20. "The theoretical basis of all ideological-educational work in contemporary conditions is the conception of mature socialism developed by the Communist Party of the Soviet Union." Pravda, Jul. 30, 1982, at 2.

constitutional right.<sup>21</sup>

The new constitutional provisions on the use of private property for production represent a departure from traditional Soviet policy and ideology. The extent of that departure is suggested by examining the previous constitution. The Soviet Constitution of 1936 authorized the allocation of small parcels of land to peasant households. The text specified, however, that peasants were to employ this land for "personal use," and thereby implicitly precluded the sale of surplus agricultural produce.<sup>22</sup> Elsewhere in the Constitution of 1936, the legislature authorized a "small-scale private economy of individual peasants and handicraftsmen based on personal labor."<sup>23</sup> The 1936 Constitution was ambiguous about the right of individuals to sell the products of their personal husbandry and manufacture. A peasant who observed the contemporary practices of the courts and the prosecutor's office with regard to the Constitution almost certainly would have abstained from private production for sale.<sup>24</sup> In contrast, the 1977 Constitution states that the Soviet Union "permits individual labor in handicrafts, farming, the provision of services for the public and other forms of activity based exclusively on the personal work of individual citizens and members of their families."<sup>25</sup> The fundamental law also obligates the state and collective farms to "provide assistance to citizens in working their small holdings."<sup>26</sup>

One Soviet commentator states that the new Constitution employs a "broader formula" to define the right of individuals to use property for private production:<sup>27</sup> "The legislation reflected fundamental changes in Soviet society occurring in the period after the

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21. For example, E.B. Pashukanis, the most influential Soviet legal theorist of the 1920s, wrote of the aim of the Communist Party to abolish "the market bond," that is, contractual exchange, and to construct a "single planned economy," a society in which, in Marx's words, "man shall comprehend and organize his individual forces as social forces." Pashukanis, *The General Theory of Law and Marxism*, SOVIET LEGAL PHILOSOPHY 178-79 (1951).

22. USSR Const. art. 7, para. 2 (1936).

23. *Id.* art. 9.

24. See 1929 SUDEBNAIA PRAKTIKA 2 (No. 1), (A Report of the Civil Cassation College of the Soviet Union's Supreme Court, urging local judges to scrutinize rural economic activity more closely.) and 1930 SUDEBNAIA PRAKTIKA 6 (No. 9), (A Report of the Supreme Court on the local Soviets' practice of confiscating income producing equipment.) On August 22, 1932 the Central Executive Committee of the R.S.F.S.R. Supreme Soviet amended article 107 of the Criminal Code, which prohibited any "purchase and resale by private persons of the produce of agriculture and articles of mass consumption for the purpose of profit." The statute permitted prosecutors to attack virtually any sale of property. Many prosecutors took advantage of this latitude. 1934 Sovetskaia Iustitsiia 3, 24.

25. USSR Const. art. 17, (1977).

26. *Id.* art. 13.

27. Tagunov, *Lichnoe podsobnoe khoziaistvo i individual'naiia trudovaia deiatelet'nost'*, 1981 SOVETSKOE GOSUDARSTVO I PRAVO 7, 129 [hereinafter cited as S.G.iP.].

adoption of the 1936 Constitution, especially changes in economic conditions and the social structure."<sup>28</sup> These fundamental changes seem to include a recognition by policy makers that the planned economy has not been satisfying the needs of the Soviet people, and an acquiescence by Soviet leaders in the widespread popular aspiration for greater economic freedom.<sup>29</sup> The Soviet leadership no longer determines the propriety of a rule of law by ascertaining its position in the development of a future classless society. It asks, according to Brezhnev, whether the legal institution "performs a useful role at present in our economy."<sup>30</sup> The expanded legal capacity to engage in private economic activity is unlikely to foster attitudes conducive to Communist development, yet it is "objectively necessary" Brezhnev said, "because the quantity of produce grown in the socialized economy of collective farms and state farms is presently insufficient to satisfy the needs of the population."<sup>31</sup>

#### PRIVATE AGRICULTURE: LEGAL REFORMS AND THEIR IMPLEMENTATION

According to one Soviet analyst, at least one hundred million people in the Soviet Union currently fulfill part of their nutritional needs through personal agriculture.<sup>32</sup> In the Belorussian Republic, for example, personal husbandry is responsible for approximately 17%, by value, of all agricultural produce.<sup>33</sup> Six percent of all crops are grown privately;<sup>34</sup> however, peasants grow 60% of all potatoes and 40% of all vegetables in their personal plots.<sup>35</sup> Peasants also produce 40%, by weight, of the republic's meat, 68% of the eggs and 39% of the milk.<sup>36</sup>

Soviet commentators no longer denigrate the economic and social importance of private agriculture. Bolshevik ideology traditionally regarded private husbandry as inimical to the objectives of a collectivist society, and Soviet leaders from Lenin to Khrushchev devised various methods of education, persuasion, and coercion for

28. *Id.*

29. *Id.* Other Soviet commentators also have noted the expanded ability to use property for private purposes which the 1977 Constitution permits. Kozug, *Sovershenstvovanie pravovogo regulirovaniia lichnogo podsobnogo khoziaistva grazhdan*, 1981 S.G.iP. 8, 37; Tolstoi, *Konstitutsiia SSSR i pravo sobstvennosti*, 1978 S.G.iP. 7, 13; Rubanov, *Konstitutsionnye osnovy prava lichnoi sobstvennosti v SSSR*, 1981 S.G.iP. 4, 29.

30. Tagunov, *supra* note 27, at 130 (quoting Brezhnev).

31. G.IA. KUZNETSOV, *SOTSIAL'NO-EKONOMICHESKIE PROBLEMY SOVETSKOI DEREVNI* 133 (1977).

32. Stepanko, *Problemy zemlepol'zovaniia grazhdan*, 1977 PRAVOVEDENIIE 1, 56.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*



divorcing the peasantry from their personal plots.<sup>37</sup> Today, however, the official ideology encourages private agricultural production: "It is important to create a social climate in the locales in which people will see that they perform a service useful to the state by growing livestock and fowl in their personal husbandry."<sup>38</sup>

Soviet legislative and administrative authorities have begun to implement the provision of the 1977 Constitution that requires collective farms to assist peasants in their personal agriculture. New statutes and regulations authorize collective farms to provide individuals with various types of economic assistance.<sup>39</sup> The farms may now give a milk cow to a young family to encourage the family to remain on the collective farm rather than to relocate to an industrial region.<sup>40</sup> The farm manager may divert money from the material incentive fund of the farm to assist individuals in their private agriculture.<sup>41</sup> Ordinarily the manager would use this money to reward workers for their contribution to the collectivized sector. New regulations permit the collective farm to construct barns to house the personal cattle of its members.<sup>42</sup> The government also has instructed

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37. The Soviet government expropriated the produce of private agriculture during the Civil War. Samuel Kucherov wrote that "during the period of War Communism [1918-1920] . . . the attempt was made to install socialism with one stroke." Kucherov, *Property in the Soviet Union*, 11 AM. J. COMP. L. 376, 378 (1962). Lenin also attempted to persuade the peasantry to abandon private enterprise in favor of cooperatives. V.I. LENIN, ON COOPERATION, THE LENIN ANTHOLOGY 709 (R.C. Tucker ed. 1975). Stalin ordered the collectivization of agriculture in 1928, virtually terminating private agriculture. A regulation enacted in 1932 limited a peasant's ability to engage in personal agriculture by establishing minimum amounts of time which peasants were required to devote to the work of the collective farm. *Sobranie Zakonov i Rasporiazhenii Pravitel'stva SSSR* (1932) No. 62, st. 360. Additional regulations promulgated in 1942 authorized criminal penalties for violations of these minimum work hours. *Id.* 1942 No. 4, st. 61.

In 1960 Khrushchev informed the U.S.S.R. Supreme Soviet that "conditions will be created under which the role of individual plots will fall off, they will, evidently, lose their importance for the kolkhozes." Kucherov, *supra*, at 382 (quoting Khrushchev). Khrushchev then reduced the size of private plots. See SAWICKI, *supra* note 9, at 87-88.

38. Tagunov, *supra* note 27, at 131. Another example of the current ideology appeared in Pravda:

[L]ife severely condemns any haste in social practice as ignorance of objective conditions. One example in particular was the "attack" on small holdings and the personal subsidiary economy at the beginning of the '60s. Not only the economic irrationality but also the "absence of prestige" associated with working on small holdings was maintained. As a result, people began to buy in shops articles of consumption which they had formerly produced themselves."

Pravda, July 30, 1982, at 2.

39. See Postanovlenie TsK KPSS i Soveta Ministrov SSSR, Jan. 8, 1981, SP SSSR No. 6, st. 37 § 8; Ukazaniia o poriadke ucheta skota i ptitsy, 1982 Biulleten' Normativnykh Aktov 3, 4. See also *infra* notes 40-48 and accompanying text.

40. Postanovlenie TsK KPSS i Soveta Ministrov SSSR Jan. 8, 1981, SP SSSR No. 6, st. 37.

41. *Id.* at § 19.

42. 1978 SP SSSR 298, 311 (No. 15).

collective farms to include in their annual financial plans sufficient reserves of grain to ensure that the farms may sell cattle feed to peasants, and to maintain enough draft animals to assist individual farmers with tilling and hauling.<sup>43</sup> The farm also may enter contracts with the state agricultural assistance bureau<sup>44</sup> to provide pesticides for the personal plots of peasants.<sup>45</sup>

The government has instructed the State Bank to finance this program of agricultural assistance. A 1981 statute authorized the bank to extend loans to collective farms in order to fund farm managers' programs for the purchase of tools, animals, and supplies by individual farmers.<sup>46</sup> Regulations adopted in 1982 expanded the obligation of the State Bank to assist private farming. The Bank now may loan money to collective farms to finance purchases of vegetables, cattle, and fowl produced by the personal husbandry of collective farm members.<sup>47</sup> The regulation instructs the State Bank to make these loans to collective farms "irrespective of the status of their accounts under earlier loans."<sup>48</sup> These instructions to the State Bank illustrate the government's concerns regarding the failures of Soviet collective agriculture, and the newly expanded role of private production. The government has not only legitimized private agricultural production, it also has begun to finance individual farming.

Under the Soviet system of federalism,<sup>49</sup> union republics have the authority to enact special legislation pertaining to agriculture if those regulations are consistent with national or "all-union" statutes. In March of 1979 the Latvian Republic approved an experimental change in the planning practices of collective farms in two districts.<sup>50</sup> Every adult residing in these districts, regardless of his or her profession, now may enter into a contract with a collective farm to raise and sell livestock to the farm. The farm provides calves or other young animals, veterinary services, fodder, mixed feed, and pasturage to the individual free of charge or at a reduced price. When the animals have matured, the farm purchases them at the state-estab-

43. Postanovlenie TsK KPSS i Soveta Ministrov SSSR Jan. 8, 1981, SP SSSR No. 6, st. 37, § 21.

44. *Sel'khoztekhnika*.

45. Bashmakov, *Lichnoe podsobnoe khoziaistvo grazhdan*, 1979 SOTSIALISTICHESKAIA ZAKONNOST' 7, 36.

46. Postanovlenie TsK KPSS i Soveta Ministrov SSSR, Jan. 8, 1981, SP SSSR No. 6, st. 37, § 12.

47. Ukazaniia o poriadke ucheta skota i ptitsy, 1982 Biulleten' Normativnykh Aktov 3, 4.

48. 1982 Biulleten' Normativnykh Aktov 3, 4 § 11.

49. For a general discussion of the division of power between the central government and the union republics, see J. HOUGH AND M. FAINSD, *HOW THE SOVIET UNION IS GOVERNED* 480-517 (1979).

50. *The Rural Household's Potential*, 32 CDSP 17 (Dec. 17, 1980).

lished agricultural procurement price. According to the press, the fifty-five collective farms participating in the experiment are assured a supply of mature cattle each year, and many individuals who could not otherwise work in animal husbandry are able to earn supplemental incomes.<sup>51</sup>

Academic commentaries urging the adoption of additional legislation to facilitate further forms of assistance by collective farms to private agriculture have appeared in Soviet publications. One commentator suggested that collective farms permit privately owned cattle to graze in sections of the farm where fodder cannot be harvested mechanically.<sup>52</sup> He also suggested that farms make available their resources for artificial insemination and their information on selective breeding.<sup>53</sup> As participants in policy debates in the Soviet Union often publicly express their point of view by permitting statements with which they agree to be published in the press, the appearance of these suggestions may indicate that the Party leadership is debating questions concerning additional methods of assisting agriculture.

Newspaper reports on the agricultural crisis indicate, however, that few collective farms have implemented the legislatively authorized assistance programs. Journalists report that assistance to private agriculture is sufficiently unusual to be noteworthy. Complaints about the role of collective farms in private agriculture are generally more common than praise. A typical letter published by Pravda in 1978 criticized farms for selling an inadequate number of chicks and suckling pigs to individuals.<sup>54</sup> At some farms, however, there are exceptions. For instance, the farm "Bolshevik" in Minsk reportedly sells hay to individuals at 20-25% of the market price.<sup>55</sup> The farm also maintains summer pasturage for the peasants' personal cattle.<sup>56</sup> Another collective farm built a barn to house 100 privately owned cattle,<sup>57</sup> and the farm employs one full time worker to tend and milk the cattle.<sup>58</sup> Peasants pay a small fee to house their stock in this cooperative facility.<sup>59</sup> The press reports that this program has saved peasants an average of 750 man hours per year.<sup>60</sup>

51. *Id.*

52. G.IA. KUZNETSOV, *supra* note 31, at 144.

53. *Id.*

54. *From Livestock Section to Consumer: For the General Good*, 30 CDSP 21 (Apr. 19, 1978).

55. *Aspects of Change in the Countryside*, 30 CDSP 8 (May 31, 1978).

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.* at 8-9.

60. *Id.* at 9.

In addition to authorizing collective farms to assist private agriculture, the government has sponsored a limited debate in the press on the possibilities of expanding private rights to own animals. Individuals now may own cattle for their personal use, and for sale to consumer cooperatives, collective farms, or state procurement agencies.<sup>61</sup> Although no national laws restrict the number of cattle that an individual may own, local regulations and the charters of the collective farms may restrict cattle ownership. In late 1977, the Council of Ministers of the Soviet Union instructed all union republics to examine the regulations of their cities to determine whether prohibitions on the ownership of stock in urban areas were necessary to the maintenance of acceptable sanitation.<sup>62</sup> The Council of Ministers also ordered the republics to study the regulations of collective farms.<sup>63</sup> In addition, the republics were to authorize an increase in the number of livestock that an individual farmer might own if the amount of land available for private grazing was sufficient to justify such an increase.<sup>64</sup> This instruction was a signal to the press that debate on the expansion of private ownership of cattle was permissible. The debate began with a letter from a machinist, printed in *Pravda* on January 3, 1978.<sup>65</sup> The writer suggested that more land be allocated to industrial enterprises for the use of employees who desire to raise cattle.<sup>66</sup> He also urged the encouragement of animal husbandry in the suburbs.<sup>67</sup> Other writers criticized local authorities for constructing high rise apartment buildings that have no unused, adjacent land, instead of single family dwellings with adjoining pasturage.<sup>68</sup> A 1981 statute was the only apparent result of this debate. It permitted individuals to own cattle in excess of the norms of the collective farm charter if the cattle were yearlings that the farmer was raising under contract for subsequent sale to the collective farm.<sup>69</sup>

In addition to the measures which the Soviet government has introduced for the purpose of stimulating private agricultural production, national authorities have attempted to facilitate the efforts

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61. Postanovlenie TsK KPSS i Soveta Ministrov SSSR Jan. 8, 1981, SP SSSR No. 6, st. 37, § 2.

62. 12 Resheniia Partii i Pravitel'stva po Khoziaistvennym Voprosam § 2, 104, 106 (1977) [hereinafter cited as Resheniia Partii].

63. *Id.*

64. *Id.*

65. *Pravda Considers the Meat Shortage*, 30 CDSP 1 (Feb. 1, 1978).

66. *Id.*

67. *Id.*

68. *From Livestock Section to Consumer: For the General Good*, 30 CDSP 21 (Apr. 19, 1978).

69. Postanovlenie TsK KPSS i Soveta Ministrov SSSR, Jan. 8, 1981, SP SSSR No. 6, st. 37.

of peasants to sell their produce. The private sale of goods is a more sensitive political problem for the Soviet leadership than private production, however, because the unrestricted sale of farm products would undermine government controls on retail prices, and encourage private accumulation of capital. To retain its control of the retail market, the government has not made new avenues for the commercial disposition of farm products accessible, and has attempted instead to make traditional means of sale more attractive to the peasantry.

The Soviet peasant has a number of ways, both legal and extra-legal, to dispose of his produce. He and his family may consume all the food they raise. Alternatively, peasants may effect private sales or sell to middlemen for resale. In addition, they may sell their produce to governmental or quasi-governmental purchasers such as consumer cooperatives, collective farms, or state procurement agencies. In order to encourage the delivery of privately produced food to urban areas without losing control of the retail market, the leadership has preferred to enhance the attractiveness of governmental and quasi-governmental purchasing agents.<sup>70</sup> The Party's alternative policy is to encourage private sales in urban markets by the producing peasants.<sup>71</sup> Sales to middlemen, on the other hand, are illegal because they allow individuals whom the government cannot control to accumulate economic power.<sup>72</sup>

In recent years the Soviet government has prodded the consumer cooperatives and state procurement agencies, which traditionally have purchased food stuffs only from collective farms, to begin purchasing the surplus produce of private agriculture.<sup>73</sup> Because the success of this program initially depends upon peasants producing more food than their own families can consume, in 1981 the Central Committee of the Communist Party and Soviet Union Council of Ministers jointly adopted a resolution designed to foster assistance from local officials to private agriculture. The resolution urged local Party and Soviet agricultural organizations, trade unions, and directors of collective farms to "develop broad organizational and exploratory work among the population and assist them so that every family in the village has a garden and is raising livestock and fowl

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70. *Id.* preamble. Urban markets facilitate the availability of produce to consumers, however, the government cannot control the price of vegetables, milk, or other items in private sales.

71. See *infra* note 97 and accompanying text.

72. RSFSR Criminal Code § 154 defines the crime of "speculation" as "the purchase and resale of goods or other objects of consumption with the aim of profit." For a discussion of speculation, see *infra* notes 169-76 and accompanying text.

73. Postanvlenie TsK KPSS i Soveta Ministrov SSSR Jan. 8, 1981, SP SSSR, No. 6, st. 37, § 4.

and in so far as possible every family has a cow.”<sup>74</sup> The Party recognized that private farmers probably would not supply urban areas with food if their rural neighbors were in need. The resolution also encouraged quasi-governmental purchasing organizations to explore a “fuller use of the potential for production by citizens in increasing the supply of the produce of agriculture and animal husbandry.”<sup>75</sup> A commentator from Belorussia asserted that local soviets in his republic have been “developing supplemental means for better organizing the purchase from individual collective farmers, workers, professionals and other citizens of their surplus agricultural produce.”<sup>76</sup>

The government also has authorized its administrative branches to offer financial advantages to peasants who sell their surplus produce to a governmental agency.<sup>77</sup> Peasants who enter contracts with consumer cooperatives are entitled to purchase farm implements, building materials, and other manufactured goods from the co-op.<sup>78</sup> These articles are in chronically short supply in the Soviet Union, and if consumer co-ops actually were able to keep them in stock, this regulation would offer peasants a mighty incentive to sell crops and milk to the state. In addition, in 1981 the national procurement agency *Tsentrosoiuz* adopted a model contract for use by its local affiliates.<sup>79</sup> A citizen who enters into such a contract with the procurement agency at the beginning of the growing season is entitled to advance payments for the livestock and the crops he agrees to deliver.<sup>80</sup> If the individual fails to deliver, he is obligated to repay the advance plus 1% annual interest.<sup>81</sup>

Commentaries and letters in Soviet newspapers have proposed other forms of cooperation between state purchasing agents and private farmers. One author urged the government to commission state procurement agencies to transport peasants' surplus produce to urban markets, and to attempt to sell the goods on the peasants' behalf.<sup>82</sup> According to the author, 6,500 collective farms maintain urban markets, at which their members sell their surplus crops, milk, and meat.<sup>83</sup> If state agencies were to transport and sell these wares,

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74. *Id.*

75. *Id.*

76. See Stepanko, *supra* note 32, at 58.

77. Postanovlenie TsK KPSS i Soveta Ministrov SSSR Jan. 8, 1981, SP SSSR No. 6, st. 37, at preamble.

78. Bashmakov, *supra* note 45, at 36.

79. 1982 Biulleten' Normativnykh Aktov 3, 33.

80. The advance is 50% of the contract price for livestock and 30% for crops. *Id.*

81. *Id.*

82. *Why Price Controls Don't Work at Farm Markets, and What Does*, 31 CDSP 18 (Mar. 21, 1979).

83. *Id.*

the peasants could remain at home to tend the fields. The author concludes that the reduction in man-hours expended in transporting and selling the goods should yield lower prices. Another writer echoed these ideas in suggesting that state catering organizations located at factories and schools purchase directly from peasants.<sup>84</sup>

The measures that the Soviet government has adopted in recent years to encourage private agricultural production and to facilitate the distribution of peasants' surplus crops, milk, and meat presently are not succeeding. Official sources explain some of the reasons for this failure.<sup>85</sup> Government documents contain complaints that excessive bureaucratization in local procurement organizations, consumer cooperatives, and collective farms has prevented these agencies from responding to the new policy. A joint resolution of the Party Central Committee and Council of Ministers criticized "discrete executive committees,"<sup>86</sup> "collective farm directors and other state and cooperative enterprises and organizations for underestimating the potential" of private production.<sup>87</sup> "In a number of regions," the resolution lamented, "agricultural production on private parcels has been curtailed."<sup>88</sup> The resolution asserted that some collective farms refuse to sell individuals grain and fodder for their animals, or to supply grazing space for personal stock even if there is sufficient pasture.<sup>89</sup> In 1981, the Central Committee and Council of Ministers criticized local governments, trade unions, and collective farm directors for failing to implement the government's enabling legislation concerning assistance to peasants.<sup>90</sup> Political leaders scolded collective farm directors in particular, because of their "administrative interference" with peasants who were raising livestock.<sup>91</sup> Collective farm directors may attempt to coerce peasants to sell their cattle, or threaten the peasants with sanctions for devoting too much time to private agriculture.<sup>92</sup>

The leadership also has criticized those agencies whose new vocation is purchasing crops from peasants. According to the 1981 resolution, "[s]erious deficiencies" exist in the work of the Ministry of Meat and Milk Production, the Ministry of Food Production, and

84. *How Should Private Plot Output Be Sold?*, 32 CDSP 8 (Sept. 3, 1980).

85. See *infra* notes 85-116 and accompanying text.

86. This is a euphemism which means that a problem is widespread.

87. Postanovlenie TsK KPSS i Soveta Ministrov v SSSR, Sept. 14, 1977, 12 Resheniia Partii 104.

88. *Id.*

89. *Id.*

90. Postanovlenie TsK KPSS i Soveta Ministrov SSSR, Jan. 8, 1981, SP SSSR No. 6, st. 37.

91. *Id.* at § 4. "Administrative interference" is official abuse of power or intimidation in Soviet parlance.

92. *Id.*

the Central Procurement Agency.<sup>93</sup> These agencies failed to purchase significant amounts of the peasants' surplus produce, and also had neglected to organize local purchasing offices.<sup>94</sup> In a 1980 article, the Soviet press reported that state procurement agencies were purchasing less than 5% of the products of private agriculture.<sup>95</sup> The article asserted that consumer co-ops also assign low priority to purchases from individuals, and frequently refuse to buy any privately grown food stuffs.<sup>96</sup>

It appears that local governments also have failed to supply a greater part of the urban population with private agricultural surplus. Local soviets control the urban market space allotted for the sale of privately produced goods to collective farms.<sup>97</sup> The soviets have shown little interest in providing, maintaining, or cleaning this market space, and they have generally declined to assist peasants in transporting goods to market.<sup>98</sup> "[A]ll of this cannot fail to reflect negatively on providing to workers in industrial centers the produce of agriculture and on the tempo of growth of personal income of the rural population."<sup>99</sup>

Local soviets also seem to be administering ineptly the program for allocating unused land to industrial enterprises. Under this program, state manufacturing firms receive land for their employees to use for cultivating crops and raising cattle.<sup>100</sup> In 1982, the Central Committee of the Latvian Communist Party complained that, three years before, the government of that union republic had set aside 4,000 hectare of land for the agricultural use of industrial enterprises, yet not one hectare had been cultivated.<sup>101</sup>

A realistic appraisal of Soviet affairs supplements the government's explanation for the failure of its new agricultural program. The chaotic condition of legislation promulgated by the central government is one reason for the unresponsiveness of collective farms, procurement agencies, and local governments. Even well-intentioned Soviet officials, earnestly attempting to determine their legal duties, never can be certain that they are acting properly. Numerous central authorities promulgate statutes, decrees, instructions, and

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93. *Id.* preamble.

94. *Id.*

95. *How Should Private Plot Output Be Sold?*, 32 CDSP 8 (Sept. 3, 1980).

96. *Id.*

97. See G.IA. KUZNETSOV, *supra* note 31, at 139.

98. See *id.*

99. *Id.*

100. Pravda, Jun. 18, 1982, at 2.

101. *Id.*



regulations, often without repealing prior actions.<sup>102</sup> Furthermore, they do so without explaining the relationship between such rules. Legislation pertaining to public procurement of private produce is plagued by overlaps, omissions, and uncertainty.<sup>103</sup> The authority of some procurement agencies appears to conflict with the powers of other bodies.<sup>104</sup> No one is certain who adjudicates disputes between different agencies. Purchases by procurement agencies are regulated by at least three decrees of the Council of Ministers,<sup>105</sup> a decree of the State Committee on Prices,<sup>106</sup> and the Model Contract of the Central Procurement Agency.<sup>107</sup>

Implementing agencies also may be unresponsive because of their hostility to performing the new tasks that the central government has assigned them. Procurement agencies, for example, perform tasks assigned to them by the National Economic Plan.<sup>108</sup> Traditionally, they have purchased food stuffs only from collective farms to fulfill their "plan." The government's instructions to purchase from individual farmers, as well as from collective farms,<sup>109</sup> requires the procurement agencies to spread their scarce manpower resources to perform new tasks. Under the Soviet system of material incentives, the agency staff receives bonuses only when it fulfills its plan.<sup>110</sup> Local procurement agencies may consider purchase negotiations with directors of collective farms to be more cost effective than dealings with individual peasants.

In addition, relations between procurement agencies and the peasantry traditionally have been antagonistic rather than cooperative. During the Civil War and the early 1930s, the beginning years of collective agriculture, state procurement agencies seized the farmers' grain, leaving these individuals little or none of their produce for

102. In addition to the Soviet Union Council of Ministers, and the Communist Party Central Committee, the Soviet Union Ministry of Procurement, the State Committee on Prices, the Central Procurement Agency, and other government departments promulgate regulations in this area.

103. For example, none of the legislation pertaining to procurement provides for central planning of state purchases from peasants.

104. State procurement agencies, the Ministry of Meat and Milk Production, and the Ministry of Food Production have overlapping authority in this area.

105. Postanovlenie TsK KPSS SSSR i Soveta Ministrov SSSR, Jan. 8, 1981; Postanovlenie Soveta Ministrov SSSR, Apr. 23, 1970, No. 278, SP SSSR 1970 No. 8., st. 63; Postanovlenie Soveta Ministrov SSSR, Jul. 31, 1970, No. 627, SP SSSR 1970, No. 14, st. 115.

106. Postanovlenie Goskomtsen SSSR Nov. 15, 1977 No. 549, 1978 Biulleten' Normativnykh Aktov 6, 23.

107. Tsentrosoiuz Model Contract, 1982 Biulleten' Normativnykh Aktov 3, 33.

108. Resheniia Partii, *supra* note 67, § 1 at 104.

109. *What is Private Farming's Proper Role?*, 32 CDSP 8 (Mar. 5, 1980).

110. Polozhenie ob obrazovanii i ispol'zovanii rezervov po fondam ekonomicheskogo stimulirovaniia ministerstv (vedomstv).

personal use. The government prosecuted peasants who hid grain, and generally meted out summary punishment.<sup>111</sup> Subsequently, millions of people died in a famine caused by the actions of state procurement officials.<sup>112</sup> Even though state procurement agencies and the peasantry no longer are engaged in a life and death struggle, their relationship is not one that would engender trust of officials among the farmers. Procurement agencies are the only entities legally entitled to buy the output of collective farms, and the price that they offer is fixed.<sup>113</sup> The failure of a farm to deliver the output required by contract, or to deliver it on time, subjects the collective to both damages and fines.<sup>114</sup> By law, the agency also is entitled to demand specific performance when a farm does not satisfy its contractual obligation with its own output, even though the farm cannot purchase covering goods from any other source because of the strictures of the planned economy.<sup>115</sup> The agency thus has considerable power over the peasants.

This tradition of antagonism inhibits the agency staff from negotiating directly with individual peasants, and makes it easier for the peasantry to distrust state procurement. A proposal made by one Pravda reader suggesting that peasants deliver their surplus milk and eggs to these agencies for subsequent resale in urban areas is laughable.<sup>116</sup> The typical Soviet peasant would prefer to waste a working day walking to the village to sell her basket of eggs, than to accept a sum fixed by the State Committee on Pricing and proffered by the procurement agency.<sup>117</sup>

The failure of collective farms to follow the dictates of the 1977 Constitution and implementing legislation, and assist peasants in their personal agriculture probably is explained by a conflict of interest in collective farm management. Directors enter annual procurement contracts with the state on behalf of their farms.<sup>118</sup> Career advancement opportunities in the collective farm area depend, in part, upon the directors' efficacy in leading the farms to the fulfill-

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111. See generally M. LEWIN, *supra* note 4, at 514-52; R. TUCKER, *STALIN AS REVOLUTIONARY* 407-20 (1973).

112. M. LEWIN, *supra* note 4, at 214-44.

113. 1982 Builleten' Normativnykh Aktov 3, 33.

114. R.S.F.S.R. Civil Code §§ 217, 219, 221.

115. All produce of state owned enterprises is allocated by the plan. The produce of cooperative organizations is purchased by the state. See e.g., *Polozhenie o Postavkakh Produktsii Proizvodstvenno-tekhnicheskogo Naznacheniiia*, SP SSSR 1969, No. 11, st. 64, § 6.

116. *Why Price Controls Don't Work at Farm Markets, and What Does*, 31 CDSP 18 (Mar. 21, 1979).

117. See J. HOUGH & M. FAINSOD, *supra* note 49, at 179-80, for a description of the alienation of the peasantry from the regime in recent years.

118. A. NOVE, *THE SOVIET ECONOMY* 99-103 (1968).

ment of these contracts, and in increasing the output of the collectives from year to year. Directors probably believe that the development of private agriculture by collective farm members will distract the peasants from their obligations to the organization. Increased private farming may diminish the number of hours that peasant farmers devote to the collective crop. In addition, income from private farming also reduces the *kolkhozniks'* dependence on their share of the collective farms' profits, and may therefore diminish the commitment of the peasants to working on the collective. These factors could lead to diminishing productivity for the collective farms. Thus, directors may be reluctant to implement a policy which weakens their ability to accomplish their own objectives.

Finally, some members of the policy making elite in the Soviet Union do not support the government's program to expand agricultural production through private farming. For many years the Soviet government pursued a policy of suppressing all profit-making uses of private property. There are undoubtedly many officials who remain relentlessly opposed to private economic activity because of the threat it poses to the economic power of the government. In addition, some officials are committed to building a society in which the people's economic motivation is the public welfare, rather than personal profit. The resistance of these officials compounds the effects of self-interest, mistrust, and bureaucratic inertia which prevent Soviet governmental and quasi-governmental organizations from assisting small private farmers.

Opposition within the ruling councils to the government's agricultural program surfaces in legislation and in the press, and makes official pronouncements concerning the program seem somewhat contradictory. Ruling governmental and Party bodies adopt resolutions that condemn profit seeking among peasants who are farming small holdings, and simultaneously enact statutes that encourage private initiative. For example, in 1977, the year the new Constitutional provisions liberalizing the right to use private property for profit were adopted, the Central Committee and Council of Ministers instructed the union republics to exercise "strict supervision through local soviets and agricultural organs of the observance of existing land legislation and of the regulations of the use of land allotted to citizens, keeping in mind that such land should be used for production of agricultural produce and leisure activities and not for personal enrichment or money grubbing."<sup>119</sup>

Soviet publications contain articles and letters from readers condemning abuses of the right to engage in private agriculture, and

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119. *How Should Private Plot Output Be Sold?*, 32 CDSP 8 (Sept. 3, 1980).

describing examples of the deleterious effects of free enterprise on the moral fabric of the nation. The press reported, for example, that some peasants at the Lenin Collective Farm in Dagestan owned personal flocks consisting of hundreds of sheep.<sup>120</sup> The writer lamented that "there is no law to punish people for owning excessive numbers of private animals."<sup>121</sup> The behavior of those individuals amounted only to a violation of the rules of the collective farm,<sup>122</sup> and entailed only a small fine. Another author complained that vegetable growing in Zaporozhets province was so profitable that thousands of industrial workers resign their jobs each summer to grow cash crops in personal greenhouses.<sup>123</sup> Peasants also were slaughtering their farm animals so as to invest all their capital and time in vegetable cultivation.<sup>124</sup> The author asserted that because the residents of Zaporozhets were following the invisible hand of profit, essential agricultural and industrial tasks remained unperformed.<sup>125</sup> To remedy this situation, the writer suggested the imposition of a price ceiling for retail sales of vegetables.<sup>126</sup> Finally, one writer mourned the moral corruption of Soviet youth through the legitimization of the quest for profit.<sup>127</sup> The writer cited the fact that farmers use school children on summer holiday to pick crops, an activity which violates the Soviet laws prohibiting any use of hired labor in private economic activity.<sup>128</sup> The author recognized that the youth of the Soviet Union should be occupied at productive activity during the summer, but stated that "no amount of money can measure the damage—physical, moral and every other kind—that is caused by this sort of training in private ownership."<sup>129</sup> The author complained that despite this violation of the rules against employment of hired labor, the state prosecutor, the Communist Union of Youth, and the State Committee on Labor took no interest in the affair, although the matter was within the jurisdiction of each.<sup>130</sup>

In summary, the Soviet government has adopted several measures intended to increase private production of food so as to meet the needs of consumers. Bureaucratic inertia, a tradition of animosity between the government and the peasantry, and the resistance of

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120. *Into the Wrong Steppe*, 31 CDSP 18 (Sept. 5, 1979).

121. *Id.*

122. *See id.*

123. *What is Private Farming's Proper Role?*, 32 CDSP 8 (Mar. 5, 1980).

124. *Id.*

125. *Id.*

126. *Id.*

127. *Children Hired to Pick Private-Plot Watermelons*, 31 CDSP 12 (Oct. 10, 1979).

128. *Id.*

129. *Id.*

130. *Id.*

some individuals in positions of influence relative to the pursuit of private gain by peasants, however, have hindered the government's program of agricultural incentives. The following discussion demonstrates that, in contrast to the government's overt attempt to encourage individual farming with incentives and state assistance, the government more successfully has employed covert means to encourage the private supply of goods and services.

#### HANDICRAFTS AND SUPPLY OF SERVICES: PROSECUTORIAL NULLIFICATION AS POLICY

Nullification of the law is the centerpiece of the Soviet government's policy toward the private supply of non-agricultural goods and services. Although studied indifference by prosecutorial and administrative departments to violations of the law plays a part in the government's policy regarding private agriculture, constitutional and legislative reform has been central to the government's approach in that area. National leaders and local officials, sympathetic to the objective of increasing agricultural production through private farming, ignore many violations of the prohibitions on private business. This behavior complements the effect of the new regulations, which permit greater freedom to dispose of produce, and require public agencies to assist peasants. In contrast, the government has been hesitant to liberalize formal regulations in the area of private production and sale of non-agricultural goods and services. Notwithstanding this governmental hesitancy, nullification of the law has resulted in an increase in the supply of handicrafts and services.

The systemic failures that lead to the necessity for private agriculture in the Soviet Union also are responsible for the need for a larger supply of privately produced non-agricultural goods and services. The socialized sector is unable to fill the demands of consumers and absorb the excess savings of individuals. Inadequate supplies of consumer goods are not as critical to the political system, however, as food shortages. Moreover, the risk the government takes in permitting private manufacture is much greater than that involved in encouraging private agriculture. By authorizing a significant amount of private manufacture, the government would risk losing control over the supply of raw materials, including wood, plastic, leather, and building materials. The government also would lose control of the retail price structure. The most important factor motivating the government's desire to restrain private manufacturing, however, is the Soviet prohibition on the use of hired labor. The prohibition on hired labor is a central tenet of Marxist political thought, and a critical reason for the government's control of the

labor supply.<sup>131</sup> Unless the government permits artisans to employ persons who are not members of their immediate families, however, private manufacture will not develop to a significant degree. Because of this conflict, recent efforts by the government to encourage private trade in nonagricultural goods have been much more modest than its campaign to promote production on private farms.

The press is replete with articles criticizing the minimal capacity of the planned economy to supply consumer goods and services. In 1977, for example, a letter writer lamented the condition of new state-built apartment buildings. The writer asserted that "persons moving into a new apartments still have to pay enormous sums to moonlighters or bribes to state workers in order to make their new dwellings liveable."<sup>132</sup> In addition, he wrote, "most of [the] new tenants' extra expenses are necessitated by unfinished or shoddy work on the part of builders."<sup>133</sup> The author recognized that entrepreneurs merely fill a gap in the supply of consumer goods and services created by the shortcomings of the planned economy. He deplored the necessity of private carpentry, however, saying, "I have been brought up to have an antipathy for private entrepreneurs and would rather see state service employees"<sup>134</sup> perform these jobs.

Other citizens have urged the government to permit cottage industries to supply articles which the planned sector of the economy neglects to produce. The deputy director of a knitwear factory wrote that "[o]ur society also needs various consumer services that can be performed in the home. Why do we have so few tailors, for example . . . and knife sharpeners? They have disappeared entirely."<sup>135</sup> The writer observed that a policy of encouraging handicrafts would stimulate production particularly in the decorative arts.<sup>136</sup>

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131. The Principles of Legislation of the Soviet Union and Union Republics on Labor, preamble, states "[t]he Great October Socialist Revolution destroyed the system of exploitation and degradation. After centuries of forced labor for exploiters, the workers received the opportunity to work for themselves, for their own society." *Vedomosti Verkhovnogo Soveta SSSR* 1970 No. 29, st. 265. Lenin wrote that socialism would be both more efficient and less alienating to workers than capitalism. He asserted that society would own the means of production, and therefore each worker would direct his energies toward the public good, eradicating the self-interested character of labor, and "transforming labor into 'life's prime want.'" V.I. LENIN, *THE STATE AND REVOLUTION*, in *THE LENIN ANTHOLOGY*, *supra* note 37, at 379.

132. *Edik as a Competitor of Slipshod State Services*, 29 CDSP 16 (June 15, 1977).

133. *Id.*

134. *Id.* at 17.

135. *The Virtues of Hiring People to Work in Their Own Homes*, 31 CDSP 15 (Dec. 19, 1979).

136. *Id.* The field of the decorative arts provides an apt illustration of an area in which the government has been unable to satisfy consumer desires through the socialized sector, or to organize the distribution and sale of the wares that privately operating artists

Recent Soviet commentaries have maintained that private manufacture and privately supplied services are not *per se* inimical to socialism. One commentator has stated that “[P]roductive activity by individuals or a group of people is not only not socially dangerous; it is useful.”<sup>137</sup> Nonetheless, the commentator noted, the government must regulate private production of non-agricultural commodities because of abuses that are common to most forms of individual manufacture:

The social harm of such activity is the use of valuable articles in which the state has a strict interest such as grain, flax, hemp, chemicals, etc. Goods manufactured privately such as linen, rope, butter, flour, and leather, are as a rule of much worse quality than those manufactured at state enterprises. People occupied in such activities draw profit to themselves unconnected with the quality or quantity of work.<sup>138</sup>

One authority estimated that the portion of all Soviet workers occupied by private manufacturing and services was 0.1% of the work force in 1981.<sup>139</sup> This figure includes only artisans and handicraftmen who had registered their occupations with local authorities, as the law prescribes.<sup>140</sup> The number of individuals performing useful services whose illegal business activities the government is compelled to tolerate is much greater.

Historically, the Soviet Union either has prohibited or regulated all forms of private manufacturing and all supplies of services. Individuals lawfully may engage in professions that are not prohibited if they register with local authorities.<sup>141</sup> A list of prohibited occupations, promulgated by Stalin in 1949, was in effect for many years.<sup>142</sup> These rules, which ostensibly regulated the procedure for “registration of handicraftsmen and artisans not working in a collective,” actually imposed criminal sanctions for those engaging in virtually any nonagricultural economic activity.<sup>143</sup> The statute’s reference to procedures for registration of handicraftsmen was misleading, as the law forbade almost all conceivable forms of cottage industry. The

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create. Many peasants carve and decorate wooden masks, which they may legally sell at farmers’ markets. The Russian Souvenir Experimental Handicrafts Combine once attempted to organize the collection and distribution of these masks, but the results of their efforts were of no benefit to either consumers or peasant producers. Red tape increased the price of these masks by 30% and greatly delayed their sale. *Free-Lance Craftsmen Pose a Problem*, 29 CDSF 14 (Dec. 7, 1977).

137. KURS SOVETSKOGO UGOLOVNOGO PRAVA: CHAST’ OSOBNENNAIA (tom 4), 31 (N. A. Beliaev, ed. 1978).

138. *Id.* at 148.

139. *See* Tagunov, *supra* note 27, at 132.

140. *Id.*

141. Postanovlenie Soveta Ministrov SSSR, May 3, 1976, SP SSSR 1976, No. 7, st. 39.

142. Postanovlenie, Jun. 30, 1949 (unpublished in official sources); *see* Ugolovnyi Kodeks RSFSR (1966).

143. *Id.*

statute prohibited, among other things, the processing of purchased grain, fiber goods,<sup>144</sup> and chemical compounds.<sup>145</sup> It enjoined the production for sale of many small personal and household items.<sup>146</sup> The section of the statute proscribing the manufacture of photoreproduction equipment and metal type for printing presses assisted the government in maintaining its monopoly on the means of communication.<sup>147</sup> The government proscribed private processing for sale of food stuffs and baked goods, as well as the preparation of alcoholic and nonalcoholic beverages.<sup>148</sup> The statute also prohibited the transportation of passengers or commodities for payment.<sup>149</sup> Finally, the Act of 1949 prohibited "any kind of trade in the form of purchase and resale or as a middleman and the repair for resale of purchased articles."<sup>150</sup>

The 1949 statute facilitated two types of governmental control over the population. The list of prohibited professions established for the government a monopoly on the means of disseminating ideas and on the use of force. The statute therefore impeded the formation and execution of nationwide opposition to the policies of the Party. In addition the government used the statute to monopolize both manufacture for sale and the supply of services.

In 1976 the government repealed the 1949 legislation and adopted new national regulations.<sup>151</sup> The government's primary objective in enacting the new legislation was to retain control of the means of communication and political resistance, but to permit the small scale private nonagricultural production of goods and supply of services. To these ends, the central government now prohibits fewer professions. This new All-Union legislation prohibits the processing of grain and other food products not grown by the processor, the manufacture and repair of weapons and explosives, the production of devices for duplicating, photocopying, video and audio reproduction, and printing.<sup>152</sup> The statute forbids the manufacture of awards or medals, articles containing precious stones and metals, chemical and cosmetic goods, poisonous or narcotic articles, and any

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144. *Id.* at § 4. These items included hemp, flax, seed, silk, cocoons, tobacco, wool, yarn, and sheepskin.

145. *Id.* Production of acid, vitriol, soda, blueing, poisonous materials, drying oil, cosmetics, explosives, and fireworks were included in this prohibition.

146. *Id.* These included clothing, jewelry, footwear, articles made of colored metals, medals or badges, china, writing pads, envelopes, candles, and articles made of bristle or woven hair.

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. Postanovlenie Soveta Ministrov SSSR, May 3, 1976, SP SSSR 1976, No. 7, st. 39.

152. *Id.* at § 2.



sort of medicine.<sup>153</sup> Treating and dyeing leather, sheepskin, and skins of fur bearing animals is also proscribed. Finally, the statute forbids transporting passengers and freight by automotive means for pay, organizing a holiday hotel, bath house or spectator event, and manufacturing ikons or other religious utensils.<sup>154</sup>

The most innovative feature of the new legislation is that it expands the ability of individuals to use private property for profit making activity. Only two types of property that a Soviet citizen legally may own, automobiles and houses, cannot be used for profit.<sup>155</sup> An individual now may manufacture and sell clothing and prepare food stuffs from home grown crops. These activities are particularly significant in view of their importance to consumers, the scarcity of textiles and foodstuffs in the Soviet economy, and the relatively low level of capital and skill required to practice those trades. Thus, the new statute opens genuine new avenues for cottage industry.

To avoid discouraging participation in the legal forms of private economic activity that it wishes to encourage, the government has adopted a lenient prosecutorial policy towards persons engaged in prohibited professions.<sup>156</sup> In a recent book on private commercial activity, a Soviet author observed that criminal sanctions frequently are not applied to first offenders.<sup>157</sup> Under a statute enacted in 1977, the court, on its own motion or at the suggestion of the prosecutor, may suspend the ongoing criminal proceeding, render a special determination that administrative sanctions are in order, and dismiss the case without rendering a verdict.<sup>158</sup> Administrative sanctions may consist of a fine of not more than fifty rubles, corrective labor at the offender's place of regular employment, or confinement for not

153. *Id.*

154. *Id.*

155. Other possessions, such as metal working tools, cannot be used for professions such as the manufacture of medals. The use of metal working tools to manufacture kitchen utensils, for example, is permitted if the artisan registers with the local government.

156. Note that the laws of each of the union republics prescribe penalties for persons engaging in proscribed professions. Article 162 of the R.S.F.S.R. Criminal Code provides, for example,

Engaging in a business which is specially prohibited, if such act is not subject to administrative liability or if committed after an administrative fine has been levied for such activity, is punished by corrective labor for a period not exceeding one year or a fine of not more than two hundred rubles.

*Id.* at art. 162, para. 2. Repeat offenders or those employing hired labor in prohibited businesses are subject to imprisonment not exceeding four years and confiscation of property. *Id.*

157. V. IA. TATSIL, OTVETSTVENNOST' ZA CHASTNOPREDPRINIMATEL'SKAIA DEIATEL'NOST'I KOMMERCHESKOE POSREDNICHESTVO 57 (1979).

158. Vedomosti Verkhovnogo Soveta RSFSR 1977, No. 12, st. 256 (amending Ugolovnyi Kodeks RSFSR § 50 (1)).

more than fifteen days.<sup>159</sup>

The statute authorizing administrative disposition of persons committing economic crimes permits judicial leniency. The lack of strong criminal penalties encourages private economic activity. Because there is no means of determining the extent of black market activity, however, the actual effect of judicial leniency on the turnover of goods and services remains unknown.

In contrast to the statute of 1949, the 1976 rules on Handicraft-Artisan Professions set forth procedures for registration of private business which actually have been implemented. A Soviet citizen may engage in any business that is not specifically prohibited by statute. Failure to register a business with the local tax department, however, will subject an individual to administrative liability.<sup>160</sup> The registrant must inform the tax department of the location of the business and the identity of any family members participating in the undertaking.<sup>161</sup> An artisan may not employ hired labor.<sup>162</sup> To control the size of private enterprises, and to prevent the formation of partnerships and other business associations, the statute forbids the issuing of registration certificates to two or more unrelated individuals who wish to engage in business on the same premises.<sup>163</sup> The artisan may peddle his wares from town to town if his registration certificate notes that he is an itinerant craftsman.<sup>164</sup>

The regulations that implement the 1976 statute permit individuals to engage in several trades without registering.<sup>165</sup> A peasant may prepare and process crops or meat that he grows on his personal plot, and sell them as baked goods, sausage, meat pies, and the like without registering as a merchant.<sup>166</sup> In addition, individuals who perform household services, such as chopping firewood, washing clothes in their homes without "special equipment," or washing floors and windows, need not register with local authorities.<sup>167</sup> Individuals may enter any type of handicrafts or artisan vocation without registering their activity, if they sell their goods or services exclusively to state or cooperative (quasi-governmental)

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159. *Id.* The press has reported several recent examples of administrative sanctions consisting of fines of 30 to 40 rubles or a month of corrective labor. See *Iu. A. Ivanov, Osnovaniia i poriadok osvobozhdeniia ot ugolovnoi otvetstvennosti s privlecheniem k administrativnoi otvetstvennosti, KOMMENTARII SUEBNOI PRAKTIKI ZA 1977 GOD*, 166.

160. *Postanovlenie Soveta Ministrov SSSR § 10, May 3, 1976, SP SSSR 1976, No. 7, st. 39.*

161. *Id.* at § 4.

162. *Id.* at § 1.

163. *Id.* at § 4.

164. 1977 *Biulleten' Normatiuykh Aktov § 12, No. 1, 10.*

165. *Id.* at § 10.

166. *Id.* at § 5.

167. *Id.*

enterprises.<sup>168</sup>

In recent years the government also has permitted open discussion in the press of an idea that was once anathema in the Soviet system, that is, retail sales of consumer goods by individuals who did not manufacture the articles they sell. "Speculation," as Soviet authorities refer to this activity, is defined as the purchase and resale for profit of goods or other objects.<sup>169</sup> During Stalin's rule, the government frequently inflicted the death penalty on speculators.<sup>170</sup> Since 1957, the RSFSR Criminal Code has distinguished between speculators and "petty speculators," or, individuals who purchase and resell consumer goods, agricultural produce, chits for purchasing scarce goods, tickets to spectator events, and books.<sup>171</sup> Petty speculators may be punished by three to fifteen days confinement, or a fifty ruble fine.<sup>172</sup> In 1961, the government further mitigated the punishment for petty speculation, by authorizing judges to transmit first offenders to the custody of social organizations, such as trade unions, for moral counseling and "application of measures of social influence."<sup>173</sup> Finally, in December 1974, the Soviet Union Supreme Court issued instructions to trial judges. Although purporting to "clarify" the law, the justices virtually eliminated the crime of petty speculation, at least insofar as that crime might have applied to individuals undertaking occasional, nonsystematic resale activities.<sup>174</sup> The Court informed trial judges that individuals would be allowed to sell goods that they had acquired by gift, barter, and inheritance, or goods that they initially had purchased for personal use, without committing the crime of speculation.<sup>175</sup> Thus, a prosecutor now must prove not only that the individual bought an article which he later resold, but also that the individual intended to resell the article for profit at the time of his initial purchase. The Court's instructions permit a judge to infer intent to resell for profit where an individual

168. *Id.*

169. Ugolovnyi Kodeks RSFSR § 154.

170. See J. HOUGH & M. FAINSOD, *supra* note 49; MEDVEDEV AND MEDVEDEV, *supra* note 6. The RSFSR Supreme Court warned trial judges in 1932 that they were "devoting insufficient attention to cases of those who resell goods and to speculators. . . . [s]peculation in agricultural products and in the objects of mass consumption is obviously an especially socially harmful crime against inviolable and sacred social (socialist) property." 1932 Sovetskaia Iustitsiia 27, 10.

171. Ukazaniia Prezidiuma Verkhovnogo Soveta RSFSR, Sept. 15, 1957, Vedomosti Verkhovnogo Soveta RSFSR 1957 No. 1, st. 5; UK RSFSR § 154, para. 3.

172. *Id.*

173. Ukazaniia Prezidiuma Verkhovnogo Soveta RSFSR, Mar. 28, 1961, Vedomosti Verkhovnogo Soveta RSFSR 1961, No. 13, st. 229.

174. Postanovlenie Plenuma Verkhovnogo Suda SSSR, Dec. 14, 1974, No. 11; Biulleten' Verkhovnogo Suda SSSR 1975, No. 1.

175. *Id.* at § 2.

has sold numerous articles.<sup>176</sup>

The market in second hand goods has flourished since the Supreme Court issued these instructions, however, the ruble value of this market is undeterminable.<sup>177</sup> Moreover, the instructions apparently have encouraged the practice of purchasing goods that are plentiful in one section of the Soviet Union and reselling them in another, where they are scarce. This was always a widespread though illegal activity,<sup>178</sup> and it now has become even more common. The prosecutor's increased burden in proving a case of speculation, the general scarcity of consumer products, and the incremental legitimization of the profit motive have created a milieu favorable to a bazaar type economy in the Soviet Union.<sup>179</sup>

Flea markets are ubiquitous in the Soviet Union.<sup>180</sup> In every population center of any size, one park, street corner, subway station, or other area is known locally as a bazaar. In larger cities, markets for particular commodities are segregated. Pet markets are at one subway station, stamp collectors' markets on another corner, while clothing is sold at a third location. Proponents of legalizing flea markets, for the sake of advocacy, term these bazaars "markets for secondhand goods" or "markets for products of personal handicrafts." If bazaars were permitted, however, the difficulty of distinguishing articles produced or purchased for personal use by the seller, from goods purchased by a merchant for the purpose of resale, would allow "petty speculators" substantial latitude in practicing their trade. One reader who advocated legalizing flea markets wrote to the press that, "experience has shown that the negative phenomena that restriction of market trade was supposed to combat—the reselling of goods in short supply for example—are not disappearing. Quite the contrary: It's becoming more difficult to bring these phenomena to light and to put a stop to them."<sup>181</sup>

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176. *Id.*

177. Soviet commentators do not attribute the growing market in second hand sales to the Supreme Court's instructions; however, the Soviet press only has reported the widespread existence of open air markets for second-hand goods in the past five years.

178. See E. H. Carr, 2 *THE BOLSHEVIK REVOLUTION* 335 (1952); H. SCHWARTZ, *RUSSIA'S SOVIET ECONOMY* 479 (1954).

179. A recent article in the Soviet press observed: "Flea markets are necessary—why else would so many people flock to [them]. Despite all the measures taken to outlaw [the flea market], it is very tenacious." *Still, There's Growing Support For a Flea-Market Revival*, 34 *CDSP* 15, 16 (Aug. 4, 1982). Although purchasing goods for resale is a criminal offense, and organized markets in secondhand goods are illegal under local ordinances, the author "can't include the old women at these flea markets in the shady category of speculators" because they "satisfy demand without requiring additional production facilities or equipment." *Id.* at 15.

180. This and following statements are based on anecdotal evidence obtained from recent Western visitors to the Soviet Union.

181. *Does Moscow Need Private Markets?*, 32 *CDSP* 15 (Nov. 19, 1980).

Although the Soviet Union does not publish statistics on criminal activity, impressionistic sources, including newspaper reports, indicate that investigations of speculation in consumer goods have subsided significantly in recent years. For instance, these sources indicate that city dwellers sometimes travel to villages, reside in a local hotel for several months, buy large amounts of produce at collective farm markets, then ship the goods to their homes for resale by friends and relatives.<sup>182</sup> The deputy director of one collective farm market wrote, "[w]e used to combat the speculators. . . . Several years ago when regular 'salesmen' lived here for four or five months at a stretch, the police . . . sent inquiries to their places of residence and fined them. Now no notice is taken of such instances."<sup>183</sup> The employees of the department in charge of combating speculation, he writes, are rarely at the market now.<sup>184</sup>

As recently as 1977, the city of Moscow still maintained no official flea market for the sale of pets. Nevertheless, one street corner was a notorious center for trading in animals. The press reported that several hundred teenage boys were arrested at this market during the course of one year.<sup>185</sup> "We patiently explained to them why it is bad for them to get involved in peddling," a police official explained, "but little comes of it. Just talking to them doesn't have much effect."<sup>186</sup> The following year the city legalized the pet market.<sup>187</sup> On one weekend more than 4,500 merchants registered to sell pets and pet supplies in the square.<sup>188</sup> The press account acknowledged that many of the merchants had purchased the pets elsewhere for resale.<sup>189</sup>

The government has been increasingly tolerant of the actions of private entrepreneurs who supply goods and services. In contrast to the field of private agriculture, however, the government has not offered incentives in the area of private manufacture. The ambivalent attitude of political leaders concerning entrepreneurship is demonstrated by the reduced number of forbidden professions, in combination with the retention of the requirement that all handicraftsmen register with local authorities. In addition, this atti-

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182. See generally *Are Out-of-Town Traders Taking Over 'Farm' Markets?*, 32 CDSP 12, 13 (Oct. 1, 1980).

183. *Id.* at 12.

184. *Id.*

185. —*And Pet Market Turns Boys Into Peddlers*, 29 CDSP 18 (May 25, 1977).

186. *Id.*

187. From a reference to registration of merchants in a 1978 newspaper article, it can be inferred that the city government began to permit private sales of pets during the following year. *Pet Vogue Breeds Brisk Private Trade*, 30 CDSP 19 (Jan. 24, 1979).

188. *Id.*

189. *Id.*

tude is reflected by the exercise of prosecutorial and police discretion as an incentive to private market activity in contrast to the formal prohibition of any resale of consumer goods for the purpose of profit.

### CONCLUSION

The Soviet Union has enacted major legislation, most importantly, Constitutional provisions, that enhance the right of individuals to use private property for profit. There are, however, significant differences between the policy of the government toward private farming, and its stance on handicrafts and private retail trade. The central government actively is encouraging farming. It has authorized several forms of subsidies and assistance to peasants cultivating small farm holdings because of the chronic food shortage. The success of this policy depends in large part, however, on the willingness of local officials and administrators to implement it.

On the other hand, Soviet leaders are not committed to private manufacturing and retail trade. They are deeply suspicious of the economic power that individuals may accumulate through trade. In addition, the scarcity of household goods is not a serious political problem for Soviet leaders. Whereas food shortages historically have been a cause of profound popular unrest in Eastern Europe, a shortage of household goods merely frustrates consumer desires, and leaves unspent savings in the hands of the people. Legislation that the Soviets have enacted now permits more handicraft activity than did earlier legislation. The government, however, has not abandoned the principle of absolute state control over the means of production. Consequently, the state has conceded no ground to private manufacturing and trade that it could not withdraw.

In the areas of both agriculture and handicrafts, however, nullification of the law has had greater impact on individual ability to exploit property freely. In the area of agriculture, nullification of the law by local administrations, local soviets, and directors of collective farms has prevented subsidies authorized by the central government for private agriculture from reaching the peasantry. Soviet leaders intend to make private agriculture a significant source of food for the consumer. Thus, they have instructed Party, state, and social organizations to assist peasants in the productive use of their small plots, and to provide stock and fodder, light implements, sheds, and loans. The central government also has instructed its agencies to explore new methods for assisting peasants in the sale of private produce. Bureaucratic inertia, shortages of manpower, ill will between program participants, and disagreements with the objectives of the lead-

ership have hindered the program of assistance. The government apparently has not been able to change the behavior of its administrators merely by changing the law. Administrative disobedience of the new agricultural laws has hindered the opportunity of individuals to use private property for gain.

In contrast, prosecutorial nullification of the prohibition on private resale of goods for the purpose of profit, judicial leniency towards individuals convicted of engaging in forbidden professions, and the unwillingness of criminal investigators to pursue those who engage in illegal market activity, appear to be major components of the central government's policy on non-agricultural production and trade. Soviet law enforcement officials simply are not pursuing vigorously violators of the laws relating to speculation, prohibited forms of business, and registration of artisans. Nonenforcement of these laws has been more significant than statutory liberalization in increasing the freedom of individuals to use property.

# CORNELL INTERNATIONAL LAW JOURNAL

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Volume 16

Winter 1983

Number 1

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