

January 1988

Glasnot and Perestroika: An Evaluation of the Gorbachev Revolution and Its Opportunities for the West

Harold E. Rogers Jr.

Follow this and additional works at: <https://digitalcommons.du.edu/djilp>

Recommended Citation

Harold E. Rogers, Glasnot and Perestroika: An Evaluation of the Gorbachev Revolution and Its Opportunities for the West, 16 Denv. J. Int'l L. & Pol'y 209 (1988).

This Article is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Denver Journal of International Law & Policy by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu,dig-commons@du.edu.

Glasnot and Perestroika: An Evaluation of the Gorbachev Revolution and Its Opportunities for the West

Keywords

Revolution, Comparative Law, International Trade

ARTICLES

Glasnost and Perestroika: An Evaluation of the Gorbachev Revolution and Its Opportunities for the West

HAROLD E. ROGERS, JR.*

I. INTRODUCTION

The Russian Bear is stirring from a long winter's nap, and to the surprise of the western world, is showing a new, friendly smile. The reason for the changed appearance, according to its new masters, is the effect of glasnost (openness) and perestroika (restructuring) now sweeping Russia. These changes are so broad and fundamental that they stir world speculation and hope that the cold war may be ending.¹

The principal author of these changes is Mikhail Gorbachev who, in March, 1985, became General Secretary of the Soviet Communist Party.² Since his appointment as Party General Secretary, Gorbachev has startled the world with a dazzling succession of new plans and proposals aimed at slowing the arms race³, democratizing Soviet society,⁴ reforming

* Harold E. Rogers, Jr. is an attorney practicing in San Mateo, California, a graduate of Stanford University (majoring in History) and of the Stanford Law School. For this article, Mr. Rogers has drawn on his personal observations and conversations in the Soviet Union during travels there in 1971, 1982, 1985, 1987, and 1988 and upon a variety of personal meetings in the United States in recent years with Soviet diplomats posted to the Soviet Consulate in San Francisco, and upon recent research conducted at Stanford University and its Hoover Institution.

1. See TIME, July 27, 1987, at 12.

2. After waiting patiently in the wings following the death of his mentor Yuri Andropov in 1984, Gorbachev on March 10, 1985, at age 54, was named General Secretary, within 24 hours of the death of Andropov's successor, Konstantin Chernenko. By April, 1985, the Central Committee had put its preliminary stamp of approval on Gorbachev's far-reaching proposals for opening Soviet society and restructuring its economy. It was obvious from the rapidity with which Gorbachev consolidated his position after Chernenko's death, that his plans had been formulated and his key allies selected well before his succession to the top Soviet post. See generally William G. Hyland, *The Gorbachev Succession*, 63 FOREIGN AFF. 800 (Spring 1985). See also C. SCHMIDT-HAUER, GORBACHEV—THE PATH TO POWER 112-114 (1986).

3. For an outline of his disarmament proposals see M. GORBACHEV, THE RESULTS AND LESSONS OF REYKJAVIK (1986).

4. In a speech to the Central Committee on January 27, 1987, Gorbachev discussed his

its long stagnant economy, and restoring Soviet influence in the world. While many in the West are applauding the fresh new winds emanating from Soviet Russia,⁵ others are speculating that with a less menacing demeanor and in a more conventional western manner, Gorbachev could prove to be a far more dangerous threat than his predecessors.⁶ To paraphrase the American Bolshevik admirer John Reed, the Russian Revolution created by Gorbachev⁷ is "shaking the world," and because of its implications and opportunities for the West, deserves to be examined in some detail.

II. ECONOMIC REFORM

A. Background

The centerpiece of perestroika in the Soviet Union is economic reform.⁸ The utopian promises of Marx and Lenin⁹ have not materialized.¹⁰ Gorbachev and his supporters recognize that the Soviet economy has reached a pre-crisis state and that unless fundamental, far-reaching

proposals for democratizing Soviet society, including the replacement of incompetent leaders at the top with an influx of new faces, and secret ballot elections of local officials and factory bosses. *Pravda* and *Izvestia*, January 28, 1987, at 1-5; *The Current Digest of the Soviet Press*, XXXIX, No. 6., 1987, at 8-10.

5. British Prime Minister Margaret Thatcher, upon the occasion of Gorbachev's first visit to Britain in 1984 remarked: "I like him. We can do business together." SCHMIDT-HAUER, *supra* note 2, at 8.

6. *Moscow News*, July 19, 1987, at 6, reporting on an article by Egon Bahr, in the West German magazine *Vorwärts* (No. 24).

7. John Reed, an American journalist sympathetic to Lenin and the Bolshevik revolution of 1917, wrote an account of the revolution entitled *TEN DAYS THAT SHOOK THE WORLD*. He is buried in the Kremlin wall in Moscow. See *Moscow News*, *supra* note 6, at 13.

8. In his newly published book Mikhail Gorbachev has outlined the historical development and application of restructuring in the Soviet Union, in amplification of the detailed outline of his new economic program set out in his June 25, 1987, speech to the Central Committee. M. GORBACHEV, *PERESTROIKA—NEW THINKING FOR OUR COUNTRY AND THE WORLD* (1987).

9. For a very readable account of the life and writings of both Marx and Lenin see J. K. GALBRAITH, *THE AGE OF UNCERTAINTY* (1977).

10. The promise of Communism as portrayed by Marx and Lenin is that if workers take control of government, and free from exploitation, supply all man's economic requirements, class conflict will cease and government will wither away. Marx postulated that there would first be required a dictatorship of the proletariat (workers) who would overthrow the exploiting bourgeoisie (capitalist class). Initially there would be socialism during which workers would be paid in accordance with their contribution ("to each according to his work") Ultimately when material wants were satisfied, a state of communism would ensue in which each worker would contribute according to his ability and receive according to his needs. Jealousy and competition would presumably disappear, along with the achievement of plenty provided by the new economy. Socialism required that the government (workers) would own and control the means of production to prevent exploitation of workers by the bourgeoisie owners of capital. See J. BARRON, *KGB TODAY—THE HIDDEN HAND* 10 (1983). In contrast to today's reality, the Twenty Second Congress of the Communist Party in 1961 declared that by 1980 the Soviet Union would achieve the utopia of true communism. Little is heard about this boast today.

changes are made, Russia will continue to fall further behind the West in almost every measure of economic development, technology, standard of living and military.¹¹ In addition, since Communism is becoming an evident failure at home, it is increasingly difficult for the Soviets to sell it as the wave of the future to third world and other countries.

Gorbachev recognizes likewise that more than cosmetic changes will be required—that the problems are endemic to the system. Since the Communist Party rulers have invested their entire political capital in the sanctity of Marxist-Leninist theory and its Stalinist legacy as the ultimate scientific truth about the behavior of society and the economy,¹² enormous skill in theory¹³ and politics will be required to orchestrate a credible about-face in the thrust of the Soviet economy without simultaneously creating a political revolution.¹⁴

Because of the long totalitarian tradition beginning with the early Czars and Russian princes, and continuing with the Communists, changes in the Soviet Union have quite often been accomplished by violence, including assassination.¹⁵ Through draconian measures, including terror im-

11. For an excellent discussion of the general economic problems facing Gorbachev, see M. Goldman, *Gorbachev and Economic Reform*, 64 *FOREIGN AFFAIRS* 56 (1985). A particular problem of the Soviets with their centrally planned economy has been their failure to master the new high technology sweeping the world. Since the life cycle of many new products is only two or three years, by the time the Soviets have learned a new process, it often is already obsolete. *Id.* at 58.

12. Professor Richard Pipes of Harvard argues that among the ruling elite in the Soviet Union (the "nomenklatura," some 40,000 strong), there is a nostalgia for the order and discipline of Stalinism. Over the years these ruling party members have maintained their power and privilege by fear and strict control (through the KGB and its predecessors), and through aggressiveness and threats of war. Democratization will thus require the nomenklatura to give up power. Gorbachev must overcome this legacy of fear and control to free creative energies of the Soviet people. See R. Pipes, *Can the Soviet Union Reform*, 63 *FOREIGN AFF.* 47 (1984). See also Ford, *The Soviet Union: The Next Decade*, 62 *FOREIGN AFF.* 1137 (1984).

13. A. N. Yakovlev, orchestrator of Gorbachev's international publicity for glasnost and recently appointed by him to the Politburo, set out the guidelines for the change in theory in a report published in *Pravda*, April 18, 1987: Our task today "... involves enriching Marxist thought at a qualitatively new stage of world development and constantly renewing and upgrading our world outlook ... Lenin ... summarized ... natural sciences at the beginning of the century. It is our duty to collectively develop Marxist-Leninist teaching just as dynamically, keeping in mind that the amount of information available now doubles every 20 months as opposed to 50 years in K. Marx's times. ... We need to be aware that no one has a monopoly on truth in either raising new questions or finding answers."

14. Following Khrushchev's speech to the Central Committee in 1956 attacking Stalin and his brutality, a democratic Hungarian regime declared itself independent of the Warsaw Pact. And after duplicitous reassurances from Russia, Hungary's efforts to achieve freedom were snuffed out by Soviet tanks and troops sent in to overthrow the new government and to quell the rebellion. See BARRON, *supra* note 10, at 7. Likewise in 1953 following Stalin's death, riots occurred in East Germany.

15. Ivan the Terrible and Peter the Great are accused of personally eliminating political enemies. Czar Paul I, son of Catherine the Great, was assassinated in 1801 in favor of his son Alexander I when he displeased the ruling Boyar class. In 1825 the Decembrists (a revolutionary group opposed to the harsh policies of Czar Alexander I and his brother and suc-

posed by secret police and slaughter of kulaks and appropriation of their farms, Stalin created his socialist-industrial dictatorship.¹⁶

Changes as fundamental as those proposed by Gorbachev, while not portending the terror or bloodshed of earlier eras, do carry with them severe risks to the Soviet regime itself; among them are loss of Marxism-Leninism, loss of moral power among Soviet citizens, and loss of control over the Socialist world.¹⁷

B. Gorbachev's Call For Change

1. Generally

Gorbachev was a known reformer when he assumed office in March, 1985. Under the tutelage of Yuri Andropov among others, his rise from humble beginnings in Stavropol at the base of the Caucasus Mountains, to Moscow and the Politburo was swift.¹⁸ Following Brezhnev's death in

cessor Nicholas I), were caught and executed or exiled in accordance with the degree of their participation. In 1905 the palace guards of Nicholas II massacred peacefully petitioning citizens led by Father Gapon to the Winter Palace in Leningrad. The ensuing uproar finally led Nicholas to create the First Duma, an advisory legislative body. The Duma was in turn abolished (1918) by the Bolsheviks through armed threat, following the abdication of Nicholas II in 1917. See generally B. PARES, A HISTORY OF RUSSIA (1965).

16. So pervasive was the use of mass terror to accomplish reform, particularly during the Stalin era, that by some estimates some 20 million innocent Soviet citizens were annihilated in prisons and forced labor camps. See W. CORSON & R. CROWLEY, THE NEW KGB—ENGINE OF SOVIET POWER 41 (1986). Stalin is alleged to have said "One man's death is a tragedy; 10,000 deaths is merely a statistic." *Id.* Alexandre I. Solzhenitsyn confirmed the brutality in THE GULAG ARCHIPELAGO 435-439 (1973). Based on reports of prisoners who presumably witnessed the events or were in a position to develop accurate information, Solzhenitsyn estimates that in the 16 month period between June, 1918 and October 1919, more than 16,000 persons were shot (more than 1,000 per month, compared to about 10 executions per month during the peak years of the Inquisition in Spain (1420-1498) by burning at the stake. During the period of NKVD chief Yezhov's purges of 1937-1938, execution by shooting increased to more than 500,000 political prisoners, plus 480,000 habitual thieves. According to other Solzhenitsyn sources, 1,700,000 condemned prisoners had been shot by 1939.

17. A realist, Gorbachev is said to have proclaimed to visiting rulers of the Communist satellites during the recent 1987 November Communist celebration that Moscow is no longer the center for world communism and that each communist country is on its own and must tailor its own policy. China, Yugoslavia and Rumania, have been following such a course for some time. While Polish leader Wojciech Jaruzelski has become an ideological ally of Gorbachev, hardline leader Erich Honecker of East Germany and Gustav Husak of Czechoslovakia are lukewarm, and Rumania's Nicolae Ceausescu is clearly opposed to Gorbachev's new ideas. The Hungarians under Janos Kadar experimented with their economy for two decades. See Szulc, *How East Europeans View Gorbachev's Reforms*, San Francisco Chron., August 12, 1987, at C-5.

18. See generally SCHMIDT-HAUER, *supra* note 2. Under Andropov's wing Gorbachev became a candidate member of the Politburo in 1979, and a year later became a full member, six months before his 50th birthday. This rapid ascension was startling in view of the fact that the average age of Politburo members at that time was over 70. See generally Breslauer, *The Nature of Soviet Politics and the Gorbachev Leadership*, in THE GORBACHEV ERA: THE PORTABLE STANFORD 11-29 (Dallin & Rice eds. 1986).

1982, Andropov was elected his successor, but soon fell ill. Gorbachev, as his crowned prince, appeared to independently take over Andropov's duties during his illness in order to continue the momentum for reform, particularly against alcoholism¹⁹ and corruption, started by Andropov.²⁰ When Andropov died on February 9, 1984, there was speculation that Gorbachev might become his successor. The old guard, however, had been alarmed by the Andropov reforms, and felt the pace of change should be slowed. It felt safer with Chernenko, who was too old and frail even at that time to make any dramatic changes.²¹ As a result of the wholesale sacking of Party officials in Andropov's campaign against corruption, the old guard and its proteges were frightened and anxious about their tenure, privileges, and benefits.²² In addition it feared that any sudden changes might lead to loss of control, a weakening of planning, and a host of other unpredictable consequences if Gorbachev were allowed to assume power at that time.²³ To credit his political skills,²⁴ Gorbachev was willing to make a deal with the older generation and wait a while longer, until Chernenko finally died on March 10, 1985 of complications resulting from emphysema.²⁵

19. Alcoholism, always a serious social problem in Russia, seemed to become worse as workers faced increasing hopelessness of bettering their lot through increased personal efforts. BARRON, *supra* note 10, at 12. It has been estimated that as many as 40 million Soviet citizens are alcoholics. US NEWS AND WORLD REPORT, Oct. 19, 1987, at 36. Murray Feshbach of Georgetown University estimates that urban families in the Soviet Union spend nearly the same proportion of their weekly budget on alcohol as American families do for food. Gorbachev was shocked to learn that government tax returns on liquor sales grew to 169 billion rubles (about \$253 billion) in the 11th five year plan period, from only 67 billion rubles in the 8th five year plan. Moscow News Supp. No. 27, p. 7. Also it was reported recently in the Soviet press, that the government battle against alcoholism has extended to a crackdown on illegal home distilling of moonshine. San Francisco Chron., *supra* note 17, at 91.

20. SCHMIDT-HAUER, *supra* note 2, at 91; BARRON, *supra* note 10 at 18, gives examples of wide-spread corruption. In one case, local newspapers in January, 1983 reported the trial of Stanislav Ivanov and 14 conspirators who allegedly embezzled millions of rubles by registering a nonexistent factory and collecting wages for 515 phantom employees over a three year period. Bribes and kickbacks kept officials quiet. *Id.* at 21.

21. According to Harvard professor Richard Pipes, the Soviet leadership and the party evolved into a self serving privileged class which became parasitic and "Corrupted by privilege and peculation, it [had] lost, since Stalin's death, any sense of service or obligation, whether to the ideal of communism or to the nation; it so [dreaded] any change in the Stalinist system, from which its power and privilege largely derive, that it [chose] ever weaker secretaries as Party leaders." Pipes, *supra* note 12, at 49-50.

22. See US NEWS AND WORLD REPORT, Oct. 19, 1987, at 36.

23. As it turned out, some of their worst fears were soon to be realized.

24. Zdenek Mlynar, a Czechoslovak Communist and law school classmate of Gorbachev's in the early 1950's regards him as a person with great political skill to have survived the Brezhnev years while still retaining his independence and outspokenness. Said Mlynar: "If he could live under Brezhnev for 18 years with these exceptional ideas and then come to the top, that's proof that he is a man who knows what steps he can afford to take." San Francisco Chron., Nov. 7, 1987.

25. SCHMIDT-HAUER, *supra* note 2, at 97. At the time of Chernenko's death, three of the ten Politburo members were away from Moscow. The remaining members gathered together

Moving quickly on his agenda for reform, before the end of 1985, Gorbachev had removed 16 of the Soviet Union's 64 ministers and had replaced about 20 percent of all local Party officials. Four months after his ascension, his champion Gromyko was moved out of the foreign ministry and pushed upstairs to become Head of State. His rivals Grishin and Romanov were quickly forced into retirement. Truly, he was demonstrating his passion for restructuring and "his teeth of iron," so aptly described by Gromyko.²⁶

The principal outline of Gorbachev's proposals for economic reform began to emerge almost immediately following his ascension in speeches before the Central Committee and to various interest groups within and from outside the Soviet Union.²⁷

2. *Speech to the Central Committee, June, 1987*

In a major address to the Central Committee on June 25, 1987, Gorbachev provided the details of his economic proposals, and sought and received Committee approval for his extensive program.²⁸ He outlined his proposals as follows:²⁹

a. *Outline of Proposals*

- 1) Factories and amalgamations are to be given substantially greater independence, and will
 - a) be converted to full profit and loss accounting,
 - b) become self-financing, and
 - c) have increased responsibility for end results, including direct link-

at about 10:30 PM, less than three hours after he had died. Gorbachev's leading opponent Grigori Romanov of Leningrad proposed Viktor Grishin, the 70 year old party chief of Moscow, as the new General Secretary. But Foreign Minister Gromyko countered by successfully arguing in favor of Gorbachev, to be seconded by KGB chief Viktor Chebrikov. The next day with only 200 of 300 representatives of the Central Committee Plenum in attendance, the Politburo choice of Gorbachev was ratified. At the party Plenum, Gromyko described Gorbachev as a man with a nice smile, but "he has teeth of iron." After his election, opposition to Gorbachev collapsed. *Id.* at 112-114.

26. *Id.* at 114, 115, 120.

27. On January 27 and 28, 1987, at a plenary session of the Central Committee, Gorbachev delivered a report on the draft U.S.S.R. Law on the State Enterprise. Copies of the draft had previously been circulated among committee members for review. During his report Gorbachev noted that the April, 1985 session of the Committee had initiated restructuring. *The Current Digest of the Soviet Press*, Vol. XXXIX, No. 4, Feb. 25, 1987, at 1, 2. Steps toward reform were discussed with U.S. Congressional leaders in Moscow on April 15, 1987. *See Pravda*, April 16, 1987.

28. *Moscow News*, No. 28 (Supp. 1987) (hereinafter MN Supp. No. 28). The Gorbachev address was printed in *Pravda* on June 27, 1987. Virtually all statements in this section have been drawn from the Gorbachev speeches delivered to the Central Committee, whether or not specifically documented, and represent Gorbachev's characterizations of the state of the Soviet economy, and proposed solutions. These statements take on significance in that they were endorsed by the Central Committee and were delivered to party members, rather than being generated for propaganda purposes for the western press.

29. *Moscow News*, No. 27 (Supp. 1987) at 8 (hereinafter MN Supp. No. 27).

ing of income to work performance

2) Centralized command and control will be radically reduced.

a) Central planning bodies are not to interfere in the day-to-day activities of subordinate economic units.

b) Management is to become more democratic and self administering.

3) Planning, pricing, financing and crediting will be reformed, including

a) transition to wholesale trade, and

b) reorganization of foreign economic activities.

b. *Justification For Program—Weakened Economy*

To justify the radical new programs to his comrades on the Central Committee, Gorbachev painted a rather grim picture of the Soviet economy. Restructuring is necessary, he said, because of accumulating contradictions in the development of Soviet society. Such contradictions, which have remained unsolved, have assumed "pre-crisis forms."³⁰ The Soviet economy as it entered the 1980's was in a state of virtual stagnation.³¹ This dire state of affairs, brought tension and turmoil in national finances.³²

Production growth assignments were not met, according to Gorbachev, during the past 3 five year plans. Wages substantially exceeded plan budgets. Due to shortages of everything—metal, fuel, cement, machinery and consumer goods, together with a chronic shortage of manpower,³³—it became clear that the economy would not be able to develop

30. *Id.*, at 1. Quotations are from and references are to the speech reported in Supp. No. 27, unless otherwise stated.

31. "We began to concede one position after another, and the gap in production efficiency, output, quality and in technology as compared with the most developed countries began to widen." "The desire to shore up declining growth rates by extensive methods brought exorbitant outlays for the fuel and energy branches and the hasty commitment of new natural resources to production, their irrational use, an excessive growth in demand for additional labour, and an acute shortage thereof in the national economy, with a decline in the out-put-per-asset ratio." *Id.* at 7.

Gorbachev's assessments are generally consistent with statistics derived from Western intelligence sources. Although Soviet per capita consumption nearly tripled between 1950 and 1970, it was only about one third the U.S. level, and less than half that of France and Germany in the late 1970's. Soviet per capita consumption growth rates averaged about 3.4% annually from 1950, but slowed to less than 2% in 1981, and to under 1% in 1982. See G. SCHROEDER, *SOVIET LIVING STANDARDS: ACHIEVEMENTS AND PROSPECTS* 367, 368; *SOVIET ECONOMY IN THE 1980'S: PROBLEMS AND PROSPECTS*, Part 2, Selected Papers (Joint Economic Committee, Congress of the United States, December 31, 1982) cited as *Joint Economic Committee*. Despite periodic shortages of food throughout the Soviet Union, roughly 25% of its labor force is employed in agriculture. By contrast, the U.S. so employs only 3.4% of its labor force, yet has a continuing problem of excess production. BARRON, *supra* note 10, at 12, 13.

32. "Outwardly everything looked fine" (in the State budget). But the budget was balanced not by increasing economic efficiency but by extensive selling of oil and other fuel and raw material resources on the world market. MN Supp. No. 27, *supra* note 29, at 7.

33. Labor shortages are likely to become more acute in the future. Between 1964 and 1980, the mortality rate in the Soviet Union increased almost 50% from 6.9 deaths to 10.3

normally. The housing industry failed to meet demands,³⁴ as had industries producing consumer goods.³⁵ Gorbachev admitted that a shadow economy had emerged to provide for unmet consumer services.³⁶

He expressed alarm that the U.S.S.R. had begun to lag in scientific and technical development during a period when Western countries had begun large-scale restructuring of their own economies. He confirmed that economic incentives necessary to raise quality and efficiency were not operating, and that this created fuel for inflation. Furthermore, hard currency earned from exports of oil and raw materials is not being used to modernize the economy, but to meet current needs. The Soviet economy is so bad, conceded Gorbachev, that revolutionary in-depth transformations are needed to get it out of the pre-crisis situation it is in.

Present management difficulties, he said, stem from the Stalin era, when the U.S.S.R. was attempting to pull its backward economy forward in the face of isolation from the capitalist world.³⁷ Dramatic strides in industrialization were made during the Stalin period.³⁸ Following adop-

deaths annually per 1000 people, due primarily to poor medical care. Barron, *supra* note 10, at 10. In the past, Communist leaders had been able to show increases of production by adding more workers to the work force. However, recently declining population, particularly among the northern Russians, has deprived the economy of important necessary motive power which can be replaced only through innovation, efficiency and new technology. See Urban, *Perestroika versus Oblomov*, The Times (London), July 23, 1987.

34. Notwithstanding a housing shortage, Gorbachev asserts that there is unused housing construction capacity of about 20% in the country. Brickyards and building materials plants, he says, should be operated continuously and not be operated on half day shifts nor shut down on weekends.

35. "We need . . . more goods of better quality and wider range . . . service standards are low . . . there are many queues because the number of shops is . . . insufficient" MN Supp. No. 27, *supra* note 29, at 7. Studies conducted in 1982 found that a typical Moscow worker must labor 53.5 hours to provide a family of 4 with basic groceries needed for a week, while comparable work time in Washington would be 18.6 hours, and in London, 24.7 hours. BARRON, *supra* note 10, at 12. These figures cited by Barron are slightly misleading because of government subsidies and the relative cost of housing, utilities and recreation for Soviet citizens is substantially lower than comparable costs in the West.

36. The Central Statistical Board estimates that 1.5 billion rubles (about \$2.25 billion) is paid annually by Soviet citizens for such services in the shadow economy. "Let us call a spade a spade and stop feigning innocence. Individual enterprise has always existed in our economy. Illicit, underground, the black economy, call it what you like . . . This phenomenon has assumed a mass scale. We are not introducing individual enterprise, we are just giving this practice civilized and organized forms . . . We are legalizing individual enterprise, and introducing a system of taxation and elements of planning to it." Interview with Lionid Abalkin, Director of the Institute of Economics at the U.S.S.R. Academy of Sciences, in *New Times* (Moscow), July 20, 1987 at 3.

See H. SMITH, *THE RUSSIANS* 106-134 (1976) for a very readable account of how the shadow or counter economy works.

37. "The foundations for the present system of management were laid down . . . in the 1930's. In that difficult period our country, which was far from the most developed economically and which was up against the whole capitalist world, needed to rapidly overcome the technic-economic lag and to bring about quick structural changes in the national economy." MN Supp. No. 27, *supra* note 29, at 7.

38. Gorbachev states that in the pre World War II period, gross industrial output grew

tion of the five-year plans beginning in 1928, the number of industrial workers tripled over the next twelve pre-war years. Sixty percent of the national income was redistributed through the State budget. Great resources were channeled into heavy industry. A highly centralized, rigid, over-regimented management system was devised to direct these changes in the economy. Such a system permitted the Soviet Union, according to Gorbachev, to achieve strategic tasks which took capitalist countries decades to achieve. But, over the years this system has clashed with the requirements of modern economics including the technological revolution, emphasis on quality and the consequence of social conditions. Although since the 1950's attempts to change the management system were made, such efforts were short lived.³⁹ The prevailing system thus continued to stifle rather than to stimulate the economy.

c. *Proposed Solutions and Benefits of Changes*

The solution to the problem, according to Gorbachev, is more socialism combined with greater democracy. What we are planning, he said, does not weaken socialism, but rather will strengthen it, and remove barriers holding it back.⁴⁰ The most difficult challenge, is to create under socialism more powerful stimuli than those of capitalism, which will promote economic, scientific, technological and social progress. In addition, Soviets must learn how best to blend planned guidance with the interests of the individual and society.

The worker must become the real master of the workplace.⁴¹ Income

6.5 times and the Soviet Union moved from fourth to first place in Europe and to second in the world.

39. The seeds of change were beginning to be sown upon the death of Stalin. Khrushchev made efforts to revitalize the economy, boasting to then Vice President Nixon in the late 1950's at a Moscow trade fair: "We will bury you." Khrushchev instituted a disastrous effort to improve grain harvests through a "virgin lands" policy by plowing up new lands which added little to grain production.. FODOR'S SOVIET UNION 1985 103 (1984). He attempted other reforms but without sufficient political skills, stepped on too many toes and in 1964 was deposed. See also US NEWS AND WORLD REPORT, *supra* note 20, at 42. Andropov, upon the death of Brezhnev in 1982, made a determined effort to crack down on bureaucratic corruption and alcoholism, but died too soon to effect any substantial changes. Chernenko was too frail and old to initiate any major reforms before his death in March 1985, little more than a year after taking the helm of the Soviet Communist Party.

40. The changes will bring out the immense potential of socialism and "lend it the most modern forms. . . socialism should not be seen as an ossified, unchanging system, or the practical work to refine it as a means of adjusting complex reality to fit ideas, notions and formulas adopted once and for all." "We should strive after Lenin's ability to creatively develop the theory and practice of building socialism, adopt scientific methods. . ." MN Supp. No. 27, *supra* note 29, at 8.

41. [This] "means giving collectives and individual workers broad possibilities to manage public property and increase their accountability for how efficiently it is used." ". . . man with his real interests and motives is central to our economic policy. . ." "We must realize that the time when management consisted of orders, bans and calls has gone . . . such methods can no longer be employed for they are simply ineffective." *Id.* at 8. Under the new enterprise law ". . . the actual pay of every worker [should] be closely linked to his

of working people should be geared to individual performance. The criterion for performance and material rewards should be whether the enterprise will help meet peoples' vital needs and help eliminate the shadow economy.

Under the new price and credit system, the market is to be "won and controlled in accordance with its laws. . ." Competition is central to activating the forces of socialism. There should be competition between government-run and cooperative factories. The winners should be rewarded with tangible economic benefits. This, he said, "is in line with the principles of socialism. . ." There should also be competition in science and technological development.⁴²

Gorbachev noted that the present Soviet economic system has suffered from an inherent weakness of internal stimuli for the proper development of the enterprise.⁴³ Under the new program, the factory itself, guided by public requirements, will draw up its own production and marketing plans. The plan will not be based on detailed targets handed down by superior agencies, but rather on commercial orders placed by state agencies, by enterprises operating on a self-supporting basis, and by trading establishments. Factories should compete economically to meet consumer demand and state contract orders should be awarded, as a rule, on a competitive basis.

Planning target figures should serve as a guide to the factory regarding the social need for products. Such figures should not serve as directives and thus shackle the work collective in drafting its plans.

Factories should pay their own way. From their own revenues and profits, they should cover their current expenses, including wages and salary, make investments for modernization and increased capacity, and pay for social amenities for their collectives. State budget funding will only be used for important state tasks. Factories will be allowed to draw bank credits. They will make payments to the state for interest on credits, land, water, manpower and other basic resources. Supplies to factories will no longer be provided by central authorities but rather from wholesale trade, to be paid for from earnings. Work collectives individually should determine all production matters at their factories, including election of their top managers.

personal contribution to the end result, and that no limit be set. There is only one criterion of justice: whether or not it is honestly earned." *Id.* at 11.

42. ". . . Experience has convinced us that monopoly for individual organizations is a serious drag on scientific and technological progress. . ." *Id.* at 8.

43. "A factory is given production quotas and resources through a system of directive-like indices. Virtually all costs are covered and the marketing of products is effectively guaranteed . . . workers' incomes are connected poorly with the end result of work . . . (In this situation) manufacturers find it disadvantageous to use cheap . . . materials and unprofitable to improve product quality and apply research innovation. Under such an economic mechanism, the line between effective and systematically lagging enterprises is virtually erased." *Id.* at 8.

Gorbachev recognized that excess labor will be a necessary by-product of the changes, particularly with the resulting scientific and technological progress.⁴⁴ Part of the surplus labor forces will be absorbed into expanded public service, education, medicare, recreational and cultural jobs to be created. The dislocations must be handled with due regard for workers' rights.⁴⁵

He also touched on the critical problem of bankruptcy.⁴⁶ If a factory has been mismanaged and cannot make guaranteed payments to the state or payments for labor, aid can be provided initially from a bank or the industrial branch of which the failing enterprise is a part. If there is no improvement, the enterprise can be reorganized or terminated; in such circumstances, the state should help dismissed workers find new jobs.

d. *Providing A Theoretical Base For Changes*

Gorbachev recognized the need for a solid theoretical underpinning to his bold initiatives, to keep at bay his detractors who would argue that he was abandoning the precepts of the fathers of Socialism.⁴⁷ Both Marx and Lenin, said Gorbachev, had early practical experiences in analyzing the problems of society and in developing theories for building socialism, but over the years basic socialist principles have been oversimplified and corrupted, and this has resulted in negative influences on the Soviet economy.⁴⁸

Management of the economy has mistakenly been attempted by decree and resort to enthusiasm⁴⁹, Gorbachev asserted, we have tended to

44. It is anticipated that some 16 million workers might be displaced by the end of the century. US NEWS AND WORLD REPORT, *supra* note 19, at 38.

45. We must pay close attention to the rearrangements, and "... ensure social guarantees for employment of the working people, for their constitutional right to work." MN Supp. No. 27, *supra* note 29, at 9. It was reported that the Politburo has approved plans for a government-run placement service and for greater unemployment benefits to ease the shock of job losses expected under the economic reforms. About half of all government ministry jobs are to be terminated by 1990. San Francisco Chron., Nov. 20, 1987, at A31.

46. According to recent Pravda reports, 13 percent of Soviet state-owned businesses are unprofitable and may be closed under the new economic reforms. San Francisco Chron., Aug. 20, 1987, at 14.

47. We need a "real breakthrough on the theoretical front . . . a scientific substantiation of the aims and prospects of our movement." MN Supp. No. 27, *supra* note 29, at 2.

48. "[Our] task now is to make a profound analysis of the practice of socialist development, the wealth of experience accumulated by us." In making "the transition to full profit-and-loss accounting, to remunerate according to the end result" the socialist principle of "from each according to his abilities, to each according to his work" was often sacrificed in the name of a simplified concept of equality. "Equality does not mean levelling off" (i.e. paying similar wages to all). This, states Gorbachev, has "generated sponging, negatively influenced the quality and quantity of work and reduced incentives to increase productivity". *Id.* at 2-3.

49. The Central Committee annually promulgates slogans to be used for May Day celebrations to whip up enthusiasm among Soviet citizens for party programs. Some of those promulgated for May Day, 1987, are as follows: "Toilers of the Land of Soviets! More broadly develop competition . . . Communists! Be in the vanguard of restructuring . . . Ex-

forget about Lenin's precepts that the growth of production can be ensured on the basis of personal interest⁵⁰ and material incentives. To demonstrate the validity of the gospel he was propounding, he lauded new, capitalistic family contracts that were initiated to help boost agricultural production.⁵¹ Advantages of the contract system, utilizing small unused plots, are substantially lower costs and higher production, all of which benefit the community generally.

Although his reforms sound very capitalistic,⁵² he does not see these new procedures as contradicting or corrupting socialism.⁵³ Socialism he said, is a system of working people for working people, which provides a high degree of social protection to the Soviet citizen. Work, and work alone should be the basis of a person's material and moral standing in socialist society. "Every encouragement should be given to creative, highly productive work, to talent, to real contribution to the common

pand Soviet democracy and the Socialist self-government of the people!" *The Current Digest of the Soviet Press*, XXXIX No. 17 (May 27, 1987).

50. "[U]nshackled grass roots initiative and departure from over-organization and from excessive reliance on centralized management make it possible, with the same resources, to achieve a breakthrough in increasing food stocks." MN Supp. No. 27, *supra* note 29, at 5. He cites an example of workers on a farm collective in the Novosibirsk region of Siberia who say they were attracted "not only by high wages, but, in no lesser degree, independence, realization of their human significance, and pride that they are doing really useful work." MN Supp. No. 27, *supra* note 29, at 4.

51. He described a contract in which A. A. Volochensky, a state farm machinery operator is assigned 40 hectares of land, some calves and feed, and with the help of his family of four will produce 11 tons of meat. After reimbursing the state farm 23,000 rubles for rent, seed, fuel and other resources, the family business will retain wages (profit) of 8,000 rubles, about \$12,000. This spare time return is substantial considering that the average Soviet citizen earns 200 rubles (about \$300) per month (\$3600 per year) at his regular job. Thus in comrade Volochensky's case, since both he and his wife work at the state farm and presumably earn about \$7,200 annually between them, and with the help of their two children, who are students, they can more than double their family yearly income by their spare time livestock business. In another calf producing operation by a small group of workers, the average monthly wage per team member was 534 rubles (about \$800) per month. "Gorbachev responds . . . there is nothing wrong with that because the money is for work, for real products. Let me ask: has this undermined the collective farm system? No it hasn't. . . So this is nothing other than socialism, effective, creative and labour-minded." *Id.* at 4-5.

52. Soviet economist Leonid Abalkin in the *New Times* interview, *supra* note 36, was asked whether capitalism and socialism were converging under the new economic program. He stated: ". . . there exist certain universal forms of social and economic progress . . . without competition any advance is unthinkable . . . the economy must be geared to the needs of the consumer. . ." It is on the producer's ". . . ability to meet consumer demand that the income of a self-supporting factory, the earnings of its collective and social welfare funds depend. What is this: capitalist competition or a manifestation of certain universal economic laws? . . . The difference between our society and capitalism lies not in the form, but in the social and class essence of production relations. What really matters is who reigns supreme in the country, who owns the means of production. I see no convergence here . . . As for the forms, we ought to adopt the best of them." *Id.* at 5.

53. "Rather, the old practice, when negligence in work was paid from the budget, corrupted the farmer." *Id.* at 4.

cause."⁵⁴

e. *Democratization*

Democratization, according to Gorbachev, is the key to successful restructuring; this is in accordance with Leninist principles.⁵⁵ Revitalization cannot be successful without massive support of Soviet citizens. This in turn, can be achieved only through a general democratization of society.⁵⁶ Democratization in all spheres of life is expanding; it includes a cultural revival, and extends to science, literature and art. Soviet citizens are more keenly interested in the ethical problems of their society and want to know more about their country's past,⁵⁷ present and future. As a consequence of these positive changes in attitude, labor productivity and industrial output have increased noticeably during the last two years. Democratization affects all aspects of Soviet life. Soviet citizens "[n]o longer want decisions related to their interests to be taken without their participation, no matter who takes them." Party committees and state authorities must stay constantly in touch with public opinion and use it to verify decisions that they are about to make.

He recognizes that the new democratic procedure will not be easy for everybody.⁵⁸ Gorbachev sees democracy as a way of holding the feet of

54. Perhaps in preparation for his speech on revitalizing the Soviet economy, Gorbachev and his advisors read T. PETERS & R. WATERMAN, *IN SEARCH OF EXCELLENCE—LESSONS FROM AMERICA'S BEST-RUN COMPANIES* 14 (1982). Among the authors' findings is that the most productive and profitable companies foster autonomy and entrepreneurship. One of the successful companies, 3M, was described as "so intent on innovation that its essential atmosphere seems not like that of a large corporation but rather a loose network of laboratories and cubbyholes populated by feverish inventors and dauntless entrepreneurs who let their imaginations fly in all directions. . . They encourage practical risk taking, and support good tries." *Id.* For a capitalistic view of factors leading to the renewal of business organizations, compare R. WATERMAN, *THE RENEWAL FACTOR* (1987).

55. Democracy according to Gorbachev, appears to be involvement of the masses in the decision making process, not necessarily through voting as we in the west think of it. Quoting Lenin, he says: "The more profound the change we wish to bring about, the more we must rouse an interest in and an intelligent attitude towards it, and convince more millions and tens of millions of people that it is necessary." MN Supp. No. 27, *supra* note 29, at 6.

56. "Comrades, I want to stress once again that our economic work, the reorganization in the national economy can be successful only if [it] attract[s] millions of working people. So it can be said that our course of fundamentally restructuring management actually merges with the course of further democratization and not only of economic life, but of the entire life of society. Progress in the economy and development of socialist democratization are indivisible." *Id.* at 7.

57. Gorbachev has laid the foundation for a correction of Soviet history books which had been tampered with, particularly during the Stalin years: ". . . there should be no forgotten names or blank spots in either history or literature. Otherwise, what we have is not history and literature but artificial, opportunistic constructs. . . The Party has spoken about the painful matters. We do not intend to portray them in a rosy light today. . . History must be seen as it is. Everything happened, there were mistakes—grave mistakes—but the country moved forward." *Current Digest of the Soviet Press*, XXXIX, No. 7 (1987) at 7.

58. "Some have difficulties with openness; others find it hard to accept criticism and unfavorable press reports, still others have come to believe that only their own opinion is

wayward public officials to the fire in order to bring about desired changes in the bureaucracy.⁵⁹

He has made some bold pronouncements concerning the virtue of unfettered debate in a democratic society, and the need for changes in the Party control mechanism.⁶⁰ Though recent events demonstrate that there are limits to democratic expression in the Soviet Union,⁶¹ and that the Party leaders are still feeling their way through the minefields of glasnost.

f. *Planning*

Gorbachev foresees a radical reformation of central planning in the Soviet Union.⁶² He anticipates a greater role for economic contracts between enterprises to balance the economy.⁶³ The national economic plan should define basic priorities and objectives for the country's socio-economic development, trends in investment policy and targets for scientific, educational, cultural and defense capability. The plan should provide targets for the ministries and the republics and, over a 15 year period, should balance all major programs. Yearly goals should be set in the five-year plans.⁶⁴

g. *Pricing*

Radical reform in pricing is contemplated. According to Gorbachev,

'infallible?' " MN Supp. No. 27, *supra* note 29, at 6.

59. Such officials "understand perfectly well that they can talk their way out of it when brought to account by their superiors, but the people will hold them responsible in full measure." *Id.*

60. "To live and work in conditions of extended democracy means to have no fear of debates and of the collision of views and positions. All this is natural and essential in the quest for truth. . ." Under the new democracy, control mechanisms must change. Without giving up the predominant guiding role of the Party in Soviet society "We should master in full the Leninist principle of socialist control combining broad democratization with Party guidance. We regard people's inspection both as an efficient tool for detecting new issues which demand urgent solution and as one of the most important forms of bringing the masses into the process of self government, into running the affairs of society and the State." *Id.*

61. Particularly the highly publicized demotion of one of Gorbachev's supporters, Boris Yeltsin, former Party boss of Moscow for his outbursts at a Party gathering in which he decried the slow pace of restructuring. See San Francisco Chron., November 14, 1987. For overstepping the boundaries of glasnost in his enthusiasm to push reforms, Yeltsin was given a public dressing down by party leaders, led by Gorbachev himself, and the proceedings were given full coverage by the Soviet press. *TIME*, Nov. 23, 1987, at 34.

62. "It is an illusion to think that everything can be foreseen from the centre within the framework of such a huge economy as ours." MN Supp. No. 27, *supra* note 29, at 9.

63. The new "genuinely democratic centralism as Lenin understood it . . . possesses a far greater potential than centralism thorned by attempts to regulate all and everything." *Id.*

64. This planning process appears to be moving more closely toward our own in the United States where the President and Congress establish national long term goals through various legislative pronouncements, and then as a part of the budgeting process, particularly in military procurement, provide for expenditures over a multi-year period.

price must be an important stimulus for lowering costs, improving use of resources product quality, and in speeding up technological progress. Pricing has been geared to cheap natural resources. Existing low prices of coal, gas, oil and electricity keep an illusion of inexhaustibility of natural resources and promote increased production, consumption and export. Low pricing has resulted in rapid growth of subsidies.⁶⁵ Poor pricing has provided an unjustifiably high level of profit for many goods and does not contribute to efficient production. Those who understate prices have no incentive to increase output.

Pricing must be radically reformed to interconnect the entire price system—wholesale, purchase and retail prices together with tariffs. The price of the most important products must be centrally set as a part of the state plan. But the sphere of contract prices must be widened to promote economic independence. Wholesale price reform must promote higher production efficiency, resource savings and quality. Much work and discussion must ensue before the price system can be reformed and the new five year plan is prepared.⁶⁶

h. *Wholesale Trade*

Wholesale trade will become more dependent upon direct contacts between suppliers and consumers, with the state playing only a regulatory role. The present system is wasteful and results in large stocks of commodities being stored. Wholesale trade would normalize stocks.⁶⁷

i. *Finance and Crediting*

Gorbachev observed that the national economy is oversaturated with money⁶⁸ and that monetary funds are thus divorced from movement of material values. The ruble therefore does not fulfill its role of active financial control over the economy.⁶⁹ Cooperatives should be established to

65. It has been estimated that to keep rents at 1928 levels and meat prices at those prevailing in 1964, the government must now pay annual subsidies of some \$115 billion. US NEWS AND WORLD REPORT, *supra* note 19, at 38.

66. Soviet citizens have displayed anxiety about potential price reforms. For many years they have been used too low, highly subsidized basic commodities, not to mention housing and utilities. US NEWS AND WORLD REPORT, Oct. 19, 1987, at 37. As Gorbachev has observed however, the failure of the Soviets to permit the market to regulate prices has brought about shortages and waste. Polish citizens, socialist neighbors of the Soviets, are alarmed over the prospect of price reform in their country, fearing that price increases contemplated by the government may be beyond many family budgets. San Francisco Chron., Nov. 16, 1987.

67. There are complaints about shortages. However stockpiles of metals grow, observes Gorbachev. The surplus stocks are scattered around the economy. "Therefore the sooner we establish direct ties and embark on wholesale trade, the quicker we shall get rid of shortages in supply and of surplus stocks. . ." MN Supp. No. 27, *supra* note 29, at 10.

68. Excess money supply developed from 1971 through 1985, when the volume of money in circulation grew 3.1 times while consumer goods production only doubled.

69. "The national financial system has grown largely out dated." MN Supp. No. 27, *supra* note 29, at 10.

provide public services, and Soviet citizens should invest surplus funds in such enterprises. In addition, personal funds should be used to finance cooperative and individually constructed housing, as well as leisure and tourist facilities.⁷⁰

j. *International Trade*

Gorbachev recognized that because of the vast size of the Soviet economy and the increasing interdependence of world economies, the Soviet union is increasingly linked economically to the outside world. The U.S.S.R. must deepen its participation in the international division of labor. External ties will impact the quality of Soviet products and the scientific and technological progress of Soviet industries through increased competition with world class products and technology transfers. In addition, Gorbachev foresees that restructuring will increase the integration of Soviet industries with those of other socialist countries.⁷¹

k. *Organization of Amalgamations and Enterprises*

New forms of business organization should be permitted to increase the efficiency of the economy. Labor has been wasted by irrational organization and lack of specialization. Switching to profit and loss accounting must be combined with allowing enterprises to form joint ventures and to provide for shareholding. Mergers should be permitted if dictated by economic expediency. Under the contemplated new conditions, enterprises can be expected to form all sorts of new organizations such as computing centers, social and environmental protection facilities, and transport and training schools.

Presently 37,000 industrial enterprises are controlled by the state plan, directly from the center.⁷² The ministries should be relieved of operational economic management and concentrate instead on broad stimula-

70. To some extent private savings are already being tapped to provide housing, particularly in instances where parents wish to assist their newly married children. Increasingly, Gorbachev's recommendations as to how citizens should utilize their savings would seem to open up vast possibilities of investment akin to capitalistic stock or bond holding. Perhaps socialist principles can remain untarnished if the government controls the amount of return payable for the use of capital. Such control however, would quite often be authorizing a subsidy for the user of the capital if he borrows below what would otherwise be market rates.

71. "We must study the experience of our friends closely and profoundly, and apply everything that can be used in the interests of the national economy of the U.S.S.R." MN Supp. No. 27, *supra* note 29, at 10. The Hungarians have been experimenting with capitalism for at least several decades. In addition, the Soviets have been closely watching the economic restructuring going on in China in recent years.

It was recently reported that a U.S.-Hungarian institute will be established in Budapest for the study of capitalistic management techniques. San Francisco Chron., Nov. 15, 1987.

72. Marshall Goldman of Harvard's Russian Research Center estimates that Gosplan, the central planning committee which administers the economy, handles 7 million documents a year and makes 83 million calculations, most of them without the benefit of computers. US NEWS AND WORLD REPORT, *supra* note 19, at 36.

tion of new products, achieving world standards, and promoting science and technology. As a consequence, their large staffs can be reduced. As the economy is restructured, the roles and functions of state ministries will change significantly in order to help industries within their oversight to work out new forms and mechanisms. The U.S.S.R. State Planning Committee should concentrate on determining prospects for development, realizing fundamental and social tasks and insuring overall balance in the economy.

1. *Implementation of the New Program*

The Soviet Communist Party, with the assistance of the country's economic managers, will be responsible for implementing the reform. Gorbachev warned that unless managers behind restructuring are supported and those opposed are reassigned, reform will proceed with difficulty. Discussion of the new procedures is to take place at all Party levels. National progress on restructuring was reviewed at the 19th All-Union Party conference which began June 28, 1988. The principal reforms are to be in place as a part of the 13th, five year plan, beginning in 1991.⁷³

In charging his communist cadres to spread the new gospel throughout the land, Gorbachev stated that a ground swell of support by the ordinary citizen is essential, to be achieved by prompt tangible benefits to the common man.⁷⁴ While tremendous hopes have been aroused, he says, the benefits of restructuring have not yet become evident to the masses. The Party must make sure that these hopes are effectuated by its leaders.

A principal roadblock to renewal and creativity, according to Gorbachev, is the conservatism, inertia, and selfish interests of the bureaucracy.⁷⁵ As a part of his campaign to pressure recalcitrant officials to get on-board with his program, along with encouraging the press to put pressure on laggards⁷⁶ and encouraging workers to participate in workplace elections, Gorbachev has adopted a practice of publicly criticizing responsible Party members for their failures.⁷⁷ A basic problem of change

73. The June, 1987 plenary meeting of the Central Committee approved the Gorbachev sponsored "Guidelines for Radical Restructuring of Economic Management." He had proposed that they should become the Party directives for all work in that area and that the Supreme Soviet of the U.S.S.R. adopt the "Law of the U.S.S.R. on the State Enterprise (Amalgamation)" which he explained to the Committee in his address. Gorbachev expects that beginning in 1988, the new principles will apply to about two thirds of all Soviet industrial output and that transition to the new system will be completed by 1989.

74. "People should feel that perestroika is spreading, deepening and beginning to bear real fruit in all spheres of life and above all in what concerns meeting daily, essential needs of the working people." *Id.*

75. See *US News and World Report*, *supra* note 19 at 36, 37.

76. *Current Digest of the Soviet Press*, *supra* note 57, at 7. "The press is called upon to be even more active, to give no rest to idlers, self-seekers, time servers and suppressors of criticism, and to more actively help those who are fighting for restructuring." "Criticism is a bitter pill. But the illness makes it necessary. You wince but you take it." *Id.* at 6.

77. Gorbachev provided examples to the Central Committee of national targets in cer-

at local levels is the historical predisposition to wait for commands to originate from above—a necessary side-effect of dictatorship.⁷⁸

Time is running out warns Gorbachev: "That beautiful tomorrow" may not happen if everyone does not work today by the sweat of his brow, changing his way of thinking, overcoming inertia and accepting new approaches.

III. SOVIET TRADE OFFENSIVE

As a part of his efforts to implement restructuring of the economy, Gorbachev has launched a new foreign trade offensive. On December 8, 1986, some 50 top trade officials from the Soviet Union, headed by Minister of Foreign Trade Boris Aristov descended on New York City for the annual meeting of the U.S.-U.S.S.R. Trade and Economic Council. The Russians were joined by more than 250 American businessmen, largely chief executive officers of major American corporations interested in trading with the Soviet Union.⁷⁹ Among the American participants was Armand Hammer, chairman of Occidental Petroleum Corporation, and Donald Kendall, chairman of Pepsico. Both companies are heavily involved in trade with the Soviet Union.

The purpose of the December meeting was to continue the dialogue which had been initiated upon formation of the Trade and Economic Council in 1973, but at a more intense pace. Following the Moscow summit meeting between President Nixon and General Secretary Brezhnev in 1972, a number of accords were entered into in order to give substance to the new detente which had developed. Among them was the creation of the U.S.-U.S.S.R. Trade and Economic Council. Its purpose was to bring together leading American businessmen and heads of Soviet foreign trade, industrial, and service organizations on an annual basis. The Council

tain industries which were not met. Serious miscalculations were made, but problems could have been foreseen and prevented. Primarily responsible were Comrade N. V. Talyzin of the State Planning Committee and other ministers named by Gorbachev. Armenia and its party boss Demirchyan, according to Gorbachev is showing "... totally unjustified tranquility" and "no effective efforts are being made against bribery, profiteering and protectionism." Similar problems exist in the Gorky region. In a veiled threat to improve performance, Gorbachev states: "It may be presumed that . . . party officials there (will) . . . draw conclusions from the criticism and put things right." MN Supp. No. 27, *supra* note 29, at 3.

78. "Many local officials show the most deep-seated parasitic attitudes. Even in cases when a minimum of effort and attention would be enough, officials keep shifting the burden onto the central authorities, and waiting for assistance from those higher up. Such an attitude . . . should be resolutely condemned. . ." *Id.* at 3. According to Arkady N. Shevchenko, Soviet Under Secretary General of the United Nations, who defected to the United States in the early 1980's: "Official Soviet pedagogy prescribed that independent behavior or thinking means above all the ability to understand orders and carry them out in the best way possible. What this means in practical terms is that any initiative which might go beyond established limits should be viewed as dangerous and suppressed." A. SHEVCHENKO, *BREAKING WITH MOSCOW* (1985).

79. See *The U.S.S.R. Trade Supplement*, *The Journal of Commerce* (Moscow) Dec. 8, 1987, at 10.

seeks ways to improve trade and cooperation between the two countries and, in so doing, facilitates the exchange of trade delegations, the conduct of seminars and joint scientific research, participation in trade exhibitions, and the conduct of joint scientific research. It also helps organize joint ventures and promotes the exchange of technology and products. The Council helps U.S. companies find Soviet partners and gives advice on how to deal with Soviet counterparts.⁸⁰

At the 1986 Council meeting in New York, Trade Minister Aristov and his associates sought to capitalize on the thaw in Soviet-U.S. relations brought about by the Geneva and Reykjavik summit meetings between Gorbachev and President Reagan. They also sought to reinforce impressions in the West that the Soviets were truly changing their demeanor through massive restructuring of their economy and glasnost, and that they wanted to become full fledged members of the world community through trade,⁸¹ including admission to GATT.⁸²

During the course of the two days of official meetings (plus additional days of informal meetings to permit trading companies to conclude deals), the Soviets explained the new economic policies emanating from

80. During the 1985-86 period the Council helped conduct in the Soviet Union some 70 scientific seminars sponsored by U.S. companies concerning agriculture, oil processing and drilling, tobacco, foodstuffs and other products. And in the same year, 16 Soviet trade delegations visited the United States. Furthermore, in 1986, Soviet foreign trade organizations and U.S. companies concluded some \$1.8 billion in contracts. *Id.* at 34.

81. The West for many years has sought to use trade as a means of taming the Russian bear. In 1922 British Prime Minister Lloyd George said: "I believe we can save her [Russia] by trade. Commerce has a sobering influence. . . Trade, in my opinion will bring an end to the ferocity, the rapine, and the crudity of Bolshevism surer than any other method." H. SMITH, *THE RUSSIANS* 655 (1976).

82. *The Journal of Commerce*, *supra* note 79, at 25.

GATT (General Agreement on Tariffs and Trade) was initiated in 1947, following the post war failure of the U.S. proposed International Trade Organization. Twenty three nations met in Geneva, Switzerland and negotiated an extensive set of bilateral trade concessions which they incorporated into the GATT agreements. See P. T. ELLSWORTH, *THE INTERNATIONAL ECONOMY* 512 (1964). See also K. DAM, *THE GATT LAW AND INTERNATIONAL ECONOMIC ORGANIZATION* (1970). Since then the signatory parties have met periodically to negotiate additional trade concessions.

They have adopted a set of rules to protect their rights and obligations. Meetings are to be held annually or oftener. The organization provides for a secretariat and a permanent Council of Representatives. Among the rules are the following: 1) trade is to be conducted in a non-discriminatory manner, 2) use of qualitative restrictions is condemned, and 3) disagreements are to be resolved through consultation.

To ensure against discrimination, the parties have agreed to apply the most favored nation principle to all import and export duties (each nation is to be treated as well as the most favored nation). Dumping and export subsidies may be countered by measures limited to the offending country. Customs unions or free trade areas are permitted if they do not raise barriers to the trade of other parties. Though import quotas are not allowed, countries confronted with balance of payments problems may use quantitative restrictions to forestall a serious decline in reserves. In addition, underdeveloped countries may apply quantitative restrictions to further economic development but only under GATT approved procedures. Import restrictions are also allowed under certain other conditions relating to domestic market controls imposed by the importing country. ELLSWORTH, *supra* note 82.

the Kremlin. They also engaged in joint bi-lingual study sessions with U.S. businessmen, their lawyers and other advisors, provided detailed discussions of the new joint venture law, and reminded Americans of the continuing impediments to U.S.-Soviet trade. Their efforts were well orchestrated to appeal to the sense and sensibilities of American businessmen, and their demeanor was business-like and free of propagandistic bombast. One of the benefits the Soviets are deriving from the Council meetings is the development of a high-powered American constituency for easing trade barriers which exist between the two countries.⁸³

While launching the trade offensive, the Soviets, with the help of their American supporters, portrayed Russia as a potentially excellent trading partner.⁸⁴ Assuming that political and other problems can be solved, there is no doubt that the Soviet Union represents a large, relatively untapped market for American businessmen and politicians eager to reduce the mounting foreign trade deficit.⁸⁵

IV. JOINT ENTERPRISES

A. Background

Among his proposals to restructure the economy, Gorbachev has called for new forms of economic and industrial organizations to permit the Soviet economy to become more efficient and benefit from world technology. In order to implement this aspect of his program, the U.S.S.R. Council of Ministers, on January 13, 1987, adopted a resolution permitting the establishment of joint enterprises in the Soviet Union with capi-

83. In attendance at the meeting were not only the CEOs of major American corporations whose checkbooks and political influence are strongly felt in Washington, but also leading officials of the U.S. Department of Commerce, the Soviet Ambassador to the United Nations and Claiborne Pell, chairman of the Senate Foreign Relations Committee, the principal dinner speaker. In April, 1988, a delegation of more than 500 U.S. business leaders, headed by Secretary of Commerce Verity, traveled to Moscow for the annual Trade Council meeting and were hosted at dinner in the Kremlin by Gorbachev and the Politburo.

84. Considerable expansion of the Soviet economy is anticipated in the current 12th five year plan. Much of the expansion will require imports from abroad. Stressed will be the development of scientific and technological products in the areas of electronics, comprehensive automation, biotechnology, and nuclear power generation, as well as the development of raw materials. Computer hardware and software capacity is to be increased during the plan period 230%. Development of new metal and plastic materials is to increase 25%; machine building will increase 40-45% and investment in engineering is to increase 80%. There will be special emphasis on the development of Siberia and the Soviet Far East, in the search for and processing of new supplies of oil, gas and other natural resources, in the development of hydroelectric power, in completion of the BAM (Baikal-Amur) main railway line, and the new rail lines through Tommot and Yakutsk in Soviet Siberia. *The Journal of Commerce*, *supra* note 79, at 3.

85. Of the total present (1985) Soviet foreign trade turnover (exports and imports combined) of 141.6 billion rubles, the U.S. enjoyed only 1.5% of such trade. Presently the U.S. ranks 15th among Soviet trading partners in terms of volume. *Id.* at 11. Energy and fuel exports accounted for 52.8% of Soviet exports in 1985. By the year 2000, the Soviets expect to double their gross national product. *Id.* at 24, 29.

talist and developing country partners. Although the Soviet Union had, since the beginning of its history some 70 years ago under Lenin, entered into various joint venture arrangements with capitalists (particularly during the time of the New Economic Policy beginning in 1921) such arrangements were rare under Stalin. Following the rapprochement between the United States and Russia in 1972, a variety of limited joint venture agreements were entered into with Americans and others.⁸⁶ Notable among the ventures created were the development of a trade center in Moscow by the Soviets and Armand Hammer, an old friend of Lenin, and a marketing agreement with Pepsico.

The new Joint Enterprise (Venture) law⁸⁷ is part of a wide ranging restructuring of the entire Soviet economy and represents a well thought-out effort on the part of the Soviet leadership to tap, in a systematic and sustained way, the technology of the West to help revitalize the national economy.⁸⁸ Among its stated aims is to develop trade, economic, scientific and technical cooperation with the capitalist and developing countries on a stable and mutually advantageous basis.⁸⁹

86. Over the past 20 years the Soviet Union has entered into more than 50 licensing agreements with companies in capitalist countries. See article by Yuri Dryomov, Head of the Joint Ventures Department, U.S.S.R. Ministry of Foreign Trade, prepared for *The Wall Street Journal*, Aug. 24, 1987.

87. For a discussion of Soviet perspectives on this new law, see G. Zubov, *Legal Aspects of Improvement of Foreign Economic Activity of the USSR*. Paper presented to the Legal Committee, US-USSR Trade and Economic Council in New York (December 8, 1986).

88. Although the present joint venture law is new to the Soviets, the U.S.S.R. has had many years of experience in working with western capitalists, beginning with Lenin's New Economic Policy in 1921. It also has had the benefit of studying the successes and failures of other socialist countries in developing a joint venture program, particularly Yugoslavia, Hungary and China. The new Soviet law appears to have anticipated some but not all of the problems encountered by the Chinese who were years behind the Soviets in developing a modern legal system. See, H. Rogers, Jr., *Deterrents to Joint Venturing in China: A Look at Shanghai Real Estate Projects*, 8 EAST ASIAN EXECUTIVE REPORTS (July 15, 1986) (discussion of problems which have arisen in China under a similar law). Such problems included: 1) lack of confidence by westerners that profits will be adequate, 2) lack of capital security, 3) shortage of foreign exchange, 4) political risks, 5) lack of an adequate legal structure, 6) problems in valuing contributions, and 7) the high cost of doing business in China.

Similarly see comments and detailed recommendations made to the Soviets in papers presented to the US-USSR Trade and Economic Council on December 8, 1986, *supra* note 87: Shillinglaw, *New Soviet Decree Permitting Joint Ventures of Western Firms and the Experience of Western Firms with Joint Ventures in P. R. China*, and Hitch, *August 19, 1986 Soviet Decree Permitting Joint Enterprises between Soviet Organizations and Foreign Firms From Capitalist Countries--Recommendations to Avoid Practical Problems*.

89. Initial reactions among western businessmen to the new law have been guarded. Many feel that they need more assurances that they will be allowed to tap the large Soviet domestic market, and that clarifications will be provided with respect to presently vague provisions of the law regarding labor costs, reserves and other matters. The Soviets are putting the best face on the reception of their new program. Deputy Prime Minister Vladimir Kamentsev reported that by April, 1987, the Soviets had received 200 proposals for deals. Various U.S. companies have shown an interest. *The Wall Street Journal*, Apr. 6, 1987, at 20. By November, 1987 it was announced that Occidental Petroleum Company would enter into a joint venture including the Soviets and Italian and Japanese firms for the construc-

B. *Formation*⁹⁰

To form a joint enterprise, the Soviet partner must present to its supervising ministry a copy of the proposed articles of incorporation or charter and substantiating technical and economic documents. Following clearance of the documents with the State Planning Committee, the Ministry of Finance and other concerned ministries or departments, the proposal will be submitted to the U.S.S.R. Council of Ministers for approval. The approving authorities will be guided in their review by the need of the country for the specific types of industrial output, raw materials, food products, equipment and technology proposed to be provided by the venture and its capability to help the U.S.S.R. develop its export base and reduce irrational imports.⁹¹

C. *Participants, Property and Rights of the Venture*

The Soviet partner must own at least a 51% share of the initial capitalization and may include one or more legal entities under U.S.S.R. law. The other partner likewise may consist of one or more foreign legal entities.

The venture will be a legal person under Soviet law, fully responsible to the extent of its assets for its own obligations, but not responsible for liabilities of the Soviet state or any of its entities. Conversely, the Soviet government is not responsible for the obligations of the joint venture. The enterprise may enter into contracts, acquire rights in property, sue and be sued. It must be financially independent. Its charter or articles of incorporation will define its objectives, composition of its participants, initial capitalization and governing procedure and will contain various other provisions governing the rights and duties of the participating parties. Upon approval and registration of the articles by the Ministry of Finance, the venture will become a legal entity.

D. *Capitalization*

Contributed capital may be in the form of money or property such as

tion of a chemical complex to be built near the Caspian sea, valued at \$6 billion. San Francisco Chronicle, Nov. 20, 1987. In addition Combustion Engineering had completed arrangements for a joint venture to provide control systems for oil refineries and petro-chemical plants. TIME, Nov. 23, 1987, at 57.

90. The January 13, 1987 resolution adopted by the U.S.S.R. Council of Ministers, was published in Pravda on January 27, 1987. Pravda, *On the Procedure Governing the Creation, on USSR Territory, and the Activities of Joint Enterprises With the Participation of Soviet Organizations and Firms of Capitalist and Developing Countries*, Jan. 27, 1987. See *The Current Digest of the Soviet Press* XXXIX, No. 6 (1987) at 15.

91. Ivan Ivanoff, the Deputy Chairman of the State Foreign Economic Commission of the Council of Ministers, stated that when applications for joint ventures were processed the government would take into account three goals: 1) to attract new technology and managerial experience, 2) to stimulate import substitution, and 3) to expand Soviet exports. Wall Street Journal, Aug. 24, 1987.

buildings, equipment, rights to use land, water or other natural resources and patents, technology or other property rights.⁹² Contributions will be valued in rubles at contractually agreed-upon values, bearing in mind world market prices if applicable. Contributions of the foreign partner of property or goods will be exempt from customs duties. The property of the venture will be governed according to Soviet law and may not be requisitioned or confiscated by administrative procedures. Any Party to the venture may transfer its shares to third parties with the prior approval of Soviet authorities, provided that the Soviet partner will have the right of first refusal.

E. Dispute Resolution and Governance

Disputes between the venture and the Soviet state or its entities, or disputes between the joint venturers, are heard by courts of the U.S.S.R. or by consent in an arbitration court, either within or outside the Soviet Union, as determined by the partners.⁹³

The governing body of the enterprise will be appointed by the participants, which will follow decision-making procedures provided in the articles. While the chairman of the board and general director of the enterprise must be Soviet citizens, general management may be provided by both Soviet and foreign citizens.

The venture will adopt its own business plan, free from interference of state agencies;⁹⁴ this, however, will not guarantee sale of its output.⁹⁵ The venture may independently conduct import and export operations through its own foreign marketing operations or through Soviet foreign trade organizations.⁹⁶

92. Yuri Dryomov observes that while adequately capitalized large corporations seeking joint venture opportunities in the Soviet Union have expressed concerns about creating a foreign subsidiary which would compete with the home corporation, small businesses, on the other hand, while possessing useful technology, often lack sufficient capital. The U.S.S.R. Ministry of Foreign Trade has explored the possibility of inviting certain foreign banks to provide needed capital to such small businesses in exchange for an ownership share. Dryomov, *supra* note 86.

93. Ivanoff, *supra* note 91.

94. However, the U.S.S.R. Ministry of Foreign Trade will provide general supervisory control over the joint venture. Dryomov, *supra* note 86.

95. To the extent that the Foreign Trade Ministry determines to make purchases of products from the joint venture, it will pay the going world market price. If the product is resold on the domestic market, the Soviet Government will price the product reflecting social goals. This might involve payment of subsidies, if products are resold domestically below cost. Mathias, *Turn Left Off Wall Street Into Red Square*, International Herald Tribune, July 22, 1987.

96. The joint venture will operate in foreign markets under a general license from the Ministry of Foreign Trade. For domestic trade within the Soviet Union, the joint venture will sell and be supplied through the appropriate Soviet foreign trade organization on freely contracted prices in competition with domestic producers. The competition is introduced deliberately to force Soviet domestic firms to produce more efficiently and with higher quality. See Ivanoff, *supra* note 91.

F. *Finances*

All foreign exchange requirements of the venture must be derived from sale of its products on the foreign market.⁹⁷ Sale of output on the Soviet market and delivery to the venture of raw materials and supplies from the local market⁹⁸ must be paid for in rubles.

The enterprise may borrow from the U.S.S.R. Foreign Trade Bank, or, with its consent, from foreign banks or firms⁹⁹ for its foreign exchange needs, or it may borrow from the U.S.S.R. State Bank or the Foreign Trade Bank if it requires a loan in rubles. Commercial terms may be negotiated. Interest will be paid on deposits made to the banks.

Reserves must be established by the venture to cover its operations and requirements for the social development of its labor collective. Profits available after payment of expenses and deductions to necessary reserves are distributed to the participants in accordance with their proportionate ownership. Foreign participants are guaranteed the right to extract their profits in foreign exchange.

G. *Taxation*

A tax amounting to 30 percent of the net income of the joint enterprise, following deductions for reserves¹⁰⁰ and research and development,

97. Soviet financial planners are conservative and wary of incurring hard currency debt, and thus are unwilling to subsidize joint ventures with otherwise difficult to earn convertible or hard currency. A principal source of hard currency for the Soviets (oil revenues) deteriorated sharply after world oil prices dropped in the early 1980's. Also reserves have been used up to pay for necessary grain and food imports and to help Poland through the Solidarity crisis. See Joan P. Zoeter, "U.S.S.R.: Hard Currency Trade and Payments" *Joint Economic Committee*, *supra* note 31, at 479.

Legal practitioners (e.g. Thomas Shillinglaw) have expressed concerns that the sections of the joint venture law dealing with foreign exchange requirements are overly restrictive. Although the law requires the venture to be self sufficient in foreign exchange (all foreign exchange needs must be derived from proceeds of export sales) such needs for a new venture can be substantial, considering required machinery, employee salaries, debt service, royalty payments for foreign technology and eventual dividend repatriation. A start up venture would have difficulty penetrating foreign markets quickly enough to cover operational needs. Ventures should be able to sell to domestic markets in the U.S.S.R. and convert ruble proceeds if the product sold, replaces what would otherwise be imported. Also ventures which produce foreign exchange surpluses ought to be permitted to sell its foreign exchange to those which are deficient.

98. Mathias, *supra* note 95. The joint venture may purchase raw materials and other supplies wherever it chooses.

99. Although joint ventures must finance their own operations, lenders are likely to look to the credit history of the Soviets, generally, in evaluating risks; the Soviet government has had an excellent repayment record of its debts. During 1986, western banks made nearly \$4 billion in untied (general) loans to the Soviets. Total Soviet debt to western banks is now nearly \$36 billion, up from \$21.8 billion in 1984. To help finance their proposed new trade deals, the Soviets have indicated their desire to enter the Eurobond market and to seek membership in the World Bank and International Monetary Fund. *Editorial*, *Wall Street Journal*, July 23, 1987.

100. *Supra* note 92. Tax free reserves may be accumulated up to an amount equal to 25

is assessed by the Ministry of Finance. The venture is exempt from tax for the first two years of its operations. Tax appeal procedures are provided. An additional tax of 20 percent of the amount transferred abroad is levied on the foreign partner at the time of transfer. Wages earned by foreign employees are assessed an income tax of 13 percent.¹⁰¹

H. Auditing and Oversight

The participants are entitled to receive financial and other data necessary to carry out their supervision of the venture. The enterprise must maintain records required by U.S.S.R. state enterprises on forms provided by the Ministry of Finance and the Central Statistical Administration. Auditing is done for a fee by a Soviet auditing organization. Information and reports concerning the joint venture may not be provided to foreign state agencies.

I. Personnel

The venture will be primarily staffed by Soviet citizens, although management is free to hire foreign technicians on terms and conditions to be negotiated by the parties.¹⁰² Contracts for Soviet employees must be concluded with local collectives and must include provisions for social development, terms of labor compensation, work and rest schedules, and social security and insurance for the workers. The enterprise will remit payments for social insurance coverage and pensions to the U.S.S.R. State Budget Office.

J. Liquidation

The joint enterprise may be wound up in accordance with its articles or terminated by the U.S.S.R. Council of Ministers if its activities conflict with its articles. After payment of debts, the residual value will be distributed proportionately to the participants, and may be withdrawn from the country.¹⁰³

V. HISTORY OF U.S.-SOVIET TRADE

A proper evaluation of trade and joint venture proposals, now being tendered by the Soviets, cannot be made without an understanding of the history of U.S.-Soviet trade relations. Trade between the two superpowers got off to a rocky start 70 years ago when the Bolsheviks came to power and promptly repudiated the debts of the Czarist regime.¹⁰⁴ The U.S. and Britain, among others, offended the Bolsheviks by landing

percent of authorized capital.

101. *Id.*

102. *Id.*

103. *Id.*

104. See generally, J. GIFFEN, *THE LEGAL AND PRACTICAL ASPECTS OF TRADE WITH THE SOVIET UNION* (1971).

troops on Russian soil during the chaotic period following the Bolshevik revolution, when the Red and White armies were vying for control. From 1917, when Russia abandoned the war, until 1921, the Russian economy was in a shambles.¹⁰⁵ Lenin's decrees to confiscate industry and other measures designed to establish the communist state nearly ruined what was left of trade following the turmoil brought about by the war. By 1923, U.S. trade with the Soviets amounted to only 3.9 million rubles. In 1921, Lenin recognized that his new nation was about to starve to death if drastic and immediate changes were not made in the economy. As a consequence, he instituted the New Economic Policy (NEP) which reinstated capitalistic practices, but retained political control in the hands of the Bolsheviks.

Although the United States did not recognize the Soviets until 1933 when Roosevelt came into office, it did become involved in trade through private efforts before then. Armand Hammer and others established, with Lenin's blessing,¹⁰⁶ a variety of joint venture trading and manufacturing businesses in Russia.¹⁰⁷ Immediately following the revolution, Herbert Hoover (later U.S. Secretary of Commerce and President) headed up an effort in Russia to provide food to the millions of starving people there.

105. Armand Hammer traveled by train from Moscow to Ekaterinburg in the Urals in August, 1921. In his book *HAMMER* (1987) he describes what he saw along the way: "Everywhere we went we met the same condition—tremendous mills, factories and mine works standing idle and the workers hanging about, hungry and despairing. Even if the mills and factories could be put into operation, there was no market for their products, owing to the economic stagnation of the entire country. . . ." *Id.* at 108.

106. Hammer described his meeting with Lenin at the Kremlin in the summer of 1921, in which Lenin urged Hammer to become one of the first foreign concessionaires under the new economic policy: "Our two countries, the United States and Russia, Lenin explained, were complementary. Russia was a backward land with enormous treasures in the form of undeveloped resources. The United States could find here raw materials and a market for machines, and later for manufactured goods. Above all, Russia needed American technology. . . ." According to Hammer, Lenin went on to say: "We need the knowledge and spirit that has made America what she is today." *Id.* at 116. And in describing Lenin's demeanor Hammer said: "To talk with Lenin was like talking with a trusted friend, a friend who understood. His infectious smile and colloquial speech, his sincerity and natural ways, put me completely at my ease." *Id.* at 118.

107. Fresh out of medical school, Armand Hammer, traveled to Russia in the summer of 1921 before beginning practice as a resident in New York City. He brought with him a complete field hospital, paid for with his own funds, and sought to help alleviate some of the suffering he had read about, taking place in the land of his forbearers. Before the summer was out, he had arranged a business deal to provide \$1 million worth of grain to starving peasants in exchange for Russian furs, and had come to the attention of Lenin himself. Hammer decided to forsake his medical practice and stay in Russia to do business. He remained there until the late 1920's and because of his special ties to Lenin, has remained a friend and business benefactor of the Soviets ever since. At age 89, he is still active in concluding massive trading deals with the Soviet Union. *Id.* at 109.

In 1973, with Brezhnev's help, his Occidental Petroleum Corporation, entered into long term joint venture contracts with the Soviets to exchange fertilizer for urea and ammonia (valued at \$8 billion over a 20 year period), and to build an international trade center and hotel in the heart of Moscow. *Id.* at 400. See also, *The American Review of East West Trade*, May-June, 1973, at 15.

In exchange for food, Hoover and his agents collected tons of books and papers documenting the Bolshevik revolution which, happily for Western posterity, he transported to his alma mater, Stanford University, for safe-keeping and study by scholars from around the world.

Lenin encouraged trade with the U.S.: "We are resolutely for economic accord with America, with all the countries, but especially with America."¹⁰⁸ In 1924, Amtorg Trading Corporation, a private company, was established in New York to act as purchasing and selling agent for Soviet trade corporations in the United States. By 1931, the Soviet Union was the principal foreign purchaser of U.S.-made machines and equipment. Some 1500 assorted American experts were in the Soviet Union. In 1937 a trade agreement was signed with Russia,¹⁰⁹ giving it Most Favored Nation status. During the lend-lease program to Russia, American companies shipped huge amounts of munitions and supplies to the Soviets in a joint effort to defeat Hitler during the Second World War.

As the cold war descended over Europe and Asia following defeat of the Nazis, trade relations took a sharp turn for the worse. In 1947, Congress passed the Export Control Act¹¹⁰ to limit the types of goods which could be shipped to the Soviets and their allies; in 1951, following the Soviet inspired invasion of South Korea, the U.S.-Soviet trade agreement was cancelled altogether.¹¹¹ Trade nearly came to a standstill.¹¹²

With the beginning of the thaw in the Cold War in the 1970's, trade began to increase. Nixon and Brezhnev signed a trade agreement in 1972 which reinstated Most Favored Nation status for the Soviets and a settle-

108. The Journal of Commerce, *supra* note 79, at 11.

109. However formal trade relations were initiated earlier on July 13, 1935 in "An Agreement Regarding Commercial Relations with The USSR, 49 Stat. 3805, pt. 2.

110. Under the Export Administration Act of 1985, 50 U.S.C. app. 2401 *et seq.*, successor to the 1947 Act, the U.S., through the Department of Commerce, may control exports, reexports, and trans-shipments of goods and technical data. This is handled through a licensing procedure. The purpose of the controls, among others, is to 1) protect U.S. national security, 2) further U.S. policy, and 3) protect the U.S. domestic economy from shortages and the inflationary impacts of abnormal foreign demand for goods. Export licensing applies to a) export of commodities and technical data from the U.S., b) reexport of U.S. origin commodities and technical data from one foreign destination to another, c) U.S. origin parts and components used in a foreign country to manufacture a foreign end product for export and d) in some instances, a foreign produced product using U.S. technical data.

Most U.S. exports require no specific U.S. approval. They are exported under a "general license." No license application is needed if the goods in question are not on a restricted control list maintained by the Department of Commerce. If a "validated license" is required, the proposed transaction is reviewed to determine if the commodity or technology in question would contribute to significant military use or promote the military-industrial base of the importing country. See R. Starr, *The Evolving U.S. Legal Framework for US-USSR Trade*, in BUSINESS TRANSACTIONS WITH THE USSR 16 (1975). See also GIFFEN, *supra* note 104, at 9-42. Under the Act, the U.S. may cooperate with other nations having common strategic interests to restrict exports of goods and technology. 50 U.S.C. App. 2402.

111. Trade Agreements Extension Act of 1951, sec. 5, 65 Stat. 73 (1951).

112. *Id.*

ment of the long outstanding lend lease debt was reached.¹¹³ The trade bill was, however, subject to ratification by both Congress and the Supreme Soviet. After much debate,¹¹⁴ Congress attached a rider to the trade bill making its approval conditional upon Soviet acceptance of the so-called Jackson-Vanick amendment, which required them to halt certain human rights violations, principally their restrictions upon the emigration of Soviet jews. Although during the 1970's the Soviets did permit substantial emigration, they refused to formally agree to the provisions of the Jackson-Vanick amendment, and the trade bill never took effect.¹¹⁵ A side casualty was cessation of payment by the Soviets of the lend-lease debt, made conditional upon effectiveness of the trade bill.

While other trade accords did go into effect,¹¹⁶ the failure of the

113. The U.S.S.R. had agreed to pay a small percentage of the total due on the lend lease account. The settlement amounted to \$722 million, payable \$24 million per year until the year 2001. See *The American Review of East-West Trade* (Dec. 1972).

114. Not only the Congressional, but the national debate over trade included wide ranging considerations concerning U.S. policy toward the Soviets and its effectiveness in promoting peace. See G. BALL, *DIPLOMACY FOR A CROWDED WORLD* 110 (1976) for a discussion of some of the issues surrounding U.S. participation in Soviet trade.

115. While the Trade Agreement of October 18, 1972 did not become effective, in light of the new Soviet trade offensive, renewed efforts will be made to resurrect and debate some of its key provisions. These should be noted here.

Included in the 1972 agreement was a provision that MFN status would be provided to each party. Other provisions set up a procedure for preventing disruption of domestic markets, provided for payment of goods to be made in freely convertible currencies, and for the establishment of reciprocal commercial offices and business facilities. In addition the agreement provided for arbitration of commercial disputes. Both the U.S. and the Soviet Union are parties to the "United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards," concluded in New York in 1958. See Starr, *supra* note 110, at 14.

The agreement also provided a waiver by the Soviet Union of sovereign immunity claims by its foreign trade organizations (FTO's) See Paper presented to the US-USSR Trade and Economic Council, *supra*, on December 8, 1986, prepared by Stephen A. Oxman and Margery S. Bronster, "Foreign Sovereign Immunities Act of 1976—an Overview." Under the Sovereign Immunities Act, 28 U.S.C. §§ 1330, 1391 (f), 1441 (d) and 1602-1611. Foreign states are not granted immunity from suit in U.S. courts in cases involving their commercial activities. This question becomes important in dealing with socialist countries, where virtually all businesses are owned by the government. As to the origin of the doctrine, see *The Schooner Exchange v. M'Faddon*, 11 U.S. (7 Cranch) 116 (1812) and *Verlinden, B.V. v. Central Bank of Nigeria*, 461 U.S. 480 (1983). See also, Osakwe, *A Soviet Perspective on Foreign Sovereign Immunity: Law and Practice*, LAW IN THE SOVIET UNION (1984).

See Starr, *supra* note 110, at 1-24, for a discussion of the evolution of Soviet trade agreements.

116. A grain agreement was signed on July 8, 1972. This agreement provided for the purchase of at least \$750 million worth of U.S. grain by the Soviets for delivery over a three year period. The grain agreement also permitted the Commodity Credit Corporation to provide credit to the Soviet Union. Soviet purchases in 1963 and 1971 had been for cash. Starr, *supra* note 110, at 1. A lend lease settlement and a credit agreement, were signed in October, 1972. These agreements contemplated tripling trade over the next three years. *Id.* at 2, 3.

A Maritime Agreement was signed on October 14, 1972 permitting access by each of the parties to 40 specified ports in the others's territory. This agreement and others negotiated during the "thaw" of the 1970's have been renegotiated, or in some cases suspended as trade

trade bill itself has denied the Soviets the coveted Most Favored Nation status and U.S. government trade credits. In response to Soviet misbehavior, the Carter administration in, 1978, imposed export controls on oil and gas equipment destined for the Soviet Union and instituted a variety of boycotts, embargoes and sanctions.¹¹⁷ In 1980, following the Soviet invasion of Afghanistan, the United States boycotted the Moscow Olympic Games, placed an embargo on grain shipments to the Soviets and took other measures which reduced trade by some 50 percent.¹¹⁸ Additional restrictions were imposed by the Reagan administration in 1982, following Soviet intervention in Poland at the time of the Solidarity crises there.¹¹⁹ Among other sanctions, the U.S. sought to dissuade its European allies from participating in Soviet efforts to construct a gas pipeline from Siberia to Western Europe.¹²⁰

Sensing that it was time to cool down the Cold War rhetoric which had been building up during his first term, President Reagan in January, 1984, declared his intention to seek an expansion of trade with the Soviets. In May, 1985 the joint U.S.-U.S.S.R. Commercial Commission met in Moscow after a hiatus of seven years. And in December, 1985, more than 400 U.S. businessmen travelled to Moscow as part of the U.S.-U.S.S.R. Trade and Economic Council, for meetings with Soviet trade officials, highlighted by a welcoming banquet hosted by Gorbachev at the Kremlin.¹²¹

As part of their trade offensive, the Soviets are making concerted efforts to influence the American Administration and Congress to remove outstanding trade barriers. They recognize that improvement of trade is closely linked to improvement of political relations between the two countries. Assuming satisfactory progress in this area, they cite specific barriers which must be removed:¹²²

1. DENIAL OF MOST FAVORED NATION (MFN) STATUS. As a result of the absence of MFN status, the cost to U.S. consumers of many Soviet goods is 3 or 4 times higher than comparable goods from other countries. This makes it extremely difficult for the Soviets to find satisfac-

sanctions were imposed following the Soviet invasion of Afghanistan and other events. See Brougher, *Joint Economic Committee*, *supra* note 31, at 419-453.

117. The Journal of Commerce, *supra* note 79, at 11.

118. J. CARTER, KEEPING FAITH—MEMOIRS OF A PRESIDENT 471-489 (1982). See also Brougher, 1979-82: *The United States Uses Trade to Penalize Soviet Aggression and Seeks to Reorder Western Policy*, *Joint Economic Committee*, *supra* note 31, at 419-453 (for an excellent summary of sanctions imposed on the Soviet Union).

119. U.S. Department of the Treasury, *US Government Policy on Economic Relations with the Soviet Union*, *Joint Economic Committee*, *supra* note 31, at 398.

120. Holliday, *Foreign Economic Relations—Overview*, *Joint Economic Committee*, *supra* note 31, at 392.

121. The Journal of Commerce, *supra* note 79, at 29. The Trade and Economic Council was scheduled to convene for its annual 1987 meeting in Moscow in December, but was postponed until after the Washington, D. C. summit between Reagan and Gorbachev.

122. *Id.* at 29, 32.

tory products to ship to the U.S. in order to earn dollars it needs to purchase U.S. goods. The Soviets claim that the U.S. is its only trading partner not granting MFN status.

2. FAILURE TO GRANT GOVERNMENT SUPPORTED CREDITS, SUCH AS EXPORT-IMPORT BANK GUARANTEES.¹²³ The Soviets say that such credits are granted by the Western Europeans and Japanese, and, as a consequence they are much more competitive as sellers than the U.S.

3. IMPOSITION OF RIGID EXPORT CONTROLS.¹²⁴ Such controls are imposed, among other reasons, to deny the Soviets access to U.S. products deemed to assist them in their military efforts. The Soviets contend that such controls are too broad, and that many of the products denied to them by the U.S. are easily obtainable from Western Europe or Japan.

123. Under the 1972 credit agreement (later aborted by Soviet refusal to accept emigration provisions of the Jackson-Vanick amendment) the U.S. agreed to extend Export-Import Bank credits and guarantees to the Soviets. Relations with the Bank were to be handled on the Soviet side by the Soviet Bank of Foreign Trade (Vneshtorgbank of the USSR). For a good general discussion of Vneshtorgbank and the Soviet banking structure, see *Journal of the US-USSR Trade and Economic Council* (New York and Moscow), Vol. 11, No. 5/6 (1986), at 17, 28. See also article by Victor Gerashchenko, First Deputy Chairman of the Board, USSR Bank for Foreign Trade, *Wall Street Journal*, Aug. 24, 1987. The Soviet government agreed to guarantee repayment of all Exim Bank credits extended to any of its trading organizations. The U.S.S.R. also agreed to finance its exports to the U.S.. See Starr, *supra* note 110, at 5.

124. In addition to controls imposed under the Export Administration Act discussed above, the U.S. has controlled the sale of goods to the Soviet Union under a number of other laws. For example, licenses are required for the export of certain military sensitive products by U.S. government agencies including the State Department (arms), the Atomic Energy Commission, Maritime Administration and others. See Starr, *supra* note 110, at 19. See also Giffen, *supra* note 104, at 10. See generally J. BARTON & B. FISHER, *INTERNATIONAL TRADE AND INVESTMENT—SELECTED DOCUMENTS* (1986), for an overview of applicable trade acts.

Also controls are imposed through COCOM (The International Coordinating Committee on Strategic Trade with Communist Countries). COCOM is an organization created by the United States and 14 other NATO countries (except Iceland), and including Japan. COCOM provides for voluntary export restraint by its members to help preserve mutual security. Though control mechanisms are in place, COCOM members have been ambiguous in their support of the program. While they recognize the need to restrict transfer of technology to the Soviets which would be of military value, western industry is anxious to do business with Russia. See *TIME*, Nov. 30, 1987, at 42. As a consequence COCOM has been under funded, and under staffed, and this in turn has contributed to such inadequate oversight as the recent sale by Norwegian (Kongsberg) and Japanese (Toshiba) companies of ship propeller manufacturing equipment to the Soviets which permitted radical reduction in the detectability of Soviet submarines. (See Perle, *Keeping Western Technology Western*, *Wall Street Journal*, July 23, 1987). COCOM publishes a list of embargoed items and "watches" other commodities which it feels may become worthy of embargo in the future. Starr, *supra* note 110, at 17. For a good discussion of the operation of COCOM and of related controls, see Bayard, Pelzman & Perez-Lopez, *An Economic Model of United States and Western Controls on Exports to the Soviet Union and Eastern Europe*, Joint Economic Committee, *supra* note 31, at 511-519.

Attempting to show some flexibility in technology sales to the Soviets, the Reagan administration recently removed its objections to sale of basic "no frills" personal computers. *San Francisco Chron.*, August 19, 1987.

4. A U.S. POLICY OF BOYCOTTS, EMBARGOES, SANCTIONS AND BROKEN CONTRACTS, ALL OF WHICH MAKES THE U.S. AN UNRELIABLE TRADING PARTNER. The U.S., unlike many of its allies, has used trade policy with the Soviets to register its displeasure with Soviet political behavior, such as invasion of Afghanistan, intervention in Poland, and human rights violations.)

5. IMPOSITION OF OTHER TYPES OF RESTRICTIONS. Since 1951, the U.S. has embargoed 7 types of fur skins produced in the Soviet Union and has banned the importation of nickel, contending that it was produced through the use of slave labor. Also the U.S. has imposed anti-dumping and countervailing duties¹²⁵ on products from the Soviet Union, including titanium, potassium chloride, and urea, based on the U.S. belief that these products are disruptive to the U.S. market and are sold in the U.S. at prices below cost in the Soviet Union.¹²⁶

VI. LESSONS AND OPPORTUNITIES FOR THE WEST

Economic restructuring in the Soviet Union presents the West, particularly the United States (as Russia's principal rival), with an opportunity to radically change its relationship with the U.S.S.R. and to reap substantial benefits which have eluded it for the 70 years the Communists have been in power.

The most obvious immediate benefits on the horizon are substantial cuts in armaments and a reduction in present heavy costs for defense. Additional benefits are opportunities for increased mutual trade and a general normalization of the U.S.-U.S.S.R. relationship, including increased cultural, scientific and social exchanges. In many ways, all of these benefits are interdependent. However all of them arise from the new Soviet consciousness that its economic system is not working and that if it wishes to keep pace economically and culturally with the rest of the world it, must make significant changes.

The West, with proper caution, should applaud and encourage the changes, not simply to show the Soviets good will, but rather to help to reduce ever-spiraling arms budgets, to increase foreign trade, to reduce the U.S. trade deficit, and to benefit from increased interchange with Soviet artists, scholars and scientists.¹²⁷

A. Reducing U.S. Defense Costs

On December 9, 1987, President Reagan and General Secretary Gorbachev signed an agreement eliminating intermediate range nuclear

125. Under the Anti-Dumping Act of 1921, 19 U.S.C. §§ 1671 *et seq.*, the U.S. may levy countervailing duties pursuant to the Tariff Act of 1930, 19 U.S.C. §§ 1202 *et seq.* (the Smoot-Hawley Act), as amended.

126. See Lazarus, *Perspectives on the U.S. Role in East-West Trade*, THE AMERICAN REVIEW OF EAST-WEST TRADE, May-June, 1973, at 31.

127. See Editorial by Zukerman, *Should the West Help Gorbachev?*, US NEWS AND WORLD REPORT, October 19, 1987.

missiles. Although the agreement does not significantly reduce nuclear arms stockpiles held by each nation,¹²⁸ it is an important first step in contributing to mutual trust.¹²⁹ Hopefully it is also a prelude to a second step in disarmament—a 50 percent reduction in strategic nuclear missiles preliminarily, agreed to at Reykjavik.¹³⁰

Impetus for restructuring in the U.S.S.R. has come in large part because the Soviets find they cannot finance both "guns and butter."¹³¹ Large standing armies are depriving the civilian economy of necessary manpower. Gorbachev and his advisors fear SDI not only because of the nuclear risk, but also because of the cost.¹³² They find themselves being drawn into an economic race they have no hope of winning.

Following Khrushchev's humiliation in 1963, when he was forced by President Kennedy to withdraw his missiles from Cuba, the Soviets embarked on a military buildup without parallel in modern history.¹³³ Its purpose was to prevent future embarrassment and to project Soviet power world-wide. But because military industries were starving civilian production and industrial renewal, the Soviets realized by the late 1970's that their economy was not only failing to meet civilian demands, but also threatened to curtail future military requirements.¹³⁴ Thus, economic restructuring became a matter of national necessity, rather than a manifestation of Soviet good will. To restructure the Soviet economy and to provide necessary reindustrialization, Gorbachev needs a period of repose.¹³⁵ He cannot achieve his goals of meeting promises to Soviet citizens if his

128. The INF treaty will affect only about 4 to 6 percent of the nuclear arsenals held by the superpowers in Europe. *San Francisco Chron.*, November 26, 1987, at A29.

129. *The Wall Street Journal*, November 25, 1987, at 2. Under the proposed INF treaty, the U.S. would eliminate missiles containing 350 warheads and the Soviets would destroy missiles containing 1500 warheads.

130. M. GORBACHEV, *THE RESULTS AND LESSONS OF REYKJAVIK* 24 (1986).

131. *US NEWS AND WORLD REPORT*, October 19, 1987, at 32.

132. U.S. DEPARTMENT OF DEFENCE, *SOVIET MILITARY POWER—1987* 10 (1987).

133. See R. STARR, *Soviet Union, THE UNITED STATES IN THE 1980's* 744-749 (1980). Over the decade prior to 1980, the U.S.S.R. spent about \$150 billion for strategic offensive weapons, about 3 times the amount spent by the U.S. By 1979 the Soviets outnumbered the U.S. in nearly every class of military hardware and forces. Among twenty indices of military power, the U.S. had an advantage in only four. For example the Soviets had 270 attack submarines to our 77, 761 medium bombers to our 66, 4,690 fighter aircraft to our 3,400, 169 ground divisions to our 16, 53,000 tanks to our 10,500, 40,700 artillery to our 17,500, 1398 ICBM's to our 1054, and 90 ballistic missile submarines to our 41. The U.S. led the Soviets in carriers, 12 to 3, heavy bombers 573 to 156, total warheads 8,526 to 6,132, and naval aircraft 1,464 to 1,310. Starr, p. 745. This imbalance has been redressed in part by significant increases in U.S. military expenditures during the Reagan administration. For example, by 1989 the U.S. navy fleet will have grown from 479 to 600 battle force ships. *SOVIET MILITARY POWER—1987*, *supra* note 132, at 149. Notwithstanding, it has been estimated that military expenditures in the U.S.S.R. have averaged 15 to 17 percent of the Soviet GNP, about three times the comparable U.S. figure. See Sybert, *The Reality of Strategic Defense*, *LOS ANGELES LAWYER*, July-August, 1987, at 22.

134. *SOVIET MILITARY POWER—1987*, *supra* note 132, at 10.

135. See Broening, *U.S. Debates how to Handle Soviets as Moscow Grapples with Reform*, *San Francisco Chron.*, Aug. 30, 1987, at A-5.

limited resources and productive capacity must be redirected to a continuation of the arms race, particularly an open-ended pursuit of "star wars."¹³⁶ The economic turmoil in Russia is of direct benefit to the West in encouraging the Soviets to enter into meaningful disarmament agreements.

The cost of arms has not been easy for the U.S. Since 1980, President Reagan, largely through his efforts to build up U.S. military might, has added more than \$1 trillion to the U.S. national debt,¹³⁷ consequences include consequent repercussions in foreign trade deficits, the plummeting dollar on foreign exchanges and the recent crash of the stock market in October.¹³⁸

While President Reagan has denied that SDI is a bargaining chip,¹³⁹ the Pentagon has conceded that it will provide the basis for deep reductions in offensive weapons.¹⁴⁰ Due to the highly questionable merits of the star wars program¹⁴¹, there is reason to believe that the Reagan adminis-

136. The Soviets see the SDI proposal as a snare to force them into an unending, economically debilitating arms race and a means to enable the U.S. to gain a first strike capability over the Soviet Union. See McReynolds, *Star Wars: Logic of the Past*, reprinted from The Bulletin of the War Resisters' League (USA), in SOVIET PEACE COMMITTEE, XX CENTURY AND PEACE (1986). See, in addition, M. GORBACHEV, THE RESULTS AND LESSONS OF REYKJAVIK (1986). Discounting Reagan's arguments that SDI would be deployed only for defensive purposes, they point out that once the U.S. had emplaced space satellites capable of locating and destroying Soviet missiles after launch, the U.S. could easily use these same lasers or missile destroying guns to destroy Soviet missiles on the ground and thus force the Soviets to capitulate to U.S. demands. See Manheim, *Star Wars: A Dangerous Strategic Gamble*, LOS ANGELES LAWYER, July/August, 1987, at 25, and McReynolds, *supra*.

137. For a good discussion of the military buildup during the Reagan administration and the cost of the SDI program see N. COUSINS, THE PATHOLOGY OF POWER 179, 167-190 (1987).

138. TIME, Nov. 30, 1987, at 44.

139. The Wall Street Journal, Nov. 25, 1987, at 2.

140. SOVIET MILITARY POWER—1987, *supra* note 132, at 148.

141. Star wars detractors not only see merit in Soviet suspicions, but point out that the scientists charged with developing SDI technology state publicly that technology does not presently exist to provide any credible umbrella against Soviet missile attacks, and even if sufficient progress is made to create such technology, substantial numbers of missiles would still get through the defenses, and new counter-defensive measures would in the meantime be developed. Manheim, *supra* note 136, at 23, states: "The overwhelming consensus of the nation's technical community is that in fact there is no prospect whatever that science and technology can, at any time in the next several decades, make nuclear weapons 'impotent and obsolete.'" quoting from McGeorge Bundy, Kennan, McNamara, and Smith, *The President's Choice: Star Wars or Arms Control*, 63 FOREIGN AFFAIRS 264, 265 (1984).

Even after the expenditure of sums estimated to be up to \$1 trillion (about 1/3 our present GNP), we would still have no effective defense against nuclear missiles launched from submarines or bombers. See Manheim, *supra* note 136, at 23. "SDI will be designed to intercept only ballistic missiles taking a trajectory that puts them above the earth's atmosphere. It could not handle cruise missiles, short or intermediate-range missiles (e.g., submarine or air launched), bombs dropped from aircraft, or those delivered by any other means (e.g., smuggled by terrorists)." A Congressional study of SDI released in August, 1987 concluded that depending on what countermeasures are taken by the Soviets, SDI could cost up to \$1 trillion. Quoting from the Pentagon's Science Board the report stated: "... as a conse-

tration has pushed SDI precisely because of its belief that the Soviets cannot afford the race, and are being compelled to negotiate seriously on arms.

B. Increasing Trade

As part of their trade offensive toward the U.S., the Soviets hold out the prospect of greatly expanded trade and mutual benefits. Although the Soviet Union is one of the largest potential markets in the world, the U.S. must recognize that aside from certain commodities, the Soviets manufacture or produce very few products of the type or quality which would be of interest to the U.S. Furthermore, they presently have little available foreign exchange with which to purchase U.S. products.

The U.S. should, however, look to the long term and attempt to cultivate a political and economic climate which will permit it to increase its sales of products and services to the Soviets and also to augment its purchases from them. The greater its trade with the U.S.S.R., the stronger the mutual reasons are for remaining peaceful so that trade and intercourse will remain uninterrupted. The U.S. must recognize, however, that while the Soviets have historically sought trade with it, they likewise have used trade, and their desire for advanced technology, to increase espionage activities.¹⁴²

quence of the current gaps in system design and key technologies, there is presently no way of confidently assessing system performance system cost; or schedule." San Francisco Chron., Aug. 2, 1987. See also San Francisco Chron., Aug. 8, 1987.

142. In order to obtain intelligence from countries which desired trade, but which would not concede Soviet respectability by granting diplomatic status, the Soviets immediately following the revolution, began establishing trade missions and small trading companies to serve as covers for espionage. Such trading outposts were established in the early 1920's in Great Britain, Germany, the United States, and other countries. The U.S. company, Amtorg, was formed in 1924, through a merger of several smaller firms. It was headquartered in New York and charged with the task of coordinating Soviet trading activities in the United States. As a collateral task, it could operate as a fully integrated Soviet foreign intelligence station with its own funding, and serve as a base for hundreds of visiting "engineers," "inspectors," "accountants," and "trade experts." A Soviet trading company in Britain called Arcos (All-Russian Cooperative Society) was believed by the British to be the center for espionage in England. Within three years of its establishment in London, Arcos was raided by the police and its officers and the Soviet embassy and diplomatic personnel were expelled from Britain. W. CORSON & R. CRAWLEY, *supra* note 16, at 282, 283.

Corson, reports that beginning in 1941, under the cover of the US-Soviet lend lease program, the head of the NKVD (Soviet secret police) dispatched approximately one thousand NKVD and GRU (Armed Forces intelligence agency officers) to the United States to serve as "purchasing specialists" along with various "experts" from Amtorg in New York. While their mission was to buy anything thought necessary for Russia to win the war, as a collateral duty, they were to bribe and attempt the subornation of any interesting, influential, or powerful American with whom they came into contract, and to obtain designs, drawings, and patents of military and industrial secrets. *Id.* at 209.

Beginning in 1967 when Yuri Andropov became head of the KGB (later General Secretary) the Soviets began a massive world-wide espionage effort to acquire Western and particularly U.S. military and industrial secrets. The North Vietnamese were used as surrogates to capture and transport to Moscow for evaluation, U.S. military equipment. Through such

As the United States evaluates how to respond to new Soviet trade overtures, it must bear in mind that the KGB and its agents are an ever present part of the Soviet government and foreign policy. While the U.S., through the CIA, does its best to keep tabs on the Soviets and their latest technological achievements,¹⁴³ it must be aware that industrial espionage within the United States and every other Western country is a fact of life; therefore, in its dealings with its trading partners, the U.S. must continue to take all reasonable steps to guard against industrial espionage.

C. *Increasing Cultural, Scientific and Social Exchanges*

Coincident with the Gorbachev revolution in the economy has been a substantial increase in scientific and cultural exchanges with the West. Gorbachev has recognized that the Soviet economy cannot be restructured without changing fundamental beliefs and practices among Soviet citizens.¹⁴⁴ Unless the Soviets are open to new ideas and methods, creativity and motivation will remain low. Western ideas in all aspects of society are increasingly dominating the changing Soviet culture. The Soviets are hosting diverse cultural and scientific delegations in greater numbers¹⁴⁵ and are straining domestic hotels and travel facilities in the process.¹⁴⁶

means including intelligence obtained from American traitors, Andropov was successful in providing the Soviet armed forces with a guide to upgrading its conventional forces without the high costs of research and development. *Id.* at 340-344.

During Andropov's tenure as KGB chief, the Soviets greatly widened their acquisition of Western technology. Part of the program involved subscribing to and acquiring every available Western technical journal, including doctoral dissertations. This information would be analyzed by Directorate T of KGB headquarters in Moscow, from which would be developed a shopping list of high-tech hardware for acquisition. Everything on the list which could be acquired legitimately would be purchased through normal channels. Items which could not be so purchased would be acquired by illegal means, including 1) setting up dummy corporations and purchasers to get around export restrictions, and 2) outright industrial theft. See BARRON, *supra* note 10, at 161-206 for a description of military and industrial thefts which have been perpetrated by the Soviets in the United States. Barron estimates that the KGB and its military subsidiary the GRU have more than 400 officers permanently stationed in New York, Washington and San Francisco to spy and conduct active measures. Since 1975 at least 54 persons have been accused of espionage against the United States. The recent trials of Marine Moscow Embassy guard Clayton Lonetree (accused of fraternizing with a Soviet woman who turned out to be a spy), and of former Navy men Jerry Whitworth and the Walker family (who stole cryptographic information), have captured the headlines. See San Francisco Chron., Aug. 30, 1987.

143. The CIA uses many of the same techniques as the KGB to secure vital industrial and military information. See S. TURNER, *SECRECY AND DEMOCRACY—THE CIA IN TRANSITION* at 48-60 (1985). See also P. AGEE *INSIDE THE COMPANY—CIA DIARY* (1975).

144. See Bialer, *Marx had it Wrong. Does Gorbachev?*, US WORLD AND NEWS REPORT, Oct. 19, 1987, at 42.

145. See *Information Moscow 1987-88*, Western Edition (San Francisco, US Information Moscow, 1987) at xxvi.

146. See article by Vladimin Lebedev, Wall Street Journal, Aug. 24, 1987. Intourist, the official Soviet travel agency runs 107 hotels, motels and camping sites in the U.S.S.R. and can accommodate 55,000 guests. By 1990 Intourist expects that 30 new hotels will be built and that 13 older hotels will have been refurbished.

Likewise, delegations of Soviet citizens, ranging from members of the press, television, radio, government, science and the arts are finding their way with regularity to Western capitals and outlying areas.¹⁴⁷ The U.S. should encourage all such intercourse. As the Soviets learn more about the West, and the West about them, there is a possibility of giving up the sense of mutual hostility.

VII. CONCLUSION

The changes presently taking place within the Soviet Union are perhaps the most significant since Stalin initiated the five year plans in 1928, and arguably could have consequences as sweeping as the 1917 Bolshevik revolution itself. The utopian Communist society envisioned by Marx and Lenin has proved to be hopelessly elusive, and the socialist economy instituted as a precursor to the "beautiful tomorrow" is failing to provide Soviet society with the goods and services it needs to keep pace with the more dynamic economies of the West.

Stalin proved that terror and oppression could compel fundamental changes in Russian society and the economy, but the Soviets have learned to their dismay that the innovation and creativity required by a modern economy cannot be forced through dictates from the top; they have to be generated through individual enterprise from the bottom.

While the comprehensive reforms now underway in Russia will most likely prove successful over time, the benefits have not yet reached the average citizen in terms of higher standards of living. The reforms, however, are being widely discussed and appear to have the approval of the rank and file. Members of the bureaucracy and the Party which have not been performing satisfactorily, stand to lose their jobs, power and perquisites, and as a consequence are not enthusiastically embracing the Gorbachev revolution. To counter this foot-dragging and to inject a sense of meaning and life into the system, Gorbachev has enlisted elements of democracy, including a critical press and local elections in the workplace and in political units to pressure recalcitrants to get in line and remain accountable.

Under the new laws proposed by the Party and approved by the Supreme Soviet, the Soviet economy is moving substantially closer in tone and form to the Western capitalist economies. Central planners will set goals for industry and explore ways to help them to achieve those goals. Decisions as to buying, selling and pricing of commodities are to be made, for the most part, by the local industrial unit, which now will have the responsibility of remaining profitable without government subsidies. Government entities will place orders for their requirements with local manufacturers and, to the extent feasible, bids will be awarded competitively.

147. For example a contingent of high level Soviet scientists and others met with American counterparts recently at Chautauqua in up-state New York to discuss among other things, the dangers of nuclear war. *TIME*, Oct. 5, 1987, at 69.

Soviet theorists say the U.S.S.R. remains a socialist economy because the principal means of production will continue to be owned by the State. Under the new rules, however, workers can be paid whatever their services are worth, without limitation.

Although there remain substantial differences between the new Soviet and Western economies, the differences have narrowed considerably. While small entrepreneurial businesses constitute a large part of a Western, particularly the U.S., economy, these economies have become mixed with substantial socialist elements.¹⁴⁸ Another element of convergence in the two economic systems arises in the manner in which ownership interests are controlled. Under the new Soviet system, while the government will continue to own principal industries, managers and workers will have substantial freedom in establishing business plans, wages, salaries and other benefits, including the distribution of profits. Such an evolution in corporate structure and management is not essentially different from that which presently exists in many large U.S. enterprises.¹⁴⁹

Soviet economic reform will provide increased opportunities for Western trade. The United States should carefully review its policies toward the Soviet Union, especially in view of their efforts to make progress toward the solution of some of the central problems separating the two

148. Consider, for example social security, medicare, unemployment insurance, social welfare, and government subsidies to farmers, maritime interests and through military orders to defense industries. At least one third of the U.S. gross national product (GNP) can be said to be subject to planning from central governmental authorities, since at least that much of the GNP is taxed by federal, state and local governments and redistributed to citizens in the form of government services, military orders, health care and so on. Further, through our tax system our government has vast influence over other parts of the economy. Certain types of construction are encouraged through tax exempt treatment of municipal bonds; subsidies in the form of tax write-offs such as depreciation and various exemptions encourage other types of economic activity. While our society can be said to be planned through governmental intervention, such intervention up to now, is essentially different from that of the socialist dictatorships. Our planning has tended to provide incentives to induce private conduct to satisfy governmental goals, rather than dictating quotas, wages and the like. Galbraith argues that capitalism as an economic system, has essentially failed to provide adequate housing, health care and transportation facilities needed particularly by an urban society and that Western Europe and Japan have largely accepted that reality. GALBRAITH, *supra* note 9, at 319.

149. To the average worker or manager of a large American corporation such as IBM, General Motors or General Electric, it makes little difference who owns the shares of his corporation, so long as he gets what he considers fair compensation. A worker or manager may or may not have any ownership interest in the firm he works for. His union will help him bargain for what he hopes is a fair wage. Ownership of large corporations for the most part is diversified throughout the economy and held by pension funds, other corporations and individuals around the country. So long as the shareholders receive what they feel is a fair and predictable dividend, they are usually happy. This is not substantially different from Soviet ownership by the government (the proletariat or workers as a whole). Under the new Soviet system, although the government will remain the sole shareholder, it will impose a tax for its share of the industrial output (its dividend) and the balance can be distributed as management thinks best among workers in accordance with their productivity, without artificial limitations as to amount of compensation.

societies, such as arms control, internal freedom for their citizens and easier emigration.

Although Russia has endured a difficult and complex history, its traditions have been primarily Western. But for the skill and determination of Lenin and the Bolsheviks in turning the revolution to their favor in 1917, Russia might well have succeeded in becoming a stable democratic government following the turmoil of the First World War and the revolution. Those same democratic impulses are again being felt, and they may become irresistible. The United States cannot forget that through the use of the KGB and its predecessors, and consequent terror and rigid control over its citizenry, the Soviets have remained in power for 70 years. They are not likely to give up control easily, and there appears to be no substantial movement within the U.S.S.R. to overthrow the central authority. Thus change in the Soviet Union will be gradual and at a pace approved by Communist Party leaders.¹⁵⁰ Only time will tell whether the forces of change now in play will irresistibly transform the communist society into something substantially different, and similar in essential respects to evolving Western societies and economies.

Both the Soviets and the West have common interests—survival¹⁵¹ and, to the extent possible, prosperity. Through social intercourse, trade and mutual reductions in armed might, The West should encourage the Soviets to continue their quest for greater democracy and freedom, but remain vigilant not to drop its own guard or reduce its strength to unacceptable levels while the transformation is taking place.

150. At an historic meeting of the Community Party beginning on June 28, 1988, Gorbachev proposed and got approval for a radical new government structure. The party will continue to guide the country, but substantial power will be shifted to a new super legislature called the Congress of People's Deputies, composed of 1500 nationally elected delegates and 750 representatives of various trade unions and party committees. This Congress would in turn select a standing legislature of 400 to 450 members, and a president to oversee it. The president would have broad powers over domestic and foreign policy. See N.Y. Times, June 30, 1988, at A6.

151. See Nixon, *Superpower Summitry*, 64 FOREIGN AFFAIRS 1 (1985). In his new publication, *Perestroika*, *supra* note 8, Gorbachev has stated "Everyone seems to agree that there would be neither winners nor losers in [a nuclear] war. There would be no survivors. . . We are all passengers aboard one ship, the Earth, and we must not allow it to be wrecked. There will be no second Noah's Ark." *Id.* at 11, 12.