

Denver Journal of International Law & Policy

Volume 5
Number 3 *Special Issue*
Soviet-American Trade in A Legal Perspective

Article 9

May 2020

Discussion

Denver Journal International Law & Policy

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

Recommended Citation

Discussion, 5 Denv. J. Int'l L. & Pol'y

This Comment 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, digitalcommons@du.edu.

Discussion

There was considerable disagreement among the American participants concerning the degree to which the Executive Branch has supported most-favored-nation treatment for imports from the Soviet Union at various times since the late 1940's. There was universal agreement, however, that most-favored-nation treatment had been withdrawn from the Soviet Union on the initiative of Congress and that Congressional opposition was the primary obstacle to renewal of most-favored-nation treatment in the early 1970's. It was also generally agreed that this state of affairs was caused by the linkage of trade policy with general foreign policy considerations in the minds of U.S. policy makers.

Mr. Metzger expressed the opinion that the linkage of trade policy with general foreign policy considerations was so close that it was useless to expect Congress to extend most-favored-nation treatment to the Soviet Union in the absence of significant improvement in the general political climate. However, he was also of the opinion that the obstacles which would be removed by most-favored-nation treatment of Soviet imports were not serious barriers to Soviet-American trade. Parenthetically, he expressed the opinion that Soviet exporters could manipulate their prices to overcome the effect of tariff barriers. In addition, he felt that the key to the future development of Soviet-American trade was the extension of U.S. government credits for exports to the Soviet Union. Since such credits were controlled by the Administration, and thus beyond the influence of a hostile Congress or public opinion, and since the business community generally favored extension of trade with the Soviet Union, trade would increase even without most-favored-nation treatment.

Another American participant agreed that the presence or absence of most-favored-nation treatment was not objectively a major factor, but stated that it was nevertheless a major psychological problem. However, still another American participant contended that there is no way of knowing the extent to which Soviet producers could compete for U.S. imports if discriminatory tariff barriers were removed.

There was also strong disagreement among the American participants concerning the extent to which "liberals" in the United States are to blame for failure to work actively to change public attitudes toward trade with the Soviet Union.

Mr. Usenko agreed with Mr. Metzger that a favorable rate of interest on credits for U.S. exports is the most rational way of expanding Soviet-American trade. However, he disagreed with the contention that most-favored-nation treatment is not an important fac-

tor in such trade. First, he pointed out, Soviet manufacturing enterprises are autonomous units operating under principles of economic accountability, and thus cannot manipulate their prices to overcome high tariff barriers. Second, the tariff discrimination involved in a denial of most-favored-nation treatment has had a material effect on Soviet exports. Mr. Usenko pointed out examples involving airplanes, electric generators, and fibers in which the applicable tariff rates range from thirty to forty percent, as opposed to six to seven percent for imports from countries enjoying most-favored-nation status. The result, he noted, is a qualitative as well as a quantitative distortion in trade patterns; only one-third of the Soviet exports to the United States are finished products while two-thirds consist of raw materials. This guarantees a balance of trade which will always be strongly in favor of the United States, and poses problems to future development. Moreover, Mr. Usenko stated, international trade is best served not by special favors, but by the uniform application of the non-discriminatory most-favored-nation standard, which, he felt, had become an international customary norm.

Mr. Metzger disagreed with Mr. Usenko's contention that there is an international customary norm requiring the establishment of most-favored-nation or any other non-discriminatory tariff regime. He contended that a country is free to discriminate or not, as it wishes, without violating any international agreement. Further, he noted, the use of the term "equitable treatment" in the 1972 Soviet-American Trade Agreement indicates that the two governments contemplated disparity of treatment among goods of various countries, at least in the case of quantitative restrictions on imports.

Mr. Usenko agreed that most-favored-nation treatment is not a requirement of international law. However, he said, non-discrimination *is* a requirement of international law, and therefore discriminatory refusal to grant most-favored-nation treatment is a violation of international law. Further, he stated, the term "equitable treatment" does not mean in the Soviet text of the Soviet-American Trade Agreement what Mr. Metzger asserted that it means in the U.S. text. The meaning assigned to the term by Mr. Metzger would be meaningless, since the Soviet Union does not have quantitative restrictions on imports. To the Soviet Union, the term "equitable treatment" signifies that the goods of each party will receive fair, that is, non-discriminatory, treatment by the other.

Further discussion disclosed that there is a significant difference between the Russian and English meanings of the word "equitable."

It was also suggested by an American participant that, in the eyes of Soviet jurists, as well as of jurists from many other countries,

but not of the United States, widespread application of a practice transforms it into a customary norm of international law. Still another American participant suggested that the basic concept from which the Soviet jurists start is that a "right to trade" exists in international law.

Mr. Usenko reiterated that non-discrimination is an established norm of international law, and he cited various authorities, including statements of the International Law Commission, for this conclusion.

