

July 2015

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Recommended Citation

Dula, Arthur M.; Tracy, Lynne M.; and Rubino, Renee A. (1993) "Bringing Down the Barriers: American Laws That Impede Trade With the CIS," *Akron Law Review*: Vol. 26 : Iss. 3 , Article 4.

Available at: <http://ideaexchange.uakron.edu/akronlawreview/vol26/iss3/4>

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BRINGING DOWN THE BARRIERS:^{*} AMERICAN LAWS THAT IMPEDE TRADE WITH THE CIS¹

by

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INTRODUCTION

For most of this century, the U.S. Government imposed severe restrictions upon trade with the former Soviet Union. ² Traditionally, these trade restrictions have been a tool of American foreign policy. ³ Some of the rationales for placing restrictions on trade with the Soviet Union included: the desire to encourage internal political reform;⁴ the need to protect national security;⁵ and the desire to encourage liberalization of Soviet immigration policies.⁶

However, changes have occurred in the past five years that demand a serious re-evaluation of American trade policy with the former Soviet Union. First and foremost of these changes is the demise of the state known as the Soviet

^{*} This article was written as part of the work of the David L. Brennan Endowed Chair of Law at the University of Akron School of Law during the fall semester of 1992. The authors wish to thank David and Ann Brennan for their generous support of this research.

¹ The Soviet Union ceased to exist in December 1991. CIS stands for the Commonwealth of Independent States, a loose organization of former Soviet republics, although not all former republics of the Soviet Union have joined the CIS. Most notable among those countries deciding not to join are the Baltic countries, Lithuania, Latvia and Estonia. The terms Russia and CIS may be used interchangeably in this paper.

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² See STAFF OF SENATE COMM. ON FOREIGN RELATIONS, 101st Cong., 2d Sess., WORKSHOP ON U.S.-U.S.S.R. COMMERCIAL RELATIONS, at 213-19 (Comm. Print 1990) (a chronology of U.S. Trade Relations with the Soviet Union since World War II); STAFF OF HOUSE COMM. ON FOREIGN AFFAIRS, 92d Cong., 2d Sess., U.S.-SOVIET COMMERCIAL RELATIONS: THE INTERPLAY OF ECONOMICS, TECHNOLOGY TRANSFER, AND DIPLOMACY, at 48-65 (Comm. Print 1973).

³ Kevin F.F. Quigley & William J. Long, *Export Controls: Moving Beyond Economic Containment*, WORLD POL'Y J. 165, 166 (Winter 1990).

⁴ See generally H.R. REP. NO. 569, 102d Cong., 2d Sess., pt. 3 (1992) (a dissenting view to the Freedom Support Act of 1992).

⁵ Quigley & Long, *supra* note 3, at 166.

⁶ S. REP. NO. 87, 101st Cong., 2d Sess. at 2-4 (1990) (Bentsen delegation report on trip to the Soviet Union).

Union. Taking its place are fifteen independent states essentially drawn along the lines of the old Soviet ethnic republics. Russia and Ukraine remain the largest in terms of size and importance, but the breakup of the central Soviet authority should highlight the fact that each of these new states has its own history, culture and traditions. The old Cold War, US-USSR framework for making policy evaluations and decisions is no longer adequate for the present situation.

Second, the deterioration of the domestic situation has created political, economic and social turmoil in Russia and in the other states. The United States has national security and economic interests in promoting stability in this region. The sale of military hardware from the Red Army's arsenal to Third World countries and private individuals is a symptom not merely of poor security, but of desperate economic times.⁷ The severe economic conditions may create further waves of refugees seeking assistance from the United States. Ethnic strife and the re-emergence of Russian chauvinism threaten not only future trade opportunities, but also existing American interests in Russia. A policy of easing trade restrictions and encouraging a stronger American presence in Russia could increase stability and improve relations between the United States and Russia.

Finally, trade restrictions as a weapon in foreign policy have had a detrimental effect on the American-Russian trade relationship. Low volume of trade, lost jobs and profits, and loss of competitive edge to West European and Japanese companies have left American businesses at a great disadvantage in the Russian market.⁸ A window of opportunity exists to take advantage of the openings created by the fall of the Soviet Union and the Communist Party.⁹ As West European and Japanese competitors, who face fewer restrictions than their American counterparts,¹⁰ move to fill these openings, American companies will find themselves left with only the crumbs of the Russian trade pie.

In light of these changes and opportunities, it is necessary first to establish whether current trade restrictions apply to all former constituent parts of the Soviet Union or only to Russia. Second, the American-Russian trade relationship resembles a minefield. Some of the most powerful trade restrictions remain firmly in place. Others have been defused. This article will attempt to provide some guidance through the minefield. Finally, attention will be given to pending

⁷ Fred Hlatt, *Russia Plans Leaner, More Open Military*, WASH. POST, May 23, 1992, at A13; A. Craig Copetas, *Macabre: Gangland Ghouliness Shows Up at Decrepit Morgue*, NEWSDAY, Aug. 17, 1992, at 8, (Russian mob involvement in arms sales).

⁸ Quigley & Long, *supra* note 3, at 175-78.

⁹ While it is true that the Communist Party remains as an important force at the local level of Russian political life, the ruling of the Constitutional Court, limiting the Communist Party's ability to organize above the local level, undermines the Party's ability to act as a national force in politics. See generally Lynne M. Tracy, Comment, *Prospects for an Independent Judiciary: The Russian Constitutional Court and the CPSU Trial*, 26 AKRON L. REV. 581 (1993).

¹⁰ Quigley & Long, *supra* note 3, at 175-78.

legislation that affects trade with Russia. Hopefully, this analysis will provide some insight into: (1) the past U.S. trade with the former Soviet Union; (2) where the relationship is now; and (3) what direction it should go in light of the demise of the USSR and the rise of the CIS and other independent states.¹¹

SUCCESSOR STATE AND TRADE RESTRICTIONS: JUST RUSSIA?

Under U.S. law, when one part of a state becomes a new state, it does not succeed to the international agreements made by the predecessor state unless it accepts such agreements and the other parties agree.¹² The U.S. laws which regulate trade are not, however, "international agreements" as defined by the Restatement.¹³ The application of U.S. domestic law to a new state is very different from requiring compliance by the successor state to agreements made by its predecessor.

Four newly independent Russian republics challenged the authority of the U.S. Commerce Department to continue an anti-dumping duty investigation. The Department initiated the investigation against the former Soviet Union, pursuant to 19 U.S.C. 1673b (d)(1). The U.S. Court of International Trade upheld the Commerce Department's authority to continue the investigation.¹⁴

The merchandise did not evaporate upon dissolution of the Soviet Union. Commerce's view is that to terminate the investigation would cause a gap in statutory coverage which Congress did not intend, and the allegedly offending merchandise would escape scrutiny. Dissolution of a country, as opposed to mere change in government, is a rare enough event so that Commerce might have construed the statute to permit a gap in this instance, but its construction of the statute is not unreasonable and may indeed be the better construction.¹⁵

Reasonable interpretation of a statute by the agency which administers it must be upheld.¹⁶ In light of this recent opinion, U.S. trade restrictions would most likely be found to apply to each of the former Soviet republics.

¹¹ See also COMM. ON SOVIET AFFAIRS, *Normalization of the U.S.-Soviet Trade Relationship*, 46 REC. ASS'N B. CITY N.Y. 104-28 (March 1991); Jonathan H. Hines, *Reforms in Eastern Europe Spur Dismantling of United States Trade Barriers*, N.Y.L.J. 1 (Mar. 7, 1990) (other surveys of American laws impeding trade with the Soviet Union).

¹² RESTATEMENT FOREIGN RELATIONS LAW OF THE U.S. § 210 (1986).

¹³ See *id.* § 301.

¹⁴ *Technabexport, Ltd. et al. v. United States*, 802 F. Supp. 469 (Ct. Int'l Trade Sep. 25, 1992).

¹⁵ *Id.* at 472.

¹⁶ *Id.* at 473 (*citing* *Chevron U.S.A. v. Natural Resource Defense Council, Inc.*, 467 U.S. 837, 844 (1984)).

LEGAL IMPEDIMENTS TO US-RUSSIA TRADE

Technology Restrictions

American trade restrictions on the transfer of technology are the most severe legal impediments to the development of a stronger, more stable trading partnership with Russia.¹⁷ Most of the technology restrictions imposed during the years of the Cold War remain firmly in place. Despite the many changes in Russia, American policy on the issue of technology transfer shows little sign of changing.

1. The Arms Export Control Act¹⁸

The Arms Export Control Act regulates the sale, transfer and leasing of all military arms for export by public or private sources.¹⁹ The purpose of the Act is to prohibit the sale of arms in situations that are inconsistent with U.S. foreign policy interests.²⁰

Under the direction of the President, the Secretary of State (taking into account other United States activities abroad, such as military assistance, economic assistance, and the food for peace program) shall be responsible for the continuous supervision and general direction of sales, leases, financing, cooperative projects, and exports under this chapter, including, but not limited to, determining—

(1) whether there will be a sale to or financing for a country and the amount thereof;

(2) whether there will be a lease to a country;

(3) whether there will be a cooperative project and the scope thereof; and

(4) whether there will be delivery or other performance under such sale, lease, cooperative project, or export, to the end that sales, financing, leases, cooperative projects, and exports will be integrated

¹⁷ These restrictions are the most severe in two respects: (1) "Technology" encompasses a vast area of goods including, for example, areas involving industry, the military, the medical field, scientific research and agriculture; and, (2) changes have occurred in other areas such as immigration (Jackson-Vanik Amendment repealed) and financial restrictions (Byrd Amendment and Stevenson Amendment repealed) while restrictions on "technology" remain largely unchanged.

¹⁸ 22 U.S.C. § 2751 (1988).

¹⁹ David J. Scheffer, *Current Development: U.S. Law and the Iran-Contra Affair*, 81 AM. J. INTL L. 699 (1987).

²⁰ 22 U.S.C. § 2752(b) (1988).

with other United States activities and to the end that the foreign policy of the United States would be best served thereby.²¹

Essentially, two rationales have sustained the AECA since its inception in 1968: the Cold War and the desire to maintain a technological edge over the Soviet Union.

Several reasons indicate a need to revise the AECA. First, the Act creates a list of restricted items that is too broad and far-reaching. Second, the language of the Act itself is too vague. The law does not make a clear distinction between a prohibition on the sale of actual weapons and the sale of technology that *may have* military application.²² This type of technology, known as dual use technology,²³ can be caught up in the net of AECA restrictions merely on the theoretical possibility that it could serve some military purpose.²⁴ Third, the end of the Cold War has arrived. The former Soviet Union no longer presents the military threat that drove American leaders to protect every technological edge.

Two steps by American lawmakers could improve the competitiveness of American companies who are hampered by the AECA. First, Congress should reduce the overall list of restricted items. Second, the language of the AECA should be narrowed to eliminate catch-all phrases that indiscriminately prohibit trade in dual use technology.²⁵

2. The Export Administration Act²⁶

The Export Administration Act essentially enhances the Arms Export Control Act. The EAA governs the export of goods and technology without regard to potential significant military contribution.

(11) The acquisition of national security sensitive goods and technology by the Soviet Union and other countries the actions or policies of which run counter to the national security interests of the

²¹ *Id.*

²² Panel on the Future Design and Implementation of U.S. National Security Export Controls, Committee on Science, Engineering, and Public Policy. *Executive Summary: Finding Common Ground* (National Academy Press 1991).

²³ For a recent example of trade sanctions imposed pursuant to the AECA and EAA, see Public Notice 1626, DETERMINATION REGARDING MISSILE TECHNOLOGY PROLIFERATION ACTIVITIES OF FOREIGN PERSONS, OFFICE OF THE UNDER-SECRETARY FOR INTERNATIONAL SECURITY AFFAIRS (May 18, 1992). (Sanctions imposed on certain categories of technology against Russia and India. Two year ban on licenses for exports, USG contracts, and importation of products produced by Russia or India).

²⁴ For a more detailed study on dual use technology, see generally Amy L. Rothstein *The Shifting Focus of Dual Use Export Controls: An Overview of Recent Developments and a Forecast for the Future*, 25 INTL. LAW. 267 (1991). Examples the author cites include computers, telecommunications, and machine tools. *Id.* at 271.

²⁵ *Id.*

²⁶ 50 U.S.C. § 2401 (1988).

United States, has led to the significant enhancement of Soviet bloc military-industrial capabilities. This enhancement poses a threat to the security of the United States, its allies, and other friendly nations, and places additional demands on the defense budget of the United States.²⁷

The EAA even reaches beyond U.S. territory to foreign subsidiaries of American companies and prevents them from re-exporting goods that originated in the United States.²⁸

The policy reasons that sustain the Export Administration Act are nearly the same as those given in support of the Arms Export Control Act: protection of national security and maintenance of a technological edge over the Soviet Union.

The EAA impairs the competitiveness of American businesses in several ways. The U.S. government maintains a much longer list of controlled items than other countries that restrict trade with Russia.²⁹ Also, the complex regulations of the EAA may simply discourage an American business at the outset from entering markets with controlled technology.³⁰ The resources that a company must devote to the licensing procedure³¹ increase the cost of the American product.³² A lost contract means lost sales and lost jobs.³³ The direct cost of licensing procedures to the U.S. economy is \$7 to \$10 billion per year.³⁴

In comparison, West European and Japanese competitors have an edge in the Russian market. Their governments usually have shorter lists of restricted items and more streamlined procedures for obtaining licenses.³⁵ The Japanese, for example, employ twenty-five people in a central operation to administer licensing procedures.³⁶ The American government employs three hundred people

²⁷ 50 U.S.C. § 2401 (11) (1988).

²⁸ *Developments in the Law — International Environmental Law*, 104 HARV. L. REV. 1609, 1622 (1991).

²⁹ Quigley & Long, *supra* note 3, at 87.

³⁰ *Id.*

³¹ In an effort to comply with the Export Administration Act, Digital Equipment Corporation (DEC), a large computer company, employs 120 export-control specialists. Since one computer system may contain hundreds of hardware-software combinations, DEC codes each of the thousands of options and compiles a licensing profile for each system whenever an order is booked. DEC handles from 200,000 to 300,000 saleable options which must be classified by country eligibility and level of technology. 18 ELECTRONIC BUS. 22 (March 16, 1992) available in LEXIS, NEXIS Library, ELCBUS File.

³² Quigley & Long, *supra* note 3, at 176.

³³ *Id.* at 176-77. In 1983, the U.S. government imposed sanctions on the Soviet gas pipeline project. Caterpillar had 80 percent of the Soviet market for heavy duty earth-moving equipment. Komatsu, a Japanese company, had only 20 percent. Due to the sanctions, Komatsu gained Caterpillar's 80 percent marketshare, and Caterpillar lost about 15,000 jobs. *Perestroika and Its Implications for the United States: Hearings Before the House Comm. on Small Business*, 100th Cong., 2d Sess. 86 (1989) (statement of Thomas H. Naylor, Professor of Economics, Duke University).

³⁴ Quigley & Long, *supra* note 3, at 178.

³⁵ *Id.* at 176.

³⁶ *Id.*

spread out over the Commerce and Defense Departments to administer licensing regulations.³⁷ The prolonged licensing period in the United States also gives foreign competitors the opportunity to obtain information on pending U.S. export licenses and apply for a similar license in their own country with fewer barriers.³⁸

EAA licensing regulations also hamper West-West trade and create problems for U.S. foreign subsidiaries when they wish to re-export restricted materials.³⁹ Many of the COCOM countries already evade the problems caused by stringent U.S. export restrictions.⁴⁰ These countries simply no longer participate in joint review sessions.⁴¹ The ability of foreign competitors to evade review merely highlights the need for more realistic licensing procedures.

Several changes are in order if American companies are to operate on a more level playing field with foreign competitors in the bid for Russian business. First, the scope of the EAA should be narrowed by employing exclusive language rather than inclusive language on the list of controlled items. Second, simplify licensing procedures to speed up approval time. Third, coordinate all licensing through one central organization.

3. Commercial Space Launch Act⁴²

The CSLA regulates launches within and outside the U.S.⁴³ In order to launch a launch vehicle or operate a launch site, a party must first obtain a license from the Department of Transportation.⁴⁴ If the launch or launch site is within United States territory, the regulations extend to all persons, United States citizen or non-citizen.⁴⁵ If the launch or launch site is outside United States territory, the regulation only covers United States citizens.⁴⁶

(1) All requirements of Federal law which apply to the launch of a launch vehicle or the operation of a launch site shall be requirements for a license under this chapter for the launch vehicle or the operation of a launch site, respectively. . . .

³⁷ *Id.*

³⁸ STAFF OF HOUSE COMM. ON FOREIGN AFFAIRS, 92d Cong., 2d Sess., U.S.-SOVIET COMMERCIAL RELATIONS: THE INTERPLAY OF ECONOMICS, TECHNOLOGY TRANSFER, AND DIPLOMACY 51 (Comm. Print 1973).

³⁹ Quigley & Long, *supra* note 3, at 167.

⁴⁰ *Id.* at 169.

⁴¹ *Id.*

⁴² 49 U.S.C. A. § 2601 (West Supp. 1992).

⁴³ *Id.*

⁴⁴ 49 U.S.C.A. § 2607 (a)(1) (West Supp. 1992).

⁴⁵ 49 U.S.C.A. § 2605 (a)(1) (West Supp. 1992).

⁴⁶ 49 U.S.C.A. § 2605 (a)(2) (West Supp. 1992).

The Secretary may, with respect to launches and the operation of launch sites, prescribe such additional requirements as are necessary to protect the public health and safety, safety of property, and national security interests and foreign policy interests of the United States.⁴⁷

Under the license review process, various U.S. government agencies may consider and oppose the grant of a license. The process covers a broad scope which includes consideration of the launch's impact on national security and foreign policy.

The Act also gives the Secretary of Transportation the authority to issue, modify, suspend and revoke licenses.⁴⁸ The Secretary may also prescribe additional requirements.⁴⁹

The tension that resulted from the Cold War was the policy consideration for such sweeping regulatory authority in the name of foreign policy interests. Today, it is in the U.S. interest to streamline and clarify the regulations with respect to trade. The vague and time-consuming requirements of the CSLA make it difficult for U.S. corporations to make accurate business determinations, thus deterring or protracting certain business ventures. Broad phrases such as protection of "national security interests" or "foreign policy interests" leave the door to potential restrictions wide open. Furthermore, it may take up to six months for the Secretary of Transportation to make a determination on a license application.⁵⁰ A more reasonable policy would include not only clearer, but more expeditious licensing requirements in order to enhance trade opportunities.

4. The National Aeronautics and Space Act of 1958⁵¹

The National Aeronautics and Space Act of 1958 was amended in 1988.⁵² Under section 311 of the enactment, contracts for expendable launch vehicle services may be limited to sources within the United States when the Administrator determines that such limitation is in the public interest.⁵³

⁴⁷ 49 U.S.C.A. § 2607 (a)(1), (b) (West Supp. 1992).

⁴⁸ Stephanie Lee-Miller, *Symposium on the Law and Outer Space: Licensing and Regulating U.S. Commercial Space Launches*, 4 J.L. & TECH. 45, 117 (1989).

⁴⁹ *Id.*

⁵⁰ Arthur M. Dula, *Private Sector Activities in Outer Space*, 19 INTL. LAW. 159 (1985).

⁵¹ 42 U.S.C. § 2451 (1988).

⁵² Pub. L. No. 100-147, § 311 (a), 101 Stat. 867 (1988) (codified at 42 U.S.C. § 2459 (c)).

⁵³ *Id.*

The policy behind such a restriction is to protect the economic interests of American businesses.⁵⁴ On September 1, 1988, pursuant to section 311, the NASA Administrator limited contracts for expendable launch vehicle services to sources within the United States.⁵⁵

The public interest of such a restriction should be reassessed in light of the recent changes in the former Soviet Union. The emerging free markets of the former Soviet republics offer a variety of opportunities for U.S. businesses. Protecting American interests would be counter-productive at a time when freer trade is to the benefit of both nations.

5. International Economic Emergency Powers Act⁵⁶

The IEEPA was meant to enable the President to act quickly in an emergency to protect the United States, by economic means from "any unusual or extraordinary threat, which has its source in whole or substantial part outside the U.S., to the [U.S.] national security, foreign policy, or economy."⁵⁷ Under Sec. 701, the President may declare an emergency.⁵⁸

Sec. 1702(a)(1) describes the economic steps that the President may take during an emergency.⁵⁹

. . . the President may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise--(A) investigate, regulate, or prohibit--[currency or credit transactions]; and (B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving any property in which any foreign country or national thereof has any interest; by any person, or with respect to any property, subject to the jurisdiction of the United States.⁶⁰

President Reagan invoked the IEEPA twice between 1983-1985 to prevent EAA regulations from lapsing when Congress was deadlocked.⁶¹ This particular

⁵⁴ [NATIONAL AERONAUTICS AND SPACE ADMINISTRATION,] *Determination and Findings. Authority to Exclude Foreign Sources From Mixed Fleet Program, Phase III Expendable Launch Vehicle Services* (signed by James C. Fletcher, Administrator, NASA).

⁵⁵ *See id.*

⁵⁶ 50 U.S.C. §§ 1701-02 (1988).

⁵⁷ 50 U.S.C. § 1701 (1988).

⁵⁸ *Id.*

⁵⁹ 50 U.S.C. § 1702 (a)(1) (1988).

⁶⁰ *Id.*

⁶¹ Quigley & Long, *supra* note 3, at 183.

use of the IEEPA essentially circumvented one of the restraining features of the EAA: an extensive set of determinations before the imposition of controls.⁶²

The original purpose of the International Economic Emergency Powers Act was to limit the economic powers granted to the President during peacetime emergencies.⁶³ Congress did not intend for the IEEPA to be the vehicle for keeping routine export regulations in place.⁶⁴ Without proper vigilance, the IEEPA could become a convenient tool of the executive branch to serve foreign policy goals in situations that are not true emergencies.⁶⁵ The possible future misuse of this law to extend trade barriers could create an instability in our trade relationship with Russia. A higher threshold for the declaration of an emergency would help prevent such misuse.

Tariff Restrictions

American tariff restrictions on trade with Russia represent a mixed policy picture. Some very important restrictions remain in place. Others have been eased in the wake of the momentous changes that have occurred in the former Soviet Union.

1. The Trade Act of 1974--Beneficiary Developing Country⁶⁶

Under Title V of the Trade Act of 1974, the Generalized System of Preferences offers duty-free treatment of certain products to countries designated as beneficiary developing countries by the President.⁶⁷

Congress offered a number of reasons for creating this designation. First, the grant of duty-free status was to help developing countries compete effectively with industrialized nations.⁶⁸ Second, Congress deemed trade rather than aid to be in the best long-term interests of both trading partners.⁶⁹ Third, stronger trading relationships with developing countries could provide new markets for U.S. exports.⁷⁰ Fourth, increased trade in a developing country would help generate foreign exchange earnings to meet debt obligations.⁷¹ Fifth, duty-free status might promote additional trade opportunities for the developing country.⁷²

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ 19 U.S.C. §§ 2461-63 (1988).

⁶⁷ 19 U.S.C. § 2461 (1988).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

Sixth, Congress intended the designation to assist a developing country integrate itself into the international trading system.⁷³ Finally, the grant of duty-free treatment was to encourage developing countries to eliminate trade barriers.⁷⁴

However, Sec. 2462(b) of the 1974 Trade Act lists those countries that are ineligible to receive beneficiary developing country status.⁷⁵ The Soviet Union remains on that list.

The goals of the beneficiary developing country designation seem perfectly suited for the type of trade relationship American policy should be fostering with Russia. Despite the superpower status of the former Soviet Union, the years of glasnost revealed the difficult economic conditions and a declining standard of living. Furthermore, the political reasons for placing the former Soviet Union on that list have largely disintegrated. The Yeltsin Government has demonstrated unprecedented cooperation with the United States. Continued cooperation with a friendly government in Russia is in American foreign policy interests. Granting Russia beneficiary developing country status could boost American-Russian trade volume. Such a boost would benefit both economies and could help stabilize the Russian domestic situation.

Obtaining BDC status is a two-step process. First, the USSR must be removed from the ineligible list. This step could be achieved by Senate Bill 2798 which amends the Trade Act of 1974 by removing the Soviet Union from the ineligible list.⁷⁶ Second, the President must extend BDC status to Russia.⁷⁷

2. Accession of State Trading Regimes to the General Agreement on Tariffs and Trade⁷⁸

GATT is an international mechanism for reducing political and economic tensions by increasing trade and economic cooperation on a multilateral basis.⁷⁹ Eighty-five percent of international trade is conducted under the GATT umbrella.⁸⁰

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ 19 U.S.C. § 2462 (b) (1988).

⁷⁶ S. 2798, 102d Cong., 2d Sess. (1992). § 131 of the Customs and Trade Act of 1990 removed Czechoslovakia from the ineligible list. Act of August 20, 1990, Pub. L. No. 101-382, 1990 U.S.C.C.A.N. (104 Stat.) 629.

⁷⁷ 19 U.S.C. § 2461 (1988).

⁷⁸ 19 U.S.C. § 2905 (1988).

⁷⁹ William L. Richter, Note, *Soviet "Participation" in GATT: A Case for Accession*, 20 N.Y.U. J. INTL L. & POL. 477, 522 (1988).

⁸⁰ *Id.* at 477.

In 1986, the Soviet Union requested observer status in the Uruguay Round of multilateral trade negotiations.⁸¹ This request was rejected on the grounds that the Soviet economy was incompatible with GATT's basic philosophy and practices.⁸²

Sec. 2905 grants the President the authority to withhold GATT membership from a state with a non-market economy or a state that restricts trade with the U.S.⁸³

Before any major foreign country accedes [to the GATT], the President shall determine:

- (1) whether state trading enterprises account for a significant share of -
 - (A) the exports of such major foreign country, or
 - (B) the goods of such major foreign country that are subject to competition from goods imported into such foreign country; and
- (2) whether such state trading enterprises -
 - (A) unduly burden and restrict, or adversely affect, the foreign trade of the United States or the [U.S.] economy, or
 - (B) are likely to result in such a burden, restriction, or effect.⁸⁴

If the President makes both of these determinations in the affirmative, then he may withhold the application of the GATT until the U.S. reaches an agreement with the foreign country on the role and activities of the state trading enterprises that suggests more of a market economy approach.⁸⁵

Under Communist rule, the former Soviet Union was a non-market economy. This particular circumstance has supported the incompatibility rationale for denying Soviet participation in GATT.⁸⁶ Other reasons for denial include the non-convertibility of the ruble⁸⁷ and the irrational price structure created by a centrally planned and subsidized economy.⁸⁸ However, the Yeltsin administration is in the process of transforming Russia into a market economy by tackling all of these problems.⁸⁹

⁸¹ *Id.*

⁸² *Id.* at 479.

⁸³ 19 U.S.C. § 2905 (a) (1988).

⁸⁴ 19 U.S.C. § 2905 (b) (1988).

⁸⁵ *Id.*

⁸⁶ Richter, *supra* note 79, at 479.

⁸⁷ *Id.* at 511.

⁸⁸ *Id.*

⁸⁹ *Aid to Russia*, *ECONOMIST*, June 20, 1992, at 24.

Russian membership in GATT could yield benefits for both Russia and the West.⁹⁰ First, membership might help integrate Russia into the international financial system.⁹¹ Second, from a political standpoint, it makes little sense to deny Russia admission when much of Eastern Europe and Cuba already hold membership.⁹² Third, membership might also assist in the development of Russia's trade potential.⁹³ Hard currency profits are vital to Russia's rebuilding efforts. Fourth, it would be possible to apply GATT normatively to Russia if its trade practices were considered unfair.⁹⁴ Finally, admission to GATT could promote positive political change and stability in Russia during this transitional period. To achieve these goals, Russia should be granted permanent membership in GATT.⁹⁵

3. The Trade Act of 1974 — The Jackson-Vanik Amendment⁹⁶

The Trade Agreements Extension Act of 1951 revoked most-favored nation tariff treatment⁹⁷ to all Communist countries.⁹⁸ There were two rationales for the original revocation of MFN status for Communist countries.⁹⁹ First, American involvement in the Korean War left many with the feeling that it was not proper to offer trade concessions to countries which were aiding the North Koreans.¹⁰⁰ Second, the revocation provided protection to domestic producers.¹⁰¹

As a part of the 1972 US-USSR Trade Agreement, the Nixon administration was preparing to seek a waiver of the revocation in order to grant the Soviet Union MFN status.¹⁰² However, when the Trade Act of 1974 passed, it contained an amendment sponsored by Senator Henry Jackson and Representative Charles

⁹⁰ Richter, *supra* note 79, at 480.

⁹¹ *Id.* at 499.

⁹² *Id.* at 499--500.

⁹³ *Id.* at 500-04.

⁹⁴ *Id.* at 505.

⁹⁵ Arthur Dunkel, GATT Director General, recently announced that "it will take an unspecified length of time before [Russia] becomes a full GATT member." *Dunkel Says Russia Cooperates With GATT But He Sets No Date For Full Membership*, BNA INTL TRADE DAILY, Feb. 12, 1993, available in LEXIS, International Trade Library, BNA File.

⁹⁶ 19 U.S.C. § 2432 (1988).

⁹⁷ "[MFN] obligate[s] . . . contracting parties [to GATT] to extend all concessions or favors made by each in the past, or which might be made in the future to . . . any other state in such a way that their mutual trade will never be on a less favorable basis than is enjoyed by that state whose commercial relations with each is on the most favorable basis." R. SNYDER, *THE MOST FAVORED NATION CLAUSE* 10 (1948). See generally Paul Lansing & Eric C. Rose, *The Granting and Suspension of Most-Favored-Nation Status for Nonmarket Economy States: Policy and Consequences*, 25 HARV. INTL L. J. 329 (1984).

⁹⁸ 19 U.S.C. § 1362 (1988), repealed by Act of Oct. 11, 1962, Pub. L. No. 102-266, § 257 (C) (1) 76 Stat. 882.

⁹⁹ STAFF OF HOUSE COMM. ON FOREIGN AFFAIRS, 92d Cong., 2d Sess., U.S.-SOVIET COMMERCIAL RELATIONS: THE INTERPLAY OF ECONOMICS, TECHNOLOGY TRANSFER, AND DIPLOMACY 52 (Comm. Print 1973).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Trade, U.S. Policy Since 1945*, CONG. Q., 109-110 (1984).

Vanik.¹⁰³ This amendment conditioned any waiver of the prohibition on liberalization of Soviet immigration policies.¹⁰⁴

To assure the continued dedication of the United States to fundamental human rights. . . products from any nonmarket economy country shall not be eligible to receive nondiscriminatory treatment (most-favored nation treatment), such country shall not participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, directly or indirectly, and the President of the United States shall not conclude any commercial agreement with any such country. . . [while] the President determines that such country -

- (1) denies its citizens the right or opportunity to emigrate;
- (2) imposes more than a nominal tax on emigration. . . ."¹⁰⁵

Mikhail Gorbachev began liberalizing Soviet travel and immigration policies in the late 1980s in pursuit of MFN status for the Soviet Union. In December 1990, the Soviet Union received a waiver of the Jackson-Vanik Amendment.¹⁰⁶

However, while the relaxation of the Jackson-Vanik Amendment is helpful,¹⁰⁷ Russia should be granted permanent MFN status rather than the yearly waiver. Many of the political goals and policies that drove the Jackson-Vanik Amendment are simply out of date. Jackson-Vanik should be completely repealed.

4. The Tariff Act of 1930¹⁰⁸

The Tariff Act of 1930 bans the importation of products made from forced labor.

¹⁰³ *Ford Signs The Trade Act: Soviet Issue is Unresolved*, N.Y. TIMES, Jan. 4, 1975 at A1. See also PAULA STERN, *WATER'S EDGE* (1979) (for a full account of the origins of the Jackson-Vanik Amendment).

¹⁰⁴ 19 U.S.C. § 2432 (a) (1988).

¹⁰⁵ *Id.*

¹⁰⁶ Exec. Order No. 12, 740 56 Fed. Reg. 355 (1990). According to Robert D. Hormats, vice chairman of Goldman Sachs International, "It sweeps away all the Code War baggage." Stuart Auerbach, *From Russian With Lower Tariffs*, WASH. POST, June 19, 1992, at A33. But see *supra* text accompanying notes 19-86 and *infra* text accompanying notes 111, 130.

¹⁰⁷ *Perestroika and Its Implications for the United States: Hearings Before the House Comm. on Small Business*, 100th Cong., 2d Sess. 86 (1989) (statement of Eugene J. Milosh, President of the American Association of Exporters and Importers). But see Hines, *supra* note 11, at 1 (MFN will have little immediate impact on U.S.-Russian trade because the bulk of Russian exports, "raw materials and lightly processed goods - are of the type carrying little or no tariff even absent MFN").

¹⁰⁸ 12 U.S.C. § 1307 (1988).

All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited. . . .¹⁰⁹

In 1988, Congress found that Soviet forced labor was being used to produce export goods.¹¹⁰ However, the massive political changes in the former Soviet Union, and the Western desire to improve commercial relations with Russia and the other CIS countries combine to make it unlikely that the U.S. will press this particular issue with the leadership of these countries.¹¹¹

Financial Restrictions

The greatest changes in American law and policy on trade with Russia have occurred in the area of financial restrictions. Congress has recently repealed several major legal/financial impediments, and several others are under consideration for repeal. Very few obstacles to improved American-Russian trade remain in this particular area.

1. The Byrd Amendment¹¹²

The Byrd Amendment barred new loans or guarantees by the Export-Import Bank.¹¹³ The amendment also specifically prohibited loans for the production of fossil fuel energy resources.¹¹⁴ Congress repealed the Byrd Amendment in October 1991.¹¹⁵

2. The Stevenson Amendment¹¹⁶

The Stevenson Amendment prohibited all U.S. agencies, other than the Commodity Credit Corporation, from guaranteeing, insuring, or extending credits to the Soviet Union in connection with exports in excess of \$300 million without prior Congressional approval.¹¹⁷ Congress repealed the Stevenson Amendment in October 1991.¹¹⁸

¹⁰⁹ *Id.*

¹¹⁰ Act Aug. 23, 19988, P. L. 100-418, Title I, Subtitle H, Part 1, § 1906, 102 Stat. 1313 (1988).

¹¹¹ The political crackdown in China in 1989 seems to have led to renewed interest in this issue where China is concerned. There have been charges that China is exporting goods made from forced labor. See Daniel Southerland, *U.S., China Sign Prison Labor Pact*, WASH. POST, Aug. 8, 1992, at B1.

¹¹² 12 U.S.C. § 635e (b) (1988), *repealed by* Act of Oct. 28, 1991, Pub. L. No. 102-266, § 102, 106 Stat. 95.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ 19 U.S.C. § 2487 (1988), *repealed by* Act of Oct. 28, 1991, Pub. L. No. 102-266, Sec. 102, 106 Stat. 95.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

3. The Export-Import Act of 1945¹¹⁹

The Export-Import Act of 1945 prohibited the Export-Import Bank from lending or in any way participating in the extension of credits to any Communist country except when the President made a determination that extension of credits was in the national interest.¹²⁰

The Bank in exercise of its functions shall not guarantee, insure, extend credit, or participate in the extension of credit -
(1) in connection with the purchase or lease of any product by a Marxist-Leninist country, or agency, or national thereof. . . .¹²¹

Sec. 635 then goes on to define Marxist-Leninist and includes a list of countries prohibited under this definition from receiving Export-Import credits.¹²² The Soviet Union is on this list.¹²³

Sec. 409 of the Senate version of the Freedom Support Act of 1992 deleted the Soviet Union from the ineligible list.¹²⁴ However, this section was dropped from the final version of the law.¹²⁵

Maintaining this particular restriction makes little sense with the lifting of so many other financial restrictions on trade with Russia.

4. The Foreign Assistance Act of 1961¹²⁶

The Overseas Private Investment Corporation is a quasi-governmental agency which insures American investments abroad.¹²⁷ The Foreign Assistance Act of 1961 prohibited OPIC from offering insurance or guarantees for projects in any Communist country.¹²⁸ Sec. 901 of the Freedom Support Act of 1992 amended the Act by deleting the Soviet Union from the ineligible list.¹²⁹

¹¹⁹ 12 U.S.C. § 635 (b)(2)(B) (1988).

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ S. 2532, 102d Cong., 2d Sess. § 409 (1992).

¹²⁵ Act of Oct. 24, 1992, Pub. L. No. 102-511, 1992 U.S.C.C.A.N. (106 Stat.) 3320.

¹²⁶ 22 U.S.C. § 2370 (f)(1) (1988).

¹²⁷ Michael Arndt, *Rush to Russia by U.S. Firms Gathers Steam*, CHIC. TRIB., June 18, 1992, at C1.

¹²⁸ 22 U.S.C. § 2370 (f) (1) (1988).

¹²⁹ Act of Oct. 24, 1992, Pub. L. No. 102-511, 1992 U.S.C.C.A.N. (106 Stat.) 3320.

5. The Johnson Debt Default Act of 1934 (18 USC 955)¹³⁰

The Johnson Debt Default Act penalizes anyone in the U.S. who makes an untied loan to a foreign government in default of its obligations to the U.S. government.¹³¹

Whoever, within the United States, purchases or sells the bonds, securities, or other obligations of any foreign government or political subdivision thereof or any organization or association acting for or on behalf of a foreign government or political subdivision thereof. . . or makes any loan to such foreign government, political subdivision, organization or association, except for renewal or adjustment of existing indebtedness, while such government. . . is in default in the payment of its obligations, or any part thereof, to the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.¹³²

Until recently, the Johnson Debt Default Act imposed restrictions on private financial dealings with Russia because of an estimated debt of \$1.5 billion owed to the United States.¹³³ This total includes the \$900 million loaned to the Kerensky Provisional Government through the issuance of bonds to help finance continued Russian participation in World War I.¹³⁴ It also includes an additional \$674 million from the Lend-Lease program during World War II.¹³⁵

The Freedom Support Act of 1992 lifted these restrictions.¹³⁶ "Section 955 of title 18, United States Code shall not apply with respect to any obligations of the former Soviet Union, or any of the independent states of the former Soviet Union, or any political subdivision, organization, or association thereof."¹³⁷

6. The Agriculture Trade Development and Assistance Act¹³⁸

The Agriculture Trade Development and Assistance Act prohibits sales agreements on agricultural commodities for local currencies or long-term dollar

¹³⁰ 18 U.S.C. § 955 (1988).

¹³¹ *Id.*

¹³² *Id.*

¹³³ Clyde H. Farnsworth, *Toward the Summit*, N.Y. TIMES, May 29, 1990, at A6.

¹³⁴ Robert Lenzer, *USSR Seeking to Settle 70-Year Debt with U.S.*, BOSTON GLOBE, Dec. 26, 1988, at 1.

¹³⁵ Farnsworth, *supra* note 133, at A6.

¹³⁶ Act of Oct. 24, 1992, Pub. L. No. 102-511, 1992 U.S.C.C.A.N. (106 Stat.) 3320.

¹³⁷ *Id.*

¹³⁸ 41 U.S.C. § 1703 (1988).

credits with countries unfriendly to the United States.¹³⁹ The President may waive the law if he determines a country to be friendly.¹⁴⁰

Usually, countries that were deemed unfriendly were those controlled by the "world Communist movement."¹⁴¹ With the changes in Eastern Europe and the former Soviet Union, this movement has largely collapsed.¹⁴²

Due to the improvement in U.S.-USSR relations under Gorbachev and the even greater cooperation between the U.S. and the Russian Republic under Yeltsin, Russia should be removed from the list of unfriendly countries.

PROPOSED LEGISLATION AND UNRATIFIED TREATIES

Events in the former Soviet Union have precipitated recent changes in American policy and law with regard to the newly independent states. Further modifications are still making their way either as a bill through Congress or as a treaty in the Senate. Most, but not all, of the possible amendments to American law will enhance American-Russian trade.

Treatment of the Soviet Union under the Generalized System of Preferences

S. 2798¹⁴³ is the proposal to remove the Soviet Union from the list of countries ineligible for designation as a beneficiary developing country.¹⁴⁴ As discussed above,¹⁴⁵ the goals of this designation appear to coincide with the type of trade relationship America desires to have with Russia. Members of Congress should be urged to support this bill.

*Treaty with the Russian Federation Concerning the Encouragement and Reciprocal Protection of Investment*¹⁴⁶

During the June 1992 summit, President Bush and President Yeltsin signed a bilateral investment treaty.¹⁴⁷ "The treaty doesn't remove all the many obstacles

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at §1703 (d).

¹⁴² The People's Republic of China, North Korea, and Cuba remain committed in varying degrees to Communist ideology.

¹⁴³ S. 2798, *supra* note 76.

¹⁴⁴ *Id.*

¹⁴⁵ *See supra* text accompanying notes 51-71.

¹⁴⁶ Treaty for the Encouragement and Reciprocal Protection of Investment, June 17, 1992, U.S.-Russia, S. TREATY DOC. NO. 33, 102d Cong., 2d Sess. (1992) [hereinafter U.S.-Russia Investment Treaty].

¹⁴⁷ Stuart Auerbach, *From Russia With Lower Tariffs*, WASH. POST, June 19, 1992, at A33.

to doing business in centrally controlled, non-market economies, but it addresses some of the basic issues that businesses face."¹⁴⁸

The treaty contains several important features. First, Article IV "guarantees the right to repatriate profits and transfer other funds out of the country by converting rubles into hard currency."¹⁴⁹

Each party shall permit all transfers related to an investment to be made freely and without delay into and out of its territory. . . . Companies or nationals of each Party shall be permitted to convert such transfers into the freely convertible currency of their choice. . .¹⁵⁰

Second, Articles VI-VII provide for third party international arbitration of disputes between U.S. investors and the Russian government.¹⁵¹ Third, Article II guarantees non-discriminatory treatment of "investment and activities associated with the investment process."¹⁵² Fourth, Article III offers protection to investors in the event of expropriation.¹⁵³

Investments shall not be expropriated or nationalized either directly or indirectly through measures tantamount to expropriation. . . except for a public purpose; in a non-discriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general principles of international law. . . .¹⁵⁴

Finally, the investment treaty includes several other advantages to U.S. investors:¹⁵⁵ the right to operate freely,¹⁵⁶ the discontinuation of screening investments,¹⁵⁷ and access to business necessities.¹⁵⁸

Despite some potential problems, the treaty provides "substantive protection" for investment and an "unprecedented array of remedies."¹⁵⁹ This bilateral investment treaty lays at least some of the much needed groundwork to

¹⁴⁸ *U.S.-Russia Investment Treaty Moves Forward: Progress Seen on Ruble, Profits Repatriation Issue*, 3 RUSSIA & COMMONWEALTH BUS. L. REP., Aug. 7, 1992 [hereinafter *U.S.-Russia Investment Treaty Moves Forward*]. See also *U.S.-Russia Investment Treaty Tackles Issue of Repatriating Ruble Profits*, 3 RUSSIA & COMMONWEALTH BUS. L. REP., June 26, 1992.

¹⁴⁹ *U.S.-Russia Investment Treaty*, *supra* note 146, art. IV, S. TREATY DOC. NO. 33 at 11.

¹⁵⁰ *Id.*

¹⁵¹ *U.S.-Russia Investment Treaty*, *supra* note 146, arts. VI-VII, S. TREATY DOC. NO. 33 at 12-17.

¹⁵² *U.S.-Russia Investment Treaty*, *supra* note 146, art. II, S. TREATY DOC. NO. 33 at 6.

¹⁵³ *U.S.-Russia Investment Treaty*, *supra* note 146, art. II, S. TREATY DOC. NO. 33 at 9.

¹⁵⁴ *Id.*

¹⁵⁵ *U.S.-Russia Investment Treaty*, *supra* note 146, art. II, S. TREATY DOC. NO. 33 at 6.

¹⁵⁶ *U.S.-Russia Investment Treaty*, *supra* note 146, art. XVI, para. 1. S. TREATY DOC. NO. 33 at 11.

¹⁵⁷ *U.S.-Russia Investment Treaty*, *supra* note 146, art. I, protocol para. 3, S. TREATY DOC. NO. 22 at 2, 24.

¹⁵⁸ See *U.S.-Russia Investment Treaty Moves Forward*, *supra* note 148 (discussing exemption from treaty obligations for protection of a party's essential security interests as a potential significant loophole).

¹⁵⁹ *Id.*

attract large-scale American business investment. The U.S. Senate should be encouraged to ratify this treaty as quickly as possible.

*Income Tax Convention with the Russian Federation*¹⁶⁰

President Bush and President Yeltsin also signed a tax treaty at their June 1992 summit.¹⁶¹ This accord, once ratified, will replace the existing treaty from 1973.¹⁶² The new treaty addresses several issues. First, Article VI deals with the issue of creditability of the Russian tax.¹⁶³ It contains provisions that permit a U.S. investor to deduct taxes paid in Russia from its income tax in the United States.¹⁶⁴ Second, Article X covers dividends.¹⁶⁵ It reduces the withholding tax on repatriated dividends, or profits, from 15% to 5% for most likely investors.¹⁶⁶ Third, Article XIV helps narrow tax liability on personal income in Russia.¹⁶⁷ Finally, Article V permits a construction company or oil drilling company to work inside Russia for 18 months without being subject to Russian income tax.¹⁶⁸

While some difficulties¹⁶⁹ may persist in this area, important areas such as the issue of "creditability of Russian taxes for U.S. tax purposes" appears to have been resolved.¹⁷⁰ "The treaty is generally a favorable one for many U.S. investors."¹⁷¹ "It should bring a degree of stability and predictability to the Russian tax environment."¹⁷² As with the bilateral investment treaty, the Senate should be urged to ratify this treaty on taxation at the earliest opportunity.

¹⁶⁰ Convention for the Avoidance of Double Taxation, June 17, 1992, U.S.-Russia, S. TREATY DOC. NO. 39, 102d Cong., 2d Sess. (1992) [hereinafter U.S.-Russia Income Tax Treaty].

¹⁶¹ Michael Arndt, *Rush to Russia by U.S. Firms Gathers Steam*, CHIC. TRIB., June 18, 1992, at C1.

¹⁶² Convention for the Avoidance of Double Taxation, June 20, 1973, U.S.-U.S.S.R., 27 U.S.T. 1.

¹⁶³ U.S.-Russia Income Tax Treaty, *supra* note 160, art. VI, S. TREATY DOC. NO. 39 at ____.

¹⁶⁴ *Id.*

¹⁶⁵ U.S.-Russia Income Tax Treaty, *supra* note 160, art. X, S. TREATY DOC. NO. 39 at ____.

¹⁶⁶ *Id.*

¹⁶⁷ U.S.-Russia Income Tax Treaty, *supra* note 160, art. XIV, S. TREATY DOC. NO. 39 at ____.

¹⁶⁸ U.S.-Russia Income Tax Treaty, *supra* note 160, art. V, S. TREATY DOC. NO. 39 at ____.

¹⁶⁹ "The new treaty provides that a building site or construction, installation or assembly project, or an installation or drilling rig or ship used for the exploration or exploitation of natural resources constitutes a permanent establishment if it last for more than 18 months. {T}he 18-month period contrasts unfavorably with the 36-month period in the Finland-U.S.S.R. income tax treaty and the 24-month period in both the Austrian and U.K. treaties with the Soviet Union." John Turro, *New U.S.-Russia Income Tax Treaty and Protocol Examined*, TAX NOTES INT'L, Jul. 1, 1992, available in LEXIS, Int'l Trade Library, Tax Notes Int'l File. The dividend article's five percent withholding rate also compares unfavorably with other Soviet conventions which provide for zero dividend withholding rates. Jeffrey M. Trinklein, *The U.S.-Russia Tax Treaty: Has the Foreign Tax Credit Issue Been Resolved?*, TAX NOTES INT'L, Oct. 5, 1992, available in LEXIS, Int'l Trade Library, Tax Notes Int'l File.

¹⁷⁰ Trinklein, *supra* note 169.

¹⁷¹ *Tax Treaty Addresses Essential Issues, But Investors May Find Some Provisions Inadequate*, RUSSIA & COMMONWEALTH BUS. L. REP., June 26, 1992.

¹⁷² *Id.*

Restriction of Assistance for Russia Based on the Withdrawal of its Military Forces from the Baltic States

Recently in the House of Representatives, two bills were introduced which exemplify the type of condition American lawmakers should avoid attaching to a piece of legislation designed to give assistance to Russia. Both H.R. 5779¹⁷³ and 5282¹⁷⁴ condition financial assistance upon the withdrawal of Russian troops from the Baltics. H.R. 5779 provides that:

... the United States may not consent to an increase in its quota in the International Monetary Fund until the President has certified to Congress that ... Russia has developed and is implementing a plan to withdraw from the Baltic States, within 2 years after the date of the enactment of this subsection, its military forces (as well as any military forces under the control of the Commonwealth of Independent States) ...¹⁷⁵

H.R. 5282 goes even further in its demands. Matters which must be certified to Congress before the approval of loans to Russia include:

... [that] (A) significant progress has been achieved toward removal of Russian armed forces from Estonia, Latvia, and Lithuania; (B) Additional Russian armed forces have not been brought into [the Baltics] for purpose of transit to Russia or for any other purpose without the express permission of such country; (C) Artillery exercises or similar training operations are not being conducted by Russian armed forces on the territory of [the Baltic States] without the express permission of the government of such country; (D) Russian military installations in [the Baltic States] are open to inspection by the government of such country; (E) Russian air and naval forces are not interfering with traffic in the air space or territorial waters of [the Baltic States]; and (F) The government of Russia is keeping the governments of [the Baltic States] informed regarding the number and location of Russian armed forces in such country.¹⁷⁶

Before American trade has barely shed itself of the Jackson-Vanik Amendment, some lawmakers are already looking for new ways to micromanage a potentially explosive situation. One need not cast about a great deal to discover why this issue is an especially sensitive one, not just in the Baltic states, but also in Russia. First, there is an acute housing shortage that has become even more

¹⁷³ H.R. 5779, 102d Cong., 2d Sess. (1992).

¹⁷⁴ H.R. 5282, 102d Cong., 2d Sess. (1992).

¹⁷⁵ H.R. 5779, 102d Cong., 2d Sess. (1992).

¹⁷⁶ H.R. 5282, 102d Cong., 2d Sess. (1992).

pressing as the Red Army pulls back from all over Eastern Europe.¹⁷⁷ It is often the case that the government has literally nowhere to place these troops and their families.¹⁷⁸

Second, laws in the Baltics stripping most resident ethnic Russians of even the most basic rights have created a great deal of anger in Russia.¹⁷⁹ There have been calls from hardliners for intervention to protect ethnic Russians.¹⁸⁰

Third, the surrounding of the Ostankino television station this summer in Moscow was sparked in large measure by the belief of many Russians that their government has simply become a puppet of the West, especially of the United States.¹⁸¹ Attempts to dictate a matter such as how troop withdrawals should proceed reinforces the image of the U.S. as the puppet master.

These are by no means the only domestic problems the Yeltsin government faces, and the cumulative effect of such difficulties will only be exacerbated if bills like H.R. 5779 and 5282 are enacted into law. President Yeltsin, thus far, seems committed to democratic reforms, but American lawmakers should not forget the tightrope upon which Mr. Yeltsin walks in his country. The Russian government under President Yeltsin does not enjoy the solid foundation that the Brezhnev government had twenty years ago. Mr. Brezhnev had no opposition forces to whom he had to answer. Laws like the Jackson-Vanik Amendment did not threaten Soviet stability. They do, however, have a great potential for contributing to the destabilization of the political, economic, and social order in the Russia of today. Such a potential put to use has negative consequences not merely for improved trade opportunities, but for peace in general.

CONCLUSION

While this article may not have touched upon all American laws impeding trade with Russia, it does cover the bulk of laws that have and may continue to hamper efforts of American investors to engage in trade with Russia.

Political changes in the former Soviet Union require American lawmakers to reevaluate our trade policy toward Russia and the other CIS republics. A review of American legislation that has or is impeding trade with Russia indicates that a degree of reevaluation has taken place in some areas, while in

¹⁷⁷ Stephanie Simon, *Russia Softens Stand on Baltic Troop Pullout*, L.A. TIMES, Oct. 31, 1992, at A8.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* John-Thor Dahlburg, *Yeltsin Suspends Baltics Pullout*, L.A. TIMES, October 30, 1992, at A1. Domestic political difficulties may force President Yeltsin to act with care as he attempts to deal with the Russian armed forces, hard-liners, and a population that is struggling to come to terms with economic reforms. Mr. Yeltsin deserves the benefit of the doubt when it comes to implementing the Russian army withdrawal from the Baltics.

¹⁸⁰ Simon, *supra* note 177, at A8.

¹⁸¹ *Police Oust Communists From TV Studio to End 11-Day Rally*, L.A. TIMES, June 23, 1992, at A8.

others not at all. American restrictions on technology transfer remain the most severe with broad statutory language and cumbersome licensing procedures. Tariff restrictions have eased somewhat with the grant of MFN status to Russia. However, the failure to grant Russia the designation of beneficiary developing country and the refusal to extend GATT membership to Russia remain impediments to the U.S.-Russia trade relationship. Many, although not all, financial restrictions on trade with Russia have been lifted. Finally, a bilateral investment treaty and an accord on taxation, both advantageous to U.S. investors, await Senate ratification.

